

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH80271-MA-195 (2/11)

Short Title: Civil Penalties for Death By Vehicle Cases.

(Public)

Sponsors: Representative Allen.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A CIVIL DRIVERS LICENSE REVOCATION PROCESS FOR A
3 PERSON CHARGED WITH DEATH BY MOTOR VEHICLE, TO REQUIRE A
4 TOXICOLOGY REPORT IN ALL CASES WHERE A DEATH BY MOTOR VEHICLE
5 OCCURS, AND TO REQUIRE MANDATORY TRAUMA COUNSELING IN ALL
6 CASES INVOLVING DEATH BY MOTOR VEHICLE.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 20 of the General Statutes is amended by adding a new
9 section to read:

10 "**§ 20-141.4A. Immediate civil license revocation for persons charged with death by motor**
11 **vehicle.**

12 (a) Definitions. – As used in this section the following words and phrases have the
13 following meanings:

14 (1) Law Enforcement Officer. – As described in G.S. 20-16.2(a1).

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

16 (3) District Attorney. – As defined in Article 9 of Chapter 7A of the General
17 Statutes.

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

19 (5) Revocation Report. – A sworn statement by a law enforcement officer
20 containing facts indicating that the conditions of subsection (b) of this
21 section have been met and whether the person has a pending offense for
22 which the person's license had been or is revoked under this section.

23 (6) Surrender of a Drivers License. – The act of turning over to a court or a law
24 enforcement officer the person's most recent, valid drivers license or
25 learner's permit issued by the Division or by a similar agency in another
26 jurisdiction, or a limited driving privilege issued by a North Carolina court.
27 A person who is validly licensed but who is unable to locate his license card
28 may file an affidavit with the clerk setting out facts that indicate that he is
29 unable to locate his license card and that he is validly licensed; the filing of
30 the affidavit constitutes a surrender of the person's license.

31 (b) Revocations for Persons Who Are Charged With a Death by Motor Vehicle
32 Offense. – A person's drivers license is subject to revocation under this section if:

33 (1) A district attorney or an assistant district attorney has reasonable grounds to
34 believe that the person has committed an offense subject to the death by
35 motor vehicle provisions of G.S. 20-141.4.



1 (2) The person is charged with that offense as provided in G.S. 20-141.4.

2 (c) Duty of District Attorneys to Report to Judicial Officials. – If a person's drivers
3 license is subject to revocation under this section, the district attorney or a designated Assistant
4 district attorney must execute a revocation report. It is the specific duty of the district attorney
5 to make sure that the report is expeditiously filed with a judicial official as required by this
6 section.

7 (d) Which Judicial Official Must Receive Report. – The judicial official with whom the
8 revocation report must be filed is:

9 (1) The judicial official conducting the initial appearance on the underlying
10 criminal charge, if no revocation report has previously been filed.

11 (2) A judicial official conducting any other proceeding relating to the underlying
12 criminal charge at which the person is present, if no report has previously
13 been filed.

14 (3) The clerk of superior court in the county in which the underlying criminal
15 charge has, been brought, if subdivisions (1) and (2) are not applicable at the
16 time the district attorney or a designated assistant district attorney must file
17 the report.

18 (e) Procedure if Report Filed With Judicial Official When Person Is Present. – If a
19 properly executed revocation report concerning a person is filed with a judicial official when
20 the person is present before that official, the judicial official shall, after completing any other
21 proceedings involving the person, determine whether there is probable cause to believe that
22 each of the conditions of subsection (b) of this section has been met. If he determines that there
23 is such probable cause, he shall enter an order revoking the person's drivers license for the
24 period required in this subsection. The judicial official shall order the person to surrender his
25 license and if necessary may order a law enforcement officer to seize the license. The judicial
26 official shall give the person a copy of the revocation order. In addition to setting it out in the
27 order the judicial official shall personally inform the person of his right to a hearing as
28 specified in subsection (g) of this section, and that his license remains revoked pending the
29 hearing. The revocation under this subsection begins at the time the revocation order is issued
30 and continues until the person's license has been surrendered for the period specified in this
31 subsection and the person has paid the applicable costs. The period of revocation is 30 days if
32 there are no pending offenses for which the person's license had been or is revoked under this
33 section. If at the time of the current offense, the person has one or more pending offenses for
34 which his license had been or is revoked under this section, the revocation shall remain in
35 effect until a final judgment, including all appeals, has been entered for the current offense and
36 for all pending offenses. In no event may the period of revocation under this subsection be less
37 than 30 days. If within five working days of the effective date of the order, the person does not
38 surrender his license or demonstrate that he is not currently licensed, the clerk shall
39 immediately issue a pickup order. The pickup order shall be issued to a member of a local law
40 enforcement agency if the law enforcement officer was employed by the agency at the time of
41 the charge and the person resides in or is present in the agency's territorial jurisdiction. In all
42 other cases, the pickup order shall be issued to an officer or inspector of the Division. A pickup
43 order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the
44 order had been issued by the Division.

45 (f) Procedure if Report Filed With Clerk of Court When Person Not Present. – When a
46 clerk receives a properly executed report under subdivision (d)(3) of this section and the person
47 named in the revocation report is not present before the clerk, the clerk shall determine whether
48 there is probable cause to believe that each of the conditions of subsection (b) of this section
49 has been met. For purposes of this subsection, a properly executed report under subdivision
50 (d)(3) may include a sworn statement by the law enforcement officer or an affidavit by the law
51 enforcement officer if the officer is not present. If he determines that there is such probable

1 cause, he shall mail to the person a revocation order by first-class mail. The order shall direct
2 that the person on or before the effective date of the order either surrender his license to the
3 clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order
4 shall inform the person of the time and effective date of the revocation and of its duration, of
5 his right to a hearing as specified in subsection (g) of this section, and that the revocation
6 remains in effect pending the hearing. Revocation orders mailed under this subsection become
7 effective on the fourth day after the order is deposited in the United States mail. If within five
8 working days of the effective date of the order, the person does not surrender his license to the
9 clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall
10 immediately issue a pickup order. The pickup order shall be issued and served in the same
11 manner as specified in subsection (e) of this section for pickup orders issued pursuant to that
12 subsection. A revocation under this subsection begins at the date specified in the order and
13 continues until the person's license has been revoked for the period specified in this subsection
14 and the person has paid the applicable costs. If the person has no pending offenses for which
15 his license had been or is revoked under this section, the period of revocation under this
16 subsection is:

- 17 (1) Thirty days from the time the person surrenders his license to the court, if
18 the surrender occurs within five working days of the effective date of the
19 order; or
20 (2) Thirty days after the person appears before the clerk and demonstrates that
21 he is not currently licensed to drive, if the appearance occurs within five
22 working days of the effective date of the revocation order; or
23 (3) Forty-five days from the time:
24 a. The person's drivers license is picked up by a law enforcement
25 officer following service of a pickup order; or
26 b. The person demonstrates to a law enforcement officer who has a
27 pickup order for his license that he is not currently licensed; or
28 c. The person's drivers license is surrendered to the court, if the
29 surrender occurs more than five working days after the effective date
30 of the revocation order; or
31 d. The person appears before the clerk to demonstrate that he is not
32 currently licensed, if he appears more than five working days after
33 the effective date of the revocation order.

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

44 (g) Hearing Before Magistrate or Judge if Person Contests Validity of Revocation. – A
45 person whose license is revoked under this section may request in writing a hearing to contest
46 the validity of the revocation. The request may be made at the time of the person's initial
47 appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate
48 designated by the clerk, and may specifically request that the hearing be conducted by a district
49 court judge. The Administrative Office of the Courts must develop a hearing request form for
50 any person requesting a hearing. Unless a district court judge is requested, the hearing must be
51 conducted within the county by a magistrate assigned by the chief district court judge to

1 conduct such hearings. If the person requests that a district court judge hold the hearing, the
2 hearing must be conducted within the district court district as defined in G.S. 7A-133 by a
3 district court judge assigned to conduct such hearings. The revocation remains in effect pending
4 the hearing, but the hearing must be held within three working days following the request if the
5 hearing is before a magistrate or within five working days if the hearing is before a district
6 court judge. The request for the hearing must specify the grounds upon which the validity of
7 the revocation is challenged, and the hearing must be limited to the grounds specified in the
8 request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear.
9 Any person who appears and testifies is subject to questioning by the judicial official
10 conducting the hearing, and the judicial official may adjourn the hearing to seek additional
11 evidence if he is not satisfied with the accuracy or completeness of evidence. The person
12 contesting the validity of the revocation may, but is not required to, testify in his own behalf.
13 Unless contested by the person requesting the hearing, the judicial official may accept as true
14 any matter stated in the revocation report. If any relevant condition under subsection (b) of this
15 section is contested, the judicial official must find by the greater weight of the evidence that the
16 condition was met in order to sustain the revocation. At the conclusion of the hearing, the
17 judicial official must enter an order sustaining or rescinding the revocation. The judicial
18 official's findings are without prejudice to the person contesting the revocation and to any other
19 potential party as to any other proceedings, civil or criminal, that may involve facts bearing
20 upon the conditions in subsection (b) of this section considered by the judicial official. The
21 decision of the judicial official is final and may not be appealed in the General Court of Justice.
22 If the hearing is not held and completed within three working days of the written request for a
23 hearing before a magistrate or within five working days of the written request for a hearing
24 before a district court judge, the judicial official must enter an order rescinding the revocation,
25 unless the person contesting the revocation contributed to the delay in completing the hearing.
26 If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof
27 after having been properly notified, he forfeits his right to a hearing.

28 (h) Return of License. – After the applicable period of revocation under this section, or
29 if the magistrate or judge orders the revocation rescinded, the person whose license was
30 revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that
31 the person is not eligible to use the surrendered license, he must return it if:

- 32 (1) The applicable period of revocation has passed and the person has tendered
33 payment for the costs under subsection (j) of this section; or
34 (2) The magistrate or judge has ordered the revocation rescinded.

35 If the license has expired, he may return it to the person with a caution that it is no longer valid.
36 Otherwise, if the person is not eligible to use the license and the license was issued by the
37 Division or in another state, the clerk must mail it to the Division. If the person has surrendered
38 his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make
39 a record that he has withheld the limited driving privilege and forward that record to the clerk
40 in the county in which the limited driving privilege was issued for filing in the case file. If the
41 person's license is revoked under this section and under another section of this Chapter, the
42 clerk must surrender the license to the Division if the revocation under this section can
43 terminate before the other revocation; in such cases, the costs required by subsection (j) of this
44 section must still be paid before the revocation under this section is terminated.

45 (i) Effect of Revocations. – A revocation under this section revokes a person's privilege
46 to drive in North Carolina whatever the source of his authorization to drive. Revocations under
47 this section are independent of and run concurrently with any other revocations. No court
48 imposing a period of revocation following conviction of an offense involving impaired driving
49 may give credit for any period of revocation imposed under this section. A person whose
50 license is revoked pursuant to this section is not eligible to receive a limited driving privilege
51 except as specifically authorized by G.S. 20-16.5(p).

1 (j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a person
2 whose license is revoked under this section must pay a fee of one hundred dollars (\$100.00) as
3 costs for the action before the person's license may be returned under subsection (h) of this
4 section. Fifty percent (50%) of the costs collected under this section shall be credited to the
5 General Fund. Twenty-five percent (25%) of the costs collected under this section shall be used
6 to fund a statewide chemical alcohol testing program administered by the Injury Control
7 Section of the Department of Health and Human Services. The remaining twenty-five percent
8 (25%) of the costs collected under this section shall be remitted to the county for the sole
9 purpose of reimbursing the county for jail expenses incurred due to enforcement of the
10 impaired driving laws.

11 (k) Report to Division. – Except as provided below, the clerk shall mail a report to the
12 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 shall identify the person whose license has been revoked, specify the date on which
19 his license was revoked, and indicate whether the license has been returned. The report must
20 also provide, if applicable, whether the license is revoked indefinitely. No report need be made
21 to the Division, however, if there was a surrender of the drivers license issued by the Division,
22 a 30-day minimum revocation was imposed, and the license was properly returned to the
23 person under subsection (h) of this section within five working days after the 30-day period had
24 elapsed.

25 (l) Restoration Fee for Unlicensed Persons. – If a person whose license is revoked
26 under this section has no valid license, he must pay the restoration fee required by G.S. 20-7
27 before he may apply for a license from the Division.

28 (m) Modification of Revocation Order. – Any judicial official presiding over a
29 proceeding under this section may issue a modified order if he determines that an inappropriate
30 order has been issued.

31 (n) Exception for Revoked Licenses. – Notwithstanding any other provision of this
32 section, if the judicial official required to issue a revocation order under this section determines
33 that the person whose license is subject to revocation under subsection (b) of this section:

34 (1) Has a currently revoked drivers license;

35 (2) Has no limited driving privilege; and

36 (3) Will not become eligible for restoration of his license or for a limited driving
37 privilege during the period of revocation required by this section,

38 the judicial official need not issue a revocation order under this section. In this event the
39 judicial official must file in the records of the civil proceeding a copy of any documentary
40 evidence and set out in writing all other evidence on which he relies in making his
41 determination.

42 (o) Designation of Proceedings. – Proceedings under this section are civil actions and
43 must be identified by the caption "In the Matter of _____" and filed as directed by the
44 Administrative Office of the Courts."

45 **SECTION 2.** G.S. 20-141.4 is amended by adding a new subsection to read:

46 "(d) Toxicology Reports Required. – When a defendant is charged under this section, the
47 district attorney shall order a toxicology report for the defendant."

48 **SECTION 3.** G.S. 20-141.4 is amended by adding a new subsection to read:

49 "(e) Trauma Counseling Required. – When a defendant is charged under this section, the
50 presiding judge shall order trauma counseling for the defendant."

1 **SECTION 4.** This act becomes effective December 1, 2009, and applies to death
2 by motor vehicle offenses charged on or after that date.