

# STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice

 District  Superior Court Division

\_\_\_\_\_ County

**STATE VERSUS**

Name Of Defendant

**IMPAIRED DRIVING  
DETERMINATION OF SENTENCING FACTORS  
(For Offenses Committed Before Dec. 1, 2011)**

G.S. 20-179

- District Court:** The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in District Court, the Court determines that (1) the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt and (2) the defendant has proved the mitigating factors marked below by a preponderance of the evidence.
- Superior Court:** The defendant has been convicted of impaired driving (G.S. 20-138.1). Based upon the evidence presented at the trial and sentencing hearing in Superior Court, (1) the trier of fact has determined that the State has proved the grossly aggravating factors and aggravating factors marked below beyond a reasonable doubt, or the defendant has admitted to these grossly aggravating factors and aggravating factors, and (2) the Court determines that the defendant has proved the mitigating factors marked below by a preponderance of the evidence. If grossly aggravating factor No. 1.a., 1.b., 1.c., 1.d., 1.e., or 1.f. is marked below, the Court determines that the State has proved that grossly aggravating factor beyond a reasonable doubt. If aggravating factor No. 8 or 9 is marked below, the Court determines that the State has proved that aggravating factor beyond a reasonable doubt (*applies to offenses committed on or after August 30, 2007*).

**I. GROSSLY AGGRAVATING FACTORS - G.S. 20-179(c)****(NOTE: Either Nos. 1 and 2 or No. 3 apply in each case except aiders and abettors. If No. 1 is checked, No. 2.a. or No. 2.b. must also be checked.)**

1. The defendant
- a. has been convicted of a prior offense involving impaired driving which conviction occurred within seven (7) years before the date of this offense.
  - b. has two or more convictions as described in No. 1.a. (Level One punishment is required.)
  - c. has been convicted of an offense involving impaired driving which conviction occurred after the date of the offense for which the defendant is being sentenced but before or contemporaneously with the sentencing in this case.
  - d. has two or more convictions as described in No. 1.c. (Level One punishment is required.)
  - e. has a prior conviction in District Court for an offense involving impaired driving, the conviction 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 for the case has not been held pursuant to G.S. 20-38.7. (*Applies to offenses committed on or after August 30, 2007.*)
  - f. has two or more convictions as described in No.1.e. (Level One punishment is required.) (*Applies to offenses committed on or after August 30, 2007.*)
  - g. drove, at the time of the current offense, while the defendant's drivers license was revoked under G.S. 20-28 and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
  - h. caused, by the defendant's impaired driving at the time of the current offense, serious injury to another person.
  - i. drove, at the time of the current offense, while a child under the age of 16 years was in the vehicle.
2. Therefore, the following level of punishment shall be imposed:
- a. **Level One** punishment, because at least two grossly aggravating factors in No. 1 apply to this defendant. (**NOTE: Each prior conviction is a separate grossly aggravating factor.**)
  - b. **Level Two** punishment, because only one grossly aggravating factor in No. 1 applies to this defendant.
3. There are no grossly aggravating factors.

**II. AGGRAVATING AND MITIGATING FACTORS - G.S. 20-179(d) AND (e)****AGGRAVATING FACTORS - G.S. 20-179(d):****(NOTE: Except for the factors in subdivisions 8 and 9 below, the conduct constituting the aggravating factor must occur during the same transaction or occurrence as this impaired driving offense.)**

1. The defendant's faculties were grossly impaired at the time the defendant was driving.
2. The defendant had an alcohol concentration of at least  0.16  0.15 (*use for offenses committed on or after December 1, 2007*) within a relevant time after the driving.
3. The driving of the defendant was especially reckless.
4. The driving of the defendant was especially dangerous.
5. The negligent driving of the defendant led to an accident causing property damage of \$1,000.00 or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3.
6. The negligent driving of the defendant led to an accident causing personal injury.
7. The defendant was driving while the defendant's drivers license was revoked.

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(Over)

- 8. The defendant had at least two prior convictions of a motor vehicle offense not involving impaired driving, which occurred within five (5) years of this offense, and
  - a. all were offenses for which at least three (3) points were assigned under G.S. 20-16.
  - b. all were offenses for which the defendant's drivers license was subject to revocation.
  - c. at least one was an offense for which at least three (3) points were assigned under G.S. 20-16 and at least one was an offense for which the defendant's drivers license was subject to revocation.
- 9. The defendant had at least one prior conviction of an offense involving impaired driving that occurred more than seven (7) years before the date of this offense.
- 10. The defendant has been convicted under G.S. 20-141.5 of speeding while fleeing or attempting to elude apprehension.
- 11. The defendant has been convicted under G.S. 20-141 of speeding by at least 30 m.p.h. over the legal limit.
- 12. The defendant passed a stopped school bus in violation of G.S. 20-217.
- 13. Additional factors that aggravate the seriousness of this offense:

- 14. There are no aggravating factors.

**MITIGATING FACTORS - G.S. 20-179(e):**

**NOTE:** Except for the factors in subdivisions 4, 6, and 7 below, the conduct constituting the mitigating factor must occur during the same transaction or occurrence as this impaired driving offense.

- 1. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, the defendant's alcohol concentration did not exceed 0.09 at any relevant time after the driving.
- 2. There was a slight impairment of the defendant's faculties resulting solely from alcohol; and, no chemical test was made available to the defendant.
- 3. The driving of the defendant was safe and lawful except for the impairment of the defendant's faculties.
- 4. The defendant has a safe driving record, having no convictions of any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the defendant's license is subject to revocation within five (5) years of the date of this offense.
- 5. The impairment of the defendant's faculties was caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the medical drug taken was within the prescribed dosage.
- 6. After being charged in this case with impaired driving, the defendant voluntarily submitted himself/herself to a mental health facility for assessment and has voluntarily participated in any treatment recommended by such facility, if such treatment was recommended.
- 6a. The defendant completed a substance abuse assessment, complied with its recommendations, and simultaneously maintained 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system of a type approved by the Division of Adult Correction and Juvenile Justice. *(Applies to offenses committed on or after December 1, 2007.)*
- 7. Additional factors that mitigate the seriousness of this offense:

- 8. There are no mitigating factors.

**DETERMINATION - G.S. 20-179(f):**

**(NOTE: Check only one.)**

- 1. The aggravating factors marked above substantially outweigh any mitigating factors marked above. Therefore, Level Three punishment shall be imposed.
- 2. There are no aggravating or mitigating factors. Therefore, Level Four punishment shall be imposed.
- 3. The aggravating factors marked above are substantially counterbalanced by the mitigating factors marked above. Therefore, Level Four punishment shall be imposed.
- 4. The mitigating factors marked above substantially outweigh any aggravating factors marked above. Therefore, Level Five punishment shall be imposed.
- 5. No findings of mitigating or aggravating factors were made because the defendant is an aider and abettor. Therefore, Level Five punishment shall be imposed.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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Material opposite unmarked squares is to be disregarded as surplusage.