

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

S

4

SENATE BILL 167

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

Appropriations Committee Substitute No. 2 Adopted 3/2/94

Fourth Edition Engrossed 3/3/94

Short Title: Enhance Sentence if Use Firearm.

(Public)

Sponsors:

Referred to:

February 15, 1994

A BILL TO BE ENTITLED

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

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

~~For the purpose of this section, the record or records of the prior felony conviction shall be admissible in evidence after conviction and before sentencing, but only for the~~

1 purpose of proving that the person has been convicted of a previous felony. A judgment
2 of a conviction or plea of guilty or no contest to such felony offense certified to a
3 superior court in this State from the custodian of records of any other court of this State
4 under the same name as that by which the defendant is charged shall be **prima facie**
5 evidence that the identity of such person is the same as the defendant so charged and
6 shall be **prima facie** evidence of the facts so certified.

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

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

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

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

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

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

35 "(a) If a person is convicted of a felony, except a felony in which the possession
36 or use of a firearm is an essential element, and the person was armed with a firearm
37 during the commission of the felony, the person shall, in addition to the punishment for
38 the underlying felony, be sentenced to ~~imprisonment for three years.~~ a minimum term of
39 imprisonment for 36 months. If a person is convicted of a felony, except a felony in
40 which the possession or use of a firearm is an essential element, and the person used a
41 firearm during the commission of the felony, the person shall, in addition to the
42 punishment for the underlying felony, be sentenced to ~~imprisonment for 6 years.~~ a
43 minimum term of imprisonment for 72 months. ~~The court shall not sentence a person~~
44 ~~sentenced under this section as a committed youthful offender.~~ The court shall not suspend

1 any sentence imposed under this section and shall not place a person sentenced under
2 this section on probation for the sentence imposed under this section. Sentences
3 imposed pursuant to this section shall be consecutive to all other sentences imposed and
4 shall begin at the expiration of any other sentence being served by the person."

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

7 "**§ 15A-1340.16A. Enhanced sentence if defendant was armed with or used a**
8 **firearm.**

9 (a) If a person is convicted of a felony, for which possession or use of a firearm
10 is not an essential element of proof, and the court finds that the person was armed with a
11 firearm at the time of the felony, the court shall increase the minimum term of
12 imprisonment to which the person is sentenced by 36 months. The court shall not
13 suspend the 36-month minimum term of imprisonment imposed as an enhanced
14 sentence under this section and shall not place any person sentenced under this section
15 on probation for the enhanced sentence.

16 (b) If a person is convicted of a felony, for which possession or use of a firearm
17 is not an essential element of proof, and the court finds that the person used a firearm at
18 the time of the felony, the court shall increase the minimum term of imprisonment to
19 which the person is sentenced by 72 months. The court shall not suspend the 72-month
20 minimum term of imprisonment imposed as an enhanced sentence under this section
21 and shall not place any person sentenced under this section on probation for the
22 enhanced sentence."

23 Sec. 4. G.S. 15A-1340.16(d) reads as rewritten:

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

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

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

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

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

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

35 "(1) Aggravating factors:

- 36 a. The defendant induced others to participate in the commission
37 of the offense or occupied a position of leadership or
38 dominance of other participants.
- 39 b. The offense was committed for the purpose of avoiding or
40 preventing a lawful arrest or effecting an escape from custody.
- 41 c. The defendant was hired or paid to commit the offense.
- 42 d. The offense was committed to disrupt or hinder the lawful
43 exercise of any governmental function or the enforcement of
44 laws.

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

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

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

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

7 Sec. 7. Sections 2, 3, and 4 of this act become effective on the date that
8 Section 1 of Chapter 538 of the 1993 Session Laws becomes effective, and apply to
9 offenses committed on or after that date. The remainder of this act becomes effective
10 May 1, 1994, and applies to offenses committed on or after that date. Prosecutions for,
11 or sentences based on, offenses occurring before the effective dates of this act are not
12 abated or affected by this act and the statutes that would be applicable to those
13 prosecutions or sentences but for those provisions of this act remain applicable to those
14 prosecutions or sentences.