

204.10 FACTORS THAT ENHANCE SENTENCE—[USING] [DISPLAYING] [THREATENING TO USE OR DISPLAY] A FIREARM WHILE COMMITTING A FELONY.
N.C. Gen. Stat. § 15A-1340.16A.¹

NOTE WELL: This instruction should be used where a defendant has been convicted of a Class A, B1, B2, C, D, or E felony and there is evidence that the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony. This enhancement is not appropriate and this instruction should not be used where the use, display, or threatened use or display of the firearm is an essential element of the underlying felony charged. See N.C. Gen. Stat. § 15A-1340.16A(f); State v. Lucas, 353 N.C. 568, 548 S.E.2d 712 (2001). It is also inappropriate where the defendant did not actually possess a firearm about his or her person. N.C. Gen. Stat. § 15A-1340.16A(c).

If this instruction is used, the following should be added to the verdict sheet: "If you have found the defendant guilty of (name felony), do you find that he [used] [displayed] [threatened to use or display] a firearm at the time he committed (name felony) and that he actually possessed a firearm about his person? Answer: _____"

In the event you have found the defendant guilty of *(name felony)*, you must then consider and answer the following question:

Did the defendant [use] [display] [threaten to use or display] a firearm at the time *he* committed *(name felony)* and did [he] [she] actually possess a firearm about [his] [her] person?

On this question, the burden of proof is on the State to prove beyond a reasonable doubt that the defendant [used] [displayed] [threatened to use or display] a firearm at the time *he* committed *(name felony)*² and further, the State must prove beyond a reasonable doubt that the defendant actually possessed a firearm about [his] [her] person.

If you find from the evidence beyond a reasonable doubt that the defendant [used] [displayed] [threatened to use or display] a firearm at the time *he* committed *(name felony)* and that [he] [she] actually possessed a firearm about [his] [her]

person, it would be your duty to answer this question “yes.” If you do not so find, or have a reasonable doubt, it would be your duty to answer this question “no.”

1. N.C. Gen. Stat. § 15A-1340.16A(c)(1) provides that 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, and that the maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months. § 15A-1340.16A(c)(2) provides that 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, and the maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 36 months. § 15A-1340.16A(c)(3) provides that 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, and the maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months.

2. For a definition of “firearm,” see N.C. Gen. Stat. § 14-72(b)(4).