

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE DRS35124-LH-89 (03/03)

Short Title: Amend Enhanced Sentences Laws.

(Public)

Sponsors: Senator Thomas.

Referred to:

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**SECTION 1.** G.S. 14-2.2 is repealed.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

1 possessed the firearm about his or her person, then the person shall have the minimum  
2 term of imprisonment to which the person is sentenced for that felony increased by 60  
3 months. The maximum term of imprisonment shall be the maximum term that  
4 corresponds to the minimum term after it is increased by 60 months, as specified in G.S.  
5 15A-1340.17(e) and (e1).

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

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

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

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

21 **"§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent**  
22 **conviction of a Class B1 felony-felony if the victim was 13 years of age or**  
23 **younger and there are no mitigating factors.**

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

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

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

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

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

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

39 (b) An indictment or information for the Class B1 felony shall allege in that  
40 indictment or information or in a separate indictment or information the facts set out in  
41 subsection (a) of this section. The pleading is sufficient if it alleges that the defendant  
42 committed the felony against a victim who was 13 years of age or younger at the time of  
43 the felony and had one or more prior convictions of a Class B1 felony. One pleading is  
44 sufficient for all Class B1 felonies that are tried at a single trial.

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

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

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

10       **"§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the**  
11 **defendant was wearing or had in his or her immediate possession a**  
12 **bullet-proof vest during the commission of the felony.**

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

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

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

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

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

34       **SECTION 5.** This act is effective when it becomes law and applies to  
35 offenses committed on or after that date. Prosecutions for offenses occurring before the  
36 effective date of this act are not abated or affected by this act, and the statutes that  
37 would be applicable before this act remain applicable to those prosecutions.