

SUMMARY OF HB 1048 (GOVERNOR’S DWI TASK FORCE RECOMMENDATIONS) (S.L. 2006-253)

I. GENERAL OVERVIEW

Keg Purchases

- Imposes a permit requirement for keg purchases.

Motor Vehicle Checkpoints

- Standardizes checkpoints.

Procedures in Implied Consent Cases

- Delineates law enforcement authority.
- Requires that certain notices be given at the initial appearance.
- Requires the development and posting of access policies.
- Sets out formalized procedures for District Court motions, including a right of the State to immediately appeal a ruling suppressing evidence or granting a dismissal.
- Sets out new sentencing procedures following the withdrawal of an appeal to, or on remand from, Superior Court.

Specialized Evidence

- Provides for the admissibility of Horizontal Gaze Nystagmus (HGN) test results, Drug Recognition Expert (DRE) testimony and accident reconstruction testimony.

Roadside Alcohol Screening Tests

- Allows a positive or negative alcohol screening test result (or a refusal to submit to an alcohol screening test) to be used to determine whether the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol. The actual concentration reading from the test could not be used for this purpose.

“Public Vehicular Area”

- Expands the definition to include any area that is used by the public for vehicular traffic at any time.

Driving While Impaired

- Clarifies that a chemical analysis result is sufficient to prove a particular alcohol concentration.
- Adds a new theory of DWI based on the presence of a Schedule I controlled substance in the defendant's system.
- Allows DWI to be charged when the vehicle being operated is a bicycle or lawnmower.

Commercial Driving While Impaired

- Clarifies that a chemical analysis result is sufficient to prove a particular alcohol concentration.
- Adds a new theory of commercial DWI based on the presence of a Schedule I controlled substance in the defendant's system.

Habitual Driving While Impaired

- Increases the habitual DWI look-back period from seven years to ten years.

New Injury and Death Offenses

- Increases the penalty for felony death by vehicle.
- Creates new offenses of felony serious injury by vehicle, aggravated felony serious injury by vehicle, and aggravated felony death by vehicle.
- Creates a new sentencing enhancement for a "repeat felony death by vehicle offender."

Implied Consent Statute Changes

- Makes various changes to G.S. 20-16.2, including altering the wording of the implied consent rights and limiting the scope of review when a refusal revocation is appealed to Superior Court.

Chemical Analysis Results

- Makes various changes to G.S. 20-139.1 to enhance the admissibility of chemical analysis results.

Law Enforcement Access to Medical Information

- Enhances the ability of law enforcement officers to obtain health information regarding, and access to, persons involved in vehicle accidents.

Voluntary Dismissals and Reductions

- Imposes heightened reporting requirements on DAs who are dismissing or reducing an implied consent offense.
- Requires the clerk to electronically record additional information on dismissals and reductions (but this requirement does not take effect until the completion of the ACIS rewrite).

Data Collection and Reporting in Impaired Driving Cases

- Requires the clerk to record additional information in impaired driving cases and requires the AOC to prepare and publish a detailed annual report on the disposition of impaired driving cases (but these requirements do not take effect until the completion of the ACIS rewrite).

Proof of Notice from DMV

- Simplifies proving the sending of a notice by DMV.

New DWLR and FTA Offenses

- Creates new misdemeanor offenses for (i) driving while the person's license is revoked for an impaired driving revocation after DMV has sent a notice of revocation to the person and (ii) failing to appear for two years after the date of an implied consent offense charge.

Effect of Commercial DWI on the Authority to Operate a Passenger Vehicle

- Provides that a person convicted of commercial DWI whose alcohol concentration was less than 0.06 is disqualified from operating a commercial motor vehicle, but is not prohibited from operating a passenger vehicle.

Medical Exception to Interlock Requirement on Restored License

- Allows a person who ordinarily would have an ignition interlock restriction on his or her restored license to petition DMV for a medical exemption from that restriction.

DWI Sentencing Changes

- Amends the DWI sentencing statute so that it complies with United States Supreme Court case law.
- Eliminates periods of non-operation as a condition of probation for Level Three, Four and Five defendants.

Active Time Requirements

- Requires weekend active time to be served in 48-hour increments and requires true hour for hour credit for time served.
- Imposes sanctions on defendants who appear at jail with alcohol or controlled substances in their system.

Retention of DWI Case Files

- Requires the clerk to maintain for ten years all records related to an offense involving impaired driving that resulted in a conviction.
- Requires the clerk to ensure that certain case information is electronically recorded prior to destroying the file.

Underage Consumption

- Makes it unlawful for a person less than 21 years of age to consume alcohol.

Parole Requirements

- Requires that DWI parolees (i) be paroled to a residential treatment program, (ii) be placed on community service parole or (iii) be placed on house arrest with electronic monitoring.

Employment of Prior ABC Permit Holders

- Prohibits an ABC permittee from employing a person who previously held an ABC permit at the same location, but whose permit was revoked within the preceding 18 months.

DWI Continuing Judicial Education

- Requests that the Chief Justice encourage judges to obtain continuing education on DWI and related issues.

Motions for Appropriate Relief in District Court

- Provides that a motion for appropriate relief in District Court may not be granted unless the DA has signed a document indicating that the DA has had an opportunity to consent or object to the motion.

Expansion of DWI Seizure Law

- Expands the DWI seizure law so that it requires the seizure of a motor vehicle when (i) the defendant is charged with an offense involving impaired driving, (ii) the defendant does not have a valid drivers license and (iii) the defendant is not covered by an automobile liability insurance policy.

II. DETAILED SUMMARY

SUBJECT AREA	SUMMARY	EFFECTIVE DATE
Title	<ul style="list-style-type: none"> Entitles the bill, “The Motor Vehicle Driver Protection Act of 2006.” 	1 December 2006
Keg purchases	<ul style="list-style-type: none"> Amends G.S. 18B-101 to provide a definition for “keg” (“a portable container designed to hold and dispense 7.75 gallons or more of malt beverage”). Enacts a new G.S. 18B-403.1 and amends G.S. 18B-303(a) to impose a purchase-transportation permit requirement on keg purchasers. The ABC permittee who issues the purchase-transportation permit to the purchaser must retain a copy of the permit for 90 days. A first violation of these new requirements by an ABC permittee would result only in a warning. 	1 December 2006
Motor vehicle checkpoints	<p>Amends G.S. 20-16.3A to standardize the criteria for all types of motor vehicle checking stations and roadblocks:</p> <ul style="list-style-type: none"> The agency conducting the checkpoint must designate in advance the pattern for stopping vehicles and for requesting drivers who are stopped to produce their license, registration card, or insurance information. Although the pattern need not be in writing, the agency must be operating pursuant to a written policy that provides guidelines for the pattern being used. The policy may be the agency’s own policy or (if the agency does not have its own written policy) a policy developed by another law enforcement agency. However, if the agency is operating under the policy of another agency, that fact must be stated in writing. The agency must advise the public that it is operating a checkpoint “by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.” If an officer has a reasonable suspicion that a vehicle occupant 	1 December 2006

	<p>has violated Chapter 20 or another provision of law, the officer may detain the driver to further investigate. If, during the course of the stop, the officer determines that the driver has previously consumed alcohol or that there is an open container of alcohol in the vehicle, the officer may request the driver to submit to an alcohol screening test. The officer must consider the results of the test (or the driver’s refusal to submit to the test) in determining whether there is reasonable suspicion to investigate further.</p> <ul style="list-style-type: none"> • 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.” • Agencies should locate checkpoints randomly or as “statistically indicated,” and must “avoid placing checkpoints repeatedly in the same location or proximity.” However, a violation of this requirement is not grounds for a motion to suppress and is not a defense to a charge arising out of the checkpoint. 	
<p>Law enforcement authority in implied consent cases</p>	<ul style="list-style-type: none"> • Enacts a new G.S. 20-38.2 authorizing a law enforcement officer who is investigating an implied consent offense or a vehicle accident that occurred in his or her territorial jurisdiction “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.” • Enacts a new G.S. 20-38.3 requiring an officer who has arrested a person for an implied consent offense to inform the person of the charges or the cause for the arrest. • The new G.S. 20-28.3 authorizes the officer to (i) take the person “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 	<p>1 December 2006</p>

	of the person’s impairment,” (ii) take the person “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” and (iii) take photographs and fingerprints. Upon the completion of “all investigatory procedures, crash reports, chemical analyses, and other procedures,” the officer must take the person before a judicial official for an initial appearance.	
Initial appearances in implied consent cases	<p>Enacts a new G.S. 20-38.4 imposing certain special requirements for initial appearances in implied consent cases:</p> <ul style="list-style-type: none"> • Authorizes magistrates to hold initial appearances in implied consent cases at any place within the county and requires magistrates, “to the extent practicable, [to] be available at locations other than the courthouse when it will expedite the initial appearance.” • Provides as follows with regard to making the probable cause determination: “[T]he magistrate may review all alcohol screening tests [and] chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.” • Requires the magistrate to consider whether to detain the person under G.S. 15A-534.2 (detention of impaired drivers). • For persons who are unable to make bond, provides that the magistrate must (i) inform the person in writing of the local procedure for having others appear at the jail to observe the defendant’s condition or administer an additional chemical analysis and (ii) require the person to list the names and telephone numbers of all persons he wishes to contact. A copy of the form used to provide the notice and obtain the list of persons must be placed in the case file. • Requires the AOC to develop forms for the initial appearance process in implied consent cases. 	1 December 2006
Access policy/posting of notices in implied consent cases	<ul style="list-style-type: none"> • Enacts a new G.S. 20-38.5 requiring the Chief DCJ, DHHS, the DA and the Sheriff to (i) establish a written procedure for 	1 December 2006

	<p>attorneys and witnesses to have access to the chemical analysis room, (ii) approve a location for the posting of a written notice of the implied consent rights in the chemical analysis room, and (iii) approve a procedure for allowing others to observe the defendant's condition or administer an additional chemical analysis if the defendant is unable to obtain pretrial release. (Replaces the Sheriff with the local head of the State Highway Patrol or the Chief of Police when the chemical analysis instrument is located in a State or municipal building. Provides that if the chemical analysis instrument is in a motor vehicle or at a temporary location, DHHS alone establishes the procedures for access to the chemical analysis room and approves the location of the written notice.)</p> <ul style="list-style-type: none"> • Requires the posting of signs explaining the access policies. Requires DOT to provide the signs and the county to maintain them. (Requires the owner of the building to maintain the signs when the chemical analysis instrument is located in a State or municipal building.) 	
<p>District Court motions to suppress or dismiss in implied consent cases</p>	<ul style="list-style-type: none"> • Enacts a new G.S. 20-38.6 permitting a defendant in District Court to move to suppress evidence or dismiss the implied consent 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.” However, permits the defendant to move to suppress or dismiss during the trial if “the defendant discovers facts not previously known.” • Requires that the State “be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion [to suppress or dismiss.]” (This does not apply to a motion to dismiss made at the close of the State’s evidence or at the close of all the evidence.) • If the State stipulates that it will not attempt to introduce the evidence the defendant is seeking to suppress in any 	<p>1 December 2006</p>

	<p>proceeding against the defendant, the court must summarily grant the suppression motion. If the defendant failed to make the motion prior to trial and the newly-discovered evidence exception does not apply, the court may summarily deny the suppression motion.</p> <ul style="list-style-type: none"> • If the motion is not one that may be handled summarily, then the court must hold a hearing on the motion, set out in writing its findings of fact and conclusions of law, and “preliminarily indicate whether the motion should be granted or denied.” If the court indicates its intent to grant a motion to suppress or dismiss, the court may not enter a final ruling on the motion “until after the State has appealed to [S]uperior [C]ourt or has indicated it does not intend to appeal.” 	
<p>Appeals of District Court motion rulings in implied consent cases</p>	<ul style="list-style-type: none"> • Enacts a new G.S. 20-38.7 allowing the State to immediately appeal a DCJ’s preliminary indication that he or she will grant a motion to suppress or dismiss. Requires the Superior Court to determine the matter de novo if the DCJ’s findings of fact are in dispute. The State may appeal the decision of the Superior Court as provided in G.S. 15A-1432. • Prohibits the defendant from appealing the denial of a pretrial motion to suppress or dismiss until after conviction. 	<p>1 December 2006</p>
<p>Appeal withdrawals and remands to District Court in implied consent cases</p>	<ul style="list-style-type: none"> • Provides, in the new G.S. 20-38.6, that when an implied consent offense conviction has been appealed to Superior Court, (i) the District Court judgment is vacated and (ii) the case may be remanded to District Court only with the consent of the SCJ and the DA. • On remand or upon the withdrawal of the appeal, the DCJ must hold a new sentencing hearing and must take into consideration any other convictions occurring since the appeal. If the defendant has other pending impaired driving charges, the DCJ must delay resentencing in the remanded case until all pending charges are resolved so that the judge can take any new convictions into consideration. 	<p>1 December 2006</p>

	<ul style="list-style-type: none"> • Makes conforming changes to G.S. 20-179 (the DWI sentencing statute). 	
HGN, DRE and accident reconstruction evidence	<ul style="list-style-type: none"> • Amends Rule of Evidence 702 (testimony by experts) to provide for the admissibility of Horizontal Gaze Nystagmus (HGN) test results, Drug Recognition Expert (DRE) testimony and accident reconstruction testimony. • Provides that a witness, qualified as an expert under Rule 702 and with proper foundation, may give expert testimony relating to (i) HGN test results (if the test was administered by a person trained in HGN) or (ii) whether a person was under the influence of an impairing substance (and provides that a witness who holds a DRE certification is one of the types of persons qualified to give such testimony). This testimony would be admissible on the issue of whether the defendant was impaired, but not on the issue of the defendant's specific alcohol concentration. • Provides that a witness, qualified as an expert in accident reconstruction and with proper foundation, may give an opinion as to the speed of a vehicle. 	1 December 2006
Roadside alcohol screening tests	<ul style="list-style-type: none"> • Amends G.S. 20-16.3 to provide that DHHS, rather than the Commission for Health Services, approves and regulates the use of alcohol screening devices. Makes a conforming change to G.S. 20-138.3(b2) (alcohol screening tests administered to persons suspected of violating the underage per se offense). • Rewrites G.S. 20-16.3(d) to read as follows: "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 	1 December 2006

	<p>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.”</p>	
<p>Definitions of “public vehicular area” and “State”</p>	<ul style="list-style-type: none"> • Amends G.S. 20-4.01(32) to broaden the definition of “public vehicular area.” Basically, a public vehicular area is now defined as any area that is “used by the public for vehicular traffic at any time.” Also broadens the provisions that cover business areas, subdivision roads and designated roads on private property. • Amends the definition of “State” in G.S. 20-4.01(45) to include tribal lands of the Eastern Band of the Cherokee that are located within NC. 	<p>1 December 2006</p>
<p>DWI</p>	<ul style="list-style-type: none"> • G.S. 20-138.1(a)(2) (the per se theory for DWI) provides that a defendant commits the offense of impaired driving if he drives upon a street or highway or public vehicular area “[a]fter having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more.” The bill adds the following clarifying sentence: “The results of a chemical analysis shall be deemed sufficient evidence to prove a person’s alcohol concentration.” • Adds a new controlled substances theory for DWI. Specifically, provides in a new G.S. 20-138.1(a)(3) that a defendant commits the offense of impaired driving if he drives upon a street or highway or public vehicular area “[w]ith any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.” • Provides in a new G.S. 20-138.1(a1) that a defendant may use a chemical analysis obtained on his or her own under G.S. 20-139.1(d) as rebuttal evidence regarding the defendant’s alcohol concentration. 	<p>1 December 2006</p>

	<ul style="list-style-type: none"> • Clarifies, in a new G.S. 20-138.1(b1), that a defendant may assert that a chemical analysis result is inadmissible because of inadequate preventative maintenance on the chemical analysis instrument. • Eliminates the DWI exceptions for bicycles and lawnmowers. (The exception for horses remains.) 	
<p>Commercial DWI</p>	<ul style="list-style-type: none"> • G.S. 20-138.2(a)(2) (the per se theory for commercial DWI) provides that a defendant commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon a street or highway or public vehicular area “[a]fter having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more.” The bill adds the following clarifying sentence: “The results of a chemical analysis shall be deemed sufficient evidence to prove a person’s alcohol concentration.” • Adds a new controlled substances theory for commercial DWI. Specifically, provides in a new G.S. 20-138.2(a)(3) that a defendant commits the offense of commercial impaired driving if he drives upon a street or highway or public vehicular area “[w]ith any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.” • Provides in a new G.S. 20-138.2(a1) that a defendant may use a chemical analysis obtained on his or her own under G.S. 20-139.1(d) as rebuttal evidence regarding the defendant’s alcohol concentration. • Specifies, in a new G.S. 20-138.2(a2), the acceptable methods for proving the gross vehicle weight rating of the commercial vehicle. • Clarifies, in a new G.S. 20-138.2(b1), that a defendant may assert that a chemical analysis result is inadmissible because of inadequate preventative maintenance on the chemical analysis instrument. 	<p>1 December 2006</p>

<p style="text-align: center;">Habitual DWI</p>	<ul style="list-style-type: none"> • Amends G.S. 20-138.5(a) to increase the habitual DWI look-back period from seven years to ten years. • Amends G.S. 20-138.5(c) to provide that the chemical analysis procedures in G.S. 20-139.1 apply to habitual DWI charges. 	<p style="text-align: center;">1 December 2006</p>
<p style="text-align: center;">Death and serious injury offenses</p>	<ul style="list-style-type: none"> • <u>Felony death by vehicle</u>: Changes the layout of, and increases the penalty for, the offense of felony death by vehicle under G.S. 20-141.4(a1). The penalty increases from a Class G felony to a Class E felony. • <u>Misdemeanor death by vehicle</u>: Changes the layout of the offense of misdemeanor death by vehicle under G.S. 20-141.4(a2). • <u>Felony serious injury by vehicle</u>: Enacts a new G.S. 20-141.4(a3) to create the offense of felony serious injury by vehicle. This offense applies to a person who commits DWI or commercial DWI and thereby unintentionally causes serious injury to another person. The offense is a Class F felony. • <u>Aggravated felony serious injury by vehicle</u>: Enacts a new G.S. 20-141.4(a4) to create the offense of aggravated felony serious injury by vehicle. This offense applies to a person who commits felony serious injury by vehicle and has a previous conviction for an offense involving impaired driving within the seven years preceding the current offense. The offense is a Class E felony. • <u>Aggravated felony death by vehicle</u>: Enacts a new G.S. 20-141.4(a5) to create the offense of aggravated felony death by vehicle. This offense applies to a person who commits felony death by vehicle and has a previous conviction of an offense involving impaired driving within the seven years preceding the current offense. The offense is a Class D felony. • <u>Sentencing enhancement for repeat felony death by vehicle offenders</u>: Enacts a new G.S. 20-141.4(a6) to establish a new sentencing enhancement for a “repeat felony death by vehicle offender.” This offender is one who commits felony death by 	<p style="text-align: center;">1 December 2006</p>

	<p>vehicle or aggravated felony death by vehicle and who has a previous conviction for (i) felony death by vehicle, (ii) aggravated felony death by vehicle, or (iii) murder or manslaughter where the basis of the murder or manslaughter conviction was the unintentional death of another person caused by DWI or commercial DWI. The repeat offender is punished as if he or she had been convicted of second degree murder.</p>	
Implied consent statute changes	<p>Makes various changes to G.S. 20-16.2, which governs implied consent offenses:</p> <ul style="list-style-type: none"> • Allows any law enforcement officer (not just the charging officer, as under current law) to obtain the chemical analysis. • Clarifies that the chemical analysis may be administered by an authorized chemical analyst or an authorized law enforcement officer. • Alters the wording of the implied consent rights. • Provides that a law enforcement officer or a chemical analyst designates the type of chemical analysis to be administered. • Requires law enforcement to report to DMV if the chemical analysis indicates an alcohol concentration of 0.16 or more. • Limits the scope of the Superior Court’s review of a DMV decision upholding a refusal revocation. (The review will be on the record of the DMV hearing rather than a de novo review as under current law.) • Makes other conforming, clarifying and stylistic changes. 	1 December 2006
Chemical analysis results	<p>Makes numerous changes to G.S. 20-139.1, the chemical analysis statute:</p> <ul style="list-style-type: none"> • <u>Proof of alcohol concentration using chemical analysis results:</u> Provides that the results of a chemical analysis are alone sufficient to prove an alcohol concentration. • <u>Admissibility of breath analysis results:</u> Provides that breath analysis results are admissible in any court or administrative proceeding so long as the person performing the analysis 	1 December 2006

	<p>followed the DHHS rules and possessed a DHHS permit to operate the device. Requires the court or administrative agency to take judicial notice of the DHHS rules, the DHHS list of persons possessing a permit, and the DHHS preventative maintenance records for the instrument. Requires DHHS to post on a webpage and file with the clerk (i) a list of persons who possess a DHHS permit and (ii) the preventative maintenance records of the chemical analysis instruments. Provides that “[t]he results of the chemical analysis 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.”</p> <ul style="list-style-type: none"> • <u>Blood and urine tests</u>: Provides that when a law enforcement officer specifies a blood or urine test as the type of chemical analysis to be performed, an appropriate medical professional (which the bill expands to include an emergency medical technician) shall obtain the sample without the need for any further authorization or approval. Provides that blood or urine analysis results from the SBI Lab, the Charlotte-Mecklenburg Police Lab or any other lab approved by DHHS that are certified to on a form approved by the Attorney General’s Office are admissible without further authentication. (However, if a defendant in Superior Court or Juvenile Court objects to the introduction of the report at least five days prior to trial, then the court must determine the admissibility of the report via the Rules of Evidence.) Provides that the report may be sent via fax or electronically and that a fax copy or electronic copy of the report is admissible without further authentication. Requires that, in order to be admissible, the analysis must have been performed in accordance with rules adopted by the SBI or by another lab that is certified by the 	
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	<p>American Society of Crime Laboratory Directors. Allows the chain of custody of the blood or urine sample to be established via signed statements from the various persons who handled the sample. (This would not be the case, however, if a defendant in Superior Court or Juvenile Court were to object to the introduction of the chain of custody statements at least five days prior to trial.) Provides that blood or urine analysis results are admissible to prove an alcohol concentration or the presence of an impairing substance so long as (i) a law enforcement officer or chemical analyst requested the sample from the defendant and (ii) the person who performed the chemical analysis possessed the necessary DHHS permit. Requires courts and administrative agencies to take judicial notice of the DHHS list of persons possessing a permit. Authorizes a law enforcement officer to, without a court order, compel a defendant to provide a blood or urine sample after the defendant's refusal of a chemical analysis request if the officer reasonably believes that the delay involved in obtaining a court order "would result in the dissipation of the percentage of alcohol in the person's blood or urine."</p> <ul style="list-style-type: none"> • <u>Defendant's own test</u>: Allows the defendant to obtain an additional chemical analysis on his or her own. Requires the sheriff to "make reasonable efforts in a timely manner to assist" the defendant in arranging for his or her own chemical analysis if the person is not released from custody after the initial appearance. • <u>Defendant's copy of chemical analysis results</u>: Provides that if the defendant did not receive a copy of his or her chemical analysis results prior to trial, the court may grant a continuance, but may not dismiss the charge or suppress the test results for this reason alone. • <u>Subpoenaing chemical analyst</u>: Prohibits a defendant from subpoenaing a chemical analyst into District Court unless (i) 	
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	<p>the defendant files and serves on the DA at least five days prior to trial an affidavit setting forth the justifications for the analyst's live testimony and (ii) the DCJ determines the analyst's presence at trial to be necessary. If the court determines that the presence of the analyst is necessary, the case will be continued until the analyst can appear. The court may not dismiss the case unless the analyst willfully fails to appear after being ordered to appear by the court.</p> <ul style="list-style-type: none"> • <u>Admissibility of refusal of chemical analysis or field sobriety test</u>: Provides that a person's refusal to submit to a chemical analysis or field sobriety test is admissible in any civil, criminal or administrative action against the person. 	
<p>Law enforcement access to medical information</p>	<ul style="list-style-type: none"> • Enacts a new G.S. 90-21.20B requiring health care providers to provide law enforcement officers, upon request, with certain information about persons involved in vehicle accidents, such as whether the person appears to be impaired by alcohol or another substance. • Requires health care providers to provide law enforcement officers with access to these persons upon request, except when privacy is needed temporarily for medical reasons. • Requires health care providers to disclose certified copies of health information as specified in a search warrant or other court order. • Places limits on the disclosure of health information by the DA and law enforcement. • Provides that certified copies of relevant health information are admissible at trial without further authentication. • Amends G.S. 8-53.1 (the physician-patient privilege statute) to clarify that a health care provider is not precluded from disclosing information to a law enforcement agency that is investigating a vehicle crash under the new G.S. 90-21.20B. 	<p>1 December 2006</p>
<p>Additional requirements for voluntary dismissals and reductions, including</p>	<ul style="list-style-type: none"> • Amends G.S. 20-138.4 to require a prosecutor who is dismissing or reducing an implied consent charge (or a charge 	<p>1 December 2006</p>

<p>automated criminal system changes</p>	<p>“involving driving while license revoked for impaired driving”) to (i) explain the dismissal or reduction aloud in open court, (ii) file a detailed explanation form with the clerk and (iii) forward a copy of the explanation form to the charging law enforcement agency and the DA.</p> <ul style="list-style-type: none"> • Requires the AOC to develop the explanation form. • Requires the AOC to “electronically record this data in its database and make it available upon request.” 	<p><u>Note:</u> The AOC database requirement would not take effect until “after the next rewrite of the superior court clerks system [i.e., ACIS] by the Administrative Office of the Courts.”</p>
<p>Collection of additional information in impaired driving cases; annual DWI report</p>	<ul style="list-style-type: none"> • Amends G.S. 7A-109.2 to require the clerk to electronically record the name of the presiding judge (rather than the “identity” of the judge as under current law). • Also expands G.S. 7A-109.2 to require the clerk to electronically record additional information for offenses involving impaired driving, DWLR offenses where the underlying revocation is an impaired driving revocation, “and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages.” This additional information is as follows: (i) the reasons for any pretrial dismissal by the court; (ii) the alcohol concentration results reported by the chemical analyst; and (iii) the reasons for any suppression of evidence. • Enacts a new G.S. 7A-346.3 requiring the AOC to prepare and publish a detailed annual report on the cases covered by the expanded G.S. 7A-109.2. The report will analyze this case information by county, by judge, by prosecutor and by defense attorney. 	<p>“[A]fter the next rewrite of the superior court clerks system [i.e., ACIS] by the Administrative Office of the Courts.”</p>
<p>Proof of notice from DMV</p>	<ul style="list-style-type: none"> • Amends G.S. 20-48 to provide that proof of the giving of a notice by DMV may be made by a notation in DMV’s records 	<p>1 December 2006</p>

	<p>(i) memorializing that DMV sent the notice to a particular address and (ii) indicating the purpose of the notice. Further, DMV may send a certified copy of its records via the Police Information Network, by fax, or by other electronic means.</p> <ul style="list-style-type: none"> • A copy of DMV’s records sent under G.S. 20-48 “is admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.” 	
<p>New DWLR and FTA offenses</p>	<ul style="list-style-type: none"> • Adds a new G.S. 20-28(a2) making it a Class 1 misdemeanor for a person to drive “upon a highway while that person’s license is revoked for an impaired drivers license revocation after the Division [of Motor Vehicles] has sent notification in accordance with G.S. 20-48.” • Also provides in the new G.S. 20-28(a2) that a person commits a Class 1 misdemeanor if the person “fails to appear for two years from the date of the charge after being charged with an implied consent offense.” • Upon conviction for one of these new offenses, DMV would revoke the defendant’s license for an additional period of one year for a first offense, an additional period of two years for a second offense, and permanently for a third or subsequent offense. • Also provides in the new G.S. 20-28(a2) that a “restorer of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.” • Amends G.S. 20-28(c) and adds three new subsections to set out (i) when a person revoked under G.S. 20-28 may apply for a license restoration and (ii) what conditions DMV must 	<p>1 December 2006</p>

	impose on the restored license.	
Effect of commercial DWI on authority to operate a passenger vehicle	<ul style="list-style-type: none"> • Provides that the license revocation in G.S. 20-17(a)(2) applies to convictions of commercial impaired driving under G.S. 20-138.2 only if the driver's alcohol concentration was 0.06 or higher. (For purposes of making this determination, the chemical analysis results are conclusive.) • Accordingly, a person convicted of commercial DWI whose alcohol concentration was less than 0.06 would be disqualified from operating a commercial motor vehicle, but would not be prohibited from operating a passenger vehicle. 	1 December 2006
Medical exception to interlock requirement on restored license	<ul style="list-style-type: none"> • Amends G.S. 20-17.8 to allow a person who ordinarily would have an ignition interlock restriction on his or her restored license to petition DMV for a medical exemption from that restriction. 	1 December 2006
Sentencing changes/<u>Blakely</u> compliance	<p>Amends G.S. 20-179 so that it comports with United States Supreme Court case law:</p> <ul style="list-style-type: none"> • <u>District Court</u>: Requires the State to prove grossly aggravating and aggravating factors beyond a reasonable doubt. Requires the defendant to prove mitigating factors by a preponderance of the evidence. The DCJ determines the existence of grossly aggravating, aggravating and mitigating factors. The judge weighs and applies the factors found and imposes an appropriate sentence just as under current law. The factors found must be recorded as part of the judgment. • <u>Superior Court</u>: Requires the State to prove grossly aggravating and aggravating factors beyond a reasonable doubt. Requires the defendant to prove mitigating factors by a preponderance of the evidence. Requires the State to provide notice to the defendant, at least ten days prior to trial, of the grossly aggravating and aggravating factors that the State intends to prove. Unless the defendant admits to the existence of a grossly aggravating or aggravating factor, the grossly aggravating or aggravating factor must be found by the jury. 	1 December 2006

	<p>(This does not apply to the prior conviction gross aggravator in G.S. 20-179(c)(1), which may be found by the judge.) The court may determine that the interests of justice require that the jury consider the grossly aggravating factors and aggravating factors in a separate sentencing proceeding. If the defendant admits to the grossly aggravating and aggravating factors, but pleads not guilty to the underlying offense, evidence that relates solely to the establishment of a grossly aggravating or aggravating factor may not be introduced at trial. If the defendant pleads guilty to the charge, but contests the grossly aggravating and aggravating factors, then a jury must be impaneled to determine the existence of the grossly aggravating and aggravating factors. The judge weighs and applies the factors found and imposes an appropriate sentence just as under current law. The factors found must be recorded as part of the judgment.</p>	
Elimination of non-operation periods	<ul style="list-style-type: none"> Amends G.S. 20-179 and repeals G.S. 20-17.2 to eliminate non-operation periods as a condition of probation for Level Three, Four and Five defendants. 	1 December 2006
Active time/48-hour increments/hour for hour credit	<p>Amends G.S. 20-179(s) to provide as follows:</p> <ul style="list-style-type: none"> <u>Weekend service in 48-hour increments</u>: “The judge in his discretion may order a term of imprisonment to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.” So, a defendant who receives a seven-day active sentence to be served on weekends would serve it in the following increments: 48 + 48 + 48+ 24. <u>Credit is hour for hour</u>: “Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing the number of hours served.” So, a 	1 December 2006

	<p>defendant could not log in on a Friday evening and log out on a Sunday morning and receive credit for a full forty-eight hours.</p> <ul style="list-style-type: none"> • <u>Refusal of entrance to jail because of alcohol or controlled substances</u>: “The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.” Once such a defendant is reported back to court, the court must hold a hearing. If the court determines that, at the time the defendant sought entrance to the jail, the defendant (i) “had previously consumed alcohol in his body as shown by an alcohol screening device” or (ii) “had a previously consumed controlled substance in his body,” then the defendant “shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends.” It is a defense to the immediate service requirement and weekend service ban if the alcohol or controlled substance in the defendant’s body “was lawfully obtained and taken in therapeutically appropriate amounts.” 	
Retention of DWI case files by clerk’s office	<ul style="list-style-type: none"> • Enacts a new G.S. 7A-109.4 requiring the clerk to maintain for ten years all records related to an offense involving impaired driving that resulted in a conviction. • Prior to destroying the case file, the clerk must ensure that the following information is electronically recorded: (i) the names of the defendant, the judge, the prosecutor, and the defendant’s attorney (or whether there was a waiver of counsel); (ii) the alcohol concentration or the fact that the defendant refused a chemical analysis; (iii) the sentence imposed; and (iv) whether the case was appealed to Superior Court and, if so, the Superior Court disposition. 	1 December 2006
Underage consumption	<ul style="list-style-type: none"> • Amends G.S. 18B-302 to make it unlawful for a person less than 21 years of age to consume “any alcoholic beverage.” 	1 December 2006

	<p>(Under current law, it is unlawful for a person under 21 to purchase, attempt to purchase, or possess alcohol, but consumption itself is not a crime.) A violation by a person who is 19 or 20 years old would be a Class 3 misdemeanor. A violation by a person under the age of 19 would be a Class 1 misdemeanor.</p> <ul style="list-style-type: none"> • Authorizes an officer who has probable cause to believe that a person under 21 has consumed alcohol to require that person to submit to an alcohol screening test. The test results (or the fact of a refusal to submit to the test) are admissible in any court or administrative proceeding. 	
Parole requirements	<ul style="list-style-type: none"> • Amends G.S. 15A-1374 to require that a person who was sentenced under G.S. 20-179 and is now being paroled (i) be paroled to a residential treatment program, (ii) be placed on community service parole or (iii) be placed on house arrest with electronic monitoring. 	1 December 2006
Employment of former ABC permit holder	<ul style="list-style-type: none"> • Amends G.S. 18B-1003(c) to prohibit an ABC permittee from employing in the sale or distribution of alcoholic beverages a person (i) who previously held an ABC permit, but whose permit has been revoked within the preceding 18 months and (ii) who held the revoked permit at the same location where the person would now be employed. 	1 December 2006
DWI training for judges	<ul style="list-style-type: none"> • Requests that the Chief Justice (i) “encourage the judges of this State to obtain continuing legal education on the laws of this State relating to driving while impaired offenses and related issues” and (ii) “promulgate any rules necessary to ensure that the judiciary receives necessary training and education on these laws.” 	1 December 2006
DA signature requirement for MARs	<ul style="list-style-type: none"> • Amends G.S. 15A-1420(a) to provide that a motion for appropriate relief in District Court may not be granted unless the DA has signed a document indicating that the DA has had an opportunity to consent or object to the motion. However, the court may grant the motion without the DA’s signature 	1 December 2006

	once ten days have passed since the DA received notice of the motion.	
Expansion of DWI seizure law to include unlicensed DWI defendants driving without insurance	<ul style="list-style-type: none"> • Amends G.S. 20-28.3 to expand the DWI seizure law so that it also requires the seizure of a motor vehicle when (i) the defendant is charged with an offense involving impaired driving, (ii) the defendant does not have a valid drivers license and (iii) the defendant is not covered by an automobile liability insurance policy. • Amends G.S. 20-28.2 to provide that the vehicle owner may petition for permanent pretrial release as an innocent owner if the owner (i) did not know and had no reason to know that the defendant lacked a valid drivers license and liability insurance or (ii) knew that the defendant lacked a valid drivers license and liability insurance, but the defendant used the vehicle without the owner's express or implied permission. • Makes other conforming changes to the seizure statutes. 	1 December 2006