



DWI LEGISLATION CHANGES

EFFECTIVE DATE 12/1/2006

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STATUTE	OLD LAW—Prior to 12/1/2006	NEW LAW – As of 12/1/2006
18B-101(7b)	(New subsection)	Definition of keg: “a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.”
18B-403.1	(New section.)	<input type="checkbox"/> To buy and transport a keg, a person must get a purchase-transportation permit from an ABC permittee. <input type="checkbox"/> The statute sets the rules for the issuance, form and restrictions on the permit. <input type="checkbox"/> The purchaser must show this permit to any law enforcement officer when requested. <input type="checkbox"/> The first violation will be a warning for the permittee.
18B-303	<input type="checkbox"/> A person did not need a permit to purchase less than 80 liters of malt	<input type="checkbox"/> A person does not need a permit to purchase at one time more than 80 liters of malt

	<p>beverages, other than those in kegs.</p> <ul style="list-style-type: none"> <input type="checkbox"/> A person did not need a permit to purchase any amount of malt beverages in kegs. 	<p>beverages except for those in kegs pursuant to 18B-403.1 which requires a permit</p> <ul style="list-style-type: none"> <input type="checkbox"/> A permittee may purchase any amount of draft malt beverages in kegs for on-premises consumption
20-16.3A	<ul style="list-style-type: none"> <input type="checkbox"/> Applied only to impaired driving checkpoints <input type="checkbox"/> Required a written plan <input type="checkbox"/> Required marking the area as an impaired driving checkpoint 	<ul style="list-style-type: none"> <input type="checkbox"/> Applies to all checking stations and roadblocks under Chapter 20 (seat belt, license and registration, impaired driving, etc.) <input type="checkbox"/> Operate under a written policy that gives guidelines for designating a pattern of stopping vehicles. (Does not require a written plan) <input type="checkbox"/> Requires that the checking station be marked by having at least one law enforcement vehicle with blue lights on . <input type="checkbox"/> An officer who has reasonable suspicion of a violation of any law may detain to investigate. The driver may be asked to submit to an alcohol screening test if the officer determines they have previously consumed or has an open container. <input type="checkbox"/> The checkpoint placement should be random or statistically indicated and agencies will avoid placing checkpoints in the same location or proximity.
20-38.1	(New section)	<ul style="list-style-type: none"> <input type="checkbox"/> The title of this article is “Implied-Consent Offense Procedures.” <input type="checkbox"/> This article applies to the investigation, processing and District Court trial procedures for implied-consent offenses.

20-38.2	(New section)	<input type="checkbox"/> A LEO investigating an implied consent offense from his or her jurisdiction may investigate and seek evidence of the driver's impairment anywhere in or out-of-state and may arrest anywhere within the state.
20-38.3	(New section)	<input type="checkbox"/> Upon an arrest with or without a warrant, the officer must inform the person of the charges of arrest. <input type="checkbox"/> May take the person anywhere within the state for a chemical analyses, evaluation, or determination of impairment. <input type="checkbox"/> May take the person anywhere within the state for the purpose of identification, complete a crash report or other lawful purpose. <input type="checkbox"/> May take fingerprints and photographs <input type="checkbox"/> Must take the arrestee before a judicial official after all investigatory procedures are complete
20-38.4	(New Section)	<input type="checkbox"/> Magistrate will follow procedures for initial appearance set forth in Chapter 15A except for the modifications in this statute <input type="checkbox"/> Magistrate may hold the initial appearance anywhere in the county <input type="checkbox"/> In determining probable cause the magistrate may review all screening tests, chemical analyses, testimony from LEO, observations of arrestee. <input type="checkbox"/> If the magistrate finds probable cause the magistrate should consider if the impairment is to the extent that 15A-534.2 should be

		<p>imposed.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The magistrate must inform the arrestee in writing of the procedure to have other people come to the jail to observe his condition or to administer another chemical analysis and require someone who cannot make bond to make a list of all persons he wants contacted on a form. <input type="checkbox"/> The AOC is mandated to develop these forms.
20-38.5	(New section)	<ul style="list-style-type: none"> <input type="checkbox"/> The Chief District Court Judge, DHHS, district attorney and sheriff will do the following: <ul style="list-style-type: none"> ○ Set up a written procedure for attorneys and witnesses to have access to the chemical analysis room ○ Approve the location of a written notice of implied consent rights in the room ○ Approve a procedure for access by family and friends or qualified person to perform chemical analysis <input type="checkbox"/> Signs will be posted explaining how to obtain access to the room. Signs to be provided by DOT. <input type="checkbox"/> If the chemical analysis room is in a state or municipal building, the head of the highway patrol for the county or the chief of police will substitute for the sheriff in this statute.
20-38.6	(New Section)	<ul style="list-style-type: none"> <input type="checkbox"/> Defendant may only move to suppress evidence prior to trial.

		<ul style="list-style-type: none"> <input type="checkbox"/> When a motion to suppress is made, the State shall be given reasonable time to prepare and get witnesses. <input type="checkbox"/> The judge will set forth the findings of fact and conclusions of law in writing after hearing the motion to suppress.
20-38.7	(New Section)	<ul style="list-style-type: none"> <input type="checkbox"/> The state may appeal to Superior Court if the district court grants the motion to suppress. <input type="checkbox"/> The defendant cannot appeal a denial of the motion to suppress to Superior court. The defendant may only appeal a conviction. <input type="checkbox"/> If a conviction is appealed to Superior Court, the sentence from District Court is vacated. A remand can only be allowed with the consent of the prosecutor and the superior court. If a remand is allowed, a new sentencing hearing will be done in district court which will include information on any new convictions of DWI and any pending charges and the sentencing shall be delayed until all cases are resolved.
8C-1, Rule 702 (a1)	(new subsection)	<ul style="list-style-type: none"> <input type="checkbox"/> Allows a qualified expert witness to testify to the Horizontal Gaze Nystagmus Test. <input type="checkbox"/> The witness may testify to the results and whether the person was under the influence of an impairing substance. <input type="checkbox"/> A person certified as a DRE may also testify as an expert witness under this section.
8C-1, Rule 702(i)	(new subsection)	<ul style="list-style-type: none"> <input type="checkbox"/> A qualified expert witness in accident reconstruction who has completed an accident reconstruction may give an opinion as to the

		speed of the vehicle.
20-16.3	<input type="checkbox"/> Referred to Commission for Health Services <input type="checkbox"/> The results of an alcohol screening test could be used <input type="checkbox"/> The results of an alcohol screening test could not be admitted into evidence.	<input type="checkbox"/> Refers to Department of Health and Human Services <input type="checkbox"/> The fact that a driver showed a positive or a negative result on the screening test but not the actual result, is admissible in court or may be used by an administrative agency to determine if the driver has committed an implied consent offense or that the driver had previously consumed alcohol but not to prove alcohol concentration.
20-4.01(32)	<input type="checkbox"/> PVA definition	<input type="checkbox"/> An area used by the public for vehicular traffic at any time <input type="checkbox"/> Any business providing parking space whether the business is open or closed <input type="checkbox"/> An area used by vehicular traffic within or leading to a subdivision
20-4.01(45)	<input type="checkbox"/> State definition	<input type="checkbox"/> Now includes the Sovereign nation of the Eastern Band of the Cherokee Indians with tribal lands . . . located within the boundaries of the State of North Carolina.
20-138.1	<input type="checkbox"/> Statute ended (a)(2) with a concentration of .08 or more <input type="checkbox"/> Vehicle did not include horse, bicycle, or lawnmower.	<input type="checkbox"/> After (a)(2) reference to .08 or more, the statute reads that the results of a chemical analysis are deemed sufficient evidence to prove alcohol concentration. <input type="checkbox"/> Includes impairment of any amount of a Schedule I substance or its metabolites in blood or urine. <input type="checkbox"/> Vehicle does not include horse (bicycles and lawnmowers are now considered vehicles).
20-138.2	<input type="checkbox"/>	<input type="checkbox"/> Same changes as above (except definition of

		<p>vehicle)</p> <ul style="list-style-type: none"> <input type="checkbox"/> To prove gross vehicle weight: the opinion of person observing, weight rating affixed to vehicle, registered or declared weight in DMV records, weight rating from VIN, listed gross weight from manufacturer publication, or any other evidence.
20-138.5(a)	<ul style="list-style-type: none"> <input type="checkbox"/> Habitual impaired driving goes back 7 years from date of offense 	<ul style="list-style-type: none"> <input type="checkbox"/> Habitual impaired driving goes back 10 years from date of offense
20-141.4	<ul style="list-style-type: none"> <input type="checkbox"/> Felony death by motor vehicle <input type="checkbox"/> Misdemeanor death by motor vehicle 	<ul style="list-style-type: none"> <input type="checkbox"/> Amends and expands Felony Death by Vehicle <input type="checkbox"/> Amends and expands Misdemeanor Death by vehicle <input type="checkbox"/> Adds “Aggravated Felony Death by Vehicle” <input type="checkbox"/> Adds “Repeated Felony Death by Vehicle Offender” <input type="checkbox"/> Adds punishment section
20-16.2	<ul style="list-style-type: none"> <input type="checkbox"/> Refers to “charging officer” <input type="checkbox"/> Chemical Analysis rights listed <input type="checkbox"/> Pre-Arrest test rights notification listed 	<ul style="list-style-type: none"> <input type="checkbox"/> All references to “charging officer” are eliminated and statute refers to “law enforcement officer.” <input type="checkbox"/> Chemical analysis rights are rewritten and simplified (please read statute) <input type="checkbox"/> Pre-arrest test rights notification rewritten and simplified (please read statute)
20-139.1	<ul style="list-style-type: none"> <input type="checkbox"/> See changes ----- 	<ul style="list-style-type: none"> <input type="checkbox"/> The chemical analysis is sufficient to prove a person’s alcohol concentration and is admissible if performed in accordance with DHHS rules and the analyst had a current permit. <input type="checkbox"/> The court shall take judicial notice of the rules of DHHS and the list of permits issued

		<p>to the person who administered the test.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Any person possessing a current permit may perform the chemical analysis. <input type="checkbox"/> DHHS shall perform preventative maintenance and the court shall take judicial notice of the records. <input type="checkbox"/> Results admissible when breath samples are from two consecutively tested breath samples which do not differ by more than .02. Only lower used to prove alcohol concentration. <input type="checkbox"/> DHHS will post on a web page and file with the clerk of superior court in each county a list of all persons with a permit, the analyses they can perform and the instruments they can used. <input type="checkbox"/> For blood or urine collection for chemical analysis, a qualified person shall withdraw the sample with no other authorization required. If they request written confirmation from the officer, the officer will give it. <input type="checkbox"/> The chemical results from the blood or urine or admissible in court without further authentication. <input type="checkbox"/> A report can be sent electronically or via fax and still be admissible. <input type="checkbox"/> Defendant must give 5 days notice prior to trial to challenge the results in court. <input type="checkbox"/> Chain of custody is sufficiently proved by signed statements of each person in chain. <input type="checkbox"/> A person has the right to an additional test. If in custody, the agency with custody must
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		<p>provide reasonable effort to provide arrestee with telephone access for the additional test and access for the additional test.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The officer may require an additional test of blood or urine if the person refuses, without a court order if the officer has probable cause and reasonably believes that the delay would result in dissipation in the alcohol concentration. A qualified person must obtain the sample. <input type="checkbox"/> A person charged with implied-consent offense can request a copy of the chemical analysis results in writing. The failure to get the results will result in a continuance, not a dismissal. <input type="checkbox"/> In District court the affidavit of the chemical analyst is sufficient evidence without them testifying. A subpoena for the chemical analyst will not be issued unless the defendant files in writing, at least five days prior to trial, with the court and serves on the DA an affidavit stating the grounds for the need to have the chemical analyst testify (such as improper test or procedure). The judge will determine the necessity of having the chemical analyst testify and the case will be continued until the analyst can be present. The absence of the chemical analyst is not grounds for dismissal unless they fail to show after a subpoena has been served.
90-21.20B	<input type="checkbox"/> (New Section)	<input type="checkbox"/> If a person is involved in a vehicle crash, the

		<p>health care provider will give the LEO the name, current location, and opinion on impairment upon request of the LEO.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The LEO will be given access to the person except when medical reasons demand temporary privacy. <input type="checkbox"/> With a search warrant or court order, the health care provider will disclose identifiable health information in a certified copy. <input type="checkbox"/> The LEO and prosecutor will not share this identifiable health information with anyone except as described by law.
20-138.4	<ul style="list-style-type: none"> <input type="checkbox"/> The prosecutor was required to explain the reduction or dismissal of impaired driving 	<ul style="list-style-type: none"> <input type="checkbox"/> The prosecutor will enter facts into the record of any implied consent offense or DWLR for impaired driving case orally in open court and in writing if the case is dismissed, or reduced. <input type="checkbox"/> The written explanation will be on a new form from the AOC and will require certain facts. A copy of the form will be sent to the head of the law enforcement agency of the charging officer, the district attorney, and filed with the court file. The AOC will keep this data electronically and make it available upon request.
7A-109.2(b)	<ul style="list-style-type: none"> <input type="checkbox"/> (New subsection) 	<ul style="list-style-type: none"> <input type="checkbox"/> For all offenses of impaired driving, DWLR offenses from impaired driving, and all charges involving possession, consumption, use, or transportation of alcoholic beverages, the clerk will keep a record in the electronic files of the reasons for any pretrial dismissal by the court, the alcohol concentration, and

		the reasons for the suppression of evidence.
7A-346.3	<input type="checkbox"/> (New Section)	<input type="checkbox"/> The AOC will keep a database of the above information. Every March 1, they will provide annual reports to several committees which will show dispositions by state, by county, by judge, by prosecutor, and by defense attorney. This information will also be available to the public via the internet.
20-48	<input type="checkbox"/> Notice of revocation of license after a failure to appear was provable with a certificate of an officer or employee of DMV.	<input type="checkbox"/> Proof of notice can be made by a notation in the DMV records that notice was sent to the address and the purpose of the notice sent. A certified copy of the record may be sent by PIN, fax, or other electronic means and is admissible as evidence and is sufficient evidence that the notice was sent to the person named in the record and at the address of the record. The actual notice or letter does not need to be produced.
20-28	<input type="checkbox"/> Unlawful to drive while license revoked or disqualified.	<input type="checkbox"/> It is a class 1 misdemeanor to drive after notification that the person's license is revoked for an impaired driver's revocation or the person failed to appear for 2 years from the date of the charge of an implied consent offense. <input type="checkbox"/> New rules on when the person can apply for a license and under what conditions.
20-17(a)(2)	<input type="checkbox"/> Mandatory revocation for a conviction under 20-138.1 or 20-138.2.	<input type="checkbox"/> Mandatory revocation for conviction under 20-138.1 or 20-138.2 if the alcohol concentration was .06 or higher. The alcohol concentration from a chemical analyst is conclusive and is not subject to modification.

20-17.8(1)	<input type="checkbox"/> (New subsection)	<input type="checkbox"/> Medical exception to the ignition interlock system.
20-179	<input type="checkbox"/> Sentencing statute for impaired driving	<input type="checkbox"/> Trial court and evidence procedures for aggravating and mitigating factors and sentencing in general. <input type="checkbox"/> The actual list of mitigating and aggravating factors did not change.
7A-109.4	<input type="checkbox"/> (New section)	<input type="checkbox"/> The clerk of court will keep all records of impaired driving for 10 years. Before destroying the records the clerk will record the defendant, the judge, the prosecutor, and the attorney in addition to the alcohol concentration or refusal, sentence imposed and whether there was an appeal and final disposition.
18B-302	<input type="checkbox"/> Unlawful for a person under 21 to purchase or possess alcoholic beverages	<input type="checkbox"/> It is unlawful for a person under 21 to purchase, possess or consume any alcoholic beverage. <input type="checkbox"/> A LEO who has probable cause to believe a person under 21 has consumed may request the person to submit to an alcohol screening test. <input type="checkbox"/> The exemptions under 18B-103(4), (8) and (11) apply.
20-28.2	<input type="checkbox"/> Forfeiture of a vehicle under this section only applied if that person was charged with impaired driving and had his or her license revoked for a prior conviction of impaired driving.	<input type="checkbox"/> Forfeiture of a vehicle under this section can now occur as before or if the person is charged with impaired driving and they do not have a valid driver's license and no liability insurance.