

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 5*

Short Title: Three Strikes You're Out.

(Public)

Sponsors: Representatives G. Miller; Alphin, Arnold, Baddour, Barbee, Beall, Black, Bowie, Bowman, Brawley, Church, Cole, Crawford, Cromer, Culp, Cummings, Decker, Diamont, Dickson, Easterling, Esposito, Gardner, Gottovi, Griffin, Hall, Hayes, Hightower, Hill, Hunt, H. Hunter, R. Hunter, Ives, Jarrell, Jeffus, Jenkins, Joye, Kuczmariski, Lemmond, Mavretic, McAllister, McCrary, McLaughlin, McLawhorn, Mitchell, Moore, Mosley, Nichols, C. Preston, Ramsey, Redwine, Robinson, Russell, Sexton, Smith, Spears, Stewart, Sutton, Warner, Wilkins, Wilmoth, Wilson, Wood, and Yongue.

Referred to: Judiciary III.

February 8, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIFE WITHOUT PAROLE FOR A THIRD VIOLENT
FELONY CONVICTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 2B.

"VIOLENT HABITUAL FELONS.

"§ 14-7.7. Persons defined as violent habitual felons.

(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, 'convicted' means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not,

1 for the purposes of this Article, constitute a felony. The burden of proving a pardon
2 shall rest with the defendant, and this State shall not be required to disprove a pardon.

3 (b) For purposes of this Article, 'violent felony' includes the following offenses:

- 4 (1) a. Murder in the first and second degrees, G.S. 14-17.
5 b. Voluntary manslaughter, G.S. 14-18.
6 c. Killing an adversary in a duel, G.S. 14-30.
7 d. First degree rape, G.S. 14-27.2.
8 e. Second degree rape, G.S. 14-27.3.
9 f. First degree sexual offense, G.S. 14-27.4.
10 g. Second degree sexual offense, G.S. 14-27.5.
11 h. Intercourse and sexual offense by a parent or custodian, G.S.
12 14-27.7.
13 i. Malicious castration, G.S. 14-28.
14 j. Castration or maiming without malice aforethought, G.S. 14-29.
15 k. Malicious maiming, G.S. 14-30.
16 l. Malicious throwing of acid or alkali, G.S. 14-30.1.
17 m. Malicious assaulting in a secret manner, G.S. 14-31.
18 n. Any felony assault set forth in G.S. 14-32.
19 o. Felony assault on a handicapped person, G.S. 14-32.
20 p. Patient abuse and neglect, negligent or intentional, G.S. 14-
21 32.2.
22 q. Discharging firearm in occupied property, G.S. 14-34.1.
23 r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.
24 s. Kidnapping in the first or second degree, G.S. 14-39.
25 t. Malicious use of explosive or incendiary devices, G.S. 14-49.
26 u. Malicious damage of occupied property by the use of explosive,
27 G.S. 14-49.1.
28 v. Burglary in the first or second degree, G.S. 14-51.
29 w. Breaking out of a dwelling house, G.S. 14-53.
30 x. Burglary with explosives, G.S. 14-57.
31 y. Arson in the first or second degree, G.S. 14-58.
32 z. Burning of a mobile home, manufactured housing, or
33 recreational trailer, G.S. 14-58.2.
34 aa. Burning of public building, G.S. 14-59.
35 bb. Burning of a schoolhouse or building of an educational
36 institution, G.S. 14-60.
37 cc. Burning of bridges and buildings, G.S. 14-61.
38 dd. Burning of churches and other buildings, G.S. 14-62.
39 ee. Burning of building or structure in the process of construction,
40 G.S. 14-62.1.
41 ff. Common law robbery.
42 gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.
43 hh. Train robbery, G.S. 14-88.
44 ii. Contaminating a public water supply, G.S. 14-159.1.

- 1 jj. Felonious child abuse, G.S. 14-318.4.
2 kk. First degree sexual exploitation of a minor, G.S. 14-190.16.
3 ll. Distribution of adulterated food, G.S. 14-401.11.
4 mm. Manufacture, sale, or delivery or possess with intent to
5 manufacture , sell, or deliver a controlled substance within 300
6 feet of a school, G.S. 90-90.
7 nn. Selling and delivery of controlled substance by a person 18 or
8 over to a person under 16, G.S. 90-95.
9 oo. Discharge of oil or hazardous substance placing another in
10 danger of death or serious bodily injury, G.S. 143-225.88(b).
11 (2) Any repealed or superseded offense substantially equivalent to the
12 offenses listed in subdivision (1).
13 (3) Any offense committed in another jurisdiction substantially equivalent
14 to the offenses set forth in subdivision (1) or (2).
15 (4) Attempt to commit, conspiracy to commit, aiding and abetting,
16 soliciting to commit, accessory before the fact, and accessory after the
17 fact of any offense listed in subdivision (1), (2), or (3).

18 **"§ 14-7.8. Punishment.**

19 When a person is charged by indictment with the commission of a violent felony and
20 is also charged with being a violent habitual felon as defined in G.S. 14-7.7, the person
21 must, upon conviction, be sentenced in accordance with this Article, except in those
22 cases where the death penalty is imposed.

23 **"§ 14-7.9. Charge of violent habitual felon.**

24 An indictment that charges a person who is a violent habitual felon within the
25 meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to
26 sustain a conviction of violent habitual felon, also charge that the person is a violent
27 habitual felon. The indictment charging the defendant as a violent habitual felon shall
28 be separate from the indictment charging the defendant with the principal violent
29 felony. An indictment that charges a person with being a violent habitual felon must set
30 forth the date that prior violent felonies were committed, the name of the state or other
31 sovereign against whom the violent felonies were committed, the dates of convictions of
32 the violent felonies, and the identity of the court in which the convictions took place. A
33 defendant charged with being a violent habitual felon in a bill of indictment shall not be
34 required to go to trial on that charge within 20 days after the finding of a true bill by the
35 grand jury unless the defendant waives this 20-day period.

36 **"§ 14-7.10. Evidence of prior convictions of violent felonies.**

37 In all cases where a person is charged under this Article with being a violent habitual
38 felon, the records of prior convictions of violent felonies shall be admissible in
39 evidence, but only for the purpose of proving that the person has been convicted of
40 former violent felonies. A prior conviction may be proved by stipulation of the parties
41 or by the original or a certified copy of the court record of the prior conviction. The
42 original or certified copy of the court record, bearing the same name as that by which
43 the defendant is charged, shall be **prima facie** evidence that the defendant named

1 therein is the same as the defendant before the court, and shall be **prima facie** evidence
2 of the facts set out therein.

3 **"§ 14-7.11. Verdict and judgment.**

4 When an indictment charges a violent habitual felon with a violent felony as
5 provided in this Article and an indictment also charges that the person is a violent
6 habitual felon as provided in this Article, the defendant shall be tried for the principal
7 violent felony as provided by law. The indictment that the person is a violent habitual
8 felon shall not be revealed to the jury unless the jury finds that the defendant is guilty of
9 the principal violent felony or another violent felony with which the defendant is
10 charged. If the jury finds the defendant guilty of a violent felony, the bill of indictment
11 charging the defendant as a violent habitual felon may be presented to the same jury.
12 Except that the same jury may be used, the proceedings shall be as if the issue of violent
13 habitual felon were a principal charge. If the jury finds that the defendant is a violent
14 habitual felon, the trial judge shall enter judgment according to the provisions of this
15 Article. If the jury finds that the defendant is not a violent habitual felon, the trial judge
16 shall pronounce judgment on the principal violent felony or felonies as provided by law.

17 **"§ 14-7.12. Sentencing of violent habitual felons.**

18 A person who is convicted of a violent felony and of being a violent habitual felon
19 must, upon conviction (except where the death penalty is imposed), be sentenced to life
20 in the State's prison, without parole. Life without parole means that the person will
21 spend the remainder of the person's natural life in prison. The sentencing judge may not
22 suspend the sentence and may not place the person sentenced on probation. Sentences
23 for violent habitual felons imposed under this Article shall run consecutively with and
24 shall commence at the expiration of any other sentence being served by the person."

25 Sec. 2. Effective January 1, 1995, G.S. 14-7.7(b), as enacted by Section 1 of
26 this act, reads as rewritten:

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

- 28 (1) a. ~~Murder in the first and second degrees, G.S. 14-17.~~
29 b. ~~Voluntary manslaughter, G.S. 14-18.~~
30 c. ~~Killing an adversary in a duel, G.S. 14-30.~~
31 d. ~~First degree rape, G.S. 14-27.2.~~
32 e. ~~Second degree rape, G.S. 14-27.3.~~
33 f. ~~First degree sexual offense, G.S. 14-27.4.~~
34 g. ~~Second degree sexual offense, G.S. 14-27.5.~~
35 h. ~~Intercourse and sexual offense by a parent or custodian, G.S.~~
36 ~~14-27.7.~~
37 i. ~~Malicious castration, G.S. 14-28.~~
38 j. ~~Castration or maiming without malice aforethought, G.S. 14-29.~~
39 k. ~~Malicious maiming, G.S. 14-30.~~
40 l. ~~Malicious throwing of acid or alkali, G.S. 14-30.1.~~
41 m. ~~Malicious assaulting in a secret manner, G.S. 14-31.~~
42 n. ~~Any felony assault set forth in G.S. 14-32.~~
43 o. ~~Felony assault on a handicapped person, G.S. 14-32.~~

- 1 p. Patient abuse and neglect, negligent or intentional, G.S. 14-
2 32.2.
- 3 q. Discharging firearm in occupied property, G.S. 14-34.1.
- 4 r. Adulterated or misbranded foods or drugs, G.S. 14-34.4.
- 5 s. Kidnapping in the first or second degree, G.S. 14-39.
- 6 t. Malicious use of explosive or incendiary devices, G.S. 14-49.
- 7 u. Malicious damage of occupied property by the use of explosive,
8 G.S. 14-49.1.
- 9 v. Burglary in the first or second degree, G.S. 14-51.
- 10 w. Breaking out of a dwelling house, G.S. 14-53.
- 11 x. Burglary with explosives, G.S. 14-57.
- 12 y. Arson in the first or second degree, G.S. 14-58.
- 13 z. Burning of a mobile home, manufactured housing, or
14 recreational trailer, G.S. 14-58.2.
- 15 aa. Burning of public building, G.S. 14-59.
- 16 bb. Burning of a schoolhouse or building of an educational
17 institution, G.S. 14-60.
- 18 ee. Burning of bridges and buildings, G.S. 14-61.
- 19 dd. Burning of churches and other buildings, G.S. 14-62.
- 20 ee. Burning of building or structure in the process of construction,
21 G.S. 14-62.1.
- 22 ff. Common law robbery.
- 23 gg. Robbery with a firearm or dangerous weapon, G.S. 14-87.
- 24 hh. Train robbery, G.S. 14-88.
- 25 ii. Contaminating a public water supply, G.S. 14-159.1.
- 26 jj. Felonious child abuse, G.S. 14-318.4.
- 27 kk. First degree sexual exploitation of a minor, G.S. 14-190.16.
- 28 ll. Distribution of adulterated food G.S. 14-401.11.
- 29 mm. Manufacture, sale, or delivery or possess with intent to
30 manufacture, sale, or deliver a controlled substance within 300
31 feet of a school, G.S. 90-90.
- 32 nn. Selling and delivery of controlled substance by a person 18 or
33 over to a person under 16, G.S. 90-95.
- 34 oo. Discharge of oil or hazardous substance placing another in
35 danger of death or serious bodily injury, G.S. 143-225.88(b).
- 36 (2) Any repealed or superseded offense substantially equivalent to the
37 offenses listed in subdivision (1).
- 38 (3) Any offense committed in another jurisdiction substantially equivalent
39 to the offenses set forth in subdivision (1) or (2).
- 40 (4) Attempt to commit, conspiracy to commit, aiding and abetting,
41 soliciting to commit, accessory before the fact, and accessory after the
42 fact of any offense listed in subdivision (1), (2), or (3).
- 43 (b) For purposes of this Article, 'violent felony' includes the following
44 offenses:

- 1 (1) All Class A through E felonies.
- 2 (2) Any repealed or superseded offense substantially equivalent to the
- 3 offenses listed in subdivision (1).
- 4 (3) Any offense committed in another jurisdiction substantially equivalent
- 5 to the offenses set forth in subdivision (1) or (2).
- 6 (4) Attempt to commit, conspiracy to commit, aiding and abetting,
- 7 soliciting to commit, accessory before the fact, and accessory after the
- 8 fact of any offense listed in subdivision (1), (2), or (3)."

9 Sec. 3. G.S. 15A-1370.1 reads as rewritten:

10 **"§ 15A-1370.1. Applicability of Article 85.**

11 This Article ~~is applicable~~ applies to all sentenced prisoners, including Class A and

12 Class B felons, and Class C felons who receive a sentence of life imprisonment, who are

13 not subject to Article 85A of this ~~Chapter.~~ Chapter, but shall not apply to prisoners who

14 receive life imprisonment without parole. A person serving a sentence of life

15 imprisonment without parole shall not be eligible for parole at any time."

16 Sec. 4. G.S. 15A-1370.1, as amended by Section 21 of Chapter 538 of the

17 1993 Session Laws, reads as rewritten:

18 **"§ 15A-1370.1. (Effective January 1, 1995) Applicability of Article 85.**

19 This Article is applicable to all prisoners serving sentences of imprisonment for

20 convictions of impaired driving under G.S. 20-138.1 and prisoners serving sentences of

21 ~~life imprisonment.~~ imprisonment other than as violent habitual felons sentenced under

22 Article 2B of Chapter 14 of the General Statutes. A person serving a sentence of life

23 imprisonment without parole shall not be eligible for parole at any time."

24 Sec. 5. G.S. 15A-1340.10, as amended by Section 1 of Chapter 538 of the

25 1993 Session Laws, reads as rewritten:

26 **"§ 15A-1340.10. (Effective January 1, 1995) Applicability of structured sentencing.**

27 This Article applies to criminal offenses in North Carolina, other than impaired

28 driving under G.S. 20-138.1 that occur on or after January 1, 1995. This Article does

29 not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the

30 General Statutes."

31 Sec. 6. Section 1 of this act is effective upon ratification. Section 3 of this

32 act is effective upon ratification and expires January 1, 1995. The remainder of this act

33 becomes effective January 1, 1995. Prosecution for, or sentences based on, offenses

34 occurring before the effective date of this act are not abated or affected by the repeal or

35 amendment in this act of any statute, and the statutes that would be applicable to those

36 prosecutions or sentences but for the provisions of this act remain applicable to those

37 prosecutions or sentences.