

## 2011 DWI LEGISLATION: NCFADS SUMMER SCHOOL

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*A copy of any session law can be viewed, downloaded or printed from the General Assembly website at [www.ncqa.state.nc.us](http://www.ncqa.state.nc.us).*

1. **S.L. 2011-119 (S 16) (Misdemeanor death by vehicle rendered an implied consent offense)**  
Broadens the definition of “implied-consent offense” in G.S. 20-16.2(a1) to include the offense of misdemeanor death by vehicle in violation of G.S. 20-141.4(a2). Amends the subsequent testing provision in G.S. 20-139.1(b5) to provide that a person charged with any of the death or injury by vehicle offenses set forth in G.S. 20-141.4 “shall be requested to provide a blood sample in addition to or in lieu of a chemical analysis of the breath.” Specifies that the request for a blood sample is not required if the breath sample shows an alcohol concentration of 0.08 or more. Amended G.S. 20-139.1(b5) further requires a law enforcement officer to seek a warrant to obtain a blood sample if a person willfully refuses to provide a blood sample under this subsection, the person is charged with a violation of G.S. 20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offenses made subject to the implied consent procedures. Effective December 1, 2011 for offenses committed on or after that date. For further discussion of this act, see Shea Denning, Requests for Blood in Death by Vehicle Cases, posting to North Carolina Criminal Law: UNC School of Government Blog (June 22, 2011).
2. **S.L. 2011-191 (H 49)(Creates new Level A1 DWI, punishable by up to 3 years imprisonment)**  
This act, frequently referred to as “Laura’s Law”—the short title of the bill ultimately enacted, increases the maximum punishment for impaired driving, increases the length of time that continuous alcohol monitoring may be required as a condition of probation, and makes other changes applicable to defendants charged with and sentenced for impaired driving. The act is effective for offenses committed on or after December 1, 2011. S.L. 2011-191 requires Aggravated Level One punishment when there are at least three grossly aggravating factors in an impaired driving case sentenced under G.S. 20-179. An impaired driving conviction punished at Aggravated Level One (Level A1 DWI) requires a minimum term of 12 months imprisonment up to a maximum term of 36 months. The maximum fine is \$10,000. A defendant sentenced for a Level A1 DWI is not eligible for parole. Level A1 defendants must, however, be released from imprisonment four months before the end of the “maximum imposed term of imprisonment” and must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system.

The term of imprisonment for a Level A1 DWI may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. Note that this term of special probation imprisonment is significantly shorter than the mandatory minimum active term of 12 months. In this respect, Level A1 punishment departs from the sentencing requirements for other levels of impaired driving for which the mandatory minimum term of imprisonment matches the minimum term of imprisonment required as a condition of special probation. If a Level A1 defendant is placed on probation, the judge must require the defendant to abstain from alcohol for at least 120 days up to the entire term of probation as verified

by CAM. As is the case for probationary sentences imposed for other levels of DWI, the judge must require as a condition of probation for a Level A1 sentence that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6. Upon conviction of Level A1 impaired driving, the defendant's driver's license is permanently revoked pursuant to amended G.S. 20-19(e). Though a license permanently revoked under G.S. 20-19(e) may, under certain circumstances, be conditionally restored after it has been revoked for three years, a person whose license was revoked for conviction of Level A1 DWI must, in addition to meeting other conditions, have ignition interlock in order to have his or her license restored.

S.L. 2011-191 affects other types of DWI sentencing as well. Amended G.S. 20-179(h1) increases from 60 days to the term of probation the maximum period for which abstinence and CAM may be required of defendants sentenced for Level One or Level Two DWIs. It also eliminates the provision in G.S. 20-179(h1) that formerly capped a defendant's total CAM costs at \$1,000, and repeals G.S. 20-179(h2), which formerly prohibited a court from requiring CAM if it determined the defendant "should not be required to pay the costs" of CAM and the local government entity responsible for the incarceration of the defendant was unwilling to pay for CAM.

Amended G.S. 15A-534(i) authorizes abstinence from alcohol and CAM as a pretrial release condition for a defendant charged with an offense involving impaired driving who has been convicted of an offense involving impaired driving within seven years of the offense for which the defendant is being placed on pretrial release.

New G.S. 7A-304(a)(10) requires that a defendant sentenced pursuant to G.S. 20-179 (applicable to convictions under G.S. 20-138.1, 20-138.2 and second or subsequent convictions under G.S. 20-138.2A and 20-138.2B) pay, in addition to other applicable costs, a fee of \$100.

3. **S.L. 2011-216 (H 381) (Patterns for checkpoint stops may not be based on type of vehicle, with exception of commercial motor vehicles)**

G.S. 20-16.3A requires that checkpoints established to determine compliance with the state's motor vehicle laws be carried out pursuant to a written policy that provides guidelines for the pattern for stopping vehicles and for requesting stopped drivers to produce driver's license, registration or insurance information. The pattern must be designated in advance but does not itself have to be in writing. S.L. 2011-216 enacts new G.S. 20-16.3A(a1), which provides that the pattern must not be based on a particular vehicle type, except that the pattern may designate any type of commercial motor vehicle as defined in G.S. 20-4.01(3d). Subsection (a1) specifies that this subsection applies only to checkpoints established to determine compliance with the state's motor vehicle laws. Effective December 1, 2011 for offenses committed on or after that date.

4. **S.L. 2011-329 (S 241) (Requires Level One DWI sentence if a minor or disabled person was in vehicle at time of offense)**

This act amends G.S. 20-179 to require, effective for offenses committed December 1, 2011 or later, that persons convicted of covered impaired driving offenses be sentenced to Level One punishment if the grossly aggravating factor in G.S. 20-179(g)(4) exists. Before these amendments, a person could be sentenced at Level One upon a finding of at least two grossly aggravating factors. This factor formerly applied if the defendant drove while a child under the age of sixteen was in the car. The act also amends the factor itself for offenses committed December 1, 2011 or later. The amended factor applies if the defendant drives while impaired with any of the following types of persons in the car: a child under the age of 18 (was, 16), a person with the mental development of a

child under the age of 18, or a person with a physical disability that prevents the person from getting out of the vehicle without assistance.

5. **S.L. 2011-381 (H 761) (Renders tampering with an ignition interlock system a misdemeanor offense; removes colored border requirements for licenses; specifies that violations for false documents apply to special identification cards; authorizes DMV to obtain criminal history record of applicant for a restoration of a revoked driver's license)**

Enacts new G.S. 20-17.8A, which makes it a Class 1 misdemeanor to tamper with, circumvent, or attempt to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for a person to operate a motor vehicle for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results on the ignition interlock device. Each act of tampering, circumvention or attempted circumvention is a separate violation. Effective December 1, 2011 for offenses committed on or after that date.

Amends G.S. 20-7(n) to eliminate requirement that driver's licenses for persons under 21 years old and those over 21 years old have a different color background or border. Licenses and special identification cards issued to persons under 21 years of age still must be printed in a vertical format that distinguishes them from licenses and cards issued to applicants 21 and older, which are printed in a horizontal format. Also amends G.S. 20-11(a) to remove requirement that learner's permits and provisional licenses have a color background or border that indicates the level of driving privileges granted. Permit or license still must indicate level of driving privileges granted. Effective December 1, 2011 for licenses issued on or after that date.

Amends G.S. 20-30 to prohibit falsehoods related to special identification cards in the same manner as for driver's licenses and learner's permits. Effective December 1, 2011 for offenses committed on or after that date.

Enacts new G.S. 114-19.31 authorizing the Department of Justice (DOJ) to provide to DMV the criminal history record of any applicant for a restoration of revoked driver's license. Requires DMV to submit a request to DOJ accompanied by the applicant's fingerprints and a signed consent. Requires DMV to keep criminal history information obtained pursuant to this section confidential. Permits DOJ to charge a fee to offset its cost for the record check, and permits fees and costs incurred by DMV in obtaining the record to be charged to the applicant. Effective December 1, 2011.

Level	Factors	Minimum Sentence	Maximum Sentence	Probation Requiring:	Maximum F
1A	3 GAFs	12 months	36 months	Active term of at least 120 d + 120 days CAM	\$10,000
1	2 GAFs or 1 minor/disable d GAF	30 days	24 months	Active term of at least 30 d	\$4,000
2	1 GAF	7 days	12 months	Active term of at least 7 d	\$2,000
3	Agg. > Mitig.	72 hours	6 months	Active term of at least 72 hrs And/or at least 72 hrs CS	\$1,000
4	Agg = Mitig.	48 hours	120 days	48 hrs active and/or 48 hrs CS	\$500
5	Mitig. > Agg.	24 hours	60 days	24 hrs active and/or 24 hrs CS	\$200