

THE ABCs OF DWI

Part of the ABCs of NC Law Series

INTRODUCTION

To be an effective lawyer, we must either be savants, remembering everything we have ever read and witnessed, or we must know where to find the law, quickly, if the details escape our recollection. This book is designed to assist in that effort, with an easily searchable index that will take you right to the answers you seek.

Impaired driving law changes rapidly, and profoundly. In a world where many of us are just now getting familiar with the 2006 amendments, the 2011 and 2012 changes have blindsided us in a way that will test our mettle as both attorneys and counselors. It is easier to consult with a client charged with a felony than a DWI, and in many cases, the felony client faces lesser consequences.

Advising and counseling clients on the consequences of DWI convictions may be the most important deterrent available. It is no longer enough to skirt the surface of DWI law. A little bit of knowledge truly is a dangerous thing in today's trial courtrooms.

As always, the place to start is with the statutes themselves. No CLE, no "DWI Update," can give us a fraction of the expertise that reading the actual law affords us. But here is the trick with impaired driving law: the statutes build upon each other, and it is impossible to even get a "big-picture" without spending hours and hours cross-referencing each statute with every other statute!

And we all need to see the "big-picture," but without losing sight of the details. The forest and the trees, so to speak. This book organizes the details into a searchable "big-picture," to make us all experts and confident in our knowledge of impaired driving law.

Over the last decade, every DWI CLE has become an “update” class. It seems as if we are always playing catch-up, and learning about the new laws inside of the courtroom. But we must be ready to explain not just the current law to our clients, but also counsel them on potential future consequences. We must be attorneys **and** counselors at law. Perhaps by sharing our knowledge, we may prevent future impaired driving behavior.

The “ABCs” of impaired driving are greater than just 26 topics; but this book offers a complete picture of the law, and allows for quick topic reviews for fast, in-court assistance. Impaired driving law is complicated, but we can all become experts, one letter at a time.

CHAPTER 1

IMPAIRED DRIVING OFFENSES

Every assessment of an impaired driving case should start at the same place: determine the exact charge, and the elements of said charge. Impaired driving offenses in North Carolina include:

- Impaired driving (N.C.G.S. 20-138.1)
- Habitual impaired driving (N.C.G.S. 20-138.5)
- Impaired driving in a commercial vehicle (N.C.G.S. 20-138.2)
- Operating a commercial motor vehicle after consuming (N.C.G.S. 20-138.2A)
- Operating a school bus, school activity bus, or child care vehicle after consuming (N.C.G.S. 20-138.2B)

- Operating a motor vehicle after consuming under 21 (N.C.G.S. 20-138.3)
- Felony death by motor vehicle (N.C.G.S. 20-141.4(a1))
- Felony serious injury by motor vehicle (N.C.G.S. 20-141.4(a3))
- Aggravated felony serious injury by motor vehicle (N.C.G.S. 20-141.4(a4)) Aggravated felony death by motor vehicle (N.C.G.S. 20-141.4(a5))
- Involuntary manslaughter (N.C.G.S. 14-18).
- Murder (N.C.G.S. 14-17)

North Carolina officially defines an “offense involving impaired driving” in N.C.G.S. 20-4.01(24a). It includes the above offenses, with the exception of N.C.G.S. 20-138.2A, N.C.G.S. 20-138.2B, and notably, N.C.G.S. 20-138.3. It further includes substantially similar offenses committed in another jurisdiction, or substantially similar repealed or superseded offenses. The

definition establishes that convictions for both N.C.G.S. 20-138.1 and N.C.G.S. 20-138.2, arising from the same transaction, are a single impaired driving conviction.

It is impossible to understand the elements of any impaired driving charge without a through analysis of N.C.G.S. 20-4.01, “definitions.” Driving while impaired charges are heavily litigated. Cases can be determined by a single definition. Every element has been thoroughly tested and definitively defined by our legislature and our appellate courts. The following definitions, from N.C.G.S. 20-4.01, are essential reading.

Alcohol (N.C.G.S. 20-4.01(1a)) - Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

Alcohol Concentration (N.C.G.S. 20-4.01(1b)) - The concentration of alcohol in a person, expressed either as: (a) Grams of alcohol per 100 milliliters of blood; or (b)

Grams of alcohol per 210 liters of breath. The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Class A Motor Vehicle (N.C.G.S. 20-4.01(2a))

A combination of motor vehicles that meets either of the following descriptions: (a) Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds; (b) Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

Class B Motor Vehicle (N.C.G.S. 20-

4.01(2b)) - Any of the following: (a) A single motor vehicle that has a GVWR of at least 26,001 pounds; (b) A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR

of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

Class C Motor Vehicle (N.C.G.S. 20-4.01(2c)) - Any of the following: (a) A single motor vehicle not included in Class B; (b) A combination of motor vehicles not included in Class A or Class B.

Chemical Analysis (N.C.G.S. 20-4.01(3a)) - A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

Chemical Analyst (N.C.G.S. 20-4.01(3b)) - A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.