

PUNISHMENT LEVELS FOR IMPAIRED DRIVING

*Note Well: Structured sentencing does not apply.*

N.C.P.I.--Crim. 270.05

Level	One	Two	Three	Four	Five
AGGRAVATING/ MITIGATING FACTORS	Two or more grossly aggravating factors	One grossly aggravating factor	Aggravating factors outweigh mitigating factors	No aggravating/mitigating factors or they counter- balance each other	Mitigating factors outweigh aggravating factors
FINE	Up to \$2,000	Up to \$1,000	Up to \$500	Up to \$250	Up to \$100
IMPRISONMENT: FULL MAXIMUM	2 years	1 year	6 months (must suspend)	120 days (must suspend)	60 days (must suspend)
MAXIMUM UNDER SPLIT SENTENCE	6 months*	3 months*	1 1/2 months*	48 hours	24 hours
MINIMUM REQUIRED SENTENCE	14 days in jail	7 days in jail	72 hours in jail or 72 hours community service or 90 days without driving or Combination of above	48 hours in jail or 48 hours community service or 60 days without driving or Combination of above	24 hours in jail or 24 hours community service or 30 days without driving or Combination of above
CONDITIONS OF PROBATION Substance abuse assessment required within 30 days for all levels if defendant is placed on probation.	(1) & (2) required if probation imposed. The term of imprisonment may be suspended only if a condition of special proba- tion is imposed to require the defendant to serve either (A) 14 days imprisonment or (B) 4 consecutive days imprisonment and then be placed under house arrest for twice the length of time remaining in minimum term (20 days).	(1) & (2) required if probation imposed. The term of imprisonment may be suspended only if a condition of special proba- tion is imposed to require the defendant to serve either (A) 7 days imprison- ment or (B) 2 consecutive days imprisonment and then be placed under house arrest for twice the length of time remaining in the minimum term (10 days).	Probation mandated and (1) & (2) required	Probation mandated and (1) & (2) required	Probation mandated and (1) & (2) required
LENGTH OF DMV REVOCAION	No prior conviction involving impaired driving in past three years: 1 year revocation One such conviction in past three years: four-year revocation, but may apply after two years if record good. Two such prior convictions (latest one in past five years): permanent, but may apply after three years if record good.	No prior conviction involving impaired driving in past three years: 1 year revocation One such conviction in past three years: four-year revocation, but may apply after two years if record good. Two such prior convictions (latest one in past five years): permanent, but may apply after three years if record good.	One year  (If an indigent defendant's prior conviction was obtained without counsel, it may not be used to set the punishment level, but it would be counted by the DMV to impose more than a one-year revocation in factually appropriate cases.)	One year	One year
LIMITED DRIVING PRIVILEGE	No	No	Yes, after 6 months revocation, if no prior convictions for offense involving impaired driving within 7 years of date of new offense; provided other conditions are met. G.S. 20-16.2(e1).		

PROBATION NOTES:

- (1) If placed on probation, defendant must successfully complete an Alcohol and Drug Education Traffic School--unless he has already completed such a school or the judge determines that he will not benefit from the school.
- (2) If the defendant (a) had an alcohol concentration of 0.20 or more or (b) had a prior conviction involving impaired driving in the past five years and either refused the test or tested at an alcohol concentration of 0.10 or more, he must as a condition of probation submit to a substance-abuse assessment and to treatment if the assessment shows it is needed.
- (3) The judge continues to have discretion to impose other appropriate conditions of probation.
- (4) The judge need not impose conditions of probation if Level One or Level Two punishment is imposed, but if he does not he must state in the judgment his reasons for not imposing them.
- (5) The defendant continues to have the right to refuse to agree to conditions of probation and to serve an active sentence.

FOOTNOTES:

1. Under G.S. 15A-1351(a), the imprisonment portion of a split sentence (special probation) may not exceed 6 months or one-fourth of the statutory maximum, whichever is less.
2. Pursuant to G.S. 15A-1351(a) the judge may order that a term of imprisonment imposed as a condition of probation under any level of punishment be served as an inpatient in a state facility for treatment of alcoholism or substance abuse.