

## NORTH CAROLINA TRAFFIC LAWS--2010

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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, Limited Provisional Driver’s Licenses, and Provisional Driver’s Licenses—see NCGS § 20—11 for the details and restrictions of this three-phase licensing scheme for drivers under 18 years of age.
6. Commercial Drivers Licenses (CDL) and Bus Driving Licenses—beyond the scope of this outline (consult with experienced attorney).
7. 2006 Change—SSN Required: In addition to having two separate forms of identification, as of July 2006, a person must present a valid social security number in order to be issued a North Carolina driver’s license. NCGS § 20—7.
8. Renewal by Mail – available for service members and those who reside outside the state for more than 30 continuous days. A person may not file for renewal of a driver’s license prior to 180 days before their current license’s expiration date.
9. 2006 Change—Duration of Licenses: Licenses issued to a person before their 18<sup>th</sup> birthday will expire on their 21<sup>st</sup> birthday. Licenses issued to someone between 18 years and 54 years of age will expire after 8 years. Licenses issued to someone over 54 years of age expire after 5 years. There are exceptions to each of these general rules—NCGS § 20—7(f). Additionally, no license issued may exceed the time limit of any current visa issued for non-citizens.

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

1. Automatic Reciprocity—NCGS § 20—4.8.
2. Reciprocity as to Suspensions—NCGS § 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 (conviction date to conviction 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. 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).

5. Speeding over 55 miles per hour and greater than 15 miles per hour over the speed limit is a mandatory suspension of driving privileges.

D. 2006 Change—Use of Cellular Phones/Technical Devices by Drivers Under 18—NCGS § 20—137.3.

1. Drivers under the age of 18 years old may not use a cell phone or related technical device (includes MP3 players, games, etc.) while operating a motor vehicle that is in motion, with two key exceptions:

a. Emergency Exception – when calling 911 or others in an emergency situation; or

b. Parent/Spouse – when calling one’s parent, legal guardian or spouse.

2. Violations – are infractions punishable by a \$25 fine, but they do not result in any driver’s license or insurance points, or any court costs. However, any violations will result in the offender being delayed in “graduating” to the next higher license phase under most circumstances.

E. 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 (on the date of the offense).
- c. Not applicable after the 12-month period following

conviction has run.

d. 2007 Change—a limited privilege following conviction for DWI (at 0.15 or greater BAC) may only be granted after the passage of 45 days from the date of conviction. During this period, no privilege may be granted. NCGS § 20-179.3(c1).

2. Provisional DWIs— NCGS §138.3 (Under 21 years of age and driving while consuming alcohol/controlled substance or having any amount of alcohol/controlled substance remaining in his body previously consumed) – if 18 years old or older at time of offense.

3. Suspensions by DMV for up to one year—totally within the discretion of DMV (not a matter of right).

4. Suspensions for certain offenses—granted by judges (e.g., C.1-3. situations above. NCGS § 20—16(e1)).

5. Civil license revocation for implied-consent offenses. This section includes a 30-day revocation based solely upon an arrest for DWI, as well as a one-year revocation for a willful refusal to submit to chemical analysis. NCGS § 20—16.5.

6. Generally, 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. Under certain circumstances, a person under a period of suspension may apply for a hearing to have privileges reinstated early, which may or may not include a de facto limited driving privilege.

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 or Privileges to Drive Revoked or Suspended	Susp	8
Aggressive Driving (CDL Holders)	6	8
Aggressive Driving (Class C License)	5	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 (>\$800) or property Damage (>\$3,000)	-	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 (>\$1,800, but <\$3,000)	-	2
Speeding-->10 mph over limit when Total speed > 55, but < 76	3	2
Speeding—=/ <lt;10 limit="" mph="" over="" when<br=""></lt;10> 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
<b>All other Moving Violations</b>	2	1
Failure to Restrain Child in Restraint or Seat belt (8 yrs old/80lbs)	2	-

(\*\*State shall dismiss upon receipt of proof of purchase of proper device)

At-Fault Accidents—bodily injury or property damage (<\$1,800)	-	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 < \$1,800, 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 the driver has no other moving violations in experience period (notwithstanding an isolated Prayer for Judgment Continued (PJC)).
3. 2006 Change—Seat Belt Violations by Persons Not in Front Seat. It is now mandatory for all occupants of a vehicle equipped with seat belts to use them. Before 1 July 2007, only occupants of the front seat and children were required to use seat belts. There are no driver’s license or insurance points, or any court costs, assessed for these violations. NCGS § 20—135.2A.

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.
6. Insurance points are assigned for all convictions on the violations occurring at one time (e.g., they may be “stacked” by insurance companies).
7. 2006 Change—Effective July 2006, a person convicted of passing a stopped school bus may no longer be granted a “prayer for judgment continued” by the court. NCGS § 20—217(e).
8. NCDMV Policy—no “prayer for judgment continued” granted by a court will be honored for persons holding a Class A commercial driver’s license, regardless of whether they were driving a commercial or personal vehicle at the time of the offense.

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 20<sup>th</sup> 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 60<sup>th</sup> 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.
  - D. Speeding Over 25 MPH Over Limit—2007 Change: No PJC may be granted when the conviction is for speeding 25 MPH over the limit effective 12-1-07.
  - E. EXCEPT—Per NCGS § 20-4.01(4a)(a):
    - 1. A third or subsequent prayer for judgment continued within any five-year period (driving offenses only); and
    - 2. Any prayer for judgment continued if the offender holds a commercial drivers’ license or if the offense occurs in a commercial motor vehicle.
- V. Driving While License Revoked (DWLR) and During Periods of Suspension
- A. Class 1 Misdemeanor—see chart below for sentencing considerations. NCGS § 20—28
    - 1. Failure to Appear—revocation of driving privileges effective after 80 days (letter sent to last known address by DMV on 20<sup>th</sup> day).
    - 2. Failure to Pay Court Costs/Fines-- revocation of driving privileges effective after 80 days.
  - 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).

NOTE: 2007 Change allows for the granting of a limited privilege for “eligible” drivers after two years of a permanent suspension under certain circumstances.
  - C. Difference between DWLR and Driving During a Period of Suspension Offenses.
  - D. Tips for Handling DWLR cases.
- VI. Racing on Streets and Highways in North Carolina. NCGS § 20-141.3
- A. Prearranged Racing—Class 1 misdemeanor. Officer shall seize motor vehicle(s) used and put into custody of local sheriff, and DMV shall revoke driving privileges for three years.
  - B. Spontaneous Racing—Class 2 misdemeanor. DMV may suspend license of violators for period of time up to one year.
- VII. Aggressive Driving. NCGS § 20-141.6

- A. Defined—Operating a motor vehicle where the person violates NCGS § 20-141 or 141.1 (forms of speeding offenses) and drives carelessly and heedlessly in willful or wanton disregard of the rights and safety of others.
- B. Careless & Heedless Driving: Defined—where a person commits two or more of the following offenses:
  - 1. Running a red light—NCGS § 20-158;
  - 2. Running a stop sign—NCGS § 20-158;
  - 3. Illegal passing—NCGS § 20-149 or 20-150;
  - 4. Failing to yield right of way—NCGS § 20-155, 20-156, or 20-158 and/or:
  - 5. Following too closely—NCGS § 20-152.
- C. Punishment—Class 1 misdemeanor.

VIII. 2006 Change--Driving While Impaired (DWI) (NCGS §§ 20—138.1, 20—179). Any attorney dealing with a DWI case is advised to review Session Law 2006-253, which made dramatic changes in DWI laws in this State. These changes took effect on 1 December 2006 for all DWI offenses occurring on that date or thereafter. A review of all the changes is beyond the purpose of this limited outline, but key changes are noted below. North Carolina recognizes two means of proof of impairment—appreciably impaired faculties or a blood-alcohol concentration (BAC) of 0.08 or higher. Additionally, due to the 2006 changes, you may now have a DWI while operating a lawn mower or while riding a bicycle—riding a horse remains “safe” for DWI purposes.

A. 2006 Change—BAC of 0.08/Controlled Substances in Blood/Urine. Effective 1 December 2006, a result of a chemical analysis with a BAC of 0.08 or higher is “deemed” sufficient evidence, alone, to prove a person’s alcohol concentration (giving rise to an inference of guilt) under NCGS §§ 20—138(a)(2). Additionally, driving with any Schedule I controlled substance or its metabolites in one’s blood or urine is a per se violation of the impaired driving offense.

- B. 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 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 (within time limit that is within judge’s discretion); or
      - (3). 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 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 (within time limit that is within judge's discretion); or

(3). 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 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 (within time limit that is within judge's discretion); or

(3). 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 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 30 days to 24 months. If the sentence is suspended, the judge must impose an active term of imprisonment of at least 30 days.

6. 2006 Change: Effective for offenses occurring on 1 December 2006 or thereafter, a judge may no longer impose non-operation of a motor vehicle as a condition of probation option for Level 3 through 5 offenders.

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 (0.15 or more – NOTE, 2007 change from previous level of 0.16), 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—2006 Change: The “look-back” period for the requisite three prior convictions is increased from seven (7) to ten (10) years prior to the current offense.

D. Interlock Requirement—0.15 or higher BAC readings (NOTE, this is a 2007 change from previous level of 0.16), or a prior DWI conviction within seven (7) years immediately preceding the current offense. The interlock requirement is also frequently made a condition of reinstatement for persons with long-term suspensions and a history of alcohol incidents, that must first petition for hearings to have any driving privileges reinstated.

E. Refusal Cases—automatic suspension for one year, with no opportunity to have a limited driving privilege in the first six months. The requirements for having a limited driving privilege in the second six months are more strict than for a normal DWI limited driving privilege (e.g., you must have completed all recommended drug and alcohol treatment). NCGS § 20-16.2(e1).

F. Tips for Handling DWI Cases

## IX. 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