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SENATE BILL 13*
Judiciary I Committee Substitute Adopted 5/4/89
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Short Title: Safe Roads Act Study Bill Package.

(Public)

Sponsors:

Referred to:

January 13, 1989

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE SAFE ROADS
ACT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. – By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath must require the testing of at least duplicate sequential breath samples.

Those regulations must provide:

- (1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.
- (2) That the test results may only be used to prove a person's particular alcohol concentration if:
 - a. The pair of readings employed are from consecutively administered tests; and
 - b. The readings do not differ from each other by an alcohol concentration greater than 0.02.
- (3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as

1 proof of a person's alcohol concentration in any court or administrative
2 proceeding.

3 A person's willful refusal to give the sequential breath samples necessary to constitute a
4 valid chemical analysis is a willful refusal under G.S. 20-16.2(c). If a person willfully
5 refuses to submit to a chemical analysis by refusing to provide a second or subsequent
6 breath sample, (i) the result of the analysis of the sample providing the lowest alcohol
7 concentration if more than one sample is provided, or (ii) if a single sample is provided,
8 the result of the analysis of that sample, may be used as evidence in any judicial or
9 administrative proceeding for any relevant purpose, such as establishment of probable
10 cause, corroboration of field sobriety tests, or evidence of impairment, except that the
11 result shall not be used to prove that a person had a particular alcohol concentration to
12 establish a violation of G.S. 20-138.1(a)(2)."

13 Sec. 1.1. G.S. 20-179.3(b) reads as rewritten:

14 "(b) Eligibility. – A person convicted of the offense of impaired driving under
15 G.S. 20-138.1 is eligible for a limited driving privilege if:

- 16 (1) At the time of the offense he held either a valid driver's license or a
17 license that had been expired for less than one year;
- 18 (2) At the time of the offense he had not within the preceding seven years
19 been convicted of an offense involving impaired driving;
- 20 (3) Punishment Level Three, Four, or Five was imposed for the offense of
21 impaired driving; and
- 22 (4) Subsequent to the offense he has not been convicted of, or had an
23 unresolved charge lodged against him for, an offense involving
24 impaired driving; ~~driving~~; or
- 25 (5) Subdivisions (1) through (4) of this subsection are met and the person
26 refused a chemical analysis pursuant to G.S. 20-16.2 and entered a
27 plea of guilty or no contest to a charge of impaired driving under G.S.
28 20-138.1.

29 A person whose North Carolina driver's license is revoked because of a conviction in
30 another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is
31 eligible for a limited driving privilege if he would be eligible for it had the conviction
32 occurred in North Carolina. Eligibility for a limited driving privilege following a
33 revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e)."

34 Sec. 2. G.S. 20-179(k) reads as rewritten:

35 "(k) Level Five Punishment.–A defendant subject to Level Five punishment may
36 be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of
37 imprisonment that includes a minimum term of not less than 24 hours and a maximum
38 term of not more than ~~60~~61 days. The term of imprisonment must be suspended, on the
39 condition that the defendant:

- 40 (1) Be imprisoned for a term of 24 hours as a condition of special
41 probation; or
- 42 (2) Perform community service for a term of 24 hours; or
- 43 (3) Not operate a motor vehicle for a term of 30 days; or
- 44 (4) Any combination of these conditions.

1 The judge may in his discretion impose any other lawful condition of probation and, if
2 required by subsections (l) or (m), must impose the conditions relating to treatment and
3 education described in those subsections. This subsection does not affect the right of a
4 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
5 15A-1341(c)."

6 Sec. 3. G.S. 20-13.2(d) reads as rewritten:

7 "(d) A revocation under this section ~~continues until the provisional licensee reaches~~
8 ~~18 years of age or 45 days have elapsed, whichever occurs last~~ shall be for one year.
9 Revocations under this section run concurrently with any other revocations, ~~but~~ and a
10 limited driving privilege issued pursuant to law ~~does not authorize a provisional licensee to~~
11 ~~drive if his license is revoked~~ is not revoked or precluded because of a revocation under
12 this section. In addition, a district court judge in the district where the conviction giving
13 rise to the revocation under this section occurred may allow limited driving privileges
14 pursuant to G.S. 20-179.3."

15 Sec. 4. G.S. 20-17 reads as rewritten:

16 **"§ 20-17. Mandatory revocation of license by Division.**

17 The Division shall forthwith revoke the license of any driver upon receiving a record
18 of such driver's conviction for any of the following offenses when such conviction has
19 become final:

- 20 (1) ~~Manslaughter (or negligent homicide) resulting~~ Homicide when the
21 offense results from the operation of a motor vehicle.
- 22 (2) Impaired driving under G.S. 20-138.1.
- 23 (3) Any felony in the commission of which a motor vehicle is used.
- 24 (4) Failure to stop and render aid as required under the laws of this State
25 in the event of a motor vehicle accident.
- 26 (5) Perjury or the making of a false affidavit or statement under oath to the
27 Division under this Article or under any other law relating to the
28 ownership of motor vehicles.
- 29 (6) Conviction, or forfeiture of bail not vacated, upon two charges of
30 reckless driving committed within a period of 12 months.
- 31 (7) Conviction, or forfeiture of bail not vacated, upon one charge of
32 reckless driving while engaged in the illegal transportation of
33 intoxicants for the purpose of sale.
- 34 (8) Conviction of using a false or fictitious name or giving a false or
35 fictitious address in any application for a driver's license, or learner's
36 permit, or any renewal or duplicate thereof, or knowingly making a
37 false statement or knowingly concealing a material fact or otherwise
38 committing a fraud in any such application or procuring or knowingly
39 permitting or allowing another to commit any of the foregoing acts.
- 40 (9) Death by vehicle as defined in G.S. 20-141.4.
- 41 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour
42 over the legal limit in violation of G.S. 20-141(j).
- 43 (11) Conviction of assault with a motor vehicle."

44 Sec. 5. G.S. 20-16.2(a1) reads as rewritten:

1 "(a1) Meaning of Terms. – Under this section, an 'implied-consent offense' is an
2 offense involving impaired driving or an alcohol-related offense made subject to the
3 procedures of this section. A person is 'charged' with an offense if he is arrested for it,
4 ~~or if~~ criminal process for the offense has been issued, or, if the person is a juvenile, he
5 would have been arrested or criminal process would have been issued if he were an
6 adult. A 'charging officer' is a law-enforcement officer who arrests the person charged,
7 lodges the charge, takes the juvenile into protective custody, or assists the officer who
8 arrested the person, ~~or~~ lodged the charge, or took the juvenile into protective custody by
9 assuming custody of the person to make the request required by subsection (c) and, if
10 necessary, to present the person to a judicial official for an initial appearance."

11 Sec. 6. G.S. 20-27(a) reads as rewritten:

12 "(a) All records of the Division pertaining to application and to drivers' licenses,
13 except the confidential medical report referred to in G.S. 20-7 and records related to
14 chemical analyses of persons under 16 years of age, of the current or previous five years
15 shall be open to public inspection at any reasonable time during office hours and copies
16 shall be provided pursuant to the provisions of G.S. 20-26."

17 Sec. 7. G.S. 20-179(c) reads as rewritten:

18 "(c) Determining Existence of Grossly Aggravating Factors.–At the sentencing
19 hearing, based upon the evidence presented at trial and in the hearing, the judge must
20 first determine whether there are any grossly aggravating factors in the case. If the
21 defendant has been convicted of two or more prior offenses involving impaired driving,
22 if the convictions occurred within seven years before the date of the offense for which
23 he is being sentenced, the judge must impose the Level One punishment under
24 subsection (g). The judge must also impose the Level One punishment if he determines
25 that two or more of the following grossly aggravating factors apply:

- 26 (1) A single conviction for an offense involving impaired driving, if the
27 conviction occurred within seven years before the date of the offense
28 for which the defendant is being sentenced.
- 29 (2) Driving by the defendant at the time of the offense while his driver's
30 license was revoked under G.S. 20-28, and the revocation was an
31 impaired driving revocation under G.S. 20-28.2(a).
- 32 (3) Serious injury to another person caused by the defendant's impaired
33 driving at the time of the offense.

34 If the judge determines that only one of the above grossly aggravating factors applies,
35 he must impose the Level Two punishment under subsection (h). In imposing a Level
36 One or Two punishment, the judge may consider the aggravating and mitigating factors
37 in subsections (d) and (e) in determining the appropriate sentence. If there are no
38 grossly aggravating factors in the case, the judge must weigh all aggravating and
39 mitigating factors and impose punishment as required by subsection (f).

40 A conviction for another offense involving impaired driving, for which the
41 conviction occurs after the date of the offense for which the defendant is presently being
42 sentenced, but prior to or contemporaneously with the present sentencing, shall also
43 constitute a prior conviction of an offense involving impaired driving for aggravation
44 purposes of this subsection."

1 Sec. 8. G.S. 20-179(k1) reads as rewritten:

2 "(k1) Credit for inpatient treatment. Pursuant to G.S. 15A-1351(a), the judge may
3 order that a term of imprisonment imposed as a condition of special probation under any
4 level of punishment be served as an inpatient in a facility operated or licensed by the
5 State for the treatment of alcoholism or substance abuse where the defendant has been
6 accepted for admission or commitment as an inpatient. The defendant shall bear the
7 expense of any treatment. The judge may impose restrictions on the defendant's ability
8 to leave the premises of the treatment facility and require that the defendant follow the
9 rules of the treatment facility. The judge may credit against the active sentence imposed
10 on a defendant the time the defendant was an inpatient at the treatment facility, provided
11 (i) such treatment occurred after the commission of the offense for which the defendant
12 is being sentenced, and (ii) the treatment was completed. The credit may not be used
13 more than once during the seven-year period immediately preceding the date of the
14 offense. This section shall not be construed to limit the authority of the judge in
15 sentencing under any other provisions of law."

16 Sec. 9. This act shall become effective October 1, 1989.