

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 39

Short Title: Three Strikes You're In.

(Public)

Sponsors: Representatives Hunt; Alphin, Barbee, Bowie, Bowman, Brawley, Church, Cole, Culp, Diamont, Dickson, Gardner, Gottovi, Hall, Hayes, Hill, R. Hunter, Ives, Jarrell, Jeffus, Jenkins, Kuczarski, Lemmond, Mavretic, McCombs, McCrary, McLaughlin, McLawhorn, Mercer, Mitchell, Nichols, Ramsey, Russell, Sexton, Smith, Spears, Stewart, Sutton, Wilkins, Wilmoth, and Yongue.

Referred to: Judiciary III.

February 8, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT UPON A THIRD CONVICTION OF CERTAIN VIOLENT FELONIES AN OFFENDER IS A VIOLENT HABITUAL FELON AND SHALL BE SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE, UNLESS THE OFFENDER IS SENTENCED TO DEATH FOR A CAPITAL OFFENSE.

The General Assembly of North Carolina enacts:

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

"ARTICLE 2A.

"HABITUAL FELONS. FELONS; VIOLENT HABITUAL FELONS.

"§ 14-7.1. Persons defined as habitual felons. Definitions.

~~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~~

1 than one felony. The commission of a second felony shall not fall within the purview of
2 this Article unless it is committed after the conviction of or plea of guilty to the first
3 felony. The commission of a third felony shall not fall within the purview of this Article
4 unless it is committed after the conviction of or plea of guilty to the second felony.
5 Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be
6 felony offenses within the meaning of this Article. Any felony offense to which a
7 pardon has been extended shall not for the purpose of this Article constitute a felony.
8 The burden of proving such pardon shall rest with the defendant and the State shall not
9 be required to disprove a pardon.

10 The following definitions apply in this Article:

- 11 (1) Felony. – An offense that is a felony under the laws of the State or
12 another sovereign in which a plea of guilty was entered or a conviction
13 was returned regardless of the sentence actually imposed. The term
14 does not include, however, federal offenses relating to the
15 manufacture, possession, sale of, and kindred offenses involving
16 intoxicating liquors. For the purposes of this Article, felonies
17 committed before a person attains the age of 18 years shall not
18 constitute more than one felony. Pleas of guilty to or convictions of
19 felony offenses before July 6, 1967, shall not be felony offenses within
20 the meaning of this Article. A felony offense to which a pardon has
21 been extended is not a felony for the purpose of this Article. The
22 burden of proving the pardon shall rest with the defendant; the State is
23 not required to disprove a pardon.
- 24 (2) Habitual felon. – An offender who is not a violent habitual felon and
25 (i) is convicted in this State of a felony and (ii) was convicted on at
26 least three separate occasions, whether in this State or elsewhere,
27 before that conviction, of offenses that under the laws of this State
28 would be considered felonies.
- 29 (3) Violent felony. – For the purposes of this Article, any of the following
30 felonies or a felony attempt to commit any of the following felonies:
- 31 a. Any Class A or Class B felony.
- 32 b. Any of the following common law offenses:
- 33 1. Robbery.
- 34 2. First degree arson.
- 35 3. First degree burglary.
- 36 c. Any felony in which a finding was made that the defendant was
37 armed with a deadly weapon at the time of the commission of
38 the crime.
- 39 d. Any of the following felonies:
- 40 1. G.S. 14-18. Manslaughter.
- 41 2. G.S. 14-27.3. Second degree rape.
- 42 3. G.S. 14-27.5. Second degree sexual offense.
- 43 4. G.S. 14-32. Felonious assault with a deadly weapon
44 with intent to kill or inflict serious injury.

- 1 5. G.S. 14-32.1. Assault on handicapped persons.
 2 6. G.S. 14-32.2. Patient abuse and neglect.
 3 7. G.S. 14-34.2. Assault with a firearm or other deadly
 4 weapon upon government officers or employees.
 5 8. G.S. 14-39. Kidnapping.
 6 9. G.S. 14-49. Malicious use of explosive or incendiary.
 7 10. G.S. 14-49.1. Malicious damage of occupied property
 8 by use of explosive or incendiary.
 9 11. G.S. 14-50. Conspiracy to injure or damage by use of
 10 explosive or incendiary.
 11 12. G.S. 14-178. Incest between certain near relatives.
 12 13. G.S. 14-190.16. First degree sexual exploitation of a
 13 minor.
 14 14. G.S. 14-190.19. Participating in prostitution of a minor.
 15 15. G.S. 14-202.1. Taking indecent liberties with children.
 16 16. G.S. 14-318.4. Felony child abuse.
 17 17. G.S. 20-141.4(a1). Felony death by vehicle.
 18 18. G.S. 90-95(a)(1) or (2). Manufacture, sell, deliver, or
 19 possess with intent to manufacture, sell, or deliver a
 20 controlled substance classified in Schedule I or Schedule
 21 II or a counterfeit controlled substance.
 22 19. G.S. 90-95(e)(8). Manufacture, sell, deliver, or possess
 23 with intent to manufacture, sell, or deliver certain
 24 controlled substances in drug-free school zone.
 25 20. G.S. 90-95(h) or conspiracy to commit an offense under
 26 G.S. 90-95(h). Drug trafficking.
 27 21. G.S. 90-95.1. Continuing criminal enterprise.
 28 (4) Violent habitual felon. – An offender who (i) is convicted in this State
 29 of a violent felony and (ii) was convicted on at least two separate
 30 occasions, whether in this State or elsewhere, before that conviction, of
 31 felonies that under the laws of this State would be considered violent
 32 felonies.

33 "§ 14-7.2. Punishment.

- 34 (a) When any person is charged by indictment with the commission of a felony
 35 under the laws of the State of North Carolina and is also charged with being an habitual
 36 felon as defined in G.S. 14-7.1, ~~he~~ the person must, upon conviction, be sentenced and
 37 punished as an habitual felon, except in those cases where the person is charged and
 38 convicted of being a violent habitual felon or where the death penalty or a life sentence
 39 is imposed.
 40 (b) When a person is charged by indictment with the commission of a violent
 41 felony under the laws of North Carolina and is also charged with being a violent
 42 habitual felon as defined in G.S. 14-7.1, the person must, upon conviction, be sentenced
 43 and punished as a violent habitual felon, except in those cases where the death penalty is
 44 imposed.

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

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

15 (b) An indictment that charges a person who is a violent habitual felon within the
16 meaning of G.S. 14-7.1 with the commission of any violent felony under the laws of
17 North Carolina must, in order to sustain a conviction of a violent habitual felon, also
18 charge that the person is a violent habitual felon. The indictment charging the defendant
19 as a violent habitual felon shall be separate from the indictment charging the defendant
20 with the principal violent felony. An indictment that charges a person with being a
21 violent habitual felon shall set forth the date that prior violent felonies were committed,
22 the name of the state or other sovereign against whom the violent felonies were
23 committed, the dates that pleas of guilty were entered to or convictions returned in the
24 violent felonies, and the identity of the court in which the pleas or convictions took
25 place. A defendant charged with being a violent habitual felon in a bill of indictment
26 shall not be required to go to trial on the charge within 20 days of the finding of a true
27 bill by the grand jury, unless the defendant waives this 20-day period.

28 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

29 (a) In all cases where a person is charged under the provisions of this Article
30 with being an habitual felon, the record or records of prior convictions of felony
31 offenses shall be admissible in evidence, but only for the purpose of proving that ~~said~~
32 ~~the~~ person has been convicted of former felony offenses. A prior conviction may be
33 proved by stipulation of the parties or by the original or a certified copy of the court
34 record of the prior conviction. The original or certified copy of the court record, bearing
35 the same name as that by which the defendant is charged, shall be **prima facie** evidence
36 that the defendant named therein is the same as the defendant before the court, and shall
37 be **prima facie** evidence of the facts set out therein.

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

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

3 **"§ 14-7.5. Verdict and judgment.**

4 (a) When an indictment charges an habitual felon with a felony as above
5 provided and an indictment also charges that ~~said~~ the person is an habitual felon as
6 provided herein, the defendant shall be tried for the principal felony as provided by law.
7 The indictment that the person is an habitual felon shall not be revealed to the jury
8 unless the jury shall find that the defendant is guilty of the principal felony or other
9 felony with which he is charged. If the jury finds the defendant guilty of a felony, the
10 bill of indictment charging the defendant as an habitual felon may be presented to the
11 same jury. Except that the same jury may be used, the proceedings shall be as if the
12 issue of habitual felon were a principal charge. If the jury finds that the defendant is an
13 habitual felon, the trial judge shall enter judgment according to the provisions of this
14 Article. If the jury finds that the defendant is not an habitual felon, the trial judge shall
15 pronounce judgment on the principal felony or felonies as provided by law.

16 (b) When an indictment charges a violent habitual felon with a violent felony and
17 an indictment also charges that the person is a violent habitual felon, the defendant shall
18 be tried for the principal violent felony as provided by law. The indictment that the
19 person is a violent habitual felon shall not be revealed to the jury unless the jury finds
20 that the defendant is guilty of the principal violent felony or another violent felony with
21 which the defendant is charged. If the jury finds the defendant guilty of a violent
22 felony, the bill of indictment charging the defendant as a violent habitual felon may be
23 presented to the same jury. Except that the same jury may be used, the proceedings shall
24 be as if the issue of violent habitual felon were a principal charge. If the jury finds that
25 the defendant is a violent habitual felon, the trial judge shall enter judgment according
26 to the provisions of this Article. If the jury finds that the defendant is not a violent
27 habitual felon, the trial judge shall pronounce judgment on the principal violent felony
28 or felonies as provided by law.

29 **"§ 14-7.6. Sentencing of habitual and violent habitual felons.**

30 (a) When an habitual felon as defined in this Article ~~shall commit~~ commits any
31 felony under the laws of the State of North Carolina, ~~he~~ the felon must, upon conviction
32 or plea of guilty under indictment ~~as herein provided~~ (except where the death penalty or a
33 sentence of life imprisonment is imposed) be sentenced as a Class C felon.
34 Notwithstanding any other provision of law, a person sentenced as an habitual felon
35 under this Article shall serve a term of not less than seven years in prison, excluding
36 gain time granted under G.S. 148-13. A person sentenced as an habitual felon under this
37 Article shall receive a sentence of at least 14 years in the State's prison and shall be
38 entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may
39 not suspend the sentence and may not place the person sentenced on probation.

40 (b) When a violent habitual felon commits any violent felony as defined by G.S.
41 14-7.1 under the laws of this State, the felon must, upon conviction or plea of guilty
42 under indictment (except where the death penalty is imposed) be sentenced to life in the
43 State's prison, without parole. Life without parole means that the person will spend the

1 remainder of the person's natural life in prison. The sentencing judge may not suspend
2 the sentence and may not place the person sentenced on probation.

3 (c) Sentences imposed under this Article shall run consecutively with and shall
4 commence at the expiration of any sentence being served by the person sentenced
5 hereunder."

6 Sec. 2. Effective January 1, 1995, the amendments to G.S. 14-7.6 made by
7 Section 1 of this act expire and G.S. 14-7.6, as amended by Section 9 of Chapter 538 of
8 the 1993 Session Laws, reads as rewritten:

9 **"§ 14-7.6. (Effective January 1, 1995) Sentencing of habitual and violent habitual**
10 **felons.**

11 (a) When an habitual felon ~~shall commit~~ commits any felony classified as a Class
12 E, F, G, H, or I felony under the laws of ~~the State of North Carolina, he~~ this State, the
13 felon must, upon conviction or plea of guilty under ~~indictment as herein provided,~~
14 indictment, be punished as a Class D felon. ~~In determining the prior record level,~~
15 ~~convictions used to establish a person's status as a habitual felon shall not be used.~~ For
16 purposes of this section, habitual felon is defined as in G.S. 14-7.1, except that only one
17 of the three felony convictions may be for a Class H, I, or J felony. ~~Sentences imposed~~
18 ~~under this Article shall run consecutively with and shall commence at the expiration of any~~
19 ~~sentence being served by the person sentenced hereunder.~~

20 (b) When a violent habitual felon commits any violent felony as defined by G.S.
21 14-7.1 under the laws of this State, the felon must, upon conviction or plea of guilty
22 under indictment, be sentenced to life imprisonment without parole.

23 (c) In determining the prior record level, convictions used to establish a person's
24 status as an habitual felon or a violent habitual felon shall not be used. Sentences
25 imposed under this Article shall run consecutively with and shall begin at the expiration
26 of any sentence being served by the person sentenced."

27 Sec. 3. G.S. 15A-1370.1 reads as rewritten:

28 **"§ 15A-1370.1. Applicability of Article 85.**

29 This Article ~~is applicable~~ applies to all sentenced prisoners, including Class A and
30 Class B felons, and Class C felons who receive a sentence of life imprisonment, who are
31 not subject to Article 85A of this ~~Chapter~~ Chapter, ~~but shall not apply to prisoners who~~
32 receive a sentence of life imprisonment without parole. A person serving a sentence of
33 life imprisonment without parole shall not be eligible for parole at any time."

34 Sec. 4. Effective January 1, 1995, the changes made to G.S. 15A-1370.1 by
35 Section 3 of this act expire and G.S. 15A-1370.1, as amended by Section 21 of Chapter
36 538 of the 1993 Session Laws, reads as rewritten:

37 **"§ 15A-1370.1. (Effective January 1, 1995) Applicability of Article 85.**

38 This Article ~~is applicable~~ applies to all prisoners serving sentences of imprisonment
39 for convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences
40 of life ~~imprisonment~~ imprisonment other than as violent habitual felons sentenced under
41 Article 2A of Chapter 14 of the General Statutes. A person serving a sentence of life
42 imprisonment without parole shall not be eligible for parole at any time."

43 Sec. 5. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the
44 1993 Session Laws, reads as rewritten:

1 "§ 15A-1340.10. (Effective January 1, 1995) Applicability of structured sentencing.
2 This Article applies to criminal offenses in North Carolina, other than impaired
3 driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does
4 not apply to violent habitual felons sentenced under Article 2A of Chapter 14 of the
5 General Statutes."

6 Sec. 6. Sections 1, 3, and 6 of this act become effective March 1, 1994, and
7 apply to offenses committed on or after that date. Section 3 of this act and the changes
8 made to G.S. 14-7.6 by Section 1 of this act expire January 1, 1995. The remainder of
9 this act becomes effective January 1, 1995, and applies to offenses committed on or
10 after that date.