

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1308

Short Title: Public Safety & Treatment Act.

(Public)

Sponsors: Representative Michaux.

Referred to: Judiciary II.

April 20, 2005

A BILL TO BE ENTITLED

1 AN ACT TO REDEFINE HABITUAL FELON, TO PUNISH CLASS G, H, AND I
2 HABITUAL FELONS THREE CLASSES HIGHER THAN THE PRINCIPAL
3 OFFENSE, TO GIVE JUDGES DISCRETION TO IMPOSE AN INTERMEDIATE
4 PUNISHMENT INCLUDING MANDATORY TREATMENT FOR
5 NONVIOLENT LOW-LEVEL OFFENDERS WHO ARE CHEMICALLY
6 ADDICTED OR MENTALLY ILL, AND TO GIVE JUDGES THAT SAME
7 DISCRETION TO RESENTENCE CERTAIN ELIGIBLE PRISONERS.
8

9 The General Assembly of North Carolina enacts:

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

11 "**§ 14-7.1. Persons defined as habitual felons.**

12 Any person who has been convicted of or pled guilty to three felony offenses in any
13 federal court or state court in the United States or combination thereof is declared to be
14 an habitual ~~felon~~-felon, if at least one of the three felonies used to obtain an habitual
15 felony indictment is a violent felony as defined in G.S. 14-7.7. For the purpose of this
16 Article, a felony offense is defined as an offense which is a felony under the laws of the
17 State or other sovereign wherein a plea of guilty was entered or a conviction was
18 returned regardless of the sentence actually imposed. Provided, however, that federal
19 offenses relating to the manufacture, possession, sale and kindred offenses involving
20 intoxicating liquors shall not be considered felonies for the purposes of this Article. For
21 the purposes of this Article, felonies committed before a person attains the age of 18
22 years shall not constitute more than one felony. The commission of a second felony
23 shall not fall within the purview of this Article unless it is committed after the
24 conviction of or plea of guilty to the first felony. The commission of a third felony shall
25 not fall within the purview of this Article unless it is committed after the conviction of
26 or plea of guilty to the second felony. Pleas of guilty to or convictions of felony
27 offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this
28 Article.

1 No Class G, H, or I felony shall be used to obtain an habitual felon indictment if
2 more than 10 years have elapsed between the date of the conviction for the prior felony
3 and the date of commission for the current principal offense. Time spent incarcerated
4 shall be excluded from the calculation of the 10-year period. No Class G, H, or I felony
5 shall be used to obtain an habitual felon sentence enhancement if the sentenced imposed
6 is an intermediate sanction under G.S. 14-7.6. Any felony offense to which a pardon
7 has been extended shall not for the purpose of this Article constitute a felony. The
8 burden of proving such pardon shall rest with the defendant and the State shall not be
9 required to disprove a pardon."

10 **SECTION 2.** G.S. 14-7.6 reads as rewritten:

11 **"§ 14-7.6. Sentencing of habitual felons.**

12 (a) When an habitual felon as defined in this Article commits any felony under
13 the laws of the State of ~~North Carolina,~~ North Carolina as defined in G.S. 14-7.1, the
14 felon must, upon conviction or plea of guilty under indictment as provided in this
15 Article (except where the felon has been sentenced as a Class A, B1, or B2 ~~felon~~-felon
16 or is eligible for intermediate punishment) be sentenced as a Class C felon.
17 Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, the felon shall be
18 sentenced to an active punishment. In determining the prior record level, convictions
19 used to establish a person's status as an habitual felon shall not be used. No points
20 associated with prior misdemeanor convictions shall be considered in calculating a
21 person's prior record level. Sentences imposed under this Article ~~shall run~~
22 ~~consecutively with and shall commence at the expiration of any sentence being served~~
23 ~~by the person sentenced under this section,~~ may be imposed consecutively to any
24 sentence being served by the person under this section.

25 If a person charged under this Article is convicted of a Class G, H, or I principal
26 offense and has no prior violent felonies, a judge shall order the Division of Community
27 Corrections in the Department of Correction to prepare a presentence investigative
28 report that includes a clinical assessment for chemical dependency or mental illness
29 before sentencing. The presentence report shall also include a comprehensive
30 sentencing plan, with mandatory treatment and the appropriate supervision level for
31 each individual diagnosed.

32 (b) Any person indicted as an habitual felon under this Article whose triggering
33 offense is a Class G, H, or I felony may have that indictment dismissed and be
34 sentenced to the minimum and maximum for the principal offense and, notwithstanding
35 the sentencing dispositions in G.S. 15A-1340.17, the defendant shall be sentenced to an
36 intermediate punishment that shall include, but not be limited to, substance abuse and
37 mental health treatment pursuant to G.S. 15A-1340.11(6), if:

- 38 (1) The defendant is clinically diagnosed to be mentally ill or chemically
39 dependent;
40 (2) The judge has obtained a comprehensive presentence investigative
41 report that includes an appropriate treatment and supervision plan; and
42 (3) The prosecutor does not prove to the sentencing judge by a
43 preponderance of the evidence that the defendant is not amenable to

1 treatment for substance abuse or mental illness and the defendant
2 would pose an unacceptable risk to public safety.

3 (c) A person serving an habitual felon sentence in the Department of Correction
4 who: (i) was convicted of a Class G, H, or I felony as the triggering offense, (ii) had no
5 prior violent felonies, (iii) was clinically diagnosed as chemically dependant or mentally
6 ill when admitted to prison, and (iv) has been incarcerated for a period of time longer
7 than the maximum sentence for the principal offense triggering the habitual felon
8 enhancement, may petition the superior court in the county of conviction to have his or
9 her habitual felon sentence modified to an intermediate punishment with a suspended
10 sentence that shall include a sentencing plan with mandatory treatment and an
11 appropriate level of supervision.

12 (d) Individuals whose sentences are suspended shall be placed under the
13 supervision of the Department of Community Corrections for the balance of their
14 suspended sentence."

15 **SECTION 3.** This act is effective when it becomes law.