

IMPAIRED DRIVING. MISDEMEANOR. (OFFENSES OCCURRING ON
OR AFTER DECEMBER 1, 2006.)
REPLACEMENT JUNE 2016
N.C. Gen. Stat. § 20-138.1

270.20A IMPAIRED DRIVING. MISDEMEANOR.

NOTE WELL: This instruction is to be used for offenses occurring on or after December 1, 2006. For offenses occurring before December 1, 2006, use N.C.P.I.—Crim. 270.20. This instruction is also to be used when the defendant is charged with habitual impaired driving and admits previous conviction(s) under N.C. Gen. Stat. § 20-138.1 (or an equivalent statute from another jurisdiction). See N.C. Gen. Stat. § 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) (B) and (C), instructions on each alternative should be given⁴.

- a. [Was under the influence of an impairing substance. (*Name substance involved*) is an impairing substance.⁵ The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of 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.⁶]
- b. [Had consumed sufficient alcohol that at any relevant time after

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the driving the defendant had an alcohol concentration⁷ 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 the driving that the driver still has in the body alcohol consumed before or during the driving].⁸ The results of a chemical analysis are deemed sufficient evidence to prove a person's alcohol concentration.⁹

- c. [Had any amount of [a Schedule I control substance] [metabolites of a Schedule I controlled substance] in the defendant's blood or urine]. (*Name substance*) is a Schedule I control substance or is a metabolite¹⁰ of a Schedule I control substance.].¹¹

(If the evidence tends to show that [a chemical test known as a(n) [intoxilizer] [breathalyzer] [blood test] [urine test]¹² was offered to the defendant by a law enforcement officer and that the defendant refused to take the test] (or) [the defendant refused to perform a field sobriety test at the request of an officer], 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 the defendant (allegedly) drove a motor vehicle.)¹³

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] (or) [public vehicular area] in this state and that when doing so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that at any relevant time after the driving the defendant had an alcohol concentration of 0.08 or more] [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's [blood] [urine] [breath], it would be your duty

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

1 N.C. Gen. Stat. § 20-4.01 defines the driver as the operator of a vehicle.

2 If there is any doubt, define "vehicle" under N.C. Gen. Stat. § 20-4.01(49), or "motor vehicle" under N.C. Gen. Stat. § 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. N.C. Gen. Stat. § 20-168(b). Effective December 1, 2006, lawnmowers and bicycles are no longer exempt. Horses remain exempt.

3 If there is any doubt, define "highway" or "street" in accordance with N.C. Gen. Stat. § 20-4.01(13). "Public vehicular area" is defined in N.C. Gen. Stat. § 20-4.01(32).

4 See *State v. Godwin*, ___ N.C. App., 786 S.E.2d 34(2016) (concluded that the trial court did not err in denying defendant's request for jury instructions concerning Intoximeter results and rejecting defendant's argument that by instructing the jury using N.C.P.I.- Crim. 270.20A, the trial court impressed upon the jury that it could not consider evidence showing that the defendant was not impaired).

5 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. N.C. Gen. Stat. § 20-4.01(14a).

6 N.C. Gen. Stat. § 20-4.01(48a).

7 N.C. Gen. Stat. § 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."

8 N.C. Gen. Stat. § 20-4.01(33a).

9 The term "deemed sufficient" is not defined in N.C. Gen. Stat. § 20.138.1 or N.C. Gen. Stat. § 20-141.4, other statutes or any appellate court decisions. Absent a specific definition, it can be presumed that the legislature intended the words to be given their ordinary meaning.

10 A metabolite is any substance produced or used during metabolism (digestion). In drug use, the term usually refers to the end product that remains after metabolism.

11 Driving with any Schedule I controlled substance, or its metabolites in one's [blood] [urine] [breath] is a per se violation of impaired driving offense.

12 Note that if the offense occurred between December 1, 2006 and June 27, 2007, there was no statutory provision during this time that required the defendant to take a urine test.

13 N.C. Gen. Stat. § 20-139.1(f).

