

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1164

Short Title: DWI Assessments Change.

(Public)

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Sponsors: Representatives Holt and Alexander (Co-sponsors).

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Referred to: Courts and Justice.

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April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW RELATING TO ASSESSMENTS AND  
TREATMENT UNDER THE "DRIVING WHILE IMPAIRED" LAW.

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 shall be required as a condition of that probation to obtain a substance abuse ~~assessment~~ assessment if the defendant's alcohol concentration reached or exceeded 0.08.

The judge 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. Each assessor shall use the criteria developed and updated by the American Society of Addiction Medicine (ASAM). To the extent practicable, all agencies providing assessments shall employ substance abuse counselors as the assessors. 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. These rules shall also include methods to ensure that all assessors use the criteria developed and updated by the American Society of Addiction Medicine (ASAM) and that, to the extent practicable,

1 assessors are substance abuse counselors. These rules shall also include provision that  
2 the assessing agency function as the tracking system for any treatment. The assessing  
3 agency shall give the client a standardized test capable of providing uniform research  
4 data, including, but not limited to, demographic information, defendant history,  
5 assessment results and recommended interventions, approved by the Department of  
6 Human Resources to determine chemical dependency. A clinical interview concerning  
7 the general status of the defendant with respect to chemical dependency shall be  
8 conducted by the assessing agency before making any recommendation for further  
9 treatment. A recommendation made by the assessing agency shall be signed by a  
10 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the  
11 Department of Human Resources.

12 If the assessing agency recommends that the defendant participate in a treatment  
13 program, the judge may require the defendant to do so, ~~and he so.~~ The judge shall  
14 require the defendant to do so if the defendant's alcohol concentration reached or  
15 exceeded 0.20. The judge shall require the defendant to execute a Release of  
16 Information authorizing the treatment agency to report his progress to the court or the  
17 Department of Correction. The judge may order the defendant to participate in an  
18 appropriate treatment program at the time he is ordered to obtain an assessment, or he  
19 may order him to reappear in court when the assessment is completed to determine if a  
20 condition of probation requiring participation in treatment should be imposed. An order  
21 of the court shall not require the defendant to participate in any treatment program for  
22 more than 90 days unless a longer treatment program is recommended by the assessing  
23 agency and his alcohol concentration was .15 or greater as indicated by a chemical  
24 analysis taken when he was charged or this was a second or subsequent offense within  
25 five years. At the time of sentencing the judge shall require the defendant to pay one  
26 hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-  
27 five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii)  
28 seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug  
29 education traffic school depending upon the recommendation made by the assessing  
30 agency. Fees received by the Area Mental Health, Developmental Disabilities, and  
31 Substance Abuse Authorities under this section shall be administered pursuant to G.S.  
32 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply  
33 to monies received under this section. The operators of the local alcohol and drug  
34 education traffic school may change the length of time required to complete the school  
35 in accordance with administrative costs, provided, however that the length and the  
36 curriculum of the school shall be approved by the Commission for Mental Health,  
37 Developmental Disabilities, and Substance Abuse Services and in no event shall the  
38 school be less than five hours in length. If the defendant is treated by an area mental  
39 health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00)  
40 fee. If an area mental health facility or its contractor is providing treatment or education  
41 services to a defendant pursuant to this subsection, the area facility or its contractor may  
42 require that the defendant pay the fees prescribed by law for the services before it  
43 certifies that the defendant has completed the recommended treatment or educational

1 program. Any determinations with regard to the defendant's ability to pay the  
2 assessment fee shall be made by the judge.

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

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

36 Sec. 2. This act becomes effective October 1, 1993, and applies to  
37 assessments ordered on or after that date.