

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

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

- (1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.
- (2) Before the hearing the prosecutor shall make all feasible efforts to secure the defendant's full record of traffic convictions, and shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor shall furnish the defendant or the defendant's attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor shall present all other appropriate grossly aggravating and aggravating factors of which the prosecutor is aware, and the defendant or the defendant's attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor shall present evidence of the resulting alcohol concentration.

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

- (1) Notice. - If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.
- (2) Aggravating factors. - The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.
- (3) Convening the jury. - If at any time prior to rendering a decision to the court regarding whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.
- (4) Jury selection. - A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court. -

- (1) Defendant admits aggravating factor only. - If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of

the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

- (2) Defendant pleads guilty to the charge only. - If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a3) Procedure When Jury Trial Waived. - If a defendant waives the right to a jury trial under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury under the provisions of this section.

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

(c) Determining Existence of Grossly Aggravating Factors. - At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that the grossly aggravating factor in subdivision (4) of this subsection applies or two of the other grossly aggravating factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this subsection applies, then the judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the other grossly aggravating factors applies. The grossly aggravating factors are:

- (1) A prior conviction for an offense involving impaired driving if:
- The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
 - The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
 - The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

- (2) Driving by the defendant at the time of the offense while the defendant's driver's license was revoked pursuant to G.S. 20-28(a1).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.
- (4) Driving by the defendant while (i) a child under the age of 18 years, (ii) a person with the mental development of a child under the age of 18 years, or (iii) a person with a physical disability preventing unaided exit from the vehicle was in the vehicle at the time of the offense.

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

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

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

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more within a relevant time after the driving. For purposes of this subdivision, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's

alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

- (2) Especially reckless or dangerous driving.
- (3) Negligent driving that led to a reportable accident.
- (4) Driving by the defendant while the defendant's driver's license was revoked.
- (5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.
- (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
- (8) Passing a stopped school bus in violation of G.S. 20-217.
- (9) Any other factor that aggravates the seriousness of the offense.

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

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

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
- (2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
- (3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
- (4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
- (5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- (6) The defendant's voluntary submission to a mental health facility for assessment after being charged with the impaired driving offense for which the defendant is being sentenced, and, if recommended by the facility, voluntary participation in the recommended treatment.
- (6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. The continuous alcohol monitoring system shall be of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.
- (6b) Prior to trial, the defendant voluntarily equipped a designated motor vehicle with a functioning ignition interlock system of a type approved by the Commissioner, operated only the designated vehicle with the ignition interlock system for a minimum of six months, and produced evidence satisfactory to the judge that the defendant did not start the vehicle with an alcohol concentration greater than 0.02 or commit any other acts that would be considered violations of the interlock policies established by the Division for use of an ignition interlock system or a violation of G.S. 20-17.8A. The factor set forth in this subdivision only applies to a defendant who meets all of the following requirements:
 - a. The defendant was charged with an offense under G.S. 20-138.1.
 - b. The vehicle being operated by the defendant was not involved at the time of the offense in a crash resulting in the serious injury or death of a person.

- c. At the time of the offense, the defendant held either a valid driver's license or a license that had been expired for less than one year.
- d. At the time of the offense, the defendant did not have an additional unresolved pending charge involving impaired driving, or an additional conviction of an offense involving impaired driving within the five years preceding the date of the offense.
- e. At the time of the offense the person did not have an alcohol concentration of 0.15 or more.
- f. The defendant equipped the designated motor vehicle with an ignition interlock system no later than 45 days after being charged with the offense.
- g. The defendant only operated the designated motor vehicle with a limited driving privilege that is valid in this State or during a time when the defendant's driver's license was not revoked or suspended.

(7) Any other factor that mitigates the seriousness of the offense.

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

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

- (1) The aggravating factors substantially outweigh any mitigating factors, the judge shall note in the judgment the factors found and the judge's finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i) of this section.
- (2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, the judge shall note in the judgment any factors found and the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j) of this section.
- (3) The mitigating factors substantially outweigh any aggravating factors, the judge shall note in the judgment the factors found and the judge's finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k) of this section.

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

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

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

(f3) Aggravated Level One Punishment. - A defendant subject to Aggravated Level One punishment may be fined up to ten thousand dollars (\$10,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 12 months and a maximum term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the defendant shall be released from the Statewide Misdemeanant Confinement Program on the date equivalent to the defendant's maximum imposed term of imprisonment less four months and shall be supervised by the Division of Community Supervision and Reentry under and subject to the provisions of Article 84A of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol consumption for the four-month period of supervision as verified by a continuous alcohol monitoring system. For purposes of revocation, violation of the requirement to abstain from alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a controlling condition under G.S. 15A-1368.4.

The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. If the defendant is placed on probation, the judge shall impose as requirements that the defendant (i) abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by a continuous alcohol monitoring system pursuant to subsection (h1) of this section, and (ii) obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(g) Level One Punishment. - A defendant subject to Level One punishment may be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. A judge may reduce the minimum term of imprisonment required to a term of not less than 10 days if a condition of special probation is imposed to require that a defendant abstain from alcohol consumption and be monitored by a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, for a period of not less than 120 days. If the defendant is monitored on an approved continuous alcohol monitoring system during the pretrial period, up to 60 days of pretrial monitoring may be credited against the 120-day monitoring requirement for probation. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. - A defendant subject to Level Two punishment may be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days or to abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction. If the defendant is subject to Level Two punishment based on a finding that the grossly aggravating factor in subdivision (1) or (2) of subsection (c) of this section applies, the conviction for a prior offense involving impaired driving occurred within five years before the date of the offense for which the defendant is being sentenced and the judge suspends all active terms of imprisonment and imposes abstinence from alcohol as verified by a continuous alcohol monitoring system, then the judge must also impose as an additional condition of special probation that the defendant must complete 240 hours of community service. If the defendant is monitored on an approved continuous alcohol monitoring system during the pretrial period, up to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement for probation. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h1) Alcohol Abstinence as Condition of Probation for Level One and Level Two Punishments. - The judge may impose, as a condition of probation for defendants subject to Level One or Level Two punishments, that the defendant abstain from alcohol consumption for a minimum of 30 days, to a maximum of the term of probation, as verified by a continuous alcohol monitoring system. The defendant's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.

(h2) Repealed by Session Laws 2011-191, s. 1, effective December 1, 2011, and applicable to offenses committed on or after that date.

(h3) Repealed by Session Laws 2012-146, s. 9, effective December 1, 2012.

(i) Level Three Punishment. - A defendant subject to Level Three punishment may be fined up to one thousand dollars (\$1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.

(4) Any combination of these conditions.

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

(j) Level Four Punishment. - A defendant subject to Level Four punishment may be fined up to five hundred dollars (\$500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
- (4) Any combination of these conditions.

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

(k) Level Five Punishment. - A defendant subject to Level Five punishment may be fined up to two hundred dollars (\$200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- (3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
- (4) Any combination of these conditions.

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

(k1) Credit for Inpatient Treatment. - Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol Monitoring. - The judge may order that as a condition of special probation for any level of offense under G.S. 20-179 the defendant abstain from alcohol consumption, as verified by a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.

(k3) Continuous Alcohol Monitoring During Probation. - The court, in the sentencing order, may authorize probation officers to require defendants to submit to continuous alcohol monitoring for assessment purposes if the defendant has been required to abstain from alcohol consumption during the term of probation and the probation officer believes the defendant is consuming alcohol. The defendant shall bear the costs of the continuous alcohol monitoring system if the use of the system has been authorized by a judge in accordance with this subsection.

(k4) Continuous Alcohol Monitoring Exception. - Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section, if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.

(k5) Delegation to Probation Officer. - Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Supervision and Reentry of the Department of Adult Correction may require an offender sentenced pursuant to subsection (f3), (g), (h), (i), (j), or (k) of this section and placed on supervised probation to do any of the following:

- (1) Perform up to 20 hours of community service and pay the applicable supervision fee prescribed by law.
- (2) Report to the offender's probation officer on a frequency to be determined by the officer.
- (3) Submit to substance abuse assessment, monitoring, or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month. If the person being ordered to a period or periods of confinement is under the age of 18, that person must be confined in a detention facility approved by the Division of Juvenile Justice of the Department of Public Safety to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11). If the person being ordered to a period or periods of confinement reaches the age of 18 years while in confinement, the person may be transported by personnel of the Division of Juvenile Justice, or personnel approved by the Division of Juvenile Justice, to the custody of the sheriff of the applicable local confinement facility.
- (6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Division of Community Supervision and Reentry imposes any of the above requirements, then it may subsequently reduce or remove those same requirements. The probation officer may exercise authority delegated to the probation officer by the court pursuant to this subsection after administrative review and approval by a chief probation officer. The offender may file a motion with the court to review the action taken by the probation officer.

The offender shall be given notice of the right to seek such a court review. However, the offender shall have no right of review if the offender has signed a written waiver of rights as required by this subsection. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending, except that the condition in subdivision (5) of this subsection may not be imposed unless the Division determines that the offender failed to comply with one or more of the conditions of probation. Nothing in this subsection shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345. The Division of Community Supervision and Reentry shall adopt guidelines and procedures to implement the requirements of this subsection, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this subsection. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right to (i) a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence, (ii) have counsel at the hearing, and that one will be appointed if the probationer is indigent, (iii) request witnesses who have relevant information concerning the alleged violations, and (iv) examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Deputy Secretary of the Division of Community Supervision and Reentry in written Division policy.

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

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

(n) Time Limits for Performance of Community Service. - If the judgment requires the defendant to perform a specified number of hours of community service, a minimum of 24 hours must be ordered.

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

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

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

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

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

(r) Supervised Probation Terminated. - Unless a judge in the judge's discretion determines that supervised probation is necessary, and includes in the record that the judge has received evidence and finds as a fact that supervised probation is necessary, and states in the judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if the defendant meets three conditions. These conditions are that the defendant (i) has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which the defendant is sentenced, (ii) is being sentenced under subsections (i), (j), and (k) of this section, and (iii) has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

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

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

(s) Method of Serving Sentence. - The judge in the judge's discretion may order a term of imprisonment to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served. All of the following apply to a sentence served under this subsection:

- (1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.
- (2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in the defendant's body any alcohol as shown by an

alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.

(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve the defendant's jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of entrance to the jail, at least one of the following apply:

a. The defendant had previously consumed alcohol in the defendant's body as shown by an alcohol screening device.

b. The defendant had a previously consumed controlled substance in the defendant's body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, ss. 1, 2; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9; 1995, c. 191, s. 3; c. 496, ss. 2-7; c. 506, ss. 11-13; 1997-379, ss. 2.1-2.8; 1997-443, s. 19.26(c); 1998-182, ss. 25, 31-35; 2006-253, s. 23; 2007-165, ss. 2, 3; 2007-493, ss. 6, 20, 26; 2009-372, s. 14; 2010-97, s. 2; 2011-145, s. 19.1(h), (k); 2011-191, s. 1; 2011-329, s. 1; 2012-146, s. 9; 2012-194, s. 51.5; 2013-348, s. 2; 2014-100, s. 16C.1(d); 2015-186, s. 6; 2015-264, ss. 38(b), 86; 2015-289, s. 2; 2017-102, s. 7.1; 2017-186, s. 2(nnnn); 2021-94, s. 4; 2021-180, s. 19C.9(t), (vvvv); 2021-189, s. 5.1(j); 2023-121, s. 13(a); 2025-71, s. 11(a).)