

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-165
SENATE BILL 105**

**AN ACT TO INCREASE THE PENALTY FOR CERTAIN SECOND DEGREE MURDERS
TO CLASS B1 FELONIES, AND CREATE A GRADUATED SCALE OF PENALTIES
FOR DEATHS CAUSED BY DRIVING WHILE IMPAIRED.**

Whereas, the State must prove that the defendant acted with malice to obtain a conviction of second degree murder; and

Whereas, North Carolina case law holds that malice may be shown in three different ways: by hatred, ill will, or spite; a condition of the mind which prompts a person to take the life of another intentionally or to intentionally inflict serious bodily injury which proximately results in another's death, without just cause, excuse or justification; or the commission of an inherently dangerous act or omission, in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief; Now, therefore;

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

(a) A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. ~~All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon.~~

(b) A murder other than described in subsection (a) of this section or in G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree murder shall be punished as a Class B1 felon, except that a person who commits second degree murder shall be punished as a Class B2 felon in either of the following circumstances:

- (1) The malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.
- (2) The murder is one that was proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, and the ingestion of such substance caused the death of the user."

SECTION 2. G.S. 20-141.4(b) reads as rewritten:



"(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

- (1) Repeat felony death by vehicle is a Class B2 felony.
- ~~(1)~~(1a) Aggravated felony death by vehicle is a Class D felony. Notwithstanding the provisions of G.S. 15A-1340.17, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level.
- (2) Felony death by vehicle is a Class E–D felony. Notwithstanding the provisions of G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender.
- (3) Aggravated felony serious injury by vehicle is a Class E felony.
- (4) Felony serious injury by vehicle is a Class F felony.
- (5) Misdemeanor death by vehicle is a Class A1 misdemeanor."

SECTION 3. G.S. 20-141.4(a6) reads as rewritten:

"(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

- (1) The person commits an offense under subsection (a1) or subsection (a5) of this section; and
- (2) The person has a previous conviction under:
 - a. Subsection (a1) of this section;
 - b. Subsection (a5) of this section; or
 - c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

~~A person convicted under this subsection shall be subject to the same sentence as if the person had been convicted of second degree murder."~~

SECTION 4. Sections 1, 2, and 3 of this act become effective December 1, 2012, and apply to offenses committed on or after that date. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:31 p.m. this 12th day of July, 2012