

## DWLR + DWI Does Not (Automatically) Equal a Grossly Aggravating Factor

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*Author's note: The law was amended in 2015 to alter this analysis. The amendments are discussed [here](#).*

Grossly aggravating factors matter in DWI sentencing. And there's one factor that seems to be confusing folks, particularly when it comes to ignition interlock violations. Here's hoping this post clears it up. People convicted of impaired driving have their driver's licenses revoked for a definite period, either one year, four years, or permanently, depending upon the person's prior record. A person may apply to DMV to have his or her license restored after a one-year period of revocation ends or after two years of a four year or permanent revocation. If the DWI conviction is based on an offense in which the person had an alcohol concentration of 0.15 or more, or the person had a prior DWI within seven years, the person's license is restored subject to [an ignition interlock restriction](#). That restriction requires that the person (1) operate only a vehicle equipped with a functioning ignition interlock system of a type approved by DMV; (2) personally activate the ignition interlock system before driving the vehicle; and (3) not drive with an alcohol concentration that meets or exceeds the specified level of 0.04 or 0.00. Despite the fact that the person's license is restored and is no longer revoked, driving in violation of any of these ignition interlock restrictions constitutes the offense of driving while license revoked. Why is that? Because the General Assembly said so. [G.S. 20-17.8\(f\)](#) provides that a person who violates ignition interlock restrictions "commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section."

**DWI sentencing implications.** Driving while one's license is revoked for an impaired driving revocation is a grossly aggravating factor for purposes of sentencing DWI. See [G.S. 20-179\(c\)\(2\)](#). And because ignition interlocks follow prior convictions, most people who commit DWI while subject to an ignition interlock requirement already have at least one other grossly aggravating factor, namely a prior DWI conviction within seven years. Thus, if the ignition interlock violation also constitutes a grossly aggravating factor, the potential severity of the person's sentence increases. **The violation of an ignition interlock requirement imposed as a condition of license restoration does not, however, constitute an "impaired driving revocation."** That term is defined in [G.S. 20-28.2\(a\)](#) as a revocation made under several specific statutes. Recall that persons whose licenses have been restored are not, as a matter of fact, driving while their licenses are revoked. *But see* G.S. 20-17.8(f) (providing, as a matter of law, that driving in violation of an ignition interlock requirement is driving while license revoked). Thus, such persons are not **revoked** under any of the listed statutes.

**Limited driving privileges are different.** A person whose license is revoked may, in limited circumstances, be awarded a judgment that authorizes the person to drive essential purposes. Such judgments are referred to as limited driving privileges. The General Assembly has specified that a person who violates the restrictions of a limited driving privilege that permits driving during the period of revocation imposed for conviction of DWI commits "the offense of driving while . . . license . . . revoked under G.S. 20-28(a)." This makes sense. The person's license is revoked. He or she is authorized to drive in limited circumstances, and he or she has driven in a manner not authorized. **The grossly aggravating factor in G.S. 20-179(c)(2) does apply to DWI committed by a person driving pursuant to a limited driving privilege issued to allow driving following a DWI conviction (assuming the other elements of DWLR are satisfied).** That's because the driver's licenses of such persons are revoked pursuant to G.S. 20-17(a)(2), an impaired driving license revocation listed in G.S. 20-28.2(a). The answer is no different when the limited driving

privilege contains an ignition interlock restriction, as it must if the person had an alcohol concentration restriction of 0.15.