

Criminal Offenses

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A. General Information

I. Obligations When Stopped by Police Officers

If you have been stopped for a traffic offense, you have an obligation to provide the police with your license and registration. If approached and questioned on the street, you must provide the officer with your name and address.

If you are stopped for a traffic offense, have cooperated with the officer and have not given the officer any reason to suspect you of criminal activity, **you do not have an obligation to allow them to search your vehicle.** If a police officer asks you if they can search your car, you may politely decline by informing them you **do not consent to searches.** Remain cordial but repeat your refusal as many times as necessary.

You may be ordered to exit your vehicle during a traffic stop if police feel criminal activity has occurred. Be courteous and respectful with the police. Even if you feel the officer has acted illegally, **follow the officer’s instructions to avoid a resist, delay or obstruct charge.** You can always file a complaint later on or refer to your refusal to consent to prevent the prosecutor from using evidence obtained from a search over your objection.

II. Your Legal Rights to Refuse to Answer Questions

You are not required to answer any questions from a police officer, although the failure to answer questions during the early stage of an investigation or traffic stop may create suspicion and lead the officer to conduct further investigation. It is always advisable to ask to speak to an attorney when a police officer begins asking questions that may result in a criminal charge.

III. Legal Police Powers

Police are allowed to detain individuals when they have reasonable suspicion to believe that a crime has been committed, and are also allowed to frisk them for weapons if they have a reason to believe that the individual is armed and dangerous. The period of this detention should be reasonable. Often the line between being “free to leave” from a temporary detention and being under arrest is murky. The best way to determine whether you are free to go is to ask the officer point blank if you are free to leave.

As a general rule, police are not allowed to search homes or vehicles without a search warrant. Exceptions to this rule are the following: police may conduct a search incident to the arrest of an individual; search property where the owner has consented to search; may seize illegal items that are in plain view; and enter homes or other property under exigent circumstances, such as when they are in hot pursuit of a fleeing suspect.

B. Criminal Charges

I. Misdemeanors or Serious Crimes

Whether you have been charged with a misdemeanor or a more serious offense, it is important that you speak with a lawyer as soon as possible. With misdemeanor offenses, often the difference between being arrested and simply being issued a citation for the offense is your behavior and cooperation with the officer.

II. Arrest Procedure

Once you are processed at the jail, you will be taken before a magistrate who will read the charges against you and set the conditions of release in the form of a written promise to appear, secured bond or unsecured bond. This is also when you will be allowed to make a phone call. Bond is a monetary condition of release that is used to compel your appearance in court and is determined by the seriousness of the offense, whether you have failed to appear in court in the past, your contacts in the community, criminal record, and general attitude in front of the magistrate.

A first appearance will be set within 72 hours in front of a judge. At the first appearance you have the right to request appointed counsel and to have the judge reconsider the conditions of your release that were set by the magistrate. Your next court date will also be set by the judge.

C. Common Punishments for Misdemeanor Offenses

I. Misdemeanor Diversion Programs [G.S. 20 § 90-96]

Misdemeanor sentencing in NC is based on the seriousness of the offense as well as the defendant's prior convictions. First time offenders on charges such as marijuana possession, underage alcohol possession, shoplifting, larceny, and trespassing may be afforded the opportunity to earn a dismissal of the charge upon successful completion of a substance abuse class or community service. These agreements require the approval of the district attorney and the judge.

II. Prior Offenders

Defendants who do not have a clean record, or who have committed a more serious offense, are punished based on the classification of the misdemeanor and the defendant's prior record level. While punishment is harsher, the court has many options other than active time spent in jail. These include, from most lenient to harsh:

a. “Prayer for Judgment” (PJC) Continued [G.S. 15A-101(4a)].

In less serious cases, the court may grant a PJC to the defendant which in essence means that a judgment is never entered in the case by the court. The defendant is only assessed the court costs in the matter. Should the defendant pick up new offenses, however, the State may pray judgment in the case requesting that the court enter a judgment.

b. Unsupervised Probation

This is a probationary period under which the defendant is essentially under his or her own reconnaissance. Theoretically the State could violate an unsupervised probationer if a term of the probationary sentence is violated, and request that the suspended jail sentence be served, but this happens infrequently.

c. Supervised Probation

A probationary period, usually from one to three years, in which the active term of imprisonment is suspended and the defendant is supervised by a probation officer. Conditions of probation may include drug testing, proof of employment, community service, substance abuse assessment and recommended treatment, monthly appointments with the probation officer, various classes, and monthly payments of supervision fees, community service fees, and or payments of restitution to the victim.

d. Active Time

Misdemeanors in NC can be punishable by up to 150 days in jail, depending upon the charge, whether the defendant has a lengthy record, and whether the defendant has previously been unsuccessful on probation. A judge may be quick to give active time in some cases where the facts are especially egregious, such as Assault on a Law Enforcement Officer, Assault on a Female, or Assault with a Deadly Weapon. In addition, some driving while impaired offenses now carry mandatory minimum jail sentences depending upon the severity of the offense.

D. Common Misdemeanor Offenses

I. Drug Offenses [G.S. 14 Art. 8 § 5.90-86] & Minor Alcohol Possession [G.S. 14 Art. 8 § 8.18B-300]

Most first-time offenders charged with underage alcohol possession or misdemeanor drug possession are able to obtain a dismissal of the charge upon successful completion of a diversion program. The diversion program usually consists of attendance in a drug or alcohol education class. Upon dismissal, a record of the charge can be expunged from the offender’s record.

In limited circumstances, first time felony drug charges can also be diverted through successful completion of a drug education program and community service. These diversion programs are offered only to first time offenders possessing small amounts of the drug, and they are a great way to keep the defendant’s record clean. NC criminalizes possession of any amount of Cocaine, Ecstasy, Heroin and other harder drugs at the Felony level.

II. Larceny & Shoplifting [G.S. 14 Art. 16 § 14-72]

Receiving or possessing stolen goods worth more than \$1,000 amounts to larceny and is classified as a Class H felony. [G.S. 14 Art. 16 § 14-72]. Misdemeanor larceny involves goods worth less than \$1,000 and is a class one misdemeanor punishable by 120 days in jail.

Whoever willfully conceals goods or merchandise of any store while still on the premises of the store is guilty of shoplifting, a misdemeanor. [G.S. 14 Art. 16 §14-72.1(a)]. Changing the price tags on items while inside a store and then bringing them up for purchase is also a misdemeanor shoplifting offense. [G.S. 14 Art. 16 § 14-72.1(d)].

Shoplifting is a class 3 misdemeanor punishable by 20 days in jail, which may be suspended for community service. [G.S. 14 Art. 16 § 14-72.1(e)].

Both forms of shoplifting charges can be dismissed upon successful completion of a first offender's program.

III. Assaults [G.S. 14 Art. 8 § 14-33-34]

Whether assault is charged as a misdemeanor or felony is largely dependent upon the severity and type of the injury to the victim and whether a weapon was used. NC defines assault as an overt act or attempt, or the unequivocal appearance of an attempt, to immediately physically injure another person. People who point a gun or pistol at another person, regardless of whether the gun is loaded or not or whether they are joking or not, are guilty of Class A1 misdemeanor assault. [G.S. 14 Art. 8 §14-34].

Punishments are more severe where the victim is a female, a police officer or other government official such as a teacher [G.S. 14 Art. 8 § 14-33(c)]. Domestic violence, or the acts of violence between individuals involved in a romantic relationship, may require that the offender complete a Domestic Abuser treatment program, get a substance abuse assessment, etc. If a person is convicted of more than two misdemeanor assaults, they can be convicted of habitual misdemeanor assault, which makes them guilty of a Class H felony. [G.S. 14 Art. 8 § 14-33.2].

IV. Juvenile Offenses [G.S. 14 Art. 15 §7B-1500]

In NC, crimes committed by those aged 6-15 are governed by the Juvenile Code. Juveniles have their own courtrooms and judges. Starting December 1, 2019, most 16 and 17 year-olds will also be prosecuted in Juvenile Courts, with some exceptions for cases involving driving and other offenses. [G.S. 7B-1501(7)]. The purpose of the Juvenile system is to rehabilitate delinquents through community-based programs such as community service, after school programs, wilderness camps, etc.

Juvenile convictions are sealed records and not public records. These convictions are not subject to background checks.

V. Expunctions [G.S. 14 Art. 5 § 15A.145-153]

NC law generally allows for an expungement of a person's criminal record in certain limited circumstances. Generally, a person who has never been convicted of a felony offense can have any offense that resulted in a finding of not guilty or resulted in a dismissal removed from their criminal record. If an individual has multiple dismissals or findings of not guilty or a combination of the two, all of any such charges can be removed from a person's record, if the charges occurred within one calendar year.

There are several different expungement provisions. Seeking the help of a qualified attorney is the best way to ensure the appropriate statute is used that best suits the situation.

E. Traffic Offenses

I. Speeding Tickets

Anyone charged with a speeding offense should contact an attorney before disposing of the ticket in order to minimize the risk of vehicle insurance rate increase as well as the possibility of license suspension.

a. Occasional Speeding Tickets

NC's Safe Driver Incentive Plan provides that a first conviction within a three-year period for speeding 10 mph or less over the posted speed will not create any grounds for an increase in insurance premium points. This provision does not apply in certain circumstances where the driver has had an accident in the three-year period or where the violation occurred in a school zone. A prior violation in which the driver was granted a PJC during the previous three years would not affect this provision.

Most prosecutorial districts have a policy whereby violations of up to 20 mph, and sometimes 25 mph, over the posted limit are regularly reduced to nine miles over the speed limit in order to allow first time speeders the opportunity to benefit from the Safe Driver Incentive Plan.

Some counties, such as Wake, are requiring young drivers under 18 to attend four-hour driver education classes in order to "earn" a reduction in their speed.

In some counties, other than Wake, prosecutors plead down speeding offenses to "improper equipment" violations, which are non-moving violations for DMV purposes and do not affect vehicle insurance.

It is important to note that improper equipment violations are reported on driving records. Many prosecutorial districts offer improper equipment violations as a lesser offense to speeding. If you receive this benefit, it will be reflected on your driving record. However, this type of disposition does not carry insurance or license points.

b. "Prayer for Judgment" (PJC) Continued Offenses [G.S. 15A-101(4)]

The PJC is a device granted in the discretion of the court under which a judgment is never entered in the case, and thus the driver is never convicted of the offense. Under the Safe Driver Incentive Plan, each household is entitled to one PJC every three years for insurance point purposes. The PJC should be saved at all costs so that it can be used in extraordinary circumstances such as those listed below:

- i. Stop Sign and Stop Light Violations:** usually cannot be reduced to non-moving violations.
- ii. Speeding in a School Zone:** not subject to the Safe Driver Incentive Plan. It is best to consult a lawyer to determine the best course of action.
- iii. Speeding in a Work Zone:** unlike other tickets, carries a mandatory fine of \$250 by statute. In certain instances, judges may PJC this offense so that

the driver can avoid the fine. Contact a lawyer.

- iv. **Accidents involving Moving Violations:** District Attorney offices will sometimes dismiss the underlying moving violation in an accident case upon proof that any outstanding damage claims are being satisfied by the at-fault driver's insurance company.
- v. **Speeding over 90 M.P.H.:** many district attorneys are no longer willing to plea bargain with any speed over 90 mph. The resulting conviction carries with it an automatic suspension of license. Contact an attorney to discuss options.
- vi. **Speeding in excess of 10 M.P.H. over the limit in a 55 M.P.H. or higher zone:** conviction of this offense results in an automatic license suspension. Consult with an attorney.

Even for a first offender, the legislature does not allow a judge to give a PJC to a person who pleads guilty or who is found guilty of Passing a Stopped School Bus. A motorist charged with speeding 25 miles over the speed limit is ineligible for a PJC. If an accident causes more than \$2,300 in damage or the person has a prior driving conviction or at-fault accident on their record, PJC will not be available.

II. Driving While License Revoked [G.S. 20 Art. 2 § 20-28]

In NC, Driving While Licensed Revoked is a Class 3 Misdemeanor punishable by up to 120 days in jail. [G.S. 20 Art. 2 § 20-28(a)]. For a person whose drivers license has been revoked for an impaired driving offense, DWLR is a Class 1 misdemeanor. Any conviction of this offense carries with it an automatic one-year suspension of driver's license. [G.S. 20 Art. 2 § 20-28(a1)]

Most DWLR charges are the result of the defendant having failed to appear in court at some time in the past. Once the failure to appear (FTA) is entered, the DMV is sent notification and correspondingly suspends that person's driver's license.

Because driving is such an integral part of modern society, many individuals convicted of DWLR continue to drive illegally out of necessity. Any moving violation during a period of suspension results in another revocation for one year. For many people, these suspensions pile up easily and what was once a very simple missed court date on a seatbelt ticket becomes a permanent revocation (after three convictions of DWLR) of the privilege to drive. Additionally, prior convictions for DWLR will lead to more severe punishments for lack of insurance or registration. [G.S. 20 Art. 2 § 20-28(a1)]

Requirements vary for how a defendant can get a license restored after it has been revoked. For less serious offenses, a defendant might be required only to go the period of revocation without any moving offenses or violations of other laws. [G.S. 20 Art. 2 § 20-28(c1)]. However, if the offense resulted from driving after revocation for driving while impaired, a defendant might be required to obtain a substance abuse assessment and potentially substance abuse education or treatment. [G.S. 20 Art. 2 § 20-28(c4)]

Always contact an attorney on a DWLR charge to discuss options. Often the attorney will have to go back and revisit old tickets that the offender failed to appear on in order to restore driving privileges.

III. Driving While Impaired [G.S. 20 Art. 3 § 29-138]

DWI in NC is defined as operating a motor vehicle on a street or highway, or public vehicular area within this State while under the influence of an impairing substance; or having consumed a sufficient amount of alcohol that he has, at any relevant time after driving, an alcohol concentration of .08 or more; or with any amount of a Schedule I controlled substance or its metabolites in their blood or urine. [G.S. 20 Art. 3 §20-138.1(a)].

Legal entitlement to use a drug is not a defense to driving while impaired, so a prescription for medication which impairs you or a license to use medical marijuana cannot absolve you if you are driving while impaired. [N.C. G.S. Ch. 20 Art. 3 §20-138.1(b)]. By driving on the highway, you consent to a chemical analysis, so if an officer has reasonable grounds to believe you have been driving while impaired you have no right to refuse a test. [N.C. G.S. Ch. 20 Art. 3 §20-16.2(a)]. If you refuse a test, your driver's license will be revoked for a period of one year and your refusal will be admissible as evidence against you at trial. [N.C. G.S. Ch. 20 Art. 3 §20-16.2(a)]. After your first conviction of driving while impaired, you may not operate a vehicle with an alcohol concentration of 0.04 while driving. [N.C. G.S. Ch. 20 Art. 3 §20-19(c3)(1)].

a. First DWI Conviction [G.S. 20 Art. 3 § 29-138.1]

The punishments for DWI have become considerably more severe in the last few years. A conviction can impact a person's freedom and right to drive for considerable time frames.

It is definitely better to consult with a knowledgeable attorney if you are charged. If you cannot afford an attorney, you should consider asking for court appointed counsel.

There are six different levels of Driving While Impaired at the misdemeanor stage. Each level has minimums and maximums that a judge may impose at sentencing. There is always judicial discretion in whether a person can get driving privileges. However, at some levels driving privileges are suspended or revoked. [G.S. 20 Art. 3 § 20-179(g-k)].

Even at the easiest or most lenient level, a person could receive an active jail sentence of 60 days. At an aggravated level a person could receive 3 years imprisonment without parole.

Factors determining the level are much more complicated than whether you had a prior Driving While Impaired. They include, among other things, how reckless the driving was, whether the offense occurred while defendant was passing a school bus, or whether the defendant was grossly impaired at the time of the offense. [G.S. 20 Art. 3 § 20-179(d)].

Some defendants may receive only community service, alcohol classes, and fines on a first offense, but nothing is ever assured, and the judge has discretion to impose whatever sentence is justified by the aggravating and mitigating factors presented. For instance, a child or handicapped person in the car, for even a first offender, would mean the driver must do at least 30 days, or up to two years in jail with driving privileges being suspended or revoked. If the court finds as a fact that someone has seriously injured someone else due to the impaired driving, the case could be increased to a felony where the defendant would again face active time and complete loss of driving privileges [G.S. 20 Art. 3 § 20-179(g)].

b. Repeat DWI Offender [G.S. 20 Art. 3 § 29-138.5]

Driving while impaired is a serious offense and should not be taken lightly. If you are charged with DWI, it is imperative you contact an attorney.

Upon a second conviction within seven years for DWI, the offender must be sentenced to seven days in jail and may be sentenced up to two years in prison, depending on whether there are other grossly aggravating factors present. Two-time DWI offenders are not eligible for a limited driving privilege. If the second offense occurred within seven years of a prior conviction of DWI, the sentence imposed on the defendant will be more serious. [G.S. 20 Art. 3 § 20-179(c)(1)].

Upon a third conviction of DWI, a person is classified as a Class F felon and must be sentenced to a minimum term of one year in prison. Additionally, if you are convicted of three or more DWI offenses your license will be permanently revoked. [G.S. 20 Art. 3 § 20-138.5].

If the new charge comes within 7 years of a prior offense, there is only one way to escape jail, and that is by in-patient rehabilitation, and that is in the Court's discretion. Factors which add to the severity of a DWI offense include:

- A child under the age of 18 in the vehicle at the time of the offense.
- The defendant's driver's license was in a period of revocation for a previous DWI offense at the time of the present offense.
- The defendant's driving was especially careless and reckless.
- The defendant was involved in an accident that resulted in bodily injury.

[G.S. 20 Art. 3 § 20-179(d)].

Defendants can also present mitigating factors in order to argue for reduced sentences. These factors can include whether the driving was safe and lawful at the time of the offense, whether impairment resulted from taking a prescribed drug, or whether the defendant has entered a substance abuse assessment. [G.S. 20 Art. 3 §20-179(e)].

Each case stands on its own facts. In every case, the Judge controls the appropriate sentence. If you are charged with DWI, it is critical that you have a lawyer who can argue on your behalf in order to help you navigate this complicated and increasingly severe section of the law.

c. Underage Drinking and Driving [G.S. 20 Art. 3 § 20-138.3]

Anyone under 21 years old driving a motor vehicle on a highway or public vehicular area while consuming alcohol or driving while there is alcohol still remaining in their body is guilty of a Class 2 misdemeanor. [G.S. 20 Art. 3 § 20-138.3].

Odor itself is not sufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide samples. [G.S. 20 Art. 3 § 20-138-3(b2)].

If you are convicted of violating the underage drinking and driving law, are between the ages of

18-20, and have not been convicted previously of the same offense, you can apply for a limited driving privilege while your license has been suspended. [N.C. G.S. § 20-138-3(d)].

IV. Unlawful Use of Mobile Phones [G.S. 20 Art. 3 § 20-137.3]

It is an infraction for any motorist under the age of 18 to use a mobile phone while operating a motor vehicle, whether that use involves talking on the phone or using it for some other purpose. [G.S. 20 Art. 3 § 20-137.3(b)]. However, if you are communicating with your parent, legal guardian or spouse; or a hospital, physician's office, health clinic, fire department or law enforcement agency via phone, you will not be guilty of using a phone unlawfully. [G.S. 20 Art. 3 § 20-137.3(d)].

Any person who uses a phone in a manner that does not qualify for one of these exceptions must pay a fine of \$25. [G.S. 20 Art. 3 § 20-137.3(e)].