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1985-86 Infractions Legislation

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AN INFRACTION IS A noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than \$100. The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools. [G.S. 14-3.1.]

With this section, the General Assembly created a new kind of offense—one that is not a crime (i.e., a felony or misdemeanor) but for most practical purposes is treated the same way. This memo will discuss the effects of the infractions law on the procedures used by criminal justice officials, provide a list of infractions, and discuss a significant new driver's license revocation made applicable to all motor vehicle offenses by the infractions legislation. [Ch. 761, N.C. Sess. Laws 1985.]

An infraction is different from a crime in the following ways. First, it can carry no jail sentence. Second, persons charged with infractions cannot be arrested, although in some cases they may be required to post an appearance bond. Third, the procedure used to dispose of an infraction that is before a judge will be a little different from those used to dispose of misdemeanors. Imprisonment is not allowed as a punishment for an infraction; as a result, suspended sentences can be neither imposed nor activated. The principal effect of this change will likely be that the threat of immediate activation of a suspended sentence will not be available to collect penalties and costs owed the court. Jury trials in superior court for infractions can be waived by the defendant, but not for misdemeanors. Fourth, the language

used to describe the infractions procedure is different from the language used in misdemeanors: Criminal defendants plead guilty or not guilty; infraction defendants admit or deny responsibility. Courts find criminal defendants guilty; they find infraction defendants responsible. Criminal defendants pay fines; infraction defendants pay an infraction penalty (which is different from the civil penalties collected under some ordinances, regulations, or statutes). Criminal defendants have trials; infraction defendants have hearings.

Effective Date

Ch. 761 was scheduled to become effective July 1, 1986, to apply to offenses committed on and after that date. The 1986 session of the General Assembly amended those provisions to make the legislation apply to offenses committed on or after September 1, 1986. [Ch. 852, N.C. Sess. Laws 1982, 2d sess. 1986.] The same bill included several technical changes. The appendix to this memo contains an engrossed version of the major statutes affected by the 1986 legislation.

Procedure

Charging an Infraction. The procedure used to begin an infraction case is similar to the procedure used to begin a minor traffic misdemeanor under existing law. G.S. 15A-1113(a) provides that infractions may be begun with the

issuance of a citation or a criminal summons. The uniform traffic ticket has been revised to reflect changes made by the infractions law; it can be used to charge both infractions and misdemeanors. In appropriate cases, an infraction and a misdemeanor can be charged on the same citation. A criminal summons can also be used to charge an infraction, although the existing form will have to be modified appropriately in order to do so.

The important thing about the documents available to charge an infraction is the documents that are not available for this purpose. Warrants for arrest may not be used to charge an infraction. Orders for arrest may not be used if a person fails to appear in response to a citation. [G.S. 15A-1116(b).] The remedy for failure to appear is a criminal summons; if the summons fails to result in the defendant's appearance, the court may then begin contempt proceedings, which can include an order for arrest. For motor vehicle cases and for some nonresidents, there are additional effects of nonappearance that will be discussed later.

Bonds. Since arrest is not allowed in infraction cases, the use of bonds to secure a defendant's appearance is also limited. G.S. 15A-1113(c) authorizes the use of appearance bonds only for *nonresident* defendants charged with infractions. Further, even if he is a nonresident, the defendant may *not* be required to post a bond if (a) he is charged with a motor vehicle offense that is subject to the nonresident-violator compact in Article 1B of G.S. Chapter 20, and (b) he complies with the provisions of that compact.

If the defendant is subject to the bond requirement, the officer may require the defendant to go with him to a judicial official's office to have the amount of the bond determined. Although the person is not under arrest, the officer may take any reasonable precautions to secure the person's property and to protect himself.

The judicial official may, in these cases, require that a secured bond be posted. If he determines that the defendant cannot post a secured bond, he must allow him to post an unsecured bond. The law specifies neither how the judicial official makes that determination nor how long he may take to make the determination. The judicial official can probably take any reasonable measures in order to find out the information he needs for making his decision, and those measures must be accomplished in a reasonable time. The local bond policy is the best place to inquire to see what is reasonable in a particular county. In any event, the unsecured bond—if it is forfeited in a motor vehicle case—will be treated as a conviction in North Carolina and probably in the defendant's home state as well.

Court Procedure. After the defendant is charged, the case is disposed of much as such cases have been handled for the last twenty years. A defendant charged with an infraction has three options. First, if the offense with which he is charged is included in a waiver list, he can dispose

of his case before the hearing date by waiving his right to appear, admitting responsibility, and paying the penalty prescribed by the appropriate list. Second, if the offense is not on a waiver list, or if the defendant prefers to admit responsibility before a judge, he may appear on his scheduled hearing date and admit responsibility before a district court judge. The judge may impose a penalty without regard to the waiver list. Finally, the defendant may deny responsibility. A district judge must conduct a hearing in these cases. [G.S. 15A-1114.]

For cases disposed of by waiver, there is no substantial change in the law. Magistrates, clerks, and assistant and deputy clerks will still be authorized to take waivers. In determining their authority, one should consult the appropriate waiver list—it does not matter whether the offense is an infraction or a misdemeanor. One change, however, will affect the practice in a few counties: G.S. 15A-1117 allows a person charged with an infraction to waive his appearance, admit responsibility, and pay the penalty set by the waiver list even if his scheduled court appearance date has already passed.

For cases disposed of by a judge, there is also no basic change in the law. A prosecutor represents the State, the rules of evidence apply, and the State must prove the defendant responsible beyond a reasonable doubt. G.S. 15A-1114 allows the State to conduct infractions hearings in either civil or criminal court at the district court level. Although there is no statute dealing with the subject, it is likely that misdemeanors and infractions can be consolidated for judgment.

Appeals are to the superior court for a *de novo* hearing. The hearing can be before a jury, or the defendant may waive his right to a jury and have the matter heard by a judge. Cases appealed to the superior court must be heard by a judge with jurisdiction over criminal cases, and a prosecutor must represent the State. Appeals from the superior court are to the Court of Appeals, following the procedure for appeals in criminal actions. [G.S. 15A-1115.]

Costs. The costs for an infraction are the same as for a criminal action [G.S. 7A-304(e)], with two exceptions. The infractions of failure to wear a seat belt by an adult [G.S. 20-135.2A], which is effective January 1, 1987, and purchase of wine or beer by a 19- or 20-year-old [G.S. 18B-302(1)], which is effective September 1, 1986, carry no court costs. Both have specific exemptions in the law.

Enforcement of Sanctions. The only sanction authorized for an infraction is the payment of an infraction penalty, although costs and fees assessed by statute also must to be paid. Since jail is not a permissible penalty, the use of jail in lieu of payment of the penalty (for example, a suspended sentence) is also not authorized in the first instance. The court may enforce its order requiring payment of a penalty with its contempt power, or it may use the procedure in Article 84 of G.S. Chapter 15A. Both procedures, however,

require that the person receive some form of notice and a hearing before he may be jailed for failure to pay. The infractions statute does not say how long the judge may detain in the courtroom a person who purports to have insufficient funds to pay a penalty or costs. It is likely, however, that a judge would have the inherent power to detain a defendant for a reasonable time in order to determine whether he should be given additional time to pay or whether enforcement proceedings should be begun immediately.

For motor vehicle infractions (as well as motor vehicle criminal offenses), failure to pay a penalty or costs may also result in revocation of one's driver's license. This procedure will be discussed in more detail in the section below on Driver's License Revocation.

Recordkeeping. When an infraction and a misdemeanor are charged on the same document or consolidated for judgment; the case should be filed as a misdemeanor. The Administrative Office of the Courts has issued several memos to clerks of court on this subject, and those documents should be consulted when recordkeeping questions about infractions arise.

Driver's License Revocation

Ch. 761 contains a significant change in the law dealing with failures to appear and failures to pay fines, penalties, and costs in motor vehicle cases. It adds G.S. 20-24.1, which revokes the defendant's license in such cases. The license-revocation provision applies to all motor vehicle offenses under Chapter 20—infraction and crimes.

Failures to Appear. The revocation procedure is structured to give the motorist ample opportunity to comply with the law. If a motorist fails to appear at a scheduled hearing or trial or within 20 days thereafter, the clerk must report that failure to the Division of Motor Vehicles (DMV). The report will be rendered by checking the appropriate block on the traffic ticket. DMV must then revoke the person's license, effective on the sixtieth day after the revocation order was mailed or delivered to the motorist. With the processing time that the clerks and the DMV will need to handle these cases, the average motorist will have at least 100 days in which to appear before he loses his license. If he appears before the effective date of the revocation, the revocation never becomes effective, and he does not have to pay a restoration fee. If the revocation does become effective, it remains in effect until the person appears; the person must then pay the applicable restoration fee before he may be relicensed.

The law does not define an appearance. In my opinion, a person appears when (1) he disposes of his case by a waiver; or (2) he or his counsel is physically in court to enter a plea

with the consent of the prosecutor; or (3) he or his counsel is physically in court pursuant to a scheduled court appearance date. In my opinion, merely showing up at a clerk's office or in the courtroom to ask to have one's case heard does not constitute a court appearance.

If the defendant shows the court that he is not the person charged in the infraction, the revocation will be rescinded when the DMV is notified of that fact by the court.

Ninety-Day Failures. For several years G.S. 20-24(e) has required DMV that treat failures to appear for a court appearance date and for 90 days thereafter as convictions ("90-day failures"). G.S. 20-7.2 also makes 90-day failures a basis to deny renewal of a license. Both provisions remain intact, unaffected by the infractions legislation. They both deal with the same issue as the revocation in G.S. 20-24.1 in related but confusing ways. If a defendant already has a revocation for failure to appear under G.S. 20-24.1 scheduled to become effective at the time a 90-day failure is entered, it is in many ways a duplication of effort to enter a 90-day failure. However, the main advantage of G.S. 20-7.2 to court officials is that it makes collection of fines somewhat simpler and more automatic than would be true if the case were tried in court.

Should 90-day failures still be entered if the defendant's license is already revoked? There is no simple answer. In my opinion, the efficient administration of justice would suggest that clerks at least wait a reasonable time after the revocation under G.S. 20-24.1 becomes effective (say, 50 days, or 150 days after the initial failure to appear) to enter a 90-day failure in order to give the revocation a chance to work. However, local court officials will have to decide the proper policy for their jurisdictions.

Failure to Pay Fine, Penalty, or Costs. G.S. 20-24.1 also applies to failures to pay fines, penalties, or costs. As with failures to appear, the clerk must report failures to pay court-ordered amounts for 20 days after the date specified or implied in the court order. This report will be made on the DMV form DL 47/47.1. The same 60-day grace period between the issuance of the DMV revocation order and the effective date of the order applies. This revocation procedure applies to all motor vehicle offenses, including infractions, but it poses practical problems. For minor offenses in which the amount to be paid is small and is expected to be paid in one payment, the procedure allows a delay of approximately 100 days before the license is revoked. Given the cost and effort required to use contempt procedures or the procedures in Article 84 of G.S. Chapter 15A, the revocation procedure may turn out to be the most cost-effective way to collect such payments. In any event, the clerk's duty to report is not discretionary; he must file the report.

G.S. 20-24.1 also covers failures to pay in serious motor vehicle cases. These cases pose different problems. Some of them, especially DWI cases, involve payments of large

sums of money. The money is often paid in installments, and the proper payment schedule may have to be determined by a probation officer. Failure to meet these payment schedules are likely to be dealt with by probation-revocation proceedings, which may include the arrest of the defendant. Reporting a failure to pay an installment to DMV could result in a lot of paper work for little immediate benefit until the revocation becomes effective. That is especially true if the court is also actively using the probation revocation procedures to enforce its judgments. Each local jurisdiction will have to work out its procedure for dealing with these cases.

A defendant whose license is revoked for nonpayment of fines, etc., may avoid the revocation by paying the proper amount or by demonstrating to the court that he was unable to pay the fine before the effective date of the order. But if he does so after the order's effective date, he cannot be relicensed until he pays DMV the appropriate restoration fee.

Compliance. When a defendant complies appropriately under G.S. 20-24.1, the revocation procedure ends. If the compliance comes before the effective date of the revoca-

tion, the revocation never becomes effective. Some defendants will comply on the last possible day. In such cases, the defendant is legally not revoked, but until the DMV receives notice from the clerk indicating the compliance, the DMV computer records will indicate that the defendant is revoked. Until there is instantaneous electronic communication between each clerk's office and the DMV, this situation will arise.

To help prevent charges of driving while license revoked in these cases, the defendant is entitled, on request, to a copy of the form to be sent to the DMV indicating the date of his compliance. With that form, the arresting officer can determine whether the defendant is driving legally by checking the form and the effective date of the revocation (which is available on the DMV's computer).

The same provisions apply if a defendant complies after the revocation becomes effective. The only difference is that the defendant's copy will enable him to prove that his license is *not* revoked, but he may still be charged with driving without a valid license.

Offenses

Listed below is a list of offenses that are infractions. The original list was prepared by the Crime Control Division of the Attorney General's staff and is adapted with their permission. Many thanks to the compilers.

Infractions

A. Handicapped parking violations. G.S. 20-37.6.

B. Equipment violations.

1. Unsafe tires. G.S. 20-122.1.
2. Trailers and towed vehicles. G.S. 20-123.
3. Steering mechanisms. G.S. 20-123.1.
4. Brakes. G.S. 20-124.
5. Horns. G.S. 20-125.
6. Directional signals. G.S. 20-125.1.
7. Mirror. G.S. 20-126.
8. Windshields. G.S. 20-127.
9. Mufflers. G.S. 20-128.
10. Visible emissions. G.S. 20-128.1.
11. Required lighting. G.S. 20-129.
12. Additional lighting. G.S. 20-129.1.
13. Lighting for mobile homes. G.S. 20-129.2.
14. Additional permissible lighting on vehicles. G.S. 20-130.
15. Use of amber lights. G.S. 20-130.2.
16. Use of white lights. G.S. 20-130.3.
17. Requirements for headlights. G.S. 20-131.
18. Acetylene lights. G.S. 20-132.
19. Enforcement (headlights). G.S. 20-133.

20. Lights on parked cars. G.S. 20-134.

21. Operation or sale of vehicle without safety glass. G.S. 20-135.

22. Safety belts. G.S. 20-135.1 and -135.2.

23. Use of seatbelts. G.S. 20-135.2A (no court costs). Effective January 1, 1987.

24. Seatbelt anchorage for rear seats. G.S. 20-135.3.

25. Auto standards. G.S. 20-135.4.

26. Location of TV monitor. G.S. 20-136.1.

27. Unlawful display emblem. G.S. 20-137.

28. Child-restraint system. G.S. 20-137.1.

C. Rules of the road.

1. Overcrowded vehicle. G.S. 20-140.2.

2. Use of interstate highway. G.S. 20-140.3.

3. Motorcycle passengers and helmets. G.S. 20-140.4.

4. Exceeding a safe speed. G.S. 20-141(a).

5. Exceeding the posted speed limit. G.S. 20-141(b) (this offense becomes a misdemeanor if the speed exceeds 15 mph over the limit).

6. Failing to decrease speed to avoid an accident. G.S. 20-141(m).

7. Speeding in school zone. G.S. 20-141.1.

8. Railroad signals. G.S. 20-142.

9. Stop at railroad crossing. G.S. 20-143.

10. Certain vehicles must stop at railroad crossing. G.S. 20-143.1.
 11. Speed limitations on bridges. G.S. 20-144.
 12. Drive on the righthand side of the road. G.S. 20-146.
 13. Operation of motorcycles. G.S. 20-146.1.
 14. Stay to right when crossing railroad. G.S. 20-147.
 15. Meeting another vehicle. G.S. 20-148.
 16. Overtaking a vehicle. G.S. 20-149.
 17. Limitations on passing. G.S. 20-150.
 18. Passing on the right. G.S. 20-150.1.
 19. Overtaking a vehicle. G.S. 20-151.
 20. Following too closely. G.S. 20-152.
 21. Turning at an intersection. G.S. 20-153.
 22. Starting, stopping, and turning. G.S. 20-154.
 23. Right-of-way. G.S. 20-155.
 24. Following a fire truck. G.S. 20-157(b).
 25. Parking within 400 feet of fire vehicle. G.S. 20-157(c).
 26. Driving over fire hoses. G.S. 20-157(d).
 27. Leaving vehicle within 200 feet of police, fire vehicles, ambulances, rescue squads. G.S. 20-157(e).
 28. Vehicle control signs and signals. G.S. 20-158.
 29. Yield right-of-way. G.S. 20-158.1.
 30. Drive through safety zone. G.S. 20-160.
 31. Parking on the highway. G.S. 20-161.
 32. Night parking. G.S. 20-161.1.
 33. Parking in front of private drive. G.S. 20-162.
 34. Unattended motor vehicle. G.S. 20-163.
 35. Coasting. G.S. 20-165.
 36. One-way traffic. G.S. 20-165.1.
 37. Transporting explosives. G.S. 20-167.
- D. Bicycle-racing violations. G.S. 20-171.1, -171.2.
- E. Pedestrian rights and duties.
1. Pedestrians crossing a traffic control signal. G.S. 20-172.
 2. Pedestrians at crosswalk. G.S. 20-173.
 3. Crossing at other than crosswalks; walking along the highway. G.S. 20-174.
 4. Pedestrian soliciting rides. G.S. 20-175.
- F. Inspection requirements. Inspection violations are infractions, except for reproduction of an inspection sticker, which is forgery. G.S. 20-183.8(c).
- G. Non-motor vehicle infractions.
1. Possession, purchase or attempt to purchase beer or unfortified wine by a person age 19 or 20 (effective September 1, 1986). G.S. 20-18B-302.
 2. Violation of Family and Mental Therapy Certification Act. G.S. 90-270.61.

Misdemeanors and Felonies

(Motor vehicle law misdemeanors that have not been changed).

- A. Licensing violations.
1. No operator's license. G.S. 20-7.
 2. Failure to change address. G.S. 20-7.1.
 3. Person not 18 operating passenger vehicle. G.S. 20-10(a).
 4. Person under 14 on road with farm equipment. G.S. 20-10(b).
 5. Moped operated by a person under 16. G.S. 20-10.1.
 6. Improper instruction of a person with a learner's permit. G.S. 20-12.
 7. Impaired instruction. G.S. 20-12.1.
 8. Operating under a suspended foreign license. G.S. 20-21.
 9. Driving while license revoked. G.S. 20-28.
 10. Failure to surrender license. G.S. 20-29.
 11. Displaying revoked license. G.S. 20-30(1).
 12. Counterfeit, sell, or lend license. G.S. 20-30(2).
 13. Display another's license. G.S. 20-30(3).
 14. Refuse to surrender license to DMV. G.S. 20-30(4).
 15. False information to obtain a license. G.S. 20-30(5).
 16. Reproduction of a license. G.S. 20-30(6).
 17. Selling reproduction of license. G.S. 20-30(7).
 18. Make false affidavit. G.S. 20-31 (felony).
 19. Permit unlicensed driver to operate motor vehicle. G.S. 20-32.
 20. Permit violations of Article II. (G.S. 20-5 through 20-37). G.S. 20-34.
 21. Unlawful to issue license for anything of value. G.S. 20-34.1 (felony).
- B. Article 2A Offenses—Disabled or handicapped persons.
1. Motorized-wheelchair violations. G.S. 20-37.1.
 2. Unauthorized use of flag or facsimile. G.S. 20-37.4.
- C. Article 2B—Special identification card for nonoperators.
1. Fraud in obtaining special ID card. G.S. 20-37.7(d).
 2. Fraudulent use of special ID card. G.S. 20-37.8.
- D. Article 3, Part 2—Authority and duties of Commissioner.
1. Failure to return factitious license or registration plate by local law enforcement officer. G.S. 20-39(h).
 2. Failure to surrender title, plate, or license after notice. G.S. 20-45(b).

- E. Article 3, Part 3—Registration and titles of Motor Vehicles.
 - 1. Giving false information where list vehicle for taxes. G.S. 20-50.2(c).
 - 2. Delivering blank copy of certificate of origin. G.S. 20-52.1(c).
 - 3. Duty of secured party to disclose information. G.S. 20-58.6.
 - 4. Unlawful for lienor to fail to surrender title when lien is satisfied. G.S. 20-59.
 - 5. Preservation and cleaning of plates. G.S. 20-63(e).
 - 6. Operating vehicle with altered plate. G.S. 20-63(f).
 - 7. Alteration, disguise, or concealment of numbers on plate. G.S. 20-63(g).
 - 8. Failure to secure new certificate of title G.S. 20-73.
 - 9. Failure to apply for a transfer within the time specified. G.S. 20-74.
- F. Manufacturer and dealer not licensed. G.S. 20-79(a).
- G. Article 3, Part 8—Antitheft and Enforcement Provisions. These statutes have not been changed and are either misdemeanors or felonies as indicated. This section includes willful failure to obey law enforcement officer. G.S. 20-114.1.
- H. Article 3, Part 9—Size, Weight, and Construction.
 - 1. Exceeding axle limits. G.S. 20-116(g).
 - 2. Refusing to weigh vehicle. G.S. 20-118.1.
 - 3. Violating special permit. G.S. 20-119(a).
 - 4. Overloading flat trucks. G.S. 20-120.
 - 5. Prohibited use of red or blue light. G.S. 20-130.1.
 - 6. Smoke screens. G.S. 20-136 (Felony).
 - 7. Operating a vehicle resembling a law enforcement officer's vehicle. G.S. 20-137.2.
- I. Article 3, Part 10—Rules of the Road.
 - 1. DWI. G.S. 20-138.1.
 - 2. Provisional-licensee offense. G.S. 20-138.3.
 - 3. Reckless driving. G.S. 20-140(a) and (b).
 - 4. Speeding to elude arrest. G.S. 20-141(j).
 - 5. Driving at more than 15 mph over the posted limit. G.S. 20-141(jl).
 - 6. Racing, willful and prearranged. G.S. 20-141.3.
 - 7. Felony and misdemeanor death by vehicle. G.S. 20-141.4.
 - 8. Failure to yield right-of-way to police, fire, ambulance, rescue squad. G.S. 20-157(a).
 - 9. Failure to stop at scene of accident. G.S. 20-166. (There is still a felony charge for this offense.)
 - 10. Failing to report accident. G.S. 20-166.1.
 - 11. Transportation of spent nuclear fuel. G.S. 20-167.1.
- J. Article 3, Part 11—Pedestrian's Rights and Duties.
 - 1. Sitting and lying upon the street. G.S. 20-174.
- K. Article 3, Part 11A—Blind Pedestrian. (All offenses under this part are still misdemeanors.)
- L. Article 3A, Part 2—Equipment Inspection of Motor Vehicle.
 - 1. Unauthorized reproduction of inspection sticker is forgery under G.S. 14-119 (felony). G.S. 20-183.8(c).
- M. Article 7, Miscellaneous Provisions Relating to Motor Vehicles.
 - 1. Passing stopped school bus. G.S. 20-217.
 - 2. Standards for school bus drivers and speed limits. G.S. 20-218.
 - 3. Speed limit for activity bus. G.S. 20-218.2.
- N. Article 9A—Financial Responsibility. (All insurance violations are misdemeanors including operating a motor vehicle without financial responsibility.) G.S. 20-313(a).
- O. Article 16—Professional House Moving. (All violations under this article are misdemeanors.)

**ENGROSSED COPY OF MAJOR CHANGES
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1985 SESSION LAWS (REGULAR SESSION, 1986)

§ 15A-1113. Prehearing procedure.

(a) Process.—A law enforcement officer may issue a citation for an infraction in accordance with the provisions of G.S. 15A-302. A judicial official may issue a summons for an infraction in accordance with the provisions of G.S. 15A-303.

(b) Detention of Person Charged.—A law enforcement officer who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period in order to issue and serve him a citation.

(c) Appearance Bond May Be Required.—A person charged with an infraction may not be required to post an appearance bond if:

- (1) He is licensed to drive by a state that subscribes to the nonresident violator compact as defined in Article 1B of Chapter 20 of the General Statutes, the infraction charged is subject to the provisions of that compact, and he executes a personal recognizance as defined by that compact.
- (2) He is a resident of North Carolina.

Any other person charged with an infraction may be required to post a bond to secure his appearance and a charging officer may require such a person charged to accompany him to a judicial official's office to allow the official to determine if a bond is necessary to secure the person's court appearance, and if so, what kind of bond is to be used. If the judicial official finds that the person is unable to post a secured bond, he must allow the person to be released on execution of an unsecured bond. The provisions of Article 26 of this Chapter relating to issuance and forfeiture of bail bonds required pursuant to this subsection.

(d) Territorial Jurisdiction.—A law enforcement officer's territorial jurisdiction to charge a person with an infraction is the same as his jurisdiction to arrest specified in G.S. 15A-402.

(e) Use of Same Process for Two Offenses.—A person may be charged with a criminal offense and an infraction in the same pleading.

§ 15A-1114. (Not changed by 1986 legislation)

§ 15A-1115. Review of disposition by superior court.

(a) Appeal of District Court Decision.—A person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consent to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions.

§ 15A-1116. Enforcement of sanctions.

(a) Use of Contempt or Fine Collection Procedures: Notification of DMV.—If the person does not comply with a sanction ordered by the court, the court may proceed in accordance with Chapter 5A of the General Statutes. If the person fails to pay a penalty or costs, the court may proceed in accordance with Article 84 of this Chapter. If the infraction is a motor vehicle infraction, the court must report a failure to pay the ap-

licable penalty and costs to the Division of Motor Vehicles as specified in G.S. 20-24.2.

(b) No Order for Arrest.—If a person served with a citation for an infraction fails to appear to answer the charge, the court may issue a criminal summons to secure the person's appearance, but an order for arrest may not be used in such cases.

§ 15A-1117 is repealed and recodified as G.S. 20-24.2.

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

- (1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or
- (2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

- (1) appears to answer the charge; or
- (2) demonstrates to the court that he is not the person charged with the offense;
- (3) pays the penalty, fine, or costs ordered by the court; or
- (4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order must be rescinded and the person does not have to pay a restoration fee. For all other revocation orders issued pursuant to this section, the person must pay the restoration fee required by G.S. 20-7(i) and satisfy any other applicable requirements of this Article before he may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter.

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

- (1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or
- (2) Fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment.

§ 20-115. Scope and effect of regulations in this title.

It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the Department of Transportation adopted pursuant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as excess authority may be granted in this Article.

§ 20-138.3. Driving by provisional licensee after consuming alcohol or drugs.

(a) Offense.—It is unlawful for a provisional licensee to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a provisional licensee does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law.—An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Punishment; Effect When Impaired Driving Offense Also Charged.—The offense in this section is a misdemeanor punishable under G.S. 20-176(c). It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed.

§ 7A-517(12) is amended as follows:

(12) Delinquent Juvenile.—Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

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