

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 222  
Committee Substitute Favorable 4/23/97

Short Title: Habit. Felon Determination.

(Public)

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Sponsors:

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Referred to:

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February 17, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND  
3 VIOLENT HABITUAL FELONS, TO PROVIDE THAT THE ISSUE OF  
4 WHETHER A DEFENDANT IS AN HABITUAL FELON OR A VIOLENT  
5 HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE, AND  
6 TO MAKE OTHER CHANGES.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 14-7.1 is recodified as G.S. 15A-1340.13A; the remainder of  
9 Article 2A of Chapter 14 of the General Statutes is repealed.

10 Section 2. G.S. 14-7.1, as recodified by Section 1 of this act, reads as  
11 rewritten:

12 "**§ 15A-1340.13A. ~~Persons defined as habitual~~ Habitual felons.**

13 ~~Any person who has been convicted of or pled guilty to three felony offenses in any~~  
14 ~~federal court or state court in the United States or combination thereof is declared to be~~  
15 ~~an habitual felon. For the purpose of this Article, a felony offense is defined as an offense~~  
16 ~~which is a felony under the laws of the State or other sovereign wherein a plea of guilty~~  
17 ~~was entered or a conviction was returned regardless of the sentence actually imposed.~~  
18 ~~Provided, however, that federal offenses relating to the manufacture, possession, sale and~~  
19 ~~kindred offenses involving intoxicating liquors shall not be considered felonies for the~~

1 purposes of this Article. For the purposes of this Article, felonies committed before a  
2 person attains the age of 18 years shall not constitute more than one felony. The  
3 commission of a second felony shall not fall within the purview of this Article unless it is  
4 committed after the conviction of or plea of guilty to the first felony. The commission of  
5 a third felony shall not fall within the purview of this Article unless it is committed after  
6 the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions  
7 of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning  
8 of this Article. Any felony offense to which a pardon has been extended shall not for the  
9 purpose of this Article constitute a felony. The burden of proving such pardon shall rest  
10 with the defendant and the State shall not be required to disprove a pardon.

11 (a) Definitions. – The following definitions shall apply in this section when  
12 determining a person's status as an habitual felon:

13 (1) Felony. – An offense that is a felony under the laws of the State or other  
14 sovereign wherein a plea of guilty was entered or a conviction was  
15 returned regardless of the sentence actually imposed. The term does not  
16 include, however, federal offenses relating to the manufacture,  
17 possession, sale of, and kindred offenses involving intoxicating liquors.  
18 For the purposes of this section, felonies committed before a person  
19 attains the age of 18 years shall not constitute more than one felony. The  
20 commission of a second felony shall not fall within the purview of this  
21 section unless it is committed after the conviction of or plea of guilty to  
22 the first felony. The commission of a third felony shall not fall within  
23 the purview of this section unless it is committed after the conviction of  
24 or plea of guilty to the second felony. Pleas of guilty to or convictions  
25 of felonies before July 6, 1967, are not felonies for the purposes of this  
26 section. A felony offense to which a pardon has been extended is not a  
27 felony for the purposes of this section. The burden of proving the  
28 pardon shall rest with the defendant; the State is not required to disprove  
29 a pardon.

30 (2) Habitual felon. – A person who has been convicted of or pled guilty to  
31 three or more felony offenses in any federal court or state court in the  
32 United States or combination thereof prior to committing the current  
33 offense.

34 (b) Sentencing of Habitual Felons. – When a person is convicted of or pleads  
35 guilty to any felony under the laws of this State, the district attorney may, upon  
36 sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination  
37 of the person's status as an habitual felon. If the trial judge determines, upon submission  
38 by the district attorney of the defendant's status as an habitual felon that the felony was  
39 committed by an habitual felon, the trial judge shall sentence the person as a Class C  
40 felon, except where the felon has been sentenced as a Class A, B1, or B2 felon. In  
41 determining the prior record level of the person sentenced as an habitual felon, the  
42 convictions used to establish the person's status as an habitual felon shall not be used. A  
43 sentence imposed on an habitual felon pursuant to this section shall run consecutively

1 with and shall commence at the expiration of any sentence being served by the person  
2 sentenced under this section.

3 (c) Disclosure of Habitual Felon Status. – If the district attorney fails to serve  
4 written notice upon the defendant no later than 20 working days before trial of the  
5 defendant's status as an habitual felon and the district attorney's intention to submit to the  
6 trial judge the defendant's status as an habitual felon, the defendant may not be sentenced  
7 as an habitual felon under this section.

8 (d) Evidence of Prior Convictions. – In sentencing a person under this section, the  
9 record or records of prior convictions of felony offenses may be used by the court to  
10 determine if the person has been convicted of former felony offenses. A prior conviction  
11 may be shown by stipulation of the parties or by the original or a certified copy of the  
12 court record of the prior conviction. The original or certified copy of the court record,  
13 bearing the same name as that by which the defendant is charged, shall be sufficient to  
14 show that the defendant named therein is the same as the defendant before the court and  
15 to show the facts set out in the record, and the burden of any showing to the contrary  
16 shall be upon the defendant."

17 Section 3. G.S. 14-7.7 is recodified as G.S. 15A-1340.13B; the remainder of  
18 Article 2B of Chapter 14 of the General Statutes is repealed.

19 Section 4. G.S. 14-7.7, as recodified by Section 3 of this act, reads as rewritten:  
20 "**§ 15A-1340.13B. Persons defined as violent Violent habitual felons.**

21 (a) ~~Any person who has been convicted of two violent felonies in any federal~~  
22 ~~court, in a court of this or any other state of the United States, or in a combination of~~  
23 ~~these courts is declared to be a violent habitual felon. For purposes of this Article,~~  
24 ~~"convicted" means the person has been adjudged guilty of or has entered a plea of guilty~~  
25 ~~or no contest to the violent felony charge, and judgment has been entered thereon when~~  
26 ~~such action occurred on or after July 6, 1967. This Article does not apply to a second~~  
27 ~~violent felony unless it is committed after the conviction or plea of guilty or no contest to~~  
28 ~~the first violent felony. Any felony to which a pardon has been extended shall not, for~~  
29 ~~the purposes of this Article, constitute a felony. The burden of proving a pardon shall~~  
30 ~~rest with the defendant, and this State shall not be required to disprove a pardon.~~  
31 ~~Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent~~  
32 ~~felony.~~

33 (b) ~~For purposes of this Article, "violent felony" includes the following offenses:~~

34 (1) ~~All Class A through E felonies.~~

35 (2) ~~Any repealed or superseded offense substantially equivalent to the~~  
36 ~~offenses listed in subdivision (1).~~

37 (3) ~~Any offense committed in another jurisdiction substantially equivalent~~  
38 ~~to the offenses set forth in subdivision (1) or (2).~~

39 (a) Definitions. – The following definitions shall apply in this section when  
40 determining a person's status as a violent habitual felon:

41 (1) Violent felony. – An offense that is one of the following:

42 a. All Class A through E felonies.

1           b. Any repealed or superseded offense substantially equivalent to  
2           the offenses listed in sub-subdivision a.

3           c. Any offense committed in another jurisdiction substantially  
4           equivalent to the offenses set forth in sub-subdivisions a. or b.

5           A person is convicted of a violent felony if he or she has been adjudged  
6           guilty of or has entered a plea of guilty to a violent felony charge, and a  
7           judgment has been entered on or after July 6, 1967. This section does  
8           not apply to a second violent felony unless it is committed after the  
9           conviction or plea of guilty or no contest to the first violent felony. Any  
10           felony to which a pardon has been extended shall not, for the purposes  
11           of this section, constitute a violent felony. The burden of proving a  
12           pardon shall rest with the defendant, and the State shall not be required  
13           to disprove a pardon. Conviction and punishment as an habitual felon  
14           shall not, for the purposes of this section, constitute a violent felony.

15           (2) Violent habitual felon. – Any person who has been convicted of two  
16           violent felonies in any federal court, in a court of this or any other state  
17           of the United States, or in a combination of these courts.

18           (b) Sentencing of Violent Habitual Felons. – When a person is convicted of or  
19           pleads guilty to any violent felony under the laws of this State, the district attorney may,  
20           upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the  
21           determination of the person's status as a violent habitual felon. If the trial judge  
22           determines, upon the submission by the district attorney of the person's status as a violent  
23           habitual felon that the violent felony was committed by a violent habitual felon, the trial  
24           judge shall sentence the person to life imprisonment without parole, except where the  
25           death penalty is imposed. Life imprisonment without parole means that the person will  
26           spend the remainder of the person's natural life in prison. The sentencing judge may not  
27           suspend the sentence and may not place the person sentenced on probation. Sentences  
28           for violent habitual felons imposed under this Article shall run consecutively with and  
29           shall commence at the expiration of any other sentence being served by the person.

30           (c) Disclosure of Violent Habitual Felon Status. – If the district attorney fails to  
31           serve written notice upon the defendant no later than 20 working days before trial of the  
32           defendant's status as a violent habitual felon and the district attorney's intention to submit  
33           to the trial judge the defendant's status as a violent habitual felon, the defendant may not  
34           be sentenced as a violent habitual felon under this section.

35           (d) Evidence of Prior Convictions. – In sentencing a person under this section, the  
36           records of prior convictions of violent felonies may be used by the court to determine if  
37           the person has been convicted of former violent felonies. A prior conviction may be  
38           shown by stipulation of the parties or by the original or a certified copy of the court  
39           record of the prior conviction. The original or certified copy of the court record, bearing  
40           the same name as that by which the defendant is charged, shall be prima facie evidence  
41           that the defendant named therein is the same as the defendant before the court, and shall  
42           be prima facie evidence of the facts set out therein, and the burden of any showing to the  
43           contrary shall be upon the defendant."

1           Section 5. This act becomes effective December 1, 1997, and applies to  
2 offenses committed on or after that date.