

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 511

Short Title: Strengthen DWI Laws.

(Public)

Sponsors: Senators Allran; Carpenter, Codington, Cochrane, Hartsell, Shaw, Smith, Forrester, Kincaid, Blackmon, and Simpson.

Referred to: Judiciary I.

March 22, 1993

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE DWI LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-12.1(a) reads as rewritten:

"(a) It is unlawful for any person to accompany another person driving a motor vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor vehicle, in accordance with G.S. 20-7(1-1) and (m) or G.S. 20-12:

(1) While the person accompanying or instructing is under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

Sec. 2. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if he is charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when he has reasonable grounds to believe that the person charged has committed the implied-consent offense. Except as provided in subsection (b), the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give him a notice in writing that:

(1) He has a right to refuse to be tested.

- 1 (2) Refusal to take any required test or tests will result in an immediate
2 revocation of his driving privilege for at least 10 days and an
3 additional 12-month revocation by the Division of Motor Vehicles.
4 (3) The test results, or the fact of his refusal, will be admissible in
5 evidence at trial on the offense charged.
6 (4) His driving privilege will be revoked immediately for at least 10 days
7 if:
8 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
9 or
10 b. He was driving a commercial motor vehicle and the test reveals
11 an alcohol concentration of 0.04 or more.
12 (5) He may have a qualified person of his own choosing administer a
13 chemical test or tests in addition to any test administered at the
14 direction of the charging officer.
15 (6) He has the right to call an attorney and select a witness to view for him
16 the testing procedures, but the testing may not be delayed for these
17 purposes longer than 30 minutes from the time he is notified of his
18 rights."

19 Sec. 3. G.S. 20-16.2(i) reads as rewritten:

20 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
21 questioned by a law-enforcement officer who is investigating whether the person may
22 have committed an implied-consent offense may request the administration of a
23 chemical analysis before any arrest or other charge is made for the offense. Upon this
24 request, the officer must afford the person the opportunity to have a chemical analysis
25 of his breath, if available, in accordance with the procedures required by G.S. 20-
26 139.1(b). The request constitutes the person's consent to be transported by the law-
27 enforcement officer to the place where the chemical analysis is to be administered.
28 Before the chemical analysis is made, the person must confirm his request in writing
29 and he must be notified:

- 30 (1) That the test results will be admissible in evidence and may be used
31 against him in any implied-consent offense that may arise;
32 (2) That his license will be revoked for at least 10 days if:
33 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
34 or
35 b. He was driving a commercial motor vehicle and the test results
36 reveal an alcohol concentration of 0.04 or more.
37 (3) That if he fails to comply fully with the test procedures, the officer
38 may charge him with any offense for which the officer has probable
39 cause, and if he is charged with an implied-consent offense, his refusal
40 to submit to the testing required as a result of that charge would result
41 in revocation of his driver's license. The results of the chemical
42 analysis are admissible in evidence in any proceeding in which they
43 are relevant."

44 Sec. 4. G.S. 20-16.5(b) reads as rewritten:

1 "(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
2 Concentrations of ~~0.10-0.08~~ or More After Driving a Motor Vehicle or of 0.04 or More
3 After Driving a Commercial Vehicle. – A person's driver's license is subject to
4 revocation under this section if:

- 5 (1) A charging officer has reasonable grounds to believe that the person
6 has committed an offense subject to the implied-consent provisions of
7 G.S. 20-16.2;
- 8 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 9 (3) The charging officer and the chemical analyst comply with the
10 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
11 submission to or procuring a chemical analysis; and
- 12 (4) The person:
 - 13 a. Willfully refuses to submit to the chemical analysis;
 - 14 b. Has an alcohol concentration of ~~0.10-0.08~~ or more within a
15 relevant time after the driving; or
 - 16 c. Has an alcohol concentration of 0.04 or more at any relevant
17 time after the driving of a commercial vehicle."

18 Sec. 5. G.S. 20-16.5(b1) reads as rewritten:

19 "(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the
20 provisions of subsection (b), a person's driver's license is subject to revocation under
21 this section if:

- 22 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
23 and
- 24 (2) He has:
 - 25 a. An alcohol concentration of ~~0.10-0.08~~ or more at any relevant
26 time after driving; or
 - 27 b. An alcohol concentration of 0.04 or more at any relevant time
28 after driving a commercial motor vehicle; and
- 29 (3) He is charged with an implied-consent offense."

30 Sec. 6. G.S. 20-138.1(a) reads as rewritten:

31 "(a) Offense. – A person commits the offense of impaired driving if he drives any
32 vehicle upon any highway, any street, or any public vehicular area within this State:

- 33 (1) While under the influence of an impairing substance; or
- 34 (2) After having consumed sufficient alcohol that he has, at any relevant
35 time after the driving, an alcohol concentration of ~~0.10-0.08~~ or more."

36 Sec. 7. G.S. 20-179(g) reads as rewritten:

37 "(g) Level One Punishment. – A defendant subject to Level One punishment may
38 be fined up to ~~two thousand dollars (\$2,000)~~ five thousand dollars (\$5,000) and must be
39 sentenced to a term of imprisonment that includes a minimum term of not less than 14
40 days and a maximum term of not more than 24 months. The term of imprisonment may
41 be suspended only if a condition of special probation is imposed to require the
42 defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed
43 on probation, the judge must, if required by subsections (l) or (m), impose the
44 conditions relating to treatment and education described in those subsections. The

1 judge may impose any other lawful condition of probation. If the judge does not place
2 on probation a defendant who is otherwise subject to the mandatory assessment and
3 treatment provisions of subsection (m), he must include in the record of the case his
4 reasons for not doing so."

5 Sec. 8. G.S. 20-179(h) reads as rewritten:

6 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
7 be fined up to ~~one thousand dollars (\$1,000)~~ four thousand dollars (\$4,000) and must be
8 sentenced to a term of imprisonment that includes a minimum term of not less than
9 seven days and a maximum term of not more than 12 months. The term of
10 imprisonment may be suspended only if a condition of special probation is imposed to
11 require the defendant to serve a term of imprisonment of at least seven days. If the
12 defendant is placed on probation, the judge must, if required by subsections (l) or (m),
13 impose the conditions relating to treatment and education described in those
14 subsections. The judge may impose any other lawful condition of probation. If the
15 judge does not place on probation a defendant who is otherwise subject to the
16 mandatory assessment and treatment provisions of subsection (m), he must include in
17 the record of the case his reasons for not doing so."

18 Sec. 9. G.S. 20-179(i) reads as rewritten:

19 "(i) Level Three Punishment. – A defendant subject to Level Three punishment
20 may be fined up to ~~five hundred dollars (\$500.00)~~ three thousand dollars (\$3,000) and
21 must be sentenced to a term of imprisonment that includes a minimum term of not less
22 than 72 hours and a maximum term of not more than six months. The term of
23 imprisonment must be suspended, on the condition that the defendant:

- 24 (1) Be imprisoned for a term of at least 72 hours as a condition of special
25 probation; or
- 26 (2) Perform community service for a term of at least 72 hours; or
- 27 (3) Not operate a motor vehicle for a term of at least 90 days; or
- 28 (4) Any combination of these conditions.

29 The judge in his discretion may impose any other lawful condition of probation and, if
30 required by subsections (l) or (m), must impose the conditions relating to treatment and
31 education described in those subsections. This subsection does not affect the right of a
32 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
33 15A-1341(c)."

34 Sec. 10. G.S. 20-179(j) reads as rewritten:

35 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may
36 be fined up to ~~two hundred fifty dollars (\$250.00)~~ two thousand dollars (\$2,000) and must
37 be sentenced to a term of imprisonment that includes a minimum term of not less than
38 48 hours and a maximum term of not more than 120 days. The term of imprisonment
39 must be suspended, on the condition that the defendant:

- 40 (1) Be imprisoned for a term of 48 hours as a condition of special
41 probation; or
- 42 (2) Perform community service for a term of 48 hours; or
- 43 (3) Not operate a motor vehicle for a term of 60 days; or
- 44 (4) Any combination of these conditions.

1 The judge in his discretion may impose any other lawful condition of probation and, if
2 required by subsections (l) or (m), must impose the conditions relating to treatment and
3 education described in those subsections. This subsection does not affect the right of a
4 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
5 15A-1341(c)."

6 Sec. 11. G.S. 20-179(k) reads as rewritten:

7 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may
8 be fined up to ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000), shall have his
9 drivers license suspended for a period of one year, and must be sentenced to a term of
10 imprisonment that includes a minimum term of not less than 24 hours and a maximum
11 term of not more than ~~60~~ 61 days. The term of imprisonment must be suspended, on the
12 condition that the defendant:

- 13 (1) Be imprisoned for a term of 24 hours as a condition of special
14 probation; or
- 15 (2) Perform community service for a term of 24 hours; or
- 16 (3) Not operate a motor vehicle for a term of 30 days; or
- 17 (4) Any combination of these conditions.

18 The judge may in his discretion impose any other lawful condition of probation and, if
19 required by subsections (l) or (m), must impose the conditions relating to treatment and
20 education described in those subsections. This subsection does not affect the right of a
21 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
22 15A-1341(c)."

23 Sec. 12. G.S. 20-139.1(b3) reads as rewritten:

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

- 28 (1) A specification as to the minimum observation period before collection
29 of the first breath sample and the time requirements as to collection of
30 second and subsequent samples.
- 31 (2) That the test results may only be used to prove a person's particular
32 alcohol concentration if:
 - 33 a. The pair of readings employed are from consecutively
34 administered tests; and
 - 35 b. The readings do not differ from each other by an alcohol
36 concentration greater than 0.02.
- 37 (3) That when a pair of analyses meets the requirements of subdivision
38 (2), only the lower of the two readings may be used by the State as
39 proof of a person's alcohol concentration in any court or administrative
40 proceeding.

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

43 If a person willfully refuses to submit to a chemical analysis by refusing to provide a
44 second or subsequent breath sample, then

1 (i) The result of the analysis of the sample providing the lowest alcohol
2 concentration, if more than one sample is provided; or
3 (ii) If a single sample is provided, the result of that sample
4 may be used as evidence in any judicial or administrative proceeding for any relevant
5 purpose, including, but not limited to
6 (i) The establishment of probable cause;
7 (ii) Corroboration of field sobriety tests; or
8 (iii) Evidence of impairment
9 provided, however, the result may not be used to prove that a person had a particular
10 alcohol concentration to establish a violation of G.S. 20-138.1(a)(2)."

11 Sec. 13. G.S. 20-13.2(d) reads as rewritten:

12 "(d) ~~A~~~~The length of revocation under this section continues until shall be equal to~~
13 ~~the number of days from the date of the charge to the provisional licensee licensee's~~
14 ~~eighteenth birthday reaches 18 years of age or 45 days have elapsed, whichever occurs~~
15 ~~lastis longer.~~ Revocations under this section run concurrently with any other
16 revocations, but a limited driving privilege issued pursuant to law does not authorize a
17 provisional licensee to drive if his license is revoked under this section."

18 Sec. 14. G.S. 20-16.2(a1) reads as rewritten:

19 "(a1) Meaning of Terms. – Under this section, an 'implied-consent offense' is an
20 offense involving impaired driving or an alcohol-related offense made subject to the
21 procedures of this section. A person is 'charged' with an offense if he is arrested for ~~it~~
22 ~~it, if criminal process for the offense has been issued.~~ issued or, if the person is a
23 juvenile, he would have been arrested or criminal process would have been issued if he
24 were an adult. A 'charging officer' is a law-enforcement officer who arrests the person
25 charged, lodges the ~~charge, charges,~~ takes the juvenile into protective custody, or assists
26 the officer who arrested the ~~person or person,~~ lodged the charge charge, or took the
27 juvenile into protective custody by assuming custody of the person to make the request
28 required by subsection (c) and, if necessary, to present the person to a judicial official
29 for an initial appearance."

30 Sec. 15. G.S. 20-138.4 reads as rewritten:

31 "**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**
32 **involving impaired driving.**

33 In any case in which a person is charged with an offense involving impaired driving,
34 ~~Any~~any prosecutor must enter detailed facts in the record ~~of any case involving impaired~~
35 ~~driving~~ explaining the reasons for his action if he:

- 36 (1) Enters a voluntary dismissal; or
- 37 (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- 38 (3) Substitutes another charge, by statement of charges or otherwise, if the
39 substitute charge carries a lesser mandatory minimum punishment or is
40 not an offense involving impaired driving; or
- 41 (4) Otherwise takes a discretionary action that effectively dismisses or
42 reduces the original charge in the case involving impaired driving.

43 General explanations such as 'interests of justice' or 'insufficient evidence' are not
44 sufficiently detailed to meet the requirements of this section."

1 Sec. 16. G.S. 20-179(e) reads as rewritten:

2 "(e) Mitigating Factors to Be Weighed. – The judge must also determine before
3 sentencing under subsection (f) whether any of the mitigating factors listed below apply
4 to the defendant. The judge must weigh the degree of mitigation of each factor in light
5 of the particular circumstances of the case. The factors are:

6 (1) Slight impairment of the defendant's faculties resulting solely from
7 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09
8 at any relevant time after the driving.

9 (2) Slight impairment of the defendant's faculties, resulting solely from
10 alcohol, with no chemical analysis having been available to the
11 defendant.

12 (3) Driving at the time of the offense that was safe and lawful except for
13 the impairment of the defendant's faculties.

14 (4) A safe driving record, with the defendant's having no conviction for
15 any motor vehicle offense for which at least four points are assigned
16 under G.S. 20-16 or for which the person's license is subject to
17 revocation within five years of the date of the offense for which the
18 defendant is being sentenced.

19 (5) Impairment of the defendant's faculties caused primarily by
20 a lawfully prescribed drug for an existing medical condition, and the
21 amount of the drug taken was within the prescribed dosage.

22 (6) The defendant's voluntary submission to a mental health facility for
23 assessment after he was charged with the impaired driving offense for
24 which he is being sentenced, and, if recommended by the facility, his
25 voluntary participation in the recommended treatment.

26 (7) Any other factor that mitigates the seriousness of the offense.

27 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
28 mitigating factor must occur during the same transaction or occurrence as the impaired
29 driving offense."

30 Sec. 17. G.S. 20-179(c) reads as rewritten:

31 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing
32 hearing, based upon the evidence presented at trial and in the hearing, the judge must
33 first determine whether there are any grossly aggravating factors in the case. If the
34 defendant has been convicted of two or more prior offenses involving impaired driving,
35 if the convictions occurred within seven years before the date of the offense for which
36 he is being sentenced, the judge must impose the Level One punishment under
37 subsection (g). The judge must also impose the Level One punishment if he determines
38 that two or more of the following grossly aggravating factors apply:

39 (1) A single conviction for an offense involving impaired driving, if the
40 conviction occurred within seven years before the date of the offense
41 for which the defendant is being sentenced.

42 (2) Driving by the defendant at the time of the offense while his driver's
43 license was revoked under G.S. 20-28, and the revocation was an
44 impaired driving revocation under G.S. 20-28.2(a).

1 (3) Serious injury to another person caused by the defendant's impaired
2 driving at the time of the offense.

3 If the judge determines that only one of the above grossly aggravating factors applies,
4 he must impose the Level Two punishment under subsection (h). In imposing a Level
5 One or Two punishment, the judge may consider the aggravating and mitigating factors
6 in subsections (d) and (e) in determining the appropriate sentence. If there are no
7 grossly aggravating factors in the case, the judge must weigh all aggravating and
8 mitigating factors and impose punishment as required by subsection (f).

9 A conviction for another offense involving impaired driving, for which the
10 conviction occurs after the date of the offense for which the defendant is presently being
11 sentenced, but prior to or contemporaneously with the present sentencing, shall also
12 constitute a prior conviction involving impaired driving for aggravation purposes of this
13 subsection."

14 Sec. 18. Chapter 20 of the General Statutes is amended by adding a new
15 section to read:

16 **"§ 20-16.05. Mandatory suspension of drivers license upon conviction for impaired**
17 **driving.**

18 Notwithstanding any other provisions of this Article, the Division shall suspend the
19 license of any driver, without preliminary hearing, for a period of one year, upon
20 receiving a record of that driver's conviction for a violation of G.S. 20-138.1."

21 Sec. 19. This act becomes effective October 1, 1993.