

As of August 1, 2011, court costs have gone up!

If your client pleads guilty to an infraction, costs are \$188. **If your client pleads guilty to a CR traffic offense, costs are \$190. If your client pleads guilty to a criminal offense, costs are \$180.** To this amount you have to add a fine which we often estimate to be \$50 and an additional \$50 if you get any equipment violation.

Therefore, for court costs and fines for an infraction, you can tell your client that he/she will owe approximately \$263 (\$188 for infraction + \$25 for estimated fine + \$50 for equipment violation).

New NCGS §7A-304(a)(10) imposes an additional \$100 in costs against a defendant for a conviction under NCGS § 20-138.1, impaired driving, or NCGS § 20-138.2, impaired driving in a commercial vehicle,, or for a second or subsequent conviction under NCGS §20-138.2A, operating a commercial vehicle after consuming alcohol, or NCGS §20-138.2B, operating a school bus, school activity bus, or child care vehicle after consuming alcohol.

Based on the above, we usually tell a dwi defendant that he needs to bring cash to court if convicted of a level 3,4 or 5 dwi the following: \$198 costs + \$200 estimated fine + \$250 community service (or \$40 a day for jail) + \$100 DWI fee [NCGS §§7A-304(a)(10) as of 12/01/11] + \$100 for a privilege if available = \$850 approximately.

DWI Punishments have increased.

Effective December 1, 2011, a defendant can receive an aggravated level one punishment, NCGS § 20-179(f), nicknamed “Laura’s Law,” if the judge finds three or more grossly aggravating factors.¹ The punishment is:

- (1) a fine of up to \$10,000;
- (2) a sentence of imprisonment of a minimum of 12 months and a maximum of 36 months of which a defendant must serve 4 months. If split sentence, scam and complete abstinence from 120 days to the full term of probation;
- 3) not eligible for parole.
- 4) a permanent license revocation
- 5) ignition interlock is required if the person’s license is restored
- 6) no credit for inpatient treatment
- 7) assessment and education or treatment
- 8) continuous alcohol monitoring system and costs related thereto

Defendants who receive an active sentence of imprisonment **must** be released four months before the end of the “maximum imposed term of imprisonment.” Once released, defendants must be placed on post-release supervision with a requirement that they abstain from alcohol during this four-month period as verified by a continuous alcohol monitoring system. ²A defendant must also obtain a substance abuse assessment and education or treatment.

¹ Remember to argue Apprendi v. New Jersey (2000) 530 U.S. 466, in which the U.S. Supreme Court ruled that grossly aggravating factors must be proven beyond a reasonable doubt . Argue that an out of state conviction is not similar, i.e., a Virginia conviction may not be substantially similar.

For defendants charged with an offense involving impaired driving and who have a prior conviction for such an offense within seven years of the current offense, new NCG.S §15A-534(i) authorizes, as a condition of pretrial release, abstinence from alcohol as verified by a continuous alcohol monitoring system.

As a result of being convicted under NCGS § 20-179(f3), the defendant's license revocation is permanent. NCGS § 20-19(e). When such a defendant's license is eligible for restoration, (3 years after last conviction) ignition interlock is required and such a defendant is not allowed to drive with an alcohol concentration of greater than 0.00. NCGS § 20-17.8(b).

Effective December 1, 2011, a person may be convicted of tampering with an ignition interlock system, which is a Class 1 misdemeanor. NCGS § 20-17.8A.

A defendant charged with an offense involving impaired driving and having a prior impaired driving conviction that occurred within 7 years of the date of offense of the pending case may have the SCRAM bracelet ordered as a condition for pretrial release. NCGS § 15A-534.

Pursuant to NCGS §20-179(c), effective 12/1/11, a DWI conviction is Level 1 if Defendant had with him in the vehicle at the time of the offense a person under the age of 18, a person with mental development of a child under the age of 18 or a person with a physical disability preventing unaided exit from the vehicle

LET'S TALK ABOUT DWI SENTENCING.

What are your obligations? 1) Candor to tribunal. 2) Confidences of client.

What do I do? I **always** do it the same way. Never make any assertions about Defendant's record, even when it's safe. My D.A.s usually (I remind them sometimes) tell the judge that the Defendant has a safe record. Then, when you know something that D.A. doesn't and you won't say anything, like always, it won't alert them that something is up.

MAKE NO STATEMENT.

And of course you can't offer a privilege if you know Defendant is disqualified, even if the Court/D.A. doesn't know.

Be careful. Your reputation is your stock in trade. Never risk it for a client!

Also, don't forget Apprendi and its progeny. Proof beyond a reasonable doubt of all aggravators and gross aggravators. Make the D.A. do his work!

Work on that privilege. It will make life hard or easy for Defendant depending on how good the

2 Any reference to not allowing the cost of the continuous alcohol monitoring system to exceed \$1,000 has been deleted. N.C.G.S. § 20-179(h1). Also N.C.G.S. § 20-179(h2) allowing the court upon good cause to order that the defendant not use the continuous alcohol monitoring system has been deleted as well as the part providing that a local governmental entity may agree to pay the costs of the system if the defendant is incarcerated.

privilege is. Don't just accept standard hours--pay attention to the details--work letter, other specific language that some judges prefer on the privileges.

Stopping patterns at vehicle checkpoints now required.

Effective for offenses committed on or after December 1, 2011, law enforcement agencies must designate in advance a pattern for stopping vehicles at checkpoints and are prohibited from basing a stopping pattern on a particular vehicle type other than a commercial motor vehicle. NCGS §20-16.3A(a1).

Criminal history and fingerprints may be required for a DMV restoration hearing. The fee is to be determined by DOJ and paid by defendant. NCGS §114-19.31.

Unsafe driving by teenagers:

Pursuant to NCGS §20-13.3, effective October 1, 2011,

- 1) All applicants for licenses submit to DMV driving logs signed by supervising drivers. For limited provisional driver's license, applicant's logs must list 60 hours, at least 10 at night, no more than 10 hours a week. For full provisional driver's license, 12 hours, at least 6 at night.
- 2) Civil revocation under NCGS §20-13.3, for provisional driver's license when charged with motor vehicle offense that is a criminal moving violation, not including nonmoving violations (registration, etc.) and equipment violations. The officer must execute a revocation report and take the provisional licensee before a judicial official for an initial appearance. This requires officers to arrest provisional licensees with misdemeanor motor vehicle offenses, such as speeding, for which drivers typically are cited and released. Permit or license suspended for 30 days. No privilege allowed. Licensee/permittee does not need to surrender permit/dl. No drivers license points or insurance surcharge assessed for revocation under NCGS §20-13.3. If DWI also charged based on same conduct, the DWI revocation controls.

Miscellaneous Stuff:

As of October 1, 2011, for offenses committed on or after that date, **all-terrain vehicles** require US Dept of Transportation motorcycle approved helmet and eye protection if on a public street or highway or a public vehicular area. If the driver is under 18, approved helmet and eye protection required at all times unless he works for the power company and then he has to wear OSHA approved gear. But: if driver 16 or older, can ride ATV on beach without helmet if ATVs are allowed at that beach. NCGS §20-171.19.

As of December 1, 2011, for offenses committed on or after that date, unsafe movement that affects **a motorcycle** costs minimum \$200 fine and costs. If unsafe movement causes the motorcycle to wreck, \$500 minimum fine. NCGS §20-154(a1).

As of December 1, 2011, if felony speed to elude is charged, a law enforcement officer seizes vehicle and delivers it to the sheriff, the vehicle can be released to defendant for bond worth double the value of vehicle, or the value of the vehicle, depending on charges.

Otherwise, may be released to lienholder, who can sell. If defendant is convicted of felony speeding to elude, school board gets any amount left after lien paid at public auction after first paying a) storage, b) seizure fee c) costs of sale.

Innocent owner can file petition (and has right to jury trial) if:

- a) Defendant was an immediate member of owner's family at the time of offense
- b) Defendant has no previous felony or misdemeanor convictions at offense date and had no previous or pending violations of Chapter 20 offenses for 3 years prior to offense, and
- c) Defendant was under 19 at time of offense

Then vehicle returned to owner.

If innocent owner did not give Defendant permission to drive and files report and helps prosecute the Defendant for unauthorized use, the innocent owner can file a petition with CSC and CSC determines whether innocent owner. If yes, then vehicle released to owner. NCGS § 20-141.5.

Speeding in school zone: exactly \$250 fine mandatory.

Expungement of record of non-violent felony for people under 18 on date of offense. NCGS §15A-145.4.

Misdemeanor death by vehicle made an implied consent offense; mandatory blood tests in certain circumstances. Effective for offenses committed on or after December 1, 2011, the act amends NCGS §20-16.2(a1) to designate as an "implied-consent offense" a violation of NCGS §20-141.4(a2). This offense is misdemeanor death by vehicle, which in essence involves the unintentional causing of the death of another person by the commission of a traffic violation other than impaired driving. The act also amends NCGS §20-139.1(b5), which deals with subsequent tests for an impairing substance when a person is charged with an implied-consent offense. The statute has given officers the discretion to request a test of a person's blood (or other bodily fluid or substance) in addition to or in lieu of a test of the person's breath. The amended statute requires officers to request a blood sample in addition to or in lieu of a breath test if the person is charged with a violation of NCGS §20-141.4, which involves various offenses involving death and serious injury by vehicle; however, the officer retains the discretion not to request a blood sample if the breath sample shows an alcohol concentration of .08 or more. Amended NCGS §20-139.1(b5) also provides that an officer must seek a warrant for a blood sample if the person willfully refuses to provide a blood sample, the person is charged with a violation of NCGS §20-141.4, and the officer has probable cause to believe that the offense involved impaired driving or was an alcohol-related offense subject to the implied-consent procedures in NCGS §20-16.2; the amended statute states, however, that the failure to obtain a blood sample is not grounds for dismissal and is not an appealable issue.

Electric vehicles in carpool lanes. Effective May 26, 2011, the act amends NCGS §20-146.2 to allow a plug-in electric vehicle, as defined in new NCGS §20-4.01(28a), to travel in a high occupancy vehicle lane regardless of the number of passengers in the vehicle as long as the vehicle is able to travel at the posted speed limit.

Finally, **limitations on judge's authority to revoke probation!** Effective for probation violations on or after December 1, 2011, amended NCGS §15A-1344(e) allows a court to revoke probation (activate the entirety of a suspended sentence) for two specific types of violations only: committing a new criminal offense and absconding.

BONUS STUFF!

Bonus 1: Periods required for interlock (See attached)

Bonus 2: How to tell if an equipment violation is a moving violation
Marcus' Rule: If you stick it on the car, it's not moving.

Bonus 3: Resources for Attorneys-
Go to marcusehill.com and find lots of useful stuff