



DWI Sentencing Changes

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In addition to enacting the aggravated level one punishment for impaired driving discussed [here](#), the 2011 General Assembly amended the requirements for imposing a Level One impaired driving sentence, effective for offenses committed on or after December 1, 2011. Most readers likely are familiar with the sentencing scheme set forth in G.S. 20-179, which governs sentencing for convictions under G.S. 20-138.1 (driving while impaired), G.S. 20-138.2 (driving while impaired in a commercial vehicle) and second or subsequent convictions under G.S. 20-138.2A (operating a commercial vehicle after consuming alcohol) and G.S. 20-138.2B (operating a school bus or child care vehicle after consuming alcohol). Those who aren't can read more about the current sentencing scheme [here](#) and [here](#).

[S.L. 2011-329](#) (S 241) amends G.S. 20-179 to require 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, rendering it applicable if the defendant drives while impaired with any of the following types of persons in the car: a child under the age of eighteen, a person with the mental development of a child under the age of eighteen, or a person with a physical disability that prevents the person from getting out of the vehicle without assistance. If more than one of these types of persons is in the car, it appears that only one grossly aggravating factor applies. For further analysis of that issue under current law, read [this post](#) by Jeff Welty.

Thus, an 18-year-old convicted of a first offense of impaired driving based upon an incident occurring December 1, 2011 or later in which a 17-year-old passenger was in the car and in which there were no injuries must be sentenced at Level One, which requires that the defendant serve at least 30 days in jail. In contrast, a defendant convicted of impaired driving based on an incident with the same underlying facts occurring before December 1, 2011 might, depending upon the existence of mitigating factors, be sentenced at Level Five—the least punitive level. While a Level Five sentence requires a minimum term of imprisonment of not less than 24 hours, such a sentence may be suspended on the condition that a defendant be imprisoned for a term of 24 hours as a condition of special probation or perform community service for a term of 24 hours.

I've updated the one-page (front and back) sentencing chart that I use as a quick reference for G.S. 20-179 sentencing questions to reflect the changes effective for offenses committed on or after December 1, 2011. It's available [here](#) for readers who might find it useful.