

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 220

Short Title: Two Strikes You're Out.

(Public)

Sponsors: Representatives Creech; Alphin, Arnold, Berry, Bowen, Bowman, Daughtry, Decker, Edwards, James, Joye, Justus, Nichols, J. Preston, Russell, Sexton, Smith, and Thompson.

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT UPON A SECOND CONVICTION OF CERTAIN SERIOUS FELONIES AN OFFENDER IS A SERIOUS 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; SERIOUS 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 felonies before July 6, 1967, are not felonies for the purposes of this
18 Article. A felony offense to which a pardon has been extended is not a
19 felony for the purposes of this Article. The burden of proving the
20 pardon shall rest with the defendant; the State is not required to
21 disprove a pardon.
- 22 (2) Habitual felon. – An offender who (i) is convicted in this State of a
23 felony and (ii) was convicted on at least three separate occasions,
24 whether in this State or elsewhere, prior to that conviction, of offenses
25 that under the laws of this State would be considered felonies, no more
26 than one of which was for an offense that under the law of this State
27 would be considered a Class H, I, or J felony.
- 28 (3) Serious felony. – For purposes of this Article, any of the following
29 felonies or a felony attempt to commit any of the following felonies:
- 30 a. Any Class A or Class B felony.
- 31 b. Any of the following common law offenses:
- 32 1. Robbery.
- 33 2. First degree arson.
- 34 3. First degree burglary.
- 35 c. Any felony in which a special finding was made that the
36 defendant was armed with a deadly weapon at the time of the
37 commission of the crime.
- 38 d. Any of the following felonies:
- 39 1. G.S. 14-18. Manslaughter.
- 40 2. G.S. 14-27.3. Second degree rape.
- 41 3. G.S. 14-27.5. Second degree sexual offense.
- 42 4. G.S. 14-32. Felonious assault with a deadly weapon
43 with intent to kill or inflict serious injury.
- 44 5. G.S. 14-32.1. Assault on handicapped persons.

1 punished as a serious habitual felon, except in those cases where the death penalty is
2 imposed.

3 **"§ 14-7.3. Charge of habitual or serious habitual felon.**

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

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

31 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

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

41 (b) In all cases in which a person is charged with being a serious habitual felon,
42 the records of prior convictions of serious felony offenses shall be admissible in
43 evidence, but only for the purpose of proving that the person has been convicted of
44 former serious felony offenses. A prior conviction may be proved by stipulation of the

1 parties or by the original or a certified copy of the court record of the prior conviction.
2 The original or certified copy of the court record, bearing the same name as that by
3 which the defendant is charged, shall be **prima facie** evidence that the defendant named
4 therein is the same as the defendant before the court, and shall be **prima facie** evidence
5 of the facts set out therein.

6 "**§ 14-7.5. Verdict and judgment.**

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

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

32 "**§ 14-7.6. (Effective January 1, 1995) Sentencing of habitual and serious habitual**
33 **felons.**

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

43 (b) When a serious habitual felon commits any serious felony as defined by G.S.
44 14-7.1 under the laws of the State of North Carolina, the defendant shall, upon

1 conviction or plea of guilty under indictment, be sentenced to life imprisonment without
2 parole.

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

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

8 **"§ 15A-1370.1. (Effective January 1, 1995) Applicability of Article 85.**

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

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

16 **"§ 15A-1340.10. (Effective January 1, 1995) Applicability of structured sentencing.**

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

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