

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

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1

HOUSE BILL 47

Short Title: Three Strikes You're Out.

(Public)

Sponsors: Representatives Nichols; Alphin, Arnold, Balmer, Barbee, Berry, Bowie, Bowman, Brawley, J. Brown, Brubaker, Church, Cole, Creech, Culp, Daughtry, Decker, Dickson, Dockham, Edwards, Ellis, Esposito, Flaherty, Gardner, Hall, Hayes, Hill, Ives, Lemmond, McCombs, McCrary, McLaughlin, McLawhorn, Mercer, Miner, Mitchell, J. Preston, Ramsey, Russell, Sexton, Smith, Spears, Sutton, Tallent, Thompson, Weatherly, Wilson, and Yongue.

Referred to: Judiciary III.

February 8, 1994

A BILL TO BE ENTITLED

1
2 AN ACT TO PROVIDE THAT UPON A THIRD CONVICTION OF CERTAIN
3 SERIOUS FELONIES AN OFFENDER IS A SERIOUS HABITUAL FELON AND
4 SHALL BE SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE,
5 UNLESS THE OFFENDER IS SENTENCED TO DEATH FOR A CAPITAL
6 OFFENSE.

7 The General Assembly of North Carolina enacts:

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

9 style="text-align:center">**"ARTICLE 2A.**

10 style="text-align:center">**"HABITUAL FELONS. FELONS; SERIOUS HABITUAL FELONS.**

11 **"§ 14-7.1. Persons defined as habitual felons. Definitions.**

12 ~~Any person who has been convicted of or pled guilty to three felony offenses in any~~
13 ~~federal court or state court in the United States or combination thereof is declared to be~~
14 ~~an habitual felon. For the purpose of this Article, a felony offense is defined as an~~
15 ~~offense which is a felony under the laws of the State or other sovereign wherein a plea~~
16 ~~of guilty was entered or a conviction was returned regardless of the sentence actually~~
17 ~~imposed. Provided, however, that federal offenses relating to the manufacture,~~
18 ~~possession, sale and kindred offenses involving intoxicating liquors shall not be~~
19 ~~considered felonies for the purposes of this Article. For the purposes of this Article,~~

1 felonies committed before a person attains the age of 18 years shall not constitute more
2 than one felony. The commission of a second felony shall not fall within the purview of
3 this Article unless it is committed after the conviction of or plea of guilty to the first
4 felony. The commission of a third felony shall not fall within the purview of this Article
5 unless it is committed after the conviction of or plea of guilty to the second felony.
6 Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be
7 felony offenses within the meaning of this Article. Any felony offense to which a
8 pardon has been extended shall not for the purpose of this Article constitute a felony.
9 The burden of proving such pardon shall rest with the defendant and the State shall not
10 be required to disprove a pardon.

11 The following definitions apply in this Article:

- 12 (1) Felony. – An offense that is a felony under the laws of the State or
13 another sovereign in which a plea of guilty was entered or a conviction
14 was returned, regardless of the sentence actually imposed. The term
15 does not include, however, federal offenses relating to the
16 manufacture, possession, sale of, and kindred offenses involving
17 intoxicating liquors. For the purposes of this Article, felonies
18 committed before a person attains the age of 18 years shall not
19 constitute more than one felony. Pleas of guilty to or convictions of
20 felonies before July 6, 1967, are not felonies for the purposes of this
21 Article. A felony offense to which a pardon has been extended is not a
22 felony for the purposes of this Article. The burden of proving the
23 pardon shall rest with the defendant; the State is not required to
24 disprove a pardon.
- 25 (2) Habitual felon. – An offender who (i) is convicted in this State of a
26 felony and (ii) was convicted on at least three separate occasions,
27 whether in this State or elsewhere, prior to that conviction, of offenses
28 that under the laws of this State would be considered felonies, no more
29 than one of which was for an offense that under the law of this State
30 would be considered a Class H, I, or J felony.
- 31 (3) Serious felony. – For purposes of this Article, any of the following
32 felonies or a felony attempt to commit any of the following felonies:
- 33 a. Any Class A or Class B felony.
- 34 b. Any of the following common law offenses:
- 35 1. Robbery.
- 36 2. First degree arson.
- 37 3. First degree burglary.
- 38 c. Any felony in which a special finding was made that the
39 defendant was armed with a deadly weapon at the time of the
40 commission of the crime.
- 41 d. Any of the following felonies:
- 42 1. G.S. 14-18. Manslaughter.
- 43 2. G.S. 14-27.3. Second degree rape.
- 44 3. G.S. 14-27.5. Second degree sexual offense.

- 1 4. G.S. 14-32. Felonious assault with a deadly weapon
 2 with intent to kill or inflict serious injury.
 3 5. G.S. 14-32.1. Assault on handicapped persons.
 4 6. G.S. 14-32.2. Patient abuse and neglect.
 5 7. G.S. 14-34.2. Assault with a firearm or other deadly
 6 weapon upon government officers or employees.
 7 8. G.S. 14-39. Kidnapping.
 8 9. G.S. 14-49. Malicious use of explosive or incendiary.
 9 10. G.S. 14-49.1. Malicious damage of occupied property
 10 by use of explosive or incendiary.
 11 11. G.S. 14-50. Conspiracy to injure or damage by use of
 12 explosive or incendiary.
 13 12. G.S. 14-118.4. Extortion.
 14 13. G.S. 14-178. Incest between certain near relatives.
 15 14. G.S. 14-190.16. First degree sexual exploitation of a
 16 minor.
 17 15. G.S. 14-190.18. Promoting prostitution of a minor.
 18 16. G.S. 14-190.19. Participating in prostitution of a minor.
 19 17. G.S. 14-202.1. Taking indecent liberties with children.
 20 18. G.S. 14-318.4. Felony child abuse.
 21 19. G.S. 20-141.4(a1). Felony death by vehicle.
 22 20. G.S. 90-95(a)(1) or (2). Manufacture, sell, deliver, or
 23 possess with intent to manufacture, sell, or deliver a
 24 controlled substance classified in Schedule I or Schedule
 25 II or a counterfeit controlled substance.
 26 21. G.S. 90-95(e)(8). Manufacture, sell, deliver, or possess
 27 with intent to manufacture, sell, or deliver certain
 28 controlled substances in drug-free school zone.
 29 22. G.S. 90-95(h) or conspiracy to commit an offense under
 30 G.S. 90-95(h). Drug trafficking.
 31 23. G.S. 90-95.1. Continuing criminal enterprise.
 32 (4) Serious habitual felon. – An offender who (i) is convicted in this State
 33 of a serious felony and (ii) was convicted on at least two separate
 34 occasions, whether in this State or elsewhere, prior to that conviction,
 35 of felonies that under the laws of this State would be considered
 36 serious felonies.

37 **"§ 14-7.2. Punishment.**

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

1 (b) When any person is charged by indictment with the commission of a serious
2 felony under the laws of this State and is also charged with being a serious habitual
3 felon as defined in G.S. 14-7.1, the person must, upon conviction, be sentenced and
4 punished as a serious habitual felon, except in those cases where the death penalty is
5 imposed.

6 **"§ 14-7.3. Charge of habitual or serious habitual felon.**

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

21 (b) An indictment that charges a person who is a serious habitual felon within the
22 meaning of G.S. 14-7.1 with the commission of any serious felony under the laws of
23 this State must, in order to sustain a conviction of serious habitual felon, also charge
24 that the person is a serious habitual felon. The indictment charging the defendant as a
25 serious habitual felon shall be separate from the indictment charging the defendant with
26 the principal serious felony. An indictment which charges a person with being a serious
27 habitual felon shall set forth the date that prior serious felony offenses were committed,
28 the name of the state or other sovereign against whom the serious felony offenses were
29 committed, the dates that pleas of guilty were entered to or convictions returned in the
30 serious felony offenses, and the identity of the court in which the pleas or convictions
31 took place. No defendant charged with being a serious habitual felon in a bill of
32 indictment shall be required to go to trial on the charge within 20 days of the finding of
33 a true bill by the grand jury, unless the defendant waives this 20-day period.

34 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

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

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

10 **"§ 14-7.5. Verdict and judgment.**

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

23 (b) When an indictment charges a serious habitual felon with a serious felony and
24 an indictment also charges that the person is a serious habitual felon as provided herein,
25 the defendant shall be tried for the principal serious felony as provided by law. The
26 indictment that the person is a serious habitual felon shall not be revealed to the jury
27 unless the jury finds that the defendant is guilty of the principal serious felony or other
28 serious felony with which the defendant is charged. If the jury finds the defendant
29 guilty of a serious felony, the bill of indictment charging the defendant as a serious
30 habitual felon may be presented to the same jury. Except that the same jury may be
31 used, the proceedings shall be as if the issue of serious habitual felon were a principal
32 charge. If the jury finds that the defendant is a serious habitual felon, the trial judge
33 shall enter judgment according to the provisions of this Article. If the jury finds that the
34 defendant is not a serious habitual felon, the trial judge shall pronounce judgment on the
35 principal serious felony or felonies as provided by law.

36 **"§ 14-7.6. (Effective January 1, 1995) Sentencing of habitual and serious habitual**
37 **felons.**

38 (a) When an habitual felon shall commit any felony classified as a Class E, F, G,
39 H, or I felony under the laws of the State of North Carolina, ~~he~~the felon must, upon
40 conviction or plea of guilty under indictment ~~as herein provided,~~ indictment be punished
41 as a Class D felon. ~~In determining the prior record level, convictions used to establish a~~
42 ~~person's status as a habitual felon shall not be used. For purposes of this section, habitual felon~~
43 ~~is defined as in G.S. 14-7.1, except that only one of the three felony convictions may be for a~~
44 ~~Class H, I, or J felony. Sentences imposed under this Article shall run consecutively with and~~

1 ~~shall commence at the expiration of any sentence being served by the person sentenced~~
2 ~~hereunder.~~

3 (b) When a serious habitual felon commits any serious felony as defined by G.S.
4 14-7.1 under the laws of the State of North Carolina, the defendant shall, upon
5 conviction or plea of guilty under indictment, be sentenced to life imprisonment without
6 parole.

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

11 Sec. 2. G.S. 15A-1370.1 reads as rewritten:

12 "**§ 15A-1370.1. (Effective January 1, 1995) Applicability of Article 85.**

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

18 Sec. 3. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the
19 1993 Session Laws, reads as rewritten:

20 "**§ 15A-1340.10. (Effective January 1, 1995) Applicability of structured sentencing.**

21 This Article applies to criminal offenses in North Carolina, other than impaired
22 driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does
23 not apply to serious habitual felons sentenced under Article 2A of Chapter 14 of the
24 General Statutes."

25 Sec. 4. This act becomes effective January 1, 1995, and applies to offenses
26 committed on or after that date.