

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 754
Committee Substitute Favorable 5/7/93

Short Title: Mandatory Jail for Some DWI.

(Public)

Sponsors:

Referred to:

April 6, 1993

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE MANDATORY ACTIVE JAIL SENTENCES FOR
2 PERSONS CONVICTED OF DRIVING WHILE IMPAIRED WITH BLOOD
3 ALCOHOL LEVELS OF MORE THAN FIFTEEN HUNDREDTHS PERCENT
4 AND TO MAKE THE RESULTS OF A FIRST BREATH TEST ADMISSIBLE
5 UNDER CERTAIN CIRCUMSTANCES.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-179 is amended by adding a new subsection to read:

9 "(u) Notwithstanding any other provision of law, a person convicted of impaired
10 driving with more than fifteen hundredths (0.15) alcohol concentration at any relevant
11 time after driving shall serve an active jail term based on that alcohol concentration at
12 any relevant time after driving. A person convicted of driving while impaired with an
13 alcohol concentration of sixteen hundredths (0.16) at any relevant time after driving
14 shall be sentenced to at least two days in jail. For each one hundredth (0.01) alcohol in
15 the person's blood above sixteen hundredths (0.16) at any relevant time after driving,
16 that person shall serve a minimum of two additional days in jail.

17 The mandatory days in jail required by this subsection may be suspended only if a
18 condition of special probation is imposed to require the defendant to serve a term of
19 imprisonment equal to the mandatory days in jail required by this subsection.

20 For any defendant who is punished at Level Three, Level Four, or Level Five and
21 has not been previously convicted of an offense involving impaired driving within seven
22 years, the sentencing judge may order the person to perform 24 hours of community
23 service in lieu of each day in jail mandated by this subsection.

1 The days to be served in jail mandated by this subsection shall be served in a county
2 jail unless the defendant is sentenced to serve an active sentence in prison and then the
3 days mandated by this subsection may be served concurrently with that active
4 sentence."

5 Sec. 2. G.S. 20-139.1(b3) reads as rewritten:

6 "(b3) Sequential Breath Tests Required. – By January 1, 1985, the regulations of
7 the Commission for Health Services governing the administration of chemical analyses
8 of the breath must require the testing of at least duplicate sequential breath samples.
9 Those regulations must provide:

10 (1) A specification as to the minimum observation period before collection
11 of the first breath sample and the time requirements as to collection of
12 second and subsequent samples.

13 (2) That the test results may only be used to prove a person's particular
14 alcohol concentration if:

15 a. The pair of readings employed are from consecutively
16 administered tests; and

17 b. The readings do not differ from each other by an alcohol
18 concentration greater than 0.02.

19 (3) That when a pair of analyses meets the requirements of subdivision
20 (2), only the lower of the two readings may be used by the State as
21 proof of a person's alcohol concentration in any court or administrative
22 proceeding.

23 A person's willful refusal to give the sequential breath samples necessary to constitute a
24 valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

25 A person's willful refusal to give the second sequential breath sample shall make the
26 results of the first breath test admissible at trial, if it is otherwise admissible."

27 Sec. 3. This act becomes effective October 1, 1993.