

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 693  
Judiciary II Committee Substitute Adopted 4/23/03  
House Committee Substitute Favorable 5/19/03

Short Title: Amend Enhanced Sentences Laws.

(Public)

Sponsors:

Referred to:

April 2, 2003

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**SECTION 1.** G.S. 14-2.2 is repealed.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

(c) 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).

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

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

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

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

20 **"§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent**  
21 **conviction of a Class B1 felony-felony if the victim was 13 years of age or**  
22 **younger and there are no mitigating factors.**

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

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

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

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

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

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

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

1       (e) The State shall prove the issues set out in subsection (a) of this section  
2 beyond a reasonable doubt during the same trial in which the defendant is tried for the  
3 felony unless the defendant pleads guilty or no contest to the issues. The issues 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 issues set out in subsection  
6 (a) of this section, then a jury shall be impaneled to determine the issues.

7       (f) 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. This section does not apply to law enforcement officers.

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       (c) 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       (d) 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       (e) 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.** G.S. 14-269.1 reads as rewritten:

35       **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

36       Upon conviction of any person for violation of ~~G.S. 14-2.2,~~ G.S. 14-269, G.S.  
37 14-269.7, or any other offense involving the use of a deadly weapon of a type referred  
38 to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have  
39 been convicted shall be ordered confiscated and disposed of by the presiding judge at  
40 the trial in one of the following ways in the discretion of the presiding judge.

41       (1) By ordering the weapon returned to its rightful owner, but only when  
42 such owner is a person other than the defendant and has filed a petition  
43 for the recovery of such weapon with the presiding judge at the time of  
44 the defendant's conviction, and upon a finding by the presiding judge

1 that petitioner is entitled to possession of same and that he was  
2 unlawfully deprived of the same without his consent.

3 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

4 (4) By ordering such weapon turned over to the sheriff of the county in  
5 which the trial is held or his duly authorized agent to be destroyed. The  
6 sheriff shall maintain a record of the destruction thereof.

7 (4a) By ordering the weapon, if the weapon has a legible unique  
8 identification number, turned over to a law enforcement agency in the  
9 county of trial for the official use of such agency, but only upon the  
10 written request by the head or chief of such agency. The receiving law  
11 enforcement agency shall maintain a record and inventory of all such  
12 weapons received.

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

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

22 **SECTION 6.** G.S. 15A-1340.16(d) reads as rewritten:

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

24 (1) The defendant induced others to participate in the commission of the  
25 offense or occupied a position of leadership or dominance of other  
26 participants.

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

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

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

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

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

- 1 (6) The offense was committed against or proximately caused serious  
2 injury to a present or former law enforcement officer, employee of the  
3 Department of Correction, jailer, fireman, emergency medical  
4 technician, ambulance attendant, justice or judge, clerk or assistant or  
5 deputy clerk of court, magistrate, prosecutor, juror, or witness against  
6 the defendant, while engaged in the performance of that person's  
7 official duties or because of the exercise of that person's official duties.  
8 (7) The offense was especially heinous, atrocious, or cruel.  
9 (8) The defendant knowingly created a great risk of death to more than  
10 one person by means of a weapon or device which would normally be  
11 hazardous to the lives of more than one person.  
12 (9) The defendant held public office at the time of the offense and the  
13 offense related to the conduct of the office.  
14 (10) The defendant was armed with or used a deadly weapon at the time of  
15 the crime.  
16 (11) The victim was very young, or very old, or mentally or physically  
17 infirm, or handicapped.  
18 (12) The defendant committed the offense while on pretrial release on  
19 another charge.  
20 (13) The defendant involved a person under the age of 16 in the  
21 commission of the crime.  
22 (14) The offense involved an attempted or actual taking of property of great  
23 monetary value or damage causing great monetary loss, or the offense  
24 involved an unusually large quantity of contraband.  
25 (15) The defendant took advantage of a position of trust or confidence to  
26 commit the offense.  
27 (16) The offense involved the sale or delivery of a controlled substance to a  
28 minor.  
29 (17) The offense for which the defendant stands convicted was committed  
30 against a victim because of the victim's race, color, religion,  
31 nationality, or country of origin.  
32 (18) The defendant does not support the defendant's family.  
33 (18a) The defendant has previously been adjudicated delinquent for an  
34 offense that would be a Class A, B1, B2, C, D, or E felony if  
35 committed by an adult.  
36 (19) The serious injury inflicted upon the victim is permanent and  
37 debilitating.  
38 (20) Any other aggravating factor reasonably related to the purposes of  
39 sentencing.

40 Evidence necessary to prove an element of the offense shall not be used to prove any  
41 factor in aggravation, and the same item of evidence shall not be used to prove more  
42 than one factor in aggravation. Evidence necessary to establish that an enhanced  
43 sentence is required under ~~G.S. 14-2.2~~ G.S. 15A-1340.16A may not be used to prove  
44 any factor in aggravation.

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

3               **SECTION 7.** This act is effective when it becomes law and applies to  
4 offenses committed on or after that date. Prosecutions for offenses occurring before the  
5 effective date of this act are not abated or affected by this act, and the statutes that  
6 would be applicable before this act remain applicable to those prosecutions.