



2017 NC DWI

QUICK REFERENCE GUIDE



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GUILFORD COURT HOUSE

NHTSA

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

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.

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.



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|---|--|
| 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, and administers or arranges for a preliminary breath test. |
| Field Sobriety Test: | Any one of several roadside tests that can be used to determine whether a suspect is impaired. |
| Psychophysical: | “Mind/Body.” Used to describe field sobriety tests that measure a person’s ability to perform both mental and physical tasks. |
| Divided Attention Test: | A test which requires the subject to concentrate on both mental and physical tasks at the same time. |
| One-Leg Stand (OLS): | A divided attention field sobriety test. |
| Walk-and-Turn (W&T): | A divided attention field sobriety test. |
| Clue: | Something that leads to the solution of a problem. |
| Cue: | A reminder or prompting as a signal to do something. A suggestion or a hint. |
| Horizontal Gaze Nystagmus (HGN): | Involuntary jerking of the eyes occurring as the eyes gaze to the side. The first test administered in the SFST battery. |

| | |
|---------------------------------------|--|
| Nystagmus: | An involuntary jerking of the eyes. |
| 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. |
| Preliminary Breath Test (PBT): | A pre-arrest breath test administered during the investigation of a possible DWI violator to obtain an indication of the person's blood alcohol concentration. |
| Weaving: | Weaving occurs when the vehicle alternately moves toward one side of the roadway and then the other, creating a zig-zag course. The pattern of lateral movement is relatively regular as one steering correction is closely followed by another. |
| Weaving Across Lane Lines: | Extreme cases of weaving when the vehicle wheels cross the lane lines before a correction is made. |
| Straddling a Lane Line: | The vehicle is moving straight ahead with the center or lane marker between the left-hand and right-hand wheels. |
| Swerving: | A swerve is an abrupt turn away from a generally straight course. Swerving might occur directly after a period of driving when the driver discovers the approach of a traffic in an oncoming lane or discovers the vehicle is going off the road; swerving might also occur as an abrupt turn is executed to return the vehicle to the traffic lane. |

**Improper or Unsafe
Lane Change:**

Driver taking risks or endangering others. Driver is frequently or abruptly changing lanes without regard to other motorists.

**Stopping
Inappropriately:**

The observed vehicle stops at an inappropriate location or under inappropriate conditions, other than in the traffic lane. Examples include Stopping:

- In a prohibited zone
- At a crosswalk
- Far short of an intersection
- On a walkway
- Across lanes
- For a green traffic signal
- For a flashing yellow traffic signal
- Abruptly as if startled
- In an illegal, dangerous manner

**Appearing to Be
Impaired:**

This cue is actually one or more of a set of indicators related to personal behavior or appearance of the driver. Examples of specific indicators might include:

- Eye fixation
- Tightly gripping the steering wheel
- Slouching in the seat
- Gesturing erratically or obscenely
- Face close to the windshield
- Driver's head protruding from the vehicle

| | | |
|---|---|--|
| Driver's Name: _____ Approx. Wt.: _____ Gender: <input type="checkbox"/> M <input type="checkbox"/> F Minors in Vehicle: <input type="checkbox"/> Yes <input type="checkbox"/> No Blood / Breath Results: <u> 0 </u> / <u> 0 </u> . Vehicle Crash: <input type="checkbox"/> Yes <input type="checkbox"/> No Injuries: <input type="checkbox"/> Yes <input type="checkbox"/> No Date: _____ Time: _____ <input type="checkbox"/> am <input type="checkbox"/> pm | <h2 style="margin: 0;">Driving While Impaired Report (DWIR)</h2> <p style="margin: 10px 0 0 0;">Department of Health and Human Services, Forensic Tests for Alcohol Branch</p> | Agency: _____ Officer's Name: _____ Case No.: _____ DRE Officer: _____ City / County: _____ Street / Highway: _____ |
|---|---|--|

| | |
|----------------|---|
| Phase I | <p>Initial Observations: What drew your attention to the vehicle (wide turns, weaving, violations of law, etc.). Unusual driver's actions, blank stare, etc:</p> |
| | <p>Observation of Stop: Describe vehicle maneuvers during the stop, delays in stopping, unusual manner of parking, etc.:</p> |

| | |
|-----------------|---|
| Phase II | <p>General Observation: Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.:</p> |
| | <p>Breath: Describe the odor of alcohol on driver's breath:</p> |
| | <p>Statements: Any statement made by the driver from time of stop to arrest:</p> |
| | <p>Observation Prior to Arrest: Describe any difficulty with motor skills, retrieving drivers license, getting out of vehicle, walking, standing, etc.:</p> |
| | <p>Odors: Describe any significant odors other than alcohol:</p> |

Phase III

| | | |
|----------------------|-------|---|
| Psychophysical Tests | Time: | <input type="checkbox"/> am <input type="checkbox"/> pm |
| Location Performed: | | |

| Horizontal Gaze Nystagmus (HGN) | | Walk and Turn Test | | |
|---|---|---|--|--|
| <input type="checkbox"/> Glasses | <input type="checkbox"/> Contact Lenses | Instruction Stage | | |
| Remove Glasses <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Hard <input type="checkbox"/> Soft | <input type="checkbox"/> Cannot Keep Balance <input type="checkbox"/> Starts Too Soon | | |
| Tracking Equal? | <input type="checkbox"/> Yes <input type="checkbox"/> No | First 9 Steps Second 9 steps | | |
| Able to Follow Stimulus? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Stops Walking | | |
| | Left Eye Right Eye | Misses Heel to Toe | | |
| Lack of Smooth Pursuit | | Steps Off Line | | |
| Maximum Deviation | | Uses Arms To Balance | | |
| Onset Prior 45° | | Actual Steps Taken | | |
| Vertical Nystagmus? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Improper Turn (Describe): | | |
| Explain: | | Cannot Do Test (Explain): | | |

Walk and Turn Test

| One Leg Stand | | Optional Tests | | Finger to Nose Test | Romberg Balance |
|--|--|--------------------------|--|---------------------|---|
| | | Draw Lines Spots Touched | | | |
| Sways While Balancing: <input type="checkbox"/> L <input type="checkbox"/> R Uses Arms for Balance: <input type="checkbox"/> L <input type="checkbox"/> R Hopping: <input type="checkbox"/> L <input type="checkbox"/> R Puts Foot Down: <input type="checkbox"/> L <input type="checkbox"/> R Type of Footwear: | | | | | Internal Clock Estimated as 30 Seconds |

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

| | |
|---|---|
| Make / Model | Serial # |
| Test 1 | Test 2 |
| Time: <input type="checkbox"/> am <input type="checkbox"/> pm Result: 0. | Time: <input type="checkbox"/> am <input type="checkbox"/> pm Result: 0. |

State of North Carolina Driving While Impaired Report (DWIR)**Form #****DHHS/FTA 4064**

Effective:10/01/05

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.



STANDARDIZED FIELD SOBRIETY TESTS

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
- 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 the original research, if you observe four or more clues it is likely that the suspect's BAC is above 0.10. Using this criterion you will be able to classify about 77% of your suspects accurately. This was determined during laboratory and field testing and helps you weigh the various field sobriety tests in this battery 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 suspect performs this test. Original research demonstrated that the behaviors listed below are likely to be observed in someone with a BAC above 0.10. 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 original research, if the suspect exhibits two or more clues on this test or fails to complete it, classify the suspect's BAC as above 0.10. Use this criterion, you will be able to accurately classify 68% of your suspects.

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 research indicated that individuals over 65 years of age, back, leg or inner ear problems had difficulty with this test. Individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes.

5. Combined Interpretation of Horizontal Gaze Nystagmus and Walk-and-Turn Tests:

Based on the original research, combining four or more clues of HGN and two or more clues of the Walk-and-Turn, suspects can be classified as above 0.10 BAC 80% of the time.

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.”



ANSON COVNTY COVRT HOVSE

A.D. 1912



“While holding that position, count out loud in the following manner: “one thousand and one, one thousand and two, one thousand and three, until told to stop.” (Demonstrate a count, as follows: “one thousand and one, one thousand and two, one thousand and three, etc.” Officer should not look at his foot when conducting the demonstration – OFFICER SAFETY.)

“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 foot 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 suspect performs this test. The original research found the behaviors listed below are the most likely to be observed in someone with a BAC above 0.10. Look for the following clues each time the One-Leg Stand 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 original research, if an individual shows two or more clues or fails to complete the One-Leg Stand, there is a good chance the BAC is above 0.10. Using that criterion, you will accurately classify 65% of the people you test as to whether their BAC's are above 0.10.

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.

***REFLECTS U.S. DEPARTMENT OF TRANSPORTATION NHTSA DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING MAY 2013 PARTICIPANT GUIDE, REPLACING THE 2006 EDITION. PLEASE MAKE CERTAIN TO INDEPENDENTLY CONFIRM ACCURACY OF SAID MATERIALS.**

***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.**

***NHTSA DWI DETECTION AND STANDARDIZED SOBRIETY TESTING 2006**



BREATH TESTING EQUIPMENT

POLK COUNTY COURTHOUSE
ESTABLISHED 1820

Alcohol Testing Devices: Preliminary Breath Testing

Interpretations in the caselaw pertaining to Probable Cause for Arrest and the use of technology have made the application of alcohol screening / testing devices a very important issue. Roadside and laboratory simulated physical dexterity tests work hand-in-hand with alcohol “screening” devices. The NHTSA states in its DWI instructional manual, “The PBT (Preliminary Breath Testing) result is only one of many factors the officer considers in determining whether the suspect should be arrested for DWI. It should never be the sole basis for a DWI arrest.”

The Alco-Sensor devices implement the use of a fuel cell to measure alcohol in one’s breath. The key to fuel cell testing is to utilize chemical compounds that create an electrical current only when exposed to ethyl alcohol. By measuring the current created, the device can determine the amount of alcohol in one’s breath and thereby the bloodstream.



**Alco-Sensor V XL
(NOT APPROVED)**



Alco-Sensor III



Alco-Sensor FST

Alcohol Testing Devices: Evidentiary Breath Testing

The purpose of breath testing devices is to obtain a representative sample of the different chemicals expelled from the bloodstream and into the respiratory system through the lungs. Put simply, we seek to capture what was most recently floating about the bloodstream. In addition to CO_2 , we exhale other poisons, including $\text{CH}_3\text{CH}_2\text{OH}$ (ethyl alcohol).

It is imperative that breath testing devices be calibrated in order to maintain their accuracy. The method for calibrating the devices is to recreate a human breath, with a controlled amount of ethanol. This can be done using a wet bath method or a dry gas method. The wet bath method takes water with a predetermined amount of ethanol dissolved in it and bubbles air through the mixture. After the air has passed through the solution, it is run through the machine. A dry gas method uses a premixed tank of gas and air to use as the control sample.



**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)

An Ignition Interlock is an alcohol monitoring device used to detect, evaluate, and prevent a person from operating a vehicle after consumption of ethyl alcohol.

The Ignition Interlock is a device that attaches to the dashboard of vehicles. It works by requiring the driver to breath into the wand in order to start a vehicle. It may also require the driver to breath into it at random intervals while driving. If the driver breathes into the device and exceeds the specified alcohol limit, the vehicle will not start, and the driver will be warned. Ignition Interlocks keep an up-to-date log of a user's activity, reporting back to the North Carolina DMV.



**SMART START SSI-20/20
with Optional Camera**

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



**Monitech
Ignition Interlock**

Monitech
1-800-521-4246
www.monitechnc.com
customerservice@monitechnc.com



**Alcolock
Ignition Interlock**

Alcolock USA
1-855-664-0353
www.alcolocknc.com

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: Related TABLE OF CONTENTS

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10A NCAC 41B .0101 DEFINITIONS

The definitions in G.S. 18B-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: Related

- I. Rules 701, 702, 703, 704, and 705
- II. §15A-1343.3 - Department of Corrections to establish regulations for continuous alcohol monitoring systems; payment of fees; authority to terminate monitoring
- III. §20-16.2 - Implied-consent to chemical analysis; mandatory revocation of license in event of a refusal; right of driver to request analysis
- IV. §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
- V. §20-16.3A - Checking Stations and Roadblocks
- VI. §20-16.5A - Immediate civil license revocation for certain persons charged with implied-consent offenses
- VII. §20-17 - Mandatory revocation of license by division
- VIII. §20-38.1 - Applicability
- IX. §20-38.2 - Investigation
- X. §20-38.3 - Police Processing Duties
- XI. §20-38.6 - Motions and District Court procedure
- XII. §20-38.7 - Appeal to Superior Court
- XIII. §20-138.1 - Impaired Driving
- XIV. §20-138.2 - Impaired Driving in Commercial Vehicle
- XV. §20-138.3 - Driving by person less than 21 years old after consuming alcohol or drugs
- XVI. §20-138.5 - Habitual impaired driving
- XVII. §20-139.1 - Procedures governing chemical analysis; admissibility; evidentiary provisions; controlled - drinking programs

THE FOLLOWING REFERENCED STATUTORY SECTIONS PERTAIN TO OFFENSES THAT TOOK PLACE ON OR AFTER OCTOBER 1, 2016.

FOR OFFENSES PRIOR TO OCTOBER 1, 2016, PLEASE REFERENCE THE 2014 NC DWI QUICK REFERENCE GUIDE.

PLEASE MAKE CERTAIN TO ALWAYS INDEPENDENTLY REVIEW STATUTORY AUTHORITY.

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) A witness, qualified under subsection (a) of this section and with proper foundation, 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.
- (c) 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.)

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.)



101

PUBLIC AND HANDICAPPED
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§ 15A-1343.3. Division of Adult Correction of the Department of Public Safety to establish regulations for continuous alcohol monitoring systems; payment of fees; authority to terminate monitoring.

- (a) The Division of Corrections 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 Department 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 a 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.
 - (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 the 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 drivers 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 drivers 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 restriction on the drivers 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 drivers 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 tenth 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 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 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 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 driver's 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 conclusions 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 driver's 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:
 - (5a) Other than by conviction; or

- (5b) 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 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 in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this 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. 914.
- (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 cause, 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.
 - (1a) 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 may 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.
 - (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, 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.

- (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 analysts.
 - (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:
 - (4a) Willfully refuses to submit to the chemical analysis;
 - (4b) Has an alcohol concentration of 0.08 or more within a relevant time after the driving;
 - (4c) Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or
 - (4d) 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:
 - (2a) An alcohol concentration of 0.08 or more at any relevant time after driving;
 - (2b) An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; or
 - (2c) 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:
 - (1a) No revocation report has previously been filed; and

- (1b) 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,



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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:
 - (3a) The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or
 - (3b) The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or
 - (3c) 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
 - (3d) 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; and
 - (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:
 - (2a) Impaired driving under G.S. 20-138.1.
 - (2b) 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.
- (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. 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
 - (16b) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall:
 - (b) Ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor 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; or
 - (c) 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.



§ 20-38.1. 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.)

§ 20-38.6. 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.)



ORANGE COUNTY COURT HOUSE

§ 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.

§ 20-138.5. 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 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:
 - (3a) 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
 - (3b) 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 statement may 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 or 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 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.
- (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, then 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.

- (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.



PITT COUNTY COURT HOUSE

- (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 or 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.

§ 132-1.4A. Law enforcement agency recordings.

- (a) Definitions. – The following definitions apply in this section:
- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
 - (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
 - (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
 - (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
 - (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person’s surviving spouse, parent, or adult child; the deceased person’s attorney; or the parent or guardian of a surviving minor child of the deceased.
 - (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
 - (7) Release. – To provide a copy of a recording.
- (b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

- (c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers. The head of the custodial law enforcement agency may only disclose a recording to the following:
- (1) A person whose image or voice is in the recording.
 - (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
 - (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 - (4) A personal representative of a deceased person whose image or voice is in the recording.
 - (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

- (d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor. The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:
- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
 - (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
 - (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
 - (4) If disclosure may harm the reputation or jeopardize the safety of a person.
 - (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
 - (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

- (e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person’s request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person’s employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

- (e1) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (f) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of

appeal and the petitioner may file an action for release pursuant to subsection (f) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (f) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

- (f) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:
- (1) Release is necessary to advance a compelling public interest.
 - (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
 - (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
 - (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
 - (5) Release may harm the reputation or jeopardize the safety of a person.
 - (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
 - (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
 - (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

- (g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (e1), and (f) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:
 - (1) For law enforcement training purposes.
 - (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
 - (3) To another law enforcement agency for law enforcement purposes.
- (h) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.
- (i) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.
- (j) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.
- (k) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.
- (l) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section.



SENTENCING GUIDELINES

302
CRAVEN
COUNTY
COURT

Grossly Aggravating Factors (GAF) G.S. § 20-179(c)

- (a) Prior conviction for DWI when the conviction date is within seven (7) years of the current date of offense G.S. § 20-179(c)(1).;
- (b) Conviction for DWI after the current date of offense, but prior to or contemporaneously with the current sentencing G.S. § 20-179(c)(1).;
- (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.;
- (c2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. § 20-28(a1), and the revocation was an impaired driving revocation under G.S. § 20-28.2(a).;
- (c3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.;
- (c4) Driving by the defendant while:
 - (1) A child under the age of 18 years, G.S. § 20-179;
 - (2) A person with the mental development of a child under the age of 18 years, G.S. § 20-179; or
 - (3) a person with a physical disability preventing unaided exit from the vehicle was in the vehicle at the time of the offense, G.S. § 20-179.

Aggravating Factors (AF) G.S. § 20-179(d)

- (d1) Gross impairment of the defendant's faculties, or an alcohol concentration of 0.15 or more G.S. § 20-179;
- (d2) Especially reckless or dangerous driving G.S. § 20-179;
- (d3) Negligent driving that led to reportable accident; G.S. § 20-179;
- (d4) Driving by defendant while his driver's license was revoked; G.S. § 20-179;
- (d5) 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.G.S. § 20-179;
- (d6) Conviction under G.S. § 20-141.5 for speeding while fleeing or attempting to elude apprehension G.S. § 20-179;
- (d7) Conviction under G.S. § 20-141 for speeding at least 30 miles per hour over the legal limit G.S. § 20-179

- (d8) Passing a stopped school bus in violation of G.S. § 20-217, G.S. § 20-179; or
- (d9) Any other factor that aggravates the seriousness of the offense G.S. § 20-179.

Mitigating Factors (MF) G.S. § 20-179(e)

- (e1) Slight impairment of the driver's faculties resulting solely from alcohol G.S. § 20-179; Alcohol concentration that did not exceed .09 at any relevant time after the driving G.S. § 20-179;
- (e2) Slight impairment of the defendant's faculties, resulting solely from alcohol, and no chemical analysis being available to the defendant G.S. § 20-179;
- (e3) Driving was safe and lawful except for the impairment of the defendant's faculties G.S. § 20-179;
- (e4) 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 G.S. § 20-179;
- (e5) Impairment of the defendant's faculties caused primarily by lawfully prescribed drug taken for existing medical condition and the amount of the drug taken was within the prescribed dosage G.S. § 20-179;
- (e6) Alcohol assessment after current date of offense, and voluntary participation in any recommended treatment G.S. § 20 G.S. § 20-179;
 - (a) Completion of a substance abuse assessment and 60 days of Continuous Alcohol Monitoring system (CAM) G.S. § 20-179; or
- (e7) Any other factor that mitigates the seriousness of the offense G.S. § 20-179

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 ACTI VE | MINIMUM 30 DAYS ACT IVE | MINIMUM 7 DAYS ACTI VE | 72 HOURS ACTI VE 72 HOURS CS OR COMBINATION | 48 HOURS ACTI VE 48 HOURS CS OR COMBINATION | 24 HOURS ACTI VE 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 |



2017 NC DWI QUICK REFERENCE GUIDE