DWI Legislative Changes Since 2006

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(This paper primarily summarizes the changes made to the impaired driving statutes in 2006 by S.L. 2006-253; that act made the most widespread changes to the impaired driving statutes since 1983. Numbers in parentheses (e.g. Sec. 9) refer to specific sections in that act. When "Ch. 493" is cited, it is referring to S.L. 2007-493, which enacted technical amendments to the 2006 amendments. When other legislation is referenced, it is specifically cited. Unless specifically noted, the changes are from Ch. 253 and are effective Dec. 1, 2006.)

1) **Substantive changes to criminal offenses**

   a) Impaired Driving—GS 20-138.1 (Sec. 9).

      i) Specifies that results of a chemical analysis is 'deemed sufficient evidence' to prove a person's alcohol concentration for purposes of establishing the person's guilt under GS 20-138(a)(2).

      ii) Adds additional prong of offense which provides that driving with any Schedule I controlled substance, or its metabolites in one's blood or urine is a per se violation of impaired driving offense.

      iii) Specifies that person who obtains blood test as alternative to state mandated chemical analysis may use the test to rebut the state's analysis.

      iv) Specifies that person may assert that chemical analysis is inadmissible if preventive maintenance not properly performed.

      v) Deletes exemption for lawnmowers and bicycles, which means that driving on either is now covered by impaired driving offense.

      vi) Amends GS 20-179 (Sec. 23) to delete the judge's option of meeting the mandatory conditions of probation required for non-activated sentences at levels three through five by imposing a period of non-operation of a motor vehicle.

   b) Impaired Driving in Commercial Vehicle—GS 20-138.2 (Sec. 10).

      i) Makes changes identical to 1) (a), (ii), (iii), and (iv) above.

      ii) Specifies that gross vehicle weight rating of a vehicle may be proved by opinion testimony, observation of the gross vehicle weight rating affixed to the vehicle, registered or declared weight shown on Division of Motor Vehicles, gross vehicle weight as determined by the VIN, listed gross weight publications from the vehicle manufacturer, or any other description or evidence.

   c) Habitual Impaired Driving—GS 20-138.5 (Sec. 12).

i) Extends 'look-back' period for determining if prior convictions count for purposes of establishing that person had requisite number of prior convictions from seven to ten years.
ii) Specifies that provisions of GS 20-139.1 (procedures governing chemical analysis) apply to prosecutions under this statute.

d) Death by Vehicle—GS 20-141.4 (Sec.14)--Establishes new offenses of Felony Serious Injury by Vehicle, Aggravated Serious Injury by Vehicle, Aggravated Felony Death by Vehicle and Repeat Felony Death by Vehicle

i) Felony Serious Injury requires unintentional causation of "serious injury" while driving while impaired—Class F felony.

ii) Aggravated Felony Serious Injury is same as (1) and person has one or more previous convictions of an offense involving impaired driving within seven years of offense date of instant offense—Class E felony.
iii) Reclassifies Felony Death by Vehicle as Class E felony.

iv) Aggravated Felony Death by Vehicle is same as felony death by vehicle and person has one or more previous convictions of an offense involving impaired driving within seven years of offense date of instant offense—Class D felony.

v) Repeat Felony Death by Vehicle occurs if person who has a conviction of Felony Death by Vehicle or Aggravated Felony Death by Vehicle commits either offense again, and is punishable as second degree murder

(1) No limit on how long in the past the prior offense occurs.

vi) (Ch. 253: No specific license revocation for new injury offenses, and does not amend definition of Offense Involving Impaired Driving to include them; Death offenses would be covered by existing statutes classifying death by vehicle as offense involving impaired driving, with specified license consequences.) (Ch. 493: makes it clear that license revocation provisions applicable to death by vehicle convictions also apply to felonious injury provisions, effective August 30, 3007).

e) Driving after Notification or Failure to Appear—GS 20-28(a2). (Sec. 22.1)

i) Two alternative ways of committing offense—

(1) Drive on highway with a revoked license for an impaired driving license revocation after the Division of Motor Vehicles has sent notification in accordance with GS 20-48.

(2) Fail to appear for two years from the date of the charge after being charged with an implied-consent offense.

f) Definition of Public Vehicular Area (Sec.8). Amends GS 20-4.01 (32) to specify that area is public vehicular area if it open to public at any time (instead of "generally"); to specify that business areas that meet definition remain public vehicular area, even if the business is closed; and clarifies that residential subdivision roads that are not public roads are public vehicular areas if road is used by vehicular traffic in or leading to a subdivision.

(S.L. 2007-455, effective 12/1/07, specify that roads within or leading to gated communities are public vehicular areas.)

g) Consumption of alcohol by underage person. (Sec. 26). Amends GS 18B-302 to make it a misdemeanor for a person under 21 to consume (it is already unlawful to purchase or possess) alcohol. Allows law enforcement officer with probable cause to require any person whom the officer has probable cause to believe has violated this statute to submit to alcohol screening devices approved by HHS. Refusal to submit may be introduced in evidence as may be the screening results. Exempts consumption for medical, sacramental or culinary school activities.

2) **Driver's license changes**

a) Amends GS 20-17(a)(2) (Sec. 22.2) to limit authority to revoke driver's license for convictions of impaired driving in a commercial vehicle to those cases in which driver's alcohol concentration is 0.06 or higher. (Revocation under this section prohibits driving punishable pursuant to GS 20-28, but under separate sections of commercial driver license law, driver would also be disqualified from driving commercial vehicle for the same conduct and any driving of a commercial vehicle during the period of disqualification would also be a violation of the commercial licensing laws.) Specifies that chemical analysis result is conclusive and judge may not alter it.

b) Amends GS 20-16.2(e) (sec. 15) to provide that hearing in superior court to review revocation based on willful refusal under that section is limited to whether there is sufficient evidence in the record to support the DMV findings of fact and conclusions and whether conclusions are consistent with law.

c) For convictions of offense of driving after notification or failure to appear (see 1. e. above) (Sec. 22.1), revokes license for an additional period of one year for first conviction, two years for second and permanently for third offense. Revocation is in addition to any revocation in effect at the time of conviction.

i) First year revocation may not be reduced by DMV.

ii) For longer revocations person may apply for conditional restoration after one year for a two-year revocation and three years for a permanent revocation. Restoration to be conditioned on compliance with substance abuse assessment, and if alcohol abuse found, on use of interlock during period of time required by GS 20-17.8.

(1) Violations of conditions or subsequent convictions result in cancellation of license, re-revocation, and registration revocation of any vehicles registered by defendant.

d) Amends GS 20-28 (Sec. 22.1) to require person originally revoked under GS 20-16.5 (CVR law) who is punished under GS 20-28(a1) (driver without reclaiming license), as condition of reinstatement of license must show proof of financial responsibility to Division and obtain substance abuse assessment, and complete any recommended treatment or education within time required by Division.

e) Amends GS 20-17.8 to add new subsection (l) (Sec. 22.4) to add medical exception to requirement that driver use interlock. Medical condition must make person incapable of

personally activating the interlock. Exception must be certified to by at least two physicians. Commissioner not bound by medical recommendations. Commissioner's negative decision may be reviewed by DMV Medical Review Board under GS 20-9. Ch. 253 made this section effective 12/1/06 for offenses committed on and after that date, which would have delayed it's being effective for several years; Ch. 493 makes it effective retroactively to Aug. 21, 2006 and does not require the offense to have been committed on or after that date, thereby making it applicable to people seeking exemptions for conviction-based revocations occurring before that date.

f) Repeals GS 20-17.2 (Sec. 25), which authorizes DMV to revoke in DWI cases in which the court orders a person not to drive as a condition of probation the mandatory conditions of probation required for levels . A related amendment to GS 20-179 deletes the judge's option of meeting three through five by imposing such a probation condition.

g) Amends GS 20-48 (Sec. 21) to specify that proof of notice given by DMV may be made by a notation in the DMV records that notice given to a particular address for a specified purpose. Repeals requirement that the notice be proved by certificate or affidavit of DMV employee. Allows certified copies of DMV records to be sent PIN, fax, or electronically, and specifies that records so sent are admissible in evidence and are sufficient to "discharge the burden" of establishing that the notice was sent to the person and address named in the record for the purpose specified. Specifies that the actual notice need not be produced.

h) Amends definition of "state" in GS 20-4.01 (45) (Sec. 8) to include Sovereign nation of Eastern Band of Cherokee, which authorizes DMV to take actions on convictions reported from the tribal courts of that nation in same manner as in convictions received from other states.

i) Effective Aug. 30, 2007 (Ch. 493), amends GS 20-19(i) to provide that person whose license is revoked permanently for conviction of felony death by vehicle involving a fatality must wait at least five years before DMV may consider conditionally restoring the person's license.

j) Effective Dec. 1, 2007 (Ch. 493), amends various statutes that now use 0.16 alcohol concentrations as a threshold (to require interlock requirement for a limited privilege or as a condition of reinstatement of license, to lower the threshold to 0.15.
   (1) Specifies in GS 20-17.8 that DMV is to use the chemical analyst's affidavit to determine if it should impose an interlock requirement on a restored license.
   (2) Amends GS 20-179.3(g5), which requires a limited privilege to include an interlock if the defendant has an alcohol concentration of 0.15 or more, to specify that the results of a test presented at trial or sentencing are conclusive, and may not be modified by a party, with or without approval by the court.
   (3) Adds new GS 20-179.3(c1) to establish restrictions on limited privileges for "high-risk drivers" (drivers with alcohol concentration of 0.15 or more) to prohibit issuance of limited privilege for first 45 days after the final conviction; to require the defendant to have interlock device on the vehicle and to restrict the person to driving to and from work or school (but not during work), and to go to treatment, education or to get the interlock device serviced.

k) Effective December 1, 2007, SL 2007-165 allows DMV to restore driver's license to person permanently revoked for impaired driving convictions after 24 months, instead of 36 months, upon a showing of various things, if the person has been monitored by a continuous alcohol monitoring device for 12 months.

3) **Investigative and detention changes**

a) Amends GS 20-16.3A (Sec. 4) to revise procedures to conduct license checking stations and roadblocks (formerly called "impaired driving checks"). Specifies that checking stations operated to determine compliance with motor vehicle law are to operated pursuant to that statute. Checking stations operated for other purposes that are consistent with state and federal constitutions not affected by this statute. Agency policy must be written, and must include guidelines for establishing the pattern for a particular checkpoint, but that pattern need not be in writing. Locations must be random or statistically indicated, but violation of that rule is not basis to suppress evidence.

b) Amends GS 20-16.3 (Sec. 7) to clarify that fact that test results from preliminary breath testing devices showed that a person had a positive or negative test result may be introduced in evidence in court or used in administrative hearing for purpose of determining if reasonable grounds exist to believe driver had committed an implied consent offense and the driver had consumed alcohol. Allows negative results (but not low readings) to be used in determining if impairment is caused by something other than alcohol. Alcohol concentration results may not be admitted into evidence, but does not change admissibility of results in zero tolerance statutes such as GS 20-138.3.

c) Adds new GS 20-38.2 (Sec. 5) to authorize law enforcement officer investigating an implied consent offense that occurs in his or her jurisdiction to seek evidence both in- or out-of-state, and to make arrests anywhere in state.

d) SL 2007-370, effective Oct. 1, 2007, adds new GS 15A-502(a2) to require law enforcement agency arresting person for impaired driving or driving while license revoked for an impaired driving revocation to obtain fingerprints and photograph if the person arrested cannot provide identification.

e) Adds new GS 20-38.3 (Sec. 5) to require officer to inform defendant of the charges against him and take defendant to judicial official for an initial appearance as required by law.

f) After arrest and before initial appearance allows officer to take defendant to any chemical test location in the state for testing or to any site for medical evaluation, to any place in the state for to have person identified, and may have the defendant fingerprinted and photographed.

g) Adds new GS 20-38.4 (Sec. 5) to spell out additional procedures magistrate may or must follow in implied consent cases:

i) May hold initial appearance anywhere in county, and must, if practicable be available anywhere in county as appropriate

ii) Must consider whether preventive detention provisions of GS 15A-534.2 should be imposed, if probable cause found

iii) Must inform person in writing of procedures to have others come to jail to observe his condition or administer additional test of breath or blood, and must require person unable to make bond to furnish names and phone numbers of people he wishes to contact. The list of names must be kept in case file.

h) Adds new GS 20-38.5 (Sec. 5) to require Chief District Judge, DA, sheriff and Department of Health and Human Services to have a written procedure for attorneys and witnesses to have access to chemical testing rooms, and a procedure for those same people to have access to defendants in jail unable to comply with pretrial release conditions. Requires county to have signs indicating the location of chemical test sites, with initial signs to be provided by Department of Transportation. Requires the posting of a written notice of a person's rights in the chemical analysis process. When mobile chemical testing equipment is used, Department of Health and Human Services responsible for the notices and procedures.

i) Rewrites GS 20-16.2 (Sec.15), which deals with the duty of a motorist to submit to chemical analyses in implied consent offenses, to make numerous editorial changes. Eliminates references to "charging officer" and replaces them with references to "law enforcement officer". Retains requirement that chemical analyst or law enforcement officer authorized to administer a breath test must conduct testing procedure. Rewrites rights that have to be read to defendant.

i) Requires law enforcement officer and chemical analyst to report test results, by affidavit, to DMV when test indicates an alcohol concentration of 0.16 or higher (which may authorize the imposition of the ignition interlock requirement under GS 20-17.8). (Ch. 493, effective August 30, 2007, specifies that only this affidavit may be used to determine whether to impose the interlock.)

ii) Rewrites GS 20-139.1 (Sec. 16) which deal with the testing procedures for taking chemical analyses.

4) Breath tests—rewrites GS 20-139.1(b) to limit application of that subsection to breath testing. Specifies that breath tests are valid if performed in accordance with HHS rules and if done by a person with a permit to do so by the agency. Requires judges and administrative agencies to take judicial notice of rules and of permits issued.

(1) Repeals GS 20-139.1(b1) which limited ability of arresting officer to conduct breath tests.

(2) Rewrites GS 20-139.1(b2) which requires suppression of breath test result if defendant proves that preventive maintenance not performed on the instrument used to conduct breath test. Requires judges and administrative agencies to take judicial notice of the agency preventive maintenance records.

(3) Rewrites GS 20-139.1(b3), which requires sequential breath tests, to eliminate requirement that the statutory provisions be established in HHS regulations and to eliminate requirement that there be a waiting period between sequential tests.

(a) Specifies that results of all breath chemical analyses are admissible if the test results from any two samples do not differ by more than 0.02, but only lower can be used to establish particular alcohol concentration.

(4) Adds new GS 20-139.1 to require HHS to post on a website the names of all persons authorized to administer breath tests, the instruments that each is authorized to use, the effective date of the permits and all preventive maintenance records, and to send the information to each clerk of court. Requires adjudicators to take judicial notice of this material.

5) Blood and urine tests—adds urine to the kinds of bodily fluids that can be collected. Adds new subsections (c1)-(c4) to specify procedures to be used in collection of blood and urine samples. Provides that test results from SBI or Charlotte Police Lab are admissible in evidence without authentication or personal appearance by lab personnel unless defendant notifies state at least five days before trial or hearing in superior or juvenile court that he or she objects to the introduction by that method. Allows transmission by fax or electronically. Retains right of any party to subpoena witnesses. Requires testing to be consistent with SBI rules or ASCLD approved procedures. Specifies rules on proof of chain of custody of fluid sample. Specifies that results may be used to prove an alcohol concentration or the presence of a controlled substance if person conducting analysis had the proper permits from HHS.

a) Adds new GS 20-139.1(d2), (d3) to mandate that physician, nurse, emergency medical technician or other qualified person withdraw blood upon request of law enforcement officer. Officer must reduce request to writing. Immunizes medical personnel from civil or criminal liability, except for negligence, in the drawing of blood or collection of urine if requested by medical personnel SL 2007-115 clarifies the original amendment by further amending GS 20-139.1to specify that health care provider may refuse to draw blood only if it reasonably appears that the procedure cannot be performed safely..

b) Medical Records (HIPAA). (Sec. 17-18). Adds new GS 90-21.20B to specify that health care provider providing care to person involved in vehicle crash must provide basic identifying information to law enforcement and allow law enforcement to have access to patient, and must comply with court orders requiring release of information. Provides that law enforcement and prosecution must not release information except as necessary for the investigation or prosecution. Amends GS 8-53.1, medical privilege, to specify that the privilege does not apply to matters covered by new statute.

c) Alternatives test by state and defendant.

(1) Adds new GS 20-139.1(d1) to specify that law enforcement officer may compel a defendant who refuses a chemical analysis to provide blood or urine samples without getting a court order if the officer believes getting a court order would result in a dissipation of the person's alcohol concentration.

(2) Rewrites GS 20-139.1(d), which authorizes defendant to try to obtain an additional test. If defendant is not released on pretrial release, person with custody of the defendant must make timely, reasonable efforts to provide defendant with telephone access and insure that outside parties have physical access to defendant.

6) **Trial procedure and evidence changes. (Sec. 5)** Adds new Article 2D (20-38.1—38.7) to GS Ch. 20 setting out special procedures applicable to the trial procedures for implied consent cases handled in the District Court Division. Also makes other changes to trial procedures (in this section d, unless otherwise noted, all provisions are contained in new Art. 2D.)

   a) Requires defense motions to suppress or dismiss the charges, to be made before trial, except for motions to dismiss at close of state's or defendant's case and motion based on new facts not known to defendant before trial.

   b) State must be given reasonable time to prepare for motion. If state stipulates evidence will not be offered, judge must grant motion summarily. Judge must also summarily deny motions not made before trial unless specifically allowed by law to be filed during trial.

   c) If hearing required, judge must find facts, and all testimony must be under oath. Written findings and conclusions required. If judge "preliminarily indicates" that defendant prevails, judge may not enter an order until state either appeals to superior court or decides not to appeal.

   d) Appeals to superior court by state are heard de novo. Defendant may not appeal denial of motion before trial but may "appeal upon conviction as provided by law".

   e) If defendant convicted and appeals to superior court, any judgment is vacated. Case may be remanded back to district court with the consent of the court and prosecutor. If appeal withdrawn or case remanded, district court must hold new sentencing hearing, and must consider any pending or new charges or convictions, and delay sentencing in the remanded case until all pending cases are disposed of. One result of this rule was that if two remanded cases were pending, neither could be sentenced (Ch. 493, effective Aug. 30, 2007, repeals the provision requiring delay in sentencing in GS 20-38.7 and adds a new grossly aggravating factor in GS 20-179(c) to provide that it is a grossly aggravating factor if a conviction in district court has been appealed to superior court, has been withdrawn or the case remanded and a new sentencing hearing has not been held; and to specify that remanded cases can be appealed for jury trial on sentencing matters only if there is new information that was not considered in the original district court trial. Effect is that courts will be sentencing under three different statutes for the foreseeable future—pre 12/1/06; 12/1/06 thru 8/30/07 and after 8/30/07).

   f) Amends GS 8C-1, Rule 702 (Sec. 6) to allow introduction of Horizontal Gaze Nystagmus test results by person who has been trained in the test's administration and interpretation of the test data, and to allow testimony as to whether a person is under the influence of an impairing substance and what category of substance caused the impairment. Specifically allows Drug Recognition Expert testimony by trained personnel in the DRE protocols to testify as to impairment. New subsection (a1) does not authorize expert testimony on issue of specific alcohol concentration. Witness must be qualified as expert and must establish foundation. Also allows accident reconstruction experts to give opinions as to speed of vehicles.

   g) Amends GS 20-138.4 (Sec. 19) to require prosecutor to give detailed reasons in the record and orally to the court for his or her actions dismissing or reducing an implied consent case or involving driving while license revoked for impaired driving. Record must include

h) Alcohol concentration, prior convictions of the defendant, license status, any pending charges.

(1) Elements the prosecutor believes can and cannot be proven, and why.

(2) Name of charging officer, and the agency of employment.

i) Amends various sections in GS 20-139.1 (Sec. 16) to require court to take judicial notice of:

i) Rules of HHS regarding chemical analysis rules

(1) Lists of permits issued by HHS

(2) Whether a person had a valid permit at the time of the chemical analysis, based on HHS website

(3) HHS permits issued to blood analysts, types of instruments they can use, and the time periods for which they are valid

(4) Preventive maintenance records

ii) Adds new subsections GS 20-139.1(c1)-(c4) (sec. 16) to specify procedures to be used in collection of blood and urine samples. Provides that test results from SBI or Charlotte Police Lab are admissible in evidence without authentication or personal appearance by lab personnel unless defendant notifies state at least five days before trial or hearing in superior or juvenile court that he or she objects to the introduction by that method. Allows transmission of results by fax or electronically. Retains right of any party to subpoena witnesses. Requires testing to be consistent with SBI rules or ASCLD approved procedures. Specifies that results may be used to prove an alcohol concentration or the presence of a controlled substance if person conducting analysis had the proper permits from HHS. Prescribes procedure for establishing chain of custody of blood or urine. Provides that statement of various persons in possession of evidence (with required information specified in bill) is prima facie evidence that person had custody and made delivery as indicated in statement, and that personal appearance in court of that person is not necessary.

j) Amends GS 20-139.1(e) (Sec. 16) to allow defendant to get continuance if he or she shows that state did not provide notice of chemical analysis result before trial, but may not be grounds to suppress evidence or dismiss charges.

k) Amends subsection (e1) (Sec. 16), which allows testimony of chemical analyst by affidavit in district court, to provide that subpoena for chemical analyst in district court trial may not be issued unless person files affidavit specifying the factual grounds on which person believes the chemical analysis was not administered and the basis for asserting that the analyst's presence is necessary. If court finds analyst's presence to be necessary, case may be continued, but it may not be dismissed for failure of an analyst to appear unless the analyst willfully fails to appear after being ordered to do so by the court.

l) Amends GS 15A-1420 (Sec. 30) to prohibit granting of a motion for appropriate relief in district court unless district attorney files notice that he or she has been notified or has consented to the motion, or unless 10 business days have passed since defendant gives written notice or oral notice in open court.

7) **Sentencing changes**

a) Amends GS 20-179 (sec. 23) to modify the procedure used to determine the existence of aggravating factors in superior court. Generally requires that jury determine all factors other than those involving prior convictions, to make procedure consistent with *Blakeley v. Washington*. Requires the factors to be proved beyond a reasonable doubt.

b) Amends GS 20-179 (sec. 23) to require defendant to serve 48 continuous hours if the court orders the person to serve a term of 48 hours or has more than 48 hours remaining on a term. Requires credit to be given only hour for hour for time actually served, and requires jail to maintain a log of hours served. Requires local confinement personnel to refuse to admit defendant who reports to jail with any alcohol in its body. Directs court to hold a hearing when defendant is refused admission into jail. Directs judge to order defendant to serve time immediately and may not allow it to be served only on weekends if judge finds that the person did in fact report with alcohol in his or her body.

c) Amends GS 20-179 (sec. 23), in subsections describing mandatory punishments for levels three through five, to delete authority for judge to satisfy mandatory probation conditions by imposing period of non-operation of a motor vehicle. Effect is to require judge punishing at those levels who imposes probation judgment to require either special probation (jail) or community service as a probation condition.

d) Amends GS 20-179 and adds GS 20-38.7 providing that if defendant convicted of impaired driving and appeals to superior court, any judgment is vacated. Case may be remanded back to district court with the consent of the court and prosecutor. If appeal withdrawn or case remanded, district court must hold new sentencing hearing, and must consider any pending or new charges or convictions, and delay sentencing in the remanded case until all pending cases are disposed of. One result of this rule was that if two remanded cases were pending, neither could be sentenced (Ch. 493, effective Aug. 30, 2007, repeals the provision requiring delay in sentencing in GS 20-38.7 and adds a new grossly aggravating factor in GS 20-179(c) to provide that it is a grossly aggravating factor if a conviction in district court has been appealed to superior court, has been withdrawn or the case remanded and a new sentencing hearing has not been held; and to specify that remanded cases can be appealed for jury trial on sentencing matters only if there is new information that was not considered in the original district court trial. Effect is that courts will be sentencing under three different statutes for the foreseeable future—pre 12/1/06; 12/1/06 thru 8/30/07 and after 8/30/07).

e) Amends GS 15A-1374 (Sec. 27) to require defendant who is paroled and has completed treatment program but is not being paroled to a residential treatment facility must either be paroled on community service parole or be subject to electronic monitoring as a condition of parole.

f) Driving by underage driver after drinking—GS 20-138.3. (Sec. 11 and Sec. 23). Makes no substantive change to elements of the offense and leaves the offense as a Class 2

misdemeanor. However, in Sec. 23 of this bill, GS 20-179 is amended to make the offense subject to punishment under that section, which is the punishment for convictions of DWI. Early versions of this bill had made the underage drinking/driving offense subject to DWI punishments and contained similar language in the text of GS 20-138.3, but the final version of the legislation removed all those references in GS 20-138.3. The conforming change in GS 20-179 was not removed. The effect is that GS 20-138.3 says that it is a Class 2 misdemeanor and GS 20-179 says it is punished as an impaired driving offense. This creates a conflict which will likely be interpreted to punish convictions under this section as a Class 2 misdemeanor, based on the legislative history that can be discerned by looking at previous versions of the bill. (Ch. 493, effective Aug. 30, 2007, eliminates the reference to GS 20-138.3 in GS 20-179, thereby making it clear that GS 20-138.3 is a Class 2 misdemeanor. One effect of that is that the general law prohibiting PJC's under GS 20-179 is not applicable to violations of GS 20-138.3.)

g) Amends various statutes in the vehicle forfeiture laws (GS 20-28.2, et. seq.) (Sec. 21) to extend coverage of those laws to persons charged with impaired driving and who at the time of the offense had neither a valid driver's license or insurance. Specifies that hearing to determine if vehicle subject to forfeiture at any hearing for the underlying offense, a separate hearing after conviction, or a forfeiture hearing held after person fails to appear for the underlying offense. Specifies that burden of proof for any of those hearings is greater weight of the evidence. (Technical corrections in Ch. 493 make it clear that the forfeiture hearing must be after conviction unless defendant fails to appear, thereby clarifying an issue that arose in the 2006 amendments, which could be read to suggest that forfeiture hearing could be held without the defendant being first convicted.)

h) Effective Dec. 1, 2007, amends GS 20-179 to lower threshold for finding aggravating factor based on alcohol concentration from 0.16 to 0.15.

i) Effective Dec. 1, 2007, SL 2007-165 adds as a mitigating factor that the defendant has been assessed and as a result of the assessment both complied with its recommendations and been subject to sixty days of continuous alcohol monitoring..

j) Effective Dec. 1, 2007, SL 2007-165 specifies that judge may require defendants sentenced to levels one or two to use continuous alcohol monitoring device for at least thirty and no more than sixty days. Total cost to defendant may not exceed, $1000, which must be paid to clerk as part of court cost.

8) **ABC law changes**

a) Keg regulation. (Sec. 1, 2). Amends GS 18B-101 to define keg as portable container designed to hold at least 7.75 gallons of beer or other malt beverage. Adds new GS 18B-403.1 to require purchaser of a keg to obtain a purchase-transportation permit from the seller of the keg. The permit is to be retained by seller for at least 90 days or for as long as any person asks that it be retained. Failure to obtain permit is violation of unlawful purchase statute in GS 18B-303. Failure of seller to comply with statute is punishable by warning for first offense.

b) Rehiring former permittees. (Sec. 28). Amends GS 18B-1003(c) to make it unlawful for a permittee to hire a person who was the previous permit holder for that same location if that person had his or her permit revoked in the preceding 18 months.

c) Consumption of alcohol by underage person. (Sec. 25). Amends GS 18B-302 to make it a misdemeanor for a person under 21 to consume (it is already unlawful to purchase or possess) alcohol. Allows law enforcement officer with probable cause to require any person whom the officer has probable cause to believe has violated this statute to submit to alcohol screening devices approved by HHS. Refusal to submit may be introduced in evidence as may be the screening results. Exempts consumption for medical, sacramental or culinary school activities.

d) SL 2007-537, effective Dec. 1, 2007, adds new offense of giving alcohol to minor, and provides that conviction of the offense requires DMV to revoke the person's license for 12 months. Judge may issue limited driving privilege for this revocation.

9) **Data collection changes**

a) Prosecutor disclosure in dismissals. (Sec. 19). Amends GS 20-138.4 to require prosecutor to enter detailed "explanation" before reducing, dismissing or otherwise not proceeding with the original charge in implied consent cases and in DWLR for impaired driving. (Previously the explanations were required only in offenses involving impaired driving.) Requires explanation to be in writing and signed by prosecutor, and must contain:

i) Results of any chemical test

ii) Prior alcohol or DWLR offenses, and current status of license

iii) List of any pending charges or a representation that the AOC database was checked

iv) Elements that cannot be proved, and why

v) Name of officer and agency making arrest, and whether officer is available.

(1) Copies must be sent to the law enforcement head and the district attorney and filed electronically. The electronic filing is not required until the Administrative Office of the Courts rewrites its criminal information system

b) Clerk's records

i) Amends GS 7A-109.2 (Sec. 20.1) to require clerks to maintain electronic database on any case involving vehicles and alcohol. Database must include reasons for any pretrial dismissal by the court, alcohol concentration of driver, if known and reasons for suppression of any evidence. This requirement is not effective until the Administrative Office of the Courts rewrites its criminal information system.

ii) Adds new GS 7A-109.4 (Sec. 24) to require clerks to maintain all records of convictions for an offense involving impaired driving for at least 10 years from conviction date and to maintain permanent record of defendant's name, the judge, prosecutor, any attorney or waiver of attorney, alcohol concentration or refusal to take a chemical analysis, the sentence, if appealed the disposition in superior court as well. (Unlike new GS 7A-109.2 above, which is not effective until the information system is upgraded, this section becomes effective when bill becomes effective).

c) Web-based statewide data (Sec. 20.2)

i) Adds new GS 7A-346.3 to require AOC to provide annual report to legislature and to maintain website on data for vehicle/alcohol cases. Database must include types of dispositions for whole state and by county, judge, prosecutor and defense attorney. Also must include fines and costs imposed and collected and compliance data for community service, jail, substance abuse assessment, treatment and education. This requirement is not effective until the Administrative Office of the Courts rewrites its criminal information system.

d) **Effective date.** Effective December 1, 2006 for offenses committed on and after that date. Sections requiring AOC to maintain electronic Internet database, requiring clerks to keep electronic records of reasons for court dismissals and requiring AOC to maintain electronic copies of prosecutor's explanations of dismissals are not effective until AOC rewrites the clerk's criminal information system. Ch. 493 is effective August 30, 2007 for most purposes, and for some purposes (the changes based on the lowering of the threshold from 016 to 0.15), December 1, 2007. Other changes in Ch. 493 that affect prosecutions are effective for offenses occurring on or after the effective date, and other changes are effective on August 30.

10) For a copy of any of these DWI bills, go to www.ncleg.net and use the "Bill Look Up" search engine on the right hand column of the home page. Be sure that the correct year's bill database is selected.