

GENERAL ASSEMBLY OF NORTH CAROLINA

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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

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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 and serious 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.~~

1 ~~Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be~~  
2 ~~felony offenses within the meaning of this Article. Any felony offense to which a~~  
3 ~~pardon has been extended shall not for the purpose of this Article constitute a felony.~~  
4 ~~The burden of proving such pardon shall rest with the defendant and the State shall not~~  
5 ~~be required to disprove a pardon.~~

6 (a) Definitions. – The following definitions apply in this section:

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

18 (2) Habitual felon. – An offender who (i) is convicted in this State of a  
19 Class D, E, F, G, H, or I felony and (ii) was convicted on at least three  
20 separate occasions, whether in this State or elsewhere, before that  
21 conviction, of felonies, other than Class J felonies. To be considered a  
22 separate occasion, the subsequent felony must have been committed  
23 after the conviction for the previous felony.

24 (3) Serious habitual felon. – An offender who (i) is convicted in this State  
25 of a Class B, C, or D felony and (ii) was convicted on at least three  
26 separate occasions, whether in this State or elsewhere, before that  
27 conviction, of felonies, other than Class J felonies, of which at least  
28 one was a Class A, B, C, or D felony. To be considered a separate  
29 occasion, the subsequent felony must have been committed after the  
30 conviction for the previous felony.

31 (b) Sentencing of Habitual Felons. – Before sentencing a person who is  
32 convicted of a Class E, F, G, H, or I felony, the judge shall, upon an indictment so  
33 charging, determine whether the person is an habitual felon. Proof of prior convictions  
34 to establish a person's habitual felon status shall be as provided by G.S. 15A-1340.14.  
35 The three most recent prior felony convictions, subject to subdivision (2) of subsection  
36 (a) of this section, shall be used to establish a person's habitual felon status. If the judge  
37 finds that the person is an habitual felon, the court shall sentence the person as a Class C  
38 felon under G.S. 15A-1340.13; the punishment shall be as provided in G.S. 15A-  
39 1340.17. In determining the prior record level of the person, the convictions used to  
40 establish the person's status as an habitual felon shall not be used, but all other prior  
41 convictions shall be used in determining the prior record as provided in G.S. 15A-  
42 1340.14. A sentence imposed on an habitual felon pursuant to this section shall run  
43 consecutively with and shall begin at the expiration of any sentence being served by the  
44 habitual felon.

1       (c) Sentencing of Serious Habitual Felons. – Before sentencing a person who is  
2 convicted of a Class B, C, or D felony, the judge shall, upon an indictment so charging,  
3 determine whether the person is a serious habitual felon. Proof of prior convictions to  
4 establish a person's serious habitual felon status shall be as provided by G.S. 15A-  
5 1340.14. The three most recent prior felony convictions, subject to subdivision (3) of  
6 subsection (a) of this section, shall be used to establish a person's serious habitual felon  
7 status. If the judge finds that the person is a serious habitual felon, the court shall  
8 sentence the person to a term of imprisonment pursuant to G.S. 15A-1340.17 for the  
9 underlying felony conviction plus an additional minimum term of imprisonment of 240  
10 months for conviction as a serious habitual felon. In determining the prior record level  
11 of the person, the convictions used to establish the person's status as a serious habitual  
12 felon shall not be used for sentencing for the underlying felony conviction, but all other  
13 prior convictions shall be used in determining the prior record as provided in G.S. 15A-  
14 1340.14. A sentence imposed on a serious habitual felon pursuant to this section shall  
15 run consecutively with and shall begin at the expiration of any sentence being served or  
16 to be served by the felon."

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

19 **"§ 15A-1340.13B. Charge of habitual felon or serious habitual felon.**

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

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

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

3           Sec. 5. This act becomes effective January 1, 1995, and applies to offenses  
4 committed on or after that date. Prosecutions for offenses committed before the  
5 effective date of this act are not abated or affected by this act, and the statutes that  
6 would be applicable but for this act remain applicable to those prosecutions.