GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 506
HOUSE BILL 353

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I.—-ALLOWING JUDGES TO ORDER AN IGNITION INTERLOCK SYSTEM INSTALLED ON ANY VEHICLE DRIVEN AS A CONDITION OF A LIMITED DRIVING PRIVILEGE IN ORDER TO PREVENT DRIVING AFTER DRINKING.

Section 1. G.S. 20-179.3 is amended by adding new subsections to read:

"(g3) Ignition Interlock Allowed. – A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART II.—-REQUIRING ALL PERSONS TO OBTAIN A SUBSTANCE ABUSE ASSESSMENT PRIOR TO BEING GRANTED A LIMITED DRIVING PRIVILEGE.

Sec. 2. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. –

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; ~~and~~
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired ~~driving.~~ driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type specified in G.S. 20-179(m).

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

PART III.—-RAISING TO AGE 21 THE PROHIBITION AGAINST DRIVING AFTER DRINKING ANY AMOUNT OF ALCOHOL AND MAKING CORRESPONDING CHANGES TO THE REVOCATION STATUTES.

Sec. 3. G.S. 20-13.2(b) reads as rewritten:

"(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is ~~a provisional licensee,~~ less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law."

Sec. 4. G.S. 20-13.2(c) reads as rewritten:

"(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is ~~a provisional licensee,~~ less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal."

Sec. 5. G.S. 20-13.2(d) reads as rewritten:

"(d) The length of revocation under this section shall be ~~equal to the number of days from the date of the charge to the provisional licensee's eighteenth birthday or 45 days whichever is longer.~~ one year. Revocations under this section run concurrently with any other ~~revocations, but a limited driving privilege issued pursuant to law does not authorize a provisional licensee to drive if his license is revoked under this section.~~ revocations."

Sec. 6. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by ~~provisional licensee~~ person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. – It is unlawful for a ~~provisional licensee~~ person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a ~~provisional licensee~~ person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed.

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART IV.—-PROHIBITING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE IN A MOTOR VEHICLE WHEN A DRIVER HAS BEEN DRINKING.

Sec. 7. G.S. 20-17 reads as rewritten:

"**§ 20-17. Mandatory revocation of license by Division.**

The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

Sec. 8. G.S. 20-19 is amended by adding a new subsection to read:

"(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense."

Sec. 9. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming alcohol.**

(a) Offense. – No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation of this section shall be punished as a Class 3 misdemeanor for the first offense and shall be punished as a Class 2 misdemeanor for a second or subsequent offense. A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000). Violation of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. – If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, 'passenger area of a motor vehicle' means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term 'alcoholic beverage' is as defined in G.S. 18B-101(4).

(g) Pleading. – In any prosecution for a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

(h) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V.—-CLARIFYING THE AUTHORITY OF LAW ENFORCEMENT OFFICERS TO ARREST WITHOUT A WARRANT FOR THE OFFENSE OF IMPAIRED DRIVING.

Sec. 10. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under ~~G.S. 14-72.1 or G.S. 14-134.3;~~ G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), G.S. 14-33(b)(1), or G.S. 14-33(b)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

(3) Repealed by Session Laws 1991, c. 150."

PART VI.—-STANDARDIZING STATUTORY REGULATIONS REGARDING BLOOD ALCOHOL CONCENTRATION.

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

"(d) Aggravating Factors to Be Weighed. – The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of ~~0.20~~ 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense."

Sec. 12. G.S. 20-179(e) reads as rewritten:

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

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

(7) Any other factor that mitigates the seriousness of the offense.

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

Sec. 13. G.S. 20-179(m) reads as rewritten:

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

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was ~~.15~~ 0.13 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars ($125.00). The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. Fees received by the Area Mental

Health, Developmental Disabilities, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

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

Sec. 14. G.S. 75A-10(b1) reads as rewritten:

"(b1) No person shall operate any motorboat or motor vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

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

The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this subsection or subsection (b) above.

The relevant definitions contained in G.S. 20-4.01 shall apply to this subsection and subsection (b) above."

PART VII.—-EFFECTIVE DATE.

Sec. 15. This act becomes effective September 15, 1995, and applies to offenses committed on or after that date and to limited driving privileges issued on or after that date. This act shall not be construed to abate or affect any charges or violations occurring before the effective date of this act.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

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Dennis A. Wicker
President of the Senate

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Harold J. Brubaker
Speaker of the House of Representatives