

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 458  
Committee Substitute Favorable 3/29/95  
Senate Finance Committee Substitute Adopted 7/20/95

Short Title: DWI-Assessment Enhancement/AB.

(Public)

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Sponsors:

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Referred to:

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March 9, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPOSE CONDITIONS FOR THE RESTORATION OF A DRIVERS  
3 LICENSE AFTER A CONVICTION FOR CERTAIN ALCOHOL-RELATED  
4 DRIVING OFFENSES AND TO PROMOTE COMPLIANCE WITH THESE  
5 CONDITIONS.

6 The General Assembly of North Carolina enacts:

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

9 "**§ 20-17.6. Restoration of a license after a conviction of driving while impaired or**  
10 **driving while a provisional licensee after consuming alcohol or drugs.**

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 – This section applies to a person whose license was revoked as a result  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

13 (1) G.S. 20-138.1, driving while impaired (DWI).

14 (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked  
15 under G.S. 20-17(2).

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

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

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

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

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

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

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

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

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

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

18           Sec. 5. 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) and must be sentenced to a term of  
21 imprisonment that includes a minimum term of not less than 72 hours and a maximum  
22 term of not more than six months. The term of imprisonment must be suspended, on the  
23 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           If the defendant is placed on probation, the judge may impose a requirement that the  
30 defendant obtain a substance abuse assessment and the education or treatment required by  
31 G.S. 20-17.6 for the restoration of a drivers license. ~~The judge in his discretion may~~  
32 ~~impose any other lawful condition of probation and, if required by subsection (m), must~~  
33 ~~impose the conditions relating to assessment, treatment, and education described in that~~  
34 ~~subsection.~~ probation. This subsection does not affect the right of a defendant to elect to  
35 serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

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

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

- 42           (1) Be imprisoned for a term of 48 hours as a condition of special  
43 probation; or

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

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

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

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

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

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

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

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

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

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

1 "§ 122C-142.1. Substance abuse services for those convicted of driving while  
2 impaired or driving while a provisional licensee after consuming alcohol  
3 or drugs.

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

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

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

25 (1) The person took a chemical test at the time of the offense that caused  
26 the person's license to be revoked and the test revealed that the person  
27 had an alcohol concentration at any relevant time after driving of at least  
28 0.15.

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

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

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

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

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

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

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

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

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

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

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

34       (1) The number of persons required to obtain a certificate of completion  
35 during the previous fiscal year as a condition of restoring the person's  
36 drivers license under G.S. 20-17.6.

37       (2) The number of substance abuse assessments conducted during the  
38 previous fiscal year for the purpose of obtaining a certificate of  
39 completion.

40       (3) Of the number of assessments reported under subdivision (2) of this  
41 subsection, the number recommending attendance at an ADET school,  
42 the number recommending treatment, and, for those recommending  
43 treatment, the level of treatment recommended.

1           (4) Of the number of persons recommended for an ADET school or  
2           treatment under subdivision (3) of this subsection, the number who  
3           completed the school or treatment.

4           (5) The number of substance abuse assessments conducted by each facility  
5           and, of these assessments, the number that recommended attendance at  
6           an ADET school and the number that recommended treatment.

7           (6) The fees paid to a facility for providing services for persons to obtain a  
8           certificate of completion and the facility's costs in providing those  
9           services."

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

12 **"§ 20-17.6. Restoration of a license after a conviction of driving while impaired or**  
13 **driving while a ~~provisional licensee~~ less than 21 years old after consuming**  
14 **alcohol or drugs."**

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

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

18           (1) G.S. 20-138.1, driving while impaired (DWI).

19           (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked  
20           under G.S. 20-17(2).

21           (3) G.S. 20-138.3, driving while a ~~provisional licensee~~ less than 21 years old  
22           after consuming alcohol or drugs."

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

25 **"§ 122C-142.1. Substance abuse services for those convicted of driving while**  
26 **impaired or driving while a ~~provisional licensee~~ less than 21 years old after**  
27 **consuming alcohol or drugs."**

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