THE NC DWI

QUICK REFERENCE GUIDE

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Special Thanks for their very kind assistance in editing to:
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DWI Detection and Standardized Field Sobriety Testing

Refresher - Full Instructor Manual: 02/2023 Revision

Preface

The DWI Detection and Standardized Field Sobriety Testing (SFST) training curriculum prepares police officers and other qualified persons to conduct the SFSTs for use in DWI investigations. This training, developed under the auspices and direction of NHTSA and IACP, has experienced remarkable success since its inception in the early 1980s. As in any educational training program, an instruction manual or guide is considered a "living document" that is subject to updates and changes based on advances in technology and science. A thorough review is made of information by the IACP Technical Advisory Panel (TAP) of the Highway Safety Committee of the IACP with contributions from many sources in health care science, toxicology, jurisprudence, and law enforcement. Based on this information, any appropriate revisions and modifications in background theory, facts, examination and decision-making methods are made to improve the quality of the instruction as well as the standardization of guidelines for the implementation of the SFST curriculum. The reorganized manuals are then prepared and disseminated, both domestically and internationally. Changes will take effect 90 days after approval by TAP, unless otherwise specified or when so designated. The procedures outlined in this manual describe how the SFSTs are to be administered under ideal conditions. We recognize that the SFSTs will not always be administered under ideal conditions in the field because such conditions do not always exist. Even when administered under less than ideal conditions, they will generally serve as valid and useful indicators of impairment. **Slight variations from the ideal, i.e., the inability to find a perfectly smooth surface at roadside, may have some effect on the evidentiary weight given to the results**; however, this does not necessarily make the SFSTs invalid. (**Emphasis added**)

These tests are designed to be administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHTSA/IACP - supported research. **The SFSTs serve as the foundation for impaired driving enforcement. It is critical these tests be performed and interpreted properly.** (No emphasis added - 2023 Revision)

*Reflects U.S. Department of Transportation NHTSA DWI Detection and Standardized Field Sobriety Testing 2023 Participant/Instructor Guide, replacing the 2018 edition. Please make certain to independently confirm accuracy of said materials.

The 02/2023 Advanced Roadside Impaired Driving Enforcement (ARIDE) Manual, 02/2023 Drug Recognition Expert (DRE) Manual, and/or 02/2023 NHTSA DWI Detection and SFST Administrative Guide and are intended as additional source materials for reference purposes.

PLEASE MAKE CERTAIN TO INDEPENDENTLY REVIEW THE 02/2023 Drug Recognition Expert (DRE) Manual, and/or 02/2023 NHTSA DWI Detection and SFST Administrative Guide

NHTSA

Standardized Field Sobriety Tests

DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING – GLOSSARY OF TERMS

ADDICTION: Habitual, psychological, and physiological dependence on a substance beyond one's voluntary control.

ALVEOLA BREATH: Breath from the deepest part of the lung.

BLOOD ALCOHOL CONCENTRATION: A measurement that indicates the grams of alcohol per 100 milliliters of a person's blood or 210 liters of his breath. For example, a BAC of 0.08% means that there are 80 milligrams of alcohol in 100 milliliters of the person's blood.

BREATH ALCOHOL CONCENTRATION (BrAC): The percentage of alcohol in a person's breath, as measured by a breath testing device.

CLUE: "Scientifically proven item: (ex. the specific clues of the SFST tests.)

CUE: "Good to know" item. (ex. unable to keep still during HGN)

DIVIDED ATTENTION: Concentrating on more than one thing at a time.

DIVIDED ATTENTION TEST: A test which requires the subject to concentrate on both mental and physical tasks at the same time. The two psychophysical tests Walk and Turn (WAT) and One Leg Stand (OLS) require the suspect to their divide attention.

DRUG RECOGNITION EXPERT (DRE):	An individual who successfully completed all phases of the DRE training requirements for certification established by the IACP and NHTSA. The word “evaluator,” “technician,” or similar words may be used as a substitute for “expert,” depending upon locale or jurisdiction.
DWI/DUI:	The acronym “DWI” means driving while impaired and is synonymous with the acronym “DUI,” driving under the influence or other acronyms used to denote impaired driving. These terms refer to any and all offenses involving the operation of vehicles by persons under the influence of alcohol and/or other drugs.
DWI DETECTION PROCESS:	The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation. The DWI detection process has three phases: Phase One – Vehicle In Motion Phase Two – Personal Contact Phase Three – Pre -arrest Screening
EVIDENCE:	Any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a DWI violation may be of various types: a. Physical (or real) evidence: something tangible, visible, or audible. b. Well established facts (judicial notice). c. Demonstrative evidence: demonstrations performed in the courtroom. d. Written matter or documentation. e. Testimony.

EXPERT WITNESS: A person skilled in some art, trade, science or profession, having knowledge of matters not within the knowledge of persons of average education, learning and experience, who may assist a jury in arriving at a verdict by expressing an opinion on a state of facts shown by the evidence and based upon his or her special knowledge. (NOTE: Only the court can determine whether a witness is qualified to testify as an expert.)

FIELD SOBRIETY TEST: Any one of several roadside tests that can be used to determine whether a subject is impaired.

Editor's Note: Field sobriety tests may include but are not limited to the "ABC Test, Finger Count," and "Counting Tests."

GAIT ATAXIA: An unsteady, staggering gait (walk) in which walking is uncoordinated and appears to be "not ordered."

GENERAL INDICATOR: Behavior or observations of the subject that are observed and not specifically tested for. (Observational and Behavioral Indicators)

HORIZONTAL GAZE NYSTAGMUS (HGN): An involuntary jerking of the eyes, occurring as the eyes gaze towards the side. The first test administered in the SFSTs.

Editor's Note: The HGN test should not be used to estimate specific BAC level.

IMPAIRMENT: One of several terms used to describe the degradation of mental and/or physical abilities necessary for safely operating a vehicle.

IMPLIED CONSENT LAW:	A law that states the suspected DWI drivers are deemed to have given their consent to submit to chemical testing. If the individual fails to provide a chemical test, they can be subject to license sanctions.
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA):	The National Highway Traffic Safety Administration, within the United States Department of Transportation that exercises primary responsibility for coordinating federal efforts to ensure the safe design and operation of motor vehicles.
NYSTAGMUS:	An involuntary jerking of the eyes.
ONE LEG STAND (OLS):	A divided attention field sobriety test. One of the tests administered in the SFSTs.
PERSONAL CONTACT:	The second phase in the DWI detection process. In this phase the officer observes and interviews the driver face to face; determines whether to ask the driver to step from the vehicle; and observes the driver's exit and walk from the vehicle.
PRE-ARREST SCREENING:	The third phase in the DWI detection process. In this phase the officer administers field sobriety tests to determine whether there is probable cause to arrest the driver for DWI. Depending on agency policy, the officer may administer or could arrange to have a preliminary breath test conducted.

PRELIMINARY BREATH TEST (PBT):	A pre-arrest breath test administered during investigation of a possible DWI violator to obtain an indication of the person's blood alcohol concentration.
PROBABLE CAUSE:	It is more than mere suspicion; facts and circumstances within the officer's knowledge, and of which he or she has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed.
PSYCHOPHYSICAL:	"Mind/Body." Used to describe field sobriety tests that measure a person's ability to perform both mental and physical tasks.
PSYCHOPHYSICAL TESTS:	Methods of investigating the mental (psycho-) and physical characteristics of a person suspected of alcohol or drug impairment. Most psychophysical tests employ the concept of divided attention to assess a suspect's impairment.
REASONABLE SUSPICION:	Less than probable cause but more than mere suspicion; exists when an officer, in light of his or her training and experience, reasonably believes and can articulate that criminal activity is taking, has taken or is about to take place.
RESTING NYSTAGMUS:	Jerking of the eyes as they look straight ahead.
STANDARDIZED FIELD SOBRIETY TESTs:	There are three SFSTs, namely Horizontal Gaze Nystagmus (HGN), Walk and Turn (WAT), and One Leg Stand (OLS). Based on a series of controlled laboratory studies, scientifically validated clues of

alcohol impairment have been identified for each of these three tests. They are the only Standardized Field Sobriety Tests for which validated clues have been identified.

TRAFFIC SAFETY RESOURCE PROSECUTOR (TSRP): Usually a current or former prosecutor who provides training, education and technical support to traffic crimes prosecutors and law enforcement agencies throughout their State. (For the contact information of your TSRP, contact your Highway Safety Office).

VALID: Conforming to accepted principles. Producing accurate and reliable results.

VALIDATED: A documented act of demonstrating that a procedure, process, and/or activity will consistently lead to accurate and reliable results.

VEHICLE IN MOTION: The first phase in the DWI detection process. In this phase the officer observes the vehicle in operation, determines whether to stop the vehicle, and observes the stopping sequence.

VERTICAL GAZE NYSTAGMUS: An involuntary jerking of the eyes (up and down) which occurs when the eyes gaze upward at maximum elevation. The jerking should be distinct and sustained.

Editor's Note: Commentary reads as follows, with no additional emphasis added:

"Point out VGN was not examined in the original research that led to the validation of the SFSTs (HGN, WAT, and OLS)."

WALK AND TURN (WAT): A divided attention field sobriety test. One of the tests administered in SFSTs.

Editor's Note: Commentary reads as follows, with no additional emphasis added:

"Stress to participants to consider age along with environmental factors, location, injury, or physical ailments while administering this test. The importance of the totality of all factors should not be overlooked. Point out subjects with heels two inches or more or any other form of unusual footwear (i.e., flip flops, platform shoes, etc.) should be afforded the opportunity to remove footwear prior to the test. Remind participants prior to administering psychophysical tests to ask the subject if they have any physical problems or disabilities."

"Explain there may be times when the suspect takes a wrong number of steps or begins the heel-to-toe walk with the wrong foot resulting in a turn on the right foot instead of the left. If this occurs the suspect would normally be assessed a clue for an incorrect number of steps and not assessed a clue for an improper turn if the turn was made using a series of small steps as instructed and the suspect did not lose his/her balance while attempting the turn."

Driver's Name:	Driving While Impaired Report (DWIR)	Agency:
DOB: Race: Gender: ☐ M ☐ F		Officer's Name:
Approx. Wt.: Minors in Vehicle: ☐ Yes ☐ No	**Department of Health and Human Services, Forensic Tests for Alcohol Branch**	Officer No.:
Vehicle Crash: ☐ Yes ☐ No Injuries: ☐ Yes ☐ No		Case No.:
Blood / Breath Results: 0. / 0. BL: ☐ Yes ☐ No		DRE Officer:
Tests REFUSED: ☐ Yes ☐ No		City / County:
Arrest Date: Time: ☐am ☐ pm		Street / Highway:
		Area No.:

Phase I

Initial Observations: What drew your attention to the vehicle (wide turns, weaving, violations of law, etc.). Unusual driver's actions, blank stare, etc:

Observation of Stop: Describe vehicle maneuvers during the stop, delays in stopping, unusual manner of parking, etc.:

Phase II

General Observation: Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.:

Breath: Describe the odor of alcohol on driver's breath:

Statements: Any statement made by the driver from time of stop to arrest:

Observation Prior to Arrest: Describe any difficulty with motor skills, retrieving drivers license, getting out of vehicle, walking, standing, etc.:

Odors: Describe any significant odors other than alcohol:

Phase III

Psychophysical Tests Time: ☐ am ☐ pm

Location Performed:

Horizontal Gaze Nystagmus (HGN)

☐ Glasses	☐ Contact Lenses	
Remove Glasses ☐ Yes ☐ No	☐ Hard ☐ Soft	
Tracking Equal?	☐ Yes ☐ No	
Able to Follow Stimulus?	☐ Yes ☐ No	
	Left Eye	Right Eye
Lack of Smooth Pursuit		
Maximum Deviation		
Onset Prior 45°		
Vertical Nystagmus?	☐ Yes ☐ No	

Explain:

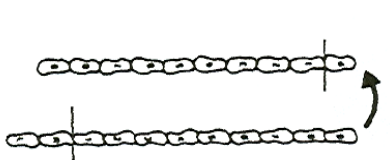
Walk and Turn Test

Instruction Stage		
☐ Cannot Keep Balance ☐ Starts Too Soon		
	1st Nine	2nd Nine
Stops Walking		
Misses Heel to Toe		
Steps Off Line		
Uses Arms To Balance		
Actual Steps Taken		

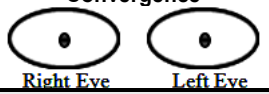
Improper Turn (Describe):

Cannot Do Test (Explain):

Walk and Turn Test



Convergence



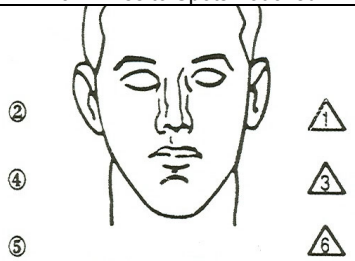
Other Sobriety Tests

One Leg Stand

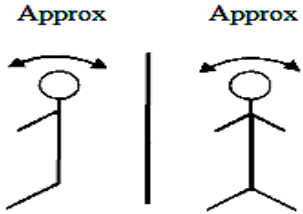
Sways While Balancing: ☐ L ☐ R
Uses Arms for Balance: ☐ L ☐ R
Hopping: ☐ L ☐ R
Puts Foot Down: ☐ L ☐ R
Type of Footwear:

Finger to Nose Test

Draw Lines to Spots Touched



Modified Romberg Balance



Internal Clock
Estimated as 30 Seconds

Alcohol Screening Test Device **(If test result is 0.08 or greater, wait a minimum of 5 minutes and administer an additional test)**

Make / Model:	Serial #:	Date of last accuracy check:

Test 1		Test 2	
Time: ☐am ☐ pm	Result: 0.	Time: ☐am ☐ pm	Result: 0.

DHHS 4064
08/2019

Miranda Rights **Driver's Name**:

Miranda Rights Advised:	☐ Yes	☐ No	Miranda Rights Waived:	☐ Yes	☐ No
Location:			Date:	Time:	☐ am ☐ pm

Questionnaire

Were you operating a vehicle? ☐ Yes ☐ No						Were there any mechanical problems with that vehicle? ☐ Yes ☐ No				
Describe:										
Where were you going?						Where were you coming from?				
What street or highway were you on?						What city are you in now?				
Without looking at a watch, what time is it					☐ am ☐ pm	What is the date?				
What is the day of the week?			Actual Time		☐ am ☐ pm	Actual Date			Actual Day	
When did you last eat?			☐ am ☐ pm							
What did you eat?										
What time did you begin drinking?			☐ am ☐ pm		Time of last drink?				☐ am ☐ pm	
What did you drink?										
How many?		What size?			Where?					
When did you last use Marijuana/ Cannabis?					Used any other drug?	☐ Yes ☐ No				
On a scale of 0 to 10, with 0 being completely sober and 10 being completely drunk/ impaired, where do you fit? (Check one.)										
☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐ 8	☐ 9	☐ 10
On that same scale of 0 to 10, what is the drunkest/most impaired you have ever been? (Check one.)										
☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ 7	☐ 8	☐ 9	☐ 10
In your opinion, should you have been operating a vehicle? ☐ Yes ☐ No										
Do you have any physical defects?	☐ Yes ☐ No			If so, what?						
Are you sick?	☐ Yes ☐ No			If so, what's wrong?						
Do you limp?	☐ Yes ☐ No			Why do you limp?						
Have you been injured lately?	☐ Yes ☐ No			If so, what type of injury?						
Were you involved in a crash today?	☐ Yes ☐ No			When did the crash occur?				☐ am ☐ pm		
Did you get a bump on your head?	☐ Yes ☐ No			Have you had any alcoholic beverage(s) since the crash?				☐ Yes ☐ No		

Did you get a bump on your head? ☐ Yes ☐ No		Have you had any alcoholic beverage(s) since the crash? ☐ Yes ☐ No	
If so, what?		How many?	
When?		Where?	
Have you seen a doctor or dentist lately? ☐ Yes ☐ No		If so, who?	
What for?	When?		
When did you last go to sleep?		How much sleep did you have?	
Are you wearing false teeth? ☐ Yes ☐ No	Are you wearing oral jewelry? ☐ Yes ☐ No	Do you have a glass eye? ☐ Yes ☐ No	
Are you taking medication(s) of any kind? ☐ Yes ☐ No	How much taken?		
If so, what kind?			
Last dose?	☐ am ☐ pm		
Do you have epilepsy? ☐ Yes ☐ No	Do you have diabetes? ☐ Yes ☐ No		
Do you take insulin? ☐ Yes ☐ No	If so last dose?		
Have you had any injections of any other drugs lately? ☐ Yes ☐ No	If so, what for?		
What kind of drug?	Last dose? ☐ am ☐ pm		

Passengers			
	Name	**Age**	**Relationship**
1.			
2.			
3.			

Witnesses			
	Name	**Address**	**Phone**
1.			
2.			
3.			

Notes

SOURCE: Department of Health and Human Services, Forensic Tests for Alcohol Branch

PURPOSE AND USE: To aid in securing and recording pertinent information regarding the impairment of the physical and mental faculties of persons charged with driving while impaired.

NUMBER TO BE COMPLETED: Two (2)

DISPOSITION: Original - Retained by charging officer for use in the prosecution of persons charged with DWI and for any related administrative hearing.

Copy - May be given to the District Attorney's office for prosecution and/or defense attorney according with your agency policies.

RETENTION SCHEDULE: At a minimum of one year after the disposition of the case or longer in accordance with your agency's retention schedule.

COMPLETION: This form is to be completed by the officer completing the arrest.

Upper left hand box:

1. Complete driver's full name: first name, middle initial and last name.
2. Enter approximate weight of driver.
3. Check the appropriate box for Gender.
4. Check the appropriate box if Minors in Vehicle.
5. Circle if the test was Breath or Blood.
6. Enter the results of the 1st and 2nd breath test results if applicable.
7. Check the appropriate box for Vehicle Crash.
8. Check appropriate box if driver is Injured.
9. Enter appropriate Date (mm/dd/yyyy) and Time (0:00) of arrest to include AM or PM.

Upper right hand box:

10. Enter your agency name to include troop and/or district, if applicable. Do not abbreviate your agency name. Enter PD, SO, SD etc. after agency name, if applicable
11. Enter your name. First, middle initial, last name
12. Enter your citation number or appropriate agency case number.
13. Enter Drug Recognition Officer's name. First, middle initial and last, if applicable
14. Enter City / County of arrest.
15. Enter Street and/or Highway where violation occurred.

Phase I:

16. Initial Observation: Record what drew your attention to the vehicle and include any violations of law (when you first noticed the driver, observations of traffic violations, wide turns, weaving, drifting, swerving, signaling inconsistent with driving, slow speed, slow reaction to traffic signals, unusual driver's actions, blank stare, gripping the steering wheel tightly, driving with one's face close to the windshield, slouching in the seat, slow response, and staring straight ahead with eyes fixed, etc.).
17. Observation of Stop: Failed to immediately stop, stopped too far from a curb or at an inappropriate angle, stopped too short or beyond road edge or line, and jerky or abrupt stop, etc. Unusual driver's actions, blank stare, etc. not previously noted.

Phase II:

18. General Observation: Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.
19. Breath: Describe the odor of alcoholic beverages on the driver's breath.
20. Observation Prior to Arrest: List any pertinent statements by the driver made during the stop and arrest. Describe any difficulty with motor skills prior to arrest.
21. Odors: Describe any odor other than alcohol pertinent to the arrest.

Phase III:

22. Psychophysical Tests: Record time (0.00), check box AM or PM, and enter location where tests were performed. Horizontal Gaze Nystagmus: Record the results for each eye independently of each other.
23. Check the appropriate blocks for contacts or glasses, if applicable.
24. Check yes or no if tracking equally.
25. Check yes or no if able to follow stimulus.
26. Check yes or no if vertical nystagmus.
27. Use explanation section for other pertinent information.

Walk and Turn

28. Record the appropriate information after having the driver perform the walk and turn along a straight line in a heel-to-toe manner, to turn around as described, and to walk back in a heel to toe fashion.

One Leg Stand

29. Record the appropriate information after having the driver perform the test as described from "one-thousand one to one thousand thirty:.

Finger to Nose

30. Optional - If used, record where suspect touches facial area.

Romberg Balance

31. Optional - If used, record the manner the driver is swaying; used one arm and leg figure if front to back, two arms and legs if side to side. Record actual time the suspect estimated was 30 seconds - stop after 90 seconds.

Alcohol Screening Test Device

32. If used, record make, model and serial number of device.
33. If used, record the test time(s) (0:00) and result(s) of alcohol screening device.
34. If the test results are 0.08 or greater, you are required to wait 5 minutes and administer an additional test, then record the time and results. If second test is more than 0.02 under first reading, disregard the first reading.

Back of DHHS 4064, Miranda Rights

35. Check yes or no if Miranda rights were advised.
36. Check yes or no if Miranda rights waived.
37. Record location given, date (mm/dd/yyyy), time (0:00) and check AM or PM.

Questionnaire (when entering date (mm/dd/yyyy) and time (0:00).

38. Record the answers to the questions listed.
39. Record any known passengers, name, age and relationship.
40. Record any known witnesses, name, address and phone number.

HORIZONTAL GAZE NYSTAGMUS (HGN)

REQUIRED ABILITIES: Proper face-to-face observation and interview of the driver demands two distinct but related abilities:

- The ability to recognize the sensory evidence of alcohol and/or other drug influence
- The ability to describe that evidence clearly and convincingly.

Developing these abilities requires practice.

Horizontal Gaze Nystagmus:

- Remove eyeglasses
- Ask about contacts and make note if they are hard or soft. Do not ask them to remove the contacts.
- Check for equal pupil size and resting nystagmus
- Check for equal tracking
- Begin with LEFT eye
- Check each eye independently
- Position stimulus (12-15 inches and slightly above eye level)
- Check for a “lack of smooth pursuit”
- Center to Side in 2 seconds
- Check both eyes twice to confirm observations
- Check for “distinct nystagmus at maximum deviation”
- Hold at Maximum deviation for “minimum” 4 seconds each time
- Nystagmus must be both Distinct and Sustained
- Check both eyes twice to confirm observations
- Check for “onset of nystagmus prior to 45 degrees”
- The stimulus should be moved from 0 to 45 degrees at a pace taking approximately four seconds
- Check both eyes twice to confirm observations

ADMINISTRATIVE PROCEDURES:

1. CHECK FOR EYEGLASSES
2. VERBAL INSTRUCTIONS
3. POSITION STIMULUS (12-15 INCHES)
4. EQUAL PUPIL SIZE AND RESTING NYSTAGMUS
5. TRACKING
6. LACK OF SMOOTH PURSUIT
7. DIST. & SUSTAINED NYSTAGMUS @ MAX. DEV.
8. ONSET OF NYSTAGMUS PRIOR TO 45°
9. TOTAL THE CLUES
10. CHECK FOR VERTICAL GAZE NYSTAGMUS

Specific Procedures:

If the suspect is wearing eyeglasses, have them removed. Give the suspect the following instructions from a safe position.

(FOR OFFICER SAFETY KEEP YOUR WEAPON AWAY FROM SUSPECT):

- "I am going to check your eyes."
- "Keep your head still and follow this stimulus with your eyes only."
- "Keep following the stimulus with your eyes until I tell you to stop."

Position the stimulus approximately 12-15 inches from the suspect's nose and slightly above eye level. Check to see that both pupils are equal in size. If they are not, this may indicate a head injury. You may observe Resting Nystagmus at this time, then check the suspect's eyes for the ability to track together. Move the stimulus smoothly across the suspect's entire field of vision. Check to see if the eyes track the stimulus together or one lags behind the other. If the eyes don't track together it could indicate a possible medical disorder, injury, or blindness.

Test Interpretation: You should look for three clues of nystagmus in each eye.

1. The eye cannot follow a moving object smoothly.
2. Nystagmus is distinct and sustained when the eye is held at maximum.
3. The angle of onset of nystagmus is prior to 45 degrees.

Based on recent research, if you observe four or more clues it is likely the subject's BAC is at or above 0.08. Using this criterion, you will be able to classify about 88% of your subjects accurately. This was determined during laboratory and field testing and helps you weigh the various SFSTs as you make your arrest decision

Vertical Gaze Nystagmus: The Vertical Gaze Nystagmus test simple to administer. During the Vertical Gaze Nystagmus test, look for jerking as the eyes move up and are held for approximately four seconds at maximum deviation.

1. Position the stimulus horizontally, about 12-15 inches in front of the suspect's nose.
2. Instruct the suspect to hold the head still, and follow the object with the eyes only.
3. Raise the object until the suspect's eyes are elevated as far as possible.
4. Hold for approximately four seconds.
5. Watch closely for evidence of jerking.

WALK-AND-TURN (W&T)

1. Instructions Stage:

Initial Positioning and Verbal Instructions

For standardization in the performance of the test, have the suspect assume the heel-to-toe stance by giving the following verbal instructions, accompanied by demonstrations:

"Place your left foot on the line" (real or imaginary)
(Demonstrate.)

“Place your right foot on the line ahead of the left foot, with heel of right foot against toe of left foot.”
(Demonstrate.)

“Place your arms down at your sides.”
(Demonstrate.)

“Maintain this position until I have completed the instructions. Do not start to walk until told to do so.”

“Do you understand the instructions so far?” (Make sure the suspect indicates understanding.)

2. Demonstrations and Instructions for the Walking Stage:

Explain the test requirements, using the following verbal instructions, accompanied by demonstrations:

“When I tell you to start, take nine heel-to-toe steps, turn, and take nine heel-to-toe steps back.”
(Demonstrate 3 heel-to-toe steps.)

“When you turn, keep your front foot on the line, and turn by taking a series of small steps with the other foot, like this.”
(Demonstrate.)

“While you are walking, keep your arms at your sides, watch your feet at all times, and count your steps out loud.”

“Once you start walking, don’t stop until you have complete the test.”

“Do you understand the instructions?”
(Make sure suspect understands.)

“Begin, and count your first step from the heel-to-toe position as ‘One.’”

3. Test Interpretation: You may observe a number of different behaviors when a subject performs this test. Original research demonstrated the behaviors are likely to be observed in someone with a BAC at or above 0.08. Look for the following clues each time this test is given:

A. Cannot keep balance while listening to the instructions. Two tasks are required at the beginning of this test. The suspect must balance heel-to-toe on the line, and at the same time, listen carefully to the instructions. Typically, the person who is impaired can do only one of these things. The suspect may listen to the instructions, but not keep balance. Record this clue if the suspect does not maintain the heel-to-toe position throughout the instructions. (Feet must actually break apart.) Do not record this clue if the suspect sways or uses the arms to balance but maintains the heel-to-toe position.

B. Starts before the instructions are finished. The impaired person may also keep balance, but not listen to the instructions. Since you are specifically instructing the suspect not to start walking "until I tell you to begin," record this clue if the suspect does not wait.

C. Stops while walking. The suspect pauses for several seconds. Do not record this clue if the suspect is merely walking slowly.

D. Does not touch heel-to-toe. The suspect leaves a space of more than one-half inch between the heel and toe on any step.

E. Steps off the line. The suspect steps so that one foot is entirely off the line.

F. Uses arms to balance. The suspect raises one or both arms more than 6 inches from the sides in order to maintain balance

G. Improper turn. The suspect removes the front foot from the line while turning. Also record this clue if the suspect has not followed directions as demonstrated, i.e., spins or pivots around.

H. Incorrect number of steps. Record this clue if the suspect takes more or fewer than nine steps in either direction.

Note: If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety.

If the suspect has difficulty with the test (for example, steps off the line), continue from that point, not from the beginning. This test may lose its sensitivity if it is repeated several times.

Observe the suspect from a safe distance and limit your movement while may distract the suspect during the test. Always consider officer safety.

Based on recent research, if the subject exhibits two or more clues on this test or fails to complete it, classify the subject's BAC as at or above 0.08. Using this criterion, you will be able to accurately classify 79% of your subjects.

4. Test Conditions: Walk-and-Turn test requires a designated straight line, and should be conducted on a reasonably dry, hard, level, non slippery surface. There should be sufficient room for suspects to complete nine heel-to-toe steps.

Note: Recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.

The original SCRI studies suggested individuals over 65 years of age or people with back, leg, or inner ear problems had difficulty performing this test. Less than 1.5% of the test subjects in the original

studies were over 65 years of age. Also, the SCRI studies suggest individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes. Officers should consider all factors when conducting SFSTs.

ONE-LEG STAND (1LS)

1. Instructions Stage:

Initial Positioning and Verbal Instructions

Initiate the test by giving the following verbal instructions, accompanied by demonstrations:

"Please stand with your feet together and your arms down at the sides, like this." (Demonstrate.)

"Do not start to perform the test until I tell you to do so."

"Do you understand the instructions so far? (Make sure suspect indicates understanding.)

2. Demonstrations and Instructions for the Balance and Counting Stage:

Explain the test requirements, using the following verbal instructions, accompanied by demonstrations:

"When I tell you to start, raise one leg, either leg, with the foot approximately six inches off the ground, keeping your raised foot parallel to the ground." (Demonstrate one leg stance.)

"You must keep both legs straight, arms at your side."

Explain the test requirements using the following verbal instructions accompanied by demonstrations:

"When I tell you to start, raise either leg with the foot approximately six inches off the ground, keeping your foot parallel to the ground. Keep both legs straight and your arms at your side. While holding that position, count out loud in the following manner: 'one thousand one, one thousand two, one thousand three,' and so on until told to stop."

"Keep your arms at your sides at all times and keep watching the raised foot."

"Do you understand?" (Make sure suspect indicates understanding.)

"Go ahead and perform the test." (Officer should always time the 30 seconds. Test should be discontinued after 30 seconds.)

Observe the suspect from a safe distance. If the suspect puts the foot down, give instructions to pick the foot up again and continue from the point at which the food touched the ground. If the suspect counts very slowly, terminate the test after 30 seconds.

3. Test Interpretation: You may observe a number of different behaviors when a subject performs this test. Original research demonstrated the behaviors are likely to be observed in someone with a BAC at or above 0.08. Look for the following clues each time the OLS test is administered:

A. The suspect sways while balancing. This refers to side-to-side or back-and-forth motion while the suspect maintains the one-leg stand position.

B. Uses arms for balance. Suspect moves arms 6 or more inches from the side of the body in order to keep balance.

C. Hopping. Suspect is able to keep one foot off the ground, but resorts to hopping in order to maintain balance.

D. Puts foot down. The suspect is not able to maintain the one-leg stand position, putting the foot down one or more times during the 30-second count.

Note: If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety.

Remember that time is critical in this test. The original research has shown a person with a BAC above 0.10 can maintain balance up to 25 seconds, but seldom as long as 30.

Based on recent research, if an individual shows two or more clues or fails to complete the OLS, there is a good chance the BAC is at or above 0.08. Using that criterion, you will accurately classify 83% of the people you test as to whether their BAC's are at or above 0.08.

Observe the suspect from a safe distance and remain as motionless as possible during the test so as not to interfere. If the suspect puts the foot down, give instructions to pick the foot up again and continue counting from the point at which the foot touched the ground. If the suspect counts very slowly, terminate the test after 30 seconds.

4. Test Conditions:

One-Leg Stand requires a reasonably dry, hard, level, and non-slippery surface. Suspect's safety should be considered at all times.

The original research indicated that certain individuals over 65 years of age, back, leg or inner ear problems, or people who are overweight by 50 or more pounds had difficulty performing this test. Individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes.

5. Taking Field Notes on Suspect's Performance of Field Sobriety Tests:

For purposes of the arrest report and courtroom testimony, it is not enough to record the total number of clues on the three tests. The number of clues is important to the police officer in the field because it helps determine whether there is probable cause to arrest. But to secure a conviction, more descriptive evidence is needed.

The officer must be able to describe how the suspect performed the tests, and exactly what the suspect did.

The standard note taking guide provided in this Manual is designed to help you develop a clear description of the suspect's performance on the tests.

***IT IS NECESSARY TO EMPHASIZE THIS VALIDATION APPLIES ONLY WHEN:**

- THE TESTS ARE ADMINISTERED IN THE PRESCRIBED, STANDARDIZED MANNER
- THE STANDARD CLUES ARE USED TO ASSESS THE SUSPECTS'S PERFORMANCE
- THE STANDARDIZED CRITERIA ARE EMPLOYED TO INTERPRET THAT PERFORMANCE

***IF ANY ONE OF THE STANDARDIZED FIELD SOBRIETY TEST ELEMENTS IS CHANGED, THE VALIDITY IS COMPROMISED.**

BREATH TESTING EQUIPMENT

Preliminary Breath Test (PBT)

Approved PBT devices, including the Alco-Sensor by Intoximeters, Inc., utilize a fuel cell to detect ethanol in a sample. Current is created as the fuel cell detects ethyl alcohol (EtOH). By measuring the current, a numerical value is calculated. North Carolina limits evidence to a Positive or Negative indication for alcohol.

The NHTSA states in its DWI instructional manual, **The PBT (Preliminary Breath Test) result is only one of many factors the officer considers in determining whether the suspect should be arrested for DWI. Whenever possible the PBT result should not be the sole basis for DWI arrest.**

Alcohol "screening" devices, when operated by experienced, well-trained law enforcement officers, together with the proper administration and interpretation of SFST's that are conducted in a systematic and standardized manner, can be effective tools in determining probable cause to arrest.

Alco-Sensor V XL
(NOT APPROVED)

Alco-Sensor III

Alco-Sensor FST

Evidentiary Breath Testing

The intent of breath testing devices is to obtain a representative sample of ethanol that may be expelled from the blood stream and into the respiratory system through an exchange of gasses between the alveoli of the lungs and capillaries that enmesh the individual alveolum.

Breath testing devices must be properly calibrated for accuracy. There are two primary methods for calibration: Wet Bath Simulator and Dry Gas Canister. The wet bath method uses a pre-measured, pre-calibrated liquid solution of ethyl alcohol dissolved in water. The dry gas method employs a tank of compressed air containing ethanol. As a compressed gas, calibration must include adjustments for non-standard altitude and/or pressure to confirm accuracy and precision.

Smith and Wesson Breathalyzer Model 900A

Intoxilyzer 5000

Intoximeter EC/IR II

Wet Bath Simulation Kit

Dry Gas Tank with Ethanol Breath Standard Mixture

Ignition Interlock Device (IID)

The ignition interlock is a device intended to detect and evaluate BrAC. If ethyl alcohol is detected upon an attempt to start the vehicle, operation is prevented. Repeated, failed attempts to start the vehicle after consumption of alcohol results in a "lock out."

The IID further requires the operator to blow into the handheld wand at random intervals while driving. There are three approved IID vendors in North Carolina.

SMART START SSI-20/30
with Optional Camera

SMART START
1-800-880-3394
www.smartstartinc.com

Monitech
Ignition Interlock

Monitech

1-844-598-5557
www.monitechnc.com
customerservice@monitechnc.com

Alcolock
Ignition Interlock

ALCOLOCK USA

1-855-664-0353
www.alcolocknc.com
customerservice@alcolockusa.com

Intoxalock

(866) 306-5015
intoxalockselect.com/drive

The Legacy Model

Secure Continuous Remote Alcohol Monitoring (SCRAM)

SCRAM is a device worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer's system. For persons convicted of DWI and other alcohol-related offenses, it can serve as evidence of abstinence from alcohol.

- A condition of pretrial release – ensuring the offender's sobriety during the pre-trial period. § 15A-534.
- A probationary condition – 24/7 supervision specific to the offense. § 15A-1343(b1).
- A condition of work release – Support family, pay restitution, and court fees while being continuously monitored. § 50-13.2.

Continuous alcohol monitoring can also be useful in DMV hearings:

- As a medical exemption from ignition interlock devices. § 20-17.8(l).
- As evidence of an offender's abstinence of alcohol during a license revocation hearing, if the person has had CAM monitoring for at least 120 days. § 20-19(e1)(2).

SCRAM - How It Works

SCRAM Bracelet:

- Samples insensible perspiration every 30 minutes.
- Anti-tamper technology using five sensors.
- Automatically collects, stores, and transfers all data to the SCRAM Modem.

SCRAM Modem:

- Uploads all available data from the SCRAM bracelet.
- Stores and sends alcohol readings, tamper alerts, and diagnostic data to SCRAMnet.
- Downloads monitoring and reporting schedules from SCRAMnet to SCRAM bracelet.

SCRAMnet:

- A web-based application managed by AMS where offender data is stored, collected, and analyzed.

Alcohol Monitoring Systems - SCRAMx
1-800-557-0861 • www.alcoholmonitoring.com

NC ADMINISTRATIVE CODE

North Carolina Administrative Code:

I. 10A NCAC 41B .0101 – DEFINITIONS

II. 10A NCAC 41B .0313 – BREATH-TESTING INSTRUMENTS: REPORTING OF SEQUENTUAL TESTS

III. 10A NCAC 41B .0320 – INTOXILYZER: MODEL 5000

IV. 10A NCAC 41B .0321 – PREVENTATIVE MAINTENANCE: INTOXILYZER: MODEL 5000

V. 10A NCAC 41B .0322 – INTOXIMETERS: MODEL INTOX EC/IR II

VI. 10A NCAC 41B .0323 – PREVENTATIVE MAINTENANCE: INTOXIMETERS: MODEL INTOX EC/IR II

VII. 10A NCAC 41B .0501 – SCREENING TESTS FOR ALCOHOL CONCENTRATION

VIII. 10A NCAC 41B .0502 – APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE

IX. 10A NCAC 41B .0503 – APPROVED ALCOHOL SCREENING DEVICES: CALIBRATION

10A NCAC 41B .0101 DEFINITIONS

The definitions in G.S. 18 B-101, G.S. 20-4.01, G.S. 130A-3 and the following shall apply throughout this Subchapter:

(1) "Alcoholic Breath Simulator" means a constant temperature water-alcohol solution bath instrument devised for the purpose of providing a standard alcohol-air mixture;

(2) "Breath testing Instrument" means an instrument for making a chemical analysis of breath and giving the resultant alcohol concentration in grams of alcohol per 210 liters of breath;

(3) "Controlled Drinking Program" means a bona fide scientific, experimental, educational, or demonstration program in which tests of a person's breath or blood are made for the purpose of determining his alcohol concentration when such person has consumed controlled amounts of alcohol;

(4) "Director" means the Director of the Division of Public Health of the Department;

(5) "Handling Alcoholic Beverages" means the acquisition, transportation, keeping in possession or custody, storage, administration, and disposition of alcoholic beverages done in connection with a controlled drinking program;

(6) "Observation Period" means a period during which a chemical analyst observes the person or persons to be tested to determine that the person or persons has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen. The chemical analyst may observe while conducting the operational procedures in using a breath testing instrument. Dental devices or oral jewelry need not be removed;

(7) "Permittee" means a chemical analyst possessing a valid permit from the Department to perform chemical analyses, of the type set forth within the permit;

(8) "Simulator Solution" means a water-alcohol solution made by preparing a stock solution of distilled or American Society for Testing and Materials Type I water and 48.4 grams of alcohol per liter of solution. Each 10 ml. of this stock solution is further diluted to 500 ml. by adding distilled or American Society for Testing and Materials Type I water. The resulting simulator solution corresponds to the equivalent alcohol concentration of 0.08;

(9) "Verify Instrument Accuracy" means verification of instrumental accuracy of an approved breath testing instrument or approved alcohol screening test device by employment of a control sample from an alcoholic breath simulator using simulator solution and obtaining the expected result or 0.01 less than the expected result as specified in Item (8) of this

Rule; or by employment of a control sample from an ethanol gas canister and obtaining the expected result or 0.01 less than the expected result as specified in Item (10) of this Rule. When the procedures set forth for approved breath testing instruments in Section .0300 of this Subchapter and for approved alcohol screening test devices in Section .0500 of this Subchapter are followed and the result specified herein is obtained, the instrument shall be deemed accurate;

(10) "Ethanol Gas Canister" means a dry gas calibrator producing an alcohol-in-inert gas sample at an accurately known concentration from a compressed gas cylinder. The resulting alcohol-in-inert gas sample corresponds to the equivalent concentration of 0.08.

10A NCAC 41B .0313 BREATH-TESTING INSTRUMENTS: REPORTING OF SEQUENTIAL TESTS

The Department approves breath-testing instruments listed on the National Highway Traffic Safety Administration, Conforming Products List of Evidential Breath Measurement Devices. Instruments are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Evaluations are not limited in scope and may include any factors deemed appropriate to ensure the accuracy, reliability, stability, cost, and ease of operation and durability of the instrument being evaluated.

10A NCAC 41B .0320 INTOXILYZER: MODEL 5000

The operational procedures to be followed in using the Intoxilyzer, Model 5000 are:

(1) Insure instrument displays time and date;

(2) Insure observation period requirements have been met;

(3) Press "START TEST"; when "INSERT CARD" appears, insert test record;

(4) Enter information as prompted;

(5) Verify instrument accuracy;

(6) When "PLEASE BLOW" appears, collect breath sample;

(7) When "PLEASE BLOW" appears, collect breath sample; and

(8) When test record ejects, remove.

If the alcohol concentrations differ by more than 0.02, a third breath sample shall be collected when "PLEASE BLOW" appears.

Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

10A NCAC 41B .0321 PREVENTIVE MAINTENANCE: INTOXILYZER : MODEL 5000

The preventive maintenance procedures for the Intoxilyzer Model 5000 to be followed at least once every four months are:

(1) Verify alcoholic breath simulator thermometer shows 34 degrees, plus or minus 2 degree centigrade;

(2) Verify instrument displays time and date;

(3) Press “START TEST”; when “INSERT CARD” appears, insert test record;

(4) Enter information as prompted;

(5) Verify instrument accuracy;

(6) When “PLEASE BLOW” appears, collect breath sample;

(7) When “PLEASE BLOW” appears, collect breath sample;

(8) When test record ejects, remove;

(9) Verify Diagnostic Program; and

(10) Verify alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record shall be kept on file for at least three years.

10A NCAC 41B .0322 INTOXIMETERS: MODEL INTOX EC/IR II

The operational procedures to be followed in using the Intoximeters, Model Intox EC/IR II are:

(1) Insure instrument displays time and date;

(2) Insure observation period requirements have been met;

(3) Initiate breath test sequence;

(4) Enter information as prompted;

(5) Verify instrument accuracy;

(6) When “PLEASE BLOW” appears, collect breath sample;

(7) When “PLEASE BLOW” appears, collect breath sample; and

(8) Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when “PLEASE BLOW” appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

10A NCAC 41B .0323 PREVENTIVE MAINTENANCE: INTOXIMETERS: MODEL INTOX EC/IR II

The preventive maintenance procedures for the Intoximeters, Model Intox EC/IR II to be followed at least once every four months are:

(1) Verify the ethanol gas canister displays pressure, or the alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;

(2) Verify instrument displays time and date;

(3) Initiate breath test sequence;

(4) Enter information as prompted;

(5) Verify instrument accuracy;

(6) When “PLEASE BLOW” appears, collect breath sample;

(7) When “PLEASE BLOW” appears, collect breath sample;

(8) Print test record;

(9) Verify Diagnostic Program; and

(10) Verify that the ethanol gas canister is being changed before expiration date, or the alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record shall be kept on file for at least three years.

10A NCAC 41B .0501 SCREENING TESTS FOR ALCOHOL CONCENTRATION

(a) This Section governs the requirement of G.S. 20-16.3 that the Department examine devices suitable for use by law enforcement officers in making on-the-scene tests of drivers for alcohol concentration and that the Department approve these devices and their manner of use. In examining devices for making chemical analyses, the Department finds that at present only screening devices for testing the breath of drivers are suitable for on-the-scene use by law enforcement officers.

(b) This Section does not address or in any way restrict the use of screening tests for impairment other than those based on chemical analyses, including various psychophysical tests for impairment.

10A NCAC 41B .0502 APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE

(a) Alcohol screening test devices that measure alcohol concentration through testing the breath of individuals are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Devices shall meet the minimum requirements as set forth in the Department specifications for Alcohol Screening Test Devices. Evaluations are not limited in scope and may include any factors deemed appropriate to insure the accuracy, reliability, stability, cost, and ease of operation and durability of the device being evaluated. On the basis of evaluations to date, approved devices are listed in 10A NCAC 41B .0503 of this Section.

(b) When the validity of an alcohol screening test of the breath of a driver administered by a law enforcement officer depends upon approval by the Department of the test device and its manner of use, the test shall be administered as follows:

1.The officer shall determine that the driver has removed all food, drink, tobacco products, chewing gum and other substances and objects from his mouth. Dental devices or oral jewelry need not be removed.
2. Unless the driver volunteers the information that he has consumed an alcoholic beverage within the previous 15 minutes, the officer shall administer a screening test as soon as feasible. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the officer shall disregard the first reading.
3. The officer may request that the driver submit to one or more additional screening tests.
4. In administering any screening test, the officer shall use an alcohol screening test device approved under 10A NCAC 41B .0503 of this Section in accordance with the operational instructions supplied by the Forensic Tests for Alcohol Branch and listed on the device.

10A NCAC 41B .0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION

(a) The following breath alcohol screening test devices are approved as to type and make:

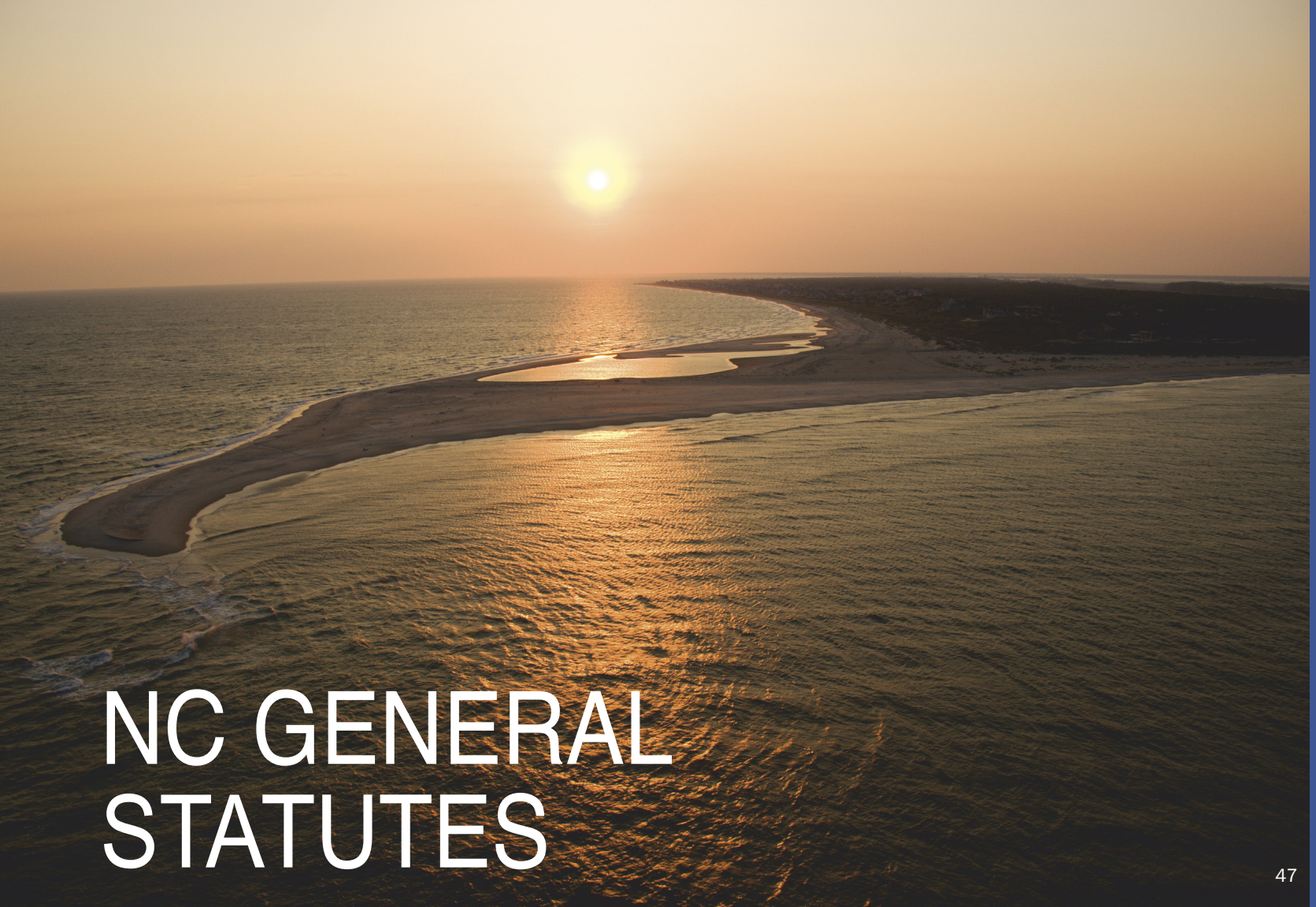
(1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.
(2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.
(3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
(4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.
(5) S-D2, manufactured by CMI, Inc.
(6) S-D5, manufactured by CMI, Inc.

(b) The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use. The verification shall be performed by employment of an alcoholic breath simulator using simulator solution in accordance with the rules in this Section or an ethanol gas canister.

(c) Alcoholic breath simulators used exclusively to verify instrument calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(d) Ethanol gas canisters used exclusively to verify instrument calibration of alcohol screening test devices shall not be utilized beyond the expiration date on the canister.

(e) Requirements of Paragraphs (b), (c), and (d) of this Rule shall be recorded on an alcoholic breath simulator log or an ethanol gas canister log designed by the Forensic Tests for Alcohol Branch and maintained by the user agency.



NC GENERAL STATUTES

DWI NCGS:

Chapter 8	**Rule 701, 702, 703, 704, and 705**
§ 7A-49.6	**Proceedings conducted by audio and video transmission**
§ 8-58.20	**Forensic analysis admissable as evidence**
§ 15A-601	**First appearance before a district court judge; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court.**
§ 15A-1225.3	**Forensic analyst remote testimony**
§ 15A-1343.3	**Division of Community Supervision and Reentry of the Department of Adult Correction to establish regulations for continuous alcohol monitoring systems; payment of fees; authority to terminate monitoring.**
§20-16.2	**Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to Request analysis**
§ 20-16.3	**Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Department of Health and Human Services; use of test results or refusal**
§ 20-16.3A	**Checking stations and roadblocks**
§ 20-16.5	**Immediate civil license revocation for certain persons charged with implied-consent offenses**
§ 20-17	**Mandatory revocation of license by Division**
§ 20-17.8	**Restoration of a license after certain driving while impaired convictions; ignition interlock**
§ 20-19	**Period of suspension or revocation; conditions of restoration**

§ 20-38.1	Applicability
§ 20-38.2	investigation
§ 20-38.3	Police processing duties
§ 20-38.4	Initial appearance
§ 20-38.5	Facilities
§ 20-38.6	Motions and District Court Procedure
§ 20-38.7	Appeal to Superior Court
§ 20-138.1	Impaired driving
§ 20-138.2	Impaired driving in commercial vehicle
§ 20-138.3	Driving by person less than 21 years old after consuming alcohol or drugs
§ 20-138.4	Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case
§ 20-138.5	Habitual impaired driving
§ 20-139.1	Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled drinking programs
§ 20-179	Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.
§ 20-179.1	Presentence investigation of persons convicted of offense involving impaired driving.
§ 20-179.3	Limited driving privilege DWI Punishment Chart

Rule 701. Opinion testimony by lay witness.

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue. (1983, c. 701, s. 1.)

Rule 702. Testimony by experts.

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply:
  (1) The testimony is based upon sufficient facts or data.
  (2) The testimony is the product of reliable principles and methods.
  (3) The witness has applied the principles and methods reliably to the facts of the case

(a1) Notwithstanding any other provision of law, a witness may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:
  (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
  (2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

(b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not give expert testimony on the appropriate standard of health care as defined in G.S. 90-21.12 unless the person is a licensed health care provider in this State or another state and meets the following criteria:
  (1) If the party against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:
  (1a) Specialize in the same specialty as the party against whom or on whose behalf the testimony is offered; or
  (1b) Specialize in a similar specialty which includes within its specialty the performance of the procedure that is the subject of the complaint and have prior experience treating similar patients.
  (2) During the year immediately preceding the date of the occurrence that is the basis for the action, the expert witness must have devoted a majority of his or her professional time to either or both of the following:
  (2a) The active clinical practice of the same health profession in which the party against whom or on whose behalf the

testimony is offered, and if that party is a specialist, the active clinical practice of the same specialty or a similar specialty which includes within its specialty the performance of the procedure that is the subject of the complaint and have prior experience treating similar patients; or

(2b) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered, and if that party is a specialist, an accredited health professional school, or accredited residency or clinical research program in the same specialty.

(b) Notwithstanding subsection (b) of this section, if the party against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence that is the basis for the action, must have devoted a majority of his or her professional time to either or both of the following:

(1) Active clinical practice as a general practitioner; or

(2) Instruction of students in an accredited health professional school or accredited residency or clinical research program in the general practice of medicine.

(d) Notwithstanding subsection (b) of this section, a physician who qualifies as an expert under subsection (a) of this Rule and who by reason of active clinical practice or instruction of students has knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff may give expert testimony in a medical malpractice action with respect to the standard of care of which he is knowledgeable of nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants licensed under Chapter 90 of the General Statutes, or other medical support staff.

(e) Upon motion by either party, a resident judge of the superior court in the county or judicial district in which the action is pending may allow expert testimony on the appropriate standard of health care by a witness who does not meet the requirements of subsection (b) or (c) of this Rule, but who is otherwise qualified as an expert witness, upon a showing by the movant of extraordinary circumstances and a determination by the court that the motion should be allowed to serve the ends of justice.

(f) In an action alleging medical malpractice, an expert witness shall not testify on a contingency fee basis.

(g) This section does not limit the power of the trial court to disqualify an expert witness on grounds other than the qualifications set forth in this section.

(h) Notwithstanding subsection (b) of this section, in a medical malpractice action as defined in G.S. 90-21.11(2)b. against a hospital, or other health care or medical facility, a person shall not give expert testimony on the appropriate standard of care as to administrative or other nonclinical issues unless the person has substantial knowledge, by

virtue of his or her training and experience, about the standard of care among hospitals, or health care or medical facilities, of the same type as the hospital, or health care or medical facility, whose actions or inactions are the subject of the testimony situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving. (1983, c. 701, s. 1; 1995, c. 309, s. 1; 2006-253, s. 6; 2007-493, s. 5; 2011-283, s. 1.3; 2011-400, s. 4; 2017-57, s. 17.8(b); 2017-212, s. 5.3.)

Rule 703. Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. (1983, c. 701, s. 1.)

Rule 704. Opinion on ultimate issue.

Testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. (1983, c. 701, s. 1.)

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless an adverse party requests otherwise, in which event the expert will be required to disclose such underlying facts or data on direct examination or voir dire before stating the opinion. The expert may in any event be required to disclose the underlying facts or data on cross-examination. There shall be no requirement that expert testimony be in response to a hypothetical question. (1983, c. 701, s. 1.

§ 7A-49.6. Proceedings conducted by audio and video transmission.

(a) Except as otherwise provided in this section, judicial officials may conduct proceedings of all types using an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. Judicial officials conducting proceedings by audio and video transmission under this section must safeguard the constitutional rights of those persons involved in the proceeding and preserve the integrity of the judicial process.

(b) Each party to a proceeding involving audio and video transmission must be able to communicate fully and confidentially with his or her attorney if the party is represented by an attorney.

(c) In a civil proceeding involving a jury, the court may allow a witness to testify by audio and video transmission only upon finding in the record that good cause exists for doing so under the circumstances.
(d) A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection, or if there is an objection and good cause is not shown, the presiding official may conduct the proceeding by audio and video transmission.
(e) Except as otherwise permitted by law, when the right to confront witnesses or be present is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained a knowing, intelligent, and voluntary waiver of the defendants or juvenile respondents rights.
(f) Proceedings conducted by audio and video transmission shall be held in a manner that complies with any applicable federal and state laws governing the confidentiality and security of confidential information.
(g) If the proceeding is one that is open to the public, then the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.
(h) If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with G.S. 7A-95, G.S. 7A-198, and other laws, as applicable.
(i) This section is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it, including G.S. 15A-1225.1, 15A-1225.2, 15-A-1225.3, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f).
(j) All proceedings under this section shall be conducted using videoconferencing applications approved by the Administrative Office of the Courts.
(k) As used herein, the term “judicial official” has the same meaning as in G.S. 15A-101 (5). (2021-47, s. 9(a).)

§ 8-58.20. Forensic analysis admissible as evidence.

(a) In any criminal prosecution a laboratory report of a written forensic analysis, including an analysis of the defendant’s DNA, or a forensic sample alleged to be the defendant’s DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that is signed and sworn to by the person performing the analysis shall be admissible in evidence without the testimony of the analyst who prepared the report in accordance with the requirements of this section.
(b) A forensic analysis to be admissible under this section, shall be performed by a laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses. The analyses of DNA samples and typing results of DNA samples shall be performed by a

laboratory that is accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing.

(c) The analyst who analyzes the forensic sample and signs the report shall complete an affidavit on a form developed by the State Crime Laboratory. In the affidavit, the analyst shall state (i) that the person is qualified by education, training, and experience to perform the analysis, (i) the name and location of the laboratory where the analysis was performed, and (iii) that performing the analysis is part of that person's regular duties. The analyst shall also aver in the affidavit that the tests were performed pursuant to the accrediting body standards for that discipline and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the investigating officer and the District Attorney in the prosecutorial district in which the criminal charges are pending. An affidavit by a forensic analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any criminal proceedings with respect to the forensic analysis administered and the procedures followed.

(d) The District Attorney shall serve a copy of the laboratory report and affidavit and indicate whether the report and affidavit will be offered as evidence at any proceeding against the defendant on the attorney of record for the defendant, or on the defendant if that person has no attorney, no later than five business days after receiving the report and affidavit, or 30 business days before any proceeding in which the report may be used against the defendant, whichever occurs first.

(e) Upon receipt of a copy of the laboratory report and affidavit, the attorney of record for the defendant or the defendant if that person has no attorney, shall have 15 business days to file a written objection to the use of the laboratory report and affidavit at any proceeding against the defendant. The written objection shall be filed with the court in which the matter is pending with a copy provided to the District Attorney.

(f) If the defendant’s attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the objection shall be deemed waived and the laboratory report and affidavit shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence.

(g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses. -

(1) For the purpose of establishing the chain of physical custody or control of evidence that has been subjected to forensic analysis performed as provided in subsection (b) of this section, a statement signed by each successive person in the

chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

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

(3) The provisions of this subsection may be utilized by the State only if (i) the State notifies the defendant at least 15 business days before any proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement and (ii) the defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the statement into evidence.

(4) In lieu of the notice required in subdivision (3) of this subsection, the State may include the statement with the laboratory report and affidavit, as provided in subsection (d) of this section.

(5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement.

(6) Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or witness, except an analyst regarding the results of forensic testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to G.S. 15A-1225.3. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) This section does not apply to chemical analyses under G.S. 20-139.1

§ 15A-601. First appearance before a district court judge; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court; use of two-way audio and video transmission.

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

(a1), (a2) Repealed by Session Laws 2021-47, s. 10(g), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, the judge may consolidate those proceedings and the proceedings under this Article.

(c) Unless the courthouse is closed for transactions for a period longer than 72 hours or the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within 72 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the courthouse is closed for transactions for a period longer than 72 hours, the first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody or is released pursuant to Article 26 of this Chapter, Bail, prior to a first appearance, the first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

(d) Upon motion of the defendant, the first appearance before a District Court judge may be continued to a time certain. The defendant may not waive the holding of the first appearance before a District Court judge but he need not appear personally if he is represented by counsel at the proceeding.

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within 72 hours after the defendant is taken into custody, or 96 hours after the defendant is taken into custody if the courthouse is closed for transactions for a period longer than 72 hours. A magistrate may conduct the first appearance if the clerk is not available. For the limited purpose of conducting a first appearance and notwithstanding any other provision of law, the clerk or magistrate shall proceed under this article as a District Court judge would and shall have the same authority that a District Court judge would have at a first appearance.

§ 15A-1225.3 Forensic Analyst Remote Testimony

(a) Definitions. – The following definitions apply to this section:.

(1) Criminal proceeding. - Any hearing or trial in Superior Court in a prosecution of a person charged with violating a

criminal law of this state and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the general statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.

(1a) District Court proceeding. - Any hearing or trial in District Court in a prosecution of a person charged with violating a criminal law in this state.

(2) Remote testimony. - A method by which a forensic analyst testifies from a location other than the location where the hearing or trial is being conducted and outside the physical presence of a party or parties.

(b) Remote Testimony Authorized. In Real Time Authorized for Criminal Proceeding. - In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G S. 8-58.20(d). For purposes of this subdivision, “report” means the full laboratory report package provided to the District Attorney.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence we used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony.

(3) The defendant’s attorney of record ,or the defendant if that person has no attorney, fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

(b1) Remote Testimony in Real Time Authorized in District Court. – In any district court proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, and the testimony of each person in the associated chain of custody admissible pursuant to G.S. 8-58.20(g) shall be permitted by remote testimony if each of the following occurs:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by G.S. 8-58.20(d) and (g). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony in real time.

Nothing in this subsection shall be construed to determine the admissibility of evidence in a criminal proceeding in superior court, including a trial de novo pursuant to G.S. 15A-1431.

(c) Testimony. – The method used for remote testimony authorized by this section shall allow the trier of fact and all parties to observe the demeanor of the analyst remote witness as the analyst witness testifies in a similar manner as if the analyst witness were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the witness.

(d) Nothing in this section shall preclude the right of any party to call any witness, except an analyst regarding the results of forensic testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in a district court proceeding pursuant to subsection (b1) of this section.

(e) Nothing in this section shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose."

§ 15A-1343.3. Division of Community Supervision and Reentry of the Department of Adult Correction to establish regulations for continuous alcohol monitoring systems; payment of fees; authority to terminate monitoring.

(a) The Division of Community Supervision and Reentry of the Department of Adult Correction shall establish regulations for continuous alcohol monitoring systems that are authorized for use by the courts as evidence that an offender on probation has abstained from the use of alcohol for a specified period of time. A “continuous alcohol monitoring system” is a device that is worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer’s system over a continuous 24-hour daily basis. The regulations shall include the procedures for supervision of the offender, collection and monitoring of the results, and the transmission of the data to the court for consideration by the court. All courts, including those using continuous alcohol monitoring systems prior to July 4, 2007, shall comply with the regulations established by the division pursuant to this section.

The Secretary, or the Secretary’s designee, shall approve continuous alcohol monitoring systems for use by the courts prior to their use by a court as evidence of alcohol abstinence, or their use as a condition of probation. The Secretary shall not unreasonably withhold approval of a continuous alcohol monitoring system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(b) Any fees or costs paid by an offender on probation in order to comply with continuous alcohol monitoring shall be paid directly to the monitoring provider. A monitoring provider shall not terminate the provision of continuous alcohol monitoring for nonpayment of fees unless authorized by the court.

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

(a) Basis for Officer to Require Chemical Analysis; Notification of Rights. - Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied- consent offense may obtain a chemical analysis of the person.

Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person they notice in writing that:

(1) You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your driver's license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
(2) Repealed by Session Laws 2006-253, s. 15, effective December 1, 2006, and applicable to offenses committed on or after that date.
(3) The test results, or the fact of your refusal, will be admissible in evidence at trial.
(4) Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
(5) After you are released, you may seek your own test in addition to this test.
(6) You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

(a1) Meaning of Terms. - Under this section, an "implied-consent offense" is an offense involving impaired driving, a violation of G.S. 20-141.4(a2), or an alcohol- related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued.

(b) Unconscious Person May be Tested. - If a law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person

incapable of refusal, the law enforcement officer may direct the taking of a blood sample or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. - A law enforcement officer or chemical analyst shall designate the type of test or tests to be given and may request the person charged to submit to that type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. - whenever a person refuses to submit to a chemical analysis, a person has an alcohol concentration of 0.15 or more, or a person's driver's license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the law enforcement officer and the chemical analyst shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the driver's license;
(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration on the driver's license;
(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;
(4) The person was notified of the rights in subsection (a); and
(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis.

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

(d) Consequences of Refusal; Right to Hearing before Division; Issues. - Upon receipt of a properly executed affidavit required by subsection (c1), the Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the thirtieth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly

requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witness or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing the hearing shall be conducted in the county where the charge was brought and shall be limited to consideration of whether:

(1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;
(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied- consent offense or violated the alcohol concentration restriction on the drivers license;
(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
(4) The person was notified of the person's rights as required by subsection (a); and
(5) The person willfully refused to submit to a chemical analysis.

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

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have been terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for the hearing. If the person's drivers license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. - If the revocation for a willful refusal is sustained after the hearing the person whose license has been revoked has the right to file a petition in the Superior Court district or set of districts defined in G.S. 7A - 41.1, where the charges were made, within 30 days thereafter for a hearing on the record. The Superior Court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusion of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.

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

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

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

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

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

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

a. Other than by conviction; or

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

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

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

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

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the Superior Court, the hearing shall be conducted in the Superior Court district or set of districts as defined by G.S. 7A-41.1 in which the refusal occurred by a Superior Court judge. A limited driving privilege issued under the section authorizes a person to drive if the person’s license is revoked solely under this section

or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

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

(g) Repealed by Session Laws 1973, c. 915.

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

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

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

(2) Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21;

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

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

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

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:

(1a) Committed a moving traffic violation; or

(1b) Been involved in an accident or collision; or

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

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

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

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

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

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

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

§ 20-16.3A. Checking stations and roadblocks.

(a) A law-enforcement agency may conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

(1) Repealed by Session Laws 2006 253, s. 4, effective December 1, 2006, and applicable to offenses committed on or after that date.

(2) Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to produce drivers license, registration, or insurance information.

(2a) Operate under a written policy that provides guidelines for the pattern, which need not be in writing. The policy may be either the agency's own policy, or if the agency does not have a written policy, it may be the policy of another law

enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, if of the vehicles stopped, which driver is requested to produce drivers license, registration, or insurance information. If officers of a law-enforcement agency are operating under another agency's policy, it must be stated in writing.

(3) Advise the public that an authorized checking station is being operated by having, at a minimum, one law-enforcement vehicle with its blue light in operation during the conducting of the checking station.

(a1) A pattern designated by a law-enforcement agency pursuant to subsection (a) of this section shall not be based on a particular vehicle type, except that the pattern my designate any type of commercial motor vehicle as defined in G.S. 20-4.01(3d). The provisions of this subsection shall apply to this Chapter only and are not to be construed to restrict any other type of checkpoint or roadblock which is lawful and meets the requirements of subsection (c) of this section.

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

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

(d) The placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station.

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. – As used in this section the following words and phrases have the following meanings:

(1) Law-Enforcement Officer. – As described in G.S. 20-16.2(a1).

(2) Clerk. – As defined in G.S. 15A-101(2).

(3) Judicial Official. – As defined in G.S. 15A-101(5).

(4) Revocation Report. – A sworn statement by a law-enforcement officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met, and whether the person has a pending offense

for which the person's license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analyst.

(5) Surrender of a Driver's License. – The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. A person's driver's license is subject to revocation under this section if:

(1) A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has any alcohol concentration of 0.08 or more at any relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) The person has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving;

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; or

c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and

(3) The person is charged with an implied-consent offense.

(c) Duty of Law-Enforcement Officers and Chemical Analysts to Report to Judicial Officials. – If a person's driver's license is subject to revocation under this section, the law-enforcement officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section.

It is the specific duty of the law-enforcement officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. – The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:

a. No revocation report has previously been filed; and

b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is Present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) And (2) are not applicable at the time the law enforcement officer must file the report.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the law enforcement officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. – When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. For purposes of this subsection, a properly executed report under subdivision (d)(3) may include a sworn statement by the law-enforcement officer along with an affidavit received directly by the Clerk from the chemical analyst. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty-days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty-days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or
b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or
c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or
d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up

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

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. – A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. – After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:
(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or
(2) The magistrate or judge has ordered the revocation rescinded.
If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

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

(j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of one hundred dollars ($100.00) as costs for the action before the person's license may be returned under subsection (h) of this section. Fifty percent (50%) of the costs collected under this section shall be credited to the General Fund. Twenty five percent (25%) of the costs collected under this section shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services. The remaining twenty five percent (25%) of the costs collected under this section shall be remitted to the county for the sole purpose of reimbursing the county for jail expenses incurred due to enforcement of the impaired driving laws.

(k) Report to Division. – Except as provided below, the clerk shall mail a report to the Division:
(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and
(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report shall identify the person whose license has been revoked, specify the date on which his license was revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 30-day period had elapsed.

(l) Restoration Fee for Unlicensed Persons. – If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. – Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. – Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;
(2) Has no limited driving privilege; and
(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. – Proceedings under this section are civil actions, and must be identified by the caption "In the Matter of _____" and filed as directed by the Administrative Office of the Courts.

(p) Limited Driving Privilege. – A person whose drivers license has been revoked for a specified period of 30 or 45 days under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for Less than one year;
(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;
(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days
(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program

A person whose license has been indefinitely revoked under this section may, after completion of 30 days under subsection (e) or the applicable period of time under subdivision (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite revocation, a judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, except that the requirements in G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any District Court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid

§ 20-17. Mandatory revocation of license by Division.

(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. 20-138.2, if the driver's alcohol concentration level was .06 or higher. For the purposes of this sub subdivision, the driver's alcohol concentration level result, obtained by chemical analysis, shall be conclusive and is not subject to modification by any party, with or without approval by the court.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction, within a period of 12 months, of (i) two charges of reckless driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

(7) Conviction upon one charge of aggressive driving or reckless driving while engaged in the illegal transportation intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly

permitting or allowing another to commit any of the foregoing acts.

(9) Any offense set forth under G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7.

(13) A second or subsequent conviction, as defined in

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B.

(15) A conviction of malicious use of an explosive or incendiary device to damage property (G.S. 14-49(b) and

(16) A second or subsequent conviction of larceny of motor fuel under G.S. 14-72.5. A conviction for violating G.S. 14-72.5 is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under G.S. 14-72.5 that occurred in the seven years immediately preceding the date of the current offense

(17) A third or subsequent conviction of operating a private passenger automobile with prohibited modifications on any highway or public vehicular area under G.S. 20-135.4(d). A conviction for violating G.S. 20-135.4(d) is a third or subsequent conviction if at the time of the current infraction the person has two or more previous convictions under G.S. 20-135.4 that occurred in the 12 months immediately preceding the date of the current infraction.

(b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:

(1) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obliger who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110- 142.2 or G.S. 50-13.12. The obliger shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12; or

(2) Revoke the drivers license of any person who has willfully failed to complete court-ordered community service and a court has issued a revocation order. This revocation shall continue until the Division receives certification from the clerk of court that the person has completed the court-ordered community service. No person whose drivers license is revoked pursuant to this subdivision shall be entitled to any other hearing before the Division as a result of this revocation.

§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and any of the following conditions is met:

(1) The person had an alcohol concentration of 0.15 or more.

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven

driving privilege was held shall be applied toward the requirements of subsection (c).

(e) Notice of Requirement. - When a court reports to the Division a conviction of a person who is subject to this section, the division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. - A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked Not Charged. - A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person’s license revoked by the Division for a period of one year.

(h) Beginning of Revocation Period. - If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. - If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the thirtieth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. - If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period

required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, except when the evidence of the violation is an alcohol concentration report from an ignition interlock system, the hearing may be conducted in the county where the person resides. The hearing must be limited to consideration of whether both of the following conditions were met:

(1) The drivers license of the person had an ignition interlock requirement.

(2) Any of the following conditions occurred:

a. The person was driving a vehicle that was not equipped with a functioning ignition interlock system.

b. The person did not personally activate the ignition interlock system before driving the vehicle.

c. The person was driving a vehicle in violation of an applicable alcohol concentration restriction prescribed by subsection (b)(3) of this section.

d. The person was driving a vehicle that was not designated in accordance with subsection (c1) of this section.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. - When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully compiled with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section.

(l) Medical Exception to Requirement. - A person subject to this section solely for the reason set forth in subdivision (a)(1) of this section and who has a medically diagnosed physical condition that makes the person incapable of personally

activating an ignition interlock system may request an exception to the requirements of this section from the Division. the Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4). This subsection shall not apply to persons subject to an ignition interlock requirement under this section for the reasons set forth in subdivision (a)(2) or (a)(3) of this section.

§ 20-19. Period of suspension or revocation; conditions of restoration. ...

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a),

subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows.

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving.

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving.

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.02 at any relevant time after the driving.

(3a) For any restoration of a drivers license (i) for a person convicted of driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, or (ii) revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense which the person's license was revoked prohibits substantially similar conduct which if committed in this state would result in a conviction of driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this state would result a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

(5) For any restoration of a drivers license pursuant to G.S. 20-17.8 requiring an ignition interlock system, that the person not operate a vehicle with an alcohol concentration of 0.02 or more at any relevant time after the driving during the period that the ignition interlock is required.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while the person has remaining in the person's body any alcohol or controlled substance previously consumed. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. - When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. – Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the thirtieth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued

under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether all of the following conditions exist:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration Restriction.

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a).

(3) The drivers license of the person had an alcohol concentration restriction.

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. - There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which the person has been convicted, which offense occurred within three years immediately preceding the date of the offense for which the person's license is being revoked, or (ii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a3), the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if the person provides the Division with satisfactory proof that both of the following requirements are met:

(1) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and drugs.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the

restoration consideration. All of the following requirements apply when providing proof that the requirement set forth in this subdivision has been met:

a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.
b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has two or more previous offenses involving Impaired driving for which the person has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which the person's license is being revoked, (ii) G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense resulting in the revocation, or (iii)G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.

(e1) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least three years under subsection (e) if the person provides the Division with satisfactory proof of all of the following:

(1) In the three years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.
(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during a period of revocation immediately prior to the restoration consideration. All of the following requirements apply when providing proof that the requirement set forth in this subdivision has been met:
    a. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence if the Division receives sufficient documentation that reflects that the person abstained from alcohol use during the monitoring period.
    b. The continuous alcohol monitoring system shall be a system approved under G.S. 15A-1343.3.
    c. The Division may establish guidelines for the acceptance of evidence of abstinence under this subdivision.

(e2) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides

the Division with satisfactory proof of all of the following:

(1) The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction.

(2) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) The person is not currently an excessive user of drugs or prescription drugs.

(4) The person is not unlawfully using any controlled substance.

(e3) If the Division restores a person's license under subsection (e1), (e2), or (e4) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration.

(e4) When a person's license is revoked under G.S. 20-138.5(d), the Division may conditionally restore the license of that person after it has been revoked for at least 10 years after the completion of any sentence imposed by the court, if the court, if the person provides the Division with satisfactory proof of all of the following:

(1) In the 10 years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any other criminal offense.

(2) The person is not currently a user of alcohol, unlawfully using any controlled substance, or an excessive user of prescription drugs.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(g2) When a license is revoked under G.S. 20-17(a)(16), the period of revocation is 90 days for a second conviction and six months for a third or subsequent conviction. The term "second or subsequent conviction" shall have the same meaning as found in G.S. 20-17(a)(16).

(g3) When a license is revoked under G.S. 20-17(a)(17), the period of revocation shall be not less than one year.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under G.S. 20-17(a)(1) or G.S. 20-17(a)(9), and the offense is one involving impaired

driving and a fatality, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least five years under this subsection if the person provides the Division with satisfactory proof that both of the following requirements are met:

(1) In the five years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to seven years from the date of restoration.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the person seeking to have the person's driver's license restored shall submit to the Division proof that the person has notified the person's insurance agent or company that the person is seeking the restoration and that the person is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

Subdivisions (1) and (2) of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for

suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of 30 days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

§ 20-38.1. Applicability.

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division. (2006-253, s. 5.)

§ 20-38.2. Investigation.

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to investigate and seek evidence of the driver's impairment anywhere in-state or out-of-state, and to make arrests at any place within the State. (2006-253, s. 5.)

§ 20-38.3. Police processing duties.

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

(1) Shall inform the person arrested of the charges or a cause for the arrest.
(2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.
(3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.
(4) May take photographs and fingerprints in accordance with G.S. 15A-502.
(5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.(2006-253, s. 5.)

§ 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. - Except as modified in this Article, a magistrate shall follow the procedures set forth in

Article 24 of Chapter 15A of the General Statutes.

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

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

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

(4) The magistrate shall also:

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

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

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

§ 20-38.5. Facilities.

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

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

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

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

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

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner

of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section. (2006-253, s. 5.)

§ 20-38.6. Motions and District Court Procedure.

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

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

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

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

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

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal. (2006-253, s. 5.)

§ 20-38.7. Appeal to Superior Court.

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

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

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the

district court shall hold a new sentencing hearing and shall consider any new convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(2) If the appeal is withdrawn and remanded pursuant to G.S 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court.

(d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:

(1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated sentence, and

(2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179. A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall

have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal. (2006-253, s. 5; 2007-493, s. 9; 2008-187, s. 10.)

§ 20-138.1. Impaired driving.

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

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

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

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

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

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

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

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

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

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

§ 20-138.2. Impaired driving in commercial vehicle.

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

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

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or

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

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12e), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

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

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

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

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

(e) Punishment. - The offense in this section is a misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of

the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

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

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

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

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

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

(b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to its manner and use. Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable shall be imposed.

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

Is 18, 19, or 20 years old on the date of the offense.
Has not previously been convicted of a violation of this section.
The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:
(1) Enters a voluntary dismissal; or
(2) Accepts a plea of guilty or no contest to a lesser included offense; or
(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not a case subject to the implied-consent law; or
(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law.
General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:
(1) The alcohol concentration or the fact that the driver refused.
(2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
(3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
(4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
(5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
(6) The name and agency of the charging officer and whether the officer is available.
(7) Any reason why the charges are dismissed.

(c) **(See Editor's note on effective date)** A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and

and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request.

§ 20-138.5. Habitual impaired driving.

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

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

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

(d) A person convicted under this section shall have his license permanently revoked.
If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies: The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving. The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest.

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

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

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

(1) It is performed in accordance with the rules of the Department of Health and Human Services.

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

employed. For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. – Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

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

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

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

(b3) Sequential Breath Tests Required. – The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analyses is of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c). A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Repealed by Session Laws 2006-253, s. 16, effective December 1, 2006, and applicable to offenses committed on or after that date

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of a law-enforcement officer; except that a person charged with a violation of G.S. 20-141.4 shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then requesting a blood sample shall be in the discretion of a law-enforcement officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S.20-16.2 If a person willfully refuses to provide a blood sample under this subsection, and the person is charged with a violation of G.S. 20-141.4 then a law-enforcement officer with probable cause to believe that the offense involved impaired driving or was an alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a charge and is not an appeal-able issue.

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

(c) Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, when a blood or urine test is specified as the type of chemical analysis by a law-enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the law-enforcement officer's request for the withdrawal of blood or collecting the urine, the officer shall furnish it before blood is withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a law-enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood or collecting urine, may be held criminally or civilly liable by reason of withdrawing the blood or collecting the urine, except that there is no immunity from liability for negligent acts or omissions. A person requested to withdraw blood or collect urine pursuant to

this subsection may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the officer requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal.

(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. For the purposes of this section, a "laboratory approved for chemical analysis" by the DHHS includes, but is not limited to, any hospital laboratory approved by DHHS pursuant to the program resulting from the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA). The results shall be certified by the person who performed the analysis.

The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

(1) The State notifies the defendant no later than 15 business days after receiving the report and at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence. If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence. If the proceeding at which the report would be introduced into evidence under this subsection is continued, the notice provided by the State, the written objection filed by the defendant, or the failure of the defendant to file a written objection shall remain effective at any subsequent calendaring of that proceeding. The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services. Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) Repealed by Session Laws 2013-194, s. 1, effective June 26, 2013.

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

(1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to

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

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) or the affidavit provided for in subsection (e1) of this section, as applicable.

(3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

a The State notifies the defendant no later than 15 business days after receiving the statement and at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides a copy of the statement to the defendant, and

b The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence. If the proceeding at which the statement would be introduced into evidence under this subsection is continued, the notice provided by the State, the written objection filed by the defendant, or the failure of the defendant to file a written objection shall remain effective at any subsequent calendaring of that proceeding.

(4) Nothing in this subsection precludes the right of any party to call any witness, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to subsection (c6) of this section. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the statement.

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

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

(2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed by a laboratory that is accredited by an accrediting body hat requires conformance to forensic specific requirements and which is a signatory

to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission, identification, analysis, and storage of forensic analyses.

(c5) The testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and in any court, if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, the the objections shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

The method used for remote testimony authorized by this subsection shall allow the trier of fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar manner as if the analyst were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the analyst. Nothing in this section shall preclude the right of any party to call any witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

(c6) The testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, and the testimony of each person in the associated chain of custody admissible pursuant to subsection (c3) of this section shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in district court, if each of the following occurs

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.

The method used for remote testimony authorized by this subsection shall allow the trier of fact and all parties to observe

the demeanor of the remote witness as the witness testifies in a similar manner as if the witness were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

Nothing in this subsection shall preclude the right of any party to call any witness, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to this subsection.

(d) Right to Additional Test. – Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.5. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law-enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained. A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the officer requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or

urine under this subsection shall be admissible if performed by the State Crime Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. - A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

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

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

(2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventative maintenance, the date the most recent preventative maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit.

(e2) Except as governed by subsection (c1) or (c3) of this section, the State can only use the provisions of subsection (e1) of this section if:

(1) The State notifies the defendant no later than 15 business days after receiving the affidavit and at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the defendant, and

(2) The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the affidavit would be used that the defendant objects to the introduction of the affidavit into evidence.

The failure to file a timely objection as provided in this subsection shall be deemed a waiver of the right to object to the admissibility of the affidavit, and the affidavit shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of

evidence. The case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

If the proceeding at which the affidavit would be introduced into evidence under this subsection is continued, the notice provided by the State, the written objection filed by the defendant, or the failure of the defendant to file a written objection shall remain effective at any subsequent calendaring of that proceeding.
Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any witness, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to subsection (c6) of this section. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the affidavit.

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

(g) Controlled-Drinking Programs. - The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol.

(h) Disposition of Blood Evidence. - Notwithstanding any other provision of law, any blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance pursuant to this section may be destroyed by the analyzing agency 12-months after the case is filed or after the case is concluded in the trial court and not under appeal, whichever is later, without further notice to the parties. However, if a Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the custody of the analyzing agency or the agency that collected the sample until dispositive order of a court of competent jurisdiction is entered.

SECTION 2. This act becomes effective October 1, 2016, and applies to trials commencing on or after that date. In the General Assembly read three times and ratified this the 1st day of June, 2016.

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

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

Except for the factors in subdivisions (4), (6), (6a), 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 abstention from alcohol as verified by a continuous alcohol monitory 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.

(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.

§ 20-179.1. Presentence investigation of persons convicted of offense involving impaired driving

When a person has been convicted of an offense involving impaired driving, the trial judge may request a presentence investigation to determine whether the person convicted would benefit from treatment for habitual use of alcohol or drugs. If the person convicted objects, no presentence investigation may be ordered, but the judge retains his power to order suitable treatment as a condition of probation, and must do so when required by statute.

§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. - A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:
(1) The person's employment.
(2) The maintenance of the person's household.
(3) The person's education.
(4) The person's court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.
(7) Religious worship.

(b) Eligibility-
(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if all of the following requirements are met:
a. At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.
b. At the time of the offense the person had not within the preceding seven years been convicted of an offense involving impaired driving.
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving.

d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the the person for, an offense involving impaired driving.
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331.1 is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license that had been expired for less than one year and either of the following requirements is met:
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed.
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. - A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. A person whose license is revoked revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(c1) Repealed by Session Laws 2021-182, s. 1(a), effective December 1, 2021, and applicable to limited driving privileges issued on or after that date.

(d) Application for and Scheduling of Subsequent Hearing. - The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1. as the case may be, in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in

G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. - A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under G.S. 20-17(a)(2) or as a result of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. - Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". - Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. - In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. - If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, the applicant must present documentation of that fact before the judge may authorize the applicant to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, the judge may authorize the

applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which the applicant will be driving to and from work, or if the applicant is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which the applicant will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1). Driving to and from the applicant's place of religious worship is subject to the same limitations applicable to work-related driving under subsections (g) and (g1) of this section.

(g3) Ignition Interlock Allowed. - A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock

system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system.

(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(g5) Ignition Interlock Required. - If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.15 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.02. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(h) Other Mandatory and Permissive Conditions or Restrictions. - In all limited driving privileges the judge shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while the applicant has remaining in the applicant's body any alcohol or controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. - A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or the judge must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. - A person holding a limited driving privilege who violates any of its restrictions commits the offense of driving while license is revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the person holding a limited driving privilege has consumed alcohol while driving or has driven while the person has remaining in the person's body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person holding a limited driving privilege is charged with driving while license revoked by violating a restriction contained in the limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the person to surrender the limited driving privilege. The judicial official must also notify the person that the person is not entitled to drive until the case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(j1) Effect of Violation of Community Service Requirement. - Divison of Community Supervision and Reentry staff shall report significant violations of the terms of a probation judgment related to community service to the court that ordered the community service. The court shall then conduct a hearing to determine if there was a willful failure to comply. The hearing may be held in the district where the requirement was imposed, where the alleged violation occurred, or where the probationer resides. If the court determines that there was a willful failure to pay the prescribed fee or to complete the work as ordered within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until community service requirements have been met. In addition, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. - The clerk of court or the child support

enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the person holding the privilege that it considers the privilege void and that the Division records will not indicate that the person has a limited driving privilege.

(l) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance.

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2024-30
HOUSE BILL 199

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE, LIEN HEARING NOTIFICATION, AND SERVICE OF PROCESS LAWS OF THE STATE, AS RECOMMENDED BY THE DIVISION OF MOTOR VEHICLES OF THE DEPARTMENT OF TRANSPORTATION, AND TO MAKE OTHER CHANGES TO LAWS RELATED TO TRANSPORTATION.

The General Assembly of North Carolina enacts:

CLARIFY SCOPE OF INTERLOCK REQUIREMENT

SECTION 2.(a) G.S. 20-17.8 reads as rewritten:

"§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.

…

(a1) Additional Scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5. Except for a conviction under G.S. 20-141.4(a2), this section also applies to a person whose license was revoked as a result of a conviction under G.S. 20-141.4 if the person was engaged in the offense of impaired driving under G.S. 20-138.1 and had an alcohol concentration of 0.08 or more at the time of the offense, or the person was engaged in the offense of impaired driving under G.S. 20-138.2 and had an alcohol concentration of 0.04 or more at the time of the offense.

…."

SECTION 2.(b) This section becomes effective December 1, 2024, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

HOUSE BILL 250
RATIFIED BILL

AN ACT TO MAKE REVISIONS PERTAINING TO DEATH INVESTIGATIONS UNDER THE JURISDICTION OF THE OFFICE OF THE CHIEF MEDICAL EXAMINER, TO MODIFY CERTAIN LAWS RELATED TO LIMITED DRIVING PRIVILEGES AND RESTORATION OF A LICENSE AFTER CERTAIN DRIVING WHILE IMPAIRED CONVICTIONS, TO MODIFY SECTION 5 OF SESSION LAW 2023-151 RELATED TO THE LICENSE PLATE READER PILOT PROGRAM, TO MODIFY THE RURAL ELECTRIFICATION

AUTHORITY AND CERTAIN FEES, TO ALLOW SCHOOL BOARDS TO USE EMINENT DOMAIN FOR EASEMENTS, TO ADD TIANEPTINE TO THE CONTROLLED SUBSTANCE SCHEDULES, TO EXEMPT LEASES OF PROPERTY BY THE HALIFAX-NORTHAMPTON REGIONAL AIRPORT AUTHORITY FROM GENERAL LAWS REGARDING DISPOSAL OF PROPERTY AND TO ALLOW THE AUTHORITY TO ENTER INTO CERTAIN LEASES FOR A TERM OF UP TO FORTY YEARS, AND TO REMOVE THE VETERANS BURIAL RESIDENCY REQUIREMENT.

The General Assembly of North Carolina enacts:

IGNITION INTERLOCK AND LIMITED DRIVING PRIVILEGE CHANGES

SECTION 2.(a) G.S. 20-179.3 reads as rewritten:

"§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. – A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) The person's employment.
(2) The maintenance of the person's household.
(3) The person's education.
(4) The person's court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.
(7) Religious worship.

(b) Eligibility. –

(1) ~~A~~ Except as otherwise provided in subdivision (3) of this subsection, a person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if all of the following requirements are met:

a. At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.
b. At the time of the offense the person had not within the preceding seven years been convicted of an offense involving impaired driving.
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving.
d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331.1 is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and either of the following requirements is met:

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed.

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(3) A person convicted of the offense of impaired driving under G.S. 20-138.1 that has been convicted of not more than one offense involving impaired driving within the preceding seven years is eligible for a limited driving privilege if all of the following requirements are met:

a. At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.

b. At the time of the offense the person did not have an alcohol concentration of 0.15 or more.

c. One of the following punishment levels was imposed for the offense of impaired driving:

1. Punishment Level Three, Four, or Five.

2. Punishment Level Two, but only if the Grossly Aggravating Factor determined to impose Punishment Level Two was the Grossly Aggravating Factor provided in G.S. 20-179(c)(1).

d. Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if the person would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

...

(g3) Ignition Interlock Allowed. – A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against. All approved vendors shall report all attempts to start the vehicle with an alcohol concentration greater than 0.02 or any other 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 to the Commissioner in accordance with Division requirements.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system.

(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.15 or ~~more,~~ more or is eligible for a limited driving privilege pursuant to subdivision (b)(3) of this section, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol

concentration of greater than 0.02. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against. All approved vendors shall report all attempts to start the vehicle with an alcohol concentration greater than 0.02 or any other 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 to the Commissioner in accordance with Division requirements.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

If the limited driving privilege order includes the restrictions set forth in this subsection, then the limitations set forth in subsections (a), (f), (g), (g1), and (g2) of this section do not apply when the person is operating the designated motor vehicle with a functioning ignition interlock system. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court. The removal of the ignition interlock system prior to the end of the revocation period or any extension shall void the limited driving privilege and the Division shall remove the limited driving privilege from the person's driving record. The interlock provider shall notify the holder of the limited driving privilege that removal voids the limited driving privilege in accordance with Division policy. The Division shall notify the person by first class mail at the address on file with the Division that the limited driving privilege is void and does not authorize driving due to removal of the ignition interlock system.

…

(j) Effect of Violation of Restriction. – ~~A~~ Except as otherwise provided in subsection (j2) of this section, a person holding a limited driving privilege who violates any of its restrictions commits the offense of driving while license is revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the person holding a limited driving privilege has consumed alcohol while driving or has driven while the person has remaining in the person's body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person holding a limited driving privilege is charged with driving while license revoked by violating a restriction contained in the limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the person to surrender the limited driving privilege. The judicial official must also notify the person that the person is not entitled to drive until the case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No

alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

…

(j2) Effect of Ignition Interlock System Violation During Final 90-Day Period. – Notwithstanding subsection (j) of this section, a person holding a limited driving privilege, including the restriction set forth in subsection (g5) of this section who commits an ignition interlock system violation during the 90-day period immediately preceding the date on which the person's compliance with subsection (g5) of this section is to end, shall have the period of revocation and authorization to drive with the limited driving privilege in compliance with subsection (g5) of this section extended for an additional period of 90 days or until the person has been violation-free for such extended period. For purposes of this subsection, the term "ignition interlock system violation" means any of the following:

(1) Any attempt to start the vehicle with an alcohol concentration greater than 0.02 or violation of any of the other restrictions set forth in subsection (g5) of this section.

(2) A violation of G.S. 20-17.8A.

(3) A violation of any of the policies established by the Division for use of an ignition interlock system on a designated motor vehicle.

The Division shall notify the holder of the limited driving privilege of any violation and the right to appeal in accordance with Division policy. The Division shall provide for a telephonic hearing if the holder appeals an extension. The extension shall continue pending appeal. The Division shall send notice of the extension to the person holding the limited driving privilege by first class mail to the address on file with the Division.

…."

SECTION 2.(b) G.S. 20-17.8 reads as rewritten:

"§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and any of the following conditions is met:

(1) The person had an alcohol concentration of 0.15 or more.

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(3) The person was sentenced pursuant to G.S. 20-179(f3).

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration.

(a1) Additional Scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5. Except for a conviction under G.S. 20-141.4(a2), this section also applies to a person whose license was revoked as a result of a conviction under G.S. 20-141.4.

(b) Ignition Interlock Required. – Except as provided in subsection (*l*) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against. All approved vendors shall report all attempts to start the vehicle with an alcohol concentration greater than 0.02 or any other 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 to the Commissioner in accordance with Division requirements.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.02 or greater.

(c) Length of Requirement. – ~~The~~ Except as otherwise provided in subsection (g1) of this section, the requirements of subsection (b) shall remain in effect for one of the following:

(1) One year from the date of restoration if the original revocation period was one year.

(2) Three years from the date of restoration if the original revocation period was four years.

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

…

(f) Effect of Violation of Restriction. – ~~A~~ Except as otherwise provided in subsection (g1) of this section, a person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender

the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked Not Charged. – ~~A~~ Except as otherwise provided in subsection (g1) of this section, a person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year.

(g1) Effect of Ignition Interlock System Violation During Final 90-Day Period. – Notwithstanding subsection (f) or (g) of this section, a person subject to this section who commits an ignition interlock system violation during the 90-day period immediately preceding the date on which the person's length of requirement set forth in subsection (c) of this section is to end shall have the period of compliance with subsection (b) of this section extended for an additional period of 90 days or until the person has been violation-free for such extended period. For purposes of this subsection, the term "ignition interlock system violation" means any of the following:

(1) Any attempt to start the vehicle with an alcohol concentration greater than 0.02 or violation of any of the other restrictions set forth in subsection (b) of this section.

(2) A violation of G.S. 20-17.8A.

(3) A violation of any of the policies established by the Division for use of an ignition interlock system on a designated motor vehicle.

The Division shall notify the license holder of any violation and the right to appeal in accordance with Division policy. The Division shall provide for a telephonic hearing if the holder appeals an extension. The extension shall continue pending appeal. The Division shall send notice of the extension to the person holding the license by first class mail to the address on file with the Division.

…."

SECTION 2.(c) Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 2.(d) If House Bill 199, 2023 Regular Session, becomes law, then Section 2 of that act is repealed.

SECTION 2.(e) Subsection (a) of this section becomes effective December 1, 2024, and applies to limited driving privileges issued on or after that date. Subsection (b) of this section becomes effective December 1, 2024, and applies to drivers licenses revoked on or after that date. The remainder of this section becomes effective December 1, 2024.

DWI PUNISHMENT CHART-DWIs OCCURRING ON/AFTER DECEMBER 1, 2011

DWI JUDGMENT	LEVEL A1	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
FACTORS	3 GAFs	2 GAFs OR 1 (C)(4) FACTOR	1 GAF	AF>MF	AF=MF	AF<MF
MAXIMUM FINE	$10,000	$4,000	$2,000	$1,000	$500	$200
SPECIAL DWI ASSESSMENT FEE	$100	$100	$100	$100	$100	$100
MINIMUM SENTENCE	12 MONTHS	30 DAYS	7 DAYS	72 HOURS	48 HOURS	24 HOURS
MAXIMUM SENTENCE	36 MONTHS	24 MONTHS	12 MONTHS	6 MONTHS	120 DAYS	60 DAYS
SPECIAL PROBATION	MINIMUM 120 DAYS ACTIVE	MINIMUM 30 DAYS ACTIVE	MINIMUM 7 DAYS ACTIVE	72 HOURS ACTIVE 72 HOURS CS OR COMBINATION	48 HOURS ACTIVE 48 HOURS CS OR COMBINATION	24 HOURS ACTIVE 24 HOURS CS OR COMBINATION
ASSESSMENT & TREATMENT	A & T	A & T	A & T	A & T	A & T	A & T
CONTINUOUS ALCOHOL MONITORING (CAM)	120 MINIMUM MAXIMUM = PERIOD OF PROBATION	30 MINIMUM MAXIMUM = PERIOD OF PROBATION "DISCRETIONARY"	30 MINIMUM MAXIMUM = PERIOD OF PROBATION "DISCRETIONARY"	"DISCRETIONARY" AS LAWFUL CONDITION	"DISCRETIONARY" AS LAWFUL CONDITION	"DISCRETIONARY" AS LAWFUL CONDITION