

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 9\*  
Committee Substitute Favorable 2/21/94

Short Title: Increase Firearm Penalty.

(Public)

Sponsors:

Referred to:

February 8, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENHANCED SENTENCE SHALL BE IMPOSED ON A PERSON CONVICTED OF A CLASS A THROUGH E FELONY IF THE PERSON USED, DISPLAYED, OR THREATENED TO USE OR DISPLAY A FIREARM DURING THE COMMISSION OF THE FELONY, AND TO PROVIDE THAT A FIREARM USED IN THE COMMISSION OF A FELONY SHALL BE CONFISCATED AND DISPOSED OF AS ORDERED BY THE COURT UNLESS IT CAN BE ESTABLISHED THAT THE FIREARM IS OWNED BY SOMEONE OTHER THAN THE CONVICTED DEFENDANT.

The General Assembly of North Carolina enacts:

Section 1. 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~~

1 ~~this section shall run consecutively with and shall commence at the expiration of any~~  
2 ~~sentence being served by the person sentenced hereunder.~~

3 ~~For the purpose of this section, the record or records of the prior felony conviction~~  
4 ~~shall be admissible in evidence after conviction and before sentencing, but only for the~~  
5 ~~purpose of proving that the person has been convicted of a previous felony. A judgment~~  
6 ~~of a conviction or plea of guilty or no contest to such felony offense certified to a~~  
7 ~~superior court in this State from the custodian of records of any other court of this State~~  
8 ~~under the same name as that by which the defendant is charged shall be **prima facie**~~  
9 ~~evidence that the identity of such person is the same as the defendant so charged and~~  
10 ~~shall be **prima facie** evidence of the facts so certified.~~

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

13 ~~Pleas of guilty or no contest to or convictions of felony offenses prior to September~~  
14 ~~1, 1977, are not felony offenses within the meaning of this section. Any felony offense~~  
15 ~~to which a pardon has been extended does not for the purpose of this section constitute a~~  
16 ~~felony. The burden of proving a pardon rests with the defendant and the State is not~~  
17 ~~required to disprove a pardon.~~

18 **Sentencing of a person convicted of a Class A, B, C, D, or E felony who used,**  
19 **displayed, or threatened to use or display a firearm during the commission of the**  
20 **crime; confiscation and disposition of a firearm used in a felony.**

21 (a) If a person is convicted of a Class A, B, C, D, or E felony and the person  
22 used, displayed, or threatened to use or display a firearm during the commission of the  
23 felony, the person shall, in addition to the punishment for the underlying felony, be  
24 sentenced to imprisonment for five years.

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

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

33 (1) The person is convicted of a Class E felony and the person is not  
34 sentenced to an active term of imprisonment.

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

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

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

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

- 1           (1) G.S. 14-49(b). Malicious use of explosive or incendiary.  
 2           (2) G.S. 14-59. Burning of certain public buildings.  
 3           (3) G.S. 14-60. Burning of schoolhouses or buildings of educational  
 4           institutions.  
 5           (4) G.S. 14-61. Burning of certain bridges and buildings.  
 6           (5) G.S. 14-62. Burning of churches and certain other buildings.  
 7           (6) G.S. 14-62.1. Burning of building or structure in process of  
 8           construction.  
 9           (7) G.S. 53-129. Misapplication of bank funds by officer or employee."

10           Sec. 2. (a) G.S. 14-2.2(a), as amended by Section 1 of this act, reads as  
 11 rewritten:

12           "(a) If a person is convicted of a Class A, B, C, D, or E felony and the person  
 13 used, displayed, or threatened to use or display a firearm during the commission of the  
 14 felony, the person shall, in addition to the punishment for the underlying felony, be  
 15 sentenced to ~~imprisonment for five years.~~ a minimum term of imprisonment for 60 months  
 16 as provided by G.S. 15A-1340.16A. Evidence of the use, display, or threatened use or  
 17 display of a firearm that is needed to prove an element of the underlying felony shall not  
 18 be used to establish the enhancement under this section.

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

25           (b) G.S. 14-2.2(d), as amended by Section 1 of this act, is repealed.

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

27           Sec. 3. Part 2 of Article 81B of Chapter 15A of the General Statutes is  
 28 amended by adding a new section to read:

29           "**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B, C,**  
 30           **D, or E felony and the defendant used, displayed, or threatened to use or**  
 31           **display a firearm during the commission of the felony.**

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

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

- 40           (1) The person is convicted of a Class E felony and the person is not  
 41 sentenced to an active term of imprisonment.  
 42           (2) The evidence of the use, display, or threatened use or display of a  
 43 firearm is needed to prove an element of the underlying Class A, B, C,  
 44 D, or E felony.

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

2           Sec. 4. G.S. 15A-1340.4(a)(1) reads as rewritten:

3           "(1) Aggravating factors:

- 4           a. The defendant induced others to participate in the commission  
5           of the offense or occupied a position of leadership or  
6           dominance of other participants.
- 7           b. The offense was committed for the purpose of avoiding or  
8           preventing a lawful arrest or effecting an escape from custody.
- 9           c. The defendant was hired or paid to commit the offense.
- 10          d. The offense was committed to disrupt or hinder the lawful  
11          exercise of any governmental function or the enforcement of  
12          laws.
- 13          e. The offense was committed against a present or former: law  
14          enforcement officer, employee of the Department of Correction,  
15          jailer, fireman, emergency medical technician, ambulance  
16          attendant, justice or judge, clerk or assistant or deputy clerk of  
17          court, magistrate, prosecutor, juror, or witness against the  
18          defendant, while engaged in the performance of his official  
19          duties or because of the exercise of his official duties.
- 20          f. The offense was especially heinous, atrocious, or cruel.
- 21          g. The defendant knowingly created a great risk of death to more  
22          than one person by means of a weapon or device which would  
23          normally be hazardous to the lives of more than one person.
- 24          h. The defendant held public office at the time of the offense and  
25          the offense related to the conduct of the office.
- 26          i. The defendant was armed with or used a deadly weapon at the  
27          time of the crime.
- 28          j. The victim was very young, or very old, or mentally or  
29          physically infirm.
- 30          k. The defendant committed the offense while on pretrial release  
31          on another felony charge.
- 32          l. The defendant involved a person under the age of 16 in the  
33          commission of the crime.
- 34          m. The offense involved an attempted or actual taking of property  
35          of great monetary value or damage causing great monetary loss,  
36          or the offense involved an unusually large quantity of  
37          contraband.
- 38          n. The defendant took advantage of a position of trust or  
39          confidence to commit the offense.
- 40          o. The defendant has a prior conviction or convictions for criminal  
41          offenses punishable by more than 60 days' confinement. Such  
42          convictions include those occurring in North Carolina courts  
43          and courts of other states, the District of Columbia, and the  
44          United States, provided that any crime for which the defendant

1 was convicted in a jurisdiction other than North Carolina would  
 2 have been a crime if committed in this State. Such prior  
 3 convictions do not include any crime that is joinable, under G.S.  
 4 Chapter 15A, with the crime or crimes for which the defendant  
 5 is currently being sentenced.

- 6 p. The offense involved the sale or delivery of a controlled  
 7 substance to a minor.  
 8 q. The offense was committed because of the race, color, religion,  
 9 nationality, or country of origin of another person.  
 10 r. The offense for which the defendant stands convicted was  
 11 committed against a victim because of the victim's race, color,  
 12 religion, nationality, or country of origin.

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

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

20 Sec. 5. G.S. 15A-1340.16(d) reads as rewritten:

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

- 22 (1) The defendant induced others to participate in the commission of the  
 23 offense or occupied a position of leadership or dominance of other  
 24 participants.  
 25 (2) The defendant joined with more than one other person in committing  
 26 the offense and was not charged with committing a conspiracy.  
 27 (3) The offense was committed for the purpose of avoiding or preventing a  
 28 lawful arrest or effecting an escape from custody.  
 29 (4) The defendant was hired or paid to commit the offense.  
 30 (5) The offense was committed to disrupt or hinder the lawful exercise of  
 31 any governmental function or the enforcement of laws.  
 32 (6) The offense was committed against a present or former: law  
 33 enforcement officer, employee of the Department of Correction, jailer,  
 34 fireman, emergency medical technician, ambulance attendant, justice  
 35 or judge, clerk or assistant or deputy clerk of court, magistrate,  
 36 prosecutor, juror, or witness against the defendant, while engaged in  
 37 the performance of that person's official duties or because of the  
 38 exercise of that person's official duties.  
 39 (7) The offense was especially heinous, atrocious, or cruel.  
 40 (8) The defendant knowingly created a great risk of death to more than  
 41 one person by means of a weapon or device which would normally be  
 42 hazardous to the lives of more than one person.  
 43 (9) The defendant held public office at the time of the offense and the  
 44 offense related to the conduct of the office.

- 1 (10) The defendant was armed with or used a deadly weapon at the time of  
2 the crime.
- 3 (11) The victim was very young, or very old, or mentally or physically  
4 infirm, or handicapped.
- 5 (12) The defendant committed the offense while on pretrial release on  
6 another charge.
- 7 (13) The defendant involved a person under the age of 16 in the  
8 commission of the crime.
- 9 (14) The offense involved an attempted or actual taking of property of great  
10 monetary value or damage causing great monetary loss, or the offense  
11 involved an unusually large quantity of contraband.
- 12 (15) The defendant took advantage of a position of trust or confidence to  
13 commit the offense.
- 14 (16) The offense involved the sale or delivery of a controlled substance to a  
15 minor.
- 16 (17) The offense for which the defendant stands convicted was committed  
17 against a victim because of the victim's race, color, religion,  
18 nationality, or country of origin.
- 19 (18) The defendant does not support the defendant's family.
- 20 (19) The serious injury inflicted upon the victim is permanent and  
21 debilitating.
- 22 (20) Any other aggravating factor reasonably related to the purposes of  
23 sentencing.

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

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

31 Sec. 6. G.S. 14-269.1 reads as rewritten:

32 "**§ 14-269.1. Confiscation and disposition of deadly weapons.**

33 Upon conviction of any person for violation of G.S. 14-2.2, 14-269, ~~G.S.~~14-269.7,  
34 or any other offense involving the use of a deadly weapon of a type referred to in G.S.  
35 14-269, the deadly weapon with reference to which the defendant shall have been  
36 convicted shall be ordered confiscated and disposed of by the presiding judge at the trial  
37 in one of the following ways in the discretion of the presiding judge.

- 38 (1) By ordering the weapon returned to its rightful owner, but only when  
39 such owner is a person other than the defendant and has filed a petition  
40 for the recovery of such weapon with the presiding judge at the time of  
41 the defendant's conviction, and upon a finding by the presiding judge  
42 that petitioner is entitled to possession of same and that he was  
43 unlawfully deprived of the same without his consent.

- 1 (2) By ordering the weapon turned over to a law-enforcement agency in  
2 the county of trial for the official use of such agency, but only upon the  
3 written request by the head or chief of such agency. The clerk of the  
4 superior court of such county shall maintain a record of such weapons  
5 and the law-enforcement agency receiving them.
- 6 (3) By ordering the weapon turned over to the sheriff of the county in  
7 which the trial is held to be sold as herein provided. Under the  
8 direction of the sheriff, the weapon shall be sold at public auction after  
9 one advertisement in a newspaper having general circulation in the  
10 county which advertisement shall be at least seven days prior to sale.  
11 The proceeds of such sale shall go to the general fund of the county in  
12 which such weapons are sold. The sheriff shall maintain a record and  
13 inventory of all such weapons received and sold by him. Sales of such  
14 weapons by the sheriff shall be held at least once each year.
- 15 (4) By ordering such weapon turned over to the sheriff of the county in  
16 which the trial is held or his duly authorized agent to be destroyed.  
17 The sheriff shall maintain a record of the destruction thereof.
- 18 (5) By ordering such weapon turned over to the North Carolina State  
19 Bureau of Investigation's Crime Laboratory Weapons Reference  
20 Library for official use by that agency. The State Bureau of  
21 Investigation shall maintain a record and inventory of all such  
22 weapons received.
- 23 (6) By ordering such weapons turned over to the North Carolina Justice  
24 Academy for official use by that agency. The North Carolina Justice  
25 Academy shall maintain a record and inventory of all such weapons  
26 received."

27 Sec. 7. Sections 1, 4, and 6 of this act become effective May 1, 1994, and  
28 apply to offenses committed on or after the date of ratification. The remainder of this  
29 act becomes effective on the date that Section 56 of Chapter 538 of the 1993 Session  
30 Laws provides that that act becomes effective, and applies to offenses committed on or  
31 after that date. Prosecutions for, or sentences based on, offenses committed before the  
32 effective dates of this act are not abated or affected by this act, and the statutes that  
33 would be applicable to those prosecutions or sentences but for the provisions of this act  
34 remain applicable to those prosecutions or sentences.