

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 922

Short Title: Amend Habitual Felon Law.

(Public)

Sponsors: Senators Odom; and Winner.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUDGE RATHER THAN A JURY SHALL
DETERMINE WHETHER A PERSON IS AN HABITUAL FELON OR A
VIOLENT HABITUAL FELON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.1 reads as rewritten:

"§ 14-7.1. ~~Persons defined as habitual~~ Habitual felons.

~~Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions~~

1 of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning
2 of this Article. Any felony offense to which a pardon has been extended shall not for the
3 purpose of this Article constitute a felony. The burden of proving such pardon shall rest
4 with the defendant and the State shall not be required to disprove a pardon.

5 (a) Definitions. – The following definitions apply in this Article:

6 (1) Convicted or conviction. – The terms include offenses for which a
7 person was adjudged guilty and offenses to which a person entered a
8 plea of guilty or no contest.

9 (2) Felony. – An offense that is a felony under the laws of this State,
10 another state, the federal government, or that is classified as a felony
11 under G.S. 15A-1340.14(e). The term does not include federal offenses
12 relating to the manufacture, possession, sale of, and kindred offenses
13 involving intoxicating liquors. The term includes only offenses of which
14 a person was convicted.

15 For purposes of this Article, the following are not felonies: (i)
16 convictions of felonies before July 6, 1967, and (ii) a felony to which a
17 pardon has been extended. The burden of proving the pardon shall rest
18 with the defendant; the State is not required to disprove a pardon.

19 (3) Habitual felon. – A person who has been convicted of three felonies in
20 any federal court or state court in the United States or a combination of
21 those courts.

22 For the purposes of this Article, felonies committed before a person
23 attains the age of 18 years shall not constitute more than one felony. The
24 commission of a second felony shall not fall within the purview of this
25 Article unless it is committed after the conviction of or plea of guilty to
26 the first felony. The commission of a third felony shall not fall within
27 the purview of this Article unless it is committed after the conviction of
28 or plea of guilty to the second felony.

29 (b) Sentencing of Habitual Felons. – Before sentencing a person convicted of a
30 felony who was also indicted as an habitual felon, the judge shall determine whether the
31 person is an habitual felon. Proof of prior convictions to establish a person's habitual
32 felon status shall be in accordance with G.S. 15A-1340.14. The three most recent prior
33 felony convictions, subject to subdivision (2) of subsection (a) of this section, shall be
34 used to establish a person's habitual felon status. If the judge finds that the person is an
35 habitual felon, the court shall sentence the person as a Class C felon under G.S. 15A-
36 1340.13, unless the person is convicted of a Class A, B1, or B2 felony.

37 The punishment shall be as provided in G.S. 15A-1340.17. In determining the prior
38 record level of the person, the convictions used to establish the person's status as an
39 habitual felon shall not be used, but all other prior convictions shall be used in
40 determining the prior record as provided in G.S. 15A-1340.14. A sentence imposed on
41 an habitual felon pursuant to this section shall run consecutively with and shall begin at
42 the expiration of any sentence being served by the habitual felon."

43 Section 2. G.S. 14-7.3 reads as rewritten:

1 **"§ 14-7.3. Charge of habitual felon.**

2 An indictment which charges a person who is an habitual felon within the meaning of
3 G.S. 14-7.1 with the commission of any felony under the laws of the State of North Carolina
4 must, in order to sustain a conviction of habitual felon, also charge that ~~said the~~ person is
5 an habitual felon. ~~The indictment charging the defendant as an habitual felon shall be separate~~
6 ~~from the indictment charging him with the principal felony.~~ An indictment which charges a
7 person with being an habitual felon must set forth the date that prior felony offenses were
8 committed, the name of the state or other sovereign against whom said felony offenses
9 were committed, the dates that pleas of guilty were entered to or convictions returned in
10 said felony offenses, and the identity of the court wherein said pleas or convictions took
11 place. No defendant charged with being an habitual felon in a bill of indictment shall be
12 required to go to trial on said charge within 20 days of the finding of a true bill by the
13 grand jury; provided, the defendant may waive this 20-day period."

14 Section 3. G.S. 14-7.7 reads as rewritten:

15 **"§ 14-7.7. ~~Persons defined as violent~~ Violent habitual felons.**

16 (a) ~~Any person who has been convicted of two violent felonies in any federal~~
17 ~~court, in a court of this or any other state of the United States, or in a combination of~~
18 ~~these courts is declared to be a violent habitual felon. For purposes of this Article,~~
19 ~~"convicted" means the person has been adjudged guilty of or has entered a plea of guilty~~
20 ~~or no contest to the violent felony charge, and judgment has been entered thereon when~~
21 ~~such action occurred on or after July 6, 1967. This Article does not apply to a second~~
22 ~~violent felony unless it is committed after the conviction or plea of guilty or no contest to~~
23 ~~the first violent felony. Any felony to which a pardon has been extended shall not, for~~
24 ~~the purposes of this Article, constitute a felony. The burden of proving a pardon shall~~
25 ~~rest with the defendant, and this State shall not be required to disprove a pardon.~~
26 ~~Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent~~
27 ~~felony.~~

28 (b) For purposes of this Article, "violent felony" includes the following offenses:

29 (1) ~~All Class A through E felonies.~~

30 (2) ~~Any repealed or superseded offense substantially equivalent to the~~
31 ~~offenses listed in subdivision (1).~~

32 (3) ~~Any offense committed in another jurisdiction substantially equivalent~~
33 ~~to the offenses set forth in subdivision (1) or (2).~~

34 (a) Definitions. – The following definitions apply in this Article:

35 (1) Convicted or conviction. – The terms include offenses for which a
36 person was adjudged guilty and offenses to which a person entered a
37 plea of guilty or no contest.

38 (2) Violent felony. – The term does not include conviction as a violent felon
39 or conviction as an habitual felon. The term does not include a felony to
40 which a pardon has been extended. The burden of proving a pardon
41 shall rest with the defendant, and this State shall not be required to
42 disprove a pardon.

43 The term does include the following offenses:

- 1 a. All Class A through E felonies.
2 b. Any repealed or superseded offense substantially equivalent to
3 the offenses listed in sub-subdivision a. of this subdivision.
4 c. Any offense committed in another jurisdiction substantially
5 equivalent to the offenses set forth in sub-subdivision a. or b. of
6 this subdivision.

7 (3) Violent habitual felon. – Any person who has been convicted of two
8 violent felonies in any federal court, in a court of this or any other state
9 of the United States, or in a combination of these courts. This Article
10 does not apply to a second violent felony unless it is committed after the
11 conviction to the first violent felony.

12 (b) Sentencing of Violent Habitual Felons. – Before sentencing a person convicted
13 of a violent felony who was also indicted as a violent habitual felon, the judge shall
14 determine whether the person is a violent habitual felon. If the judge finds that the
15 person is a violent habitual felon, then the judge shall sentence the person to life
16 imprisonment without parole, unless the person is convicted of first degree murder and
17 the death penalty is imposed.

18 Proof of prior convictions to establish a person's habitual felon status shall be in
19 accordance with G.S. 15A-1340.14. The two most recent prior felony convictions,
20 subject to subdivision (2) of subsection (a) of this section, shall be used to establish a
21 person's violent habitual felon status. Sentences for violent habitual felons imposed
22 under this Article shall run consecutively with and shall commence at the expiration of
23 any other sentence being served by the person."

24 Section 4. G.S. 14-7.9 reads as rewritten:

25 "**§ 14-7.9. Charge of violent habitual felon.**

26 An indictment that charges a person who is a violent habitual felon within the
27 meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to
28 sustain a conviction of violent habitual felon, also charge that the person is a violent
29 habitual felon. ~~The indictment charging the defendant as a violent habitual felon shall be~~
30 ~~separate from the indictment charging the defendant with the principal violent felony.~~—An
31 indictment that charges a person with being a violent habitual felon must set forth the
32 date that prior violent felonies were committed, the name of the state or other sovereign
33 against whom the violent felonies were committed, the dates of convictions of the violent
34 felonies, and the identity of the court in which the convictions took place. A defendant
35 charged with being a violent habitual felon in a bill of indictment shall not be required to
36 go to trial on that charge within 20 days after the finding of a true bill by the grand jury
37 unless the defendant waives this 20-day period."

38 Section 5. The following sections are repealed:

39 G.S. 14-7.2, 14-7.4, 14-7.5, 14-7.6, 14-7.8, 14-7.10, 14-7.11, and 14-7.12.

40 Section 6. This act becomes effective December 1, 1997, and applies to
41 offenses committed on or after that date.