

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1069

Short Title: DWI Task Force Recommendations.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS STATUTES RELATED TO DRIVING WHILE
3 IMPAIRED, AS RECOMMENDED BY THE GOVERNOR'S TASK FORCE ON
4 DRIVING WHILE IMPAIRED.

5 The General Assembly of North Carolina enacts:

6 **PART I. INTEGRATED DATA SYSTEM TO PROVIDE ESSENTIAL**
7 **INFORMATION ABOUT DWI OFFENSES STATEWIDE**

8 **SECTION 1.** G.S. 7A-109.2 reads as rewritten:

9 "**§ 7A-109.2. Records of dispositions in criminal ~~eases~~ cases; impaired driving**
10 **integrated data system.**

11 (a) Each clerk of superior court shall ensure that all records of dispositions in
12 criminal cases, including those records filed electronically, contain all the essential
13 information about the case, including the ~~identity~~ the name of the presiding judge and
14 the attorneys representing the State and the defendant.

15 (b) In addition to the information required by subsection (a) for all offenses
16 involving impaired driving as defined by G.S. 20-4.01, all charges of driving while
17 license revoked for an impaired driving license revocation as defined by G.S. 20-28.2,
18 and any other violation of the motor vehicle code involving the operation of a vehicle
19 and the possession, consumption, use, or transportation of alcoholic beverages, the clerk
20 shall include in the electronic records the following information:

- 21 (1) The reasons for any voluntary dismissal or reduction of charges as
22 specified in G.S. 20-138.4;
23 (2) The reasons for any pretrial dismissal by the court;
24 (3) The reasons for any continuances granted in the case;
25 (4) The alcohol concentration reported by the charging officer or chemical
26 analyst, if any;
27 (5) The reasons for any suppression of evidence;
28 (6) The reasons for dismissal of charges at trial;

- 1 (7) The punishment imposed, including community service, jail, substance
2 abuse assessment and education or treatment, amount of any fine,
3 costs, and fees imposed;
4 (8) The amount and reason for waiving or reduction of any fee or fine;
5 (9) The time or other conditions given to pay any fine, cost, or fees;
6 (10) After the initial disposition, the modification or reduction to any
7 sentence, fee owed, fine, or restitution and the name and agency of the
8 person requesting the modification;
9 (11) The date of compliance with court-ordered community service, jail
10 sentence, substance abuse assessment, substance abuse education or
11 treatment, and payment of fines, costs, and fees; and
12 (12) Subsequent court proceedings to enforce compliance with punishment,
13 assessment, treatment, education, or payment of fines, costs, and fees.

14 **SECTION 2.** Chapter 7A of the General Statutes is amended by adding a
15 new section to read:

16 **"§ 7A-346.3. Impaired driving integrated data system report.**

17 The information compiled by G.S. 7A-109.2 shall be maintained in an
18 Administrative Office of the Courts database. By March 1, the Administrative Office of
19 the Courts shall provide an annual report of the previous calendar year to the Joint
20 Legislative Commission on Governmental Operation showing types of dispositions for
21 the entire State, by county, by judge, by prosecutor, and by defense attorney. This report
22 shall also include the amount of fines, costs, and fees ordered at the disposition of the
23 charge, the amount of any subsequent reduction, amount collected and amount still
24 owed,, and compliance with sanctions of community service, jail, substance abuse
25 assessment, treatment, and education. The Administrative Office of the Courts shall
26 facilitate public access to the information collected under this section by posting this
27 information on the court's Internet page in a manner accessible to the public and shall
28 make reports of any information collected under this section available to the public
29 upon request and without charge.

30 **PART II. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM**
31 **CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY**
32 **SWITCHING PERMITS TO ANOTHER NAME**

33 **SECTION 3.** G.S. 18B-900 reads as rewritten:

34 **"§ 18B-900. Qualifications for permit.**

35 (a) Requirements. – To be eligible to receive and to hold an ABC permit, a
36 person shall:

- 37 (1) Be at least 21 years old, unless the person is a manager of a business
38 selling only malt beverages and unfortified wine, in which case the
39 person shall be at least 19 years old;
40 (2) Be a resident of North Carolina unless:
41 a. He is an officer, director or stockholder of a corporate applicant
42 or permittee and is not a manager or otherwise responsible for
43 the day-to-day operation of the business; or

1 b. He has executed a power of attorney designating a qualified
2 resident of this State to serve as attorney in fact for the purposes
3 of receiving service of process and managing the business for
4 which permits are sought; or

5 c. He is applying for a nonresident malt beverage vendor permit, a
6 nonresident wine vendor permit, or a vendor representative
7 permit;

8 (3) Not have been convicted of a felony within three years, and, if
9 convicted of a felony before then, shall have had his citizenship
10 restored;

11 (4) Not have been convicted of an alcoholic beverage offense within two
12 years;

13 (5) Not have been convicted of a misdemeanor controlled substance
14 offense within two years; and

15 (6) Not have had an alcoholic beverage permit revoked within three years,
16 except where the revocation was based solely on a permittee's failure
17 to pay the annual registration and inspection fee required in
18 G.S. 18B-903(b1).

19 (7) Not have, whether as an individual or as an officer, director,
20 shareholder, or manager of a corporate permittee, an unsatisfied
21 outstanding final judgment that was entered against him in an action
22 under Article 1A of this Chapter.

23 To avoid undue hardship, however, the Commission may decline to take action under
24 G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

25 (b) Definition of Conviction. – A person has been "convicted" for the purposes of
26 subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo
27 contendere, and judgment has been entered against him. A felony conviction in another
28 jurisdiction shall disqualify a person from being eligible to receive or hold an ABC
29 permit if his conduct would also constitute a felony in North Carolina. A conviction of
30 an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall
31 disqualify a person from being eligible to receive or hold an ABC permit if his conduct
32 would constitute an offense in North Carolina, unless the Commission determines that
33 under North Carolina procedure judgment would not have been entered under the same
34 circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if
35 his conduct would be grounds for revocation in North Carolina.

36 (c) Who Must Qualify; Exceptions. – For an ABC permit to be issued to and held
37 for a business, each of the following persons associated with that business must qualify
38 under subsection (a):

39 (1) The owner of a sole proprietorship;

40 (2) Each member of a firm, association or general partnership;

41 (2a) Each general partner in a limited partnership;

42 (2b) Each manager and any member with a twenty-five percent (25%) or
43 greater interest in a limited liability company;

1 (3) Each officer, director and owner of twenty-five percent (25%) or more
2 of the stock of a corporation except that the requirement of subdivision
3 (a)(1) does not apply to such an officer, director, or stockholder unless
4 he is a manager or is otherwise responsible for the day-to-day
5 operation of the business;

6 (4) The manager of an establishment operated by a corporation other than
7 an establishment with only off-premises malt beverage, off-premises
8 unfortified wine, or off-premises fortified wine permits;

9 (5) Any manager who has been empowered as attorney-in-fact for a
10 nonresident individual or partnership.

11 (d) Manager of Off-Premises Establishment. – Although he need not otherwise
12 meet the requirements of this section, the manager of an establishment operated by a
13 corporation and holding off-premises permits for malt beverages, unfortified wine, or
14 fortified wine shall be at least 19 years old and shall meet the requirements of
15 subdivisions (3), (4), (5), and (6) of subsection (a).

16 (e) Convention Centers. – With the approval of the Commission, the manager of
17 a convention center may contract with another person to provide food and beverages at
18 conventions and banquets at the convention center, and that person may engage in the
19 activities authorized by the convention center's permit, under conditions set by the
20 Commission. The person with whom the convention center contracts must meet the
21 qualifications of this section.

22 (f) Definition of Manager. – For purposes of this section, a manager is someone
23 who has direct or indirect possession of the power to direct or cause the direction of the
24 management and policies of a permitted establishment."

25 **PART III. STANDARDIZE CRITERIA FOR LAW ENFORCEMENT** 26 **CHECKPOINTS**

27 **SECTION 4.** G.S. 20-16.3A reads as rewritten:

28 "**§ 20-16.3A. ~~Impaired driving checks. Checking Stations and Roadblocks.~~**

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

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

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

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

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

15 (c) Other roadblocks. Law enforcement agencies may conduct any type of
16 checking station or roadblock as long as it is established and operated in accordance
17 with the provision of the United States Constitution and the Constitution of North
18 Carolina. No court shall suppress any evidence or dismiss any case unless the court
19 specifies in writing that there was a substantial and willful violation of the provisions of
20 this section and that such violation was not made in good faith and such violation
21 amounts to a violation of the United States Constitution or the Constitution of North
22 Carolina.

23 ~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to~~
24 ~~request a screening test if, in the course of dealing with a driver under the authority of~~
25 ~~this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol~~
26 ~~screening tests and the results from them are subject to the provisions of subsections (b),~~
27 ~~(c), and (d) of G.S. 20-16.3. This section does not limit the authority of a~~
28 ~~law enforcement officer or agency to conduct a license check independently or in~~
29 ~~conjunction with the impaired driving check, to administer psychophysical tests to~~
30 ~~screen for impairment, or to utilize roadblocks or other types of vehicle checks or~~
31 ~~checkpoints that are consistent with the laws of this State and the Constitution of North~~
32 ~~Carolina and of the United States."~~

33 **PART IV. ADMIT ALCO-SENSOR RESULTS AT TRIAL**

34 **SECTION 5.** G.S. 20-16.3 reads as rewritten:

35 "**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test**
36 **devices and manner of use by ~~Commission for Health Services;~~**
37 **Department of Health and Human Services; use of test results or refusal.**

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

- 41 (1) Reasonable grounds to believe that the driver has consumed alcohol
42 and has:
- 43 a. Committed a moving traffic violation; or
 - 44 b. Been involved in an accident or collision; or

- 1 (2) An articulable and reasonable suspicion that the driver has committed
2 an implied-consent offense under G.S. 20-16.2, and the driver has
3 been lawfully stopped for a driver's license check or otherwise
4 lawfully stopped or lawfully encountered by the officer in the course
5 of the performance of the officer's duties.

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

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

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

22 (d) Use of Screening Test Results or Refusal by Officer. – The results of an
23 alcohol screening test or a driver's refusal to submit may be used by a law-enforcement
24 officer, a court, or an administrative agency in determining if there are reasonable
25 grounds for believing that the driver has committed an implied-consent offense under
26 ~~G.S. 20-16.2~~G.S. 20-16.2, and are admissible in a court or administrative proceeding
27 to prove that the driver had consumed alcohol and that previously consumed alcohol
28 was present in the driver's body, but not to prove a particular alcohol concentration.
29 Negative or low results on the alcohol screening test may be used in factually
30 appropriate cases by the officer, a court, or an administrative agency in determining
31 whether a person's alleged impairment is caused by an impairing substance other than
32 alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test~~
33 ~~may not be admitted in evidence in any court or administrative proceeding."~~

34 **PART V. CLARIFY PER SE OFFENSES**

35 **SECTION 6.** G.S. 20-138.1(a) reads as rewritten:

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

- 38 (1) While under the influence of an impairing substance; or
39 (2) After having consumed sufficient alcohol ~~that he has, that,~~ at any
40 relevant time after the ~~driving, an alcohol concentration of 0.08 or~~
41 ~~more driving, the person submits to a chemical analysis, and the result~~
42 is 0.08 or more."

43 **SECTION 7.** G.S. 20-138.2(a) reads as rewritten:

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

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

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

9 **PART VI. INCREASE/CREATE PENALTY FOR DWI DEATH/INJURY**

10 **SECTION 8.** G.S. 20-141.4 reads as rewritten:

11 **"§ 20-141.4. Felony and misdemeanor death by vehicle.**

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

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

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

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

27 (a4) Aggravated Felony Death by Vehicle. – A person commits the offense of
28 aggravated felony death by vehicle if he unintentionally causes the death of another
29 person while engaged in the offense of impaired driving under G.S. 20-138.1 or
30 G.S. 138.2, the commission of that offense is the proximate cause of the death, and the
31 person has a been convicted of an offense involving impaired driving as defined in
32 G.S. 20-4.01(24a) within seven years of the date of this offense.

33 (a5) Aggravated Felony Serious Injury by Vehicle. – A person commits the
34 offense of aggravated felony serious injury by vehicle if he unintentionally causes
35 serious injury to another person while engaged in the offense of impaired driving under
36 G.S. 20-138.1 or G.S. 20-138.2, the commission of that offense is the proximate cause
37 of the death, and the person has been convicted of an offense involving impaired driving
38 as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

39 (b) Punishments. – Felony death by vehicle is a Class G felony. Aggravated
40 felony death by vehicle is a Class D felony. Felony serious injury by vehicle is a Class
41 H felony. Aggravated felony serious injury by vehicle is a Class E felony. Misdemeanor
42 death by vehicle is a Class 1 misdemeanor.

43 (c) No Double Prosecutions. – No person who has been placed in jeopardy upon
44 a charge of death by vehicle may be prosecuted for the offense of manslaughter arising

1 out of the same death; and no person who has been placed in jeopardy upon a charge of
2 manslaughter may be prosecuted for death by vehicle arising out of the same death."

3 **PART VII. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED**
4 **DRIVING CASES**

5 **SECTION 9.** Chapter 90 of the General Statutes is amended by adding a
6 new section to read:

7 "**§ 90-21.20B. Access to medical information for law enforcement purposes.**

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

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

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

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

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

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

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

28 **PART VIII. DWI TRAINING FOR JUDGES**

29 **SECTION 10.** Chapter 7A of the General Statutes is amended by adding a
30 new section to read:

31 "**§ 7A-10.2. Judicial education requirements.**

32 All justices and judges of the General Court of Justice shall be required to attend
33 continuing judicial education as prescribed by the Supreme Court. At a minimum, every
34 justice and judges shall be required to obtain two hours every two years of continuing
35 judicial education regarding driving while impaired offenses and related issues."

36 **PART IX. DRIVING WHILE LICENSE REVOKED FOR FAILURE TO**
37 **APPEAR IN DRIVING WHILE IMPAIRED**

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

39 "**§ 20-48. Giving of notice.**

40 (a) Whenever the Division is authorized or required to give any notice under this
41 Chapter or other law regulating the operation of vehicles, unless a different method of
42 giving such notice is otherwise expressly prescribed, such notice shall be given either by
43 personal delivery thereof to the person to be so notified or by deposit in the United
44 States mail of such notice in an envelope with postage prepaid, addressed to such person

1 at his address as shown by the records of the Division. The giving of notice by mail is
2 complete upon the expiration of four days after such deposit of such notice. Proof of the
3 giving of notice in either such manner may be made by ~~the certificate of any officer or~~
4 ~~employee of the Division or affidavit of any person over 18 years of age, naming the~~
5 ~~person to whom such notice was given and specifying the time, place, and manner of~~
6 ~~the giving thereof.~~ a notation in the records of the Division that a notice was sent to a
7 particular address and the purpose of the notice. A certified copy of the Division's
8 records may be sent by the Police Information Network, facsimile, or other electronic
9 means. A copy of the Division's records sent under the authority of this section is
10 admissible in evidence in any court or administrative agency and is sufficient evidence
11 to discharge the burden of the person presenting the record that notice was sent to the
12 person named in the record, at the address indicated in the record, and for the purpose
13 indicated in the record. There is no requirement that the actual notice or letter be
14 produced.

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

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

22 **SECTION 12.** G.S. 20-28 reads as rewritten:

23 "**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or**
24 **while disqualified.**

25 (a) Driving While License Revoked. – Except as provided in subsection (a1) of
26 this section, any person whose drivers license has been revoked who drives any motor
27 vehicle upon the highways of the State while the license is revoked is guilty of a Class 1
28 misdemeanor. Upon conviction, the person's license shall be revoked for an additional
29 period of one year for the first offense, two years for the second offense, and
30 permanently for a third or subsequent offense.

31 The restorer of a revoked drivers license who operates a motor vehicle upon the
32 highways of the State without maintaining financial responsibility as provided by law
33 shall be punished as for driving without a license.

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

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

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

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

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

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

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

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

22 (c) When Person May Apply for License. – A person whose license has been
23 revoked under subsection (a) or (a1) of this section for one year may apply for a license
24 after 90 days. A person whose license has been revoked under subsection (a2) of this
25 section for one year may apply for a license after one year. A person whose license has
26 been revoked under this section for two years may apply for a license after 12 months.
27 A person whose license has been revoked under this section permanently may apply for
28 a license after three years. Upon the filing of an application the Division may, with or
29 without a hearing, issue a new license upon satisfactory proof that the former licensee
30 has not been convicted of a moving violation under this Chapter or the laws of another
31 state, a violation of any provision of the alcoholic beverage laws of this State or another
32 state, or a violation of any provisions of the drug laws of this State or another state when
33 any of these violations occurred during the revocation period. The Division may impose
34 any restrictions or conditions on the new license that the Division considers appropriate
35 for the balance of the revocation period. When the revocation period is permanent, the
36 restrictions and conditions imposed by the Division may not exceed three years. If the
37 person was revoked pursuant to subsection (a1) of this section and the person drove
38 while his license was revoked for an impaired driving revocation, or the revocation was
39 for violating subsection (a2) of this section and the revocation was for more than one
40 year, the Division may only conditionally restore the license in accordance with this
41 subsection and shall require at a minimum as a condition of restoration that the driver
42 obtain a substance abuse assessment prior to issuance of a license and show proof of
43 financial responsibility. If the substance abuse assessment recommends education or
44 treatment, the person must complete the education or treatment within the time limits

1 specified. If the assessment determines that the person abuses alcohol, then the Division
2 shall require the person to install and use an ignition interlock on any vehicles that are to
3 be driven. If the person violates any condition of the restoration or is convicted of any
4 moving offense in this or another state or the alcoholic beverage or control substance
5 laws of this or any other state, the Division shall cancel the conditionally restored
6 license and impose the remaining revocation period. The Division shall also cancel the
7 registration on any vehicles and shall require the driver to surrender all current
8 registration plates and cards.

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

15 (1) For a first offense of driving while disqualified, a person is
16 disqualified for a period equal to the period for which the person was
17 disqualified when the offense occurred.

18 (2) For a second offense of driving while disqualified, a person is
19 disqualified for a period equal to two times the period for which the
20 person was disqualified when the offense occurred.

21 (3) For a third offense of driving while disqualified, a person is
22 disqualified for life.

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

28 **PART X. MODIFY SENTENCING STATUTES TO COMPLY WITH** 29 **BLAKELY V. WASHINGTON**

30 **SECTION 13.** G.S. 20-179(a) reads as rewritten:

31 "(a) Sentencing Hearing Required. – After a conviction for impaired driving under
32 G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A,
33 or a second or subsequent conviction under G.S. 20-138.2B, or when any of those
34 offenses are remanded back to district court after an appeal to superior court, the judge
35 must hold a sentencing hearing to determine whether there are aggravating or mitigating
36 factors that affect the sentence to be imposed. Before the hearing the prosecutor must
37 make all feasible efforts to secure the defendant's full record of traffic convictions, and
38 must present to the judge that record for consideration in the hearing. Upon request of
39 the defendant, the prosecutor must furnish the defendant or his attorney a copy of the
40 defendant's record of traffic convictions at a reasonable time prior to the introduction of
41 the record into evidence. In addition, the prosecutor must present all other appropriate
42 grossly aggravating and aggravating factors of which he is aware, and the defendant or
43 his attorney may present all appropriate mitigating factors. In every instance in which a

1 valid chemical analysis is made of the defendant, the prosecutor must present evidence
2 of the resulting alcohol concentration."

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

4 "(a1) Sentencing Hearing in Superior Court. – Upon a determination of guilt by the
5 jury, the court shall submit to the same jury or a different jury if using the same jury is
6 impracticable, any grossly aggravating or aggravating factors supported by the
7 evidence. Prior to submitting these factors to the jury, the court shall allow the State and
8 the defendant to present evidence to the jury that is relevant to proving any grossly
9 aggravating factors that had not been presented to the jury during the guilt phase of the
10 trial. Provided, however, the court is not required to allow proof of or submit to the jury
11 any grossly aggravating or aggravating factor that is a conviction of a crime or
12 determination of responsibility for an infraction or that is stipulated to by the
13 defendant."

14 **SECTION 15.** G.S. 20-179(c) reads as rewritten:

15 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing
16 hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~judge,
17 or the jury in superior court, must first determine whether there are any grossly
18 aggravating factors in the case. The judge must impose the Level One punishment under
19 subsection (g) of this section if ~~the judge determines it is determined~~it is determined that two or more
20 grossly aggravating factors apply. The judge must impose the Level Two punishment
21 under subsection (h) of this section if ~~the judge determines it is determined~~it is determined that only one
22 of the grossly aggravating factors applies. The grossly aggravating factors are:

- 23 (1) A prior conviction for an offense involving impaired driving if:
24 a. The conviction occurred within seven years before the date of
25 the offense for which the defendant is being sentenced; or
26 b. The conviction occurs after the date of the offense for which the
27 defendant is presently being sentenced, but prior to or
28 contemporaneously with the present sentencing.
29 Each prior conviction is a separate grossly aggravating factor.
- 30 (2) Driving by the defendant at the time of the offense while his driver's
31 license was revoked under G.S. 20-28, and the revocation was an
32 impaired driving revocation under G.S. 20-28.2(a).
- 33 (3) Serious injury to another person caused by the defendant's impaired
34 driving at the time of the offense.
- 35 (4) Driving by the defendant while a child under the age of 16 years was
36 in the vehicle at the time of the offense.

37 In imposing a Level One or Two punishment, the judge may consider the
38 aggravating and mitigating factors in subsections (d) and (e) in determining the
39 appropriate sentence. If there are no grossly aggravating factors in the case, the judge
40 must weigh all aggravating and mitigating factors and impose punishment as required
41 by subsection (f)."

42 **SECTION 16.** G.S. 20-179(d) reads as rewritten:

43 "(d) Aggravating Factors to Be Weighed. – The ~~judge~~judge, or the jury in
44 superior court, must determine before sentencing under subsection (f) whether any of

1 the aggravating factors listed below apply to the defendant. The judge must weigh the
2 seriousness of each aggravating factor in the light of the particular circumstances of the
3 case. The factors are:

- 4 (1) Gross impairment of the defendant's faculties while driving or an
5 alcohol concentration of 0.16 or more within a relevant time after the
6 driving.
- 7 (2) Especially reckless or dangerous driving.
- 8 (3) Negligent driving that led to a reportable accident.
- 9 (4) Driving by the defendant while his driver's license was revoked.
- 10 (5) Two or more prior convictions of a motor vehicle offense not
11 involving impaired driving for which at least three points are assigned
12 under G.S. 20-16 or for which the convicted person's license is subject
13 to revocation, if the convictions occurred within five years of the date
14 of the offense for which the defendant is being sentenced, or one or
15 more prior convictions of an offense involving impaired driving that
16 occurred more than seven years before the date of the offense for
17 which the defendant is being sentenced.
- 18 (6) Conviction under G.S. 20-141.5 of speeding by the defendant while
19 fleeing or attempting to elude apprehension.
- 20 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least
21 30 miles per hour over the legal limit.
- 22 (8) Passing a stopped school bus in violation of G.S. 20-217.
- 23 (9) Any other factor that aggravates the seriousness of the offense.

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

26 **SECTION 17.** G.S. 20-179(f) reads as rewritten:

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

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

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

6 **PART XI. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR**
7 **APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT**

8 **SECTION 18.** G.S. 15A-1420(a) reads as rewritten:

9 "(a) Form, Service, Filing.

10 (1) A motion for appropriate relief must:

11 a. Be made in writing unless it is made:

12 1. In open court;

13 2. Before the judge who presided at trial;

14 3. Before the end of the session if made in superior court;
15 and

16 4. Within 10 days after entry of judgment;

17 b. State the grounds for the motion;

18 c. Set forth the relief sought; and

19 d. Be timely filed.

20 (2) A written motion for appropriate relief must be served in the manner
21 provided in G.S. 15A-951(b). When the written motion is made more
22 than 10 days after entry of judgment, service of the motion and a
23 notice of hearing must be made not less than five working days prior to
24 the date of the hearing. When a motion for appropriate relief is
25 permitted to be made orally the court must determine whether the
26 matter may be heard immediately or at a later time. If the opposing
27 party, or his counsel if he is represented, is not present, the court must
28 provide for the giving of adequate notice of the motion and the date of
29 hearing to the opposing party, or his counsel if he is represented by
30 counsel.

31 (3) A written motion for appropriate relief must be filed in the manner
32 provided in G.S. 15A-951(c).

33 (4) An oral or written motion for appropriate relief may not be granted in
34 District Court without the signature of the District Attorney, indicating
35 that the State has had an opportunity to consent or object to the
36 motion. However, the court may grant a motion for appropriate belief
37 without the District Attorney's signature 10 business days after the
38 District Attorney has been notified in open court of the motion, or
39 served with the motion pursuant to G.S. 15A-951(c)."

40 **PART XII. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF**
41 **AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW**
42 **ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS**
43 **CONSUMED ALCOHOL**

44 **SECTION 19.** G.S. 18B-302 reads as rewritten:

1 **"§ 18B-302. Sale to or purchase by underage persons.**

2 (a) Sale. – It shall be unlawful for any person to:

3 (1) Sell or give malt beverages or unfortified wine to anyone less than 21
4 years old; or

5 (2) Sell or give fortified wine, spirituous liquor, or mixed beverages to
6 anyone less than 21 years old.

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

8 (1) A person less than 21 years old to purchase, to attempt to purchase, or
9 to possess malt beverages or unfortified wine; or

10 (2) A person less than 21 years old to purchase, to attempt to purchase, or
11 to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~
12 beverages; or

13 (3) A person less than 21 years old to consume any alcoholic beverage.

14 (c) Aider and Abettor.

15 (1) By Underage Person. – Any person who is under the lawful age to
16 purchase and who aids or abets another in violation of subsection (a)
17 or (b) of this section shall be guilty of a Class 2 misdemeanor.

18 (2) By Person over Lawful Age. – Any person who is over the lawful age
19 to purchase and who aids or abets another in violation of subsection (a)
20 or (b) of this section shall be guilty of a Class 1 misdemeanor.

21 (d) Defense. – It shall be a defense to a violation of subsection (a) of this section
22 if the seller:

23 (1) Shows that the purchaser produced a driver's license, a special
24 identification card issued under G.S. 20-37.7, a military identification
25 card, or a passport, showing his age to be at least the required age for
26 purchase and bearing a physical description of the person named on
27 the card reasonably describing the purchaser; or

28 (2) Produces evidence of other facts that reasonably indicated at the time
29 of sale that the purchaser was at least the required age.

30 (e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter
31 or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain
32 or attempt to obtain alcoholic beverages, or to obtain or attempt to obtain permission to
33 purchase alcoholic beverages, in violation of subsection (b) of this section, by using or
34 attempting to use any of the following:

35 (1) A fraudulent or altered drivers license.

36 (2) A fraudulent or altered identification document other than a drivers
37 license.

38 (3) A drivers license issued to another person.

39 (4) An identification document other than a drivers license issued to
40 another person.

41 (5) Any other form or means of identification that indicates or symbolizes
42 that the person is not prohibited from purchasing or possessing
43 alcoholic beverages under this section.

1 (f) Allowing Use of Identification. – It shall be unlawful for any person to permit
2 the use of the person's drivers license or any other form of identification of any kind
3 issued or given to the person by any other person who violates or attempts to violate
4 subsection (b) of this section.

5 (g) Conviction Report Sent to Division of Motor Vehicles. – The court shall file a
6 conviction report with the Division of Motor Vehicles indicating the name of the person
7 convicted and any other information requested by the Division if the person is convicted
8 of:

9 (1) A violation of subsection (e) or (f) of this section; or

10 (2) A violation of subdivision (c)(1) of this section; or

11 (3) A violation of subsection (b) of this section, if the violation occurred
12 while the person was purchasing or attempting to purchase an
13 alcoholic beverage.

14 Upon receipt of a conviction report, the Division shall revoke the person's license as
15 required by G.S. 20-17.3.

16 (h) Handling in Course of Employment. – Nothing in this section shall be
17 construed to prohibit an underage person from selling, transporting, possessing or
18 dispensing alcoholic beverages in the course of employment, if the employment of the
19 person for that purpose is lawful under applicable youth employment statutes and
20 Commission rules.

21 ~~(i) Purchase or Possession~~ Purchase, Possession, or Consumption by 19 or
22 20-Year old.-A violation of subdivision (b)(1) or (b)(3) of this section by a person who
23 is 19 or 20 years old is a Class 3 misdemeanor.

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

32 **PART XIII. ALLOW CREDIT ONLY FOR HOURS SERVED FOR WEEKEND** 33 **JAIL TIME**

34 **SECTION 20.** G.S. 20-179(s) reads as rewritten:

35 "(s) Method of Serving Sentence. – The judge in his discretion may order a term
36 of imprisonment or ~~community service~~ to be served on weekends, even if the sentence
37 cannot be served in consecutive sequence. However, if the defendant is ordered to a
38 term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment,
39 the defendant shall be required to serve 48 continuous hours of imprisonment to be
40 given credit for time served. Credit for any jail time shall only be given hour for hour
41 for time actually served. The jail shall maintain a log showing number of hours served.
42 If the defendant appears at the jail and has remaining in his body any alcohol as shown
43 by an alcohol screening device or controlled substance previously consumed, unless
44 lawfully obtained and taken in therapeutically appropriate amounts, the defendant shall

1 be refused entrance and shall be reported back to court. If, after a hearing, the court
2 determines that when the defendant reported to jail, the defendant had remaining in his
3 body any alcohol previously consumed as shown by an alcohol screening device or
4 controlled substance previously consumed, unless lawfully obtained and taken in
5 therapeutically appropriate amounts, the defendant must be ordered to serve his jail time
6 immediately and shall not be eligible to serve jail time on weekends.

7 **PART XIV. REQUIRE DWI OFFENDERS ON SUPERVISED PROBATION TO**
8 **SUBMIT TO TESTING FOR ALCOHOL OR DRUGS**

9 **SECTION 21.** G.S. 20-179 is amended by adding a new subsection to read:

10 "(u) Mandatory Terms of Supervised Probation. – When placing a defendant
11 convicted of an offense of impaired driving on supervised probation, the judge shall
12 require as special conditions of probation that the defendant not use, possess, or control
13 any illegal or controlled substance, and submit to any physical, chemical, blood or
14 breath test, or to a urinalysis for the detection of alcohol or controlled substances."

15 **PART XV. EFFECTIVE DATE**

16 **SECTION 22.** Section 3 of this act becomes effective December 1, 2005,
17 and applies to all permit applications and renewals on or after that date. Section 10 of
18 this act becomes effective January 1, 2006. Sections 13 through 17 are effective when
19 they become law. Section 18 becomes effective December 1, 2005, and applies to all
20 motions filed on or after that date. Section 20 of this act is effective when it becomes
21 law. The remainder of this act becomes effective December 1, 2005, and applies to
22 offenses committed on or after that date.