

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1048

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors: Representatives Hackney; Alexander, B. Allen, Carney, Insko, and Weiss.

Referred to: Judiciary I.

March 31, 2005

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. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403(a) reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

- (1) A maximum of 100 liters of unfortified wine;
- (2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two combined; or
- (3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage permittee.
- (4) A keg of malt beverage for off-premises consumption."

SECTION 2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

- (1) Not more than 80 liters of malt beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for off-premises consumption the permit required by G.S. 18B-403(a)(4) must first be obtained;
- (2) Any amount of draft malt beverages by a permittee in kegs for on-premise consumption;
- (3) Not more than 50 liters of unfortified wine;
- (4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

1 **PART II. TO MAKE PRETRIAL CIVIL REVOCATION REMAIN IN EFFECT**
2 **UNTIL THE TRIAL AND APPEAL OF ALL CHARGES AND TO AFFECT**
3 **THE PAYMENT OF THE LIMITED DRIVING PRIVILEGE RESTORATION**
4 **FEE AND TO PROVIDE FOR THE FORFEITURE OF CERTAIN MOTOR**
5 **VEHICLES.**

6 **SECTION 3.** Chapter 20 of the General Statutes is amended by adding a
7 new section to read:

8 **"§ 20-5A. Purpose of this chapter.**

9 The safe operation and use of vehicles and motor vehicles is necessary for protection
10 of the safety and health of the citizens of this State as well as their property. The
11 issuance, denial, cancellation, suspension, and revocation of the license to drive and the
12 regulation of the operation of vehicles, registration of vehicles, and the regulation of the
13 use of the highways and public vehicular areas are essential to protect the citizens of
14 this State. The issuance, denial, cancellation, suspension, and revocation of the license
15 to drive or the registration of a vehicle is declared a matter of highway safety to be
16 implemented by the Division in accordance with the laws of this Chapter. The issuance,
17 denial, cancellation, suspension, and revocation of the license to drive or the registration
18 of a vehicle is not intended to be part of the punishment of a person who is convicted of
19 a crime."

20 **SECTION 4.** G.S. 20-16.5 reads as rewritten:

21 **"§ 20-16.5. Immediate civil license revocation for certain persons charged with**
22 **implied-consent offenses.**

23 (a) Definitions. – As used in this section the following words and phrases have
24 the following meanings:

25 (1) ~~Charging Officer.~~ – As described in G.S. 20-16.2(a1).

26 (2) Clerk. – As defined in G.S. 15A-101(2).

27 (3) Judicial Official. – As defined in G.S. 15A-101(5).

28 (4) Revocation Report. – A sworn statement by a ~~charging~~ law
29 enforcement officer and a chemical analyst containing facts indicating
30 that the conditions of subsection (b) have been met, and whether the
31 person has a pending offense for which the person's license had been
32 or is revoked under this section. When one chemical analyst analyzes a
33 person's blood and another chemical analyst informs a person of his
34 rights and responsibilities under G.S. 20-16.2, the report must include
35 the statements of both analysts.

36 (5) Surrender of a Driver's License. – The act of turning over to a court or
37 a law-enforcement officer the person's most recent, valid driver's
38 license or learner's permit issued by the Division or by a similar
39 agency in another jurisdiction, or a limited driving privilege issued by
40 a North Carolina court. A person who is validly licensed but who is
41 unable to locate his license card may file an affidavit with the clerk
42 setting out facts that indicate that he is unable to locate his license card
43 and that he is validly licensed; the filing of the affidavit constitutes a
44 surrender of the person's license.

1 (b) Revocations for Persons Who Refuse Chemical Analyses or Who Are
2 Charged With Certain Implied-Consent Offenses. – A person's driver's license is subject
3 to revocation under this section ~~if~~if all of the following apply:

- 4 (1) A ~~charging-law enforcement~~ officer has reasonable grounds to believe
5 that the person has committed an offense subject to the
6 implied-consent provisions of ~~G.S. 20-16.2~~G.S. 20-16.2.
- 7 (2) The person is charged with that offense as provided in
8 ~~G.S. 20-16.2(a)~~G.S. 20-16.2(a).
- 9 (3) The charging officer and the chemical analyst comply with the
10 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
11 submission to or procuring a chemical ~~analysis~~analysis.
- 12 (4) The ~~person~~following apply to the person:
- 13 a. ~~Willfully~~He or she refuses to submit to the chemical
14 ~~analysis~~analysis.
- 15 b. ~~Has~~He or she has an alcohol concentration of 0.08 or more
16 within a relevant time after the ~~driving~~driving.
- 17 c. ~~Has~~He or she has an alcohol concentration of 0.04 or more at
18 any relevant time after the driving of a commercial motor
19 ~~vehicle~~vehicle.
- 20 d. ~~Has~~He or she has any alcohol concentration at any relevant
21 time after the driving and the person is under 21 years of age.

22 ~~(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the~~
23 ~~provisions of subsection (b), a person's driver's license is subject to revocation under~~
24 ~~this section if:~~

- 25 (1) ~~The person requests a precharge chemical analysis pursuant to~~
26 ~~G.S. 20-16.2(i); and~~
- 27 (2) ~~The person has:~~
- 28 a. ~~An alcohol concentration of 0.08 or more at any relevant time~~
29 ~~after driving;~~
- 30 b. ~~An alcohol concentration of 0.04 or more at any relevant time~~
31 ~~after driving a commercial motor vehicle; or~~
- 32 e. ~~Any alcohol concentration at any relevant time after driving and~~
33 ~~the person is under 21 years of age; and~~
- 34 (3) ~~The person is charged with an implied-consent offense.~~

35 (c) Duty of ~~Charging~~ Officers and Chemical Analysts to Report to Judicial
36 Officials. – If a person's driver's license is subject to revocation under this section, the
37 ~~charging-law enforcement~~ officer and the chemical analyst must execute a revocation
38 report. If the person has refused to submit to a chemical analysis, a copy of the affidavit
39 to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the
40 revocation report if it contains the information required by this section. It is the specific
41 duty of the charging officer to make sure that the report is expeditiously filed with a
42 judicial official as required by this section.

43 (d) Which Judicial Official Must Receive Report. – The judicial official with
44 whom the revocation report must be filed is:

- 1 (1) The judicial official conducting the initial appearance on the
2 underlying criminal charge if:
3 a. No revocation report has previously been filed; and
4 b. At the time of the initial appearance the results of the chemical
5 analysis, if administered, or the reports indicating a refusal, are
6 available.
- 7 (2) A judicial official conducting any other proceeding relating to the
8 underlying criminal charge at which the person is present, if no report
9 has previously been filed.
- 10 (3) ~~The clerk of superior court in the county in which the underlying~~
11 ~~criminal charge has been brought~~ Division if subdivisions (1) and (2)
12 are not applicable at the time the charging officer must file the report.

13 (e) Procedure if Report Filed with Judicial Official When Person Is Present. – If
14 a properly executed revocation report concerning a person is filed with a judicial official
15 when the person is present before that official, the judicial official shall, after
16 completing any other proceedings involving the person, determine whether there is
17 probable cause to believe that each of the conditions of subsection (b) has been met. If
18 he determines that there is such probable cause, he shall enter an order revoking the
19 person's driver's license for the period required in this subsection. The judicial official
20 shall order the person to surrender his license and if necessary may order a
21 law-enforcement officer to seize the license. The judicial official shall give the person a
22 copy of the revocation order. In addition to setting it out in the order the judicial official
23 shall personally inform the person of his right to a hearing as specified in subsection (g),
24 and that his license remains revoked pending the hearing. The revocation under this
25 subsection begins at the time the revocation order is issued and continues until the
26 person's license has been surrendered for the period specified in this subsection, and the
27 person has paid the applicable costs. ~~The period of revocation is 30 days, if there are no~~
28 ~~pending offenses for which the person's license had been or is revoked under this~~
29 ~~section. If at the time of the current offense, the person has one or more pending~~
30 ~~offenses for which his license had been or is revoked under this section, the~~ The
31 revocation shall remain in effect until a final judgment, including all appeals, has been
32 entered for the current offense and for all pending offenses. In no event, may the period
33 of revocation under this subsection be less than 30 days. If within five working days of
34 the effective date of the order, the person does not surrender his license or demonstrate
35 that he is not currently licensed, the clerk shall immediately issue a pick-up order. The
36 pick-up order shall be issued to a member of a local law-enforcement agency if the
37 charging officer was employed by the agency at the time of the charge and the person
38 resides in or is present in the agency's territorial jurisdiction. In all other cases, the
39 pick-up order shall be issued to an officer or inspector of the Division. A pick-up order
40 issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the
41 order had been issued by the Division.

42 (f) Procedure if Report Filed with ~~Clerk of Court~~ Division When Person Not
43 Present. – When a clerk receives a properly executed report under subdivision (d)(3)
44 ~~and the person named in the revocation report is not present before the clerk, the clerk it~~

1 shall determine whether there is probable cause to believe that each of the conditions of
2 subsection (b) has been met. For purposes of this subsection, a properly executed report
3 under subdivision (d)(3) may include a sworn statement by the charging officer along
4 with an affidavit received directly by the ~~Clerk~~ Division from the chemical analyst. If he
5 determines that there is such probable cause, he shall mail to the person a revocation
6 order by first-class mail. The order shall direct that the person on or before the effective
7 date of the order either surrender his license ~~to the clerk~~ Division or appear before the
8 ~~clerk~~ Division and demonstrate that he is not currently licensed, and the order shall
9 inform the person of the time and effective date of the revocation and of its duration, of
10 his right to a hearing as specified in subsection (g), and that the revocation remains in
11 effect pending the hearing. Revocation orders mailed under this subsection become
12 effective on the fourth day after the order is deposited in the United States mail. If
13 within five working days of the effective date of the order, the person does not surrender
14 his license to the ~~clerk~~ Division or appear before the ~~clerk~~ Division to demonstrate that
15 he is not currently licensed, the ~~clerk~~ Division shall immediately issue a pick-up order.
16 The pick-up order shall be issued and served in the same manner as specified in
17 subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under
18 this subsection begins at the date specified in the order and continues until the person's
19 license has been revoked for the period specified in this subsection and the person has
20 paid the applicable costs. ~~If the person has no pending offenses for which his license~~
21 ~~had been or is revoked under this section, the period of revocation under this subsection~~
22 ~~is:~~

- 23 (1) ~~Thirty days from the time the person surrenders his license to the~~
24 ~~court, if the surrender occurs within five working days of the effective~~
25 ~~date of the order; or~~
26 (2) ~~Thirty days after the person appears before the clerk and demonstrates~~
27 ~~that he is not currently licensed to drive, if the appearance occurs~~
28 ~~within five working days of the effective date of the revocation order;~~
29 ~~or~~
30 (3) ~~Forty five days from the time:~~
31 a. ~~The person's drivers license is picked up by a law enforcement~~
32 ~~officer following service of a pick up order; or~~
33 b. ~~The person demonstrates to a law enforcement officer who has~~
34 ~~a pick up order for his license that he is not currently licensed;~~
35 ~~or~~
36 e. ~~The person's drivers license is surrendered to the court if the~~
37 ~~surrender occurs more than five working days after the effective~~
38 ~~date of the revocation order; or~~
39 d. ~~The person appears before the clerk to demonstrate that he is~~
40 ~~not currently licensed, if he appears more than five working~~
41 ~~days after the effective date of the revocation order.~~

42 ~~If at the time of the current offense, the person has one or more pending offenses for~~
43 ~~which his license had been or is revoked under this section, the~~ The revocation shall
44 remain in effect until a final judgment, including all appeals, has been entered for the

1 current offense and for all pending offenses. In no event may the period of revocation
2 for the current offense be less than the applicable period of revocation in subdivision
3 (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the
4 person of his right to a hearing as specified in subsection (g), and that the revocation
5 remains in effect pending the hearing. An officer serving a pick-up order under this
6 subsection shall return the order to the court indicating the date it was served or that he
7 was unable to serve the order. If the license was surrendered, the officer serving the
8 order shall deposit it with the clerk within three days of the surrender.

9 (g) ~~Hearing before Magistrate or Judge~~ if Person Contests Validity of
10 Revocation. – A person whose license is revoked under this section may request in
11 writing a hearing to contest the validity of the revocation. The request may be made at
12 the time of the person's initial appearance, or within 10 days of the effective date of the
13 revocation to the ~~clerk or a magistrate designated by the clerk, and may specifically~~
14 ~~request that the hearing be conducted by a district court judge.~~ Division in a manner
15 required by the Division. The Administrative Office of the ~~Courts~~ Courts, in
16 consultation with the Division, shall develop a hearing request form for any person
17 requesting a hearing, hearing and which includes the filing of the revocation report
18 forms along with the hearing request. ~~Unless a district court judge is requested, the~~
19 ~~hearing must be conducted within the county by a magistrate assigned by the chief~~
20 ~~district court judge to conduct such hearings. If the person requests that a district court~~
21 ~~judge hold the hearing, the hearing must be conducted within the district court district as~~
22 ~~defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings.~~ The
23 revocation remains in effect pending the hearing, but the hearing ~~must~~ shall be held
24 ~~within three working days following the request if the hearing is before a magistrate or~~
25 ~~within five working days if the hearing is before a district court judge.~~ days. The request
26 for the hearing ~~must~~ shall specify the grounds upon which the validity of the revocation
27 is challenged and the hearing must be limited to the grounds specified in the request. A
28 witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any
29 person who appears and testifies is subject to questioning by the ~~judicial~~ official
30 conducting the hearing, and the ~~judicial~~ official may adjourn the hearing to seek
31 additional evidence if he is not satisfied with the accuracy or completeness of evidence.
32 The person contesting the validity of the revocation may, but is not required to, testify
33 in his own behalf. Unless contested by the person requesting the hearing, the ~~judicial~~
34 official may accept as true any matter stated in the revocation report. If any relevant
35 condition under subsection (b) is contested, the ~~judicial~~ official must find by the greater
36 weight of the evidence that the condition was met in order to sustain the revocation. At
37 the conclusion of the hearing the ~~judicial~~ official must enter an order sustaining or
38 rescinding the revocation. The ~~judicial~~ official's findings are without prejudice to the
39 person contesting the revocation and to any other potential party as to any other
40 proceedings, civil or criminal, that may involve facts bearing upon the conditions in
41 subsection (b) considered by the ~~judicial~~ official. The decision of the ~~judicial~~ official is
42 ~~final and may not be appealed in the General Court of Justice.~~ may be appealed to
43 Superior Court on the record. If the hearing is not held and completed ~~within three~~
44 ~~working days of the written request for a hearing before a magistrate or within five~~

1 working days of the written request for a hearing before a district court judge, the
2 judicial official must enter an order rescinding the revocation, a temporary drivers
3 license may be issued until the hearing can be held, unless the person contesting the
4 revocation contributed to the delay in completing the hearing. If the person requesting
5 the hearing fails to appear at the hearing or any rescheduling thereof after having been
6 properly notified, he forfeits his right to a hearing.

7 (h) Return of License. – After the applicable period of revocation under this
8 section, or if the ~~magistrate or judge orders the revocation is~~ rescinded, the person
9 whose license was revoked may apply to the ~~clerk~~ Division for return of his surrendered
10 license. Unless ~~the clerk finds that the person is not eligible to use the surrendered~~
11 ~~license,~~ license the Division shall ~~he must~~ return it if:

12 (1) The applicable period of revocation has passed and the person has
13 tendered payment for the costs under subsection (j); or

14 (2) The ~~magistrate or judge has ordered the revocation has been~~ rescinded.

15 If the driver is required to have an ignition lock pursuant to G.S. 20-16.6, the Division
16 shall include the license restriction that limits the driver to operating a vehicle equipped
17 with an ignition interlock. This restriction shall remain on the license until the driver has
18 complied with G.S. 20-16.6. If the license has expired, he may return it to the person
19 with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the
20 license and the license was issued by the Division or in another state, the clerk must
21 mail it to the Division. If the person has surrendered his copy of a limited driving
22 privilege and he is no longer eligible to use it, the clerk must make a record that he has
23 withheld the limited driving privilege and forward that record to the clerk in the county
24 in which the limited driving privilege was issued for filing in the case file. If the
25 person's license is revoked under this section and under another section of this Chapter,
26 the clerk must surrender the license to the Division if the revocation under this section
27 can terminate before the other revocation; in such cases, the costs required by
28 subsection (j) must still be paid before the revocation under this section is terminated.

29 (i) Effect of Revocations. – A revocation under this section revokes a person's
30 privilege to drive in North Carolina whatever the source of his authorization to drive.
31 Revocations under this section are independent of and run concurrently with any other
32 revocations. No court imposing a period of revocation following conviction of an
33 offense involving impaired driving may give credit for any period of revocation
34 imposed under this section. A person whose license is revoked pursuant to this section
35 is not eligible to receive a limited driving privilege except as specifically authorized by
36 ~~G.S. 20-16.5(p).~~ G.S. 20-11.1.

37 (j) Costs. – Unless ~~the magistrate or judge orders the revocation rescinded,~~ a
38 person whose license is revoked under this section ~~must~~ shall pay a fee of fifty dollars
39 (\$50.00) as costs for the action before the person's license may be returned under
40 subsection ~~(h).~~ (h) or when the driver obtains a limited driving privilege pursuant to
41 G.S. 20-11.1. The costs collected under this section shall be credited to the General
42 Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide
43 chemical alcohol testing program administered by the Injury Control Section of the
44 Department of Health and Human Services.

1 (k) Report to Division. – ~~Except as provided below, the clerk shall mail a report~~
2 ~~to the Division:~~

3 (1) ~~If the license is revoked indefinitely, within 10 working days of the~~
4 ~~revocation of the license; and~~

5 (2) ~~In all cases, within 10 working days of the return of a license under~~
6 ~~this section or of the termination of a revocation of the driving~~
7 ~~privilege of a person not currently licensed.~~

8 The clerk shall electronically notify the Division within one working day of any
9 revocation under this section. This report shall identify the person whose license has
10 been revoked, specify the date on which his license was revoked, and indicate whether
11 the license has been returned. The report must also provide, if applicable, whether the
12 license is revoked indefinitely. No report need be made to the Division, however, if
13 there was a surrender of the driver's license issued by the Division, a 30 day minimum
14 revocation was imposed, and the license was properly returned to the person under
15 subsection (h) within five working days after the 30 day period had elapsed. provide any
16 other information requested by the Division.

17 (l) Restoration Fee for Unlicensed Persons. – If a person whose license is
18 revoked under this section has no valid license, he must pay the restoration fee required
19 by G.S. 20-7 before he may apply for a license from the Division.

20 (m) Modification of Revocation Order. – ~~Any judicial official presiding over a~~
21 ~~proceeding under this section~~ The Division may issue a modified order if he it
22 determines that an inappropriate order has been issued.

23 (n) ~~Exception for Revoked Licenses. – Notwithstanding any other provision of~~
24 ~~this section, if the judicial official required to issue a revocation order under this section~~
25 ~~determines that the person whose license is subject to revocation under subsection (b):~~

26 (1) ~~Has a currently revoked driver's license;~~

27 (2) ~~Has no limited driving privilege; and~~

28 (3) ~~Will not become eligible for restoration of his license or for a limited~~
29 ~~driving privilege during the period of revocation required by this~~
30 ~~section;~~

31 ~~the judicial official need not issue a revocation order under this section. In this event the~~
32 ~~judicial official must file in the records of the civil proceeding a copy of any~~
33 ~~documentary evidence and set out in writing all other evidence on which he relies in~~
34 ~~making his determination.~~

35 (o) Designation of Proceedings. – Proceedings under this section are civil
36 actions, and ~~must~~ shall be identified by the caption "In the Matter of ___" and filed as
37 directed by the Administrative Office of the Courts.

38 (p) Limited Driving Privilege. – A person whose drivers license has been
39 ~~revoked for a specified period of 30 or 45 days under this section may apply for a~~
40 ~~limited driving privilege if:~~ pursuant to G.S. 20-11.1 if at the time of the alleged offense
41 all of the following apply:

42 (1) ~~At the time of the alleged offense the~~ The person held either a valid
43 drivers license or a license that had been expired for less than one
44 year; year.

- 1 (2) ~~Does~~The person does not have an unresolved pending charge
 2 involving impaired driving except the charge for which the license is
 3 currently revoked under this section or additional convictions of an
 4 offense involving impaired driving since being charged for the
 5 violation for which the license is currently revoked under this
 6 ~~section;~~section.
- 7 (3) The person's license has been revoked for at least 10 days ~~if the~~
 8 ~~revocation is for 30 days or 30 days if the revocation is for 45 days;~~
 9 ~~and days.~~
- 10 (4) The person has obtained a substance abuse assessment from a mental
 11 health facility and registers for and ~~agrees to participate~~is participating
 12 in any recommended training or treatment program.

13 ~~A person whose license has been indefinitely revoked under this section may, after~~
 14 ~~completion of 30 days under subsection (e) or the applicable period of time under~~
 15 ~~subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the~~
 16 ~~case of an indefinite revocation, a judge of the division in which the current offense is~~
 17 ~~pending may issue the limited driving privilege only if the privilege is necessary to~~
 18 ~~overcome undue hardship and the person meets the eligibility requirements of~~
 19 ~~G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and~~
 20 ~~G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions~~
 21 ~~of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing~~
 22 ~~and the restrictions required or authorized to be included in the limited driving privilege~~
 23 ~~apply to applications under this subsection. Any district court judge authorized to hold~~
 24 ~~court in the judicial district is authorized to issue such a limited driving privilege. A~~
 25 ~~limited driving privilege issued under this section authorizes a person to drive if the~~
 26 ~~person's license is revoked solely under this section. If the person's license is revoked~~
 27 ~~for any other reason, the limited driving privilege is invalid."~~

28 **SECTION 5.** Chapter 20 of the General Statutes is amended by adding a new
 29 section to read:

30 "**§ 20-16.6. Seizure, impoundment, and restriction of motor vehicle registration for**
 31 **certain drivers charged with offenses involving impaired driving.**

32 (a) Motor Vehicles Registration Plate Subject to Seizure. – The registration plate
 33 and card of a motor vehicle that is driven by a person who is charged with an implied
 34 consent offense is subject to seizure if any of the following apply to the person driving
 35 the motor vehicle:

- 36 (1) He or she has an alcohol concentration of 0.16 or more at any relevant
 37 time after operating the motor vehicle.
- 38 (2) He or she refuses to submit to a chemical analysis.
- 39 (3) He or she has a prior conviction for an offense involving impaired
 40 driving and that all of the following apply:
- 41 a. The conviction date was within 10 years; and
- 42 b. The person submits to a chemical analysis and the results are
 43 0.08 or more, or 0.04 or more if operating a commercial motor
 44 vehicle or 0.01 or more if under age 21.

1 (b) Duty of Officer. – If the officer has probable cause to believe that the driver
2 of a motor vehicle has committed an implied consent offense, the officer shall seize the
3 registration plate and card of the motor vehicle driven by the defendant. The officer
4 shall replace the seized registration plate with a temporary registration plate provided by
5 the Division and indicate on the temporary registration plate the expiration date of 10
6 calendar days from the date of the plate seizure.

7 (c) When Registration Plate Shall Not Be Seized. – The officer shall not seize the
8 registration plate and card if the officer determines prior to seizure of the motor vehicle
9 registration plate and card that any of the following apply to the motor vehicle:

10 (1) It had been reported stolen.

11 (2) It is a rental vehicle registered to a company in the business of renting
12 vehicles.

13 (3) It is registered in another state or jurisdiction.

14 (4) It was wrecked and appears to be a total loss.

15 Probable cause may be based on the officer's personal knowledge, reliable information
16 conveyed by another officer, records of the Division, or other reliable source.

17 (d) Return of Registration Plate to Driver By Officer. – If after the driver of the
18 motor vehicle is offered a chemical analysis, the driver does not meet the requirements
19 of subsection (a) of this section, the chemical analysis selected is a blood or urine test
20 and the results are not available, or the magistrate determines there is no probable cause
21 for the charges, the officer shall return the registration plate and card to the driver by
22 returning the registration plate and card to the driver upon release from custody or
23 placing the plate with the personal effects of the driver at the jail or hospital. The officer
24 may request the driver or property custodian at the jail or hospital to sign a receipt
25 acknowledging return of the registration plate and card.

26 (e) Notification of Driver and Division. – If the registration plate and card are not
27 returned to the driver as provided in subsection (d) of this section, the officer shall
28 provide the driver with a notification of requirements for obtaining a new registration
29 plate and card. The notification form shall be provided by the Division. The officer shall
30 transmit the registration plate and card along with the revocation report(s) of the law
31 enforcement officer and chemical analyst as provided in G.S. 20-16.5 to the Division in
32 accordance with procedures established by the Division within 48 hours. The report
33 forms shall be modified to include the necessary registration information.

34 (f) Report of Result of Blood or Urine Test. – An officer who receives a
35 chemical analyst's affidavit or report of the blood or urine of a driver indicating that the
36 registration plate and card are subject to seizure under subsection (a) of this section,
37 shall send a copy of the revocation report(s) provided for in G.S. 20-16.5 to the Division
38 in accordance with the Division's procedures.

39 (g) Duty of Division Upon Receipt of Plate and Revocation Reports. – Upon
40 receipt of the registration plate and card and revocation reports, the Division shall
41 determine if the registration plate and card were properly seized under subsection (a) of
42 this section. If not, then the Division shall flag the registration file indicating that the
43 registration plate was improperly seized and mail, within 72 hours, to the registered
44 owner at the most recent address contained in the Division's records, by first-class mail,

1 a copy of the procedure for obtaining new registration at no cost. A copy of this
2 notification shall also be sent to the head of the law enforcement agency of the officer
3 who seized the plate.

4 If the Division determines from the report(s) that the registration plate and card were
5 properly seized, but that a registered owner was not driver of the vehicle, the Division
6 shall revoke the registration of the vehicle effective 10 days from the date of the seizure
7 and mail to the registered owner at the most recent address contained in the Division's
8 records, by first-class mail, within 72 hours, a copy of the procedure for obtaining a new
9 registration.

10 If the Division determines from the report(s) that the registration plate and card were
11 properly seized and that a registered owner was the driver of the vehicle, the Division
12 shall revoke the registration of the vehicle effective 10 days from the date of the seizure.
13 If the driver is the registered owner of any other vehicle, the Division shall also mail to
14 the registered owner, within 72 hours, by first-class mail to the most recent address
15 contained in the Division's records a notice that the registration on all vehicles
16 registered in the driver's name will be revoked effective 10 days from the date specified
17 in the letter, which shall be four days after mailing, if the driver does not equip all
18 registered vehicles with an ignition interlock in accordance with this section. The
19 Division shall indicate in the registration file of all vehicles owned by the driver and
20 require any person registering any of the vehicles to sign an acknowledgment that the
21 driver is not allowed to operate the vehicle unless it is equipped with an ignition
22 interlock and the driver has a valid license. The acknowledgment shall also inform the
23 new registered owner that a violation of this provision shall result in revocation of the
24 registration of all vehicles registered in the owner's name.

25 (h) Duty of Division Upon Receipt of Blood or Urine Test Results. – Upon
26 receipt of revocation reports of a blood or urine test, the Division shall determine if the
27 motor vehicle registration plate and card are subject to seizure under this section. If so
28 and a registered owner was the driver of the vehicle, the Division shall notify the
29 registered owner that he must surrender his registration plate or show proof of
30 installation of an ignition interlock in accordance with this section within 10 days of the
31 date specified in the letter, which shall be four days after mailing, and pay a fee of fifty
32 dollars (\$50.00). The letter shall outline the procedure for obtaining the ignition
33 interlock and surrendering the registration plate.

34 If a registered owner was not the driver of the vehicle, then the Division shall notify
35 the registered owner that the owner's vehicle registration is subject to cancellation if the
36 registered owner allows the driver to operate the vehicle without a valid license, or fails
37 to return the signed acknowledgment and pay a fee of fifty dollars (\$50.00), and if the
38 driver is impaired when driving the vehicle, the vehicle is subject to seizure and
39 forfeiture. This letter shall require the registered owner(s) to sign and return to the
40 Division an acknowledgment that the registered owner will not allow the driver to
41 operate the vehicle unless properly licensed and the required fee has been paid. The
42 Division shall enter into its records that this acknowledgment was sent. If the signed
43 acknowledgment is not returned, the registration of the vehicle shall be cancelled. If the

1 acknowledgment is signed and returned, the Division shall enter the acknowledgment in
2 its records and make this information available to law enforcement officers.

3 (i) Issuance of New Registration. – A registered owner of a vehicle who was the
4 driver of the vehicle when the vehicle registration plate was seized shall not be allowed
5 to register any vehicle unless all vehicles are equipped with ignition interlock in
6 accordance with the procedures of G.S. 20-17.8 and he or she pays a fee of fifty dollars
7 (\$50.00) and shows a valid license and proof of insurance. If the registered owner who
8 was the driver of the vehicle transfers ownership to another, the person registering the
9 vehicle shall be required to sign an acknowledgment as provided in this section.

10 A registered owner of a vehicle who was not the driver of the vehicle when the
11 vehicle registration plate was seized shall not be allowed to register any vehicle unless
12 all registered owners sign the acknowledgment provided for in this section, show a valid
13 license, show proof of insurance, and pay a fee of fifty dollars (\$50.00).

14 (j) Length of Time for Ignition Interlock. – When an ignition interlock is
15 required under this section, the Division shall not remove the restriction on registration
16 of the vehicle and drivers license until all of the following have been met:

17 (1) The driver has successfully completed the required level of substance
18 abuse treatment required by the substance abuse assessment.

19 (2) The driver has not attempted to start the vehicle with any amount of
20 alcohol in his system for at least four months as shown by the records
21 of the ignition interlock.

22 (3) The driver does not have any unresolved pending motor vehicle law
23 charges.

24 (4) The driver is not required to have an ignition interlock by any other
25 provision of law.

26 (5) The driver shows proof of insurance.

27 The time that the ignition interlock has been installed under this section shall be applied
28 towards the requirements of an ignition interlock required by G.S. 20-17.8.

29 (k) Indigent Offenders. – If the Division determines that the driver is indigent
30 and the sole supporter of his household and that the vehicle is essential to the driver
31 working, the Division may provide the ignition interlock and plate without costs.

32 **SECTION 6.** The catchline of G.S. 20-28.2 reads as rewritten:

33 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
34 **license revocation, revocation or driving without an ignition interlock and**
35 **revoked registration."**

36 **SECTION 7.** G.S. 20-28.2(b) reads as rewritten:

37 **"(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. – If at**
38 **a sentencing hearing for the underlying offense involving impaired ~~driving~~, driving or a**
39 **violation of G.S. 20-28.10, at a separate hearing after conviction of the defendant, or at**
40 **a forfeiture hearing held at least 60 days after the defendant failed to appear at the**
41 **scheduled trial for the underlying offense and the defendant's order of arrest for failing**
42 **to appear has not been set aside, the judge determines by the greater weight of the**
43 **evidence that the defendant is guilty of an offense involving impaired driving and that**
44 **the defendant's license was revoked pursuant to an impaired driving license revocation**

1 as defined in subsection (a) of this ~~section~~, section or the defendant violated
2 G.S. 20-28.10, the motor vehicle that was driven by the defendant at the time the
3 defendant committed the offense becomes property subject to an order of forfeiture."

4 **SECTION 8.** The catchline of G.S. 20-28.3 reads as rewritten:

5 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses**
6 **involving impaired driving while license ~~revoked~~, ~~revoked~~ or driving**
7 **without an ignition interlock and revoked registration.**"

8 **SECTION 9.** G.S. 20-28.3(a) reads as rewritten:

9 "(a) Motor Vehicles Subject to Seizure. – A motor vehicle that is driven by a
10 person who is charged with an offense involving impaired driving is subject to seizure if
11 at the time of the violation the drivers license of the person driving the motor vehicle
12 was revoked as a result of a prior impaired driving license revocation as defined in
13 G.S. 20-28.2(a). A motor vehicle that is driven by a person who is charged with a
14 violation of G.S. 20-28.10 is subject to seizure under this subsection."

15 **SECTION 10.** Chapter 20 of the General Statutes is amended by adding a
16 new section to read:

17 "**§ 20-28.10. Unlawful to drive without ignition interlock.**

18 Any person who drives a motor vehicle upon the highways of the State without an
19 installed and operable ignition interlock when required by this Chapter and the
20 registration of the motor vehicle is revoked pursuant to G.S. 20-16.6, is guilty of a Class
21 1 misdemeanor. Upon conviction, the person's license shall be revoked for a period of
22 one year for the first offense, two years for the second offense, and permanently for a
23 third or subsequent offense. Upon a conviction of violating this section, the defendant
24 shall at a minimum be sentenced to either 30-day house arrest or seven days of jail time
25 in the discretion of the court, and this sentence shall not be suspended or deferred."

26 **PART III. MODIFYING THE STATUTES ON CHECKING STATIONS AND** 27 **ROADBLOCKS**

28 **SECTION 11.** G.S. 20-16.3A reads as rewritten:

29 "**§ 20-16.3A. ~~Impaired driving checks~~. Checking stations and roadblocks.**

30 (a) A law-enforcement agency may ~~make impaired driving checks of drivers of~~
31 ~~vehicles on highways and public vehicular areas if the agency:~~ conduct checking
32 stations to determine compliance with the provisions of this Chapter. If the agency is
33 conducting a checking station for the purposes of determining compliance with this
34 Chapter, it shall:

35 (1) ~~Develops a systematic plan in advance that takes into account the~~
36 ~~likelihood of detecting impaired drivers, traffic conditions, number of~~
37 ~~vehicles to be stopped, and the convenience of the motoring public.~~

38 (2)(1) ~~Designates~~ Designate in advance the pattern both for stopping vehicles
39 and for requesting drivers that are stopped ~~to submit to alcohol~~
40 ~~screening tests.~~ to produce a drivers license, a registration card, or
41 insurance information. The ~~plan~~ pattern need not be in writing and
42 may include contingency provisions for altering either pattern if actual
43 traffic conditions are different from those anticipated, but no
44 individual officer may be given discretion as to which vehicle is

1 stopped or, of the vehicles stopped, which driver is requested to submit
2 to an alcohol screening test to produce a drivers license, a registration
3 card, or insurance information.

4 (3)(2) ~~Marks the area in which checks are conducted to advise~~ Advise the
5 public that an authorized ~~impaired driving check~~ checking station is
6 being ~~made~~ operated by having at a minimum one law enforcement
7 vehicle with its blue lights in operation during the conducting of the
8 checking station.

9 An officer who determines there is a reasonable suspicion that the driver has violated a
10 provision of this chapter or any other provision of law may detain the driver to further
11 investigate in accordance with law. The operator of any vehicle stopped at a checking
12 station established under this subsection may be requested to submit to an alcohol
13 screening test under G.S. 20-16.3 if during the course of the stop the officer determines
14 the driver had previously consumed alcohol or has an open container of alcoholic
15 beverage in the vehicle. The officer so requesting shall consider the results of any
16 alcohol screening test or the driver's refusal in determining if there is reasonable
17 suspicion to investigate further.

18 (b) Law enforcement agencies may conduct any other type of checking station or
19 roadblock as long as it is established and operated in accordance with the provision of
20 the United States Constitution and the Constitution of North Carolina.

21 ~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to~~
22 ~~request a screening test if, in the course of dealing with a driver under the authority of~~
23 ~~this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol~~
24 ~~screening tests and the results from them are subject to the provisions of subsections (b),~~
25 ~~(c), and (d) of G.S. 20-16.3. This section does not limit the authority of a~~
26 ~~law enforcement officer or agency to conduct a license check independently or in~~
27 ~~conjunction with the impaired driving check, to administer psychophysical tests to~~
28 ~~screen for impairment, or to utilize roadblocks or other types of vehicle checks or~~
29 ~~checkpoints that are consistent with the laws of this State and the Constitution of North~~
30 ~~Carolina and of the United States. No court shall suppress any evidence or dismiss any~~
31 ~~case unless the court specifies in writing that there was a substantial and willful~~
32 ~~violation of the provisions of this section and that the violation was not made in good~~
33 ~~faith and that the violation amounts to a violation of the United States Constitution or~~
34 ~~the Constitution of North Carolina."~~

35 **PART IV. PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT** 36 **PROCEEDINGS**

37 **SECTION 12.** Chapter 20 of the General Statutes is amended by adding a
38 new Article to read:

39 "Article 2D.

40 "Implied Consent Offense Procedures.

41 "**§ 20-38. Applicability.**

42 The procedures set forth in this Article shall be followed for the investigation and
43 processing of an implied consent offense as defined in G.S. 20-16.2. The trial

1 procedures shall apply to any implied consent offense litigated in the District Court
2 Division.

3 **"§ 20-38.1. Investigation.**

4 A law enforcement officer who is investigating an implied consent offense or a
5 vehicle crash is authorized to seek evidence of the driver's impairment wherever the
6 driver is located, and the provisions of the implied consent law apply even if the driver
7 is located outside of this State or outside of the officer's territorial jurisdiction.

8 **"§ 20-38.2. Police processing duties.**

9 Upon the arrest of a person, with or without a warrant, but not necessarily in the
10 order listed, a law enforcement officer:

- 11 (1) Shall inform the person arrested of the charges or a cause for the
12 arrest.
- 13 (2) May take the person arrested to any place inside or outside the officer's
14 territorial jurisdiction for one or more chemical analyses at the request
15 of any law enforcement officer and for any evaluation by a law
16 enforcement officer, medical professional, or other person to
17 determine the extent or cause of the person's impairment.
- 18 (3) May take the person arrested to some other place for the purpose of
19 having the person identified, to complete a crash report, or for any
20 other lawful purpose.
- 21 (4) May take photographs and fingerprints in accordance with
22 G.S. 15A-502.
- 23 (5) Shall take the person arrested before a judicial official for an initial
24 appearance after completion of all investigatory procedures, crash
25 reports, chemical analyses, and other procedures provided for in this
26 subsection.

27 **"§ 20-38.3. Initial appearance.**

28 (a) Appearance Before a Magistrate. – Except as modified in this Article, a
29 magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the
30 General Statutes.

- 31 (1) A magistrate may hold an initial appearance at any place within the
32 county and shall, to the extent practicable, be available at locations
33 other than the courthouse when it will expedite the initial appearance.
- 34 (2) In determining whether there is probable cause to believe a person is
35 impaired, the magistrate may review all alcohol screening tests,
36 chemical analyses, receive testimony from any law enforcement
37 officer concerning impairment and the circumstances of the arrest, and
38 observe the person arrested, and only if all of the evidence would lead
39 a reasonable person to believe that a crime was not committed or that
40 this person did not commit a crime, the magistrate shall not find
41 probable cause.
- 42 (3) If there is a finding of probable cause, the magistrate shall consider
43 whether the person is impaired to the extent that the provisions of
44 G.S. 15A-534.2 should be imposed.

1 (4) The magistrate shall also:

2 a. Inform the person in writing of the established procedure to
3 have others appear at the jail to observe his condition or to
4 administer an additional chemical analysis if the person is
5 unable to make bond; and

6 b. Require the person who is unable to make bond to list all
7 persons he wishes to contact and telephone numbers on a form
8 that sets forth the procedure for contacting the persons listed. A
9 copy of this form shall be filed with the case file.

10 (b) The Administrative Office of the Courts shall adopt forms to implement this
11 Article.

12 **"§ 20-38.4. Facilities.**

13 (a) The Chief District Court Judge, the Department of Health and Human
14 Services, the District Attorney, and the Sheriff shall:

15 (1) Establish a written procedure for attorneys and witnesses to have
16 access to the chemical analysis room.

17 (2) Approve the location of written notice of implied consent rights in the
18 chemical analysis room in accordance with G.S. 20-16.2.

19 (3) Approve a procedure for access to a person arrested for an implied
20 consent offense by family and friends or a qualified person contracted
21 with by the arrested person to obtain blood or urine when the arrested
22 person is held in custody and unable to obtain pretrial release from jail.

23 (b) Signs shall be posted explaining to the public the procedure for obtaining
24 access to the room where the chemical analysis of the breath is administered and to any
25 person arrested for an implied consent offense. The initial signs shall be provided by the
26 Department of Transportation, without costs. The signs shall thereafter be maintained
27 by the county for all county buildings and the county courthouse.

28 (c) If the instrument for performing a chemical analysis of the breath is located in
29 a State or municipal building, then the head of the Highway Patrol for the county or the
30 chief of police for the city or their designee shall be substituted for the sheriff when
31 determining signs and access to the chemical analysis room. The signs shall be
32 maintained by the owner of the building. When a breath testing instrument is in a motor
33 vehicle or at a temporary location, the Department of Health and Human Services shall
34 alone perform the above functions listed in subsection (a)(1) and (a)(2).

35 **"§ 20-38.5. Motions and district court procedure.**

36 (a) The defendant may move to suppress evidence or dismiss the charges only
37 prior to trial, except the defendant may move to dismiss the charges for insufficient
38 evidence at the close of the State's evidence and at the close of all of the evidence.

39 (b) A motion to suppress evidence or dismiss the charges made before trial shall
40 be in writing, and a copy of the motion shall be served upon the State at least seven days
41 prior to any hearing. The motion shall state the grounds upon which it is made. The
42 motion shall be accompanied by an affidavit containing facts supporting the motion.
43 The affidavit may be based upon personal knowledge, or upon information and belief, if
44 the source of the information and the basis for the belief are stated. The State may file

1 an answer denying or admitting any of the allegations. A copy of the answer shall be
2 served on the defendant's attorney, or on the defendant if he has no counsel.

3 (c) The judge shall summarily grant the motion to suppress evidence if either of
4 the following conditions is met:

5 (1) The motion complies with the requirements of subsection (b) of this
6 section, it states grounds which require exclusion of the evidence, and
7 the State concedes the truth of allegations of fact which support the
8 motion.

9 (2) The State stipulates that the evidence sought to be suppressed will not
10 be offered in evidence in any criminal action or proceeding against the
11 defendant.

12 (d) The judge may summarily deny the motion to suppress evidence if either of
13 the following conditions is met:

14 (1) The motion is not in writing or does not allege a legal basis for the
15 motion.

16 (2) The affidavit does not as a matter of law support the ground alleged.

17 (e) If the motion is not determined summarily, the judge shall make the
18 determination after a hearing and finding of facts. Testimony at the hearing shall be
19 under oath.

20 (f) The judge shall set forth in writing his findings of facts and conclusions of
21 law.

22 **"§ 20-38.6. Appeal to superior court.**

23 (a) The State may appeal to superior court any district court pretrial order
24 suppressing evidence or dismissing any charges. If there is a dispute about the findings
25 of fact, the superior court shall not be bound by the findings of the district court but
26 shall determine the matter de novo. Any further appeal shall be governed by Article 90
27 of Chapter 15A of the General Statutes.

28 (b) The defendant may not appeal a denial of a pretrial motion to suppress or to
29 dismiss, but may appeal upon conviction as provided by law.

30 (c) For any implied consent offense that is first tried in district court and that is
31 appealed to superior court, the case shall only be remanded back to district court with
32 the consent of the prosecutor and the superior court. When a case is remanded back to
33 district court, the district court shall hold a new sentencing hearing and shall consider
34 any new convictions, and if the defendant has any pending charges of offenses
35 involving impaired driving, shall delay sentencing in the remanded case until all cases
36 are resolved.

37 **"§ 20-38.7. Remedy.**

38 The failure to follow the procedures set forth in this Chapter or Articles 24, 25, or 26
39 of Chapter 15A of the General Statutes shall not be grounds to dismiss a criminal charge
40 or any theory of a criminal charge or suppression of evidence unless a court finds that
41 the violation was intentional and not in good faith, and as a result the defendant's rights
42 under the United States Constitution or the Constitution of North Carolina were
43 violated."

1 **PART V. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION**
2 **EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN**
3 **ACCIDENT RECONSTRUCTION EXPERT**

4 **SECTION 13.** Article 7 of Chapter 8C of the General Statutes is amended
5 by adding a new rule of evidence to read:

6 **Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of**
7 **an accident reconstruction expert.**

8 (a) Results of Horizontal Gaze Nystagmus (HGN) Test. – Notwithstanding any
9 provision of law, the results of a horizontal gaze nystagmus (HGN) test are admissible
10 into evidence, and the opinion of the analyst is admissible as to whether the results are
11 consistent with a chemical analysis or consistent with a person who is under the
12 influence of a particular type or class of impairing substances, when the HGN test is
13 administered by a person who has successfully completed training in HGN and
14 administers the test in accordance with the training.

15 (b) Opinion of Drug Recognition Expert (DRE). – Notwithstanding any provision
16 of law, the opinion of a DRE that a person is under the influence of one or more
17 impairing substances, and the opinion as to the category of such impairing substance or
18 substances is admissible in any court or administrative hearing when the DRE holds a
19 current certification as a DRE issued by the Department of Health and Human Services
20 and the DRE has examined the person in accordance with his training.

21 (c) Opinion As To Speed of a Vehicle. – Notwithstanding any other provision of
22 law, any person who is found by a court to be an expert in accident reconstruction who
23 has performed a reconstruction of a crash or has reviewed the report of investigation
24 may give an opinion as to the speed of a vehicle even if the expert did not actually
25 observe the vehicle moving.

26 Nothing contained in this section shall be construed to prohibit cross-examination of
27 any person as to their opinions and the basis for the opinions and shall not limit other
28 opinion testimony otherwise admissible under the rules of evidence or court decision."

29 **PART VI. ALCOHOL SCREENING DEVICES**

30 **SECTION 14.** G.S. 20-16.3 reads as rewritten:

31 **"§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test**
32 **devices and manner of use by ~~Commission for Health Services;~~**
33 **Department of Health and Human Services; use of test results or refusal.**

34 (a) **When Alcohol Screening Test May Be Required; Not an Arrest. – A**
35 **law-enforcement officer may require the driver of a vehicle to submit to an alcohol**
36 **screening test within a relevant time after the driving if the officer has:**

37 (1) Reasonable grounds to believe that the driver has consumed alcohol
38 and has:

39 a. Committed a moving traffic violation; or

40 b. Been involved in an accident or collision; or

41 (2) An articulable and reasonable suspicion that the driver has committed
42 an implied-consent offense under G.S. 20-16.2, and the driver has been
43 lawfully stopped for a driver's license check or otherwise lawfully

1 stopped or lawfully encountered by the officer in the course of the
2 performance of the officer's duties.

3 Requiring a driver to submit to an alcohol screening test in accordance with this section
4 does not in itself constitute an arrest.

5 (b) Approval of Screening Devices and Manner of Use. – ~~The Commission for~~
6 ~~Health Services-Department of Health and Human Services~~ is directed to examine and
7 approve devices suitable for use by law-enforcement officers in making on-the- scene
8 tests of drivers for alcohol concentration. For each alcohol screening device or class of
9 devices approved, the ~~Commission must-Department shall~~ adopt regulations governing
10 the manner of use of the device. For any alcohol screening device that tests the breath of
11 a driver, the ~~Commission-Department~~ is directed to specify in its regulations the shortest
12 feasible minimum waiting period that does not produce an unacceptably high number of
13 false positive test results.

14 (c) Tests ~~Must-Should~~ Be Made with Approved Devices and in Approved Manner.
15 – No screening test for alcohol concentration is a valid one under this section unless the
16 device used is one approved by the ~~Commission for Health Services-Department of~~
17 ~~Health and Human Services~~ and the screening test is conducted in accordance with the
18 applicable regulations of the ~~Commission-Department~~ as to the manner of its use.

19 (d) Use of Screening Test Results or Refusal by Officer. – The results of an
20 alcohol screening test or a driver's refusal to submit may be used by a law-enforcement
21 officer, and are admissible in a court, or an administrative agency in determining if there
22 are reasonable grounds for believing:

23 (1) ~~that~~That the driver has committed an implied-consent offense under
24 ~~G.S. 20-16.2- G.S. 20-16.2; and~~

25 (2) That the driver had consumed alcohol and that the driver had in his or
26 her blood previously consumed alcohol, but not to prove a particular
27 alcohol concentration. Negative or low results on the alcohol screening
28 test may be used in factually appropriate cases by the officer, a court,
29 or an administrative agency in determining whether a person's alleged
30 impairment is caused by an impairing substance other than alcohol.
31 ~~Except as provided in this subsection, the results of an alcohol~~
32 ~~screening test may not be admitted in evidence in any court or~~
33 ~~administrative proceeding."~~

34 PART VII. CLARIFYING PER SE OFFENSES

35 SECTION 15. G.S. 20-138.1 reads as rewritten:

36 "§ 20-138.1. Impaired driving.

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

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

40 (2) After having consumed sufficient alcohol that he ~~has,~~submits to a
41 chemical analysis and the result is 0.08 or more at any relevant time
42 after the driving, an alcohol concentration of 0.08 or more.driving; or

43 (3) With any amount of a Schedule I or II controlled substance, as listed in
44 G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

1 (b) Defense Precluded. – The fact that a person charged with violating this
2 section is or has been legally entitled to use alcohol or a drug is not a defense to a
3 charge under this section.

4 (c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient
5 if it states the time and place of the alleged offense in the usual form and charges that
6 the defendant drove a vehicle on a highway or public vehicular area while subject to an
7 impairing substance.

8 (d) Sentencing Hearing and Punishment. – Impaired driving as defined in this
9 section is a misdemeanor. Upon conviction of a defendant of impaired driving, the
10 presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in
11 accordance with G.S. 20-179.

12 (e) Exception. — ~~Notwithstanding the definition of "vehicle" pursuant to~~
13 ~~G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a~~
14 ~~horse, bicycle, or lawnmower."~~

15 **SECTION 16.** G.S. 20-138.2 reads as rewritten:

16 "**§ 20-138.2. Impaired driving in commercial vehicle.**

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

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

21 (2) After having consumed sufficient alcohol that he ~~has,~~ submits to a
22 chemical analysis and the result is 0.04 or more; or at any relevant
23 time after the driving, an alcohol concentration of 0.04 or more.

24 (3) With any amount of a Schedule I or II controlled substance, as listed in
25 G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

26 (b) Defense Precluded. – The fact that a person charged with violating this
27 section is or has been legally entitled to use alcohol or a drug is not a defense to a
28 charge under this section.

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

33 (d) Implied Consent Offense. – An offense under this section is an implied
34 consent offense subject to the provisions of G.S. 20-16.2. The provisions of
35 G.S. 20-139.1 shall apply to an offense committed under this section.

36 (e) Punishment. – The offense in this section is a misdemeanor and any
37 defendant convicted under this section shall be sentenced under G.S. 20-179. This
38 offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and if a
39 person is convicted under this section and of an offense involving impaired driving
40 under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment
41 imposed by the Court may not exceed the maximum punishment applicable to the
42 offense involving impaired driving under G.S. 20-138.1.

43 (f) Repealed by Session Laws 1991, c. 726, s. 19.

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

3 **PART VIII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE**

4 **SECTION 17.** G.S. 20-141.4 reads as rewritten:

5 "**§ 20-141.4. Felony and misdemeanor death by vehicle.**

6 (a) Repealed by Session Laws 1983, c. 435, s. 27.

7 (a1) **Felony Death by Vehicle.** – A person commits the offense of felony death by
8 vehicle if he unintentionally causes the death of another person while engaged in the
9 offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of
10 that offense is the proximate cause of the death.

11 (a2) **Misdemeanor Death by Vehicle.** – A person commits the offense of
12 misdemeanor death by vehicle if he unintentionally causes the death of another person
13 while engaged in the violation of any State law or local ordinance applying to the
14 operation or use of a vehicle or to the regulation of traffic, other than impaired driving
15 under G.S. 20-138.1, and commission of that violation is the proximate cause of the
16 death.

17 (a3) **Felony Serious Injury by Vehicle.** – A person commits the offense of serious
18 injury by vehicle if he unintentionally causes serious injury to another person while
19 engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and
20 the commission of the offense is the proximate cause of the serious injury.

21 (b) **Punishments.** – Felony death by vehicle is a Class ~~G~~D felony. Felony serious
22 injury by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1
23 misdemeanor.

24 (c) **No Double Prosecutions.** – No person who has been placed in jeopardy upon
25 a charge of death by vehicle may be prosecuted for the offense of manslaughter arising
26 out of the same death; and no person who has been placed in jeopardy upon a charge of
27 manslaughter may be prosecuted for death by vehicle arising out of the same death."

28 **PART IX. CLARIFICATION OF IMPAIRED DRIVING OFFENSES**

29 **SECTION 18.** G.S. 20-4.01 reads as rewritten:

30 "**§ 20-4.01. Definitions.**

31 Unless the context requires otherwise, the following definitions apply throughout
32 this Chapter to the defined words and phrases and their cognates:

33 ...

34 (32) **Public Vehicular Area.** – Any area within the State of North Carolina
35 that meets one or more of the following requirements:

36 a. The area is ~~generally open to and used by the public for~~
37 ~~vehicular traffic,~~ traffic at any time, including by way of
38 illustration and not limitation any drive, driveway, road,
39 roadway, street, alley, or parking lot upon the grounds and
40 premises of any of the following:

- 41 1. Any public or private hospital, college, university,
42 school, orphanage, church, or any of the institutions,
43 parks or other facilities maintained and supported by the
44 State of North Carolina or any of its subdivisions.

- 1 2. Any service station, drive-in theater, supermarket, store,
2 restaurant, or office building, or any other business,
3 residential, or municipal establishment providing parking
4 space ~~for customers, patrons, or the public, whether the~~
5 business or establishment is open or closed.
- 6 3. Any property owned by the United States and subject to
7 the jurisdiction of the State of North Carolina. (The
8 inclusion of property owned by the United States in this
9 definition shall not limit assimilation of North Carolina
10 law when applicable under the provisions of Title 18,
11 United States Code, section 13).
- 12 b. The area is a beach area used ~~by the public~~ for vehicular traffic.
- 13 c. The area is a road ~~opened to used by~~ vehicular traffic within or
14 leading to a ~~subdivision for use by subdivision residents, their~~
15 guests, and members of the public, subdivision, whether or not
16 the subdivision roads have been offered for dedication to the
17 public.
- 18 d. The area is a portion of private property used ~~for~~ by vehicular
19 traffic and designated by the private property owner as a public
20 vehicular area in accordance with G.S. 20-219.4."

21 **SECTION 19.** G.S. 20-138.1 reads as rewritten:

22 **"§ 20-138.1. Impaired driving.**

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,~~ submits to a
27 chemical analysis and the result is 0.08 or more at any relevant time
28 after the driving, an alcohol concentration of 0.08 or more, driving.

29 (3) With any amount of a Schedule I or II controlled substance, as listed in
30 G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

31 (b) Defense Precluded. – The fact that a person charged with violating this
32 section is or has been legally entitled to use alcohol or a drug is not a defense to a
33 charge under this section.

34 (c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient
35 if it states the time and place of the alleged offense in the usual form and charges that
36 the defendant drove a vehicle on a highway or public vehicular area while subject to an
37 impairing substance.

38 (d) Sentencing Hearing and Punishment. – Impaired driving as defined in this
39 section is a misdemeanor. Upon conviction of a defendant of impaired driving, the
40 presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in
41 accordance with G.S. 20-179.

42 (e) Exception. — ~~Notwithstanding the definition of "vehicle" pursuant to~~
43 ~~G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a~~
44 ~~horse, bicycle, or lawnmower."~~

1 **SECTION 20.** G.S. 20-138.2 reads as rewritten:

2 "**§ 20-138.2. Impaired driving in commercial vehicle.**

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

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

7 (2) After having consumed sufficient alcohol that he ~~has,~~ submits to a
8 chemical analysis and the result is 0.04, at any relevant time after the
9 ~~driving, an alcohol concentration of 0.04 or more driving.~~

10 (3) With any amount of a Schedule I or II controlled substance, as listed in
11 G.S. 90-89 or G.S. 90-90, or its metabolites in his blood or urine.

12 (a1) In order to prove the gross vehicle weight rating of a vehicle as defined in
13 G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight,
14 testimony of the gross vehicle weight rating affixed to the vehicle, the registered or
15 declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross
16 vehicle weight rating as determined from the vehicle identification number, the listed
17 gross weight publications from the manufacturer of the vehicle, or any other description
18 or evidence shall be admissible.

19 (b) Defense Precluded. – The fact that a person charged with violating this
20 section is or has been legally entitled to use alcohol or a drug is not a defense to a
21 charge under this section.

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

26 (d) Implied Consent Offense. – An offense under this section is an implied
27 consent offense subject to the provisions of G.S. 20-16.2. The provisions of
28 G.S. 20-139.1 shall apply to an offense committed under this section.

29 (e) Punishment. – The offense in this section is a misdemeanor and any
30 defendant convicted under this section shall be sentenced under G.S. 20-179. This
31 offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and if a
32 person is convicted under this section and of an offense involving impaired driving
33 under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment
34 imposed by the Court may not exceed the maximum punishment applicable to the
35 offense involving impaired driving under G.S. 20-138.1.

36 (f) Repealed by Session Laws 1991, c. 726, s. 19.

37 ~~(g) Chemical Analysis Provisions. — The provisions of G.S. 20-139.1 shall apply~~
38 ~~to the offense of impaired driving in a commercial motor vehicle."~~

39 **SECTION 21.** G.S. 20-138.2A reads as rewritten:

40 "**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

41 (a) Offense. – A person commits the offense of operating a commercial motor
42 vehicle after consuming alcohol if the person drives a commercial motor vehicle, as
43 defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public

1 vehicular area within the State while consuming alcohol or while alcohol remains in the
2 person's body.

3 (a1) In order to prove the gross vehicle weight rating of a vehicle as defined in
4 G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight,
5 testimony of the gross vehicle weight rating affixed to the vehicle, the registered or
6 declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross
7 vehicle weight rating as determined from the vehicle identification number, the gross
8 weight listed in publications from the manufacturer of the vehicle, or any other
9 description or evidence shall be admissible.

10 (b) Implied-Consent Offense. – An offense under this section is an
11 implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of
12 G.S. 20-139.1 shall apply to an offense committed under this section.

13 (b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the
14 driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol
15 was remaining in the driver's body in violation of this section unless the driver was
16 offered an alcohol screening test or chemical analysis and refused to provide all
17 required samples of breath or blood for analysis.

18 (b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an
19 alcohol screening test may be administered to a driver suspected of violation of
20 subsection (a) of this section, and the results of an alcohol screening test or the driver's
21 refusal to submit may be used by a law enforcement officer, a court, or an
22 administrative agency in determining if alcohol was present in the driver's body. No
23 alcohol screening tests are valid under this section unless the device used is one
24 approved by the ~~Commission for Health Services, Department of Health and Human~~
25 Services, and the screening test is conducted in accordance with the applicable
26 regulations of the Commission as to its manner and use.

27 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
28 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
29 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
30 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
31 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
32 commercial vehicle under G.S. 20-138.2.

33 (d) Second or Subsequent Conviction Defined. – A conviction for violating this
34 offense is a second or subsequent conviction if at the time of the current offense the
35 person has a previous conviction under this section, and the previous conviction
36 occurred in the seven years immediately preceding the date of the current offense. This
37 definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and
38 G.S. 20-17.4(a)(6)."

39 **SECTION 22.** G.S. 20-138.2B(b2) reads as rewritten:

40 "(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an
41 alcohol screening test may be administered to a driver suspected of violation of
42 subsection (a) of this section, and the results of an alcohol screening test or the driver's
43 refusal to submit may be used by a law enforcement officer, a court, or an
44 administrative agency in determining if alcohol was present in the driver's body. No

1 alcohol screening tests are valid under this section unless the device used is one
2 approved by the ~~Commission for Health Services,~~ Department of Health and Human
3 Services, and the screening test is conducted in accordance with the applicable
4 regulations of the ~~Commission-Department~~ as to its manner and use."

5 **SECTION 23.** G.S. 20-138.3 reads as rewritten:

6 "**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**
7 **drugs.**

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

14 (b) Subject to Implied-Consent Law. – An offense under this section is an
15 alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. The
16 provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

17 (b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the
18 driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol
19 was remaining in the driver's body in violation of this section unless the driver was
20 offered an alcohol screening test or chemical analysis and refused to provide all
21 required samples of breath or blood for analysis.

22 (b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an
23 alcohol screening test may be administered to a driver suspected of violation of
24 subsection (a) of this section, and the results of an alcohol screening test or the driver's
25 refusal to submit may be used by a law enforcement officer, a court, or an
26 administrative agency in determining if alcohol was present in the driver's body. No
27 alcohol screening tests are valid under this section unless the device used is one
28 approved by the ~~Commission for Health Services,~~ Department of Health and Human
29 Services, and the screening test is conducted in accordance with the applicable
30 regulations of the ~~Commission-Department~~ as to its manner and use.

31 (c) Punishment; Effect When Impaired Driving Offense Also Charged. – The
32 offense in this section is ~~a Class 2 misdemeanor.~~ shall be punished pursuant to
33 G.S. 20-179. It is not, in any circumstances, a lesser included offense of impaired
34 driving under G.S. 20-138.1, but if a person is convicted under this section and of an
35 offense involving impaired driving arising out of the same transaction, the aggregate
36 punishment imposed by the court may not exceed the maximum applicable to the
37 offense involving impaired driving, and any minimum punishment applicable shall be
38 imposed.

39 Notwithstanding any other provision of law, whenever any person who does not
40 have any pending charges for violating Chapters 18B, 20, or 90 of the General Statutes
41 and has not previously been convicted of violating this section, an offense involving
42 impaired driving under any statute of the United States or any state relating to those
43 substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in
44 Article 5B of Chapter 90 or a violation of Chapter 18B, pleads guilty to or is found

1 guilty of a violation of this section, the court may, without entering a judgment of guilt
2 and with the consent of such person, defer further proceedings and place him on
3 probation for a minimum of one year upon such reasonable terms and conditions as it
4 may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or
5 law, to fulfill the terms and conditions of probation the court shall impose, at a
6 minimum, all of the following conditions. The person shall:

- 7 (1) Obtain a substance abuse assessment within 30 days, and comply with
8 education or treatment requirements recommended by the assessment.
- 9 (2) Not operate a motor vehicle for at least 90 days.
- 10 (3) Perform 50 hours of community service and pay the community
11 service fee.
- 12 (4) Submit at reasonable times to warrantless searches by a probation
13 officer of his or her person, vehicle, and premises including drug and
14 alcohol screening and testing and pay the costs of such screening and
15 tests.
- 16 (5) Not possess or consume any alcoholic beverage or controlled
17 substance unless the controlled substance is lawfully prescribed to the
18 person.
- 19 (6) Pay court costs and all fees.
- 20 (7) Not violate any law of this or any other state or the federal
21 government.
- 22 (8) Remain gainfully employed or in school as a full-time student as
23 determined by the probation officer.
- 24 (9) Not violate any other reasonable condition of probation.

25 Upon violation of a term or condition, the court may enter an adjudication of guilt and
26 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court
27 shall discharge the person and dismiss the proceedings against him. Discharge and
28 dismissal under this section shall be without court adjudication of guilt and shall not be
29 deemed a conviction for purposes of this section or for purposes of disqualifications or
30 disabilities imposed by law upon conviction of a crime including the additional
31 penalties imposed for second or subsequent convictions. Prior to entering a discharge
32 and dismissal, the court shall determine if the person has been charged with or
33 convicted of any other offense, including infractions. The discharge and dismissal shall
34 not be entered unless the court finds that the person does not have any pending charges
35 for violating any law of this State and has not during the period of probation violated a
36 law of this State or been convicted of violating a provision of Chapter 18B, 20, 14, or 90
37 of the General Statutes of this State or a substantially similar provision of any other
38 state or the federal government.

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

- 43 (1) ~~Is 18, 19, or 20 years old on the date of the offense.~~
- 44 (2) ~~Has not previously been convicted of a violation of this section.~~

1 ~~The judge may issue the limited driving privilege only if the person meets the eligibility~~
2 ~~requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)e.~~
3 ~~G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided~~
4 ~~for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the~~
5 ~~issuance of a limited driving privilege to a person who is convicted of violating~~
6 ~~subsection (a) of this section and of driving while impaired as a result of the same~~
7 ~~transaction. G.S. 20-11.1."~~

8 **SECTION 24.** G.S. 20-138.5(a) reads as rewritten:

9 "(a) A person commits the offense of habitual impaired driving if he drives while
10 impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses
11 involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~10 years of the
12 date of this offense."

13 **SECTION 25.** G.S. 20-138.5(c) reads as rewritten:

14 "(c) An offense under this section is an implied consent offense subject to the
15 provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense
16 committed under this section."

17 **PART X. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW**

18 **SECTION 26.** G.S. 20-16.2 reads as rewritten:

19 "**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license**
20 **in event of refusal; right of driver to request analysis.**

21 (a) Basis for Charging Officer to Require Chemical Analysis; Notification of
22 Rights. – Any person who drives a vehicle on a highway or public vehicular area
23 thereby gives consent to a chemical analysis if charged with an implied-consent offense.
24 ~~The charging officer shall designate the type of chemical analysis to be administered,~~
25 ~~and it may be administered when the officer~~ Any law enforcement officer who has
26 reasonable grounds to believe that the person charged has committed the
27 implied-consent offense, offense may obtain a chemical analysis of the person.

28 ~~Except as provided in this subsection or subsection (b), before~~ Before any type of
29 chemical analysis is administered the person charged shall be taken before a chemical
30 analyst authorized to administer a test of a person's breath or a law enforcement officer
31 who is authorized to administer chemical analysis of the breath, who shall inform the
32 person orally and also give the person a notice in writing that:

33 (1) ~~The person has a right to refuse to be tested.~~ You have been charged
34 with an implied consent offense. Under the implied consent law you
35 can refuse any test but your drivers license will be revoked for at least
36 one year and you will be required to install an ignition interlock on
37 your vehicle, plus an officer can compel you to be tested under other
38 laws.

39 (2) ~~Refusal to take any required test or tests will result in an immediate~~
40 ~~revocation of the person's driving privilege for at least 30 days and an~~
41 ~~additional 12-month revocation by the Division of Motor Vehicles.~~

42 (3)(2) The test results, or the fact of the ~~person's~~ your refusal, will be
43 admissible in evidence at ~~trial on the offense charged.~~ trial.

1 ~~(4)(3)~~ The person's ~~Your~~ driving privilege will be revoked immediately ~~for at~~
2 ~~least 30 days if:~~ and until your trial and any appeals if you refuse any
3 ~~test or the test result is a 0.08 or more, 0.04 if you were driving a~~
4 ~~commercial vehicle, or 0.01 if you are under the age of 21.~~

5 ~~a. The test reveals an alcohol concentration of 0.08 or more;~~

6 ~~b. The person was driving a commercial motor vehicle and the test~~
7 ~~reveals an alcohol concentration of 0.04 or more; or~~

8 ~~e. The person is under 21 years of age and the test reveals any~~
9 ~~alcohol concentration.~~

10 ~~(5)(4)~~ The person may choose a qualified person to administer a chemical
11 ~~test or tests in addition to any test administered at the direction of the~~
12 ~~charging officer. After you are released, you may seek your own test in~~
13 ~~addition to this test.~~

14 ~~(6)(5)~~ The person has the right to ~~You may~~ call an attorney for advice and
15 select a witness to view ~~for him or her~~ the testing ~~procedures,~~
16 procedures remaining after the witness arrives, but the testing may not
17 be delayed for these purposes longer than 30 minutes from the time
18 ~~when the person is notified of his or her of these rights. You must take~~
19 ~~the test at the end of 30 minutes even if you have not contacted an~~
20 ~~attorney or your witness has not arrived.~~

21 ~~If the charging officer or an arresting officer is authorized to administer a chemical~~
22 ~~analysis of a person's breath, the charging officer or the arresting officer may give the~~
23 ~~person charged the oral and written notice of rights required by this subsection. This~~
24 ~~authority applies regardless of the type of chemical analysis designated.~~

25 (a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an
26 offense involving impaired driving or an alcohol-related offense made subject to the
27 procedures of this section. A person is "charged" with an offense if the person is
28 arrested for it or if criminal process for the offense has been issued. ~~A "charging officer"~~
29 ~~is a law enforcement officer who arrests the person charged, lodges the charge, or~~
30 ~~assists the officer who arrested the person or lodged the charge by assuming custody of~~
31 ~~the person to make the request required by subsection (c) and, if necessary, to present~~
32 ~~the person to a judicial official for an initial appearance.~~

33 (b) Unconscious Person May Be Tested. – ~~If a charging law enforcement officer~~
34 ~~has reasonable grounds to believe that a person has committed an implied-consent~~
35 ~~offense, and the person is unconscious or otherwise in a condition that makes the person~~
36 ~~incapable of refusal, the charging law enforcement officer may direct the taking of a~~
37 ~~blood sample by a person qualified under G.S. 20-139.1 or may direct the~~
38 ~~administration of any other chemical analysis that may be effectively performed. In this~~
39 ~~instance the notification of rights set out in subsection (a) and the request required by~~
40 ~~subsection (c) are not necessary.~~

41 (c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement
42 ~~officer, officer or chemical analyst, in the presence of the chemical analyst who has~~
43 ~~notified the person of his or her rights under subsection (a), must shall designate the~~
44 ~~type of test or tests to be given and either may request the person charged to submit to~~

1 the type of chemical analysis designated. If the person charged willfully refuses to
2 submit to that chemical analysis, none may be given under the provisions of this section,
3 but the refusal does not preclude testing under other applicable procedures of law.

4 (c1) Procedure for Reporting Results and Refusal to Division. – Whenever a
5 person refuses to submit to a chemical analysis or a person's drivers license has an
6 alcohol concentration restriction and the results of the chemical analysis establish a
7 violation of the restriction, the charging officer and the chemical analyst ~~must~~ shall
8 without unnecessary delay go before an official authorized to administer oaths and
9 execute an affidavit(s) stating that:

- 10 (1) The person was charged with an implied-consent offense or had an
11 alcohol concentration restriction on the drivers license;
- 12 (2) ~~The charging officer~~ A law enforcement officer had reasonable
13 grounds to believe that the person had committed an implied-consent
14 offense or violated the alcohol concentration restriction on the drivers
15 license;
- 16 (3) Whether the implied-consent offense charged involved death or critical
17 injury to another person, if the person willfully refused to submit to
18 chemical analysis;
- 19 (4) The person was notified of the rights in subsection (a); and
- 20 (5) The results of any tests given or that the person willfully refused to
21 submit to a chemical ~~analysis upon the request of the charging~~
22 officer analysis.

23 If the person's drivers license has an alcohol concentration restriction, pursuant to
24 G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated
25 a provision of that restriction other than violation of the alcohol concentration level, the
26 ~~charging officer~~ and chemical analyst shall complete the applicable sections of the
27 affidavit and indicate the restriction which was violated. The ~~charging officer~~ must shall
28 immediately mail the affidavit(s) to the Division. If the ~~charging officer~~ is also the
29 chemical analyst who has notified the person of the rights under subsection (a), the
30 ~~charging officer~~ may perform alone the duties of this subsection.

31 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon
32 receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~
33 shall expeditiously notify the person charged that the person's license to drive is revoked
34 for 12 months, effective on the tenth calendar day after the mailing of the revocation
35 order unless, before the effective date of the order, the person requests in writing a
36 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the
37 person shows to the satisfaction of the Division that his or her license was surrendered
38 to the court, and remained in the court's possession, then the Division shall credit the
39 amount of time for which the license was in the possession of the court against the
40 12-month revocation period required by this subsection. If the person properly requests
41 a hearing, the person retains his or her license, unless it is revoked under some other
42 provision of law, until the hearing is held, the person withdraws the request, or the
43 person fails to appear at a scheduled hearing. The hearing officer may subpoena any
44 witnesses or documents that the hearing officer deems necessary. The person may

1 request the hearing officer to subpoena the charging officer, the chemical analyst, or
2 both to appear at the hearing if the person makes the request in writing at least three
3 days before the hearing. The person may subpoena any other witness whom the person
4 deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and
5 service of all subpoenas issued under the authority of this section. The hearing officer is
6 authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~
7 shall be conducted in the county where the charge was brought, and ~~must shall~~ be
8 limited to consideration of whether:

- 9 (1) The person was charged with an implied-consent offense or the driver
10 had an alcohol concentration restriction on the drivers license pursuant
11 to G.S. 20-19;
- 12 (2) ~~The charging~~ A law enforcement officer had reasonable grounds to
13 believe that the person had committed an implied-consent offense or
14 violated the alcohol concentration restriction on the drivers license;
- 15 (3) The implied-consent offense charged involved death or critical injury
16 to another person, if this allegation is in the affidavit;
- 17 (4) The person was notified of the person's rights as required by
18 subsection (a); and
- 19 (5) The person willfully refused to submit to a chemical ~~analysis upon the~~
20 request of the charging officer analysis.

21 If the Division finds that the conditions specified in this subsection are met, it ~~must shall~~
22 order the revocation sustained. If the Division finds that any of the conditions (1), (2),
23 (4), or (5) is not met, it ~~must shall~~ rescind the revocation. If it finds that condition (3) is
24 alleged in the affidavit but is not met, it ~~must shall~~ order the revocation sustained if that
25 is the only condition that is not met; in this instance subsection (d1) does not apply to
26 that revocation. If the revocation is sustained, the person ~~must shall~~ surrender his or her
27 license immediately upon notification by the Division.

28 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the
29 refusal occurred in a case involving death or critical injury to another person, no limited
30 driving privilege may be issued. The 12-month revocation begins only after all other
31 periods of revocation have terminated unless the person's license is revoked under
32 G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,
33 the revocation under this subsection begins at the time and in the manner specified in
34 subsection (d) for revocations under this section. However, the person's eligibility for a
35 hearing to determine if the revocation under those sections should be rescinded is
36 postponed for one year from the date on which the person would otherwise have been
37 eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the
38 12-month revocation under this subsection is in effect, that revocation, whether imposed
39 by a court or by the Division, may only take effect after the period of revocation under
40 this subsection has terminated.

41 (e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is
42 sustained after the hearing, the person whose license has been revoked has the right to
43 file a petition in the superior court for a hearing ~~de novo upon the issues listed in~~
44 ~~subsection (d), in the same manner and under the same conditions as provided in~~

~~G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.~~

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge ~~authorized to do so by this subsection~~ the Division may issue a limited driving privilege if:

- ~~(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;~~
- ~~(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;~~
- ~~(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;~~
- ~~(4) The implied consent offense charged did not involve death or critical injury to another person;~~
- ~~(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
 - ~~a. Other than by conviction; or~~
 - ~~b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;~~~~
- ~~(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;~~
- ~~(7) The person's license has been revoked for at least six months for the refusal; and~~
- ~~(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.~~

~~Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A~~

1 ~~limited driving privilege issued under this section authorizes a person to drive if the~~
2 ~~person's license is revoked solely under this section or solely under this section and~~
3 ~~G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving~~
4 ~~privilege is invalid.pursuant to G.S. 20-11.1.~~

5 (f) Notice to Other States as to Nonresidents. – When it has been finally
6 determined under the procedures of this section that a nonresident's privilege to drive a
7 motor vehicle in this State has been revoked, the Division ~~must~~shall give information in
8 writing of the action taken to the motor vehicle administrator of the state of the person's
9 residence and of any state in which the person has a license.

10 (g) Repealed by Session Laws 1973, c. 914.

11 (h) Repealed by Session Laws 1979, c. 423, s. 2.

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

22 (1) ~~That the test results will be admissible in evidence and may be used~~
23 ~~against the person in any implied consent offense that may arise;~~

24 (2) ~~That the person's license will be revoked for at least 30 days if:~~

25 a. ~~The test reveals an alcohol concentration of 0.08 or more; or~~

26 b. ~~The person was driving a commercial motor vehicle and the test~~
27 ~~results reveal an alcohol concentration of 0.04 or more; or~~

28 e. ~~The person is under 21 years of age and the test reveals any~~
29 ~~alcohol concentration.~~

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

36 PART XI. ADMISSIBILITY OF CHEMICAL ANALYSES

37 SECTION 27. G.S. 20-139.1 reads as rewritten:

38 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
39 **provisions; controlled-drinking programs.**

40 (a) Chemical Analysis Admissible. – In any implied-consent offense under
41 G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing
42 substance in the person's body as shown by a chemical analysis is admissible in
43 evidence. This section does not limit the introduction of other competent evidence as to

1 a person's alcohol concentration or results of other tests showing the presence of an
2 impairing substance, including other chemical tests.

3 (b) Approval of Valid Test Methods; Licensing Chemical Analysts. —~~A~~The
4 results of a chemical analysis, to be valid, shall be analysis shall be deemed sufficient
5 evidence to prove a person's alcohol concentration. A chemical analysis of the breath
6 administered pursuant to the implied consent law is admissible in any court or
7 administration if it meets both of the following requirements:

8 (1) It is performed in accordance with the provisions of this section. The
9 chemical analysis shall be performed according to methods approved
10 by the Commission for Health Services by an individual possessing
11 rules of the Department of Health and Human Services.

12 (2) The person performing the analysis had, at the time of the analysis, a
13 current permit issued by the Department of Health and Human
14 Services authorizing the person to perform a test of the breath using
15 the type of instrument employed. for that type of chemical analysis.

16 For purposes of establishing compliance with subdivision (b)(1) of this section, the
17 court or administrative agency shall take notice of the rules of the Department of Health
18 and Human Services. For purposes of establishing compliance with subdivision (b)(2)
19 of this section, the court or administrative agency shall take judicial notice of the list of
20 permits issued to the person performing the analysis, the type of instrument on which
21 the person is authorized to perform tests of the breath, and the date the permit was
22 issued. The Commission for Health Services may adopt rules approving satisfactory
23 methods or techniques for performing chemical analyses, and the Department of Health
24 and Human Services may ascertain the qualifications and competence of individuals to
25 conduct particular chemical analyses. analyses and the methods for conducting chemical
26 analyses. The Department may issue permits to conduct chemical analyses to
27 individuals it finds qualified subject to periodic renewal, termination, and revocation of
28 the permit in the Department's discretion.

29 (b1) ~~When Officer May Perform Chemical Analysis. – Except as provided in this~~
30 ~~subsection, a chemical analysis is not valid in any case in which it is performed by an~~
31 ~~arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical~~
32 ~~analysis of the breath may be performed by an arresting officer or by a charging officer~~
33 ~~when both of the following apply:~~

34 (1) ~~The officer possesses a current permit issued by the Department of~~
35 ~~Health and Human Services for the type of chemical analysis.~~

36 (2) ~~The officer performs the chemical analysis by using an automated~~
37 ~~instrument that prints the results of the analysis.~~

38 Any person possessing a current permit authorizing the person to perform chemical
39 analysis may perform a chemical analysis.

40 (b2) ~~Breath Analysis Results Inadmissible if Preventive Maintenance Not~~
41 ~~Performed. Maintenance. – The Department of Health and Human Services shall~~
42 ~~perform preventive maintenance on breath testing instruments used for chemical~~
43 ~~analysis. A court or administrative agency shall take judicial notice of the preventive~~
44 ~~maintenance records of the Department. Notwithstanding the provisions of subsection~~

1 (b), the results of a chemical analysis of a person's breath performed in accordance with
2 this section are not admissible in evidence if:

- 3 (1) The defendant objects to the introduction into evidence of the results
4 of the chemical analysis of the defendant's breath; and
- 5 (2) The defendant demonstrates that, with respect to the instrument used to
6 analyze the defendant's breath, preventive maintenance procedures
7 required by the regulations of the ~~Commission for Health Services~~
8 Department of Health and Human Services had not been performed
9 within the time limits prescribed by those regulations.

10 (b3) ~~Sequential Breath Tests Required. —By January 1, 1985, the regulations of~~
11 ~~the Commission for Health Services—The methods governing the administration of~~
12 ~~chemical analyses of the breath shall require the testing of at least duplicate sequential~~
13 ~~breath samples. The results of the chemical analysis of all breath samples are admissible~~
14 ~~if the test results from any two consecutively collected breath samples do not differ~~
15 ~~from each other by an alcohol concentration greater than 0.01. Only the lower of the~~
16 ~~two test results of the consecutively administered tests can be used to prove a particular~~
17 ~~alcohol concentration. Those regulations must provide:~~

- 18 (1) ~~A specification as to the minimum observation period before collection~~
19 ~~of the first breath sample and the time requirements as to collection of~~
20 ~~second and subsequent samples.~~
- 21 (2) ~~That the test results may only be used to prove a person's particular~~
22 ~~alcohol concentration if:~~
 - 23 a. ~~The pair of readings employed are from consecutively~~
24 ~~administered tests; and~~
 - 25 b. ~~The readings do not differ from each other by an alcohol~~
26 ~~concentration greater than 0.02.~~
- 27 (3) ~~That when a pair of analyses meets the requirements of subdivision~~
28 ~~(2), only the lower of the two readings may be used by the State as~~
29 ~~proof of a person's alcohol concentration in any court or administrative~~
30 ~~proceeding.~~

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

33 A person's refusal to give the second or subsequent breath sample shall make the
34 result of the first breath sample, or the result of the sample providing the lowest alcohol
35 concentration if more than one breath sample is provided, admissible in any judicial or
36 administrative hearing for any relevant purpose, including the establishment that a
37 person had a particular alcohol concentration for conviction of an offense involving
38 impaired driving.

39 ~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program.—In~~
40 ~~civil and criminal proceedings, any party may introduce, without further authentication,~~
41 ~~simulator logs and logs for other devices used to verify a breath testing instrument,~~
42 ~~certificates and other records concerning the check of ampoules and of simulator stock~~
43 ~~solution and the stock solution used in any other equilibration device, preventive~~
44 ~~maintenance records, and other records that are routinely kept concerning the~~

1 ~~maintenance and operation of breath testing instruments. In a criminal case, however,~~
2 ~~this subsection does not authorize the State to introduce records to prove the results of a~~
3 ~~chemical analysis of the defendant or of any validation test of the instrument that is~~
4 ~~conducted during that chemical analysis.~~

5 (b5) Subsequent Tests Allowed. – A person may be requested, pursuant to
6 G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid
7 or substance in addition to or in lieu of a chemical analysis of the breath, in the
8 discretion of ~~the charging a law enforcement~~ officer. If a subsequent chemical analysis
9 is requested pursuant to this subsection, the person shall again be advised of the implied
10 consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit
11 to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal
12 under G.S. 20-16.2.

13 (b6) The Department of Health and Human Services shall post on a webpage and
14 file in each county a list of all persons who have a permit authorizing them to perform
15 chemical analyses, the type of analyses that they can perform, the instruments that each
16 person is authorized to operate and the effective dates of the permits, and records of
17 preventive maintenance. A court shall take judicial notice of whether at the time of the
18 chemical analysis, the chemical analyst possessed a permit authorizing the chemical
19 analyst to perform a chemical analysis administered and whether preventive
20 maintenance had been performed on the breath-testing instrument in accordance with
21 Department rule.

22 (c) ~~Withdrawal of Blood and Urine for Chemical Analysis. – Notwithstanding~~
23 ~~any other provision of law, When when a blood or urine test is specified as the type of~~
24 ~~chemical analysis by the charging a law enforcement officer, only a physician,~~
25 ~~registered nurse, emergency medical technician, or other qualified person may shall~~
26 ~~withdraw the blood sample. sample and obtain the urine sample and no further~~
27 ~~authorization or approval is required. If the person withdrawing the blood or collecting~~
28 ~~the urine requests written confirmation of the charging officer's request for the~~
29 ~~withdrawal of blood, blood or collecting the urine, the officer shall furnish it before~~
30 ~~blood is withdrawn. withdrawn or urine collected. When blood is withdrawn or urine~~
31 ~~collected pursuant to a charging law enforcement officer's request, neither the person~~
32 ~~withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or~~
33 ~~corporation employing that person, or contracting for the service of withdrawing blood,~~
34 ~~may be held criminally or civilly liable by reason of withdrawing that blood, except that~~
35 ~~there is no immunity from liability for negligent acts or omissions.~~

36 ~~The chemical analyst who analyzes the blood shall complete an affidavit stating the~~
37 ~~results of the analysis on a form developed by the Department of Health and Human~~
38 ~~Services and provide the affidavit to the charging officer and the clerk of superior court~~
39 ~~in the county in which the criminal charges are pending.~~

40 ~~Evidence regarding the qualifications of the person who withdrew the blood sample~~
41 ~~may be provided at trial by testimony of the charging officer or by an affidavit of the~~
42 ~~person who withdrew the blood sample and shall be sufficient to constitute prima facie~~
43 ~~evidence regarding the person's qualifications.~~

1 (c1) Whenever blood or urine is submitted to the North Carolina State Bureau of
2 Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory,
3 or any other laboratory approved for chemical analysis by the Department of Health and
4 Human Services to determine if the blood or urine contains alcohol or a controlled
5 substance or its metabolites or any other impairing substance, the report of that analysis
6 certified to upon a form approved by the Attorney General by the person performing the
7 analysis shall be admissible without further authentication in all administrative hearings
8 and proceedings in the district court and superior court divisions of the General Court of
9 Justice as evidence that the blood or urine contained alcohol, a controlled substance or
10 its metabolites or any other impairing substance as well as the quantity of the alcohol,
11 controlled substance, metabolite of a controlled substance, or other impairing substance.
12 Provided, however, that a report is admissible in a criminal proceeding in the superior
13 court division or in an adjudicatory hearing in juvenile court in the district court division
14 only if the defendant fails to notify the State at least five days before trial that the
15 defendant objects to the introduction of the report into evidence.

16 The report containing the results of any blood or urine test may be transmitted
17 electronically or via facsimile. A copy of the affidavit sent electronically or via
18 facsimile shall be admissible in any court or administrative hearing without further
19 authentication. A copy of the report shall be sent to the charging officer, the clerk of
20 superior court in the county in which the criminal charges are pending, the Division of
21 Motor Vehicles, and the Department of Health and Human Services.

22 Nothing in this subsection precludes the right of any party to call any witness or to
23 introduce any evidence supporting or contradicting the evidence contained in the report.

24 (c2) Procedure for establishing chain of custody without calling unnecessary
25 witnesses. –

26 (1) For the purpose of establishing the chain of physical custody or control
27 of blood or urine tested or analyzed to determine whether it contains
28 alcohol, a controlled substance or its metabolite, or any impairing
29 substance, a statement signed by each successive person in the chain of
30 custody that the person delivered it to the other person indicated on or
31 about the date stated is prima facie evidence that the person had
32 custody and made the delivery as stated, without the necessity of a
33 personal appearance in court by the person signing the statement.

34 (2) The statement shall contain a sufficient description of the material or
35 its container so as to distinguish it as the particular item in question
36 and shall state that the material was delivered in essentially the same
37 condition as received. The statement may be placed on the same
38 document as the report provided for in subsection (c1) of this section.

39 (3) The provisions of this subsection may be utilized in any administrative
40 hearing and by the State in district court but can only be utilized in a
41 case originally tried in superior court or an adjudicatory hearing in
42 juvenile court, if the defendant fails to notify the State at least five
43 days before trial that the defendant objects to the introduction of the
44 statement into evidence.

1 (4) Nothing in this subsection precludes the right of any party to call any
2 witness or to introduce any evidence supporting or contradicting the
3 evidence contained in the statement.

4 (c3) The results of a blood or urine test are admissible to prove a person's alcohol
5 concentration or the presence of controlled substances or metabolites or any other
6 impairing substance if:

7 (1) A law enforcement officer or chemical analyst requested a blood
8 and/or urine sample from the person charged; and

9 (2) A chemical analysis of the person's blood was performed by a
10 chemical analyst possessing a permit issued by the Department of
11 Health and Human Services authorizing the chemical analyst to
12 analyze blood or urine for alcohol or controlled substances,
13 metabolites of a controlled substance, or any other impairing
14 substance.

15 For purposes of establishing compliance with subdivision (2) of this subsection, the
16 court or administrative agency shall take judicial notice of the list of persons possessing
17 permits, the type of instrument on which each person is authorized to perform tests of
18 the blood and/or urine, and the date the permit was issued and the date it expires.

19 (d) Right to Additional Test. — A person who submits to a chemical analysis may
20 have a qualified person of his own choosing administer an additional chemical test or
21 tests, or have a qualified person withdraw a blood sample for later chemical testing by a
22 qualified person of his own choosing. Any law enforcement officer having in his charge
23 any person who has submitted to a chemical analysis shall assist the person in
24 contacting someone to administer the additional testing or to withdraw blood, and shall
25 allow access to the person for that purpose. Nothing in this section shall be construed to
26 prohibit a person from obtaining or attempting to obtain an additional chemical analysis.
27 If the person is not released from custody after the initial appearance, the agency having
28 custody of the person shall allow the person access to a telephone to attempt to arrange
29 for any additional test and allow access to the person in accordance with the agreed
30 procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a
31 chemical analysis to obtain any additional test or to withdraw blood does not preclude
32 the admission of evidence relating to the chemical analysis.

33 (d1) Right to Require Additional Tests. — If a person refuses to submit to any test
34 or tests pursuant to this section, any law enforcement officer with probable cause may,
35 with or without a court order, compel the person to provide blood and/or urine samples
36 for analysis. Notwithstanding any other provision of law, when a blood or urine sample
37 is requested under this subsection by a law enforcement officer, a physician, registered
38 nurse, emergency medical technician, or other qualified person shall withdraw the blood
39 and obtain the urine sample and no further authorization or approval is required. If the
40 person withdrawing the blood or collecting the urine requests written confirmation of
41 the charging officer's request for the withdrawal of blood or obtaining urine, the officer
42 shall furnish it before blood is withdrawn or urine obtained. When blood is withdrawn
43 or urine collected pursuant to a law enforcement officer's request, neither the person
44 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or

1 corporation employing that person, or contracting for the service of withdrawing blood,
2 may be held criminally or civilly liable by reason of withdrawing that blood, except that
3 there is no immunity from liability for negligent acts or omissions. The results of the
4 analysis of blood or urine under this subsection shall be admissible if performed by the
5 State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

6 (e) ~~Recording Results of Chemical Analysis of Breath. – The chemical analyst~~
7 ~~who administers a test of a person's breath shall record the following information after~~
8 ~~making any chemical analysis:~~

9 (1) ~~The alcohol concentration or concentrations revealed by the chemical~~
10 ~~analysis.~~

11 (2) ~~The time of the collection of the breath sample or samples used in the~~
12 ~~chemical analysis.~~

13 ~~A copy of the record of this information shall be furnished to the person submitting to~~
14 ~~the chemical analysis, or to his attorney, before any trial or proceeding in which the~~
15 ~~results of the chemical analysis may be used. A person charged with an implied consent~~
16 ~~offense who has not received prior to a trial a copy of the chemical analysis results the~~
17 ~~State intends to offer into evidence prior to trial may request in writing a copy of the~~
18 ~~results. The failure to provide a copy prior to any trial shall be grounds for a~~
19 ~~continuance of the case but shall not be grounds to suppress the results of the chemical~~
20 ~~analysis or to dismiss the criminal charges.~~

21 (e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a
22 chemical analyst sworn to and properly executed before an official authorized to
23 administer oaths is admissible in evidence without further authentication in any hearing
24 or trial in the District Court Division of the General Court of Justice with respect to the
25 following matters:

26 (1) The alcohol concentration or concentrations or the presence or absence
27 of an impairing substance of a person given a chemical analysis and
28 who is involved in the hearing or trial.

29 (2) The time of the collection of the blood, breath, or other bodily fluid or
30 substance sample or samples for the chemical analysis.

31 (3) The type of chemical analysis administered and the procedures
32 followed.

33 (4) The type and status of any permit issued by the Department of Health
34 and Human Services that the analyst held on the date the analyst
35 performed the chemical analysis in question.

36 (5) If the chemical analysis is performed on a breath-testing instrument for
37 which regulations adopted pursuant to subsection (b) require
38 preventive maintenance, the date the most recent preventive
39 maintenance procedures were performed on the breath-testing
40 instrument used, as shown on the maintenance records for that
41 instrument.

42 The Department of Health and Human Services shall develop a form for use by
43 chemical analysts in making this affidavit. If any person who submitted to a chemical
44 analysis desires that a chemical analyst personally testify in the hearing or trial in the

1 District Court Division, the person may subpoena the chemical analyst and examine him
2 as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued
3 unless the person files in writing with the court and serves a copy on the district attorney
4 at least five days prior to trial an affidavit specifying the specific factual grounds that
5 the person believes the chemical analysis was not properly administered and the facts
6 that the chemical analyst will testify about and stating that the presence of the analyst is
7 necessary for the proper defense of the case. The district court shall determine if there
8 are grounds to believe that the presence of the analyst requested is necessary for the
9 proper defense. If so, the case shall be continued until the analyst can be present. The
10 criminal case shall not be dismissed due to the failure of the analyst to appear, unless
11 the analyst willfully fails to appear after being ordered to appear by the court.

12 (f) Evidence of Refusal Admissible. – If any person charged with an
13 implied-consent offense refuses to submit to a chemical ~~analysis,~~ analysis or to perform
14 field sobriety tests at the request of an officer, evidence of that refusal is admissible in
15 any ~~criminal~~ criminal, civil, or administrative action against ~~him for an implied consent~~
16 ~~offense under G.S. 20-16.2.~~ the person. The fact finder shall consider either type of
17 refusal to be evidence that the person had consumed sufficient impairing substance to be
18 impaired.

19 (g) Controlled-Drinking Programs. – The Department of Health and Human
20 Services may adopt rules concerning the ingestion of controlled amounts of alcohol by
21 individuals submitting to chemical testing as a part of scientific, experimental,
22 educational, or demonstration programs. These regulations shall prescribe procedures
23 consistent with controlling federal law governing the acquisition, transportation,
24 possession, storage, administration, and disposition of alcohol intended for use in the
25 programs. Any person in charge of a controlled-drinking program who acquires alcohol
26 under these regulations must keep records accounting for the disposition of all alcohol
27 acquired, and the records must at all reasonable times be available for inspection upon
28 the request of any federal, State, or local law-enforcement officer with jurisdiction over
29 the laws relating to control of alcohol. A controlled-drinking program exclusively using
30 lawfully purchased alcoholic beverages in places in which they may be lawfully
31 possessed, however, need not comply with the record-keeping requirements of the
32 regulations authorized by this subsection. All acts pursuant to the regulations reasonably
33 done in furtherance of bona fide objectives of a controlled-drinking program authorized
34 by the regulations are lawful notwithstanding the provisions of any other general or
35 local statute, regulation, or ordinance controlling alcohol.

36 (h) The results of a chemical analysis shall not be suppressed for a violation of
37 this section or G.S. 20-16.2. Any violation shall go to the weight to be given to the
38 results and not the admissibility as provided in G.S. 20-38.7."

39 **PART XII. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED** 40 **DRIVING CASES**

41 **SECTION 28.** Chapter 90 is amended by adding a new section to read:

42 **"§ 90-21.20B. Access to medical information for law enforcement purposes.**

43 (a) Notwithstanding any other provision of law, if a person is involved in a
44 vehicle crash:

1 (1) Any health care provider who is providing medical treatment to the
2 person shall, upon request, disclose to any law enforcement officer
3 investigating the crash the following information about the person:
4 name, current location, and whether the person appears to be impaired
5 by alcohol, drugs, or another substance.

6 (2) Law enforcement officers shall be provided access to visit and
7 interview the person upon request, except when the health care
8 provider requests temporary privacy for medical reasons.

9 (3) A health care provider shall disclose a certified copy of all identifiable
10 health information related to that person as specified in a search
11 warrant or an order issued by a judicial official.

12 (b) A prosecutor or law enforcement officer receiving identifiable health
13 information under this section shall not disclose this information to others prior to trial
14 except as necessary to the investigation or otherwise allowed by law.

15 (c) A certified copy of identifiable health information, if relevant, shall be
16 admissible in any hearing or trial without further authentication.

17 (d) As used in this section, "health care provider" has the same meaning as in
18 G.S. 90-21.11."

19 **PART XIII. PROSECUTOR REPORTING WHEN IMPLIED CONSENT CASE** 20 **IS DISMISSED**

21 **SECTION 29.** G.S. 20-138.4 reads as rewritten:

22 **"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**
23 **involving impaired driving.**

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

28 (1) Enters a voluntary dismissal; or

29 (2) Accepts a plea of guilty or no contest to a lesser included offense; or

30 (3) Substitutes another charge, by statement of charges or otherwise, if the
31 substitute charge carries a lesser mandatory minimum punishment or is
32 not an offense involving impaired driving; or

33 (4) Otherwise takes a discretionary action that effectively dismisses or
34 reduces the original charge in the case involving impaired driving.

35 (b) The written explanation shall be signed by the prosecutor taking the action on
36 a form approved by the Administrative Office of the Courts and shall contain, at a
37 minimum, the alcohol concentration or the fact that the driver refused, a list of all prior
38 convictions of implied consent offenses or driving while license revoked, whether the
39 driver had a valid drivers license or privilege to drive in this State as indicated by the
40 Division's records, a statement that a check of the database of the Administrative Office
41 of the Courts revealed whether there are any other pending charges against the
42 defendant pending in this State, those elements that the prosecutor believes in good faith
43 can be proved, and a list of those elements that the prosecutor cannot prove and why,
44 the name and agency of the charging officer and whether the officer is available, and

1 any other reason why the charges are dismissed. General explanations such as "interests
2 of justice" or "insufficient evidence" are not sufficiently detailed to meet the
3 requirements of this section.

4 (c) A copy of this form shall be sent to the head of the law enforcement agency
5 that employed the charging officer, to the elected district attorney who employs the
6 prosecutor and filed in the court file. The Administrative Office of the Courts shall
7 electronically record this data in its database and make it available upon request at no
8 charge."

9 **PART XIV. DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO**
10 **APPEAR IN DRIVING WHILE IMPAIRED**

11 **SECTION 30.** G.S. 20-48 reads as rewritten:

12 **"§ 20-48. Giving of notice.**

13 (a) Whenever the Division is authorized or required to give any notice under this
14 Chapter or other law regulating the operation of vehicles, unless a different method of
15 giving such notice is otherwise expressly prescribed, such notice shall be given either by
16 personal delivery thereof to the person to be so notified or by deposit in the United
17 States mail of such notice in an envelope with postage prepaid, addressed to such person
18 at his address as shown by the records of the Division. The giving of notice by mail is
19 complete upon the expiration of four days after such deposit of such notice. Proof of the
20 giving of notice in either such manner may be made by ~~the certificate of any officer or~~
21 ~~employee of the Division or affidavit of any person over 18 years of age, naming the~~
22 ~~person to whom such notice was given and specifying the time, place, and manner of~~
23 ~~the giving thereof.~~ a notation in the records of the Division that the notice was sent to a
24 particular address and the purpose of the notices. A certified copy of the Division's
25 records may be sent by the Police Information Network, facsimile, or other electronic
26 means. A copy of the Division's records sent under the authority of this section is
27 admissible as evidence in any court or administrative agency and is sufficient evidence
28 to discharge the burden of the person presenting the record that notice was sent to the
29 person named in the record, at the address indicated in the record, and for the purpose
30 indicated in the record. There is no requirement that the actual notice or letter be
31 produced.

32 (b) Notwithstanding any other provision of this Chapter at any time notice is now
33 required by registered mail with return receipt requested, certified mail with return
34 receipt requested may be used in lieu thereof and shall constitute valid notice to the
35 same extent and degree as notice by registered mail with return receipt requested.

36 (c) The Commissioner shall appoint such agents of the Division as may be
37 needed to serve revocation notices required by this Chapter. The fee for service of a
38 notice shall be fifty dollars (\$50.00)."

39 **SECTION 31.** G.S. 20-28 reads as rewritten:

40 **"§ 20-28. Unlawful to drive while license ~~revoked~~revoked, after notification, or**
41 **while disqualified.**

42 (a) Driving While License Revoked. – Except as provided in subsection (a1) of
43 this section, any person whose drivers license has been revoked who drives any motor
44 vehicle upon the highways of the State while the license is revoked is guilty of a Class 1

1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional
2 period of one year for the first offense, two years for the second offense, and
3 permanently for a third or subsequent offense.

4 The restoree of a revoked drivers license who operates a motor vehicle upon the
5 highways of the State without maintaining financial responsibility as provided by law
6 shall be punished as for driving without a license.

7 (a1) Driving Without Reclaiming License. – A person convicted under subsection
8 (a) shall be punished as if the person had been convicted of driving without a license
9 under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and
10 (2), or subdivision (3) of this subsection is true:

11 (1) At the time of the offense, the person's license was revoked solely
12 under G.S. 20-16.5; and

13 (2) a. The offense occurred more than 45 days after the effective date
14 of a revocation order issued under G.S. 20-16.5(f) and the
15 period of revocation was 45 days as provided under subdivision
16 (3) of that subsection; or

17 b. The offense occurred more than 30 days after the effective date
18 of the revocation order issued under any other provision of
19 G.S. 20-16.5; or

20 (3) At the time of the offense the person had met the requirements of
21 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of
22 the person's drivers license privilege as provided therein.

23 In addition, a person punished under this subsection shall be treated for drivers
24 license and insurance rating purposes as if the person had been convicted of driving
25 without a license under G.S. 20-35, and the conviction report sent to the Division must
26 indicate that the person is to be so treated.

27 (a2) Driving After Notification or Failure to Appear. – A person who drives upon
28 a highway while his license is revoked for an impaired drivers license revocation after
29 the Division has sent notification in accordance with G.S. 20-48 or who fails to appear
30 for two years from the date of the charge after being charged with an implied consent
31 offense shall be guilty of a Class 1 misdemeanor. Upon conviction, the person's license
32 shall be revoked for an additional period of one year for the first offense, two years for
33 the second offense, and permanently for a third or subsequent offense. The restoree of a
34 revoked drivers license who operates a motor vehicle upon the highways of the State
35 without maintaining financial responsibility as provided by law shall be punished as for
36 driving without a license.

37 (b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

38 (c) When Person May Apply for License. – A person whose license has been
39 revoked under this section and for no other reason and the period of revocation is for
40 one year may apply for a license after 90 days. A person whose license has been
41 revoked under this section for two years may apply for a license after 12 months. A
42 person whose license has been revoked under this section permanently may apply for a
43 license after three years. Upon the filing of an application the Division may, with or
44 without a hearing, issue a new license upon satisfactory proof that the former licensee

1 has not been convicted of a moving violation under this Chapter or the laws of another
2 state, a violation of any provision of the alcoholic beverage laws of this State or another
3 state, or a violation of any provisions of the drug laws of this State or another state when
4 any of these violations occurred during the revocation period. The Division may impose
5 any restrictions or conditions on the new license that the Division considers appropriate
6 for the balance of the revocation period. When the revocation period is permanent, the
7 restrictions and conditions imposed by the Division may not exceed three years. If the
8 person's license was revoked pursuant to subsection (a1) of this section and the person
9 drove while his license was revoked for an impaired driving revocation or the
10 revocation was for violating subsection (a2) of this section, the Division may only
11 conditionally restore the license in accordance with this subsection and shall require, at
12 a minimum, as a condition of restoration that the driver obtain a substance abuse
13 assessment prior to issuance of a license and show proof of financial responsibility. If
14 the substance abuse assessment recommends education or treatment, the person must
15 complete the education or treatment within the time limits specified. If the assessment
16 determines that the person abuses alcohol, then the Division shall require the person to
17 install and use an ignition interlock on any vehicles that are to be driven. If the person
18 violates any condition of the restoration or is convicted of any moving offense in this or
19 another state or the alcoholic beverage or controlled substance laws of this or any other
20 state, the Division shall cancel the conditionally restored license and impose the
21 remaining revocation period. The Division shall also cancel the registration on any
22 vehicles and shall require the driver to surrender all current registration plates and cards.

23 (d) Driving While Disqualified. – A person who was convicted of a violation that
24 disqualified the person and required the person's drivers license to be revoked who
25 drives a motor vehicle during the revocation period is punishable as provided in the
26 other subsections of this section. A person who has been disqualified who drives a
27 commercial motor vehicle during the disqualification period is guilty of a Class 1
28 misdemeanor and is disqualified for an additional period as follows:

- 29 (1) For a first offense of driving while disqualified, a person is
30 disqualified for a period equal to the period for which the person was
31 disqualified when the offense occurred.
- 32 (2) For a second offense of driving while disqualified, a person is
33 disqualified for a period equal to two times the period for which the
34 person was disqualified when the offense occurred.
- 35 (3) For a third offense of driving while disqualified, a person is
36 disqualified for life.

37 The Division may reduce a disqualification for life under this subsection to 10 years in
38 accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a
39 commercial motor vehicle while the person is disqualified and the person's drivers
40 license is revoked is punishable for both driving while the person's license was revoked
41 and driving while disqualified."

42 **PART XV. MODIFYING CURRENT PUNISHMENTS**

43 **SECTION 32.** G.S. 20-179 reads as rewritten:

1 "§ 20-179. Sentencing hearing after conviction for impaired driving;
2 determination of grossly aggravating and aggravating and mitigating
3 factors; punishments.

4 (a) Sentencing Hearing Required. – After a conviction for impaired driving under
5 G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A,
6 or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or any of
7 the foregoing offenses are remanded back to the district court after an appeal to superior
8 court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are
9 aggravating or mitigating factors that affect the sentence to be imposed. Before the
10 hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full
11 record of traffic convictions, and ~~must~~ shall present to the judge that record for
12 consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall
13 furnish the defendant or his attorney a copy of the defendant's record of traffic
14 convictions at a reasonable time prior to the introduction of the record into evidence. In
15 addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and
16 aggravating factors of which he is aware, and the defendant or his attorney may present
17 all appropriate mitigating factors. In every instance in which a valid chemical analysis is
18 made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting
19 alcohol concentration.

20 (a1) Sentencing Hearing in Superior Court. – Upon a determination of guilt by the
21 jury, the court shall submit to the same jury, or a different jury if using the same jury is
22 impracticable, any grossly aggravating or aggravating factors supported by the
23 evidence. Prior to submitting these factors to the jury, the court shall allow the State and
24 the defendant to present evidence to the jury that is relevant to proving any grossly
25 aggravating or aggravating factors that had not been presented to the jury during the
26 guilt phase of the trial. Provided, however, the court is not required to allow proof of or
27 submit to the jury any grossly aggravating or aggravating factor that is a conviction of a
28 crime or determination of responsibility for an infraction that is stipulated to by the
29 defendant.

30 (b) Repealed by Session Laws 1983, c. 435, s. 29.

31 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing
32 hearing, based upon the evidence presented at trial and in the hearing, the judge ~~must~~
33 shall first determine whether there are any grossly aggravating factors in the case. If the
34 sentencing hearing is for a case remanded back to district court from superior court, the
35 judge shall determine whether the defendant has been convicted of any offense that was
36 not considered at the initial sentencing hearing and impose the appropriate sentence
37 under this section. The judge ~~must~~ shall impose the Level One punishment under
38 subsection (g) of this section if the judge determines that two or more grossly
39 aggravating factors apply. The judge ~~must~~ shall impose the Level Two punishment
40 under subsection (h) of this section if the judge determines that only one of the grossly
41 aggravating factors applies. The grossly aggravating factors are:

42 (1) A prior conviction for an offense involving impaired driving if:

43 a. The conviction occurred within seven years before the date of
44 the offense for which the defendant is being sentenced; or

1 b. The conviction occurs after the date of the offense for which the
2 defendant is presently being sentenced, but prior to or
3 contemporaneously with the present sentencing.

4 Each prior conviction is a separate grossly aggravating factor.

5 (2) Driving by the defendant at the time of the offense while his driver's
6 license was revoked under G.S. 20-28, and the revocation was an
7 impaired driving revocation under G.S. 20-28.2(a).

8 (3) Serious injury to another person caused by the defendant's impaired
9 driving at the time of the offense.

10 (4) Driving by the defendant while a child under the age of 16 years was
11 in the vehicle at the time of the offense.

12 In imposing a Level One or Two punishment, the judge may consider the
13 aggravating and mitigating factors in subsections (d) and (e) in determining the
14 appropriate sentence. If there are no grossly aggravating factors in the case, the judge
15 ~~must~~shall weigh all aggravating and mitigating factors and impose punishment as
16 required by subsection (f).

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

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

24 (2) Especially reckless or dangerous driving.

25 (3) Negligent driving that led to a reportable accident.

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

27 (5) Two or more prior convictions of a motor vehicle offense not
28 involving impaired driving for which at least three points are assigned
29 under G.S. 20-16 or for which the convicted person's license is subject
30 to revocation, if the convictions occurred within five years of the date
31 of the offense for which the defendant is being sentenced, or one or
32 more prior convictions of an offense involving impaired driving that
33 occurred more than seven years before the date of the offense for
34 which the defendant is being sentenced.

35 (6) Conviction under G.S. 20-141.5 of speeding by the defendant while
36 fleeing or attempting to elude apprehension.

37 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least
38 30 miles per hour over the legal limit.

39 (8) Passing a stopped school bus in violation of G.S. 20-217.

40 (9) Any other factor that aggravates the seriousness of the offense.

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

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

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

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

29 (f) Weighing the Aggravating and Mitigating Factors. – If the judge in the
30 sentencing hearing determines that there are no grossly aggravating factors, he ~~must~~
31 shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the
32 judge determines that:

- 33 (1) The aggravating factors substantially outweigh any mitigating factors,
34 he ~~must~~shall note in the judgment the factors found and his finding
35 that the defendant is subject to the Level Three punishment and impose
36 a punishment within the limits defined in subsection (i).
- 37 (2) There are no aggravating and mitigating factors, or that aggravating
38 factors are substantially counterbalanced by mitigating factors, he ~~must~~
39 shall note in the judgment any factors found and his finding that the
40 defendant is subject to the Level Four punishment and impose a
41 punishment within the limits defined in subsection (j).
- 42 (3) The mitigating factors substantially outweigh any aggravating factors,
43 he ~~must~~shall note in the judgment the factors found and his finding

1 that the defendant is subject to the Level Five punishment and impose
2 a punishment within the limits defined in subsection (k).

3 It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism,
4 drug addiction, diminished capacity, or mental disease or defect. Evidence of these
5 matters may be received in the sentencing hearing, however, for use by the judge in
6 formulating terms and conditions of sentence after determining which punishment level
7 ~~must~~shall be imposed.

8 (f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of
9 this section, a person convicted of impaired driving under G.S. 20-138.1 under the
10 common law concept of aiding and abetting is subject to Level Five punishment. The
11 judge need not make any findings of grossly aggravating, aggravating, or mitigating
12 factors in such cases.

13 (f2) Limit on Consolidation of Judgments. – Except as provided in subsection
14 (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~
15 shall determine if the sentencing factors described in subsections (c), (d) and (e) are
16 applicable unless the impaired driving charge is consolidated with a charge carrying a
17 greater punishment. Two or more impaired driving charges may not be consolidated for
18 judgment.

19 (g) Level One Punishment. – A defendant subject to Level One punishment may
20 be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of
21 imprisonment that includes a minimum term of not less than 30 days and a maximum
22 term of not more than 24 months. The term of imprisonment may be suspended only if a
23 condition of special probation is imposed to require the defendant to serve a term of
24 imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall
25 impose a requirement that the defendant obtain a substance abuse assessment and the
26 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license
27 and as a condition of probation. The judge may impose any other lawful condition of
28 probation.

29 (h) Level Two Punishment. – A defendant subject to Level Two punishment may
30 be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of
31 imprisonment that includes a minimum term of not less than seven days and a maximum
32 term of not more than 12 months. The term of imprisonment may be suspended only if a
33 condition of special probation is imposed to require the defendant to serve a term of
34 imprisonment of at least seven days. If the defendant is placed on probation, the judge
35 shall impose a requirement that the defendant obtain a substance abuse assessment and
36 the education or treatment required by G.S. 20-17.6 for the restoration of a drivers
37 license and as a condition of probation. The judge may impose any other lawful
38 condition of probation.

39 (i) Level Three Punishment. – A defendant subject to Level Three punishment
40 may be fined up to one thousand dollars (\$1,000) and shall be sentenced to a term of
41 imprisonment that includes a minimum term of not less than 72 hours and a maximum
42 term of not more than six months. The term of imprisonment may be suspended.
43 However, the suspended sentence shall include the condition that the defendant:

- 1 (1) Be imprisoned for a term of at least 72 hours as a condition of special
2 probation; or
3 (2) Perform community service for a term of at least 72 hours; or
4 ~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~
5 ~~(4)~~(3) Any combination of these conditions.

6 If the defendant is placed on probation, the judge shall impose a requirement that the
7 defendant obtain a substance abuse assessment and the education or treatment required
8 by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation.
9 The judge may impose any other lawful condition of probation.

10 (j) Level Four Punishment. – A defendant subject to Level Four punishment may
11 be fined up to five hundred dollars (\$500.00) and shall be sentenced to a term of
12 imprisonment that includes a minimum term of not less than 48 hours and a maximum
13 term of not more than 120 days. The term of imprisonment may be suspended.
14 However, the suspended sentence shall include the condition that the defendant:

- 15 (1) Be imprisoned for a term of 48 hours as a condition of special
16 probation; or
17 (2) Perform community service for a term of 48 hours; or
18 ~~(3) Not operate a motor vehicle for a term of 60 days; or~~
19 ~~(4)~~(3) Any combination of these conditions.

20 If the defendant is placed on probation, the judge shall impose a requirement that the
21 defendant obtain a substance abuse assessment and the education or treatment required
22 by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation.
23 The judge may impose any other lawful condition of probation.

24 (k) Level Five Punishment. – A defendant subject to Level Five punishment may
25 be fined up to two hundred dollars (\$200.00) and shall be sentenced to a term of
26 imprisonment that includes a minimum term of not less than 24 hours and a maximum
27 term of not more than 60 days. The term of imprisonment may be suspended. However,
28 the suspended sentence shall include the condition that the defendant:

- 29 (1) Be imprisoned for a term of 24 hours as a condition of special
30 probation; or
31 (2) Perform community service for a term of 24 hours; or
32 ~~(3) Not operate a motor vehicle for a term of 30 days; or~~
33 ~~(4)~~(3) Any combination of these conditions.

34 If the defendant is placed on probation, the judge shall impose a requirement that the
35 defendant obtain a substance abuse assessment and the education or treatment required
36 by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation.
37 The judge may impose any other lawful condition of probation.

38 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge
39 may order that a term of imprisonment imposed as a condition of special probation
40 under any level of punishment be served as an inpatient in a facility operated or licensed
41 by the State for the treatment of alcoholism or substance abuse where the defendant has
42 been accepted for admission or commitment as an inpatient. The defendant shall bear
43 the expense of any treatment unless the trial judge orders that the costs be absorbed by
44 the State. The judge may impose restrictions on the defendant's ability to leave the

1 premises of the treatment facility and require that the defendant follow the rules of the
2 treatment facility. The judge may credit against the active sentence imposed on a
3 defendant the time the defendant was an inpatient at the treatment facility, provided
4 such treatment occurred after the commission of the offense for which the defendant is
5 being sentenced. This section shall not be construed to limit the authority of the judge in
6 sentencing under any other provisions of law.

7 (l) Repealed by Session Laws 1989, c. 691.

8 (m) Repealed by Session Laws 1995, c. 496, s. 2.

9 (n) Time Limits for Performance of Community Service. – If the judgment
10 requires the defendant to perform a specified number of hours of community service as
11 provided in subsections (i), (j), or (k), the community service ~~must~~shall be completed:

12 (1) Within 90 days, if the amount of community service required is 72
13 hours or more; or

14 (2) Within 60 days, if the amount of community service required is 48
15 hours; or

16 (3) Within 30 days, if the amount of community service required is 24
17 hours.

18 The court may extend these time limits upon motion of the defendant if it finds that the
19 defendant has made a good faith effort to comply with the time limits specified in this
20 subsection.

21 (o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing
22 hearing, the State ~~must~~shall prove any grossly aggravating or aggravating factor by the
23 greater weight of the evidence, and the defendant ~~must~~shall prove any mitigating factor
24 by the greater weight of the evidence. Evidence adduced by either party at trial may be
25 utilized in the sentencing hearing. Except as modified by this section, the procedure in
26 G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or
27 absence of previous convictions that he finds reliable but he ~~must~~shall give prima facie
28 effect to convictions recorded by the Division or any other agency of the State of North
29 Carolina. A copy of such conviction records transmitted by the police information
30 network in general accordance with the procedure authorized by G.S. 20-26(b) is
31 admissible in evidence without further authentication. If the judge decides to impose an
32 active sentence of imprisonment that would not have been imposed but for a prior
33 conviction of an offense, the judge ~~must~~shall afford the defendant an opportunity to
34 introduce evidence that the prior conviction had been obtained in a case in which he was
35 indigent, had no counsel, and had not waived his right to counsel. If the defendant
36 proves by the preponderance of the evidence all three above facts concerning the prior
37 case, the conviction may not be used as a grossly aggravating or aggravating factor.

38 (p) Limit on Amelioration of Punishment. – For active terms of imprisonment
39 imposed under this section:

40 (1) The judge may not give credit to the defendant for the first 24 hours of
41 time spent in incarceration pending trial.

42 (2) The defendant shall serve the mandatory minimum period of
43 imprisonment and good or gain time credit may not be used to reduce
44 that mandatory minimum period.

- 1 (3) The defendant may not be released on parole unless he is otherwise
2 eligible, has served the mandatory minimum period of imprisonment,
3 and has obtained a substance abuse assessment and completed any
4 recommended treatment or training program or is paroled into a
5 residential treatment program.

6 With respect to the minimum or specific term of imprisonment imposed as a condition
7 of special probation under this section, the judge may not give credit to the defendant
8 for the first 24 hours of time spent in incarceration pending trial.

9 (q) Repealed by Session Laws 1991, c. 726, s. 20.

10 (r) Supervised Probation Terminated. – Unless a judge in his discretion
11 determines that supervised probation is necessary, and includes in the record that he has
12 received evidence and finds as a fact that supervised probation is necessary, and states
13 in his judgment that supervised probation is necessary, a defendant convicted of an
14 offense of impaired driving shall be placed on unsupervised probation if he meets three
15 conditions. These conditions are that he has not been convicted of an offense of
16 impaired driving within the seven years preceding the date of this offense for which he
17 is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this
18 section, and has obtained any necessary substance abuse assessment and completed any
19 recommended treatment or training program.

20 When a judge determines in accordance with the above procedures that a defendant
21 should be placed on supervised probation, the judge shall authorize the probation officer
22 to modify the defendant's probation by placing the defendant on unsupervised probation
23 upon the completion by the defendant of the following conditions of his suspended
24 sentence:

- 25 (1) Community service; or
26 (2) Repealed by Session Laws 1995 c. 496, s. 2.
27 (3) Payment of any fines, court costs, and fees; or
28 (4) Any combination of these conditions.

29 (s) Method of Serving Sentence. – The judge in his discretion may order a term
30 of imprisonment ~~or community service~~ to be served on weekends, even if the sentence
31 cannot be served in consecutive sequence. However, if the defendant is ordered to a
32 term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment,
33 the defendant shall be required to serve 48 continuous hours of imprisonment to be
34 given credit for time served. Credit for any jail time shall only be given hour for hour
35 for time actually served. The jail shall maintain a log showing number of hours served.
36 The court may provide for the DWI case manager in consultation with the sheriff's
37 office to determine which weekends the defendant shall serve. If the defendant appears
38 at the jail and has remaining in his body any alcohol, as shown by an alcohol screening
39 device, or controlled substance previously consumed, unless lawfully obtained and
40 taken in therapeutically appropriate amounts, the defendant shall be refused entrance
41 and this shall be reported back to court. If after a hearing the court determines that when
42 the defendant reported to jail, the defendant had remaining in his body any alcohol
43 previously consumed, as shown by an alcohol screening device, or controlled substance
44 previously consumed, unless lawfully obtained and taken in therapeutically appropriate

1 amounts, the defendant shall be ordered to serve his jail time immediately and shall not
2 be eligible to serve jail time on weekends.

3 (t) Repealed by Session Laws 1995, c. 496, s. 2."

4 **SECTION 33.** Chapter 7A of the General Statutes is amended by adding a
5 new section to read:

6 "**§ 7A-109.4. Records of offenses involving impaired driving.**

7 The clerk of superior court shall maintain all records relating to an offense involving
8 impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the
9 date of conviction. Prior to destroying the record, the clerk shall record the name of the
10 defendant, the judge, the prosecutor, and the attorney or whether there was a waiver, the
11 alcohol concentration or the fact of refusal, the sentence imposed, and whether the case
12 was appealed to superior court and its disposition."

13 **PART XVI. INCREASED COLLECTION OF FINES AND FEES**

14 **SECTION 34.** G.S. 20-179 is amended by adding a new subsection to read:

15 "(u) Fees and Fines. – A fee, fine, or cost that is authorized by law to be imposed
16 for a person sentenced under this section shall not be waived or remitted unless the
17 court determines that the person is indigent and incapable of paying now and will not be
18 capable of paying during the term of probation."

19 **SECTION 35.** G.S. 7A-108 reads as rewritten:

20 "**§ 7A-108. Accounting for fees and other receipts; annual audit.**

21 (a) The Administrative Office of the Courts, subject to the approval of the State
22 Auditor, shall establish procedures for the receipt, deposit, protection, investment, and
23 disbursement of all funds coming into the hands of the clerk of superior court. The fees
24 to be remitted to counties and municipalities shall be paid to them monthly by the clerk
25 of superior court.

26 (b) The operations of the Administrative Office of the Courts and the Clerks of
27 Superior Court shall be subject to the oversight of the State Auditor pursuant to Article
28 5A of Chapter 147 of the General Statutes.

29 (c) The procedures specified in subsection (a) of this section, at a minimum, shall
30 require each clerk of superior court within 48 hours of any court order to establish an
31 accounts payable for all funds required to be paid to the clerk of superior court and still
32 owed. In addition to the procedures of G.S. 20-24.1 and G.S. 20-24.2, the clerk shall
33 report all persons back to court who are six months overdue on payments. By March 1,
34 the Administrative Office of the Courts shall provide an annual report of the previous
35 calendar year to the Joint Legislative Commission on Governmental Operations on a
36 statewide and county basis the amount of fines, costs, restitution, and amount and types
37 of fees ordered to be paid at the disposition of any criminal trial, any subsequent
38 reduction of this amount, amount collected, and amount still owed."

39 **SECTION 36.** Chapter 20 of the General Statutes is amended by adding a
40 new section to read:

41 "**§ 20-24.3. Surrender of license and registration.**

42 (a) Upon conviction for an offense which requires the Division to revoke a
43 person's drivers license, the person shall surrender to the court his most recent valid
44 drivers license issued by the Division or by a similar agency in another jurisdiction and

1 any limited driving privilege. For a person who does not surrender the license within 10
2 days of a conviction, the clerk shall impose the fee of fifty dollars (\$50.00) specified in
3 G.S. 7A-304(a)(6). A person who is unable to locate his license or whose license is
4 revoked and does not have a limited driving privilege shall file an affidavit with the
5 clerk stating that he is validly licensed and is unable to locate the license or that it is
6 revoked. This affidavit shall constitute surrender of the license.

7 (b) Upon conviction for an offense that requires the Division to revoke a person's
8 registration, the person shall surrender to the court all registration plates and registration
9 cards issued to him by the Division. For a person who does not surrender the
10 registration plates and cards within 10 days of a conviction, the clerk shall impose the
11 fee of fifty dollars (\$50.00) specified in G.S. 7A-304(a)(6) for each such tag or card not
12 surrendered. A person who surrenders his registration plate and card to the Division
13 may submit the receipt issued by the Division in lieu of surrendering the tag to the
14 court."

15 **PART XVII. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF**
16 **AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW**
17 **ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS**
18 **CONSUMED ALCOHOL**

19 **SECTION 37.** G.S. 18B-302(b) reads as rewritten:

20 "(b) Purchase or Possession. – It shall be unlawful for:

- 21 (1) A person less than 21 years old to purchase, to attempt to purchase, or
22 to possess malt beverages or unfortified wine; or
23 (2) A person less than 21 years old to purchase, to attempt to purchase, or
24 to possess fortified wine, spirituous liquor, or mixed beverages.
25 (3) A person less than 21 years old to consume any alcoholic beverage."

26 **SECTION 38.** G.S. 18B-302 is amended by adding a new subsection to
27 read:

28 "(j) Notwithstanding any other provisions of law, a law enforcement officer may
29 require any person the officer has probable cause to believe is under the age of 21 and
30 who has consumed alcohol to submit to an alcohol screening test using a device
31 approved by the Department of Health and Human Services. The results of any
32 screening device administered in accordance with the rules of the Department of Health
33 and Human Services shall be admissible in any court or administrative proceeding to
34 prove that a person possessed or consumed an alcoholic beverage."

35 **PART XVIII. REQUIRING THAT DEFENDANTS WHO ARE RELEASED**
36 **FROM PRISON EARLY ARE TO BE ASSIGNED TO HOUSE ARREST OR**
37 **COMMUNITY SERVICE PAROLE**

38 **SECTION 39.** G.S. 15A-1371(h) reads as rewritten:

39 "(h) Community Service ~~Parole~~ Parole and House Arrest. – Notwithstanding the
40 provisions of any other subsection herein, prisoners serving sentences for impaired
41 driving who are granted early release shall be eligible for assigned community service
42 ~~parole, parole or house arrest,~~ in the discretion of the Post-Release Supervision and
43 Parole Commission.

1 Community service parole is early parole for the purpose of participation in a
2 program of community service under the supervision of a probation/parole officer. A
3 parolee who is paroled under this subsection ~~must~~shall perform as a condition of parole
4 community service in an amount and over a period of time to be determined by the
5 Post-Release Supervision and Parole Commission. However, the total amount of
6 community service shall not exceed an amount equal to 32 hours for each month of
7 active service remaining in his minimum sentence. The Post-Release Supervision and
8 Parole Commission may grant early parole under this section without requiring the
9 performance of community service if it determines that such performance is
10 inappropriate to a particular case.

11 The probation/parole officer and the community service coordinator shall develop a
12 program of community service for the parolee. The community service coordinator shall
13 report any willful failure to perform community service work to the probation/parole
14 officer. Parole may be revoked for any parolee who willfully fails to perform
15 community service work as directed by a community service ~~coordinator~~coordinator or
16 violates the rules of house arrest. The provisions of G.S. 15A-1376 shall apply to this
17 violation of a condition of parole.

18 Community service parole or house arrest eligibility shall be available to a prisoner:

- 19 (1) Who is serving an active sentence the term of which exceeds six
20 months; and
- 21 (2) Who, in the opinion of the Post-Release Supervision and Parole
22 Commission, is unlikely to engage in further criminal conduct; and
- 23 (3) Who agrees to complete service of his sentence as herein specified;
24 and
- 25 (4) Who has served one-half of his minimum sentence.

26 In computing the service requirements of subdivision (4) of this subsection, credit
27 shall be given for good time and gain time credit earned pursuant to G.S. 148-13.
28 Nothing herein is intended to create or shall be construed to create a right or entitlement
29 to community service parole or house arrest in any prisoner. The Post-Release
30 Supervision and Parole Commission may impose additional restrictions on consumption
31 of alcohol or other impairing substances and requirements for treatment for substance
32 abuse."

33 **SECTION 40.** G.S. 15A-1371(i) reads as rewritten:

34 "(i) A fee of two hundred dollars (\$200.00) shall be paid by all persons who
35 participate in the Community Service Parole ~~Program or House Arrest Program.~~ That
36 fee ~~must~~shall be paid to the clerk of court in the county in which the parolee is released.
37 The fee ~~must~~shall be paid in full within two weeks unless the Post-Release Supervision
38 and Parole Commission, upon a showing of hardship by the person, allows the person
39 additional time to pay the fee. The parolee may not be required to pay the fee before the
40 person begins the community service or is assigned to house arrest unless the
41 Post-Release Supervision and Parole Commission specifically orders that the person do
42 so. Fees collected under this subsection shall be deposited in the General Fund. The fee
43 imposed under this subsection may be paid as prescribed by the supervising parole
44 officer."

1 **SECTION 41.** G.S. 15A-1371(j) reads as rewritten:

2 "(j) The Post-Release Supervision and Parole Commission may terminate a
3 prisoner's community service parole or house arrest before the expiration of the term of
4 imprisonment where doing so will not endanger the public, unduly depreciate the
5 seriousness of the crime, or promote disrespect for the law."

6 **PART XIX. EFFECTIVE DATE**

7 **SECTION 42.** This act becomes effective December 1, 2005, and applies to
8 offenses committed on or after that date.