

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 9\*

Short Title: Increase Firearm Penalty.

(Public)

Sponsors: Representatives G. Miller; Alphin, Arnold, Barbee, Berry, Black, Bowie, Bowman, Brawley, Brubaker, Burton, Church, Cole, Colton, Crawford, Cromer, Culp, Cummings, Cunningham, Decker, Diamont, Dickson, Easterling, Gardner, Gottovi, Griffin, Hall, Hayes, Hightower, Hill, Holt, Hunt, H. Hunter, R. Hunter, Ives, Jarrell, Jeffus, Jenkins, Joye, Kuczarski, Lemmond, Mavretic, McCombs, McCrary, McLaughlin, McLawhorn, Mitchell, Moore, Mosley, Nichols, C. Preston, J. Preston, Ramsey, Redwine, Robinson, Russell, Sexton, Spears, Stewart, Sutton, Wainwright, Warner, Wilmoth, Wood, Wright, and Yongue.

Referred to: Judiciary III.

February 8, 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~~

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

3 ~~For the purpose of this section, the record or records of the prior felony conviction~~  
4 ~~shall be admissible in evidence after conviction and before sentencing, but only for the~~  
5 ~~purpose of proving that the person has been convicted of a previous felony. A judgment~~  
6 ~~of a conviction or plea of guilty or no contest to such felony offense certified to a~~  
7 ~~superior court in this State from the custodian of records of any other court of this State~~  
8 ~~under the same name as that by which the defendant is charged shall be **prima facie**~~  
9 ~~evidence that the identity of such person is the same as the defendant so charged and~~  
10 ~~shall be **prima facie** evidence of the facts so certified.~~

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

13 ~~Pleas of guilty or no contest to or convictions of felony offenses prior to September~~  
14 ~~1, 1977, are not felony offenses within the meaning of this section. Any felony offense~~  
15 ~~to which a pardon has been extended does not for the purpose of this section constitute a~~  
16 ~~felony. The burden of proving a pardon rests with the defendant and the State is not~~  
17 ~~required to disprove a pardon.~~

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

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

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

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

37 "(a) If a person is convicted of a felony, except a felony in which the possession  
38 or use of a firearm is an essential element, and the person was armed with or 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 five years.~~a  
41 minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A. ~~The~~  
42 ~~court shall not sentence a person sentenced under this section as a committed youthful offender.~~  
43 The court shall not suspend any sentence imposed under this section and shall not place  
44 a person sentenced under this section on probation for the sentence imposed under this

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

4 (b) Section 4 of Chapter 538 of the 1993 Session Laws is repealed.

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 If a person is convicted of a felony, for which possession or use of a firearm is not  
10 an essential element of proof, and the court finds that the person was armed with or used  
11 a firearm at the time of the felony, the court shall increase the minimum term of  
12 imprisonment to which the person is sentenced by 60 months. The court shall not  
13 suspend the 60-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 Sec. 4. Effective January 1, 1995, G.S. 15A-1340.16(d) reads as rewritten:

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

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

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

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

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

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