

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 937
PROPOSED COMMITTEE SUBSTITUTE H937-PCS80323-SA-24

Short Title: Amend Various Firearms Laws.

(Public)

Sponsors:

Referred to:

April 15, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE PENALTIES FOR CERTAIN CRIMES IN WHICH A FIREARM
3 IS USED, DISPLAYED, OR THERE IS A THREAT TO USE OR DISPLAY A
4 FIREARM; TO MAKE IT A CRIMINAL OFFENSE FOR ANYONE TO PERMIT A
5 CHILD TO HAVE ACCESS TO OR POSSESS A FIREARM WITHOUT SUPERVISION
6 AND PARENTAL CONSENT; TO PROVIDE THAT A PERSON WHO HAS A VALID
7 CONCEALED HANDGUN PERMIT MAY DO ALL OF THE FOLLOWING: HAVE A
8 CONCEALED HANDGUN IN A LOCKED VEHICLE IN A STATE GOVERNMENT
9 PARKING LOT, HAVE A CONCEALED HANDGUN IN A LOCKED
10 COMPARTMENT IN A VEHICLE ON THE PREMISES OF A COMMUNITY
11 COLLEGE, OR PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY, AND CARRY A
12 HANDGUN INTO AN ASSEMBLY WHERE AN ADMISSION FEE IS CHARGED OR
13 AN ESTABLISHMENT WHERE ALCOHOLIC BEVERAGES ARE SOLD AND
14 CONSUMED, UNLESS THE PERSON IN LEGAL POSSESSION OR CONTROL OF
15 THE PREMISES HAS POSTED A NOTICE PROHIBITING THE CARRYING OF
16 HANDGUNS ON THE PREMISES; TO PROVIDE THAT AN EMPLOYEE OF AN
17 INSTITUTION OF HIGHER EDUCATION WHO LIVES IN A CERTAIN TYPE OF
18 CAMPUS RESIDENCE MAY CARRY A HANDGUN ON THE EMPLOYEE'S
19 RESIDENTIAL PREMISES AND IN SOME INSTANCES ALSO KEEP THE GUN IN
20 THE EMPLOYEE'S LOCKED VEHICLE IN THE PARKING AREA OF THE
21 INSTITUTION OF HIGHER EDUCATION; TO CLARIFY THE LAW ON LOCAL
22 GOVERNMENT AUTHORITY TO PROHIBIT CONCEALED CARRY OF FIREARMS;
23 AND TO ESTABLISH UNIFORM STATE REQUIREMENTS FOR REPORTING
24 INFORMATION CONCERNING MENTAL HEALTH AND SUBSTANCE ABUSE
25 JUDICIAL DETERMINATIONS OR FINDINGS TO THE NATIONAL INSTANT
26 CRIMINAL BACKGROUND CHECK SYSTEM AND TO MAKE THESE
27 REQUIREMENTS MORE CONSISTENT WITH FEDERAL FIREARMS LAW.

28 The General Assembly of North Carolina enacts:

29 **SECTION 1.** G.S. 14-269 is amended by adding a new subsection to read:

30 "(a2) This prohibition does not apply to a person who has a concealed handgun permit
31 issued in accordance with Article 54B of this Chapter, has a concealed handgun permit
32 considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to
33 G.S. 14-415.25, provided the weapon is a handgun, is in a closed compartment or container
34 within the person's locked vehicle, and the vehicle is in a parking area that is owned or leased
35 by State government. A person may unlock the vehicle to enter or exit the vehicle, provided the



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handgun remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit."

SECTION 2. G.S. 14-269.2 is amended by adding the following new subsections to read:

"(i) The provisions of this section shall not apply to an employee of an institution of higher education as defined in G.S. 116-143.1 or a nonpublic post-secondary educational institution who resides on the campus of the institution at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The institution is either:

a. An institution of higher education as defined by G.S. 116-143.1.

b. A nonpublic post-secondary educational institution that has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the institution at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee for the purposes of immediately leaving the campus. The employee may possess the handgun on the employee's person outside the premises of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle for the purpose of immediately leaving the campus.

(j) The provisions of this section shall not apply to an employee of a public or nonpublic school who resides on the campus of the school at which the person is employed when all of the following criteria are met:

(1) The employee's residence is a detached, single-family dwelling in which only the employee and the employee's immediate family reside.

(2) The school is either:

a. A public school which provides residential housing for enrolled students.

b. A nonpublic school which provides residential housing for enrolled students and has not specifically prohibited the possession of a handgun pursuant to this subsection.

(3) The weapon is a handgun.

(4) The handgun is possessed in one of the following manners as appropriate:

a. If the employee has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, the handgun may be on the premises of the employee's residence or in a closed compartment or container within the employee's locked vehicle that is located in a parking area of the educational property of the school at which the person is employed and resides. Except for direct transfer between the residence and the vehicle, the handgun must remain at all times either on the premises of the employee's residence or in the closed compartment of the employee's locked vehicle. The employee may unlock the vehicle to enter or exit, but must lock the vehicle immediately following the entrance or exit if the handgun is in the vehicle.

b. If the employee is not authorized to carry a concealed handgun pursuant to Article 54B of this Chapter, the handgun may be on the premises of the employee's residence, and may only be in the employee's vehicle when the vehicle is occupied by the employee for the purposes of immediately leaving the campus. The employee may possess the handgun on the employee's person outside the premises of the employee's residence when making a direct transfer of the handgun from the residence to the employee's vehicle for the purpose of immediately leaving the campus.

(k) The provisions of this section shall not apply to a person who has a concealed handgun permit that is valid under Article 54B of this Chapter, or who is exempt from obtaining a permit pursuant to that Article, when all of the following criteria are met:

(1) The weapon is a handgun.

(2) The handgun is in a closed compartment or container within the person's locked vehicle.

(3) The vehicle is on the educational property of either:

a. An institution of higher education as defined by G.S. 116-143.1.

b. A nonpublic post-secondary educational institution that has not specifically prohibited the possession of a handgun pursuant to this subsection."

SECTION 3. G.S. 14-269.3(b) reads as rewritten:

"(b) This section shall not apply to any of the following:

(1) A person exempted from the provisions of ~~G.S. 14-269;~~G.S. 14-269.

(2) The owner or lessee of the premises or business ~~establishment;~~establishment.

(3) A person participating in the event, if he is carrying a gun, rifle, or pistol with the permission of the owner, lessee, or person or organization sponsoring the ~~event;~~ and event.

(4) A person registered or hired as a security guard by the owner, lessee, or person or organization sponsoring the event.

(5) A person carrying a handgun if the person has a valid concealed handgun permit issued in accordance with Article 54B of this Chapter, has a concealed handgun permit considered valid under G.S. 14-415.24, or is exempt from obtaining a permit pursuant to G.S. 14-415.25. This subdivision shall not be construed to permit a person to carry a handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c)."

SECTION 4. G.S. 14-316 reads as rewritten:

"§ 14-316. **Permitting young children to use dangerous firearms.**

(a) It shall be unlawful for any ~~parent, guardian, or person standing in loco parentis,~~ person to knowingly permit ~~his-a~~ child under the age of 12 years to have ~~the access to,~~ or possession, custody or use in any manner whatever, of, any gun, pistol or other dangerous firearm, whether such weapon be loaded or unloaded, ~~except when such~~ unless the person has the permission of the child's parent or guardian, and the child is under the supervision of the ~~parent, guardian or person standing in loco parentis. It shall be unlawful for any other person to knowingly furnish such child any weapon enumerated herein.~~ an adult. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) Air rifles, air pistols, and BB guns shall not be deemed "dangerous firearms" within the meaning of subsection (a) of this section except in the following counties: Anson, Caldwell, Caswell, Chowan, Cleveland, Cumberland, Durham, Forsyth, Gaston, Harnett, Haywood, Mecklenburg, Stanly, Stokes, Surry, Union, Vance."

SECTION 5. 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 or deadly weapon during the commission of the felony.**

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) 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 or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon 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 corresponds to the minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e) and (e1).~~ as follows:

(1) If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 72 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) If the felony is a Class F or G felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 36 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 36 months, as specified in G.S. 15A-1340.17(d).

(3) If the felony is a Class H or I felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 12 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months, as specified in G.S. 15A-1340.17(d).

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

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest

1 to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a
2 jury shall be impaneled to determine the issues.

3 (f) Subsection (c) of this section does not apply if the evidence of the use, display, or
4 threatened use or display of the firearm or deadly weapon is needed to prove an element of the
5 felony or if the person is not sentenced to an active term of imprisonment."

6 **SECTION 6.** G.S. 14-415.23 reads as rewritten:

7 **"§ 14-415.23. Statewide uniformity.**

8 (a) It is the intent of the General Assembly to prescribe a uniform system for the
9 regulation of legally carrying a concealed handgun. To insure uniformity, no political
10 subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal
11 corporation, town, township, village, nor any department or agency thereof, may enact
12 ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of
13 local government may adopt an ordinance to permit the posting of a prohibition against
14 carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government
15 buildings and their appurtenant premises.

16 (b) A unit of local government may adopt an ordinance to prohibit, by posting, the
17 carrying of a concealed handgun on municipal and county recreational facilities that are
18 specifically identified by the unit of local government. If a unit of local government adopts
19 such an ordinance with regard to recreational facilities, then the concealed handgun permittee
20 may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other
21 enclosed compartment or area within or on the motor vehicle.

22 (c) For purposes of this section, the term "recreational facilities" includes only the
23 following: ~~a playground, an athletic field, a swimming pool, and an athletic facility.~~

24 (1) An athletic field, including any appurtenant facilities such as restrooms,
25 during an organized athletic event if the field had been scheduled for use
26 with the municipality or county office responsible for operation of the park
27 or recreational area.

28 (2) A swimming pool, including any appurtenant facilities used for dressing,
29 storage of personal items, or other uses relating to the swimming pool.

30 (3) A facility used for athletic events, including, but not limited to, a
31 gymnasium.

32 (d) For the purposes of this section, the term "recreational facilities" does not include
33 any greenway, designated biking or walking path, an area that is customarily used as a
34 walkway or bike path although not specifically designated for such use, open areas or fields
35 where athletic events may occur unless the area qualifies as an "athletic field" pursuant to
36 subdivision (1) of subsection (c) of this section, and any other area that is not specifically
37 described in subsection (c) of this section."

38 **SECTION 7.** G.S. 122C-54(d1) reads as rewritten:

39 "(d1) ~~After a judicial determination that an individual shall be involuntarily committed for~~
40 ~~either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter, the~~
41 ~~clerk of superior court in the county where the judicial determination was made shall, as soon~~
42 ~~as practicable, cause a report of the commitment to be transmitted to the National Instant~~
43 ~~Criminal Background Check System (NICS). Reporting of an individual involuntarily~~
44 ~~committed to outpatient mental health treatment under this subsection shall only be reported if~~
45 ~~the individual is found to be a danger to self or others. The clerk shall also cause to be~~
46 ~~transmitted to NICS a record where an individual is found not guilty by reason of insanity or~~
47 ~~found mentally incompetent to proceed to criminal trial. The clerk, upon receipt of~~
48 ~~documentation that an affected individual has received a relief from disabilities pursuant to~~
49 ~~G.S. 122C-54.1 or any applicable federal law, shall cause the individual's record in NICS to be~~
50 ~~updated. Excluding Saturdays, Sundays, and holidays, not later than 48 hours after receiving~~
51 ~~notice of any of the following judicial determinations or findings, the clerk of superior court in~~

the county where the determination or finding was made shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS):

- (1) A determination that an individual shall be involuntarily committed to a facility for inpatient mental health treatment upon a finding that the individual is mentally ill and a danger to self or others.
- (2) A determination that an individual shall be involuntarily committed to a facility for outpatient mental health treatment upon a finding that the individual is mentally ill and, based on the individual's treatment history, in need of treatment in order to prevent further disability or deterioration that would predictably result in a danger to self or others.
- (3) A determination that an individual shall be involuntarily committed to a facility for substance abuse treatment upon a finding that the individual is a substance abuser and a danger to self or others.
- (4) A finding that an individual is not guilty by reason of insanity.
- (5) A finding that an individual is mentally incompetent to proceed to criminal trial.
- (6) A finding that an individual lacks the capacity to manage the individual's own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.
- (7) A determination to grant a petition to an individual for the removal of disabilities pursuant to G.S. 122C-54.1 or any applicable federal law.

The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding."

SECTION 8. The last two sentences of G.S. 122C-54(d1) are recodified as G.S. 122C-54(d2) and read as rewritten:

"(d2) The record of involuntary commitment for inpatient or outpatient mental health treatment or for substance abuse treatment required by subsection (d1) of this section shall be accessible only by an entity having proper access to NICS and shall remain otherwise confidential as provided by this Article. ~~The clerk shall effect the transmissions to NICS required by the subsection according to protocols which shall be established by the Administrative Office of the Courts.~~ The Administrative Office of the Courts shall adopt rules to require clerks of court to transmit information to the NICS as required by subsection (d1) of this section in a uniform manner."

SECTION 9. G.S. 122C-54.1 reads as rewritten:

"§ 122C-54.1. Restoration process to remove mental commitment bar.

(a) Any individual over the age of 18 may petition for the removal of the ~~mental commitment bar to purchase, possess, or transfer a firearm when the individual no longer suffers from the condition that resulted in the individual's involuntary commitment for either inpatient or outpatient mental health treatment pursuant to Article 5 of this Chapter and no longer poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~ disabilities pursuant to 18 U.S.C. § 922(d)(4) and (g)(4), G.S. 14-404, G.S. 14-415.3, and G.S. 14-415.12 arising out of a determination or finding required to be transmitted to the National Instant Criminal Background Check System by subdivisions (1) through (6) of subsection (d1) of G.S. 122C-54. The individual may file the petition with a district court judge upon the expiration of any current inpatient or outpatient commitment. ~~No individual who has been found not guilty by reason of insanity may petition a court for restoration under this section.~~

(b) The petition must be filed in the district court of the county where the respondent was the subject of the most recent judicial determination or finding~~that either inpatient or~~

1 ~~outpatient treatment was appropriate~~ or in the district court of the county of the petitioner's
2 residence. ~~An individual disqualified from firearms possession due to a comparable~~
3 ~~out-of-State mental commitment shall make application in the county of residence.~~ The clerk of
4 court upon receipt of the petition shall schedule a hearing using the regularly scheduled
5 commitment court time and provide notice of the hearing to the petitioner and the ~~district~~
6 ~~attorney.~~ attorney who represented the State in the underlying case, or that attorney's successor.
7 Copies of the petition must be served on the director of the relevant inpatient and/or outpatient
8 ~~treatment facility, in-State or out-of-State, facility~~ and the district attorney in the petitioner's
9 current county of residence.

10 (c) The burden is on the petitioner to establish by a preponderance of the evidence that
11 the petitioner ~~no longer suffers from the condition that resulted in commitment and no longer~~
12 ~~poses a danger to self or others for purposes of the purchase, possession, or transfer of firearms~~
13 ~~pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~ will not be likely to act in a
14 manner dangerous to public safety and that the granting of the relief would not be contrary to
15 the public interest. The district attorney shall present any and all relevant information to the
16 contrary. For these purposes, the district attorney may access and use any and all mental health
17 records, juvenile records, and criminal history of the petitioner wherever maintained. The
18 applicant must sign a release for the district attorney to receive any mental health records of the
19 applicant. This hearing shall be closed to the public, unless the court finds that the public
20 interest would be better served by conducting the hearing in public. If the court determines the
21 hearing should be open to the public, upon motion by the petitioner, the court may allow for the
22 in camera inspection of any mental health records. The court may allow the use of the record
23 but shall restrict it from public disclosure, unless it finds that the public interest would be better
24 served by making the record public. The district court shall enter an order that the petitioner
25 ~~does or does not continue to suffer from the condition that resulted in commitment and does or~~
26 ~~does not continue to pose a danger to self or others for purposes of the purchase, possession, or~~
27 ~~transfer of firearms pursuant to 18 U.S.C. § 922, G.S. 14-404, and G.S. 14-415.12.~~ is or is not
28 likely to act in a manner dangerous to public safety and that the granting of the relief would or
29 would not be contrary to the public interest. The court shall include in its order the specific
30 findings of fact on which it bases its decision. In making its determination, the court shall
31 consider the circumstances regarding the firearm disabilities from which relief is sought, the
32 petitioner's mental health and criminal history records, the petitioner's reputation, developed at
33 a minimum through character witness statements, testimony, or other character evidence, and
34 any changes in the petitioner's condition or circumstances since the original determination or
35 finding relevant to the relief sought. The decision of the district court may be appealed to the
36 superior court for a hearing de novo. After a denial by the superior court, the applicant must
37 wait a minimum of one year before reapplying. Attorneys designated by the Attorney General
38 shall be available to represent the State, or assist in the representation of the State, in a
39 restoration proceeding when requested to do so by a district attorney and approved by the
40 Attorney General. An attorney so designated shall have all the powers of the district attorney
41 under this section.

42 (d) Upon a judicial determination to grant a petition under this section, the clerk of
43 superior court in the county where the petition was granted shall forward the order to the
44 National Instant Criminal Background Check System (NICS) for updating of the respondent's
45 record."

46 **SECTION 10.** G.S. 14-404(g) reads as rewritten:

47 "(g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of
48 this section because of an adjudication of mental incompetence or involuntary commitment to
49 mental health services if the individual's rights have been restored under G.S. 122C-54.1."

50 **SECTION 11.** G.S. 14-415.3 is amended by adding a new subsection to read:

1 "(c) The provisions of this section shall not apply to a person whose rights have been
2 restored pursuant to G.S. 122C-54.1."

3 **SECTION 12.** G.S. 14-415.12(c) reads as rewritten:

4 "(c) An applicant shall not be ineligible to receive a concealed carry permit under
5 subdivision (6) of subsection (b) of this section because of an adjudication of mental incapacity
6 or illness or an involuntary commitment to mental health services if the individual's rights have
7 been restored under G.S. 122C-54.1."

8 **SECTION 13.** Sections 1 through 6 of this act become effective October 1, 2013,
9 and apply to offenses committed on or after that date. The remainder of this act becomes
10 effective October 1, 2013.