

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**EXTRA SESSION 1994**

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SENATE BILL 167

Short Title: Enhance Sentence if Use Firearm.

(Public)

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Sponsors: Senators Plyler, Conder, and Hoyle.

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Referred to: Corrections/Punishment.

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February 15, 1994

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE THAT AN ENHANCED SENTENCE SHALL BE IMPOSED  
3 ON A PERSON CONVICTED OF A FELONY IF THE PERSON WAS ARMED  
4 WITH OR USED A FIREARM DURING THE COMMISSION OF THE FELONY.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-2.2 reads as rewritten:

7 "**§ 14-2.2. Sentencing of person convicted of repeated felony using deadly weapon.**

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

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

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

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

6 Pleas of guilty or no contest to or convictions of felony offenses prior to September  
7 1, 1977, are not felony offenses within the meaning of this section. Any felony offense  
8 to which a pardon has been extended does not for the purpose of this section constitute a  
9 felony. The burden of proving a pardon rests with the defendant and the State is not  
10 required to disprove a pardon.

11 **Sentencing of a person convicted of a felony who was armed with or who used a**  
12 **firearm during the commission of the crime.**

13 (a) If a person is convicted of a felony, except a felony in which the possession  
14 or use of a firearm is an essential element, and the person was armed with a firearm  
15 during the commission of the felony, the person shall, in addition to the punishment for  
16 the underlying felony, be sentenced to imprisonment for five years. If a person is  
17 convicted of a felony, except a felony in which the possession or use of a firearm is an  
18 essential element, and the person used a firearm during the commission of the felony,  
19 the person shall, in addition to the punishment for the underlying felony, be sentenced to  
20 imprisonment for 10 years. The court shall not sentence a person sentenced under this  
21 section as a committed youthful offender. The court shall not suspend any sentence  
22 imposed under this section and shall not place a person sentenced under this section on  
23 probation for the sentence imposed under this section. Sentences imposed pursuant to  
24 this section shall be consecutive to all other sentences imposed and shall begin at the  
25 expiration of any other sentence being served by the person.

26 (b) When a person is found to have personally used a firearm in the commission  
27 or attempted commission of a felony and the firearm is owned by that person, or the  
28 serial number on the firearm has been defaced such that ownership is not traceable, the  
29 court shall order that the firearm be deemed a nuisance and be destroyed by the law  
30 enforcement agency having custody of it."

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

33 "(a) If a person is convicted of a felony, except a felony in which the possession  
34 or use of a firearm is an essential element, and the person was armed with a firearm  
35 during the commission of the felony, the person shall, in addition to the punishment for  
36 the underlying felony, be sentenced to ~~imprisonment for five years.~~ a minimum term of  
37 imprisonment for 60 months. If a person is convicted of a felony, except a felony in  
38 which the possession or use of a firearm is an essential element, and the person used a  
39 firearm during the commission of the felony, the person shall, in addition to the  
40 punishment for the underlying felony, be sentenced to ~~imprisonment for 10 years.~~ a  
41 minimum term of imprisonment for 120 months. ~~The court shall not sentence a person~~  
42 ~~sentenced under this section as a committed youthful offender.~~ The court shall not suspend  
43 any sentence imposed under this section and shall not place a person sentenced under  
44 this section on probation for the sentence imposed under this section. Sentences

1 imposed pursuant to this section shall be consecutive to all other sentences imposed and  
2 shall begin at the expiration of any other sentence being served by the person."

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

5 **"§ 15A-1340.16A. Enhanced sentence if defendant was armed with or used a**  
6 **firearm.**

7 (a) If a person is convicted of a felony, for which possession or use of a firearm  
8 is not an essential element of proof, and the court finds that the person was armed with a  
9 firearm at the time of the felony, the court shall increase the minimum term of  
10 imprisonment to which the person is sentenced by 60 months. The court shall not  
11 suspend the 60-month minimum term of imprisonment imposed as an enhanced  
12 sentence under this section and shall not place any person sentenced under this section  
13 on probation for the enhanced sentence.

14 (b) If a person is convicted of a felony, for which possession or use of a firearm  
15 is not an essential element of proof, and the court finds that the person used a firearm at  
16 the time of the felony, the court shall increase the minimum term of imprisonment to  
17 which the person is sentenced by 120 months. The court shall not suspend the 120-  
18 month minimum term of imprisonment imposed as an enhanced sentence under this  
19 section and shall not place any person sentenced under this section on probation for the  
20 enhanced sentence."

21 Sec. 4. Effective January 1, 1995, G.S. 15A-1340.16(d) reads as rewritten:

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

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

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

26 Evidence necessary to prove an element of the offense shall not be used to prove any  
27 factor in aggravation, and the same item of evidence shall not be used to prove more  
28 than one factor in 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. 5. G.S. 15A-1340.4(a)(1) reads as rewritten:

32 "(1) Aggravating factors:

- 33 a. The defendant induced others to participate in the commission  
34 of the offense or occupied a position of leadership or  
35 dominance of other participants.
- 36 b. The offense was committed for the purpose of avoiding or  
37 preventing a lawful arrest or effecting an escape from custody.
- 38 c. The defendant was hired or paid to commit the offense.
- 39 d. The offense was committed to disrupt or hinder the lawful  
40 exercise of any governmental function or the enforcement of  
41 laws.
- 42 e. The offense was committed against a present or former: law  
43 enforcement officer, employee of the Department of Correction,  
44 jailer, fireman, emergency medical technician, ambulance

1 attendant, justice or judge, clerk or assistant or deputy clerk of  
2 court, magistrate, prosecutor, juror, or witness against the  
3 defendant, while engaged in the performance of his official  
4 duties or because of the exercise of his official duties.

- 5 f. The offense was especially heinous, atrocious, or cruel.  
6 g. The defendant knowingly created a great risk of death to more  
7 than one person by means of a weapon or device which would  
8 normally be hazardous to the lives of more than one person.  
9 h. The defendant held public office at the time of the offense and  
10 the offense related to the conduct of the office.  
11 i. The defendant was armed with or used a deadly weapon other  
12 than a firearm at the time of the crime.  
13 j. The victim was very young, or very old, or mentally or  
14 physically infirm.  
15 k. The defendant committed the offense while on pretrial release  
16 on another felony charge.  
17 l. The defendant involved a person under the age of 16 in the  
18 commission of the crime.  
19 m. The offense involved an attempted or actual taking of property  
20 of great monetary value or damage causing great monetary loss,  
21 or the offense involved an unusually large quantity of  
22 contraband.  
23 n. The defendant took advantage of a position of trust or  
24 confidence to commit the offense.  
25 o. The defendant has a prior conviction or convictions for criminal  
26 offenses punishable by more than 60 days' confinement. Such  
27 convictions include those occurring in North Carolina courts  
28 and courts of other states, the District of Columbia, and the  
29 United States, provided that any crime for which the defendant  
30 was convicted in a jurisdiction other than North Carolina would  
31 have been a crime if committed in this State. Such prior  
32 convictions do not include any crime that is joinable, under G.S.  
33 Chapter 15A, with the crime or crimes for which the defendant  
34 is currently being sentenced.  
35 p. The offense involved the sale or delivery of a controlled  
36 substance to a minor.  
37 q. The offense was committed because of the race, color, religion,  
38 nationality, or country of origin of another person.  
39 r. The offense for which the defendant stands convicted was  
40 committed against a victim because of the victim's race, color,  
41 religion, nationality, or country of origin.

42 Evidence necessary to prove an element of the offense may not be used to prove any  
43 factor in aggravation, and the same item of evidence may not be used to prove more  
44 than one factor in aggravation.

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

3           Sec. 6. Section 4 of Chapter 538 of the 1993 Session Laws is repealed.

4           Sec. 7. Sections 2, 3, and 4 of this act become effective January 1, 1995, and  
5 apply to offenses committed on or after that date. The remainder of this act becomes  
6 effective May 1, 1994, and applies to offenses committed on or after that date.