

## DWI CHEAT SHEET

**Levels:** (§20-179(c-k)) AOC-CR-311

**Agg 1= 3 or more Grossly Aggravating Factors**

**1= 2 Grossly Aggravating Factors, OR factor involving age/disability**

**2= 1 Grossly Aggravating Factor (other than factor involving age/disability)**

3=Aggravating outweighs Mitigating	A>M
4=No Aggravating or Mitigating	Ø
Or Aggravating=Mitigating	A=M
5=Mitigating outweighs Aggravating	M>A

**Sentencing:** (§20-179(f)-(k)) AOC-CR-310 & 342

Level	Minimum	Maximum	Mandatory split IF suspended
Agg 1	12 months	36 months/\$10,000	120 days
IF suspended, MUST require a term of imprisonment of at least 120 days, abstain from alcohol for period of 120 days up to the full term of probation and require abuse asmt and treatment (§20-179 (f))			

Level	Minimum	Maximum	Mandatory split IF suspended
1	30 days & \$4,000	24 months	30 days MAY reduce to 10 days if CAM for 120 (may apply up to 60 pretrial days) (g)
2	7 days & \$2,000	12 months	7 days MAY eliminate split if CAM for 90 (may apply up to 60 pretrial days) AND if prior w/in 5 years or DWLR, MUST perform 240 hours of CS (h) MAY require abstain from alcohol as verified by CAMS (§20-179 (h1) & (k2))

Level	Minimum	Maximum	MAY be suspended with these Probation Conditions
3	72 hrs	6 months \$1,000	72 hours jail (i) 72 hours C.S. Or any combination
4	48 hrs	120 days \$500	48 hours jail (j) 48 hours C.S. Or any combination
5	24 hrs	60 days \$200	24 hours jail (k) 24 hours C.S.

**SECOND or subsequent off.** requires interlock on all vehicles owned or operated  
**SECOND or subsequent off.** requires at least 30 days of CS OR 5 days in jail  
**THIRD or subsequent off.** requires at least 60 days of CS OR 10 days in jail  
**IF suspended, MUST** require substance abuse asmt and treatment (§20-179(i-k))  
**MAY** require abstain from alcohol as verified by CAMS (§20-179 (k2))  
**No Jail Credit for First 24 Hours** (§20-179 (p)(1))  
 Hour for Hour service/Weekends/Report in Sober Condition (§20-179(s))  
 Credit for Inpatient Treatment (§20-179 (k1))  
 Can't consolidate multiple DWIs. Can consolidate w/ higher charge (§20-179(f))  
 Aiding and Abetting conviction is always **LEVEL 5** (§20-179 (f1))  
**MUST** serve active sentence in local jail unless second DWI (§20-176(c1))

**Limited Driving Privilege Eligibility:** (§20-179.3) AOC-CR-312

Valid license or license that had been expired for less than 1 year

No prior impaired driving convictions w/in 7 years of offense date

Level Three, Four, or Five was imposed and Not a refusal

After offense, not been convicted of or have unresolved DWI charge

Obtained and filed with the court a substance abuse assessment **NEED**

- Letter on letterhead for nonstandard working hours (STD hours 6:00 A.M. to 8:00 P.M. Mon through Fri)
- DL-123 or DL-123A from Ins. Co. (Only good for 30 days)
- \$100 filing fee

Allows maintenance of household only during standard hours

Allows for work, edu & religious worship during standard and listed times

CS, asmt and treatment as directed; Medical anytime

**Refusal Privilege:** (§20-16.2 (c1) & §20-179.3) AOC-CR-313

Same as above but also; No prior refusals w/in 7 years

No death or critical injury

Final dispo AND Revoked at least 6 months AND no unresolved DWI charges

Complied with at least one condition of suspended sentence

Completed training or treatment per assessment

Allows work, edu & religious worship same. If < .15 medical anytime, maint std & CS as directed If ≥ .15 not allowed for medical, maint or CS

**Interlock:** (§20-179.3 (g5)) required when 0.15 or more AOC-CR-340

§20-179.3 (c1) requires 45 day waiting period for LDP

Does not allow maint, medical or CS / allows work, edu. & tmt at listed times

**THIS BELONGS TO AN EXCELLENT ASSISTANT PUBLIC DEFENDER IN 2015**  
 Effective for LDP on or after October 1, 2015

**Interlock info:** [www.monitechnc.com](http://www.monitechnc.com) 800-521-4246

**Interlock info:** [www.smartstartinc.com](http://www.smartstartinc.com) 800-880-3394

**DWI Regs:** 10A N.C.A.C. 41B .0101 - 41B .0503

**Preventive Maintenance and Permits** (§20-139.1 (b2); (b6))

[www.ncpublichealth.com/chronicdiseaseandinjury/fla/history.htm](http://www.ncpublichealth.com/chronicdiseaseandinjury/fla/history.htm)

**Pre-Trial Motion Practice** (§20-38.6)

**Checking Stations and Roadblocks** (§20-16.3A)

**Blood Test Chain of Custody** (§20-139.1 (c3))

**Expert Testimony Fee** under §20-139.1 \$600 (§7A-304(a)(11) & (12))  
 (fees assessed on or after 8-1-13)

**BLAKELY CURE** in District Court (§20-179(a)(1) & (2); (c))

State must prove Grossly Aggravating or Aggravating Factors beyond a reasonable doubt at sentencing hearing or may use evidence from trial

**BLAKELY CURE** in Superior Court (§20-179(a1), (a2) & (c))

For notice, see AOC-CR-338

10 year look back period on Habitual DWI (§20-138.5 (a)) (on or after 12-1-06)

**MELENDEZ-DIAZ CURE** (20-139.1(c1), (c3), (e1) & (e2))

(on or after 10-1-09) AOC-CR-344

**Appeals and Withdrawal/Remand** (§20-38.7) (appeals on or after 12-1-15)

**GROSSLY AGGRAVATING FACTORS** (§20-179 (c))

- A conviction for an offense involving impaired driving within seven years of the date of this offense (See §20-179 (o) re: rebutting priors)
- Each prior conviction is a separate grossly aggravating factor
- District court conviction that is appealed and either withdrawn or remanded BUT not yet resentenced
- The defendant's driver's license was revoked for an impaired driving offense at the time of this offense
- Serious injury to another person caused by the defendant's impaired driving at the time of this offense
- A child under the age of 18, mental development of a child under 18, or physical disability preventing unaided exit was in the vehicle at the time of this offense (Super Aggravating Factor that bumps to Level 1)

**AGGRAVATING FACTORS** (§20-179 (d))

- Gross impairment of 0.15 or more
- Especially reckless or dangerous driving
- Negligent driving that led to a reportable accident
- Driving by the defendant while his driver's license was revoked under §20-28(a1) for an impaired driving revocation under §20-28.2(a)
- Two or more prior convictions of a motor vehicle offense for which at least three points are assigned occurring within five years of the date of this offense OR one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of this offense
- Conviction of speeding while fleeing or attempting to elude apprehension
- Conviction of speeding by the defendant by at least 30 miles per hour over the legal limit
- Passing a stopped school bus
- Any other factor that aggravates the seriousness of the offense

**MITIGATING FACTORS** (§20-179 (e))

- Slight impairment solely from alcohol and the alcohol concentration did not exceed 0.09
- Slight impairment resulting solely from alcohol, with no chemical analysis having been available to the defendant
- Driving at the time of the offense that was safe and lawful except for the impairment
- A safe driving record, having no convictions for any motor vehicle offense for which at least four points are assigned within five years of the date of this offense
- Impairment caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage
- Voluntary submission to a mental health facility for assessment after being charged with the impaired driving offense and, if recommended by the facility, voluntary participation in the recommended treatment
- Assessment, compliance with recommendations and maintaining 60 days of continuous abstinence, as proven by DOC approved device
- Any other factor that mitigates the seriousness of the offense

Effective for offenses on or after 12-1-15



## Class A1

Assault by Pointing Gun (14-34)  
 Assault Inflicting Serious Injury (14-33)(c)(1)  
 Assault on a Child Under 12 (14-33)(c)(3)  
 Assault on a Female (14-33)(c)(2)  
 Assault on Gov. Off. (14-33)(c)(4) F  
 \* Assault on Handicapped Person (14-32.1)  
 Assault on School Pers (14-33)(c)(6) F  
 Assault with a Deadly Weapon (14-33)(c)(1)  
 Assault and pers rel in presence of minor (14-33 (d))  
 Child Abuse (14-318.2) F  
 Death by Vehicle (20-141.4)  
 E-Liquid Container Violations (14-401.18A)  
 Food Stamp Fraud \$100-\$500 (108A-53.1)  
 Ind Lib by School Personnel, not Teacher (14-202.4) F  
 Interfering with Emergency Comm (14-286.2)  
 Patient Abuse (14-32.2) F  
 P Patronizing a Prostitute (14-205.2) F  
 P Secret Peeping #2 or w/ photo device (14-202) F  
 Sex with Student by School, not Teacher (14-27.7) F  
 @ & \* Sexual Battery (14-27.5A)  
 \* Stalking (14-277.3) Felony if prior or while 50B/C  
 Trespass, 1<sup>st</sup> Degree at Utility Facility (14-159.12)(c) F  
 Trespass, 1<sup>st</sup> Degree at Agricultural Center (14-159.12)(c) F  
 Unfair Trade of Cigarettes (14-401.18)  
 Unmanned Aircraft Image Dissemination (14-401.25) F  
 Violation of 50B Order (50B-4) F

## Class 1

Alcohol offense, not otherwise specified (18B-102)(b)  
 Alcohol Powder Offenses (18B-102(a)(1))  
 Altering Serial Number (14-160.1)  
 Breaking or Entering (14-54) F  
 B&E Coin Operated Machine (14-56.1) F  
 Communicative Threats (14-277.1)  
 Concealed Weapon Prohibited or Alcohol (14-415.21)  
 Contrib to Delinq of Juvenile (14-316.1)  
 Criminal Domestic Trespass (14-134.3) F  
 Damaging Computers < \$100 (14-455) F  
 Death by Vehicle (20-141.4) F Prior to 12-1-09  
 Disorderly Conduct #2 (14-288.4) F  
 DWLR ONLY if Impaired Driving revocation (20-28)  
 Escape by Misdemeanor (148-45) F  
 ESC Violation (96-18)

HIV testing if DAC, effective 7-1-13  
 P = May order testing for Sexually Transmitted Disease, effective 10-1-13 (14-205.4)  
 M = possible misd. enhancement (review statute)  
 F = possible felony enhancement (review statute)  
 \* Subject to DNA sample (15A-266.4)  
 @ Potential Sex Offender Registry (14-208.7)  
 DV / knowing female is pregnant is 1 class higher. If A1, becomes class I felony (14-18.2)  
 Hab Misd Assault Class H Felony (14-33.2)  
 14-33 & physical inj or 14-34; & 2 or > assault conv  
 Assault by strangulation Class H felony (14-32.4)  
 Committed because of race, color, religion, nationality or country of origin  
 Class 2 or 3 becomes Class 1, Class A1 or 1 becomes Class H Felony (14-3)

Ethnic Intimidation (14-401.14) F (See 14-3)  
 Failure to Stop for School Bus (20-217)  
 Failure to Yield Emerg Veh w/Damage (20-156, 57) F  
 False Imprisonment (Common Law)  
 Food Stamp Fraud < \$100 (108A-53) F  
 Forgery (Common Law)  
 Fracking Violations (113-380)  
 Going Armed to the Terror (Common Law)  
 Graffiti Vandalism (14-127.1) Min \$500 & CS if suspended sentence F  
 Hit and Run Property Damage (20-166) F  
 Inciting a Riot (14-288.2) F  
 Injury to Personal Property >200 (14-160(b))  
 Injury to Real Property (14-127)  
 Injury to Trees, Crops, Lands (14-128)  
 Interfering with Meter Lines (14-151) F  
 Larceny (14-72) F Habitual Misd Lar F (14-72(b)(6))  
 P Maintaining Place of Prostitution (14-204)  
 Metal Theft (14-159.4) F  
 Metal Sales Regulation Violation (66-424) F  
 Misuse of 911 (14-111.4) all types of Misuse of 911  
 Move Over Law >500 damage or injury (20-157(h)) F  
 Obstruction of Justice (Common Law)  
 Passing Stopped School Bus (20-217) min \$500 fine F  
 Picketing Courthouse (14-225.1)  
 Possession Weapon on School Grounds (14-269.2) F  
 Possession of Drug Paraphernalia (90-113.22) (90-95) Except MJJ  
 [BUT SEE PDP admission immunity for needle/sharp obj]  
 Possession of MJJ > ½ oz (90-95) (90-96 discharge) F  
 Possession Stolen Goods (14-72) F  
 Prearranged Racing (20-141.3)  
 P Prostitution (14-204) Conditional Discharge 1<sup>st</sup> Off.  
 Receiving Stolen Goods (14-72) F  
 Secret Peeping (14-202) F  
 Shoplifting #3 w/in 5 Yrs (14-72.1) F  
 Speeding to Elude (20-141.5) F  
 P Soliciting for Prostitution (14-205.1) F  
 Toxic Fumes Violations (90-113.10-13)  
 Unauthorized Use of Motor Vehicle (14-72.2) F  
 Unlawful Assembly (Common Law)  
 Unmanned Aircraft Fishing or Hunting (14-401.25)  
 Welfare Fraud (108A-39) F  
 Worthless Check \$2000 or Less 4<sup>th</sup> Conv (14-107) F  
 Worthless Check/Closed Account (14-107(d)(4)) F

## Class 2

Adult Establishment Viol #2 (14-202.11-12)  
 Carrying Concealed Weapon (14-269 & 14-415.21) F  
 Concealed Weapon Permit Most Violations (14-415.21) M  
 Cyberbullying School Employee (14-458.2)  
 Cyberstalking (14-196.3)  
 Defacing Public Property (14-132)  
 Defrauding Innkeeper (14-110)  
 Disorderly Conduct (14-288.4) F  
 Driving After Consuming <21 (20-138.3)  
 Driving w/ Open Cont Alcoh in System #2 (20-138.7)  
 Failure to Disperse (14-288.5)  
 Failure to Work after Being Paid (14-104)  
 Failure to Yield/Stop Emerg Veh (20-156, 57) F  
 Filing False Police Report (14-225)  
 Financial Card Fraud <500 w/in 6 mos. (14-113.13) F  
 Fornication / Adultery (14-184)  
 Furnishing False Information (20-29)  
 Gambling (14-291-292)  
 Harassing Phone Calls (14-196)

Hit and Run Failure to Notify (20-166.1) M F  
 Indecent Exposure (14-190.9) F  
 Injury to Personal Property \$200 or Less M (14-160(a))  
 Lottery Viol (14-289-291)  
 Moped Registration and Plate Violation (20-53.4)  
 Motor Vehicle Law, not otherwise specified (20-35 & 20-176)  
 Move Over Law (20-157(a)) F  
 Open Container 2<sup>nd</sup> or > Off (20-138.7(a))  
 Possession of Handgun by Minor (14-269.7)  
 Reckless Driving (20-140)  
 Resisting/Obstructing Officer (14-223)  
 Scalping (14-344)  
 Setting Fire to Woods (14-137)  
 Shoplifting #2 w/in 3 Yrs (14-72.1) F  
 Simple Assault/Battery/Atfray (14-33) M  
 Soliciting for CAN (Common Law)  
 Tampering with M/V (20-107)  
 Trespass, 1<sup>st</sup> Degree (14-159.12) M  
 Willful Racing (20-141)

## Class 3

Offenses on or after 12-1-13, unless otherwise specified if less than 4 prior convictions, fine ONLY (max \$200)

Adult Establishment Viol (14-202.11-12) M  
 Concealed Weapon w/out Permit or disclosure (14-15.21) M  
 Conversion by Bailor \$400 or Less (14-168.1) F  
 Driving Commercial Vehicle after Cons (20-138.2A)  
 Driving w/ Open Cont Alcohol in System (20-138.7)  
 DWLR IF NOT Impaired Driving revocation (20-28) M  
 Expired License (20-7(f) & 20-35(a2))  
 Failure to Notify DMV of Address Change (20-7.1)  
 Failure to Possess License (20-7(a) & 20-35(a2))  
 Failure to Return Rental Property (14-167) F  
 Failure to Return Rental Property Purchase Option (14-168.4)  
 Fishing Without License (133-271)  
 Hunting Without License (133-270.2)  
 Intoxicated and Disruptive (14-444)  
 Littering (14-399(a)) M F  
 NOL (20-7(a) & 20-35)  
 Obtaining Property by W/C (14-106)  
 Open Container 1<sup>st</sup> Offense (20-138.7(a)) M  
 Permitting Bitch at Large (67-2)  
 Possession of MJJ Drug Paraphernalia (90-113.22A)  
 Possession of MJJ > ½ oz (90-95) (90-96) M F  
 Shoplifting (14-72.1) M F  
 Speeding >15 MPH over OR >80 MPH (20-141(j))  
 Trespass, 2<sup>nd</sup> Degree (14-159.13) M  
 Unsealed Wine/Liquor in Passenger Area (18B-401(a))  
 Using Profane Language on Roadway (14-197)  
 Violation of City or County Ord (14-4)  
 Window tinting violation (20-127(d))  
 Worthless Check \$2000 or Less (14-107) M F

## Infraction

Concealed Weapon w/out Permit or disclosure (14-15.21) M  
 Cell Phone <18 (20-137.3)  
 Littering (14-399(a)) M F  
 MV Law, Parts 9, 10, 10A & 11, if not otherwise specified (20-176)  
 Move Over Law (20-157(g)) M F  
 Open Container Passenger (20-138.7(a)) M  
 Seatbelt Violations (20-135.2A(e)) fine & cost limits  
 Speedometer Violations (20-123.2)  
 Violation of Ord re: operation of vehicles (14-4(b))

**Multiple Prior Convictions** §15A-1340.21(d) [If an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level.]

**Multiple Convictions** §15A-1340.22(a) If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

**Concurrent and Consecutive Terms** §15A-1354(a) Unless specified or required by statute to run consecutively, sentences shall run concurrently.

**Prior Record Level for Felony Sentencing** §15A-1340.14(b)(5) Prior Record Level for Felony Sentencing. --For each prior misdemeanor conviction as defined in subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.2) of the General Statutes.

**Sentences of Imprisonment** §15A-1351(a) Split sentence may not exceed one fourth the maximum sentence of imprisonment imposed for the offense. "[T]he judge credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation."

**Restitution Statutes** §15A-1340.34 - 38 Basis, Determination, Defendant's Ability to Pay, Partial Restitution and Enforcement.

**Standard Probation Lengths** §15A-1343.2 Community Punishment 6-18 months / Intermediate Punishment 12-24 months.

**Probation Hearing/Probable Cause Hearing** §15A-1345(c) must be held within seven working days of an arrest. Otherwise, must be released.

[P]rovided that probation may not be revoked solely for conviction of a Class 3 misdemeanor, §15A-1344(d)

**Conspiracy & Attempt** (§14-2.5) = 1 lower

**Solicitation** (§14-2.6) = class 3 misdemeanor (unless specified)

**Aid and Abet & Acting in Concert** = same punish

Class	PRIOR CONVICTION LEVELS		
	0 Priors	1 to 4 Priors	5 or > Priors
	I	II	III
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C Fine ONLY*	1-15 days	
		1 to 3 Priors C Fine ONLY*	4 Priors C/I

\* Fine ONLY, unless otherwise provided, effective on or after 12-1-13 per §15A-1340.23(d)

THIS BELONGS TO AN EXCELLENT ASSISTANT PUBLIC DEFENDER IN 2015

Effective for offenses on or after 12-1-15 Effective for offenses on or after 6-19-15: 7-1-15

**COMMUNITY**  
 §15A-1340.11(2)  
 Does NOT include ACTIVE OR Drug Ct  
 OR Special Prob / Split under §15A-1351(a)  
 MAY be unsupervised or supervised MAY include 1 or > under §15A-1343(a1)  
 House Arrest with EM Community Service  
 Confinement of 2/3 days (<6 days per month) during 3 separate months  
 Substance Abuse Asmt, Monitoring or TmtEdu or Vocational Skills Development Program  
 Satellite-based Monitoring (if covered under §14-208.40(a)(2))  
 Daily fee and \$90 install

**INTERMEDIATE**  
 §15A-1340.11(6)  
 Must be Supervised Probation MAY include:  
 Drug Treatment Court  
 Special Prob / Split §15A-1351(a)  
 CP conditions under §15A-1343(a1)  
**ACTIVE** §15A-1340.11(1)  
 Any time within the range. Also see §15A-1340.20 (c1) for time served when active not otherwise authorized  
**FINES** §15A-1340.23(b)  
 Unless specified by offense:  
 Class A1 = discretion of court  
 Class 1 = discretion of court  
 Class 2 = \$1,000  
 Class 3 = \$200  
 MV Infraction = \$100 §20-176(b)  
 Local Ordinance \$500/\$50 §14-4

**DELEGATION TO PROBATION**  
 UNLESS SPECIFIC FINDING TO INAPPROPRIATE §15A-1343.2(e)  
 Probation may require:  
 20/50 hours of Community Service + Report to Probation more frequent  
 Substance Abuse Asmt, Monitoring c  
 House Arrest with Electronic Monitor  
 Confinement of 2/3 days (<6 days monthly) during 3 separate months  
 Curfew with Electronic Monitoring I  
 Edu or Vocational Skills Development Program  
**REQUIRES**  
 Admin Review and Approval by Ch  
 MAY FILE MOTION to review UNLESS signed a WAIVER