

DWI sentencing (G.S. 20-179) for offenses committed before 12/1/2011

Level	Factors	Minimum Sentence	Maximum Sentence	If Suspended, ¹ Special Probation Requiring:	Maximum Fine
1	2+ GAFs	30 days	24 months	Active term of at least 30 days	\$4,000
2	1 GAF	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. (Based on materials originally prepared by Ripley Rand. Updated by Shea Denning. Applicable to offenses committed before 12/1/2011.)

Grossly Aggravating Factors (GAFs) (if 1 GAF, **Level 2**; If 2 GAFs 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 - c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.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 to Be Weighed:

- (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 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 factors (5a) and (5b), the conduct must occur during the same transaction as the 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 impairment).
- (4) A safe driving record (no convictions within five years for four-point motor vehicle offenses or for motor vehicle offenses for which the person's license is subject to revocation).
- (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 (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