

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

1

HOUSE BILL 25

Short Title: Impaired Driving Law Revisions. (Public)

Sponsors: Representative Clampitt.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

February 1, 2021

A BILL TO BE ENTITLED

AN ACT TO REVISE THE DEFINITION OF THE TERM "OFFENSE INVOLVING
IMPAIRED DRIVING" TO INCLUDE THE OFFENSE OF DRIVING WHILE LICENSE
REVOKED FOR IMPAIRED DRIVING AND TO ADJUST HOW CERTAIN GROSSLY
AGGRAVATING FACTORS ARE DETERMINED DURING A SENTENCING
HEARING FOR IMPAIRED DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- a. Impaired driving under G.S. 20-138.1.
- b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
- c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.
- d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
- e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
- g. Habitual impaired driving under G.S. 20-138.5.
- h. Driving while license revoked for impaired driving under G.S. 20-28(a1).

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

SECTION 2. G.S. 20-179(c) reads as rewritten:

"(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether



1 a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists
2 under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not
3 the jury, in district or superior court. If the sentencing hearing is for a case remanded back to
4 district court from superior court, the judge shall determine whether the defendant has been
5 convicted of any offense that was not considered at the initial sentencing hearing and impose the
6 appropriate sentence under this section. The judge must impose the Aggravated Level One
7 punishment under subsection (f3) of this section if it is determined that three or more grossly
8 aggravating factors apply. The judge must impose the Level One punishment under subsection
9 (g) of this section if it is determined that the grossly aggravating factor in subdivision (4) of this
10 subsection applies or two of the other grossly aggravating factors apply. If the judge does not
11 find that the aggravating factor at subdivision (4) of this subsection applies, then the judge must
12 impose the Level Two punishment under subsection (h) of this section if it is determined that
13 only one of the other grossly aggravating factors applies. The grossly aggravating factors are:

- 14 (1) A prior conviction for an offense involving impaired driving if:
15 a. The conviction occurred within seven years before the date of the
16 offense for which the defendant is being sentenced; or
17 b. The conviction occurs after the date of the offense for which the
18 defendant is presently being sentenced, but prior to or
19 contemporaneously with the present sentencing; or
20 c. The conviction occurred in district court; the case was appealed to
21 superior court; the appeal has been withdrawn, or the case has been
22 remanded back to district court; and a new sentencing hearing has not
23 been held pursuant to G.S. 20-38.7.

24 Each prior conviction is a separate grossly aggravating factor.

- 25 (2) Driving by the defendant at the time of the offense while the defendant's
26 driver's license was revoked pursuant to G.S. 20-28(a1). Each revocation
27 pursuant to G.S. 20-28(a1) in effect at the time of the offense for which the
28 defendant is presently being sentenced is a separate grossly aggravating factor.
29 (3) Serious injury to another person caused by the defendant's impaired driving at
30 the time of the offense. Each person seriously injured by the defendant's
31 impaired driving at the time of the offense is a separate grossly aggravating
32 factor.
33 (4) Driving by the defendant while ~~(i) a~~ any of the following are in the vehicle at
34 the time of the offense:
35 a. A child under the age of 18 years, (ii) a years.
36 b. A person with the mental development of a child under the age of 18
37 years, or (iii) a years.
38 c. A person with a physical disability preventing unaided exit from the
39 vehicle was in the vehicle at the time of the offense.
40 Each person meeting one or more of the descriptions set forth in
41 sub-subdivisions a. through c. of this subdivision in the vehicle at the time of
42 the offense is a separate grossly aggravating factor.

43 In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the judge
44 may consider the aggravating and mitigating factors in subsections (d) and (e) of this section in
45 determining the appropriate sentence. If there are no grossly aggravating factors in the case, the
46 judge must weigh all aggravating and mitigating factors and impose punishment as required by
47 subsection (f) of this section."

48 **SECTION 3.** Prosecutions for offenses committed before the effective date of this
49 act are not abated or affected by this act, and the statutes that would be applicable but for this act
50 remain applicable to those prosecutions.

1 **SECTION 4.** This act becomes effective December 1, 2021, and applies to offenses
2 committed on or after that date.