

Appearance Before Magistrate for DWI Offenses; G.S. 20-38.4

- Magistrate may hold initial appearance at any place within county, and
 - Shall, to extent practicable, be available at locations other than courthouse when it will expedite initial appearance
- If magistrate finds probable cause, magistrate shall consider whether defendant is impaired to extent that conditions of G.S. 15A-534.2 should be imposed

Appearance Before Magistrate for DWI Offenses; G.S. 20-38.4

- In determining probable cause, magistrate may review
 - All screening tests and chemical analyses
 - Receive testimony from any officer concerning impairment and circumstances of arrest, and
 - Observe arrested person

Appearance Before Magistrate for DWI Offenses; G.S. 20-38.4

- Magistrate shall
 - Inform person in writing of established procedure
 - To have others appear at jail to observe his or her condition, or
 - To have others appear at jail to administer additional chemical analysis if person is unable to make bond

**Appearance Before Magistrate for DWI
Offenses; G.S. 20-38.4**

- G.S. 20-38.5
 - Requires specified officials to
 - Establish written procedure for attorneys and witnesses to have access to chemical analysis room
 - Approve location of written notice of implied-consent rights in chemical analysis room
 - Approve procedure for access to person arrested for implied consent offense
 - By family and friends, or
 - Qualified person contacted by arrested in-custody person to obtain blood or urine

**Appearance Before Magistrate for DWI
Offenses; G.S. 20-38.4**

- Magistrate shall
 - Require defendant who is unable to make bond
 - To list all people defendant wishes to contact and their telephone numbers
 - On form that sets forth procedure for contacting persons listed
- Copy of form must be filed with case file
- AOC-CR-271 (Implied Consent Offense Notice)

**Detention of Impaired Driver;
G.S. 15A-534.2**

- 2006 DWI legislation did not amend statute
- AOC-CR-270 (Detention of Impaired Driver)
 - Use of form is not required, but it is a good practice to complete form

**Detention of Impaired Driver;
G.S. 15A-534.2**

- Magistrate finds by clear and convincing evidence
 - Defendant is charged with offense involving impaired driving, and
 - At time of initial appearance, impairment of defendant’s physical or mental faculties presents danger, if defendant is released,
 - Physical injury to defendant or others, or
 - Damage to property

**Detention of Impaired Driver;
G.S. 15A-534.2**

- Magistrate orders defendant detained until judicial official determines
 1. Defendant’s physical and mental faculties are no longer impaired to extent defendant presents a danger if released, or
 2. Sober, responsible adult is willing and able to assume responsibility for defendant until defendant’s physical and mental capacities are no longer impairedPeriod of detention can not exceed 24 hours

**2006 New or Modified DWI Offenses
Involving Vehicle Death or Injury**

- Felony death by vehicle: punishment increased from Class G to Class E felony
 - Punishment is now greater than for involuntary manslaughter (Class F felony)
- Aggravated felony death by vehicle G.S. 20-141.4(a5)
 - Person commits felony death by vehicle, and
 - Prior conviction of offense involving impaired driving with 7 years of date of offense
 - Class D felony

2006 New or Modified DWI Offenses
Involving Vehicle Death or Injury

- Repeat felony death by vehicle G.S. 20-141.4(a6)
 - Person commits felony death by vehicle or aggravated felony death by vehicle
 - Person has prior conviction of
 - Felony death by vehicle, or
 - Aggravated felony death by vehicle, or
 - G.S. 14-17 (murder) or G.S. 14-18 (manslaughter), when offense involved impaired driving under G.S. 20-138.1 or G.S. 20-138.2
 - Punishment: Class B2 felony

2006 New or Modified DWI Offenses
Involving Vehicle Death or Injury

- Felony Serious Injury by Vehicle G.S. 20-141.4(a3)
 - Person unintentionally causes serious injury to another person
 - While engaged in impaired driving under G.S. 20-138.1 or G.S. 20-138.2
 - Class F felony
 - Other possible charge: assault with deadly weapon inflicting serious injury (Class E felony)

2006 New or Modified DWI Offenses
Involving Vehicle Death or Injury

- Aggravated felony serious injury by vehicle G.S. 20-141.4(a4)
 - Person unintentionally causes serious injury to another person
 - While engaged in impaired driving under G.S. 20-138.1 or G.S. 20-138.2
 - Person has prior conviction of offense involving impaired driving with 7 years of date of offense
 - Class E felony
 - Other possible charge: assault with deadly weapon inflicting serious injury (Class E felony)

First-Degree Felony Murder: Vehicle Crash

- State v. Jones, 353 N.C. 159 (2000)
 - First-degree felony murder
 - Conviction reversed because underlying felonies (felonious assaults) were only committed through culpable negligence
 - Defendant must purposely resolve to commit underlying felony

First-Degree Felony Murder: Vehicle Crash

- State v. Jones, 353 N.C. 159 (2000)
 - Felonious assault convictions upheld
 - Three surviving occupants
 - Operating vehicle, deadly weapon, in criminally negligent manner proximately causing serious injury
 - DWI conviction established criminal negligence as matter of law
 - Also, exceeding posted speed limit and driving on wrong side of road
 - Evidence was sufficient for second-degree murder

First-Degree Felony Murder: Vehicle Crash

- State v. Woodard, 146 N.C. App. 75 (2001)
 - First-degree felony murder conviction may not be supported by felony of eluding arrest, G.S. 20-141.5

Second-Degree Murder: Vehicle Crash

- Unlawful killing of another living human being with malice
- State v. Trott, 190 N.C. 674 (1925)
 - Conviction of passenger, who was intoxicated, as aider and abettor to second-degree murder committed by driver
 - Defendant ordered driver to drive vehicle to avoid police
 - Driver was intoxicated and driving high rate of speed and in wrong lane, colliding with another vehicle, and killing one of its passengers

Second-Degree Murder: Vehicle Crash

- Driver was conscious of “malignant recklessness of the lives and safety of others”

Second-Degree Murder: Vehicle Crash

- State v. Snyder, 311 N.C. 391 (1984)
 - Facts
 - Defendant passed in no passing zone, struck motorcycle, and forced it off road
 - Drove through red light at 60 to 70 m.p.h
 - Hit vehicle and killed three people inside
 - Blood alcohol reading of 0.24
 - Intentional act, although no intention to injure, that evidenced recklessness of consequences and total disregard for human life

Second-Degree Murder: Vehicle Crash

- State v. Bethea, 167 N.C. App. 215 (2004)
- Conviction of second-degree murder upheld
- Sufficient evidence of malice and proximate cause
 - Death of officer during high speed pursuit of defendant
- Court stated that malice does not require proof of impaired driving

Involuntary Manslaughter

- Remember that voluntary manslaughter is not charged with vehicular homicides
- State v. McGill, 314 N.C. 633 (1985)
 - Involuntary manslaughter is proven by impaired driving that was a proximate cause of death
 - No need to prove additional violation of rules of road
 - Effect of ruling: involuntary manslaughter requires no more proof than felony death by vehicle [noted in State v. Grice, 131 N.C. App. 48 (1998)]

Involuntary Manslaughter

- Misdemeanor death by vehicle is lesser-included offense of involuntary manslaughter
 - State v. Williams, 90 N.C. App. 614 (1988)

**Felony Death by Vehicle:
G.S. 20-141.4(a1)**

- Unintentional killing of another living human being
- While committing DWI or commercial DWI
- DWI is proximate cause of death
- Felony death by vehicle is not lesser-included offense of second-degree murder or involuntary manslaughter
 - State v. Williams, 90 N.C. App. 614 (1988); State v. Grice, 131 N.C. App. 48 (1998)

**Felony Death by Vehicle:
G.S. 20-141.4(a1)**

- Misdemeanor death by vehicle is not lesser-included offense of felony death by vehicle
- Effective for offenses committed on or after December 1, 2006, the punishment for felony death by vehicle will be a Class E felony (currently, it is a Class G felony)

**Misdemeanor Death by Vehicle:
G.S. 20-141.4(a2)**

- Unintentional killing of another living human being while committing
 - Violation of state law or local ordinance applying to operation or use of vehicle or regulation of traffic—other than DWI
 - Commission of violation is proximate cause of death
- Misdemeanor death by vehicle is lesser-included offense of involuntary manslaughter: State v. Williams, 90 N.C. App. 614 (1988)
- Misdemeanor death by vehicle is not lesser-included offense of felony death by vehicle

Assault by Criminal Negligence

- Driving vehicle recklessly or while impaired
 - State v. Jones, 353 N.C. 159 (2000)
 - Criminal negligence established as matter of law when jury convicted defendant of DWI
 - Criminal negligence also established by exceeding speed limit and driving on wrong side of road
 - Convictions of assault with deadly weapon inflicting serious injury upheld
- Other examples: Recklessly tossing object off a bridge over highway or from roof of building

Search Warrant for Blood or Urine

- For use in vehicle crash involving impaired driving, see AOC-CR-155
 - Available at <http://www.nccourts.org/Forms/FormSearch.asp>
