

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 752
Committee Substitute Favorable 5/9/89
Judiciary I Senate Committee Substitute Adopted 6/29/89

Short Title: DWI Modifications.

(Public)

Sponsors:

Referred to:

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE STATUTES REQUIRING
ASSESSMENT OF CONVICTED IMPAIRED DRIVERS.

The General Assembly of North Carolina enacts:

PART I. POSTPONE STATEWIDE APPLICABILITY OF 1987 LAW.

Section 1. Section 5 of Chapter 797 of the 1987 Session Laws reads as rewritten:

"Sec. 5. Section 2 of this act shall be established as a pilot program in not more than ten counties in the State as determined and required by the Division Director of Mental Health, Mental Retardation and Substance Abuse Services, shall become effective January 1, 1988, and shall apply to sentencing for convictions after that date. The Division for Mental Health, Mental Retardation and Substance Abuse Services shall monitor the pilot programs and shall report administrative costs, case management practices, participant recidivism, and other relevant information, to the General Assembly on or before February 1, 1989. Section 2 of this act shall become effective throughout the State ~~July 1, 1989.~~ July 1, 1990."

Sec. 1.1. Section 4 of Chapter 797 of the 1987 Session Laws reads as rewritten:

"Sec. 4. Section 1 of this act shall become effective January 1, 1988 and shall expire ~~June 30, 1989.~~ June 30, 1990 and shall apply to sentencing for convictions after January 1, 1988."

PART II. TECHNICAL CORRECTION TO 1987 PILOT LAW.

1 Sec. 2. Effective January 1, 1988, Section 2 of Chapter 797, Session Laws of
2 1987 reads as rewritten:

3 "Sec. 2. G.S. 20-179(m) reads as rewritten:

4 '(m) Assessment and Treatment Required. If a defendant being sentenced under
5 this section is placed on probation, he ~~must~~ shall be required as a condition of that
6 probation to obtain a substance abuse assessment; provided, however, that the defendant
7 shall have the option of meeting the conditions of his probation either in the county of
8 his conviction or in the county of his residence and he shall be sentenced according to
9 the law of the county selected. The defendant shall inform the court at the time of his
10 conviction of the county in which he has chosen to meet the conditions of his probation.
11 ~~if:~~

12 (1) ~~He had an alcohol concentration of 0.20 or more as~~
13 ~~indicated by a chemical analysis taken when he was charged; or~~

14 (2) ~~He has a prior conviction for an offense involving impaired~~
15 ~~driving within the five years preceding the date of the offense for~~
16 ~~which he is being sentenced and, when he was charged with the~~
17 ~~current offense, he either:~~

18 a. ~~Had an alcohol concentration of 0.10 or more; or~~

19 b. ~~Willfully refused to submit to a chemical analysis.~~

20 The judge ~~must~~ shall require the defendant to obtain the assessment from an area mental
21 health agency, its designated agent, or a private facility licensed by the State for the
22 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
23 the court's judgment, the defendant shall schedule the assessment within 30 days from
24 the date of the judgment. Any agency performing assessments shall give written
25 notification of its intention to do so to the area mental health authority in the catchment
26 area in which it is located and to the Department of Human Resources. The Secretary
27 of the Department of Human Resources may adopt rules to implement the provisions of
28 this subsection, and these rules may include provisions to allow defendant to obtain
29 assessments and treatment from agencies not located in North Carolina. The assessing
30 agency shall give the client a standardized test capable of providing uniform research
31 data, including, but not limited to, demographic information, defendant history,
32 assessment results and recommended interventions, approved by the Department of
33 Human Resources to determine chemical dependency. A clinical interview concerning
34 the general status of the defendant with respect to chemical dependency shall be
35 conducted by the assessing agency before making any recommendation for further
36 treatment. A recommendation made by the assessing agency shall be signed by a
37 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
38 Department of Human Resources.

39 If the assessing agency recommends that the defendant participate in a treatment
40 program, the judge may require the defendant to do so, and he shall ~~In addition, he must~~
41 ~~require the defendant to participate in a treatment program if recommended by the assessing~~
42 ~~agency, and he must~~ require the defendant to execute a Release of Information
43 authorizing the treatment agency to report his progress to the court or the ~~Division of~~
44 ~~Adult Probation and Parole~~ Department of Correction. The judge may order the defendant

1 to participate in an appropriate treatment program at the time he is ordered to obtain an
2 assessment, or he may order him to reappear in court when the assessment is completed
3 to determine if a condition of probation requiring participation in treatment should be
4 imposed. An order of the court shall not require the defendant to participate in any
5 treatment program for more than 90 days unless a longer treatment program is
6 recommended by the assessing agency and his alcohol concentration was .15 or greater
7 as indicated by a chemical analysis taken when he was charged or this was a second or
8 subsequent offense within five years. At the time of sentencing The the judge must shall
9 require the defendant to pay twenty-five dollars (\$25.00) for the services of the assessment
10 facility and the treatment fees that may be charged by the treatment facility one hundred
11 twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five
12 dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii)
13 seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug
14 education traffic school depending upon the recommendation made by the assessing
15 agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees
16 received by the Area Mental Health, Mental Retardation, and Substance Abuse
17 Authorities under this section shall be administered pursuant to G.S. 20-179.2(e),
18 provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies
19 received under this section. The operators of the local alcohol and drug education
20 traffic school may change the length of time required to complete the school in
21 accordance with administrative costs, provided, however that the length and the
22 curriculum of the school shall be approved by the Commission for Mental Health,
23 Mental Retardation, and Substance Abuse Services and in no event shall the school be
24 less than five hours in length. If the defendant is treated by an area mental health
25 facility, G.S. 122-35.47—122C-146 applies after receipt of the seventy-five dollar
26 (\$75.00) fee. Any determinations with regard to the defendant's ability to pay the
27 assessment fee must shall be made by the judge.

28 In those cases in which no substance abuse handicap is identified, that finding ~~must~~
29 shall be forwarded in writing to filed with the court and the defendant shall be required to
30 attend an alcohol and drug education traffic school. When treatment is required, the
31 treatment agency's progress reports must shall be filed with the court or the Division of
32 Adult Probation and Parole Department of Correction at intervals of no greater than six
33 months until the termination of probation or the treatment agency determines and
34 reports that no further treatment is appropriate. If the defendant is required to
35 participate in a treatment program and he completes the recommended treatment, he
36 does not have to attend the alcohol and drug education traffic school. Upon the
37 completion of the court-ordered assessment and court-ordered treatment or school, the
38 assessing or treatment agency or school shall give the Division of Motor Vehicles the
39 original of the certificate of completion, shall provide the defendant with a copy of that
40 certificate, and shall retain a copy of the certificate on file for a period of five years.
41 The Division of Motor Vehicles shall not reissue the drivers license of a defendant
42 ordered to obtain assessment, participate in a treatment program or school unless it has
43 received the original certificate of completion from the assessing or treatment agency or
44 school, provided, however that a defendant may be issued a limited driving privilege

1 pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be
2 issued unless the agency or school has received the fifty dollar (\$50.00) fee and the
3 seventy-five dollar (\$75.00) fee as appropriate.

4 The Department of Human Resources may approve programs offered in another
5 state if they are substantially similar to programs approved in this State, and if that state
6 recognizes North Carolina programs for similar purposes. The defendant shall be
7 responsible for the fees at the approved program."

8 **PART III. AMENDMENTS TO PILOT PROGRAM/PERMANENT LAW.**

9 Sec. 2.1. Effective July 1, 1989, G.S. 20-179(m) as rewritten by Section 2 of
10 Chapter 797, Session Laws of 1987, and Section 2 of this act, as applicable:

- 11 (1) Until June 30, 1990, as a pilot program as provided by Section 5 of
12 Chapter 797, Session Laws of 1987, as amended by Section 1 of this
13 act♦; and
- 14 (2) On a statewide basis beginning July 1, 1990, as provided by Section 5
15 of Chapter 797, Session Laws of 1987, as amended by Section 1 of
16 this act reads as rewritten:

17 "(m) Assessment and Treatment Required in Certain Cases. If a defendant being
18 sentenced under this section is placed on probation, he shall be required as a condition
19 of that probation to obtain a substance abuse assessment; ~~provided, however, that the~~
20 ~~defendant shall have the option of meeting the conditions of his probation either in the county~~
21 ~~of his conviction or in the county of his residence and he shall be sentenced according to the~~
22 ~~law of the county selected. The defendant shall inform the court at the time of his conviction of~~
23 ~~the county in which he has chosen to meet the conditions of his probation.~~

24 The judge shall require the defendant to obtain the assessment from an area mental
25 health agency, its designated agent, or a private facility licensed by the State for the
26 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
27 the court's judgment, the defendant shall schedule the assessment within 30 days from
28 the date of the judgment. Any agency performing assessments shall give written
29 notification of its intention to do so to the area mental health authority in the catchment
30 area in which it is located and to the Department of Human Resources. The Secretary
31 of the Department of Human Resources may adopt rules to implement the provisions of
32 this subsection, and these rules may include provisions to allow defendant to obtain
33 assessments and treatment from agencies not located in North Carolina. The assessing
34 agency shall give the client a standardized test capable of providing uniform research
35 data, including, but not limited to, demographic information, defendant history,
36 assessment results and recommended interventions, approved by the Department of
37 Human Resources to determine chemical dependency. A clinical interview concerning
38 the general status of the defendant with respect to chemical dependency shall be
39 conducted by the assessing agency before making any recommendation for further
40 treatment. A recommendation made by the assessing agency shall be signed by a
41 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
42 Department of Human Resources.

43 If the assessing agency recommends that the defendant participate in a treatment
44 program, the judge may require the defendant to do so, and he shall require the

1 defendant to execute a Release of Information authorizing the treatment agency to
2 report his progress to the court or the Department of Correction. The judge may order
3 the defendant to participate in an appropriate treatment program at the time he is
4 ordered to obtain an assessment, or he may order him to reappear in court when the
5 assessment is completed to determine if a condition of probation requiring participation
6 in treatment should be imposed. An order of the court shall not require the defendant to
7 participate in any treatment program for more than 90 days unless a longer treatment
8 program is recommended by the assessing agency and his alcohol concentration was .15
9 or greater as indicated by a chemical analysis taken when he was charged or this was a
10 second or subsequent offense within five years. At the time of sentencing the judge
11 shall require the defendant to pay \$125.00. The payment of the fee of one hundred
12 twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency
13 and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and
14 drug education traffic school depending upon the recommendation made by the
15 assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this
16 section. Fees received by the Area Mental Health, Mental Retardation, and Substance
17 Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e),
18 provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies
19 received under this section. The operators of the local alcohol and drug education
20 traffic school may change the length of time required to complete the school in
21 accordance with administrative costs, provided, however that the length and the
22 curriculum of the school shall be approved by the Commission for Mental Health,
23 Mental Retardation and Substance Abuse Services and in no event shall the school be
24 less than five hours in length. If the defendant is treated by an area mental health
25 facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an
26 area mental health facility or its contractor is providing treatment or education services
27 to a defendant pursuant to this subsection, the area facility or its contractor may require
28 that the defendant pay the fees prescribed by law for the services before it certifies that
29 the defendant has completed the recommended treatment or educational program. Any
30 determinations with regard to the defendant's ability to pay the assessment fee shall be
31 made by the judge.

32 In those cases in which no substance abuse handicap is identified, that finding shall
33 be filed with the court and the defendant shall be required to attend an alcohol and drug
34 education traffic school. When treatment is required, the treatment agency's progress
35 reports shall be filed with the court or the Department of Correction at intervals of no
36 greater than six months until the termination of probation or the treatment agency
37 determines and reports that no further treatment is appropriate. If the defendant is
38 required to participate in a treatment program and he completes the recommended
39 treatment, he does not have to attend the alcohol and drug education traffic school.
40 Upon the completion of the court-ordered assessment and court-ordered treatment or
41 school, the assessing or treatment agency or school shall give the Division of Motor
42 Vehicles the original of the certificate of completion, shall provide the defendant with a
43 copy of that certificate, and shall retain a copy of the certificate on file for a period of
44 five years. The Division of Motor Vehicles shall not reissue the driver's license of a

1 defendant ordered to obtain assessment, participate in a treatment program or school
2 unless it has received the original certificate of completion from the assessing or
3 treatment agency or ~~school~~, school or a court order issued upon review of an agency's
4 decision to decline to certify that the defendant has completed the court-ordered
5 assessment or treatment; provided, however that a defendant may be issued a limited
6 driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no
7 certificate shall be issued unless the agency or school has received the fifty dollar
8 (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may
9 within 90 days after an agency decision to decline to certify, by filing a motion in the
10 criminal case, request that a judge presiding in the court in which he was convicted
11 review the decision of an assessment or treatment agency to decline to certify that the
12 defendant has completed the assessment or treatment. The agency whose decision is
13 being reviewed shall be notified at least 10 days prior to any hearing to review its
14 decision. If the judge determines that the defendant has obtained an assessment, has
15 completed the treatment, or has made an effort to do so that is reasonable under the
16 circumstances, as the case may be, the judge shall order that the agency send a
17 certificate of completion to the Division of Motor Vehicles.

18 The Department of Human Resources may approve programs offered in another
19 state if they are substantially similar to programs approved in this State, and if that state
20 recognizes North Carolina programs for similar purposes. The defendant shall be
21 responsible for the fees at the approved program."

22 PART IV. CONFORMING AMENDMENTS.

23 Sec. 3. Effective July 1, 1990, G.S. 20-179, including subsection (m) as
24 rewritten by Section 2.1 of this act, reads as rewritten:

25 "**§ 20-179. Sentencing hearing after conviction for impaired driving; determination**
26 **of grossly aggravating and aggravating and mitigating factors;**
27 **punishments.**

28 (a) Sentencing Hearing Required. – After a conviction for impaired driving under
29 G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are
30 aggravating or mitigating factors that affect the sentence to be imposed. Before the
31 hearing the prosecutor must make all feasible efforts to secure the defendant's full
32 record of traffic convictions, and must present to the judge that record for consideration
33 in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant
34 or his attorney a copy of the defendant's record of traffic convictions at a reasonable
35 time prior to the introduction of the record into evidence. In addition, the prosecutor
36 must present all other appropriate grossly aggravating and aggravating factors of which
37 he is aware, and the defendant or his attorney may present all appropriate mitigating
38 factors. In every instance in which a valid chemical analysis is made of the defendant,
39 the prosecutor must present evidence of the resulting alcohol concentration.

40 (b) Repealed by Session Laws 1983, c. 435, s. 29, effective October 1, 1983.

41 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing
42 hearing, based upon the evidence presented at trial and in the hearing, the judge must
43 first determine whether there are any grossly aggravating factors in the case. If the
44 defendant has been convicted of two or more prior offenses involving impaired driving,

1 if the convictions occurred within seven years before the date of the offense for which
2 he is being sentenced, the judge must impose the Level One punishment under
3 subsection (g). The judge must also impose the Level One punishment if he determines
4 that two or more of the following grossly aggravating factors apply:

- 5 (1) A single conviction for an offense involving impaired driving, if the
6 conviction occurred within seven years before the date of the offense
7 for which the defendant is being sentenced.
- 8 (2) Driving by the defendant at the time of the offense while his driver's
9 license was revoked under G.S. 20-28, and the revocation was an
10 impaired driving revocation under G.S. 20-28.2(a).
- 11 (3) Serious injury to another person caused by the defendant's impaired
12 driving at the time of the offense.

13 If the judge determines that only one of the above grossly aggravating factors applies,
14 he must impose the Level Two punishment under subsection (h). In imposing a Level
15 One or Two punishment, the judge may consider the aggravating and mitigating factors
16 in subsections (d) and (e) in determining the appropriate sentence. If there are no
17 grossly aggravating factors in the case, the judge must weigh all aggravating and
18 mitigating factors and impose punishment as required by subsection (f).

19 (d) Aggravating Factors to Be Weighed. – The judge must determine before
20 sentencing under subsection (f) whether any of the aggravating factors listed below
21 apply to the defendant. The judge must weigh the seriousness of each aggravating factor
22 in the light of the particular circumstances of the case. The factors are:

- 23 (1) Gross impairment of the defendant's faculties while driving or an
24 alcohol concentration of 0.20 or more within a relevant time after the
25 driving.
- 26 (2) Especially reckless or dangerous driving.
- 27 (3) Negligent driving that led to an accident causing property damage in
28 excess of five hundred dollars (\$500.00) or personal injury.
- 29 (4) Driving by the defendant while his driver's license was revoked.
- 30 (5) Two or more prior convictions of a motor vehicle offense not
31 involving impaired driving for which at least three points are assigned
32 under G.S. 20-16 or for which the convicted person's license is subject
33 to revocation, if the convictions occurred within five years of the date
34 of the offense for which the defendant is being sentenced, or one or
35 more prior convictions of an offense involving impaired driving that
36 occurred more than seven years before the date of the offense for
37 which the defendant is being sentenced.
- 38 (6) Conviction under G.S. 20-141(j) of speeding by the defendant while
39 fleeing or attempting to elude apprehension.
- 40 (7) Conviction under G.S. 20-141 of speeding by the defendant by at least
41 30 miles per hour over the legal limit.
- 42 (8) Passing a stopped school bus in violation of G.S. 20-217.
- 43 (9) Any other factor that aggravates the seriousness of the offense.

1 Except for the factor in subdivision (5) the conduct constituting the aggravating factor
2 must occur during the same transaction or occurrence as the impaired driving offense.

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

7 (1) Slight impairment of the defendant's faculties resulting solely from
8 alcohol, and an alcohol concentration that did not exceed 0.11 at any
9 relevant time after the driving.

10 (2) Slight impairment of the defendant's faculties, resulting solely from
11 alcohol, with no chemical analysis having been available to the
12 defendant.

13 (3) Driving at the time of the offense that was safe and lawful except for
14 the impairment of the defendant's faculties.

15 (4) A safe driving record, with the defendant's having no conviction for
16 any motor vehicle offense for which at least four points are assigned
17 under G.S. 20-16 or for which the person's license is subject to
18 revocation within five years of the date of the offense for which the
19 defendant is being sentenced.

20 (5) Impairment of the defendant's faculties caused primarily by a lawfully
21 prescribed drug for an existing medical condition, and the amount of
22 the drug taken was within the prescribed dosage.

23 (6) The defendant's voluntary submission to a mental health facility for
24 assessment after he was charged with the impaired driving offense for
25 which he is being sentenced, and, if recommended by the facility, his
26 voluntary participation in the recommended treatment.

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

28 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
29 mitigating factor must occur during the same transaction or occurrence as the impaired
30 driving offense.

31 (f) Weighing the Aggravating and Mitigating Factors. – If the judge in the
32 sentencing hearing determines that there are no grossly aggravating factors, he must
33 weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the
34 judge determines that:

35 (1) The aggravating factors substantially outweigh any mitigating factors,
36 he must note in the judgment the factors found and his finding that the
37 defendant is subject to the Level Three punishment and impose a
38 punishment within the limits defined in subsection (i).

39 (2) There are no aggravating and mitigating factors, or that aggravating
40 factors are substantially counterbalanced by mitigating factors, he must
41 note in the judgment any factors found and his finding that the
42 defendant is subject to the Level Four punishment and impose a
43 punishment within the limits defined in subsection (j).

1 (3) The mitigating factors substantially outweigh any aggravating factors,
2 he must note in the judgment the factors found and his finding that the
3 defendant is subject to the Level Five punishment and impose a
4 punishment within the limits defined in subsection (k).

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

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

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

21 (g) Level One Punishment. — A defendant subject to Level One punishment may
22 be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of
23 imprisonment that includes a minimum term of not less than 14 days and a maximum
24 term of not more than 24 months. The term of imprisonment may be suspended only if a
25 condition of special probation is imposed to require the defendant to serve a term of
26 imprisonment of at least 14 days. If the defendant is placed on probation, the judge
27 must, if required by ~~subsections (l) or subsection~~ subsection (m), impose the conditions relating to
28 ~~treatment—assessment, treatment, and education described in those subsections.~~ that
29 subsection. The judge may impose any other lawful condition of probation. If the judge
30 does not place on probation a defendant who is otherwise subject to the mandatory
31 assessment and treatment provisions of subsection (m), he must include in the record of
32 the case his reasons for not doing so.

33 (h) Level Two Punishment. — A defendant subject to Level Two punishment may
34 be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of
35 imprisonment that includes a minimum term of not less than seven days and a maximum
36 term of not more than 12 months. The term of imprisonment may be suspended only if a
37 condition of special probation is imposed to require the defendant to serve a term of
38 imprisonment of at least seven days. If the defendant is placed on probation, the judge
39 must, if required by ~~subsections (l) or subsection~~ subsection (m), impose the conditions relating to
40 ~~treatment—assessment, treatment, and education described in those subsections.~~ that
41 subsection. The judge may impose any other lawful condition of probation. If the judge
42 does not place on probation a defendant who is otherwise subject to the mandatory
43 assessment and treatment provisions of subsection (m), he must include in the record of
44 the case his reasons for not doing so.

1 (i) Level Three Punishment. – A defendant subject to Level Three punishment
2 may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of
3 imprisonment that includes a minimum term of not less than 72 hours and a maximum
4 term of not more than six months. The term of imprisonment must be suspended, on the
5 condition that the defendant:

- 6 (1) Be imprisoned for a term of at least 72 hours as a condition of special
7 probation; or
- 8 (2) Perform community service for a term of at least 72 hours; or
- 9 (3) Not operate a motor vehicle for a term of at least 90 days; or
- 10 (4) Any combination of these conditions.

11 The judge in his discretion may impose any other lawful condition of probation and, if
12 required by ~~subsections (l) or subsection~~ subsection (m), must impose the conditions relating to
13 ~~treatment—assessment, treatment, and education described in those subsections.—that~~
14 subsection. This subsection does not affect the right of a defendant to elect to serve the
15 suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

16 (j) Level Four Punishment. – A defendant subject to Level Four punishment may
17 be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of
18 imprisonment that includes a minimum term of not less than 48 hours and a maximum
19 term of not more than 120 days. The term of imprisonment must be suspended, on the
20 condition that the defendant:

- 21 (1) Be imprisoned for a term of 48 hours as a condition of special
22 probation; or
- 23 (2) Perform community service for a term of 48 hours; or
- 24 (3) Not operate a motor vehicle for a term of 60 days; or
- 25 (4) Any combination of these conditions.

26 The judge in his discretion may impose any other lawful condition of probation and, if
27 required by ~~subsections (l) or subsection~~ subsection (m), must impose the conditions relating to
28 ~~treatment—assessment, treatment, and education described in those subsections.—that~~
29 subsection. This subsection does not affect the right of a defendant to elect to serve the
30 suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

31 (k) Level Five Punishment. – A defendant subject to Level Five punishment may
32 be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of
33 imprisonment that includes a minimum term of not less than 24 hours and a maximum
34 term of not more than 60 days. The term of imprisonment must be suspended, on the
35 condition that the defendant:

- 36 (1) Be imprisoned for a term of 24 hours as a condition of special
37 probation; or
- 38 (2) Perform community service for a term of 24 hours; or
- 39 (3) Not operate a motor vehicle for a term of 30 days; or
- 40 (4) Any combination of these conditions.

41 The judge may in his discretion impose any other lawful condition of probation and, if
42 required by ~~subsections (l) or subsection~~ subsection (m), must impose the conditions relating to
43 ~~treatment—assessment, treatment, and education described in those subsections.—that~~

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

3 (k1) Credit for Inpatient Treatment. Pursuant to G.S. 15A-1351(a), the judge may
4 order that a term of imprisonment imposed as a condition of special probation under any
5 level of punishment be served as an inpatient in a facility operated or licensed by the
6 State for the treatment of alcoholism or substance abuse where the defendant has been
7 accepted for admission or commitment as an inpatient. The defendant shall bear the
8 expense of any treatment. The judge may impose restrictions on the defendant's ability
9 to leave the premises of the treatment facility and require that the defendant follow the
10 rules of the treatment facility. The judge may credit against the active sentence imposed
11 on a defendant the time the defendant was an inpatient at the treatment facility, provided
12 such treatment occurred after the commission of the offense for which the defendant is
13 being sentenced. The credit may not be used more than once during the seven-year
14 period immediately preceding the date of the offense. This section shall not be
15 construed to limit the authority of the judge in sentencing under any other provisions of
16 law.

17 ~~(l) Education Required in Certain Cases. — If a defendant being sentenced under~~
18 ~~this section is placed on probation, he must be required as a condition of that probation~~
19 ~~to complete the course of instruction successfully at an alcohol and drug education~~
20 ~~traffic school established pursuant to G.S. 20-179.2 within 90 days of the date of~~
21 ~~conviction unless:~~

- 22 ~~(1) He has previously been assigned to an alcohol and drug education~~
23 ~~traffic school and has successfully completed the course of instruction;~~
24 ~~or~~
25 ~~(2) The judge finds that the defendant will not benefit from the course of~~
26 ~~instruction because of specific, extenuating circumstances; or~~
27 ~~(3) There is no alcohol and drug education traffic school within a~~
28 ~~reasonable distance of the defendant's residence.~~

29 (m) Assessment and Treatment Required in Certain Cases. If a defendant being
30 sentenced under this section is placed on probation, he shall be required as a condition
31 of that probation to obtain a substance abuse assessment.

32 The judge shall require the defendant to obtain the assessment from an area mental
33 health agency, its designated agent, or a private facility licensed by the State for the
34 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
35 the court's judgment, the defendant shall schedule the assessment within 30 days from
36 the date of the judgment. Any agency performing assessments shall give written
37 notification of its intention to do so to the area mental health authority in the catchment
38 area in which it is located and to the Department of Human Resources. The Secretary
39 of the Department of Human Resources may adopt rules to implement the provisions of
40 this subsection, and these rules may include provisions to allow defendant to obtain
41 assessments and treatment from agencies not located in North Carolina. The assessing
42 agency shall give the client a standardized test capable of providing uniform research
43 data, including, but not limited to, demographic information, defendant history,
44 assessment results and recommended interventions, approved by the Department of

1 Human Resources to determine chemical dependency. A clinical interview concerning
2 the general status of the defendant with respect to chemical dependency shall be
3 conducted by the assessing agency before making any recommendation for further
4 treatment. A recommendation made by the assessing agency shall be signed by a
5 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the
6 Department of Human Resources.

7 If the assessing agency recommends that the defendant participate in a treatment
8 program, the judge may require the defendant to do so, and he shall require the
9 defendant to execute a Release of Information authorizing the treatment agency to
10 report his progress to the court or the Department of Correction. The judge may order
11 the defendant to participate in an appropriate treatment program at the time he is
12 ordered to obtain an assessment, or he may order him to reappear in court when the
13 assessment is completed to determine if a condition of probation requiring participation
14 in treatment should be imposed. An order of the court shall not require the defendant to
15 participate in any treatment program for more than 90 days unless a longer treatment
16 program is recommended by the assessing agency and his alcohol concentration was .15
17 or greater as indicated by a chemical analysis taken when he was charged or this was a
18 second or subsequent offense within five years. At the time of sentencing the judge
19 shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The
20 payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars
21 (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a
22 treatment facility or to an alcohol and drug education traffic school depending upon the
23 recommendation made by the assessing agency. G.S. 20-179(i) shall not apply to
24 defendants sentenced under this section. Fees received by the Area Mental Health,
25 Mental Retardation, and Substance Abuse Authorities under this section shall be
26 administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of
27 G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of
28 the local alcohol and drug education traffic school may change the length of time
29 required to complete the school in accordance with administrative costs, provided,
30 however that the length and the curriculum of the school shall be approved by the
31 Commission for Mental Health, Mental Retardation and Substance Abuse Services and
32 in no event shall the school be less than five hours in length. If the defendant is treated
33 by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five
34 dollar (\$75.00) fee. If an area mental health facility or its contractor is providing
35 treatment or education services to a defendant pursuant to this subsection, the area
36 facility or its contractor may require that the defendant pay the fees prescribed by law
37 for the services before it certifies that the defendant has completed the recommended
38 treatment or educational program. Any determinations with regard to the defendant's
39 ability to pay the assessment fee shall be made by the judge.

40 In those cases in which no substance abuse handicap is identified, that finding shall
41 be filed with the court and the defendant shall be required to attend an alcohol and drug
42 education traffic school. When treatment is required, the treatment agency's progress
43 reports shall be filed with the court or the Department of Correction at intervals of no
44 greater than six months until the termination of probation or the treatment agency

1 determines and reports that no further treatment is appropriate. If the defendant is
2 required to participate in a treatment program and he completes the recommended
3 treatment, he does not have to attend the alcohol and drug education traffic school.
4 Upon the completion of the court-ordered assessment and court-ordered treatment or
5 school, the assessing or treatment agency or school shall give the Division of Motor
6 Vehicles the original of the certificate of completion, shall provide the defendant with a
7 copy of that certificate, and shall retain a copy of the certificate on file for a period of
8 five years. The Division of Motor Vehicles shall not reissue the driver's license of a
9 defendant ordered to obtain assessment, participate in a treatment program or school
10 unless it has received the original certificate of completion from the assessing or
11 treatment agency or school or a court order issued upon review of an agency's decision
12 to decline to certify that the defendant has completed the court-ordered assessment or
13 treatment; provided, however that a defendant may be issued a limited driving privilege
14 pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be
15 issued unless the agency or school has received the fifty dollar (\$50.00) fee and the
16 seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an
17 agency decision to decline to certify, by filing a motion in the criminal case, request that
18 a judge presiding in the court in which he was convicted review the decision of an
19 assessment or treatment agency to decline to certify that the defendant has completed
20 the assessment or treatment. The agency whose decision is being reviewed shall be
21 notified at least 10 days prior to any hearing to review its decision. If the judge
22 determines that the defendant has obtained an assessment, has completed the treatment,
23 or has made an effort to do so that is reasonable under the circumstances, as the case
24 may be, the judge shall order that the agency send a certificate of completion to the
25 Division of Motor Vehicles.

26 The Department of Human Resources may approve programs offered in another
27 state if they are substantially similar to programs approved in this State, and if that state
28 recognizes North Carolina programs for similar purposes. The defendant shall be
29 responsible for the fees at the approved program.

30 (n) Time Limits for Performance of Community Service. – If the judgment
31 requires the defendant to perform a specified number of hours of community service as
32 provided in subsections (i), (j), or (k), the community service must be completed:

- 33 (1) Within 90 days, if the amount of community service required
34 is 72 hours or more; or
35 (2) Within 60 days, if the amount of community service required
36 is 48 hours; or
37 (3) Within 30 days, if the amount of community service required
38 is 24 hours.

39 The court may extend these time limits upon motion of the defendant if it finds that the
40 defendant has made a good faith effort to comply with the time limits specified in this
41 subsection.

42 (o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing
43 hearing, the State must prove any grossly aggravating or aggravating factor by the
44 greater weight of the evidence, and the defendant must prove any mitigating factor by

1 the greater weight of the evidence. Evidence adduced by either party at trial may be
2 utilized in the sentencing hearing. Except as modified by this section, the procedure in
3 G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or
4 absence of previous convictions that he finds reliable but he must give **prima facie**
5 effect to convictions recorded by the Division or any other agency of the State of North
6 Carolina. A copy of such conviction records transmitted by the police information
7 network in general accordance with the procedure authorized by G.S. 20-26(b) is
8 admissible in evidence without further authentication. If the judge decides to impose an
9 active sentence of imprisonment that would not have been imposed but for a prior
10 conviction of an offense, the judge must afford the defendant an opportunity to
11 introduce evidence that the prior conviction had been obtained in a case in which he was
12 indigent, had no counsel, and had not waived his right to counsel. If the defendant
13 proves by the preponderance of the evidence all three above facts concerning the prior
14 case, the conviction may not be used as a grossly aggravating or aggravating factor.

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

- 17 (1) The judge may not give credit to the defendant for the first 24 hours of
18 time spent in incarceration pending trial.
- 19 (2) The defendant must serve the mandatory minimum period of
20 imprisonment and good or gain time credit may not be used to reduce
21 that mandatory minimum period.
- 22 (3) The defendant may not be released on parole unless he is otherwise
23 eligible and has served the mandatory minimum period of
24 imprisonment.

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

28 (q) Meaning of 'Conviction'. – For the purposes of this Article, 'conviction'
29 includes a guilty verdict, guilty plea, plea of no contest, or anything that would be
30 treated as a conviction under G.S. 20-24(c).

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

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

- 1 (1) Community service; or
2 (2) Treatment and education as described in ~~subsections (l) and~~ subsection
3 (m); or
4 (3) Payment of any fines, court costs, and fees; or
5 (4) Any combination of these conditions.

6 (s) Method of Serving Sentence. – The judge in his discretion may order a term
7 of imprisonment or community service to be served on weekends, even if the sentence
8 cannot be served in consecutive sequence.

9 (t) Assessment for Convicted Defendants not Placed on Probation. – Any person
10 convicted of impaired driving who is not placed on probation shall obtain a substance
11 abuse assessment as a condition of having his driver's license restored following a
12 revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an
13 area mental health agency, its designated agency, or a private facility licensed by the
14 State for the treatment of alcoholism and substance abuse. The fee for the assessment
15 shall be as specified in subsection (m) of this section. The assessing agency shall
16 provide to the Department of Human Resources a certificate attesting that the
17 assessment has been performed and indicating its results. The Department shall
18 promptly notify the Division of Motor Vehicles of the receipt of the certificate. The
19 Division shall not reissue a driver's license to the defendant until this notification is
20 received. The Commission for Mental Health, Mental Retardation, and Substance
21 Abuse Services may adopt rules to implement the provisions of this subsection."

22 Sec. 4. G.S. 20-16.4 is repealed.

23 Sec. 4.1. Effective July 1, 1989, G.S. 20-179(m), as it applies until June 30,
24 1990, as provided by Section 4 of Chapter 797, Session Laws of 1989, as amended by
25 Section 1.1 of this act, reads as rewritten:

26 "(m) Assessment and Treatment Required in Certain Cases. – If a defendant being
27 sentenced under this section is placed on probation, he shall be required as a condition
28 of that probation to obtain a substance abuse assessment if:

- 29 (1) He had an alcohol concentration of 0.15 or more as
30 indicated by a chemical analysis taken when he was charged; or
31 (2) He has a prior conviction for an offense involving impaired
32 driving within the five years preceding the date of the offense for
33 which he is being sentenced and, when he was charged with the
34 current offense, he had an alcohol concentration of 0.10 or more; or
35 (3) He willfully refused to submit to a chemical analysis.

36 The judge shall require the defendant to obtain the assessment from an area mental
37 health agency, its designated agent, or a private facility licensed by the State for the
38 treatment of alcoholism and substance abuse. Unless a different time limit is specified in
39 the court's judgment, the defendant shall schedule the assessment within 30 days from
40 the date of the judgment. Any agency performing assessments shall give written
41 notification of its intention to do so to the area mental health authority in the catchment
42 area in which it is located and to the Department of Human Resources. The Secretary
43 of the Department of Human Resources may adopt rules to implement the provisions of
44 this subsection, and these rules may include provisions to allow defendant to obtain

1 assessments and treatment from agencies not located in North Carolina. The assessing
2 agency shall give the client a standardized test, approved by the Department of Human
3 Resources to determine chemical dependency. A clinical interview concerning the
4 general status of the defendant with respect to chemical dependency shall be conducted
5 by the assessing agency before making any recommendation for further treatment. A
6 recommendation made by the assessing agency shall be signed by a 'Certified
7 Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department
8 of Human Resources. If the assessing agency recommends that the defendant
9 participate in a treatment program, the judge may require the defendant to do so, and he
10 shall require the defendant to execute a Release of Information authorizing the treatment
11 agency to report his progress to the court or the Department of Correction. The judge
12 may order the defendant to participate in an appropriate treatment program at the time
13 he is ordered to obtain an assessment, or he may order him to reappear in court when the
14 assessment is completed to determine if a condition of probation requiring participation
15 in treatment should be imposed. An order of the court shall not require the defendant to
16 participate in any treatment program for more than 90 days unless a longer treatment
17 program is recommended by the assessing agency and his alcohol concentration was .15
18 or greater as indicated by a chemical analysis taken when he was charged or this was a
19 second or subsequent offense within five years. The judge shall require the defendant to
20 pay fifty dollars (\$50.00) for the services of the assessment facility and any additional
21 treatment fees that may be charged by the treatment facility. If the defendant is treated
22 by an area mental health facility, G.S. 122C-146 applies. Any determinations with
23 regard to the defendant's ability to pay the assessment fee shall be made by the judge. In
24 those cases in which no substance abuse handicap is identified, that finding shall be
25 filed with the court. When treatment is required, the treatment agency's progress reports
26 shall be filed with the court or the Department of Correction at intervals of no greater
27 than six months until the termination of probation or the treatment agency determines
28 and reports that no further treatment is appropriate. Upon the completion of the court-
29 ordered assessment or court-ordered treatment, the assessing or treatment agency shall
30 give the Division of Motor Vehicles the original of the certificate of completion, shall
31 provide the defendant with a copy of that certificate, and shall retain a copy of the
32 certificate on file for a period of five years. The Division of Motor Vehicles shall not
33 reissue the driver's license of a defendant ordered to obtain assessment or participate in
34 a treatment program unless it has received the original certificate of completion from
35 the assessing or treatment agency or a court order issued upon review of an agency's
36 decision to decline to certify that the defendant has completed the court-ordered
37 assessment or treatment, provided, however that a defendant may be issued a limited
38 driving privilege pursuant to G.S. 20-179.3. A defendant may within 90 days after an
39 agency decision to decline to certify, by filing a motion in the criminal case, request that
40 a judge presiding in the court in which he was convicted review the decision of an
41 assessment or treatment agency to decline to certify that the defendant has completed
42 the assessment or treatment. The agency whose decision is being reviewed shall be
43 notified at least 10 days prior to any hearing to review its decision. If the judge
44 determines that the defendant has obtained an assessment, has completed the treatment,

1 or has made an effort to do so that is reasonable under the circumstances, as the case
2 may be, the judge shall order that the agency send a certificate of completion to the
3 Division of Motor Vehicles.

4 The Department of Human Resources may approve programs offered in another
5 state if they are substantially similar to programs approved in this State, and if that state
6 recognizes North Carolina programs for similar purposes. The defendant shall be
7 responsible for the fees at the approved program."

8 Sec. 5. Sections 1 and 1.1 of this act are effective upon ratification. Section 4
9 shall become effective July 1, 1990. The remainder of this act is effective as provided
10 herein.