

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1360

Short Title: Amend Habitual Offender Law. (Public)

Sponsors: Representatives Haire; Bordsen, Harrison, Lucas, Mackey, and Parmon.

Referred to: Judiciary III, if favorable, Ways and Means/Broadband Connectivity.

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HABITUAL FELON LAW BY REDEFINING AN HABITUAL FELON AS A PERSON WHO HAS BEEN CONVICTED OF THREE PRIOR FELONY OFFENSES THAT WERE CLASS G FELONIES OR HIGHER AND BY CHANGING THE SENTENCE IMPOSED ON A PERSON CONVICTED AS AN HABITUAL FELON TO BE ONE FELONY CLASS HIGHER THAN THE UNDERLYING FELONY FOR WHICH THE PERSON IS CONVICTED, AND TO DIRECT THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO STUDY THE FEASIBILITY OF REDUCING THE SENTENCE FOR CERTAIN HABITUAL FELONS WHO ARE CURRENTLY IN PRISON AND TO STUDY OTHER POSSIBLE MODIFICATIONS TO THE HABITUAL FELON LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.1 reads as rewritten:

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

Any person who has been convicted of or pled guilty to three felony offenses that were Class G felonies or higher or the equivalent thereof 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~~ Class G felony or higher 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 pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon."

SECTION 2. G.S. 14-7.2 reads as rewritten:

"§ 14-7.2. **Punishment.**

When any person is charged by indictment with the commission of a felony that is a Class G felony or higher under the laws of the State of North Carolina and is also charged with being an habitual felon as defined in G.S. 14-7.1, he must, upon conviction, be sentenced and



1 punished as an habitual felon, as in this Chapter provided, except in those cases where the death
2 penalty or a life sentence is imposed."

3 **SECTION 3.** G.S. 14-7.3 reads as rewritten:

4 **"§ 14-7.3. Charge of habitual felon.**

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

17 **SECTION 4.** G.S. 14-7.4 reads as rewritten:

18 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

19 In all cases where a person is charged under the provisions of this Article with being an
20 habitual felon, the record or records of prior convictions of felony offenses shall be admissible
21 in evidence, but only for the purpose of proving that said person has been convicted of former
22 ~~felony offenses.~~offenses and that those offenses were at least Class G felonies or higher. A
23 prior conviction may be proved by stipulation of the parties or by the original or a certified
24 copy of the court record of the prior conviction. The original or certified copy of the court
25 record, bearing the same name as that by which the defendant is charged, shall be prima facie
26 evidence that the defendant named therein is the same as the defendant before the court, and
27 shall be prima facie evidence of the facts set out therein."

28 **SECTION 5.** G.S. 14-7.5 reads as rewritten:

29 **"§ 14-7.5. Verdict and judgment.**

30 When an indictment charges an habitual felon with a ~~felony~~Class G felony or higher as
31 above provided and an indictment also charges that said person is an habitual felon as provided
32 herein, the defendant shall be tried for the principal felony as provided by law. The indictment
33 that the person is an habitual felon shall not be revealed to the jury unless the jury shall find
34 that the defendant is guilty of the principal felony or other felony with which he is charged. If
35 the jury finds the defendant guilty of a ~~felony,~~felony that is a Class G felony or higher, the bill
36 of indictment charging the defendant as an habitual felon may be presented to the same jury.
37 Except that the same jury may be used, the proceedings shall be as if the issue of habitual felon
38 were a principal charge. If the jury finds that the defendant is an habitual felon, the trial judge
39 shall enter judgment according to the provisions of this Article. If the jury finds that the
40 defendant is not an habitual felon, the trial judge shall pronounce judgment on the principal
41 felony or felonies as provided by law."

42 **SECTION 6.** G.S. 14-7.6 reads as rewritten:

43 **"§ 14-7.6. Sentencing of habitual felons.**

44 When an habitual felon as defined in this Article commits any felony that is a Class G
45 felony or higher under the laws of the State of North Carolina, the felon must, upon conviction
46 or plea of guilty under indictment as provided in this Article (except where the felon has been
47 sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~one felony class
48 higher than the underlying felony for which the person was convicted. In determining the prior
49 record level, convictions used to establish a person's status as an habitual felon shall not be
50 used. Sentences imposed under this Article shall run consecutively with and shall commence at
51 the expiration of any sentence being served by the person sentenced under this section."

1 **SECTION 7.** The Post-Release Supervision and Parole Commission shall evaluate
2 the current prison population and identify the prisoners who are habitual offenders but whose
3 felony offenses consist solely of Class I and Class H felonies. The Commission shall study the
4 feasibility of reducing the sentence for each prisoner in that particular habitual offender
5 category as follows: (i) reduce the prisoner's sentence to equal the active time required by the
6 sentencing grid under G.S. 15A-1340.17 for the highest level of the highest underlying felony
7 in the indictment that charged the prisoner as an habitual felon, and (ii) also give credit to the
8 prisoner for time served. In its study the Commission shall also consider the feasibility of
9 amending the current habitual felon law to provide that Class G and Class F felony convictions
10 on a defendant's record that are at least 10 years old from the date the defendant's citizenship
11 rights have been restored shall not be considered. The Commission may also consider any
12 other issues relevant to its studies under this section.

13 **SECTION 8.** This act becomes effective December 1, 2009.