

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 183
Committee Substitute Favorable 4/22/97

Short Title: DWI/Felony Prior Record Level.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY
PRIOR RECORD LEVEL CALCULATION, TO PROVIDE FOR AN INDEFINITE
CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS
CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER
IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION, AND TO ALLOW
FOR MODIFICATION OF SENTENCE FOR IMPAIRED DRIVING ON REMAND
TO DISTRICT COURT OR WITHDRAWAL OF APPEAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. – Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class A1 or Class 1 misdemeanor ~~conviction-conviction~~
or prior impaired driving conviction under G.S. 20-138.1, 1 point,
except that convictions for Class 1 misdemeanor offenses under Chapter

1 20 of the General Statutes, other than conviction for misdemeanor death
2 by vehicle (~~G.S. 20-141.4(a2)~~), (G.S. 20-141.4(a2)) and conviction for
3 impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be
4 assigned any points for purposes of determining a person's prior record
5 for felony sentencing.

6 (6) If all the elements of the present offense are included in the prior
7 offense, 1 point.

8 (7) If the offense was committed while the offender was on probation or
9 parole, or while the offender was serving a sentence of imprisonment, or
10 while the offender was on escape from a correctional institution while
11 serving a sentence of imprisonment, 1 point.

12 For purposes of determining prior record points under this subsection, a conviction for
13 a first degree rape or a first degree sexual offense committed prior to the effective date of
14 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
15 other felony Class B offense committed prior to the effective date of this subsection shall
16 be treated as a felony Class B2 conviction."

17 Section 2. G.S. 20-16.5(a) reads as rewritten:

18 "(a) Definitions. – As used in this section the following words and phrases have the
19 following meanings:

20 (1) Charging Officer. – As described in G.S. 20-16.2(a1).

21 (2) Clerk. – As defined in G.S. 15A-101(2).

22 (3) Judicial Official. – As defined in G.S. 15A-101(5).

23 (4) Revocation Report. – A sworn statement by a charging officer and a
24 chemical analyst containing facts indicating that the conditions of
25 subsection (b) have been ~~met~~–met, and whether the person has a
26 pending offense for which their license had been or is revoked under
27 this section. When one chemical analyst analyzes a person's blood and
28 another chemical analyst informs a person of his rights and
29 responsibilities under G.S. 20-16.2, the report must include the
30 statements of both analysts.

31 (5) Surrender of a Driver's License. – The act of turning over to a court or a
32 law-enforcement officer the person's most recent, valid driver's license
33 or learner's permit issued by the Division or by a similar agency in
34 another jurisdiction, or a limited driving privilege issued by a North
35 Carolina court. A person who is validly licensed but who is unable to
36 locate his license card may file an affidavit with the clerk setting out
37 facts that indicate that he is unable to locate his license card and that he
38 is validly licensed; the filing of the affidavit constitutes a surrender of
39 the person's license."

40 Section 3. G.S. 20-16.5(e) reads as rewritten:

41 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
42 properly executed revocation report concerning a person is filed with a judicial official
43 when the person is present before that official, the judicial official must, after completing

1 any other proceedings involving the person, determine whether there is probable cause to
2 believe that each of the conditions of subsection (b) has been met. If he determines that
3 there is such probable cause, he must enter an order revoking the person's driver's license
4 for the period required in this subsection. The judicial official must order the person to
5 surrender his license and if necessary may order a law-enforcement officer to seize the
6 license. The judicial official must give the person a copy of the revocation order. In
7 addition to setting it out in the order the judicial official must personally inform the
8 person of his right to a hearing as specified in subsection (g), and that his license remains
9 revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation
10 under this subsection begins at the time the revocation order is issued and continues until
11 the person's license has been surrendered for 10 days and the person has paid the applicable
12 costs. If the person is not currently licensed, the revocation continues until 10 days from the date
13 the revocation order is issued and the person has paid the applicable costs. revoked for the
14 period specified in this subsection and the person has paid the applicable costs. The
15 period of revocation is 10 days, if there are no pending offenses for which the person's
16 license had been or is revoked under this section. If at the time of the current offense, the
17 person has one or more pending offenses for which his license had been or is revoked
18 under this section, the revocation shall remain in effect until a final judgment, including
19 all appeals, has been entered for the current offense and for all pending offenses. In no
20 event, may the period of revocation under this subsection be less than 10 days. If within
21 five working days of the effective date of the order, the person does not surrender his
22 license or demonstrate that he is not currently licensed, the clerk must immediately issue
23 a pick-up order. The pick-up order must be issued to a member of a local law-
24 enforcement agency if the charging officer was employed by the agency at the time of the
25 charge and the person resides in or is present in the agency's territorial jurisdiction. In all
26 other cases, the pick-up order must be issued to an officer or inspector of the Division. A
27 pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-
28 29 as if the order had been issued by the Division."

29 Section 4. G.S. 20-16.5(f) reads as rewritten:

30 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –
31 When a clerk receives a properly executed report under subdivision (d)(3) and the person
32 named in the revocation report is not present before the clerk, the clerk must determine
33 whether there is probable cause to believe that each of the conditions of subsection (b)
34 has been met. If he determines that there is such probable cause, he must mail to the
35 person a revocation order by first-class mail. The order must direct that the person on or
36 before the effective date of the order either surrender his license to the clerk or appear
37 before the clerk and demonstrate that he is not currently licensed, and the order must
38 inform the person of the time and effective date of the revocation and of its duration, of
39 his right to a hearing as specified in subsection (g), and that the revocation remains in
40 effect pending the hearing. Revocation orders mailed under this subsection become
41 effective on the fourth day after the order is deposited in the United States mail. If within
42 five working days of the effective date of the order, the person does not surrender his
43 license to the clerk or appear before the clerk to demonstrate that he is not currently

1 licensed, the clerk must immediately issue a pick-up order. The pick-up order must be
2 issued and served in the same manner as specified in subsection (e) for pick-up orders
3 issued pursuant to that subsection. A revocation under this subsection begins at the date
4 specified in the order and continues until the person's license has been revoked for the
5 period specified in this subsection and the person has paid the applicable costs. ~~The~~If the
6 person has no pending offenses for which his license had been or is revoked under this
7 section, the period of revocation under this subsection is:

- 8 (1) Ten days from the time the person surrenders his license to the court, if
9 the surrender occurs within five working days of the effective date of
10 the order; or
- 11 (2) Ten days after the person appears before the clerk and demonstrates that
12 he is not currently licensed to drive, if the appearance occurs within five
13 working days of the effective date of the revocation order; or
- 14 (3) Thirty days from the time:
 - 15 a. The person's driver's license is picked up by a law-enforcement
16 officer following service of a pick-up order; or
 - 17 b. The person demonstrates to a law-enforcement officer who has a
18 pick-up order for his license that he is not currently licensed; or
 - 19 c. The person's driver's license is surrendered to the court if the
20 surrender occurs more than five working days after the effective
21 date of the revocation order; or
 - 22 d. The person appears before the clerk to demonstrate that he is not
23 currently licensed, if he appears more than five working days
24 after the effective date of the revocation order.

25 If at the time of the current offense, the person has one or more pending offenses for
26 which his license had been or is revoked under this section, the revocation shall remain in
27 effect until a final judgment, including all appeals, has been entered for the current
28 offense and for all pending offenses. In no event may the period of revocation for the
29 current offense be less than the applicable period of revocation in subdivision (1), (2), or
30 (3) of this subsection. When a pick-up order is issued, it must inform the person of his
31 right to a hearing as specified in subsection (g), and that the revocation remains in effect
32 pending the hearing. An officer serving a pick-up order under this subsection must return
33 the order to the court indicating the date it was served or that he was unable to serve the
34 order. If the license was surrendered, the officer serving the order must deposit it with
35 the clerk within three days of the surrender."

36 Section 5. G.S. 20-16.5(i) reads as rewritten:

37 "(i) Effect of Revocations. – A revocation under this section revokes a person's
38 privilege to drive in North Carolina whatever the source of his authorization to drive.
39 Revocations under this section are independent of and run concurrently with any other
40 revocations. No court imposing a period of revocation following conviction of an offense
41 involving impaired driving may give credit for any period of revocation imposed under
42 this section. ~~A~~Except as provided in subsection (i1), a person is not eligible for a limited
43 driving privilege under any statute while his license is revoked under this section."

1 Section 6. G.S. 20-16.5 is amended by adding a new subsection to read:

2 "(i1) A person whose license has been indefinitely revoked under this section may,
3 after completion of 10 days under subsection (e) or the applicable period of time under
4 subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege as
5 provided in G.S. 20-179.3. A judge of the division in which the current offense is
6 pending may issue the limited driving privilege only if the privilege is necessary to
7 overcome undue hardship and the person meets the eligibility requirements of G.S. 20-
8 179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not
9 apply."

10 Section 7. G.S. 20-16.5(k) reads as rewritten:

11 "(k) Report to Division. – Except as provided below, the clerk must mail a report to
12 the ~~Division within~~ Division:

13 (1) If the license is revoked indefinitely, within 10 working days of the
14 revocation of the license; and

15 (2) In all cases, within 10 working days of the return of a license under this
16 section or of the termination of a revocation of the driving privilege of a
17 person not currently licensed.

18 The report must identify the person whose license has been ~~revoked and~~ revoked, specify
19 the date on which his license was ~~revoked~~ revoked, and indicate whether the license has
20 been returned. The report must also provide, if applicable, whether the license is revoked
21 indefinitely. No report need be made to the Division, however, if there was a surrender of
22 the driver's license issued by the Division, a 10-day minimum revocation was imposed,
23 and the license was properly returned to the person under subsection (h) within five
24 working days after the 10-day period had elapsed."

25 Section 8. G.S. 20-179 is amended by adding a new subsection to read:

26 "(a1) Modification of Sentence. – If a conviction for impaired driving under G.S. 20-
27 138.1 has been appealed to superior court and the notice of appeal is withdrawn or the
28 case remanded to district court for imposition of judgment, the district court shall, upon
29 motion of the district attorney, hold a hearing to determine if any grossly aggravating
30 factors under subdivision (1) of subsection (c) apply which were not included in the
31 judgment. If so, the judge shall modify the sentence in accordance with this section. The
32 motion of the district attorney under this subsection must be filed prior to the order of
33 remand or withdrawal of the notice of appeal."

34 Section 9. The Judicial Department shall implement the provisions of this act
35 from existing funds available to it.

36 Section 10. Section 1 of this act becomes effective December 1, 1997.
37 Sections 2 through 8 of this act become effective July 1, 1998. Sections 9 and 10 of this
38 act become effective July 1, 1997.