

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 761

Short Title: Enhance Firearms Penalties.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary I.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO ALL FELONIES THE ADDITIONAL PUNISHMENT FOR THE POSSESSION, DISPLAY, OR DISCHARGE OF A FIREARM DURING THE COMMISSION OF A FELONY AND TO INCREASE THE LENGTH OF ADDITIONAL PUNISHMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.2 reads as rewritten:

"§ 14-2.2. Sentencing of a person convicted of a ~~Class A, B, B1, B2, C, D, or E~~ felony who used, displayed, or threatened to use or display possessed, displayed, or discharged a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) ~~If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.~~

(a1) A person who is convicted of a felony and who possessed, displayed, or discharged a firearm during the commission of the felony shall be punished pursuant to one of the following subdivisions:

(1) If a person is convicted of a felony and the person possessed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months.

(2) If a person is convicted of a felony and the person displayed a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 84 months.

(3) If a person is convicted of a felony and the person discharged a firearm during the commission of the felony, the person shall, in addition to

1 the punishment for the underlying felony, be sentenced to a minimum
2 term of imprisonment for 120 months.

3 (a2) An indictment or information for the felony must allege in that indictment or
4 information or in a separate indictment or information the facts set out in subsection
5 (a1) of this section. The pleading is sufficient if it alleges that the defendant committed
6 the felony by possessing, displaying, or discharging the firearm. One such pleading is
7 sufficient for all felonies that are tried at a single trial.

8 (a3) The State must prove to the jury the issue set out in subsection (a1) of this
9 section beyond a reasonable doubt during the same trial in which the defendant is tried
10 for the felony. If the defendant pleads guilty or no contest to the felony but pleads not
11 guilty to the issue set out in subsection (a1) of this section, then a jury shall be
12 impaneled to determine that issue.

13 (a4) The enhanced punishment provided by this section for the acts of possessing
14 or displaying a firearm applies even if the firearm is incapable of firing.

15 (b1) The court shall not suspend any sentence imposed under this section and shall
16 not place a person sentenced under this section on probation for the sentence imposed
17 under this section. Sentences imposed pursuant to this section shall be consecutive to all
18 other sentences imposed and shall begin at the expiration of any other sentence being
19 served by the person.

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

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

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

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

27 (c) When a person is found to have personally used a firearm in the commission
28 or attempted commission of a felony and the firearm is owned by that person, or the
29 serial number on the firearm has been defaced such that ownership is not traceable, the
30 court shall order that the firearm be confiscated and disposed of in any of the ways
31 provided by G.S. 14-269.1 that the court in its discretion deems appropriate."

32 **SECTION 2.** G.S. 15A-1340.16A is repealed.

33 **SECTION 3.** This act becomes effective December 1, 2003, and applies to
34 offenses committed on or after that date. Prosecutions for offenses committed before
35 the effective date of this act are not abated or affected by this act, and the statutes that
36 would be applicable but for this act remain applicable to those prosecutions.