

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

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HOUSE BILL 158

Short Title: Habitual Misdemeanant Law.

(Public)

Sponsors: Representatives Joye; Nichols and Wood.

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT UPON A FOURTH CONVICTION OF A CLASS 1 MISDEMEANOR, AN OFFENDER IS AN HABITUAL MISDEMEANANT AND SHALL BE PUNISHED AS A CLASS I FELON.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 14 reads as rewritten:

"ARTICLE 2A.

"HABITUAL FELONS. ~~CRIMINALS.~~

~~§ 14-7.1. Persons defined as habitual felons. Definitions; scope.~~

~~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 of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a~~

1 ~~pardon has been extended shall not for the purpose of this Article constitute a felony.~~
2 ~~The burden of proving such pardon shall rest with the defendant and the State shall not~~
3 ~~be required to disprove a pardon.~~

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

5 (1) Felony. – An offense that is a felony under the laws of this State or
6 would be classified as a felony under G.S. 15A-1340.14(e).

7 (2) Habitual felon. – An offender who (i) is convicted in this State of a
8 felony and (ii) has at least three separate prior convictions of felonies,
9 no more than one of which was for an offense that under the law of
10 this State would be considered a Class H, I, or J felony. The
11 provisions of G.S. 15A-1340.14(d) govern multiple convictions
12 obtained in one week for the purposes of this Article.

13 (3) Habitual misdemeanor. – An offender who (i) is convicted in this
14 State of a Class 1 misdemeanor and (ii) has at least three separate prior
15 convictions for Class 1 misdemeanors. The provisions of G.S. 15A-
16 1340.21(d) govern multiple convictions obtained in one week for the
17 purposes of this Article.

18 (4) Misdemeanor. – An offense that is a Class 1 misdemeanor under the
19 laws of this State or is classified as a misdemeanor punishable by more
20 than six months' imprisonment in the jurisdiction in which the offense
21 occurred.

22 (5) Prior conviction. – Defined in G.S. 15A-1340.11.

23 (b) Scope. – The following offenses are not considered in determining whether a
24 person is an habitual criminal:

25 (1) More than one offense committed before a person attains the age of 18
26 years.

27 (2) Offenses for which the defendant was convicted before July 6, 1967.

28 (3) Federal offenses relating to the manufacture, possession, and sale of,
29 and kindred offenses involving intoxicating liquors.

30 (4) An offense to which a pardon has been extended. The burden of
31 proving the pardon shall rest with the defendant; the State is not
32 required to disprove a pardon.

33 (5) A second offense committed before the conviction of the first offense.

34 (6) An offense for which the defendant was convicted outside the United
35 States.

36 "**§ 14-7.2. Punishment.**

37 (a) Habitual Felons. – When any person is charged by indictment with the
38 commission of a felony under the laws of the State of North Carolina this State and is also
39 charged with being an habitual felon as defined in G.S. 14-7.1, ~~he~~ the person must, upon
40 conviction, be sentenced and punished as an habitual felon, as in this Chapter provided,
41 except in those cases where the death penalty or a life sentence is imposed.

42 (b) Habitual Misdemeanants. – When any person is charged with the commission
43 of a misdemeanor under the laws of this State and is also charged with being an habitual

1 misdemeanant as defined in G.S. 14-7.1, the person must, upon conviction, be sentenced
2 and punished as an habitual misdemeanant.

3 **"§ 14-7.3. Charge of habitual felon, felon or habitual misdemeanant.**

4 (a) Habitual Felons. – An indictment which charges a person who is an habitual
5 felon within the meaning of G.S. 14-7.1 with the commission of any felony under the
6 laws of the State of North Carolina must, in order to sustain a conviction of habitual
7 felon, also charge that ~~said the~~ person is an habitual felon. The indictment charging the
8 defendant as an habitual felon shall be separate from the indictment charging him with
9 the principal felony. An indictment which charges a person with being an habitual felon
10 must set forth the date that prior felony offenses were committed, the name of the state
11 or other sovereign against whom ~~said the~~ felony offenses were committed, the dates that
12 pleas of guilty were entered to or convictions returned in ~~said the~~ felony offenses, and
13 the identity of the court wherein ~~said the~~ pleas or convictions took place. No defendant
14 charged with being an habitual felon in a bill of indictment shall be required to go to
15 trial on ~~said the~~ charge within 20 days of the finding of a true bill by the grand jury;
16 provided, the defendant may waive this 20-day period. ~~jury, unless the defendant waives this~~
17 20-day period.

18 (b) Habitual Misdemeanants. – In order to sustain a conviction of habitual
19 misdemeanant, a person must be charged by indictment of being an habitual
20 misdemeanant and must also be charged by indictment with the commission of the
21 principal misdemeanor. If a person has been charged in district court with a
22 misdemeanor and the district attorney elects to charge the person as an habitual
23 misdemeanant, the district attorney must notify the district court and ask that the
24 misdemeanor charge be transferred to superior court after the defendant has been
25 charged by indictment with the misdemeanor and with being an habitual misdemeanant.

26 The indictment charging the defendant as an habitual misdemeanant shall be
27 separate from the indictment charging the defendant with the principal misdemeanor.
28 An indictment that charges a person with being an habitual misdemeanant shall set forth
29 the date the prior misdemeanor offenses were committed, the name of the state or other
30 sovereign against whom the misdemeanor offenses were committed, the dates that
31 convictions were entered in the misdemeanor offenses, and the identity of the courts in
32 which the convictions took place. No defendant charged with being an habitual
33 misdemeanant in a bill of indictment shall be required to go to trial on the charge within
34 20 days of the finding of a true bill by the grand jury, unless the defendant waives this
35 20-day period.

36 **"§ 14-7.4. Evidence of prior convictions of ~~felony~~ offenses.**

37 (a) Habitual Felons. – In all cases where a person is charged under the provisions
38 of this Article with being an habitual felon, the record or records of prior convictions of
39 felony offenses shall be admissible in evidence, but only for the purpose of proving that
40 ~~said the~~ person has been convicted of former felony offenses. A prior conviction may be
41 proved by stipulation of the parties or by the original or a certified copy of the court
42 record of the prior conviction. The original or certified copy of the court record, bearing
43 the same name as that by which the defendant is charged, shall be **prima facie** evidence

1 that the defendant named therein is the same as the defendant before the court, and shall
2 be **prima facie** evidence of the facts set out therein.

3 (b) Habitual Misdemeanants. – In all cases in which a person is charged with
4 being an habitual misdemeanor, the records of prior convictions of misdemeanor
5 offenses shall be admissible in evidence, but only for the purpose of proving that the
6 person has been convicted of former misdemeanor offenses. A prior conviction may be
7 proved by stipulation of the parties or by the original or a certified copy of the court
8 record of the prior conviction. The original or certified copy of the court record,
9 bearing the same name as that by which the defendant is charged, shall be **prima facie**
10 evidence that the defendant named therein is the same as the defendant before the court,
11 and shall be **prima facie** evidence of the facts set out therein.

12 **"§ 14-7.5. Verdict and judgment.**

13 (a) Habitual Felons. – When an indictment charges an habitual felon with a
14 felony as above provided and an indictment also charges that ~~said~~the person is an
15 habitual felon as provided herein, the defendant shall be tried for the principal felony as
16 provided by law. The indictment that the person is an habitual felon shall not be
17 revealed to the jury unless the jury shall find that the defendant is guilty of the principal
18 felony or other felony with which he is charged. If the jury finds the defendant guilty of
19 a felony, the bill of indictment charging the defendant as an habitual felon may be
20 presented to the same jury. Except that the same jury may be used, the proceedings shall
21 be as if the issue of habitual felon were a principal charge. If the jury finds that the
22 defendant is an habitual felon, the trial judge shall enter judgment according to the
23 provisions of this Article. If the jury finds that the defendant is not an habitual felon, the
24 trial judge shall pronounce judgment on the principal felony or felonies as provided by
25 law.

26 (b) Habitual Misdemeanants. – When an indictment charges an habitual
27 misdemeanant with a misdemeanor and an indictment also charges that the person is an
28 habitual misdemeanor, the defendant shall be tried for the principal misdemeanor in
29 superior court as provided by law. The indictment that the person is an habitual
30 misdemeanant shall not be revealed to the jury unless the jury finds that the defendant is
31 guilty of the principal misdemeanor or another misdemeanor with which the defendant
32 is charged. If the jury finds the defendant guilty of a misdemeanor, the bill of
33 indictment charging the defendant as an habitual misdemeanor may be presented to the
34 same jury. Except that the same jury may be used, the proceedings shall be as if the
35 issue of habitual misdemeanor were a principal charge. If the jury finds that the
36 defendant is an habitual misdemeanor, the trial judge shall enter judgment as provided
37 in this Article. If the jury finds that the defendant is not an habitual misdemeanor, the
38 trial judge shall pronounce judgment on the principal misdemeanor as provided by law.

39 **"§ 14-7.6. (Effective January 1, 1995) Sentencing of habitual felons. criminals.**

40 (a) Habitual Felons. – When an habitual felon ~~shall commit~~ commits any felony
41 classified as a Class E, F, G, H, or I felony under the laws of the State of North
42 Carolina, ~~he~~the felon must, upon conviction or plea of guilty under ~~indictment as herein~~
43 provided, ~~indictment~~ be punished as a Class D felon. ~~In determining the prior record level,~~
44 ~~convictions used to establish a person's status as a habitual felon shall not be used. For~~

1 ~~purposes of this section, habitual felon is defined as in G.S. 14-7.1, except that only one of the~~
2 ~~three felony convictions may be for a Class H, I, or J felony. Sentences imposed under this~~
3 ~~Article shall run consecutively with and shall commence at the expiration of any sentence being~~
4 ~~served by the person sentenced hereunder.~~

5 (b) Habitual Misdemeanants. – When an habitual misdemeanant commits a
6 misdemeanor as defined by G.S. 14-7.1 under the laws of this State, the defendant shall,
7 upon conviction or plea of guilty under indictment, be punished as a Class I felon.

8 (c) Prior Record Level; Consecutive Sentences. – In determining the prior record
9 level, convictions used to establish a person's status as an habitual felon or an habitual
10 misdemeanant shall not be used. Sentences imposed under this Article shall run
11 consecutively with and shall begin at the expiration of any sentence being served by the
12 person sentenced."

13 Sec. 2. This act becomes effective January 1, 1995, and applies to offenses
14 committed on or after that date.