



DRIVING WHILE IMPAIRED



The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

*** North Carolina is known for being one of the toughest states with regards to punishing DWI offenders.**

- **WHAT CONSTITUTES "DWI" IN NORTH CAROLINA?**

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

- **WHAT CAN I EXPECT IF I AM PULLED OVER FOR DWI?**

A. The officer will probably have you perform several field sobriety tests. He may then 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, he may arrest you under suspicion of "Driving While Impaired."

- **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.

- **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 letter of reprimand. 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.

- **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 not a defense to DWI. Although no alcohol may be involved, you can still be convicted of DWI.

- **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:

You have a right to refuse to be tested.



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1. Refusal to take any required test or tests will result in revocation of your driver's license for one year, and possibly a longer period of time.
2. The test results, or the fact of your refusal, will be admissible as evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if:
 - a. You refuse any test or 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.
 - c. You are under the age of 21 and the test reveals an alcohol concentration of 0.01 or more.
4. 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.
5. You have the right to call an attorney and select a witness 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.

6. 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.

7. 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 on-base driving privileges will be revoked and you may receive some type of administrative action by your commander. In addition, you can be barred from reenlistment and discharged.

8. 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 administrative action before you are convicted. You will be referred to ADAPT or a similar alcohol/drug abuse education program. Your commander may start separation proceedings against you.

9. 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



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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 be lifted only 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.

10. WHAT IF I HAVE OTHER QUESTIONS OR SPECIFIC PROBLEMS I WANT HELP IN SOLVING?

A. See a legal assistance attorney as soon as possible. Your lawyer can answer the questions and help you to make fair and intelligent decisions about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.

12. WHAT ARE THE FINES OR PENALTIES FOR GETTING A DWI?

A. The punishments DWI offenders face depend on the classification level of the offense. Most first-offense DWIs are classified at level V, VI, or III.

Jail time. North Carolina law specifies minimum and maximum jail sentences for first-time DWI offenders—and the minimum jail sentence for even the least serious offense classification (level V) is 24 hours. Here are the possible jail times corresponding to offense level:

Level V: 24 hours to 60 days
Level IV: 48 hours to 120 days
Level III: 72 hours to six months
Level II: Seven days to one year
Level I: 30 days to two years

Fines. A standard first-offense DWI in North Carolina carries fines ranging from \$200 to \$4,000. As with jail time, fine amounts are based on the level classification. Here are the maximum fines:

Level V: \$200
Level IV: \$500
Level III: \$1,000
Level II: \$2,000
Level I: \$4,000

B. Probation. In some circumstances, a judge might suspend a DWI sentence and, instead, impose a term of probation. Conditions of probation often include jail time (to be served on a schedule set by the offender's probation officer), community service, and participation in a drug and alcohol evaluation program. However, the judge does not have the authority to sentence a level II or level I offender to probation in North Carolina.

Substance Abuse Assessment. All North Carolina impaired driving offenders must complete a substance abuse assessment and comply with any recommended treatment before their driver's license will be restored.

HELPFUL WEBSITES:

North Carolina Legal Aid
<http://www.legalaidnc.org/>



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Armed Forces Legal Assistance Website

<http://legalassistance.law.af.mil/>

North Carolina Department of Public Safety- Driving while impaired

<https://www.ncdps.gov/our-organization/law-enforcement/state-highway-patrol/faq/driving-while-impaired>

First Offense DWI in North Carolina

<https://dui.drivinglaws.org/resources/north-carolina-first-offense-dui.htm>

Legal Assistance for Military Personnel

<https://www.nclamp.gov/publications/take-1/to-the-drinking-soldier-driving-while-impaired-dwi-in-north-carolina/>