

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 45

Short Title: Two Strikes You're In.

(Public)

Sponsors: Senators Plexico; Albertson, Allran, Cochran, Codrington, Conder, Forrester, Gulley, Harris, Hartsell, Hoyle, Kincaid, Lee, Martin of Pitt, Odom, Parnell, Sands, Sherron, Smith, Simpson, Speed, and Warren.

Referred to: Corrections/Punishment.

February 10, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT UPON A SECOND 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 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

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

8 The following definitions apply in this Article:

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

22 (2) Habitual felon. – An offender who is not a violent habitual felon and
23 (i) is convicted in this State of a felony and (ii) was convicted on at
24 least three separate occasions, whether in this State or elsewhere,
25 before that conviction, of offenses that under the laws of this State
26 would be considered felonies, no more than one of which was for an
27 offense that under the law of this State would be considered a Class H,
28 I, or J felony.

29 (3) Violent felony. – For the purposes of this Article, any of the following
30 felonies:

31 a. G.S. 14-17. First degree murder and second degree murder.

32 b. G.S. 14-27.2. First degree rape.

33 c. G.S. 14-27.4. First degree sexual offense.

34 d. G.S. 14-28. Malicious castration.

35 e. G.S. 14-30. Malicious maiming.

36 f. G.S. 14-32(a). Assault with a deadly weapon with intent to kill
37 and inflicting serious injury.

38 g. G.S. 14-32.1(b). Assault on a handicapped person with a
39 deadly weapon with intent to kill and inflicting serious injury.

40 h. G.S. 14-32.2(b)(1). Patient abuse and neglect, intentional
41 conduct proximately causing death.

42 i. G.S. 14-39. First degree kidnapping.

43 j. G.S. 14-87. Robbery with firearms or other dangerous
44 weapons.

1 (4) Violent habitual felon. – An offender who (i) is convicted in this State
2 of a violent felony and (ii) was convicted on at least one occasion,
3 whether in this State or elsewhere, before that conviction, of a felony
4 that under the laws of this State would be considered a violent felony.

5 **"§ 14-7.2. Punishment.**

6 (a) When any person is charged by indictment with the commission of a felony
7 under the laws of ~~the State of North Carolina~~ this State and is also charged with being an
8 habitual felon as defined in G.S. 14-7.1, ~~he~~ the person must, upon conviction, be
9 sentenced and punished as an habitual felon, except in those cases where the person is
10 charged and convicted of being a violent habitual felon or where the death penalty or a
11 life sentence is imposed.

12 (b) When a person is charged by indictment with the commission of a violent
13 felony under the laws of this State and is also charged with being a violent habitual
14 felon as defined in G.S. 14-7.1, the person must, upon conviction, be sentenced and
15 punished as a violent habitual felon, except in those cases where the death penalty is
16 imposed.

17 **"§ 14-7.3. Charge of habitual or violent habitual felon.**

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

31 (b) An indictment that charges a person who is a violent habitual felon within the
32 meaning of G.S. 14-7.1 with the commission of any violent felony under the laws of
33 North Carolina must, in order to sustain a conviction of a violent habitual felon, also
34 charge that the person is a violent habitual felon. The indictment charging the
35 defendant as a violent habitual felon shall be separate from the indictment charging the
36 defendant with the principal violent felony. An indictment that charges a person with
37 being a violent habitual felon shall set forth the date that the prior violent felony was
38 committed, the name of the state or other sovereign against whom the violent felony
39 was committed, the date that a plea of guilty was entered to or a conviction was returned
40 in the violent felony, and the identity of the court in which the plea or conviction took
41 place. A defendant charged with being a violent habitual felon in a bill of indictment
42 shall not be required to go to trial on the charge within 20 days of the finding of a true
43 bill by the grand jury, unless the defendant waives this 20-day period.

44 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

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

10 (b) In all cases where a person is charged under this Article with being a violent
11 habitual felon, the record of prior convictions of violent felonies shall be admissible in
12 evidence, but only for the purpose of proving that the person has been convicted of a
13 former violent felony. A prior conviction may be proved by stipulation of the parties or
14 by the original or a certified copy of the court record of the prior conviction. The
15 original or certified copy of the court record, bearing the same name as that by which
16 the defendant is charged, shall be prima facie evidence that the defendant named in the
17 record is the same as the defendant before the court, and shall be prima facie evidence
18 of the facts set out in the record.

19 "§ 14-7.5. Verdict and judgment.

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

32 (b) When an indictment charges a violent habitual felon with a violent felony and
33 an indictment also charges that the person is a violent habitual felon, the defendant shall
34 be tried for the principal violent felony as provided by law. The indictment that the
35 person is a violent habitual felon shall not be revealed to the jury unless the jury finds
36 that the defendant is guilty of the principal violent felony or another violent felony with
37 which the defendant is charged. If the jury finds the defendant guilty of a violent
38 felony, the bill of indictment charging the defendant as a violent habitual felon may be
39 presented to the same jury. Except that the same jury may be used, the proceedings
40 shall be as if the issue of violent habitual felon were a principal charge. If the jury finds
41 that the defendant is a violent habitual felon, the trial judge shall enter judgment
42 according to the provisions of this Article. If the jury finds that the defendant is not a
43 violent habitual felon, the trial judge shall pronounce judgment on the principal violent
44 felony or felonies as provided by law.

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

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

12 (b) When a violent habitual felon commits any violent felony as defined by G.S.
13 14-7.1 under the laws of this State, the felon must, upon conviction or plea of guilty
14 under indictment, be sentenced to life imprisonment without parole.

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

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

20 **"§ 15A-1370.1. (Effective January 1, 1995) Applicability of Article 85.**

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

26 Sec. 3. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the
27 1993 Session Laws, reads as rewritten:

28 **"§ 15A-1340.10. (Effective January 1, 1995) Applicability of structured sentencing.**

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

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