



DWLR as a Grossly Aggravating Factor for DWI Sentencing

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Grossly aggravating or just grossly confusing? When is a DWI defendant driving while revoked for an impaired driving revocation?

Several earlier posts ([here](#), [here](#) and [here](#)) have discussed sentencing for the offense of impaired driving. The punishment for driving while impaired is based on the presence and weighing of statutorily defined aggravating and mitigating factors. The factors with the greatest influence upon the sentence imposed are denominated grossly aggravating factors (GAFs). One GAF requires a Level Two punishment. More than one GAF requires punishment at Level One, the level with the highest mandatory minimum and maximum sentence.

The GAF about which I receive the most questions is set forth in [G.S. 20-179\(c\)\(2\)](#): "Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under [G.S. 20-28.2\(a\)](#)."

The following four scenarios are those about which folks most often inquire.

1. The defendant's license previously was revoked upon conviction of driving while impaired. The time period set forth for that revocation pursuant to [G.S. 20-19\(c1\)](#) (one year) or (d) (four years) had expired at the time of the current offense. However, the defendant's license had not been restored when he committed the current offense. Does the GAF apply?

It depends. If the defendant failed to obtain a certificate of completion for receiving a substance abuse assessment and completing an ADET school or substance abuse treatment program, the revocation period is extended until DMV receives the certificate of completion. See [G.S. 20-17.6\(b\)](#). If the revocation period was extended for this reason at the time the person committed the instant offense, then his or her license was revoked for an impaired driving revocation. The GAF factor thus applies if the defendant met the other requirements for the offense of driving while license revoked under G.S. [20-28\(a\)](#) by driving a motor vehicle on a street or highway.

If, however, the defendant had obtained a certificate of completion but simply failed to seek restoration of his license, which requires proof of insurance (G.S. 20-19(k)) and payment of a \$100 restoration fee ([G.S. 20-7\(i1\)](#)), then the defendant's license was not revoked at the time of the driving. In such a circumstance, the GAF does not apply.

If a suspension for a DWI conviction is listed on a defendant's DMV record as "indefinite," that means the term of revocation has expired, but DMV has not received a certificate of completion.

2. The defendant previously was revoked for an impaired driving revocation. During the period of revocation, the defendant drove and was convicted of driving while license revoked. The impaired driving revocation was no longer in effect at the time of the instant impaired driving offense, but the revocation for driving while license revoked was in place. Does the GAF apply?

No. Regardless of the reason for which the defendant was revoked at the time he committed the earlier offense of

driving while license revoked, the revocation in effect at the time of the instant impaired driving offense was pursuant to G.S. 20-28(a), which is not among the “impaired driving license revocations” set forth in G.S. 20-28.2(a). Those revocations must be made pursuant to one of the following statutes:

- G.S. 20-13.2: consuming alcohol or drugs, willful refusal, or impaired driving by driver under age twenty one
- G.S. 20-16(a)(8b): driving while impaired on a military installation
- G.S. 20-16.2: willful refusal to submit to a chemical analysis
- G.S. 20-16.5: pretrial civil license revocation
- G.S. 20-17(a)(2): impaired driving or impaired driving in a commercial vehicle
- G.S. 20-138.5: habitual impaired driving
- G.S. 20-17(a)(12): second or subsequent conviction of transporting an open container of alcohol
- G.S. 20-17.2: court order not to operate motor vehicle (repealed effective December 1, 2006)
- G.S. 20-16(a)(7): impaired driving while out of state resulting in revocation of North Carolina driver’s license
- G.S. 20-17(a)(1): manslaughter or second-degree murder involving impaired driving
- G.S. 20-17(a)(3): felony involving use of motor vehicle involving impaired driving
- G.S. 20-17(a)(9): felony or misdemeanor death or felony serious injury by vehicle involving impaired driving
- G.S. 20-17(a)(11): assault with a motor vehicle involving impaired driving
- G.S. 20-28.2(a)(3): the laws of another state and the offense for which the person’s license is revoked prohibits substantially similar conduct that, if committed in North Carolina, would result in a revocation listed under any of the statutes listed above. (*This type of revocation is defined as an impaired driving license revocation for purposes of the applying the laws governing seizure and forfeiture of motor vehicles, discussed [here](#). However, since driving while license revoked pursuant to G.S. 20-28(a) requires a North Carolina revocation, license revocation by another jurisdiction will not support application of the GAF discussed in this post*).

Note that the aggravating factor of driving by the defendant while his driver’s license was revoked as set forth in G.S. 20-179(d)(4) *does* apply on these facts.

3. The defendant’s license was civilly revoked several years ago pursuant to G.S. 20-16.5. The minimum revocation period has expired, but at the time she committed the instant offense, the defendant had not paid the restoration fee required to end the civil revocation. Does the GAF apply?

Yes. Impaired driving license revocations are defined by G.S. 20-28.2(a) to include G.S. 20-16.5 revocations. Moreover, a person who drives while her license is civilly revoked commits the offense of DWLR under G.S. 20-28(a). This is true even when the minimum revocation period has expired at the time of the driving and the person is eligible to have his or license returned upon payment of costs. G.S. 20-28(a1) provides that a person convicted of DWLR for driving after the minimum revocation period expired but before reclaiming his or her license is *punished* as if the person has been convicted of the less serious offense of driving without a license. This reduced punishment does not alter the charge or conviction of DWLR.

4. The defendant drove a bicycle in the commission of the instant impaired driving offense. At the time of the instant offense, the defendant’s driver’s license was revoked for an impaired driving revocation. Does the GAF apply?

No. In addition to being revoked for an impaired driving revocation, for this GAF to apply the defendant must have committed the offense of driving while license revoked as defined in G.S. 20-28(a), which requires driving a motor vehicle on a highway while the defendant’s license is revoked. Because a bicycle is a *vehicle* but is not a *motor vehicle* the defendant has not violated G.S. 20-28(a). Thus, the GAF does not apply.