

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 1241
HOUSE BILL 619

1 AN ACT TO CREATE THE OFFENSE OF HABITUAL FELON AND TO PROVIDE FOR
2 THE PUNISHMENT OF THE VIOLATION THEREOF.

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4 The General Assembly of North Carolina do enact:
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6 **Section 1.** Persons Defined as Habitual Felons. Any person who has been convicted
7 of or pled guilty to three felony offenses in any Federal court or State court in the United States
8 or combination thereof is declared to be an habitual felon. For the purpose of this Act, a felony
9 offense is defined as an offense which is a felony under the laws of the State or other sovereign
10 wherein a plea of guilty was entered or a conviction was returned regardless of the sentence
11 actually imposed. Provided, however, that federal offenses relating to the manufacture,
12 possession, sale and kindred offenses involving intoxicating liquors shall not be considered
13 felonies for the purposes of this Act. For the purposes of this Act, felonies committed before a
14 person attains the age of 21 years shall not constitute more than one felony. The commission of
15 a second felony shall not fall within the purview of this Act unless it is committed after the
16 conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall
17 within the purview of this Act unless it is committed after the conviction of or plea of guilty to
18 the second felony. Pleas of guilty to or convictions of felony offenses prior to the effective date
19 of this Act shall not be felony offenses within the meaning of this Act. Any felony offense to
20 which a pardon has been extended shall not for the purpose of this Act constitute a felony. The
21 burden of proving such pardon shall rest with the defendant and the State shall not be required
22 to disprove a pardon.

23 **Sec. 2.** Punishment. When any person is charged by indictment with the
24 commission of a felony under the laws of the State of North Carolina and is also charged with
25 being an habitual felon as defined in Section 1 of this Act, he must, upon conviction, be
26 sentenced and punished as an habitual felon, as in this Chapter provided, except in those cases
27 where the death penalty is imposed.

28 **Sec. 3.** Charge of Habitual Felon. An indictment which charges a person who is an
29 habitual felon within the meaning of Section 1 of this Act with the commission of any felony
30 under the laws of the State of North Carolina must, in order to sustain a conviction of habitual
31 felon, also charge that said person is an habitual felon. The indictment charging the defendant
32 as an habitual felon shall be separate from the indictment charging him with the principal
33 felony. An indictment which charges a person with being an habitual felon must set forth the
34 date that prior felony offenses were committed, the name of the state or other sovereign against
35 whom said felony offenses were committed, the dates that pleas of guilty were entered to or
36 convictions returned in said felony offenses, and the identity of the court wherein said pleas or
37 convictions took place. No defendant charged with being an habitual felon in a bill of
38 indictment shall be required to go to trial on said charge within 20 days of the finding of a true
39 bill by the grand jury; provided, the defendant may waive this 20-day period.

40 **Sec. 4.** Evidence of Prior Convictions of Felony Offenses. In all cases where a
41 person is charged under the provisions of this Act with being an habitual felon, the record or
42 records of prior convictions of felony offenses shall be admissible in evidence, but only for the
43 purpose of proving that said person has been convicted of former felony offenses. A judgment

1 of a conviction or plea of guilty to a felony offense certified to a Superior Court of this State
2 from the custodian of records of any state or Federal court under the same name as that by
3 which the defendant is charged with habitual felon shall be prima facie evidence that the
4 identity of such person is the same as the defendant so charged and shall be prima facie
5 evidence of the facts so certified.

6 **Sec. 5. Verdict and Judgment.** When an indictment charges an habitual felon with a
7 felony as above provided and an indictment also charges that said person is an habitual felon as
8 provided herein, the defendant shall be tried for the principal felony as provided by law. The
9 indictment that the person is an habitual felon shall not be revealed to the jury unless the jury
10 shall find that the defendant is guilty of the principal felony or other felony with which he is
11 charged. If the jury finds the defendant guilty of a felony, the bill of indictment charging the
12 defendant as an habitual felon may be presented to the same jury. Except that the same jury
13 may be used, the proceedings shall be as if the issue of habitual felon were a principal charge.
14 If the jury finds that the defendant is an habitual felon, the trial judge shall enter judgment
15 according to the provisions of this Article. If the jury finds that the defendant is not an habitual
16 felon, the trial judge shall pronounce judgment on the principal felony or felonies as provided
17 by law.

18 **Sec. 6. Sentencing of Habitual Felons.** When an habitual felon as defined in this
19 Chapter shall commit any felony under the laws of the State of North Carolina, he must, upon
20 conviction or plea of guilty under indictment in form as herein provided (except where the
21 death penalty is imposed) be sentenced as an habitual felon; and his punishment must be fixed
22 at a term of not less than 20 years in the State Prison nor more than life imprisonment; and such
23 offender shall not be eligible for parole until he has actually served seventy-five per cent (75%)
24 of the prison sentence so imposed. Said sentence imposed under the terms of this Act shall not
25 be reduced for good behavior, for other cause, or by any means below seventy-five per cent
26 (75%) of the prison sentence so imposed, nor shall the same be suspended. For the purposes of
27 determining the eligibility for parole for a person sentenced to life imprisonment under the
28 provisions of this Act, the life sentence shall be considered as a sentence of 40 years. Nothing
29 in this Chapter shall be construed or considered as seeking or tending to impair the pardoning
30 powers of the Governor of the State of North Carolina.

31 **Sec. 7.** All laws and clauses of laws in conflict with this Act are hereby repealed.

32 **Sec. 8.** This Act shall be in full force and effect from and after the date of its
33 ratification.

34 In the General Assembly read three times and ratified, this the 6th day of July, 1967.