

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 458
Committee Substitute Favorable 3/29/95

Short Title: DWI-Assessment Enhancement/AB.

(Public)

Sponsors:

Referred to:

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO IMPOSE CONDITIONS FOR THE RESTORATION OR CONTINUED ENJOYMENT OF A DRIVING PRIVILEGE AFTER A CONVICTION FOR DRIVING WHILE IMPAIRED OR DRIVING WHILE A PROVISIONAL LICENSEE AFTER CONSUMING DRUGS OR ALCOHOL, 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; effect of failure to comply.

(a) Certificate of Completion Required. – When the Division receives an original certificate of completion for an individual who was convicted:

(1) Under G.S. 20-138.1 of driving while impaired (DWI);

(2) Under G.S. 20-138.2 of commercial DWI; or

(3) Under G.S. 20-138.3 of driving while a provisional licensee after consuming alcohol or drugs,

it may take one of the following actions:

- 1 (1) Restore the person's license, if one of the following applies:
2 a. The person was convicted under G.S. 20-138.1 of DWI.
3 b. The person was convicted under G.S. 20-138.2 of commercial
4 DWI and the person's license was revoked under G.S. 20-17(2).
5 c. The person was convicted under G.S. 20-138.3 of driving while a
6 provisional licensee after consuming alcohol or drugs and one of
7 the following applies:
8 1. The person's license was revoked for at least one year.
9 2. The person's license was revoked for less than one year, it
10 has been at least one year since the person was convicted,
11 and the person did not obtain a license after the revocation
12 period ended.
13 (2) End the person's period of disqualification, if the person was convicted
14 under G.S. 20-138.2 of commercial DWI and the person's license was
15 not revoked under G.S. 20-17(2).
16 (3) Allow a person who was convicted under G.S. 20-138.3 of driving
17 while a provisional licensee after consuming alcohol or drugs, and
18 whose period of revocation was less than one year, to hold a license
19 obtained by the person after the revocation period ended and before one
20 year elapsed since the person was convicted.
21 (b) When Certificate Is Issued. – A certificate of completion shall be issued after a
22 person has had a substance abuse assessment and has completed either an alcohol and
23 drug education traffic (ADET) school or a substance abuse treatment program.
24 Completion of an ADET school is required if none of the following applies:
25 (1) The person took a chemical test at the time of the offense, and the test
26 revealed that the person had an alcohol concentration at any relevant
27 time after driving of at least 0.15.
28 (2) The person has a prior conviction of an offense involving impaired
29 driving.
30 (3) The substance abuse assessment identifies a substance abuse disability.
31 Completion of a substance abuse treatment program is required if any of the following
32 applies:
33 (1) The person took a chemical test at the time of the offense, and the test
34 revealed that the person had an alcohol concentration at any relevant
35 time after driving of at least 0.15.
36 (2) The person has a prior conviction of an offense involving impaired
37 driving.
38 (3) The substance abuse assessment identifies a substance abuse disability.
39 (c) Notice of Requirement. – When a court reports to the Division a conviction
40 under G.S. 20-138.1 of DWI, under G.S. 20-138.2 of commercial DWI, or under G.S. 20-
41 138.3 of driving while a provisional licensee after consuming alcohol or drugs, the
42 Division shall notify the convicted person, in writing, of the requirements of this section
43 and the consequences for failure to comply with them. The notification shall include a

1 statement that the convicted person may contact the local area mental health,
2 developmental disabilities, and substance abuse program for a list of agencies and entities
3 in his area that are authorized to make a substance abuse assessment and to provide
4 education or treatment needed in obtaining a certificate of completion.

5 (d) How to Obtain a Certificate. – To begin the process of obtaining a certificate
6 of completion, a person shall have a substance abuse assessment conducted by one of the
7 entities authorized to do so by the Department of Human Resources. The procedure
8 established in G.S. 122C-142.1 shall then be followed to obtain a certificate of
9 completion.

10 (e) Suspension for Failure to Obtain Certificate. – If the Division has not received
11 the original certificate of completion from the Department of Human Resources within
12 one year from the date of the conviction, the Division shall automatically suspend the
13 person's drivers license until it receives the original certificate of completion. Any
14 individual whose drivers license is suspended pursuant to this subsection shall not be
15 eligible to drive under any limited driving privilege."

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

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

18 "(g) Level One Punishment. – A defendant subject to Level One punishment may
19 be fined up to two thousand dollars (\$2,000) and ~~must~~ shall be sentenced to a term of
20 imprisonment that includes a minimum term of not less than 14 days and a maximum
21 term of not more than 24 months. The term of imprisonment may be suspended only if a
22 condition of special probation is imposed (i) to require the defendant to serve a term of
23 imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of
24 imprisonment of at least four consecutive days and then be placed under house arrest for
25 twice the length of time remaining in the minimum term prescribed in (i) above. If the
26 defendant is placed on probation, the judge must, if required by ~~subsection (m),~~ G.S. 20-
27 17.6(b), impose the conditions relating to assessment, treatment, and education described
28 in that subsection. The judge may impose any other lawful condition of probation. ~~If the~~
29 ~~judge does not place on probation a defendant who is otherwise subject to the mandatory~~
30 ~~assessment and treatment provisions of subsection (m), he must include in the record of the case~~
31 ~~his reasons for not doing so."~~

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

33 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
34 be fined up to one thousand dollars (\$1,000) and ~~must~~ shall be sentenced to a term of
35 imprisonment that includes a minimum term of not less than seven days and a maximum
36 term of not more than 12 months. The term of imprisonment may be suspended only if a
37 condition of special probation is imposed (i) to require the defendant to serve a term of
38 imprisonment of at least seven days or, (ii) to require the defendant to serve a term of
39 imprisonment of at least two consecutive days and then be placed under house arrest for
40 twice the length of time remaining in the minimum term prescribed in (i) above. If the
41 defendant is placed on probation, the judge must, if required by ~~subsection (m),~~ G.S. 20-
42 17.6(b), impose the conditions relating to assessment, treatment, and education described
43 in that subsection. The judge may impose any other lawful condition of probation. ~~If the~~

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

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

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

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

15 The judge in his discretion may impose any other lawful condition of probation and, if
16 required by ~~subsection (m),~~ G.S. 20-17.6(b), must impose the conditions relating to
17 assessment, treatment, and education described in that subsection. This subsection does
18 not affect the right of a defendant to elect to serve the suspended sentence of
19 imprisonment as provided in G.S. 15A-1341(c)."

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

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

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

31 The judge in his discretion may impose any other lawful condition of probation and, if
32 required by ~~subsection (m),~~ G.S. 20-17.6(b), must impose the conditions relating to
33 assessment, treatment, and education described in that subsection. This subsection does
34 not affect the right of a defendant to elect to serve the suspended sentence of
35 imprisonment as provided in G.S. 15A-1341(c)."

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

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

- 42 (1) Be imprisoned for a term of 24 hours as a condition of special
43 probation; or

- 1 (2) Perform community service for a term of 24 hours; or
- 2 (3) Not operate a motor vehicle for a term of 30 days; or
- 3 (4) Any combination of these conditions.

4 The judge may in his discretion impose any other lawful condition of probation and, if
5 required by ~~subsection (m),~~ G.S. 20-17.6(b), must impose the conditions relating to
6 assessment, treatment, and education described in that subsection. This subsection does
7 not affect the right of a defendant to elect to serve the suspended sentence of
8 imprisonment as provided in G.S. 15A-1341(c)."

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

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

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

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

22 "**§ 122C-142.1. Substance abuse services for those convicted of driving while**
23 **impaired or driving while a provisional licensee after consuming alcohol**
24 **or drugs.**

25 (a) Services. – An area authority shall provide, directly or by contract, the
26 substance abuse services needed by a person to obtain a certificate of completion required
27 under G.S. 20-17.6 as a condition for the restoration or continued enjoyment of a drivers
28 license.

29 A person may obtain the required services from an area facility, from a private facility
30 that has complied with this subsection, or, with the approval of the Department, from an
31 agency that is located in another state. Before a private facility located in this State
32 provides the substance abuse services needed by a person to obtain a certificate of
33 completion, the facility shall notify both the designated area facility for the catchment
34 area in which it is located and the Department of its intent to provide the services and
35 shall agree to comply with the laws and rules concerning these services that apply to area
36 facilities.

37 (b) Assessments. – To conduct a substance abuse assessment, a facility shall give a
38 client a standardized test approved by the Department to determine chemical dependency.
39 Before recommending that a client attend an alcohol and drug education traffic (ADET)
40 school or obtain treatment, a facility shall conduct a clinical interview with the client. A
41 recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or
42 substance abuse counselor, as defined by the Commission, a Certified Substance Abuse

1 Counselor, or by a physician certified by the American Society of Addiction Medicine
2 (ASAM).

3 (c) ADET Schools and Treatment Programs. – An ADET school shall offer the
4 curriculum established by the Commission and shall comply with the rules adopted by
5 the Commission. A substance abuse treatment program offered to a person who needs
6 the program to obtain a certificate of completion shall comply with the rules adopted by
7 the Commission.

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

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

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

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

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

35 (g) Rules. – The Commission may adopt rules to implement this section. In
36 developing rules for determining when a person needs to be placed in a substance abuse
37 treatment program, the Commission shall consider diagnostic criteria such as those
38 contained in the most recent revision of the Diagnostic and Statistical Manual or used by
39 the American Society of Addiction Medicine (ASAM)."

40 Sec. 11. This act becomes effective January 1, 1996, and applies to offenses
41 occurring on or after that date.