

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 349

Short Title: Habitual Impaired Driving.

(Public)

Sponsors: Senators Shaw of Guilford; Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochran, East, Forrester, Foxx, Garwood, Hartsell, Horton, Kincaid, Ledbetter, McDaniel, Page, and Rucho.

Referred to: Judiciary.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING MUST BE SENTENCED TO PRISON AND MUST SERVE THE ENTIRE TIME OF IMPRISONMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.10 reads as rewritten:

"§ 15A-1340.10. Applicability of structured sentencing.

This Article applies to criminal offenses in North Carolina, other than impaired driving under ~~G.S. 20-138.1~~ G.S. 20-138.1, habitual impaired driving under G.S. 20-138.5, and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."

Section 2. G.S. 20-138.5 reads as rewritten:

"§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class G felon. ~~felon~~ as follows:

- 1 (1) For a first conviction of this offense, the court shall sentence the
2 person to a term of imprisonment for not less than 60 months nor more
3 than 84 months and may impose a fine;
4 (2) For a second conviction of this offense, the court shall sentence the
5 person to a term of imprisonment for not less than 120 months nor
6 more than 180 months and may impose a fine;
7 (3) For a third conviction of this offense, the court shall sentence the
8 person to a term of imprisonment for not less than life.

9 The court shall impose a single term of imprisonment that shall be both the
10 minimum and maximum sentence, and the court may not suspend the sentence and may
11 not place the person sentenced on probation. The sentence shall not be reduced by any
12 credit for good behavior, gain time, earned time, and the like, except for credit for time
13 served under G.S. 15-196.1. A person serving the sentence shall not be eligible for
14 parole or post-release supervision. ~~Sentences~~ A sentence imposed under this subsection
15 shall run consecutively with and shall commence at the expiration of any sentence being
16 served.

17 (c) An offense under this section is an implied consent offense subject to the
18 provisions of G.S. 20-16.2.

19 (d) A person convicted under this section shall have his license permanently
20 revoked.

21 (e) If a person is convicted under this section, the motor vehicle that was driven
22 by the defendant at the time the defendant committed the offense of impaired driving
23 becomes property subject to forfeiture in accordance with the procedure set out in G.S.
24 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a
25 security interest is considered an innocent party with respect to a motor vehicle subject
26 to forfeiture under this subsection if any of the following applies:

- 27 (1) The owner or holder of the security interest did not know and had no
28 reason to know that the defendant had been convicted within the
29 previous seven years of three or more offenses involving impaired
30 driving.
31 (2) The defendant drove the motor vehicle without the consent of the
32 owner or the holder of the security interest."

33 Section 3. This act is effective on October 1, 1997, and applies to offenses
34 committed on or after that date.