

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 70

Short Title: Reinstate Sentencing Provisions.

(Public)

Sponsors: Senators Parnell; Martin of Pitt and Conder.

Referred to: Corrections/Punishment.

February 11, 1994

A BILL TO BE ENTITLED

1 AN ACT TO REINSTATE THE RECOMMENDATION OF THE SENTENCING
2 COMMISSION REGARDING THE HABITUAL FELON LAW; TO PROVIDE
3 THAT A DEFENDANT CONVICTED OF MURDER IN THE FIRST DEGREE
4 MAY BE SENTENCED TO LIFE WITHOUT PAROLE; TO REPEAL THE
5 PROVISION IN THE STRUCTURED SENTENCING ACT THAT WOULD
6 HAVE PROVIDED THAT POSSESSION OF LESS THAN ONE GRAM OF
7 COCAINE WAS NOT A FELONY; TO CLARIFY THAT PERSONS
8 SENTENCED UNDER THE STRUCTURED SENTENCING ACT SHALL NOT
9 BE RELEASED UNDER THE PRISON POPULATION CAP; TO PROVIDE FOR
10 THE EARLIER IMPLEMENTATION OF STRUCTURED SENTENCING BY
11 AMENDING THE EFFECTIVE DATES OF CHAPTERS 538 AND 539 OF THE
12 1993 SESSION LAWS; TO PROVIDE THAT A DEFENDANT WHO USES OR
13 THREATENS TO USE A FIREARM DURING THE COMMISSION OF A
14 FELONY OFFENSE SHALL BE SENTENCED TO THE MANDATORY
15 MAXIMUM PUNISHMENT FOR THAT FELONY OFFENSE; AND TO
16 PROVIDE THAT A PERSON WHO COMMITS A THIRD VIOLENT FELONY
17 MAY BE SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE.

18 The General Assembly of North Carolina enacts:

19 Section 1. G.S. 14-7.6, as amended by Section 9 of Chapter 538 of the 1993
20 Session Laws, reads as rewritten:

21 **"§ 14-7.6. Sentencing of habitual felons.**

22 When an habitual felon shall commit any felony classified as a Class E, F, G, H, or I
23 felony under the laws of the State of North Carolina, he must, upon conviction or plea
24

1 of guilty under indictment as herein provided, be punished as a Class D felon. In
2 determining the prior record level, convictions used to establish a person's status as a
3 habitual felon shall not be used. ~~For purposes of this section, habitual felon is defined as in~~
4 ~~G.S. 14-7.1, except that only one of the three felony convictions may be for a Class H, I, or J~~
5 ~~felony.~~ Sentences imposed under this Article shall run consecutively with and shall
6 commence at the expiration of any sentence being served by the person sentenced
7 hereunder."

8 Sec. 2. G.S. 15A-1340.13 is amended by adding a new subsection to read:

9 "(d1) Mandatory Maximum Sentence Required for Use or Threatened Use of
10 Firearm. – Before imposing a sentence, the court shall determine whether the defendant
11 used or threatened to use a firearm at the time of the felony. If the court finds that (i)
12 the defendant did use or threaten to use a firearm at the time of the felony, and (ii) the
13 possession or use of a firearm is not an essential element of proof of the felony, the
14 court shall sentence the defendant to a mandatory maximum punishment as follows.
15 The court shall determine the prior record level for the defendant pursuant to G.S. 15A-
16 1340.14. The court shall sentence the defendant to the maximum term of punishment
17 from the aggravated range listed in the appropriate cell for the class of offense and prior
18 record level under G.S. 15A-1340.17(c)."

19 Sec. 3. G.S. 15A-2002, as amended by Section 29 of Chapter 538 of the 1993
20 Session Laws, reads as rewritten:

21 "**§ 15A-2002. Capital offenses; jury verdict and sentence.**

22 If the recommendation of the jury is that the defendant be sentenced to death, the
23 judge shall impose a sentence of death in accordance with the provisions of Chapter 15,
24 Article 19 of the General Statutes. If the recommendation of the jury is that the
25 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence
26 of imprisonment for life in the State's ~~prison~~ prison without parole, or a sentence of life
27 with eligibility for parole after 25 years.

28 The judge shall instruct the jury, in words substantially equivalent to those of this
29 section, that a sentence of life imprisonment means ~~a sentence of life with eligibility for~~
30 ~~parole consideration after 25 years.~~ either a sentence of life without parole, or a sentence of
31 life with eligibility for parole after 25 years, in the discretion of the court."

32 Sec. 4. G.S. 148-4.1, as amended by Section 31 of Chapter 538 of the 1993
33 Session Laws, reads as rewritten:

34 "**§ 148-4.1. Release of inmates.**

35 (a) Whenever the Secretary of Correction determines from data compiled by the
36 Department of Correction that it is necessary to reduce the prison population to a more
37 manageable level, he shall direct the Post-Release Supervision and Parole Commission
38 to release on parole over a reasonable period of time a number of prisoners sufficient to
39 that purpose.

40 (b) Except as provided in subsection (c) and (e), only inmates who are otherwise
41 eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of
42 this Chapter may be released under this section.

43 (c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible
44 for early parole under this section nine months prior to the discharge date otherwise

1 applicable, and six months prior to the date of automatic 90-day parole authorized by
2 G.S. 15A-1380.2.

3 (d) If the number of prisoners housed in facilities owned or operated by the State
4 of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of
5 21,400 for 15 consecutive days, the Secretary of Correction shall notify the Governor
6 and the Chairman of the Post-Release Supervision and Parole Commission of this fact.
7 Upon receipt of this notification, the Post-Release Supervision and Parole Commission
8 shall within 90 days release on parole a number of inmates sufficient to reduce the
9 prison population to ninety-seven percent (97%) of 21,400.

10 From the date of the notification until the prison population has been reduced to
11 ninety-seven percent (97%) of 21,400, the Secretary may not accept any inmates
12 ordered transferred from local confinement facilities to the State prison system under
13 G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State
14 prison system under an order entered pursuant to G.S. 148-32.1(b) to the local
15 confinement facility from which the inmate was transferred.

16 (e) In addition to those persons otherwise eligible for parole, from the date of
17 notification in subsection (d) until the prison population has been reduced to ninety-
18 seven percent (97%) of 21,400, any person imprisoned only for a misdemeanor also
19 shall be eligible for parole and immediate termination upon admission, notwithstanding
20 any other provision of law, except:

21 (1) Those persons convicted under G.S. 20-138.1 of driving while
22 impaired or any offense involving impaired driving, and

23 (2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain
24 the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A
25 or of violating G.S. 130A-144(f) or G.S. 130A-145.

26 (f) In complying with the mandate of subsection (d), the Post-Release
27 Supervision and Parole Commission may exercise the discretion granted to refuse
28 parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as
29 the prison population does not exceed 21,400.

30 (g) In order to meet the requirements of this section, the Parole Commission shall
31 not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under
32 G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or
33 under G.S. 14-17. The Parole Commission may continue to consider the suitability for
34 release of such persons in accordance with the criteria set forth in Article 85 and 85A of
35 Chapter 15A.

36 (h) A person sentenced under Article 81B of Chapter 15A of the General
37 Statutes, Structured Sentencing of Persons Convicted of Crimes, shall not be released
38 pursuant to this section."

39 Sec. 5. Article 2A of Chapter 14 reads as rewritten:

40 **"ARTICLE 2A.**

41 **"HABITUAL FELONS. FELONS; VIOLENT HABITUAL FELONS.**

42 **"§ 14-7.1. Persons defined as habitual felons. Definitions.**

43 (a) 'Habitual Felon' and 'Felony' Defined. – Any person who has been convicted
44 of or pled guilty to three felony offenses in any federal court or state court in the United

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

18 (b) 'Violent Felony' and 'Violent Habitual Felon' Defined. – The following
19 definitions apply in this Article:

20 (1) Violent felony. – A felony that is classified as a Class A, B, C, or D
21 felony. The term does not include a conviction as an habitual felon.

22 (2) Violent habitual felon. – An offender who (i) is convicted in this State
23 of a violent felony and (ii) was convicted on at least two separate
24 occasions, whether in this State or elsewhere, before that conviction, of
25 felonies that under the laws of this State would be considered violent
26 felonies.

27 **"§ 14-7.2. Punishment.**

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

34 (b) When any person is charged by indictment with the commission of a violent
35 felony under the laws of the State of North Carolina and is also charged with being a
36 violent habitual felon as defined in G.S. 14-7.1, the person must, upon conviction, be
37 sentenced and punished as a violent habitual felon, as provided in this Article.

38 **"§ 14-7.3. Charge of habitual or violent habitual felon.**

39 (a) An indictment which charges a person who is an habitual felon within the
40 meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State
41 of North Carolina must, in order to sustain a conviction of habitual felon, also charge
42 that ~~said the~~ person is an habitual felon. The indictment charging the defendant as an
43 habitual felon shall be separate from the indictment charging him with the principal
44 felony. An indictment which charges a person with being an habitual felon must set

1 forth the date ~~that~~ the prior felony offenses were committed, the name of the state or
2 other sovereign against whom ~~said~~ the felony offenses were committed, the dates that
3 pleas of guilty were entered to or convictions returned in ~~said~~ the felony offenses, and
4 the identity of the court wherein ~~said~~ the pleas or convictions took place. No defendant
5 charged with being an habitual felon in a bill of indictment shall be required to go to
6 trial on ~~said~~ the charge within 20 days of the finding of a true bill by the grand jury;
7 provided, the defendant may waive this 20-day period.

8 (b) An indictment which charges a person who is a violent habitual felon within
9 the meaning of G.S. 14-7.1 with the commission of a violent felony under the laws of
10 the State of North Carolina must, in order to sustain a conviction of violent habitual
11 felon, also charge that the person is a violent habitual felon. The indictment charging the
12 defendant as a violent habitual felon shall be separate from the indictment charging the
13 defendant with the principal violent felony. An indictment that charges a person with
14 being a violent habitual felon shall set forth the date the prior violent felony offenses
15 were committed, the name of the state or other sovereign against whom the violent
16 felony offenses were committed, the dates that pleas of guilty were entered to or
17 convictions returned in the violent felony offenses, and the identity of the court in which
18 the pleas or convictions took place. A defendant charged with being a violent habitual
19 felon in an indictment shall not be required to go to trial on the charge within 20 days of
20 the finding of a true bill by the grand jury, unless the defendant waives this 20-day
21 period.

22 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

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

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

41 **"§ 14-7.5. Verdict and judgment.**

42 (a) When an indictment charges an habitual felon with a felony as above
43 provided and an indictment also charges that ~~said~~ the person is an habitual felon as
44 provided herein, the defendant shall be tried for the principal felony as provided by law.

1 The indictment that the person is an habitual felon shall not be revealed to the jury
2 unless the jury shall find that the defendant is guilty of the principal felony or other
3 felony with which he is charged. If the jury finds the defendant guilty of a felony, the
4 bill of indictment charging the defendant as an habitual felon may be presented to the
5 same jury. Except that the same jury may be used, the proceedings shall be as if the
6 issue of habitual felon were a principal charge. If the jury finds that the defendant is an
7 habitual felon, the trial judge shall enter judgment according to the provisions of this
8 Article. If the jury finds that the defendant is not an habitual felon, the trial judge shall
9 pronounce judgment on the principal felony or felonies as provided by law.

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

23 **"§ 14-7.6. Sentencing of habitual and violent habitual felons.**

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

33 (b) When a violent habitual felon commits any violent felony as defined by G.S.
34 14-7.1 under the laws of the State of North Carolina, the defendant shall, upon
35 conviction or plea of guilty under indictment, be sentenced to life imprisonment without
36 parole.

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

41 Sec. 6. G.S. 15A-1340.10, as enacted by Section 1 of Chapter 538 of the
42 1993 Session Laws, reads as rewritten:

43 **"§ 15A-1340.10. Applicability of structured sentencing.**

1 This Article applies to criminal offenses in North Carolina, other than impaired
2 driving under G.S. 20-138.1 that occur on or after ~~January 1, 1995~~, July 1, 1994. This
3 Article does not apply to violent habitual felons sentenced under Article 2A of Chapter
4 14 of the General Statutes."

5 Sec. 7. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the
6 1993 Session Laws, reads as rewritten:

7 "**§ 15A-1370.1. Applicability of Article 85.**

8 This Article is applicable to all prisoners serving sentences of imprisonment for
9 convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of
10 life imprisonment. However, this Article does not apply to a prisoner sentenced to life
11 imprisonment without parole. A prisoner serving a sentence of life imprisonment
12 without parole shall not be eligible for parole at any time."

13 Sec. 8. Section 1358.1 of Chapter 539 of the 1993 Session Laws is repealed.

14 Sec. 9. Section 56 of Chapter 538 of the 1993 Session Laws reads as
15 rewritten:

16 "Sec. 56. This act becomes effective ~~January 1, 1995~~, July 1, 1994, and applies only
17 to offenses occurring on or after that date. Prosecutions for, or sentences based on,
18 offenses occurring before the effective date of this act are not abated or affected by the
19 repeal or amendment in this act of any statute, and the statutes that would be applicable
20 to those prosecutions or sentences but for the provisions of this act remain applicable to
21 those prosecutions or sentences."

22 Sec. 10. Section 1359 of Chapter 539 of the 1993 Session Laws reads as
23 rewritten:

24 "Sec. 1359. This act becomes effective ~~January 1, 1995~~, July 1, 1994, and applies to
25 offenses occurring on or after that date. Prosecutions for offenses committed before the
26 effective date of this act are not abated or affected by this act, and the statutes that
27 would be applicable but for this act remain applicable to those prosecutions."

28 Sec. 11. This act becomes effective July 1, 1994, and applies to offenses
29 committed on or after that date. Prosecutions for offenses committed before the
30 effective date of this act are not abated or affected by this act, and the statutes that
31 would be applicable but for this act remain applicable to those prosecutions.