

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

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SENATE BILL 167

Select Committee on Corrections/Punishment Committee Substitute Adopted 2/24/94

Short Title: Enhance Sentence if Use Firearm.

(Public)

Sponsors:

Referred to: Appropriations.

February 15, 1994

A BILL TO BE ENTITLED

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

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~~

1 superior court in this State from the custodian of records of any other court of this State
2 under the same name as that by which the defendant is charged shall be **prima facie**
3 evidence that the identity of such person is the same as the defendant so charged and
4 shall be **prima facie** evidence of the facts so certified.

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

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

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

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

24 (b) Before sentencing a defendant convicted of a felony, the court shall determine
25 whether the defendant was armed with or used a firearm during the commission of the
26 crime. The defendant shall be afforded all rights set forth in G.S. 15A-1334.

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

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

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

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

3 **"§ 15A-1340.16A. Enhanced sentence if defendant was armed with or used a**
4 **firearm.**

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

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

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

- 14 (1) The defendant induced others to participate in the commission of the
15 offense or occupied a position of leadership or dominance of other
16 participants.
- 17 (2) The defendant joined with more than one other person in committing
18 the offense and was not charged with committing a conspiracy.
- 19 (3) The offense was committed for the purpose of avoiding or preventing a
20 lawful arrest or effecting an escape from custody.
- 21 (4) The defendant was hired or paid to commit the offense.
- 22 (5) The offense was committed to disrupt or hinder the lawful exercise of
23 any governmental function or the enforcement of laws.
- 24 (6) The offense was committed against a present or former: law
25 enforcement officer, employee of the Department of Correction, jailer,
26 fireman, emergency medical technician, ambulance attendant, justice
27 or judge, clerk or assistant or deputy clerk of court, magistrate,
28 prosecutor, juror, or witness against the defendant, while engaged in
29 the performance of that person's official duties or because of the
30 exercise of that person's official duties.
- 31 (7) The offense was especially heinous, atrocious, or cruel.
- 32 (8) The defendant knowingly created a great risk of death to more than
33 one person by means of a weapon or device which would normally be
34 hazardous to the lives of more than one person.
- 35 (9) The defendant held public office at the time of the offense and the
36 offense related to the conduct of the office.
- 37 (10) The defendant was armed with or used a deadly weapon other than a
38 firearm at the time of the crime.
- 39 (11) The victim was very young, or very old, or mentally or physically
40 infirm, or handicapped.
- 41 (12) The defendant committed the offense while on pretrial release on
42 another charge.
- 43 (13) The defendant involved a person under the age of 16 in the
44 commission of the crime.

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

16 Evidence necessary to prove an element of the offense shall not be used to prove any
17 factor in aggravation, and the same item of evidence shall not be used to prove more
18 than one factor in aggravation.

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

21 Sec. 5. G.S. 15A-1340.4(a)(1) reads as rewritten:

22 "(1) Aggravating factors:

- 23 a. The defendant induced others to participate in the commission
24 of the offense or occupied a position of leadership or
25 dominance of other participants.
- 26 b. The offense was committed for the purpose of avoiding or
27 preventing a lawful arrest or effecting an escape from custody.
- 28 c. The defendant was hired or paid to commit the offense.
- 29 d. The offense was committed to disrupt or hinder the lawful
30 exercise of any governmental function or the enforcement of
31 laws.
- 32 e. The offense was committed against a present or former: law
33 enforcement officer, employee of the Department of Correction,
34 jailer, fireman, emergency medical technician, ambulance
35 attendant, justice or judge, clerk or assistant or deputy clerk of
36 court, magistrate, prosecutor, juror, or witness against the
37 defendant, while engaged in the performance of his official
38 duties or because of the exercise of his official duties.
- 39 f. The offense was especially heinous, atrocious, or cruel.
- 40 g. The defendant knowingly created a great risk of death to more
41 than one person by means of a weapon or device which would
42 normally be hazardous to the lives of more than one person.
- 43 h. The defendant held public office at the time of the offense and
44 the offense related to the conduct of the office.

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

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

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

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

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