

# DWI / DUI

## in North Carolina



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The following information comes from The North Carolina DUI Guide which is available at <http://www.northcarolinadwi.pro/>

The material in this handout represents general legal principles. The law is continually changing; although the information in the handout was current as of the date it was drafted, some provisions in this pamphlet may have changed. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

### **I just got arrested in the State of North Carolina for a DWI offense. What happens next?**

Your North Carolina license (or your right to drive in North Carolina if you're not a North Carolina licensed driver) was most likely revoked for anywhere from 30 days to one year or more for failing or refusing a chemical (breath) test. Read your paperwork carefully.

A person whose license is revoked may request in writing a hearing to contest the validity of their revocation. The request may be made at the time of your initial appearance or within ten days of the effective date of the revocation to the clerk or a magistrate and may specifically request that the hearing be conducted by a district court judge. This hearing is sometimes referred to as a DMV hearing.

Separate from the implied consent revocation is the criminal charge for driving while impaired (DWI). In North Carolina, a person commits the crime of DWI if they drive a vehicle upon any highway, any street, or any public vehicular area within the state:

- While under the influence of an impairing substance; or
- After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 percent or more. The results of a chemical analysis is deemed sufficient evidence to prove a person's alcohol concentration; or
- With any amount of a Schedule I controlled substance or its metabolites in his blood or urine.

**Important:** The implied consent revocation proceeding and the criminal DWI offense are completely separate from one another.

### **Will the Air Force wait for the court to dispose of my case before taking action?**

No. Pursuant to AFI 31-218, Para 2-4 a(3)(d) on-base driving privileges will be immediately suspended on an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving. Immediate suspension of on-base driving privileges is authorized for active duty military personnel, regardless of the geographic location of the intoxicated driving incident.

In accordance with AFI 31-218, Table 5-1, driving a motor vehicle while under the influence of alcohol or other drugs to the degree rendered incapable of safe vehicle operation requires a mandatory one year suspension of on-base driving privileges.

You may be referred to an alcohol/drug abuse education program. Moreover, your commander may start separation proceedings against you.

### **What blood alcohol content is illegal on base?**

Vehicle operators will be cited for DUI when their BAC on the Intoxilyzer 5000EN, or blood alcohol content registers a 0.05 or higher. AFI 31-218, para 6.2.

### **What will a North Carolina DWI do to my insurability?**

If your insurance company finds out about your DWI one of two things are likely to happen. Either your North Carolina insurer will raise your rates or you may be cancelled or non-renewed. North Carolina does NOT require the filing of an SR-22 for a DWI conviction like many states do.

### **Are there special concerns for licensed pilots who get a North Carolina DWI?**

Yes. The FAA has reporting requirements for certain Motor Vehicle Actions including North Carolina DWI convictions and certain implied consent revocations.

### **I missed a North Carolina DWI court appearance. What do I do now?**

At a minimum, after missing a DWI court appearance, the North Carolina court typically issues a warrant for your arrest (known as a bench warrant). Your license may be revoked as well (at least until the warrant is cleared). Talk to your lawyer as soon as possible. Often, your only option is to turn yourself in to the jail on the outstanding warrant. A new court date will then be scheduled.

### **Can I represent myself in court on my North Carolina DWI and other criminal charge(s)?**

Yes. You have a constitutional right to represent yourself on any criminal charge no matter how serious, including a North Carolina DWI charge. Keep in mind that North Carolina DWI defense is a complex area of the law. If you cannot afford to hire your own attorney, you definitely should apply for court appointed counsel to represent you. You have no right to court appointed counsel at the implied consent license proceeding.

### **What is the difference between a DWI, DUI, OWI, OUI, OVI etc.?**

These terms are all acronyms that refer to the offense commonly known as "drunk driving." Most states including South Carolina, Virginia and Tennessee use the phrase "driving under the influence" (DUI) to refer to the charge. Other states use the phrase operating while

intoxicated (OWI) or operating under the influence (OUI). North Carolina law refers to "drunk driving" as "driving while impaired" or DWI.

### **Will my North Carolina driver license be revoked?**

Your North Carolina driver license (or your right to drive in North Carolina if you do not have a valid North Carolina license) will likely be revoked in the implied consent proceeding **for failing or for refusing a chemical test** for alcohol and / or drugs.

If you are **convicted** of the **DWI offense**, you will also lose your license (or your right to drive in North Carolina if you don't have a valid North Carolina license) for one year, for four years, or permanently. This revocation is separate and distinct from the implied consent revocation. Talk to your North Carolina DWI lawyer for possible revocation lengths

### **What happens if I get caught driving while my license is revoked?**

Driving while your license is revoked (DWLR) should be avoided as it is a new crime. If you're on probation for a DWI, driving with a revoked license will also violate your DWI probation. Penalties for driving while license revoked include fines, jail time, and an additional license revocation of at least one year.

If you're on probation for a DWI when you are caught driving while revoked you will face a **probation violation** hearing on your DWI along with the new driving while revoked charge.

### **I really need to drive. Will I be able to get limited driving privileges to drive to work?**

If available, limited driving privileges allow driving for the following purposes:

- Employment;
- Maintenance of the household;
- Education;
- Court ordered treatment or assessment;
- Community service ordered as a condition of the person's probation;
- Emergency medical care.

Speak to your North Carolina DWI lawyer about whether you qualify and how to apply for these limited driving privileges. The State of North Carolina does not issue limited driving privileges to operate commercial motor vehicles.

### **What type of penalties might I face if I am *convicted* of a North Carolina DWI charge?**

Upon conviction of a North Carolina DWI offense, a defendant can receive a variety of penalties including alcohol screening / treatment / education; jail time; fines; a substantial license revocation; and community service. How much jail time you realistically face depends on a wide range of factors some of which are outlined below. Only an experienced North Carolina DWI attorney can tell you the specific range of penalties you're likely to face if you're convicted of a DWI. For a first DWI conviction, the following minimum penalties apply:

<b>FIRST NC DWI MINIMUM PENALTIES</b>	a one year license revocation; at least a \$200 fine; a minimum of 24 hours jail or 24 hours of community service; installation of an ignition interlock device if your BAC is 0.15 % or greater.
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### **Will I have to install an Ignition Interlock Device on my car?**

An ignition interlock device (IID) is a breath alcohol measurement device that is connected to a motor vehicle ignition. In order to start the motor vehicle, a driver must blow a breath sample into the device which then measures alcohol concentration. If the alcohol concentration exceeds the startup set point on the interlock device, the motor vehicle will not start.

You generally will be required to install an ignition interlock device on your car if your BAC is 0.15 percent or higher or if this is your second or subsequent conviction.

### **What happens if I was on probation when I got arrested for my North Carolina DWI offense?**

Committing a new offense while you're on probation for a previous crime creates two problems. First, you face the new NC DWI charge. Second, you face a probation violation hearing for failing to obey all laws (a standard condition of probation). The most serious scenario is when you receive a new North Carolina DWI offense when you're already on probation for a previous DWI.

### **I was also arrested for a hit and run charge along with my DWI. What should I know about that charge?**

Persons driving under the influence that are involved in an accident frequently fail to stop either because they're so drunk they don't realize they hit something or because they know that they are DWI and don't want to be arrested. The crime of hit and run results. This offense is found in NCGS § 20-166.

Under North Carolina law, a hit and run that results in only property damage is a misdemeanor offense. If a hit and run results in death or injury, the crime is a felony. A felony hit and run will result in at least a one year license revocation.

A hit and run can result in possible jail time, fines, and probation.

**Will my defense lawyer be able to plea bargain / negotiate my North Carolina DWI charge down to another (lesser) offense?**

Maybe. Plea bargaining and charge reduction are two areas that any experienced North Carolina DWI lawyer would discuss with the prosecutor on the client's behalf. Under North Carolina law, a prosecutor must give a detailed explanation if the prosecutor allows a voluntary dismissal, accepts a plea to a lesser included offense, or substitutes another--less serious--charge for the DWI.

**Will a North Carolina DWI go on "my driving record?"**

Yes. A DWI **conviction** will go on your North Carolina driving record. You **cannot** expunge a DWI **conviction**.

**I am licensed to drive in a state other than North Carolina and I was arrested for a DWI in North Carolina. Will my driver license be revoked / suspended?**

North Carolina only has the authority to revoke your right to drive in the State of North Carolina. However, North Carolina and 44 other states and the District of Columbia have adopted an agreement known as the "Driver License Compact." North Carolina will report a DWI **conviction** to the home state of the driver (assuming the home state has also adopted the Compact). Your home state will then generally take action to suspend or revoke your license.

This also works in reverse. If you are a North Carolina licensed driver and you are convicted of a **DWI / DUI / OVI / OUI / OWI** offense in another state, North Carolina will revoke your license if it learns of the conviction.

**Just how much jail time will I have to do if I am *convicted* of a DWI in North Carolina?**

The amount of incarceration (jail time) received will depend on a number of factors not the least of which is your prior drunk driving history. North Carolina law directs the sentencing judge to examine whether grossly aggravating factors, aggravating factors, or mitigating factors are present in your case.

Under NC law, the following are considered **grossly aggravating factors** and, if present, will likely result in a more severe sentence:

- A prior conviction for a DUI / DWI / OWI offense if:
  - The conviction occurred within the past seven years; or
  - The conviction occurs after the date of the offense for which you are 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.

[Please note that each prior conviction is a **separate** grossly aggravating factor.]

- You were driving on a revoked license (DWLR) from a prior DWI offense.
- The DWI resulted in serious physical injury to another person.
- The DWI was committed with a child under the age of 16 years in the vehicle.

The following are considered **aggravating factors** that can result in a stiffer sentence:

- Gross impairment of your faculties or a BAC of 0.15 percent or more.
- Especially reckless or dangerous driving.
- Negligent driving that led to a reportable accident.
- Driving with a revoked license (DWLR) other than for a prior DWI offense.
- Two or more prior convictions of motor vehicle offenses not involving impaired driving for which at least three points are assigned or for which your license is subject to revocation, if the convictions occurred within the past five years, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years ago.
- Conviction of speeding while fleeing or attempting to elude apprehension.
- Conviction of speeding by at least 30 miles per hour over the legal limit.
- Passing a stopped school bus.
- Any other factor that aggravates the seriousness of the DWI offense.

The following are considered **mitigating factors** that may lighten your DWI sentence:

- Only slight impairment of your faculties resulting solely from alcohol, and a BAC that did not exceed 0.09 percent.
- Only slight impairment of your faculties, resulting solely from alcohol, with no chemical analysis having been available to you.
- Driving that is otherwise safe and uneventful.

- A safe driving record, with no conviction for any motor vehicle offense for which at least four points are assigned or for which your license is subject to revocation within the past five years.
- Impairment of your faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- Your voluntary entry into alcohol / drug / substance abuse treatment after arrest.
- Proof of 60 days or more of continuous abstinence from alcohol consumption, as shown by a continuous alcohol monitoring system.
- Any other factor that mitigates the seriousness of the offense.

### **Will I be placed on probation following a NC DWI conviction?**

Yes. You will be subject to a period of probation and ordered to comply with a number of obligations including obtaining a substance abuse evaluation and treatment. The standard conditions of probation will generally require you to:

- Commit no criminal offense in any jurisdiction (obey all laws);
- Remain within the jurisdiction of the court unless granted written permission to leave by the court or the probation department;
- Report as directed by the court or the probation department and permit the officer to visit your residence;
- Answer all reasonable inquiries by the probation department and obtain prior approval from the probation department before moving;
- Submit at reasonable times to warrantless searches by a probation officer of your person, vehicle, and residence;
- Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed by a licensed physician;
- Not knowingly associate with any known or previously convicted users, possessors, or sellers of any controlled substances;
- Not knowingly be present at or frequent any place where such illegal drugs are sold, kept, or used;
- Surrender your driver's license to the clerk of superior court, and not operate a motor vehicle for a specified period specified.

### **Is a DWI offense in North Carolina a crime?**

Yes, a DWI in North Carolina is a criminal offense.

## **Is a NC DWI a misdemeanor or felony?**

In North Carolina, a DWI is usually a misdemeanor crime. However, if you have three or more DWI's in the past 10 years, you commit the felony offense of habitual impaired driving (**Habitual DWI**). Conviction of a felony Habitual DWI results in at least 12 months incarceration and a permanent license revocation.

**Q.     What Constitutes "DWI" in North Carolina?**

A.     A motorist may be convicted of DWI in North Carolina if the motorist operates a vehicle while under the influence of an impairing substance or if, at any relevant time after operating a vehicles the motorist is found to have a blood-alcohol concentration of .08 or more. A person is "under the influence of impairing substances" if his or her mental and/or physical faculties are appreciably impaired by some substance.

**Q.     What can I expect if I am pulled over for DWI?**

A.     The officer will probably have you perform several field sobriety tests. The officer may then decide to ask you to consent to a blood or breath test. If the officer has probable cause to believe you have operated a vehicle while under the influence, the officer may arrest you and formally charge you with "Driving While Impaired."

**Q.     Do I choose which test to take?**

A.     No. The officer decides. You have a right to an additional chemical test after your initial test which you pay for yourself.

**Q.     Can the officer force me to give a sample for chemical analysis?**

A.     You can refuse to be tested, but you will lose your driving privileges in North Carolina for a period of one year. You may also receive a military disciplinary action. Under certain circumstances your commander can give you a direct order to submit to a blood test. The police can frequently prove the DWI charge without a test result by testifying about your driving and performance on field sobriety tests.

**Q.     What if I haven't been drinking? What if I have only been taking prescription drugs?**

A.     Driving under the influence of prescription or other drugs is no defense to DWI. Although no alcohol may be involved, you can still be convicted of DWI. If you can show that prescription drugs were the cause of your impaired driving, you may receive a more lenient sentence.

**Q.     What are the rights of a person requested to submit to a chemical analysis to determine blood-alcohol content?**

A.     You will be advised that you have been charged with operating a vehicle upon a highway or public vehicular area while committing an implied consent offense. You will be requested to submit to a chemical analysis to determine your alcohol concentration. It is required that you be informed both orally and in writing as to your rights, which are as follows:

1. You have a right to refuse to be tested.
2. Refusal to take any required test or tests will result in an immediate revocation of your driving privilege for at least 10 days and an additional 12 month revocation by the Division of Motor Vehicles.
3. The test results, or the fact of your refusal, will be admissible as evidence at trial of the defense charge.
4. Your driving privilege will be revoked immediately for at least 10 days if:
  - a. The test reveals an alcohol concentration of 0.08 or more; or
  - b. You were driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
5. You may have a qualified person of your own choosing to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
6. You have the right to call an attorney and select a witness for you for the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of your rights.

(It is usually recommended that you do request a witness to view the testing procedure and also that you ask for the help of an attorney.)

You will have a chance to blow into the Breathalyzer twice, and, if you do so, the lower of the two readings will be used.

**Q. My friend was charged with DWI while he was driving my car, and I got charged too. Can this happen?**

A. Owners who knowingly permit their vehicles to be driven by impaired drivers can be charged with Aiding and Abetting a DWI. The charge is just as serious as a DWI, and the penalties are just as severe.

**Q. Do I need a lawyer to help me if I am charged with DWI?**

A. Yes! DWI is a serious criminal charge. Conviction may result in jail, fines, community service, the loss of driving privileges and increased insurance premiums. If you are convicted, your installation driving privileges will be revoked and you will face disciplinary action. In addition, you can be barred from reenlistment or discharged.

**Q. If I am charged with DWI, can I be represented by an Air Force attorney?**

A. Regulations prohibit Air Force legal assistance attorneys from representing persons charged with criminal offenses. The Area Defense Counsel (ADC) can assist you with military administrative actions which flow from a DWI charge. For example, the ADC can help you respond to a letter of reprimand or revocation of driving privileges. If your commander recommends your administrative elimination, the ADC also will provide legal counseling.

**Q. Where will my DWI case be heard?**

A. On-base cases are usually dealt with by the commanders. Off-base cases are usually heard in state court, first before a district court judge and then (if a conviction is appealed) again by a superior court judge. The commander may later take additional action.

**Q. Does the Air Force have to wait for the court to dispose of my case before taking action?**

A. No. Your driving privileges will be suspended immediately upon arrest and you may receive a letter of reprimand before you are convicted. You may be referred to an alcohol/drug abuse education program. Your commander may start separation proceedings against you.

**Q. What if I am later acquitted of DWI or plead guilty to a lesser charge?**

A. Conviction of DWI is not required to support military administrative sanctions. Each case is carefully reviewed on its own facts and merits. If an acquittal was due to a technical defect (for example, absence of a particular witness at trial) which does not otherwise undermine the evidence of your impaired driving, administrative sanctions may still be imposed. These sanctions will usually only be lifted when it appears that you were not actually driving while impaired. For example, if you could not be identified conclusively as the driver in an accident situation, the sanction might be lifted.

**Q. What if I have other questions or specific problems I want help in solving?**

A. See the ADC as soon as possible. He or she can answer the questions and help you to make a fair and intelligent decision about your choices, options and alternatives. The ADC stands ready, willing and able to help you in these matters.