

GENERAL ASSEMBLY OF NORTH CAROLINA  
EXTRA SESSION 1994

CHAPTER 22  
HOUSE BILL 39

AN ACT TO ESTABLISH CRIME PREVENTION AND ENHANCED  
PUNISHMENT INITIATIVES, AND TO AMEND THE LAW TO ENHANCE  
CRIME CONTROL.

The General Assembly of North Carolina enacts:

PART 1. TITLE OF ACT

Section 1. This act shall be known as the Crime Control Act of 1994.

**PART 2. BRUTAL RAPE SENTENCES**

Sec. 2. G.S. 14-27.2(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B-B1~~ felony."

Sec. 3. G.S. 14-27.4(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B-B1~~ felony."

Sec. 4. G.S. 14-17, as amended by Section 1127 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

**"§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of

the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class ~~B~~B2 felon."

Sec. 5. G.S. 14-20, as amended by Section 1129 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

**"§ 14-20. Killing adversary in duel; aiders and abettors declared accessories.**

If any person fight a duel in consequence of a challenge sent or received, and either of the parties shall be killed, then the survivor, on conviction thereof, shall be punished as a Class ~~B~~B2 felon. All their aiders and abettors shall be considered accessories before the fact.

Any person charged with killing an adversary in a duel may enter a plea of guilty to said charge in the same way and manner and under the conditions and restrictions set forth in G.S. 15-162.1 relating to pleas of guilty for first degree murder, first degree burglary, arson and rape."

Sec. 6. G.S. 14-5.2 reads as rewritten:

**"§ 14-5.2. Accessory before fact punishable as principal felon.**

All distinctions between accessories before the fact and principals to the commission of a felony are abolished. Every person who heretofore would have been guilty as an accessory before the fact to any felony shall be guilty and punishable as a principal to that felony. However, if a person who heretofore would have been guilty and punishable as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, coconspirators, or accessories to the crime, he shall be guilty of a Class ~~B~~B2 felony."

Sec. 7. G.S. 15A-1340.17, as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Sections 20 and 21 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

**"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; ~~and~~ 'A' indicates that an active punishment is ~~authorized~~ authorized; and 'Life Imprisonment Without Parole' indicates that the

defendant shall be imprisoned for the remainder of the prisoner's natural life.

- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment or Death as Established by Statute						
	<u>A</u> 240-300	<u>A</u> 288-360	<u>A</u> 336-420	<u>A</u> 384-480	<u>A</u> Life Imprisonment Without Parole	<u>A</u> 384-480	<u>DISPOSITION</u> Aggravated
<u>B1</u>	<u>192-240</u> <u>144-192</u>	<u>230-288</u> <u>173-230</u>	<u>269-336</u> <u>202-269</u>	<u>307-384</u> <u>230-307</u>	<u>346-433</u> <u>260-346</u>	<u>384-480</u> <u>288-384</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 135-169	A 163-204	A 190-238	A 216-270	A 243-304	A 270-338	<u>DISPOSITION</u> Aggravated
<u>BB2</u>	<u>108-135</u> <u>81-108</u>	<u>130-163</u> <u>98-130</u>	<u>152-190</u> <u>114-152</u>	<u>173-216</u> <u>130-173</u>	<u>194-243</u> <u>146-194</u>	<u>216-270</u> <u>162-216</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 63-79	A 86-108	A 100-125	A 115-144	A 130-162	A 145-181	<u>DISPOSITION</u> Aggravated
C	<u>50-63</u> <u>38-50</u>	<u>69-86</u> <u>52-69</u>	<u>80-100</u> <u>60-80</u>	<u>92-115</u> <u>69-92</u>	<u>104-130</u> <u>78-104</u>	<u>116-145</u> <u>87-116</u>	<u>PRESUMPTIVE</u> <u>Mitigated</u>
	A 55-69	A 66-82	A 89-111	A 101-126	A 115-144	A 126-158	<u>DISPOSITION</u> Aggravated

D	44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE
	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated
E	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
F	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
G	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
H	C/I	I	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
I	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) ~~Maximum Sentences Specified for Class B—B1 through Class E Felonies.~~ Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class ~~B—B1~~ through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372

303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months."

Sec. 8. G.S. 15A-1368.1, as enacted by Section 20.1 of Chapter 538 of the 1993 Session Laws and as amended by Section 26 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

**"§ 15A-1368.1. Applicability of Article 84A.**

This Article applies to all felons in Class ~~B~~B1 through Class E sentenced to an active punishment under Article 81B of this ~~Chapter~~Chapter, but does not apply to felons in Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

Sec. 9. G.S. 15A-1340.13(h), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws and as amended by Section 19 of Chapter 14 of the Session Laws of the 1994 Extra Session, reads as rewritten:

"(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- (1) The offense is a Class A or Class B1 felony;
- (2) The offense is a drug trafficking offense under G.S. 90-95(h); or
- (3) The defendant has five or more points as determined by G.S. 15A-1340.14."

Sec. 10. G.S. 15A-1340.14(b), as enacted by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(b) Points. – Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class ~~B~~B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class 1 misdemeanor conviction, 1 point~~point~~, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.

- (6) If all the elements of the present offense are included in the prior offense, 1 point.
- (7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Sec. 11. G.S. 14-2.5, as enacted by Section 6 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

**"§ 14-2.5. Punishment for attempt to commit a felony or misdemeanor.**

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit. An attempt to commit a Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a Class I felony is a Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor."

Sec. 12. G.S. 14-2.4(a), as amended by Section 5 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor."

Sec. 13. G.S. 14-2.6(a), as enacted by Section 6.1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

"(a) Unless a different classification is expressly stated, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit, except that a solicitation to commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor."

Sec. 14. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

### **PART 3. MODIFY HABITUAL FELON LAW**

Sec. 15. G.S. 14-7.6 reads as rewritten:

**"§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article ~~shall commit~~ commits any felony under the laws of the State of North Carolina, ~~he the felon~~ must, upon conviction or plea of guilty under indictment as ~~herein provided~~ provided in this Article (except where the death penalty or a sentence of life imprisonment is imposed) be sentenced as a Class C felon. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. ~~Notwithstanding any other provision of law, a person sentenced under this Article shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.~~ under this section."

Sec. 16. Section 9 of Chapter 538 of the 1993 Session Laws is repealed.

Sec. 17. This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

**PART 4. INCREASE FIREARM PENALTY**

Sec. 18. G.S. 14-2.2 reads as rewritten:

**"§ 14-2.2. Sentencing of person convicted of repeated felony using deadly weapon.**

~~Notwithstanding any other provision of law, any person who has been previously convicted in the courts of this State within seven years of a felony in which a deadly weapon was used, provided that the previous felony did not occur within 10 days of the second or subsequent felony, in which a deadly weapon was used, shall serve a term for the second or subsequent felony of not less than seven years in prison, excluding gain time granted under G.S. 148-13. Any person sentenced under this section shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not sentence a person sentenced under this section as a committed youthful offender and may not suspend the sentence and place the person sentenced on probation. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.~~

~~For the purpose of this section, the record or records of the prior felony conviction shall be admissible in evidence after conviction and before sentencing, but only for the purpose of proving that the person has been convicted of a previous felony. A judgment of a conviction or plea of guilty or no contest to such felony offense certified to a superior court in this State from the custodian of records of any other court of this State~~



~~under the same name as that by which the defendant is charged shall be prima facie evidence that the identity of such person is the same as the defendant so charged and shall be prima facie evidence of the facts so certified.~~

~~For the purposes of this section, a felony committed before a person attains the age of 18 years does not constitute a previous felony conviction.~~

~~Pleas of guilty or no contest to or convictions of felony offenses prior to September 1, 1977, are not felony offenses within the meaning of this section. Any felony offense to which a pardon has been extended does not for the purpose of this section constitute a felony. The burden of proving a pardon rests with the defendant and the State is not required to disprove a pardon.~~

**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 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 imprisonment for five years.

The court shall not sentence a person sentenced under this section as a committed youthful offender. The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(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, B, B1, B2, C, D, or E felony.
- (3) The person did not actually possess a firearm about his or her person.

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

(d) Subsection (a) of this section does not apply to the following felonies:

- (1) G.S. 14-49(b). Malicious use of explosive or incendiary.
- (2) G.S. 14-59. Burning of certain public buildings.
- (3) G.S. 14-60. Burning of schoolhouses or buildings of educational institutions.
- (4) G.S. 14-61. Burning of certain bridges and buildings.
- (5) G.S. 14-62. Burning of churches and certain other buildings.
- (6) G.S. 14-62.1. Burning of building or structure in process of construction.

(7) G.S. 53-129. Misapplication of bank funds by officer or employee."

Sec. 19. (a) G.S. 14-2.2(a), as amended by Section 18 of this act, reads as rewritten:

"(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 ~~imprisonment for five years.~~ a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A. Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section.

~~The court shall not sentence a person sentenced under this section as a committed youthful offender.~~ The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person."

(b) G.S. 14-2.2(d), as amended by Section 18 of this act, is repealed.

(c) Section 4 of Chapter 538 of the 1993 Session Laws is repealed.

Sec. 20. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 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."

Sec. 21. G.S. 15A-1340.4(a)(1) reads as rewritten:

"(1) Aggravating factors:

a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

- c. The defendant was hired or paid to commit the offense.
- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.
- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.
- p. The offense involved the sale or delivery of a controlled substance to a minor.

- q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.
- r. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

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

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

Sec. 22. G.S. 15A-1340.16(d) reads as rewritten:

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

- (1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- (2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- (3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (4) The defendant was hired or paid to commit the offense.
- (5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- (6) The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- (7) The offense was especially heinous, atrocious, or cruel.
- (8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- (9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- (10) The defendant was armed with or used a deadly weapon at the time of the crime.
- (11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
- (12) The defendant committed the offense while on pretrial release on another charge.

- (13) The defendant involved a person under the age of 16 in the commission of the crime.
- (14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- (15) The defendant took advantage of a position of trust or confidence to commit the offense.
- (16) The offense involved the sale or delivery of a controlled substance to a minor.
- (17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- (18) The defendant does not support the defendant's family.
- (19) The serious injury inflicted upon the victim is permanent and debilitating.
- (20) Any other aggravating factor reasonably related to the purposes of sentencing.

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

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

Sec. 23. G.S. 14-269.1 reads as rewritten:

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

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

- (1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.
- (2) By ordering the weapon turned over to a law-enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The clerk of the superior court of such county shall maintain a record of such weapons and the law-enforcement agency receiving them.
- (3) By ordering the weapon turned over to the sheriff of the county in which the trial is held to be sold as herein provided. Under the

direction of the sheriff, the weapon shall be sold at public auction after one advertisement in a newspaper having general circulation in the county which advertisement shall be at least seven days prior to sale. The proceeds of such sale shall go to the general fund of the county in which such weapons are sold. The sheriff shall maintain a record and inventory of all such weapons received and sold by him. Sales of such weapons by the sheriff shall be held at least once each year.

- (4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.
- (5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.
- (6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

Sec. 24. Sections 18, 21, and 23 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part becomes effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws provides that that act becomes effective, and applies to offenses committed on or after that date. Prosecutions for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

## **PART 5. TRANSFER JUVENILES 13 YEARS OF AGE**

Sec. 25. G.S. 7A-608 reads as rewritten:

### **"§ 7A-608. Transfer of jurisdiction of juvenile to superior court.**

The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile ~~14 years of age or older~~ to superior court if the juvenile was ~~14~~ 13 years of age or older at the time ~~he~~ the juvenile allegedly committed an offense ~~which that~~ would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the ~~judge~~ court finds probable cause, the ~~judge~~ court shall transfer the case to the superior court for trial as in the case of adults."

Sec. 26. G.S. 7A-609(a) reads as rewritten:

"(a) The ~~judge~~ court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was ~~14~~ 13 years of age or older when the offense was allegedly ~~committed~~ committed. ~~unless counsel~~ Counsel for the juvenile ~~waives~~ may waive in writing ~~his~~ the right to the hearing and ~~stipulates~~ stipulate to a finding of

probable cause. The ~~judge~~ court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Sec. 27. G.S. 7A-610(a) reads as rewritten:

"(a) If probable cause is ~~found~~, found and transfer to superior court is not required by G.S. 7A-608, the prosecutor or the juvenile may move that the case be transferred to the superior court for trial as in the case of adults. ~~If the alleged felony does not constitute a capital offense, the~~ The judge may proceed to determine whether the needs of the juvenile or the best interest of the State will be served by transfer of the case to superior court for trial as in the case of adults. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony."

Sec. 28. G.S. 7A-601 reads as rewritten:

**"§ 7A-601. Destruction of records resulting from nontestimonial identification procedures.**

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of ~~such~~ the evidence shall be destroyed.
- (2) If in the district court or superior court pursuant to a transfer a juvenile is found not guilty, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under ~~14~~ 13 years of age and who is adjudicated to have committed a delinquent act, which would be less than a felony had the juvenile been an adult, all records shall be destroyed.
- (3) If a juvenile ~~14-13~~ 13 years of age or older is found to have committed a delinquent act ~~which~~ that would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in such a manner and under such safeguards as to limit their use to inspection for comparison purposes by law-enforcement officers only in the investigation of a crime.
- (4) If the juvenile is transferred to superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law-enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law-enforcement agency having possession of such records. Following destruction, the law-

enforcement agency shall make written certification to the court of ~~such the~~ destruction."

Sec. 29. The Juvenile Code Committee of the Legislative Research Commission is authorized to study the issue of whether district courts should be mandated to transfer jurisdiction of juveniles who have committed certain serious or violent felony offenses to superior court for trial as in the case of adults upon a finding of probable cause. The Committee may also study the issue of the proper age of juveniles mandatorily transferred to superior court for trial as in the case of adults. The Committee may submit an interim report of its findings and recommendations to the 1994 Regular Session of the 1993 General Assembly and shall submit a final report to the 1995 General Assembly.

Sec. 30. Sections 25 through 28 of this act become effective May 1, 1994, and apply to offenses committed on or after that date. The remainder of this Part is effective upon ratification.

## **PART 6. THREE STRIKES YOU'RE IN**

Sec. 31. Chapter 14 of the General Statutes is amended by adding a new Article to read:

### "ARTICLE 2B.

#### "Violent Habitual Felons.

##### **"§ 14-7.7. Persons defined as violent habitual felons.**

(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, 'convicted' means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony. The burden of proving a pardon shall rest with the defendant, and this State shall not be required to disprove a pardon. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.

(b) For purposes of this Article, 'violent felony' includes the following offenses:

- (1)
  - a. Murder in the first and second degrees, G.S. 14-17.
  - b. Voluntary manslaughter, G.S. 14-18.
  - c. Killing an adversary in a duel, G.S. 14-30.
  - d. First degree rape, G.S. 14-27.2.
  - e. Second degree rape, G.S. 14-27.3.
  - f. First degree sexual offense, G.S. 14-27.4.
  - g. Second degree sexual offense, G.S. 14-27.5.
  - h. Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.



- i. Malicious castration, G.S. 14-28.
  - j. Castration or maiming without malice aforethought, G.S. 14-29.
  - k. Malicious maiming, G.S. 14-30.
  - l. Malicious throwing of acid or alkali, G.S. 14-30.1.
  - m. Malicious assaulting in a secret manner, G.S. 14-31.
  - n. Any felony assault set forth in G.S. 14-32.
  - o. Felony assault on a handicapped person, G.S. 14-32.
  - p. Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.
  - q. Discharging firearm in occupied property, G.S. 14-34.1.
  - r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.
  - s. Kidnapping in the first or second degree, G.S. 14-39.
  - t. Malicious use of explosive or incendiary devices, G.S. 14-49.
  - u. Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.
  - v. Burglary in the first or second degree, G.S. 14-51.
  - w. Breaking out of a dwelling house, G.S. 14-53.
  - x. Burglary with explosives, G.S. 14-57.
  - y. Arson in the first or second degree, G.S. 14-58.
  - z. Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.
  - aa. Burning of public building, G.S. 14-59.
  - bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.
  - cc. Burning of bridges and buildings, G.S. 14-61.
  - dd. Burning of churches and other buildings, G.S. 14-62.
  - ee. Burning of building or structure in the process of construction, G.S. 14-62.1.
  - gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.
  - hh. Train robbery, G.S. 14-88.
  - ii. Contaminating a public water supply, G.S. 14-159.1.
  - jj. Felonious child abuse, G.S. 14-318.4.
  - kk. First degree sexual exploitation of a minor, G.S. 14-190.16.
  - ll. Distribution of adulterated food, G.S. 14-401.11.
  - mm. Manufacture, sale, or delivery or possess with intent to manufacture, sell, or deliver a controlled substance within 300 feet of a school, G.S. 90-95(e)(8).
  - nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.
  - oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).
- (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

- (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).

**"§ 14-7.8. Punishment.**

When a person is charged by indictment with the commission of a violent felony and is also charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon conviction, be sentenced in accordance with this Article, except in those cases where the death penalty is imposed.

**"§ 14-7.9. Charge of violent habitual felon.**

An indictment that charges a person who is a violent habitual felon within the meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to sustain a conviction of violent habitual felon, also charge that the person is a violent habitual felon. The indictment charging the defendant as a violent habitual felon shall be separate from the indictment charging the defendant with the principal violent felony. An indictment that charges a person with being a violent habitual felon must set forth the date that prior violent felonies were committed, the name of the state or other sovereign against whom the violent felonies were committed, the dates of convictions of the violent felonies, and the identity of the court in which the convictions took place. A defendant charged with being a violent habitual felon in a bill of indictment shall not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period.

**"§ 14-7.10. Evidence of prior convictions of violent felonies.**

In all cases where a person is charged under this Article with being a violent habitual felon, the records of prior convictions of violent felonies shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of former violent felonies. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be **prima facie** evidence that the defendant named therein is the same as the defendant before the court, and shall be **prima facie** evidence of the facts set out therein.

**"§ 14-7.11. Verdict and judgment.**

When an indictment charges a violent habitual felon with a violent felony as provided in this Article and an indictment also charges that the person is a violent habitual felon as provided in this Article, the defendant shall be tried for the principal violent felony as provided by law. The indictment that the person is a violent habitual felon shall not be revealed to the jury unless the jury finds that the defendant is guilty of the principal violent felony or another violent felony with which the defendant is charged. If the jury finds the defendant guilty of a violent felony, the bill of indictment charging the defendant as a violent habitual felon may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of violent habitual felon were a principal charge. If the jury finds that the defendant is a violent habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a violent habitual felon, the trial judge shall pronounce judgment on the principal violent felony or felonies as provided by law.

**"§ 14-7.12. Sentencing of violent habitual felons.**

A person who is convicted of a violent felony and of being a violent habitual felon must, upon conviction (except where the death penalty is imposed), be sentenced to life imprisonment without parole. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person."

Sec. 32. Effective on the date Chapter 538 of the 1993 Session Laws becomes effective, G.S. 14-7.7(b), as enacted by Section 31 of this act, reads as rewritten:

"(b) For purposes of this Article, 'violent felony' includes the following offenses:

- (1) a. ~~Murder in the first and second degrees, G.S. 14-17.~~
- b. ~~Voluntary manslaughter, G.S. 14-18.~~
- c. ~~Killing an adversary in a duel, G.S. 14-30.~~
- d. ~~First degree rape, G.S. 14-27.2.~~
- e. ~~Second degree rape, G.S. 14-27.3.~~
- f. ~~First degree sexual offense, G.S. 14-27.4.~~
- g. ~~Second degree sexual offense, G.S. 14-27.5.~~
- h. ~~Intercourse and sexual offense by a parent or custodian, G.S. 14-27.7.~~
- i. ~~Malicious castration, G.S. 14-28.~~
- j. ~~Castration or maiming without malice aforethought, G.S. 14-29.~~
- k. ~~Malicious maiming, G.S. 14-30.~~
- l. ~~Malicious throwing of acid or alkali, G.S. 14-30.1.~~
- m. ~~Malicious assaulting in a secret manner, G.S. 14-31.~~
- n. ~~Any felony assault set forth in G.S. 14-32.~~
- o. ~~Felony assault on a handicapped person, G.S. 14-32.~~
- p. ~~Patient abuse and neglect, negligent or intentional, G.S. 14-32.2.~~
- q. ~~Discharging firearm in occupied property, G.S. 14-34.1.~~
- r. ~~Adulterated or misbranded foods or drugs, G.S. 14-34.4.~~
- s. ~~Kidnapping in the first or second degree, G.S. 14-39.~~
- t. ~~Malicious use of explosive or incendiary devices, G.S. 14-49.~~
- u. ~~Malicious damage of occupied property by the use of explosive, G.S. 14-49.1.~~
- v. ~~Burglary in the first or second degree, G.S. 14-51.~~
- w. ~~Breaking out of a dwelling house, G.S. 14-53.~~
- x. ~~Burglary with explosives, G.S. 14-57.~~
- y. ~~Arson in the first or second degree, G.S. 14-58.~~
- z. ~~Burning of a mobile home, manufactured housing, or recreational trailer, G.S. 14-58.2.~~
- aa. ~~Burning of public building, G.S. 14-59.~~

- ~~bb. Burning of a schoolhouse or building of an educational institution, G.S. 14-60.~~
- ~~cc. Burning of bridges and buildings, G.S. 14-61.~~
- ~~dd. Burning of churches and other buildings, G.S. 14-62.~~
- ~~ee. Burning of building or structure in the process of construction, G.S. 14-62.1.~~
- ~~gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.~~
- ~~hh. Train robbery, G.S. 14-88.~~
- ~~ii. Contaminating a public water supply, G.S. 14-159.1.~~
- ~~jj. Felonious child abuse, G.S. 14-318.4.~~
- ~~kk. First degree sexual exploitation of a minor, G.S. 14-190.16.~~
- ~~ll. Distribution of adulterated food G.S. 14-401.11.~~
- ~~mm. Manufacture, sale, or delivery or possess with intent to manufacture, sale, or deliver a controlled substance within 300 feet of a school, G.S. 90-90.~~
- ~~nn. Selling and delivery of controlled substance by a person 18 or over to a person under 16, G.S. 90-95.~~
- ~~oo. Discharge of oil or hazardous substance placing another in danger of death or serious bodily injury, G.S. 143-225.88(b).~~
- ~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~
- ~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~
- (b) For purposes of this Article, 'violent felony' includes the following offenses:
  - (1) All Class A through E felonies.
  - (2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).
  - (3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2)."

Sec. 33. G.S. 15A-1370.1 reads as rewritten:

**"§ 15A-1370.1. Applicability of Article 85.**

This Article is applicable-applies to all sentenced prisoners, including Class A and Class B felons, and Class C felons who receive a sentence of life imprisonment, who are not subject to Article 85A of this Chapter-Chapter, but shall not apply to prisoners who receive life imprisonment without parole. A person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 34. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

**"§ 15A-1370.1. Applicability of Article 85.**

This Article is applicable to all prisoners serving sentences of imprisonment for convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of life imprisonment. This Article does not apply to a person serving a sentence of life imprisonment without parole. A person serving a sentence of life imprisonment without parole shall not be eligible for parole at any time."

Sec. 35. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the 1993 Session Laws, reads as rewritten:

**"§ 15A-1340.10. Applicability of structured sentencing.**

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."

Sec. 36. Effective May 1, 1994, Section 8 of Chapter 21 of the Session Laws of the Extra Session of 1994 reads as rewritten:

"Sec. 8. This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective, and applies to offenses occurring on or after that ~~date~~ date except that Section 7 of this act becomes effective May 1, 1994, with respect to offenses committed on or after May 1, 1994, that are punishable under Article 2B of Chapter 14 of the General Statutes. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Sec. 37. Sections 31, 36, and 37 of this act become effective May 1, 1994. Section 33 of this act becomes effective May 1, 1994, and expires on the date that Chapter 538 of the 1993 Session Laws becomes effective, but prosecution for, or sentences based on, offenses occurring before that date are not abated or affected by the expiration of that section. Sections 32, 34, and 35 of this act become effective on the date that Chapter 538 of the 1993 Session Laws becomes effective. Prosecution for, or sentences based on, offenses occurring before the effective date of this Part are not abated or affected by the repeal or amendment in this Part of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences.

**PART 7. EFFECTIVE DATE**

Sec. 38. Except as otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1994.

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Marc Basnight  
President Pro Tempore of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives