

DWI Sentencing

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November 2023

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Sentencing under G.S. 20-179

<p>01</p> <p>Separate scheme from structured sentencing</p>	<p>02</p> <p>No indefinite PICs</p>	<p>03</p> <p>Mandatory minimums</p>	<p>04</p> <p>Good time credit</p>	<p>05</p> <p>Parole eligible</p>	<p>06</p> <p>Substance abuse assessment and education or treatment required as condition of probation</p>
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G.S. 20-179: Covered Offenses

- G.S. 20-138.1 (impaired driving)
- G.S. 20-138.2 (impaired driving in a commercial vehicle)
- Second or subsequent conviction of
 - G.S. 20-138.2A (operating a commercial vehicle after consuming alcohol)
 - G.S. 20-138.2B (operating a school bus, child care vehicle, emergency or law enforcement vehicle after consuming)
- A person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level 5 punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

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Punishment Level Corresponding Sentence Factors	Imprisonment and Mandatory Probation Conditions	Fine
Aggravated Level One G.S. 20-179(f) Three or more grossly aggravating factors	<ul style="list-style-type: none"> 12 months minimum to 36 months maximum If suspended <ul style="list-style-type: none"> Imprisonment of at least 120 days as a condition of special probation Requirement that defendant abstain from alcohol consumption for a minimum of 120 days to a maximum of the term of probation, as verified by continuous alcohol monitoring (CAM) system Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$10,000
Level One G.S. 20-179(g) Grossly aggravating factor in G.S. 20-179(b)(3) or two other grossly aggravating factors	<ul style="list-style-type: none"> 30 days minimum to 24 months maximum If suspended <ul style="list-style-type: none"> Special probation requiring (1) imprisonment of at least 30 days or (2) imprisonment of at least 10 days and alcohol abstinence and CAM for at least 120 days Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$4,000
Level Two G.S. 20-179(h) One grossly aggravating factor, other than the grossly aggravating factor in G.S. 20-179(b)(3)	<ul style="list-style-type: none"> 7 days minimum to 12 months maximum If suspended <ul style="list-style-type: none"> Special probation requiring (1) imprisonment of at least 7 days or (2) alcohol abstinence and CAM for at least 90 days If Level Two based on prior conviction or DWLR for an impaired driving revocation and prior conviction occurred within five years, sentence must require 240 hours of community service if no imprisonment imposed Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$2,000

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Level Three G.S. 20-179(i) Aggravating factor substantially outweigh any mitigating factors	<ul style="list-style-type: none"> 72 hours minimum to 6 months maximum If suspended <ul style="list-style-type: none"> Must require one or both of the following <ul style="list-style-type: none"> Imprisonment for at least 72 hours as a condition of special probation Community service for a term of at least 72 hours Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$1,000
Level Four G.S. 20-179(j) No aggravating and mitigating factors or aggravating factors are substantially counterbalanced by mitigating factors	<ul style="list-style-type: none"> 48 hours minimum to 120 days maximum If suspended <ul style="list-style-type: none"> Must require one or both of the following <ul style="list-style-type: none"> Imprisonment for 48 hours as a condition of special probation Community service for a term of 48 hours Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$500
Level Five G.S. 20-179(k) Mitigating factors substantially outweigh aggravating factors	<ul style="list-style-type: none"> 24 hours minimum to 60 days maximum If suspended <ul style="list-style-type: none"> Must require one or both of the following <ul style="list-style-type: none"> Imprisonment for 24 hours as a condition of special probation Community service for a term of 24 hours Requirement that defendant obtain a substance abuse assessment and education or treatment required by G.S. 20-17.6 	Up to \$200

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Grossly Aggravating Factors

G.S. 20-179(c)

1. Prior conviction for offense involving impaired driving (within 7 years before instant offense; after instant offense and before/at sentencing)
2. DWLR while license revoked for impaired driving revocation
3. Serious injury to another person
4. *Driving with any of the following in the vehicle
 - a. Child under 18, or
 - b. Person with mental development of child under 18, or
 - c. Person with disability barring unaided exit from vehicle

* Finding of this factor alone requires sentencing at Level One

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STATE OF NORTH CAROLINA

County _____

File in _____
 District Superior Court Division
 In the General Court Of Justice

STATE VERSUS _____

NAME OF DEFENDANT _____

IMPAIRED DRIVING
 DETERMINATION OF SENTENCING FACTORS
 (For Offenses Committed On Or After Dec. 1, 2011)
 G.S. 20-17b

District Court: Based upon the evidence presented at the trial and sentencing hearing in District Court, the Court determines that (1) the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt and (2) the defendant has proved the mitigating factors marked below by a preponderance of the evidence.

Superior Court: Based upon the evidence presented at the trial and sentencing hearing in Superior Court, (1) the trier of fact has determined that the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt, or the defendant has admitted to these grossly aggravating factors and aggravating factors, and (2) the Court determines that the defendant has proved the mitigating factors marked below by a preponderance of the evidence. If grossly aggravating factor No. 1 a., 1 b., 1 c., 1 d., 1 e., or 1 f. is marked below, the Court determines that the State has proved that grossly aggravating factor beyond a reasonable doubt. If aggravating factor No. 8 or 9 is marked below, the Court determines that the State has proved that aggravating factor beyond a reasonable doubt.

I. GROSSLY AGGRAVATING FACTORS - G.S. 20-179(c)

(NOTE: Other Nos. 1 and 2 or No. 3 apply in each case except voters and athletes. If No. 1 is checked, No. 2 a., 2 b., or 2 c. must also be checked.)

1. The defendant:

a. has been convicted of a prior offense involving impaired driving which conviction occurred within seven (7) years before the date of this offense.

b. has two three or more convictions as described in No. 1 a.

c. has been convicted of an offense involving impaired driving which conviction occurred after the date of the offense for which the defendant is being sentenced but before or contemporaneously with the sentencing in this case.

d. has two three or more convictions as described in No. 1 c.

e. has a prior conviction in District Court for an offense involving impaired driving, the conviction 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 for the case has not been held pursuant to G.S. 20-38 f.

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Duties of the Prosecutor

G.S. 20-179(a)(2)

- Obtain full record of traffic convictions and present to judge
- Present all other appropriate GAFs and Afs of which he or she is aware
- Present evidence of alcohol concentration from valid chemical analysis

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Aggravating Factors

1. Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more.
2. Especially reckless or dangerous driving.
3. Negligent driving that led to a reportable accident.
4. Driving by the defendant while his or her driver's license was revoked.
5. Two or more prior convictions of certain motor vehicle offenses within five years of the instant offense or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the instant offense.
6. Conviction under G.S. 20-141.5 of speeding to elude.
7. Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal 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.

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Mitigating Factors

- (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) Driving that was safe and lawful except for the defendant's impairment.
- (4) A safe driving record.
- (5) Impairment caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of drug taken was within the prescribed dosage.
- (6) Voluntary submission to a substance abuse assessment and to treatment.
- (6a) Completion of a substance abuse assessment, compliance with its recommendations, and 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring (CAM) system.
- (7) Any other factor that mitigates the seriousness of the offense.

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Special Rules

G.S. 20-179

1. Judge may award credit against term of imprisonment for inpatient treatment obtained after commission of offense.
2. Judge may order special probation to be served in a treatment facility.
3. Good time credit is awarded against active sentences at all levels other than Level A1.
4. Good time credit does *not* reduce special probation sentence.
5. Imprisonment (both active and split) may be served in 48-hour intervals.
6. Level A1 sentences end 4 months before maximum to place defendant on post-release supervision.

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Special probation (split sentence) for DWI



Local Jail

Active sentence for DWI



Statewide Misdemeanant Confinement Program

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Resentencing After Appeal

G.S. 20-38.7(c)

- District court sentence is vacated when an appeal is withdrawn and a case remanded and the district court must hold a new sentencing hearing unless
 - Appeal is withdrawn and prosecutor certifies in writing that he/she has no new sentencing factors to offer

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AOC-CR-321B
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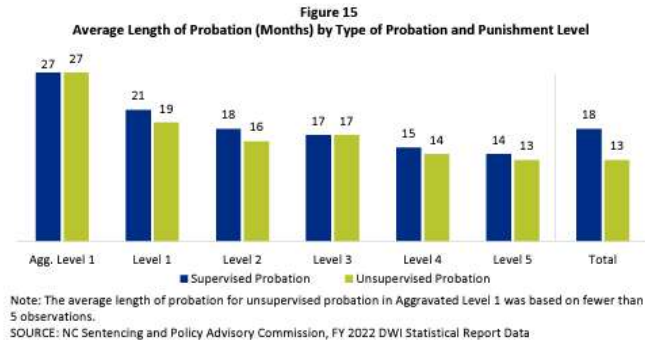
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Sentencing Scenario 1

- Don is convicted of DWI. BAC is 0.08. He has a safe driving record under G.S. 20-179(e)(4). The State does not present aggravating factors. Dan demonstrates that he obtained a substance abuse assessment and attended ADETS, which was recommended.

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Sentencing Scenario 2

- Danielle is convicted of DWI. She is 30. Her BAC was a 0.08. She has a safe driving record. The State proves beyond a reasonable doubt that her 5-year-old daughter was in the car at the time of the offense. She has obtained a substance abuse assessment and has attended ADETS.

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Suspended sentence?

- Must require
 - Imprisonment for 24 hours as a condition of special probation and/or
 - Community service for 24 hours
 - AND defendant must obtain substance abuse assessment and education or treatment required by G.S. 20-17.6

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Level One Sentencing Requirements

- 30 days minimum – 24 months maximum
- If suspended
 - Special probation requiring (1) imprisonment of at least 30 days or (2) imprisonment of at least 10 days and alcohol abstinence and CAM for at least 120 days
 - AND defendant must obtain substance abuse assessment and education or treatment required by G.S. 20-17.6

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Sentencing Scenario 3

- Darren is convicted of DWI – his third conviction. The State proves that he was previously convicted of DWI five years ago and again two years ago. The State also proves that at the time of the current offense, committed on a city street, Darren’s license was revoked for the latest DWI conviction.

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Aggravated Level One Sentencing Requirements

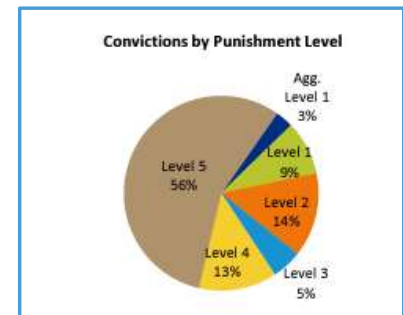
- 12 months minimum – 36 months maximum
- If suspended
 - Special probation requiring imprisonment of at least 120 days;
 - Alcohol abstinence and CAM for at least 120 days; and
 - Defendant must obtain substance abuse assessment and education or treatment required by G.S. 20-17.6

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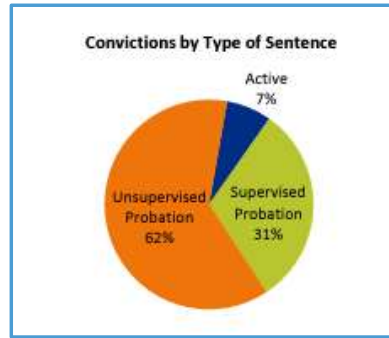


- SOURCE: NC Sentencing and Policy Advisory Commission, 2022 DWI Statistical Report

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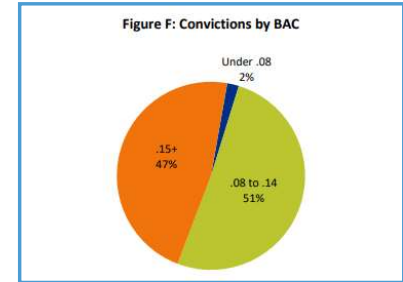
• SOURCE: NC Sentencing and Policy Advisory Commission, 2022 DWI Statistical Report



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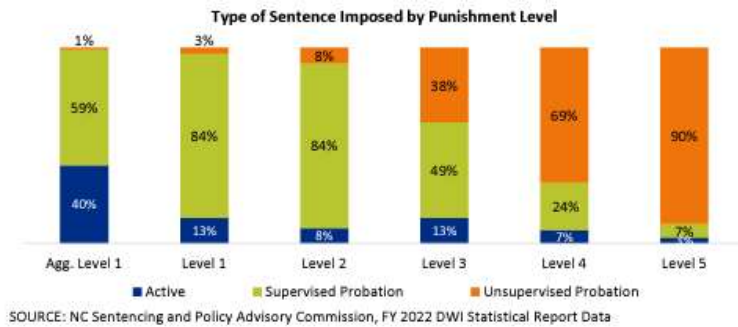
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• SOURCE: NC Sentencing and Policy Advisory Commission, 2022 DWI Statistical Report

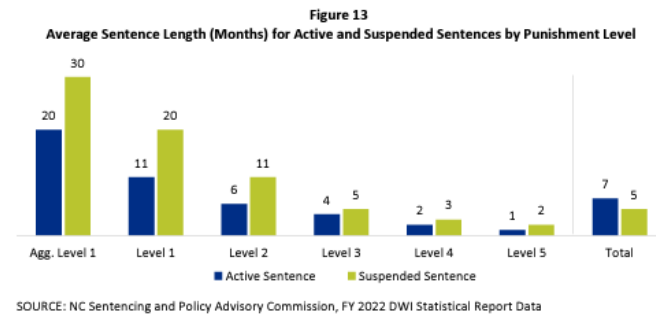


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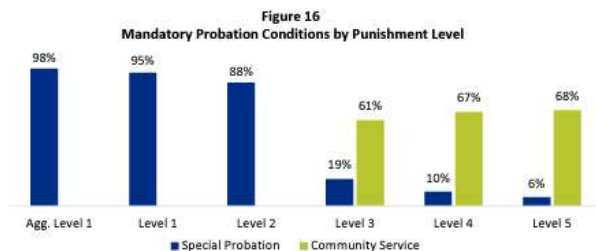
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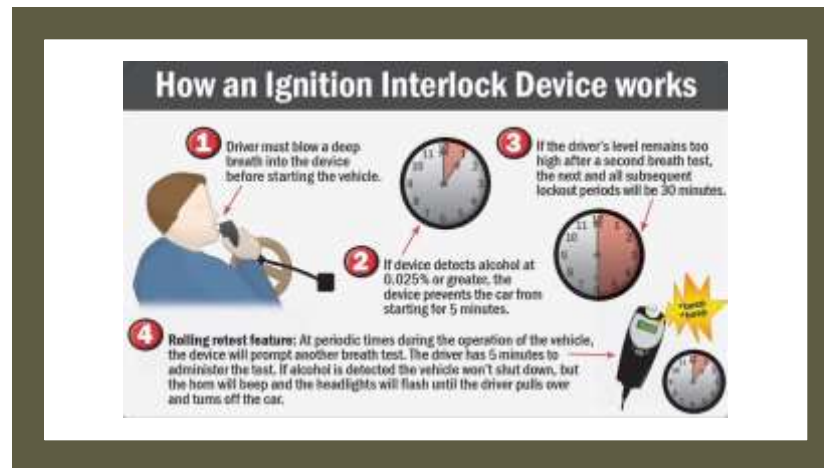
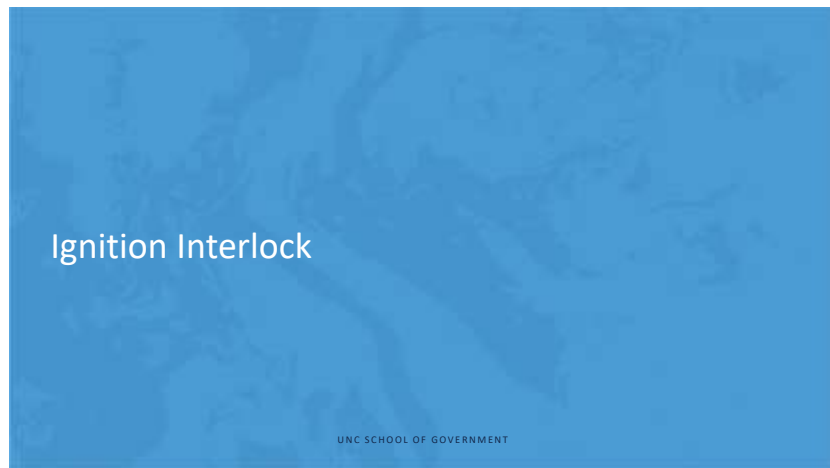


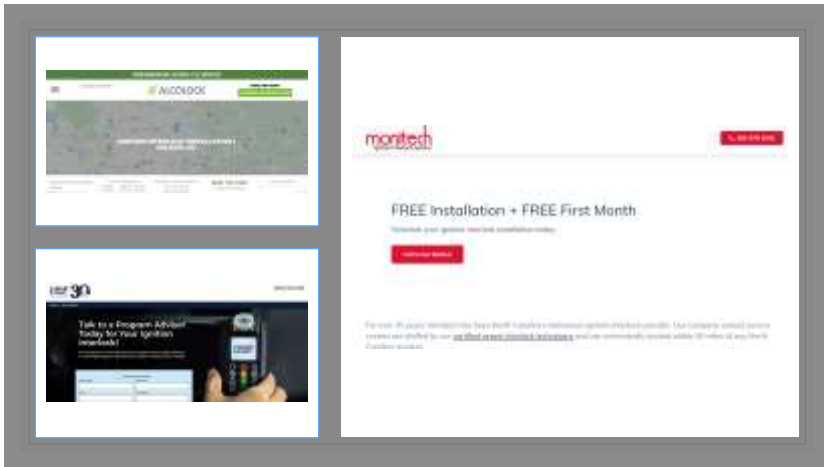
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2022 DWI Statistical Report Data

Special Circumstances

- Defendant was convicted of a Level 1 DWI and was ordered to serve 30 days of imprisonment as a condition of special probation.
- After being placed on probation the defendant deployed to Iraq. Upon his return, he was diagnosed with PTSD and other medical issues.
- The probation officer appeared in court with a representative from Operation Recovery—a group that helps veterans—and requested that the court modify the sentence so that the defendant would not have to serve 30 days of imprisonment. The probation officer submitted an assessment from a VA doctor who recommended that the defendant not serve the jail time of PTSD and other mental health issues.
- What do you do?

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Why impose ignition interlock?

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Prevents impaired driving.

4. Deterrence: DWI Offender Treatment, Monitoring, and Control

Countermeasure	Effectiveness	Cost	Use	Time
4.1 Alcohol Problem Assessment and Treatment	★★★★★	Varies	High	Varies
4.2 Alcohol Ignition Interlocks [†]	★★★★★	\$\$	Medium	Medium
4.3 Vehicle and License Plate Sanctions [†]	★★★★	Varies	Medium	Medium
4.4 DWI Offender Monitoring [†]	★★★★	\$\$\$	Unknown	Varies
4.5 Lower BAC Limit for Repeat Offenders	★★★★	\$	Low	Short

[†] Proven for reducing recidivism

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Saves lives.

Requiring ignition interlocks for all drunk-driving convictions was associated with 15% fewer alcohol-involved crash deaths, compared with states with less-stringent requirements. Interlocks are a life-saving technology that merit wider use.

Kaufan, Elinore J. & Wiebe, Douglas J., *Impact of State Ignition Interlock Laws on Alcohol-Involved Crash Deaths in the United States*, 106 AM. J. PUB. Health, No. 5, 865-71 (2016).

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When Is Ignition Interlock Required?



In connection with certain limited driving privileges

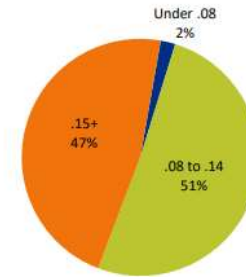


In connection with certain license restorations

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◦ SOURCE: NC Sentencing and Policy Advisory Commission, 2022 DWI Statistical Report

Figure F: Convictions by BAC



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Limited Driving Privileges & Interlock

Ignition Interlock is **required** if person had AC of 0.15 or more

- G.S. 20-179.3(c1)
- Person may only drive vehicle with ignition interlock and person must activate ignition interlock
- Exception for employer-owned vehicles (G.S. 20-179.3(g4)).

For **any** limited driving privilege under G.S. 20-179.3, judge **may** impose ignition interlock

- G.S. 20-179.3(g3)

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S.L. 2021-182: Limited Driving Privileges

No 45-day delay for limited driving privilege issued to person convicted of impaired driving based on AC of 0.15 or more

- Effective December 1, 2021 for limited driving privileges issued on or after that date
- Also eliminated heightened driving restrictions that applied to limited driving privileges issued to high-risk drivers

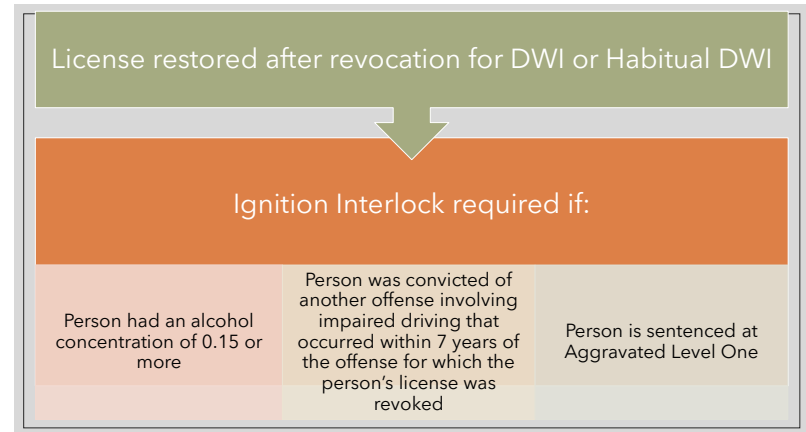
Time and purpose restrictions for a limited driving privilege issued under G.S. 20-179.3 eliminated if privilege orders ignition interlock

- Effective June 1, 2022 for limited driving privileges issued on or after that date

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- Person may only operate a vehicle with Ignition Interlock
- Person must personally activate Ignition Interlock before driving
- Person may not drive with an alcohol concentration of 0.02 or greater
- Person must designate any registered vehicle that the person owns and intends to operate, and equip vehicle(s) with ignition interlock
- DMV must cancel the driver's license of any person for operating a vehicle that has not been designated and equipped with ignition interlock

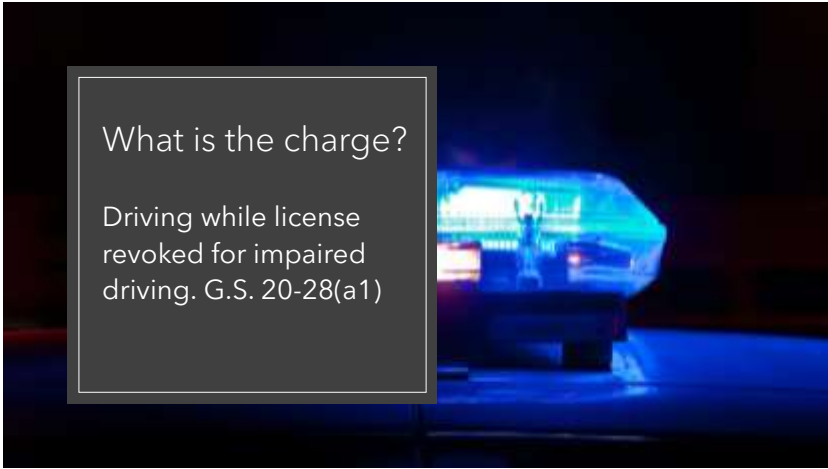


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OCCUR/ BEGIN DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION
11-27-2021	11-27-2022	SUSP: VIOLATION OF ALCOHOL RESTRICTION -- LOGGER STATUTE: 20-19(c3) AND/OR 20-17.8(g)
9-28-2021	9-28-2021	CONV: (785) VIOL ALCOHOL RESTRICTN -- LOGGER COURT: MONITECH INC, NC COURT: AOC #: AB1CD0000123 CITATION ID: 1234567

VENDOR-REPORTED VIOLATIONS

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