

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

2

HOUSE BILL 1287
Committee Substitute Favorable 6/14/96

Short Title: DWI/Felony Prior Record Level.

(Public)

Sponsors:

Referred to:

May 22, 1996

A BILL TO BE ENTITLED

1 AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY
2 PRIOR RECORD LEVEL CALCULATION, TO PROVIDE FOR AN INDEFINITE
3 CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS
4 CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER
5 IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION, AND TO ALLOW
6 FOR MODIFICATION OF SENTENCE FOR IMPAIRED DRIVING ON REMAND
7 TO DISTRICT COURT OR WITHDRAWAL OF APPEAL.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 15A-1340.14(b) reads as rewritten:

11 "(b) Points. – Points are assigned as follows:

12 (1) For each prior felony Class A conviction, 10 points.

13 (1a) For each prior felony Class B1 conviction, 9 points.

14 (2) For each prior felony Class B2, C, or D conviction, 6 points.

15 (3) For each prior felony Class E, F, or G conviction, 4 points.

16 (4) For each prior felony Class H or I conviction, 2 points.

17 (5) For each prior Class A1 or Class 1 misdemeanor ~~conviction-conviction~~
18 or prior impaired driving conviction under G.S. 20-138.1, 1 point,
19 except that convictions for Class 1 misdemeanor offenses under Chapter

1 20 of the General Statutes, other than conviction for misdemeanor death
2 by vehicle (~~G.S. 20-141.4(a2)~~), [G.S. 20-141.4(a2)] and conviction for
3 impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be
4 assigned any points for purposes of determining a person's prior record
5 for felony sentencing.

6 (6) If all the elements of the present offense are included in the prior
7 offense, 1 point.

8 (7) If the offense was committed while the offender was on probation or
9 parole, or while the offender was serving a sentence of imprisonment, or
10 while the offender was on escape from a correctional institution while
11 serving a sentence of imprisonment, 1 point.

12 For purposes of determining prior record points under this subsection, a conviction for
13 a first degree rape or a first degree sexual offense committed prior to the effective date of
14 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
15 other felony Class B offense committed prior to the effective date of this subsection shall
16 be treated as a felony Class B2 conviction."

17 Sec. 2. G.S. 20-16.5 reads as rewritten:

18 **"§ 20-16.5. Immediate civil license revocation for certain persons charged with**
19 **implied-consent offenses.**

20 (a) Definitions. – As used in this section the following words and phrases have the
21 following meanings:

22 (1) Charging Officer. – As described in G.S. 20-16.2(a1).

23 (2) Clerk. – As defined in G.S. 15A-101(2).

24 (3) Judicial Official. – As defined in G.S. 15A-101(5).

25 (4) Revocation Report. – A sworn statement by a charging officer and a
26 chemical analyst containing facts indicating that the conditions of
27 subsection (b) have been ~~met~~ met, and whether the person has a
28 pending offense for which their license had been or is revoked under
29 this section. When one chemical analyst analyzes a person's blood and
30 another chemical analyst informs a person of his rights and
31 responsibilities under G.S. 20-16.2, the report must include the
32 statements of both analysts.

33 (5) Surrender of a Driver's License. – The act of turning over to a court or a
34 law-enforcement officer the person's most recent, valid driver's license
35 or learner's permit issued by the Division or by a similar agency in
36 another jurisdiction, or a limited driving privilege issued by a North
37 Carolina court. A person who is validly licensed but who is unable to
38 locate his license card may file an affidavit with the clerk setting out
39 facts that indicate that he is unable to locate his license card and that he
40 is validly licensed; the filing of the affidavit constitutes a surrender of
41 the person's license.

42 (b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
43 Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After

1 Driving a Commercial Vehicle. – A person's driver's license is subject to revocation
2 under this section if:

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

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

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

27 (c) Duty of Charging Officers and Chemical Analysts to Report to Judicial
28 Officials. – If a person's driver's license is subject to revocation under this section, the
29 charging officer and the chemical analyst must execute a revocation report. If the person
30 has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the
31 Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains
32 the information required by this section. It is the specific duty of the charging officer to
33 make sure that the report is expeditiously filed with a judicial official as required by this
34 section.

35 (d) Which Judicial Official Must Receive Report. – The judicial official with
36 whom the revocation report must be filed is:

- 37 (1) The judicial official conducting the initial appearance on the underlying
38 criminal charge if:
- 39 a. No revocation report has previously been filed; and
- 40 b. At the time of the initial appearance the results of the chemical
41 analysis, if administered, or the reports indicating a refusal, are
42 available.

1 (2) A judicial official conducting any other proceeding relating to the
2 underlying criminal charge at which the person is present, if no report
3 has previously been filed.

4 (3) The clerk of superior court in the county in which the underlying
5 criminal charge has been brought if subdivisions (1) and (2) are not
6 applicable at the time the charging officer must file the report.

7 (e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
8 properly executed revocation report concerning a person is filed with a judicial official
9 when the person is present before that official, the judicial official must, after completing
10 any other proceedings involving the person, determine whether there is probable cause to
11 believe that each of the conditions of subsection (b) has been met. If he determines that
12 there is such probable cause, he must enter an order revoking the person's driver's license
13 for the period required in this subsection. The judicial official must order the person to
14 surrender his license and if necessary may order a law-enforcement officer to seize the
15 license. The judicial official must give the person a copy of the revocation order. In
16 addition to setting it out in the order the judicial official must personally inform the
17 person of his right to a hearing as specified in subsection (g), and that his license remains
18 revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation
19 under this subsection begins at the time the revocation order is issued and continues until
20 the person's license has been surrendered for 10 days and the person has paid the applicable
21 costs. ~~If the person is not currently licensed, the revocation continues until 10 days from the date~~
22 ~~the revocation order is issued and the person has paid the applicable costs.~~ revoked for the
23 period specified in this subsection and the person has paid the applicable costs. The
24 period of revocation is 10 days, if there are no pending offenses for which the person's
25 license had been or is revoked under this section. If at the time of the current offense, the
26 person has one or more pending offenses for which his license had been or is revoked
27 under this section, the revocation shall remain in effect until a final judgment, including
28 all appeals, has been entered for the current offense and for all pending offenses. In no
29 event, may the period of revocation under this subsection be less than 10 days. If within
30 five working days of the effective date of the order, the person does not surrender his
31 license or demonstrate that he is not currently licensed, the clerk must immediately issue
32 a pick-up order. The pick-up order must be issued to a member of a local law-
33 enforcement agency if the charging officer was employed by the agency at the time of the
34 charge and the person resides in or is present in the agency's territorial jurisdiction. In all
35 other cases, the pick-up order must be issued to an officer or inspector of the Division. A
36 pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-
37 29 as if the order had been issued by the Division.

38 (f) Procedure if Report Filed with Clerk of Court When Person Not Present. –
39 When a clerk receives a properly executed report under subdivision (d)(3) and the person
40 named in the revocation report is not present before the clerk, the clerk must determine
41 whether there is probable cause to believe that each of the conditions of subsection (b)
42 has been met. If he determines that there is such probable cause, he must mail to the
43 person a revocation order by first-class mail. The order must direct that the person on or

1 before the effective date of the order either surrender his license to the clerk or appear
2 before the clerk and demonstrate that he is not currently licensed, and the order must
3 inform the person of the time and effective date of the revocation and of its duration, of
4 his right to a hearing as specified in subsection (g), and that the revocation remains in
5 effect pending the hearing. Revocation orders mailed under this subsection become
6 effective on the fourth day after the order is deposited in the United States mail. If within
7 five working days of the effective date of the order, the person does not surrender his
8 license to the clerk or appear before the clerk to demonstrate that he is not currently
9 licensed, the clerk must immediately issue a pick-up order. The pick-up order must be
10 issued and served in the same manner as specified in subsection (e) for pick-up orders
11 issued pursuant to that subsection. A revocation under this subsection begins at the date
12 specified in the order and continues until the person's license has been revoked for the
13 period specified in this subsection and the person has paid the applicable costs. ~~The~~If the
14 person has no pending offenses for which his license had been or is revoked under this
15 section, the period of revocation under this subsection is:

- 16 (1) Ten days from the time the person surrenders his license to the court, if
17 the surrender occurs within five working days of the effective date of
18 the order; or
- 19 (2) Ten days after the person appears before the clerk and demonstrates that
20 he is not currently licensed to drive, if the appearance occurs within five
21 working days of the effective date of the revocation order; or
- 22 (3) Thirty days from the time:
 - 23 a. The person's driver's license is picked up by a law-enforcement
24 officer following service of a pick-up order; or
 - 25 b. The person demonstrates to a law-enforcement officer who has a
26 pick-up order for his license that he is not currently licensed; or
 - 27 c. The person's driver's license is surrendered to the court if the
28 surrender occurs more than five working days after the effective
29 date of the revocation order; or
 - 30 d. The person appears before the clerk to demonstrate that he is not
31 currently licensed, if he appears more than five working days
32 after the effective date of the revocation order.

33 If at the time of the current offense, the person has one or more pending offenses for
34 which his license had been or is revoked under this section, the revocation shall remain in
35 effect until a final judgment, including all appeals, has been entered for the current
36 offense and for all pending offense. In no event may the period of revocation for the
37 current offense be less than the applicable period of revocation in subdivisions (1), (2), or
38 (3) of this subsection. When a pick-up order is issued, it must inform the person of his
39 right to a hearing as specified in subsection (g), and that the revocation remains in effect
40 pending the hearing. An officer serving a pick-up order under this subsection must return
41 the order to the court indicating the date it was served or that he was unable to serve the
42 order. If the license was surrendered, the officer serving the order must deposit it with
43 the clerk within three days of the surrender.

1 (g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation.
2 – A person whose license is revoked under this section may request in writing a hearing
3 to contest the validity of the revocation. The request may be made at the time of the
4 person's initial appearance, or within 10 days of the effective date of the revocation to the
5 clerk or a magistrate designated by the clerk, and may specifically request that the
6 hearing be conducted by a district court judge. The Administrative Office of the Courts
7 must develop a hearing request form for any person requesting a hearing. Unless a
8 district court judge is requested, the hearing must be conducted within the county by a
9 magistrate assigned by the chief district judge to conduct such hearings. If the person
10 requests that a district court judge hold the hearing, the hearing must be conducted within
11 the district court district as defined in G.S. 7A-133 by a district court judge assigned to
12 conduct such hearings. The revocation remains in effect pending the hearing, but the
13 hearing must be held within three working days following the request if the hearing is
14 before a magistrate or within five working days if the hearing is before a district court
15 judge. The request for the hearing must specify the grounds upon which the validity of
16 the revocation is challenged and the hearing must be limited to the grounds specified in
17 the request. A witness may submit his evidence by affidavit unless he is subpoenaed to
18 appear. Any person who appears and testifies is subject to questioning by the judicial
19 official conducting the hearing, and the judicial official may adjourn the hearing to seek
20 additional evidence if he is not satisfied with the accuracy or completeness of evidence.
21 The person contesting the validity of the revocation may, but is not required to, testify in
22 his own behalf. Unless contested by the person requesting the hearing, the judicial
23 official may accept as true any matter stated in the revocation report. If any relevant
24 condition under subsection (b) is contested, the judicial official must find by the greater
25 weight of the evidence that the condition was met in order to sustain the revocation. At
26 the conclusion of the hearing the judicial official must enter an order sustaining or
27 rescinding the revocation. The judicial official's findings are without prejudice to the
28 person contesting the revocation and to any other potential party as to any other
29 proceedings, civil or criminal, that may involve facts bearing upon the conditions in
30 subsection (b) considered by the judicial official. The decision of the judicial official is
31 final and may not be appealed in the General Court of Justice. If the hearing is not held
32 and completed within three working days of the written request for a hearing before a
33 magistrate or within five working days of the written request for a hearing before a
34 district court judge, the judicial official must enter an order rescinding the revocation,
35 unless the person contesting the revocation contributed to the delay in completing the
36 hearing. If the person requesting the hearing fails to appear at the hearing or any
37 rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

38 (h) Return of License. – After the applicable period of revocation under this
39 section, or if the magistrate or judge orders the revocation rescinded, the person whose
40 license was revoked may apply to the clerk for return of his surrendered license. Unless
41 the clerk finds that the person is not eligible to use the surrendered license, he must return
42 it if:

1 (1) The applicable period of revocation has passed and the person has
2 tendered payment for the costs under subsection (j); or

3 (2) The magistrate or judge has ordered the revocation rescinded.

4 If the license has expired, he may return it to the person with a caution that it is no longer
5 valid. Otherwise, if the person is not eligible to use the license and the license was issued
6 by the Division or in another state, the clerk must mail it to the Division. If the person
7 has surrendered his copy of a limited driving privilege and he is no longer eligible to use
8 it, the clerk must make a record that he has withheld the limited driving privilege and
9 forward that record to the clerk in the county in which the limited driving privilege was
10 issued for filing in the case file. If the person's license is revoked under this section and
11 under another section of this Chapter, the clerk must surrender the license to the Division
12 if the revocation under this section can terminate before the other revocation; in such
13 cases, the costs required by subsection (j) must still be paid before the revocation under
14 this section is terminated.

15 (i) Effect of Revocations. – A revocation under this section revokes a person's
16 privilege to drive in North Carolina whatever the source of his authorization to drive.
17 Revocations under this section are independent of and run concurrently with any other
18 revocations. No court imposing a period of revocation following conviction of an offense
19 involving impaired driving may give credit for any period of revocation imposed under
20 this section. ~~A—Except as provided in subsection (i1), a person is not eligible for a limited~~
21 ~~driving privilege under any statute while his license is revoked under this section.~~

22 (i1) A person whose license has been indefinitely revoked under this section may,
23 after completion of 10 days under subsection (e) or the applicable period of time under
24 subdivisions (1), (2), or (3) of subsection (f), apply for a limited driving privilege as
25 provided in G.S. 20-179.3. A judge of the division in which the current offense is
26 pending may issue the limited driving privilege only if the privilege is necessary to
27 overcome undue hardship and the person meets the eligibility requirements of G.S. 20-
28 179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not
29 apply.

30 (j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a
31 person whose license is revoked under this section must pay a fee of fifty dollars (\$50.00)
32 as costs for the action before the person's license may be returned under subsection (h).
33 The costs collected under this section shall be credited to the General Fund. Fifty percent
34 (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing
35 program administered by the Injury Control Section of the Department of Environment,
36 Health, and Natural Resources.

37 (k) Report to Division. – Except as provided below, the clerk must mail a report to
38 the ~~Division within~~ Division:

39 (1) If the license is revoked indefinitely, within 10 working days of the
40 revocation of the license; and

41 (2) In all cases, within 10 working days of the return of a license under this
42 section or of the termination of a revocation of the driving privilege of a
43 person not currently licensed.

1 The report must identify the person whose license has been ~~revoked and revoked~~, specify
2 the date on which his license was ~~revoked~~, and indicate whether the license has
3 been returned. The report must also provide, if applicable, whether the license is revoked
4 indefinitely. No report need be made to the Division, however, if there was a surrender of
5 the driver's license issued by the Division, a 10-day minimum revocation was imposed,
6 and the license was properly returned to the person under subsection (h) within five
7 working days after the 10-day period had elapsed.

8 (l) Restoration Fee for Unlicensed Persons. – If a person whose license is revoked
9 under this section has no valid license, he must pay the restoration fee required by G.S.
10 20-7 before he may apply for a license from the Division.

11 (m) Modification of Revocation Order. – Any judicial official presiding over a
12 proceeding under this section may issue a modified order if he determines that an
13 inappropriate order has been issued.

14 (n) Exception for Revoked Licenses. – Notwithstanding any other provision of this
15 section, if the judicial official required to issue a revocation order under this section
16 determines that the person whose license is subject to revocation under subsection (b):

- 17 (1) Has a currently revoked driver's license;
- 18 (2) Has no limited driving privilege; and
- 19 (3) Will not become eligible for restoration of his license or for a limited
20 driving privilege during the period of revocation required by this
21 section,

22 the judicial official need not issue a revocation order under this section. In this event the
23 judicial official must file in the records of the civil proceeding a copy of any
24 documentary evidence and set out in writing all other evidence on which he relies in
25 making his determination.

26 (o) Designation of Proceedings. – Proceedings under this section are civil actions,
27 and must be identified by the caption "In the Matter of _____" and filed as directed by
28 the Administrative Office of the Courts."

29 Sec. 3. G.S. 20-179 is amended by adding a new subsection to read:

30 "(a1) Modification of Sentence. – If a conviction for impaired driving under G.S. 20-
31 138.1 has been appealed to superior court and the notice of appeal is withdrawn or the
32 case remanded to district court for imposition of judgment, the district court shall, upon
33 motion of the district attorney, hold a hearing to determine if any grossly aggravating
34 factors under subdivision (1) of subsection (c) apply which were not included in the
35 judgment. If so, the judge shall modify the sentence in accordance with this section. The
36 motion of the district attorney under this subsection must be filed prior to the order of
37 remand or withdrawal of the notice of appeal."

38 Sec. 4. Section 1 of this act becomes effective July 1, 1997. The remaining
39 sections of this act become effective January 1, 1997.