

Article 2D.

Habitual Breaking and Entering Status Offense.

**§ 14-7.25. Definitions.**

The following definitions apply in this Article:

- (1) "Breaking and entering." – The term means any of the following felony offenses:
  - a. First degree burglary (G.S. 14-51).
  - b. Second degree burglary (G.S. 14-51).
  - c. Breaking out of dwelling house burglary (G.S. 14-53).
  - d. Breaking or entering buildings generally (G.S. 14-54(a)).
  - d1. Breaking or entering with intent to terrorize or injure an occupant of the building (G.S. 14-54(a1)).
  - e. Breaking or entering a building that is a place of religious worship (G.S. 14-54.1).
  - f. Any repealed or superseded offense substantially equivalent to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
  - g. Any offense committed in another jurisdiction substantially similar to any of the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
- (2) "Convicted." – The person has been adjudged guilty of or has entered a plea of guilty or no contest to the offense of breaking and entering.
- (3) "Status offender." – A person who is a habitual breaking and entering status offender as described in G.S. 14-7.26. (2011-192, s. 3(a); 2017-176, s. 3(a).)

**§ 14-7.26. Habitual breaking and entering status offender.**

Any person who has been convicted of or pled guilty to one or more prior felony offenses of breaking and entering in any federal court or state court in the United States, or combination thereof, is guilty of the status offense of habitual breaking and entering and may be charged with that status offense pursuant to this Article.

This Article does not apply to a second felony offense of breaking and entering unless it is committed after the conviction of the first felony offense of breaking and entering. For purposes of this Article, felony offenses of breaking and entering committed before the person is 18 years of age shall not constitute more than one felony of breaking and entering. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony offense of breaking and entering. (2011-192, s. 3(a).)

**§ 14-7.27. Punishment.**

When any person is charged with a felony offense of breaking and entering and is also charged with being a status offender as defined in G.S. 14-7.26, the person must, upon conviction, be sentenced and punished as a status offender as provided by this Article. (2011-192, s. 3(a).)

**§ 14-7.28. Charge of habitual breaking and entering status offender.**

(a) The district attorney, in his or her discretion, may charge a person with the status offense of habitual breaking and entering pursuant to this Article. To sustain a conviction of a

person as a status offender, the person must be charged separately for the felony offense of breaking and entering and for the habitual breaking and entering status offense. The indictment charging the defendant as a status offender shall be separate from the indictment charging the person with the principal felony offense of breaking and entering.

(b) An indictment that charges a person with being a status offender must set forth the date that the prior felony offense of breaking and entering was committed, the name of the state or other sovereign against whom the felony offense of breaking and entering was committed, the dates that the plea of guilty was entered into or conviction returned in the felony offense of breaking and entering, and the identity of the court in which the plea or conviction took place. No defendant charged with being a status offender in a bill of indictment shall be required to go to trial on the charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period. (2011-192, s. 3(a).)

#### **§ 14-7.29. Evidence of prior convictions of breaking and entering.**

In all cases in which a person is charged under the provisions of this Article with being a status offender, the record of prior conviction of the felony offense of breaking and entering shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former felony offense of breaking and entering. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein. (2011-192, s. 3(a).)

#### **§ 14-7.30. Verdict and judgment.**

(a) When an indictment charges a person with a felony offense of breaking and entering as provided by this Article and an indictment also charges that the person is a status offender, the defendant shall be tried for the principal offense of breaking and entering as provided by law. The indictment that the person is a status offender shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal felony offense of breaking and entering with which the defendant is charged.

(b) If the jury finds the defendant guilty of the felony offense of breaking and entering, the bill of indictment charging the defendant as a status offender may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of status offender were a principal charge.

(c) If the jury finds that the defendant is a status offender, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a status offender, the trial judge shall pronounce judgment on the principal felony offense of breaking and entering as provided by law. (2011-192, s. 3(a).)

#### **§ 14-7.31. Sentencing of status offenders.**

(a) When a status offender as defined in this Article commits a felony offense of breaking and entering under the laws of the State of North Carolina, the status offender must, upon conviction or plea of guilty under indictment as provided in this Article, be sentenced as a Class E felon.

(b) In determining the prior record level, any conviction used to establish a person's status as a status offender shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) A conviction as a status offender under this Article shall not constitute commission of a felony for the purpose of either Article 2A or Article 2B of Chapter 14 of the General Statutes. (2011-192, s. 3(a).)

**§ 14-7.32:** Reserved for future codification purposes.

**§ 14-7.33:** Reserved for future codification purposes.

**§ 14-7.34:** Reserved for future codification purposes.