

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 368*

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

(Public)

Sponsors: Senators Odom, Cooper, Forrester (Cosponsors); Albertson, Allran, Ballance, Ballantine, Blust, Carpenter, Carrington, Cochrane, Conder, Dannelly, East, Foxx, Garwood, Gulley, Jenkins, Jordan, Kerr, Kincaid, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, McDaniel, Phillips, Plyler, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) Release the vehicle to an innocent party lienholder pursuant to the
2 provisions of subsection (h) of this section.

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

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

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

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

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

21 (e) Return of Vehicle to Innocent Registered Owner. — If the registered owner
22 establishes, by clear and convincing evidence, that the vehicle was being driven by a
23 person who was not a registered owner at the time of the underlying offense and that each
24 registered owner is an 'innocent party', the sentencing judge may order the vehicle
25 returned to the registered owner.

26 This release may only be ordered upon satisfactory proof of:

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

28 (2) The existence of financial responsibility as required by Article 13 of this
29 Chapter;

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

31 (4) The execution of an acknowledgment as set forth in this section.

32 No vehicle subject to forfeiture under this section shall be released to a registered
33 owner if the records of the Division indicate any registered owner had previously signed
34 an acknowledgment as required by this section, and the same person was operating the
35 owner's vehicle when that person's license was revoked.

36 (f) Innocent Party Defined. — A registered owner or holder of a security is an
37 'innocent party' if he or she:

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

40 (2) Knew that the defendant's drivers license was revoked, but the
41 defendant drove the vehicle without his or her consent.

1 (g) Acknowledgment Required. – The 'innocent party' registered owner of a
2 vehicle seeking release pursuant to this section shall sign a written document
3 acknowledging that:

4 (1) His or her vehicle was operated by a person charged with an offense
5 involving impaired driving while that drivers license was revoked as a
6 result of a prior impaired drivers license revocation;

7 (2) If the vehicle is again operated by this particular person, at any time
8 while that person's drivers license is revoked, that the vehicle is subject
9 to impoundment and forfeiture, even if the operator was not impaired;
10 and

11 (3) A lack of knowledge or consent to the operation will not be a defense in
12 the future.

13 (h) Release to Lienholder. – The trial judge may order a forfeited vehicle released
14 to the holder of a security interest if he determines by clear and convincing evidence, that
15 the holder of the security interest is an 'innocent party', as defined in subsection (f) of this
16 section, and:

17 (1) The lienholder's interest is not less than the fair market value of the
18 vehicle;

19 (2) The lienholder agrees not to sell, give, or otherwise transfer possession
20 of the forfeited vehicle to a registered owner or any person acting on a
21 registered owner's behalf; and

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

24 (i) Possessory Lien. – The county school board shall be entitled to a possessory
25 lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant
26 to this section. This lien shall have priority over perfected and unperfected security
27 interests. Storage fees subject to the lien shall not exceed five dollars (\$5.00) per day."

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

30 **"§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving**
31 **impaired driving while license revoked.**

32 (a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 is
33 subject to seizure if at the time of the violation the drivers license was suspended as a
34 result of a prior impaired drivers license revocation. The revocation of a person's drivers
35 license is an impaired drivers license revocation for purposes of this section if the
36 revocation is pursuant to:

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

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

41 (b) Duty of Officer. – In any case where the charging officer has probable cause to
42 believe that a motor vehicle driven by the defendant may be subject to forfeiture under
43 this section, the officer shall seize the vehicle and have it impounded. Probable cause

1 may be based on the officer's personal knowledge, reliable information conveyed by
2 another officer, records of the Division, or other reliable source. If the registered owner
3 was not operating or present in the vehicle at the time of the offense, the officer shall
4 cause to be issued written notification of impoundment to the registered owner of the
5 vehicle. This notice shall be sent by first-class mail to the most recent address contained
6 in the Division registration records. This written notification shall inform the registered
7 owner that the vehicle has been impounded, the reason for the impoundment, and the
8 procedure for requesting its release. Whether the registered owner was driving or present
9 at the time of seizure, the seizing officer shall notify the Division of the seizure in
10 accordance with procedures established by the Division. The officer shall also cause
11 notice to be given to any lien holder of record with the Division of the impoundment and
12 intent to forfeit the vehicle upon conviction.

13 (c) Review by Magistrate. – Upon seizing the vehicle, the seizing officer shall
14 present to the magistrate determining the operator's condition for pretrial release an
15 affidavit of impoundment setting forth the requirements of this section. The magistrate
16 shall review the affidavit of impoundment and if the magistrate determines the
17 requirements of this section have been met, shall order the vehicle held in accordance
18 with this section. The magistrate may request additional information and may hear from
19 the operator if he is present. If the operator of the vehicle is not present at the time the
20 affidavit of impoundment is presented, the seizing officer may present the affidavit to any
21 judicial official who shall perform the review contained herein.

22 (d) Custody of Vehicle. – The seized vehicle shall be towed to a location
23 designated by the county school board for the county in which the operator of the vehicle
24 is charged and placed under the constructive possession of the school board pending
25 release or sale. Each county school board may elect to have seized vehicles stored on
26 property owned or leased by the school board or, in the alternative, may contract with a
27 commercial storage facility for the storage of such vehicles. In either event, a storage fee
28 of not more than five dollars (\$5.00) per day may be charged for the storage of any
29 vehicle while in the constructive possession of the school board.

30 (e) Release of Vehicle Pending Trial. – A registered owner of a vehicle, other than
31 the driver at the time of the underlying offense resulting in the seizure, may apply to the
32 Clerk of Superior Court in the county where the charges are pending for pretrial release
33 of the vehicle. The Clerk may release the vehicle to the registered owner under the
34 following conditions:

- 35 (1) The vehicle has been stored for not less than 24 hours;
- 36 (2) All towing and storage charges have been paid;
- 37 (3) Execution of a good and valid bond with sufficient sureties in an
38 amount double the value of the seized vehicle, payable to the county
39 school fund and conditioned on return of the vehicle, without the
40 imposition of any additional liens or encumbrances, on the day of trial
41 of the operator;
- 42 (4) Execution of a written acknowledgment as described in G.S. 20-28.2(g);
43 and

1 (5) A check of the records of the Division indicates that the owner has not
2 previously executed a written acknowledgment pertaining to the
3 operator of the seized vehicle.

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

7 (g) Possessory Lien. – The county school board shall be entitled to a possessory
8 lien for any and all costs and fees associated with the towing, storage, (not to exceed five
9 dollars (\$5.00) per day), and sale of a vehicle pursuant to this section. This lien shall
10 have priority over perfected and unperfected security interests."

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

13 **"§ 20-28.4. Release of impounded vehicles by trial judge.**

14 (a) Release to Innocent Registered Owner. – An innocent party registered owner
15 may apply to the trial judge presiding over the underlying offense for return of the
16 vehicle pursuant to the provisions of G.S. 20-28.2(e).

17 (b) Acknowledgment Required. – The innocent party registered owner of a vehicle
18 seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a
19 written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also
20 acknowledge that if the vehicle is again operated by this particular person at any time
21 while the person's license is revoked, the owner's vehicle is subject to seizure,
22 impoundment, and forfeiture, even if the person is not impaired at the time he or she
23 operates the vehicle. The registered owner shall acknowledge further that a lack of
24 knowledge, or consent to the operation will not be a defense in the future.

25 (c) Release to Lienholder. – The trial judge may order a forfeited vehicle released
26 to the holder of a security interest if he determines, by clear and convincing evidence,
27 that the holder of the security interest is an 'innocent party' as defined by G.S. 20-28.2(f),
28 and the lienholder satisfies the criteria as set out in G.S. 20-28.2(h)."

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

31 **"§ 20-28.5. Forfeiture of impounded vehicle.**

32 (a) Sale. – Unless the trial judge orders the vehicle returned to an innocent party
33 pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold
34 or transferred to the school board in the county where the charges were filed. The sale of
35 the vehicle shall be at public sale and shall be conducted by the county school board or a
36 person acting on its behalf. Notice of sale shall be given to the Division in accordance
37 with the procedures established by the Division.

38 (b) Proceeds of Sale. – Proceeds of any sale conducted under this section shall first
39 be applied to satisfy towing and storage liens and the cost of sale. If the vehicle was
40 stored on property owned or leased by the county school board, the storage lien (not to
41 exceed five dollars (\$5.00) per day) shall be paid to the school fund of that county. The
42 balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of
43 record that were properly recorded with the Division prior to the date of initial seizure of

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

4 (c) Retention of Vehicle. – The county board may, at its option, retain any
5 forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time
6 of the initial seizure of the vehicle shall be satisfied by the school board. If there is more
7 than one school board in the county, then the fair market value of the vehicle shall be
8 used to determine the share of the school boards in the same manner as fines and other
9 forfeitures."

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

12 **"§ 20-28.6. Responsibility of Division of Motor Vehicles.**

13 The Division shall establish procedures to provide for the orderly seizure, forfeiture,
14 sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

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

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

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

- 32 (1) The person has a right to refuse to be tested.
- 33 (2) Refusal to take any required test or tests will result in an immediate
34 revocation of the person's driving privilege for at least ~~10~~30 days and an
35 additional 12-month revocation by the Division of Motor Vehicles.
- 36 (3) The test results, or the fact of the person's refusal, will be admissible in
37 evidence at trial on the offense charged.
- 38 (4) The person's driving privilege will be revoked immediately for at least
39 ~~10~~30 days if:
 - 40 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 41 b. The person was driving a commercial motor vehicle and the test
42 reveals an alcohol concentration of 0.04 or more.

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

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

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

12 Section 3.2. G.S. 20-16(e1) reads as rewritten:

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

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

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

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

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

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

27 a. Other than by conviction; or

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

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

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

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

42 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the
43 procedure for application and conduct of the hearing and the restrictions required or

1 authorized to be included in the limited driving privilege apply to applications under this
2 subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall
3 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal
4 occurred by a district court judge. If the case was finally disposed of in the superior
5 court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts
6 as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A
7 limited driving privilege issued under this section authorizes a person to drive if the
8 person's license is revoked solely under this section or solely under this section and G.S.
9 20-17(2). If the person's license is revoked for any other reason, the limited driving
10 privilege is invalid."

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

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

- 22 (1) That the test results will be admissible in evidence and may be used
23 against the person in any implied-consent offense that may arise;
- 24 (2) That the person's license will be revoked for at least ~~10~~ 30 days if:
 - 25 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 26 b. The person was driving a commercial motor vehicle and the test
27 results reveal an alcohol concentration of 0.04 or more.
- 28 (3) That if the person fails to comply fully with the test procedures, the
29 officer may charge the person with any offense for which the officer has
30 probable cause, and if the person is charged with an implied-consent
31 offense, the person's refusal to submit to the testing required as a result
32 of that charge would result in revocation of the person's driver's license.
33 The results of the chemical analysis are admissible in evidence in any
34 proceeding in which they are relevant."

35 Section 3.4. G.S. 20-16.2 is amended by adding a new subsection to read:

36 "(j) A person whose license is administratively revoked for 30 days under
37 subsections (a) and (i) of this section may apply for a limited driving privilege after the
38 expiration of 10 days provided that the applicant:

- 39 (1) At the time of the alleged offense, held either a valid drivers license or a
40 license that had been expired for less than one year;
- 41 (2) Does not have an unresolved pending charge for an offense involving
42 impaired driving; and

1 (3) Obtains a substance abuse assessment from a mental health facility and
2 registers for and agrees to participate in any recommended training or
3 treatment program."

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

5 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
6 properly executed revocation report concerning a person is filed with a judicial official
7 when the person is present before that official, the judicial official ~~must~~, shall, after
8 completing any other proceedings involving the person, determine whether there is
9 probable cause to believe that each of the conditions of subsection (b) has been met. If he
10 determines that there is such probable cause, he ~~must~~ shall enter an order revoking the
11 person's driver's license for the period required in this subsection. The judicial official
12 ~~must~~ shall order the person to surrender his license and if necessary may order a law-
13 enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a
14 copy of the revocation order. In addition to setting it out in the order the judicial official
15 ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection
16 (g), and that his license remains revoked pending the hearing. Unless the person is not
17 currently licensed, the revocation under this subsection begins at the time the revocation
18 order is issued and continues until the person's license has been surrendered for ~~40-30~~
19 days and the person has paid the applicable costs. If the person is not currently licensed,
20 the revocation continues until ~~40-30~~ days from the date the revocation order is issued and
21 the person has paid the applicable costs. If within five working days of the effective date
22 of the order, the person does not surrender his license or demonstrate that he is not
23 currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up
24 order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging
25 officer was employed by the agency at the time of the charge and the person resides in or
26 is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~
27 shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant
28 to this section is to be served in accordance with G.S. 20-29 as if the order had been
29 issued by the Division."

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

31 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –
32 When a clerk receives a properly executed report under subdivision (d)(3) and the person
33 named in the revocation report is not present before the clerk, the clerk ~~must~~ shall
34 determine whether there is probable cause to believe that each of the conditions of
35 subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~
36 shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct
37 that the person on or before the effective date of the order either surrender his license to
38 the clerk or appear before the clerk and demonstrate that he is not currently licensed, and
39 the order ~~must~~ shall inform the person of the time and effective date of the revocation and
40 of its duration, of his right to a hearing as specified in subsection (g), and that the
41 revocation remains in effect pending the hearing. Revocation orders mailed under this
42 subsection become effective on the fourth day after the order is deposited in the United
43 States mail. If within five working days of the effective date of the order, the person does

1 not surrender his license to the clerk or appear before the clerk to demonstrate that he is
2 not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-
3 up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e)
4 for pick-up orders issued pursuant to that subsection. A revocation under this subsection
5 begins at the date specified in the order and continues until the person's license has been
6 revoked for the period specified in this subsection and the person has paid the applicable
7 costs. The period of revocation under this subsection is:

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

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

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

33 "(i) Effect of Revocations. – A revocation under this section revokes a person's
34 privilege to drive in North Carolina whatever the source of his authorization to drive.
35 Revocations under this section are independent of and run concurrently with any other
36 revocations. No court imposing a period of revocation following conviction of an offense
37 involving impaired driving may give credit for any period of revocation imposed under
38 this section. ~~A person is not eligible for a limited driving privilege under any statute while his~~
39 ~~license is revoked under this section.~~ A person whose license is revoked pursuant to this
40 section is not eligible to receive a limited driving privilege except as specifically
41 authorized by G.S. 20-16.2(j)."

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

1 "(k) Report to Division. – Except as provided below, the clerk ~~must~~shall mail a
2 report to the Division within 10 working days of the return of a license under this section
3 or of the termination of a revocation of the driving privilege of a person not currently
4 licensed. The report ~~must~~shall identify the person whose license has been revoked and
5 specify the dates on which his license was revoked. No report need be made to the
6 Division, however, if there was a surrender of the driver's license issued by the Division,
7 a ~~ten-day~~30-day minimum revocation was imposed, and the license was properly
8 returned to the person under subsection (h) within five working days after the ~~40-day~~30-
9 day period had elapsed."

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

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

13 "**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**
14 **drugs.**

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

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

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

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

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

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

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

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

7 The judge may issue the limited driving privilege only if the person meets the eligibility
8 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.
9 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in
10 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the
11 issuance of a limited driving privilege to a person who is convicted of violating
12 subsection (a) of this section and of driving while impaired as a result of the same
13 transaction."

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

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

16 "(3a) Chemical Analysis. – A test or tests of the ~~breath or blood~~ breath, blood,
17 or other bodily fluid or substance of a person to determine ~~his~~ the
18 person's alcohol concentration, concentration or presence of an impairing
19 substance, performed in accordance with G.S. 20-139.1. G.S. 20-139.1,
20 including duplicate or sequential analyses. The term "chemical
21 analysis" includes duplicate or sequential analyses when necessary or desirable
22 to insure the integrity of test results."

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

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

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

31 "(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S.
32 20-16.2, a person's alcohol concentration or the presence of any other impairing
33 substance in the person's body as shown by a chemical analysis is admissible in evidence.
34 This section does not limit the introduction of other competent evidence as to ~~a defendant's~~
35 a person's alcohol concentration, concentration or results of other tests showing the
36 presence of an impairing substance, including other chemical tests."

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

38 "(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-
39 16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or
40 substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of
41 the charging officer. A person's willful refusal to submit to a chemical analysis of the
42 blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

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

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

- 6 (1) The alcohol concentration or concentrations or the presence or absence
7 of an impairing substance of a person given a chemical analysis and
8 who is involved in the hearing or trial.
9 (2) The time of the collection of the ~~blood or breath~~ blood, breath, or other
10 bodily fluid or substance sample or samples for the chemical analysis.
11 (3) The type of chemical analysis administered and the procedures
12 followed.
13 (4) The type and status of any permit issued by the Department of
14 Environment, Health, and Natural Resources that he held on the date he
15 performed the chemical analysis in question.
16 (5) If the chemical analysis is performed on a breath-testing instrument for
17 which regulations adopted pursuant to subsection (b) require preventive
18 maintenance, the date the most recent preventive maintenance
19 procedures were performed on the breath-testing instrument used, as
20 shown on the maintenance records for that instrument.

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

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

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

34 PART VI. HABITUAL IMPAIRED DRIVING.

35 Section 7. G.S. 20-138.5(b) reads as rewritten:

36 "(b) A person convicted of violating this section shall be punished as a Class G
37 ~~felon~~ felon and shall be sentenced to a minimum active term of not less than 12 months
38 of imprisonment, which shall not be suspended and if paroled, the person shall be
39 enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training
40 (DART) or similar substance abuse program as a condition of parole. Sentences imposed
41 under this subsection shall run consecutively with and shall commence at the expiration
42 of any sentence being served."

43 PART VII. EFFECTIVE DATES.

1 Section 8. Sections 1.1 through 1.5, 6, and 8 of this act are effective when
2 they become law. The remaining sections of this act become effective December 1,
3 1997, and apply to offenses committed on or after that date. If Part II, VI, or any other
4 Part or section of this act requires additional funds for implementation, then it shall not
5 become effective until those funds have been appropriated. Sentencing for an offense
6 committed before the effective date of this act is governed by the laws in effect at the
7 time of the commission of the offense.