



DWI for the Whole Family

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My wife reads celebrity gossip magazines, and one she brought home recently featured a couple who (a) apparently like to hit the nightspots (not necessarily with one another) and (b) have eight children. I assume that they don't bring the kids with them when they go out on the town, and I don't have any reason to believe that they drink and drive, either, but the magazine still got me thinking about a question that comes up from time to time: if a defendant drives while impaired with multiple children in the car, is that defendant "eligible" for multiple grossly aggravating factors?

As most readers of this blog know, DWI sentencing is governed by G.S. 20-179, which provides for certain mitigating factors, aggravating factors, and grossly aggravating factors. The balance of the various factors impacts the severity of the sentence. One of the grossly aggravating factors is having "a child under the age of 16 years . . . in the vehicle at the time of the offense." G.S. 20-179(c)(4). It's easy enough to apply when the defendant has one child in the car, but what if the defendant has two (or eight!) kids in the vehicle? One aggravating factor, or more than one? It's a big deal, because if two or more grossly aggravating factors apply, a Level One punishment is mandatory, meaning at least 30 days in jail, and up to 24 months.

There's no reported appellate decision on point, so we don't really know the answer. But most folks here at the School of Government think that only one aggravating factor applies, regardless of the number of kids. The best argument for that position is that the grossly aggravating factor for prior DWI convictions, set forth at G.S. 20-179(c)(1), expressly says that "[e]ach prior conviction is a separate grossly aggravating factor." The lack of any similar language as to passengers under 16 suggests that each kid doesn't count separately.

A similar issue arises with respect to the grossly aggravating factor set forth at G.S. 20-179(c)(3), "[s]erious injury to another person caused by the defendant's impaired driving." If the defendant injures two people, are there two grossly aggravating factors? Again, and for the same reasons, I tend to think not. If others disagree, I'm eager to hear about it.