

General Assembly Approves Relief from the Endless Loop of License Revocation

Author : Shea Denning

Categories : [Uncategorized](#)

Date : August 3, 2015

Author's note: The North Carolina Drivers License Restoration Act was enacted in [S.L. 2015-186](#). The Technical Corrections Act, [S.L. 2015-264](#), rewrote the earlier act's effective date to render it applicable to offenses committed on or after December 1, 2015. Other clarifications made by the Technical Corrections Act are discussed [here](#).

The General Assembly ratified the [North Carolina Drivers License Restoration Act](#) last week and submitted it to the Governor. If the act becomes law, it will relieve defendants convicted of certain types of driving while license revoked of the mandatory additional license revocation that has historically followed such convictions. Proponents for a change in the law argued that people convicted of driving while license revoked under current law drove during the revocation period out of necessity and then became locked in an unending cycle of license revocation.

The cycle developed this way: A person was convicted of an offense requiring revocation of the person's license. You can find a chart of such convictions [here](#). The person drove during the initial revocation period, sometimes because he or she had no other way to travel to and from work. The person was stopped by a law enforcement officer and charged with driving while revoked. Upon conviction, the person's license was automatically revoked for an additional year. During that additional year, the person again was convicted of driving while license revoked. This time, the additional revocation period was two years. The person's third conviction for driving while license revoked led to a permanent license revocation.

[H 529](#) ends that cycle for some defendants, effective for convictions on or after December 1, 2015.

Recodification. The legislation assigns each of the two types of driving while license revoked currently codified in [G.S. 20-28\(a\)](#) to its own subsection. Driving while license revoked for impaired driving, a Class 1 misdemeanor, is codified in amended G.S. 20-28(a1). Driving while license revoked generally, a Class 3 misdemeanor, remains in G.S. 20-28(a).

The punishment for driving without reclaiming a license is moved to G.S. 20-28(a2), and the offense of driving after notification or failure to appear is codified in new subsection (a3).

The chart below sets forth the various subsections as recodified by H 529.

G.S. 20-28(a)	Driving While License Revoked	Class 3 misdemeanor
G.S. 20-28(a1)	Driving While License Revoked for Impaired Driving	Class 1 misdemeanor
G.S. 20-28(a2)	Punishment for Driving Without Reclaiming License	Class 3 misdemeanor
G.S. 20-28(a3)	Driving After Notification or Failure to Appear	Class 1 misdemeanor

If H 529 becomes law, a person convicted of driving while license revoked under G.S. 20-28(a) on or after December 1, 2015 will no longer be subject to a mandatory additional period of license revocation. Persons convicted of violating G.S. 20-28(a1) or (a3) still will be subject to the automatic revocation periods described at the outset of this post. Persons punished for driving without reclaiming a license are not subject to an automatic additional revocation period under current law or H 529.

A person's license also is subject to automatic revocation under current [G.S. 20-28.1](#) if the person is convicted of a motor vehicle moving offense that was committed while the person's license was revoked. H 529 amends G.S. 20-28.1(a) to provide that a violation of G.S. 20-7(a) (no operator's license), 20-24.1 (failure to appear or pay for motor vehicle offense), or G.S. 20-28(a) or (a2) shall not be considered a motor vehicle moving offense unless the offense occurred in a commercial motor vehicle or the person held a commercial driver's license at the time of the offense.

Ignition interlock amendment. Not all of the provisions of H 529 afford relief to defendants, however. The act amends G.S. 20-17.8(f) to specify that a person subject to an ignition interlock restriction who violates the restriction commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. This is a change from [what current law provides](#).

The act also amends [G.S. 20-179.3\(j\)](#) to provide that the holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section. This is a technical change that accounts for the recodification but does not change treatment of limited driving privilege violations under current law.

DWI sentencing change. Finally, the act makes a corresponding change to the grossly aggravating factor in [G.S. 20-179\(c\)\(2\)](#) that elevates the punishment for DWI when a person is driving at the time of the offense with a license that is revoked for impaired driving. Amended G.S. 20-179(c)(2) lists as a grossly aggravating factor "[d]riving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28(a1), and the revocation was an impaired driving revocation under G.S. 20-28.2(a)." The last clause is confusing. Is it surplusage since G.S. 20-28(a1) only applies to persons whose licenses are revoked for an impaired driving revocation or for an ignition interlock violation? Or does it operate to exclude ignition interlock violations from the grossly aggravating factor since they are not listed as impaired driving revocation under [G.S. 20-28.2\(a\)](#)? Perhaps a technical corrections bill later in the session will clear this up.