

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-486
HOUSE BILL 183

AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, AND TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION.

The General Assembly of North Carolina enacts:

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

"(b) Points. -- Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class A1 or Class 1 misdemeanor ~~conviction,~~
conviction or prior impaired driving conviction under G.S. 20-138.1,1
point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle ~~(G.S. 20-141.4(a2))~~, (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in the prior offense, 1 point.
- (7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

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

Section 2. G.S. 20-16.5(a) reads as rewritten:

"(a) Definitions. -- As used in this section the following words and phrases have the following meanings:

- (1) Charging Officer. -- As described in G.S. 20-16.2(a1).
- (2) Clerk. -- As defined in G.S. 15A-101(2).
- (3) Judicial Official. -- As defined in G.S. 15A-101(5).
- (4) Revocation Report. -- A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been ~~met~~, and whether the person has a pending offense for which their license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.
- (5) Surrender of a Driver's License. -- The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license."

Section 3. G.S. 20-16.5(e), as amended by Chapter 379 of the 1997 Session Laws, reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 30 days from the date the revocation order is issued and the person has paid the applicable costs. revoked for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's

license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 4. G.S. 20-16.5(f), as amended by Chapter 379 of the 1997 Session Laws, reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. ~~The~~ If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

- (1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or
- (2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs

within five working days of the effective date of the revocation order;
or

(3) Forty-five days from the time:

- a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or
- b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or
- c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or
- d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

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

Section 5. G.S. 20-16.5(p), as enacted by Section 3.4 of Chapter 379 of the 1997 Session Laws, reads as rewritten:

"(p) Limited Driving Privilege. -- A person whose drivers license has been revoked for a specified period of 30 or 45 days under this section may apply for a limited driving privilege if:

- (1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;
- (2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;
- (3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and
- (4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

A person whose license has been indefinitely revoked under this section may, after completion of 30 days under subsection (e) or the applicable period of time under subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite revocation, a judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 6. G.S. 20-16.5(k), as amended by Chapter 379 of the 1997 Session Laws, reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk shall mail a report to the ~~Division within~~ Division:

- (1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and
- (2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report shall identify the person whose license has been ~~revoked and~~ revoked, specify the date on which his license was ~~revoked~~ revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed."

Section 7. The Judicial Department shall implement the provisions of this act from existing funds available to it.

Section 8. Section 1 of this act becomes effective December 1, 1997. Sections 2 through 6 of this act become effective July 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 11:07 a.m. this 10th day of September, 1997