

NORTH CAROLINA TRAFFIC LAWS--2004

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I. Privilege to Drive—North Carolina recognizes no “right to drive,” and instead has developed a strict “privilege to drive” approach to violations of its motor vehicle laws that can be unforgiving.

A. North Carolina Licenses

1. A person must hold a valid license by the North Carolina Department of Motor Vehicles (NCDMV), and must be in possession of that license, in order to lawfully operate a motor vehicle in this state. NCGS § 20—7
2. New Residents—with licenses issued by another jurisdiction, must obtain a license from the NCDMV within 60 days after becoming a resident.
3. Motorcycles—require a valid license and a motorcycle endorsement or a motorcycle learner’s permit
4. Exemptions—NCGS § 20—8
 - (a). Any person operating a motor vehicle that is the property of and in the service of the armed forces of the United States;
 - (b). Any person driving farm machinery on a highway; or
 - (c). A nonresident who is at least 16 years old who has in his immediate possession a valid driver’s license issued to him by his home state or country.
5. Issuance of Limited Learner’s Permits/Provisional Driver’s Licenses—see NCGS § 20—11

B. Reciprocal Agreements on Registration and Licensing – NCGS § 20—4.2

1. Automatic Reciprocity—NCGS § 20—4.8
2. Reciprocity as to Suspensions--N CGS § 20—4.20
3. Drivers License Compact—NCGS § 20—4.21 *et seq*
 - a. Mandatory Reports: manslaughter, negligent homicide, driving while impaired, a felony involving the use of a motor vehicle, and failure to stop and render aid in fatal or serious injury accidents
 - b. Permissive Reports: governed by NCGS § 20—23
4. North Carolina Records—out of state violations are collected on N.C. licensed drivers (and N.C. violations are reported to states of drivers with out of state licenses) for the following violations: offenses involving exceeding the posted speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competitions, engaging willfully in speed competitions, hit and run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of alcoholic beverages, and for any of the 15 violations found in NCGS § 20—17. NCGS § 20—26(a)

C. Authority of NCDMV to Suspend Licenses—the DMV has the authority to suspend a person’s license or driving privileges under a number of circumstances, some of which are listed below in the subsequent sections of this outline. NCGS § 20—16. Other bases are:

1. Within 12 months (offense date to offense date), a person has 2 or more convictions of speeding in excess of 55 and not more than 80 miles per hour, or one or more convictions of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour.
2. Conviction of speeding in excess of 75 miles per hour where the maximum speed is less than 70 miles per hour.
3. Conviction of speeding in excess of 80 miles per hour where the maximum speed is 70 miles per hour.
4. Speeding in excess of 15 miles per hour over the posted speed limit, when the ticketed speed is over 55 miles per hour
5. Within a three-year period, accumulating 12 or more driver’s license points (or 8 or more points within a three-year period after reinstatement of a license following a suspension/revocation for a traffic offense conviction).

D. Limited Driving Privileges—only a few circumstances apply wherein a person may have limited driving privileges after their driver’s license has been suspended or revoked:

1. DWIs—granted by and in discretion of a judge; only for the 12 months immediately following their conviction.
 - a. Not if Level 1 or 2 DWI convictions
 - b. Not if under the age of 21
 - c. Not applicable after the 12-month period following conviction has run
2. Suspensions by DMV for up to one year—totally within the discretion of DMV (not a matter of right).
3. Suspensions for certain offenses—granted by judges (e.g., C.1-3. situations above. NCGS § 20—16(e1)).
4. Civil license revocation for implied-consent offenses. NCGS § 20—16.5
5. No limited driving privileges are available for a person whose license is suspended or revoked for driving during a period of suspension or while license revoked, or for an indefinite period due to an unresolved DMV matter.

II. Insurance Points versus Driver’s License Points—while Driver’s license points affect your ability (privilege) to drive, in N.C. the insurance points assessed under the N.C. Safe Driver Incentive Plan (SDIP) determine the cost to each driver to exercise that privilege. The points are separately assessed based upon the below chart and may dramatically affect how you should handle routine violations. Due to variations from one county to another, it is important to know the latitude one has in negotiating reductions or dismissals of violations in each courtroom—many district attorney offices have policies covering these situations.

A. Chart

<u>Offense</u>	<u>NCDL Points</u>	<u>NCSDIP Points</u>
Manslaughter/Negligent Homicide	Susp	12
Prearranged Highway Racing	Susp	12
Hit & Run—bodily injury/death	Susp	12
DWI—0.08 BAC or more	Susp	12
Transporting Illegal Liquor for Sale	Susp	12
Highway Racing	Susp	10
Speeding to Elude	Susp	10
Driving While License Revoked or Suspended	Susp	8
Reckless Driving	4	4
Hit & Run—property damage only	4	4
Passing a Stopped School Bus	5	4
Speeding-->75 mph when limit < 70	Susp	4
Speeding-->80 mph when limit =/>70	3	4
Driving After Consuming Alcohol or Drugs < 21	Susp	4
At-Fault Accident—death or bodily Injury (>\$1,500) or property Damage (>\$2,500)	-	3
Illegal Passing	4	2
Following Too Closely	4	2
Driving on Wrong Side of Road	4	2
Stop Sign/Light Violation	3	1
Speeding Through Safety Zone	3	By Speed
No Operator's License (NOL)	3	1
Failure to Yield Right of Way	3	1
Failure to Stop for Siren	3	1
No Liability Insurance	3	1
At Fault Accident—property damage (>\$1,500, but <\$2,500)	-	2
Speeding-->10 mph over limit when Total speed > 55, but < 76	3	2
Speeding—=/<<10 mph over limit when In speed zone =/> 55	See Below	2
Speeding > 55 mph zone	3	By Speed
Speeding </= 55 mph zone	2	By Speed
Speeding in School Zone	3	By Speed
All other Moving Violations	2	1
Failure to Restrain Child in Restraint or Seat belt	2	1
At-Fault Accidents—bodily injury or property damage (<\$1,500)	-	1
Speeding =/< 10 mph over limit when Speed zone < 55	2	1

Littering—when from motor vehicle	1	-
Non-Moving Violations	0	0

B. Exemptions to SDIP—no SDIP points will be charged for:

1. Accidents—property damage only, damage < \$1,500, there is no conviction for related moving violation, and household has clean record during experience period.
2. Speeding 10 mph or less over posted limit—not in school zone and driver has no other moving violations in experience period (notwithstanding an isolated Prayer for Judgment Continued (PJC)).

C. Cost of Insurance Points (basic rate of \$300)

SDIP Pts	% Rate Increase	Cost @ Basic Rate
1	25%	\$375
2	45%	\$435
3	65%	\$495
4	90%	\$570
5	120%	\$660
6	150%	\$750
7	180%	\$840
8	220%	\$960
9	260%	\$1,080
10	300%	\$1,200
11	350%	\$1,350
12	400%	\$1,500

D. Miscellaneous

1. Experience Period = 3 years
2. Non-Moving Violations = city code violations, improper equipment, seat belt violations for adults, expired registration, inspection violations, etc. (but not “no liability insurance” or child seat restraint violations).
3. Only one PJC is available for each household every three years for the avoidance of SDIP points. A second or greater PJC may result in SDIP points being assessed for the underlying convictions.
4. NCDL points are only assessed for the greater offense when a person is convicted of two or more violations arising from a single occasion.
5. NCDL point suspensions—first for up to 60 days, second for up to 6 months, and any subsequent suspension shall not exceed one year.

III. Missed Court Dates & Mailed-In Payments of Tickets—both generally have adverse consequences.

A. Missed Court Dates—will result in a person being “Called and Failed” (C&F) and a “Failure to Appear” (FTA) notation entered in the clerk’s computer system.

1. Depending upon the offense, an “Order for Arrest” (OFA) will be

issued seeking the apprehension of the offending party so that they may be brought before the court to be heard on the original charges (violations) and their failure to appear.

2. For motor vehicle offenses, notice of the FTA is transmitted to the NCDMV on the 20th day following the missed court date, and NCDMV thereafter sends a suspension of driver's license notice to the person, to take effect automatically 60 days thereafter, should the FTA not be cleared up.

3. When assisting a person who has missed a traffic court date, ensure that you consider and address the FTA notice to DMV, or else their suspension will take effect on the 60th day noted in their suspension letter, despite you having a new court date set for them. A suspension under this provision remains "indefinite" until the underlying matter is cleared up.

B. Mailing-In Payments for Tickets—the only "safe" ticket to mail in payment of will be a simple adult seat belt violation. Most every other ticket is better handled in person with a district attorney, negotiating a reduction or dismissal of the violation. Adverse and unknown insurance and driver's license consequences frequently result when people just mail in their ticket payments.

IV. Prayers for Judgment Continued (PJC)s—not a "conviction," per se, but may ultimately have legal consequences of conviction. Only a judge may grant a PJC, not the prosecution (though the latter may not oppose or may affirmatively support one).

A. Safe Driver Incentive Program (Insurance Points)—one per household each three year period.

B. DMV Points/Consequences—two per person per five year period.

C. Criminal Charges—unlimited.

V. Driving While License Revoked (DWLR) and During Periods of Suspension

A. Class 1 Misdemeanor—see chart below for sentencing considerations.
NCGS § 20—28

B. Suspensions:

1. First Offense = one year

2. Second Offense = two year suspension

3. Third or Subsequent Offenses = permanent suspension (three years of non-operation of a motor vehicle before a person is eligible to petition for a hearing to have driving privileges reinstated).

C. Tips for Handling DWLR cases

VI. Driving While Impaired (DWI) (NCGS §§ 20—138.1, 20—179). North Carolina recognizes two means of proof of impairment—appreciably impaired faculties or a blood-alcohol concentration (BAC) of 0.08 or higher.

A. Five Misdemeanor Levels of DWI—determined by the existence of grossly aggravating factors, if any, and, if not, then by weighing any aggravating factors against any mitigating factors.

1. Level 5—least severe

(a). Criteria: No grossly aggravating factors, and the mitigating factors substantially outweigh any aggravating factors.

(b). Punishment: Fine up to \$200, imprisonment for from 24 hours to 60 days. If the sentence is suspended, the judge must impose either:

(1). Imprisonment for 24 hours;

(2). 24 hours of community service work (in 30 days);

(3). Not operate a motor vehicle for a term of at least 30

days; or

(4). Any combination of these conditions.

2. Level 4

(a). Criteria: No grossly aggravating factors and no aggravating or mitigating factors, or any mitigating factors are sufficiently counterbalanced by any aggravating factors.

(b). Punishment: Fine up to \$500, imprisonment for from 48 hours to 120 days. If the sentence is suspended, the judge must impose either:

(1). Imprisonment for 48 hours;

(2). 48 hours of community service work (in 60 days);

(3). Not operate a motor vehicle for a term of at least 60

days; or

(4). Any combination of these conditions.

3. Level 3

(a). Criteria: No grossly aggravating factors, and any aggravating factors substantially outweigh any mitigating factors.

(b). Punishment: Fine up to \$1,000, imprisonment for from 72 hours to 6 months. If the sentence is suspended, the judge must impose either:

(1). Imprisonment for 72 hours;

(2). 72 hours of community service work (in 90 days);

(3). Not operate a motor vehicle for a term of at least 90

days; or

(4). Any combination of these conditions.

4. Level 2

(a). Criteria: One grossly aggravating factor is present (no weighing of aggravating or mitigating factors involved).

(b). Punishment: Fine up to \$2,000, imprisonment for from 7 days to 12 months. If the sentence is suspended, the judge must impose an active term of imprisonment of at least 7 days.

5. Level 1—most severe “misdemeanor”

(a). Criteria: Two or more grossly aggravating factor are present (no weighing of aggravating or mitigating factors involved).

(b). Punishment: Fine up to \$4,000, imprisonment for from 30 days to 24 months. If the sentence is suspended, the judge must impose an active term of imprisonment of at least 30 days.

B. Statutory Factors

1. Grossly Aggravating Factors—include: prior DWI conviction within the preceding 7 years, DWLR under NCGS §§ 20—27 and the revocation was for an impaired driving offense, serious injury to another caused by the Defendant’s impaired driving, and having a child under 16 years of age in the vehicle at the time of the offense.

2. Aggravating Factors—include: gross impairment (0.16 or more), especially reckless or dangerous driving, negligent driving leading to a reportable accident, two or more prior convictions for 3-point driving offenses within the preceding 5 years before the offense, conviction of a prior DWI more than 7 years before the instant offense, conviction of speeding to elude apprehension, conviction of speeding at least 30 miles over the legal limit, passing a stopped school bus, or any other factor that aggravates the seriousness of the offense.

3. Mitigating Factors—include: slight impairment (0.09 or less), safe and lawful driving at the time of the offense, statutory safe driving record (no driving offenses for which at least 4 points are assigned within 5 years of date of offense), impairment by lawfully prescribed drugs within prescribed dosage, voluntary submission to DWI-alcohol assessment and participation in recommended treatment, or, any other factor that mitigates the seriousness of the offense (including, for some judges, ‘polite and cooperative’).

C. Habitual DWIs

D. Interlock Requirement—0.16 or higher BAC readings

E. Refusal Cases—automatic suspension for one year

F. Tips for Handling DWI Cases

VII. Misdemeanor Sentencing in North Carolina

A. Classes/Punishment Levels—there are four classes of misdemeanors in North Carolina, and three levels of punishment (level 1 = no prior convictions, level 2 = one to four prior convictions, and level 3 = five or more prior convictions).

1. Traffic offenses that are not ‘infractions’ are generally punished as Class 2 misdemeanors, unless their statute notes otherwise.

2. Driving While License Revoked (DWLR) and No Liability Insurance are Class 1 misdemeanors, while common Class 2 misdemeanors include No Operator’s License and Careless and Reckless (C&R) Driving.

3. A person with no ‘criminal’ violations in their past, but with multiple driving offenses such as speeding in excess of 15 miles over the limit may find their punishment level elevated as a result.

4. Punishments are classified into three groups:

(a). Active (A) = active jail sentence.

(b). Intermediate (I) = includes Electronic House Arrest (EHA), intense probation, and split sentences (an active/probation hybrid – up to 1/4 of maximum, not to exceed 6 mos).

(c). Community Punishment = fines, community service, etc.

B. Chart:

<u>Class of Misdemeanor</u>	<u>Punishment Level</u>		
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C/I	1-20 days C/I/A

VIII. Teaching Example: John and Mary Smith live in Raleigh and have a child, Tom, who is 19 years old and lives at home and is on their insurance policy. John has speeding ticket for 80 in a 65 on the Raleigh Beltline on May 1, 2000, which he resolves on June 10, 2000 by pleading responsible to 74 in a 65. Mary was ticketed for not having a seat belt on while driving on October 1, 2000, which she resolves by mailing in a payment to the Clerk of Court's office. Tom, who already costs the family a premium on their insurance due to gender and age, had a fender bender in August 2001 with a neighbor's car, resulting in no bodily injury, but \$1,750 in property damage, which their insurance company paid. Tom was not cited for any moving violation arising from the accident. In November 2001, Tom received a 'no seatbelt' ticket, which he forgot to go to court for on December 1, 2001. On December 21, 2001, a Failure to Appear (FTA) notice was sent from the Wake County Clerk of Court's office to the NCDMV, who promptly sent Tom a notice that his license would be suspended for the FTA effective February 21, 2002. While momentarily concerned, Tom misplaced the letter and took no action to clear up this matter. In May, 2002, John receives his second speeding ticket for driving 76 in a 55, which he resolves by pleading to 64 in a 55, and by requesting and receiving a Prayer for Judgment Continued (PJC). In late September 2003, Tom is stopped for passing a stopped school bus and driving while license revoked (DWLR). His initial court date is pending in late November 2003. Not to be left out, in October 2003, Mary becomes impatient with traffic backed up on the interstate before her turnoff, and passes cars on the right side emergency lane to reach her exit. A state trooper cites her for illegal passing and careless and reckless driving. Her court date is pending. Last week, John received his third speeding ticket for 50 in a 30—because he will be out of town on his court date, he is contemplating mailing in his ticket to save the cost of hiring an attorney. As the Smith family attorney, how do you help them through this legal quagmire??