

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 105  
House Committee Substitute Favorable 4/20/11  
Proposed Conference Committee Substitute S105-PCCS35393-RK-7

Short Title: Increase Penalties/Murder and DWI Deaths.

(Public)

Sponsors:

Referred to:

February 23, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE PENALTY FOR CERTAIN SECOND DEGREE MURDERS  
3 TO CLASS B1 FELONIES, AND CREATE A GRADUATED SCALE OF PENALTIES  
4 FOR DEATHS CAUSED BY DRIVING WHILE IMPAIRED.

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

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

13 Now, therefore;

14 The General Assembly of North Carolina enacts:

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

16 **"§ 14-17. Murder in the first and second degree defined; punishment.**

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

32 (b) A murder other than described in subsection (a) of this section or in G.S. 14-23.2  
33 shall be deemed second degree murder. Any person who commits second degree murder shall



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1 be punished as a Class B1 felon, except that a person who commits second degree murder shall  
2 be punished as a Class B2 felon in either of the following circumstances:

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

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

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

- 16       (1) Repeat felony death by vehicle is a Class B2 felony.  
17       ~~(1)~~(1a) Aggravated felony death by vehicle is a Class D felony. Notwithstanding the  
18 provisions of G.S. 15A-1340.17, the court shall sentence the defendant in the  
19 aggravated range of the appropriate Prior Record Level.  
20       (2) Felony death by vehicle is a Class E–D felony. Notwithstanding the  
21 provisions of G.S. 15A-1340.17, intermediate punishment is authorized for a  
22 defendant who is a Prior Record Level I offender.  
23       (3) Aggravated felony serious injury by vehicle is a Class E felony.  
24       (4) Felony serious injury by vehicle is a Class F felony.  
25       (5) Misdemeanor death by vehicle is a Class A1 misdemeanor."

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

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

- 29       (1) The person commits an offense under subsection (a1) or subsection (a5) of  
30 this section; and  
31       (2) The person has a previous conviction under:  
32           a. Subsection (a1) of this section;  
33           b. Subsection (a5) of this section; or  
34           c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the  
35 unintentional death of another person while engaged in the offense of  
36 impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

37       The pleading and proof of previous convictions shall be in accordance with  
38 the provisions of G.S. 15A-928.

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

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