GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 1048
Committee Substitute Favorable 6/8/05

Short Title: Governor's DWI Task Force Recommendations. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 1. G.S. 18B-403 reads as rewritten:

"(a) Amounts. – With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;

(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two ~~combined; or~~ combined;

(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage ~~permittee.~~permittee; or

(4) A keg of malt beverage for off-premises consumption, when purchased by a person who is not a permittee; or

(b) Issuance of Permit. – A purchase-transportation permit may be issued by:

(1) The local board chairman;

(2) A member of the local board;

(3) The general manager or supervisor of the local ~~board; or~~board;

(4) The manager or assistant manager of an ABC store, if he is authorized to issue permits by the local board ~~chairman.~~chairman; or

(5) The retailer of a keg of malt beverage for off-premises consumption. A permit issued under this subdivision is only valid for kegs of malt beverage sold by that retailer.

(c) Disqualifications. – A purchase-transportation permit shall not be issued to a person who:

(1) Is not sufficiently identified or known to the issuer;

(2) Is known or shown to be an alcoholic or bootlegger;

(3) Has been convicted within the previous three years of an offense involving the sale, possession, or transportation of nontaxpaid alcoholic beverages; or

(4) Has been convicted within the previous three years of an offense involving the sale of alcoholic beverages without a permit.

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

(e) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the issuing person, one by the purchaser, and one by the store from which the purchase is made. The purchaser shall display his copy of the permit to any law-enforcement officer upon request. A permit for the purchase and transportation of spirituous liquor may be issued only by an authorized agent of the local board for the jurisdiction in which the purchase will be made.

(f) Time. – A purchase-transportation permit is valid only until 9:30 P.M. on the date of purchase, which date shall be stated on the permit.

(g) Special Occasion Purchase-Transportation Permit. – When a person holds a special occasion for which a permit under G.S. 18B-1001(8) or (9) is required, the purchase-transportation permit issued to him may provide for the storage at and transportation to and from the site of the special occasion of unfortified wine, fortified wine, and spirituous liquor for a period of no more than 48 hours before and after the special occasion. The purchase-transportation permit authorizes that person to transport only the amounts of those alcoholic beverages authorized by subsection (a). The Commission may adopt rules to govern issuance of these extended purchase-transportation permits.

(h) Any retailer that issues a purchase-transportation permit pursuant to subdivision (b)(5) of this section shall retain the records of all permits issued for at least one year. "

SECTION 2. G.S. 18B-303(a) reads as rewritten:

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

(1) Not more than 80 liters of malt ~~beverages, other than draft malt beverages in kegs;~~beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg of malt beverages for off-premises consumption, the permit required by G.S. 18B-403(a)(4) must first be obtained;

(2) Any amount of draft malt beverages by a permittee in ~~kegs;~~kegs for on-premise consumption;

(3) Not more than 50 liters of unfortified wine;

(4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

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

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

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

~~(1)~~ ~~Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.~~

~~(2)~~(1) ~~Designates~~ Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped ~~to submit to alcohol screening tests.~~ to produce a drivers license, a registration card, or insurance information. The ~~plan~~ pattern need not be in writing if the law enforcement officers are operating under a written policy of one of the law enforcement agencies which provides a pattern. The pattern or policy may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested ~~to submit to an alcohol screening test.~~to produce a drivers license, a registration card, or insurance information.

~~(3)~~(2) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized ~~impaired driving check~~ checking station is being ~~made.~~operated by having at a minimum one law enforcement vehicle with its blue lights in operation during the conducting of the checking station.

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

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

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

(c) The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies.

(d) A law enforcement agency may not repeatedly establish a checking station in the same location if that location is within close proximity to a business with a license to sell alcohol for on-premises consumption. This prohibition shall not be a defense to any criminal charge arising out of the operation of a checking station."

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

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

"Article 2D.

"Implied-Consent Offense Procedures.

"**§ 20-38. Applicability.**

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

"**§ 20-38.1. Investigation.**

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash is authorized to seek evidence of the driver's impairment wherever the driver is located, and the provisions of the implied-consent law apply even if the driver is located outside of this State or outside of the officer's territorial jurisdiction.

"**§ 20-38.2. Police processing duties.**

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

(1) Shall inform the person arrested of the charges or a cause for the arrest.

(2) May take the person arrested to any place inside or outside the officer's territorial jurisdiction for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.

(3) May take the person arrested to some other place for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.

(4) May take photographs and fingerprints in accordance with G.S. 15A-502.

(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"**§ 20-38.3. Initial appearance.**

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

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested. If the evidence would lead a reasonable person to believe that a crime has been committed by the person charged, the magistrate shall find probable cause.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

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

"**§ 20-38.4. Facilities.**

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

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

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

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

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

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

"**§ 20-38.5. Motions and district court procedure.**

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

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

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

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

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

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"**§ 20-38.6. Appeal to superior court.**

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

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

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

(c) For any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions, and if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

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

SECTION 5. Article 7 of Chapter 8C of the General Statutes is amended by adding a new rule of evidence to read:

"**Rule 707. Drug recognition expert and HGN testimony and opinion as to speed of an accident reconstruction expert.**

(a) Results of Horizontal Gaze Nystagmus (HGN) Test. – The results of a horizontal gaze nystagmus (HGN) test are admissible into evidence, and the opinion of the analyst is admissible as to whether the results are consistent with a chemical analysis or consistent with a person who is under the influence of a particular type or class of impairing substances, when the HGN test is administered by a person who has successfully completed training in HGN and administers the test in accordance with the training.

(b) Opinion of Drug Recognition Expert (DRE). – The opinion of a DRE that a person is under the influence of one or more impairing substances, and the opinion as to the category of such impairing substance or substances is admissible in any court or administrative hearing when the DRE holds a current certification as a DRE issued by the Department of Health and Human Services and the DRE has examined the person in accordance with his training.

(c) Opinion as to Speed of a Vehicle. – Any person who is found by a court to be an expert in accident reconstruction who has performed a reconstruction of a crash or has reviewed the report of investigation may give an opinion as to the speed of a vehicle even if the expert did not actually observe the vehicle moving.

Nothing contained in this section shall be construed to prohibit cross-examination of any person as to their opinions and the basis for the opinions and shall not limit other opinion testimony otherwise admissible under the rules of evidence or court decision."

PART V. ALCOHOL SCREENING DEVICES

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

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

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

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:
  a. Committed a moving traffic violation; or
  b. Been involved in an accident or collision; or

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

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

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

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

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

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

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

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

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

"**§ 20-4.01. Definitions.**

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

…

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

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

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

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

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

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

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

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

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

"**§ 20-138.1. Impaired driving.**

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

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

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or ~~more.~~more

or, at any relevant time after the driving, submits to a chemical analysis and the result is 0.08 or more; or

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

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

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

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

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

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

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

"**§ 20-138.2. Impaired driving in commercial vehicle.**

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

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

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or ~~more.~~more or, at any relevant time after the driving, submits to a chemical analysis and the result is 0.04 or more; or

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

(a1) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

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

charge under this section. However, it shall be an affirmative defense to a charge pursuant to subdivision (a)(3) of this section for a Schedule II controlled substance if the defendant can show that the Schedule II substance in the defendant's blood or urine was lawfully obtained and taken in therapeutically appropriate amounts.

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

(c) Pleading. – To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) Implied Consent Offense. – An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(e) Punishment. – The offense in this section is a misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

(f) Repealed by Session Laws 1991, c. 726, s. 19.

~~(g) Chemical Analysis Provisions. – The provisions of G.S. 20-139.1 shall apply to the offense of impaired driving in a commercial motor vehicle.~~"

SECTION 10. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. – A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State while consuming alcohol or while alcohol remains in the person's body.

(a1) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the gross weight listed in publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Implied-Consent Offense. – An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) 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.

(b2) 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 for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. – Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. – A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

SECTION 11. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) 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 for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use."

SECTION 12. 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 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 body 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. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) 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.

(b2) 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 for Health Services,~~ Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~ Department as to its manner and use.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section ~~is a Class 2 misdemeanor.~~ shall be punished pursuant to G.S. 20-179. 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 shall be imposed.

Notwithstanding any other provision of law, whenever any person who does not have any pending charges for violating Chapters 18B, 20, or 90 of the General Statutes and has not previously been convicted of violating this section, an offense involving impaired driving under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 or a violation of Chapter 18B, pleads guilty to or is found guilty of a violation of this section, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation for a minimum of one year upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, to fulfill the terms and conditions of probation the court shall impose, at a minimum, all of the following conditions. The person shall:

(1) Obtain a substance abuse assessment within 30 days and comply with education or treatment requirements recommended by the assessment.

(2) Not operate a motor vehicle for at least 90 days.

(3) Perform 50 hours of community service and pay the community service fee.

(4) Submit at reasonable times to warrantless searches by a probation officer of his or her person, vehicle, and premises including drug and

alcohol screening and testing and pay the costs of such screening and tests.

(5) Not possess or consume any alcoholic beverage or controlled substance unless the controlled substance is lawfully prescribed to the person.

(6) Pay court costs and all fees.

(7) Not violate any law of this or any other state or the federal government.

(8) Remain gainfully employed or in school as a full-time student as determined by the probation officer.

(9) Not violate any other reasonable condition of probation.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Prior to entering a discharge and dismissal, the court shall determine if the person has been charged with or convicted of any other offense, including infractions. The discharge and dismissal shall not be entered unless the court finds that the person does not have any pending charges for violating any law of this State and has not during the period of probation violated a law of this State or been convicted of violating a provision of Chapter 18B, 20, 14, or 90 of the General Statutes of this State or a substantially similar provision of any other state or the federal government.

(d) 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."

SECTION 13. G.S. 20-138.5(a) reads as rewritten:

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

SECTION 14. G.S. 20-138.5(c) reads as rewritten:

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

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 15. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; serious injury by vehicle.**

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

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

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

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of serious injury by vehicle if he unintentionally causes serious injury to another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and the commission of the offense is the proximate cause of the serious injury.

(b) Punishments. – Felony death by vehicle is a Class ~~G~~ D felony. Felony serious injury by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

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

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED CONSENT LAW

SECTION 16. G.S. 20-16.2 reads as rewritten:

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

(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 shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent ~~offense.~~offense may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer

who is authorized to administer chemical analysis of the breath, who 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.~~You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

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

~~(3)~~(2) The test results, or the fact of ~~the person's~~your refusal, will be admissible in evidence at ~~trial on the offense charged.~~trial.

~~(4)~~(3) ~~The person's~~ Your driving privilege will be revoked immediately for at least 30 days ~~if:~~ if you refuse any test or the test result is 0.08 or more, 0.04 if you were driving a commercial vehicle, or 0.01 if you are under the age of 21.

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

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

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

~~(5)~~(4) ~~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.~~After you are released, you may seek your own test in addition to this test.

~~(6)~~(5) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view ~~for him or her~~ the testing ~~procedures,~~ procedures remaining after the witness arrives, 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~~ of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~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.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of~~

~~the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

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

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

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

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

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

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~analysis.

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

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other

periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

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

(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 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;

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

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

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

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

(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 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 shall confirm the request in writing and shall be notified:

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

(2) ~~That the person's license will be revoked for at least 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; or~~

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

Your driving privilege will be revoked immediately for at least 30 days

if the test result is 0.08 or more, 0.04 if you were driving a commercial vehicle, or 0.01 if you are under the age of 21.

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

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES

SECTION 17. G.S. 20-139.1 reads as rewritten:

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

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

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

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

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

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The ~~Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the~~ Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical ~~analyses.~~ analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to

individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

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

~~(1) The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~

~~(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

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

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

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

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

~~(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~

~~(2) That the test results may only be used to prove a person's particular alcohol concentration if:~~

~~a. The pair of readings employed are from consecutively administered tests; and~~

~~b. The readings do not differ from each other by an alcohol concentration greater than 0.02.~~

~~(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

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

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

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

(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~~ a law enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). 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.

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

(c) ~~Withdrawal of~~ Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, ~~When~~ when a blood or urine test is specified as the type of chemical analysis by ~~the charging~~ a law enforcement officer, ~~only~~ a physician, registered nurse, emergency medical technician, or other qualified person ~~may~~ shall withdraw the blood ~~sample.~~ sample and obtain the urine sample, and no further

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

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

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

(c1) Whenever blood or urine is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services to determine if the blood or urine contains alcohol or a controlled substance or its metabolites or any other impairing substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all administrative hearings and proceedings in the district court and superior court divisions of the General Court of Justice as evidence that the blood or urine contained alcohol, a controlled substance or its metabolites, or any other impairing substance as well as the quantity of the alcohol, controlled substance, metabolite of a controlled substance, or other impairing substance. However, if the defendant notifies the State, at least five days before trial in the superior court division or an adjudicatory hearing in juvenile court, that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

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

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime

Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

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

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

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

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

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

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

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

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

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

(d) Right to Additional Test. – ~~A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a~~

~~qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose.~~ Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall allow the person access to a telephone to attempt to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, with or without a court order, compel the person to provide blood and/or urine samples for analysis. Notwithstanding any other provision of law, when a blood or urine sample is requested under this subsection by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained. When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

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

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

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

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

(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, 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 Health and Human Services that the analyst held on the date the analyst 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 Health and Human Services 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, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

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

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures

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

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

SECTION 18. Chapter 90 of the General Statutes is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

SECTION 19. G.S. 20-138.4 reads as rewritten:

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

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

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum, the alcohol concentration or the fact that the driver refused, a list of all prior convictions of implied-consent offenses or driving while license revoked, whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records, a statement that a check of the database of the Administrative Office of the Courts revealed whether there are any other pending charges against the defendant pending in this State, those elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why, the name and agency of the charging officer and whether the officer is available, and any other reason why the charges are dismissed. General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

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

PART XII. DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR IN DRIVING WHILE IMPAIRED

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

"**§ 20-48. Giving of notice.**

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.~~a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notices. A certified copy of the Division's

records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

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

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

SECTION 21. G.S. 20-28 reads as rewritten:

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

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

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

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

(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving

without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

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

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

(2) The person fails to appear for two years from the date of the charge after being charged with an implied consent offense.

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

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

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

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

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

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

(4) If revoked under this section for two years, the person may apply for a license after 12 months.

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

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

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When

the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) The Division may only conditionally restore the license in accordance with this section if:

(1) The person drove while the person's license was revoked, and the revocation was an impaired drivers license revocation as defined in G.S. 20-28.2; or

(2) The revocation was for violating subsection (a2) of this section and the revocation was for more than one year.

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

(c5) The Division shall cancel a conditionally restored license and impose the remaining revocation period if any of the following occur:

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

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

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

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

(1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.

(2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.

(3) For a third offense of driving while disqualified, a person is disqualified for life.

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

PART XIII. MODIFYING CURRENT PUNISHMENTS

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

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

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

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

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

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

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

(2) The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate

sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

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

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

(a2) Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(a3) Defendant Pleads Guilty to the Charge Only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

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

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

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

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

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

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

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

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

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

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

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

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

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

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

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

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

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

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
(7) Any other factor that mitigates the seriousness of the offense.

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

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

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

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

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

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

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

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

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 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 to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge 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 and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and 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 to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge 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 and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and 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 may be 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)~~(3) Any combination of these conditions.

If the defendant is placed on probation, the judge 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 and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and 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 may be 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)~~(3) Any combination of these conditions.

If the defendant is placed on probation, the judge 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 and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and 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 may be 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)~~(3) Any combination of these conditions.

If the defendant is placed on probation, the judge 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 and as a condition of probation. The judge may impose any other lawful condition of probation.

(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 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. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

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

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

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

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

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

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

(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 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, has served the mandatory minimum period of 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.

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

(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 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, that the defendant is sentenced under subsections (i), (j), and (k) of this 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.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment ~~or community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served. Credit for any jail time shall only be given hour for hour for time actually served. If the defendant appears at the jail and has remaining in his body any alcohol, as shown by an alcohol screening device, or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate

amounts, the defendant shall be refused entrance and this shall be reported back to court. If after a hearing, the court determines that when the defendant reported to jail, the defendant had remaining in his body any alcohol previously consumed, as shown by an alcohol screening device, or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts, the defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends.

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

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

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

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

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

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

SECTION 25. G.S. 18B-302(b) reads as rewritten:

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

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

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

(3) A person less than 21 years old to consume any malt beverage, unfortified wine, fortified wine, spirituous liquor, or mixed beverage."

SECTION 26. G.S. 18B-302 is amended by adding the following new subsections to read:

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

(k) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under the age of 21 and who has consumed an alcoholic beverage to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative hearing or proceeding to prove that a person possessed or consumed an alcoholic beverage."

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

SECTION 27. G.S. 15A-1374 reads as rewritten:

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

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

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

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and

(2) Is not being paroled to a residential treatment program;

shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART XVI. EFFECTIVE DATE

SECTION 28. The requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, becomes effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date.