

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 1537**

Short Title: DWI Technical Amendments.

(Public)

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Sponsors: Representative Ross.

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Referred to: Judiciary I.

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April 18, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE LAWS ON DRIVING  
WHILE INTOXICATED.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Revisor of Statutes shall substitute the term "law enforcement officer" for the term "charging officer" everywhere that term appears in G.S. 20-16.5.

**SECTION 2.** G.S. 20-139.1(d) reads as rewritten:

"(d) Right to Additional Test. – 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 make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. ~~20-38.4~~, 20-38.5. 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."

**SECTION 3.** G.S. 20-28(a2)(1) reads as rewritten:

"(1) The person ~~drives~~ operates a motor vehicle 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

...."

**SECTION 4.** 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 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

1 subsequent conviction under G.S. 20-138.2B, ~~G.S. 20-138.3~~, or when any of those  
2 offenses are remanded back to district court after an appeal to superior court, the judge  
3 shall hold a sentencing hearing to determine whether there are aggravating or mitigating  
4 factors that affect the sentence to be imposed.

5 ...

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

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

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

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

18 ...

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

25 ...

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

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

33 b. The defendant had a previously consumed controlled substance  
34 in his body.

35 ...."

36 **SECTION 5.** G.S. 20-28.2(a)(1) reads as rewritten:

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

40 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2),  
41 20-17(a)(12), ~~20-17.2~~, or 20-138.5; or

42 ...."

43 **SECTION 6.** G.S. 20-139.1(c2) reads as rewritten:

1       "(c2) A chemical analysis of blood or urine, to be admissible under this section,  
2 shall be performed in accordance with rules or procedures adopted by the State Bureau  
3 of Investigation, or by another laboratory ~~certified~~accredited by the American Society  
4 of Crime Laboratory ~~Directors~~Directors/Laboratory Accreditation Board  
5 ~~(ASCLD)~~(ASCLD/LAB) for the submission, identification, analysis, and storage of  
6 forensic analyses."

7           **SECTION 7.** G.S. 20-139.1(c1) reads as rewritten:

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

19       ...."

20           **SECTION 8.** This act is effective when it becomes law.