

DWI
Sentencing Changes--2006

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Things That Aren't Changed

- Levels of Punishment
- Factors in gross aggravation, aggravation or mitigation
- Fines
- Mandated lengths of punishment

Things That Are Changed

- Eliminate non operation period for levels 3-5
- Aggravating factors burden of proof beyond reasonable doubt
- Less discretion in how special probation is structured
- Mandatory parole conditions (after serving minimum and completing treatment)
 - Residential treatment program, or
 - Community service parole, or
 - Electronic monitoring while on parole
- Appeals to superior court

Appeals

- (c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved.

Appeals

- Sentence imposed by the district court is vacated upon giving notice of appeal
- The case shall only be remanded back to district court with the consent of the prosecutor and the superior court.
 - Before calendared (15A-1431 allows withdrawal at any time)
 - After calendared (15A-1431 allows withdrawal with court consent and payment of costs)

Appeals

- When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions
 - Which judge?
 - Can you hear new evidence or make different factor findings (that a child was under 16 or that serious injury was involved?)
- Pending charges of offenses involving impaired driving--delay sentencing in the remanded case until all cases are resolved
 - In what court?
 - Applicable only to resentencing, so can sentence initially with other pending charges
