

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 496
HOUSE BILL 458

AN ACT TO IMPOSE CONDITIONS FOR THE RESTORATION OF A DRIVERS LICENSE AFTER A CONVICTION FOR CERTAIN ALCOHOL-RELATED DRIVING OFFENSES AND TO PROMOTE COMPLIANCE WITH THESE CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 20 of the General Statutes is amended by adding the following new sections to read:

"§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while a provisional licensee after consuming alcohol or drugs.

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- (1) G.S. 20-138.1, driving while impaired (DWI).
- (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).
- (3) G.S. 20-138.3, driving while a provisional licensee after consuming alcohol or drugs.

(b) Requirement for Restoring License. – The Division must receive a certificate of completion for a person who is subject to this section before the Division can restore that person's license. The revocation period for a person who is subject to this section is extended until the Division receives the certificate of completion.

(c) Certificate of Completion. – To obtain a certificate of completion, a person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug education traffic (ADET) school or a substance abuse treatment program. The substance abuse assessment must be conducted by one of the entities authorized by the Department of Human Resources to conduct assessments. G.S. 122C-142.1 describes the procedure for obtaining a certificate of completion.

(d) Notice of Requirement. – When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the local area mental health, developmental disabilities, and substance abuse program for a list of agencies and entities in the person's area that are authorized to make a substance abuse assessment and provide the education or treatment needed to obtain a certificate of completion.

(e) Effect on Limited Driving Privileges. – A person who is subject to this section is not eligible for limited driving privileges if the revocation period for the offense that caused the person to become subject to this section has ended and the person's license remains revoked only because the Division has not obtained a certificate of completion for that person. The issuance of limited driving privileges during the revocation period for the offense that caused the person to become subject to this section is governed by the statutes that apply to that offense."

Sec. 2. G.S. 20-179(m), 20-179(r)(2), and 20-179(t) are repealed.

Sec. 3. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge ~~must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection.~~ may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. ~~If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."~~

Sec. 4. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge ~~must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection.~~ may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. ~~If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."~~

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

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

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

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge ~~in his discretion~~ may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. ~~probation.~~ This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

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

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

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

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge ~~in his discretion~~ may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. ~~probation.~~ This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

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

"(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or

- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may in his discretion impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

Sec. 8. G.S. 20-179.2 is repealed.

Sec. 9. G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of one hundred dollars (\$100.00) must be paid by all persons serving a community service sentence. That fee must be paid to the clerk of court in the county in which the person is convicted. The fee must be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows ~~him~~ additional time to pay the fee. The person may not be required to pay the fee before ~~he begins~~ beginning the community service unless the court specifically orders ~~that he the person to do so. If the person is also ordered to attend an Alcohol and Drug Education Traffic School established pursuant to G.S. 20-179.2, the fee for supervision of community service punishment is fifty dollars (\$50.00)."~~

Sec. 10. Part 4 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while a provisional licensee after consuming alcohol or drugs.

(a) Services. – An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility that has complied with this subsection, or, with the approval of the Department, from an agency that is located in another state. Before a private facility located in this State provides the substance abuse services needed by a person to obtain a certificate of completion, the facility shall notify both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services and shall agree to comply with the laws and rules concerning these services that apply to area facilities.

(b) Assessments. – To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. – Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.

(2) The person has a prior conviction of an offense involving impaired driving.

(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. – An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(e) Certificate of Completion. – Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) Fees. – A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of fifty dollars (\$50.00). A person shall pay to a treatment facility or school a fee of seventy-five dollars (\$75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(g) Out-of-State Services. – A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. – The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those

contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. – The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

- (1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.
- (2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.
- (3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.
- (4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.
- (5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.
- (6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services."

Sec. 11. The catch line to G.S. 20-17.6, as enacted by this act, reads as rewritten:

"§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while a ~~provisional licensee~~ less than 21 years old after consuming alcohol or drugs."

Sec. 12. G.S. 20-17.6(a), as enacted by this act, reads as rewritten:

"(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- (1) G.S. 20-138.1, driving while impaired (DWI).
- (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).
- (3) G.S. 20-138.3, driving while a ~~provisional licensee~~ less than 21 years old after consuming alcohol or drugs."

Sec. 13. The catch line to G.S. 122C-142.1, as enacted by this act, reads as rewritten:

"§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while ~~a provisional licensee~~ less than 21 years old after consuming alcohol or drugs."

Sec. 13.1. (a) Section 12.1 of Chapter 466 of the 1995 Session Laws is repealed.

(b) This section is effective upon ratification.

Sec. 14. This act becomes effective January 1, 1996, and applies to offenses occurring on or after that date. Sections 11, 12, and 13 of this act become effective only if House Bill 353 of the 1995 General Assembly, AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED, is enacted.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives