

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 797  
SENATE BILL 508

AN ACT TO AMEND THE ASSESSMENT PROCEDURES FOR DEFENDANTS  
SENTENCED FOR DRIVING WHILE IMPAIRED AND TO ESTABLISH PILOT  
PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179(m) reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he ~~must~~shall be required as a condition of that probation to obtain a substance abuse assessment if:

- (1) He had an alcohol concentration of ~~0.20~~0.15 or more as indicated by a chemical analysis taken when he was charged; or
- (2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he ~~either:~~ a. Had had an alcohol concentration of 0.10 or more; or
- (3) ~~b. Willfully~~He willfully refused to submit to a chemical analysis.

The judge ~~must~~shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources. If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall ~~In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he must require the defendant to execute a~~

Release of Information authorizing the treatment agency to report his progress to the court or the ~~Division of Adult Probation and Parole~~ Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. The judge ~~must~~ shall require the defendant to pay ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) for the services of the assessment facility and ~~the~~ any additional treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. ~~122-35.47-122C-146~~ applies. Any determinations with regard to the defendant's ability to pay the assessment fee ~~must~~ shall be made by the judge. In those cases in which no substance abuse handicap is identified, that finding ~~must~~ shall be ~~forwarded in writing to~~ filed with the court. When treatment is required, the treatment agency's progress reports ~~must~~ shall be filed with the court or the ~~Division of Adult Probation and Parole~~ Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. Upon the completion of the court-ordered assessment or court-ordered treatment, the assessing or treatment agency shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment or participate in a treatment program unless it has received the original certificate of completion from the assessing or treatment agency, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 2. G.S. 20-179(m) reads as rewritten:

"(m) Assessment and Treatment Required. If a defendant being sentenced under this section is placed on probation, he ~~must~~ shall be required as a condition of that probation to obtain a substance abuse assessment; provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation. The judge ~~must~~ shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in

the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall ~~In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he must require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Division of Adult Probation and Parole Department of Correction.~~ The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years.

At the time of sentencing ~~The~~ the judge ~~must~~ shall require the defendant to pay ~~twenty five dollars (\$25.00)~~ one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(1) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and

in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122-35.47-122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. Any determinations with regard to the defendant's ability to pay the fee must shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding must shall be forwarded in writing to filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports must shall be filed with the court or the Division of Adult Probation and Parole Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 3. G.S. 20-16.2(d) is amended by adding a new sentence immediately after the first sentence to read:

"Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection."

Sec. 4. Section 1 of this act shall become effective January 1, 1988 and shall expire June 30, 1989 and shall apply to sentencing for convictions after January 1, 1988.

Sec. 5. Section 2 of this act shall be established as a pilot program in not more than ten counties in the State as determined and required by the Division Director of Mental Health, Mental Retardation and Substance Abuse Services, shall become effective January 1, 1988, and shall apply to sentencing for convictions after that date. The Division for Mental Health, Mental Retardation and Substance Abuse Services shall monitor the pilot programs and shall report administrative costs, case management practices, participant recidivism, and other relevant information, to the General

Assembly on or before February 1, 1989. Section 2 of this act shall become effective throughout the State July 1, 1989.

Sec. 6. Section 3 of this act shall become effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1987.