

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 691
HOUSE BILL 752

AN ACT TO MAKE MODIFICATIONS TO THE STATUTES REQUIRING ASSESSMENT OF CONVICTED IMPAIRED DRIVERS.

The General Assembly of North Carolina enacts:

PART I. POSTPONE STATEWIDE APPLICABILITY OF 1987 LAW.

Section 1. Section 5 of Chapter 797 of the 1987 Session Laws as amended by Chapter 548, Session Laws of 1989 reads as rewritten:

"**Sec. 5.** Section 2 of this act shall be established as a pilot program in not more than ten counties in the State as determined and required by the Division Director of Mental Health, Mental Retardation and Substance Abuse Services, shall become effective January 1, 1988, and shall apply to sentencing for convictions after that date. The Division for Mental Health, Mental Retardation and Substance Abuse Services shall monitor the pilot programs and shall report administrative costs, case management practices, participant recidivism, and other relevant information, to the General Assembly on or before February 1, 1989. Section 2 of this act shall become effective throughout the State July 28, 1989January 1, 1990."

Sec. 1.1. Section 4 of Chapter 797 of the 1987 Session Laws as amended by Chapter 548, Session Laws of 1989 reads as rewritten:

"**Sec. 4.** Section 1 of this act shall become effective January 1, 1988 and shall expire July 28, 1989December 31, 1989 and shall apply to sentencing for convictions after January 1, 1988."

PART II. TECHNICAL CORRECTION TO 1987 PILOT LAW.

Sec. 2. Effective January 1, 1988, Section 2 of Chapter 797, Session Laws of 1987 reads as rewritten:

"**Sec. 2.** G.S. 20-179(m) reads as rewritten:

'(m) Assessment and Treatment Required. If a defendant being sentenced under this section is placed on probation, he mustshall be required as a condition of that probation to obtain a substance abuse assessment; provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation. if:

- (1) He had an alcohol concentration of 0.20 or more as indicated by a chemical analysis taken when he was charged; or

- (2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he either:
- a. ~~Had an alcohol concentration of 0.10 or more; or~~
 - b. ~~Willfully refused to submit to a chemical analysis.~~

The judge ~~must shall~~ require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. ~~Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.~~

~~If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he must require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Division of Adult Probation and Parole Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing The the judge must shall require the defendant to pay twenty five dollars (\$25.00) for the services of the assessment facility and the treatment fees that may be charged by the treatment facility one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and~~

drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. ~~122-35.47~~ 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. Any determinations with regard to the defendant's ability to pay the assessment fee must shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding must shall be forwarded in writing to filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports must shall be filed with the court or the Division of Adult Probation and Parole Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

PART III. AMENDMENTS TO PILOT PROGRAM/PERMANENT LAW.

Sec. 2.1. Effective July 28, 1989, G.S. 20-179(m) as rewritten by Section 2 of Chapter 797, Session Laws of 1987, and Section 2 of this act, as applicable:

- (1) Until December 31, 1989, as a pilot program as provided by Section 5 of Chapter 797, Session Laws of 1987, as amended by Section 1 of this act; and

(2) On a statewide basis beginning January 1, 1990, as provided by Section 5 of Chapter 797, Session Laws of 1987, as amended by Section 1 of this act reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment; ~~provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation.~~

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay \$125.00. The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency

and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school, school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any

hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

PART IV. CONFORMING AMENDMENTS.

Sec. 3. Effective January 1, 1990, G.S. 20-179, including subsection (m) as rewritten by Section 2.1 of this act, reads as rewritten:

"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. – After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29, effective October 1, 1983.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two or more prior offenses involving impaired driving, if the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment if he determines that two or more of the following grossly aggravating factors apply:

- (1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.
- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. – The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.
- (2) Especially reckless or dangerous driving.
- (3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars (\$500.00) or personal injury.
- (4) Driving by the defendant while his driver's license was revoked.
- (5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
- (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
- (8) Passing a stopped school bus in violation of G.S. 20-217.
- (9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.
- (2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

- (3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
- (4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
- (5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- (6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
- (7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

- (1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).
- (2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).
- (3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. – ~~Nowithstanding~~ Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five

punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment 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 14 days. If the defendant is placed on probation, the judge must, if required by ~~subsections (l) or subsection~~ (m), impose the conditions relating to ~~treatment assessment, treatment, and education described in those subsections. that subsection.~~ The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment 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 seven days. If the defendant is placed on probation, the judge must, if required by ~~subsections (l) or subsection~~ (m), impose the conditions relating to ~~treatment assessment, treatment, and education described in those subsections. that subsection.~~ The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Not operate a motor vehicle for a term of at least 90 days; or
- (4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by ~~subsections (l) or subsection~~ (m), must impose the conditions relating to

~~treatment assessment, treatment, and education described in those subsections. that subsection.~~ This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Not operate a motor vehicle for a term of 60 days; or
- (4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by ~~subsections (l) or subsection (m)~~, must impose the conditions relating to ~~treatment assessment, treatment, and education described in those subsections. that subsection.~~ This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required by ~~subsections (l) or subsection (m)~~, must impose the conditions relating to ~~treatment assessment, treatment, and education described in those subsections. that subsection.~~ This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year

period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(f) ~~Education Required in Certain Cases.~~ If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to complete the course of instruction successfully at an alcohol and drug education traffic school established pursuant to G.S. 20-179.2 within 90 days of the date of conviction unless:

- (1) ~~He has previously been assigned to an alcohol and drug education traffic school and has successfully completed the course of instruction; or~~
- (2) ~~The judge finds that the defendant will not benefit from the course of instruction because of specific, extenuating circumstances; or~~
- (3) ~~There is no alcohol and drug education traffic school within a reasonable distance of the defendant's residence.~~

(m) ~~Assessment and Treatment Required in Certain Cases.~~ If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation

in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has

waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

- (1) Within 90 days, if the amount of community service required is 72 hours or more; or
- (2) Within 60 days, if the amount of community service required is 48 hours; or
- (3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give **prima facie** effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
- (2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
- (3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Meaning of 'Conviction'. – For the purposes of this Article, 'conviction' includes a guilty verdict, guilty plea, plea of no contest, or anything that would be treated as a conviction under G.S. 20-24(c).

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

- (1) Community service; or
- (2) Treatment and education as described in subsections (l) and subsection (m); or
- (3) Payment of any fines, court costs, and fees; or
- (4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Assessment for Convicted Defendants not Placed on Probation. – Any person convicted of impaired driving who is not placed on probation shall obtain a substance abuse assessment as a condition of having his driver's license restored following a revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an area mental health agency, its designated agency, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. The fee for the assessment

shall be as specified in subsection (m) of this section. The assessing agency shall provide to the Department of Human Resources a certificate attesting that the assessment has been performed and indicating its results. The Department shall promptly notify the Division of Motor Vehicles of the receipt of the certificate. The Division shall not reissue a driver's license to the defendant until this notification is received. The Commission for Mental Health, Mental Retardation, and Substance Abuse Services may adopt rules to implement the provisions of this subsection."

Sec. 4. G.S. 20-16.4 is repealed.

Sec. 4.1. Effective July 28, 1989, G.S. 20-179(m), as it applies until December 31, 1989, as provided by Section 4 of Chapter 797, Session Laws of 1987, as amended by Section 1.1 of this act, reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. – If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment if:

- (1) He had an alcohol concentration of 0.15 or more as indicated by a chemical analysis taken when he was charged; or
- (2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he had an alcohol concentration of 0.10 or more; or
- (3) He willfully refused to submit to a chemical analysis.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources. If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation

in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. The judge shall require the defendant to pay fifty dollars (\$50.00) for the services of the assessment facility and any additional treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge. In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. Upon the completion of the court-ordered assessment or court-ordered treatment, the assessing or treatment agency shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment or participate in a treatment program unless it has received the original certificate of completion from the assessing or treatment agency or ~~school~~, school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

Sec. 5. Sections 1 and 1.1 of this act are effective upon ratification. Section 4 shall become effective January 1, 1990. The remainder of this act is effective as provided herein.

In the General Assembly read three times and ratified this the 27th day of July, 1989.