

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS35305-LH-76C (02/13)

Short Title: 10 Yr. Min for 2nd Gun Felony Conviction. (Public)

Sponsors: Senator Daniel (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A SECOND FELONY
3 INVOLVING THE DISPLAY OR USE OF A FIREARM MAY BE INDICTED AS AN
4 ARMED HABITUAL FELON AND SENTENCED TO A MINIMUM OF TEN YEARS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 14 of the General Statutes is amended by adding a new
7 article to read:

8 "Article 3D.

9 "Armed Habitual Felon.

10 "**§ 14-7.35. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) "Convicted." – The person has been adjudged guilty of or has entered a plea
13 of guilty or no contest to the firearm-related felony.
14 (2) "Firearm-related felony." – Any felony committed by a person in which the
15 person used or displayed a firearm while committing the felony.
16 (3) "Status offender." – A person who is an armed habitual felon as described in
17 G.S. 14-7.36.

18 "**§ 14-7.36. Armed habitual felon.**

19 Any person who has been convicted of or pled guilty to one or more prior firearm-related
20 felony offenses in any federal court or state court in the United States, or combination thereof,
21 is guilty of the status offense of armed habitual felon and may be charged with that status
22 offense pursuant to this Article.

23 This Article does not apply to a second firearm-related felony unless it is committed after
24 the conviction of the first firearm-related felony. For purposes of this Article, firearm-related
25 felonies committed before the person is 18 years of age shall not constitute more than one
26 firearm-related felony. Any firearm-related felony to which a pardon has been extended shall
27 not, for the purposes of this Article, constitute a firearm-related felony.

28 This Article does not apply if the evidence of the use or display of the firearm is needed to
29 prove an element of the firearm-related felony.

30 "**§ 14-7.37. Punishment.**

31 When any person is charged with a firearm-related felony and is also charged with being a
32 status offender, the person must, upon conviction, be sentenced and punished as a status
33 offender as provided by this Article.

34 "**§ 14-7.38. Charge of status offense as an armed habitual felon.**

35 (a) The district attorney, in the district attorney's discretion, may charge a person as a
36 status offender pursuant to this Article. To sustain a conviction of a person as a status offender,



1 the person must be charged separately for the principal firearm-related felony and for the status
2 offense of armed habitual felon. The indictment charging the defendant as a status offender
3 shall be separate from the indictment charging the person with the principal firearm-related
4 felony.

5 (b) An indictment that charges a person with being a status offender must set forth all of
6 the following information regarding the prior firearm-related felony:

7 (1) The date the offense was committed.

8 (2) The name of the state or other sovereign against whom the offense was
9 committed.

10 (3) The dates that the plea of guilty was entered into or conviction returned in
11 the offense.

12 (4) The identity of the court in which the plea or conviction took place.

13 (c) No defendant charged with being a status offender in a bill of indictment shall be
14 required to go to trial on the charge within 20 days of the finding of a true bill by the grand
15 jury; provided, the defendant may waive this 20-day period.

16 **"§ 14-7.39. Evidence of prior convictions of firearm-related felonies.**

17 In all cases in which a person is charged under the provisions of this Article with being a
18 status offender, the record of prior conviction of the firearm-related felony shall be admissible
19 in evidence, but only for the purpose of proving that the person has been convicted of a former
20 firearm-related felony. A prior conviction may be proved by stipulation of the parties or by the
21 original or a certified copy of the court record of the prior conviction. The original or certified
22 copy of the court record, bearing the same name as that by which the defendant is charged,
23 shall be prima facie evidence that the defendant named therein is the same as the defendant
24 before the court and shall be prima facie evidence of the facts set out therein.

25 **"§ 14-7.40. Verdict and judgment.**

26 (a) When an indictment charges a person with a firearm-related felony as provided by
27 this Article and an indictment also charges that the person is a status offender, the defendant
28 shall be tried for the principal firearm-related felony as provided by law. The indictment that
29 the person is a status offender shall not be revealed to the jury unless the jury shall find that the
30 defendant is guilty of the principal firearm-related felony with which the defendant is charged.

31 (b) If the jury finds the defendant guilty of the principal firearm-related felony, the bill
32 of indictment charging the defendant as a status offender may be presented to the same jury.
33 Except that the same jury may be used, the proceedings shall be as if the issue of status
34 offender were a principal charge.

35 (c) If the jury finds that the defendant is a status offender, the trial judge shall enter
36 judgment according to the provisions of this Article. If the jury finds that the defendant is not a
37 status offender, the trial judge shall pronounce judgment on the principal firearm-related felony
38 offense as provided by law.

39 **"§ 14-7.41. Sentencing of armed habitual felon.**

40 (a) A person who is convicted of a firearm-related felony and is also convicted of the
41 status offense must, upon conviction or plea of guilty under indictment as provided in this
42 Article, be sentenced as a Class C felon (except where the felon has been sentenced as a Class
43 A, B1, or B2 felon). Notwithstanding any other provision of law, a person sentenced under this
44 Article shall serve either (i) a minimum term of imprisonment of 120 months and a maximum
45 term of 156 months or (ii) the minimum and maximum terms of imprisonment that would be
46 imposed for the principal firearm-related felony pursuant to G.S. 15A-1340.17, whichever is
47 greater.

48 (b) In determining the prior record level, any conviction used to establish a person's
49 status as an armed habitual felon shall not be used. Sentences imposed under this Article shall
50 run consecutively with and shall commence at the expiration of any sentence being served by
51 the person sentenced under this section.

1 (c) A conviction as a status offender under this Article shall not constitute commission
2 of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General
3 Statutes."

4 **SECTION 2.** Part 1 of Article 81B or Chapter 15A of the General Statutes is
5 amended by adding a new section to read:

6 **"§ 15A-1340.12A. Sentencing court to include in judgment whether firearm was used.**

7 When a person is convicted of a felony in which the person used or displayed a firearm
8 while committing the felony, the sentencing court shall include that fact when entering the
9 judgment that imposes the sentence for the felony conviction."

10 **SECTION 3.** This act becomes effective December 1, 2013, and applies to any
11 offense that occurs on or after that date and that is the principal firearm-related felony offense
12 for a charge as an armed habitual felon. Section 2 of the bill applies to any judgment entered
13 for a felony conviction on or after that date.