

Elements of Motor Vehicle Offenses

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DWI Offenses	Elements	Items to note
DWI: G.S. 20-138.1 Misdemeanor sentenced under G.S. 20-179	<ol style="list-style-type: none"> 1. Drive 2. Vehicle 3. Street/highway or PVA 4. While impaired <ol style="list-style-type: none"> a. Under influence b. 0.08 AC c. Schedule I 	p. 29 of yellow book
DWI in commercial motor vehicle: G.S. 20-138.2 Misdemeanor sentenced under G.S. 20-179	<ol style="list-style-type: none"> 1. Drive 2. Commercial motor vehicle 3. Street/highway or PVA 4. While impaired <ol style="list-style-type: none"> a. Under influence b. 0.04 AC c. Schedule I 	p. 68 of yellow book Not a lesser included offense of DWI. Can charge both. Limit on aggregate punishment.
Habitual impaired driving: G.S. 20-138.5 Class F felony	<ol style="list-style-type: none"> 1. DWI 2. Has been convicted of 3 or more offenses involving impaired driving within 10 years of offense 	p. 52 of yellow book

Zero Tolerance Offenses	Elements	Items to Note
<p>Driving after consuming by person < 21: G.S. 20-138.3</p> <p>Class 2 misdemeanor</p>	<ol style="list-style-type: none"> 1. Less than 21 2. Drive 3. Motor vehicle 4. Highway or PVA 5. <ol style="list-style-type: none"> a. While consuming alcohol; b. At any time while person has remaining in his or her body any alcohol previously consumed; or c. Any time while he or she has remaining in his or her body any previously consumed controlled substance, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts 	<p>p. 75 of yellow book</p> <p>Not a lesser included offense of DWI, but punishment limitations apply.</p>
<p>Operating commercial motor vehicle after consuming: G.S. 20-138.2A</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Commercial motor vehicle* 3. Street, Highway, or PVA 4. While consuming alcohol or while alcohol remains in body 	<p>p. 76 of yellow book</p> <p>*Does not apply to the driving of Class C motor vehicles designed to transport 16 or more passengers or that are transporting hazardous material</p>
<p>Driving school bus/child care vehicle/ambulance/EMS vehicle/firefighting vehicle/LE Vehicle after consuming: G.S. 20-138.2B</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. School bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle 3. Street, Highway, or PVA 4. While consuming alcohol or while alcohol remains in body 	<p>p. 77 of yellow book</p> <p>Does not apply to law enforcement officers acting in the course of, and within the scope of, their duties</p>

Driver's License Offenses	Elements	Items to Note
<p>Driving while license revoked: G.S. 20-28(a)</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Highway 4. While driver's license or privilege to drive in NC is revoked 5. With knowledge of revocation 	<p>p. 101 of Pulled Over</p> <p>Does not apply to driving a bicycle or moped.</p> <p>Mailing of DMV notice raises presumption that defendant received notice.</p>
<p>Driving while license revoked for impaired driving: G.S. 20-28(a1)</p> <p>Class 1 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Highway 4. While driver's license or privilege to drive in NC is revoked 5. With knowledge of revocation 6. License is revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) 	<p>p. 103 of Pulled Over</p> <p>A person subject to ignition interlock who violates that condition commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1). See G.S. 20-17.8(f).</p> <p>Driving in violation of the terms of a limited driving privilege constitutes the offense of DWLR. If the limited driving privilege was issued to permit driving during an impaired driving revocation, then violation of its terms constitutes DWLR for an impaired driving revocation.</p>
<p>No operator's license: G.S. 20-7(a)</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Highway 4. Without a valid license 	<p>p. 98 of Pulled Over</p>
<p>Failure to comply with license restriction: G.S. 20-7(e)</p> <p>Class 3 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Highway 4. In violation of license restriction 	<p>p. 98 of Pulled Over</p> <p>This is proper charge for violation of alcohol concentration restriction.</p>

Rules of the Road	Elements	Items to Note
Reckless driving: G.S. 20-140(a) <i>Carelessly and heedlessly</i> Class 2 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. Vehicle 3. Highway or PVA 4. Carelessly and heedlessly 5. In willful or wanton disregard 6. Of the rights and safety of others 	p. 133 of Pulled Over
Reckless driving: G.S. 20-140(b) <i>Endangering persons or property</i> Class 2 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. Vehicle 3. Highway or PVA 4. Without due caution and circumspection 5. At a speed or in a manner 6. That endangers or is likely to endanger any person or property 	p. 133 of Pulled Over A person who violates both G.S. 20-140(a) and (b) in “one continuous operation of [a] vehicle” may be convicted of only one offense of reckless driving.
Aggressive driving: G.S. 20-141.6(a) Class 1 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others 4. Street/highway or PVA 5. In violation of speed restrictions in G.S. 20-141 or speed restrictions in school zones in G.S. 20-141.1 	p. 144 of Pulled Over Reckless driving is a lesser-included offense of aggressive driving.

<p>Hit and run: G.S. 20-166(a1) <i>Failure to stop, remain at scene when injury occurs</i></p> <p>Class H felony</p>	<ol style="list-style-type: none"> 6. Drive 7. Vehicle 8. Street/highway or PVA 9. Involved in crash 10. Causing injury 11. Knows or reasonably should that vehicle was involved in crash causing injury 12. Willfully <ol style="list-style-type: none"> a. Fails to stop b. Fails to remain at scene, or c. Facilitates removal of vehicle 	<p>p. 165 of Pulled Over</p> <p>An exception permits a driver to leave the scene of a crash in his or her vehicle to call for a law enforcement officer, to call for or obtain medical assistance or treatment, or to remove himself, herself, or others from significant risk of injury. A driver who leaves for one of these purposes must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer.</p>
<p>Hit and run: G.S. 20-166(b) <i>Failure to give information or assistance when injury, serious bodily injury, or death occurs</i></p> <p>Class 1 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Vehicle 3. Street/highway or PVA 4. Involved in crash 5. Causing injury, serious bodily injury, or death 6. Knows or reasonably should that vehicle was involved in crash causing injury, serious bodily injury, or death 7. Driver fails to <ol style="list-style-type: none"> a. Give name, address, DL #, license plate number of vehicle involved in crash to person struck by his or her vehicle or to the driver or occupants of any vehicle with which he or she collided; or b. Render reasonable assistance to any person injured, including calling for medical assistance if it is apparent that such assistance is necessary or is requested by injured person 	<p>p. 166 of Pulled Over</p> <p>A driver is not required to give information to person who is not physically and mentally capable of receiving it.</p>

<p>Misdemeanor flee to elude: G.S. 20-141.5(a)</p> <p>Class 1 misdemeanor If violation causes death, Class H felony</p>	<ol style="list-style-type: none"> 1. Drive 2. Motor vehicle 3. Street/highway or PVA 4. While fleeing or attempting to elude a LEO who is lawfully performing duties 	<p>p. 143 of Pulled Over</p>
<p>Felony flee to elude: G.S. 20-141.5(b)</p> <p>Class H felony If violation causes death, Class E felony</p>	<p>Misdemeanor flee to elude, plus two of the following:</p> <ol style="list-style-type: none"> 1. Speeding more than 15 m.p.h. over the legal speed limit; 2. Person's faculties are grossly impaired while driving due to: <ol style="list-style-type: none"> a. consumption of an impairing substance; or b. BAC of 0.14 or more; 3. Reckless driving under G.S. 20-140; 4. Negligent driving leading to an accident causing: <ol style="list-style-type: none"> a. property damage of more than \$1,000; or b. personal injury; 5. Driving while driver's license is revoked; 6. Driving over speed limit on school property, in school zone, or in a highway work zone; 7. Passing a stopped school bus under G.S. 20-217; or 8. Driving with a child under 12 in the vehicle. 	<p>p. 143 of Pulled Over</p> <p>Motor vehicle subject to seizure if driven by person charged with felony flee to elude.</p> <p>Officer must seize motor vehicle unless (1) it has been reported stolen or (2) is a rental vehicle and the driver is not listed as an authorized driver on contract. G.S. 20-28.3(a1).</p> <p>Seizing officer presents affidavit of impoundment to magistrate. Magistrate determines if seizure requirements are met.</p>

Death by vehicle offenses	Elements	Items to Note
<p>Second degree murder: G.S. 14-17</p> <p>Class B2 felony if based on inherently dangerous act performed in reckless and wanton manner, such as DWI</p>	<ol style="list-style-type: none"> 1. Killing 2. Another person 3. With malice 	<p>p. 58 of yellow book</p>
<p>Involuntary manslaughter: Common law offense</p> <p>Class F felony</p>	<ol style="list-style-type: none"> 1. Kill 2. Another person 3. (a) By an unlawful act that does not amount to a felony and is not ordinarily dangerous to life or (b) by a culpably negligent act or omission 	<p>p. 60 of yellow book</p> <p>DWI is culpable negligence.</p> <p>DWI and proximately causing death of another is both involuntary manslaughter and felony death by vehicle. A person convicted of both offenses based on a single death in a single incident may be sentenced only for felony death by vehicle, the more serious offense.</p> <p>This offense is not limited to deaths caused by DWI.</p> <p>Violation of traffic laws other than DWI unintentionally or negligently is not culpable negligence unless act is likely to result in death/great bodily harm. Consider whether the person intentionally violated a statute (culpable negligence) or simply negligently failed to observe its provisions (ordinary negligence).</p>

<p>Felony death by vehicle: G.S. 20-141.4(a1)</p> <p>Class D felony</p>	<ol style="list-style-type: none"> 1. Unintentionally cause death of another 2. While engaged in offense of (a) DWI under G.S. 20-138.1 or (b) DWI in commercial motor vehicle under G.S. 20-138.2 3. DWI is proximate cause of death 	<p>p. 61 of yellow book</p> <p>Does not include deaths caused by motor vehicle offenses other than DWI and DWI in commercial motor vehicle</p>
<p>Aggravated felony death by vehicle: G.S. 20-141.4(a5)</p> <p>Class D felony (sentenced in aggravated range)</p>	<ol style="list-style-type: none"> 1. Felony death by vehicle 2. Prior conviction for offense involving impaired driving within 7 years 	<p>p. 62 of yellow book</p>
<p>Repeat felony death by vehicle: G.S. 20-141.4(a6)</p> <p>Class B2 felony</p>	<ol style="list-style-type: none"> 1. Felony death by vehicle 2. Previous conviction for felony death by vehicle, aggravated felony death by vehicle, or murder based on the unintentional death of another person while engaged in DWI 	<p>p. 63 of yellow book</p>
<p>Misdemeanor death by vehicle: G.S. 20-141.4(a2)</p> <p>Class A1 misdemeanor</p>	<ol style="list-style-type: none"> 1. Unintentionally cause death of another 2. While violating a state law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic – other than DWI 3. Traffic offense is proximate cause of death 	<p>p. 64 of yellow book</p>

Serious Injury by Vehicle	Elements	Items to Note
<p>Felony serious injury by vehicle: G.S. 20-141.4(a3)</p> <p>Class F felony</p>	<ol style="list-style-type: none"> 1. Unintentionally cause serious injury to another person 2. While engaged in DWI or DWI in commercial motor vehicle 3. DWI is proximate cause of serious injury 	<p>p. 64 of yellow book</p> <p>Serious injury is not defined by statute. Refer to definitions in assault context. Consider pain and suffering, loss of blood, hospitalization, and/or time lost from work.</p> <p>This offense is limited to DWI and does not include serious injuries caused by other types of traffic offenses.</p>
<p>Aggravated felony serious injury by vehicle: G.S. 20-141.4(a4)</p> <p>Class E felony</p>	<ol style="list-style-type: none"> 1. Felony serious injury by vehicle 2. Previous conviction for offense involving impaired driving within 7 years of offense 	<p>p. 66 of yellow book</p>

Definitions.

Drive: To be in actual physical control of a vehicle that is in motion or that has the engine running. Drive and operate have the same meaning. G.S. 20-4.01(7), (25).

Vehicle: Any device that will take people or property down the road other than devices moved by human power. But, bicycles are vehicles, even though human-powered. Segways are not vehicles. And certain devices used by a person who has a mobility impairment are not vehicles. G.S. 20-4.01(49).

Motor Vehicle: Every vehicle that is self-propelled and every vehicle designed to run on the highways that is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term does not include mopeds or electric assisted bicycles. G.S. 20-4.01(23).

Moped: A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each. G.S. 20-4.01(27)j.

Commercial Motor Vehicle: Any of the following vehicles designed or used to transport passengers or property:

- a. A Class A motor vehicle that has a combined gross vehicle weight rating (GVWR) of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds;
- b. A Class B motor vehicle: (1) a single motor vehicle that has a GVWR of at least 26,001 pounds or (2) a combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds;
- c. A Class C motor vehicle that:
 1. Is designed to transport sixteen or more passengers, including the driver; or
 2. Is transporting hazardous materials and is required to be placarded in accordance with federal regulations.

G.S. 20-4.01(3d).

Street, Highway: The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. G.S. 20-4.01(13), (46).

Public Vehicular Area: Any area within the State of North Carolina that meets one or more of the following requirements:

- a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:
 1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
 2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.
 3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina.
- b. The area is a beach area used by the public for vehicular traffic.
- c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.
- d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.
G.S. 20-4.01(32).

While Impaired: Impairment can be proved in one of three ways. To violate G.S. 20-138.1, the person must drive:

1. While under the influence of an impairing substance;
2. After having consumed sufficient alcohol that the person has, at any relevant time after the driving an alcohol concentration of 0.08 or more; or
3. With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

Impairing substance: Alcohol, controlled substance under Chapter 90, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

Offense involving impaired driving: The following are offenses involving impaired driving:

1. Impaired driving under G.S. 20-138.1
2. Habitual impaired driving under G.S. 20-138.5
3. Impaired driving in a commercial vehicle under G.S. 20-138.2
4. Death or serious injury by vehicle under G.S. 20-141.4 based on impaired driving
5. Murder under G.S. 14-17 based on impaired driving
6. Involuntary manslaughter under G.S. 14-18 based on impaired driving
7. Substantially similar offenses committed in another jurisdiction.
G.S. 20-4.01(24a).

Impaired driving license revocation: The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

- G.S. 20-13.2 Driving after consuming alcohol/drugs while less than 21
- G.S. 20-16(a)(8b) Military driving while impaired
- G.S. 20-16.2 Refused chemical test
- G.S. 20-16.5 Civil license revocation
- G.S. 20-17(a)(2) Driving while impaired; driving while impaired in a commercial motor vehicle
- G.S. 20-17(a)(12) Transporting open container – second or subsequent
- G.S. 20-138.5 Habitual driving while impaired
- G.S. 20-16(a)(7) Out-of-state offense similar to DWI resulting in NC revocation
- G.S. 20-17(a)(1) Manslaughter involving DWI
- G.S. 20-17(a)(3) Any felony in the commission of which a motor vehicle is used if the offense includes impaired driving
- G.S. 20-17(a)(9) Any offense set forth under G.S. 20-141.4 based on impaired driving
- G.S. 20-17(a)(11) Conviction of assault with a motor vehicle if the offense involves impaired driving; or
- The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed above.

G.S. 20-28.2(a).

Crash: Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash share the same meaning. G.S. 20-4.01(4b).