

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1153

Short Title: DWI Counseling Limitation.

(Public)

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Sponsors: Representatives Lee; and Bowman.

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Referred to: Judiciary III.

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April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PLACE A LIMITATION ON THE CHARGE FOR AND NUMBER OF  
2 WEEKS OF COUNSELING THAT MAY BE REQUIRED OF A DEFENDANT  
3 CONVICTED OF DRIVING WHILE IMPAIRED.  
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5 The General Assembly of North Carolina enacts:

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

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

10 The judge shall require the defendant to obtain the assessment from an area mental  
11 health agency, its designated agent, or a private facility licensed by the State for the  
12 treatment of alcoholism and substance abuse. Unless a different time limit is specified  
13 in the court's judgment, the defendant shall schedule the assessment within 30 days  
14 from the date of the judgment. Any agency performing assessments shall give written  
15 notification of its intention to do so to the area mental health authority in the catchment  
16 area in which it is located and to the Department of Human Resources. The Secretary  
17 of the Department of Human Resources may adopt rules to implement the provisions of  
18 this subsection, and these rules may include provisions to allow defendant to obtain  
19 assessments and treatment from agencies not located in North Carolina. The assessing  
20 agency shall give the client a standardized test capable of providing uniform research  
21 data, including, but not limited to, demographic information, defendant history,  
22 assessment results and recommended interventions, approved by the Department of  
23 Human Resources to determine chemical dependency. A clinical interview concerning  
24 the general status of the defendant with respect to chemical dependency shall be

1 conducted by the assessing agency before making any recommendation for further  
2 treatment. A recommendation made by the assessing agency shall be signed by a  
3 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the  
4 Department of Human Resources.

5 If the assessing agency recommends that the defendant participate in a treatment  
6 program, the judge may require the defendant to do so, and he shall require the  
7 defendant to execute a Release of Information authorizing the treatment agency to  
8 report his progress to the court or the Department of Correction. The judge may order  
9 the defendant to participate in an appropriate treatment program at the time he is  
10 ordered to obtain an assessment, or he may order him to reappear in court when the  
11 assessment is completed to determine if a condition of probation requiring participation  
12 in treatment should be imposed. An order of the court shall not require the defendant to  
13 participate in any treatment program for more than 90 days unless a longer treatment  
14 program is recommended by the assessing agency and his alcohol concentration was .15  
15 or greater as indicated by a chemical analysis taken when he was charged or this was a  
16 second or subsequent offense within five years. At the time of sentencing the judge  
17 shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The  
18 payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars  
19 (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a  
20 treatment facility or to an alcohol and drug education traffic school depending upon the  
21 recommendation made by the assessing agency. Fees received by the Area Mental  
22 Health, Developmental Disabilities, and Substance Abuse Authorities under this section  
23 shall be administered pursuant to G.S. 20-179.2(e), provided, however that the  
24 provisions of G.S. 20-179.2(c) shall not apply to monies received under this section.  
25 The operators of the local alcohol and drug education traffic school may change the  
26 length of time required to complete the school in accordance with administrative costs,  
27 provided, however that the length and the curriculum of the school shall be approved by  
28 the Commission for Mental Health, Developmental Disabilities, and Substance Abuse  
29 Services and in no event shall the school be less than five hours in length. If the  
30 defendant is treated by an area mental health facility, G.S. 122C-146 applies after  
31 receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its  
32 contractor is providing treatment or education services to a defendant pursuant to this  
33 subsection, the area facility or its contractor may require that the defendant pay the fees  
34 prescribed by law for the services before it certifies that the defendant has completed the  
35 recommended treatment or educational program. Any determinations with regard to the  
36 defendant's ability to pay the assessment fee shall be made by the judge. If an area  
37 mental health facility or its contractor is both the assessing agency and the provider of  
38 treatment in the form of counseling, that area mental health facility or its contractor  
39 shall charge the defendant no more than ten dollars (\$10.00) per session for each  
40 counseling session and shall require no more than one session per week for no more  
41 than 13 weeks.

42 In those cases in which no substance abuse handicap is identified, that finding shall  
43 be filed with the court and the defendant shall be required to attend an alcohol and drug  
44 education traffic school. When treatment is required, the treatment agency's progress

1 reports shall be filed with the court or the Department of Correction at intervals of no  
2 greater than six months until the termination of probation or the treatment agency  
3 determines and reports that no further treatment is appropriate. If the defendant is  
4 required to participate in a treatment program and he completes the recommended  
5 treatment, he does not have to attend the alcohol and drug education traffic school.  
6 Upon the completion of the court-ordered assessment and court-ordered treatment or  
7 school, the assessing or treatment agency or school shall give the Division of Motor  
8 Vehicles the original of the certificate of completion, shall provide the defendant with a  
9 copy of that certificate, and shall retain a copy of the certificate on file for a period of  
10 five years. The Division of Motor Vehicles shall not reissue the drivers license of a  
11 defendant ordered to obtain assessment, participate in a treatment program or school  
12 unless it has received the original certificate of completion from the assessing or  
13 treatment agency or school or a certificate of completion sent by the agency subsequent  
14 to a court order as hereinafter provided; provided, however that a defendant may be  
15 issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has  
16 waived the fee, no certificate shall be issued unless the agency or school has received  
17 the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A  
18 defendant may within 90 days after an agency decision to decline to certify, by filing a  
19 motion in the criminal case, request that a judge presiding in the court in which he was  
20 convicted review the decision of an assessment or treatment agency to decline to certify  
21 that the defendant has completed the assessment or treatment. The agency whose  
22 decision is being reviewed shall be notified at least 10 days prior to any hearing to  
23 review its decision. If the judge determines that the defendant has obtained an  
24 assessment, has completed the treatment, or has made an effort to do so that is  
25 reasonable under the circumstances, as the case may be, the judge shall order that the  
26 agency send a certificate of completion to the Division of Motor Vehicles.

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

31 Sec. 2. This act is effective upon ratification and applies to treatment for  
32 assessments made on or after that date.