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Short Title: Governor's D.W.I. Initiative/AB.

(Public)

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Sponsors:

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Referred to:

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March 10, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED  
OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

**"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving  
license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. – The revocation of a  
person's driver's license is an impaired driving license revocation if the revocation is  
pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2), 20-17(a)(2),~~ or  
20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired  
driving.

1 (a1) As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, and 20-28.6, the  
2 following terms mean:

3 (1) Acknowledgment. – A written document acknowledging that:

4 a. The vehicle was operated by a person charged with an offense  
5 involving impaired driving while that person's drivers license  
6 was revoked as a result of a prior impaired drivers license  
7 revocation;

8 b. If the vehicle is again operated by this particular person, at any  
9 time while that person's drivers license is revoked, and the person  
10 is charged with an offense involving impaired driving, the  
11 vehicle is subject to impoundment and forfeiture; and

12 c. A lack of knowledge or consent to the operation will not be a  
13 defense in the future, unless the vehicle owner has taken all  
14 reasonable precautions to prevent the use of the vehicle by this  
15 particular person and immediately reports, upon discovery, any  
16 unauthorized use to the appropriate law enforcement agency.

17 (2) Innocent Party. – A vehicle owner who:

18 a. Did not know and had no reason to know that the defendant's  
19 drivers license was revoked; or

20 b. Knew that the defendant's drivers license was revoked, but the  
21 defendant drove the vehicle without the person's expressed or  
22 implied permission.

23 (3) Lienholder. – A person who holds a perfected security interest in a  
24 motor vehicle at the time of seizure.

25 (4) Order of Forfeiture. – An order by the court which terminates the rights  
26 and ownership interest of a vehicle owner in a motor vehicle in  
27 accordance with G.S. 20-28.2.

28 (5) Possessory Lien. – A lien for all costs and fees associated with the  
29 towing, storage, or sale of a vehicle pursuant to this section. This lien  
30 shall have priority over perfected and unperfected security interests.  
31 Storage fees subject to this lien shall not exceed five dollars (\$5.00) per  
32 day.

33 (6) Registered Owner. – A person in whose name a registration card for a  
34 motor vehicle is issued.

35 (7) Vehicle Owner. – A person in whose name a registration card or  
36 certificate of title for a motor vehicle is issued.

37 (b) When Motor Vehicle Becomes Property Subject to Forfeiture. – If at a  
38 sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines  
39 that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor  
40 vehicle that was driven by the defendant at the time ~~he~~the defendant committed the  
41 offense of impaired driving becomes property subject to forfeiture.

42 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which  
43 a prosecutor determines that a motor vehicle driven by a defendant may be subject to

1 forfeiture under this section, the prosecutor ~~must~~shall determine the identity of ~~the vehicle~~  
2 ~~owner as shown on the certificate of title for the vehicle and he must~~every vehicle owner. The  
3 prosecutor shall also determine if there are any ~~security interests~~lienholders noted on the  
4 vehicle's certificate of title. The State ~~must~~shall notify ~~the holder of each security interest~~  
5 ~~the defendant, each vehicle owner, and each lienholder~~ that the vehicle may be subject to  
6 forfeiture and that ~~he~~the defendant, vehicle owner, or the lienholder may intervene to  
7 protect ~~his~~that person's interest. If the defendant is not the owner, a similar notice ~~must be~~  
8 ~~served on the owner~~. The notice may be served by any means reasonably likely to provide  
9 actual notice, and ~~must~~shall be served at least fourteen days before the ~~forfeiture hearing~~  
10 hearing at which an order of forfeiture may be entered.

11 (d) Duty of Judge. – ~~The judge at sentencing must hold a hearing to determine if~~  
12 ~~the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he~~  
13 ~~finds that:~~

- 14 (1) ~~The vehicle is subject to forfeiture;~~
- 15 (2) ~~The vehicle is not primarily used by a member of the defendant's family~~  
16 ~~or household for a business purpose or for driving to and from work or~~  
17 ~~school;~~
- 18 (3) ~~All potential innocent parties have been notified as required in~~  
19 ~~subsection (e); and~~
- 20 (4) ~~No party has shown that he is an innocent party as described in~~  
21 ~~subsection (f).~~

22 ~~If the owner or the holder of a security interest has not been notified, the judge may~~  
23 ~~continue the hearing to allow the State to serve the notice or he may decline to order~~  
24 ~~forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject~~  
25 ~~to forfeiture, he must enter into the record detailed, written reasons for his decision. The~~  
26 ~~trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or~~  
27 ~~G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If~~  
28 ~~at the sentencing hearing, or at a subsequent hearing, the judge determines that the~~  
29 ~~requirements of subsections (a) through (c) of this section exist and the defendant was the~~  
30 ~~only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited.~~  
31 ~~If at the sentencing hearing or at a subsequent hearing, the judge determines that the~~  
32 ~~requirements of subsections (a) through (c) of this section exist and the defendant was not~~  
33 ~~the only vehicle owner at the time of the offense, the judge shall order the vehicle~~  
34 ~~forfeited unless another vehicle owner establishes, by the greater weight of the evidence,~~  
35 ~~that such vehicle owner is an innocent party as defined by subdivision (a1)(2) of this~~  
36 ~~section, in which case the trial judge shall order the vehicle released to the innocent party~~  
37 ~~vehicle owner pursuant to the provisions of subsection (e) of this section. In any case~~  
38 ~~where the vehicle is ordered forfeited, the judge shall either:~~

- 39 (1) Authorize the school board to sell the vehicle at public sale or retain the  
40 vehicle for its own use pursuant to G.S. 20-28.5; or
- 41 (2) Release the vehicle to an intervening lienholder pursuant to the  
42 provisions of subsection (g) of this section.

1 If the judge determines that the requirements of subsection (a) and (b) of this section exist  
2 but that notice as required by subsection (c) has not been given, the judge shall continue  
3 the forfeiture proceeding until adequate notice has been given. In no circumstance shall  
4 the sentencing of the defendant be delayed as a result of the failure of the prosecutor to  
5 give adequate notice.

6 ~~(e) Sale of Forfeited Vehicle Required.— If the judge orders forfeiture of the~~  
7 ~~vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale~~  
8 ~~must be paid to the school fund of the county in which the property was seized.~~

9 ~~(f) Innocent Party May Intervene.— At any time before the forfeiture is ordered,~~  
10 ~~the property owner or holder of a security interest, other than the defendant, may apply to~~  
11 ~~protect his interest in the motor vehicle. The application may be made to a judge who has~~  
12 ~~jurisdiction to try the impaired driving offense with which the motor vehicle is~~  
13 ~~associated. The judge must order the vehicle returned to the owner if he finds that either~~  
14 ~~the owner or the holder of a security interest is an innocent party. An owner or holder of a~~  
15 ~~security interest is an innocent party if he:~~

16 ~~(1) Did not know and had no reason to know that the defendant's driver's~~  
17 ~~license was revoked; or~~

18 ~~(2) Knew that the defendant's driver's license was revoked, but the~~  
19 ~~defendant drove the vehicle without his consent.~~

20 ~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge~~  
21 ~~finds no laches in the innocent party's delay, the judge may order a payment to the~~  
22 ~~innocent party from the net proceeds of the sale equal to his equity or security interest in~~  
23 ~~the vehicle.~~

24 (e) Return of Vehicle to Innocent Vehicle Owner. – If a nondefendant vehicle  
25 owner establishes by the greater weight of the evidence that: (i) the vehicle was being  
26 driven by a person who was not the only vehicle owner at the time of the underlying  
27 offense and (ii) that vehicle owner requesting release is an 'innocent party', a judge shall  
28 order the vehicle returned to the owner.

29 This release shall only be ordered upon satisfactory proof of:

30 (1) The identity of the person as a vehicle owner;

31 (2) The existence of financial responsibility to the extent required by  
32 Article 13 of this Chapter;

33 (3) The payment of towing and storage fees; and

34 (4) The execution of an acknowledgment as defined in subdivision (a1)(1)  
35 of this section.

36 No vehicle subject to forfeiture under this section shall be released to a vehicle owner  
37 if the records of the Division indicate the vehicle owner had previously signed an  
38 acknowledgment, as required by this section, and the same person was operating the  
39 vehicle while that person's license was revoked unless the innocent vehicle owner shows  
40 by the greater weight of the evidence that the vehicle owner has taken all reasonable  
41 precautions to prevent the use of the vehicle by this particular person and immediately  
42 reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

1 (f) Release to Lienholder. – The trial judge shall order a forfeited vehicle released  
2 to the lienholder if the judge determines, by the greater weight of the evidence, that:

3 (1) The lienholder's interest is equal to or greater than the fair market value  
4 of the vehicle;

5 (2) The lienholder agrees not to sell, give, or otherwise transfer possession  
6 of the forfeited vehicle to the vehicle owner who owned the vehicle  
7 immediately prior to forfeiture, or any person acting on the vehicle  
8 owner's behalf;

9 (3) The forfeited vehicle had not previously been released to the lienholder;  
10 and

11 (4) The lienholder pays, in full, any towing and storage costs incurred as a  
12 result of the seizure of the vehicle.

13 (g) Possessory Lien. – The entity that tows or stores the motor vehicle, other than  
14 the county school board, shall be entitled to a possessory lien as defined in G.S.  
15 28.2(a1)(5)."

16 Section 1.2. Article 2 of Chapter 20 of the General Statutes is amended by  
17 adding a new section to read:

18 "**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving**  
19 **impaired driving while license revoked.**

20 (a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S.  
21 20-138.5 is subject to seizure if at the time of the violation the drivers license of the  
22 person driving the motor vehicle was revoked as a result of a prior impaired drivers  
23 license revocation. The revocation of a person's drivers license is an impaired drivers  
24 license revocation for purposes of this section if the revocation is pursuant to:

25 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),  
26 or 20-17.2; or

27 (2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved  
28 impaired driving.

29 (b) Duty of Officer. – If the charging officer has probable cause to believe that a  
30 motor vehicle driven by the defendant may be subject to forfeiture under this section, the  
31 officer shall seize the vehicle and have it impounded. Probable cause may be based on  
32 the officer's personal knowledge, reliable information conveyed by another officer,  
33 records of the Division, or other reliable source. The officer shall cause to be issued  
34 written notification of impoundment to any vehicle owner who was not operating or  
35 present in the vehicle at the time of the offense. This notice shall be sent by first-class  
36 mail to the most recent address contained in the Division records. This written  
37 notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall  
38 state the reason for the impoundment and the procedure for requesting release of the  
39 vehicle. The seizing officer shall notify the Division of the seizure in accordance with  
40 procedures established by the Division. Within 72 hours of the seizure of the vehicle the  
41 officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be  
42 given to any lienholder of record with the Division.

1       (c) Review by Magistrate. – Upon seizing a vehicle, the seizing officer shall  
2 present to a magistrate within the county where the vehicle was seized an affidavit of  
3 impoundment setting forth the basis upon which the motor vehicle has been seized for  
4 forfeiture. The magistrate shall review the affidavit of impoundment and if the  
5 magistrate determines the requirements of this section have been met, shall order the  
6 vehicle held. The magistrate may request additional information and may hear from the  
7 operator if the operator is present.

8       (d) Custody of Vehicle. – The seized vehicle shall be towed to a location  
9 designated by the county school board for the county in which the operator of the vehicle  
10 is charged and placed under the constructive possession of the school board pending  
11 release or sale. Each county school board may elect to have seized vehicles stored on  
12 property owned or leased by the school board and charge no fee for storage. In the  
13 alternative, the county school board may contract with a commercial storage facility for  
14 the storage of seized vehicles, and a storage fee of not more than five dollars (\$5.00) per  
15 day may be charged.

16       (e) Release of Vehicle Pending Trial. – A vehicle owner, or a lienholder of a  
17 vehicle, other than the driver at the time of the underlying offense resulting in the seizure,  
18 may apply to the clerk of superior court in the county where the charges are pending for  
19 pretrial release of the vehicle.

20       The clerk shall release the vehicle to a qualified vehicle owner or a lienholder under  
21 the following conditions:

- 22       (1) The vehicle has been stored for not less than 24 hours;
- 23       (2) All towing and storage charges have been paid;
- 24       (3) Execution of a good and valid bond with sufficient sureties in an  
25 amount equal to twice the value of the seized vehicle, as determined in  
26 accordance with the schedule of values adopted by the Commissioner of  
27 Motor Vehicles pursuant to G.S. 105-187.3, payable to the county  
28 school fund and conditioned on return of the vehicle, without any new  
29 or additional liens or encumbrances, on the day of trial of the operator;
- 30       (4) If a qualified vehicle owner, execution of an acknowledgment as  
31 described in G.S. 20-28.2(a1); and
- 32       (5) A check of the records of the Division indicates that the requesting  
33 vehicle owner has not previously executed an acknowledgment naming  
34 the operator of the seized vehicle.

35       (f) Duty of Trial Judge. – The trial judge at the sentencing hearing on the  
36 operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the  
37 vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

38       (g) Possessory Lien. – The entity that tows and stores the vehicle, other than the  
39 county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5)."

40       Section 1.3. Article 2 of Chapter 20 of the General Statutes is amended by  
41 adding a new section to read:

42       "**§ 20-28.4. Release of impounded vehicles by judge.**

1       (a) Release to Innocent Vehicle Owner. – A vehicle owner who was not the  
2 operator of the vehicle at the time of the offense may petition the court for return of the  
3 vehicle pursuant to the provisions of G.S. 20-28.2(e).

4       (b) Acknowledgment Required. – The vehicle owner seeking release under this  
5 section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described  
6 in G.S. 20-28.2(a1)(1).

7       (c) Release to Lienholder. – A district court judge may order a forfeited vehicle  
8 released to a lienholder if the judge determines, by the greater weight of the evidence,  
9 that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).

10       (d) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized  
11 pursuant to G.S. 20-28.3:

12           (1) Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5  
13 due to dismissal or a finding of not guilty; or

14           (2) The judge at the sentencing hearing fails to find the grossly aggravating  
15 factor described in G.S. 20-179(c)(2),

16 the seized vehicle shall be returned to the vehicle owner.

17       If the court finds that probable cause did not exist to seize the motor vehicle, the court  
18 shall order the vehicle released.

19       A determination which results in the return or release of the seized vehicle under this  
20 section authorizes the driver, vehicle owner, or lienholder to recover towing or storage  
21 fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees  
22 recovered pursuant to this subsection shall be paid by the county school board from  
23 forfeitures paid into the county school fund."

24       Section 1.4. Article 2 of Chapter 20 of the General Statutes is amended by  
25 adding a new section to read:

26 **"§ 20-28.5. Forfeiture of impounded vehicle.**

27       (a) Sale. – Unless a judge orders the vehicle returned to an innocent party or a  
28 lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited  
29 and sold or transferred to the school board in the county where the charges were filed.  
30 The sale of the vehicle shall be a judicial sale conducted in accordance with the  
31 provisions of Parts 1 and 2 of Article 29A of Chapter 1 of the General Statutes and shall  
32 be conducted by the county school board or a person acting on its behalf. In addition to  
33 the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes,  
34 notice of sale shall also be given by certified mail, return receipt requested, to all vehicle  
35 owners at the address shown by the Division's records and at any other address of the  
36 vehicle owner as may be found in the criminal file in which the forfeiture was ordered.  
37 Notice of sale shall also be by certified mail, return receipt requested, to all lienholders  
38 on file with the Division. Notice of sale shall be given to the Division in accordance with  
39 the procedures established by the Division.

40       (b) Proceeds of Sale. – Proceeds of any sale conducted under this section shall first  
41 be applied to satisfy towing and storage liens and the cost of sale. The balance of the  
42 proceeds of sale, if any, shall be used to satisfy any other existing liens of record that  
43 were properly recorded with the Division prior to the date of initial seizure of the vehicle.

1 Any remaining balance shall be paid to the county school fund in the county in which the  
2 vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred  
3 free and clear of any liens.

4 (c) Retention of Vehicle. – The county board may, at its option, retain any  
5 forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time  
6 of the initial seizure of the vehicle shall be satisfied by the school board relieving the  
7 vehicle owner of all liability for the obligation secured by the motor vehicle.

8 (d) If there is more than one school board in the county, then the fair market value  
9 of the vehicle shall be used to determine the share due each of the school boards in the  
10 same manner as fines and other forfeitures.

11 (e) Order of Forfeiture - Appeals. – An order of forfeiture is stayed pending appeal  
12 of a conviction for an offense that is the basis for the order. When the conviction of an  
13 offense that is the basis for an order of forfeiture is appealed from district court, the issue  
14 of forfeiture shall be heard in superior court de novo. Appeal from a final order of  
15 forfeiture shall be to the Court of Appeals."

16 Section 1.5. Article 2 of Chapter 20 of the General Statutes is amended by  
17 adding a new section to read:

18 **"§ 20-28.6. Forfeiture of right of registration.**

19 (a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the  
20 person's drivers license is revoked as a result of a prior impaired drivers license  
21 revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a  
22 motor vehicle in the person's name until the person's drivers license is restored. The trial  
23 judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S.  
24 20-138.5 shall order the defendant's rights of registration forfeited for the period the  
25 defendant's drivers license is revoked. The defendant shall be ordered to surrender the  
26 registration on all motor vehicles registered in the defendant's name to the Division  
27 within 10 days of the date of the order. Information in the order pertaining to the  
28 registration of motor vehicles shall be transmitted electronically or otherwise by the clerk  
29 of superior court to the Division. The Division shall not thereafter register a motor  
30 vehicle in the defendant's name until the defendant's drivers license has been restored.

31 (b) A registered owner other than the operator of the vehicle that is seized pursuant  
32 to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to  
33 register or have registered in the person's name the motor vehicle seized, until the drivers  
34 license of the person whose driving violation resulted in the motor vehicle being seized is  
35 restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-  
36 138.5 shall order the registered owner's rights of registration for the seized motor vehicle  
37 forfeited for the period the defendant's drivers license is revoked after an opportunity for  
38 a hearing and a determination that the requirements of subsections (a) through (c) of G.S.  
39 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the  
40 motor vehicle seized to the Division within 10 days of the date of the order. Information  
41 in the order pertaining to the registration of motor vehicles shall be transmitted  
42 electronically or otherwise by the clerk of superior court to the Division. The Division



1 shall not thereafter register the motor vehicle seized in the registered owner's name until  
2 the defendant's drivers license has been restored."

3 Section 1.6. Article 2 of Chapter 20 of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 20-28.7. Responsibility of Division of Motor Vehicles.**

6 The Division shall establish procedures by rule to provide for the orderly seizure,  
7 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2,  
8 20-28.3, 20-28.4, 20-28.5, and 20-28.6."

9 Section 1.7. G.S. 20-219.10(a) reads as rewritten:

10 "(a) This Article applies to each towing of a vehicle that is carried out pursuant to  
11 G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement  
12 officer except:

- 13 (1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4,  
14 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only  
15 insofar as specifically provided;
- 16 (2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1,  
17 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a  
18 vehicle for evidence in a criminal proceeding or pursuant to any other  
19 statute providing for the forfeiture of a vehicle;
- 20 (3) This Article does not apply to a seizure of a vehicle pursuant to a levy  
21 under execution."

22 Section 1.8. G.S. 1-339.4 reads as rewritten:

23 **"§ 1-339.4. Who may hold sale.**

24 An order of sale may authorize the persons designated below to hold the sale:

- 25 (1) In any proceeding, a commissioner specially appointed therefor; or
- 26 (2) In a proceeding to sell property of a decedent, the administrator,  
27 executor or collector of such decedent's estate;
- 28 (3) In a proceeding to sell property of a minor, the guardian of such minor's  
29 estate;
- 30 (4) In a proceeding to sell property of an incompetent, the guardian or  
31 trustee of such incompetent's estate;
- 32 (5) In a proceeding to sell property of an absent or missing person, the  
33 administrator, collector, conservator, or guardian of the estate of such  
34 absent or missing person;
- 35 (6) In a proceeding to foreclose a deed of trust, the trustee named in the  
36 deed of trust;
- 37 (7) In a receivership proceeding, the receiver;
- 38 (8) In a proceeding to sell property of a trust, the ~~trustee~~-trustee;
- 39 (9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the  
40 county school board or a person acting on its behalf."

41 PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

42 Section 2.1. G.S. 20-179(g) reads as rewritten:

1       "(g) Level One Punishment. – A defendant subject to Level One punishment may  
2 be fined up to two thousand dollars (\$2,000) and ~~must~~shall be sentenced to a term of  
3 imprisonment that includes a minimum term of not less than ~~14~~30 days and a maximum  
4 term of not more than 24 months. The term of imprisonment may be suspended only if a  
5 condition of special probation is imposed (i) to require the defendant to serve a term  
6 of imprisonment of at least ~~14~~ days, or (ii) ~~to require the defendant to serve a term of~~  
7 ~~imprisonment of at least four consecutive days and then be placed under house arrest for twice~~  
8 ~~the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the  
9 defendant is placed on probation, the judge ~~may~~shall impose a requirement that the  
10 defendant obtain a substance abuse assessment and the education or treatment required by  
11 G.S. 20-17.6 for the restoration of a drivers ~~license.~~license and as a condition of  
12 probation. The judge may impose any other lawful condition of probation."

13           Section 2.2. G.S. 20-179(h) reads as rewritten:

14       "(h) Level Two Punishment. – A defendant subject to Level Two punishment may  
15 be fined up to one thousand dollars (\$1,000) and ~~must~~shall be sentenced to a term of  
16 imprisonment that includes a minimum term of not less than seven days and a maximum  
17 term of not more than 12 months. The term of imprisonment may be suspended only if a  
18 condition of special probation is imposed (i) to require the defendant to serve a term  
19 of imprisonment of at least seven days or, (ii) ~~to require the defendant to serve a term of~~  
20 ~~imprisonment of at least two consecutive days and then be placed under house arrest for twice~~  
21 ~~the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the  
22 defendant is placed on probation, the judge ~~may~~shall impose a requirement that the  
23 defendant obtain a substance abuse assessment and the education or treatment required by  
24 G.S. 20-17.6 for the restoration of a drivers ~~license.~~license and as a condition of  
25 probation. The judge may impose any other lawful condition of probation."

26           Section 2.3. G.S. 20-179(i) reads as rewritten:

27       "(i) Level Three Punishment. – A defendant subject to Level Three punishment  
28 may be fined up to five hundred dollars (\$500.00) and ~~must~~shall be sentenced to a term  
29 of imprisonment that includes a minimum term of not less than 72 hours and a maximum  
30 term of not more than six months. The term of imprisonment ~~must~~may be ~~suspended, on~~  
31 suspended. However, the suspended sentence shall include the condition that the  
32 defendant:

- 33           (1) Be imprisoned for a term of at least 72 hours as a condition of special  
34 probation; or
- 35           (2) Perform community service for a term of at least 72 hours; or
- 36           (3) Not operate a motor vehicle for a term of at least 90 days; or
- 37           (4) Any combination of these conditions.

38       If the defendant is placed on probation, the judge ~~may~~shall impose a requirement that  
39 the defendant obtain a substance abuse assessment and the education or treatment  
40 required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~license and as a condition  
41 of probation. The judge may impose any other lawful condition of probation. ~~This~~  
42 ~~subsection does not affect the right of a defendant to elect to serve the suspended sentence of~~  
43 ~~imprisonment as provided in G.S. 15A-1341(e)."~~

1 Section 2.4. G.S. 20-179(j) reads as rewritten:

2 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may  
3 be fined up to two hundred fifty dollars (\$250.00) and ~~must~~shall be sentenced to a term  
4 of imprisonment that includes a minimum term of not less than 48 hours and a maximum  
5 term of not more than 120 days. The term of imprisonment ~~must~~may be ~~suspended, on~~  
6 suspended. However, the suspended sentence shall include the condition that the  
7 defendant:

- 8 (1) Be imprisoned for a term of 48 hours as a condition of special  
9 probation; or
- 10 (2) Perform community service for a term of 48 hours; or
- 11 (3) Not operate a motor vehicle for a term of 60 days; or
- 12 (4) Any combination of these conditions.

13 If the defendant is placed on probation, the judge ~~may~~shall impose a requirement that  
14 the defendant obtain a substance abuse assessment and the education or treatment  
15 required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~license and as a condition  
16 of probation. The judge may impose any other lawful condition of probation. ~~This~~  
17 ~~subsection does not affect the right of a defendant to elect to serve the suspended sentence of~~  
18 ~~imprisonment as provided in G.S. 15A-1341(e)."~~

19 Section 2.5. G.S. 20-179(k) reads as rewritten:

20 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may  
21 be fined up to one hundred dollars (\$100.00) and ~~must~~shall be sentenced to a term of  
22 imprisonment that includes a minimum term of not less than 24 hours and a maximum  
23 term of not more than 60 days. The term of imprisonment ~~must~~may be ~~suspended, on~~  
24 suspended. However, the suspended sentence shall include the condition that the  
25 defendant:

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

31 If the defendant is placed on probation, the judge ~~may~~shall impose a requirement that  
32 the defendant obtain a substance abuse assessment and the education or treatment  
33 required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~license and as a condition  
34 of probation. The judge may impose any other lawful condition of probation. ~~This~~  
35 ~~subsection does not affect the right of a defendant to elect to serve the suspended sentence of~~  
36 ~~imprisonment as provided in G.S. 15A-1341(e)."~~

37 Section 2.6. G.S. 20-179(k1) reads as rewritten:

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

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

9 Section 2.7. G.S. 20-179(p) reads as rewritten:

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

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

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

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

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

25 Section 2.8. G.S. 20-179(r) reads as rewritten:

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

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

41 (1) Community service; or

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

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

1 (4) Any combination of these conditions."

2 PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

3 Section 3.1. G.S. 20-16.2(a) reads as rewritten:

4 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of  
5 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby  
6 gives consent to a chemical analysis if charged with an implied-consent offense. The  
7 charging officer ~~must~~shall designate the type of chemical analysis to be administered,  
8 and it may be administered when the officer has reasonable grounds to believe that the  
9 person charged has committed the implied-consent offense.

10 Except as provided in this subsection or subsection (b), before any type of chemical  
11 analysis is administered the person charged ~~must~~shall be taken before a chemical analyst  
12 authorized to administer a test of a person's breath, who ~~must~~shall inform the person  
13 orally and also give the person a notice in writing that:

14 (1) The person has a right to refuse to be tested.

15 (2) Refusal to take any required test or tests will result in an immediate  
16 revocation of the person's driving privilege for at least ~~10-30~~30 days and an  
17 additional 12-month revocation by the Division of Motor Vehicles.

18 (3) The test results, or the fact of the person's refusal, will be admissible in  
19 evidence at trial on the offense charged.

20 (4) The person's driving privilege will be revoked immediately for at least  
21 ~~10-30~~30 days if:

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

23 b. The person was driving a commercial motor vehicle and the test  
24 reveals an alcohol concentration of 0.04 or more.

25 (5) The person may choose a qualified person to administer a chemical test  
26 or tests in addition to any test administered at the direction of the  
27 charging officer.

28 (6) The person has the right to call an attorney and select a witness to view  
29 for him or her the testing procedures, but the testing may not be delayed  
30 for these purposes longer than 30 minutes from the time when the  
31 person is notified of his or her rights.

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 Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

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

40 (1) At the time of the refusal the person held either a valid ~~driver's~~drivers  
41 license or a license that had been expired for less than one year;

42 (2) At the time of the refusal, the person had not within the preceding seven  
43 years been convicted of an offense involving impaired driving;

- 1 (3) At the time of the refusal, the person had not in the preceding seven  
2 years willfully refused to submit to a chemical analysis under this  
3 section;
- 4 (4) The implied-consent offense charged did not involve death or critical  
5 injury to another person;
- 6 (5) The underlying charge for which the defendant was requested to submit  
7 to a chemical analysis has been finally disposed of:
- 8 a. Other than by conviction; or  
9 b. By a conviction of impaired driving under G.S. 20-138.1, at a  
10 punishment level authorizing issuance of a limited driving  
11 privilege under G.S. 20-179.3(b), and the defendant has complied  
12 with at least one of the mandatory conditions of probation listed  
13 for the punishment level under which the defendant was  
14 sentenced;
- 15 (6) Subsequent to the refusal the person has had no unresolved pending  
16 charges for or additional convictions of an offense involving impaired  
17 driving; ~~and~~
- 18 (7) The person's license has been revoked for at least six months for the  
19 ~~refusal-refusal; and~~
- 20 (8) The person has obtained a substance abuse assessment from a mental  
21 health facility and successfully completed any recommended training or  
22 treatment program.

23 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the  
24 procedure for application and conduct of the hearing and the restrictions required or  
25 authorized to be included in the limited driving privilege apply to applications under this  
26 subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall  
27 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal  
28 occurred by a district court judge. If the case was finally disposed of in the superior  
29 court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts  
30 as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A  
31 limited driving privilege issued under this section authorizes a person to drive if the  
32 person's license is revoked solely under this section or solely under this section and G.S.  
33 20-17(2). If the person's license is revoked for any other reason, the limited driving  
34 privilege is invalid."

35 Section 3.3. G.S. 20-16.2(i) reads as rewritten:

36 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or  
37 questioned by a law-enforcement officer who is investigating whether the person may  
38 have committed an implied-consent offense may request the administration of a chemical  
39 analysis before any arrest or other charge is made for the offense. Upon this request, the  
40 officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or  
41 her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b).  
42 The request constitutes the person's consent to be transported by the law-enforcement  
43 officer to the place where the chemical analysis is to be administered. Before the

1 chemical analysis is made, the person ~~must~~shall confirm the request in writing and ~~must~~  
2 shall be notified:

- 3 (1) That the test results will be admissible in evidence and may be used  
4 against the person in any implied-consent offense that may arise;
- 5 (2) That the person's license will be revoked for at least ~~10~~30 days if:  
6 a. The test reveals an alcohol concentration of 0.08 or more; or  
7 b. The person was driving a commercial motor vehicle and the test  
8 results reveal an alcohol concentration of 0.04 or more.
- 9 (3) That if the person fails to comply fully with the test procedures, the  
10 officer may charge the person with any offense for which the officer has  
11 probable cause, and if the person is charged with an implied-consent  
12 offense, the person's refusal to submit to the testing required as a result  
13 of that charge would result in revocation of the person's driver's license.  
14 The results of the chemical analysis are admissible in evidence in any  
15 proceeding in which they are relevant."

16 Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

17 "(p) Limited Driving Privilege. – A person whose drivers license has been revoked  
18 under this section may apply for a limited driving privilege if:

- 19 (1) At the time of the alleged offense the person held either a valid drivers  
20 license or a license that had been expired for less than one year;
- 21 (2) Does not have an unresolved pending charge involving impaired driving  
22 except the charge for which the license is currently revoked under this  
23 section or additional convictions of an offense involving impaired  
24 driving since being charged for the violation for which the license is  
25 currently revoked under this section;
- 26 (3) The person's license has been revoked for at least 10 days if the  
27 revocation is for 30 days or 30 days if the revocation is for 45 days; and
- 28 (4) The person has obtained a substance abuse assessment from a mental  
29 health facility and registers for and agrees to participate in any  
30 recommended training or treatment program.

31 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the  
32 procedure for application and conduct of the hearing and the restrictions required or  
33 authorized to be included in the limited driving privilege apply to applications under this  
34 subsection. Any district court judge authorized to hold court in the judicial district is  
35 authorized to issue such a limited driving privilege. A limited driving privilege issued  
36 under this section authorizes a person to drive if the person's license is revoked solely  
37 under this section. If the person's license is revoked for any other reason, the limited  
38 driving privilege is invalid."

39 Section 3.5. G.S. 20-16.5(e) reads as rewritten:

40 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
41 properly executed revocation report concerning a person is filed with a judicial official  
42 when the person is present before that official, the judicial official ~~must~~shall, after  
43 completing any other proceedings involving the person, determine whether there is

1 probable cause to believe that each of the conditions of subsection (b) has been met. If he  
2 determines that there is such probable cause, he ~~must~~shall enter an order revoking the  
3 person's driver's license for the period required in this subsection. The judicial official  
4 ~~must~~shall order the person to surrender his license and if necessary may order a law-  
5 enforcement officer to seize the license. The judicial official ~~must~~shall give the person a  
6 copy of the revocation order. In addition to setting it out in the order the judicial official  
7 ~~must~~shall personally inform the person of his right to a hearing as specified in subsection  
8 (g), and that his license remains revoked pending the hearing. Unless the person is not  
9 currently licensed, the revocation under this subsection begins at the time the revocation  
10 order is issued and continues until the person's license has been surrendered for ~~10~~30  
11 days and the person has paid the applicable costs. If the person is not currently licensed,  
12 the revocation continues until ~~10~~30 days from the date the revocation order is issued and  
13 the person has paid the applicable costs. If within five working days of the effective date  
14 of the order, the person does not surrender his license or demonstrate that he is not  
15 currently licensed, the clerk ~~must~~shall immediately issue a pick-up order. The pick-up  
16 order ~~must~~shall be issued to a member of a local law-enforcement agency if the charging  
17 officer was employed by the agency at the time of the charge and the person resides in or  
18 is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~  
19 shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant  
20 to this section is to be served in accordance with G.S. 20-29 as if the order had been  
21 issued by the Division."

22 Section 3.6. G.S. 20-16.5(f) reads as rewritten:

23 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –  
24 When a clerk receives a properly executed report under subdivision (d)(3) and the person  
25 named in the revocation report is not present before the clerk, the clerk ~~must~~shall  
26 determine whether there is probable cause to believe that each of the conditions of  
27 subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~  
28 shall mail to the person a revocation order by first-class mail. The order ~~must~~shall direct  
29 that the person on or before the effective date of the order either surrender his license to  
30 the clerk or appear before the clerk and demonstrate that he is not currently licensed, and  
31 the order ~~must~~shall inform the person of the time and effective date of the revocation and  
32 of its duration, of his right to a hearing as specified in subsection (g), and that the  
33 revocation remains in effect pending the hearing. Revocation orders mailed under this  
34 subsection become effective on the fourth day after the order is deposited in the United  
35 States mail. If within five working days of the effective date of the order, the person does  
36 not surrender his license to the clerk or appear before the clerk to demonstrate that he is  
37 not currently licensed, the clerk ~~must~~shall immediately issue a pick-up order. The pick-  
38 up order ~~must~~shall be issued and served in the same manner as specified in subsection (e)  
39 for pick-up orders issued pursuant to that subsection. A revocation under this subsection  
40 begins at the date specified in the order and continues until the person's license has been  
41 revoked for the period specified in this subsection and the person has paid the applicable  
42 costs. The period of revocation under this subsection is:



- 1           (1) ~~Ten~~Thirty days from the time the person surrenders his license to the  
2 court, if the surrender occurs within five working days of the effective  
3 date of the order; or
- 4           (2) ~~Ten~~Thirty days after the person appears before the clerk and  
5 demonstrates that he is not currently licensed to drive, if the appearance  
6 occurs within five working days of the effective date of the revocation  
7 order; or
- 8           (3) ~~Thirty~~Forty-five days from the time:
- 9           a. The person's ~~driver's~~drivers license is picked up by a law-  
10 enforcement officer following service of a pick-up order; or
- 11           b. The person demonstrates to a law-enforcement officer who has a  
12 pick-up order for his license that he is not currently licensed; or
- 13           c. The person's ~~driver's~~drivers license is surrendered to the court if  
14 the surrender occurs more than five working days after the  
15 effective date of the revocation order; or
- 16           d. The person appears before the clerk to demonstrate that he is not  
17 currently licensed, if he appears more than five working days  
18 after the effective date of the revocation order.

19 When a pick-up order is issued, it ~~must~~shall inform the person of his right to a hearing as  
20 specified in subsection (g), and that the revocation remains in effect pending the hearing.  
21 An officer serving a pick-up order under this subsection ~~must~~shall return the order to the  
22 court indicating the date it was served or that he was unable to serve the order. If the  
23 license was surrendered, the officer serving the order ~~must~~shall deposit it with the clerk  
24 within three days of the surrender."

25           Section 3.7. G.S. 20-16.5(i) reads as rewritten:

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

35           Section 3.8. G.S. 20-16.5(k) reads as rewritten:

36           "(k) Report to Division. – Except as provided below, the clerk ~~must~~shall mail a  
37 report to the Division within 10 working days of the return of a license under this section  
38 or of the termination of a revocation of the driving privilege of a person not currently  
39 licensed. The report ~~must~~shall identify the person whose license has been revoked and  
40 specify the dates on which his license was revoked. No report need be made to the  
41 Division, however, if there was a surrender of the driver's license issued by the Division,  
42 a ~~ten-day~~30-day minimum revocation was imposed, and the license was properly

1 returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-  
2 day period had elapsed."

3 PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE  
4 OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

5 Section 4. G.S. 20-138.3 reads as rewritten:

6 "**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**  
7 **drugs.**

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

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

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

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

29 (e) (e) Punishment; effect when impaired driving offense also charged. – The  
30 offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser  
31 included offense of impaired driving under G.S. 20-138.1, but if a person is convicted  
32 under this section and of an offense involving impaired driving arising out of the same  
33 transaction, the aggregate punishment imposed by the court may not exceed the  
34 maximum applicable to the offense involving impaired driving, and any minimum  
35 punishment applicable ~~must~~ shall be imposed.

36 (d) (f) Limited driving privilege. – A person who is convicted of violating  
37 subsection (a) of this section and whose drivers license is revoked solely based on that  
38 conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This  
39 subsection shall apply only if the person meets both of the following requirements:

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

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

42 The judge may issue the limited driving privilege only if the person meets the eligibility  
43 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.

1 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in  
2 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the  
3 issuance of a limited driving privilege to a person who is convicted of violating  
4 subsection (a) of this section and of driving while impaired as a result of the same  
5 transaction."

6 PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

7 Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

8 "(3a) Chemical Analysis. – A test or tests of the ~~breath or blood~~ breath, blood,  
9 or other bodily fluid or substance of a person to determine ~~his~~ the  
10 person's alcohol concentration, concentration or presence of an impairing  
11 substance, performed in accordance with G.S. 20-139.1. G.S. 20-139.1,  
12 including duplicate or sequential analyses. ~~The term "chemical~~  
13 ~~analysis" includes duplicate or sequential analyses when necessary or desirable~~  
14 ~~to insure the integrity of test results."~~

15 Section 5.2. G.S. 20-138.3(a) reads as rewritten:

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

22 Section 5.3. G.S. 20-139.1(a) reads as rewritten:

23 "(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S.  
24 20-16.2, a person's alcohol concentration or the presence of any other impairing  
25 substance in the person's body as shown by a chemical analysis is admissible in evidence.  
26 This section does not limit the introduction of other competent evidence as to ~~a defendant's~~  
27 a person's alcohol concentration, concentration or results of other tests showing the  
28 presence of an impairing substance, including other chemical tests."

29 Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

30 "(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-  
31 16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or  
32 substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of  
33 the charging officer. A person's willful refusal to submit to a chemical analysis of the  
34 blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

35 Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

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

41 (1) The alcohol concentration or concentrations or the presence or absence  
42 of an impairing substance of a person given a chemical analysis and  
43 who is involved in the hearing or trial.

- 1           (2)    The time of the collection of the ~~blood or breath~~ blood, breath, or other  
2                    bodily fluid or substance sample or samples for the chemical analysis.  
3           (3)    The type of chemical analysis administered and the procedures  
4                    followed.  
5           (4)    The type and status of any permit issued by the Department of  
6                    Environment, Health, and Natural Resources that he held on the date he  
7                    performed the chemical analysis in question.  
8           (5)    If the chemical analysis is performed on a breath-testing instrument for  
9                    which regulations adopted pursuant to subsection (b) require preventive  
10                   maintenance, the date the most recent preventive maintenance  
11                   procedures were performed on the breath-testing instrument used, as  
12                   shown on the maintenance records for that instrument.

13   The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a  
14   form for use by chemical analysts in making this affidavit. If any person who submitted  
15   to a chemical analysis desires that a chemical analyst personally testify in the hearing or  
16   trial in the District Court Division, he may subpoena the chemical analyst and examine  
17   him as if he were an adverse witness."

18           Section 5.6. G.S. 20-179.3(h) reads as rewritten:

19           "(h)   Other Mandatory and Permissive Conditions or Restrictions. – In all limited  
20   driving privileges the judge ~~must~~ shall also include a restriction that the applicant not  
21   consume alcohol while driving or drive at any time while he has remaining in his body  
22   any alcohol or ~~in his blood~~ a controlled substance previously consumed, unless the  
23   controlled substance was lawfully obtained and taken in therapeutically appropriate  
24   amounts. The judge may impose any other reasonable restrictions or conditions  
25   necessary to achieve the purposes of this section."

#### 26   PART VI. HABITUAL IMPAIRED DRIVING.

27           Section 6. G.S. 20-138.5(b) reads as rewritten:

28           "(b)   A person convicted of violating this section shall be punished as a ~~Class G~~  
29   Class F felon, ~~felon~~ and shall be sentenced to a minimum active term of not less than 12  
30   months of imprisonment, which shall not be suspended. Sentences imposed under this  
31   subsection shall run consecutively with and shall commence at the expiration of any  
32   sentence being served."

#### 33   PART VII. EFFECTIVE DATES.

34           Section 7. This act becomes effective December 1, 1997, and applies to  
35   offenses committed on or after that date. Sentencing for an offense committed before the  
36   effective date of this act is governed by the laws in effect at the time of the commission  
37   of the offense.