

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

1

HOUSE BILL 1259

Short Title: Civil Penalties for Death By Vehicle Cases. (Public)

Sponsors: Representatives Allen; and Faison.

Referred to: Judiciary III, if favorable, Finance.

April 9, 2009

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.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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