

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 13*

Judiciary I Committee Substitute Adopted 5/4/89

Third Edition Engrossed 5/11/89

House Committee Substitute Favorable 6/28/89

Short Title: Safe Roads Act Study Bill Package.

(Public)

Sponsors:

Referred to:

January 13, 1989

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE SAFE ROADS ACT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-12.1(a) reads as rewritten:

"(a) It is unlawful for any person to accompany another person driving a motor vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor vehicle, in accordance with G.S. 20-7(1-1) and (m) or G.S. 20-12:

(1) While the person accompanying or instructing is under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

Sec. 2. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights.—Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if he is charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when he has reasonable grounds to believe that the person charged has committed the implied-consent offense. Except as provided in subsection (b), the person charged must be taken before a chemical analyst authorized to administer

1 a test of a person's breath, who must inform the person orally and also give him a notice
2 in writing that:

- 3 (1) He has a right to refuse to be tested.
- 4 (2) Refusal to take any required test or tests will result in an immediate
5 revocation of his driving privilege for at least 10 days and an
6 additional 12-month revocation by the Division of Motor Vehicles.
- 7 (3) The test results, or the fact of his refusal, will be admissible in
8 evidence at trial on the offense charged.
- 9 (4) If any test reveals an alcohol concentration of ~~0.10~~0.08 or more, his
10 driving privilege will be revoked immediately for at least 10 days.
- 11 (5) He may have a qualified person of his own choosing administer a
12 chemical test or tests in addition to any test administered at the
13 direction of the charging officer.
- 14 (6) He has the right to call an attorney and select a witness to view for him
15 the testing procedures, but the testing may not be delayed for these
16 purposes longer than 30 minutes from the time he is notified of his
17 rights."

18 Sec. 3. G.S. 20-16.2(i) reads as rewritten:

19 "(i) Right to Chemical Analysis before Arrest or Charge.—A person stopped or
20 questioned by a law-enforcement officer who is investigating whether the person may
21 have committed an implied-consent offense may request the administration of a
22 chemical analysis before any arrest or other charge is made for the offense. Upon this
23 request, the officer must afford the person the opportunity to have a chemical analysis
24 of his breath, if available, in accordance with the procedures required by G.S. 20-
25 139.1(b). The request constitutes the person's consent to be transported by the law-
26 enforcement officer to the place where the chemical analysis is to be administered.
27 Before the chemical analysis is made, the person must confirm his request in writing
28 and he must be notified:

- 29 (1) That the test results will be admissible in evidence and may be used
30 against him in any implied-consent offense that may arise;
- 31 (2) That his license will be revoked for at least 10 days if the test reveals
32 an alcohol concentration of ~~0.10~~0.08 or more; and
- 33 (3) That if he fails to comply fully with the test procedures, the officer
34 may charge him with any offense for which the officer has probable
35 cause, and if he is charged with an implied-consent offense, his refusal
36 to submit to the testing required as a result of that charge would result
37 in revocation of his driver's license. The results of the chemical
38 analysis are admissible in evidence in any proceeding in which they
39 are relevant."

40 Sec. 4. G.S. 20-16.5(b) reads as rewritten:

41 "(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
42 Concentrations of ~~0.10~~0.08 or More.—A person's driver's license is subject to revocation
43 under this section if:

- 1 (1) A charging officer has reasonable grounds to believe that the person
2 has committed an offense subject to the implied-consent provisions of
3 G.S. 20-16.2;
- 4 (2) The person is charged with that offense as provided in G.S. 20-
5 16.2(a);
- 6 (3) The charging officer and the chemical analyst comply with the
7 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
8 submission to or procuring a chemical analysis; and
- 9 (4) The person:
- 10 a. Willfully refuses to submit to the chemical analysis; or
- 11 b. Has an alcohol concentration of ~~0.10~~0.08 or more within a
12 relevant time after the driving."

13 Sec. 5. G.S. 20-16.5(b1) reads as rewritten:

14 "(b1) Precharge Test Results as Basis for Revocation.—Notwithstanding the
15 provisions of subsection (b), a person's driver's license is subject to revocation under
16 this section if:

- 17 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
18 and
- 19 (2) He has, at any relevant time after the driving, an alcohol concentration
20 of ~~0.10~~0.08 or more; and
- 21 (3) He is charged with an implied-consent offense."

22 Sec. 6. G.S. 20-138.1(a) reads as rewritten:

23 "(a) Offense.—A person commits the offense of impaired driving if he drives any
24 vehicle upon any highway, any street, or any public vehicular area within this State:

- 25 (1) While under the influence of an impairing substance; or
- 26 (2) After having consumed sufficient alcohol that he has, at any relevant
27 time after the driving, an alcohol concentration of ~~0.10~~0.08 or more."

28 Sec. 7. G.S. 20-179(m) reads as rewritten:

29 "(m) Assessment and Treatment Required in Certain Cases.—If a defendant being
30 sentenced under this section is placed on probation, he shall be required as a condition
31 of that probation to obtain a substance abuse assessment if:

- 32 (1) He had an alcohol concentration of 0.15 or more as
33 indicated by a chemical analysis taken when he was charged; or
- 34 (2) He has a prior conviction for an offense involving impaired
35 driving within the five years preceding the date of the offense for
36 which he is being sentenced and, when he was charged with the
37 current offense, he had an alcohol concentration of ~~0.10~~0.08 or
38 more; or
- 39 (3) He willfully refused to submit to a chemical analysis.

40 The judge shall require the defendant to obtain the assessment from an area mental
41 health agency, its designated agent, or a private facility licensed by the State for the
42 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
43 the court's judgment, the defendant shall schedule the assessment within 30 days from
44 the date of the judgment. Any agency performing assessments shall give written

1 notification of its intention to do so to the area mental health authority in the catchment
2 area in which it is located and to the Department of Human Resources. The Secretary
3 of the Department of Human Resources may adopt rules to implement the provisions of
4 this subsection, and these rules may include provisions to allow defendant to obtain
5 assessments and treatment from agencies not located in North Carolina. The assessing
6 agency shall give the client a standardized test, approved by the Department of Human
7 Resources to determine chemical dependency. A clinical interview concerning the
8 general status of the defendant with respect to chemical dependency shall be conducted
9 by the assessing agency before making any recommendation for further treatment. A
10 recommendation made by the assessing agency shall be signed by a 'Certified
11 Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department
12 of Human Resources. If the assessing agency recommends that the defendant
13 participate in a treatment program, the judge may require the defendant to do so, and he
14 shall require the defendant to execute a Release of Information authorizing the treatment
15 agency to report his progress to the court or the Department of Correction. The judge
16 may order the defendant to participate in an appropriate treatment program at the time
17 he is ordered to obtain an assessment, or he may order him to reappear in court when the
18 assessment is completed to determine if a condition of probation requiring participation
19 in treatment should be imposed. An order of the court shall not require the defendant to
20 participate in any treatment program for more than 90 days unless a longer treatment
21 program is recommended by the assessing agency and his alcohol concentration was .15
22 or greater as indicated by a chemical analysis taken when he was charged or this was a
23 second or subsequent offense within five years. The judge shall require the defendant to
24 pay fifty dollars (\$50.00) for the services of the assessment facility and any additional
25 treatment fees that may be charged by the treatment facility. If the defendant is treated
26 by an area mental health facility, G.S. 122C-146 applies. Any determinations with
27 regard to the defendant's ability to pay the assessment fee shall be made by the judge. In
28 those cases in which no substance abuse handicap is identified, that finding shall be
29 filed with the court. When treatment is required, the treatment agency's progress reports
30 shall be filed with the court or the Department of Correction at intervals of no greater
31 than six months until the termination of probation or the treatment agency determines
32 and reports that no further treatment is appropriate. Upon the completion of the court-
33 ordered assessment or court-ordered treatment, the assessing or treatment agency shall
34 give the Division of Motor Vehicles the original of the certificate of completion, shall
35 provide the defendant with a copy of that certificate, and shall retain a copy of the
36 certificate on file for a period of five years. The Division of Motor Vehicles shall not
37 reissue the driver's license of a defendant ordered to obtain assessment or participate in
38 a treatment program unless it has received the original certificate of completion from
39 the assessing or treatment agency, provided, however that a defendant may be issued a
40 limited driving privilege pursuant to G.S. 20-179.3.

41 The Department of Human Resources may approve programs offered in another
42 state if they are substantially similar to programs approved in this State, and if that state
43 recognizes North Carolina programs for similar purposes. The defendant shall be
44 responsible for the fees at the approved program."

1 Sec 8. G.S. 20-179(g) reads as rewritten:

2 "(g) Level One Punishment. – A defendant subject to Level One punishment may
3 be fined up to ~~two thousand dollars (\$2,000)~~ five thousand dollars (\$5,000) and must be
4 sentenced to a term of imprisonment that includes a minimum term of not less than 14
5 days and a maximum term of not more than 24 months. The term of imprisonment may
6 be suspended only if a condition of special probation is imposed to require the
7 defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed
8 on probation, the judge must, if required by subsections (l) or (m), impose the
9 conditions relating to treatment and education described in those subsections. The judge
10 may impose any other lawful condition of probation. If the judge does not place on
11 probation a defendant who is otherwise subject to the mandatory assessment and
12 treatment provisions of subsection (m), he must include in the record of the case his
13 reasons for not doing so."

14 Sec. 8. G.S. 20-179(h) reads as rewritten:

15 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
16 be fined up to ~~one thousand dollars (\$1,000)~~ four thousand dollars (\$4,000) and must be
17 sentenced to a term of imprisonment that includes a minimum term of not less than
18 seven days and a maximum term of not more than 12 months. The term of
19 imprisonment may be suspended only if a condition of special probation is imposed to
20 require the defendant to serve a term of imprisonment of at least seven days. If the
21 defendant is placed on probation, the judge must, if required by subsections (l) or (m),
22 impose the conditions relating to treatment and education described in those
23 subsections. The judge may impose any other lawful condition of probation. If the
24 judge does not place on probation a defendant who is otherwise subject to the
25 mandatory assessment and treatment provisions of subsection (m), he must include in
26 the record of the case his reasons for not doing so."

27 Sec. 9. G.S. 20-179(i) reads as rewritten:

28 "(i) Level Three Punishment. – A defendant subject to Level Three punishment
29 may be fined up to ~~five hundred dollars (\$500.00)~~ two thousand five hundred dollars
30 (\$2,500) and must be sentenced to a term of imprisonment that includes a minimum
31 term of not less than 72 hours and a maximum term of not more than six months. The
32 term of imprisonment must be suspended, on the condition that the defendant:

- 33 (1) Be imprisoned for a term of at least 72 hours as a condition of special
34 probation; or
35 (2) Perform community service for a term of at least 72 hours; or
36 (3) Not operate a motor vehicle for a term of at least 90 days; or
37 (4) Any combination of these conditions.

38 The judge in his discretion may impose any other lawful condition of probation and, if
39 required by subsections (l) or (m), must impose the conditions relating to treatment and
40 education described in those subsections. This subsection does not affect the right of a
41 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
42 15A-1341(c)."

43 Sec. 10. G.S. 20-179(j) reads as rewritten:

1 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may
2 be fined up to ~~two hundred fifty dollars (\$250.00)~~ two thousand dollars (\$2,000) and must
3 be sentenced to a term of imprisonment that includes a minimum term of not less than
4 48 hours and a maximum term of not more than 120 days. The term of imprisonment
5 must be suspended, on the condition that the defendant:

- 6 (1) Be imprisoned for a term of 48 hours as a condition of special
7 probation; or
- 8 (2) Perform community service for a term of 48 hours; or
- 9 (3) Not operate a motor vehicle for a term of 60 days; or
- 10 (4) Any combination of these conditions.

11 The judge in his discretion may impose any other lawful condition of probation and, if
12 required by subsections (l) or (m), must impose the conditions relating to treatment and
13 education described in those subsections. This subsection does not affect the right of a
14 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
15 15A-1341(c)."

16 Sec. 11. G.S. 20-179(k) reads as rewritten:

17 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may
18 be fined up to ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) and must be
19 sentenced to a term of imprisonment that includes a minimum term of not less than 24
20 hours and a maximum term of not more than ~~60~~ 61 days. The term of imprisonment
21 must be suspended, on the condition that the defendant:

- 22 (1) Be imprisoned for a term of 24 hours as a condition of special
23 probation; or
- 24 (2) Perform community service for a term of 24 hours; or
- 25 (3) Not operate a motor vehicle for a term of 30 days; or
- 26 (4) Any combination of these conditions.

27 The judge may in his discretion impose any other lawful condition of probation and, if
28 required by subsections (l) or (m), must impose the conditions relating to treatment and
29 education described in those subsections. This subsection does not affect the right of a
30 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.
31 15A-1341(c)."

32 Sec. 12. G.S. 20-139.1(b3) reads as rewritten:

33 "(b3) Sequential Breath Tests Required. – By January 1, 1985, the regulations of
34 the Commission for Health Services governing the administration of chemical analyses
35 of the breath must require the testing of at least duplicate sequential breath samples.
36 Those regulations must provide:

- 37 (1) A specification as to the minimum observation period before collection
38 of the first breath sample and the time requirements as to collection of
39 second and subsequent samples.
- 40 (2) That the test results may only be used to prove a person's particular
41 alcohol concentration if:
 - 42 a. The pair of readings employed are from consecutively
43 administered tests; and

1 b. The readings do not differ from each other by an alcohol
2 concentration greater than 0.02.

3 (3) That when a pair of analyses meets the requirements of subdivision
4 (2), only the lower of the two readings may be used by the State as
5 proof of a person's alcohol concentration in any court or administrative
6 proceeding.

7 A person's willful refusal to give the sequential breath samples necessary to constitute a
8 valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

9 If a person willfully refuses to submit to a chemical analysis by refusing to provide a
10 second or subsequent breath sample, then

11 (i) The result of the analysis of the sample providing the lowest alcohol
12 concentration, if more than one sample is provided; or

13 (ii) If a single sample is provided, the result of that sample
14 may be used as evidence in any judicial or administrative proceeding for any relevant
15 purpose, including, but not limited to

16 (i) The establishment of probable cause;

17 (ii) Corroboration of field sobriety tests; or

18 (iii) Evidence of impairment

19 provided, however, the result may not be used to prove that a person had a particular
20 alcohol concentration to establish a violation of G.S. 20-138.1(a)(2)."

21 Sec. 13. G.S. 18B-401(a) reads as rewritten:

22 "(a) Opened Containers.—It shall be unlawful for a person to transport or possess
23 ~~fortified wine or spirituous liquor~~ alcoholic beverages in the passenger area of a motor
24 vehicle in other than the manufacturer's unopened original container if the person
25 driving the motor vehicle has consumed a sufficient amount of alcohol at any relevant
26 time after driving resulting in such person having an alcohol concentration of 0.04 or
27 more.

28 It shall be unlawful for a person who is driving a motor vehicle on a highway or
29 public vehicular area to consume in the passenger area of that vehicle any ~~malt beverage~~
30 ~~or unfortified wine~~ alcoholic beverages.

31 Violation of this subsection shall constitute a misdemeanor punishable by a fine of
32 twenty-five dollars (\$25.00) to five hundred dollars (\$500.00), ~~imprisonment for not more~~
33 ~~than 30 days~~ community service of not more than 24 hours, or both."

34 Sec. 14. G.S. 20-13.2(d) reads as rewritten:

35 "(d) ~~A~~ The length of revocation under this section continues until shall be equal to
36 the number of days from the date of the charge to the provisional licensee's 18th
37 birthday reaches 18 years of age or 45 days have elapsed, whichever occurs last is longer.

38 Revocations under this section run concurrently with any other revocations, but a
39 limited driving privilege issued pursuant to law does not authorize a provisional licensee
40 to drive if his license is revoked under this section."

41 Sec. 15. G.S. 20-141.4(a1) reads as rewritten:

42 "(a1) Felony Death by Vehicle.—A person commits the offense of felony death by
43 vehicle if he unintentionally causes the death of another person while engaged in the
44 offense of impaired driving under G.S. 20-138.1 and commission of that offense is the

1 proximate cause of the death. Involuntary manslaughter under G.S. 14-18 is a lesser
2 included offense."

3 Sec. 16. G.S. 20-141.4(b) reads as rewritten:

4 "(b) Punishments.—Felony death by vehicle is a Class ~~F~~G felony. Misdemeanor
5 death by vehicle is a misdemeanor punishable by a fine of not more than five hundred
6 dollars (\$500.00), imprisonment for not more than two years, or both, in the discretion
7 of the court."

8 Sec. 17. G.S. 20-16.2(a1) reads as rewritten:

9 "(a1) Meaning of Terms. – Under this section, an 'implied-consent offense' is an
10 offense involving impaired driving or an alcohol-related offense made subject to the
11 procedures of this section. A person is 'charged' with an offense if he is arrested for it,
12 ~~or if~~criminal process for the offense has been issued, or, if the person is a juvenile, he
13 would have been arrested or criminal process would have been issued if he were an
14 adult. A 'charging officer' is a law-enforcement officer who arrests the person charged,
15 lodges the charges, takes the juvenile into protective custody, or assists the officer who
16 arrested the person, ~~or~~lodged the charge, or took the juvenile into protective custody by
17 assuming custody of the person to make the request required by subsection (c) and, if
18 necessary, to present the person to a judicial official for an initial appearance."

19 Sec. 18. G.S. 20-4.01 is amended by adding a new subdivision to read:

20 "(3c) 'Commercial Motor Vehicle.' A vehicle: (a) which requires the driver to
21 possess a valid Class 'A' or Class 'B' drivers license, or a similar drivers license issued
22 by another state; or (b) which is a school bus, school activity bus, church bus, farm bus,
23 ambulance, volunteer transportation vehicle, activity bus operated for a nonprofit
24 organization when the activity bus is operated for a nonprofit purpose, or a fire-fighting
25 vehicle or combination of vehicles when operated by any volunteer member of a
26 municipal or rural fire department in the performance of his duty."

27 Sec. 19. G.S. 20-4.01(24a) reads as rewritten:

28 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- 29 a. Impaired driving under G.S. 20-138.1.
- 30 b. Death by vehicle under G.S. 20-141.4 when conviction is based upon
31 impaired driving or a substantially equivalent offense under previous
32 law.
- 33 c. Second degree murder under G.S. 14-17 or involuntary manslaughter
34 under G.S. 14-18 when conviction is based upon impaired driving or a
35 substantially equivalent offense under previous law.
- 36 d. An offense committed in another jurisdiction substantially equivalent
37 to the offenses in subparagraphs a through c.
- 38 e. A repealed or superseded offense substantially equivalent to impaired
39 driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- 40 f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2,
41 except that convictions of impaired driving under G.S. 20-138.1 and
42 G.S. 20-138.2 arising out of the same transaction shall be considered a
43 single conviction of an offense involving impaired driving for any
44 purpose under this Chapter.

1 A conviction under former G.S. 20-140(c) is not an offense involving impaired
2 driving."

3 Sec. 20. G.S. 20-16.2(a)(4) reads as rewritten:

4 "(4) ~~If any test reveals an alcohol concentration of 0.10 or more, h~~ His driving
5 privilege will be revoked immediately for at least 10 days ~~if:~~

6 a. The test reveals an alcohol concentration of 0.08 or more, or

7 b. He was driving a commercial motor vehicle and the test reveals an
8 alcohol concentration of 0.04 or more in his blood."

9 Sec. 21. G.S. 20-16.2(i)(2) reads as rewritten:

10 "(2) That his license will be revoked for at least 10 days if:

11 a. ~~T~~the test reveals an alcohol concentration of 0.10-0.08 or more; and or

12 b. He was driving a commercial motor vehicle and the test reveals an
13 alcohol concentration of 0.04 or more in his blood."

14 Sec. 22. The catch line of G.S. 20-16.5(b) reads as rewritten:

15 "Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
16 Concentrations of 0.10 or More After Driving a Motor Vehicle or 0.04 in Their Blood
17 After Driving a Commercial Vehicle.-"

18 Sec. 23. G.S. 20-16.5(b)(4) reads as rewritten:

19 "(4) The person:

20 a. Willfully refuses to submit to the chemical analysis; or

21 b. Has an alcohol concentration of ~~0.10-0.08~~ or more within a relevant
22 time after the driving ~~;~~ or

23 c. Has an alcohol concentration of 0.04 or more within a relevant time
24 after the driving of a commercial motor vehicle; and"

25 Sec. 24. G.S. 20-16.5(b1)(2) reads as rewritten:

26 "(2) He has ~~at any relevant time after the driving, a:~~

27 a. An alcohol concentration of 0.10-0.08 or more at any relevant time
28 after the driving; or

29 b. An alcohol concentration of 0.04 or more at any relevant time after the
30 driving of a commercial motor vehicle; and"

31 Sec. 25. Article 2 of Chapter 20 of the General Statutes is amended by
32 adding a new section to read:

33 "**§ 20-17.4. Mandatory Revocation of a Class A or Class B License.**

34 The Division shall forthwith revoke the Class 'A' or Class 'B' license of any driver
35 upon receiving a record of a final conviction of such driver for impaired driving in a
36 commercial vehicle under G.S. 20-138.2. Under this section only, a final conviction of
37 any driver for violating G.S. 20-138.1 shall not be grounds for revoking the license of
38 such driver."

39 Sec. 26. G.S. 20-19 is amended by adding a new subsection to read:

40 "(c2) When a license is revoked under G.S. 20-17.4, the period of suspension shall
41 be for one year for the first conviction of G.S. 20-138.2, 10 years for the second
42 conviction of G.S. 20-138.2, and for life for a third or subsequent conviction of G.S. 20-
43 138.2.

1 This period of suspension applies only to a Class 'A' or Class 'B' license and not to a
2 Class 'C' license."

3 Sec. 27. Chapter 20 of the General Statutes is amended by adding a new
4 section to read:

5 **"§ 20-138.2. Impaired driving in commercial vehicle.**

6 (a) Offense.—A person commits the offense of impaired driving in a commercial
7 motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or
8 any public vehicular area within the State:

9 (1) While appreciably under the influence of an impairing substance; or

10 (2) After having consumed sufficient alcohol that he has, at any relevant
11 time after the driving, 0.04 percent by weight of alcohol in his blood.

12 (b) Defense Precluded.—The fact that a person charged with violating this
13 section is or has been legally entitled to use alcohol or a drug is not a defense to a
14 charge under this section.

15 (c) Pleading.—To charge a violation of this section, the pleading is sufficient if
16 it states the time and place of the alleged offense in the usual form and charges the
17 defendant drove a commercial motor vehicle on a highway, street, or public vehicular
18 area while subject to an impairing substance.

19 (d) Implied Consent Offense.—An offense under this section is an implied
20 consent offense subject to the provisions of G.S. 20-16.2.

21 (e) Punishment; Effect When Impaired Driving Offense Also Charged.—The
22 offense in this section is a misdemeanor punishable by a fine of not less than one
23 hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a
24 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is
25 convicted under this section and of an offense involving impaired driving under G.S.
26 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the
27 court may not exceed the maximum punishment applicable to the offense involving
28 impaired driving under G.S. 20-138.1.

29 (f) Limited Driving Privilege.—A person convicted of the offense of impaired
30 driving under this section is eligible for a limited driving privilege if:

31 (1) At the time of the offense he held either a valid drivers license or a
32 license that had been expired for less than one year;

33 (2) At the time of the offense he had not within the preceding seven years
34 been convicted of an offense involving impaired driving;

35 (3) Subsequent to the offense he has not been convicted of, or had an
36 unresolved charge lodged against him for, an offense involving
37 impaired driving;

38 (4) The court finds slight impairment of the defendant's faculties, and an
39 alcohol concentration that did not exceed 0.05 at any relevant time
40 after the driving.

41 The limited driving privilege under this section shall be issued for the purposes
42 specified in G.S. 20-179.3(a) and according to the procedure in G.S. 20-179.3(d) and
43 G.S. 20-179.3(f)-(k).

1 (g) The provisions of G.S. 20-139.1 shall apply to the offense of impaired
2 driving in a commercial motor vehicle."

3 Sec. 28. G.S. 20-138.4 reads as rewritten:

4 **"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**
5 **involving impaired driving.**

6 In any case in which a person is charged with an offense involving impaired driving,
7 any prosecutor must enter detailed facts in the record of any case involving impaired
8 driving-explaining the reasons for his action if he:

- 9 (1) Enters a voluntary dismissal; or
- 10 (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- 11 (3) Substitutes another charge, by statement of charges or otherwise, if the
12 substitute charge carries a lesser mandatory minimum punishment or is
13 not an offense involving impaired driving; or
- 14 (4) Otherwise takes a discretionary action that effectively dismisses or
15 reduces the original charge in the case involving impaired driving.

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

18 Sec. 29. G.S. 20-179(e) reads as rewritten:

19 "(e) Mitigating Factors to Be Weighed. – The judge must also determine before
20 sentencing under subsection (f) whether any of the mitigating factors listed below apply
21 to the defendant. The judge must weigh the degree of mitigation of each factor in light
22 of the particular circumstances of the case. The factors are:

- 23 (1) Slight impairment of the defendant's faculties resulting solely from
24 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09 at
25 any relevant time after the driving.
- 26 (2) Slight impairment of the defendant's faculties, resulting solely from
27 alcohol, with no chemical analysis having been available to the
28 defendant.
- 29 (3) Driving at the time of the offense that was safe and lawful except for
30 the impairment of the defendant's faculties.
- 31 (4) A safe driving record, with the defendant's having no conviction for
32 any motor vehicle offense for which at least four points are assigned
33 under G.S. 20-16 or for which the person's license is subject to
34 revocation within five years of the date of the offense for which the
35 defendant is being sentenced.
- 36 (5) Impairment of the defendant's faculties caused primarily by
37 a lawfully prescribed drug for an existing medical condition, and the
38 amount of the drug taken was within the prescribed dosage.
- 39 (6) The defendant's voluntary submission to a mental health facility for
40 assessment after he was charged with the impaired driving offense for
41 which he is being sentenced, and, if recommended by the facility, his
42 voluntary participation in the recommended treatment.
- 43 (7) Any other factor that mitigates the seriousness of the offense.

1 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
2 mitigating factor must occur during the same transaction or occurrence as the impaired
3 driving offense."

4 Sec. 30. G.S. 20-179(c) reads as rewritten:

5 "(c) Determining Existence of Grossly Aggravating Factors.—At the sentencing
6 hearing, based upon the evidence presented at trial and in the hearing, the judge must
7 first determine whether there are any grossly aggravating factors in the case. If the
8 defendant has been convicted of two or more prior offenses involving impaired driving,
9 if the convictions occurred within seven years before the date of the offense for which
10 he is being sentenced, the judge must impose the Level One punishment under
11 subsection (g). The judge must also impose the Level One punishment if he determines
12 that two or more of the following grossly aggravating factors apply:

- 13 (1) A single conviction for an offense involving impaired driving, if the
14 conviction occurred within seven years before the date of the offense
15 for which the defendant is being sentenced.
- 16 (2) Driving by the defendant at the time of the offense while his driver's
17 license was revoked under G.S. 20-28, and the revocation was an
18 impaired driving revocation under G.S. 20-28.2(a).
- 19 (3) Serious injury to another person caused by the defendant's impaired
20 driving at the time of the offense.

21 If the judge determines that only one of the above grossly aggravating factors applies,
22 he must impose the Level Two punishment under subsection (h). In imposing a Level
23 One or Two punishment, the judge may consider the aggravating and mitigating factors
24 in subsections (d) and (e) in determining the appropriate sentence. If there are no
25 grossly aggravating factors in the case, the judge must weigh all aggravating and
26 mitigating factors and impose punishment as required by subsection (f).

27 A conviction for another offense involving impaired driving, for which the
28 conviction occurs after the date of the offense for which the defendant is presently being
29 sentenced, but prior to or contemporaneously with the present sentencing, shall also
30 constitute a prior conviction involving impaired driving for aggravation purposes of this
31 subsection."

32 Sec. 31.1. G.S. 20-16.5(e) reads as rewritten:

33 "(e) Procedure if Report Filed with Judicial Official When Person Is Present.—If a
34 properly executed revocation report concerning a person is filed with a judicial official
35 when the person is present before that official, the judicial official must, after
36 completing any other proceedings involving the person, determine whether there is
37 probable cause to believe that each of the conditions of subsection (b) has been met. If
38 he determines that there is such probable cause, he must enter an order revoking the
39 person's driver's license for the period required in this subsection. The judicial official
40 must order the person to surrender his license and if necessary may order a law-
41 enforcement officer to seize the license. The judicial official must give the person a
42 copy of the revocation order. In addition to setting it out in the order the judicial official
43 must personally inform the person of his right to a hearing as specified in subsection (g),
44 and that his license remains revoked pending the hearing. Unless the person is not

1 currently licensed, the revocation under this subsection begins at the time the revocation
2 order is issued and continues until the person's license has been surrendered for ~~10-30~~
3 days and the person has paid the applicable costs. If the person is not currently licensed,
4 the revocation continues until ~~10-30~~ days from the date the revocation order is issued
5 and the person has paid the applicable costs. If within five working days of the effective
6 date of the order, the person does not surrender his license or demonstrate that he is not
7 currently licensed, the clerk must immediately issue a pick-up order. The pick-up order
8 must be issued to a member of a local law-enforcement agency if the charging officer
9 was employed by the agency at the time of the charge and the person resides in or is
10 present in the agency's territorial jurisdiction. In all other cases, the pick-up order must
11 be issued to an officer or inspector of the Division. A pick-up order issued pursuant to
12 this section is to be served in accordance with G.S. 20-29 as if the order had been issued
13 by the Division."

14 Sec. 31.2. G.S. 20-16.5(f) reads as rewritten:

15 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present.—
16 When a clerk receives a properly executed report under subdivision (d)(3) and the
17 person named in the revocation report is not present before the clerk, the clerk must
18 determine whether there is probable cause to believe that each of the conditions of
19 subsection (b) has been met. If he determines that there is such probable cause, he must
20 mail to the person a revocation order by first-class mail. The order must direct that the
21 person on or before the effective date of the order either surrender his license to the
22 clerk or appear before the clerk and demonstrate that he is not currently licensed, and
23 the order must inform the person of the time and effective date of the revocation and of
24 its duration, of his right to a hearing as specified in subsection (g), and that the
25 revocation remains in effect pending the hearing. Revocation orders mailed under this
26 subsection become effective on the fourth day after the order is deposited in the United
27 States mail. If within five working days of the effective date of the order, the person
28 does not surrender his license to the clerk or appear before the clerk to demonstrate that
29 he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-
30 up order must be issued and served in the same manner as specified in subsection (e) for
31 pick-up orders issued pursuant to that subsection. A revocation under this subsection
32 begins at the date specified in the order and continues until the person's license has been
33 revoked for the period specified in this subsection and the person has paid the applicable
34 costs. The period of revocation under this subsection is:

35 (1) ~~Ten-Thirty~~ days from the time the person surrenders his
36 license to the court, if the surrender occurs within five working days
37 of the effective date of the order; or

38 (2) ~~Ten-Thirty~~ days after the person appears before the clerk and
39 demonstrates that he is not currently licensed to drive, if the
40 appearance occurs within five working days of the effective date of
41 the revocation order; or

42 (3) ~~Thirty-Sixty~~ days from the time:

43 a. The person's driver's license is picked up by a law-
44 enforcement officer following service of a pick-up order; or

1 b. The person demonstrates to a law-enforcement
2 officer who has a pick-up order for his license that he is not
3 currently licensed; or

4 c. The person's driver's license is surrendered to the
5 court if the surrender occurs more than five working days
6 after the effective date of the revocation order; or

7 d. The person appears before the clerk to demonstrate
8 that he is not currently licensed, if he appears more than five
9 working days after the effective date of the revocation order.

10 When a pick-up order is issued, it must inform the person of his right to a hearing as
11 specified in subsection (g), and that the revocation remains in effect pending the
12 hearing. An officer serving a pick-up order under this subsection must return the order
13 to the court indicating the date it was served or that he was unable to serve the order. If
14 the license was surrendered, the officer serving the order must deposit it with the clerk
15 within three days of the surrender."

16 Sec. 31.3. G.S. 20-28(a1) reads as rewritten:

17 "(a1) A person convicted under subsection (a) shall be punished as if he had been
18 convicted of driving without a driver's license under G.S. 20-7 if he demonstrates to the
19 court that:

20 (1) At the time of the offense, his license was revoked solely
21 under G.S. 20-16.5; and

22 (2) a. The offense occurred more than ~~30~~60 days
23 after the effective date of a revocation order issued under G.S.
24 20-16.5(f) and the period of revocation was 30 days as
25 provided under subdivision (3) of that subsection; or

26 b. The offense occurred more than ~~40~~30 days after the
27 effective date of the revocation order issued under any other
28 provision of G.S. 20-16.5.

29 In addition, a person punished under this subsection shall be treated for driver's license
30 and insurance rating purposes as if he had been convicted of driving without a license
31 under G.S. 20-7, and the conviction report sent to the Division must indicate that the
32 person is to be so treated."

33 Sec. 31.4. G.S. 20-16.2(a) reads as rewritten:

34 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
35 Rights.—Any person who drives a vehicle on a highway or public vehicular area thereby
36 gives consent to a chemical analysis if he is charged with an implied-consent offense.
37 The charging officer must designate the type of chemical analysis to be administered,
38 and it may be administered when he has reasonable grounds to believe that the person
39 charged has committed the implied-consent offense. Except as provided in subsection
40 (b), the person charged must be taken before a chemical analyst authorized to administer
41 a test of a person's breath, who must inform the person orally and also give him a notice
42 in writing that:

43 (1) He has a right to refuse to be tested.

1 (2) Refusal to take any required test or tests will result in an
2 immediate revocation of his driving privilege for at least ~~10-30~~ days
3 and an additional 12-month revocation by the Division of Motor
4 Vehicles.

5 (3) The test results, or the fact of his refusal, will be admissible
6 in evidence at trial on the offense charged.

7 (4) If any test reveals an alcohol concentration of 0.10 or more,
8 his driving privilege will be revoked immediately for at least ~~10-30~~
9 days.

10 (5) He may have a qualified person of his own choosing
11 administer a chemical test or tests in addition to any test
12 administered at the direction of the charging officer.

13 (6) He has the right to call an attorney and select a witness to
14 view for him the testing procedures, but the testing may not be
15 delayed for these purposes longer than 30 minutes from the time he
16 is notified of his rights."

17 Sec. 31.5. G.S. 20-16.2(i) reads as rewritten:

18 "(i) Right to Chemical Analysis before Arrest or Charge.—A person stopped or
19 questioned by a law-enforcement officer who is investigating whether the person may
20 have committed an implied-consent offense may request the administration of a
21 chemical analysis before any arrest or other charge is made for the offense. Upon this
22 request, the officer must afford the person the opportunity to have a chemical analysis
23 of his breath, if available, in accordance with the procedures required by G.S. 20-
24 139.1(b). The request constitutes the person's consent to be transported by the law-
25 enforcement officer to the place where the chemical analysis is to be administered.
26 Before the chemical analysis is made, the person must confirm his request in writing
27 and he must be notified:

28 (1) That the test results will be admissible in evidence and may
29 be used against him in any implied-consent offense that may arise;

30 (2) That his license will be revoked for at least ~~10-30~~ days if the
31 test reveals an alcohol concentration of 0.10 or more; and

32 (3) That if he fails to comply fully with the test procedures, the
33 officer may charge him with any offense for which the officer has
34 probable cause, and if he is charged with an implied-consent offense,
35 his refusal to submit to the testing required as a result of that charge
36 would result in revocation of his driver's license. The results of the
37 chemical analysis are admissible in evidence in any proceeding in
38 which they are relevant."

39 Sec. 31.6. G.S. 20-16.5(k) reads as rewritten:

40 "(k) Report to Division.—Except as provided below, the clerk must mail a report to
41 the Division within 10 working days of the return of a license under this section or of
42 the termination of a revocation of the driving privilege of a person not currently
43 licensed. The report must identify the person whose license has been revoked and
44 specify the dates on which his license was revoked. No report need be made to the

1 Division, however, if there was a surrender of the driver's license issued by the
2 Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was
3 properly returned to the person under subsection (h) within five working days after the
4 10-day period had elapsed."

5 Sec. 32. This act shall become effective October 1, 1989.