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

(Public)

Sponsors:

Referred to:

March 10, 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.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. – If at a
sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines

1 that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor
2 vehicle that was driven by the defendant at the time he committed the offense of impaired
3 driving becomes property subject to forfeiture.

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

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

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

25 ~~If the owner or the holder of a security interest has not been notified, the judge may
26 continue the hearing to allow the State to serve the notice or he may decline to order
27 forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject
28 to forfeiture, he must enter into the record detailed, written reasons for his decision. The
29 trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or
30 G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If
31 the judge determines that the requirements of subsections (a) through (c) of this section
32 exist and the defendant was a registered owner of the vehicle at the time of the offense,
33 the judge shall order the vehicle forfeited. If the defendant was not a registered owner of
34 the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the
35 registered owner of the vehicle establishes, by clear and convincing evidence, that he or
36 she is an innocent party as defined by subsection (f) of this section, in which case the trial
37 judge may order the vehicle released to the registered owner pursuant to the provisions of
38 subsection (e) of this section. In any case where the vehicle is ordered forfeited, the
39 judge shall either:~~

- 40 (1) Authorize the school board to sell the vehicle at public sale or retain the
41 vehicle for its own use pursuant to G.S. 20-28.5; or
42 (2) Release the vehicle to an innocent party lienholder pursuant to the
43 provisions of subsection (h) of this section.

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

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

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

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

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

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

24 This release shall only be ordered upon satisfactory proof of:

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

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

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

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

30 No vehicle subject to forfeiture under this section shall be released to a registered
31 owner if the records of the Division indicate any registered owner had previously signed
32 an acknowledgment as required by this section, and the same person was operating the
33 owner's vehicle when that person's license was revoked. However, the sentencing judge
34 may release the motor vehicle to the registered owner when the Division records indicate
35 a previously signed acknowledgment, if the registered owner shows by clear and
36 convincing evidence that the registered owner has taken all reasonable precautions to
37 prevent the use of the vehicle by this particular person and immediately reports, upon
38 discovery, any unauthorized use to the appropriate law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

29 (i) Possessory Lien. – The entity that tows or stores the motor vehicle, other than
30 the county school board, shall be entitled to a possessory lien for all costs and fees
31 associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien
32 shall have priority over perfected and unperfected security interests. Storage fees subject
33 to the lien shall not exceed five dollars (\$5.00) per day."

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

36 **"§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving**
37 **impaired driving while license revoked.**

38 (a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S.
39 20-138.5 is subject to seizure if at the time of the violation the drivers license of the
40 person driving the motor vehicle was revoked as a result of a prior impaired drivers
41 license revocation. The revocation of a person's drivers license is an impaired drivers
42 license revocation for purposes of this section if the revocation is pursuant to:

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

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

5 (b) Duty of Officer. – In any case where the charging officer has probable cause to
6 believe that a motor vehicle driven by the defendant may be subject to forfeiture under
7 this section, the officer shall seize the vehicle and have it impounded. Probable cause
8 may be based on the officer's personal knowledge, reliable information conveyed by
9 another officer, records of the Division, or other reliable source. If the registered owner
10 was not operating or present in the vehicle at the time of the offense, the officer shall
11 cause to be issued written notification of impoundment to the registered owner of the
12 vehicle. This notice shall be sent by first-class mail to the most recent address contained
13 in the Division registration records. This written notification shall inform the registered
14 owner that the vehicle has been impounded, the reason for the impoundment, and the
15 procedure for requesting its release. Whether the registered owner was driving or present
16 at the time of seizure, the seizing officer shall notify the Division of the seizure in
17 accordance with procedures established by the Division. The officer shall also cause
18 notice to be given to any lienholder of record with the Division of the impoundment and
19 intent to forfeit the vehicle upon conviction.

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

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

37 (e) Release of Vehicle Pending Trial. – A registered owner of a vehicle, other than
38 the driver at the time of the underlying offense resulting in the seizure, may apply to the
39 clerk of superior court in the county where the charges are pending for pretrial release of
40 the vehicle. The clerk may release the vehicle to the registered owner under the
41 following conditions:

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

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

1 (3) Execution of a good and valid bond with sufficient sureties in an
2 amount double the value of the seized vehicle, payable to the county
3 school fund and conditioned on return of the vehicle, without the
4 imposition of any additional liens or encumbrances, on the day of trial
5 of the operator;

6 (4) Execution of a written acknowledgment as described in G.S. 20-28.2(g);
7 and

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

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

14 (g) Possessory Lien. – The entity that tows and stores the vehicle, other than the
15 county school board, shall be entitled to a possessory lien for any and all costs and fees
16 associated with the towing and storage (not to exceed five dollars (\$5.00) per day). This
17 lien shall have priority over perfected and unperfected security interests."

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

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

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

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

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

36 (d) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized
37 pursuant to G.S. 20-28.3 is subsequently not convicted of either G.S. 20-138.1 or G.S.
38 20-138.5 due to dismissal or a finding of not guilty or the judge at the sentencing hearing
39 fails to find the grossly aggravating factor described in G.S. 20-179(c)(2), the seized
40 vehicle shall be returned to the registered owner upon payment of towing and storage
41 fees. If the court finds that probable cause did not exist to seize the motor vehicle, the
42 court may order the vehicle released without payment of the towing and storage fees.
43 Such a determination does not authorize the driver, registered owner or lienholder to

1 recover towing or storage fees paid in order to obtain pretrial release of the motor
2 vehicle."

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

5 **"§ 20-28.5. Forfeiture of impounded vehicle.**

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

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

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

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

27 **"§ 20-28.6. Responsibility of Division of Motor Vehicles.**

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

30 Section 1.6. G.S. 20-219.10(a) reads as rewritten:

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

34 (1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4,
35 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only
36 insofar as specifically provided;

37 (2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1,
38 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a
39 vehicle for evidence in a criminal proceeding or pursuant to any other
40 statute providing for the forfeiture of a vehicle;

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

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

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

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

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

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

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

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

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

39 If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that
40 the defendant obtain a substance abuse assessment and the education or treatment
41 required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition
42 of probation. The judge may impose any other lawful condition of probation. ~~This~~

1 subsection does not affect the right of a defendant to elect to serve the suspended sentence of
2 imprisonment as provided in G.S. 15A-1341(e)."

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

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

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

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

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

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

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

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

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

40 "(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may
41 order that a term of imprisonment imposed as a condition of special probation under any
42 level of punishment be served as an inpatient in a facility operated or licensed by the
43 State for the treatment of alcoholism or substance abuse where the defendant has been

1 accepted for admission or commitment as an inpatient. The defendant shall bear the
2 expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed
3 by the State. The judge may impose restrictions on the defendant's ability to leave the
4 premises of the treatment facility and require that the defendant follow the rules of the
5 treatment facility. The judge may credit against the active sentence imposed on a
6 defendant the time the defendant was an inpatient at the treatment facility, provided such
7 treatment occurred after the commission of the offense for which the defendant is being
8 sentenced. ~~The credit may not be used more than once during the seven-year period~~
9 ~~immediately preceding the date of the offense.~~ This section shall not be construed to limit
10 the authority of the judge in sentencing under any other provisions of law."

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

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

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

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

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

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

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

- 43 (1) Community service; or

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

4 PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

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

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

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

- 16 (1) The person has a right to refuse to be tested.
- 17 (2) Refusal to take any required test or tests will result in an immediate
18 revocation of the person's driving privilege for at least ~~10~~30 days and an
19 additional 12-month revocation by the Division of Motor Vehicles.
- 20 (3) The test results, or the fact of the person's refusal, will be admissible in
21 evidence at trial on the offense charged.
- 22 (4) The person's driving privilege will be revoked immediately for at least
23 ~~10~~30 days if:
 - 24 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 25 b. The person was driving a commercial motor vehicle and the test
26 reveals an alcohol concentration of 0.04 or more.
- 27 (5) The person may choose a qualified person to administer a chemical test
28 or tests in addition to any test administered at the direction of the
29 charging officer.
- 30 (6) The person has the right to call an attorney and select a witness to view
31 for him or her the testing procedures, but the testing may not be delayed
32 for these purposes longer than 30 minutes from the time when the
33 person is notified of his or her rights.

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

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

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

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

- 1 (2) At the time of the refusal, the person had not within the preceding seven
2 years been convicted of an offense involving impaired driving;
- 3 (3) At the time of the refusal, the person had not in the preceding seven
4 years willfully refused to submit to a chemical analysis under this
5 section;
- 6 (4) The implied-consent offense charged did not involve death or critical
7 injury to another person;
- 8 (5) The underlying charge for which the defendant was requested to submit
9 to a chemical analysis has been finally disposed of:
- 10 a. Other than by conviction; or
- 11 b. By a conviction of impaired driving under G.S. 20-138.1, at a
12 punishment level authorizing issuance of a limited driving
13 privilege under G.S. 20-179.3(b), and the defendant has complied
14 with at least one of the mandatory conditions of probation listed
15 for the punishment level under which the defendant was
16 sentenced;
- 17 (6) Subsequent to the refusal the person has had no unresolved pending
18 charges for or additional convictions of an offense involving impaired
19 driving; ~~and~~
- 20 (7) The person's license has been revoked for at least six months for the
21 ~~refusal.~~ refusal; and
- 22 (8) The person has obtained a substance abuse assessment from a mental
23 health facility and successfully completed any recommended training or
24 treatment program.

25 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the
26 procedure for application and conduct of the hearing and the restrictions required or
27 authorized to be included in the limited driving privilege apply to applications under this
28 subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall
29 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal
30 occurred by a district court judge. If the case was finally disposed of in the superior
31 court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts
32 as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A
33 limited driving privilege issued under this section authorizes a person to drive if the
34 person's license is revoked solely under this section or solely under this section and G.S.
35 20-17(2). If the person's license is revoked for any other reason, the limited driving
36 privilege is invalid."

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

38 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
39 questioned by a law-enforcement officer who is investigating whether the person may
40 have committed an implied-consent offense may request the administration of a chemical
41 analysis before any arrest or other charge is made for the offense. Upon this request, the
42 officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or
43 her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b).

1 The request constitutes the person's consent to be transported by the law-enforcement
2 officer to the place where the chemical analysis is to be administered. Before the
3 chemical analysis is made, the person ~~must~~shall confirm the request in writing and ~~must~~
4 shall be notified:

- 5 (1) That the test results will be admissible in evidence and may be used
6 against the person in any implied-consent offense that may arise;
- 7 (2) That the person's license will be revoked for at least ~~10~~30 days if:
 - 8 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 9 b. The person was driving a commercial motor vehicle and the test
10 results reveal an alcohol concentration of 0.04 or more.
- 11 (3) That if the person fails to comply fully with the test procedures, the
12 officer may charge the person with any offense for which the officer has
13 probable cause, and if the person is charged with an implied-consent
14 offense, the person's refusal to submit to the testing required as a result
15 of that charge would result in revocation of the person's driver's license.
16 The results of the chemical analysis are admissible in evidence in any
17 proceeding in which they are relevant."

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

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

- 21 (1) At the time of the alleged offense the person held either a valid drivers
22 license or a license that had been expired for less than one year;
- 23 (2) Does not have an unresolved pending charge for or additional
24 convictions of an offense involving impaired driving;
- 25 (3) The person's license has been revoked for at least 10 days if the
26 revocation is for 30 days or 30 days if the revocation is for 45 days; and
- 27 (4) The person has obtained a substance abuse assessment from a mental
28 health facility and registers for and agrees to participate in any
29 recommended training or treatment program.

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

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

39 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
40 properly executed revocation report concerning a person is filed with a judicial official
41 when the person is present before that official, the judicial official ~~must~~shall, after
42 completing any other proceedings involving the person, determine whether there is
43 probable cause to believe that each of the conditions of subsection (b) has been met. If he

1 determines that there is such probable cause, he ~~must~~shall enter an order revoking the
2 person's driver's license for the period required in this subsection. The judicial official
3 ~~must~~shall order the person to surrender his license and if necessary may order a law-
4 enforcement officer to seize the license. The judicial official ~~must~~shall give the person a
5 copy of the revocation order. In addition to setting it out in the order the judicial official
6 ~~must~~shall personally inform the person of his right to a hearing as specified in subsection
7 (g), and that his license remains revoked pending the hearing. Unless the person is not
8 currently licensed, the revocation under this subsection begins at the time the revocation
9 order is issued and continues until the person's license has been surrendered for ~~10~~30
10 days and the person has paid the applicable costs. If the person is not currently licensed,
11 the revocation continues until ~~10~~30 days from the date the revocation order is issued and
12 the person has paid the applicable costs. If within five working days of the effective date
13 of the order, the person does not surrender his license or demonstrate that he is not
14 currently licensed, the clerk ~~must~~shall immediately issue a pick-up order. The pick-up
15 order ~~must~~shall be issued to a member of a local law-enforcement agency if the charging
16 officer was employed by the agency at the time of the charge and the person resides in or
17 is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~
18 shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant
19 to this section is to be served in accordance with G.S. 20-29 as if the order had been
20 issued by the Division."

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

22 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –
23 When a clerk receives a properly executed report under subdivision (d)(3) and the person
24 named in the revocation report is not present before the clerk, the clerk ~~must~~shall
25 determine whether there is probable cause to believe that each of the conditions of
26 subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~
27 shall mail to the person a revocation order by first-class mail. The order ~~must~~shall direct
28 that the person on or before the effective date of the order either surrender his license to
29 the clerk or appear before the clerk and demonstrate that he is not currently licensed, and
30 the order ~~must~~shall inform the person of the time and effective date of the revocation and
31 of its duration, of his right to a hearing as specified in subsection (g), and that the
32 revocation remains in effect pending the hearing. Revocation orders mailed under this
33 subsection become effective on the fourth day after the order is deposited in the United
34 States mail. If within five working days of the effective date of the order, the person does
35 not surrender his license to the clerk or appear before the clerk to demonstrate that he is
36 not currently licensed, the clerk ~~must~~shall immediately issue a pick-up order. The pick-
37 up order ~~must~~shall be issued and served in the same manner as specified in subsection (e)
38 for pick-up orders issued pursuant to that subsection. A revocation under this subsection
39 begins at the date specified in the order and continues until the person's license has been
40 revoked for the period specified in this subsection and the person has paid the applicable
41 costs. The period of revocation under this subsection is:

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

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

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

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

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

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

1 returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-
2 day period had elapsed."

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

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

6 "**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or**
7 **drugs.**

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

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

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

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

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

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

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

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

42 The judge may issue the limited driving privilege only if the person meets the eligibility
43 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.

1 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in
2 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the
3 issuance of a limited driving privilege to a person who is convicted of violating
4 subsection (a) of this section and of driving while impaired as a result of the same
5 transaction."

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

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

8 "(3a) Chemical Analysis. – A test or tests of the ~~breath or blood~~ breath, blood,
9 or other bodily fluid or substance of a person to determine ~~his~~ the
10 person's alcohol concentration, concentration or presence of an impairing
11 substance, performed in accordance with G.S. 20-139.1. G.S. 20-139.1,
12 including duplicate or sequential analyses. ~~The term "chemical~~
13 ~~analysis" includes duplicate or sequential analyses when necessary or desirable~~
14 ~~to insure the integrity of test results."~~

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

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

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

23 "(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S.
24 20-16.2, a person's alcohol concentration or the presence of any other impairing
25 substance in the person's body as shown by a chemical analysis is admissible in evidence.
26 This section does not limit the introduction of other competent evidence as to ~~a defendant's~~
27 a person's alcohol concentration, concentration or results of other tests showing the
28 presence of an impairing substance, including other chemical tests."

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

30 "(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-
31 16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or
32 substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of
33 the charging officer. A person's willful refusal to submit to a chemical analysis of the
34 blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

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

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

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

- 1 (2) The time of the collection of the ~~blood or breath~~ blood, breath, or other
2 bodily fluid or substance sample or samples for the chemical analysis.
3 (3) The type of chemical analysis administered and the procedures
4 followed.
5 (4) The type and status of any permit issued by the Department of
6 Environment, Health, and Natural Resources that he held on the date he
7 performed the chemical analysis in question.
8 (5) If the chemical analysis is performed on a breath-testing instrument for
9 which regulations adopted pursuant to subsection (b) require preventive
10 maintenance, the date the most recent preventive maintenance
11 procedures were performed on the breath-testing instrument used, as
12 shown on the maintenance records for that instrument.

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

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

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

26 PART VI. EXPAND THE DRUG ABUSE RESISTANCE EDUCATION (DARE)
27 PROGRAM TO THE SEVENTH AND NINTH GRADES.

28 Section 6. G.S. 115C-47 is amended by adding a new subdivision to read:

29 "(38) Expand DARE Program to Seventh and Ninth Grades. – Local boards of
30 education shall use available State and federal resources to expand the
31 Drug Abuse and Resistance Education Program to the seventh and ninth
32 grades."

33 PART VII. HABITUAL IMPAIRED DRIVING.

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

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

40 PART VIII. EFFECTIVE DATES.

41 Section 8. This act becomes effective December 1, 1997, and applies to
42 offenses committed on or after that date. Sentencing for an offense committed before the

- 1 effective date of this act is governed by the laws in effect at the time of the commission
- 2 of the offense.