

DWI Sentencing

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Sentencing under G.S. 20-179

- Separate scheme from structured sentencing
- No indefinite PICs
- Mandatory minimums
- Good time credit
- Parole eligible
- Substance abuse assessment and education or treatment required as condition of probation

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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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The screenshot shows a legal document titled "DWI Sentencing" with a table of offenses and a flowchart for determining applicable law.

Offense	Applicable Law	Notes
G.S. 20-138.1 (Impaired Driving)	Level 5	Applicable to all convictions.
G.S. 20-138.2 (Impaired Driving in a Commercial Vehicle)	Level 4 or 5	Applicable to all convictions. Level 4 for first conviction, Level 5 for second or subsequent conviction.
G.S. 20-138.2A (Impaired Driving in a Commercial Vehicle After Consuming Alcohol)	Level 4 or 5	Applicable to all convictions. Level 4 for first conviction, Level 5 for second or subsequent conviction.
G.S. 20-138.2B (Impaired Driving in a School Bus, Child Care Vehicle, Emergency or Law Enforcement Vehicle After Consuming)	Level 4 or 5	Applicable to all convictions. Level 4 for first conviction, Level 5 for second or subsequent conviction.

The flowchart on the right side of the page is titled "Determine the Applicable Law" and outlines the process for determining the applicable law based on the offense and the defendant's conviction history.

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Punishment Level Controlling Statute 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(c)(4) 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(c)(4)	<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 factors 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"> o Imprisonment for at least 72 hours as a condition of special probation o 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"> o Imprisonment for 48 hours as a condition of special probation o 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"> o Imprisonment for 24 hours as a condition of special probation o 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
1. Prior conviction for offense involving impaired driving (within 7 years)
 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
- * Presence of this factor alone requires sentencing at Level One

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STATE OF NORTH CAROLINA

File No. _____
In The General Court Of Justice
District _____ Superior Court Division

County _____

STATE VERSUS

Name Of Defendant _____

**IMPAIRED DRIVING
DETERMINATION OF SENTENCING FACTORS
(For Offenses Committed On Or After Dec. 1, 2011)**
G.S. 20-179

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 tier 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., 1.f., or 1.g. 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.

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

(NOTE: Either Nos. 1 and 2 or No. 3 apply in each case except alders and abettors. 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 been 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 been 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. 20-38.7.

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Duties of the Prosecutor

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

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STATE OF NORTH CAROLINA

County: _____ In The General Court Of Justice
 District Superior Court Division

Defendant Name: _____

STATE VERSUS _____

PROSECUTOR'S DISMISSAL AND EXPLANATION
 (Implied-Consent Offense Or Driving While License Revoked For An Impaired Driving License Revocation)
 G.S. 20-138.4

NOTE: Prosecutor signs and completes both sides of this form.

File Number	Count No. (s)	Offense(s)

DISMISSAL (NOTE: Recall all outstanding Orders For Arrest in a dismissed case.)
 The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

1. No crime is charged.

2. There is insufficient evidence to warrant prosecution for the following reasons: _____

3. Defendant has agreed to plead guilty to the following charges: _____

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Special Rules

1. May award credit against term of imprisonment for inpatient treatment obtained after commission of offense.
2. May order special probation to be served in 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 for DWI



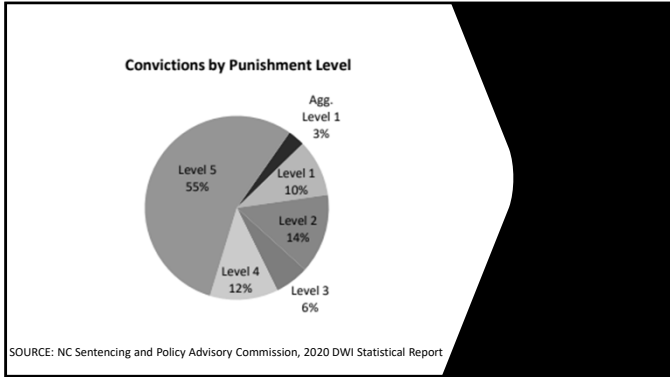
Local Jail

Active sentence for DWI

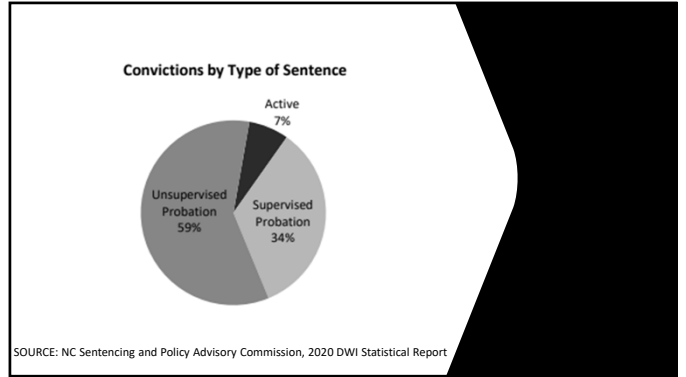


Statewide Misdemeanor Confinement Program

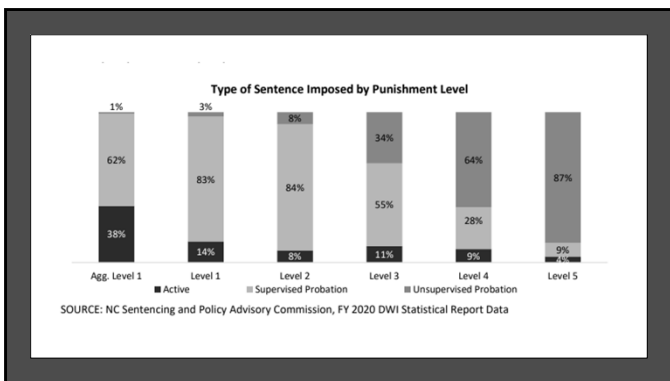
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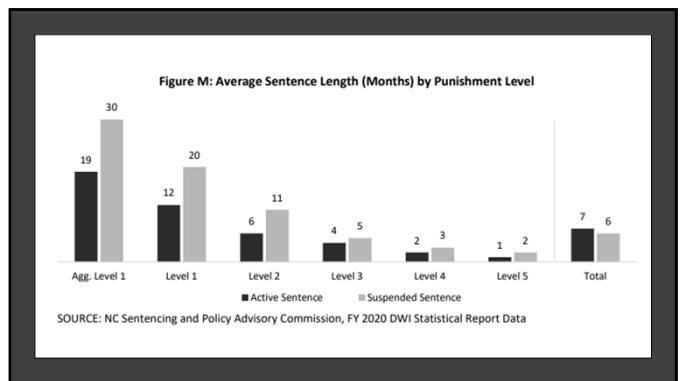
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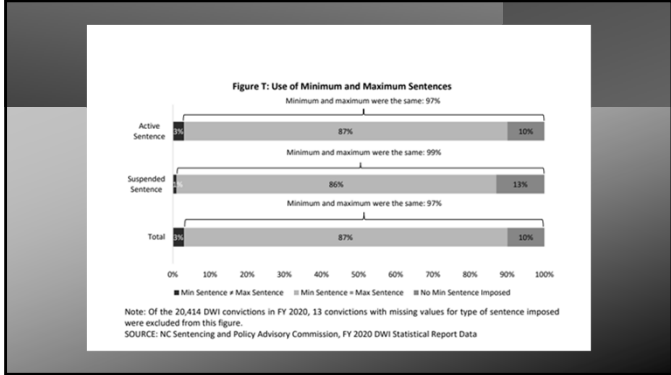
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Recently Asked Questions

- Is house arrest permissible?
- What about terminating probation?
- Can you delay service of the term of imprisonment?
- If 0.15 BAC is suppressed for trial, has it been suppressed for sentencing?
- When can you issue a limited driving privilege if the person refuses?
 - Six months of refusal revocation
 - Underlying charge must be resolved

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