

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 999**

Short Title: DWI Technical Corrections. (Public)

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Sponsors: Senators Rand; and Jones.

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Referred to: Judiciary I (Civil).

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March 21, 2007

A BILL TO BE ENTITLED  
AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MOTOR VEHICLE  
LAWS PERTAINING TO IMPAIRED DRIVING OFFENSES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-4.01(24a)b. reads as rewritten:

"(24a) Offense Involving Impaired Driving. – Any of the following offenses:

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

b. ~~Death by vehicle under~~ Any offense set forth under  
G.S. 20-141.4 when conviction is based upon impaired driving  
or a substantially similar offense under previous law."

**SECTION 2.** G.S. 20-17(a)(9) reads as rewritten:

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

...

(9) ~~Death by vehicle as defined in G.S. 20-141.4.~~ Any offense set forth under G.S. 20-141.4."

**SECTION 3.** G.S. 20-139.1(b6) reads as rewritten:

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

**SECTION 4.** G.S. 20-28(c4) reads as rewritten:

1       "(c4) For a conditional restoration under subsection (c3) of this section, the  
2 Division shall require at a minimum that the driver obtain a substance abuse assessment  
3 prior to issuance of a license and show proof of financial responsibility. If the substance  
4 abuse assessment recommends education or treatment, the person must complete the  
5 education or treatment within the time limits specified. If the assessment determines that  
6 the person abuses alcohol, the Division shall require the person to install and use an  
7 ignition interlock system on any vehicles that are to be driven by that person for the  
8 period of time ~~set forth in G.S. 20-17.8(e).~~that the conditional restoration is active."

9       **SECTION 5.** Section 33 of S.L. 2006-253 reads as rewritten:

10       **"SECTION 33.** Sections 20.1, 20.2, and the requirement that the Administrative  
11 Office of the Courts electronically record certain data contained in subsection (c) of  
12 G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next  
13 rewrite of the superior court clerks system by the Administrative Office of the Courts.  
14 Section 22.4 becomes effective December 1, 2006. The remainder of this act becomes  
15 effective December 1, 2006, and applies to offenses committed on or after that date."

16       **SECTION 6.** G.S. 20-179(c) reads as rewritten:

17       "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing  
18 hearing, based upon the evidence presented at trial and in the hearing, the judge, or the  
19 jury in superior court, must first determine whether there are any grossly aggravating  
20 factors in the case. Whether a prior conviction exists under subdivision (1) of this  
21 ~~subsection~~subsection, or whether a conviction exists under subdivision (d)(5) of this  
22 ~~section~~section, shall be a ~~matter~~matters to be determined by the judge, and not the jury, in  
23 district or superior court. If the sentencing hearing is for a case remanded back to  
24 district court from superior court, the judge shall determine whether the defendant has  
25 been convicted of any offense that was not considered at the initial sentencing hearing  
26 and impose the appropriate sentence under this section. The judge must impose the  
27 Level One punishment under subsection (g) of this section if it is determined that two or  
28 more grossly aggravating factors apply. The judge must impose the Level Two  
29 punishment under subsection (h) of this section if it is determined that only one of the  
30 grossly aggravating factors applies. The grossly aggravating factors are:

31       (1) A prior conviction for an offense involving impaired driving if:

- 32       a. The conviction occurred within seven years before the date of  
33 the offense for which the defendant is being sentenced; or  
34       b. The conviction occurs after the date of the offense for which the  
35 defendant is presently being sentenced, but prior to or  
36 contemporaneously with the present sentencing.  
37       c. The conviction occurred in district court; the case was appealed  
38 to superior court; the appeal has been withdrawn, or the case  
39 has been remanded back to district court; and a new sentencing  
40 hearing has not been held pursuant to G.S. 20-38.7.

41       Each prior conviction is a separate grossly aggravating factor."

42       **SECTION 7.** G.S. 20-28.2(b) reads as rewritten:

43       "(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture;  
44 Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle

1 driven by an impaired driver at the time of the offense becomes subject to an order of  
2 forfeiture. The determination may be made at any of the following times:

- 3 (1) A sentencing hearing for the underlying offense involving impaired  
4 driving.
- 5 (2) A separate hearing after conviction of the defendant.
- 6 (3) A forfeiture hearing held at least 60 days after the defendant failed to  
7 appear at the scheduled trial for the underlying offense, and the  
8 defendant's order of arrest for failing to appear has not been set aside.

9 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
10 evidence shows that the defendant is guilty of an underlying offense ~~involved~~ involving  
11 impaired driving, and that the defendant's license was revoked pursuant to an impaired  
12 driving license revocation as defined in subsection (a) of this section."

13 **SECTION 8.** G.S. 20-28.2(b)(1) reads as rewritten:

14 "(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No  
15 License and No Insurance. – A judge may determine whether the vehicle driven by an  
16 impaired driver at the time of the offense becomes subject to an order of forfeiture. The  
17 determination may be made at any of the following times:

- 18 (1) A sentencing hearing for the underlying offense involving impaired  
19 driving.
- 20 (2) A separate hearing after conviction of the defendant.
- 21 (3) A forfeiture hearing held at least 60 days after the defendant failed to  
22 appear at the scheduled trial for the underlying offense, and the  
23 defendant's order of arrest for failing to appear has not been set aside.

24 The vehicle shall become subject to an order of forfeiture if the greater weight of the  
25 evidence shows that the defendant is guilty of an underlying offense ~~involved~~ involving  
26 impaired driving, and: (i) the defendant was driving without a valid drivers license, and  
27 (ii) the defendant was not covered by an automobile liability policy.

28 ...."

29 **SECTION 9.** G.S. 20-38.7 reads as rewritten:

30 "**§ 20-38.7. Appeal to superior court.**

31 (a) The State may appeal to superior court any district court preliminary  
32 determination granting a motion to suppress or dismiss. If there is a dispute about the  
33 findings of fact, the superior court shall not be bound by the findings of the district court  
34 but shall determine the matter de novo. Any further appeal shall be governed by Article  
35 90 of Chapter 15A of the General Statutes.

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

38 (c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent  
39 offense that is first tried in district court and that is appealed to superior court by the  
40 defendant for a trial de novo as a result of a conviction, the sentence imposed by the  
41 district court is vacated upon giving notice of appeal. The case shall only be remanded  
42 back to district court with the consent of the prosecutor and the superior court. When an  
43 appeal is withdrawn or a case is remanded back to district court, the district court shall  
44 hold a new sentencing hearing and shall consider any new convictions. ~~convictions and,~~

1 if the defendant has any pending charges of offenses involving impaired driving, shall  
2 delay sentencing in the remanded case until all cases are resolved.

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

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

7 (2) The defendant would be entitled to a jury determination of those facts  
8 pursuant to G.S. 20-179.

9 A defendant who has a right of appeal under this subsection, gives notice of appeal, and  
10 subsequently withdraws the appeal shall have the sentence imposed by the district court  
11 reinstated by the district court as a final judgment that is not subject to further appeal."

12 **SECTION 10.** G.S. 20-17.8(b)(3) reads as rewritten:

13 "(3) An alcohol concentration restriction as follows:

- 14 a. If the ignition interlock system is required pursuant only to  
15 subdivision (a)(1) of this section, a requirement that the person  
16 not drive with an alcohol concentration of 0.04 or greater;
- 17 b. If the ignition interlock system is required pursuant to  
18 subdivision (a)(2) of this section, a requirement that the person  
19 not drive with an alcohol concentration of greater than 0.00; or
- 20 c. If the ignition interlock system is required pursuant to  
21 subdivision (a)(1) of this section, and the person has also been  
22 convicted, based on the same set of circumstances, of: (i)  
23 driving while impaired in a commercial vehicle, G.S. 20-138.2,  
24 (ii) driving while less than 21 years old after consuming alcohol  
25 or drugs, G.S. 20-138.3, (iii) ~~felony death by vehicle,~~  
26 ~~G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or (iv)  
27 manslaughter or negligent homicide resulting from the  
28 operation of a motor vehicle when the offense involved  
29 impaired driving, a requirement that the person not drive with  
30 an alcohol concentration of greater than 0.00."

31 **SECTION 11.** G.S. 20-19(c3)(4) reads as rewritten:

32 "(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23  
33 or G.S. 20-23.2 when the offense for which the person's license was  
34 revoked prohibits substantially similar conduct which if committed in  
35 this State would result in a conviction of driving while impaired in a  
36 commercial motor vehicle, G.S. 20-138.2, driving while less than 21  
37 years old after consuming alcohol or drugs, G.S. 20-138.3, ~~felony~~  
38 ~~death by vehicle, G.S. 20-141.4(a1),~~ a violation of G.S. 20-141.4, or  
39 manslaughter or negligent homicide resulting from the operation of a  
40 motor vehicle when the offense involved impaired driving, that the  
41 person not operate vehicle with an alcohol concentration of greater  
42 than 0.00 at any relevant time after the driving.

43 **SECTION 12.** G.S. 20-19(d) reads as rewritten:

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

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

14           (2) He is not currently an excessive user of alcohol or drugs.

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

17       **SECTION 13.** G.S. 20-19(e) reads as rewritten:

18       "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person  
19 has two or more previous offenses involving impaired driving for which he has been  
20 convicted, and the most recent offense occurred within the five years immediately  
21 preceding the date of the offense for which his license is being revoked, or (ii)  
22 G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the revocation is permanent.  
23 The Division may, however, conditionally restore the person's license after it has been  
24 revoked for at least three years under this subsection if he provides the Division with  
25 satisfactory proof that:

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

31           (2) He is not currently an excessive user of alcohol or drugs.

32 If the Division restores the person's license, it may place reasonable conditions or  
33 restrictions on the person for any period up to ~~three~~ five years from the date of  
34 restoration."

35       **SECTION 14.** G.S. 20-19(i) reads as rewritten:

36       "(i) When a person's license is revoked under ~~subdivision (1) or (9) of G.S. 20-17~~  
37 G.S. 20-17(1) or G.S. 20-17(9), and the offense is one involving impaired driving and a  
38 fatality, the revocation is permanent. The Division may, however, conditionally restore  
39 the person's license after it has been revoked for at least ~~three years in accordance with~~  
40 ~~the procedure in subsection (e) of this section~~ five years under this subsection if he  
41 provides the Division with satisfactory proof that:

42           (1) In the five years immediately preceding the person's application for a  
43 restored license, he has not been convicted in North Carolina or in any  
44 other state or federal court of a motor vehicle offense, an alcohol

1 beverage control law offense, a drug law offense, or any criminal  
 2 offense involving the consumption of alcohol or drugs; and  
 3 (2) He is not currently an excessive user of alcohol or drugs.  
 4 If the Division restores the person's license, it may place reasonable conditions or  
 5 restrictions on the person for any period up to seven years from the date of restoration."

6 **SECTION 15.** G.S. 20-141.4(a6) reads as rewritten:

7 "(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of  
 8 repeat felony death by vehicle if:

9 (1) The person commits an offense under subsection (a1) or subsection  
 10 (a5) of this section; and

11 (2) The person has a previous conviction under:

12 a. Subsection (a1) of this section;

13 b. Subsection (a5) of this section; or

14 c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was  
 15 the unintentional death of another person while engaged in the  
 16 offense of impaired driving under G.S. 20-138.1 or  
 17 G.S. 20-138.2.

18 The pleading and proof of previous convictions shall be in accordance  
 19 with the provisions of G.S. 15A-928.

20 A person convicted under this subsection shall be subject to the same sentence as if  
 21 the person had been convicted of second degree murder. ~~who commits an offense under~~  
 22 Subsection (a1) or Subsection (a5) of this section, and ~~who has a previous conviction~~  
 23 under

24 (1) Subsection (a1) of this section; or

25 (2) Subsection (a5) of this section; or

26 (3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as  
 27 determined from the face of the indictment, was the unintentional  
 28 death of another person while engaged in the offense of impaired  
 29 driving under GS 20-138.1 or GS 20-138.2,

30 shall be subject to the same sentence as if the person had been convicted of second  
 31 degree murder."

32 **SECTION 16.** G.S. 20-138.4(a) reads as rewritten:

33 "**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
 34 **involving impaired driving in implied-consent case.**

35 (a) Any prosecutor shall enter detailed facts in the record of any case subject to  
 36 the implied-consent law or involving driving while license revoked for impaired driving  
 37 as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for  
 38 his action if he:

39 (1) Enters a voluntary dismissal; or

40 (2) Accepts a plea of guilty or no contest to a lesser included offense; or

41 (3) Substitutes another charge, by statement of charges or otherwise, if the  
 42 substitute charge carries a lesser mandatory minimum punishment or is  
 43 not an offense involving impaired driving; a case subject to the implied  
 44 consent law; or

1           (4) Otherwise takes a discretionary action that effectively dismisses or  
2           reduces the original charge in ~~the a case involving impaired~~  
3           ~~driving~~ subject to the implied consent law.

4   General explanations such as "interests of justice" or "insufficient evidence" are not  
5   sufficiently detailed to meet the requirements of this section."

6           **SECTION 17.** This act is effective when it becomes law. Prosecutions for  
7   offenses committed before the effective date of this act are not abated or affected by this  
8   act, and the statutes that would be applicable but for this act remain applicable to those  
9   prosecutions.