

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 880

Short Title: DWI Blood Test Result-Directly to Clerk.

(Public)

Sponsors: Representative Justus.

Referred to: Judiciary IV.

April 7, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY
2 TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR
3 THE CIVIL REVOCATION OF A DRIVERS LICENSE.
4

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-16.5(f) reads as rewritten:

7 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –
8 When a clerk receives a properly executed report under subdivision (d) (3) and the
9 person named in the revocation report is not present before the clerk, the clerk shall
10 determine whether there is probable cause to believe that each of the conditions of
11 subsection (b) has been met. For purposes of this subsection, a properly executed report
12 under subdivision (d)(3) may include a sworn statement by the charging officer along
13 with an affidavit received directly by the Clerk from the chemical analyst. If he
14 determines that there is such probable cause, he shall mail to the person a revocation
15 order by first-class mail. The order shall direct that the person on or before the effective
16 date of the order either surrender his license to the clerk or appear before the clerk and
17 demonstrate that he is not currently licensed, and the order shall inform the person of
18 the time and effective date of the revocation and of its duration, of his right to a hearing
19 as specified in subsection (g), and that the revocation remains in effect pending the
20 hearing. Revocation orders mailed under this subsection become effective on the fourth
21 day after the order is deposited in the United States mail. If within five working days of
22 the effective date of the order, the person does not surrender his license to the clerk or
23 appear before the clerk to demonstrate that he is not currently licensed, the clerk shall
24 immediately issue a pick-up order. The pick-up order shall be issued and served in the
25 same manner as specified in subsection (e) for pick-up orders issued pursuant to that
26 subsection. A revocation under this subsection begins at the date specified in the order
27 and continues until the person's license has been revoked for the period specified in this
28 subsection and the person has paid the applicable costs. If the person has no pending

1 offenses for which his license had been or is revoked under this section, the period of
2 revocation under this subsection is:

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

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

33 **SECTION 2.** G.S. 20-139.1(c) reads as rewritten:

34 "(c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified
35 as the type of chemical analysis by the charging officer, only a physician, registered
36 nurse, or other qualified person may withdraw the blood sample. If the person
37 withdrawing the blood requests written confirmation of the charging officer's request for
38 the withdrawal of blood, the officer shall furnish it before blood is withdrawn. When
39 blood is withdrawn pursuant to a charging officer's request, neither the person
40 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or
41 corporation employing that person, or contracting for the service of withdrawing blood,
42 may be held criminally or civilly liable by reason of withdrawing that blood, except that
43 there is no immunity from liability for negligent acts or omissions.

1 The chemical analyst who analyzes the blood shall complete an affidavit on a form
2 developed by the Department of Health and Human Services and provide the affidavit
3 to the charging officer and the clerk of superior court in the county in which the
4 criminal charges are pending."

5 **SECTION 3.** This act is effective when it becomes law.