

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 1016  
Committee Substitute Favorable 4/18/05**

Short Title: Dispose of Firearms/Benefit Law Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 31, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A  
3 FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE  
4 COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR  
5 OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO  
6 A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE  
7 PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW  
8 ENFORCEMENT PURPOSES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 15-11.1(b1) reads as rewritten:

11 "(b1) Notwithstanding subsections (a) and (b) of this section or any other provision  
12 of law, if the property seized is a firearm and the district attorney determines the firearm  
13 is no longer necessary or useful as evidence in a criminal trial, the district attorney, after  
14 notice to all parties known or believed by the district attorney to have an ownership or a  
15 possessory interest in the firearm, including the defendant, shall apply to the court for an  
16 order of disposition of the firearm. The judge, after hearing, may order the disposition  
17 of the firearm in one of the following ways:

18 (1) By ordering the firearm returned to its rightful owner, when the  
19 rightful owner is someone other than the defendant and upon findings  
20 by the court (i) that the person, firm, or corporation determined by the  
21 court to be the rightful owner is entitled to possession of the firearm  
22 and (ii) that the person, firm, or corporation determined by the court to  
23 be the rightful owner of the firearm was unlawfully deprived of the  
24 same or had no knowledge or reasonable belief of the defendant's  
25 intention to use the firearm unlawfully.

26 (2) By ordering the firearm returned to the defendant, but only if the  
27 defendant is not convicted of any criminal offense in connection with  
28 the possession or use of the firearm, the defendant is the rightful owner

1 of the firearm, and the defendant is not otherwise ineligible to possess  
2 such firearm.

3 (3) By ordering the firearm turned over to be destroyed by the sheriff of  
4 the county in which the firearm was seized or by his duly authorized  
5 agent. The sheriff shall maintain a record of the destruction of the  
6 firearm.

7 (4) By ordering the firearm turned over to a law enforcement agency in  
8 the county of trial for (i) the official use of the agency or (ii) sale,  
9 trade, or exchange by the agency to a federally licensed firearm dealer  
10 in accordance with all applicable State and federal firearm laws. The  
11 court may order a disposition of the firearm pursuant to this  
12 subdivision only upon the written request of the head or chief of the  
13 law enforcement agency and only if the firearm has a legible, unique  
14 identification number. If the law enforcement agency sells the firearm,  
15 then the proceeds of the sale shall be remitted to the appropriate  
16 county finance officer as provided by G.S. 115C-452 to be used to  
17 maintain free public schools. The receiving law enforcement agency  
18 shall maintain a record and inventory of all firearms received pursuant  
19 to this subdivision.

20 This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of  
21 firearms used only in connection with a violation of Article 22 of Chapter 113 of the  
22 General Statutes or any local wildlife hunting ordinance."

23 **SECTION 2.** Article 2 of Chapter 15 of the General Statutes is amended by  
24 adding a new section to read:

25 **"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial**  
26 **evidence.**

27 (a) Definition. – For purposes of this section, the term "unclaimed firearm"  
28 means a firearm that is found or received by a law enforcement agency and that remains  
29 unclaimed by the person who may be entitled to it for a period of 30 days after the  
30 publication of the notice required by subsection (b) of this section. The term does not  
31 include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm  
32 that is confiscated and disposed of pursuant to G.S. 14-269.1.

33 (b) Published Notice of Unclaimed Firearm. – When a law enforcement agency  
34 finds or receives a firearm and the firearm remains unclaimed for a period of 180 days,  
35 the agency shall publish at least one notice in a newspaper published in the county in  
36 which the agency is located. The notice shall include all of the following:

37 (1) A statement that the firearm is unclaimed and is in the custody of the  
38 law enforcement agency.

39 (2) A statement that the firearm may be sold or otherwise disposed of  
40 unless the firearm is claimed within 30 days of the date of the  
41 publication of the notice.

42 (3) A brief description of the firearm and any other information that the  
43 chief or head of the law enforcement agency may consider necessary  
44 or advisable to reasonably inform the public about the firearm.

1       (c) If the firearm remains unclaimed for a period of 30 days after the publication  
2 of the notice, then the person who found the firearm and turned it over to the law  
3 enforcement agency may claim the firearm provided the person satisfies the custodial  
4 law enforcement agency holding the firearm that the person is qualified under State and  
5 federal law to possess the firearm and also presents a pistol permit issued in accordance  
6 with Article 52A of Chapter 14 of the General Statutes.

7       (d) If the firearm remains unclaimed for a period of 30 days after the publication  
8 of the notice and the person who found the firearm does not claim it as provided by  
9 subsection (c) of this section, then the head or chief of the law enforcement agency may  
10 apply to the appropriate district court for an order of disposition of the unclaimed  
11 firearm. The application shall be written.

12       (e) Disposition of Firearm. – The judge, after hearing, may order the disposition  
13 of the firearm in one of the following ways:

14           (1) By ordering the firearm turned over to be destroyed by the sheriff of  
15 the county in which the law enforcement agency applying for the order  
16 of disposition is located or by the sheriff's duly authorized agent. The  
17 sheriff shall maintain a record of the destruction of the firearm.

18           (2) By ordering the firearm turned over to the law enforcement agency  
19 applying for the disposition of the firearm for (i) the official use of the  
20 agency or (ii) sale, trade, or exchange by the agency to a federally  
21 licensed firearm dealer in accordance with all applicable State and  
22 federal firearm laws. The court may order a disposition of the firearm  
23 pursuant to this subsection only if the firearm has a legible, unique  
24 identification number.

25       (f) Disbursement of Proceeds of Sale. – If the law enforcement agency sells the  
26 firearm, then the proceeds of the sale shall be retained by the law enforcement agency  
27 and used for law enforcement purposes. The receiving law enforcement agency shall  
28 maintain a record and inventory of all firearms received pursuant to this section."

29       **SECTION 3.** G.S. 14-269.1 reads as rewritten:

30 **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

31       Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any  
32 other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269,  
33 the deadly weapon with reference to which the defendant shall have been convicted  
34 shall be ordered confiscated and disposed of by the presiding judge at the trial in one of  
35 the following ways in the discretion of the presiding judge.

36           (1) By ordering the weapon returned to its rightful owner, but only when  
37 such owner is a person other than the defendant and has filed a petition  
38 for the recovery of such weapon with the presiding judge at the time of  
39 the defendant's conviction, and upon a finding by the presiding judge  
40 that petitioner is entitled to possession of same and that he was  
41 unlawfully deprived of the same without his consent.

42           (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

- 1 (4) By ordering such weapon turned over to the sheriff of the county in  
2 which the trial is held or his duly authorized agent to be destroyed. The  
3 sheriff shall maintain a record of the destruction thereof.
- 4 ~~(4a) By ordering the weapon, if the weapon has a legible unique~~  
5 ~~identification number, turned over to a law enforcement agency in the~~  
6 ~~county of trial for the official use of such agency, but only upon the~~  
7 ~~written request by the head or chief of such agency. The receiving law~~  
8 ~~enforcement agency shall maintain a record and inventory of all such~~  
9 ~~weapons received.~~
- 10 (4b) By ordering the weapon turned over to a law enforcement agency in  
11 the county of trial for (i) the official use of the agency or (ii) sale,  
12 trade, or exchange by the agency to a federally licensed firearm dealer  
13 in accordance with all applicable State and federal firearm laws. The  
14 court may order a disposition of the firearm pursuant to this  
15 subdivision only upon the written request of the head or chief of the  
16 law enforcement agency and only if the firearm has a legible, unique  
17 identification number. If the law enforcement agency sells the firearm,  
18 then the proceeds of the sale shall be remitted to the appropriate  
19 county finance officer as provided by G.S. 115C-452 to be used to  
20 maintain free public schools. The receiving law enforcement agency  
21 shall maintain a record and inventory of all firearms received pursuant  
22 to this subdivision.
- 23 (5) By ordering such weapon turned over to the North Carolina State  
24 Bureau of Investigation's Crime Laboratory Weapons Reference  
25 Library for official use by that agency. The State Bureau of  
26 Investigation shall maintain a record and inventory of all such  
27 weapons received.
- 28 (6) By ordering such weapons turned over to the North Carolina Justice  
29 Academy for official use by that agency. The North Carolina Justice  
30 Academy shall maintain a record and inventory of all such weapons  
31 received."

32 **SECTION 4.** G.S. 50B-3.1(h) reads as rewritten:

33 "(h) Disposal of Firearms. – If the defendant does not file a motion requesting the  
34 return of any firearms, ammunition, or permits surrendered within the time period  
35 prescribed by this section, if the court determines that the defendant is precluded from  
36 regaining possession of any firearms, ammunition, or permits surrendered, or if the  
37 defendant or third-party owner fails to remit all fees owed for the storage of the firearms  
38 or ammunition within 30 days of the entry of the order granting the return of the  
39 firearms, ammunition, or permits, the sheriff who has control of the firearms,  
40 ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to  
41 the court for an order of disposition of the firearms, ammunition, or permits. The judge,  
42 after a hearing, may order the disposition of the firearms, ammunition, or permits in one  
43 or more of the ways authorized by law, including subdivision (4), ~~(4a)~~, (4b), (5), or (6)  
44 of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after

1 deducting any costs associated with the sale, and in accordance with all applicable State  
2 and federal law, shall be provided to the defendant, if requested by the defendant by  
3 motion made before the hearing or at the hearing and if ordered by the judge."

4 **SECTION 5.** This act is effective when it becomes law.