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1979 AMENDMENTS TO DUI LAWS

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Every session of the legislature seems to produce a couple of bills aimed at making the driving under the influence laws more effective in dealing with the drinking driver. The 1979 session produced one bill that passed (Ch. 903, SL 1979 (S691)) that fits that description. Effective January 1, 1980 it requires a judge who issues a limited driving privilege pursuant to G.S. 20-179 (for persons convicted of driving under the influence of liquor or drugs or with a blood alcohol content of .10% or higher) to condition the limited privilege on the defendant's completion of an alcohol and drug education traffic school (subject to limited exceptions). The legislation directs the Department of Human Resources to oversee the development of the schools on a statewide basis, and it makes numerous other changes in related sections of G.S. Chapter 20, including requiring completion of the school as a condition of a suspended sentence of G.S. 20-140(c) (reckless driving after drinking).

This memo will summarize the legislation and will discuss some of the changes that could cause problems as judges and others begin to apply the statutes. At the end of this memo, the amended statutes are reproduced.

SUMMARY OF CH. 903, SL1979

Ch. 903 was introduced as Senate Bill 691 by Sen. Henson Barnes at the request of Governor Hunt's administration. It was prepared by the Department of Human Resources in response to the recommendations of a conference convened by that Department in the fall of 1978 to discuss the status of the DUI statutes. The act was amended several times, but its theory and major provisions changed very little from the original version.

DUI School Required. The act rewrites G.S. 20-179(b), which is the subsection authorizing limited driving privileges for DUI first offenders, but the rewrite carries forward much of the substance of the present version. The judges' discretion to decide whether to issue a limited privilege is retained. If a judge decides to issue a privilege, however, the statute requires two conditions to be attached:

1. the person convicted must enroll in and successfully complete, within 75 days of the date of issuance, a program of instruction at an approved Alcohol and Drug Education Traffic School (hereinafter called DUI schools).

2. the person convicted must be allowed to drive to and from classes required to complete the DUI school.

Reasons to Avoid DUI School. The judge may issue a privilege that does not contain those conditions in only three situations:

1. if there is no DUI school within a reasonable distance of the defendant's home; or

2. if the defendant, because of his history of alcohol or drug abuse, would not benefit from the DUI school; or

3. if the defendant, because of specific extenuating circumstances placed in the record, would not benefit from the DUI school.

Conditions Other than DUI School. The judge retains his present discretion to impose other conditions related to the defendant's health, education and welfare (or his family's), although this act requires the purposes for which the privilege is issued to be "directly" related to his or his family's health, education, and welfare.

Length of Revocation. If the judge allows the defendant a limited privilege that does not contain the DUI school conditions, the defendant's license is initially revoked for one year, and the privilege may be granted for any length of time up to one year. If the privilege contains the DUI school conditions, the defendant's license is initially revoked for only six months, and the privilege may be granted for any length of time up to six months. The course instructor must certify to DMV that the person has successfully completed the DUI school before the DMV is authorized to restore the person's license.

Breath Test Refusals; Previous Convictions. The act contains two provisions insuring that a person will not receive the benefits of a limited driving privilege if his license is revoked for willful failure to take a breathalyzer or blood test. The first specifies that the privilege does not authorize the defendant to drive if his license is revoked for failure to comply with the implied consent laws. The second prohibits a judge from issuing a limited privilege while the person's license is revoked for that reason. Other sections of the bill make it clear that the privilege may not be issued if the defendant in the preceding seven years has been convicted of a violation of any section of G.S. 20-138 or G.S. 20-139. (The former law went back 10 years to consider previous convictions.)

Modification of Privileges. The act carries forward the 1979 amendment (Ch. 453, SL 1979) concerning modification of a limited privilege. It provides that a district court judge may modify a limited privilege if he is holding court in the county in which the privilege was issued and if the privilege was issued by a district court judge. A parallel provision applies to superior court judges.

Revocation of Privilege. The act continues with one exception the present provision that violation of a condition or restriction of a limited privilege constitutes the offense of driving while license revoked. The exception is that failure to successfully complete a DUI school is grounds for revoking the privilege, but it does not constitute the separate criminal offense of driving while license is revoked. Upon revocation of a limited privilege, the DMV must revoke the person's license for 12 months, beginning at the time the privilege is revoked.

Failure to Complete DUI School. Failure to complete the DUI school is defined in the act to include failure to attend scheduled classes without a valid excuse, failure to complete the course within the 75 day period, willful failure to pay the required fee of $100, or any other manner by which the person fails to complete the course. The instructor of the DUI school must report any person who fails to complete the school to the court, and the court then revokes his privilege. The court may not revoke a privilege for failure to pay unless the court determines that the person was able to pay. The person whose privilege is to be revoked has a right to a hearing before the court revokes his privilege. Upon revocation of a limited privilege, the DMV must revoke the person's license for 12 months, beginning at the time the privilege is revoked.

Establishment of DUI Schools. The State Department of Human Resources is responsible for overseeing the development of the statewide system of DUI schools. The Commission for Mental Health and Mental Retardation Services is responsible for promulgating standards and guidelines for the curriculum and operation of the schools. DHR has the authority to approve local schools, as well as the authority to approve budgets and contracts entered into by the local schools. The local school will generally be provided by the local area mental health authorities, although an authority may contract with private or public agencies to provide the course of instruction.

Distribution and Collection of Fees. The $100 fee for the schools, which is in addition to the $100 minimum fine, will be paid to the clerk of court. The clerk will pay the money he collects as fees to the area mental health authority and the authority will keep 95 per cent of the money and send five per cent to DHR. DHR may use its share only for administration of the program; in the local schools any remaining money may be used for other local drug or alcohol programs. The money collected by the local authorities may not be used to match state funds or as part of the base used to compute state formula funding.

DUI Schools as Condition of License Restoration. Under the provisions of G.S. 20-19(d), (e), the DMV may restore a multiple DUI offender's license before his full revocation period has run. This act amends those subsections to require the DMV to condition the restoration of the person's license on his successful completion of a DUI school if including such a condition is feasible.

DUI Schools as Part of Reckless Driving Punishment. G.S. 20-140(c) prohibits reckless driving as a result of drinking; it is a lesser included offense of driving under the influence. This act amends the penalty for violations of that subsection (leaving the present penalty for violations of G.S. 20-140(a) and (b) unchanged) to require a minimum fine of $100 (retaining the maximum of $500) and up to six months in jail. The imprisonment may be suspended if the suspended sentence requires the defendant to successfully complete a DUI school. The judge may suspend the sentence without requiring completion of the DUI school for the same reasons and with the same findings that are required to issue a limited privilege without requiring the completion of the DUI school.

License, Breath Test Records Sent by PIN. The act amends G.S. 20-26 and -27 to specify that the DMV may send a certified copy of a person's drivers license record to court officials by the Police Information Network, and the PIN copy of the record (which will itself contain a certification) is competent evidence to prove the status of the defendant's driver's license and his eligibility for a limited privilege. The DMV must also make records concerning a defendant's degree of intoxication as determined by a chemical test for alcohol available to the court by the Police Information Network; the statute does not specifically make those records admissible in evidence.

SOME QUESTIONS ABOUT THE ACT

Listed below are discussion of a few areas of the act that have generated inquiries or concern among those who have studied it. In many cases, the issue is one of statutory interpretation and there is no clear answer. This discussion is presented not to answer all the questions, but to raise them so that the appropriate parties can consider them in advance of the effective date of the act.

1. Findings. A judge who issues a limited privilege for driving under the influence that does not contain the DUI school conditions can do so for one of three reasons--the unavailability of a school, the defendant's prior history of alcohol or drug abuse, or any other reason that makes it likely that the defendant will not benefit from the school. The judge must specify in the record which of the reasons he is basing his decision on.

Unavailability. The statute requires that there be no DUI school within a reasonable distance of the defendant's residence. "Reasonable" is not defined in the act, and the determination of what is reasonable is apparently in the judge's discretion, subject to appellate review. If the DHR and area mental health authorities decide to establish schools on a regional basis instead of in every county, the individual judge will have to decide if the distance required for a particular defendant is reasonable.

Out-of-state drivers convicted of DUI in North Carolina will probably, as a practical matter, not have to attend the schools unless the judge requires the person to go to a school located in North Carolina that is within a reasonable distance of the defendant's home (in the border counties of Virginia, South Carolina, or Tennessee). The judge could require the defendant to attend a DUI school in his home state, but it would not be "approved" and thus the defendant's license would still be revoked for 12 months, and the judgment should indicate that the defendant does not have an approved DUI school within a reasonable distance of his residence.

Defendant's drug or alcohol history. The sponsors of the act did not envision the treatment or rehabilitation of people with serious drug or alcohol problems in the DUI schools; the schools are designed to deal with the person who has not yet reached that stage of alcohol or drug dependence. For that reason, the act allows a judge to excuse from the DUI schools a person who has a history of alcohol or drug abuse that makes it likely that he will not benefit from the school. To excuse a person for this reason the judgment must give the "exact reasons" why the defendant will not benefit--the amount of detail required is not clear, but it clearly requires more than just a recitation of the statutory language.

Other reasons. If there is a "specific extenuating" circumstance that makes it "likely that the defendant will not benefit from the program of instruction," the judge may excuse the defendant from the DUI school and still issue a limited privilege; the judge must, however, specify in the record the "specific extenuating" circumstance on which he bases his decision. That language is broad and applying it will require discretion on the part of the judge. It should be noted, however, that it doesn't provide a blank check to the judge because the circumstance must make it likely that the defendant won't benefit--is a defendant who works a 4 p.m.-midnight shift (who presumably would benefit from the school) entitled to an exemption if he must miss work to attend the school? Similar questions must be answered for travelling salesman or construction workers who are not at home every week, or for anyone else who has a schedule that doesn't coincide with the school's schedule.

Reckless Driving Penalty. The act revises the penalty for violating G.S. 20-140(c), reckless driving after drinking, to require a minimum $100 fine and imprisonment, but the judge apparently may suspend the imprisonment if he requires the defendant to attend a DUI school as part of the suspended sentence (or if he includes in the record one of the three reasons for excusing the defendant that apply when he excuses the holder of a limited privilege from the DUI school). This requirement applies to all convictions under G.S. 20-140(c), not just to first convictions. It is possible that a multiple offender under G.S. 20-140(c) might be excused because his previous attendance at a school makes it likely that he would not benefit from another, identical school, but the act doesn't speak to that point.

If the person sentenced under G.S. 20-140(c) fails to complete the school, that failure is presumably an adequate ground to activate the suspended sentence. The act is silent as to who the school director should notify in such a case, but presumably he should notify the clerk and the District Attorney's office.

The Hearing. G.S. 20-179(b)(5) provides that failure to successfully complete a DUI school "shall constitute" grounds to revoke the limited privilege. The school director is to notify that court that issued the privilege of the defendant's failure to complete the school. The court is to revoke the privilege, but the person possessing the privilege may obtain a hearing from the court first. That statute leaves several questions unanswered. Is it a criminal or civil action; who begins the proceeding--the D.A. or the court; does the D.A. represent the state in the revocation hearing; what standard of proof is required? While none of those questions are answered in the act, it is likely that the hearing will be considered part of the DUI case, and therefore a criminal action. If that is true, then it is likely that the hearing is analogous to a hearing to activate a suspended sentence, and similar procedures should be followed in this context (notice, etc.) In addition, it seems more consistent with other types of revocation hearings to have the DA begin the action by requesting a show cause order and to have him represent the state at such hearing. Since a jail sentence is not a possible result of the hearing and since G.S. 7A-451 does not authorize the payment of indigents' counsel fees, it seems likely that a defendant does not have a right to appointed counsel if he is indigent.

The issue in such a hearing is simply whether the defendant failed to successfully complete the school; that fact must presumably be proven to the satisfaction of the judge if the action is in fact analogous to a hearing concerning revocation of a suspended sentence. There are several ways a person could fail to complete the school; the act specifies that failure to attend classes without a valid excuse, failure to finish within 75 days or willful failure to pay the fee of $100 are ways in which a defendant fails to successfully complete the school. Apparently a person who fails to pay the fee or who misses classes without a valid excuse (the course director determines the validity of the excuse, at least initially) may have his privilege revoked before the 75 day time limit expires, but if the defendant is trying in good faith to complete the school, he apparently has at least the full 75 days to do so. It is not clear whether his privilege can be revoked if he has failed to complete the school in 75 days, if the failure is not willful.

The failure to pay the $100 fee must clearly be willful; presumably that means that the same kinds of reasons that would support the jailing of a defendant for failing to pay a fine would support a finding of willfullness in this context.

Finally, the act makes it clear that the three reasons for revoking a privilege listed above are not exclusive; any additional way in which a defendant fails to complete the school (such as expulsion because of class disruption) that is supported by evidence is sufficient to revoke the privilege.

If the judge finds that the defendant has not successfully completed the school, he apparently has no choice but to revoke the privilege; the act states that failure to successfully complete the school "shall constitute" grounds for revocation, and it later states that "the judge shall revoke the limited privilege."

Waiver of fees; collection of fees. The fee for the DUI school is set at $100 by the act (that is in addition to the fine required by law); it is to be paid by "all persons enrolling" in a DUI school. That language does not specifically allow the judge to waive payment of the fee, although the general criminal law (G.S. 15A-1363) allows a judge to remit a fine or costs when it is in the interest of justice to do so. The fee to the school is not a fine, nor is it included as part of the "costs" as that word is used in G.S. Ch. 7A. Nevertheless, since the provision regarding willful failure payment of fees requires that the defendant be unable to pay before his privilege can be revoked, it is logical to interpret the act to allow remission of the fee if it is clear at the time the privilege is issued that the defendant will be unable to pay.

The statute establishing the fee requires that it be paid to the clerk of court in the county in which the person was convicted. That requirement apparently applies even if the DUI school attendance is required by a DMV hearing officer as a condition of early reinstatement of a multiple DUI offender's license under G.S. 20-19. That provision could cause some problems of coordination between the clerk's office collecting the fee and the DMV hearing officer (e.g., there is no criminal case pending in the clerk's office so he may have to create a new file for the matter; the hearing officer will have to decide which clerk is to collect the fee if the person has convictions in several counties). Presumably a school director or clerk should report a failure to pay the fee to the DMV in order for it to determine if the conditional reinstatement of the defendant's license should be revoked, although the statute is silent on that point.

The manner of collection of the fee is also not specified; whether the fee is collected before the school begins or at some later date, as well as whether it is collected in installments or all at once, is apparently left to the discretion of the court.

Finally, the requirement that the fee be paid to the clerk of court in the county in which the defendant is convicted can cause practical problems if the defendant resides in a county other than the one in which he is convicted. Collection of the fee may be troublesome for the clerk when the defendant is in a distant county. When the clerk does collect the money, he pays it to the local area mental health authority; that is required even if the defendant has been assigned to a school in another area's jurisdiction. It is apparently the area mental health authority's responsibility to allocate the fees among its schools and schools in other areas.

Given this fairly complex collection procedure, it may be difficult in some cases to determine whether a particular defendant has paid the fee required. It will obviously require close cooperation among clerks of court, area mental health authorities, and school directors to insure that fees are collected promptly, distributed to the proper entity, and credited to the defendant.

Effective date; applicability to pending cases. The act is to become effective on January 1, 1980. It does not specify to what extent, if any, it affects cases pending on that date. In the absence of a specific legislative provision on the subject, certain general principles should apply. If the statute makes a penalty for a criminal offense more severe than it was on the date the offense was committed, the application of the greater penalty to that offense violates the ex post facto provision of the Constitution. If the statute mitigates the punishment, an offender is entitled to be sentenced under the reduced punishment, even though a greater penalty was in force when the crime was committed. Finally, if the statute does not involve a criminal offense or penalty it may be applied retroactively without violating the ex post facto provision even if it operates to a particular person's disadvantage.

In applying these principles to the new punishment for G.S. 20-140(c), it seems clear that the act makes the criminal penalty for that offense more severe by adding a condition that must be complied with before the defendant can receive a suspended sentence. Thus, the more severe penalty should probably apply only to offenses committed after the effective date of the act.

Applying those principles to the limited driving privilege provisions is not as easy. First it is possible that the act of issuing a limited driving privilege, while it is done as part of the court's judgment in a criminal case, is not part of the punishment for the offense and thus might not be covered by the ex post facto provision. The action is analogous to the DMV action in allowing a person subject to revocation to continue driving on probation, and that DMV action is clearly not part of the punishment for the criminal offense which is the basis of the possible revocation. If the action is not part of the punishment, the analysis ends there, and the provisions may be applied to privileges issued on or after the effective date.

Even if the action is part of the punishment and therefore subject to the ex post facto provision if it makes the punishment more severe, it is not clear that this change in fact makes the punishment more severe. The defendant, to obtain a limited privilege under the new law, has to attend a school and pay the $100 fee (unless he is excused for one of the three allowed reasons), and that makes it more difficult to get a limited privilege and therefore arguably makes the punishment more severe. That difficulty, however, is offset by the provision that allows a defendant to obtain his license after six months if he satisfactorily finishes the school and otherwise complies with the privilege, and that is a substantial benefit to a defendant driving under a privilege that contains restrictive conditions. On balance, it seems that the new provisions are beneficial to the defendant, even though it does cost him money and time to attend the school. If that analysis is correct, then the proper course is to apply the new provisions to limited driving privileges issued on or after January 1, 1980, regardless of when the offense was committed, unless the defendant can demonstrate that in his case the application of the new provisions is a burden instead of a benefit.

ENGROSSED TEXT OF CH. 903, S.L. 1979

§ 20-179. Penalty for driving or operating vehicle while under the influence of intoxicating liquor, narcotic drugs, or other impairing drugs; limited driving permits for first offenders.--(a) . . . .

(b) . . . .

(1) Upon a first conviction only of any offense included in G.S. 20-138 or G.S. 20-139, and subject to the provisions of this subsection (b) the trial judge may issue a limited driving privilege when feasible and if the person convicted requests that he do so. The limited privilege, if issued, shall contain a condition that the person convicted enroll in and successfully complete, within 75 days of the date of the issuance of said limited privilege, the program of instruction at an Alcohol and Drug Education Traffic School approved pursuant to G.S. 20-179.2. The limited privilege shall contain a provision allowing the person convicted to drive to and from classes required for successful completion of such program of instruction. In addition, the judge may include in the limited privilege conditions allowing the person convicted to drive a motor vehicle for proper purposes directly connected with the health, education and welfare of the person convicted and his family. The judge, in establishing the limited driving privilege, may impose restrictions as to the days, hours, types of vehicles, routes and geographic boundaries and specific purposes for which the limited driving privilege is issued. The trial judge may issue a limited driving privilege that does not contain a condition that the defendant successfully complete the program of instruction at an Alcohol and Drug Education Traffic School if:

a. there is no Alcohol or Drug Education Traffic School within a reasonable distance of the defendant's residence; or

b. the defendant because of his history of alcohol or drug abuse, is not likely to benefit from the program of instruction; or

c. there are specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

The trial judge shall enter such specific findings in the record provided that in the case of subsection b. above such findings shall include the exact reasons why the defendant is not likely to benefit from the program of instruction and that in the case of subsection c. above such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction, no prior offense occurring more than 7 years before the date of the current offense shall be considered. In addition, convictions for violations of any provision of G.S. 20-138(a), G.S. 20-138(b), G.S. 20-139(a), or G.S. 20-139(b) shall be considered previous convictions. Convictions prior to the effective date of this act shall be considered for purposes of this subsection.

The limited driving privilege and the restrictions imposed thereon shall be specifically recorded in a written judgment of the court, shall be signed by the trial judge and shall be affixed with the seal of the court. The written judgment shall be as near as practicable in the format established by G.S. 20-179(b)(2). A notice of the conviction and a copy of the judgment must be transmitted to the Division of Motor Vehicles, along with any operator's or chauffeur's license in the possession of the person convicted.

The limited driving privilege is valid for such length of time, not to exceed six months, as shall be set forth in the judgment of the trial judge. A limited driving privilege that does not contain a condition that the defendant successfully complete the program of instruction at an Alcohol or Drug Education Traffic School is valid for such length of time, not to exceed 12 months, as shall be set forth in the judgment of the trial court. Such permit shall constitute a valid license to operate a motor vehicle upon the streets and highways of this or any other state in accordance with the restrictions noted thereon. The holder of a limited driving privilege is subject to all provisions of this Chapter concerning operator's or chauffeur's licenses which are not by their nature inapplicable.

A limited driving privilege issued pursuant to this subsection does not authorize a person to drive while the license of such person is also revoked pursuant to G.S. 20-16.2 for failure to take a chemical test of the blood or breath to determine blood alcoholic content.

(2) The judgment issued by the trial judge as herein permitted shall as near as practicable be in the form and contents as follows:

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF

COUNTY OF _____ JUSTICE

RESTRICTED DRIVING

PRIVILEGES

This cause coming on to be heard and being heard before the Honorable _____, Judge presiding, and it appearing to the Court that the defendant, _____, has been convicted of the offense of

(describe offense under G.S. 20-138 or G.S. 20-139 or as appropriate),

and it further appearing to the Court that the defendant should be issued a limited driving privilege and is entitled to the issuance of a limited driving privilege under and by the authority of G.S. 20-179(b);

Now, therefore, it is ordered, adjudged, and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name: _____

Address: _____

Race: _____ Sex: _____

Height: _____ Weight: _____

Color of Hair: _____ Color of Eyes: _____

Birth Date: _____

Driver's License Number: _____

CONDITIONS OF RESTRICTION

1. The defendant must successfully complete the approved program of instruction at an Alcohol and Drug Education Traffic School within 75 days from the date when this limited privilege was issued.

2. Geographical restrictions: _____

_____

3. Hours of restriction: _____

_____

4. Type(s) of vehicle that may be operated: _____

_____

_____

5. Other Restrictions: _____

_____

_____

_____

This limited license shall be effective from (month) (day), (year) to (month) (day), (year) subject to further orders as the court in its discretion may deem necessary and proper.

Issued on this _____ day of _____ 19____

_____
(Judge Presiding)

Accepted on this _____ day of _____, 19 ___

_____
(Signature of Licensee)

(3) If a person is convicted in another state or county or in a federal court of an offense that is equivalent to one of the provisions of G.S. 20-138(a), G.S. 20-138(b), G.S. 20-139(a), or G.S. 20-139(b), and if the person's North Carolina driver's license is revoked as a result of that conviction, the person so convicted may apply to the presiding or resident judge of the superior court or a district court judge of the district in which he resides for a limited driving privilege. Upon such application the judge may issue a limited driving privilege in the same manner as if he were the trial judge.

(4) A district court judge may modify a limited driving privilege if:

a. the holder of the limited privilege petitions the court for a modification of the privilege; and

b. the privilege was issued by a district court judge; and

c. the privilege was issued in the county in which the district judge is conducting court.

A superior court judge may modify a limited driving privilege if:

a. the holder of the limited privilege petitions the court for a modification of the privilege; and
b. the privilege was issued by a superior court judge; and
c. the privilege was issued in the county in which the superior court judge is conducting court.

(5) Any violation of the conditions or restrictions as set forth in the judgment of the trial court allowing such privileges, other than the failure to successfully complete the prescribed program of instruction at an Alcohol and Drug Education Traffic School, shall constitute the offense of driving while license revoked as set forth in G.S. 20-28(a). When a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

Failure to successfully complete an approved program of instruction at an Alcohol and Drug Education Traffic School shall constitute grounds to revoke the limited privilege for the remainder of the time for which such limited privilege was issued. Failure to successfully complete an approved program of instruction at an Alcohol and Drug Education Traffic School shall not constitute the offense of driving while license revoked. For purposes of this subsection, the phrase "failure to successfully complete the prescribed program of instruction at an Alcohol and Drug Education Traffic School" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 75 days of the issuance of the limited privilege, wilful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to successfully complete the program of instruction to the court which issued the limited driving privilege. The court shall revoke the limited privilege. The person possessing the limited privilege may obtain a hearing prior to revocation.

(6) Notwithstanding any other provisions of this section, no person who has wilfully refused to submit to a chemical test upon request of the officer as provided by G.S. 20-16.2 may be granted a limited driving privilege or license while the driving privilege of such person is revoked pursuant to the provisions of G.S. 20-16.2(c) for the wilful refusal of such person to submit to such chemical test.

(7) This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

§ 20-179.2. Alcohol and Drug Education Traffic Schools curriculum approved by Commission for Mental Health and Mental Retardation Services; responsibilities of the Department of Human Resources; fees.--(a) The Commission for Mental Health and Mental Retardation Services shall establish standards and guidelines for the curriculum and operation of local Alcohol and Drug Education Traffic School programs. The Department shall oversee the development of a statewide system of schools and shall insure that schools are available in all localities of the State as soon as is practicable.

(1) A fee of one hundred dollars ($100.00) shall be paid by all persons enrolling in an Alcohol and Drug Education Traffic School program established pursuant to this section. That fee shall be paid to the clerk of court in the county in which the person was convicted. The amounts received by the clerk from the fees shall be remitted in monthly payments to the Area Mental Health Authority located in the catchment area where court is located. Area Mental Health Authorities will remit five percent (5%) of the above fees from the clerks of court to the Department of Human Resources on a monthly basis. Fees received by the Department of Human Resources may only be used in supporting and administering Alcohol and Drug Education Traffic Schools. Any excess funds will revert to the General Fund.

(2) The Department of Human Resources shall have the authority to approve programs to be implemented by area mental health authorities. Area mental health authorities may subcontract for the delivery of Alcohol and Drug Education Traffic School program services. The department shall have the authority to approve budgets and contracts with public and private governmental and nongovernmental bodies for the operation of such schools.

(3) All fees retained by the Area Mental Health Authorities from the clerks of court shall be placed in a nonreverting fund. Monies in that fund shall be disbursed for the operation, evaluation and administration of Alcohol and Drug Education Traffic School programs. Any excess funds shall be used to fund other Drug and Alcohol programs.

(4) All fees collected by the Area Mental Health Authorities from the clerks of court may not be used in any manner to match other State funds or to be included in any computation for State formula-funded allocations.

(b) Wilful failure to pay the fee is one ground for a finding that a person given a limited privilege has not successfully completed the course. Wilful failure to pay the fee does not include cases in which the court determines the person is unable to pay.

§ 20-19. Period of suspension or revocation.--(a) . . . .

. . . .

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by the provisions of G.S. 20-19(d) and (e), the period of revocation shall be one year unless the trial judge issues a limited driving privilege to the person convicted that contains

a condition that the defendant successfully complete the course of instruction at an Alcohol and Drug Education Traffic School. If the trial judge issues a limited privilege and the person convicted complies with the conditions and restrictions included in the limited privilege, the division must restore the person's license after six months if the person's license or limited driving privilege is not otherwise revoked or suspended, and if the division has received a certificate from the Alcohol and Drug Education Traffic School certifying that the person convicted has successsfully completed the program of instruction at the Alcohol and Drug Education Traffic School. If the person fails to comply with the conditions and restrictions contained in the limited privilege, the period of revocation is 12 months, beginning at the time the limited privilege is revoked.

(d) When a license is revoked because of a second conviction for driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug, occurring within three years after prior conviction, the period of revocation shall be four years; provided, that the Division may, after the expiration of two years, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs and upon such terms and conditions which the Division may see fit to impose for the balance of said period of revocation; provided, that as to a license which has been revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which has not been restored, the Division may upon the application of the former licensee, and after the expiration of two years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs. When a new license is issued pursuant to the provisions of this subsection, it may be issued upon such terms and conditions as the division may see fit to impose, including when feasible the condition that said former licensee successfully complete the program of instruction at an Alcohol and Drug Education Traffic School. The terms and conditions imposed by the division may be imposed for the balance of a four-year revocation, which period shall be computed from the date of the original revocation.

(e) When a license is revoked because of a third or subsequent concating liquor or while under the influence of an imparing drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Division may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past three with a violation of any provision of motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs; provided, that as to a license which has been revoked because of third or subsequent conviction for driving under the influence of intoxicating liquor or restored, the Division may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past three years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs. When a new license is issued under the provisions

of this subsection, it may be issued upon such terms and conditions as the Division may see fit to impose, including when feasible the condition that the former licensee successfully complete the program of instruction at an Alcohol and Drug Education Traffic School. The terms and conditions imposed by the Division may not exceed a period of three years.

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§ 20-140. Reckless driving.--(a) . . . .

. . . .

(d) Any person convicted of violating subsection (a) or subsection (b) of this section shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred dollars ($500.00) or by both such imprisonment and fine, in the discretion of the court.

(e) Any person convicted of violating subsection (c) of this section shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) and a term of imprisonment not to exceed six months, which term of imprisonment may be suspended by the trial court upon such terms and conditions as it may see fit provided that such terms and conditions shall include the term and condition that the person so convicted shall successfully complete the program of instruction at an Alcohol and Drug Education Traffic School within 75 days of the date of said conviction, unless the judges make a written finding in the record that:

(1) there is no Alcohol or Drug Education Traffic School within a reasonable distance of the defendant's residence; or

(2) the defendant, because of his history of alcohol or drug abuse, is not likely to benefit from the program of instruction; or

(3) there are specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

The trial judge shall enter such findings in the record provided that in the case of subdivision (2) above such findings shall include the exact reasons why the defendant is not likely to benefit from the program of instruction and that in the case of subdivision (3) above such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

§ 20-26. Records; copies furnished.--(a) The Division shall keep a record of tests, proceedings and orders pertaining to all operator's and chauffeur's licenses granted, refused, suspended or revoked. The Division shall keep records of convictions as defined in G.S. 20-24(c) occurring outside North Carolina only for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of intoxicating liquors, and the offenses included in G.S. 20-17.

(b) The Division shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge provided a certifed copy of such record may be transmitted via the police information network and that such copy shall be competent for the purpose of establishing the status of a person's operator's license and driving privilege without further authentication. The Attorney General and the Commissioner of Motor Vehicles are authorized to promulgate such rules and regulations as may be necessary to implement the provision of this subsection.

§ 20-27. Availability of records.--(a) All records of the Division pertaining to application and to operator's and chauffeur's license, except the confidential medical report referred to in G.S. 20-7, of the current or previous five years shall be open to public inspection at any reasonable time during office hours.

(b) All records of the division pertaining to chemical tests as provided in G.S. 20-16.2 shall be available to the courts as provided in G.S. 20-26(b).