

# NEWS RELEASE

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**Peter S. Gilchrist, III**  
District Attorney

**July 10, 2009**

**DA's response to recent newspaper article and editorial about habitual felons**

The following letter was sent to *The Charlotte Observer* by District Attorney Peter Gilchrist in response to one article and one editorial, both re-printed in *The Charlotte Observer*.

The newspaper article to which the DA responds was published on 6/7/09 in *The Charlotte Observer* and written by Joseph Neff of the *Raleigh News & Observer* with the this title and byline:

“Low-level felons add millions to spending”

“Change of law would mean gradual but significant savings: \$190 million”

The newspaper editorial to which the DA responds was published on 7/6/09 in the *Winston-Salem Journal* and re-printed in *The Charlotte Observer* with this title and byline:

“Habitual-felons law wastes taxpayer money”

“Exempting low-level felons from it would save cash, prison space”

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**From DA Peter Gilchrist:**

I am writing to explain how and why we use the Habitual Felon statute in Mecklenburg County. Sentencing for convictions of felony crimes in North Carolina is determined by a sentencing grid that uses the “class” of offense and the “prior record level” of a defendant to give the sentencing judge a relatively small range of sentences that can be imposed. That is a greatly over-simplified attempt to explain the complicated seven-step process that must be followed to determine the sentence for a particular defendant in a specific case.

The legislature approved the structured sentencing statute in 1994 after prison bed shortages and the resulting releases of prisoners who had served only relatively small portions of their sentences got the public’s attention. The strategy of the structured

sentencing statute was to use prison beds for those defendants who committed the most serious crimes and those defendants who had the worst criminal records. That approach resulted in suspended sentences (no active time) or shorter active sentences for most property crimes. For example, a defendant with one prior felony conviction who was charged with housebreaking under Fair Sentencing could have received up to 10 years in prison could only receive a 12 month maximum sentence under structured sentencing.

The structured sentencing law also included a provision that could increase the active sentences of defendants found to fit the classification of “habitual felon.” They did not make it easy for one to achieve that status since each conviction had to occur after the completion of the most recent sentence being used to calculate their status, simply convicting a person of 3 felonies would not make them a habitual felon. In addition, none of the felonies used to give the defendant habitual felon status could be used to calculate the prior record level for punishment.

A defendant found to be a habitual felon (convicted of a felony for the fourth time and each conviction occurring after the completion of the sentence on the prior conviction) is sentenced as though convicted of a Class C felony unless the underlying offense is a Class A, B-1 or B-2 felony. That means that a defendant convicted of the Class H offense of housebreaking and found to be a habitual felon must be sentenced to prison for between 44 months and 210 months, depending upon their prior record level. Without the enhanced sentence for a habitual felon, that same defendant convicted of housebreaking could be given a sentence ranging from 4 months to 30 months, depending upon the prior record level. The 4 to 30 month sentence would not have to be an active sentence unless the defendant has reached the highest prior record level (VI) by accumulating 19 or more points for prior convictions.

This office has tried to apply the harsher penalties of that statute only when the defendant is a repeat offender who has committed crimes that impact others in the community, not addicts whose only offenses have been possession of drugs. A number of the defendants who we charge as habitual felons will be addicts, but their criminal histories include offenses such as robbing people or breaking into peoples’ homes or cars. We do use the classification of habitual felon most often in property and drug crimes because the possible sentences for violent crimes will often exceed the sentence that a defendant could receive based upon their status as a habitual felon.

Assistant District Attorneys (ADAs) who prosecute felony cases in our office are divided into teams that specialize in particular categories of crimes such as drug cases, crimes against persons, crimes against property, and homicide. Until recently, each ADA reviewed the cases assigned to them to determine whether to charge a defendant with being a habitual felon and, then, whether to insist on them being sentenced based upon that status. Despite their best efforts, ADAs handling individual caseloads of over 150 felony cases sometimes made decisions about habitual felon status that were not consistent with decisions made by other ADAs.

Funding from Mecklenburg County has allowed us to organize a team of 4 prosecutors who will review the cases of every defendant who appears to have the 3 prior felony

convictions (each conviction having to occur after any sentence on the prior case has been completed). This new team will be able devote more time to each case and to consider every relevant issue as they make decisions about each case. Those issues include a comprehensive analysis of the new case, the strength of the evidence, and availability of and cooperativeness of the victim. Further, the team looks at the defendant's history, not only his prior convictions, but his history of drug abuse, his present age, how recent the prior crimes were committed, and the seriousness of the prior crimes.

The new team's primary goal is to increase consistency in the application of the habitual felon law. This is accomplished by allowing these lawyers to carry a lighter caseload. This permits the ADAs on the Habitual Felon Team to do an extensive analysis of the defendant, his history, and his current case. Previously, the twenty ADAs on the property and drug teams were forced to identify, analyze, and make decisions about the prosecution of habitual felons who were part of their individual caseloads. The ADAs on this new team will meet regularly to discuss every defendant assigned to the team. No decision on the case is made until all four ADAs have heard all of the facts, discussed the case, and agreed on the appropriate outcome for a particular defendant. Finally, these lawyers discuss these cases with the defendant's attorney to gather any mitigating evidence that may influence the decision of whether or not to proceed with the habitual felon indictment.

There is a proposal in the legislature to limit the types of convictions that can be used to classify a defendant as a habitual felon. An editorial from the Winston-Salem newspaper reprinted in the Charlotte Observer noted that "minor" convictions would no longer be counted, but, in fact, the proposal would prevent Class H and Class I offenses (for example: housebreaking, car break-ins, felony larceny, false pretense, and embezzlement of less than \$100,000) from being counted as convictions in determining habitual felon status. The result would be that a housebreaker could receive no more than a 30 month sentence for a new house break-in no matter how many prior convictions of housebreaking he had. While this change may bring about some short term savings on jails, the true cost to the community would be severe.

The legislature created the provisions for classification as a habitual felon as a method to protect the community from repeat offenders. We believe that our approach to the use of the habitual felon designation is in keeping with the intent of the statute.

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