

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

2

HOUSE BILL 551  
Committee Substitute Favorable 4/26/93

Short Title: Substance Abuse Rehab.

(Public)

---

Sponsors:

---

Referred to:

---

March 25, 1993

A BILL TO BE ENTITLED

1 AN ACT TO INCORPORATE INTO STATUTE POLICIES AND PROCEDURES TO  
2 INCREASE COMPLIANCE WITH SUBSTANCE ABUSE REHABILITATION  
3 SANCTIONS AND TO INCREASE PENALTIES FOR WILLFUL REFUSAL TO  
4 COMPLY.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-17.2 reads as rewritten:

8 "**§ 20-17.2. Court-ordered revocations for offenses involving impaired driving;  
9 procedure for notice.**

10 When a person convicted of an offense involving impaired driving is ordered by a  
11 court not to operate a motor vehicle for a specified period of time as a condition of  
12 probation, the Division, upon receiving a copy of the judgment, ~~must~~ shall revoke the  
13 person's driver's license for the period and dates specified in the order of the court. The  
14 entry of probationary judgment by the court is notice to the person that ~~his~~ the license is  
15 revoked, and the Division need not notify the person of ~~his~~ the revocation. However,  
16 the Division shall notify the area mental health, developmental disabilities, and  
17 substance abuse authority for the defendant's county of residence of the conviction and  
18 shall forward to the area authority a copy of the defendant's driving record. In judgment  
19 forms for use in impaired driving cases under G.S. 20-138.1 the Administrative Office  
20 of the Courts ~~must~~ shall provide for inclusion of a notice provision, when applicable, of  
21 the terms of this section."

22 Sec. 2. Article 2 of Chapter 20 of the General Statutes is amended by adding  
23 the following new sections to read:

1 "§ 20-17.6. Assessment, alcohol and drug education traffic school and treatment  
2 requirements for persons convicted of certain alcohol- and drug-related  
3 offenses.

4 (a) Before the Division restores a person's license that has been revoked as a  
5 result of a conviction under G.S. 20-138.1, 20-138.2, or 20-138.3, the Division must  
6 have received an original certificate of completion showing that the person has obtained  
7 a substance abuse assessment and has completed the recommended intervention.

8 Upon notification that a person has been convicted under G.S. 20-138.1, 20-138.2,  
9 or 20-138.3, the Division shall notify the area mental health, developmental disabilities,  
10 and substance abuse authority for the county in which the conviction occurs. The area  
11 mental health, developmental disabilities, and substance abuse authority shall provide to  
12 the individual notification of the requirements for obtaining a substance abuse  
13 assessment as well as a list of all licensed facilities or agencies located within the  
14 catchment area that provide substance abuse assessments.

15 The individual shall schedule the assessment within 60 days from the date of the  
16 conviction. All assessments shall be initiated through the area mental health authority.  
17 Any agency performing assessments shall give written notification of its intention to do  
18 so to the area mental health authority for the catchment area in which it is located and to  
19 the Department of Human Resources. The Commission of Mental Health,  
20 Developmental Disabilities, and Substance Abuse Services shall adopt rules to  
21 implement the provisions of this subsection, and these rules may allow the individual to  
22 obtain assessments and treatment from agencies not located in North Carolina. The  
23 assessing agency shall give the client a standardized test approved by the Department of  
24 Human Resources to determine chemical dependency. A clinical interview concerning  
25 the general status of the individual with respect to chemical dependency shall be  
26 conducted by the assessing agency before making any recommendation for further  
27 treatment. A recommendation made by the assessing agency shall be reviewed and  
28 signed by a 'Certified Alcoholism, Drug Abuse, or Substance Abuse Counselor', as  
29 defined by the Department of Human Resources or a physician who has been certified  
30 by the American Society of Addiction Medicine (ASAM).

31 In those cases in which no substance abuse handicap is identified, the individual  
32 shall be required to successfully complete an alcohol and drug education traffic school.  
33 Upon completion of the school, the school shall give the area authority the original  
34 certificate of completion.

35 If a substance abuse handicap is identified, the individual shall complete a treatment  
36 program that is consistent with accepted medical standards. If the individual is required  
37 to participate in a treatment program and completes the recommended treatment, the  
38 individual does not have to attend the alcohol and drug education traffic school. Upon  
39 completion of the assessment and treatment, the agency or program shall give the area  
40 mental health authority the original certification of completion and shall provide the  
41 individual with a copy of that certificate.

42 Upon a receipt of the original certification of completion of the alcohol and drug  
43 education traffic school or treatment program, the area mental health authority shall  
44 forward the original of the certificate of completion to the Department of Human

1 Resources. The Department of Human Resources shall review the certificate for  
2 accuracy and completeness and then forward the original certificate to the Division of  
3 Motor Vehicles.

4 (b) Fees for Services. The individual shall pay the following fees for services:  
5 (i) twenty-five dollars (\$25.00) to the area authority for administrative costs, which  
6 includes all case supervision and transfer fees, (ii) fifty dollars (\$50.00) to the assessing  
7 agency, (iii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol  
8 and drug education traffic school, depending upon the recommendation made by the  
9 assessing agency, and (iv) a five dollar (\$5.00) processing fee to the Department of  
10 Transportation. Fees received by the area mental health, developmental disabilities, and  
11 substance abuse authority under this section shall be administered pursuant to G.S. 20-  
12 179.2(e) except that the provisions of G.S. 20-17.2(c) shall not apply to monies received  
13 under this section. If the individual is treated by an area mental health facility, G.S.  
14 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. Any facility  
15 providing assessment, alcohol and drug education traffic school, or treatment to an  
16 individual pursuant to this section may require that the individual pay the fees  
17 prescribed by law for the services before it certifies that the individual has completed  
18 the recommended assessment, treatment, or educational program.

19 (c) The Department of Human Resources may approve programs offered in  
20 another state if they are substantially similar to programs approved in this State, and if  
21 that state recognizes North Carolina programs for similar purposes. The individual shall  
22 be responsible for the fees at the approved program.

23 **"§ 20-17.7. Failure to complete assessment, alcohol and drug education traffic**  
24 **school, or treatment program.**

25 (a) If, within six months after the date of notification to the individual by the area  
26 mental health authority, the individual has failed to comply with any of the requirements  
27 of G.S. 20-17.6, the area mental health authority shall report that individual's  
28 noncompliance to the Division of Motor Vehicles.

29 (b) Upon receipt of notice from the area mental health authority that the  
30 defendant has willfully failed to complete an assessment, the alcohol and drug education  
31 traffic school, or a treatment program, the Division shall revoke the person's drivers  
32 license for an indefinite period. A limited driving privilege does not authorize the  
33 person to drive while the license is revoked pursuant to the provisions of this section.  
34 When the individual whose license has been revoked for an indefinite period does  
35 satisfactorily complete all the requirements of G.S. 20-17.6, the individual's license  
36 shall be restored.

37 (c) Any person who willfully fails to comply with the provisions of G.S. 20-17.6  
38 as ordered by the court as a result of having been convicted under G.S. 20-138.1, 20-  
39 138.2, or 20-138.2, may be subject to criminal proceedings pursuant to Article 1 of  
40 Chapter 5 of the General Statutes.

41 (d) After the mandatory period of revocation required by G.S. 20-19(d) or G.S.  
42 20-19(f) has expired, the individual may request a hearing before the Division. If the  
43 mandatory revocation is determined by G.S. 20-19(e) or G.S. 20-19(i), the individual is  
44 eligible for a hearing under this subsection after three years from the effective date of

1 the revocation. The individual may request the hearing officer to subpoena the  
2 appropriate agency or program personnel to appear in person at the hearing by making  
3 the request in writing at least three days before the hearing. The individual may  
4 subpoena any other witness, and the provisions of G.S. 1A-1, Rule 45, apply to the  
5 issuance and service of all subpoenas issued under authority of this section.

6 (e) The hearing shall be conducted in the county in which the reporting agency or  
7 program is located, under the provisions for hearings held under G.S. 20-16(d), except  
8 that the hearing is limited to consideration of whether:

9 (1) The individual was convicted under G.S. 20-138.1, 20-138.2, or 20-  
10 138.3;

11 (2) The individual failed to obtain an assessment or complete the alcohol  
12 and drug education traffic school or a treatment program successfully;  
13 and

14 (3) The failure was willful.

15 If the Division finds that the conditions specified in this subsection are met, it shall  
16 order the revocation sustained. If the Division finds that any of the conditions is not  
17 met, it shall rescind the revocation. If the revocation is sustained, the individual shall  
18 present a certificate of compliance before the revocation can be rescinded. The  
19 individual may file a petition in superior court for a **de novo** review of the issues listed  
20 in this section, in the same manner and under the same conditions as provided in G.S.  
21 20-25, except that the hearing shall be held in the judicial district in which the reporting  
22 agency or program is located.

23 (f) A failure to obtain the required assessment or complete the alcohol and drug  
24 education traffic school or a treatment program is not willful if it is based solely in a  
25 failure:

26 (1) To pay the prescribed fee and the person was unable to pay after  
27 making reasonable efforts to secure funds to pay the fee; or

28 (2) To obtain the assessment or attend the classes or treatment because of  
29 reasons over which the individual had no control other than alcoholism  
30 or drug abuse."

31 Sec. 3. G.S. 20-138.1(d) reads as rewritten:

32 "(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this  
33 section is a misdemeanor. Upon conviction of a defendant of impaired driving, the  
34 presiding judge must hold a sentencing hearing and impose punishment in accordance  
35 with G.S. 20-179. In addition, the judge shall order the defendant to comply with the  
36 provisions of G.S. 20-17.6."

37 Sec. 4. G.S. 20-138.2(e) reads as rewritten:

38 "(e) Punishment; Effect When Impaired Driving Offense Also Charged. – The  
39 offense in this section is a misdemeanor punishable by a fine of not less than one  
40 hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a  
41 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is  
42 convicted under this section and of an offense involving impaired driving under G.S.  
43 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the  
44 Court may not exceed the maximum punishment applicable to the offense involving

1 impaired driving under G.S. 20-138.1. However, the judge shall order any person  
2 convicted under this section to comply with the provisions of G.S. 20-17.6."

3           Sec. 5. G.S. 20-138.3(c) reads as rewritten:

4           "(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The  
5 offense in this section is a misdemeanor punishable under G.S. 20-176(c). It is not, in  
6 any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1,  
7 but if a person is convicted under this section and of an offense involving impaired  
8 driving arising out of the same transaction, the aggregate punishment imposed by the  
9 court may not exceed the maximum applicable to the offense involving impaired  
10 driving, and any minimum punishment applicable ~~must~~ shall be imposed. In addition,  
11 the judge shall order any person convicted under this section to comply with the  
12 provisions of G.S. 20-17.6."

13           Sec. 6. G.S. 20-179(e)(6), 20-179(m), and 20-179(t) are repealed.

14           Sec. 7. This act becomes effective December 1, 1993, and applies to  
15 convictions for offenses involving impaired driving occurring on or after that date.