

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 513
HOUSE BILL 1077

AN ACT TO SET FORTH THE PROCEDURE TO SUPPRESS A PRIOR
CONVICTION OBTAINED IN VIOLATION OF THE RIGHT TO COUNSEL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended to add in Article 53 a new section to read as follows:

"§ 15A-980. Right to suppress use of certain prior convictions obtained in violation of right to counsel. – (a) A defendant has the right to suppress the use of a prior conviction that was obtained in violation of his right to counsel if its use by the State is to impeach the defendant or if its use will:

- (1) increase the degree of crime of which the defendant would be guilty;
or
- (2) result in a sentence of imprisonment that otherwise would not be imposed; or
- (3) result in a lengthened sentence of imprisonment.

(b) A defendant who has grounds to suppress the use of a conviction in evidence at a trial or other proceeding as set forth in (a) must do so by motion made in accordance with the procedure in this Article. A defendant waives his right to suppress use of a prior conviction if he does not move to suppress it.

(c) When a defendant has moved to suppress use of a prior conviction under the terms of subsection (a), he has the burden of proving by the preponderance of the evidence that the conviction was obtained in violation of his right to counsel. To prevail, he must prove that at the time of the conviction he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves that a prior conviction was obtained in violation of his right to counsel, the judge must suppress use of the conviction at trial or in any other proceeding if its use will contravene the provisions of subsection (a)."

Sec. 2. The codification note under Article 54 of Chapter 15A of the General Statutes is rewritten to read:

"§ 15A-981 to 15A-990: Reserved for future codification purposes."

Sec. 3. G.S. 15A-1334 is amended by rewriting subsection (d) and adding a new subsection (e) to read as follows:

"(d) Sentencing in Capital Cases. Sentencing in capital cases is governed by Article 100 of this Chapter.

(e) Procedure Applicable when Certain Prior Convictions May Be Used. The procedure in G.S. 15A-980 governs if the State seeks to use a prior conviction in a sentencing hearing."

Sec. 4. G.S. 15A-1340.4(e) is amended to delete from the fourth sentence the words "pursuant to Article 53 of this Chapter" and to substitute "pursuant to G.S. 15A-980".

Sec. 5. This act shall become effective October 1, 1983.

In the General Assembly read three times and ratified, this the 13th day of June, 1983.