

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 746
Judiciary II Committee Substitute Adopted 4/17/01
House Committee Substitute Favorable 6/13/01

Short Title: Sentencing Enhancements Changes/Sent. Comm.

(Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING ENHANCED SENTENCES AS
RECOMMENDED BY THE SENTENCING COMMISSION, AND TO MAKE
CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 is repealed.

SECTION 2. G.S. 15A-1340.16A reads as rewritten:

"§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.

(a) ~~If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.~~

(b) ~~Subsection (a) of this section does not apply in any of the following circumstances:~~

(1) ~~The person is not sentenced to an active term of imprisonment.~~

(2) ~~The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.~~

(3) ~~The person did not actually possess a firearm about his or her person.~~

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm, and (ii) the person actually possessed the firearm about his or her person, then the person shall have the minimum

1 term of imprisonment to which the person is sentenced for that felony increased by 60
2 months. The maximum term of imprisonment shall be the maximum term that
3 corresponds to the minimum term after it is increased by 60 months, as specified in G.S.
4 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this
5 section and shall not place a person sentenced under this section on probation for the
6 sentence imposed under this section.

7 (b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall
8 allege in that indictment or information the facts set out in subsection (a) of this section.
9 The pleading is sufficient if it alleges that the defendant committed the felony by using,
10 displaying, or threatening the use or display of a firearm and the defendant actually
11 possessed the firearm about the defendant's person. One pleading is sufficient for all
12 Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

13 (c) The State shall prove the issues set out in subsection (a) of this section
14 beyond a reasonable doubt during the same trial in which the defendant is tried for the
15 felony unless the defendant pleads guilty or no contest to that issue. If the defendant
16 pleads guilty or no contest to the felony but pleads not guilty to the issue set out in
17 subsection (a) of this section, then a jury shall be impaneled to determine that issue.

18 (d) Subsection (a) of this section does not apply if the evidence of the use,
19 display, or threatened use or display of the firearm is needed to prove an element of the
20 felony or if the person is not sentenced to an active term of imprisonment."

21 **SECTION 3.** G.S. 15A-1340.16B reads as rewritten:

22 **"§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent**
23 **conviction of a Class B1 felony-felony, the victim was 13 years of age or**
24 **younger, and there are no mitigating factors.**

25 (a) Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, If a person
26 is convicted of a Class B1 felony and it is found as provided in this section that: (i)
27 shall be sentenced to life imprisonment without parole if:

28 (1) The offense was committed~~the person committed the felony~~ against a
29 victim who was 13 years of age or younger at the time of the offense;

30 and

31 (2) ~~The~~ (ii) the person has one or more prior convictions of a Class B1
32 felony; and

33 (3) ~~The court finds that there are no mitigating factors in accordance with~~
34 G.S. 15A-1340.16(e); felony, then the person shall be sentenced to life
35 imprisonment without parole.

36 (b) ~~If the sentencing court finds that there are mitigating circumstances, then the~~
37 court shall sentence the person in accordance with G.S. 15A-1340.17.

38 (e) ~~A prior conviction of a Class B1 felony shall be proved in accordance with~~
39 G.S. 15A-1340.14.

40 (b) An indictment or information for the Class B1 felony shall allege in that
41 indictment or information or in a separate indictment or information the facts set out in
42 subsection (a) of this section. The pleading is sufficient if it alleges that the defendant

1 committed the felony against a victim who was 13 years of age or younger at the time of
2 the felony and had one or more prior convictions of a Class B1 felony. One pleading is
3 sufficient for all Class B1 felonies that are tried at a single trial.

4 (c) The State shall prove the issues set out in subsection (a) of this section
5 beyond a reasonable doubt during the same trial in which the defendant is tried for the
6 felony unless the defendant pleads guilty or no contest to that issue. The issue shall be
7 presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads
8 guilty or no contest to the felony but pleads not guilty to the issue set out in subsection
9 (a) of this section, then a jury shall be impaneled to determine that issue.

10 (d) Subsection (a) of this section does not apply if there are mitigating factors
11 present under G.S. 15A-1340.16(e)."

12 **SECTION 4.** G.S. 15A-1340.16C reads as rewritten:

13 **"§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the**
14 **defendant was wearing or had in his or her immediate possession a**
15 **bulletproof vest during the commission of the felony.**

16 (a) If a person is convicted of a felony and ~~the court finds that it is found as~~
17 provided in this section that the person was wearing-wore or had in his or her immediate
18 possession a bulletproof vest at the time of the felony, then the person is guilty of a
19 felony that is one class higher than the underlying felony for which the person was
20 convicted.

21 ~~(b) This section does not apply if the evidence that the person possessed a bullet-~~
22 ~~proof vest is needed to prove an element of the underlying felony for which the person~~
23 ~~was convicted. This section does not apply to law enforcement officers.~~

24 (b) An indictment or information for the felony shall allege in that indictment or
25 information or in a separate indictment or information the facts set out in subsection (a)
26 of this section. The pleading is sufficient if it alleges that the defendant committed the
27 felony while wearing or having in the defendant's immediate possession a bulletproof
28 vest. One pleading is sufficient for all felonies that are tried as a single trial.

29 (c) The State shall prove the issue set out in subsection (a) of this section beyond
30 a reasonable doubt during the same trial in which the defendant is tried for the felony
31 unless the defendant pleads guilty or no contest to that issue. If the defendant pleads
32 guilty or no contest to the felony but pleads not guilty to the issue set out in subsection
33 (a) of this section, then a jury shall be impaneled to determine that issue.

34 (d) Subsection (a) of this section does not apply if the evidence that the person
35 wore or had in the person's immediate possession a bulletproof vest is needed to prove
36 an element of the felony."

37 **SECTION 5.** Article 81B of Chapter 15A of the General Statutes is
38 amended by adding a new section to read:

39 **"§ 15A-1340.18. Maximum punishments for felony offenses.**

40 The maximum punishment for a felony offense shall be equal to the maximum term
41 of imprisonment which corresponds to the longest minimum term of imprisonment in

1 the aggravated range in Prior Record Level VI for that offense class pursuant to G.S.
2 15A-1340.17. The maximum punishments are as follows:

- 3 (1) A Class A felony shall be punishable by death or life imprisonment
4 without parole as provided by Article 100 of Chapter 15A of the
5 General Statutes.
6 (2) A Class B1 felony may be punished by a term of imprisonment of up
7 to life imprisonment without parole.
8 (3) A Class B2 felony may be punished by a term of imprisonment of up
9 to 480 months.
10 (4) A Class C felony may be punished by a term of imprisonment of up to
11 261 months.
12 (5) A Class D felony may be punished by a term of imprisonment of up to
13 229 months.
14 (6) A Class E felony may be punished by a term of imprisonment of up to
15 98 months.
16 (7) A Class F felony may be punished by a term of imprisonment of up to
17 59 months.
18 (8) A Class G felony may be punished by a term of imprisonment of up to
19 44 months.
20 (9) A Class H felony may be punished by a term of imprisonment of up to
21 30 months.
22 (10) A Class I felony may be punished by a term of imprisonment of up to
23 15 months."

24 **SECTION 6.** G.S. 14-269.1 reads as rewritten:

25 **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

26 Upon conviction of any person for violation of ~~G.S. 14-2.2~~, 14-269, 14-269.7, or any
27 other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269,
28 the deadly weapon with reference to which the defendant shall have been convicted
29 shall be ordered confiscated and disposed of by the presiding judge at the trial in one of
30 the following ways in the discretion of the presiding judge.

- 31 (1) By ordering the weapon returned to its rightful owner, but only when
32 such owner is a person other than the defendant and has filed a petition
33 for the recovery of such weapon with the presiding judge at the time of
34 the defendant's conviction, and upon a finding by the presiding judge
35 that petitioner is entitled to possession of same and that he was
36 unlawfully deprived of the same without his consent.
37 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.
38 (4) By ordering such weapon turned over to the sheriff of the county in
39 which the trial is held or his duly authorized agent to be destroyed. The
40 sheriff shall maintain a record of the destruction thereof.
41 (4a) By ordering the weapon, if the weapon has a legible unique
42 identification number, turned over to a law enforcement agency in the

1 county of trial for the official use of such agency, but only upon the
2 written request by the head or chief of such agency. The receiving law
3 enforcement agency shall maintain a record and inventory of all such
4 weapons received.

5 (5) By ordering such weapon turned over to the North Carolina State
6 Bureau of Investigation's Crime Laboratory Weapons Reference
7 Library for official use by that agency. The State Bureau of
8 Investigation shall maintain a record and inventory of all such
9 weapons received.

10 (6) By ordering such weapons turned over to the North Carolina Justice
11 Academy for official use by that agency. The North Carolina Justice
12 Academy shall maintain a record and inventory of all such weapons
13 received."

14 **SECTION 7.** G.S. 15A-1340.16(d) reads as rewritten:

15 "(d) Aggravating Factors. – The following are aggravating factors:

16 (1) The defendant induced others to participate in the commission of the
17 offense or occupied a position of leadership or dominance of other
18 participants.

19 (2) The defendant joined with more than one other person in committing
20 the offense and was not charged with committing a conspiracy.

21 (2a) The offense was committed for the benefit of, or at the direction of,
22 any criminal street gang, with the specific intent to promote, further, or
23 assist in any criminal conduct by gang members, and the defendant
24 was not charged with committing a conspiracy. A "criminal street
25 gang" means any ongoing organization, association, or group of three
26 or more persons, whether formal or informal, having as one of its
27 primary activities the commission of felony or violent misdemeanor
28 offenses, or delinquent acts that would be felonies or violent
29 misdemeanors if committed by an adult, and having a common name
30 or common identifying sign, colors, or symbols.

31 (3) The offense was committed for the purpose of avoiding or preventing a
32 lawful arrest or effecting an escape from custody.

33 (4) The defendant was hired or paid to commit the offense.

34 (5) The offense was committed to disrupt or hinder the lawful exercise of
35 any governmental function or the enforcement of laws.

36 (6) The offense was committed against or proximately caused serious
37 injury to a present or former law enforcement officer, employee of the
38 Department of Correction, jailer, fireman, emergency medical
39 technician, ambulance attendant, justice or judge, clerk or assistant or
40 deputy clerk of court, magistrate, prosecutor, juror, or witness against
41 the defendant, while engaged in the performance of that person's
42 official duties or because of the exercise of that person's official duties.

- 1 (7) The offense was especially heinous, atrocious, or cruel.
- 2 (8) The defendant knowingly created a great risk of death to more than
- 3 one person by means of a weapon or device which would normally be
- 4 hazardous to the lives of more than one person.
- 5 (9) The defendant held public office at the time of the offense and the
- 6 offense related to the conduct of the office.
- 7 (10) The defendant was armed with or used a deadly weapon at the time of
- 8 the crime.
- 9 (11) The victim was very young, or very old, or mentally or physically
- 10 infirm, or handicapped.
- 11 (12) The defendant committed the offense while on pretrial release on
- 12 another charge.
- 13 (13) The defendant involved a person under the age of 16 in the
- 14 commission of the crime.
- 15 (14) The offense involved an attempted or actual taking of property of great
- 16 monetary value or damage causing great monetary loss, or the offense
- 17 involved an unusually large quantity of contraband.
- 18 (15) The defendant took advantage of a position of trust or confidence to
- 19 commit the offense.
- 20 (16) The offense involved the sale or delivery of a controlled substance to a
- 21 minor.
- 22 (17) The offense for which the defendant stands convicted was committed
- 23 against a victim because of the victim's race, color, religion,
- 24 nationality, or country of origin.
- 25 (18) The defendant does not support the defendant's family.
- 26 (18a) The defendant has previously been adjudicated delinquent for an
- 27 offense that would be a Class A, B1, B2, C, D, or E felony if
- 28 committed by an adult.
- 29 (19) The serious injury inflicted upon the victim is permanent and
- 30 debilitating.
- 31 (20) Any other aggravating factor reasonably related to the purposes of
- 32 sentencing.

33 Evidence necessary to prove an element of the offense shall not be used to prove any
34 factor in aggravation, and the same item of evidence shall not be used to prove more
35 than one factor in aggravation. Evidence necessary to establish ~~that~~ an enhanced
36 sentence is ~~required under G.S. 14-2.2~~ may not be used to prove any factor in
37 aggravation.

38 The judge shall not consider as an aggravating factor the fact that the defendant
39 exercised the right to a jury trial."

40 **SECTION 8.** This act is effective when it becomes law and applies to
41 offenses committed on or after that date. Prosecutions for offenses occurring before the

- 1 effective date of this act are not abated or affected by this act, and the statutes that
- 2 would be applicable before this act remain applicable to those prosecutions.