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HOUSE BILL 1048  
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Short Title: Governor's DWI Task Force Recommendations.

(Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S  
TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

**PART I. REGULATING MALT BEVERAGE KEGS**

**SECTION 1.** G.S. 18B-101 is amended by adding a new subdivision to read:

"(7b) "Keg" means a portable container designed to hold and dispense in  
excess of eight gallons of malt beverage."

**SECTION 2.1.** Chapter 18B of the General Statutes is amended by adding a  
new section to read:

**"§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.**

(a) Purchase-Transportation. – A person who is not a permittee may purchase  
and transport for off-premises consumption a keg or kegs as defined in  
G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a  
purchase-transportation permit according to this section is a violation of  
G.S. 18B-303(b).

(b) Issuance. – A person holding a permit pursuant to G.S. 18B-1001(2) may  
issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser.  
A copy of the purchase-transportation permit shall be maintained by the permittee for  
30 days.

(c) Form. – A purchase-transportation permit shall be issued on a printed form  
adopted and provided by the Commission. The Commission shall adopt rules specifying  
the content of the permit form.

(d) Restrictions on Permit. – A purchase may be made only from the store named  
on the permit. One copy of the permit shall be kept by the purchaser and one by the  
permittee from whom the purchase is made. The purchaser shall display his copy of the  
permit to any law enforcement officer upon request.

1 (e) Violation. – The first violation of this section shall result in a warning to the  
 2 permittee."

3 **SECTION 2.2.** G.S. 18B-303(a) reads as rewritten:

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

- 5 (1) Not more than 80 liters of malt beverages, other than draft malt  
 6 beverages in kegs; beverages, except draft malt beverages in kegs for  
 7 off-premises consumption. For purchase of a keg or kegs of malt  
 8 beverages for off-premises consumption, the permit required by  
 9 G.S. 18B-403.1(a)(4) must first be obtained;
- 10 (2) Any amount of draft malt beverages by a permittee in kegs; kegs for  
 11 on-premise consumption;
- 12 (3) Not more than 50 liters of unfortified wine;
- 13 (4) Not more than eight liters of either fortified wine or spirituous liquor,  
 14 or eight liters of the two combined."

15 **PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND**  
 16 **ROADBLOCKS**

17 **SECTION 3.** G.S. 20-16.3A reads as rewritten:

18 "**§ 20-16.3A. Impaired driving checks. Checking stations and roadblocks.**

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

- 23 (1) Develops a systematic plan in advance that takes into account the  
 24 likelihood of detecting impaired drivers, traffic conditions, number of  
 25 vehicles to be stopped, and the convenience of the motoring public.
- 26 (2) Designates~~Designate~~ in advance the pattern both for stopping vehicles  
 27 and for requesting drivers that are stopped to submit to alcohol  
 28 screening tests to produce drivers license, registration, and insurance  
 29 information. The plan
- 30 (2a) Operate under a written policy that provides guidelines for the pattern.  
 31 The policy may be either the agency's own policy, or the policy of  
 32 another law enforcement agency, and may include contingency  
 33 provisions for altering either pattern if actual traffic conditions are  
 34 different from those anticipated, but no individual officer may be given  
 35 discretion as to which vehicle is stopped or, of the vehicles stopped,  
 36 which driver is requested to submit to an alcohol screening test. to  
 37 produce drivers license, registration, and insurance information. If  
 38 officers of a law enforcement agency are operating under another  
 39 agency's policy, it must be stated in writing.
- 40 (3) Marks the area in which checks are conducted to advise~~Advise~~ the  
 41 public that an authorized impaired driving check checking station is  
 42 being made operated by having, at a minimum, one law enforcement  
 43 vehicle with its blue light in operation during the conducting of the  
 44 checking station.

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

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be a defense to any offense arising out of the operation of a checking station.

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

### **PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS**

**SECTION 4.** Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

**"§ 20-38.1. Applicability.**

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

**"§ 20-38.2. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to seek evidence of the driver's impairment, and make arrests, at any place within the State.

**"§ 20-38.3. Police processing duties.**

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

- 1           (1) Shall inform the person arrested of the charges or a cause for the  
2 arrest.
- 3           (2) May take the person arrested to any place within the State for one or  
4 more chemical analyses at the request of any law enforcement officer  
5 and for any evaluation by a law enforcement officer, medical  
6 professional, or other person to determine the extent or cause of the  
7 person's impairment.
- 8           (3) May take the person arrested to some other place within the State for  
9 the purpose of having the person identified, to complete a crash report,  
10 or for any other lawful purpose.
- 11           (4) May take photographs and fingerprints in accordance with  
12 G.S. 15A-502.
- 13           (5) Shall take the person arrested before a judicial official for an initial  
14 appearance after completion of all investigatory procedures, crash  
15 reports, chemical analyses, and other procedures provided for in this  
16 section.

17 **"§ 20-38.4. Initial appearance.**

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

- 21           (1) A magistrate may hold an initial appearance at any place within the  
22 county and shall, to the extent practicable, be available at locations  
23 other than the courthouse when it will expedite the initial appearance.
- 24           (2) In determining whether there is probable cause to believe a person is  
25 impaired, the magistrate may review all alcohol screening tests,  
26 chemical analyses, receive testimony from any law enforcement  
27 officer concerning impairment and the circumstances of the arrest, and  
28 observe the person arrested.
- 29           (3) If there is a finding of probable cause, the magistrate shall consider  
30 whether the person is impaired to the extent that the provisions of  
31 G.S. 15A-534.2 should be imposed.
- 32           (4) The magistrate shall also:
- 33           a. Inform the person in writing of the established procedure to  
34 have others appear at the jail to observe his condition or to  
35 administer an additional chemical analysis if the person is  
36 unable to make bond; and
- 37           b. Require the person who is unable to make bond to list all  
38 persons he wishes to contact and telephone numbers on a form  
39 that sets forth the procedure for contacting the persons listed. A  
40 copy of this form shall be filed with the case file.

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

43 **"§ 20-38.5. Facilities.**

1       (a) The Chief District Court Judge, the Department of Health and Human  
2 Services, the district attorney, and the sheriff shall:

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

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

7           (3) Approve a procedure for access to a person arrested for an  
8 implied-consent offense by family and friends or a qualified person  
9 contacted by the arrested person to obtain blood or urine when the  
10 arrested person is held in custody and unable to obtain pretrial release  
11 from jail.

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

17       (c) If the instrument for performing a chemical analysis of the breath is located in  
18 a State or municipal building, then the head of the highway patrol for the county, the  
19 chief of police for the city or that person's designee shall be substituted for the sheriff  
20 when determining signs and access to the chemical analysis room. The signs shall be  
21 maintained by the owner of the building. When a breath testing instrument is in a motor  
22 vehicle or at a temporary location, the Department of Health and Human Services shall  
23 alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section.

24 **"§ 20-38.6. Motions and district court procedure.**

25       (a) The defendant may move to suppress evidence or dismiss charges only prior  
26 to trial, except the defendant may move to dismiss the charges for insufficient evidence  
27 at the close of the State's evidence and at the close of all of the evidence without prior  
28 notice. If, during the course of the trial, the defendant discovers facts not previously  
29 known, a motion to suppress or dismiss may be made during the trial.

30       (b) Upon a motion to suppress or dismiss the charges, other than at the close of  
31 the State's evidence or at the close of all the evidence, the State shall be granted  
32 reasonable time to procure witnesses or evidence and to conduct research required to  
33 defend against the motion.

34       (c) The judge shall summarily grant the motion to suppress evidence if the State  
35 stipulates that the evidence sought to be suppressed will not be offered in evidence in  
36 any criminal action or proceeding against the defendant.

37       (d) The judge may summarily deny the motion to suppress evidence if the  
38 defendant failed to make the motion pretrial when all material facts were known to the  
39 defendant.

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

43       (f) The judge shall set forth in writing the findings of fact and conclusions of law  
44 and preliminarily indicate whether the motion should be granted or denied. If the judge

1 preliminarily indicates the motion should be granted, the judge shall not enter a final  
2 judgment on the motion until after the State has appealed to superior court or has  
3 indicated it does not intend to appeal.

4 **"§ 20-38.7. Appeal to superior court.**

5 (a) The State may appeal to superior court any district court preliminary  
6 determination granting a motion to suppress or dismiss. If there is a dispute about the  
7 findings of fact, the superior court shall not be bound by the findings of the district court  
8 but shall determine the matter de novo. Any further appeal shall be governed by Article  
9 90 of Chapter 15A of the General Statutes.

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

12 (c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent  
13 offense that is first tried in district court and that is appealed to superior court by the  
14 defendant for a trial de novo as a result of a conviction, the sentence imposed by the  
15 district court is vacated upon giving notice of appeal. The case shall only be remanded  
16 back to district court with the consent of the prosecutor and the superior court. When an  
17 appeal is withdrawn or a case is remanded back to district court, the district court shall  
18 hold a new sentencing hearing and shall consider any new convictions and, if the  
19 defendant has any pending charges of offenses involving impaired driving, shall delay  
20 sentencing in the remanded case until all cases are resolved."

21 **PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION**  
22 **EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN**  
23 **ACCIDENT RECONSTRUCTION EXPERT**

24 **SECTION 5.** G.S. 8C-702 reads as rewritten:

25 **"Rule 702. Testimony by experts.**

26 (a) If scientific, technical or other specialized knowledge will assist the trier of  
27 fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
28 expert by knowledge, skill, experience, training, or education, may testify thereto in the  
29 form of an opinion.

30 (a1) In an impaired driving action under Chapter 20 of the General Statutes, a  
31 witness, qualified under subsection (a) of this section and with proper foundation, may  
32 give expert testimony solely on the issue of impairment and not on the issue of specific  
33 alcohol concentration level relating to the following:

34 (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test  
35 is administered by a person who has successfully completed training in  
36 HGN.

37 (2) Whether a person was under the influence of one or more impairing  
38 substances, and the category of such impairing substance or  
39 substances. A witness who has received training and holds a current  
40 certification as a Drug Recognition Expert, issued by the State  
41 Department of Health and Human Services, shall be qualified to give  
42 the testimony under this subdivision.

43 ...

1 (i) A witness qualified as an expert in accident reconstruction who has  
2 performed a reconstruction of a crash, or has reviewed the report of investigation, with  
3 proper foundation may give an opinion as to the speed of a vehicle even if the witness  
4 did not observe the vehicle moving."

5 **PART V. ALCOHOL SCREENING DEVICES**

6 **SECTION 6.** G.S. 20-16.3 reads as rewritten:

7 "**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test**  
8 **devices and manner of use by ~~Commission for Health Services;~~**  
9 **Department of Health and Human Services; use of test results or refusal.**

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

13 (1) Reasonable grounds to believe that the driver has consumed alcohol  
14 and has:

15 a. Committed a moving traffic violation; or

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

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

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

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

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

38 (d) **Use of Screening Test Results or Refusal by Officer.** – ~~The results of an~~  
39 ~~fact that a driver showed a positive or negative result on an~~ alcohol screening test, but not  
40 the actual alcohol concentration result, or a driver's refusal to submit may be used by a  
41 law-enforcement officer, is admissible in a court, or may also be used by an  
42 administrative agency in determining if there are reasonable grounds for  
43 ~~believing~~believing:

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

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

**PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES**

**SECTION 7. G.S. 20-4.01 reads as rewritten:**

**"§ 20-4.01. Definitions.**

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

...

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

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

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

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

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

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

c. The area is a road ~~opened to used by~~ vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public,~~ subdivision, whether or not



1 the subdivision roads have been offered for dedication to the  
 2 public.

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

6 ...

7  
 8 (45) State. – A state, territory, or possession of the United States, District of  
 9 Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada,~~a  
 10 province of Canada, or the Sovereign Nation of the Eastern Band of  
 11 the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151,  
 12 located within the boundaries of the State of North Carolina.

13 ..."

14 **SECTION 8.** G.S. 20-138.1 reads as rewritten:

15 **"§ 20-138.1. Impaired driving.**

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

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

19 (2) After having consumed sufficient alcohol that he has, at any relevant  
 20 time after the driving, an alcohol concentration of 0.08 or more. The  
 21 results of a chemical analysis shall be deemed sufficient evidence to  
 22 prove a person's alcohol concentration; or

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

25 (a1) A person who has submitted to a chemical analysis of a blood sample,  
 26 pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person  
 27 did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

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 (b1) Defense Allowed. – Nothing in this section shall preclude a person from  
 32 asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

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

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

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

44 **SECTION 9.** G.S. 20-138.2 reads as rewritten:

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

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

5           (2) After having consumed sufficient alcohol that he has, at any relevant  
6 time after the driving, an alcohol concentration of 0.04 or more. The  
7 results of a chemical analysis shall be deemed sufficient evidence to  
8 prove a person's alcohol concentration; or

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

11       (a1) A person who has submitted to a chemical analysis of a blood sample,  
12 pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person  
13 did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

14       (a2) In order to prove the gross vehicle weight rating of a vehicle as defined in  
15 G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight,  
16 the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or  
17 declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross  
18 vehicle weight rating as determined from the vehicle identification number, the listed  
19 gross weight publications from the manufacturer of the vehicle, or any other description  
20 or evidence shall be admissible.

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

24       (b1) Defense Allowed. – Nothing in this section shall preclude a person from  
25 asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

26       ..."

27       **SECTION 10.1.** G.S. 20-138.3 reads as rewritten:

28       "**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**  
29 **drugs.**

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

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

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

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 (c) Punishment; Effect When Impaired Driving Offense Also Charged. – The  
9 offense in this section is a ~~Class 2~~Class 3 misdemeanor. It is not, in any circumstances,  
10 a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is  
11 convicted under this section and of an offense involving impaired driving arising out of  
12 the same transaction, the aggregate punishment imposed by the court may not exceed  
13 the maximum applicable to the offense involving impaired driving, and any minimum  
14 punishment applicable shall be imposed.

15 (d) ~~Limited Driving Privilege.~~ — A person who is convicted of violating  
16 subsection (a) of this section and whose driver's license is revoked solely based on that  
17 conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This  
18 subsection shall apply only if the person meets both of the following requirements:

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

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

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

28 **SECTION 10.2.** G.S. 20-13(a) reads as rewritten:

29 "(a) The Division ~~must~~must, upon receipt of a record of the licensee's conviction,  
30 revoke the license of a person who was under 18 years of age at the time of the offense  
31 and who is convicted of violating the provisions of G.S. 20-138.3 ~~G.S. 20-138.3.~~ upon  
32 receipt of a record of the licensee's conviction."

33 **SECTION 11.** G.S. 20-138.5(a) reads as rewritten:

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

38 **SECTION 12.** G.S. 20-138.5(c) reads as rewritten:

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

## 42 **PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE**

43 **SECTION 13.** G.S. 20-141.4 reads as rewritten:

1 **"§ 20-141.4. Felony and misdemeanor death by ~~vehiele~~vehicle; felony serious**  
2 **injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

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

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

8 (1) The person unintentionally causes the death of another person,

9 (2) The person was engaged in the offense of impaired driving under  
10 G.S. 20-138.1 or G.S. 20-138.2, and

11 (3) The commission of the offense in subdivision (2) of this subsection is  
12 the proximate cause of the death.

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

19 (1) The person unintentionally causes the death of another person,

20 (2) The person was engaged in the violation of any State law or local  
21 ordinance applying to the operation or use of a vehicle or to the  
22 regulation of traffic, other than impaired driving under G.S. 20-138.1,  
23 and

24 (3) The commission of the offense in subdivision (2) of this subsection is  
25 the proximate cause of the death.

26 (a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony  
27 serious injury by vehicle if:

28 (1) The person unintentionally causes serious injury to another person,

29 (2) The person was engaged in the offense of impaired driving under  
30 G.S. 20-138.1 or G.S. 20-138.2, and

31 (3) The commission of the offense in subdivision (2) of this subsection is  
32 the proximate cause of the serious injury.

33 (a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the  
34 offense of aggravated felony serious injury by vehicle if:

35 (1) The person unintentionally causes serious injury to another person,

36 (2) The person was engaged in the offense of impaired driving under  
37 G.S. 20-138.1 or G.S. 20-138.2,

38 (3) The commission of the offense in subdivision (2) of this subsection is  
39 the proximate cause of the serious injury, and

40 (4) The person has a previous conviction involving impaired driving, as  
41 defined in G.S. 20-4.01(24a), within seven years of the date of the  
42 offense.

43 (a5) Aggravated Felony Death by Vehicle. – A person commits the offense of  
44 aggravated felony death by vehicle if:

- 1           (1) The person unintentionally causes the death of another person,
- 2           (2) The person was engaged in the offense of impaired driving under
- 3           G.S. 20-138.1 or G.S. 20-138.2,
- 4           (3) The commission of the offense in subdivision (2) of this subsection is
- 5           the proximate cause of the death, and
- 6           (4) The person has a previous conviction involving impaired driving, as
- 7           defined in G.S. 20-4.01(24a), within seven years of the date of the
- 8           offense.

9           (a6) Repeat Felony Death by Vehicle Offender. – A person who commits an  
10 offense under subsection (a1) or subsection (a5) of this section, and who has a previous  
11 conviction under subsection (a1) or subsection (a5), shall be subject to the same  
12 sentence as if the person had been convicted of second degree murder.

13           (b) Punishments. – Unless the conduct is covered under some other provision of  
14 law providing greater punishment, the following classifications apply to the offenses set  
15 forth in this section:

- 16           (1) Aggravated felony death by vehicle is a Class D felony.
- 17           (2) Felony death by vehicle is a Class E felony.
- 18           (3) Aggravated felony serious injury by vehicle is a Class E felony.
- 19           (4) Felony serious injury by vehicle is a Class F felony.
- 20           (5) Misdemeanor death by vehicle is a Class 1 misdemeanor. ~~Felony death~~
- 21           ~~by vehicle is a Class G felony. Misdemeanor death by vehicle is a~~
- 22           ~~Class 1 misdemeanor.~~

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

## 27 **PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED-CONSENT** 28 **LAW**

29           **SECTION 14.** G.S. 20-16.2 reads as rewritten:

30 **"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license**  
31 **in event of refusal; right of driver to request analysis.**

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

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

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

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

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

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

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

16 (c1) Procedure for Reporting Results and Refusal to Division. – Whenever a  
17 person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol  
18 concentration of 0.16 or more, or a person's drivers license has an alcohol concentration  
19 restriction and the results of the chemical analysis establish a violation of the restriction,  
20 the charging officer and the chemical analyst ~~must~~ shall without unnecessary delay go  
21 before an official authorized to administer oaths and execute an affidavit(s) stating that:

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

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

43 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon  
44 receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~

1 shall expeditiously notify the person charged that the person's license to drive is revoked  
2 for 12 months, effective on the tenth calendar day after the mailing of the revocation  
3 order unless, before the effective date of the order, the person requests in writing a  
4 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the  
5 person shows to the satisfaction of the Division that his or her license was surrendered  
6 to the court, and remained in the court's possession, then the Division shall credit the  
7 amount of time for which the license was in the possession of the court against the  
8 12-month revocation period required by this subsection. If the person properly requests  
9 a hearing, the person retains his or her license, unless it is revoked under some other  
10 provision of law, until the hearing is held, the person withdraws the request, or the  
11 person fails to appear at a scheduled hearing. The hearing officer may subpoena any  
12 witnesses or documents that the hearing officer deems necessary. The person may  
13 request the hearing officer to subpoena the charging officer, the chemical analyst, or  
14 both to appear at the hearing if the person makes the request in writing at least three  
15 days before the hearing. The person may subpoena any other witness whom the person  
16 deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and  
17 service of all subpoenas issued under the authority of this section. The hearing officer is  
18 authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~  
19 shall be conducted in the county where the charge was brought, and ~~must~~ shall be  
20 limited to consideration of whether:

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

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

40 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the  
41 refusal occurred in a case involving death or critical injury to another person, no limited  
42 driving privilege may be issued. The 12-month revocation begins only after all other  
43 periods of revocation have terminated unless the person's license is revoked under  
44 G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections,



1 the revocation under this subsection begins at the time and in the manner specified in  
2 subsection (d) for revocations under this section. However, the person's eligibility for a  
3 hearing to determine if the revocation under those sections should be rescinded is  
4 postponed for one year from the date on which the person would otherwise have been  
5 eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the  
6 12-month revocation under this subsection is in effect, that revocation, whether imposed  
7 by a court or by the Division, may only take effect after the period of revocation under  
8 this subsection has terminated.

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

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

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

- 1 (8) The person has obtained a substance abuse assessment from a mental  
2 health facility and successfully completed any recommended training  
3 or treatment program.

4 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the  
5 procedure for application and conduct of the hearing and the restrictions required or  
6 authorized to be included in the limited driving privilege apply to applications under  
7 this subsection. If the case was finally disposed of in the district court, the hearing shall  
8 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal  
9 occurred by a district court judge. If the case was finally disposed of in the superior  
10 court, the hearing shall be conducted in the superior court district or set of districts as  
11 defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A  
12 limited driving privilege issued under this section authorizes a person to drive if the  
13 person's license is revoked solely under this section or solely under this section and  
14 G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving  
15 privilege is invalid.

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

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

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

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

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

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

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

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

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

41 Your driving privilege will be revoked immediately for at least 30 days  
42 if the test result is 0.08 or more, 0.04 or more if you were driving a  
43 commercial vehicle, or 0.01 or more if you are under the age of 21.

1 (3) That if ~~the person fails~~you fail to comply fully with the test  
2 procedures, the officer may charge ~~the person~~you with any offense for  
3 which the officer has probable cause, and if ~~the person is~~you are  
4 charged with an implied consent offense, ~~the person's~~your refusal to  
5 submit to the testing required as a result of that charge would result in  
6 revocation of ~~the person's driver's license~~your driving privilege. The  
7 results of the chemical analysis are admissible in evidence in any  
8 proceeding in which they are relevant."

9 **PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES**

10 **SECTION 15.** G.S. 20-139.1 reads as rewritten:

11 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**  
12 **provisions; controlled-drinking programs.**

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

19 (b) Approval of Valid Test Methods; Licensing Chemical Analysts. – ~~A~~The  
20 results of a chemical analysis, to be valid, shall be analysis shall be deemed sufficient  
21 evidence to prove a person's alcohol concentration. A chemical analysis of the breath  
22 administered pursuant to the implied-consent law is admissible in any court or  
23 administrative hearing or proceeding if it meets both of the following requirements:

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

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

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

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

- 6 (1) ~~The officer possesses a current permit issued by the Department of~~  
7 ~~Health and Human Services for the type of chemical analysis.~~  
8 (2) ~~The officer performs the chemical analysis by using an automated~~  
9 ~~instrument that prints the results of the analysis.~~

10 Any person possessing a current permit authorizing the person to perform chemical  
11 analysis may perform a chemical analysis.

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

- 19 (1) The defendant objects to the introduction into evidence of the results  
20 of the chemical analysis of the defendant's breath; and  
21 (2) The defendant demonstrates that, with respect to the instrument used to  
22 analyze the defendant's breath, preventive maintenance procedures  
23 required by the regulations of the ~~Commission for Health Services~~  
24 Department of Health and Human Services had not been performed  
25 within the time limits prescribed by those regulations.

26 (b3) Sequential Breath Tests Required. – ~~By January 1, 1985, the regulations of~~  
27 ~~the Commission for Health Services~~ The methods governing the administration of  
28 chemical analyses of the breath shall require the testing of at least duplicate sequential  
29 breath samples. The results of the chemical analysis of all breath samples are admissible  
30 if the test results from any two consecutively collected breath samples do not differ  
31 from each other by an alcohol concentration greater than 0.02. Only the lower of the  
32 two test results of the consecutively administered tests can be used to prove a particular  
33 alcohol concentration. Those regulations must provide:

- 34 (1) ~~A specification as to the minimum observation period before collection~~  
35 ~~of the first breath sample and the time requirements as to collection of~~  
36 ~~second and subsequent samples.~~  
37 (2) ~~That the test results may only be used to prove a person's particular~~  
38 ~~alcohol concentration if:~~  
39 a. ~~The pair of readings employed are from consecutively~~  
40 ~~administered tests; and~~  
41 b. ~~The readings do not differ from each other by an alcohol~~  
42 ~~concentration greater than 0.02.~~  
43 (3) ~~That when a pair of analyses meets the requirements of subdivision~~  
44 ~~(2), only the lower of the two readings may be used by the State as~~

1 proof of a person's alcohol concentration in any court or administrative  
2 proceeding.

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

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

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

21 (b5) Subsequent Tests Allowed. — A person may be requested, pursuant to  
22 G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid  
23 or substance in addition to or in lieu of a chemical analysis of the breath, in the  
24 discretion of ~~the charging a law enforcement~~ officer. If a subsequent chemical analysis  
25 is requested pursuant to this subsection, the person shall again be advised of the implied  
26 consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit  
27 to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal  
28 under G.S. 20-16.2.

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

38 (c) ~~Withdrawal of Blood and Urine for Chemical Analysis. — Notwithstanding~~  
39 any other provision of law, ~~When when~~ a blood or urine test is specified as the type of  
40 chemical analysis by ~~the charging a law enforcement~~ officer, ~~only~~ a physician,  
41 registered nurse, emergency medical technician, or other qualified person ~~may shall~~  
42 withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further  
43 authorization or approval is required. If the person withdrawing the blood or collecting  
44 the urine requests written confirmation of the ~~charging law enforcement~~ officer's request

1 for the withdrawal of ~~blood,~~ blood or collecting the urine, the officer shall furnish it  
2 before blood is ~~withdrawn,~~ withdrawn or urine collected. When blood is withdrawn or  
3 urine collected pursuant to a ~~charging~~ law enforcement officer's request, neither the  
4 person withdrawing the blood nor any hospital, laboratory, or other institution, person,  
5 firm, or corporation employing that person, or contracting for the service of  
6 withdrawing blood, may be held criminally or civilly liable by reason of withdrawing  
7 that blood, except that there is no immunity from liability for negligent acts or  
8 omissions.

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

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

17 (c1) Admissibility. – The results of a chemical analysis of blood or urine by the  
18 North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina,  
19 Police Department Laboratory, or any other laboratory approved for chemical analysis  
20 by the Department of Health and Human Services, are admissible as evidence in all  
21 administrative hearings, and in any court, without further authentication. The results  
22 shall be certified by the person who performed the analysis, and reported on a form  
23 approved by the Attorney General. However, if the defendant notifies the State, at least  
24 five days before trial in the superior court division or an adjudicatory hearing in juvenile  
25 court, that the defendant objects to the introduction of the report into evidence, the  
26 admissibility of the report shall be determined and governed by the appropriate rules of  
27 evidence.

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

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

36 (c2) A chemical analysis of blood or urine, to be admissible under this section,  
37 shall be performed in accordance with rules or procedures adopted by the State Bureau  
38 of Investigation, or by another laboratory certified by the American Society of Crime  
39 Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage  
40 of forensic analyses.

41 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary  
42 Witnesses. –

43 (1) For the purpose of establishing the chain of physical custody or control  
44 of blood or urine tested or analyzed to determine whether it contains

1 alcohol, a controlled substance or its metabolite, or any impairing  
2 substance, a statement signed by each successive person in the chain of  
3 custody that the person delivered it to the other person indicated on or  
4 about the date stated is prima facie evidence that the person had  
5 custody and made the delivery as stated, without the necessity of a  
6 personal appearance in court by the person signing the statement.

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

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

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

21 (c4) The results of a blood or urine test are admissible to prove a person's alcohol  
22 concentration or the presence of controlled substances or metabolites or any other  
23 impairing substance if:

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

26 (2) A chemical analysis of the person's blood was performed by a  
27 chemical analyst possessing a permit issued by the Department of  
28 Health and Human Services authorizing the chemical analyst to  
29 analyze blood or urine for alcohol or controlled substances,  
30 metabolites of a controlled substance, or any other impairing  
31 substance.

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

36 ~~(d) Right to Additional Test. – A person who submits to a chemical analysis may~~  
37 ~~have a qualified person of his own choosing administer an additional chemical test or~~  
38 ~~tests, or have a qualified person withdraw a blood sample for later chemical testing by a~~  
39 ~~qualified person of his own choosing. Any law enforcement officer having in his charge~~  
40 ~~any person who has submitted to a chemical analysis shall assist the person in~~  
41 ~~contacting someone to administer the additional testing or to withdraw blood, and shall~~  
42 ~~allow access to the person for that purpose. Nothing in this section shall be construed to~~  
43 ~~prohibit a person from obtaining or attempting to obtain an additional chemical analysis.~~  
44 If the person is not released from custody after the initial appearance, the agency having

1 custody of the person shall make reasonable efforts in a timely manner to assist the  
2 person in obtaining access to a telephone to arrange for any additional test and allow  
3 access to the person in accordance with the agreed procedure in G.S. 20-38.4. The  
4 failure or inability of the person who submitted to a chemical analysis to obtain any  
5 additional test or to withdraw blood does not preclude the admission of evidence  
6 relating to the chemical analysis.

7 (d1) Right to Require Additional Tests. – If a person refuses to submit to any test  
8 or tests pursuant to this section, any law enforcement officer with probable cause may,  
9 without a court order, compel the person to provide blood or urine samples for analysis  
10 if the officer reasonably believes that the delay necessary to obtain a court order, under  
11 the circumstances, would result in the dissipation of the percentage of alcohol in the  
12 person's blood or urine.

13 (d2) Notwithstanding any other provision of law, when a blood or urine sample is  
14 requested under subsection (d1) of this section by a law enforcement officer, a  
15 physician, registered nurse, emergency medical technician, or other qualified person  
16 shall withdraw the blood and obtain the urine sample, and no further authorization or  
17 approval is required. If the person withdrawing the blood or collecting the urine requests  
18 written confirmation of the charging officer's request for the withdrawal of blood or  
19 obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

20 (d3) When blood is withdrawn or urine collected pursuant to a law enforcement  
21 officer's request, neither the person withdrawing the blood nor any hospital, laboratory,  
22 or other institution, person, firm, or corporation employing that person, or contracting  
23 for the service of withdrawing blood, may be held criminally or civilly liable by reason  
24 of withdrawing that blood, except that there is no immunity from liability for negligent  
25 acts or omissions. The results of the analysis of blood or urine under this subsection  
26 shall be admissible if performed by the State Bureau of Investigation Laboratory or any  
27 other hospital or qualified laboratory.

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

31 (1) The alcohol concentration or concentrations revealed by the chemical  
32 analysis.

33 (2) The time of the collection of the breath sample or samples used in the  
34 chemical analysis.

35 A copy of the record of this information shall be furnished to the person submitting to  
36 the chemical analysis, or to his attorney, before any trial or proceeding in which the  
37 results of the chemical analysis may be used. A person charged with an implied-consent  
38 offense who has not received, prior to a trial, a copy of the chemical analysis results the  
39 State intends to offer into evidence may request in writing a copy of the results. The  
40 failure to provide a copy prior to any trial shall be grounds for a continuance of the case  
41 but shall not be grounds to suppress the results of the chemical analysis or to dismiss the  
42 criminal charges.

43 (e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a  
44 chemical analyst sworn to and properly executed before an official authorized to



1 administer oaths is admissible in evidence without further authentication in any hearing  
2 or trial in the District Court Division of the General Court of Justice with respect to the  
3 following matters:

- 4 (1) The alcohol concentration or concentrations or the presence or absence  
5 of an impairing substance of a person given a chemical analysis and  
6 who is involved in the hearing or trial.
- 7 (2) The time of the collection of the blood, breath, or other bodily fluid or  
8 substance sample or samples for the chemical analysis.
- 9 (3) The type of chemical analysis administered and the procedures  
10 followed.
- 11 (4) The type and status of any permit issued by the Department of Health  
12 and Human Services that the analyst held on the date the analyst  
13 performed the chemical analysis in question.
- 14 (5) If the chemical analysis is performed on a breath-testing instrument for  
15 which regulations adopted pursuant to subsection (b) require  
16 preventive maintenance, the date the most recent preventive  
17 maintenance procedures were performed on the breath-testing  
18 instrument used, as shown on the maintenance records for that  
19 instrument.

20 The Department of Health and Human Services shall develop a form for use by  
21 chemical analysts in making this affidavit. If any person who submitted to a chemical  
22 analysis desires that a chemical analyst personally testify in the hearing or trial in the  
23 District Court Division, the person may subpoena the chemical analyst and examine him  
24 as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued  
25 unless the person files in writing with the court and serves a copy on the district attorney  
26 at least five days prior to trial an affidavit specifying the factual grounds on which the  
27 person believes the chemical analysis was not properly administered and the facts that  
28 the chemical analyst will testify about and stating that the presence of the analyst is  
29 necessary for the proper defense of the case. The district court shall determine if there  
30 are grounds to believe that the presence of the analyst requested is necessary for the  
31 proper defense. If so, the case shall be continued until the analyst can be present. The  
32 criminal case shall not be dismissed due to the failure of the analyst to appear, unless  
33 the analyst willfully fails to appear after being ordered to appear by the court.

34 (f) Evidence of Refusal Admissible. – If any person charged with an  
35 implied-consent offense refuses to submit to a chemical ~~analysis, analysis or to perform~~  
36 field sobriety tests at the request of an officer, evidence of that refusal is admissible in  
37 any ~~criminal~~ criminal, civil, or administrative action against him for an implied consent  
38 offense under G.S. 20-16.2, the person.

39 (g) Controlled-Drinking Programs. – The Department of Health and Human  
40 Services may adopt rules concerning the ingestion of controlled amounts of alcohol by  
41 individuals submitting to chemical testing as a part of scientific, experimental,  
42 educational, or demonstration programs. These regulations shall prescribe procedures  
43 consistent with controlling federal law governing the acquisition, transportation,  
44 possession, storage, administration, and disposition of alcohol intended for use in the

1 programs. Any person in charge of a controlled-drinking program who acquires alcohol  
2 under these regulations must keep records accounting for the disposition of all alcohol  
3 acquired, and the records must at all reasonable times be available for inspection upon  
4 the request of any federal, State, or local law-enforcement officer with jurisdiction over  
5 the laws relating to control of alcohol. A controlled-drinking program exclusively using  
6 lawfully purchased alcoholic beverages in places in which they may be lawfully  
7 possessed, however, need not comply with the record-keeping requirements of the  
8 regulations authorized by this subsection. All acts pursuant to the regulations reasonably  
9 done in furtherance of bona fide objectives of a controlled-drinking program authorized  
10 by the regulations are lawful notwithstanding the provisions of any other general or  
11 local statute, regulation, or ordinance controlling alcohol."

12 **PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED**  
13 **DRIVING CASES**

14 **SECTION 16.** Chapter 90 of the General Statutes is amended by adding a  
15 new section to read:

16 **"§ 90-21.20B. Access to medical information for law enforcement purposes.**

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

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

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

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

30 (b) A prosecutor or law enforcement officer receiving identifiable health  
31 information under this section shall not disclose this information to others except as  
32 necessary to the investigation or otherwise allowed by law.

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

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

37 **SECTION 17.** G.S. 8-53.1 reads as rewritten:

38 **"§ 8-53.1. Physician-patient and nurse privilege waived in child ~~abuse~~abuse;**  
39 **disclosure of information in impaired driving accident cases.**

40 (a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the  
41 physician-patient or nurse privilege shall not be a ground for excluding evidence  
42 regarding the abuse or neglect of a child under the age of 16 years or regarding an  
43 illness of or injuries to such child or the cause thereof in any judicial proceeding related

1 to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General  
2 Statutes of North Carolina.

3 (b) Nothing in this Article shall preclude a health care provider, as defined in  
4 G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a  
5 vehicle crash under the provisions of G.S. 90-21.20B."

6 **PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS**  
7 **DISMISSED**

8 **SECTION 18.** G.S. 20-138.4 reads as rewritten:

9 **"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
10 **involving impaired driving.**

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

- 15 (1) Enters a voluntary dismissal; or
- 16 (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- 17 (3) Substitutes another charge, by statement of charges or otherwise, if the  
18 substitute charge carries a lesser mandatory minimum punishment or is  
19 not an offense involving impaired driving; or
- 20 (4) Otherwise takes a discretionary action that effectively dismisses or  
21 reduces the original charge in the case involving impaired driving.

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

24 (b) The written explanation shall be signed by the prosecutor taking the action on  
25 a form approved by the Administrative Office of the Courts and shall contain, at a  
26 minimum:

- 27 (1) The alcohol concentration or the fact that the driver refused.
- 28 (2) A list of all prior convictions of implied-consent offenses or driving  
29 while license revoked.
- 30 (3) Whether the driver had a valid drivers license or privilege to drive in  
31 this State as indicated by the Division's records.
- 32 (4) A statement that a check of the database of the Administrative Office  
33 of the Courts revealed whether any other charges against the defendant  
34 were pending.
- 35 (5) The elements that the prosecutor believes in good faith can be proved,  
36 and a list of those elements that the prosecutor cannot prove and why.
- 37 (6) The name and agency of the charging officer and whether the officer is  
38 available.
- 39 (7) Any other reason why the charges are dismissed.

40 (c) A copy of the form required in subsection (b) of this section shall be sent to  
41 the head of the law enforcement agency that employed the charging officer, to the  
42 district attorney who employs the prosecutor, and filed in the court file. The  
43 Administrative Office of the Courts shall electronically record this data in its database  
44 and make it available upon request."

1           **SECTION 19.1.** G.S. 7A-109.2 reads as rewritten:

2   "**§ 7A-109.2. Records of dispositions in criminal cases; impaired driving**  
3   **integrated data system.**

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

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

- 14           (1) The reasons for any voluntary dismissal or reduction of charges as  
15 specified in G.S. 20-138.4;
- 16           (2) The reasons for any pretrial dismissal by the court;
- 17           (3) The reasons for any continuances granted in the case;
- 18           (4) The alcohol concentration reported by the charging officer or chemical  
19 analyst, if any;
- 20           (5) The reasons for any suppression of evidence;
- 21           (6) The reasons for dismissal of charges at trial;
- 22           (7) The punishment imposed, including community service, jail, substance  
23 abuse assessment and education or treatment, amount of any fine,  
24 costs, and fees imposed;
- 25           (8) The amount and reason for waiving or reduction of any fee or fine;
- 26           (9) The time or other conditions given to pay any fine, cost, or fees;
- 27           (10) After the initial disposition, the modification or reduction to any  
28 sentence, fee owed, fine, or restitution and the name and agency of the  
29 person requesting the modification;
- 30           (11) The date of compliance with court-ordered community service, jail  
31 sentence, substance abuse assessment, substance abuse education or  
32 treatment, and payment of fines, costs, and fees; and
- 33           (12) Subsequent court proceedings to enforce compliance with punishment,  
34 assessment, treatment, education, or payment of fines, costs, and fees."

35       **SECTION 19.2.** Chapter 7A of the General Statutes is amended by adding a  
36 new section to read:

37   "**§ 7A-346.3. Impaired driving integrated data system report.**

38   The information compiled by G.S. 7A-109.2 shall be maintained in an  
39 Administrative Office of the Courts database. By March 1, the Administrative Office of  
40 the Courts shall provide an annual report of the previous calendar year to the Joint  
41 Legislative Commission on Governmental Operations and the Joint Legislative  
42 Corrections, Crime Control, and Juvenile Justice Oversight Committee. The annual  
43 report shall show the types of dispositions for the entire State by county, by judge, by  
44 prosecutor, and by defense attorney. This report shall also include the amount of fines,

1 costs, and fees ordered at the disposition of the charge, the amount of any subsequent  
2 reduction, amount collected, and the amount still owed, and compliance with sanctions  
3 of community service, jail, substance abuse assessment, treatment, and education. The  
4 Administrative Office of the Courts shall facilitate public access to the information  
5 collected under this section by posting this information on the court's Internet page in a  
6 manner accessible to the public and shall make reports of any information collected  
7 under this section available to the public upon request and without charge."

8 **PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE**  
9 **REVOKED AFTER FAILURE TO APPEAR**

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

11 **"§ 20-48. Giving of notice.**

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

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

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

38 **SECTION 21.1.** G.S. 20-28 reads as rewritten:

39 **"§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or**  
40 **while disqualified.**

41 (a) Driving While License Revoked. – Except as provided in subsection (a1) of  
42 this section, any person whose drivers license has been revoked who drives any motor  
43 vehicle upon the highways of the State while the license is revoked is guilty of a Class 1  
44 misdemeanor. Upon conviction, the person's license shall be revoked for an additional

1 period of one year for the first offense, two years for the second offense, and  
2 permanently for a third or subsequent offense.

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

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

- 10 (1) At the time of the offense, the person's license was revoked solely  
11 under G.S. 20-16.5; and  
12 (2) a. The offense occurred more than 45 days after the effective date  
13 of a revocation order issued under G.S. 20-16.5(f) and the  
14 period of revocation was 45 days as provided under subdivision  
15 (3) of that subsection; or  
16 b. The offense occurred more than 30 days after the effective date  
17 of the revocation order issued under any other provision of  
18 G.S. 20-16.5; or  
19 (3) At the time of the offense the person had met the requirements of  
20 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of  
21 the person's drivers license privilege as provided therein.

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

26 (a2) Driving After Notification or Failure to Appear. – A person shall be guilty of  
27 a Class 1 misdemeanor if:

- 28 (1) The person drives upon a highway while that person's license is  
29 revoked for an impaired drivers license revocation after the Division  
30 has sent notification in accordance with G.S. 20-48; or  
31 (2) The person fails to appear for two years from the date of the charge  
32 after being charged with an implied-consent offense.

33 Upon conviction, the person's drivers license shall be revoked for an additional  
34 period of one year for the first offense, two years for the second offense, and  
35 permanently for a third or subsequent offense. The restoree of a revoked drivers license  
36 who operates a motor vehicle upon the highways of the State without maintaining  
37 financial responsibility as provided by law shall be punished as for driving without a  
38 license.

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

40 (c) When Person May Apply for License. – A person whose license has been  
41 revoked may apply for a license as follows:

- 42 (1) If revoked under subsection (a) of this section for one year-year, the  
43 person may apply for a license after 90 days.

1           (2) If punished under subsection (a1) of this section and the original  
2 revocation was pursuant to G.S. 20-16.5, in order to obtain  
3 reinstatement of a drivers license, the person must obtain a substance  
4 abuse assessment and show proof of financial responsibility to the  
5 Division. If the assessment recommends education or treatment, the  
6 person must complete the education or treatment within the time limits  
7 specified by the Division.

8           (3) If revoked under subsection (a2) of this section for one year, the  
9 person may apply for a license after one year.

10          (4) If revoked under this section for two years, the person may apply for a  
11 license after one year.

12          (5) If revoked under this section permanently, the person may apply for a  
13 license after three years.~~A person whose license has been revoked~~  
14 ~~under this section for two years may apply for a license after 12~~  
15 ~~months. A person whose license has been revoked under this section~~  
16 ~~permanently may apply for a license after three years.~~

17          (c1) Upon the filing of an application the Division may, with or without a hearing,  
18 issue a new license upon satisfactory proof that the former licensee has not been  
19 convicted of a moving violation under this Chapter or the laws of another state, a  
20 violation of any provision of the alcoholic beverage laws of this State or another state,  
21 or a violation of any provisions of the drug laws of this State or another state when any  
22 of these violations occurred during the revocation period.

23          (c2) The Division may impose any restrictions or conditions on the new license  
24 that the Division considers appropriate for the balance of the revocation period. When  
25 the revocation period is permanent, the restrictions and conditions imposed by the  
26 Division may not exceed three years.

27          (c3) A person whose license is revoked for violation of subsection (a1) of this  
28 section where the person's license was originally revoked for an impaired driving  
29 revocation, or a person whose license is revoked for a violation of subsection (a2) of  
30 this section, may only have the license conditionally restored by the Division pursuant  
31 to the provisions of subsection (c4) of this section.

32          (c4) For a conditional restoration under subsection (c3) of this section, the  
33 Division shall require at a minimum that the driver obtain a substance abuse assessment  
34 prior to issuance of a license and show proof of financial responsibility. If the substance  
35 abuse assessment recommends education or treatment, the person must complete the  
36 education or treatment within the time limits specified. If the assessment determines that  
37 the person abuses alcohol, the Division shall require the person to install and use an  
38 ignition interlock system on any vehicles that are to be driven by that person for the  
39 period of time set forth in G.S. 20-17.8(c).

40          (c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of  
41 this section, the Division shall cancel the license and impose the remaining revocation  
42 period if any of the following occur:

43               (1) The person violates any condition of the restoration;

44               (2) The person is convicted of any moving offense in this or another state;

- 1           (3) The person is convicted for a violation of the alcoholic beverage or  
2           control substance laws of this or any other state.

3 The Division shall also cancel the registration on any vehicles registered in the driver's  
4 name and shall require the driver to surrender all current registration plates and cards.

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

- 11           (1) For a first offense of driving while disqualified, a person is  
12           disqualified for a period equal to the period for which the person was  
13           disqualified when the offense occurred.  
14           (2) For a second offense of driving while disqualified, a person is  
15           disqualified for a period equal to two times the period for which the  
16           person was disqualified when the offense occurred.  
17           (3) For a third offense of driving while disqualified, a person is  
18           disqualified for life.

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

24       **SECTION 21.2.** G.S. 20-17(a)(2) reads as rewritten:

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

- 27       ...
- 28       (2) Impaired driving under G.S. 20-138.1.~~Either of the following impaired~~  
29       ~~driving offenses:~~  
30           a. ~~Impaired driving under G.S. 20-138.1.~~  
31           b. ~~Impaired driving under G.S. 20-138.2."~~

32       **SECTION 21.3.** G.S. 20-17.8(b) reads as rewritten:

33       "(b) **Ignition Interlock Required.** – ~~When~~ Except as provided in subdivision (1) of  
34 this subsection, when the Division restores the license of a person who is subject to this  
35 section, in addition to any other restriction or condition, it shall require the person to  
36 agree to and shall indicate on the person's drivers license the following restrictions for  
37 the period designated in subsection (c):

- 38           (1) A restriction that the person may operate only a vehicle that is  
39           equipped with a functioning ignition interlock system of a type  
40           approved by the Commissioner. The Commissioner shall not  
41           unreasonably withhold approval of an ignition interlock system and  
42           shall consult with the Division of Purchase and Contract in the  
43           Department of Administration to ensure that potential vendors are not  
44           discriminated against.



- 1 (2) A requirement that the person personally activate the ignition interlock  
2 system before driving the motor vehicle.
- 3 (3) An alcohol concentration restriction as follows:
- 4 a. If the ignition interlock system is required pursuant only to  
5 subdivision (a)(1) of this section, a requirement that the person  
6 not drive with an alcohol concentration of 0.04 or greater;
- 7 b. If the ignition interlock system is required pursuant to  
8 subdivision (a)(2) of this section, a requirement that the person  
9 not drive with an alcohol concentration of greater than 0.00; or
- 10 c. If the ignition interlock system is required pursuant to  
11 subdivision (a)(1) of this section, and the person has also been  
12 convicted, based on the same set of circumstances, of: (i)  
13 driving while impaired in a commercial vehicle, G.S. 20-138.2,  
14 (ii) driving while less than 21 years old after consuming alcohol  
15 or drugs, G.S. 20-138.3, (iii) felony death by vehicle,  
16 G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide  
17 resulting from the operation of a motor vehicle when the  
18 offense involved impaired driving, a requirement that the  
19 person not drive with an alcohol concentration of greater than  
20 0.00."

21 **SECTION 21.4.** G.S. 20-17.8 is amended by adding a new subsection to  
22 read:

23 "(1) Medical Exception to Requirement. – A person subject to this section who  
24 has a medically diagnosed physical condition that makes the person incapable of  
25 personally activating an ignition interlock system may request an exception to the  
26 requirements of this section from the Division. The Division shall not issue an exception  
27 to this section unless the person has submitted to a physical examination by two or more  
28 physicians or surgeons duly licensed to practice medicine in this State or in any other  
29 state of the United States and unless such examining physicians or surgeons have  
30 completed and signed a certificate in the form prescribed by the Division. Such  
31 certificate shall be devised by the Commissioner with the advice of those qualified  
32 experts in the field of diagnosing and treating physical disorders that the Commissioner  
33 may select and shall be designed to elicit the maximum medical information necessary  
34 to aid in determining whether or not the person is capable of personally activating an  
35 ignition interlock system. The certificate shall contain a waiver of privilege and the  
36 recommendation of the examining physician to the Commissioner as to whether the  
37 person is capable of personally activating an ignition interlock system.

38 The Commissioner is not bound by the recommendations of the examining  
39 physicians but shall give fair consideration to such recommendations in acting upon the  
40 request for medical exception, the criterion being whether or not, upon all the evidence,  
41 it appears that the person is in fact incapable of personally activating an ignition  
42 interlock system. The burden of proof of such fact is upon the person seeking the  
43 exception.

1 Whenever an exception is denied by the Commissioner, such denial may be  
2 reviewed by a reviewing board upon written request of the person seeking the exception  
3 filed with the Division within 10 days after receipt of such denial. The composition,  
4 procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

5 **PART XIII. MODIFYING CURRENT PUNISHMENTS**

6 **SECTION 22.** G.S. 20-179 reads as rewritten:

7 "**§ 20-179. Sentencing hearing after conviction for impaired driving;**  
8 **determination of grossly aggravating and aggravating and mitigating**  
9 **factors; punishments.**

10 (a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under  
11 G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A,  
12 or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any  
13 of those offenses are remanded back to district court after an appeal to superior court,  
14 the judge ~~must~~ shall hold a sentencing hearing to determine whether there are  
15 aggravating or mitigating factors that affect the sentence to be imposed.

16 (1) The court shall consider evidence of aggravating or mitigating factors  
17 present in the offense that make an aggravated or mitigated sentence  
18 appropriate. The State bears the burden of proving beyond a  
19 reasonable doubt that an aggravating factor exists, and the offender  
20 bears the burden of proving by a preponderance of the evidence that a  
21 mitigating factor exists.

22 (2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts  
23 to secure the defendant's full record of traffic convictions, and ~~must~~  
24 shall present to the judge that record for consideration in the hearing.  
25 Upon request of the defendant, the prosecutor ~~must~~ shall furnish the  
26 defendant or his attorney a copy of the defendant's record of traffic  
27 convictions at a reasonable time prior to the introduction of the record  
28 into evidence. In addition, the prosecutor ~~must~~ shall present all other  
29 appropriate grossly aggravating and aggravating factors of which he is  
30 aware, and the defendant or his attorney may present all appropriate  
31 mitigating factors. In every instance in which a valid chemical analysis  
32 is made of the defendant, the prosecutor ~~must~~ shall present evidence of  
33 the resulting alcohol concentration.

34 (a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

35 (1) Notice. – If the defendant appeals to superior court, and the State  
36 intends to use one or more aggravating factors under subsections (c) or  
37 (d) of this section, the State must provide the defendant with notice of  
38 its intent. The notice shall be provided no later than 10 days prior to  
39 trial and shall contain a plain and concise factual statement indicating  
40 the factor or factors it intends to use under the authority of subsections  
41 (c) and (d) of this section. The notice must list all the aggravating  
42 factors that the State seeks to establish.

43 (2) Aggravating factors. – The defendant may admit to the existence of an  
44 aggravating factor, and the factor so admitted shall be treated as

1           though it were found by a jury pursuant to the procedures in this  
2           section. If the defendant does not so admit, only a jury may determine  
3           if an aggravating factor is present. The jury impaneled for the trial  
4           may, in the same trial, also determine if one or more aggravating  
5           factors is present, unless the court determines that the interests of  
6           justice require that a separate sentencing proceeding be used to make  
7           that determination. If the court determines that a separate proceeding is  
8           required, the proceeding shall be conducted by the trial judge before  
9           the trial jury as soon as practicable after the guilty verdict is returned.  
10          The State bears the burden of proving beyond a reasonable doubt that  
11          an aggravating factor exists, and the offender bears the burden of  
12          proving by a preponderance of the evidence that a mitigating factor  
13          exists.

14          (3)   Convening the jury. – If prior to the time that the trial jury begins its  
15          deliberations on the issue of whether one or more aggravating factors  
16          exist, any juror dies, becomes incapacitated or disqualified, or is  
17          discharged for any reason, an alternate juror shall become a part of the  
18          jury and serve in all respects as those selected on the regular trial  
19          panel. An alternate juror shall become a part of the jury in the order in  
20          which the juror was selected. If the trial jury is unable to reconvene for  
21          a hearing on the issue of whether one or more aggravating factors exist  
22          after having determined the guilt of the accused, the trial judge shall  
23          impanel a new jury to determine the issue.

24          (4)   Jury selection. – A jury selected to determine whether one or more  
25          aggravating factors exist shall be selected in the same manner as juries  
26          are selected for the trial of criminal cases.

27          (a2)   Jury Trial on Aggravating Factors in Superior Court. –

28          (1)   Defendant admits aggravating factor only. – If the defendant admits  
29          that an aggravating factor exists, but pleads not guilty to the  
30          underlying charge, a jury shall be impaneled to dispose of the charge  
31          only. In that case, evidence that relates solely to the establishment of  
32          an aggravating factor shall not be admitted in the trial.

33          (2)   Defendant pleads guilty to the charge only. – If the defendant pleads  
34          guilty to the charge, but contests the existence of one or more  
35          aggravating factors, a jury shall be impaneled to determine if the  
36          aggravating factor or factors exist.

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

38          (c)   Determining Existence of Grossly Aggravating Factors. – At the sentencing  
39          hearing, based upon the evidence presented at trial and in the hearing, the ~~judge~~  
40          or the jury in superior court, must first determine whether there are any grossly  
41          aggravating factors in the case. Whether a prior conviction exists under subdivision (1)  
42          of this subsection shall be a matter to be determined by the judge, and not the jury, in  
43          district or superior court. If the sentencing hearing is for a case remanded back to  
44          district court from superior court, the judge shall determine whether the defendant has

1 been convicted of any offense that was not considered at the initial sentencing hearing  
2 and impose the appropriate sentence under this section. The judge must impose the  
3 Level One punishment under subsection (g) of this section if ~~the judge determines it is~~  
4 determined that two or more grossly aggravating factors apply. The judge must impose  
5 the Level Two punishment under subsection (h) of this section if ~~the judge determines it~~  
6 is determined that only one of the grossly aggravating factors applies. The grossly  
7 aggravating factors are:

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

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

27 (c1) Written Findings. – The court shall make findings of the aggravating and  
28 mitigating factors present in the offense. If the jury finds factors in aggravation, the  
29 court shall ensure that those findings are entered in the court's determination of  
30 sentencing factors form or any comparable document used to record the findings of  
31 sentencing factors. Findings shall be in writing.

32 (d) Aggravating Factors to Be Weighed. – The judge, judge, or the jury in superior  
33 court, ~~must~~ shall determine before sentencing under subsection (f) whether any of the  
34 aggravating factors listed below apply to the defendant. The judge ~~must~~ shall weigh the  
35 seriousness of each aggravating factor in the light of the particular circumstances of the  
36 case. The factors are:

- 37 (1) Gross impairment of the defendant's faculties while driving or an  
38 alcohol concentration of 0.16 or more within a relevant time after the  
39 driving.  
40 (2) Especially reckless or dangerous driving.  
41 (3) Negligent driving that led to a reportable accident.  
42 (4) Driving by the defendant while his driver's license was revoked.  
43 (5) Two or more prior convictions of a motor vehicle offense not  
44 involving impaired driving for which at least three points are assigned

1 under G.S. 20-16 or for which the convicted person's license is subject  
2 to revocation, if the convictions occurred within five years of the date  
3 of the offense for which the defendant is being sentenced, or one or  
4 more prior convictions of an offense involving impaired driving that  
5 occurred more than seven years before the date of the offense for  
6 which the defendant is being sentenced.

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

9 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least  
10 30 miles per hour over the legal limit.

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

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

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

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

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

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

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

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

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

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

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

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

1 (f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury  
2 in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the  
3 judge must shall weigh all aggravating and mitigating factors listed in subsections (d)  
4 and (e). If the judge determines that:

5 (1) The aggravating factors substantially outweigh any mitigating factors,  
6 ~~he must~~ the judge shall note in the judgment the factors found and his  
7 finding that the defendant is subject to the Level Three punishment and  
8 impose a punishment within the limits defined in subsection (i).

9 (2) There are no aggravating and mitigating factors, or that aggravating  
10 factors are substantially counterbalanced by mitigating factors, ~~he must~~  
11 the judge shall note in the judgment any factors found and ~~his~~the  
12 finding that the defendant is subject to the Level Four punishment and  
13 impose a punishment within the limits defined in subsection (j).

14 (3) The mitigating factors substantially outweigh any aggravating factors,  
15 ~~he must~~ the judge shall note in the judgment the factors found and his  
16 finding that the defendant is subject to the Level Five punishment and  
17 impose a punishment within the limits defined in subsection (k).

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

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

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

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

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

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

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

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

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

- 30 (1) Be imprisoned for a term of 48 hours as a condition of special  
31 probation; or
- 32 (2) Perform community service for a term of 48 hours; or
- 33 ~~(3) Not operate a motor vehicle for a term of 60 days; or~~
- 34 (4) Any combination of these conditions.

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

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

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

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

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

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

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

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

- 28 (1) Within 90 days, if the amount of community service required is 72
- 29 hours or more; or
- 30 (2) Within 60 days, if the amount of community service required is 48
- 31 hours; or
- 32 (3) Within 30 days, if the amount of community service required is 24
- 33 hours.

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

37 (o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing  
38 hearing, the State ~~must~~ shall prove any grossly aggravating or aggravating factor ~~by the~~  
39 ~~greater weight of the evidence, beyond a reasonable doubt,~~ and the defendant ~~must~~ shall  
40 prove any mitigating factor by the greater weight of the evidence. Evidence adduced by  
41 either party at trial may be utilized in the sentencing hearing. Except as modified by this  
42 section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any  
43 evidence as to the presence or absence of previous convictions that he finds reliable but  
44 he ~~must~~ shall give prima facie effect to convictions recorded by the Division or any



1 other agency of the State of North Carolina. A copy of such conviction records  
2 transmitted by the police information network in general accordance with the procedure  
3 authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If  
4 the judge decides to impose an active sentence of imprisonment that would not have  
5 been imposed but for a prior conviction of an offense, the judge ~~must~~shall afford the  
6 defendant an opportunity to introduce evidence that the prior conviction had been  
7 obtained in a case in which he was indigent, had no counsel, and had not waived his  
8 right to counsel. If the defendant proves by the preponderance of the evidence all three  
9 above facts concerning the prior case, the conviction may not be used as a grossly  
10 aggravating or aggravating factor.

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

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

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

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

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

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

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

37 When a judge determines in accordance with the above procedures that a defendant  
38 should be placed on supervised probation, the judge shall authorize the probation officer  
39 to modify the defendant's probation by placing the defendant on unsupervised probation  
40 upon the completion by the defendant of the following conditions of his suspended  
41 sentence:

42 (1) Community service; or

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

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

1 (4) Any combination of these conditions.  
2 (s) Method of Serving Sentence. – The judge in his discretion may order a term  
3 of imprisonment ~~or community service~~ to be served on weekends, even if the sentence  
4 cannot be served in consecutive sequence. However, if the defendant is ordered to a  
5 term of 48 hours or more, or has 48 hours or more remaining on a term of  
6 imprisonment, the defendant shall be required to serve 48 continuous hours of  
7 imprisonment to be given credit for time served.

8 (1) Credit for any jail time shall only be given hour for hour for time  
9 actually served. The jail shall maintain a log showing number of hours  
10 served.

11 (2) The defendant shall be refused entrance and shall be reported back to  
12 court if the defendant appears at the jail and has remaining in his body  
13 any alcohol as shown by an alcohol screening device or controlled  
14 substance previously consumed, unless lawfully obtained and taken in  
15 therapeutically appropriate amounts.

16 (3) If a defendant has been reported back to court under subdivision (2) of  
17 this subsection, the court shall hold a hearing. The defendant shall be  
18 ordered to serve his jail time immediately and shall not be eligible to  
19 serve jail time on weekends if the court determines that, at the time of  
20 his entrance to the jail, if

21 a. The defendant had previously consumed alcohol in his body as  
22 shown by an alcohol screening device, or

23 b. The defendant had a previously consumed controlled substance  
24 in his body.

25 It shall be a defense to an immediate service of sentence of jail time  
26 and ineligibility for weekend service of jail time if the court  
27 determines that alcohol or controlled substance was lawfully obtained  
28 and was taken in therapeutically appropriate amounts.

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

30 **SECTION 23.** Chapter 7A of the General Statutes is amended by adding a  
31 new section to read:

32 **"§ 7A-109.4. Records of offenses involving impaired driving.**

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

39 **SECTION 24.** G.S. 20-17.2 is repealed.

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

44 **SECTION 25.** G.S. 18B-302 reads as rewritten:

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

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

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

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

7 (b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption. – It shall be  
8 unlawful for:

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

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

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

15 ...

16 (i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or  
17 20-Year Old. – A violation of subdivision (b)(1) or (b)(3) of this section by a person  
18 who is 19 or 20 years old is a Class 3 misdemeanor.

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

27 (k) Notwithstanding the provisions in this section, it shall not be unlawful for a  
28 person less than 21 years old to consume unfortified wine or fortified wine during  
29 participation in an exempted activity under G.S. 18B-103(4), (8), or (11)."

30 **PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE**  
31 **RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY**  
32 **SERVICE PAROLE OR HOUSE ARREST**

33 **SECTION 26.** G.S. 15A-1374 reads as rewritten:

34 **"§ 15A-1374. Conditions of parole.**

35 (a) In General. – The Post-Release Supervision and Parole Commission may in  
36 its discretion impose conditions of parole it believes reasonably necessary to insure that  
37 the parolee will lead a law-abiding life or to assist him to do so. The Commission must  
38 provide as an express condition of every parole that the parolee not commit another  
39 crime during the period for which the parole remains subject to revocation. When the  
40 Commission releases a person on parole, it must give him a written statement of the  
41 conditions on which he is being released.

42 (a1) Required Conditions for Certain Offenders. – A person serving a term of  
43 imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

1           (1) Has completed any recommended treatment or training program  
2           required by G.S. 20-179(p)(3); and  
3           (2) Is not being paroled to a residential treatment program;  
4 shall, as a condition of parole, receive community service parole pursuant to  
5 G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

6           (b) Appropriate Conditions. – As conditions of parole, the Commission may  
7 require that the parolee comply with one or more of the following conditions:

8           (1) Work faithfully at suitable employment or faithfully pursue a course of  
9 study or vocational training that will equip him for suitable  
10 employment.

11           (2) Undergo available medical or psychiatric treatment and remain in a  
12 specified institution if required for that purpose.

13           (3) Attend or reside in a facility providing rehabilitation, instruction,  
14 recreation, or residence for persons on parole.

15           (4) Support his dependents and meet other family responsibilities.

16           (5) Refrain from possessing a firearm, destructive device, or other  
17 dangerous weapon unless granted written permission by the  
18 Commission or the parole officer.

19           (6) Report to a parole officer at reasonable times and in a reasonable  
20 manner, as directed by the Commission or the parole officer.

21           (7) Permit the parole officer to visit him at reasonable times at his home or  
22 elsewhere.

23           (8) Remain within the geographic limits fixed by the Commission unless  
24 granted written permission to leave by the Commission or the parole  
25 officer.

26           (8a) Remain in one or more specified places for a specified period or  
27 periods each day and wear a device that permits the defendant's  
28 compliance with the condition to be monitored electronically.

29           (9) Answer all reasonable inquiries by the parole officer and obtain prior  
30 approval from the parole officer for any change in address or  
31 employment.

32           (10) Promptly notify the parole officer of any change in address or  
33 employment.

34           (11) Submit at reasonable times to searches of his person by a parole officer  
35 for purposes reasonably related to his parole supervision. The  
36 Commission may not require as a condition of parole that the parolee  
37 submit to any other searches that would otherwise be unlawful.  
38 Whenever the search consists of testing for the presence of illegal  
39 drugs, the parolee may also be required to reimburse the Department  
40 of Correction for the actual cost of drug testing and drug screening, if  
41 the results are positive.

42           (11a) Make restitution or reparation to an aggrieved party as provided in  
43 G.S. 148-57.1.

1 (11b) Comply with an order from a court of competent jurisdiction regarding  
2 the payment of an obligation of the parolee in connection with any  
3 judgment rendered by the court.

4 (11c) In the case of a parolee who was attending a basic skills program  
5 during incarceration, continue attending a basic skills program in  
6 pursuit of a General Education Development Degree or adult high  
7 school diploma.

8 (12) Satisfy other conditions reasonably related to his rehabilitation.

9 (c) Supervision Fee. – The Commission must require as a condition of parole that  
10 the parolee pay a supervision fee of thirty dollars (\$30.00) per month. The Commission  
11 may exempt a parolee from this condition of parole only if it finds that requiring him to  
12 pay the fee will constitute an undue economic burden. The fee must be paid to the clerk  
13 of superior court of the county in which the parolee was convicted. The clerk must  
14 transmit any money collected pursuant to this subsection to the State to be deposited in  
15 the general fund of the State. In no event shall a person released on parole be required to  
16 pay more than one supervision fee per month."

17 **PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM**  
18 **CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY**  
19 **SWITCHING PERMITS TO ANOTHER NAME**

20 **SECTION 27.** G.S. 18B-1003(c) reads as rewritten:

21 "(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in  
22 the sale or distribution of alcoholic beverages any person who has been:

23 (1) Convicted of a felony within three years;

24 (2) Convicted of a felony more than three years previously and has not  
25 had his citizenship restored;

26 (3) Convicted of an alcoholic beverage offense within two years; or

27 (4) Convicted of a misdemeanor controlled substances offense within two  
28 years.

29 (5) A permit holder under Chapter 18B of the General Statutes and whose  
30 permit has been revoked within three years.

31 For purposes of this subsection, "conviction" has the same meaning as in  
32 G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion,  
33 exempt persons on a case-by-case basis from this subsection."

34 **PART XVII. DWI TRAINING FOR JUDGES**

35 **SECTION 28.** Chapter 7A of the General Statutes is amended by adding a  
36 new section to read:

37 **"§ 7A-10.2. Judicial education requirements.**

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

42 **PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR**  
43 **APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT**

44 **SECTION 29.1.** G.S. 15A-1420(a) reads as rewritten:

1       "(a) Form, Service, Filing.

2           (1) A motion for appropriate relief must:

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

4                     1. In open court;

5                     2. Before the judge who presided at trial;

6                     3. Before the end of the session if made in superior court;  
7                             and

8                     4. Within 10 days after entry of judgment;

9               b. State the grounds for the motion;

10              c. Set forth the relief sought; and

11              d. Be timely filed.

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

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

25           (4) An oral or written motion for appropriate relief may not be granted in  
26               district court without the signature of the district attorney, indicating  
27               that the State has had an opportunity to consent or object to the  
28               motion. However, the court may grant a motion for appropriate relief  
29               without the district attorney's signature 10 business days after the  
30               district attorney has been notified in open court of the motion, or  
31               served with the motion pursuant to G.S. 15A-951(c)."

32       **SECTION 29.2.** G.S. 7A-304 is amended by adding a new subsection to  
33       read:

34       "(f) A person charged for any of the offenses set forth in this subsection may, in  
35       lieu of the payment of fines or the making of court appearances, elect to provide proof  
36       of compliance to the district attorney prior to or on the scheduled court appearance date,  
37       and the district attorney may in turn agree to voluntarily dismiss the case in exchange  
38       for the person's signed waiver of appearance and payment of court costs in the sum of  
39       fifty dollars (\$50.00). Court costs assessed under this subsection are for the support of  
40       the General Court of Justice and shall be remitted to the State Treasurer.

41       Compliance dismissals authorized by this subsection may be obtained only for the  
42       following offenses:

43           (1) No operator's license, in violation of G.S. 20-7(a).

- 1           (2) Driving while license revoked, not alcohol-related, in violation of  
2           G.S. 20-28.
- 3           (3) Registration violations under G.S. 20-111(1) though (3).
- 4           (4) Failure to notify the Division of Motor Vehicles of change of address  
5           in violation of G.S. 20-7.1.
- 6           (5) Expired license, in violation of G.S. 20-7.
- 7           (6) Unsafe tires, in violation of G.S. 20-122.1.
- 8           (7) Inspection violations under G.S. 20-183.2.
- 9           (8) No registration card, in violation of G.S. 20-111.
- 10          (9) Failure to comply with license restrictions, in violation of  
11          G.S. 20-179.3.
- 12          (10) Failure to obtain commercial drivers license, in violation of  
13          G.S. 20-37.12.
- 14          (11) Allowing unlicensed person to drive, in violation of G.S. 20-32.
- 15          (12) Failure to notify the Division of Motor Vehicles of change of address  
16          registration, in violation of G.S. 20-67.
- 17          (13) Rearview mirror violations under G.S. 20-117.1(a).
- 18          (14) Safety equipment violations under G.S. 20-123.2, 20-124, 20-125,  
19          20-125.1, 20-126, 20-127, 20-128, 20-128.1, 20-129, and 20-129.1.
- 20          (15) Child restraint violations under G.S. 20-137.1.
- 21          (16) Motorcycle and moped helmet violations under G.S. 20-140.4(2).
- 22          (17) Any violation arising from a vehicular accident or collision in which a  
23          citation is issued, but which in the interests of justice the State elects to  
24          accept a compliance dismissal rather than prosecute.

25           For purposes of this section, "compliance" means proof satisfactory to the district  
26           attorney that the person has corrected the violation and is therefore in compliance with  
27           the applicable statute, or that the underlying condition which gave rise to the violation is  
28           no longer present. However, a compliance dismissal shall not be valid in any case in  
29           which the person's compliance, if presented to the court, would qualify for a statutory  
30           defense to the charge, such as those defenses contained in G.S. 20-35(c), 20-122.1(b),  
31           20-127(e), 20-133(b), and 20-137.1(c). Nothing in this subsection shall limit the  
32           discretion of the district attorney to otherwise dismiss a charge."

33           **SECTION 29.3.** G.S. 7A-304(a) reads as rewritten:

34           "(a) In every criminal case in the superior or district court, wherein the defendant  
35 is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed  
36 against the prosecuting witness, the following costs shall be assessed and collected,  
37 except that when the judgment imposes an active prison sentence, costs shall be  
38 assessed and collected only when the judgment specifically so provides, and that no  
39 costs may be assessed when a case is ~~dismissed~~dismissed, except as provided in  
40 subsection (f) of this section.

41           ..."

42           **SECTION 30.** Chapter 162 of the General Statutes is amended by adding a  
43 new section to read:

44           "**§ 162-62. Legal status of prisoners.**

1       (a) When any person charged with a felony or an impaired driving offense is  
2 confined for any period in a county jail, local confinement facility, district confinement  
3 facility, or satellite jail/work release unit, the administrator or other person in charge of  
4 the facility shall make a reasonable effort to determine the nationality of the person so  
5 confined.

6       (b) If the prisoner is a foreign national, the administrator or other person in  
7 charge of the facility holding the prisoner shall make a reasonable effort to verify that  
8 the prisoner has been lawfully admitted to the United States and if lawfully admitted,  
9 that the prisoner's lawful status has not expired. If verification of lawful status cannot be  
10 made from documents in the possession of the prisoner, verification shall be attempted  
11 within 48 hours through a query to the Law Enforcement Support Center (LESC) of the  
12 United States Department of Homeland Security or other office or agency designated  
13 for that purpose by the United States Department of Homeland Security. If the LESC or  
14 other office or agency determines that the prisoner has not been lawfully admitted to the  
15 United States, the administrator or other person in charge of the facility holding the  
16 prisoner shall notify the United States Department of Homeland Security.

17       (c) Nothing in this section shall be construed to deny bond to a person or to  
18 prevent a person from being released from confinement when that person is otherwise  
19 eligible for release.

20       (d) The Department of Crime Control and Public Safety, after consultation with  
21 the North Carolina Sheriffs' Association, shall prepare and issue guidelines and  
22 procedures to be used to comply with the provisions of this section."

23 **PART XIX. EFFECTIVE DATE**

24       **SECTION 31.** Sections 18, 19.1, and 19.2 of this act become effective upon  
25 the effective date of the next rewrite of the superior court clerks system by the  
26 Administrative Office of the Courts. Sections 29.2 and 29.3 are effective October 1,  
27 2006. The remainder of this act becomes effective December 1, 2006, and applies to  
28 offenses committed on or after that date.