

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 298

Short Title: Governor's Task Force on DWI/AB.

(Public)

Sponsors: Senators Odom and Forrester.

Referred to: Judiciary I/Constitution

March 6, 1995

A BILL TO BE ENTITLED

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 a new subsection to read:

"(g3) Ignition interlock allowed. – A judge may include in a limited driving privilege
order:

(1) A restriction that the applicant may operate only a particular 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; and

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

This restriction shall not apply to any motor vehicle:

(1) Which is owned by the applicant's employer;

- 1 (2) Which is operated by the applicant solely for work-related purposes;
2 and
3 (3) For which the owner has filed with the court a written document
4 authorizing the applicant to drive, for work-related purposes, under the
5 authority of a limited driving privilege."

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

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

9 "(b) Eligibility.

- 10 (1) A person convicted of the offense of impaired driving under G.S. 20-
11 138.1 is eligible for a limited driving privilege if:
12 a. At the time of the offense he held either a valid driver's license or
13 a license that had been expired for less than one year;
14 b. At the time of the offense he had not within the
15 preceding seven years been convicted of an offense involving
16 impaired driving;
17 c. Punishment Level Three, Four, or Five was imposed for the
18 offense of impaired driving; ~~and~~
19 d. Subsequent to the offense he has not been convicted of, or had an
20 unresolved charge lodged against him for, an offense involving
21 impaired ~~driving-~~driving; and
22 e. Has obtained and filed with the court a substance abuse
23 assessment of the type specified in G.S. 20-179(m).

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

- 30 (2) Any person whose licensing privileges are forfeited pursuant to G.S.
31 15A-1331A is eligible for a limited driving privilege if the court finds
32 that at the time of the forfeiture, the person held either a valid drivers
33 license or a drivers license that had been expired for less than one year
34 and
35 a. The person is supporting existing dependents or must have a
36 drivers license to be gainfully employed; or
37 b. The person has an existing dependent who requires serious
38 medical treatment and the defendant is the only person able to
39 provide transportation to the dependent to the health care facility
40 where the dependent can receive the needed medical treatment.

41 The limited driving privilege granted under this subdivision must
42 restrict the person to essential driving related to the purposes listed
43 above, and any driving that is not related to those purposes is unlawful

1 even though done at times and upon routes that may be authorized by
2 the privilege."

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

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

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

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

12 "(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S.
13 20-16.2 while he is a ~~provisional licensee~~, under the age of 21 years, his license must be
14 revoked under this section, in addition to any other revocation required or authorized by
15 law. A revocation order entered under authority of this subsection becomes effective at
16 the same time as a revocation order issued under G.S. 20-16.2 for the same willful
17 refusal."

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

19 "(d) The length of revocation under this section shall be equal to the number of
20 days from the date of the charge to the provisional licensee's eighteenth birthday or 45
21 days whichever is longer. If the person was age 19 or 20 on the date of the offense, the
22 length of the revocation shall be equal to the number of days from the date of the charge
23 to the person's twenty-first birthday or 45 days, whichever is longer. Revocations under
24 this section run concurrently with any other revocations, but a limited driving privilege
25 issued pursuant to law does not authorize a ~~provisional licensee person~~ to drive if his
26 license is revoked under this section."

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

28 **"§ 20-138.3. Driving by ~~provisional licensee person~~ under age twenty-one after**
29 **consuming alcohol or drugs.**

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

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

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

1 maximum applicable to the offense involving impaired driving, and any minimum
2 punishment applicable must be imposed."

3 PART IV.—CLARIFYING THAT ONLY ONE OFFICER IS REQUIRED TO
4 ADMINISTER A CHEMICAL ANALYSIS OF THE BREATH.

5 Sec. 7. G.S. 20-16.2(a) reads as rewritten:

6 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
7 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby
8 gives consent to a chemical analysis if charged with an implied-consent offense. The
9 charging officer must designate the type of chemical analysis to be administered, and it
10 may be administered when the officer has reasonable grounds to believe that the person
11 charged has committed the implied-consent offense.

12 Except as provided in this subsection or subsection (b), before any type of chemical
13 analysis is administered the person charged must be taken before a chemical analyst
14 authorized to administer a test of a person's breath, who must inform the person orally
15 and also give the person a notice in writing that:

- 16 (1) He has a right to refuse to be tested.
- 17 (2) Refusal to take any required test or tests will result in an immediate
18 revocation of his driving privilege for at least 10 days and an additional
19 12-month revocation by the Division of Motor Vehicles.
- 20 (3) The test results, or the fact of his refusal, will be admissible in evidence
21 at trial on the offense charged.
- 22 (4) His driving privilege will be revoked immediately for at least 10 days if:
23 a. The test reveals an alcohol concentration of 0.08 or more; or
24 b. He was driving a commercial motor vehicle and the test reveals
25 an alcohol concentration of 0.04 or more.
- 26 (5) He may have a qualified person of his own choosing administer a
27 chemical test or tests in addition to any test administered at the direction
28 of the charging officer.
- 29 (6) He has the right to call an attorney and select a witness to view for him
30 the testing procedures, but the testing may not be delayed for these
31 purposes longer than 30 minutes from the time he is notified of his
32 rights.

33 If the charging officer or an arresting officer is authorized to administer a chemical
34 analysis of a person's ~~breath and the charging officer designates a chemical analysis of the~~
35 ~~blood of the person charged,~~ breath, the charging officer or the arresting officer may give
36 the person charged the oral and written notice of rights required by this subsection. This
37 authority applies regardless of the type of chemical analysis designated."

38 PART V.—PROHIBITING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE
39 IN A MOTOR VEHICLE WHEN A DRIVER HAS BEEN DRINKING.

40 Sec. 8. G.S. 20-4.01(24a) reads as rewritten:

41 "(24a) Offense Involving Impaired Driving. – Any of the following
42 offenses:

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

- 1 b. Death by vehicle under G.S. 20-141.4 when conviction is based
2 upon impaired driving or a substantially equivalent offense under
3 previous law.
- 4 c. Second degree murder under G.S. 14-17 or involuntary
5 manslaughter under G.S. 14-18 when conviction is based upon
6 impaired driving or a substantially equivalent offense under
7 previous law.
- 8 d. An offense committed in another jurisdiction substantially
9 equivalent to the offenses in subparagraphs a through c.
- 10 e. A repealed or superseded offense substantially equivalent to
11 impaired driving, including offenses under former G.S. 20-138 or
12 G.S. 20-139.
- 13 f. Impaired driving in a commercial motor vehicle under G.S. 20-
14 138.2, except that convictions of impaired driving under G.S. 20-
15 138.1 and G.S. 20-138.2 arising out of the same transaction shall
16 be considered a single conviction of an offense involving
17 impaired driving for any purpose under this Chapter.
- 18 g. Transporting an open container under G.S. 20-138.7, except that
19 convictions of impaired driving under G.S. 20-138.1 or G.S. 20-
20 138.2 and transporting an open container under G.S. 20-138.7
21 arising out of the same transaction shall be considered a single
22 conviction of an offense involving impaired driving for any
23 purpose under this Chapter.

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

26 Sec. 9. G.S. 20-17 reads as rewritten:

27 "**§ 20-17. Mandatory revocation of license by Division.**

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

- 30 (1) Manslaughter (or negligent homicide) resulting from the operation of a
31 motor vehicle.
- 32 (2) Either of the following impaired driving offenses:
- 33 a. Impaired driving under G.S. 20-138.1.
- 34 b. Impaired driving under G.S. 20-138.2 when the person convicted
35 did not take a chemical test at the time of the offense or the
36 person took a chemical test at the time of the offense and the test
37 revealed that the person had an alcohol concentration at any
38 relevant time after driving of less than 0.04 or of 0.08 or more.
- 39 c. Transporting an open container of alcoholic beverage under G.S.
40 20-138.7.
- 41 (3) Any felony in the commission of which a motor vehicle is used.
- 42 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

- 1 (5) Perjury or the making of a false affidavit or statement under oath to the
2 Division under this Article or under any other law relating to the
3 ownership of motor vehicles.
- 4 (6) Conviction upon two charges of reckless driving committed within a
5 period of 12 months.
- 6 (7) Conviction upon one charge of reckless driving while engaged in the
7 illegal transportation of intoxicants for the purpose of sale.
- 8 (8) Conviction of using a false or fictitious name or giving a false or
9 fictitious address in any application for a drivers license, or learner's
10 permit, or any renewal or duplicate thereof, or knowingly making a false
11 statement or knowingly concealing a material fact or otherwise
12 committing a fraud in any such application or procuring or knowingly
13 permitting or allowing another to commit any of the foregoing acts.
- 14 (9) Death by vehicle as defined in G.S. 20-141.4.
- 15 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour
16 over the legal limit in violation of G.S. 20-141(j).
- 17 (11) Conviction of assault with a motor vehicle."

18 Sec. 10. Chapter 20 of the General Statutes is amended by adding a new
19 section to read:

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

22 (a) Offense. – No person shall drive a motor vehicle:

23 (1) On a highway or public vehicular area;

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

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

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

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

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

1 (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation
2 of this section is a Class 3 misdemeanor. Violation of this section is not a lesser included
3 offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this
4 section and of an offense involving impaired driving arising out of the same transaction,
5 the punishment imposed by the court shall not exceed the maximum applicable to the
6 offense involving impaired driving, and any minimum applicable punishment shall be
7 imposed.

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

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

19 (h) Limited Driving Privilege. – A person convicted of violating subsection (a) of
20 this section and whose drivers license is revoked solely based on that conviction may
21 apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may
22 issue the limited driving privilege only if the driver meets the eligibility requirements of
23 G.S. 20-179.3, except that requirement (b)(3) shall only apply if the driver was charged
24 with driving while impaired arising out of the same transaction. The same terms,
25 conditions, and restrictions provided for in G.S. 20-179.3 shall apply."

26 Sec. 11. G.S. 18B-401 reads as rewritten:

27 "**§ 18B-401. Manner of transportation.**

28 (a) ~~Opened Containers. – It shall be unlawful for a person to transport fortified~~
29 ~~wine or spirituous liquor in the passenger area of a motor vehicle in other than the~~
30 ~~manufacturer's unopened original container. It shall be unlawful for a person who is~~
31 ~~driving a motor vehicle on a highway or public vehicular area to consume in the~~
32 ~~passenger area of that vehicle any malt beverage or unfortified wine. Violation of this~~
33 ~~subsection shall constitute a Class 3 misdemeanor.~~

34 (b) Taxis. – It shall be unlawful for a person operating a for-hire passenger vehicle
35 as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the
36 vehicle is transporting a paying passenger who owns the alcoholic beverage being
37 transported. Not more than eight liters of fortified wine or spirituous liquor, or
38 combination of the two, may be transported by each passenger. A violation of this
39 subsection shall not be grounds for suspension of the driver's license for illegal
40 transportation of intoxicating liquors under G.S. 20-16(a)(8).

41 (c) ~~Definitions. – The definitions in Chapter 20 of the General Statutes apply in~~
42 ~~interpreting this section. If the seal on a container of alcoholic beverages has been~~
43 ~~broken, it is opened within the meaning of this section. For purposes of this section,~~

1 ~~"passenger area of a motor vehicle" means the area designed to seat the driver and~~
2 ~~passengers and any area within the reach of a seated driver or passenger, including the~~
3 ~~glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area~~
4 ~~behind the last upright back seat shall not be considered part of the passenger area."~~

5 PART VI.—INCREASING THE REVOCATION PERIOD FOR PRETRIAL CIVIL
6 REVOCATION FOR DRIVERS CHARGED WITH IMPAIRED DRIVING OFFENSES
7 FROM TEN TO THIRTY DAYS.

8 Sec. 12. G.S. 20-16.2(a) reads as rewritten:

9 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
10 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby
11 gives consent to a chemical analysis if charged with an implied-consent offense. The
12 charging officer must designate the type of chemical analysis to be administered, and it
13 may be administered when the officer has reasonable grounds to believe that the person
14 charged has committed the implied-consent offense.

15 Except as provided in this subsection or subsection (b), before any type of chemical
16 analysis is administered the person charged must be taken before a chemical analyst
17 authorized to administer a test of a person's breath, who must inform the person orally
18 and also give the person a notice in writing that:

- 19 (1) He has a right to refuse to be tested.
- 20 (2) Refusal to take any required test or tests will result in an immediate
21 revocation of his driving privilege for at least ~~40~~30 days and an
22 additional 12-month revocation by the Division of Motor Vehicles.
- 23 (3) The test results, or the fact of his refusal, will be admissible in
24 evidence at trial on the offense charged.
- 25 (4) His driving privilege will be revoked immediately for at least ~~40~~30
26 days if:
 - 27 a. The test reveals an alcohol concentration of 0.08 or more;
28 or
 - 29 b. He was driving a commercial motor vehicle and the test
30 reveals an alcohol concentration of 0.04 or more.
- 31 (5) He may have a qualified person of his own choosing administer a
32 chemical test or tests in addition to any test administered at the
33 direction of the charging officer.
- 34 (6) He has the right to call an attorney and select a witness to view for
35 him the testing procedures, but the testing may not be delayed for
36 these purposes longer than 30 minutes from the time he is notified of
37 his rights.

38 If the charging officer or an arresting officer is authorized to administer a chemical
39 analysis of a person's breath and the charging officer designates a chemical analysis of
40 the blood of the person charged, the charging officer or the arresting officer may give the
41 person charged the oral and written notice of rights required by this subsection."

42 Sec. 13. G.S. 20-16.2(i) reads as rewritten:

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

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

12 (2) That his license will be revoked for at least ~~40~~30 days if:

13 a. The test reveals an alcohol concentration of 0.08 or more;
14 or

15 b. He was driving a commercial motor vehicle and the test
16 results reveal an alcohol concentration of 0.04 or more.

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

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

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

1 period specified in this subsection and the person has paid the applicable costs. The
2 period of revocation under this subsection is:

- 3 (1) ~~Ten~~Thirty days from the time the person surrenders his license to
4 the court, if the surrender occurs within five working days of the
5 effective date of the order; or
6 (2) ~~Ten~~Thirty days after the person appears before the clerk and
7 demonstrates that he is not currently licensed to drive, if the
8 appearance occurs within five working days of the effective date of
9 the revocation order; or
10 (3) ~~Thirty~~Ninety days from the time:
11 a. The person's driver's license is picked up by a law-
12 enforcement officer following service of a pick-up order;
13 or
14 b. The person demonstrates to a law-enforcement officer
15 who has a pick-up order for his license that he is not
16 currently licensed; or
17 c. The person's driver's license is surrendered to the court if
18 the surrender occurs more than five working days after the
19 effective date of the revocation order; or
20 d. The person appears before the clerk to demonstrate that he
21 is not currently licensed, if he appears more than five
22 working days after the effective date of the revocation
23 order.

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

30 Sec. 15. G.S. 20-16.5(k) reads as rewritten:

31 "(k) Report to Division. – Except as provided below, the clerk must mail a report to
32 the Division within 10 working days of the return of a license under this section or of the
33 termination of a revocation of the driving privilege of a person not currently licensed.
34 The report must identify the person whose license has been revoked and specify the dates
35 on which his license was revoked. No report need be made to the Division, however, if
36 there was a surrender of the driver's license issued by the Division, a ~~ten-day~~30-day
37 minimum revocation was imposed, and the license was properly returned to the person
38 under subsection (h) within five working days after the ~~10-day~~30-day period had
39 elapsed."

40 PART VII.—CLARIFYING THE AUTHORITY OF LAW ENFORCEMENT
41 OFFICERS TO ARREST WITHOUT A WARRANT FOR THE OFFENSE OF
42 IMPAIRED DRIVING.

43 Sec. 16. G.S. 15A-401(b) reads as rewritten:

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

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

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

7 a. Has committed a felony; or

8 b. Has committed a misdemeanor, and:

9 1. Will not be apprehended unless immediately
10 arrested, or

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

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

16 d. Has committed a misdemeanor under G.S. 14-33(a), G.S.
17 14-33(b)(1), or G.S. 14-33(b)(2) when the offense was
18 committed by a person who is the spouse or former spouse
19 of the alleged victim or by a person with whom the
20 alleged victim is living or has lived as if married.

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

22 PART VIII.—STANDARDIZING STATUTORY REGULATIONS REGARDING
23 BLOOD ALCOHOL CONCENTRATION.

24 Sec. 17. G.S. 20-179(d) reads as rewritten:

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

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

32 (2) Especially reckless or dangerous driving.

33 (3) Negligent driving that led to an accident causing property damage in
34 excess of five hundred dollars (\$500.00) or personal injury.

35 (4) Driving by the defendant while his driver's license was revoked.

36 (5) Two or more prior convictions of a motor vehicle offense not
37 involving impaired driving for which at least three points are
38 assigned under G.S. 20-16 or for which the convicted person's
39 license is subject to revocation, if the convictions occurred within
40 five years of the date of the offense for which the defendant is being
41 sentenced, or one or more prior convictions of an offense involving
42 impaired driving that occurred more than seven years before the date
43 of the offense for which the defendant is being sentenced.

- 1 (6) Conviction under G.S. 20-141(j) of speeding by the defendant while
- 2 fleeing or attempting to elude apprehension.
- 3 (7) Conviction under G.S. 20-141 of speeding by the defendant by at
- 4 least 30 miles per hour over the legal limit.
- 5 (8) Passing a stopped school bus in violation of G.S. 20-217.
- 6 (9) Any other factor that aggravates the seriousness of the offense.

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

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

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

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

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

38 Sec. 19. G.S. 20-179(m) reads as rewritten:

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

42 The judge shall require the defendant to obtain the assessment from an area mental
43 health agency, its designated agent, or a private facility licensed by the State for the

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

18 If the assessing agency recommends that the defendant participate in a treatment
19 program, the judge may require the defendant to do so, and he shall require the defendant
20 to execute a Release of Information authorizing the treatment agency to report his
21 progress to the court or the Department of Correction. The judge may order the
22 defendant to participate in an appropriate treatment program at the time he is ordered to
23 obtain an assessment, or he may order him to reappear in court when the assessment is
24 completed to determine if a condition of probation requiring participation in treatment
25 should be imposed. An order of the court shall not require the defendant to participate in
26 any treatment program for more than 90 days unless a longer treatment program is
27 recommended by the assessing agency and his alcohol concentration was ~~15-0.13~~ or
28 greater as indicated by a chemical analysis taken when he was charged or this was a
29 second or subsequent offense within five years. At the time of sentencing the judge shall
30 require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of
31 the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to
32 the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or
33 to an alcohol and drug education traffic school depending upon the recommendation
34 made by the assessing agency. Fees received by the Area Mental Health, Developmental
35 Disabilities, and Substance Abuse Authorities under this section shall be administered
36 pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c)
37 shall not apply to monies received under this section. The operators of the local alcohol
38 and drug education traffic school may change the length of time required to complete the
39 school in accordance with administrative costs, provided, however that the length and the
40 curriculum of the school shall be approved by the Commission for Mental Health,
41 Developmental Disabilities, and Substance Abuse Services and in no event shall the
42 school be less than five hours in length. If the defendant is treated by an area mental
43 health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee.

1 If an area mental health facility or its contractor is providing treatment or education
2 services to a defendant pursuant to this subsection, the area facility or its contractor may
3 require that the defendant pay the fees prescribed by law for the services before it
4 certifies that the defendant has completed the recommended treatment or educational
5 program. Any determinations with regard to the defendant's ability to pay the assessment
6 fee shall be made by the judge.

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

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

40 Sec. 20. G.S. 75A-10(b1) reads as rewritten:

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

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

1 (2) After having consumed sufficient alcohol that he has, at any relevant
2 time after the boating, an alcohol concentration of ~~0.10~~0.08 or more.
3 The fact that a person charged with violating this subsection is or has been legally
4 entitled to use alcohol or a drug is not a defense to a charge under this subsection or
5 subsection (b) above.

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

8 PART IX.—EFFECTIVE DATE.

9 Sec. 21. Sections 7 and 21 of this act are effective upon ratification. The
10 remaining sections of this act become effective October 1, 1995, and apply to offenses
11 committed on or after that date and to limited driving privileges issued on or after that
12 date. Except for Section 7 of this act which applies to all pending matters, this act shall
13 not be construed to abate or affect any charges or violations occurring before the effective
14 dates of the sections of this act.