



Summary Of DWI Punishment Levels

This *Summary of DWI Punishment Levels* provides you with a brief overview of the Levels of punishments available to the Trial Court at sentencing. It is not and should not be considered a full and complete overview of all terms and conditions available to the Trial Court. Those terms and conditions will be personally advised to you based upon the facts and circumstances of your case.

If you plead guilty to, or are convicted of DWI, the Trial Court is required to conduct a “*Sentencing Hearing*”. At this “*Sentencing Hearing*”, the Trial Court is required to hear evidence and determine the existence of *Grossly Aggravating Factors*, *Aggravating Factors* and *Mitigating Factors*.

Grossly Aggravating Factors (Increase Level Of Punishment)

- Prior DWI conviction date within 7 years of the current date of offense;
- Conviction for DWI after the current date of offense, but prior to or contemporaneously with the current sentencing;
- Conviction for DWI when the appeal has been withdrawn or the case remanded and the re-sentencing has not yet occurred;
- Driving with a revoked/suspended drivers license on the current date of offense and the revocation/suspension is an impaired driving revocation G.S. § 20-28(a1);
- Serious personal injury to another person caused by the impaired driving;
- A passenger in the vehicle under the age of 18;
- A passenger in the vehicle with the mental development of a child under the age of 18; or
- A passenger in the vehicle with a physical disability that prevents unaided exit from the vehicle.

Aggravating Factors (Increase Level Of Punishment)

- Gross impairment of the driver’s faculties, or an alcohol concentration of 0.15 or more;
- Especially reckless or dangerous driving;
- Negligent driving that led to reportable accident; \$1,000 or more property damage or personal injury;
- Driving at time when your drivers license is revoked (non-impaired driving revocation);
- Prior DWI conviction date more than 7 years before the current date of offense;
- Two or more three point convictions occurring within 5 years of the current date of offense;
- Two or more convictions for an offense within 5 years of the current date of offense that subjected your drivers license to revocation/suspension;
- Conviction under G.S. § 20-141.5 for speeding while fleeing or attempting to elude apprehension;
- Conviction under G.S. § 20-141 for speeding at least 30 miles per hour over the posted limit;
- Passing a stopped school bus in violation of G.S. § 20-217; or
- Any other factor that aggravates the seriousness of the offense.

Mitigating Factors (Decrease Level Of Punishment)

- Slight impairment of the driver's faculties resulting solely from alcohol and an alcohol concentration that does not exceed .09;
- Slight impairment of the driver's faculties, resulting solely from alcohol, and no chemical analysis being available to the driver;
- Driving was safe and lawful;
- Safe driving record, with no conviction carrying 4 points or more within 5 years of current date of offense, or which the driver's license is subject to revocation;
- Impairment of the driver's faculties caused primarily by lawfully prescribed drug taken for existing medical condition and in the amount prescribed;
- Alcohol assessment after current date of offense, and voluntary participation in any recommended treatment;
- Completion of assessment and treatment and 60 days of Continuous Alcohol Monitoring system ("CAM"); or
- Any other factor that mitigates the seriousness of the offense.

SENTENCING HEARING.

The Trial Court, after determining the existence of *Grossly Aggravating Factors*, *Aggravating Factors* and/or *Mitigating Factors*, must impose one of six Levels of punishments as set forth in G.S. § 20-179. The punishment at each Level is as follows:

Aggravated Level I Punishment (AI.)

To sentence at this Level, the Trial Court must find the existence of **at least three Grossly Aggravating Factors**. The terms and conditions of this Level include:

- Fine up to \$10,000.00.
- Minimum active sentence of 12 months.
- Maximum active sentence of 36 months.
- Not eligible for parole under G.S. § 15A-1371.
- Released on date 4 months prior to maximum sentence imposed with "*Continuance Alcohol Monitoring*" (CAM) system.
- Term of imprisonment may be suspended and driver placed on special supervised probation provided driver serves at least 120 days active sentence.
- Trial Court shall order "CAM" for minimum of 120 days to a maximum of term of special supervised probation.
- Inpatient treatment may be credited against any active sentence.
- Obtain substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Level I Punishment (I.)

To sentence at this Level, the Trial Court must find the existence of **at least two Grossly Aggravating Factors or the one Grossly Aggravating Factor** in G.S. § 20-179(c)(4). The terms and conditions of this Level include:

- Fine up to \$4,000.00.
- Minimum active sentence of 30 days **or** minimum 10 days active with 120 days “CAM”.
- Maximum active sentence of 24 months.
- Trial Court may order that driver not consume alcohol for a minimum of 30 days to the maximum term of special supervised probation as verified by “CAM” device.
- Inpatient treatment may be credited against any active sentence.
- Obtain a substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Level II Punishment (II.)

To sentence at this Level, the Trial Court must find the existence of **one Grossly Aggravating Factor**. The terms and conditions of this Level include:

- Fine up to \$2,000.00.
- Minimum active sentence of 7 days **or** minimum 90 days “CAM”.
- Maximum active sentence of 12 months.
- 240 hours of community service if G.S. § 20-179(c)(1) or (c)(2) and Trial Court suspends all active imprisonment.
- Trial Court may order that driver not consume alcohol for a minimum of 30 days to the maximum term of probation as verified by “CAM” device.
- Inpatient treatment may be credited against any active sentence.
- Obtain a substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Level III Punishment (III.)

To sentence at this Level, Trial Court must find that the **Aggravating Factors substantially outweigh the Mitigating Factors**. The terms and conditions of this Level include:

- Fine up to \$1,000.00.
- Minimum active sentence of 72 hours.
- Maximum active sentence of 6 months.
- Trial Court may suspend the 72 hour active sentence and impose any one or all of the following conditions:
 - 72 hours in the County Detention Center; or
 - 72 hours of community service.
- Inpatient treatment may be credited against any active sentence.
- Obtain a substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Level IV Punishment (IV.)

To sentence at this Level, Trial Court must find that **there are no *Aggravating* or *Mitigating Factors*, or that the *Aggravating Factors* are substantially outweighed by *Mitigating Factors***. The terms and conditions of this Level include:

- Fine up to \$500.00.
- Minimum active sentence of 48 hours.
- Maximum active sentence of 120 days.
- Trial Court may suspend the 48 hour active sentence and impose any one or all of the following conditions:
 - 48 hours in the County Detention Center; or
 - 48 hours of community service.
- Inpatient treatment may be credited against any active sentence.
- Obtain a substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Level V Punishment (V.)

To sentence at this Level, the Trial Court must find that the ***Mitigating Factors* substantially outweigh the *Aggravating Factors***. The terms and conditions of this Level include:

- Fine up to \$200.00.
- Minimum active sentence of 24 hours.
- Maximum active sentence of 60 days.
- Trial Court may suspend the 24 hour active sentence and impose any one or all of the following conditions:
 - 24 hours in the County Detention Center; or
 - 24 hours of community service.
- Inpatient treatment may be credited against any active sentence.
- Obtain a substance abuse assessment and complete any recommended education or treatment.
- Trial Court may impose any other lawful condition.

Credit For “CAM” Installation

The Trial Court may give up to 60 days credit for “CAM” pre-trial against Level I or Level II punishment.

Credit For Inpatient Treatment

The Trial Court may give credit against any active term of imprisonment for the time spent inpatient treatment in a facility operated or licensed by North Carolina for the treatment of alcoholism or substance abuse.

Questions

We welcome any questions you have about your potential level of sentence. Your questions should be directed to **Leslie S. Robinson** (e-mail address: les@therobinsonlawfirm.com), **Nikki Garcia** (e-mail address: nikki@therobinsonlawfirm.com) or **Dee Fields** (e-mail address: dee@therobinsonlawfirm.com), but note that neither Mrs. Garcia nor Mrs. Fields can provide you with any legal advice. If your question requires legal advice, Mrs. Garcia or Mrs. Fields will notify Mr. Robinson and he will counsel you as to your questions.