

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1434\*

Short Title: Gun Trafficking.

(Public)

Sponsors: Senator Lee.

Referred to: Judiciary II.

June 18, 2002

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE ENFORCEMENT OF STATE LAWS TO COMBAT  
3 GUN TRAFFICKING.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 114 of the General Statutes is amended by adding a  
6 new Article to read:

7 "Article 6A.

8 "Crime Gun Interdiction Program.

9 **"§ 114-45. Crime Gun Interdiction Task Force.**

10 (a) There is created within the Department of Justice a Crime Gun Interdiction  
11 Task Force to establish cooperative enforcement of the laws of this State concerning the  
12 illegal distribution and illegal possession of firearms.

13 (b) The program, in cooperation with the United States Department of Treasury,  
14 Bureau of Alcohol, Tobacco and Firearms, the United States Attorney's Office for the  
15 Eastern, Middle and Western Districts of North Carolina, district attorneys in this State,  
16 and local law enforcement agencies shall develop and implement a strategy to stop the  
17 movement of illegal guns into and out of North Carolina. The strategy shall include:

18 (1) Identifying and prosecuting gun traffickers and suppliers of guns who  
19 may be violating federal, State, or local laws,

20 (2) Cooperating with the United States Department of Treasury, Bureau of  
21 Alcohol, Tobacco and Firearms, in investigating firearm trafficking  
22 investigations,

23 (3) Cooperating with the United States Attorneys of this State in  
24 coordinating the activities of the task force with the activities of the  
25 Project Safe Neighborhood Program,

26 (4) Cooperating with appropriate prosecutorial agencies in other states in  
27 the investigation and enforcement of federal, State, or local laws. The  
28 State Bureau of Investigation, district attorneys, and any other member  
29 of the task force shall enter into agreements with prosecutorial and

1           other governmental agencies and entities in other States in an effort to  
2           stop the movement of illegal guns into and out of North Carolina.

3       (c) The program shall utilize the resources available through the Bureau of  
4 Alcohol, Tobacco and Firearms and the United States Attorney for Eastern, Middle and  
5 Western Districts of North Carolina, including assistance in all of the following:

- 6           (1) Analyzing crime gun trace and related multiple sales information.
- 7           (2) Mapping crime gun recovery locations.
- 8           (3) Utilizing Online Project Lead to search for criminal patterns in trace  
9           information.
- 10          (4) Identifying specific traffickers operating in the community.
- 11          (5) Determining the most appropriate venue for prosecution.

12 **"§ 114-46. Policy Board; membership.**

13       There shall be a Task Force Policy Board, consisting of the Attorney General or his  
14 designee, the Secretary of Crime Control and Public Safety or the secretary's designee,  
15 the Director of the State Bureau of Investigation, the agent in North Carolina in charge  
16 of the Bureau of Alcohol, Tobacco and Firearms, a representative of the North Carolina  
17 Sheriffs Association, a representative of the North Carolina Police Chiefs Association, a  
18 representative of the North Carolina District Attorneys Association, a representative of  
19 the North Carolina Fraternal Order of Police, a representative of the North Carolina  
20 Police Benevolent Association, the United States Attorneys for the Eastern, Middle and  
21 Western Districts of North Carolina or their designees, the State coordinators of the  
22 Project Safe Neighborhoods Program, one member appointed by the Governor, one  
23 member appointed by the Speaker of the House of Representatives, and one member  
24 appointed by the President Pro Tempore of the Senate.

25 **"§ 114-47. Duties of Policy Board.**

- 26          (1) The Policy Board shall direct the formation of policies and operating  
27          procedures of the task force.
- 28          (2) The Policy Board shall commission an annual report covering the  
29          activities of the task force and the gun crime and gun trafficking  
30          problem within the State. This study shall be made available to the  
31          public.
- 32          (3) The Policy Board shall make annual recommendations to the General  
33          Assembly regarding legislative remedies that would assist in reducing  
34          the level of gun crime within the State and additional resources that  
35          would assist the task force in reducing gun crime in this State.
- 36          (4) The Policy Board may apply for and administer any federal  
37          appropriations or grant funds made available for the operation of the  
38          task force. Such federal grants may include the following: Bureau of  
39          Justice Assistance Local Law Enforcement Block Grants, Byrne  
40          Formula Grants, including grants for the Weed and Seed Program,  
41          Juvenile Justice Formula Grants and Competitive Grants administered  
42          by the Office of Juvenile Justice and Delinquency Prevention; STOP  
43          Violence Against Women Formula Grants administered by the  
44          Violence Against Women Grants Office; and the National Criminal

1                    History Improvement Program administered by the Bureau of Justice  
2                    Statistics.

3            (5)    The Policy Board shall develop or identify a preexisting firearm  
4                    trafficking education program that shall be made available to local law  
5                    enforcement agencies throughout the State. The education program  
6                    shall include all of the following:

7                    a.        A module explaining the firearm violence and gun trafficking  
8                    problem within the state.

9                    b.        Resources available to local law enforcement to combat firearm  
10                    crimes and gun trafficking.

11                    c.        The assistance available from the Crime Gun Interdiction Task  
12                    Force.

13                    d.        The importance of gun tracing, crime mapping and coordinating  
14                    the federal, state and other local law enforcement.

15                    e.        Assistance in implementing investigative techniques and  
16                    investigative tools to combat gun crime and gun trafficking."

17            **SECTION 2.** G.S. 14-2.2 reads as rewritten:

18    **"§ 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E**  
19                    **felony who used, displayed, or threatened to use or display a firearm**  
20                    **during the commission of the crime; confiscation and disposition of a**  
21                    **firearm used in a ~~felony~~ felony; obliterated serial numbers.**

22            (a)    If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the  
23                    person used, displayed, or threatened to use or display a firearm during the commission  
24                    of the felony, the person shall, in addition to the punishment for the underlying felony,  
25                    be sentenced to a minimum term of imprisonment for 60 months as provided by G.S.  
26                    15A-1340.16A.

27                    The court shall not suspend any sentence imposed under this section and shall not  
28                    place a person sentenced under this section on probation for the sentence imposed under  
29                    this section. Sentences imposed pursuant to this section shall be consecutive to all other  
30                    sentences imposed and shall begin at the expiration of any other sentence being served  
31                    by the person.

32                    (b)    Subsection (a) of this section does not apply in any of the following  
33                    circumstances:

34                    (1)    The person is not sentenced to an active term of imprisonment.

35                    (2)    The evidence of the use, display, or threatened use or display of a  
36                    firearm is needed to prove an element of the underlying Class A, B,  
37                    B1, B2, C, D, or E felony.

38                    (3)    The person did not actually possess a firearm about his or her person.

39                    (b1)   It is unlawful to remove, deface, or otherwise obliterate a serial number on a  
40                    firearm so that ownership of the firearm is not traceable. Every person violating the  
41                    provisions of this subsection shall be punished as a Class I felon.

42                    (c)    When a person is found to have personally used a firearm in the commission  
43                    or attempted commission of a felony and the firearm is owned by that person, or the  
44                    serial number on the firearm has been defaced such that ownership is not traceable, the

1 court shall order that the firearm be confiscated and disposed of in any of the ways  
2 provided by G.S. 14-269.1 that the court in its discretion deems appropriate."

3 **SECTION 3.** G.S. 14-415.1(a) reads as rewritten:

4 "(a) It shall be unlawful for any person who has been convicted of a felony to  
5 purchase, own, possess, or have in his custody, care, or control any handgun or other  
6 firearm with a barrel length of less than 18 inches or an overall length of less than 26  
7 inches, or any weapon of mass death and destruction as defined in G.S. 14-288.8(c).

8 Every person violating the provisions of this section shall be punished as a Class ~~G~~  
9 felon.

10 Nothing in this subsection would prohibit the right of any person to have possession  
11 of a firearm within his own home or on his lawful place of business."

12 **SECTION 4.** Chapter 14 of the General Statutes is amended by adding a  
13 new Article to read:

14 "Article 53D.

15 "Mental Health Records Access.

16 "**§ 14-409.48. Definitions.**

17 The following definitions apply in this Article:

18 (1) 'Department' means the North Carolina Department of Health and  
19 Human Services.

20 (2) 'Prohibited person' means those persons described in  
21 G.S. 14-404(c)(4), G.S. 14-415.12(b)(6), 18 U.S.C. 922(d)(4) or 18  
22 U.S.C. 922(g)(4) who have been adjudicated mentally incompetent or  
23 involuntarily committed pursuant to G.S. 122C-226.

24 "**§ 14-409.49. Establish database of persons prohibited by state and federal law**  
25 **from possessing or purchasing a firearm.**

26 The Department shall develop a system of electronic records that contain identifying  
27 information regarding those individuals who have been adjudicated mentally  
28 incompetent or involuntarily committed pursuant to G.S. 122C-226.

29 "**§ 14-409.50. Restoration of rights.**

30 (a) Any person who is subject to G.S. 14-409.49, upon his or her release or any  
31 point thereafter, may petition the superior court of his or her county of residence for an  
32 order that the person may be eligible to obtain permits pursuant to G.S. 14-404 or G.S.  
33 14-415.12. At the time the petition is filed, the clerk of court shall set a hearing date and  
34 notify the person, the sheriff of the county of the person's residence, the Department,  
35 and the district attorney. The people of the State of North Carolina shall be the  
36 respondent in the proceeding and shall be represented by the district attorney.

37 (b) Within seven days after receiving notice of the petition, the Department shall  
38 file a report disclosing why the petitioner is included in the database described in G.S.  
39 14-409.49 with the superior court. The reports shall be disclosed upon request to the  
40 petitioner and to the district attorney.

41 (c) The district attorney shall be entitled to a continuance of the hearing to a date  
42 of not less than 14 days after the clerk of court notifies the district attorney of the  
43 hearing date.

1       (d) The court shall conduct the hearing in camera with only the parties present  
2 that the court finds have a direct interest in the proceeding. Notwithstanding any other  
3 provision of law, declarations, police reports, including criminal history information,  
4 and any other material and relevant evidence that is not excluded under the North  
5 Carolina Rules of Evidence, shall be admissible at the hearing under this section.

6       (e) If the court finds by a preponderance of the evidence that the person would be  
7 likely to use firearms in a safe and lawful manner, the court shall order that the person  
8 may have custody or control over, receive, possess, or purchase firearms as provided by  
9 State or federal law.

10       (f) A copy of the order shall be submitted to the Department of Health and  
11 Human Services. Upon receipt of the order, the Department shall delete any reference to  
12 the prohibition against firearms from the person's State summary criminal history  
13 information.

14 **"§ 14-409.51. Access to records.**

15       (a) The Department, State Bureau of Investigation, and Administrative Office of  
16 the Courts shall coordinate a procedure through which the information contained in the  
17 database described in G.S. 14-409.49 can be used to determine the eligibility of  
18 applicants for permits granted pursuant to G.S. 14-404 or G.S. 14-415.12. The  
19 procedure shall provide a framework for an electronic review of the database described  
20 in G.S. 14-409.49 to determine if the applicant is a prohibited person.

21       (b) When determining the eligibility of a person to obtain a permit pursuant to  
22 G.S. 14-404 or G.S. 14-415.12, a sheriff shall not make an electronic request directly to  
23 the Department. Instead, the response that a sheriff receives to an electronic criminal  
24 background check shall indicate whether the applicant should be denied a permit for any  
25 of the reasons set forth in G.S. 14-404 or G.S. 14-415.12. If a denial is indicated, the  
26 response shall not specify the reason for denial unless the applicant signs a release for  
27 that information.

28       (c) The response to the inquiry described in subsection (b) shall be available to  
29 the sheriffs only with respect to the sheriffs' duties with regard to applications described  
30 in G.S. 14-404 and G.S. 14-415.12.

31 **"§ 14-409.52. Response to request.**

32       (a) Upon receiving a request as defined in G.S. 14-409.51, the Department shall  
33 check immediately to verify that the person subject to the request is not a prohibited  
34 person. Thereafter upon completing the check, the Department shall forward an  
35 electronic response immediately to the Division of Criminal Information database  
36 indicating only whether or not the applicant is a prohibited person. As indicated in G.S.  
37 14-409.51 (b),the ultimate response delivered by the Division of Criminal Information  
38 database to a sheriff shall not specify the reason for denial unless the applicant signs a  
39 release for that information.

40       (b) If the Department is unable to complete the check immediately, the  
41 Department shall inform the Division of Criminal Information of an approximate time  
42 for the completion of the check. The time granted to complete the background check  
43 shall not exceed the time granted under the law to complete a background check  
44 pursuant to applicable State and federal laws.

1 **"§ 14-409.53. Institutions providing information.**

2 (a) The Department shall request only those public and private mental hospitals,  
3 sanitaria, and institutions that accept involuntary commitments pursuant to G.S.  
4 122C-226 to submit to the Department that information that the Department deems  
5 necessary to identify those persons who are within G.S. 14-409.49 in order to carry out  
6 its duties in relation to firearms.

7 (b) Upon request of the Department of Health and Human Services pursuant to  
8 subsection (a) of this section, each public and private mental hospital, sanitarium, and  
9 institution that accepts involuntary commitments pursuant to G.S. 122C-226 shall  
10 submit to the Department that information that the Department deems necessary to  
11 identify those persons who are within G.S. 14-409.49 in order to carry out its duties in  
12 relation to firearms.

13 **"§ 14-409.54. Confidentiality of records.**

14 All information provided to the Division of Criminal Information database pursuant  
15 to this Article shall not be maintained in the Department of Criminal Information  
16 database, shall remain solely in the database created by the Department pursuant to G.S.  
17 14-409.49, and shall be used only to determine eligibility of persons obtaining permits  
18 pursuant to G.S. 14-404 and G.S. 14-415.12. Any person who knowingly furnishes that  
19 information for any other purpose is guilty of a Class 1 misdemeanor. Records  
20 assembled under this provision shall be considered confidential and exempted from  
21 disclosure under the public records laws of this State.

22 **"§ 14-409.55. Immunity.**

23 Public and private mental hospitals, sanitaria, and institutions that provide reports  
24 subject to this Chapter shall be civilly immune for making any report required or  
25 authorized by this Article. This section is declaratory of existing law.

26 **"§ 14-409.56. Coordination with federal database.**

27 The Department shall coordinate with the Federal Bureau of Investigation to  
28 determine a system through which National Instant Background Check System  
29 personnel can contact the Department for the purposes of completing a mental health  
30 records check.

31 **"§ 14-409.57. Funding.**

32 The Department shall make the necessary applications to secure federal monies and  
33 grants to support the creation and operation of the database described in this Article."

34 **SECTION 5.** Section 4 of this act becomes effective only after the  
35 Department of Health and Human Services obtains federal funding to implement that  
36 section. Section 2 and Section 3 of this act become effective December 1, 2002, and  
37 apply to offenses committed on or after that date. The remainder of this act is effective  
38 when it becomes law.