

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

4

SENATE BILL 746
Judiciary II Committee Substitute Adopted 4/17/01
House Committee Substitute Favorable 6/13/01
Fourth Edition Engrossed 7/2/01

Short Title: Sentencing Enhancements Changes/Sent. Comm.

(Public)

Sponsors:

Referred to:

April 2, 2001

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 G.S. 14-2.2 is repealed.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.~~

(a) 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). The court shall not suspend any sentence imposed under this
6 section and shall not place a person sentenced under this section on probation for the
7 sentence imposed under this section.

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

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

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

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

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

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

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

32 (2) The-(ii) the person has one or more prior convictions of a Class B1
33 felony; and

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

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

39 (e) A prior conviction of a Class B1 felony shall be proved in accordance with
40 G.S. 15A-1340.14.

41 (b) An indictment or information for the Class B1 felony shall allege in that
42 indictment or information or in a separate indictment or information the facts set out in

1 subsection (a) of this section. The pleading is sufficient if it alleges that the defendant
2 committed the felony against a victim who was 13 years of age or younger at the time of
3 the felony and had one or more prior convictions of a Class B1 felony. One pleading is
4 sufficient for all Class B1 felonies that are tried at a single trial.

5 (c) The State shall prove the issues set out in subsection (a) of this section
6 beyond a reasonable doubt during the same trial in which the defendant is tried for the
7 felony unless the defendant pleads guilty or no contest to that issue. The issue shall be
8 presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads
9 guilty or no contest to the felony but pleads not guilty to the issue set out in subsection
10 (a) of this section, then a jury shall be impaneled to determine that issue.

11 (d) Subsection (a) of this section does not apply if there are mitigating factors
12 present under G.S. 15A-1340.16(e)."

13 **SECTION 4.** G.S. 15A-1340.16C reads as rewritten:

14 **"§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the**
15 **defendant was wearing or had in his or her immediate possession a**
16 **bulletproof vest during the commission of the felony.**

17 (a) If a person is convicted of a felony and ~~the court finds that it is found as~~
18 provided in this section that the person was wearing wore or had in his or her immediate
19 possession a bulletproof vest at the time of the felony, then the person is guilty of a
20 felony that is one class higher than the underlying felony for which the person was
21 convicted.

22 ~~(b) This section does not apply if the evidence that the person possessed a bullet-~~
23 ~~proof vest is needed to prove an element of the underlying felony for which the person~~
24 ~~was convicted. This section does not apply to law enforcement officers.~~

25 (b) An indictment or information for the felony shall allege in that indictment or
26 information or in a separate indictment or information the facts set out in subsection (a)
27 of this section. The pleading is sufficient if it alleges that the defendant committed the
28 felony while wearing or having in the defendant's immediate possession a bulletproof
29 vest. One pleading is sufficient for all felonies that are tried as a single trial.

30 (c) The State shall prove the issue set out in subsection (a) of this section beyond
31 a reasonable doubt during the same trial in which the defendant is tried for the felony
32 unless the defendant pleads guilty or no contest to that issue. If the defendant pleads
33 guilty or no contest to the felony but pleads not guilty to the issue set out in subsection
34 (a) of this section, then a jury shall be impaneled to determine that issue.

35 (d) Subsection (a) of this section does not apply if the evidence that the person
36 wore or had in the person's immediate possession a bulletproof vest is needed to prove
37 an element of the felony."

38 **SECTION 5.** G.S. 14-269.1 reads as rewritten:

39 **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

40 Upon conviction of any person for violation of G.S. ~~14-2.2,~~ 14-269, 14-269.7, or any
41 other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269,
42 the deadly weapon with reference to which the defendant shall have been convicted

1 shall be ordered confiscated and disposed of by the presiding judge at the trial in one of
2 the following ways in the discretion of the presiding judge.

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

9 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

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

13 (4a) By ordering the weapon, if the weapon has a legible unique
14 identification number, turned over to a law enforcement agency in the
15 county of trial for the official use of such agency, but only upon the
16 written request by the head or chief of such agency. The receiving law
17 enforcement agency shall maintain a record and inventory of all such
18 weapons received.

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

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

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

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

30 (1) The defendant induced others to participate in the commission of the
31 offense or occupied a position of leadership or dominance of other
32 participants.

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

35 (2a) The offense was committed for the benefit of, or at the direction of,
36 any criminal street gang, with the specific intent to promote, further, or
37 assist in any criminal conduct by gang members, and the defendant
38 was not charged with committing a conspiracy. A "criminal street
39 gang" means any ongoing organization, association, or group of three
40 or more persons, whether formal or informal, having as one of its
41 primary activities the commission of felony or violent misdemeanor
42 offenses, or delinquent acts that would be felonies or violent

- 1 misdemeanors if committed by an adult, and having a common name
2 or common identifying sign, colors, or symbols.
- 3 (3) The offense was committed for the purpose of avoiding or preventing a
4 lawful arrest or effecting an escape from custody.
- 5 (4) The defendant was hired or paid to commit the offense.
- 6 (5) The offense was committed to disrupt or hinder the lawful exercise of
7 any governmental function or the enforcement of laws.
- 8 (6) The offense was committed against or proximately caused serious
9 injury to a present or former law enforcement officer, employee of the
10 Department of Correction, jailer, fireman, emergency medical
11 technician, ambulance attendant, justice or judge, clerk or assistant or
12 deputy clerk of court, magistrate, prosecutor, juror, or witness against
13 the defendant, while engaged in the performance of that person's
14 official duties or because of the exercise of that person's official duties.
- 15 (7) The offense was especially heinous, atrocious, or cruel.
- 16 (8) The defendant knowingly created a great risk of death to more than
17 one person by means of a weapon or device which would normally be
18 hazardous to the lives of more than one person.
- 19 (9) The defendant held public office at the time of the offense and the
20 offense related to the conduct of the office.
- 21 (10) The defendant was armed with or used a deadly weapon at the time of
22 the crime.
- 23 (11) The victim was very young, or very old, or mentally or physically
24 infirm, or handicapped.
- 25 (12) The defendant committed the offense while on pretrial release on
26 another charge.
- 27 (13) The defendant involved a person under the age of 16 in the
28 commission of the crime.
- 29 (14) The offense involved an attempted or actual taking of property of great
30 monetary value or damage causing great monetary loss, or the offense
31 involved an unusually large quantity of contraband.
- 32 (15) The defendant took advantage of a position of trust or confidence to
33 commit the offense.
- 34 (16) The offense involved the sale or delivery of a controlled substance to a
35 minor.
- 36 (17) The offense for which the defendant stands convicted was committed
37 against a victim because of the victim's race, color, religion,
38 nationality, or country of origin.
- 39 (18) The defendant does not support the defendant's family.
- 40 (18a) The defendant has previously been adjudicated delinquent for an
41 offense that would be a Class A, B1, B2, C, D, or E felony if
42 committed by an adult.

1 (19) The serious injury inflicted upon the victim is permanent and
2 debilitating.

3 (20) Any other aggravating factor reasonably related to the purposes of
4 sentencing.

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

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

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