

IMPAIRED DRIVING—MISDEMEANOR. G.S. 20-138.1.

NOTE WELL: This instruction is to be used for offenses occurring between October 1, 1993 and November 30, 2006. For offenses occurring on or after December 1, 2006, use N.C.P.I.—Crim. 270.20A. This instruction is also to be used when the defendant is charged with habitual impaired driving and admits previous conviction(s) under G.S. 20-138.1 (or an equivalent statute from another jurisdiction). See G.S. 15A-928.

The defendant has been charged with impaired driving.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant was driving¹ a vehicle.²

Second, that the defendant was driving that vehicle upon a [highway] [street] [public vehicular area] within the state.³

And Third, that at the time the defendant was driving that vehicle, the defendant:

NOTE WELL: If the evidence supports submission of the case under alternatives (A) and (B) instructions on both alternatives should be given.

(A) [was under the influence of an impairing substance. (*Name substance involved*) is an impairing substance.⁴ The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of

1. G.S. 20-4.01 defines the driver as the operator of a vehicle.

2. If there is any doubt, define "vehicle" under G.S. 20-4.01(49), or "motor vehicle" under G.S. 20-4.01(23). The Safe Roads Act of 1983 makes this offense applicable to drivers of vehicles owned or operated by the State or any political subdivision thereof while engaged in maintenance or construction work on the highways. G.S. 20-168(b). Furthermore, under the 2006 DWI omnibus bill, lawnmowers and bicycles are no longer exempt, so that driving on either is now covered by impaired driving offense. Horses remain exempt and are not covered by this offense.

3. If there is any doubt, define "highway" or "street" in accordance with G.S. 20-4.01(13). "Public vehicular area" is defined in G.S. 20-4.01(32).

4. An impairing substance includes alcohol, controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

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that impairing substance to cause the defendant to lose the normal control of the defendant's bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties.^{5]}

- (B) [had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration⁶ of 0.08 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after driving that the driver still has in the driver's body alcohol consumed before or during driving].^{7 8}

(Evidence in this case tends to show that a chemical test known as a(n) [intoxilizer] [blood test] was offered to the defendant by a law enforcement officer and that the defendant refused to take the test. You may consider this evidence together with all other evidence in determining whether the defendant was under the influence of an impairing substance at the time he drove a motor vehicle.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant drove a vehicle on a [highway] [street] [public vehicular area] in this state and that when the defendant did so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that at any relevant time after driving the

5. G.S. 20-4.01(48a).

6. G.S. 20-4.01(0.2) defines alcohol concentration as "the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath."

7. G.S. 20-4.01(33a).

8. The results of a chemical analysis are deemed sufficient evidence to prove a person's guilt under GS 20-138(a)(2)

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defendant had an alcohol concentration of 0.08 or more], it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

