

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

Level	Factors	Minimum Sentence	Maximum Sentence	If Suspended, <sup>1</sup> Special Probation Requiring:	Maximum Fine
<b>A1</b>	3 GAFs	12 months	36 months	Active term of at least 120 days and 120 days of CAM	\$10,000
<b>1</b>	2+ GAFs or 1 minor/disabled GAF	30 days	24 months	Active term of at least 30 days	\$4,000
<b>2</b>	1 GAF	7 days	12 months	Active term of at least 7 days	\$2,000
<b>3</b>	Agg. > Mitigating	72 hours	6 months	Active term of at least 72 hours — And/or at least 72 hours community service	\$1,000
<b>4</b>	Agg. = Mitigating	48 hours	120 days	48 hours active— And/or 48 hours community service	\$500
<b>5</b>	Mitig. > Agg.	24 hours	60 days	24 hours active— And/or 24 hours community service	\$200

<sup>1</sup> 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 on or after 12/1/2011.)

**Grossly Aggravating Factors (GAFs)** (if 1 GAF (other than GAF #4), **Level 2**; if 2 GAFs or GAF #4, **Level 1**; if 3 or more GAFs, **Level A1**):

- (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  - c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.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 at time of offense with any of the following persons in vehicle: child under age of 18, person with mental development of child under 18, or person with physical disability preventing unaided exit from vehicle.

**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**