

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2005**

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**D**

**HOUSE DRH60261-LK-138 (3/15)**

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

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Sponsors: Representative Hackney.

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S  
3 TASK FORCE ON DRIVING WHILE IMPAIRED.

4 The General Assembly of North Carolina enacts:

5 **PART I. REGULATING MALT BEVERAGE KEGS**

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

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

- 12 (1) A maximum of 100 liters of unfortified wine;  
13 (2) A maximum of 40 liters of either fortified wine or spirituous liquor, or  
14 40 liters of the two combined; or  
15 (3) The amount of fortified wine or spirituous liquors specified on the  
16 purchase-transportation permit for a mixed beverage permittee.  
17 (4) A keg of malt beverage for off-premises consumption."

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

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

- 20 (1) Not more than 80 liters of malt beverages, except draft malt beverages  
21 in kegs for off-premises consumption. For purchase of a keg of malt  
22 beverages for off-premises consumption the permit required by  
23 G.S. 18B-403(a)(4) must first be obtained;  
24 (2) Any amount of draft malt beverages by a permittee in kegs for  
25 on-premise consumption;  
26 (3) Not more than 50 liters of unfortified wine;

- 1 (4) Not more than eight liters of either fortified wine or spirituous liquor,  
2 or eight liters of the two combined."

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

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

10 **"§ 20-5A. Purpose of this chapter.**

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

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

23 **"§ 20-16.5. Immediate civil license revocation for certain persons charged with**  
24 **implied-consent offenses.**

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

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

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

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

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

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

1 and that he is validly licensed; the filing of the affidavit constitutes a  
2 surrender of the person's license.

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

6 (1) A ~~charging-law enforcement~~ officer has reasonable grounds to believe  
7 that the person has committed an offense subject to the  
8 implied-consent provisions of ~~G.S. 20-16.2~~G.S. 20-16.2.

9 (2) The person is charged with that offense as provided in  
10 ~~G.S. 20-16.2(a)~~G.S. 20-16.2(a).

11 (3) The charging officer and the chemical analyst comply with the  
12 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's  
13 submission to or procuring a chemical ~~analysis~~analysis.

14 (4) The person ~~following~~ following apply to the person:

15 a. ~~Willfully—He or she~~ refuses to submit to the chemical  
16 ~~analysis~~analysis.

17 b. ~~Has—He or she has~~ an alcohol concentration of 0.08 or more  
18 within a relevant time after the ~~driving~~driving.

19 c. ~~Has—He or she has~~ an alcohol concentration of 0.04 or more at  
20 any relevant time after the driving of a commercial motor  
21 ~~vehicle~~vehicle.

22 d. ~~Has—He or she has~~ any alcohol concentration at any relevant  
23 time after the driving and the person is under 21 years of age.

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

27 ~~(1) The person requests a precharge chemical analysis pursuant to~~  
28 ~~G.S. 20-16.2(i); and~~

29 ~~(2) The person has:~~

30 a. ~~An alcohol concentration of 0.08 or more at any relevant time~~  
31 ~~after driving;~~

32 b. ~~An alcohol concentration of 0.04 or more at any relevant time~~  
33 ~~after driving a commercial motor vehicle; or~~

34 e. ~~Any alcohol concentration at any relevant time after driving and~~  
35 ~~the person is under 21 years of age; and~~

36 ~~(3) The person is charged with an implied consent offense.~~

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

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

3 (1) The judicial official conducting the initial appearance on the  
4 underlying criminal charge if:

5 a. No revocation report has previously been filed; and

6 b. At the time of the initial appearance the results of the chemical  
7 analysis, if administered, or the reports indicating a refusal, are  
8 available.

9 (2) A judicial official conducting any other proceeding relating to the  
10 underlying criminal charge at which the person is present, if no report  
11 has previously been filed.

12 (3) ~~The clerk of superior court in the county in which the underlying~~  
13 ~~criminal charge has been brought~~ Division if subdivisions (1) and (2)  
14 are not applicable at the time the charging officer must file the report.

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

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

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

1 If at the time of the current offense, the person has one or more pending offenses for  
2 which his license had been or is revoked under this section, the ~~The~~ revocation shall  
3 remain in effect until a final judgment, including all appeals, has been entered for the  
4 current offense and for all pending offenses. In no event may the period of revocation  
5 for the current offense be less than the applicable period of revocation in subdivision  
6 (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the  
7 person of his right to a hearing as specified in subsection (g), and that the revocation  
8 remains in effect pending the hearing. An officer serving a pick-up order under this  
9 subsection shall return the order to the court indicating the date it was served or that he  
10 was unable to serve the order. If the license was surrendered, the officer serving the  
11 order shall deposit it with the clerk within three days of the surrender.

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

1 ~~final and may not be appealed in the General Court of Justice.~~ may be appealed to  
2 Superior Court on the record. If the hearing is not held and completed ~~within three~~  
3 ~~working days of the written request for a hearing before a magistrate or within five~~  
4 ~~working days of the written request for a hearing before a district court judge, the~~  
5 ~~judicial official must enter an order rescinding the revocation,~~ a temporary drivers  
6 license may be issued until the hearing can be held, unless the person contesting the  
7 revocation contributed to the delay in completing the hearing. If the person requesting  
8 the hearing fails to appear at the hearing or any rescheduling thereof after having been  
9 properly notified, he forfeits his right to a hearing.

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

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

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

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

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

40 (j) Costs. – Unless ~~the magistrate or judge orders the revocation rescinded,~~ a  
41 person whose license is revoked under this section ~~must~~ shall pay a fee of fifty dollars  
42 (\$50.00) as costs for the action before the person's license may be returned under  
43 subsection ~~(h).~~ (h) or when the driver obtains a limited driving privilege pursuant to  
44 G.S. 20-11.1. The costs collected under this section shall be credited to the General

1 Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide  
2 chemical alcohol testing program administered by the Injury Control Section of the  
3 Department of Health and Human Services.

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

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

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

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

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

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

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

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

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

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

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

38 (o) Designation of Proceedings. – Proceedings under this section are civil  
39 actions, and ~~must~~ shall be identified by the caption "In the Matter of \_\_\_" and filed as  
40 directed by the Administrative Office of the Courts.

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



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

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

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

33           **"§ 20-16.6. Seizure, impoundment, and restriction of motor vehicle registration for**  
34 **certain drivers charged with offenses involving impaired driving.**

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

- 39           (1) He or she has an alcohol concentration of 0.16 or more at any relevant  
40 time after operating the motor vehicle.
- 41           (2) He or she refuses to submit to a chemical analysis.
- 42           (3) He or she has a prior conviction for an offense involving impaired  
43 driving and that all of the following apply:
- 44           a. The conviction date was within 10 years; and

1           b. The person submits to a chemical analysis and the results are  
2           0.08 or more, or 0.04 or more if operating a commercial motor  
3           vehicle or 0.01 or more if under age 21.

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

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

13           (1) It had been reported stolen.

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

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

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

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

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

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

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

42          (g) Duty of Division Upon Receipt of Plate and Revocation Reports. – Upon  
43          receipt of the registration plate and card and revocation reports, the Division shall  
44          determine if the registration plate and card were properly seized under subsection (a) of

1 this section. If not, then the Division shall flag the registration file indicating that the  
2 registration plate was improperly seized and mail, within 72 hours, to the registered  
3 owner at the most recent address contained in the Division's records, by first-class mail,  
4 a copy of the procedure for obtaining new registration at no cost. A copy of this  
5 notification shall also be sent to the head of the law enforcement agency of the officer  
6 who seized the plate.

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

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

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

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

1 Division shall enter into its records that this acknowledgment was sent. If the signed  
2 acknowledgment is not returned, the registration of the vehicle shall be cancelled. If the  
3 acknowledgment is signed and returned, the Division shall enter the acknowledgment in  
4 its records and make this information available to law enforcement officers.

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

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

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

- 19 (1) The driver has successfully completed the required level of substance  
20 abuse treatment required by the substance abuse assessment.
- 21 (2) The driver has not attempted to start the vehicle with any amount of  
22 alcohol in his system for at least four months as shown by the records  
23 of the ignition interlock.
- 24 (3) The driver does not have any unresolved pending motor vehicle law  
25 charges.
- 26 (4) The driver is not required to have an ignition interlock by any other  
27 provision of law.
- 28 (5) The driver shows proof of insurance.

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

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

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

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

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

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

1 evidence that the defendant is guilty of an offense involving impaired driving and that  
2 the defendant's license was revoked pursuant to an impaired driving license revocation  
3 as defined in subsection (a) of this section, ~~section~~ or the defendant violated  
4 G.S. 20-28.10, the motor vehicle that was driven by the defendant at the time the  
5 defendant committed the offense becomes property subject to an order of forfeiture."

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

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

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

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

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

19 "**§ 20-28.10. Unlawful to drive without ignition interlock.**

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

### 28 **PART III. MODIFYING THE STATUTES ON CHECKING STATIONS AND** 29 **ROADBLOCKS**

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

31 "**§ 20-16.3A. ~~Impaired driving checks.~~ Checking stations and roadblocks.**

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

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

40 (2)(1) ~~Designates~~ Designate in advance the pattern both for stopping vehicles  
41 and for requesting drivers that are stopped ~~to submit to alcohol~~  
42 ~~screening tests.~~ to produce a drivers license, a registration card, or  
43 insurance information. The ~~plan~~ pattern need not be in writing and  
44 may include contingency provisions for altering either pattern if actual

1 traffic conditions are different from those anticipated, but no  
2 individual officer may be given discretion as to which vehicle is  
3 stopped or, of the vehicles stopped, which driver is requested to submit  
4 to an alcohol screening test to produce a drivers license, a registration  
5 card, or insurance information.

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

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

20 (b) Law enforcement agencies may conduct any other type of checking station or  
21 roadblock as long as it is established and operated in accordance with the provision of  
22 the United States Constitution and the Constitution of North 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. No court shall suppress any evidence or dismiss any~~  
33 ~~case unless the court specifies in writing that there was a substantial and willful~~  
34 ~~violation of the provisions of this section and that the violation was not made in good~~  
35 ~~faith and that the violation amounts to a violation of the United States Constitution or~~  
36 ~~the Constitution of North Carolina."~~

37 **PART IV. PROVIDING FOR IMPLIED CONSENT PRETRIAL AND COURT**  
38 **PROCEEDINGS**

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

41 "Article 2D.

42 "Implied Consent Offense Procedures.

43 "§ 20-38. Applicability.

1        The procedures set forth in this Article shall be followed for the investigation and  
2 processing of an implied consent offense as defined in G.S. 20-16.2. The trial  
3 procedures shall apply to any implied consent offense litigated in the District Court  
4 Division.

5 **"§ 20-38.1. Investigation.**

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

10 **"§ 20-38.2. Police processing duties.**

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

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

29 **"§ 20-38.3. Initial appearance.**

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

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

1           (3) If there is a finding of probable cause, the magistrate shall consider  
2           whether the person is impaired to the extent that the provisions of  
3           G.S. 15A-534.2 should be imposed.

4           (4) The magistrate shall also:

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

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

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

15 **"§ 20-38.4. Facilities.**

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

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

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

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

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

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

38 **"§ 20-38.5. Motions and district court procedure.**

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

42       (b) A motion to suppress evidence or dismiss the charges made before trial shall  
43 be in writing, and a copy of the motion shall be served upon the State at least seven days  
44 prior to any hearing. The motion shall state the grounds upon which it is made. The



1 motion shall be accompanied by an affidavit containing facts supporting the motion.  
2 The affidavit may be based upon personal knowledge, or upon information and belief, if  
3 the source of the information and the basis for the belief are stated. The State may file  
4 an answer denying or admitting any of the allegations. A copy of the answer shall be  
5 served on the defendant's attorney, or on the defendant if he has no counsel.

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

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

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

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

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

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

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

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

25 **"§ 20-38.6. Appeal to superior court.**

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

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

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

40 **"§ 20-38.7. Remedy.**

41 The failure to follow the procedures set forth in this Chapter or Articles 24, 25, or 26  
42 of Chapter 15A of the General Statutes shall not be grounds to dismiss a criminal charge  
43 or any theory of a criminal charge or suppression of evidence unless a court finds that  
44 the violation was intentional and not in good faith, and as a result the defendant's rights

1 under the United States Constitution or the Constitution of North Carolina were  
2 violated."

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

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

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

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

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

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

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

31 **PART VI. ALCOHOL SCREENING DEVICES**

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

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

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

39 (1) Reasonable grounds to believe that the driver has consumed alcohol  
40 and has:

- 41 a. Committed a moving traffic violation; or  
42 b. Been involved in an accident or collision; or

43 (2) An articulable and reasonable suspicion that the driver has committed  
44 an implied-consent offense under G.S. 20-16.2, and the driver has been

1 lawfully stopped for a driver's license check or otherwise lawfully  
2 stopped or lawfully encountered by the officer in the course of the  
3 performance of the officer's duties.

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

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

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

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

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

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

## 35 PART VII. CLARIFYING PER SE OFFENSES

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

### 37 "§ 20-138.1. Impaired driving.

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

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

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

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

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

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

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

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

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

18           **"§ 20-138.2. Impaired driving in commercial vehicle.**

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

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

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

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

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

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

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

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

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

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

#### 4 **PART VIII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE**

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

6 "**§ 20-141.4. Felony and misdemeanor death by vehicle.**

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

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

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

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

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

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

#### 29 **PART IX. CLARIFICATION OF IMPAIRED DRIVING OFFENSES**

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

31 "**§ 20-4.01. Definitions.**

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

34 ...

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

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

42 1. Any public or private hospital, college, university,  
43 school, orphanage, church, or any of the institutions,

1 parks or other facilities maintained and supported by the  
2 State of North Carolina or any of its subdivisions.

3 2. Any service station, drive-in theater, supermarket, store,  
4 restaurant, or office building, or any other business,  
5 residential, or municipal establishment providing parking  
6 space ~~for customers, patrons, or the public.~~ whether the  
7 business or establishment is open or closed.

8 3. Any property owned by the United States and subject to  
9 the jurisdiction of the State of North Carolina. (The  
10 inclusion of property owned by the United States in this  
11 definition shall not limit assimilation of North Carolina  
12 law when applicable under the provisions of Title 18,  
13 United States Code, section 13).

14 b. The area is a beach area used ~~by the public~~ for vehicular traffic.

15 c. The area is a road ~~opened to~~ used by vehicular traffic within or  
16 leading to a ~~subdivision for use by subdivision residents, their~~  
17 ~~guests, and members of the public,~~ subdivision, whether or not  
18 the subdivision roads have been offered for dedication to the  
19 public.

20 d. The area is a portion of private property used ~~for~~ by vehicular  
21 traffic and designated by the private property owner as a public  
22 vehicular area in accordance with G.S. 20-219.4."

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

24 "**§ 20-138.1. Impaired driving.**

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

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

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

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

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

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

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

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

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

5 **"§ 20-138.2. Impaired driving in commercial vehicle.**

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

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

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

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

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

22 (b) Defense Precluded. — The fact that a person charged with violating this  
23 section is or has been legally entitled to use alcohol or a drug is not a defense to a  
24 charge under this section.

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

29 (d) Implied Consent Offense. — An offense under this section is an implied  
30 consent offense subject to the provisions of G.S. 20-16.2. The provisions of  
31 G.S. 20-139.1 shall apply to an offense committed under this section.

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

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

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

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

43 **"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

1 (a) Offense. – A person commits the offense of operating a commercial motor  
2 vehicle after consuming alcohol if the person drives a commercial motor vehicle, as  
3 defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public  
4 vehicular area within the State while consuming alcohol or while alcohol remains in the  
5 person's body.

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

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

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

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

30 (c) Punishment. – Except as otherwise provided in this subsection, a violation of  
31 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,  
32 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars  
33 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable  
34 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a  
35 commercial vehicle under G.S. 20-138.2.

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

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

43 "(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an  
44 alcohol screening test may be administered to a driver suspected of violation of



1 subsection (a) of this section, and the results of an alcohol screening test or the driver's  
2 refusal to submit may be used by a law enforcement officer, a court, or an  
3 administrative agency in determining if alcohol was present in the driver's body. No  
4 alcohol screening tests are valid under this section unless the device used is one  
5 approved by the ~~Commission for Health Services, Department of Health and Human~~  
6 Services, and the screening test is conducted in accordance with the applicable  
7 regulations of the ~~Commission-Department~~ as to its manner and use."

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

9 **"§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**  
10 **drugs.**

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

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

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

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

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

42 Notwithstanding any other provision of law, whenever any person who does not  
43 have any pending charges for violating Chapters 18B, 20, or 90 of the General Statutes  
44 and has not previously been convicted of violating this section, an offense involving

1 impaired driving under any statute of the United States or any state relating to those  
2 substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in  
3 Article 5B of Chapter 90 or a violation of Chapter 18B, pleads guilty to or is found  
4 guilty of a violation of this section, the court may, without entering a judgment of guilt  
5 and with the consent of such person, defer further proceedings and place him on  
6 probation for a minimum of one year upon such reasonable terms and conditions as it  
7 may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or  
8 law, to fulfill the terms and conditions of probation the court shall impose, at a  
9 minimum, all of the following conditions. The person shall:

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

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

42 (d) Limited Driving Privilege. – A person who is convicted of violating  
43 subsection (a) of this section and whose drivers license is revoked solely based on that

1 conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This  
2 subsection shall apply only if the person meets both of the following requirements:

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

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

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

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

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

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

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

## 21 **PART X. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW**

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

23 "**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license**  
24 **in event of refusal; right of driver to request analysis.**

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

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

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

- 1           (2) ~~Refusal to take any required test or tests will result in an immediate~~  
2 ~~revocation of the person's driving privilege for at least 30 days and an~~  
3 ~~additional 12-month revocation by the Division of Motor Vehicles.~~  
4           (3)(2) ~~The test results, or the fact of the person's~~your refusal, will be  
5 ~~admissible in evidence at trial on the offense charged.~~trial.  
6           (4)(3) ~~The person's~~Your driving privilege will be revoked immediately ~~for at~~  
7 ~~least 30 days if:~~and until your trial and any appeals if you refuse any  
8 ~~test or the test result is a 0.08 or more, 0.04 if you were driving a~~  
9 ~~commercial vehicle, or 0.01 if you are under the age of 21.~~  
10           a. ~~The test reveals an alcohol concentration of 0.08 or more;~~  
11           b. ~~The person was driving a commercial motor vehicle and the test~~  
12 ~~reveals an alcohol concentration of 0.04 or more; or~~  
13           c. ~~The person is under 21 years of age and the test reveals any~~  
14 ~~alcohol concentration.~~  
15           (5)(4) ~~The person may choose a qualified person to administer a chemical~~  
16 ~~test or tests in addition to any test administered at the direction of the~~  
17 ~~charging officer.~~After you are released, you may seek your own test in  
18 addition to this test.  
19           (6)(5) ~~The person has the right to~~You may call an attorney for advice and  
20 ~~select a witness to view for him or her the testing procedures,~~  
21 ~~procedures remaining after the witness arrives, but the testing may not~~  
22 ~~be delayed for these purposes longer than 30 minutes from the time~~  
23 ~~when the person is notified of his or her of these rights.~~You must take  
24 the test at the end of 30 minutes even if you have not contacted an  
25 attorney or your witness has not arrived.

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

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

38           (b) Unconscious Person May Be Tested. – If a charging law enforcement officer  
39 has reasonable grounds to believe that a person has committed an implied-consent  
40 offense, and the person is unconscious or otherwise in a condition that makes the person  
41 incapable of refusal, the charging law enforcement officer may direct the taking of a  
42 blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the  
43 administration of any other chemical analysis that may be effectively performed. In this

1 instance the notification of rights set out in subsection (a) and the request required by  
2 subsection (c) are not necessary.

3 (c) Request to Submit to Chemical Analysis. —~~The charging~~ A law enforcement  
4 ~~officer, officer or chemical analyst, in the presence of the chemical analyst who has~~  
5 ~~notified the person of his or her rights under subsection (a), must shall~~ designate the  
6 type of test or tests to be given and either may request the person charged to submit to  
7 the type of chemical analysis designated. If the person charged willfully refuses to  
8 submit to that chemical analysis, none may be given under the provisions of this section,  
9 but the refusal does not preclude testing under other applicable procedures of law.

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

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

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

37 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon  
38 receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~  
39 shall expeditiously notify the person charged that the person's license to drive is revoked  
40 for 12 months, effective on the tenth calendar day after the mailing of the revocation  
41 order unless, before the effective date of the order, the person requests in writing a  
42 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the  
43 person shows to the satisfaction of the Division that his or her license was surrendered  
44 to the court, and remained in the court's possession, then the Division shall credit the

1 amount of time for which the license was in the possession of the court against the  
2 12-month revocation period required by this subsection. If the person properly requests  
3 a hearing, the person retains his or her license, unless it is revoked under some other  
4 provision of law, until the hearing is held, the person withdraws the request, or the  
5 person fails to appear at a scheduled hearing. The hearing officer may subpoena any  
6 witnesses or documents that the hearing officer deems necessary. The person may  
7 request the hearing officer to subpoena the charging officer, the chemical analyst, or  
8 both to appear at the hearing if the person makes the request in writing at least three  
9 days before the hearing. The person may subpoena any other witness whom the person  
10 deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and  
11 service of all subpoenas issued under the authority of this section. The hearing officer is  
12 authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~  
13 shall be conducted in the county where the charge was brought, and ~~must shall~~ be  
14 limited to consideration of whether:

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

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

34 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the  
35 refusal occurred in a case involving death or critical injury to another person, no limited  
36 driving privilege may be issued. The 12-month revocation begins only after all other  
37 periods of revocation have terminated unless the person's license is revoked under  
38 G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,  
39 the revocation under this subsection begins at the time and in the manner specified in  
40 subsection (d) for revocations under this section. However, the person's eligibility for a  
41 hearing to determine if the revocation under those sections should be rescinded is  
42 postponed for one year from the date on which the person would otherwise have been  
43 eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the  
44 12-month revocation under this subsection is in effect, that revocation, whether imposed

1 by a court or by the Division, may only take effect after the period of revocation under  
2 this subsection has terminated.

3 (e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is  
4 sustained after the hearing, the person whose license has been revoked has the right to  
5 file a petition in the superior court for a hearing ~~de novo upon the issues listed in~~  
6 ~~subsection (d), in the same manner and under the same conditions as provided in~~  
7 ~~G.S. 20-25 except that the de novo hearing is conducted in the superior court district or~~  
8 ~~set of districts as defined in G.S. 7A-41.1 where the charge was made on the record. The~~  
9 superior court review shall be limited to whether there is sufficient evidence in the  
10 record to support the Commissioner's findings of fact and whether the conclusions of  
11 law are supported by the findings of fact and whether the Commissioner committed an  
12 error of law in revoking the license.

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

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

43 ~~Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the~~  
44 ~~procedure for application and conduct of the hearing and the restrictions required or~~

1 authorized to be included in the limited driving privilege apply to applications under  
2 this subsection. If the case was finally disposed of in the district court, the hearing shall  
3 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal  
4 occurred by a district court judge. If the case was finally disposed of in the superior  
5 court, the hearing shall be conducted in the superior court district or set of districts as  
6 defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A  
7 limited driving privilege issued under this section authorizes a person to drive if the  
8 person's license is revoked solely under this section or solely under this section and  
9 G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving  
10 privilege is invalid pursuant to G.S. 20-11.1.

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

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

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

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

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

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

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

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

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

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

## 42 PART XI. ADMISSIBILITY OF CHEMICAL ANALYSES

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



1 **"§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**  
2 **provisions; controlled-drinking programs.**

3 (a) Chemical Analysis Admissible. – In any implied-consent offense under  
4 G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing  
5 substance in the person's body as shown by a chemical analysis is admissible in  
6 evidence. This section does not limit the introduction of other competent evidence as to  
7 a person's alcohol concentration or results of other tests showing the presence of an  
8 impairing substance, including other chemical tests.

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

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

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

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

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

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

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

1 Any person possessing a current permit authorizing the person to perform chemical  
2 analysis may perform a chemical analysis.

3 ~~(b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not~~  
4 ~~Performed. Maintenance. – The Department of Health and Human Services shall~~  
5 ~~perform preventive maintenance on breath testing instruments used for chemical~~  
6 ~~analysis. A court or administrative agency shall take judicial notice of the preventive~~  
7 ~~maintenance records of the Department. Notwithstanding the provisions of subsection~~  
8 ~~(b), the results of a chemical analysis of a person's breath performed in accordance with~~  
9 ~~this section are not admissible in evidence if:~~

- 10 (1) The defendant objects to the introduction into evidence of the results  
11 of the chemical analysis of the defendant's breath; and  
12 (2) The defendant demonstrates that, with respect to the instrument used to  
13 analyze the defendant's breath, preventive maintenance procedures  
14 required by the regulations of the ~~Commission for Health Services~~  
15 Department of Health and Human Services had not been performed  
16 within the time limits prescribed by those regulations.

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

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

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

40 A person's refusal to give the second or subsequent breath sample shall make the  
41 result of the first breath sample, or the result of the sample providing the lowest alcohol  
42 concentration if more than one breath sample is provided, admissible in any judicial or  
43 administrative hearing for any relevant purpose, including the establishment that a

1 person had a particular alcohol concentration for conviction of an offense involving  
2 impaired driving.

3 ~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program.—In~~  
4 ~~civil and criminal proceedings, any party may introduce, without further authentication,~~  
5 ~~simulator logs and logs for other devices used to verify a breath testing instrument,~~  
6 ~~certificates and other records concerning the check of ampoules and of simulator stock~~  
7 ~~solution and the stock solution used in any other equilibration device, preventive~~  
8 ~~maintenance records, and other records that are routinely kept concerning the~~  
9 ~~maintenance and operation of breath testing instruments. In a criminal case, however,~~  
10 ~~this subsection does not authorize the State to introduce records to prove the results of a~~  
11 ~~chemical analysis of the defendant or of any validation test of the instrument that is~~  
12 ~~conducted during that chemical analysis.~~

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

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

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

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

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

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

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

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

32       (c2) Procedure for establishing chain of custody without calling unnecessary  
33 witnesses. –

34       (1) For the purpose of establishing the chain of physical custody or control  
35 of blood or urine tested or analyzed to determine whether it contains  
36 alcohol, a controlled substance or its metabolite, or any impairing  
37 substance, a statement signed by each successive person in the chain of  
38 custody that the person delivered it to the other person indicated on or  
39 about the date stated is prima facie evidence that the person had  
40 custody and made the delivery as stated, without the necessity of a  
41 personal appearance in court by the person signing the statement.

42       (2) The statement shall contain a sufficient description of the material or  
43 its container so as to distinguish it as the particular item in question  
44 and shall state that the material was delivered in essentially the same

1 condition as received. The statement may be placed on the same  
2 document as the report provided for in subsection (c1) of this section.

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

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

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

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

17 (2) A chemical analysis of the person's blood was performed by a  
18 chemical analyst possessing a permit issued by the Department of  
19 Health and Human Services authorizing the chemical analyst to  
20 analyze blood or urine for alcohol or controlled substances,  
21 metabolites of a controlled substance, or any other impairing  
22 substance.

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

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

41 (d1) Right to Require Additional Tests. — If a person refuses to submit to any test  
42 or tests pursuant to this section, any law enforcement officer with probable cause may,  
43 with or without a court order, compel the person to provide blood and/or urine samples  
44 for analysis. Notwithstanding any other provision of law, when a blood or urine sample

1 is requested under this subsection by a law enforcement officer, a physician, registered  
2 nurse, emergency medical technician, or other qualified person shall withdraw the blood  
3 and obtain the urine sample and no further authorization or approval is required. If the  
4 person withdrawing the blood or collecting the urine requests written confirmation of  
5 the charging officer's request for the withdrawal of blood or obtaining urine, the officer  
6 shall furnish it before blood is withdrawn or urine obtained. When blood is withdrawn  
7 or urine collected pursuant to a law enforcement officer's request, neither the person  
8 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or  
9 corporation employing that person, or contracting for the service of withdrawing blood,  
10 may be held criminally or civilly liable by reason of withdrawing that blood, except that  
11 there is no immunity from liability for negligent acts or omissions. The results of the  
12 analysis of blood or urine under this subsection shall be admissible if performed by the  
13 State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

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

- 17 (1) ~~The alcohol concentration or concentrations revealed by the chemical~~  
18 ~~analysis.~~  
19 (2) ~~The time of the collection of the breath sample or samples used in the~~  
20 ~~chemical analysis.~~

21 ~~A copy of the record of this information shall be furnished to the person submitting to~~  
22 ~~the chemical analysis, or to his attorney, before any trial or proceeding in which the~~  
23 ~~results of the chemical analysis may be used. A person charged with an implied consent~~  
24 ~~offense who has not received prior to a trial a copy of the chemical analysis results the~~  
25 ~~State intends to offer into evidence prior to trial may request in writing a copy of the~~  
26 ~~results. The failure to provide a copy prior to any trial shall be grounds for a~~  
27 ~~continuance of the case but shall not be grounds to suppress the results of the chemical~~  
28 ~~analysis or to dismiss the criminal charges.~~

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

- 34 (1) The alcohol concentration or concentrations or the presence or absence  
35 of an impairing substance of a person given a chemical analysis and  
36 who is involved in the hearing or trial.  
37 (2) The time of the collection of the blood, breath, or other bodily fluid or  
38 substance sample or samples for the chemical analysis.  
39 (3) The type of chemical analysis administered and the procedures  
40 followed.  
41 (4) The type and status of any permit issued by the Department of Health  
42 and Human Services that the analyst held on the date the analyst  
43 performed the chemical analysis in question.

1 (5) If the chemical analysis is performed on a breath-testing instrument for  
2 which regulations adopted pursuant to subsection (b) require  
3 preventive maintenance, the date the most recent preventive  
4 maintenance procedures were performed on the breath-testing  
5 instrument used, as shown on the maintenance records for that  
6 instrument.

7 The Department of Health and Human Services shall develop a form for use by  
8 chemical analysts in making this affidavit. If any person who submitted to a chemical  
9 analysis desires that a chemical analyst personally testify in the hearing or trial in the  
10 District Court Division, the person may subpoena the chemical analyst and examine him  
11 as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued  
12 unless the person files in writing with the court and serves a copy on the district attorney  
13 at least five days prior to trial an affidavit specifying the specific factual grounds that  
14 the person believes the chemical analysis was not properly administered and the facts  
15 that the chemical analyst will testify about and stating that the presence of the analyst is  
16 necessary for the proper defense of the case. The district court shall determine if there  
17 are grounds to believe that the presence of the analyst requested is necessary for the  
18 proper defense. If so, the case shall be continued until the analyst can be present. The  
19 criminal case shall not be dismissed due to the failure of the analyst to appear, unless  
20 the analyst willfully fails to appear after being ordered to appear by the court.

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

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

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

4 **PART XII. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED**  
5 **DRIVING CASES**

6        **SECTION 28.** Chapter 90 is amended by adding a 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 XIII. PROSECUTOR REPORTING WHEN IMPLIED CONSENT CASE**  
29 **IS DISMISSED**

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

31 **"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
32 **involving impaired driving.**

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

37        (1) Enters a voluntary dismissal; or

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

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

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



1       (b) The written explanation shall be signed by the prosecutor taking the action on  
2 a form approved by the Administrative Office of the Courts and shall contain, at a  
3 minimum, the alcohol concentration or the fact that the driver refused, a list of all prior  
4 convictions of implied consent offenses or driving while license revoked, whether the  
5 driver had a valid drivers license or privilege to drive in this State as indicated by the  
6 Division's records, a statement that a check of the database of the Administrative Office  
7 of the Courts revealed whether there are any other pending charges against the  
8 defendant pending in this State, those elements that the prosecutor believes in good faith  
9 can be proved, and a list of those elements that the prosecutor cannot prove and why,  
10 the name and agency of the charging officer and whether the officer is available, and  
11 any other reason why the charges are dismissed. General explanations such as "interests  
12 of justice" or "insufficient evidence" are not sufficiently detailed to meet the  
13 requirements of this section.

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

19 **PART XIV. DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO**  
20 **APPEAR IN DRIVING WHILE IMPAIRED**

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

22 **"§ 20-48. Giving of notice.**

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

42       (b) Notwithstanding any other provision of this Chapter at any time notice is now  
43 required by registered mail with return receipt requested, certified mail with return

1 receipt requested may be used in lieu thereof and shall constitute valid notice to the  
2 same extent and degree as notice by registered mail with return receipt requested.

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

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

7 "**§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or**  
8 **while disqualified.**

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

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

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

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

- 24 (2) a. The offense occurred more than 45 days after the effective date  
25 of a revocation order issued under G.S. 20-16.5(f) and the  
26 period of revocation was 45 days as provided under subdivision  
27 (3) of that subsection; or  
28 b. The offense occurred more than 30 days after the effective date  
29 of the revocation order issued under any other provision of  
30 G.S. 20-16.5; or

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

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

38 (a2) Driving After Notification or Failure to Appear. – A person who drives upon  
39 a highway while his license is revoked for an impaired drivers license revocation after  
40 the Division has sent notification in accordance with G.S. 20-48 or who fails to appear  
41 for two years from the date of the charge after being charged with an implied consent  
42 offense shall be guilty of a Class 1 misdemeanor. Upon conviction, the person's license  
43 shall be revoked for an additional period of one year for the first offense, two years for  
44 the second offense, and permanently for a third or subsequent offense. The restorer of a

1 revoked drivers license who operates a motor vehicle upon the highways of the State  
2 without maintaining financial responsibility as provided by law shall be punished as for  
3 driving without a license.

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

5 (c) When Person May Apply for License. – A person whose license has been  
6 revoked under this section and for no other reason and the period of revocation is for  
7 one year may apply for a license after 90 days. A person whose license has been  
8 revoked under this section for two years may apply for a license after 12 months. A  
9 person whose license has been revoked under this section permanently may apply for a  
10 license after three years. Upon the filing of an application the Division may, with or  
11 without a hearing, issue a new license upon satisfactory proof that the former licensee  
12 has not been convicted of a moving violation under this Chapter or the laws of another  
13 state, a violation of any provision of the alcoholic beverage laws of this State or another  
14 state, or a violation of any provisions of the drug laws of this State or another state when  
15 any of these violations occurred during the revocation period. The Division may impose  
16 any restrictions or conditions on the new license that the Division considers appropriate  
17 for the balance of the revocation period. When the revocation period is permanent, the  
18 restrictions and conditions imposed by the Division may not exceed three years. If the  
19 person's license was revoked pursuant to subsection (a1) of this section and the person  
20 drove while his license was revoked for an impaired driving revocation or the  
21 revocation was for violating subsection (a2) of this section, the Division may only  
22 conditionally restore the license in accordance with this subsection and shall require, at  
23 a minimum, as a condition of restoration that the driver obtain a substance abuse  
24 assessment prior to issuance of a license and show proof of financial responsibility. If  
25 the substance abuse assessment recommends education or treatment, the person must  
26 complete the education or treatment within the time limits specified. If the assessment  
27 determines that the person abuses alcohol, then the Division shall require the person to  
28 install and use an ignition interlock on any vehicles that are to be driven. If the person  
29 violates any condition of the restoration or is convicted of any moving offense in this or  
30 another state or the alcoholic beverage or controlled substance laws of this or any other  
31 state, the Division shall cancel the conditionally restored license and impose the  
32 remaining revocation period. The Division shall also cancel the registration on any  
33 vehicles and shall require the driver to surrender all current registration plates and cards.

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

- 40 (1) For a first offense of driving while disqualified, a person is  
41 disqualified for a period equal to the period for which the person was  
42 disqualified when the offense occurred.

- 1 (2) For a second offense of driving while disqualified, a person is  
2 disqualified for a period equal to two times the period for which the  
3 person was disqualified when the offense occurred.
- 4 (3) For a third offense of driving while disqualified, a person is  
5 disqualified for life.

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

## 11 PART XV. MODIFYING CURRENT PUNISHMENTS

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

13 "§ 20-179. Sentencing hearing after conviction for impaired driving;  
14 determination of grossly aggravating and aggravating and mitigating  
15 factors; punishments.

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

32 (a1) Sentencing Hearing in Superior Court. – Upon a determination of guilt by the  
33 jury, the court shall submit to the same jury, or a different jury if using the same jury is  
34 impracticable, any grossly aggravating or aggravating factors supported by the  
35 evidence. Prior to submitting these factors to the jury, the court shall allow the State and  
36 the defendant to present evidence to the jury that is relevant to proving any grossly  
37 aggravating or aggravating factors that had not been presented to the jury during the  
38 guilt phase of the trial. Provided, however, the court is not required to allow proof of or  
39 submit to the jury any grossly aggravating or aggravating factor that is a conviction of a  
40 crime or determination of responsibility for an infraction that is stipulated to by the  
41 defendant.

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

43 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing  
44 hearing, based upon the evidence presented at trial and in the hearing, the judge ~~must~~

1 shall first determine whether there are any grossly aggravating factors in the case. If the  
2 sentencing hearing is for a case remanded back to district court from superior court, the  
3 judge shall determine whether the defendant has been convicted of any offense that was  
4 not considered at the initial sentencing hearing and impose the appropriate sentence  
5 under this section. The judge ~~must~~ shall impose the Level One punishment under  
6 subsection (g) of this section if the judge determines that two or more grossly  
7 aggravating factors apply. The judge ~~must~~ shall impose the Level Two punishment  
8 under subsection (h) of this section if the judge determines that only one of the grossly  
9 aggravating factors applies. The grossly aggravating factors are:

- 10 (1) A prior conviction for an offense involving impaired driving if:
  - 11 a. The conviction occurred within seven years before the date of
  - 12 the offense for which the defendant is being sentenced; or
  - 13 b. The conviction occurs after the date of the offense for which the
  - 14 defendant is presently being sentenced, but prior to or
  - 15 contemporaneously with the present sentencing.Each prior conviction is a separate grossly aggravating factor.
- 16 (2) Driving by the defendant at the time of the offense while his driver's
- 17 license was revoked under G.S. 20-28, and the revocation was an
- 18 impaired driving revocation under G.S. 20-28.2(a).
- 19 (3) Serious injury to another person caused by the defendant's impaired
- 20 driving at the time of the offense.
- 21 (4) Driving by the defendant while a child under the age of 16 years was
- 22 in the vehicle at the time of the offense.
- 23

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

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

- 33 (1) Gross impairment of the defendant's faculties while driving or an
- 34 alcohol concentration of 0.16 or more within a relevant time after the
- 35 driving.
- 36 (2) Especially reckless or dangerous driving.
- 37 (3) Negligent driving that led to a reportable accident.
- 38 (4) Driving by the defendant while his driver's license was revoked.
- 39 (5) Two or more prior convictions of a motor vehicle offense not
- 40 involving impaired driving for which at least three points are assigned
- 41 under G.S. 20-16 or for which the convicted person's license is subject
- 42 to revocation, if the convictions occurred within five years of the date
- 43 of the offense for which the defendant is being sentenced, or one or
- 44 more prior convictions of an offense involving impaired driving that

1 occurred more than seven years before the date of the offense for  
2 which the defendant is being sentenced.

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

5 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least  
6 30 miles per hour over the legal limit.

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

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

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

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

16 (1) Slight impairment of the defendant's faculties resulting solely from  
17 alcohol, and an alcohol concentration that did not exceed 0.09 at any  
18 relevant time after the driving.

19 (2) Slight impairment of the defendant's faculties, resulting solely from  
20 alcohol, with no chemical analysis having been available to the  
21 defendant.

22 (3) Driving at the time of the offense that was safe and lawful except for  
23 the impairment of the defendant's faculties.

24 (4) A safe driving record, with the defendant's having no conviction for  
25 any motor vehicle offense for which at least four points are assigned  
26 under G.S. 20-16 or for which the person's license is subject to  
27 revocation within five years of the date of the offense for which the  
28 defendant is being sentenced.

29 (5) Impairment of the defendant's faculties caused primarily by a lawfully  
30 prescribed drug for an existing medical condition, and the amount of  
31 the drug taken was within the prescribed dosage.

32 (6) The defendant's voluntary submission to a mental health facility for  
33 assessment after he was charged with the impaired driving offense for  
34 which he is being sentenced, and, if recommended by the facility, his  
35 voluntary participation in the recommended treatment.

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

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

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

- 1 (1) The aggravating factors substantially outweigh any mitigating factors,  
2 he ~~must~~shall note in the judgment the factors found and his finding  
3 that the defendant is subject to the Level Three punishment and impose  
4 a punishment within the limits defined in subsection (i).
- 5 (2) There are no aggravating and mitigating factors, or that aggravating  
6 factors are substantially counterbalanced by mitigating factors, he ~~must~~  
7 shall note in the judgment any factors found and his finding that the  
8 defendant is subject to the Level Four punishment and impose a  
9 punishment within the limits defined in subsection (j).
- 10 (3) The mitigating factors substantially outweigh any aggravating factors,  
11 he ~~must~~shall note in the judgment the factors found and his finding  
12 that the defendant is subject to the Level Five punishment and impose  
13 a punishment within the limits defined in subsection (k).

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

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

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

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

40 (h) Level Two Punishment. – A defendant subject to Level Two punishment may  
41 be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of  
42 imprisonment that includes a minimum term of not less than seven days and a maximum  
43 term of not more than 12 months. The term of imprisonment may be suspended only if a  
44 condition of special probation is imposed to require the defendant to serve a term of

1 imprisonment of at least seven days. If the defendant is placed on probation, the judge  
2 shall impose a requirement that the defendant obtain a substance abuse assessment and  
3 the education or treatment required by G.S. 20-17.6 for the restoration of a drivers  
4 license and as a condition of probation. The judge may impose any other lawful  
5 condition of probation.

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

- 11 (1) Be imprisoned for a term of at least 72 hours as a condition of special  
12 probation; or
- 13 (2) Perform community service for a term of at least 72 hours; or
- 14 ~~(3) Not operate a motor vehicle for a term of at least 90 days; or~~
- 15 ~~(4)~~(3) Any combination of these conditions.

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

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

- 25 (1) Be imprisoned for a term of 48 hours as a condition of special  
26 probation; or
- 27 (2) Perform community service for a term of 48 hours; or
- 28 ~~(3) Not operate a motor vehicle for a term of 60 days; or~~
- 29 ~~(4)~~(3) Any combination of these conditions.

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

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

- 39 (1) Be imprisoned for a term of 24 hours as a condition of special  
40 probation; or
- 41 (2) Perform community service for a term of 24 hours; or
- 42 ~~(3) Not operate a motor vehicle for a term of 30 days; or~~
- 43 ~~(4)~~(3) Any combination of these conditions.



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

5 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge  
6 may order that a term of imprisonment imposed as a condition of special probation  
7 under any level of punishment be served as an inpatient in a facility operated or licensed  
8 by the State for the treatment of alcoholism or substance abuse where the defendant has  
9 been accepted for admission or commitment as an inpatient. The defendant shall bear  
10 the expense of any treatment unless the trial judge orders that the costs be absorbed by  
11 the State. The judge may impose restrictions on the defendant's ability to leave the  
12 premises of the treatment facility and require that the defendant follow the rules of the  
13 treatment facility. The judge may credit against the active sentence imposed on a  
14 defendant the time the defendant was an inpatient at the treatment facility, provided  
15 such treatment occurred after the commission of the offense for which the defendant is  
16 being sentenced. This section shall not be construed to limit the authority of the judge in  
17 sentencing under any other provisions of law.

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

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

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

- 23 (1) Within 90 days, if the amount of community service required is 72  
24 hours or more; or
- 25 (2) Within 60 days, if the amount of community service required is 48  
26 hours; or
- 27 (3) Within 30 days, if the amount of community service required is 24  
28 hours.

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

32 (o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing  
33 hearing, the State ~~must~~shall prove any grossly aggravating or aggravating factor by the  
34 greater weight of the evidence, and the defendant ~~must~~shall prove any mitigating factor  
35 by the greater weight of the evidence. Evidence adduced by either party at trial may be  
36 utilized in the sentencing hearing. Except as modified by this section, the procedure in  
37 G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or  
38 absence of previous convictions that he finds reliable but he ~~must~~shall give prima facie  
39 effect to convictions recorded by the Division or any other agency of the State of North  
40 Carolina. A copy of such conviction records transmitted by the police information  
41 network in general accordance with the procedure authorized by G.S. 20-26(b) is  
42 admissible in evidence without further authentication. If the judge decides to impose an  
43 active sentence of imprisonment that would not have been imposed but for a prior  
44 conviction of an offense, the judge ~~must~~shall afford the defendant an opportunity to

1 introduce evidence that the prior conviction had been obtained in a case in which he was  
2 indigent, had no counsel, and had not waived his right to counsel. If the defendant  
3 proves by the preponderance of the evidence all three above facts concerning the prior  
4 case, the conviction may not be used as a grossly aggravating or aggravating factor.

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

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

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

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

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

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

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

31 When a judge determines in accordance with the above procedures that a defendant  
32 should be placed on supervised probation, the judge shall authorize the probation officer  
33 to modify the defendant's probation by placing the defendant on unsupervised probation  
34 upon the completion by the defendant of the following conditions of his suspended  
35 sentence:

36 (1) Community service; or

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

38 (3) Payment of any fines, court costs, and fees; or

39 (4) Any combination of these conditions.

40 (s) Method of Serving Sentence. – The judge in his discretion may order a term  
41 of imprisonment ~~or community service~~ to be served on weekends, even if the sentence  
42 cannot be served in consecutive sequence. However, if the defendant is ordered to a  
43 term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment,  
44 the defendant shall be required to serve 48 continuous hours of imprisonment to be

1 given credit for time served. Credit for any jail time shall only be given hour for hour  
2 for time actually served. The jail shall maintain a log showing number of hours served.  
3 The court may provide for the DWI case manager in consultation with the sheriff's  
4 office to determine which weekends the defendant shall serve. If the defendant appears  
5 at the jail and has remaining in his body any alcohol, as shown by an alcohol screening  
6 device, or controlled substance previously consumed, unless lawfully obtained and  
7 taken in therapeutically appropriate amounts, the defendant shall be refused entrance  
8 and this shall be reported back to court. If after a hearing the court determines that when  
9 the defendant reported to jail, the defendant had remaining in his body any alcohol  
10 previously consumed, as shown by an alcohol screening device, or controlled substance  
11 previously consumed, unless lawfully obtained and taken in therapeutically appropriate  
12 amounts, the defendant shall be ordered to serve his jail time immediately and shall not  
13 be eligible to serve jail time on weekends.

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

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

17 **"§ 7A-109.4. Records of offenses involving impaired driving.**

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

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

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

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

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

31 **"§ 7A-108. Accounting for fees and other receipts; annual audit.**

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

37 (b) The operations of the Administrative Office of the Courts and the Clerks of  
38 Superior Court shall be subject to the oversight of the State Auditor pursuant to Article  
39 5A of Chapter 147 of the General Statutes.

40 (c) The procedures specified in subsection (a) of this section, at a minimum, shall  
41 require each clerk of superior court within 48 hours of any court order to establish an  
42 accounts payable for all funds required to be paid to the clerk of superior court and still  
43 owed. In addition to the procedures of G.S. 20-24.1 and G.S. 20-24.2, the clerk shall  
44 report all persons back to court who are six months overdue on payments. By March 1,

1 the Administrative Office of the Courts shall provide an annual report of the previous  
2 calendar year to the Joint Legislative Commission on Governmental Operations on a  
3 statewide and county basis the amount of fines, costs, restitution, and amount and types  
4 of fees ordered to be paid at the disposition of any criminal trial, any subsequent  
5 reduction of this amount, amount collected, and amount still owed."

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

8 **"§ 20-24.3. Surrender of license and registration.**

9 (a) Upon conviction for an offense which requires the Division to revoke a  
10 person's drivers license, the person shall surrender to the court his most recent valid  
11 drivers license issued by the Division or by a similar agency in another jurisdiction and  
12 any limited driving privilege. For a person who does not surrender the license within 10  
13 days of a conviction, the clerk shall impose the fee of fifty dollars (\$50.00) specified in  
14 G.S. 7A-304(a)(6). A person who is unable to locate his license or whose license is  
15 revoked and does not have a limited driving privilege shall file an affidavit with the  
16 clerk stating that he is validly licensed and is unable to locate the license or that it is  
17 revoked. This affidavit shall constitute surrender of the license.

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

26 **PART XVII. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF**  
27 **AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW**  
28 **ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS**  
29 **CONSUMED ALCOHOL**

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

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

- 32 (1) A person less than 21 years old to purchase, to attempt to purchase, or  
33 to possess malt beverages or unfortified wine; or  
34 (2) A person less than 21 years old to purchase, to attempt to purchase, or  
35 to possess fortified wine, spirituous liquor, or mixed beverages.  
36 (3) A person less than 21 years old to consume any alcoholic beverage."

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

39 "(j) Notwithstanding any other provisions of law, a law enforcement officer may  
40 require any person the officer has probable cause to believe is under the age of 21 and  
41 who has consumed alcohol to submit to an alcohol screening test using a device  
42 approved by the Department of Health and Human Services. The results of any  
43 screening device administered in accordance with the rules of the Department of Health

1 and Human Services shall be admissible in any court or administrative proceeding to  
2 prove that a person possessed or consumed an alcoholic beverage."

3 **PART XVIII. REQUIRING THAT DEFENDANTS WHO ARE RELEASED**  
4 **FROM PRISON EARLY ARE TO BE ASSIGNED TO HOUSE ARREST OR**  
5 **COMMUNITY SERVICE PAROLE**

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

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

12 Community service parole is early parole for the purpose of participation in a  
13 program of community service under the supervision of a probation/parole officer. A  
14 parolee who is paroled under this subsection ~~must~~shall perform as a condition of parole  
15 community service in an amount and over a period of time to be determined by the  
16 Post-Release Supervision and Parole Commission. However, the total amount of  
17 community service shall not exceed an amount equal to 32 hours for each month of  
18 active service remaining in his minimum sentence. The Post-Release Supervision and  
19 Parole Commission may grant early parole under this section without requiring the  
20 performance of community service if it determines that such performance is  
21 inappropriate to a particular case.

22 The probation/parole officer and the community service coordinator shall develop a  
23 program of community service for the parolee. The community service coordinator shall  
24 report any willful failure to perform community service work to the probation/parole  
25 officer. Parole may be revoked for any parolee who willfully fails to perform  
26 community service work as directed by a community service ~~coordinator~~coordinator  
27 violates the rules of house arrest. The provisions of G.S. 15A-1376 shall apply to this  
28 violation of a condition of parole.

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

- 30 (1) Who is serving an active sentence the term of which exceeds six  
31 months; and  
32 (2) Who, in the opinion of the Post-Release Supervision and Parole  
33 Commission, is unlikely to engage in further criminal conduct; and  
34 (3) Who agrees to complete service of his sentence as herein specified;  
35 and  
36 (4) Who has served one-half of his minimum sentence.

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

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

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

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

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

17 **PART XIX. EFFECTIVE DATE**

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