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SENATE BILL 693
Judiciary II Committee Substitute Adopted 4/23/03
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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 G.S. 14-2.2 is repealed.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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.