GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-379
HOUSE BILL 448

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

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

The General Assembly of North Carolina enacts:

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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.

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

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

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vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

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

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

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

a. Did not know and had no reason to know that the defendant's drivers license was revoked; or

b. Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission.

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

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

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

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

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

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

(c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of ~~the vehicle owner as shown on the certificate of title for the vehicle and he must~~ every vehicle owner. The prosecutor shall also determine if there are any ~~security interests~~ lienholders noted on the vehicle's certificate of title. The State ~~must~~ shall notify ~~the holder of each security interest~~ the defendant, each vehicle owner, and each lienholder that the vehicle may be subject to forfeiture and that ~~he~~ the defendant, vehicle owner, or the lienholder may intervene to protect ~~his~~ that person's interest. ~~If the defendant is not the owner, a similar notice must be served on the owner.~~ The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the ~~forfeiture hearing.~~ hearing at which an order of forfeiture may be entered.

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

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (c); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

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

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an intervening lienholder pursuant to the provisions of subsection (g) of this section.

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

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

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

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

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

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the~~

~~innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

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

This release shall only be ordered upon satisfactory proof of:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of

the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

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

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

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

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

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

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

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

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3, payable to the county school fund and conditioned on return of the vehicle, without any new or additional liens or encumbrances, on the day of trial of the operator;

(4) If a qualified vehicle owner, execution of an acknowledgment as described in G.S. 20-28.2(a1); and

(5) A check of the records of the Division indicates that the requesting vehicle owner has not previously executed an acknowledgment naming the operator of the seized vehicle.

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

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

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

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

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

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

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

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

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

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

the seized vehicle shall be returned to the vehicle owner.

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

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

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

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

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

(b) Proceeds of Sale. – Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

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

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

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

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

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

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall order the defendant's rights of registration forfeited for the period

the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

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

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

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

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

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

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

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

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

"**§ 1-339.4. Who may hold sale.**

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

(1) In any proceeding, a commissioner specially appointed therefor; or

(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
(7) In a receivership proceeding, the receiver;
(8) In a proceeding to sell property of a trust, the ~~trustee.~~ trustee;
(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

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

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

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

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

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

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

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

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

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
    a. The test reveals an alcohol concentration of 0.08 or more; or
    b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

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

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

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

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

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

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

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

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

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

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under

this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

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

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

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

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

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

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

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

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

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

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

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

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

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

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

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. – When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~

shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's ~~driver's~~ drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's ~~driver's~~ drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

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

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

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

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

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

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

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

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

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

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

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

(d) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one

approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

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

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

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

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

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

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

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

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

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

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

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

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

~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

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

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

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

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

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

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

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

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

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

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

PART VI. HABITUAL IMPAIRED DRIVING.

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

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

PART VII. EFFECTIVE DATES.

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

In the General Assembly read three times and ratified this the 4th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 11:30 a.m. this 7th day of August, 1997