

203.10 HABITUAL FELON.<sup>1</sup>

*NOTE WELL: See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment.*

The defendant has been charged with being a habitual felon. A habitual felon is an individual who has been convicted of or pled guilty to felony offenses on at least three separate occasions since July 6, 1967. The second and subsequent crimes must have been committed after the plea of guilty to or conviction of the one before it.<sup>2</sup>

For you to find the defendant guilty of being a habitual felon, the State must prove three things beyond a reasonable doubt:

*NOTE WELL: While the first element below refers to felonies, N.C. Gen. Stat. § 14-7.1 now applies not only to prior felonies under the laws of North Carolina, pursuant to subsection (b)(1), but also: pursuant to subsection (b)(2) of the statute, an offense that is a felony under the laws of another state or sovereign that is substantially similar to an offense that is a felony in North Carolina, and to which a plea of guilty was entered, or a conviction was returned regardless of the sentence actually imposed; pursuant to subsection (b)(3), an offense that is a crime under the laws of another state or sovereign that does not classify any crimes as felonies if all of the following apply: The offense is substantially similar to an offense that is a felony in North Carolina, the offense may be punishable by imprisonment for more than a year in state prison, a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed; and pursuant to subsection (b)(4), an offense that is a felony under federal law, provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purpose of this Article. The pattern jury committee believes it is for the trial judge to determine whether an offense UNDER THE LAWS OF ANOTHER STATE is substantially similar to an offense that is a felony in North Carolina.*

First, that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

Second, that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

And Third, that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime) that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

If you find from the evidence beyond a reasonable doubt that:

1. On (name date), the defendant in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States]; and
2. On (name date), the defendant in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States]; and
3. On (name date), the defendant in (name court) [was convicted of] [pled guilty to] the [felony] [crime] of (name felony or crime),

that was committed on (name date) in violation of the law of the  
[State of North Carolina] [State of (name other state)] [United  
States];

it would be your duty to return a verdict of guilty. If you do not so find  
or have a reasonable doubt as to one or more of these things, it would be  
your duty to return a verdict of not guilty.

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1 Under N.C. Gen. Stat. §14-7.5, the issue of whether a defendant is a habitual felon is submitted to the jury, or, in the alternative, a defendant may enter a guilty plea to the charge of being a habitual felon. Even when a defendant stipulates to the three prior convictions and as to his status as a habitual felon, such stipulation, in the absence of an inquiry by the trial court to establish a record of a formal guilty plea, is not tantamount to a guilty plea. *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001). The trial judge is strongly advised to use a transcript of plea if defendant pleads guilty or admits to being a habitual felon.

2 At least two of the three felonies must have been committed after the defendant's eighteenth birthday. Pleas of guilty to or convictions of felony offense, prior to July 6, 1967, shall not constitute felony offenses, nor shall any felony offense to which a pardon has been extended constitute a felony. Federal offenses involving intoxicating liquors are not felonies for purposes of this offense.

