

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE DRS85233-RK-32 (03/09)**

Short Title: DWI Technical Corrections.

(Public)

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Sponsors: Senator Rand.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE  
LAWS PERTAINING TO IMPAIRED DRIVING OFFENSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-4.01(24a)b. reads as rewritten:

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

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

b. ~~Death by vehicle under~~ Any offense set forth under  
G.S. 20-141.4 when conviction is based upon impaired driving  
or a substantially similar offense under previous law."

**SECTION 2.** G.S. 20-17(a)(9) reads as rewritten:

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

...

(9) ~~Death by vehicle as defined in G.S. 20-141.4.~~ Any offense set forth  
under G.S. 20-141.4."

**SECTION 3.** G.S. 20-139.1(b6) reads as rewritten:

"(b6) The Department of Health and Human Services shall post on a Web page ~~and~~  
~~file with the clerk of superior court in each county~~ a list of all persons who have a  
permit authorizing them to perform chemical analyses, the types of analyses that they  
can perform, the instruments that each person is authorized to operate, the effective  
dates of the permits, and the records of preventive maintenance. A court or  
administrative agency shall take judicial notice of whether, at the time of the chemical  
analysis, the chemical analyst possessed a permit authorizing the chemical analyst to  
perform the chemical analysis administered and whether preventive maintenance had  
been performed on the breath-testing instrument in accordance with the Department's  
rules."

1           **SECTION 4.** G.S. 20-28(c4) reads as rewritten:

2           "(c4) For a conditional restoration under subsection (c3) of this section, the  
3 Division shall require at a minimum that the driver obtain a substance abuse assessment  
4 prior to issuance of a license and show proof of financial responsibility. If the substance  
5 abuse assessment recommends education or treatment, the person must complete the  
6 education or treatment within the time limits specified. If the assessment determines that  
7 the person abuses alcohol, the Division shall require the person to install and use an  
8 ignition interlock system on any vehicles that are to be driven by that person for the  
9 period of time ~~set forth in G.S. 20-17.8(e).~~that the conditional restoration is active."

10           **SECTION 5.** Section 33 of S.L. 2006-253 reads as rewritten:

11           "**SECTION 33.** Sections 20.1, 20.2, and the requirement that the Administrative  
12 Office of the Courts electronically record certain data contained in subsection (c) of  
13 G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next  
14 rewrite of the superior court clerks system by the Administrative Office of the Courts.  
15 Section 22.4 becomes effective December 1, 2006. The remainder of this act becomes  
16 effective December 1, 2006, and applies to offenses committed on or after that date."

17           **SECTION 6.** G.S. 20-179(c) reads as rewritten:

18           "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing  
19 hearing, based upon the evidence presented at trial and in the hearing, the judge, or the  
20 jury in superior court, must first determine whether there are any grossly aggravating  
21 factors in the case. Whether a prior conviction exists under subdivision (1) of this  
22 ~~subsection~~subsection, or whether a conviction exists under subdivision (d)(5) of this  
23 section, shall be a ~~matter~~matters to be determined by the judge, and not the jury, in  
24 district or superior court. If the sentencing hearing is for a case remanded back to  
25 district court from superior court, the judge shall determine whether the defendant has  
26 been convicted of any offense that was not considered at the initial sentencing hearing  
27 and impose the appropriate sentence under this section. The judge must impose the  
28 Level One punishment under subsection (g) of this section if it is determined that two or  
29 more grossly aggravating factors apply. The judge must impose the Level Two  
30 punishment under subsection (h) of this section if it is determined that only one of the  
31 grossly aggravating factors applies. The grossly aggravating factors are:

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

- 33           a. The conviction occurred within seven years before the date of  
34 the offense for which the defendant is being sentenced; or  
35           b. The conviction occurs after the date of the offense for which the  
36 defendant is presently being sentenced, but prior to or  
37 contemporaneously with the present sentencing.  
38           c. The conviction occurred in district court; the case was appealed  
39 to superior court; the appeal has been withdrawn, or the case  
40 has been remanded back to district court; and a new sentencing  
41 hearing has not been held pursuant to G.S. 20-38.7.

42           Each prior conviction is a separate grossly aggravating factor."

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

1       "(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture;  
2 Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle  
3 driven by an impaired driver at the time of the offense becomes subject to an order of  
4 forfeiture. The determination may be made at any of the following times:

- 5           (1) A sentencing hearing for the underlying offense involving impaired  
6 driving.
- 7           (2) A separate hearing after conviction of the defendant.
- 8           (3) A forfeiture hearing held at least 60 days after the defendant failed to  
9 appear at the scheduled trial for the underlying offense, and the  
10 defendant's order of arrest for failing to appear has not been set aside.

11 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
12 evidence shows that the defendant is guilty of an underlying offense ~~involved~~ involving  
13 impaired driving, and that the defendant's license was revoked pursuant to an impaired  
14 driving license revocation as defined in subsection (a) of this section."

15       **SECTION 8.** G.S. 20-28.2(b)(1) reads as rewritten:

16       "(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No  
17 License and No Insurance. – A judge may determine whether the vehicle driven by an  
18 impaired driver at the time of the offense becomes subject to an order of forfeiture. The  
19 determination may be made at any of the following times:

- 20           (1) A sentencing hearing for the underlying offense involving impaired  
21 driving.
- 22           (2) A separate hearing after conviction of the defendant.
- 23           (3) A forfeiture hearing held at least 60 days after the defendant failed to  
24 appear at the scheduled trial for the underlying offense, and the  
25 defendant's order of arrest for failing to appear has not been set aside.

26 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
27 evidence shows that the defendant is guilty of an underlying offense ~~involved~~ involving  
28 impaired driving, and: (i) the defendant was driving without a valid drivers license, and  
29 (ii) the defendant was not covered by an automobile liability policy.

30       ...."

31       **SECTION 9.** G.S. 20-38.7 reads as rewritten:

32       "**§ 20-38.7. Appeal to superior court.**

33       (a) The State may appeal to superior court any district court preliminary  
34 determination granting a motion to suppress or dismiss. If there is a dispute about the  
35 findings of fact, the superior court shall not be bound by the findings of the district court  
36 but shall determine the matter de novo. Any further appeal shall be governed by Article  
37 90 of Chapter 15A of the General Statutes.

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

40       (c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent  
41 offense that is first tried in district court and that is appealed to superior court by the  
42 defendant for a trial de novo as a result of a conviction, the sentence imposed by the  
43 district court is vacated upon giving notice of appeal. The case shall only be remanded  
44 back to district court with the consent of the prosecutor and the superior court. When an

1 appeal is withdrawn or a case is remanded back to district court, the district court shall  
2 hold a new sentencing hearing and shall consider any new convictions. ~~convictions and,~~  
3 ~~if the defendant has any pending charges of offenses involving impaired driving,~~ shall  
4 delay sentencing in the remanded case until all cases are resolved.

5 (d) Following a new sentencing hearing in district court pursuant to subsection  
6 (c) of this section, a defendant has a right of appeal to the superior court only if:

7 (1) The sentence is based upon additional facts considered by the district  
8 court that were not considered in the previously vacated judgment, and

9 (2) The defendant would be entitled to a jury determination of those facts  
10 pursuant to G.S. 20-179.

11 A defendant who has a right of appeal under this subsection, gives notice of appeal, and  
12 subsequently withdraws the appeal shall have the sentence imposed by the district court  
13 reinstated by the district court as a final judgment that is not subject to further appeal."

14 **SECTION 10.** G.S. 20-17.8(b)(3) reads as rewritten:

15 "(3) An alcohol concentration restriction as follows:

- 16 a. If the ignition interlock system is required pursuant only to  
17 subdivision (a)(1) of this section, a requirement that the person  
18 not drive with an alcohol concentration of 0.04 or greater;
- 19 b. If the ignition interlock system is required pursuant to  
20 subdivision (a)(2) of this section, a requirement that the person  
21 not drive with an alcohol concentration of greater than 0.00; or
- 22 c. If the ignition interlock system is required pursuant to  
23 subdivision (a)(1) of this section, and the person has also been  
24 convicted, based on the same set of circumstances, of: (i)  
25 driving while impaired in a commercial vehicle, G.S. 20-138.2,  
26 (ii) driving while less than 21 years old after consuming alcohol  
27 or drugs, G.S. 20-138.3, (iii) ~~felony death by vehicle,~~  
28 G.S. 20-141.4(a1), a violation of G.S. 20-141.4, or (iv)  
29 manslaughter or negligent homicide resulting from the  
30 operation of a motor vehicle when the offense involved  
31 impaired driving, a requirement that the person not drive with  
32 an alcohol concentration of greater than 0.00."

33 **SECTION 11.** G.S. 20-19(c3)(4) reads as rewritten:

34 "(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23  
35 or G.S. 20-23.2 when the offense for which the person's license was  
36 revoked prohibits substantially similar conduct which if committed in  
37 this State would result in a conviction of driving while impaired in a  
38 commercial motor vehicle, G.S. 20-138.2, driving while less than 21  
39 years old after consuming alcohol or drugs, G.S. 20-138.3, ~~felony~~  
40 ~~death by vehicle,~~ G.S. 20-141.4(a1), a violation of G.S. 20-141.4, or  
41 manslaughter or negligent homicide resulting from the operation of a  
42 motor vehicle when the offense involved impaired driving, that the  
43 person not operate vehicle with an alcohol concentration of greater  
44 than 0.00 at any relevant time after the driving.

1           **SECTION 12.** G.S. 20-19(d) reads as rewritten:

2           "(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person  
3 has another offense involving impaired driving for which he has been convicted, which  
4 offense occurred within three years immediately preceding the date of the offense for  
5 which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of  
6 G.S. 20-141.4(a3), the period of revocation is four years, and this period may be  
7 reduced only as provided in this section. The Division may conditionally restore the  
8 person's license after it has been revoked for at least two years under this subsection if  
9 he provides the Division with satisfactory proof that:

10           (1) He has not in the period of revocation been convicted in North  
11 Carolina or any other state or federal jurisdiction of a motor vehicle  
12 offense, an alcoholic beverage control law offense, a drug law offense,  
13 or any other criminal offense involving the possession or consumption  
14 of alcohol or drugs; and

15           (2) He is not currently an excessive user of alcohol or drugs.

16 If the Division restores the person's license, it may place reasonable conditions or  
17 restrictions on the person for the duration of the original revocation period."

18           **SECTION 13.** G.S. 20-19(e) reads as rewritten:

19           "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person  
20 has two or more previous offenses involving impaired driving for which he has been  
21 convicted, and the most recent offense occurred within the five years immediately  
22 preceding the date of the offense for which his license is being revoked, or (ii)  
23 G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.  
24 The Division may, however, conditionally restore the person's license after it has been  
25 revoked for at least three years under this subsection if he provides the Division with  
26 satisfactory proof that:

27           (1) In the three years immediately preceding the person's application for a  
28 restored license, he has not been convicted in North Carolina or in any  
29 other state or federal court of a motor vehicle offense, an alcohol  
30 beverage control law offense, a drug law offense, or any criminal  
31 offense involving the consumption of alcohol or drugs; and

32           (2) He is not currently an excessive user of alcohol or drugs.

33 If the Division restores the person's license, it may place reasonable conditions or  
34 restrictions on the person for any period up to ~~three~~five years from the date of  
35 restoration."

36           **SECTION 14.** G.S. 20-19(i) reads as rewritten:

37           "~~(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17~~  
38 G.S. 20-17(1) or G.S. 20-17(9), and the offense is one involving impaired driving and a  
39 fatality, the revocation is permanent. The Division may, however, conditionally restore  
40 the person's license after it has been revoked for at least ~~three years in accordance with~~  
41 the procedure in subsection (e) of this sectionfive years under this subsection if he  
42 provides the Division with satisfactory proof that:

43           (1) In the five years immediately preceding the person's application for a  
44 restored license, he has not been convicted in North Carolina or in any

1            other state or federal court of a motor vehicle offense, an alcohol  
2            beverage control law offense, a drug law offense, or any criminal  
3            offense involving the consumption of alcohol or drugs; and

4            (2) He is not currently an excessive user of alcohol or drugs.

5 If the Division restores the person's license, it may place reasonable conditions or  
6 restrictions on the person for any period up to seven years from the date of restoration."

7            **SECTION 15.** G.S. 20-141.4(a6) reads as rewritten:

8            "(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of  
9 repeat felony death by vehicle if:

10            (1) The person commits an offense under subsection (a1) or subsection  
11 (a5) of this section; and

12            (2) The person has a previous conviction under:

13            a. Subsection (a1) of this section;

14            b. Subsection (a5) of this section; or

15            c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was  
16 the unintentional death of another person while engaged in the  
17 offense of impaired driving under G.S. 20-138.1 or  
18 G.S. 20-138.2.

19            The pleading and proof of previous convictions shall be in accordance  
20 with the provisions of G.S. 15A-928.

21            A person convicted under this subsection shall be subject to the same sentence as if  
22 the person had been convicted of second degree murder, who commits an offense under  
23 Subsection (a1) or Subsection (a5) of this section, and who has a previous conviction  
24 under

25            (1) Subsection (a1) of this section; or

26            (2) Subsection (a5) of this section; or

27            (3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as  
28 determined from the face of the indictment, was the unintentional  
29 death of another person while engaged in the offense of impaired  
30 driving under GS 20-138.1 or GS 20-138.2,

31 shall be subject to the same sentence as if the person had been convicted of second  
32 degree murder."

33            **SECTION 16.** G.S. 20-138.4(a) reads as rewritten:

34            "**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
35 **involving impaired driving in implied-consent case.**

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

40            (1) Enters a voluntary dismissal; or

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

42            (3) Substitutes another charge, by statement of charges or otherwise, if the  
43 substitute charge carries a lesser mandatory minimum punishment or is

1                   not an offense involving impaired driving; a case subject to the implied  
2                   consent law; or  
3           (4)       Otherwise takes a discretionary action that effectively dismisses or  
4                   reduces the original charge in ~~the a case involving impaired~~  
5                   ~~driving~~ subject to the implied consent law.

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

8                   **SECTION 17.** This act is effective when it becomes law. Prosecutions for  
9   offenses committed before the effective date of this act are not abated or affected by this  
10   act, and the statutes that would be applicable but for this act remain applicable to those  
11   prosecutions.