

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 183  
Committee Substitute Favorable 4/22/97  
Senate Judiciary Committee Substitute Adopted 8/4/97

Short Title: DWI/Felony Prior Record Level.

(Public)

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Sponsors:

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Referred to:

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February 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY  
2 PRIOR RECORD LEVEL CALCULATION, AND TO PROVIDE FOR AN  
3 INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER  
4 IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER  
5 IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION.  
6

7 The General Assembly of North Carolina enacts:

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

9 "(b) Points. – Points are assigned as follows:

10 (1) For each prior felony Class A conviction, 10 points.

11 (1a) For each prior felony Class B1 conviction, 9 points.

12 (2) For each prior felony Class B2, C, or D conviction, 6 points.

13 (3) For each prior felony Class E, F, or G conviction, 4 points.

14 (4) For each prior felony Class H or I conviction, 2 points.

15 (5) For each prior Class A1 or Class 1 misdemeanor conviction or prior

16 impaired driving conviction under G.S. 20-138.1, 1 point, except that

17 convictions for Class 1 misdemeanor offenses under Chapter 20 of the

18 General Statutes, other than conviction for misdemeanor death by

1 vehicle (~~G.S. 20-141.4(a2)~~), (G.S. 20-141.4(a2)) and conviction for  
2 impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be  
3 assigned any points for purposes of determining a person's prior record  
4 for felony sentencing.

5 (6) If all the elements of the present offense are included in the prior  
6 offense, 1 point.

7 (7) If the offense was committed while the offender was on probation or  
8 parole, or while the offender was serving a sentence of imprisonment, or  
9 while the offender was on escape from a correctional institution while  
10 serving a sentence of imprisonment, 1 point.

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

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

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

19 (1) Charging Officer. – As described in G.S. 20-16.2(a1).

20 (2) Clerk. – As defined in G.S. 15A-101(2).

21 (3) Judicial Official. – As defined in G.S. 15A-101(5).

22 (4) Revocation Report. – A sworn statement by a charging officer and a  
23 chemical analyst containing facts indicating that the conditions of  
24 subsection (b) have been ~~met~~met, and whether the person has a  
25 pending offense for which the person's license had been or is revoked  
26 under this section. When one chemical analyst analyzes a person's  
27 blood and another chemical analyst informs a person of his rights and  
28 responsibilities under G.S. 20-16.2, the report must include the  
29 statements of both analysts.

30 (5) Surrender of a Driver's License. – The act of turning over to a court or a  
31 law-enforcement officer the person's most recent, valid driver's license  
32 or learner's permit issued by the Division or by a similar agency in  
33 another jurisdiction, or a limited driving privilege issued by a North  
34 Carolina court. A person who is validly licensed but who is unable to  
35 locate his license card may file an affidavit with the clerk setting out  
36 facts that indicate that he is unable to locate his license card and that he  
37 is validly licensed; the filing of the affidavit constitutes a surrender of  
38 the person's license."

39 Section 3. G.S. 20-16.5(e) reads as rewritten:

40 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
41 properly executed revocation report concerning a person is filed with a judicial official  
42 when the person is present before that official, the judicial official must, after completing  
43 any other proceedings involving the person, determine whether there is probable cause to

1 believe that each of the conditions of subsection (b) has been met. If he determines that  
2 there is such probable cause, he must enter an order revoking the person's driver's license  
3 for the period required in this subsection. The judicial official must order the person to  
4 surrender his license and if necessary may order a law-enforcement officer to seize the  
5 license. The judicial official must give the person a copy of the revocation order. In  
6 addition to setting it out in the order the judicial official must personally inform the  
7 person of his right to a hearing as specified in subsection (g), and that his license remains  
8 revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation  
9 under this subsection begins at the time the revocation order is issued and continues until  
10 the person's license has been surrendered for 10 days and the person has paid the applicable  
11 costs. ~~If the person is not currently licensed, the revocation continues until 10 days from the date~~  
12 ~~the revocation order is issued and the person has paid the applicable costs.~~ revoked for the  
13 period specified in this subsection and the person has paid the applicable costs. The  
14 period of revocation is 10 days, if there are no pending offenses for which the person's  
15 license had been or is revoked under this section. If at the time of the current offense, the  
16 person has one or more pending offenses for which his license had been or is revoked  
17 under this section, the revocation shall remain in effect until a final judgment, including  
18 all appeals, has been entered for the current offense and for all pending offenses. In no  
19 event may the period of revocation under this subsection be less than 10 days. If within  
20 five working days of the effective date of the order, the person does not surrender his  
21 license or demonstrate that he is not currently licensed, the clerk must immediately issue  
22 a pick-up order. The pick-up order must be issued to a member of a local law-  
23 enforcement agency if the charging officer was employed by the agency at the time of the  
24 charge and the person resides in or is present in the agency's territorial jurisdiction. In all  
25 other cases, the pick-up order must be issued to an officer or inspector of the Division. A  
26 pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-  
27 29 as if the order had been issued by the Division."

28 Section 4. G.S. 20-16.5(f) reads as rewritten:

29 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –  
30 When a clerk receives a properly executed report under subdivision (d)(3) and the person  
31 named in the revocation report is not present before the clerk, the clerk must determine  
32 whether there is probable cause to believe that each of the conditions of subsection (b)  
33 has been met. If he determines that there is such probable cause, he must mail to the  
34 person a revocation order by first-class mail. The order must direct that the person on or  
35 before the effective date of the order either surrender his license to the clerk or appear  
36 before the clerk and demonstrate that he is not currently licensed, and the order must  
37 inform the person of the time and effective date of the revocation and of its duration, of  
38 his right to a hearing as specified in subsection (g), and that the revocation remains in  
39 effect pending the hearing. Revocation orders mailed under this subsection become  
40 effective on the fourth day after the order is deposited in the United States mail. If within  
41 five working days of the effective date of the order, the person does not surrender his  
42 license to the clerk or appear before the clerk to demonstrate that he is not currently  
43 licensed, the clerk must immediately issue a pick-up order. The pick-up order must be

1 issued and served in the same manner as specified in subsection (e) for pick-up orders  
2 issued pursuant to that subsection. A revocation under this subsection begins at the date  
3 specified in the order and continues until the person's license has been revoked for the  
4 period specified in this subsection and the person has paid the applicable costs. ~~The~~If the  
5 person has no pending offenses for which his license had been or is revoked under this  
6 section, the period of revocation under this subsection is:

- 7 (1) Ten days from the time the person surrenders his license to the court, if  
8 the surrender occurs within five working days of the effective date of  
9 the order; or
- 10 (2) Ten days after the person appears before the clerk and demonstrates that  
11 he is not currently licensed to drive, if the appearance occurs within five  
12 working days of the effective date of the revocation order; or
- 13 (3) Thirty days from the time:
  - 14 a. The person's driver's license is picked up by a law-enforcement  
15 officer following service of a pick-up order; or
  - 16 b. The person demonstrates to a law-enforcement officer who has a  
17 pick-up order for his license that he is not currently licensed; or
  - 18 c. The person's driver's license is surrendered to the court if the  
19 surrender occurs more than five working days after the effective  
20 date of the revocation order; or
  - 21 d. The person appears before the clerk to demonstrate that he is not  
22 currently licensed, if he appears more than five working days  
23 after the effective date of the revocation order.

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

35 Section 5. G.S. 20-16.5(i) reads as rewritten:

36 "(i) Effect of Revocations. – A revocation under this section revokes a person's  
37 privilege to drive in North Carolina whatever the source of his authorization to drive.  
38 Revocations under this section are independent of and run concurrently with any other  
39 revocations. No court imposing a period of revocation following conviction of an offense  
40 involving impaired driving may give credit for any period of revocation imposed under  
41 this section. ~~A—~~Except as provided in subsection (i1) of this section, a person is not  
42 eligible for a limited driving privilege under any statute while his license is revoked  
43 under this section."

1 Section 6. G.S. 20-16.5 is amended by adding a new subsection to read:

2 "(i1) A person whose license has been indefinitely revoked under this section may,  
3 after completion of 10 days under subsection (e) of this section or the applicable period  
4 of time under subdivision (1), (2), or (3) of subsection (f) of this section, apply for a  
5 limited driving privilege as provided in G.S. 20-179.3. A judge of the division in which  
6 the current offense is pending may issue the limited driving privilege only if the privilege  
7 is necessary to overcome undue hardship and the person meets the eligibility  
8 requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and  
9 G.S. 20-179.3(e) shall not apply."

10 Section 7. G.S. 20-16.5(k) reads as rewritten:

11 "(k) Report to Division. – Except as provided below, the clerk must mail a report to  
12 the ~~Division within~~ Division:

13 (1) If the license is revoked indefinitely, within 10 working days of the  
14 revocation of the license; and

15 (2) In all cases, within 10 working days of the return of a license under this  
16 section or of the termination of a revocation of the driving privilege of a  
17 person not currently licensed.

18 The report must identify the person whose license has been ~~revoked and~~ revoked, specify  
19 the date on which his license was ~~revoked~~ revoked, and indicate whether the license has  
20 been returned. The report must also provide, if applicable, whether the license is revoked  
21 indefinitely. No report need be made to the Division, however, if there was a surrender of  
22 the driver's license issued by the Division, a 10-day minimum revocation was imposed,  
23 and the license was properly returned to the person under subsection (h) within five  
24 working days after the 10-day period had elapsed."

25 Section 8. The Judicial Department shall implement the provisions of this act  
26 from existing funds available to it.

27 Section 9. Section 1 of this act becomes effective December 1, 1997. Sections  
28 2 through 7 of this act become effective July 1, 1998.