

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 999  
Judiciary I (Civil) Committee Substitute Adopted 4/26/07  
House Committee Substitute Favorable 7/12/07**

Short Title: DWI Technical Corrections.

(Public)

Sponsors:

Referred to:

March 21, 2007

A BILL TO BE ENTITLED

1 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE  
2 LAWS PERTAINING TO IMPAIRED DRIVING OFFENSES AND TO PROVIDE  
3 THAT THE COURT MAY ORDER SECURE CUSTODY OF A JUVENILE  
4 WHEN THE JUVENILE IS CHARGED WITH A VIOLATION OF EITHER  
5 DRIVING WHILE IMPAIRED OR UNDERAGE DRINKING AND TO  
6 AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY  
7 THE DISPOSITIONAL ALTERNATIVES FOR JUVENILES WHO ARE  
8 ADJUDICATED DELINQUENT FOR A DRIVING WHILE IMPAIRED OR AN  
9 UNDERAGE DRINKING VIOLATION.  
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 20-4.01(24a)b. reads as rewritten:

13 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

14 a. Impaired driving under G.S. 20-138.1.

15 b. ~~Death by vehicle under~~ Any offense set forth under  
16 G.S. 20-141.4 when conviction is based upon impaired driving  
17 or a substantially similar offense under previous law."

18 **SECTION 2.** G.S. 20-17(a)(9) reads as rewritten:

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

21 ...

22 (9) ~~Death by vehicle as defined in G.S. 20-141.4.~~ Any offense set forth  
23 under G.S. 20-141.4."

24 **SECTION 3.** G.S. 20-139.1(b6) reads as rewritten:

25 "(b6) The Department of Health and Human Services shall post on a Web page ~~and~~  
26 ~~file with the clerk of superior court in each county~~ a list of all persons who have a  
27 permit authorizing them to perform chemical analyses, the types of analyses that they  
28 can perform, the instruments that each person is authorized to operate, the effective

1 dates of the permits, and the records of preventive maintenance. A court or  
2 administrative agency shall take judicial notice of whether, at the time of the chemical  
3 analysis, the chemical analyst possessed a permit authorizing the chemical analyst to  
4 perform the chemical analysis administered and whether preventive maintenance had  
5 been performed on the breath-testing instrument in accordance with the Department's  
6 rules."

7 **SECTION 4.** G.S. 20-28(c4) reads as rewritten:

8 "(c4) For a conditional restoration under subsection (c3) of this section, the  
9 Division shall require at a minimum that the driver obtain a substance abuse assessment  
10 prior to issuance of a license and show proof of financial responsibility. If the substance  
11 abuse assessment recommends education or treatment, the person must complete the  
12 education or treatment within the time limits specified. If the assessment determines that  
13 the person abuses alcohol, the Division shall require the person to install and use an  
14 ignition interlock system on any vehicles that are to be driven by that person for the  
15 period of time set forth in G.S. 20-17.8(e) that the conditional restoration is active."

16 **SECTION 5.** Section 33 of S.L. 2006-253 reads as rewritten:

17 "**SECTION 33.** Section 6 becomes effective August 21, 2006, and applies to  
18 hearings held on or after that date. Sections 20.1, 20.2, and the requirement that the  
19 Administrative Office of the Courts electronically record certain data contained in  
20 subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, become effective  
21 after the next rewrite of the superior court clerks system by the Administrative Office of  
22 the Courts. Section 22.4 becomes effective December 1, 2006. The remainder of this act  
23 becomes effective December 1, 2006, and applies to offenses committed on or after that  
24 date."

25 **SECTION 6.** G.S. 20-179(c) reads as rewritten:

26 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing  
27 hearing, based upon the evidence presented at trial and in the hearing, the judge, or the  
28 jury in superior court, must first determine whether there are any grossly aggravating  
29 factors in the case. Whether a prior conviction exists under subdivision (1) of this  
30 ~~subsection~~ subsection, or whether a conviction exists under subdivision (d)(5) of this  
31 section, shall be ~~a matter~~ matters to be determined by the judge, and not the jury, in  
32 district or superior court. If the sentencing hearing is for a case remanded back to  
33 district court from superior court, the judge shall determine whether the defendant has  
34 been convicted of any offense that was not considered at the initial sentencing hearing  
35 and impose the appropriate sentence under this section. The judge must impose the  
36 Level One punishment under subsection (g) of this section if it is determined that two or  
37 more grossly aggravating factors apply. The judge must impose the Level Two  
38 punishment under subsection (h) of this section if it is determined that only one of the  
39 grossly aggravating factors applies. The grossly aggravating factors are:

40 (1) A prior conviction for an offense involving impaired driving if:

- 41 a. The conviction occurred within seven years before the date of  
42 the offense for which the defendant is being sentenced; or

- 1                   b.     The conviction occurs after the date of the offense for which the  
2                   defendant is presently being sentenced, but prior to or  
3                   contemporaneously with the present ~~sentencing~~sentencing; or  
4                   c.     The conviction occurred in district court; the case was appealed  
5                   to superior court; the appeal has been withdrawn, or the case  
6                   has been remanded back to district court; and a new sentencing  
7                   hearing has not been held pursuant to G.S. 20-38.7.

8                   Each prior conviction is a separate grossly aggravating factor."

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

10                  "(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture;  
11 Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle  
12 driven by an impaired driver at the time of the offense becomes subject to an order of  
13 forfeiture. The determination may be made at any of the following times:

- 14                  (1) A sentencing hearing for the underlying offense involving impaired  
15                  driving.  
16                  (2) A separate hearing after conviction of the defendant.  
17                  (3) A forfeiture hearing held at least 60 days after the defendant failed to  
18                  appear at the scheduled trial for the underlying offense, and the  
19                  defendant's order of arrest for failing to appear has not been set aside.

20 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
21 evidence shows that the defendant is guilty of an underlying ~~offense involved~~ involving  
22 impaired driving, and that the defendant's license was revoked pursuant to an impaired  
23 driving license revocation as defined in subsection (a) of this section."

24                  **SECTION 8.** G.S. 20-28.2(b1) reads as rewritten:

25                  "(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No  
26 License and No Insurance. – A judge may determine whether the vehicle driven by an  
27 impaired driver at the time of the offense becomes subject to an order of forfeiture. The  
28 determination may be made at any of the following times:

- 29                  (1) A sentencing hearing for the underlying offense involving impaired  
30                  driving.  
31                  (2) A separate hearing after conviction of the defendant.  
32                  (3) A forfeiture hearing held at least 60 days after the defendant failed to  
33                  appear at the scheduled trial for the underlying offense, and the  
34                  defendant's order of arrest for failing to appear has not been set aside.

35 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
36 evidence shows that the defendant is guilty of an underlying ~~offense involved~~ involving  
37 impaired driving, and: (i) the defendant was driving without a valid drivers license, and  
38 (ii) the defendant was not covered by an automobile liability policy.

39                  ...."

40                  **SECTION 9.** G.S. 20-38.7 reads as rewritten:

41                  "**§ 20-38.7. Appeal to superior court.**

42                  (a) The State may appeal to superior court any district court preliminary  
43 determination granting a motion to suppress or dismiss. If there is a dispute about the  
44 findings of fact, the superior court shall not be bound by the findings of the district court

1 but shall determine the matter de novo. Any further appeal shall be governed by Article  
2 90 of Chapter 15A of the General Statutes.

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

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

14 (d) Following a new sentencing hearing in district court pursuant to subsection  
15 (c) of this section, a defendant has a right of appeal to the superior court only if:

16 (1) The sentence is based upon additional facts considered by the district  
17 court that were not considered in the previously vacated judgment, and

18 (2) The defendant would be entitled to a jury determination of those facts  
19 pursuant to G.S. 20-179.

20 A defendant who has a right of appeal under this subsection, gives notice of appeal, and  
21 subsequently withdraws the appeal shall have the sentence imposed by the district court  
22 reinstated by the district court as a final judgment that is not subject to further appeal."

23 **SECTION 10.** G.S. 20-17.8(b)(3) reads as rewritten:

24 "(3) An alcohol concentration restriction as follows:

- 25 a. If the ignition interlock system is required pursuant only to  
26 subdivision (a)(1) of this section, a requirement that the person  
27 not drive with an alcohol concentration of 0.04 or greater;
- 28 b. If the ignition interlock system is required pursuant to  
29 subdivision (a)(2) of this section, a requirement that the person  
30 not drive with an alcohol concentration of greater than 0.00; or
- 31 c. If the ignition interlock system is required pursuant to  
32 subdivision (a)(1) of this section, and the person has also been  
33 convicted, based on the same set of circumstances, of: (i)  
34 driving while impaired in a commercial vehicle, G.S. 20-138.2,  
35 (ii) driving while less than 21 years old after consuming alcohol  
36 or drugs, G.S. 20-138.3, (iii) ~~felony death by vehicle,~~  
37 ~~G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or (iv)  
38 manslaughter or negligent homicide resulting from the  
39 operation of a motor vehicle when the offense involved  
40 impaired driving, a requirement that the person not drive with  
41 an alcohol concentration of greater than 0.00."

42 **SECTION 11.** G.S. 20-19(c3)(4) reads as rewritten:

43 "(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23  
44 or G.S. 20-23.2 when the offense for which the person's license was

1           revoked prohibits substantially similar conduct which if committed in  
2           this State would result in a conviction of driving while impaired in a  
3           commercial motor vehicle, G.S. 20-138.2, driving while less than 21  
4           years old after consuming alcohol or drugs, G.S. 20-138.3, ~~felony~~  
5           ~~death by vehicle, G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or  
6           manslaughter or negligent homicide resulting from the operation of a  
7           motor vehicle when the offense involved impaired driving, that the  
8           person not operate vehicle with an alcohol concentration of greater  
9           than 0.00 at any relevant time after the driving."

10           **SECTION 12.** G.S. 20-19(d) reads as rewritten:

11           "(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person  
12           has another offense involving impaired driving for which he has been convicted, which  
13           offense occurred within three years immediately preceding the date of the offense for  
14           which his license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of  
15           G.S. 20-141.4(a3), the period of revocation is four years, and this period may be  
16           reduced only as provided in this section. The Division may conditionally restore the  
17           person's license after it has been revoked for at least two years under this subsection if  
18           he provides the Division with satisfactory proof that:

- 19           (1) He has not in the period of revocation been convicted in North  
20           Carolina or any other state or federal jurisdiction of a motor vehicle  
21           offense, an alcoholic beverage control law offense, a drug law offense,  
22           or any other criminal offense involving the possession or consumption  
23           of alcohol or drugs; and  
24           (2) He is not currently an excessive user of alcohol or drugs.

25           If the Division restores the person's license, it may place reasonable conditions or  
26           restrictions on the person for the duration of the original revocation period."

27           **SECTION 13.** G.S. 20-19(e) reads as rewritten:

28           "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person  
29           has two or more previous offenses involving impaired driving for which he has been  
30           convicted, and the most recent offense occurred within the five years immediately  
31           preceding the date of the offense for which his license is being revoked, or (ii)  
32           G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.  
33           The Division may, however, conditionally restore the person's license after it has been  
34           revoked for at least three years under this subsection if he provides the Division with  
35           satisfactory proof that:

- 36           (1) In the three years immediately preceding the person's application for a  
37           restored license, he has not been convicted in North Carolina or in any  
38           other state or federal court of a motor vehicle offense, an alcohol  
39           beverage control law offense, a drug law offense, or any criminal  
40           offense involving the consumption of alcohol or drugs; and  
41           (2) He is not currently an excessive user of alcohol or drugs.

42           If the Division restores the person's license, it may place reasonable conditions or  
43           restrictions on the person for any period up to ~~three~~ five years from the date of  
44           restoration."

1           **SECTION 14.** G.S. 20-19(i) reads as rewritten:

2           "(i) When a person's license is revoked under ~~subdivision (1) or (9) of G.S. 20-17~~  
3 G.S. 20-17(a)(1) or G.S. 20-17(a)(9), and the offense is one involving impaired driving  
4 and a fatality, the revocation is permanent. The Division may, however, conditionally  
5 restore the person's license after it has been revoked for at least ~~three years in~~  
6 accordance with the procedure in subsection (e) of this section; five years under this  
7 subsection if he provides the Division with satisfactory proof that:

- 8           (1) In the five years immediately preceding the person's application for a  
9 restored license, he has not been convicted in North Carolina or in any  
10 other state or federal court of a motor vehicle offense, an alcohol  
11 beverage control law offense, a drug law offense, or any criminal  
12 offense involving the consumption of alcohol or drugs; and  
13           (2) He is not currently an excessive user of alcohol or drugs.

14 If the Division restores the person's license, it may place reasonable conditions or  
15 restrictions on the person for any period up to seven years from the date of restoration."

16           **SECTION 15.** G.S. 20-141.4(a6) reads as rewritten:

17           "(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of  
18 repeat felony death by vehicle if:

- 19           (1) The person commits an offense under subsection (a1) or subsection  
20 (a5) of this section; and  
21           (2) The person has a previous conviction under:  
22           a. Subsection (a1) of this section;  
23           b. Subsection (a5) of this section; or  
24           c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was  
25 the unintentional death of another person while engaged in the  
26 offense of impaired driving under G.S. 20-138.1 or  
27 G.S. 20-138.2.

28           The pleading and proof of previous convictions shall be in accordance  
29 with the provisions of G.S. 15A-928.

30           A person convicted under this subsection shall be subject to the same sentence as if  
31 the person had been convicted of second degree murder. ~~who commits an offense under~~  
32 Subsection (a1) or Subsection (a5) of this section, and who has a previous conviction  
33 under

- 34           (1) Subsection (a1) of this section; or  
35           (2) Subsection (a5) of this section; or  
36           (3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as  
37 determined from the face of the indictment, was the unintentional  
38 death of another person while engaged in the offense of impaired  
39 driving under GS 20-138.1 or GS 20-138.2,

40 shall be subject to the same sentence as if the person had been convicted of second  
41 degree murder."

42           **SECTION 16.** G.S. 20-138.4(a) reads as rewritten:

43           "**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
44 **involving impaired driving in implied-consent case.**

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

- 5 (1) Enters a voluntary dismissal; or  
6 (2) Accepts a plea of guilty or no contest to a lesser included offense; or  
7 (3) Substitutes another charge, by statement of charges or otherwise, if the  
8 substitute charge carries a lesser mandatory minimum punishment or is  
9 not ~~an offense involving impaired driving; a case subject to the~~  
10 implied-consent law; or  
11 (4) Otherwise takes a discretionary action that effectively dismisses or  
12 reduces the original charge in ~~the a case involving impaired~~  
13 driving-subject to the implied-consent law.

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

16 **SECTION 17.** The Revisor of Statutes shall substitute the term "law  
17 enforcement officer" for the term "charging officer" everywhere that term appears in  
18 G.S. 20-16.5.

19 **SECTION 18.** G.S. 20-139.1(d) reads as rewritten:

20 "(d) Right to Additional Test. – Nothing in this section shall be construed to  
21 prohibit a person from obtaining or attempting to obtain an additional chemical analysis.  
22 If the person is not released from custody after the initial appearance, the agency having  
23 custody of the person shall make reasonable efforts in a timely manner to assist the  
24 person in obtaining access to a telephone to arrange for any additional test and allow  
25 access to the person in accordance with the agreed procedure in G.S. ~~20-38.4-20-38.5.~~  
26 The failure or inability of the person who submitted to a chemical analysis to obtain any  
27 additional test or to withdraw blood does not preclude the admission of evidence  
28 relating to the chemical analysis."

29 **SECTION 19.** G.S. 20-28(a2)(1) reads as rewritten:

30 "(1) The person ~~drives-operates a motor vehicle~~ upon a highway while that  
31 person's license is revoked for an impaired drivers license revocation  
32 after the Division has sent notification in accordance with G.S. 20-48;  
33 or

34 "...."

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

36 "**§ 20-179. Sentencing hearing after conviction for impaired driving;**  
37 **determination of grossly aggravating and aggravating and mitigating**  
38 **factors; punishments.**

39 (a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1,  
40 G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or  
41 subsequent conviction under G.S. 20-138.2B, ~~G.S. 20-138.3,~~ or when any of those  
42 offenses are remanded back to district court after an appeal to superior court, the judge  
43 shall hold a sentencing hearing to determine whether there are aggravating or mitigating  
44 factors that affect the sentence to be imposed.

1 ...

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

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

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

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

14 ...

15 (s) Method of Serving Sentence. – The judge in his discretion may order a term  
16 of imprisonment to be served on weekends, even if the sentence cannot be served in  
17 consecutive sequence. However, if the defendant is ordered to a term of 48 hours or  
18 more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall  
19 be required to serve 48 continuous hours of imprisonment to be given credit for time  
20 served.

21 ...

22 (3) If a defendant has been reported back to court under subdivision (2) of  
23 this subsection, the court shall hold a hearing. The defendant shall be  
24 ordered to serve his jail time immediately and shall not be eligible to  
25 serve jail time on weekends if the court determines that, at the time of  
26 his entrance to the jail, ~~if~~

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

29 b. The defendant had a previously consumed controlled substance  
30 in his body.

31 ...."

32 **SECTION 21.** G.S. 20-28.2(a)(1) reads as rewritten:

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

36 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2),  
37 20-17(a)(12), ~~20-17.2,~~ or 20-138.5; or

38 ...."

39 **SECTION 22.** G.S. 20-139.1(c2) reads as rewritten:

40 "(c2) A chemical analysis of blood or urine, to be admissible under this section,  
41 shall be performed in accordance with rules or procedures adopted by the State Bureau  
42 of Investigation, or by another laboratory ~~certified-accredited~~ by the American Society  
43 of Crime Laboratory ~~Directors~~—Directors/Laboratory Accreditation Board



1 ~~(ASCLD),(ASCLD/LAB)~~ for the submission, identification, analysis, and storage of  
2 forensic analyses."

3 **SECTION 23.** G.S. 20-139.1(c1) reads as rewritten:

4 "(c1) Admissibility. – The results of a chemical analysis of blood or urine by the  
5 North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina,  
6 Police Department Laboratory, or any other laboratory approved for chemical analysis  
7 by the Department of Health and Human Services, are admissible as evidence in all  
8 administrative hearings, and in any court, without further authentication. The results  
9 shall be certified by the person who performed the ~~analysis, analysis, and reported on a~~  
10 ~~form approved by the Attorney General.~~ However, if the defendant notifies the State, at  
11 least five days before trial in the superior court division or an adjudicatory hearing in  
12 juvenile court that the defendant objects to the introduction of the report into evidence,  
13 the admissibility of the report shall be determined and governed by the appropriate rules  
14 of evidence.

15 ...."

16 **SECTION 24.** G.S. 20-179.3(c) reads as rewritten:

17 "(c) Privilege Not Effective until after Compliance with Court-Ordered  
18 Revocation. – A person convicted of an impaired driving offense may apply for a  
19 limited driving privilege at the time the judgment is entered. ~~If the judgment does not~~  
20 ~~require the person to complete a period of nonoperation pursuant to G.S. 20-179, the~~  
21 ~~privilege may be issued at the time the judgment is issued. If the judgment requires the~~  
22 ~~person to complete a period of nonoperation pursuant to G.S. 20-179, the limited~~  
23 ~~driving privilege may not be effective until the person successfully completes that~~  
24 ~~period of nonoperation.~~ A person whose license is revoked because of a conviction in  
25 another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 may  
26 apply for a limited driving privilege only after having completed at least 60 days of a  
27 court-imposed term of nonoperation of a motor vehicle, if the court in the other  
28 jurisdiction imposed such a term of nonoperation."

29 **SECTION 25.** G.S. 20-16.2(e) reads as rewritten:

30 "(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is  
31 sustained after the hearing, the person whose license has been revoked has the right to  
32 file a petition in the superior court district or set of districts defined in G.S. 7A-41.1,  
33 where the charges were made, within 30 days thereafter for a hearing on the record. The  
34 superior court review shall be limited to whether there is sufficient evidence in the  
35 record to support the Commissioner's findings of fact and whether the conclusions of  
36 law are supported by the findings of fact and whether the Commissioner committed an  
37 error of law in revoking the license."

38 **SECTION 26.** G.S. 20-179(d) reads as rewritten:

39 "(d) Aggravating Factors to Be Weighed. – The judge, or the jury in superior  
40 court, shall determine before sentencing under subsection (f) whether any of the  
41 aggravating factors listed below apply to the defendant. The judge shall weigh the  
42 seriousness of each aggravating factor in the light of the particular circumstances of the  
43 case. The factors are:

- 1 (1) Gross impairment of the defendant's faculties while driving or an  
2 alcohol concentration of ~~0.16~~0.15 or more within a relevant time after  
3 the driving. For purposes of this subdivision, the results of a chemical  
4 analysis presented at trial or sentencing shall be sufficient to prove the  
5 person's alcohol concentration, shall be conclusive, and shall not be  
6 subject to modification by any party, with or without approval by the  
7 court.
- 8 (2) Especially reckless or dangerous driving.
- 9 (3) Negligent driving that led to a reportable accident.
- 10 (4) Driving by the defendant while his driver's license was revoked.
- 11 (5) Two or more prior convictions of a motor vehicle offense not  
12 involving impaired driving for which at least three points are assigned  
13 under G.S. 20-16 or for which the convicted person's license is subject  
14 to revocation, if the convictions occurred within five years of the date  
15 of the offense for which the defendant is being sentenced, or one or  
16 more prior convictions of an offense involving impaired driving that  
17 occurred more than seven years before the date of the offense for  
18 which the defendant is being sentenced.
- 19 (6) Conviction under G.S. 20-141.5 of speeding by the defendant while  
20 fleeing or attempting to elude apprehension.
- 21 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least  
22 30 miles per hour over the legal limit.
- 23 (8) Passing a stopped school bus in violation of G.S. 20-217.
- 24 (9) Any other factor that aggravates the seriousness of the offense.

25 Except for the factor in subdivision (5) the conduct constituting the aggravating factor  
26 shall occur during the same transaction or occurrence as the impaired driving offense."

27 **SECTION 27.** G.S. 20-16.2(c1) reads as rewritten:

28 "(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a  
29 person refuses to submit to a chemical analysis, a person has an alcohol concentration of  
30 ~~0.16~~0.15 or more, or a person's drivers license has an alcohol concentration restriction  
31 and the results of the chemical analysis establish a violation of the restriction, the law  
32 enforcement officer and the chemical analyst shall without unnecessary delay go before  
33 an official authorized to administer oaths and execute an affidavit(s) stating that:

- 34 (1) The person was charged with an implied-consent offense or had an  
35 alcohol concentration restriction on the drivers license;
- 36 (2) A law enforcement officer had reasonable grounds to believe that the  
37 person had committed an implied-consent offense or violated the  
38 alcohol concentration restriction on the drivers license;
- 39 (3) Whether the implied-consent offense charged involved death or critical  
40 injury to another person, if the person willfully refused to submit to  
41 chemical analysis;
- 42 (4) The person was notified of the rights in subsection (a); and
- 43 (5) The results of any tests given or that the person willfully refused to  
44 submit to a chemical analysis.

1 If the person's drivers license has an alcohol concentration restriction, pursuant to  
2 G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated  
3 a provision of that restriction other than violation of the alcohol concentration level, the  
4 officer and chemical analyst shall complete the applicable sections of the affidavit and  
5 indicate the restriction which was violated. The officer shall immediately mail the  
6 affidavit(s) to the Division. If the officer is also the chemical analyst who has notified  
7 the person of the rights under subsection (a), the officer may perform alone the duties of  
8 this subsection."

9 **SECTION 28.** G.S. 20-17.8(a) reads as rewritten:

10 "(a) Scope. – This section applies to a person whose license was revoked as a  
11 result of a conviction of driving while impaired, G.S. 20-138.1, and:

- 12 (1) The person had an alcohol concentration of ~~0.16~~0.15 or more; or
- 13 (2) The person has been convicted of another offense involving impaired  
14 driving, which offense occurred within seven years immediately  
15 preceding the date of the offense for which the person's license has  
16 been revoked.

17 For purposes of subdivision (1) of this subsection, the results of a chemical analysis,  
18 as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be  
19 used by the Division to determine that person's alcohol concentration."

20 **SECTION 29.** G.S. 20-179.3(g5) reads as rewritten:

21 "(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a  
22 conviction of G.S. 20-138.1, and the person had an alcohol concentration of ~~0.16~~0.15 or  
23 more, a judge shall include all of the following in a limited driving privilege order:

- 24 (1) A restriction that the applicant may operate only a designated motor  
25 vehicle.
- 26 (2) A requirement that the designated motor vehicle be equipped with a  
27 functioning ignition interlock system of a type approved by the  
28 Commissioner, which is set to prohibit driving with an alcohol  
29 concentration of greater than 0.00. The Commissioner shall not  
30 unreasonably withhold approval of an ignition interlock system and  
31 shall consult with the Division of Purchase and Contract in the  
32 Department of Administration to ensure that potential vendors are not  
33 discriminated against.
- 34 (3) A requirement that the applicant personally activate the ignition  
35 interlock system before driving the motor vehicle.

36 For purposes of this subsection, the results of a chemical analysis presented at trial  
37 or sentencing shall be sufficient to prove a person's alcohol concentration, shall be  
38 conclusive, and shall not be subject to modification by any party, with or without  
39 approval by the court."

40 **SECTION 30.** G.S. 20-179.3 is amended by adding a new subsection to  
41 read:

42 "(c1) Privilege Restrictions for High-Risk Drivers. – Notwithstanding any other  
43 provision of this section, any limited driving privilege issued to a person convicted of an

1 impaired driving offense with an alcohol concentration of 0.15 or more at the time of  
2 the offense shall:

- 3 (1) Not become effective until at least 45 days after the final conviction  
4 under G.S. 20-138.1;
- 5 (2) Require the applicant to comply with the ignition interlock  
6 requirements of subsection (g5) of this section; and
- 7 (3) Restrict the applicant to driving only to and from the applicant's place  
8 of employment, the place the applicant is enrolled in school, any court  
9 ordered treatment or substance abuse education, and any ignition  
10 interlock service facility.

11 For purposes of this subsection, the results of a chemical analysis presented at trial  
12 or sentencing shall be sufficient to prove a person's alcohol concentration, shall be  
13 conclusive, and shall not be subject to modification by any party, with or without  
14 approval by the court."

15 **SECTION 31.** G.S. 7B-1903(b) reads as rewritten:

16 "(b) When a request is made for secure custody, the court may order secure  
17 custody only where the court finds there is a reasonable factual basis to believe that the  
18 juvenile committed the offense as alleged in the petition, and that one of the following  
19 circumstances exists:

- 20 (1) The juvenile is charged with a felony and has demonstrated that the  
21 juvenile is a danger to property or persons.
- 22 (2) The juvenile has demonstrated that the juvenile is a danger to persons  
23 and is charged with either (i) a misdemeanor at least one element of  
24 which is assault on a person or (ii) a misdemeanor in which the  
25 juvenile used, threatened to use, or displayed a firearm or other deadly  
26 weapon.
- 27 (2a) The juvenile has demonstrated that the juvenile is a danger to persons  
28 and is charged with a violation of G.S. 20-138.1 or G.S. 20-138.3.
- 29 (3) The juvenile has willfully failed to appear on a pending delinquency  
30 charge or on charges of violation of probation or post-release  
31 supervision, providing the juvenile was properly notified.
- 32 (4) A delinquency charge is pending against the juvenile, and there is  
33 reasonable cause to believe the juvenile will not appear in court.
- 34 (5) The juvenile is an absconder from (i) any residential facility operated  
35 by the Department or any detention facility in this State or (ii) any  
36 comparable facility in another state.
- 37 (6) There is reasonable cause to believe the juvenile should be detained for  
38 the juvenile's own protection because the juvenile has recently suffered  
39 or attempted self-inflicted physical injury. In such case, the juvenile  
40 must have been refused admission by one appropriate hospital, and the  
41 period of secure custody is limited to 24 hours to determine the need  
42 for inpatient hospitalization. If the juvenile is placed in secure custody,  
43 the juvenile shall receive continuous supervision and a physician shall  
44 be notified immediately.

1           (7) The juvenile is alleged to be undisciplined by virtue of the juvenile's  
2 being a runaway and is inappropriate for nonsecure custody placement  
3 or refuses nonsecure custody, and the court finds that the juvenile  
4 needs secure custody for up to 24 hours, excluding Saturdays,  
5 Sundays, and State holidays, or where circumstances require, for a  
6 period not to exceed 72 hours to evaluate the juvenile's need for  
7 medical or psychiatric treatment or to facilitate reunion with the  
8 juvenile's parents, guardian, or custodian.

9           (8) The juvenile is alleged to be undisciplined and has willfully failed to  
10 appear in court after proper notice; the juvenile shall be brought to  
11 court as soon as possible and in no event should be held more than 24  
12 hours, excluding Saturdays, Sundays, and State holidays or where  
13 circumstances require for a period not to exceed 72 hours."

14           **SECTION 32.** The Legislative Research Commission may study  
15 dispositional alternatives for juveniles who are adjudicated delinquent for an offense  
16 that is a violation of G.S. 20-138.1, Impaired Driving, or G.S. 20-138.3, Driving By  
17 Persons Less Than 21 Years Old After Consuming Alcohol or Drugs. In conducting its  
18 study, the Commission shall consider the offense classifications and dispositions set  
19 forth in G.S. 7B-2508 and shall determine whether violations of G.S. 20-138.1 and  
20 G.S. 20-138.3 should be classified as violent, serious, or minor. In addition, the  
21 Commission shall review the delinquency history level points assigned to the offense  
22 classifications pursuant to G.S. 7B-2507 and shall determine the appropriate points to be  
23 assigned for violations of G.S. 20-138.1 and G.S. 20-138.3. The Legislative Research  
24 Commission may make an interim report, including any legislative proposals, to the  
25 2007 General Assembly, Regular Session 2008, and shall make its final report to the  
26 2009 General Assembly upon its convening.

27           **SECTION 33.** Sections 26, 27, 28, 29, 30, and 31 of this act become  
28 effective December 1, 2007, and apply to offenses committed on or after that date. The  
29 remainder of this act is effective when it becomes law. Prosecutions for offenses  
30 committed before the effective date of this act are not abated or affected by this act, and  
31 the statutes that would be applicable but for this act remain applicable to those  
32 prosecutions.