

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 46

Select Committee on Corrections/Punishment Committee Substitute Adopted 2/22/94
Appropriations Committee Substitute #2 Adopted 2/25/94

Short Title: Amend Habitual Felon Law.

(Public)

Sponsors:

Referred to: Calendar 2/28/94.

February 10, 1994

A BILL TO BE ENTITLED

AN ACT TO AMEND AND RECODIFY THE HABITUAL FELON LAW UNDER
THE STRUCTURED SENTENCING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.1 is recodified as G.S. 15A-1340.13A.

Sec. 2. G.S. 14-7.1, as recodified by Section 1 of this act, reads as rewritten:

"§ 15A-1340.13A. ~~Persons defined as habitual~~ Habitual felons.

~~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 section:

5 (1) Felony. – An offense that is a felony under the laws of this State or is
6 classified as a felony under G.S. 15A-1340.14(e). The term does not
7 include, however, federal offenses relating to the manufacture,
8 possession, sale of, and kindred offenses involving intoxicating
9 liquors. For the purposes of this section, felonies committed before a
10 person attains the age of 18 years shall not constitute more than one
11 felony. Convictions of felonies before July 6, 1967, are not felonies
12 for the purposes of this section. A felony offense to which a pardon
13 has been extended is not a felony for the purposes of this Article. The
14 burden of proving the pardon shall rest with the defendant; the State is
15 not required to disprove a pardon.

16 (2) Habitual felon. – An offender who (i) is convicted in this State of a
17 Class E, F, G, H, or I felony and (ii) was convicted on at least three
18 separate occasions, whether in this State or elsewhere, before that
19 conviction, of felonies, other than Class J felonies.

20 (3) Violent habitual felon. – An offender who (i) is convicted in this State
21 of a Class B, C, or D felony and (ii) was convicted on at least three
22 separate occasions, whether in this State or elsewhere, before that
23 conviction, of felonies, other than Class J felonies, of which at least
24 one was a Class A, B, C, or D felony.

25 (b) Sentencing of Habitual Felons. – Before sentencing a person who is
26 convicted of a Class E, F, G, H, or I felony, the judge shall, upon an indictment so
27 charging, determine whether the person is an habitual felon. Proof of prior convictions
28 to establish a person's habitual felon status shall be as provided by G.S. 15A-1340.14.
29 The three most recent prior felony convictions, subject to subdivision (2) of subsection
30 (a) of this section, shall be used to establish a person's habitual felon status. If the judge
31 finds that the person is an habitual felon, the court shall sentence the person as a Class C
32 felon under G.S. 15A-1340.13; the punishment shall be as provided in G.S. 15A-
33 1340.17. In determining the prior record level of the person, the convictions used to
34 establish the person's status as an habitual felon shall not be used, but all other prior
35 convictions shall be used in determining the prior record as provided in G.S. 15A-
36 1340.14. A sentence imposed on an habitual felon pursuant to this section shall run
37 consecutively with and shall begin at the expiration of any sentence being served by the
38 habitual felon.

39 (c) Sentencing of Violent Habitual Felons. – Before sentencing a person who is
40 convicted of a Class B, C, or D felony, the judge shall, upon an indictment so charging,
41 determine whether the person is a violent habitual felon. Proof of prior convictions to
42 establish a person's violent habitual felon status shall be as provided by G.S. 15A-
43 1340.14. The three most recent prior felony convictions, subject to subdivision (3) of
44 subsection (a) of this section, shall be used to establish a person's violent habitual felon

1 status. If the judge finds that the person is a violent habitual felon, the court shall
2 sentence the person to a term of imprisonment pursuant to G.S. 15A-1340.17 for the
3 underlying felony conviction plus an additional minimum term of imprisonment of
4 twenty years for conviction as a violent habitual felon. In determining the prior record
5 level of the person, the convictions used to establish the person's status as a violent
6 habitual felon shall not be used for sentencing for the underlying felony conviction, but
7 all other prior convictions shall be used in determining the prior record as provided in
8 G.S. 15A-1340.14. A sentence imposed on a violent habitual felon pursuant to this
9 section shall run consecutively with and shall begin at the expiration of any sentence
10 being served or to be served by the habitual felon.

11 Sec. 3. G.S. 14-7.3 is recodified as G.S. 15A-1340.13B, and, as recodified,
12 reads as rewritten:

13 **"§ 15A-1340.13B. Charge of habitual felon or violent habitual felon.**

14 (a) An indictment which charges a person who is an habitual felon within the
15 meaning of G.S. 14-7.1-G.S. 15A-1340.13A with the commission of any felony under the
16 laws of the State of North Carolina must, in order to sustain a conviction of habitual felon,
17 also charge that said person is an habitual felon. The indictment charging the defendant as
18 an habitual felon shall be separate from the indictment charging him with the principal felony.
19 An indictment which charges a person with being an habitual felon must set forth the
20 date that prior felony offenses were committed, the name of the state or other sovereign
21 against whom said felony offenses were committed, the dates that pleas of guilty were
22 entered to or convictions returned in said felony offenses, and the identity of the court
23 wherein said pleas or convictions took place. No defendant charged with being an
24 habitual felon in a bill of indictment shall be required to go to trial on said charge within
25 20 days of the finding of a true bill by the grand jury; provided, the defendant may
26 waive this 20-day period.

27 (b) An indictment which charges a person who is a violent habitual felon within
28 the meaning of G.S. 15A-1340.13A must, in order to sustain a conviction of violent
29 habitual felon, also charge that said person is a violent habitual felon. An indictment
30 which charges a person with being a violent habitual felon must set forth the date that
31 prior felony offenses were committed, the name of the state or other sovereign against
32 whom said felony offenses were committed, the dates that pleas of guilty were entered
33 to or convictions returned in said felony offenses, and the identity of the court wherein
34 said pleas or convictions took place. No defendant charged with being a violent habitual
35 felon in a bill of indictment shall be required to go to trial on said charge within 20 days
36 of the finding of a true bill by the grand jury; provided, the defendant may waive this
37 20-day period."

38 Sec. 4. The remainder of Article 2A of Chapter 14 of the General Statutes
39 that is not recodified by this act is repealed.

40 Sec. 5. This act becomes effective January 1, 1995, and applies to offenses
41 committed on or after that date.