

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 746
Judiciary II Committee Substitute Adopted 4/17/01

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.

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 G.S. 14-2.2 is repealed.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 possessed the firearm about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that

1 corresponds to the minimum term after it is increased by 60 months, as specified in G.S.
2 15A-1340.17(e) and (e1). The court shall not suspend any sentence imposed under this
3 section and shall not place a person sentenced under this section on probation for the
4 sentence imposed under this section.

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

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

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

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

20 **"§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent**
21 **conviction of a Class B1 felony-felony, the victim was 13 years of age or**
22 **younger, and there are no mitigating factors.**

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

26 (1) The offense was committed the person committed the felony against a
27 victim who was 13 years of age or younger at the time of the offense;
28 and

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

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

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

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

38 (b) An indictment or information for the Class B1 felony shall allege in that
39 indictment or information or in a separate indictment or information the facts set out in
40 subsection (a) of this section. The pleading is sufficient if it alleges that the defendant
41 committed the felony against a victim who was 13 years of age or younger at the time of

1 the felony and had one or more prior convictions of a Class B1 felony. One pleading is
2 sufficient for all Class B1 felonies that are tried at a single trial.

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

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

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

12 **"§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the**
13 **defendant was wearing or had in his or her immediate possession a**
14 **bulletproof vest during the commission of the felony.**

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

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

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

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

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

36 **SECTION 5.** Article 81B of Chapter 15A of the General Statutes is
37 amended by adding a new section to read:

38 **"§ 15A-1340.18. Maximum punishments for felony offenses.**

39 The maximum punishment for a felony offense shall be equal to the maximum term
40 of imprisonment which corresponds to the longest minimum term of imprisonment in
41 the aggravated range in Prior Record Level VI for that offense class pursuant to G.S.
42 15A-1340.17. The maximum punishments are as follows:

- 1 (1) A Class A felony shall be punishable by death or life imprisonment
2 without parole as provided by Article 100 of Chapter 15A of the
3 General Statutes.
- 4 (2) A Class B1 felony may be punished by a term of imprisonment of up
5 to life imprisonment without parole.
- 6 (3) A Class B2 felony may be punished by a term of imprisonment of up
7 to 480 months.
- 8 (4) A Class C felony may be punished by a term of imprisonment of up to
9 261 months.
- 10 (5) A Class D felony may be punished by a term of imprisonment of up to
11 229 months.
- 12 (6) A Class E felony may be punished by a term of imprisonment of up to
13 98 months.
- 14 (7) A Class F felony may be punished by a term of imprisonment of up to
15 59 months.
- 16 (8) A Class G felony may be punished by a term of imprisonment of up to
17 44 months.
- 18 (9) A Class H felony may be punished by a term of imprisonment of up to
19 30 months.
- 20 (10) A Class I felony may be punished by a term of imprisonment of up to
21 15 months."

22 **SECTION 6.** This act is effective when it becomes law and applies to
23 offenses committed on or after that date. Prosecutions for offenses occurring before the
24 effective date of this act are not abated or affected by this act, and the statutes that
25 would be applicable before this act remain applicable to those prosecutions.