

**ROLL CALL TRAINING**  
**FROM NORTH CAROLINA'S 24/7 POLICE**  
**ATTORNEY LAW FIRM**

**MARCH 7, 2005**  
**VOLUME IV NUMBER 3**

**TOPIC:**

HABITUAL MISDEMEANOR ASSAULT STATUTE NCGS 14-33.2 AMENDED

*By Ralph B. Strickland, Jr.*

**THE STATUTE AS AMENDED:**

**§ 14-33.2. Habitual misdemeanor assault.**

A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33 and causes physical injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than 15 years prior to the date of the current violation. A conviction under this section shall not be used as a prior conviction for any other habitual offense statute. A person convicted of violating this section is guilty of a Class H felony. (1995, c. 507, s. 19.5(c); 2004-186, s. 10.1.)

**WE DID ALL OF THIS ONCE BEFORE!**

See the previous Roll Call Training Bulletin of October 27, 2003, Volume 2 Number 20 on this Website, titled "Habitual Misdemeanor Assault." That Bulletin should be read in conjunction with this one to fully understand the amendments.

**THE AMENDMENTS:**

1. First, the amendment changes one of the statutes to which habitual misdemeanor assault applies, and in doing so expands its coverage. Previously this statute applied to GS 14-33(c), but now is applicable to all of GS 14-33.
2. Previously, the statute did not require the victim of a GS 14-33 assault to suffer an actual "physical injury." Now it does. What is a "physical injury," you might ask. Beats me, I might answer (but wouldn't). My opinion would be something less than serious injury and probably any assault that causes pain would suffice. A slap on the back is not sufficient; a punch in the nose is sufficient (even if not broken or bleeding). Everybody nose what it's like to be punched in the knows. (I know, I know. But it still *sounds* the same, doesn't it?)
3. [Note: since its inception, the statute has been applicable to GS 14-34, assault by pointing a gun. It is still so applicable. "Physical injury" is not an element of a GS 14-34 offense, nor has it ever been.]

4. Previously the statute required five (5) or more prior misdemeanor convictions, two of which had to be assaults. Felony convictions would not trigger the statute. Now, the defendant need have only two (2) or more convictions of assault (and felony assault convictions now count) with the earlier of the two occurring no more than 15 years prior to the date of the current violation. So we have a time limitation that we did not previously have.
5. Note: A conviction under this section shall not be used as a prior conviction for any other habitual offense statute.
6. A person convicted of violating this section is guilty of a Class H felony.

## **FIRST LINE SUPERVISORS:**

Brief your subordinates on these changes and keep this charge in mind. We owe it to our victims (and defendants) to charge crimes appropriately.

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This Bulletin written without the assistance of Reece Trimmer who was outside looking for his wallet, which he erroneously believes, he lost. Greg was helping him, but they didn't find it. Only I saw where Kevin buried it.

Gosh, but I'd give my right arm to be ambidextrous.

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