

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

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SENATE BILL 166

Short Title: Habitual Felon Act.

(Public)

Sponsors: Senators Plyler, Conder, and Hoyle.

Referred to: Corrections/Punishment.

February 15, 1994

A BILL TO BE ENTITLED

1 AN ACT TO REVISE THE HABITUAL FELON LAW TO PROVIDE A
2 MEANINGFUL SENTENCE FOR REPEAT FELONY OFFENDERS.
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4 The General Assembly of North Carolina enacts:

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

6 "**§ 14-7.1. Persons defined as habitual felons. Definitions.**

7 ~~Any person who has been convicted of or pled guilty to three felony offenses in any~~
8 ~~federal court or state court in the United States or combination thereof is declared to be~~
9 ~~an habitual felon. For the purpose of this Article, a felony offense is defined as an~~
10 ~~offense which is a felony under the laws of the State or other sovereign wherein a plea~~
11 ~~of guilty was entered or a conviction was returned regardless of the sentence actually~~
12 ~~imposed. Provided, however, that federal offenses relating to the manufacture,~~
13 ~~possession, sale and kindred offenses involving intoxicating liquors shall not be~~
14 ~~considered felonies for the purposes of this Article. For the purposes of this Article,~~
15 ~~felonies committed before a person attains the age of 18 years shall not constitute more~~
16 ~~than one felony. The commission of a second felony shall not fall within the purview of~~
17 ~~this Article unless it is committed after the conviction of or plea of guilty to the first~~
18 ~~felony. The commission of a third felony shall not fall within the purview of this Article~~
19 ~~unless it is committed after the conviction of or plea of guilty to the second felony.~~
20 ~~Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be~~
21 ~~felony offenses within the meaning of this Article. Any felony offense to which a~~
22 ~~pardon has been extended shall not for the purpose of this Article constitute a felony.~~
23 ~~The burden of proving such pardon shall rest with the defendant and the State shall not~~
24 ~~be required to disprove a pardon.~~

1 The following definitions apply in this Article:

2 (1) Felony. – An offense that is a felony under the laws of the State or
3 another sovereign in which a plea of guilty was entered or a conviction
4 was returned, regardless of the sentence actually imposed. The term
5 does not include, however, federal offenses relating to the
6 manufacture, possession, sale of, and kindred offenses involving
7 intoxicating liquors. For the purposes of this Article, felonies
8 committed before a person attains the age of 18 years shall not
9 constitute more than one felony. Pleas of guilty to or convictions of
10 felonies before July 6, 1967, are not felonies for the purposes of this
11 Article. A felony offense to which a pardon has been extended is not a
12 felony for the purposes of this Article. The burden of proving the
13 pardon shall rest with the defendant; the State is not required to
14 disprove a pardon.

15 (2) Habitual felon. – An offender who (i) is convicted in this State of a
16 felony and (ii) was convicted on at least three separate occasions,
17 whether in this State or elsewhere, before that conviction, of offenses
18 that under the laws of this State would be considered felonies.

19 (3) Violent felony. – A felony that has as an essential element of proof (i)
20 assault, (ii) possession or use of a deadly weapon, or (iii) both. The
21 term includes, for example, any of the following felonies: homicide,
22 rape, sexual offense, malicious castration or other maiming,
23 kidnapping, assault, assault on a law enforcement officer, discharging
24 of a firearm into an occupied dwelling or vehicle, robbery, arson or
25 burning, and stalking. The term also includes any attempt to commit,
26 conspiracy to commit, aid and abetting, soliciting to commit, and
27 accessory before or after the fact of any of these felonies."

28 Sec. 2. G.S. 14-7.6 reads as rewritten:

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

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

43 (b) Prior to sentencing a person indicted and convicted as an habitual felon under
44 this Article, the court shall determine whether any of the prior convictions used to

1 establish the person's status as an habitual felon are violent felonies and shall sentence
2 the person as follows:

3 (1) If none of the prior convictions used to establish the person's status as
4 an habitual felon are violent felonies, the person shall serve a term of
5 not less than seven years in prison, excluding gain time granted under
6 G.S. 148-13, shall receive a sentence of at least 14 years in the State's
7 prison and shall be entitled to credit for good behavior under G.S.
8 15A-1340.7.

9 (2) If one of the prior convictions used to establish the person's status as
10 an habitual felon is a violent felony, the person shall serve a term of
11 not less than 15 years in prison, excluding gain time granted under
12 G.S. 148-13, shall receive a sentence of at least 30 years in the State's
13 prison and shall be entitled to credit for good behavior under G.S.
14 15A-1340.7.

15 (3) If two of the prior convictions used to establish the person's status as
16 an habitual felon are violent felonies, the person shall be sentenced to
17 and shall serve a term of life imprisonment without parole."

18 Sec. 3. Effective January 1, 1995, G.S. 14-7.6, as rewritten by this act, reads
19 as rewritten:

20 "**§ 14-7.6. Sentencing of habitual felons.**

21 (a) Notwithstanding any other provision of law, when an habitual felon as
22 defined in this Article shall commit any felony under the laws of the State of North
23 Carolina, he must, upon conviction or plea of guilty under indictment as herein provided
24 (except where the death penalty or a sentence of life imprisonment is imposed) be
25 sentenced as a Class C felon as provided in subsection (b) of this section. The
26 sentencing judge may not suspend a sentence imposed under this section and may not
27 place the person sentenced on probation. Sentences imposed under this Article shall run
28 consecutively with and shall commence at the expiration of any sentence being served
29 by the person sentenced under this section.

30 (b) Prior to sentencing a person indicted and convicted as an habitual felon under
31 this Article, the court shall determine whether any of the prior convictions used to
32 establish the person's status as an habitual felon are violent felonies and shall sentence
33 the person as follows:

34 (1) If none of the prior convictions (1) used to establish the person's status as
35 an habitual felon are violent felonies, the person shall serve a ~~term of~~
36 ~~not less than seven years in prison, excluding gain time granted under G.S.~~
37 ~~148-13, and shall receive a sentence of at least 14 years in the State's prison~~
38 ~~and shall be entitled to credit for good behavior under G.S. 15A-1340.7.~~
39 minimum term of imprisonment of 84 months.

40 (2) If one of the prior convictions used to establish the person's status as
41 an habitual felon is a violent felony, the person shall serve a ~~term of not~~
42 ~~less than 15 years in prison, excluding gain time granted under G.S. 148-13,~~
43 ~~and shall receive a sentence of at least 30 years in the State's prison and shall~~

1 ~~be entitled to credit for good behavior under G.S. 15A-1340.7. minimum~~
2 ~~term of imprisonment of 180 months.~~

3 (3) If two of the prior convictions used to establish the person's status as
4 an habitual felon are violent felonies, the person shall be sentenced to
5 and shall serve a term of life imprisonment without parole."

6 Sec. 4. Section 9 of Chapter 538 of the 1993 Session Laws is repealed.

7 Sec. 5. Section 3 of this act becomes effective January 1, 1995; the
8 remainder of this act becomes effective May 1, 1994, and applies to offenses committed
9 on or after that date. Prosecutions for, or sentences based on, offenses occurring before
10 the effective date of this act are not abated or affected by the repeal or amendment by
11 this act of any statute, and statutes that would be applicable to those prosecutions or
12 sentences but for the provisions of this act remain applicable to those prosecutions or
13 sentences.