

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 742

Short Title: Video of DWI Stops and Chemical Tests. (Public)

Sponsors: Senators Goolsby; Daniel, Forrester, Meredith, and Newton.

Referred to: Judiciary I.

April 20, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE ALL BREATH-TESTING SITES AND LAW ENFORCEMENT
3 VEHICLES ENGAGED IN TRAFFIC ENFORCEMENT TO BE EQUIPPED WITH A
4 VIDEO RECORDING DEVICE AND TO REQUIRE THE RECORDING OF ALL
5 IMPAIRED DRIVING OFFENSES AT THE INCIDENT SITE AND THE
6 BREATH-TESTING SITE UNLESS SUCH RECORDING IS IMPOSSIBLE, AND TO
7 REQUIRE A FEE BE ASSESSED TO A PERSON CONVICTED OF DRIVING WHILE
8 IMPAIRED TO OFFSET THE COST OF OPERATING THE VIDEO RECORDING
9 SYSTEMS.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Article 3 of Chapter 20 of the General Statutes is amended by adding
12 a new section to read:

13 **"§ 20-138.1A. Incident site and breath-testing site video recording.**

14 (a) Requirement. – A person who is charged with an impaired driving offense must
15 have his or her conduct at the incident site and the breath-testing site video recorded.

16 (b) Incident Site Recording. – The video recording at the incident site shall meet the
17 following criteria:

18 (1) Not begin later than the activation of the officer's blue lights.

19 (2) Include any field sobriety tests administered.

20 (3) Include the arrest of a person for an impaired driving offense and show the
21 person being advised of his Miranda rights.

22 (c) Test Site Recording. – The video recording at the breath-testing site shall meet the
23 following criteria:

24 (1) Include the entire breath test procedure, including the suspect being
25 informed that he or she is being video recorded.

26 (2) Include the person taking or refusing the breath test and the actions of the
27 breath test operator while conducting the test.

28 (3) Include the person's conduct during the required 15-minute-pretest waiting
29 period, unless the officer submits a sworn affidavit certifying that it was
30 impossible to video record this waiting period.

31 (d) Admissibility of Recordings. – The video recordings of the incident site and of the
32 breath-testing site are admissible pursuant to the North Carolina Rules of Evidence in a
33 criminal, administrative, or civil proceeding by any party to the action.

34 (e) Additional Evidence. – Nothing in this section may be construed as prohibiting the
35 introduction of other relevant evidence at trial for an impaired driving offense. Failure by the
36 arresting or charging officer to produce the video recording required by this section does not
37 constitute grounds for dismissal of an impaired driving offense if the arresting officer submits



1 a sworn affidavit certifying that the video recording equipment at the incident site or video
2 equipment at the breath-testing facility was in an inoperable condition, and stating that
3 reasonable efforts have been made to maintain the equipment in an operable condition, and
4 certifying that there was no other operable breath-testing facility available in the county or, in
5 the alternative, submits a sworn affidavit certifying that it was physically impossible to produce
6 the video recording because the person needed emergency medical treatment or exigent
7 circumstances existed. In circumstances including, but not limited to, road blocks and traffic
8 crash investigations where an arrest has been made and the video recording equipment has not
9 been activated by blue lights, the failure by the arresting or charging officer to produce the
10 video recordings required by this section does not constitute grounds for dismissal. However,
11 as soon as video recording is practicable in these circumstances, video recording must begin
12 and conform to the provisions of this section. Nothing in this section prohibits the court from
13 considering any other valid reason for the failure to produce the video recording based upon the
14 totality of the circumstances, nor do the provisions of this section prohibit the person from
15 offering evidence relating to the arresting law enforcement officer's or charging officer's failure
16 to produce the video recording.

17 (f) Recording Retention. – A video recording must not be disposed of in any manner
18 except for its transfer to a master recording for consolidation purposes until a final judgment is
19 rendered in any legal proceeding arising out of the stop or arrest.

20 (g) Purchase and Maintenance of Video Recording Systems. – The Department of
21 Transportation is responsible for purchasing, maintaining, and supplying all necessary video
22 recording equipment for use at the breath-testing sites. The Department of Crime Control and
23 Public Safety is responsible for monitoring all breath-testing sites to ensure the proper
24 maintenance of video recording equipment. The Department of Transportation is responsible
25 for purchasing, maintaining, and supplying all videotaping equipment for use in all law
26 enforcement vehicles in the State used for traffic enforcement. The Department of Crime
27 Control and Public Safety also is responsible for monitoring all law enforcement vehicles used
28 for traffic enforcement to ensure proper maintenance of video recording equipment.

29 (h) Rules for Video Recording System Maintenance. – The Department of Crime
30 Control and Public Safety shall promulgate rules necessary to implement the provisions of this
31 section.

32 (i) Installation of Video Recording Systems; Effect. – The provisions contained in this
33 section take effect for each law enforcement vehicle used for traffic enforcement as soon as the
34 law enforcement vehicle is equipped with a video recording device. The provisions contained
35 in this section take effect for a breath-testing site once the breath-testing site is equipped with a
36 video recording device."

37 **SECTION 2.** G.S. 7A-304 is amended by adding a new subdivision to read:

38 "(10) For the video recording system services of the Department of Crime Control
39 and Public Safety, the district or superior court judge shall, upon conviction,
40 order payment of the sum of three hundred dollars (\$300.00) to be remitted
41 to the Department of Crime Control and Public Safety. This cost shall be
42 assessed only in cases in which, as part of the investigation leading to the
43 defendant's conviction, the arresting agency utilized a mobile video
44 recording system or a fixed video recording system to record the
45 administration of field sobriety testing or chemical analysis procedures. The
46 court may waive or reduce the amount of the payment required by this
47 subdivision upon a finding of just cause to grant such a waiver or reduction."

48 **SECTION 3.** Nothing in this act shall require the purchase and installation of the
49 required video recording systems in a law enforcement vehicle or at a breath-testing site unless
50 funds are appropriated by the General Assembly for such purpose.

1 **SECTION 4.** This act becomes effective December 1, 2011, and applies to
2 impaired driving offenses committed on or after that date. Prosecutions for offenses committed
3 before the effective date of this act are not abated or affected by this act, and the statutes that
4 would be applicable but for this act remain applicable to those prosecutions.