

Sentencing for Impaired Driving: G.S. 20-179

Level	Factors	Minimum Sentence	Maximum Sentence	If Suspended, ¹ Special Probation Requiring:	Maximum Fine
1	2+ GA Factors	30 days	24 months	Active term of at least 30 days	\$4,000
2	1 GA Factor	7 days	12 months	Active term of at least 7 days	\$2,000
3	Agg. > Mitigating	72 hours	6 months	Active term of at least 72 hours -- And/or at least 72 hours community service	\$1,000
4	Agg. = Mitigating	48 hours	120 days	48 hours active -- And/or 48 hours community service	\$500
5	Mitig. > Agg.	24 hours	60 days	24 hours active -- And/or 24 hours community service	\$200

¹ For any suspended sentence, defendant must obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a driver's license and as a condition of probation.

DWI SENTENCING — G.S. 20-179.²

Grossly Aggravating Factors (if 1, Level 2. If 2 or more, Level 1):

- (1) A prior conviction for an offense involving impaired driving if:
 - a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
 - b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
 - c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

- (2) DWLR at the time of the offense 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.
- (4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

Aggravating Factors:

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more within a relevant time after the driving.
 - (2) Especially reckless or dangerous driving.
 - (3) Negligent driving that led to a reportable accident.
 - (4) DWLR.
 - (5a) 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, within five years of the date of the offense.
 - (5b) One/more prior conviction of an offense involving impaired driving more than seven years before the date of the current offense.
 - (6) Conviction under G.S. 20-141.5 of speeding to flee/elude.
 - (7) Conviction under G.S. 20-141 of speeding at least 30 mph over 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 (5a) and (5b), conduct must occur during same transaction as impaired driving offense.

Mitigating Factors to Be Weighed:

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 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) Safe and lawful driving (except for the DWI).
 - (4) A safe driving record (no four-point traffic convictions or for which the person's license is subject to revocation within five years).
 - (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) Voluntary submission for assessment after charge and, if recommended, voluntary participation in the recommended treatment.
 - (6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption as proven by a continuous alcohol monitoring system of a type approved by Dep't of Correction.
 - (7) Any other factor that mitigates the seriousness of the offense.
- Except for factors in (4), (6), (6a), and (7), the conduct must occur in the same transaction as the impaired driving offense.

A>M, Level 3; A=M, Level 4; M>A, Level 5

² Based on materials originally prepared by Judge Ripley Rand; Reviewed and updated by Shea Denning