

2011 MOTOR VEHICLE LEGISLATION OF INTEREST TO MAGISTRATES

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1. **S.L. 2011-119 (S 16) (Misdemeanor death by vehicle rendered an implied consent offense)**

Broadens the definition of “implied-consent offense” in G.S. 20-16.2(a1) to include the offense of misdemeanor death by vehicle in violation of G.S. 20-141.4(a2). Amends the subsequent testing provision in G.S. 20-139.1(b5) to provide that a person charged with any of the death or injury by vehicle offenses set forth in G.S. 20-141.4 “shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath.” Specifies that the request for a blood sample is not required if the breath sample shows an alcohol concentration of 0.08 or more. Amended G.S. 20-139.1(b5) further requires a law enforcement officer to seek a warrant to obtain a blood sample if a person willfully refuses to provide a blood sample under this subsection, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offenses made subject to the implied consent procedures. Effective December 1, 2011 for offenses committed on or after that date. For further discussion of this act, see Shea Denning, [Requests for Blood in Death by Vehicle Cases](#), posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).

2. **S.L. 2011-191 (H 49) (Creates new Level A1 DWI, punishable by up to 3 years imprisonment)**

This act, frequently referred to as “Laura’s Law”—the short title of the bill that ultimately was enacted—increases the maximum punishment for impaired driving, increases the length of time that continuous alcohol monitoring may be required as a condition of probation, and makes other changes applicable to defendants charged with and sentenced for impaired driving. The act is effective for offenses committed on or after December 1, 2011. S.L. 2011-191 requires Aggravated Level One punishment when there are at least three grossly aggravating factors in an impaired driving case sentenced under G.S. 20-179. An impaired driving conviction punished at Aggravated Level One (Level A1 DWI) requires a minimum term of 12 months imprisonment up to a maximum term of 36 months. The maximum fine is \$10,000. A defendant sentenced for a Level A1 DWI is not eligible for parole. Level A1 defendants must, however, be released from imprisonment four months before the end of the “maximum imposed term of imprisonment” and must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system.

The term of imprisonment for a Level A1 DWI may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Note that this term of special probation imprisonment is significantly shorter than the mandatory minimum active term of 12 months. In this respect, Level A1 punishment departs from the sentencing requirements for other levels of impaired driving for which the mandatory minimum term of imprisonment matches the minimum term of imprisonment required as a condition of special probation. If a Level A1 defendant is placed on probation, the judge must require the defendant to abstain from alcohol for at least 120 days up to the entire term of probation as verified by CAM. As is the case for probationary sentences imposed for other levels of DWI, the judge must

require as a condition of probation for a Level A1 sentence that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6. Upon conviction of Level A1 impaired driving, the defendant's driver's license is permanently revoked pursuant to amended G.S. 20-19(e). Though a license permanently revoked under G.S. 20-19(e) may, under certain circumstances, be conditionally restored after it has been revoked for three years, a person whose license was revoked for conviction of Level A1 DWI must, in addition to meeting other conditions, have ignition interlock in order to have his or her license restored.

S.L. 2011-191 affects other types of DWI sentencing as well. Amended G.S. 20-179(h1) increases from 60 days to the term of probation the maximum period for which abstinence and CAM may be required of defendants sentenced for Level 1 or Level 2 DWIs. It also eliminates the provision in G.S. 20-179(h1) that formerly capped a defendant's total CAM costs at \$1,000, and repeals G.S. 20-179(h2), which formerly prohibited a court from requiring CAM if it determined the defendant "should not be required to pay the costs" of CAM and the local government entity responsible for the incarceration of the defendant was unwilling to pay for CAM.

Amended G.S. 15A-534(i) authorizes abstinence from alcohol and CAM as a pretrial release condition for a defendant charged with an offense involving impaired driving who has been convicted of an offense involving impaired driving within seven years of the offense for which the defendant is being placed on pretrial release.

New G.S. 7A-304(a)(10) requires that a defendant sentenced pursuant to G.S. 20-179 (applicable to convictions under G.S. 20-138.1, 20-138.2 and second or subsequent convictions under G.S. 20-138.2A and 20-138.2B) pay, in addition to other applicable costs, a fee of \$100.

3. [S.L. 2011-271 \(H 427\)](#) (Seizure and forfeiture of motor vehicles used in the commission of felony speeding to elude)

Enacts new G.S. 20-141.5(g)-(j) requiring, upon arrest of a defendant for felony speeding to elude, that the law enforcement agency seize the motor vehicle and deliver it to the sheriff of the county in which the offense is committed. Provides for constructive possession by sheriff if delivery of actual possession is impracticable. Requires that the sheriff hold the vehicle pending trial of the operator(s) charged with the felony offense. The sheriff must restore the seized motor vehicle to its owner upon execution of a satisfactory bond in double the value of the property and conditioned upon the owner's return of the motor vehicle on the day of trial. Upon acquittal or dismissal of any felony charge, the sheriff must return the motor vehicle to its owner. If the operator is convicted, the court must order the motor vehicle sold at public auction. Liens are paid from net proceeds of sale, after deducting towing and storage expenses, seizure fee, and sale costs. The balance of the proceeds are payable to the county schools.

On petition by a lienholder, the court in its discretion may allow the vehicle to be reclaimed by the lienholder. The lienholder must file with the court an accounting of the proceeds of any subsequent sale of the vehicle and must pay into the court any proceeds received in excess of the lien.

Certain other owners also may prevent the motor vehicle from being sold. A court must restore a motor vehicle to its owner if the owner demonstrates the following three factors: (1) the defendant was an immediate member of the owner's family at the time of the offense; (2) the defendant had no previous convictions or previous or pending violations of any provision in Chapter 20 of the

General Statutes for the three years before the offense; and (3) the defendant was under the age of 19 at the time of the offense. The owner is entitled to trial by jury on these issues.

The owner of a motor vehicle driven by someone else in the commission of felony speeding to elude also may seek release of the motor vehicle by filing a petition with the clerk of court seeking a pretrial determination that he or she is an innocent owner. While the term “innocent owner” is defined in G.S. 20-28.2(a1)(2) for purposes of motor vehicles seized from impaired drivers, the term is not separately defined for purposes of felony speeding to elude seizures. Moreover, the requirements for an innocent owner under G.S. 20-28.2(a1)(2) correspond to the statutory bases for seizure under the impaired driving laws, which differ from those for felony speeding to elude. Thus, it is unclear how a motor vehicle owner establishes his or her status as an innocent owner pursuant to G.S. 20-141.5(h)(4). The clerk determines only whether the petitioner is an innocent owner, not whether the vehicle is subject to forfeiture. If the clerk determines that the petitioner is an innocent owner, then the clerk must release the vehicle to the petitioner. A determination by the clerk that the petitioner failed to establish that he or she is an innocent owner may be reconsidered by the court as part of the forfeiture hearing.

When a seized motor vehicle has been specially equipped or modified to increase its speed, the court must, before its sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. If the court finds that the equipment and modifications are so extensive that restoration of the vehicle to its original manufactured condition would be impractical, it may order that the vehicle be turned over to a governmental agency or public official within the territorial jurisdiction of the court to be used in the performance of official duties only. Effective December 1, 2011 for offenses committed on or after that date.

4. **S.L. 2011-329 (S 241) (Requires Level One DWI sentence if a minor or disabled person was in vehicle at time of offense)**

This act amends G.S. 20-179 to require, effective for offenses committed December 1, 2011 or later, that persons convicted of covered impaired driving offenses be sentenced to Level One punishment if the grossly aggravating factor in G.S. 20-179(g)(4) exists. Before these amendments, a person could be sentenced at Level One upon a finding of at least two grossly aggravating factors. This factor formerly applied if the defendant drove while a child under the age of sixteen was in the car. The act also amends the factor itself for offenses committed December 1, 2011 or later. The amended factor applies if the defendant drives while impaired with any of the following types of persons in the car: a child under the age of 18 (was, 16), a person with the mental development of a child under the age of 18, or a person with a physical disability that prevents the person from getting out of the vehicle without assistance.

5. **S.L. 2011-381 (H 761) (Renders tampering with an ignition interlock system a misdemeanor offense; removes colored border requirements for licenses; specifies that violations for false documents apply to special identification cards; authorizes DMV to obtain criminal history record of applicant for a restoration of a revoked driver's license)**

Enacts new G.S. 20-17.8A, which makes it a Class 1 misdemeanor to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for a person to operate a motor vehicle for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results on the

ignition interlock device. Each act of tampering, circumvention or attempted circumvention is a separate violation. Effective December 1, 2011 for offenses committed on or after that date.

Amends G.S. 20-7(n) to eliminate requirement that driver's licenses for persons under 21 years old and those over 21 years old have a different color background or border. Licenses and special identification cards issued to persons under 21 years of age still must be printed in a vertical format that distinguishes them from licenses and cards issued to applicants 21 and older, which are printed in a horizontal format. Also amends G.S. 20-11(a) to remove requirement that learner's permits and provisional licenses have a color background or border that indicates the level of driving privileges granted. Permit or license still must indicate level of driving privileges granted. Effective December 1, 2011 for licenses issued on or after that date.

Amends G.S. 20-30 to prohibit falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits. Effective December 1, 2011 for offenses committed on or after that date.

Enacts new G.S. 114-19.31 authorizing the Department of Justice (DOJ) to provide to DMV the criminal history record of any applicant for a restoration of revoked driver's license. Requires DMV to submit a request to DOJ accompanied by the applicant's fingerprints and a signed consent. Requires DMV to keep criminal history information obtained pursuant to this section confidential. Permits DOJ to charge a fee to offset its cost for the record check, and permits fees and costs incurred by DMV in obtaining the record to be charged to the applicant. Effective December 1, 2011.

6. **S.L. 2011-385 (S 636), as amended by S.L. 2011-___ (H 335) (Driving logs required for provisional license; immediate civil license revocations required for provisional licensees who commit criminal moving violations). *[H 335 has been enacted by the General Assembly but neither signed nor vetoed by the Governor as of 10/5/11.]***

Under current law, a person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if he or she meets the following four requirements: (1) has held a limited learner's permit issued by DMV for at least 12 months, (2) has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 (unlawful use of a mobile phone by a person under 18) in the previous six months, (3) passes a road test administered by DMV, and (4) has a driving eligibility certificate or a high school diploma or its equivalent. For persons issued a limited learner's permit on or after January 1, 2012, amendments to G.S. 20-11(d) create a fifth requirement. To obtain a limited provisional license, a person must complete a driving log, on a form approved by DMV, detailing a minimum of 60 hours as the operator of a motor vehicle of the class for which the driver has been issued a limited learner's permit. The log must show at least 10 hours of the required driving occurred during nighttime hours. No more than 10 hours of driving per week may be counted. The driving log must be signed by the supervising driver and be submitted to DMV when the applicant seeks the limited provisional license. If DMV has cause to believe that a driving log has been falsified, the limited learner's permit holder must complete a new driving log and is not eligible to obtain a limited provisional license for six months.

A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under certain conditions. Among those conditions is that the driver may drive without supervision only from 5:00 a.m. to 9:00 p.m. or when driving to or from work or to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization. See G.S. 20-11(e)(2). S.L. 2011-385 amends

G.S. 20-11(e)(2) for persons issued a limited provisional license on or after October 1, 2011 to allow unsupervised driving after 9 p.m. and before 5 a.m. only when driving “directly” to one of the aforementioned excepted activities.

Amendments to G.S. 20-11(f), applicable to persons issued a limited provisional license on or after January 1, 2012, also require a driving log to obtain a full provisional license. The log must detail a minimum of 12 hours as the operator of a motor vehicle of a class for which the driver is licensed. The log must show at least six hours of the required driving occurred during nighttime hours. The driving log must be signed by the supervising driver for any hours driven outside of the provisions in G.S. 20-11(e)(2)(allowing unsupervised driving without supervision from 5 a.m. to 9 p.m., subject to certain work-related exceptions) and must be submitted to DMV when the applicant seeks his or her full provisional license. If DMV has cause to believe the log is false, the limited provisional licensee must complete a new log and is ineligible for a full provisional license for six months.

Effective January 1, 2012 for offenses committed on or after that date, new G.S. 13-3 provides for the immediate revocation of the license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. If a law enforcement officer has reasonable grounds to believe that a person under the age of 18 who has a limited learner’s permit or a provisional license has committed a criminal moving violation, the person is charged with that violation, and the person’s license is not subject to civil revocation for a violation of the implied consent laws, the law enforcement officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. The revocation report must be filed with the judicial official (typically, a magistrate) conducting the initial appearance on the underlying criminal moving violation. If a properly executed report is filed with a judicial official when the person is present before the judicial official, the judicial official must, after completing any other proceedings, determine whether there is probable cause to believe the conditions requiring civil license revocation pursuant to G.S. 20-13.3(b) are met. If the judicial official finds probable cause, he or she must enter an order revoking the provisional licensee’s permit or license for 30 days. The provisional licensee is not required to surrender his or her permit or license card. The clerk must notify DMV of the issuance of a G.S. 20-13.3 revocation order within two business days. A person whose license is revoked under G.S. 20-13.3 is not eligible for a limited driving privilege.

DMV is directed to study the issue of teen driving and the effectiveness of the provisions of SL 2011-385. DMV specifically must determine whether, beginning October 1, 2011, there has been a decrease in any of the following types of incidents involving provisional licensees: property damage crashes, personal injury crashes, fatal crashes, moving violations, and seat belt violations. DMV must report its findings to the Joint Legislative Transportation Oversight Committee by February 1, 2014.