

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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2

HOUSE BILL 752
Committee Substitute Favorable 5/9/89

Short Title: DWI Modifications.

(Public)

Sponsors:

Referred to:

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE MODIFICATIONS TO THE STATUTES REQUIRING
3 ASSESSMENT OF CONVICTED IMPAIRED DRIVERS.

4 The General Assembly of North Carolina enacts:

5 **PART I. POSTPONE STATEWIDE APPLICABILITY OF 1987 LAW.**

6 Section 1. Section 5 of Chapter 797 of the 1987 Session Laws as
7 rewritten:

8 "Sec. 5. Section 2 of this act shall be established as a pilot program in not more than
9 ten counties in the State as determined and required by the Division Director of Mental
10 Health, Mental Retardation and Substance Abuse Services, shall become effective
11 January 1, 1988, and shall apply to sentencing for convictions after that date. The
12 Division for Mental Health, Mental Retardation and Substance Abuse Services shall
13 monitor the pilot programs and shall report administrative costs, case management
14 practices, participant recidivism, and other relevant information, to the General
15 Assembly on or before February 1, 1989. Section 2 of this act shall become effective
16 throughout the State ~~July 1, 1989.~~ January 1, 1990."

17 Sec. 1.1. Section 4 of Chapter 797 of the 1987 Session Laws reads as
18 rewritten:

19 "Sec. 4. Section 1 of this act shall become effective January 1, 1988 and shall expire
20 ~~June 30, 1989.~~ December 31, 1989 and shall apply to sentencing for convictions after
21 January 1, 1988."

22 **PART II. TECHNICAL CORRECTION TO 1987 PILOT LAW.**

1 Sec. 2. Effective January 1, 1988, Section 2 of Chapter 797, Session Laws of
2 1987 reads as rewritten:

3 "Sec. 2. G.S. 20-179(m) reads as rewritten:

4 '(m) Assessment and Treatment Required. If a defendant being sentenced under
5 this section is placed on probation, he ~~must~~ shall be required as a condition of that
6 probation to obtain a substance abuse assessment; provided, however, that the defendant
7 shall have the option of meeting the conditions of his probation either in the county of
8 his conviction or in the county of his residence and he shall be sentenced according to
9 the law of the county selected. The defendant shall inform the court at the time of his
10 conviction of the county in which he has chosen to meet the conditions of his probation.
11 ~~if:~~

12 (1) ~~He had an alcohol concentration of 0.20 or more as~~
13 ~~indicated by a chemical analysis taken when he was charged; or~~

14 (2) ~~He has a prior conviction for an offense involving impaired~~
15 ~~driving within the five years preceding the date of the offense for~~
16 ~~which he is being sentenced and, when he was charged with the~~
17 ~~current offense, he either:~~

18 a. ~~Had an alcohol concentration of 0.10 or more; or~~

19 b. ~~Willfully refused to submit to a chemical analysis.~~

20 The judge ~~must~~ shall require the defendant to obtain the assessment from an area mental
21 health agency, its designated agent, or a private facility licensed by the State for the
22 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
23 the court's judgment, the defendant shall schedule the assessment within 30 days from
24 the date of the judgment. Any agency performing assessments shall give written
25 notification of its intention to do so to the area mental health authority in the catchment
26 area in which it is located and to the Department of Human Resources. The Secretary
27 of the Department of Human Resources may adopt rules to implement the provisions of
28 this subsection, and these rules may include provisions to allow defendant to obtain
29 assessments and treatment from agencies not located in North Carolina. The assessing
30 agency shall give the client a standardized test capable of providing uniform research
31 data, including, but not limited to, demographic information, defendant history,
32 assessment results and recommended interventions, approved by the Department of
33 Human Resources to determine chemical dependency. A clinical interview concerning
34 the general status of the defendant with respect to chemical dependency shall be
35 conducted by the assessing agency before making any recommendation for further
36 treatment. A recommendation made by the assessing agency shall be signed by a
37 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
38 Department of Human Resources.

39 If the assessing agency recommends that the defendant participate in a treatment
40 program, the judge may require the defendant to do so, and he shall ~~In addition, he must~~
41 ~~require the defendant to participate in a treatment program if recommended by the assessing~~
42 ~~agency, and he must~~ require the defendant to execute a Release of Information
43 authorizing the treatment agency to report his progress to the court or the ~~Division of~~
44 ~~Adult Probation and Parole~~ Department of Correction. The judge may order the defendant

1 to participate in an appropriate treatment program at the time he is ordered to obtain an
2 assessment, or he may order him to reappear in court when the assessment is completed
3 to determine if a condition of probation requiring participation in treatment should be
4 imposed. An order of the court shall not require the defendant to participate in any
5 treatment program for more than 90 days unless a longer treatment program is
6 recommended by the assessing agency and his alcohol concentration was .15 or greater
7 as indicated by a chemical analysis taken when he was charged or this was a second or
8 subsequent offense within five years. At the time of sentencing The the judge must shall
9 require the defendant to pay twenty-five dollars (\$25.00) for the services of the assessment
10 facility and the treatment fees that may be charged by the treatment facility one hundred
11 twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five
12 dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii)
13 seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug
14 education traffic school depending upon the recommendation made by the assessing
15 agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees
16 received by the Area Mental Health, Mental Retardation, and Substance Abuse
17 Authorities under this section shall be administered pursuant to G.S. 20-179.2(e),
18 provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies
19 received under this section. The operators of the local alcohol and drug education
20 traffic school may change the length of time required to complete the school in
21 accordance with administrative costs, provided, however that the length and the
22 curriculum of the school shall be approved by the Commission for Mental Health,
23 Mental Retardation, and Substance Abuse Services and in no event shall the school be
24 less than five hours in length. If the defendant is treated by an area mental health
25 facility, G.S. 122-35.47—122C-146 applies after receipt of the seventy-five dollar
26 (\$75.00) fee. Any determinations with regard to the defendant's ability to pay the
27 assessment fee must shall be made by the judge.

28 In those cases in which no substance abuse handicap is identified, that finding must
29 shall be forwarded in writing to filed with the court and the defendant shall be required to
30 attend an alcohol and drug education traffic school. When treatment is required, the
31 treatment agency's progress reports must shall be filed with the court or the Division of
32 Adult Probation and Parole Department of Correction at intervals of no greater than six
33 months until the termination of probation or the treatment agency determines and
34 reports that no further treatment is appropriate. If the defendant is required to
35 participate in a treatment program and he completes the recommended treatment, he
36 does not have to attend the alcohol and drug education traffic school. Upon the
37 completion of the court-ordered assessment and court-ordered treatment or school, the
38 assessing or treatment agency or school shall give the Division of Motor Vehicles the
39 original of the certificate of completion, shall provide the defendant with a copy of that
40 certificate, and shall retain a copy of the certificate on file for a period of five years.
41 The Division of Motor Vehicles shall not reissue the drivers license of a defendant
42 ordered to obtain assessment, participate in a treatment program or school unless it has
43 received the original certificate of completion from the assessing or treatment agency or
44 school, provided, however that a defendant may be issued a limited driving privilege

1 pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be
2 issued unless the agency or school has received the fifty dollar (\$50.00) fee and the
3 seventy-five dollar (\$75.00) fee as appropriate.

4 The Department of Human Resources may approve programs offered in another
5 state if they are substantially similar to programs approved in this State, and if that state
6 recognizes North Carolina programs for similar purposes. The defendant shall be
7 responsible for the fees at the approved program."

8 **PART III. AMENDMENTS TO PILOT PROGRAM/PERMANENT LAW.**

9 Sec. 2.1. Effective July 1, 1989, G.S. 20-179(m) as rewritten by Section 2 of
10 Chapter 797, Session Laws of 1987, and Section 2 of this act, as applicable:

11 (1) Until December 31, 1989, as a pilot program as provided by Section 5
12 of Chapter 797, Session Laws of 1987, as amended by Section 1 of
13 this act♦; and

14 (2) On a statewide basis beginning January 1, 1990, as provided by
15 Section 5 of Chapter 797, Session Laws of 1987, as amended by
16 Section 1 of this act

17 reads as rewritten:

18 "(m) Assessment and Treatment Required in Certain Cases. If a defendant being
19 sentenced under this section is placed on probation, he shall be required as a condition
20 of that probation to obtain a substance abuse assessment; ~~provided, however, that the~~
21 ~~defendant shall have the option of meeting the conditions of his probation either in the county~~
22 ~~of his conviction or in the county of his residence and he shall be sentenced according to the~~
23 ~~law of the county selected. The defendant shall inform the court at the time of his conviction of~~
24 ~~the county in which he has chosen to meet the conditions of his probation.~~

25 The judge shall require the defendant to obtain the assessment from an area mental
26 health agency, its designated agent, or a private facility licensed by the State for the
27 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
28 the court's judgment, the defendant shall schedule the assessment within 30 days from
29 the date of the judgment. Any agency performing assessments shall give written
30 notification of its intention to do so to the area mental health authority in the catchment
31 area in which it is located and to the Department of Human Resources. The Secretary
32 of the Department of Human Resources may adopt rules to implement the provisions of
33 this subsection, and these rules may include provisions to allow defendant to obtain
34 assessments and treatment from agencies not located in North Carolina. The assessing
35 agency shall give the client a standardized test capable of providing uniform research
36 data, including, but not limited to, demographic information, defendant history,
37 assessment results and recommended interventions, approved by the Department of
38 Human Resources to determine chemical dependency. A clinical interview concerning
39 the general status of the defendant with respect to chemical dependency shall be
40 conducted by the assessing agency before making any recommendation for further
41 treatment. A recommendation made by the assessing agency shall be signed by a
42 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
43 Department of Human Resources.

1 If the assessing agency recommends that the defendant participate in a treatment
2 program, the judge may require the defendant to do so, and he shall require the
3 defendant to execute a Release of Information authorizing the treatment agency to
4 report his progress to the court or the Department of Correction. The judge may order
5 the defendant to participate in an appropriate treatment program at the time he is
6 ordered to obtain an assessment, or he may order him to reappear in court when the
7 assessment is completed to determine if a condition of probation requiring participation
8 in treatment should be imposed. An order of the court shall not require the defendant to
9 participate in any treatment program for more than 90 days unless a longer treatment
10 program is recommended by the assessing agency and his alcohol concentration was .15
11 or greater as indicated by a chemical analysis taken when he was charged or this was a
12 second or subsequent offense within five years. At the time of sentencing the judge
13 shall require the defendant to pay \$125.00. The payment of the fee of one hundred
14 twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency
15 and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and
16 drug education traffic school depending upon the recommendation made by the
17 assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this
18 section. Fees received by the Area Mental Health, Mental Retardation, and Substance
19 Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e),
20 provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies
21 received under this section. The operators of the local alcohol and drug education
22 traffic school may change the length of time required to complete the school in
23 accordance with administrative costs, provided, however that the length and the
24 curriculum of the school shall be approved by the Commission for Mental Health,
25 Mental Retardation and Substance Abuse Services and in no event shall the school be
26 less than five hours in length. If the defendant is treated by an area mental health
27 facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an
28 area mental health facility or its contractor is providing treatment or education services
29 to a defendant pursuant to this subsection, the area facility or its contractor may require
30 that the defendant pay the fees prescribed by law for the services before it certifies that
31 the defendant has completed the recommended treatment or educational program. Any
32 determinations with regard to the defendant's ability to pay the assessment fee shall be
33 made by the judge.

34 In those cases in which no substance abuse handicap is identified, that finding shall
35 be filed with the court and the defendant shall be required to attend an alcohol and drug
36 education traffic school. When treatment is required, the treatment agency's progress
37 reports shall be filed with the court or the Department of Correction at intervals of no
38 greater than six months until the termination of probation or the treatment agency
39 determines and reports that no further treatment is appropriate. If the defendant is
40 required to participate in a treatment program and he completes the recommended
41 treatment, he does not have to attend the alcohol and drug education traffic school.
42 Upon the completion of the court-ordered assessment and court-ordered treatment or
43 school, the assessing or treatment agency or school shall give the Division of Motor
44 Vehicles the original of the certificate of completion, shall provide the defendant with a

1 copy of that certificate, and shall retain a copy of the certificate on file for a period of
2 five years. The Division of Motor Vehicles shall not reissue the driver's license of a
3 defendant ordered to obtain assessment, participate in a treatment program or school
4 unless it has received the original certificate of completion from the assessing or
5 treatment agency or school, provided, however that a defendant may be issued a limited
6 driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no
7 certificate shall be issued unless the agency or school has received the fifty dollar
8 (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate.

9 The Department of Human Resources may approve programs offered in another
10 state if they are substantially similar to programs approved in this State, and if that state
11 recognizes North Carolina programs for similar purposes. The defendant shall be
12 responsible for the fees at the approved program."

13 **PART IV. CONFORMING AMENDMENTS.**

14 Sec. 3. Effective January 1, 1990, G.S. 20-179, including subsection (m) as
15 rewritten by Section 2.1 of this act, reads as rewritten:

16 **"§ 20-179. Sentencing hearing after conviction for impaired driving; determination**
17 **of grossly aggravating and aggravating and mitigating factors;**
18 **punishments.**

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

31 (b) Repealed by Session Laws 1983, c. 435, s. 29, effective October 1, 1983.

32 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing
33 hearing, based upon the evidence presented at trial and in the hearing, the judge must
34 first determine whether there are any grossly aggravating factors in the case. If the
35 defendant has been convicted of two or more prior offenses involving impaired driving,
36 if the convictions occurred within seven years before the date of the offense for which
37 he is being sentenced, the judge must impose the Level One punishment under
38 subsection (g). The judge must also impose the Level One punishment if he determines
39 that two or more of the following grossly aggravating factors apply:

- 40 (1) A single conviction for an offense involving impaired driving, if the
41 conviction occurred within seven years before the date of the offense
42 for which the defendant is being sentenced.

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

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

6 If the judge determines that only one of the above grossly aggravating factors applies,
7 he must impose the Level Two punishment under subsection (h). In imposing a Level
8 One or Two punishment, the judge may consider the aggravating and mitigating factors
9 in subsections (d) and (e) in determining the appropriate sentence. If there are no
10 grossly aggravating factors in the case, the judge must weigh all aggravating and
11 mitigating factors and impose punishment as required by subsection (f).

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

16 (1) Gross impairment of the defendant's faculties while driving or an
17 alcohol concentration of 0.20 or more within a relevant time after the
18 driving.

19 (2) Especially reckless or dangerous driving.

20 (3) Negligent driving that led to an accident causing property damage in
21 excess of five hundred dollars (\$500.00) or personal injury.

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

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

31 (6) Conviction under G.S. 20-141(j) of speeding by the defendant while
32 fleeing or attempting to elude apprehension.

33 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least
34 30 miles per hour over the legal limit.

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

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

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

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

- 1 (1) Slight impairment of the defendant's faculties resulting solely from
2 alcohol, and an alcohol concentration that did not exceed 0.11 at any
3 relevant time after the driving.
- 4 (2) Slight impairment of the defendant's faculties, resulting solely from
5 alcohol, with no chemical analysis having been available to the
6 defendant.
- 7 (3) Driving at the time of the offense that was safe and lawful except for
8 the impairment of the defendant's faculties.
- 9 (4) A safe driving record, with the defendant's having no conviction for
10 any motor vehicle offense for which at least four points are assigned
11 under G.S. 20-16 or for which the person's license is subject to
12 revocation within five years of the date of the offense for which the
13 defendant is being sentenced.
- 14 (5) Impairment of the defendant's faculties caused primarily by a lawfully
15 prescribed drug for an existing medical condition, and the amount of
16 the drug taken was within the prescribed dosage.
- 17 (6) The defendant's voluntary submission to a mental health facility for
18 assessment after he was charged with the impaired driving offense for
19 which he is being sentenced, and, if recommended by the facility, his
20 voluntary participation in the recommended treatment.
- 21 (7) Any other factor that mitigates the seriousness of the offense.

22 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
23 mitigating factor must occur during the same transaction or occurrence as the impaired
24 driving offense.

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

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

42 It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism,
43 drug addiction, diminished capacity, or mental disease or defect. Evidence of these
44 matters may be received in the sentencing hearing, however, for use by the judge in

1 formulating terms and conditions of sentence after determining which punishment level
2 must be imposed.

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

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

14 (g) Level One Punishment. – A defendant subject to Level One punishment may
15 be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of
16 imprisonment that includes a minimum term of not less than 14 days and a maximum
17 term of not more than 24 months. The term of imprisonment may be suspended only if a
18 condition of special probation is imposed to require the defendant to serve a term of
19 imprisonment of at least 14 days. If the defendant is placed on probation, the judge
20 must, if required by ~~subsections (l) or subsection~~ subsection (m), impose the conditions relating to
21 ~~treatment—assessment, treatment, and education described in those subsections.~~ that
22 subsection. The judge may impose any other lawful condition of probation. If the judge
23 does not place on probation a defendant who is otherwise subject to the mandatory
24 assessment and treatment provisions of subsection (m), he must include in the record of
25 the case his reasons for not doing so.

26 (h) Level Two Punishment. – A defendant subject to Level Two punishment may
27 be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of
28 imprisonment that includes a minimum term of not less than seven days and a maximum
29 term of not more than 12 months. The term of imprisonment may be suspended only if a
30 condition of special probation is imposed to require the defendant to serve a term of
31 imprisonment of at least seven days. If the defendant is placed on probation, the judge
32 must, if required by ~~subsections (l) or subsection~~ subsection (m), impose the conditions relating to
33 ~~treatment—assessment, treatment, and education described in those subsections.~~ that
34 subsection. The judge may impose any other lawful condition of probation. If the judge
35 does not place on probation a defendant who is otherwise subject to the mandatory
36 assessment and treatment provisions of subsection (m), he must include in the record of
37 the case his reasons for not doing so.

38 (i) Level Three Punishment. – A defendant subject to Level Three punishment
39 may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of
40 imprisonment that includes a minimum term of not less than 72 hours and a maximum
41 term of not more than six months. The term of imprisonment must be suspended, on the
42 condition that the defendant:

43 (1) Be imprisoned for a term of at least 72 hours as a condition of special
44 probation; or

- 1 (2) Perform community service for a term of at least 72 hours; or
- 2 (3) Not operate a motor vehicle for a term of at least 90 days; or
- 3 (4) Any combination of these conditions.

4 The judge in his discretion may impose any other lawful condition of probation and, if
5 required by ~~subsections (l) or~~ subsection (m), must impose the conditions relating to
6 ~~treatment—assessment, treatment, and education described in those subsections.—that~~
7 subsection. This subsection does not affect the right of a defendant to elect to serve the
8 suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

9 (j) Level Four Punishment. – A defendant subject to Level Four punishment may
10 be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of
11 imprisonment that includes a minimum term of not less than 48 hours and a maximum
12 term of not more than 120 days. The term of imprisonment must be suspended, on the
13 condition that the defendant:

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

19 The judge in his discretion may impose any other lawful condition of probation and, if
20 required by ~~subsections (l) or~~ subsection (m), must impose the conditions relating to
21 ~~treatment—assessment, treatment, and education described in those subsections.—that~~
22 subsection. This subsection does not affect the right of a defendant to elect to serve the
23 suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

24 (k) Level Five Punishment. – A defendant subject to Level Five punishment may
25 be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of
26 imprisonment that includes a minimum term of not less than 24 hours and a maximum
27 term of not more than 60 days. The term of imprisonment must be suspended, on the
28 condition that the defendant:

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

34 The judge may in his discretion impose any other lawful condition of probation and, if
35 required by ~~subsections (l) or~~ subsection (m), must impose the conditions relating to
36 ~~treatment—assessment, treatment, and education described in those subsections.—that~~
37 subsection. This subsection does not affect the right of a defendant to elect to serve the
38 suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

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

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

9 ~~(l) Education Required in Certain Cases.—If a defendant being sentenced under~~
10 ~~this section is placed on probation, he must be required as a condition of that probation~~
11 ~~to complete the course of instruction successfully at an alcohol and drug education~~
12 ~~traffic school established pursuant to G.S. 20-179.2 within 90 days of the date of~~
13 ~~conviction unless:~~

- 14 ~~(1) He has previously been assigned to an alcohol and drug education~~
15 ~~traffic school and has successfully completed the course of instruction;~~
16 ~~or~~
17 ~~(2) The judge finds that the defendant will not benefit from the course of~~
18 ~~instruction because of specific, extenuating circumstances; or~~
19 ~~(3) There is no alcohol and drug education traffic school within a~~
20 ~~reasonable distance of the defendant's residence.~~

21 (m) Assessment and Treatment Required in Certain Cases. If a defendant being
22 sentenced under this section is placed on probation, he shall be required as a condition
23 of that probation to obtain a substance abuse assessment.

24 The judge shall require the defendant to obtain the assessment from an area mental
25 health agency, its designated agent, or a private facility licensed by the State for the
26 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
27 the court's judgment, the defendant shall schedule the assessment within 30 days from
28 the date of the judgment. Any agency performing assessments shall give written
29 notification of its intention to do so to the area mental health authority in the catchment
30 area in which it is located and to the Department of Human Resources. The Secretary
31 of the Department of Human Resources may adopt rules to implement the provisions of
32 this subsection, and these rules may include provisions to allow defendant to obtain
33 assessments and treatment from agencies not located in North Carolina. The assessing
34 agency shall give the client a standardized test capable of providing uniform research
35 data, including, but not limited to, demographic information, defendant history,
36 assessment results and recommended interventions, approved by the Department of
37 Human Resources to determine chemical dependency. A clinical interview concerning
38 the general status of the defendant with respect to chemical dependency shall be
39 conducted by the assessing agency before making any recommendation for further
40 treatment. A recommendation made by the assessing agency shall be signed by a
41 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
42 Department of Human Resources.

43 If the assessing agency recommends that the defendant participate in a treatment
44 program, the judge may require the defendant to do so, and he shall require the

1 defendant to execute a Release of Information authorizing the treatment agency to
2 report his progress to the court or the Department of Correction. The judge may order
3 the defendant to participate in an appropriate treatment program at the time he is
4 ordered to obtain an assessment, or he may order him to reappear in court when the
5 assessment is completed to determine if a condition of probation requiring participation
6 in treatment should be imposed. An order of the court shall not require the defendant to
7 participate in any treatment program for more than 90 days unless a longer treatment
8 program is recommended by the assessing agency and his alcohol concentration was .15
9 or greater as indicated by a chemical analysis taken when he was charged or this was a
10 second or subsequent offense within five years. At the time of sentencing the judge
11 shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The
12 payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars
13 (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a
14 treatment facility or to an alcohol and drug education traffic school depending upon the
15 recommendation made by the assessing agency. G.S. 20-179(i) shall not apply to
16 defendants sentenced under this section. Fees received by the Area Mental Health,
17 Mental Retardation, and Substance Abuse Authorities under this section shall be
18 administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of
19 G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of
20 the local alcohol and drug education traffic school may change the length of time
21 required to complete the school in accordance with administrative costs, provided,
22 however that the length and the curriculum of the school shall be approved by the
23 Commission for Mental Health, Mental Retardation and Substance Abuse Services and
24 in no event shall the school be less than five hours in length. If the defendant is treated
25 by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five
26 dollar (\$75.00) fee. If an area mental health facility or its contractor is providing
27 treatment or education services to a defendant pursuant to this subsection, the area
28 facility or its contractor may require that the defendant pay the fees prescribed by law
29 for the services before it certifies that the defendant has completed the recommended
30 treatment or educational program. Any determinations with regard to the defendant's
31 ability to pay the assessment fee shall be made by the judge.

32 In those cases in which no substance abuse handicap is identified, that finding shall
33 be filed with the court and the defendant shall be required to attend an alcohol and drug
34 education traffic school. When treatment is required, the treatment agency's progress
35 reports shall be filed with the court or the Department of Correction at intervals of no
36 greater than six months until the termination of probation or the treatment agency
37 determines and reports that no further treatment is appropriate. If the defendant is
38 required to participate in a treatment program and he completes the recommended
39 treatment, he does not have to attend the alcohol and drug education traffic school.
40 Upon the completion of the court-ordered assessment and court-ordered treatment or
41 school, the assessing or treatment agency or school shall give the Division of Motor
42 Vehicles the original of the certificate of completion, shall provide the defendant with a
43 copy of that certificate, and shall retain a copy of the certificate on file for a period of
44 five years. The Division of Motor Vehicles shall not reissue the driver's license of a

1 defendant ordered to obtain assessment, participate in a treatment program or school
2 unless it has received the original certificate of completion from the assessing or
3 treatment agency or school, provided, however that a defendant may be issued a limited
4 driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no
5 certificate shall be issued unless the agency or school has received the fifty dollar
6 (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate.

7 The Department of Human Resources may approve programs offered in another
8 state if they are substantially similar to programs approved in this State, and if that state
9 recognizes North Carolina programs for similar purposes. The defendant shall be
10 responsible for the fees at the approved program.

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

- 14 (1) Within 90 days, if the amount of community service required
15 is 72 hours or more; or
- 16 (2) Within 60 days, if the amount of community service required
17 is 48 hours; or
- 18 (3) Within 30 days, if the amount of community service required
19 is 24 hours.

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

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

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

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

1 (2) The defendant must serve the mandatory minimum period of
2 imprisonment and good or gain time credit may not be used to reduce
3 that mandatory minimum period.

4 (3) The defendant may not be released on parole unless he is otherwise
5 eligible and has served the mandatory minimum period of
6 imprisonment.

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

10 (q) Meaning of 'Conviction'. – For the purposes of this Article, 'conviction'
11 includes a guilty verdict, guilty plea, plea of no contest, or anything that would be
12 treated as a conviction under G.S. 20-24(c).

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

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

- 27 (1) Community service; or
28 (2) Treatment and education as described in ~~subsections (l) and~~ subsection
29 (m); or
30 (3) Payment of any fines, court costs, and fees; or
31 (4) Any combination of these conditions.

32 (s) Method of Serving Sentence. – The judge in his discretion may order a term
33 of imprisonment or community service to be served on weekends, even if the sentence
34 cannot be served in consecutive sequence.

35 (t) Assessment for Convicted Defendants not Placed on Probation. – Any person
36 convicted of impaired driving who is not placed on probation shall obtain a substance
37 abuse assessment as a condition of having his driver's license restored following a
38 revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an
39 area mental health agency, its designated agency, or a private facility licensed by the
40 State for the treatment of alcoholism and substance abuse. The fee for the assessment
41 shall be as specified in subsection (m) of this section. The assessing agency shall
42 provide to the Department of Human Resources a certificate attesting that the
43 assessment has been performed and indicating its results. The Department shall
44 promptly notify the Division of Motor Vehicles of the receipt of the certificate. The

1 Division shall not reissue a driver's license to the defendant until this notification is
2 received. The Commission for Mental Health, Mental Retardation, and Substance
3 Abuse Services may adopt rules to implement the provisions of this subsection."

4 Sec. 4. G.S. 20-16.4 is repealed.

5 Sec. 5. Sections 1 and 1.1 of this act are effective upon ratification. Section 4
6 shall become effective January 1, 1990. The remainder of this act is effective as
7 provided herein.