

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 750

Short Title: Fleeing Vehicles Amendments.

(Public)

Sponsors: Senators Martin of Guilford; Allran, Ballance, Barker, Block, Conder, Daniel, Harris, Rauch, and Shaw.

Referred to: Judiciary I.

April 3, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE LAW APPLYING TO VEHICLES FLEEING TO
3 ELUDE ARREST.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-141(j) reads as rewritten:

6 "(j) Any person convicted of violating this section by operating a vehicle on a
7 street or highway in excess of 55 miles per hour and at least 15 miles per hour over the
8 legal limit while fleeing or attempting to elude arrest or apprehension by a law-
9 enforcement officer with authority to enforce the motor vehicle laws ~~is guilty of a~~
10 ~~misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor~~
11 ~~more than one thousand dollars (\$1,000) or imprisonment for not more than two years, or both,~~
12 ~~in the discretion of the court. shall be punished in the following manner:~~

13 (1) Upon a first conviction only for fleeing or attempting to elude arrest or
14 apprehension by a law-enforcement officer with authority to enforce
15 the motor vehicle laws, the person is guilty of a misdemeanor and shall
16 be punished both by a fine of not less than one hundred dollars
17 (\$100.00) nor more than one thousand dollars (\$1000) and
18 imprisonment of not less than 30 days nor more than two years.

19 For purposes of determining whether the conviction is a first
20 conviction, no prior offense occurring more than seven years before
21 the date of the current offense shall be considered.

22 The term of imprisonment may be suspended only if conditions of
23 special probation are imposed to require the defendant to:

- 1 a. Serve a term of imprisonment of at least seven days; and
2 b. Perform community service for a term of at least seven days (56
3 hours); and
4 c. Comply with any other lawful conditions of probation imposed
5 by the judge.

6 Failure to complete the community service requirement within 90 days
7 of conviction is a violation of the defendant's probation.

8 This subdivision does not affect the right of the defendant to elect to
9 serve the suspended sentence of imprisonment as provided in G.S.
10 15A-1341(c).

- 11 (2) A defendant who has been previously convicted one or more times of
12 fleeing or attempting to elude arrest or apprehension by a law-
13 enforcement officer with authority to enforce the motor vehicle laws
14 for an offense occurring during the seven years immediately prior to
15 the date of the current offense is guilty of a misdemeanor and shall be
16 punished by both a fine of not less than one hundred dollars (\$100.00)
17 nor more than two thousand dollars (\$2,000) and imprisonment of not
18 less than 60 days nor more than two years.

19 For purposes of determining whether the conviction is a first
20 conviction, no prior offense occurring more than seven years before
21 the date of the current offense shall be considered.

22 The term of imprisonment may be suspended only if conditions of
23 special probation are imposed to require the defendant to:

- 24 a. Serve a term of imprisonment of at least 14 days; and
25 b. Perform community service for a term of at least 14 days (112
26 hours); and
27 c. Comply with any other lawful conditions of probation imposed
28 by the judge.

29 Failure to complete the community service requirement within 180
30 days of conviction is a violation of the defendant's probation.

31 This subdivision does not affect the right of the defendant to elect to
32 serve the suspended sentence of imprisonment as provided in G.S.
33 15A-1341(c).

- 34 (3) The punishments in subdivisions (1) and (2) of this subsection are
35 subject to the following requirements:

- 36 a. At sentencing, the prosecutor must make all feasible efforts to
37 secure the defendant's full driving record of traffic conviction,
38 and must present to the judge that record for consideration.
39 Upon request of the defendant, the prosecutor must furnish the
40 defendant or his attorney a copy of the defendant's record of
41 traffic convictions at a reasonable time prior to the introduction
42 of the record.

43 The judge may accept any evidence as to the presence or
44 absence of previous convictions that he finds reliable but he

- 1 must give **prima facie** effect to the convictions recorded by the
2 Division or any other agency of the State of North Carolina.
3 A copy of conviction records transmitted by the Police
4 Information Network, in general accordance with the procedure
5 authorized by G.S. 20-26(b), is admissible in evidence without
6 further authentication.
- 7 b. With respect to the period of any active term of imprisonment,
8 the defendant must serve the mandatory minimum period of
9 imprisonment and good time or gain time credit may not be
10 used to reduce that mandatory minimum period. Further, the
11 defendant may not be released on parole unless he is otherwise
12 eligible and has served the mandatory minimum period of
13 imprisonment.
- 14 c. For purposes of subdivisions (1) and (2) of this subsection,
15 'conviction' includes a guilty verdict, guilty plea, plea of no
16 contest, or anything that would be treated as a conviction under
17 G.S. 20-24(c).
- 18 (4) The Commissioner of Motor Vehicles shall revoke the driver's license
19 or privilege to drive of every person convicted of violating the
20 provisions of subsection (j) of this section, with the revocation being
21 for two years; provided any person whose license has been revoked
22 under this subdivision may apply for a new license after 12 months
23 from revocation. Upon filing of an application for reinstatement of a
24 license the Division may issue a new license upon satisfactory proof
25 that the former licensee has been of good behavior for the past 12
26 months and that his conduct and attitude are such as to entitle him to
27 favorable consideration and upon such terms and conditions which the
28 Division may see fit to impose for the balance of the two-year
29 revocation period, which period shall be computed from the date of the
30 original revocation. All suspensions and revocations made pursuant to
31 the provisions of this subsection shall be in the same form and manner
32 and shall be subject to all procedures as now provided for suspensions
33 and revocations made under the provisions of Article 2 of Chapter 20
34 of the General Statutes.
- 35 (5) When any officer of the law discovers that any person has operated or
36 is operating a motor vehicle while fleeing or attempting to elude arrest
37 or apprehension by a law-enforcement officer with authority to enforce
38 the motor vehicle laws, he shall seize the motor vehicle and deliver the
39 same to the sheriff of the county in which such offense is committed,
40 or the same shall be placed under said sheriff's constructive possession
41 if delivery of actual possession is impractical, and the vehicle shall be
42 held by the sheriff pending the trial of the person or persons arrested
43 for operating such motor vehicle in violation of subsection (j) of this
44 section. The sheriff shall restore the seized motor vehicle to the owner

1 upon execution by the owner of a good and valid bond, with sufficient
2 sureties, in an amount double the value of the property, which bond
3 shall be approved by said sheriff and shall be conditioned on the
4 return of the motor vehicle to the custody of the sheriff on the day of
5 trial of the person or persons accused. Upon the acquittal of the person
6 charged with operating said motor vehicle eluding a law-enforcement
7 officer, the sheriff shall return the motor vehicle to the owner thereof.
8 Notwithstanding the provisions for sale set out above, on petition by a
9 lienholder, the court, in its discretion and upon such terms and
10 conditions as it may prescribe, may allow reclamation of the vehicle
11 by the lienholder. The lienholder shall file with the court an accounting
12 of the proceeds of any subsequent sale of the vehicle and pay into the
13 court any proceeds received in excess of the amount of the lien. Upon
14 conviction of the operator of said motor vehicle of a violation of
15 subsection (j) of this section, the court shall order a sale at public
16 auction of said motor vehicle and the officer making the sale, after
17 deducting the expenses of keeping the motor vehicle, the fee for the
18 seizure, and the costs of the sale, shall pay all liens, according to their
19 priorities, which are established, by intervention or otherwise, at said
20 hearing or in other proceeding brought for said purpose, as being bona
21 fide, and shall pay the balance of the proceeds to the proper officer of
22 the county who receives fines and forfeitures to be used for the school
23 fund of the county. All liens against a motor vehicle sold under the
24 provisions of this section shall be transferred from the motor vehicle to
25 the proceeds of its sale. If, at the time of hearing, or other proceeding
26 in which the matter is considered, the owner of the vehicle can
27 establish to the satisfaction of the court that said motor vehicle was
28 used in eluding a law-enforcement officer without the knowledge or
29 consent of the owner, and that the owner had no reasonable grounds to
30 believe that the motor vehicle would be used for such purpose, the
31 court shall not order a sale of the vehicle but shall restore it to the
32 owner, and the said owner shall, at his request, be entitled to a trial by
33 jury upon such issues. If the owner of said motor vehicle cannot be
34 found, the taking of the same, with a description thereof, shall be
35 advertised in some newspaper published in the city or county where
36 taken, or, if there be no newspaper published in such city or county, in
37 a newspaper having circulation in the county, once a week for two
38 weeks and by handbills posted in three public places near the place of
39 seizure, and if said owner shall not appear within 10 days after the last
40 publication of the advertisement, the property shall be sold, or
41 otherwise disposed of in the manner set forth in this section. When
42 any vehicle confiscated under the provisions of this section is found to
43 be specially equipped or modified from its original manufactured
44 condition so as to increase its speed, the court shall, prior to sale, order

1 that the special equipment or modification be removed and destroyed
2 and the vehicle restored to its original manufactured condition.
3 However, if the court should find that such equipment and
4 modifications are so extensive that it would be impractical to restore
5 said vehicle to its original manufactured condition, then the court may
6 order that the vehicle be turned over to such governmental agency or
7 public official within the territorial jurisdiction of the court as the court
8 shall see fit, to be used in the performance of official duties only, and
9 not for resale, transfer, or disposition other than as junk: Provided, that
10 nothing herein contained shall affect the rights of lienholders and other
11 claimants to said vehicles as set out in this section.

12 (6) Proof that a motor vehicle has been used in an offense of fleeing or
13 attempting to elude arrest or apprehension by a law-enforcement
14 officer with authority to enforce the motor vehicle laws in violation of
15 subsection (j) of this section is **prima facie** evidence that the motor
16 vehicle was operated at the time of the violation by the registered
17 owner of the vehicle."

18 Sec. 2. This act shall become effective October 1, 1989.