



What is DWI?

Under North Carolina law, N.C. Gen. Stat. §20-138.1, one can be charged with driving while impaired (DWI) if they operate a motor vehicle on a street, highway, or public vehicular area while subject to an impairing substance. A DWI conviction can occur if you have an appreciable impairment of mental and/or physical faculties from alcohol or drugs or proof of a sufficient quantity of certain impairing substances as proven by chemical tests for drugs or alcohol. For purposes of a DWI, drugs are not limited to illicit substances but include any drug that appreciably impairs one's mental and/or physical faculties, such as prescription drugs.

About Blood/Breath Alcohol Content (BAC)

In North Carolina, the legal limit for a person's blood/breath alcohol concentration is .08%. You can be convicted of a DWI if you have a BAC of .08% or higher, or if you have any amount of a schedule 1 controlled substance in your system. For drivers with CDL licenses or commercial drivers, the BAC limit is reduced to .04%. If you are under 21, the standards for driving while impaired are the same as older individuals, however, there is a lesser charge of driving after consuming while under 21 if there is any amount of alcohol or illegal substance in your system.



Can You Refuse A Sobriety Test?

If law enforcement suspects you are driving while impaired they will likely ask you to participate in a field sobriety test or blow into a portable breath test to determine the presence of any impairing substances, and/or the extent of impairment. Often these tests are recorded to potentially be used at a future trial. You are under no requirement to submit to a field sobriety test or a portable breath test. While your refusal to take these tests will have no bearing on the status of your driver's license it is often used against you at trial. However, if you agree to take a portable breath test the results are only admissible in court as a being either positive or negative for the presence of alcohol.

Chemical Test and Civil Revocation of Your Driving License

Unlike field sobriety tests and portable breath tests, chemical testing is done after you have been read your rights at a police station, testing facility, or hospital. Your refusal of a chemical test or having a blood alcohol content (BAC) of .08 or higher will result in an immediate suspension of your license for a 30 day period, which is known as a civil revocation. In some instances, you may be able to receive a limited driving privilege after 10 days from the date of the charge.

Chemical Test Refusal

If you refuse a chemical test, the DMV will send you a letter notifying you of the beginning of the 1-year license revocation and your right to request a hearing to determine if your refusal was willful. This letter will be sent to your address of record and the request for a hearing is time-sensitive. If you request a hearing you must also pay a fee for the hearing of \$600 to the DMV. Additionally, you are entitled to have representation at this like any other court proceeding, which is in addition to the hearing in front of a Judge.

If you have been charged with a DWI you know the stakes are high. You are faced with harsh penalties that can affect you financially, socially, and professionally.

If you have a DWI charge, time is of the essence, call us for your consultation to determine what your best defense is to prevent the negative effects of a drunk driving conviction. Contact us online at dementaskew.com or call (919) 833-5555 today.

Will I Lose My License?

Generally, most drivers charged with DWI will



DEMENT ASKEW & JOHNSON
TRUSTED | RELENTLESS | ADVOCATES

lose their license for a period of 30 days upon being charged with the offense. Many of these individuals are may be able to receive a limited driving privilege after 10 days. If you are eligible for this, we can advise you of the process to obtain one. Upon conviction for DWI, a person will be revoked for at least one year for the criminal conviction. In many of these instances, one may receive a limited driving privilege during that 1-year revocation. However, if you had a BAC of 0.15 or higher, the first 45 days of the revocation will be without any eligibility for a limited driving privilege. All persons receiving the initial 30-day civil revocation must pay the civil restoration fee after 30 days, even if you are not eligible for a return of your license. Failure to pay the fee will result in an indefinite suspension of your license and can result in additional charges.

Most often, 1st-time offenders are eligible for a limited driving privilege during the year revocation period, unless there are other aggravating factors involved.

If your BAC was .015 or higher you will also be required to install an ignition interlock device on your vehicle before you will be eligible for a limited privilege, and the device must remain installed for at least 1 year.

Other Consequences of a DWI

In addition to incurring various court fines, increased insurance premiums, and attorneys fees associated with DWI, if you have a concealed carry weapon permit, it will be revoked. And, if any of your personal property was seized as a result of your DWI, generally you are not eligible to have the items returned to

you until after your case is concluded in Court, especially seized firearms. Whether to return seized property is entirely up to the Court. There is no guarantee your property will be returned to you.

What Happens if you have more than one DWI?

The circumstances of your case will determine how long you will lose your driving privileges. Being convicted of a 2nd DWI the offense date of which occurred within 7 years, but more than 3 years from the previous conviction, the revocation period is 1 year, and there is not a possibility of a limited driving privilege; Being convicted of a 2nd DWI the offense date of which occurred within 3 years from the previous conviction, the revocation period is 4 years, however, you may be able to obtain a conditional restoration after 2 years; If you receive 3 DWI's within 10 years, this creates a permanent revocation, and a conditional restoration can be requested after 4 years from the date of the last DWI conviction.

How long does a DWI case take?

A DWI case can take months or years to resolve. There are many factors that come into play when scheduling a DWI trial, attempting to avoid certain judges, the availability of the charging officers, and other case backlogs. You can generally expect a delay of at least 6 months from the date you were charged until you have to go before a Judge. While we strive to resolve your matter in a timely fashion, we also know that court delays are rarely detrimental to your case and the more time passes the more beneficial it can be to you.

DWI Sentencing

North Carolina's laws are tough on drivers driving under the influence. Punishments involve enormous fines, community service, jail time, and suspension of driving privileges. In North Carolina, a DWI is a misdemeanor and is categorized into 5 levels depending on the severity of circumstances, with aggravated level 1 being the most severe and level 5 being the least.

Sentencing Guidelines for DWIs Occuring On or After 10/1/13 According to G.S. §20-179

DWI Judgment	Level A1	Level I	Level II	Level III	Level IV	Level V
Factors	3 GAF's	2 GAF's or 1(c)(4) Factor	1 GAF	AF > MF	AF = MF	AF < MF
Maximum Fine	\$10,000	\$4,000	\$2,000	\$1,000	\$500	\$200
Special DWI Assessment Fee	\$100	\$100	\$100	\$100	\$100	\$100
Minimum Sentence	12 Months	30 Days	7 Days	__ Months	48 Hours	24 hours
Maximum Sentence	36 Months	24 Months	12 Months	__ Months	120 Days	60 Days
Special Probation	Minimum 120 Days Active	Min. 30 Days Act. or 10 Days Act. w/120 Days CAM (60 Days PTC)	Min. 7 Days Act. or 90 Days CAM (60 Days PTC), and 240 hours CS if GAF (c)(1)(2), and DWI within 5 years	__ Hours Active __ Hours CS or Combination	48 Hours Active 48 Hours CS or Combination	24 Hours Active 24 Hours CS or Combination
Assessment & Treatment	A/T	A/T	A/T	A/T	A/T	A/T
CAM	120 Days Minimum Maximum = Period of Special Probation	30 Days Minimum Maximum = Period of Special Probation "Discretionary"	30 Days Minimum Maximum = Period of Special Probation "Discretionary"	"Discretionary" as Lawful Condition	"Discretionary" as Lawful Condition	"Discretionary" as Lawful Condition

There are also a number of felonies that can stem from a DWI, for example having 4 DWI's within a 10 year period is a felony habitual DWI. Or, if there was an accident caused by a driver under the influence that can also be charged as a felony.



DEMENT ASKEW & JOHNSON

TRUSTED | RELENTLESS | ADVOCATES



333 Fayetteville Street, Suite 1513
Raleigh, NC 27601

Main Street #A1
Morehead City, NC 27601

919-833-5555

910-833-5555

Being charged with driving while impaired (DWI) is an extraordinarily stressful time, and not knowing what consequences you might face can be scary. The laws surrounding DWI are complex, and there is never a “one size fits all” solution. Every case is unique and requires the expertise of an experienced criminal attorney to help you navigate the different variables that are at play.

At Dement Askew & Johnson, our team of DWI attorneys have over 40 years of experience in successfully defending DWI cases. Our experience has afforded us the ability to understand how the courts and judges handle DWI cases, as well as how the administrators at the DMV handle these charges. While we are skilled and successful in negotiating with the prosecutor’s office, we are first and foremost trial lawyers who will aggressively represent you through trial to ensure that you have the best chance for the most successful outcome.