

N.C.P.I.—Crim 204.15

FACTORS THAT ENHANCE SENTENCE—[WEARING] [POSSESSING] A
BULLET-PROOF VEST DURING THE COMMISSION OF A FELONY.
REPLACEMENT JUNE 2017

N.C. Gen. Stat. § 15A-1340.16C

204.15 FACTORS THAT ENHANCE SENTENCE—[WEARING] [POSSESSING] A
BULLET-PROOF VEST DURING THE COMMISSION OF A FELONY. N.C. Gen.
Stat. § 15A-1340.16C.¹

NOTE WELL: This instruction should be used where a defendant has been convicted of a felony and there is evidence that the defendant wore or had in the defendant's immediate possession a bullet-proof vest during the commission of the felony. This enhancement is not appropriate and this instruction should not be used where the evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony charged. See N.C. Gen. Stat. § 15A-1340.16C(e). This instruction is also inappropriate to law enforcement officers unless the State proves the two things set out in N.C. Gen. Stat. § 15A-1340.16C(b1).

See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment.

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

Did the defendant [wear] [have in defendant's immediate possession] a bullet-proof vest at the time the defendant committed (*name felony*)?

On this question, the burden of proof is on the State to prove beyond a reasonable doubt that the defendant [wore] [had in the defendant's immediate possession] a bullet-proof vest at the time the defendant committed (*name felony*).

NOTE WELL: If there is evidence presented to support both, that the defendant wore and had in the defendant's immediate possession a bullet-proof vest at the time the defendant committed the felony, the Pattern Jury Instruction Criminal Subcommittee suggests the better practice is to submit both questions to the jury and instruct on both. See State v. Robinson, 795 S.E.2d 136 (N.C. Ct. App. 2016).

If you find from the evidence beyond a reasonable doubt that the defendant [wore] [had in the defendant's immediate possession] a bullet-

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proof vest at the time the defendant committed (*name felony*), 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."²

1 N.C. Gen. Stat. § 15A-1340.16(a) provides that a defendant who is convicted of a
felony and who is found to have worn or possessed a bullet-proof vest during the
commission of the felony is guilty of a felony that is one class higher than the underlying
felony for which the person is convicted.

2 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 the defendant
[wore] [had in his immediate possession] a bullet-proof vest at the time the defendant
committed (*name felony*)? Answer: _____."