

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1360  
PROPOSED COMMITTEE SUBSTITUTE H1360-PCS50702-SU-43

Short Title: Amend Habitual Offender Law.

(Public)

Sponsors:

Referred to:

April 9, 2009

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 BY CHANGING  
4 THE SENTENCE IMPOSED ON A PERSON CONVICTED AS AN HABITUAL FELON  
5 TO BE ONE FELONY CLASS HIGHER THAN THE UNDERLYING FELONY FOR  
6 WHICH THE PERSON IS CONVICTED, AND TO DIRECT THE POST-RELEASE  
7 SUPERVISION AND PAROLE COMMISSION TO STUDY THE FEASIBILITY OF  
8 REDUCING THE SENTENCE FOR CERTAIN HABITUAL FELONS WHO ARE  
9 CURRENTLY IN PRISON AND TO STUDY OTHER POSSIBLE MODIFICATIONS TO  
10 THE HABITUAL FELON LAW.  
11

12 The General Assembly of North Carolina enacts:

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

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

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

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

33 "§ 14-7.2. **Punishment.**



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

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

7 "**§ 14-7.3. Charge of habitual felon.**

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

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

21 "**§ 14-7.4. Evidence of prior convictions of felony offenses.**

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

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

32 "**§ 14-7.5. Verdict and judgment.**

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

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

46 "**§ 14-7.6. Sentencing of habitual felons.**

47 When an habitual felon as defined in this Article commits any felony that is a Class G  
48 felony or higher under the laws of the State of North Carolina, the felon must, upon conviction  
49 or plea of guilty under indictment as provided in this Article (except where the felon has been  
50 sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~ one felony class  
51 higher than the underlying felony for which the person was convicted. Notwithstanding

1 G.S. 15A-1340.17, intermediate punishment is not authorized for a person sentenced as a  
2 habitual felon under this Article. In determining the prior record level, convictions used to  
3 establish a person's status as an habitual felon shall not be used. Sentences imposed under this  
4 Article shall run consecutively with and shall commence at the expiration of any sentence being  
5 served by the person sentenced under this section."

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

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