



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 642

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H642-ALH-71 [v.3]

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Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date 6/2, 2011

Representative Haire

FAILED

1 Moves to amend the bill on page 8, line 8,
2 By rewriting that line to read:
3 " PART III. STATUS OFFENSES OF HABITUAL BREAKING AND ENTERING AND
4 HABITUAL FELON "; and
5

6 Further moves to amend the bill on page 9, line 48 through page 10, line 47,
7 By rewriting those lines to read:

8 "SECTION 3.(b) G.S. 14-7.1 reads as rewritten:
9 '§ 14-7.1. Persons defined as habitual felons.

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

29 SECTION 3.(c) G.S. 14-7.2 reads as rewritten:
30 '§ 14-7.2. Punishment.

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



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

17 **SECTION 3.(e)** 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, that those offenses were at least Class G felonies or higher, and that
23 those offenses were committed within a 15-year period of time from the date of the commission
24 of the principal felony. A prior conviction may be proved by stipulation of the parties or by the
25 original or a certified copy of the court record of the prior conviction. The original or certified
26 copy of the court record, bearing the same name as that by which the defendant is charged,
27 shall be prima facie evidence that the defendant named therein is the same as the defendant
28 before the court, and shall be prima facie evidence of the facts set out therein.'

29 **SECTION 3.(f)** G.S. 14-7.5 reads as rewritten:

30 **'§ 14-7.5. Verdict and judgment.**

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

43 **SECTION 3.(g)** G.S. 14-7.6 reads as rewritten:

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1 **'§ 14-7.6. Sentencing of habitual felons.**

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

10 **SECTION 3.(h)** Article 81B of Chapter 15A of the General Statutes is amended by
11 adding a new section to read:

12 **'§ 15A-1340.16E. Enhanced sentence if defendant has at least three prior convictions of**
13 **Class H or I felonies.**

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

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

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

37 **SECTION 3.(i)** This section becomes effective December 1, 2011, and applies to
38 any offense that occurs on or after that date and that is the principal felony offense for a charge
39 of either the status offenses of habitual breaking and entering or habitual felon.

40 G.S. 15A-1340.16E, as enacted by subsection (h) of this section, applies to
41 offenses that are committed on or after that date that are the principal felony for the enhanced
42 sentence that may be imposed pursuant to G.S. 15A-1340.16E.

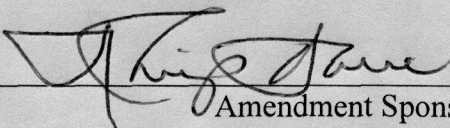
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1 Prosecutions for offenses committed before December 1, 2011, are not abated or
2 affected by this section, and the statutes that would be applicable but for this section remain
3 applicable to those prosecutions."
4

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED 36-79 *ev* *(adj)* Tabled _____

JUN 02 2011

Denise Walker

FAILED