

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 13\*  
Judiciary I Committee Substitute Adopted 5/4/89

Short Title: Safe Roads Act Study Bill Package.

(Public)

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Sponsors:

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Referred to:

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January 13, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE SAFE ROADS  
3 ACT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH  
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

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

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

10 Those regulations must provide:

11 (1) A specification as to the minimum observation period before collection  
12 of the first breath sample and the time requirements as to collection of  
13 second and subsequent samples.

14 (2) That the test results may only be used to prove a person's particular  
15 alcohol concentration if:

16 a. The pair of readings employed are from consecutively  
17 administered tests; and

18 b. The readings do not differ from each other by an alcohol  
19 concentration greater than 0.02.

20 (3) That when a pair of analyses meets the requirements of subdivision  
21 (2), only the lower of the two readings may be used by the State as  
22 proof of a person's alcohol concentration in any court or administrative  
23 proceeding.

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

11 Sec. 2. 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~~61 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 The judge may in his discretion impose any other lawful condition of probation and, if  
23 required by subsections (l) or (m), must impose the conditions relating to treatment and  
24 education described in those subsections. This subsection does not affect the right of a  
25 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.  
26 15A-1341(c)."

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

28 "(d) A revocation under this section ~~continues until the provisional licensee reaches~~  
29 ~~18 years of age or 45 days have elapsed, whichever occurs last~~ shall be for one year.  
30 Revocations under this section run concurrently with any other revocations, but a  
31 limited driving privilege issued pursuant to law does not authorize a provisional licensee  
32 to drive if his license is revoked under this section."

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

34 **"§ 20-17. Mandatory revocation of license by Division.**

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

- 38 (1) ~~Manslaughter (or negligent homicide) resulting~~ Homicide when the  
39 offense results from the operation of a motor vehicle.
- 40 (2) Impaired driving under G.S. 20-138.1.
- 41 (3) Any felony in the commission of which a motor vehicle is used.
- 42 (4) Failure to stop and render aid as required under the laws of this State  
43 in the event of a motor vehicle accident.

- 1 (5) Perjury or the making of a false affidavit or statement under oath to the  
 2 Division under this Article or under any other law relating to the  
 3 ownership of motor vehicles.
- 4 (6) Conviction, or forfeiture of bail not vacated, upon two charges of  
 5 reckless driving committed within a period of 12 months.
- 6 (7) Conviction, or forfeiture of bail not vacated, upon one charge of  
 7 reckless driving while engaged in the illegal transportation of  
 8 intoxicants for the purpose of sale.
- 9 (8) Conviction of using a false or fictitious name or giving a false or  
 10 fictitious address in any application for a driver's license, or learner's  
 11 permit, or any renewal or duplicate thereof, or knowingly making a  
 12 false statement or knowingly concealing a material fact or otherwise  
 13 committing a fraud in any such application or procuring or knowingly  
 14 permitting or allowing another to commit any of the foregoing acts.
- 15 (9) Death by vehicle as defined in G.S. 20-141.4.
- 16 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour  
 17 over the legal limit in violation of G.S. 20-141(j).
- 18 (11) Conviction of assault with a motor vehicle."

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

20 "(a1) Meaning of Terms. – Under this section, an ‘implied-consent offense’ is an  
 21 offense involving impaired driving or an alcohol-related offense made subject to the  
 22 procedures of this section. A person is ‘charged’ with an offense if he is arrested for it,  
 23 ~~or if criminal process for the offense has been issued, or, if the person is a juvenile, he~~  
 24 would have been arrested or criminal process would have been issued if he were an  
 25 adult. A ‘charging officer’ is a law-enforcement officer who arrests the person charged,  
 26 lodges the charge, takes the juvenile into protective custody, or assists the officer who  
 27 arrested the person, ~~or lodged the charge, or took the juvenile into protective custody by~~  
 28 assuming custody of the person to make the request required by subsection (c) and, if  
 29 necessary, to present the person to a judicial official for an initial appearance."

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

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

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

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

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

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

15 A conviction for another offense involving impaired driving, for which the  
16 conviction occurs after the date of the offense for which the defendant is presently being  
17 sentenced, but prior to or contemporaneously with the present sentencing, shall also  
18 constitute a prior conviction of an offense involving impaired driving for aggravation  
19 purposes of this subsection."

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

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

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