

**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.**

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

- (1) Enters a voluntary dismissal; or
- (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- (3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not a case subject to the implied-consent law; or
- (4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

- (1) The alcohol concentration or the fact that the driver refused.
- (2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
- (3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
- (4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
- (5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
- (6) The name and agency of the charging officer and whether the officer is available.
- (7) Any reason why the charges are dismissed.

(c) **(See Editor's note on effective date)** A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request. (1983, c. 435, s. 25; 1987 (Reg. Sess., 1988), c. 1112; 1989, c. 771, s. 18; 2006-253, s. 19; 2007-493, s. 16.)