

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-287
HOUSE BILL 1016**

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

The General Assembly of North Carolina enacts:

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

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

- (1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.
- (2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.
- (3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.
- (4) By ordering the firearm turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency

shall maintain a record and inventory of all firearms received pursuant to this subdivision.

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

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

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

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

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

- (1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.
- (2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.
- (3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

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

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

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

- (1) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the law enforcement agency applying for the order of disposition is located or by the sheriff's duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.
- (2) By ordering the firearm turned over to the law enforcement agency applying for the disposition of the firearm for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subsection only if the firearm has a legible, unique identification number.

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

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

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

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

- (1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.
- (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.
- (4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.
- ~~(4a) By ordering the weapon, if the weapon has a legible unique identification number, turned over to a law enforcement agency in the county of trial for the official use of such agency, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.~~
- (4b) By ordering the weapon turned over to a law enforcement agency in the county of trial for (i) the official use of the agency or (ii) sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws. The court may order a disposition of the firearm pursuant to this subdivision only upon the written request of the head or chief of the law enforcement agency and only if the firearm has a legible, unique identification number. If the law enforcement agency sells the firearm, then the proceeds of the sale shall be remitted to the appropriate county finance officer as provided by G.S. 115C-452 to be used to maintain free public schools. The receiving law enforcement agency shall maintain a record and inventory of all firearms received pursuant to this subdivision.
- (5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.
- (6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

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

"(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge,

after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), ~~(4a), (4b)~~, (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge."

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

In the General Assembly read three times and ratified this the 11th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:00 p.m. this 22nd day of August, 2005