

DWI Sentencing

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April 1, 2009



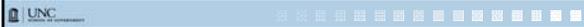
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Level	Factors	Minimum Sentence	Maximum Sentence	If Suspended, Special Probation Requiring	Maximum Fine
1	2 + GA Factors	30 days	24 months	Active term of at least 30 days	\$4,000
2	1 GA Factor	7 days	12 months	Active term of at least 7 days	\$2,000
3	Agg. > Mitig.	72 hours	6 months	Active term of at least 72 hrs -- And/or at least 72 hrs comm. service within 90 days	\$1,000
4	Agg. = Mitig.	48 hours	120 days	48 hrs active -- And/or 48 hrs comm. service within 60 days	\$500
5	Mitig. > Agg.	24 hours	60 days	24 hrs active -- And/or 24 hrs comm. service within 30 days	\$200

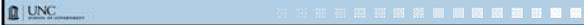
G.S. 20-179 governs sentencing for:

1. G.S. 20-138.1 (impaired driving)
2. G.S. 20-138.2 (impaired driving in a commercial vehicle)
3. 2nd or subseq. conviction of G.S. 20-138.2A (operating commercial vehicle after consuming)
4. 2nd or subseq. conviction of G.S. 20-138.2B (operating school bus, school activity bus, or child care vehicle after consuming)



Special Rules

1. Judge must hold sentencing hearing
2. Judge must make written findings of aggravating and mitigating factors. G.S. 20-179(c1).
3. State must prove aggravating factor beyond a reasonable doubt
4. Defendant must prove by a preponderance that mitigating factor exists
5. Prosecutor must
 - present defendant's record of traffic convictions
 - present all grossly aggravating and aggravating factors of which he is aware
 - present evidence of the AC from valid chemical analysis
6. No PJsCs
7. Aiders and Abettors punished at Level 5
8. May not consolidate DWIs for judgment
9. For any suspended sentence, defendant must obtain substance abuse assessment and the education or treatment required by 20-17.6 (ADET school or substance abuse treatment program)
10. Judge may not give credit for first 24 hours in jail pending trial



What about Chapter 15A?

- SSA does not apply to impaired driving under G.S. 20-138.1
 - G.S. 15A-1340.10
- Persons convicted of impaired driving under G.S. 20-138.1 may be placed on probation
 - G.S. 15A-1341(a)
- A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation
 - Total of all periods of confinement imposed as special probation may not exceed ¼ the maximum penalty allowed by law
 - G.S. 15A-1351(a)



**Grossly Aggravating Factors
(G.S. 20-179)**

1. Certain prior convictions for an offense involving impaired driving
2. DWLR if revocation was impaired driving revocation
3. Serious Injury
4. Child under 16 in the vehicle

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1(a). Is conviction in #08-CR-100 a GAF for #08-CR-500?

1. Yes
2. No

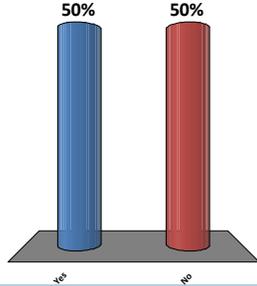
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- A prior conviction for an offense involving impaired driving is a grossly aggravating factor if:
 - The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
 - The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
 - 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.
- A “conviction” is defined in G.S. 20-4.01 as a “final conviction.”
- G.S. 15A-1431 provides that a defendant convicted in the district court may appeal to the superior court for trial de novo.

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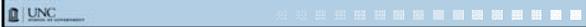
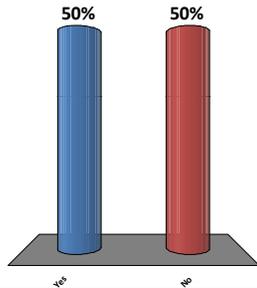
1(b). Now is the conviction in #08-CR-100 a GAF for #08-CR-500?

- 1. Yes
- 2. No



1(c). Is the conviction in #08-Cr-500 a GAF in #08-CR-100?

- 1. Yes
- 2. No

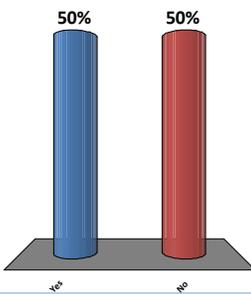


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 - The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
 - The conviction occurred in district court; the case was appealed to superior 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.
- A “conviction” is defined in G.S. 20-4.01 as a “final conviction.”
- G.S. 15A-1431 provides that a defendant convicted in the district court may appeal to the superior court for trial de novo.



1(c). May Driver appeal the sentence in #08-CR-100?

1. Yes
2. No



Response	Percentage
Yes	50%
No	50%

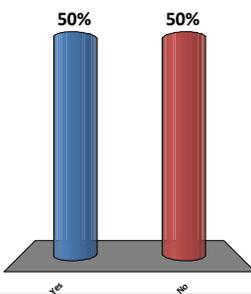
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- G.S. 20-38.7 provides that following a new sentencing hearing in district court a defendant has a right of appeal to superior court only if:
 - The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated sentence, **and**
 - The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.
- The sentence imposed upon Driver in Case #08-CR-100 is based upon a prior conviction, which is not subject to jury determination under G.S. 20-179.

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2. Is either conviction a GAF for the other conviction?

1. Yes
2. No



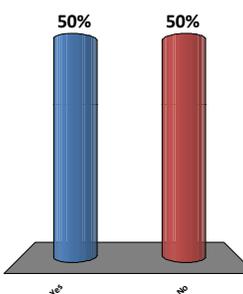
Response	Percentage
Yes	50%
No	50%

UNC

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 - The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
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 - 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.
- A “conviction” is defined in G.S. 20-4.01 as a “final conviction.”
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2. Are both cases Level 2 DWIs?

1. Yes
2. No



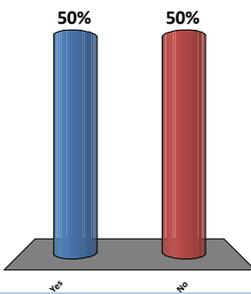
Response	Percentage
Yes	50%
No	50%

Turn to DWI Sentencing Handout



A. Is the prior conviction a GAF?

1. Yes
2. No



Response	Percentage
Yes	50%
No	50%

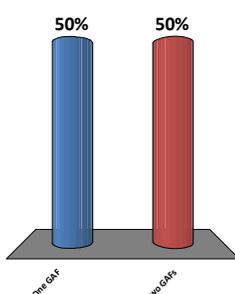
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- Prior conviction must be for an offense involving impaired driving to be a GAF
- An **offense involving impaired driving** is defined in G.S. 20-4.01(24a) as any of the following offenses:
 - Impaired driving under G.S. 20-138.1
 - Habitual impaired driving under G.S. 20-138.5
 - Impaired driving in commercial vehicle under G.S. 20-138.2
 - Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
 - 1st or 2nd degree murder under G.S. 14-17 based on impaired driving
 - Involuntary manslaughter under G.S. 14-18 based on impaired driving
 - Substantially similar offenses committed in another state or jurisdiction

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B. You find

1. One GAF
2. Two GAFs



Response	Percentage
One GAF	50%
Two GAFs	50%

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Impaired driving license revocation -- defined by G.S. 20-28.2(a) as revocation made under:

- G.S. 20-13.2: consuming alcohol/drugs or willful refusal by driver <21
- G.S. 20-16(a)(8b): military driving while impaired
- G.S. 20-16.2: refused chemical test
- G.S. 20-16.5: pretrial civil license revocation
- G.S. 20-17(a)(2): impaired driving or commercial impaired driving
- G.S. 20-138.5: habitual impaired driving
- G.S. 20-17(a)(12): transporting open container
- G.S. 20-16(a)(7): impaired driving out of state resulting in N.C. revocation
- G.S. 20-17(a)(1): manslaughter or 2nd degree murder invol. imp. driving
- G.S. 20-17(a)(3): felony involving use of MV, involving imp. driving
- G.S. 20-17(a)(9): felony/ misd. death/serious injury by vehicle involving impaired driving
- G.S. 20-17(a)(11): assault with motor vehicle involving impaired driving
- G.S. 20-28.2(a)(3): The laws of another state (Not GAF)

C. You find:

1. 1 GAF
2. 2 GAFs

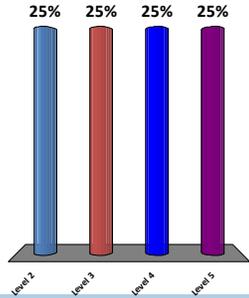
Category	Percentage
1 GAF	50%
2 GAFs	50%

Impaired driving license revocation -- defined by G.S. 20-28.2(a) as revocation made under:

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- G.S. 20-17(a)(2): impaired driving or commercial impaired driving
- G.S. 20-138.5: habitual impaired driving
- G.S. 20-17(a)(12): transporting open container
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- G.S. 20-17(a)(1): manslaughter or 2nd degree murder invol. imp. driving
- G.S. 20-17(a)(3): felony involving use of MV, involving imp. driving
- G.S. 20-17(a)(9): felony/ misd. death/serious injury by vehicle involving impaired driving
- G.S. 20-17(a)(11): assault with motor vehicle involving impaired driving
- G.S. 20-28.2(a)(3): The laws of another state (Not GAF)

D. Your ruling:

- 1. Level 2
- 2. Level 3
- 3. Level 4
- 4. Level 5



E. Your Sentence

- 1. 24 hours CS
- 2. Special Probation, 24 hours active
- 3. 24 hours active
- 4. None of the above

