

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 674

Short Title: Amend Habitual Felon Law. (Public)

Sponsors: Representative Haire (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B.

April 7, 2011

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE HABITUAL FELON LAW BY REDEFINING AN HABITUAL
2 FELON AS A PERSON WHO HAS BEEN CONVICTED OF THREE PRIOR FELONY
3 OFFENSES THAT WERE CLASS G FELONIES OR HIGHER AND THAT WERE
4 COMMITTED WITHIN FIFTEEN YEARS OF THE COMMISSION OF THE
5 PRINCIPAL FELONY WITH WHICH THE PERSON IS CHARGED BY CHANGING
6 THE SENTENCE IMPOSED ON A PERSON CONVICTED AS AN HABITUAL FELON
7 TO BE ONE FELONY CLASS HIGHER THAN THE PRINCIPAL FELONY FOR
8 WHICH THE PERSON IS CONVICTED, TO PROVIDE THAT AN ENHANCED
9 SENTENCE MAY BE IMPOSED ON A DEFENDANT CONVICTED OF A CLASS H
10 OR I FELONY WHO HAS AT LEAST THREE PRIOR CONVICTIONS OF A CLASS H
11 OR I FELONY WITHIN TEN YEARS OF THE DATE OF THE COMMISSION OF THE
12 PRINCIPAL FELONY WITH WHICH THE PERSON IS CHARGED, AND TO DIRECT
13 THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO
14 DETERMINE WHETHER THE SENTENCE BEING SERVED BY CERTAIN INMATES
15 IS LONGER THAN WOULD HAVE BEEN IMPOSED UNDER STRUCTURED
16 SENTENCING FOR THE SAME CRIME AND IF SO, THEN TO REINITIATE THE
17 PAROLE REVIEW PROCESS FOR THOSE PARTICULAR INMATES.

18 The General Assembly of North Carolina enacts:

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

20 **"§ 14-7.1. Persons defined as habitual felons.**

21 Any person who has been convicted of or pled guilty to three felony offenses that were
22 committed within a 15-year period of time from the date of the commission of the principal
23 felony with which the person is charged and that were Class G felonies or higher or the
24 equivalent thereof in any federal court or state court in the United States or combination thereof
25 is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as
26 an offense which is a ~~felony~~ Class G felony or higher under the laws of the State or other
27 sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the
28 sentence actually imposed. Provided, however, that federal offenses relating to the
29 manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be
30 considered felonies for the purposes of this Article. For the purposes of this Article, felonies
31 committed before a person attains the age of 18 years shall not constitute more than one felony.
32 The commission of a second felony shall not fall within the purview of this Article unless it is
33 committed after the conviction of or plea of guilty to the first felony. The commission of a third
34 felony shall not fall within the purview of this Article unless it is committed after the
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1 conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony
2 offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article.
3 Any felony offense to which a pardon has been extended shall not for the purpose of this
4 Article constitute a felony. The burden of proving such pardon shall rest with the defendant and
5 the State shall not be required to disprove a pardon."

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

7 **"§ 14-7.2. Punishment.**

8 When any person is charged by indictment with the commission of a felony that is a Class
9 G felony or higher under the laws of the State of North Carolina and is also charged with being
10 an habitual felon as defined in G.S. 14-7.1, he must, upon conviction, be sentenced and
11 punished as an habitual felon, as in this Chapter provided, except in those cases where the death
12 penalty or a life sentence is imposed."

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

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

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

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

28 **"§ 14-7.4. Evidence of prior convictions of felony offenses.**

29 In all cases where a person is charged under the provisions of this Article with being an
30 habitual felon, the record or records of prior convictions of felony offenses shall be admissible
31 in evidence, but only for the purpose of proving that said person has been convicted of former
32 felony offenses—offenses, that those offenses were at least Class G felonies or higher, and that
33 those offenses were committed within a 15-year period of time from the date of the commission
34 of the principal felony. A prior conviction may be proved by stipulation of the parties or by the
35 original or a certified copy of the court record of the prior conviction. The original or certified
36 copy of the court record, bearing the same name as that by which the defendant is charged,
37 shall be prima facie evidence that the defendant named therein is the same as the defendant
38 before the court, and shall be prima facie evidence of the facts set out therein."

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

40 **"§ 14-7.5. Verdict and judgment.**

41 When an indictment charges an habitual felon with a ~~felony~~ Class G felony or higher as
42 above provided and an indictment also charges that said person is an habitual felon as provided
43 herein, the defendant shall be tried for the principal felony as provided by law. The indictment
44 that the person is an habitual felon shall not be revealed to the jury unless the jury shall find
45 that the defendant is guilty of the principal felony or other felony with which he is charged. If
46 the jury finds the defendant guilty of a ~~felony~~, felony that is a Class G felony or higher, the bill
47 of indictment charging the defendant as an habitual felon may be presented to the same jury.
48 Except that the same jury may be used, the proceedings shall be as if the issue of habitual felon
49 were a principal charge. If the jury finds that the defendant is an habitual felon, the trial judge
50 shall enter judgment according to the provisions of this Article. If the jury finds that the

1 defendant is not an habitual felon, the trial judge shall pronounce judgment on the principal
2 felony or felonies as provided by law."

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

4 **"§ 14-7.6. Sentencing of habitual felons.**

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

13 **SECTION 7.** Article 81B of Chapter 15A of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 15A-1340.16E. Enhanced sentence if defendant has at least three prior convictions of**
16 **Class H or I felonies.**

17 (a) Notwithstanding G.S. 15A-1340.17, if a person is convicted of a Class H or Class I
18 felony, and it is found as provided by this section that the person has three or more prior
19 convictions for a Class H or Class I felony in this State, for any offense substantially similar to
20 a Class H or Class I felony committed in another jurisdiction, or any combination thereof, and
21 that those offenses occurred within 10 years from the date of the commission of the principal
22 felony with which the person is charged, then the person shall be sentenced to a minimum term
23 of 20 months of active punishment and a maximum term of 25 months. Upon completion of the
24 active sentence, the person shall be released from prison for post-release supervision.
25 Notwithstanding G.S. 15A-1368.2, the period of post-release supervision shall be 12 months;
26 otherwise, the provisions of Article 84A of Chapter 15A of the General Statutes shall apply as
27 appropriate.

28 (b) An indictment or information for the Class H or Class I felony shall allege in that
29 indictment or information or in a separate indictment or information the facts set out in
30 subsection (a) of this section. The pleading is sufficient if it alleges that the defendant has three
31 or more prior felony convictions of a Class H or Class I felony or substantially similar offenses
32 committed in another jurisdiction that occurred within a 10-year period of time from the date of
33 the commission of the principal felony with which the person is charged.

34 (c) The State shall prove the issues set out in subsection (a) of this section beyond a
35 reasonable doubt during the same trial in which the defendant is tried for the felony unless the
36 defendant pleads guilty or no contest to the issues. The issues shall be presented in the same
37 manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the
38 felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury
39 shall be impaneled to determine the issues."

40 **SECTION 8.(a)** The Post-Release Supervision and Parole Commission shall, with
41 the assistance of the North Carolina Sentencing and Policy Advisory Commission and the
42 Department of Correction, analyze the amount of time each inmate who is eligible for parole on
43 or before July 1, 2012, has served compared to the time served by offenders under Structured
44 Sentencing for comparable crimes. The Commission shall determine if the person has served
45 more time in custody than the person would have served if sentenced to the maximum sentence
46 under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum
47 sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of
48 this section. The Commission shall then reinitiate the parole review process for each offender
49 who has served more time than that person would have under Structured Sentencing as
50 provided by this section and may parole any offender as the Commission deems appropriate
51 pursuant to the provisions of Article 85 of Chapter 15A of the General Statutes.

1 **SECTION 8.(b)** For the purposes of this section, the following rules apply for the
2 calculation of the maximum sentence:

3 (1) The offense upon which the person was convicted shall be classified as the
4 same felony class as the offense would have been classified if committed
5 after the effective date of Article 81B of Chapter 15A of the General
6 Statutes.

7 (2) The minimum sentence shall be the maximum number of months in the
8 presumptive range of minimum durations in Prior Record Level VI of
9 G.S. 15A-1340.17(c) for the felony class determined under subdivision (1)
10 of this subsection. The maximum sentence shall be calculated using
11 G.S. 15A-1340.17(d), (e), or (e1).

12 (3) If a person is serving sentences for two or more offenses that are concurrent
13 in any respect, then the offense with the greater classification shall be used
14 to determine a single maximum sentence for the concurrent offenses. The
15 fact that the person has been convicted of multiple offenses may be
16 considered by the Commission in making its determinations under
17 subsection (a) of this section.

18 **SECTION 9.** This act becomes effective December 1, 2011. G.S. 15A-1340.16E,
19 as enacted by Section 7 of this act, applies to offenses that are committed on or after that date
20 that are the principal felony for the enhanced sentence that may be imposed pursuant to
21 G.S. 15A-1340.16E.