

STATE: **NORTH CAROLINA**
 General Reference: N. C. General Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an impairing substance ⁸⁹³ §§20-4.01(14a) and 20-138.1(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥.08 ^{894and895} §20-138.1(a)(2) Persons Under 21 Years Old: Any Alcohol in the Body or a Controlled Substance in the Blood ⁸⁹⁶ §20-138.3.
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of Any Impairing Substance or with any amount of Schedule I controlled substance (as listed in GS90-89) or its metabolites. ⁸⁹⁷ §§20 – 4.01(14a) and 20-138.1(a)(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes. ⁸⁹⁸ §§20-16.2(i), 20-16.3(a), 20-138.3(d), 20-138.2A and 20-138.2B
Implied Consent Law: Arrest Required (Yes/No): Implied Consent Law Applies to Drugs (Yes/No):	Yes ⁸⁹⁹ §20-16.2(a) Yes ⁹⁰⁰ §§20-16.2(a) and (a1) and 20-139.1 Note: Sec. 20-139.1 only applies to procedures governing chemical tests for alcohol concentration.
Refusal to Submit to Chemical Test Admitted into Evidence: Other Information:	Yes (Criminal Cases) §§20-16.3(d)

Chemical Tests of Other Substances for Alcohol
Concentration Which Are Authorized Under
the Implied Consent Law:

Blood:	Yes
Urine:	Yes
Other:	Yes

⁸⁹³ "Impairing substance" means alcohol, a controlled substance (under Ch. 20), any other drug or psychoactive substance. §20-4.01(14a)

⁸⁹⁴ This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more.

⁸⁹⁵ Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §20-4.01(1b)

⁸⁹⁶ This law does not apply in situations where the controlled substance was lawfully obtained and is taken in therapeutically appropriate amounts.

⁸⁹⁷ The fact that a person is legally entitled to use alcohol or a drug is not a defense. 20-138.1(b)

⁸⁹⁸ Based upon "suspected" violations of driving either a CMV or school bus while consuming alcohol or while having any alcohol in the body, a preliminary breath test may be administered and the results may be admitted into evidence. A refusal to submit to such a test may also be admitted into evidence. §§20-138.2A(b2) and 20-138.2B(b2)

⁸⁹⁹ Arrest or if a criminal process for the DWI offense has been issued. §20-16.2(a1)

⁹⁰⁰ A law enforcement officer shall "designate the type of chemical analysis to be administered." §20-16.2(a) and (b)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No. However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge. §20-138.4
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes ⁹⁰¹ §§20-179(f), (h), (i), (j) and (k) and 20-179.1

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	No
Other:	None
Refusal to Take <u>Implied Consent</u> <u>Chemical Test</u> : Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Revocation 12 months ⁹⁰² (with 30-day ⁹⁰³ immediate license revocation) §§20-16.2(d) and 20-16.5 ⁹⁰⁴

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): I. A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC $\geq .04$, (2) is under the influence of an impairing substance, or has any amount of a controlled substance or its metabolites in blood or urine(20-138.2), or (3) refuses to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above-listed items, the "disqualification" is for life (10 years mand but for third violation/refusal, disqualification for life is mand). II. It is a misdemeanor to operate a CMV (1) while under the influence of an impairing substance or (2) with a BAC/BrAC $\geq .04$. The sanctions for this offense are the same as for a regular drunk-driving offense (§20-179). III. The State has adopted by reference the "out-of-service" provisions of 49 CFR §§392.5 and 395.13. These provisions provide, among other things, that a CMV operator be place "out-of-service" for 24 hours, if

⁹⁰¹ A person is eligible for restricted driving privileges upon completion of a substance abuse assessment. §20-179.3(b)(1)(e)

⁹⁰² **Limited License:** There are two types of limited licenses that are available: I. A limited driving privilege license may be issued after 6 months of the revocation period provided the driver either (1) has not had a previous chemical test refusal (within 7 years), and (2) has not had a previous DWI offense conviction (within 7 years) or has not been charged with a DWI offense that involved either death or critical injury to another person. §20-16.2(e1) II. Under separate provisions, limited driving privileges may also be granted after **10 days** if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. §20-16.5(p)

⁹⁰³ If the driver is late in surrendering or does not surrender his/her license to the court when ordered to do so, the immediate revocation period is 45 days. §20-16.5(f) Limited driving privileges may be granted after **30 days** if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. §20-16.5(p)

⁹⁰⁴ For persons <21 years old a revocation for 1 year is mandatory. This revocation is in addition to and runs concurrently with any other licensing action authorized by law for an implied consent law violation. §§20-4.01(31a) and 20-13.2

by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the preceding 4 hours. IV. Driving a CMV while consuming alcohol or while alcohol remains in the body (BAC/BrAC >.00): first offense (Class 3 misdemeanor) – \$100 fine and disqualification for 10 days (mand); second or subsequent offense (within 7 years) (misdemeanor) – Same criminal sanctions as for a DWI offense and CDL disqualification for 1 year (mand). An offender must have alcohol education/treatment prior to re-licensing. However, for a fourth offense, disqualification is for life (mand). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2A). §§ 20-4.01(0.2), (3d), (5a), (14a), (24a) and (25a), 20-17(2), 20-17.4(a), (a1), (b), (b1), 20-17.6, 20-19(f), 20-37.12, 20-138.2, 20-138.2A and 20-179.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

Level 1 Punishment-30 days – 24 months; Level 2 Punishment -7 days-12 months; Level 3 Punishment – 72 hours-6 months⁹⁰⁵; Level 4 Punishment-48 hours -120 days; Level 5 Punishment – 24 hours to 60 days. §20-179 See Footnote No. ⁹⁰⁶. Fourth offense or subsequent offense (within 7 years) (Habitual Impaired Driving-Class F felony) – ≤59 months⁹⁰⁷ §20-138.5 Level 1 Punishment-30 days; Level 2 Punishment-7 days §20-179(g) and (h) Fourth offense or subsequent offense (within 7 years-Habitual Impaired Driving-Class F felony) – **12 months**. §20-138.5(b)

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

Level 1 Punishment – Not more than **\$4,000**;
Level 2 Punishment – Not more than **\$2,000**;
Level 3 Punishment – Not more than **\$1,000**;
Level 4 Punishment – Not more than **\$500**;
Level 5 Punishment – Not more than **\$200**. §20-179 Fourth offense or subsequent offense (within 7 years-Habitual Impaired Driving-Class F felony) – Fines are authorized but are not specified in the statute. §20-138.5.

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Level 3 Punishment-72 hours; Level 4 Punishment 48 hours; Level 5 Punishment – 24 hours.

⁹⁰⁵ The term of imprisonment may be suspended on the condition that the defendant either (1) serve the minimum term of imprisonment as a special condition of probation, (2) perform the indicated community service, (3) have the license withdrawn for the period of time shown under Post-DWI Conviction Licensing Action, or (4) any combination of the above.

⁹⁰⁶ For DWI offenses where sentencing is authorized under §20-179, the court, at its discretion, may order that either the term of imprisonment or community service be served on weekends. The court is authorized to impose this type of sentence even if the sentence cannot be served consecutively. §20-179(s)

⁹⁰⁷ The sanctions for Habitual Impaired Driving are an imprisonment term from 12 to 59 months and a fine. The length of the imprisonment term above the minimum period of 12 months is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. The fine amount is discretionary with the court. §§15A-1340.14, 15A-1340.16, 15A-1340.17 and 20-138.5(b)

Special Note: The level of punishment given a DWI offender is determined by weighing aggravating factors (e.g., BAC \geq .16, reckless/dangerous driving, negligent driving resulting in an accident or driving with a revoked license) and mitigating factors as specified in §20-179(d) and (e). However, the court must impose Level 2 punishment (§20-179(h)) if (1) there has been a previous DWI conviction within a 7-year period, (2) there has been a "serious injury" related to a DWI offense, or (3) there was a child under 16 years old riding with the offender (**child endangerment**). The court must impose Level 1 punishment (§20-179(g)) if there have been two previous DWI offense convictions within 7 years (i.e., for a third DWI offense). The court must also impose Level 1 punishment (§20-179(g)) if any two or more of the following conditions exist: (1) the defendant has a previous DWI offense conviction within 7 years of the offense charged; (2) the defendant at the time of the offense was driving on a revoked license where such revocation was based on a previous DWI offense conviction; (3) the present offense resulted in a "serious injury"; or (4) there was a child under 16 years old riding with the offender (**child endangerment**). §20-179(c)

Double Jeopardy: Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Oliver*, 470 S.E.2d 16 (N.C. 1996) and *State v. Reid*, 559 S.E.2d 561 (N.C. App. 2002).

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Restitution
(e.g., Victim's Fund)

Yes (1) Direct compensation by the defendant to a victim (§15B-24) (2) Also via a victims' compensation fund (§15B-1 et seq. See especially §15B-2(5).)

Other:

House Arrest: For either Level 1 or Level 2 Punishment, "house arrest" may be authorized in lieu of part of the mandatory term of imprisonment. §20-179(g) and (h).

Community Service Fee: Offenders who participate in community service are assessed a fee of \$200. §20-179.4(c)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes. \geq .08 (>.00 for Persons Under 21 Years Old)
BAC/BrAC⁹⁰⁸ Revocation for 30 days⁹⁰⁹
§20-16.5(b),

⁹⁰⁸ For commercial motor vehicle operators, if the BAC/BrAC is \geq .04. §20-16.5

⁹⁰⁹ **Mandatory Licensing Action and Limited Driving Privileges:** Limited driving privileges may be granted after **10 days** (after 30 days for a 45-day revocation) if the person does not have a conviction for an offense involving "impaired driving" and agrees to participate in a substance abuse training or treatment program. For revocations pending final judgment, limited driving privileges may be granted after **30 days** (after 45 days if the license was not surrendered to the court). §20-16.5(p)

BAC Restricted Licenses: After an offender's license has been restored, a restriction is placed on the license prohibiting driving at or above certain BAC levels as follows: (1) for a first restoration-BAC \geq .04; (2) for a second or subsequent restoration-BAC $>$.00; and (3) for a restoration following either (i) a DWI conviction in a CMV or (ii) a conviction if $<$ 21 years old of driving with any BAC/controlled substances in the body or (iii) a conviction of a vehicle homicide offense – BAC $>$.00 These BAC restrictions are in effect for the following periods after license restoration: (1) if the offender's license was permanently revoked for a DWI offense but can be restored, the restriction lasts 7 years; (2) if the offender was $<$ 21 years old and his/her license was restored following a conviction for driving with any BAC/controlled substances in the body, the restriction lasts until the person is 21 years old. In all other cases, the restriction lasts for 3 years. §20-19(c3)

School Bus, School Activity Bus or Child Care Vehicle Operators: It is illegal to operate either a school bus, a school activity or a child care vehicle while consuming alcohol or while alcohol remains the body (BAC/BrAC $>$.00). First offense (Class 3 misdemeanor) – \$100 fine and license suspension for 10 days (and); second or subsequent offense

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(1b), (e) and (f) Note: If the driver is late in surrendering or does not surrender the license to the court when ordered to do so, the revocation period is 45 days.⁹¹⁰ §20-16.5(f) In addition, if the driver already has a pending drunk-driving offense and a probationary license as a result of a DWI offense, the license is revoked for the present offense until a final judgment (including all appeals) has become final. §20-16.5(e) and (f)

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):

First offense – Revocation; second offense (within 3 years) – **Revocation**; third offense (where the second offense was within 5 years of the third) – **Revocation**; §§20-17, 20-19 and 20-179

Fourth or subsequent offense (within 7 years) – **Revocation.** §20-138.5

Note: An offender who is required to participate in either an alcohol education or treatment program must complete such program before the license can be restored. §§20-17.6 and 122C-142.1

Term of License Withdrawal
(Days, Months, Years, etc.):

First offense – 1 year^{911and912}; subsequent offense not covered by one of the following categories – 1 year; second offense (within 3 years) – **4 years**; third offense (where the second offense was within 5 years of the third) – **Permanent**; fourth or subsequent offense (within 7 years) – **Permanent.** §§20-19(c1), (d) and (e) and 20-138.5

Mandatory Minimum Term of
Withdrawal:

First offense – None Subsequent offense not covered by one of the following categories – 1 year; second offense – 2 years (within 3 years) (after 2 years, a conditional license may be issued); third offense – 3 years (where the second offense was within 5 years of the third - after 3 years, a conditional license may be issued); fourth or subsequent offense (within 7 years) – **Permanent.**

(within 7 years) – Same criminal sanctions as for a regular drunk-driving offense and license revocation for 1 year. A person must complete either an alcohol education or treatment program prior to re-licensing. §§20-17(a)(14), 20-17.6, 20-19(2), 20-138.2B and 20-179 Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.2B).

⁹¹⁰ **Due Process of Law:** The administrative per se law does not violate a person's constitutional right to due process of law. *Henry v. Edmisten*, 340 S.E.2d 720 (N.C. 1986)

⁹¹¹ Under §20-179.3, limited driving privileges may be granted for essential purposes as specified in this section (e.g., employment) provided a driver has not had either a previous conviction within 7 years or a previous DWI injury-related conviction and is subject to only levels 3, 4 or 5 punishment. This privilege is not effective until after the court-ordered license withdrawal period, if any, has been completed as a part of probation requirements.

⁹¹² If a first offender is subject to either Levels 3, 4 or 5 Punishments and the court grants probation under §20-179, the court may impose as a condition of such probation that the person not operate a motor vehicle for the following periods of time: Level 3 Punishment – 90 days; Level 4 Punishment – 60 days; and, Level 5 Punishment-30 days. Under §20-17.2, if the court orders these licensing actions they must be imposed by the State licensing agency. §§20-17(2) and 20-19(c1).

<p>Rehabilitation: Alcohol Education: Alcohol Treatment:</p>	<p>§§20-19(d) and (e) and 20-138.5</p> <p>Yes §20-179(g), (h), (i), (j) and (k)</p> <p>Yes</p> <p>I. Regardless of the level of punishment, offenders placed on probation are required to participate in either an alcohol education or treatment program.⁹¹³</p> <p>§20-179(g), (h), (i), (j) and (k)</p> <p>II. Under §20-179.1, treatment may be ordered by the court as a condition of probation.</p> <p>III. Under §29-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.</p>
<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>Forfeiture:⁹¹⁴ For a <u>fourth or subsequent offense</u>(within 7 years), the motor vehicle driven by the offender is subject to forfeiture. Certain innocent parties who have an ownership interest in the vehicle, or a lien holder, may have the vehicle released to them. §20-138.5(e)</p>
<p>Terms Upon Which Vehicle Will Be Released: Ignition Interlock:</p>	<p>I. Persons eligible for restricted driving privileges <u>may</u> be required to operate motor vehicles equipped with an ignition interlock device. II. This requirement is <u>mandatory</u> if the BAC was $\geq .16$ or if the person is a second or subsequent offender (within 7 years).⁹¹⁵ III. Such use does not apply on employer-owned vehicles. §§20-17.8(a), (b) and (c) and 20-179.3(g3) and (g5)</p>

Persons Under 21 Years Old: I. It is a Class 2 Misdemeanor for persons under 21 years old to operate a motor vehicle with any alcohol or controlled substance ("unless lawfully obtained and taken in therapeutically appropriate amounts") in the body but where such amount would not result in a normal DWI charge and conviction. The sanctions for this offense are a jail term of **1 to 60 days** and/or a fine of **not more than \$1,000**. The length of the imprisonment term is determined in part by the number of prior criminal convictions. An offender is also subject to revocation for 1 year. First offenders who are 18, 19 or 20 years old may receive limited driving privileges. However, such revocation is mandatory for subsequent offenses. §§20-13.2, 20-138.3, 20-176(c) and 15A-1340.23. II. Persons <21 years old who are convicted of a regular drunk-driving offense are subject to a revocation for 1 year plus a regular DWI revocation. These revocations, however, are to run concurrently. §§20-4.01(31a) and 20-13.2 but a first offender may be

⁹¹³ As part of the conditions for probation, the offender must participate in either alcohol education or treatment before the driving privileges can be restored. §20-179(g), (h), (i), (j) and (k)

⁹¹⁴ A vehicle that is subject to forfeiture is also subject, at the time of the violation, to seizure by law enforcement officers. §20-28.3

⁹¹⁵ I. Required ignition interlock usage, after license restoration, is as follows: (1) 1 year if license revocation was for 1 year; (2) 3 years if license revocation was for 4 years; and (3) 7 years if the license was permanently revoked but can be restored. §20-17.8(c)

II. The following BAC requirements also apply while using an ignition interlock device: (1) If BAC was $\geq .16$, the person may not drive with a BAC $\geq .04$; and, for either a second or subsequent DWI offense, DWI in a CMV, DWI <21 years old after consuming alcohol/drugs or any vehicle homicide offense, the person may not drive with a BAC $> .00$. §20-17.8(b)(3)

eligible for limited driving privileges. §20-179.3. III. Note: A person convicted under I above, a §20-138.3 offense, may also be convicted of a regular DWI offense (§20-138.1); i.e., a §20-138.3 offense is not a lesser-included offense under §20-138.1. However, the aggregate punishment imposed cannot exceed the maximum punishment for a DWI offense (§20-138.1). §20-138.3(c). Note: The preliminary breath test and implied consent laws also apply to this offense (§20-138.3).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes Death by Vehicle I. **Class E felony** if death is DWI-related⁹¹⁶ {Second offense prosecuted as second degree murder} §20-141.4

II. **Class 1 Misdemeanor** if death is not DWI-related §20-141.4

III. **Aggravated Felony Death by Vehicle** – If previous DUI within 7 years, Class D felony. §20-141.4(a4)

IV. **Felony Serious Injury by Vehicle** - Unintentionally caused serious injury as a result of DUI {Class E felony} §20-141.4(a3)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

I. Class E felony⁹¹⁷ §15A-1340.17

II. Class 1 Misdemeanor – **1 to 120 days**⁹¹⁸ §15A-1340.23

None

Mandatory Minimum Term:

Fine (\$ Range):

I. Class E felony-The fine amount is discretionary with the court. §15A-1340.17

II. Class 1 Misdemeanor-The fine amount is discretionary with the court. §15A-1340.23

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Revocation

⁹¹⁶ Includes deaths that are related to CMV operation while in violation of §20-138.2.

⁹¹⁷ The length of the imprisonment term is determined by the number of prior criminal convictions and by aggravating and mitigating circumstances. §§15A-1340.13, 15A-1340.16 and 15A-1340.17

⁹¹⁸ The length of the imprisonment term is determined in part by the number of prior criminal convictions.

Limited Forfeiture: A vehicle (whether or not owned by the driver) is subject to forfeiture (which appears to be mandatory) if the driver was driving such vehicle (1) while in violation of the drunk-driving laws and (2) while his/her license is still in a revocation status for either (1) a previous drunk-driving conviction, (2) implied consent refusal, (3) admin per se action, or (4) other license revocation-related alcohol conviction. Certain innocent parties who have an ownership interest in the vehicle or a lien holder may have the vehicle released to them. §20-28.2(b), (d) and (e), 20-28.5 and 20-138.5(e).

Vehicle Registration Revocation: Except for certain innocent owners, the registrations of all vehicles owned by a person are revoked (until his/her license is restored) if that person has been convicted for a drunk-driving offense while the license is still in a revocation status for either (1) a previous drunk-driving conviction, (2) implied consent refusal, (2) admin per se action, or (4) any other license revocation related alcohol. In addition, such a person cannot register a recently purchased/obtained motor vehicle until driving privileges are restored. §20-54.1

Length of Term of Licensing Withdrawal:	One year unless the trial judge issues limited driving privileges to the person convicted containing a condition that the defendant successfully complete a course of instruction at an Alcohol Drug Education
Traffic School.	If the defendant complies with these conditions, the license must be restored within 6 months. §§20-17 (1) and 29-19(c).
Mandatory Action--Minimum Length of License Withdrawal:	None
<u>Driving While License Suspended or Revoked</u>	
Where the Basis Was a DWI Offense:	Impaired Driving Licensing Revocation §20-28.2
Sanction:	
Criminal:	
Imprisonment (Term):	Driving While Revoked– Class 1 Misdemeanor – 1 to 120 days⁹¹⁹ §§20-28(a) and (b) and 15A-1340.23
Mandatory Minimum Term of Imprisonment:	If a person's license has been permanently revoked and thereafter drives, 30 days §20-28(b)
Fine (\$ Range):	Discretionary with the court. §15A-1340.23
Mandatory Minimum Fine:	None
Other:	Vehicle “subject to” impoundment and forfeiture if determined by judge. §20.28.2

⁹¹⁹ The length of the imprisonment term is determined in part by the number of prior criminal convictions. Community service is also authorized for misdemeanor offenses. §15A-1340.23(c)

Special Note: I. Class 1 misdemeanor to operate a CMV during a CDL disqualification. For a first offense, there is an additional disqualification for a period equal to the original disqualification. For a second offense, there is an additional disqualification for a period equal to twice the original disqualification. For a subsequent offense, disqualification is for life. §§20-28(d). II. Class 3 misdemeanor to operate a CMV while under a CDL out-of-service order. For a first or subsequent offense, an offender is subject to an imprisonment term of 1 to 20 days. For a first offense, an offender is subject to a fine of not less than \$250. For a subsequent offense, an offender is subject to a fine of not less than \$500. Also, the following CDL disqualifications are imposed: first offense – 90 days; second offense (within 10 years) – 1 year; and, third or subsequent offense (within 10 years) – 3 years. The following disqualification periods are imposed if the offender was operating a CMV carrying hazardous materials: first offense – 180 days; and, second or subsequent offense (within 10 years) – 3 years. §15A-1340.23(c), 20-17.4(g) and (h), 20-37.12(b) and 20-37.21(a). In addition, via regulations, the State may adopt the fines of the CMV Safety Alliance for out-of-service violations. §20-17.7

Murder: A person can be convicted of second-degree murder if that person caused the death of another person while operating a motor vehicle at a high rate of speed and after consuming alcohol. Such behavior may be considered evidence of “malice” for the purposes of proving this offense. *State v. Grice*, 505 S.E.2d 166 (N.C. App. 1998) (review denied by the State supreme court, 350 N.C. 102, 1999 N.C. LEXIS 188) and *State v. Rich*, 527 S.E.2d 299 (N.C. 2000). However, the State Supreme Court has held that a person who causes a death while DWI, even though that person can be convicted of assault with a deadly weapon, cannot be convicted of first-degree murder under the murder felony rule. The court held that the defendant did not have the necessary intent to commit the underlying felony in order to invoke this rule. *State v. Jones*, 538 S.E.2d 917 (N.C. 2000)

Administrative Licensing Actions:
 Type of Licensing Action
 (Susp/Rev):
 Length of Term of License
 Withdrawal Action:

Revocation

First offense – **1 year** (90 days mand) **revocation** added to original revocation period; second offense – **2 years** (12 months mand) **revocation** added to original revocation period; third offense – **Permanent revocation** (3 years mand). §§20-28(a) and (c)

Mandatory Term of License
 Withdrawal Action:

First offense – **90 days**; second offense – **12 months**; third offense – **3 years**. (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.) §§20-28(c)

Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No):

Limited. Habitual Offender: §20-138.5 provides for habitual impaired driving which is defined as 3 or more impaired driving offenses within 7 years.

Term of License Rev While
 Under Habitual Offender Status:
 Type of Criminal Offense if
 Convicted on Charges of
 Driving While on Habitual
 Offender Status:
 Sanctions Following a Conviction of
 Driving While on Habitual Offender
 Status:
 Imprisonment (Term):
 Mandatory Minimum Term of
 Imprisonment:
 Fine (\$ Range):
 Mandatory Minimum Fine (\$):
 Licensing Actions (Specify):

Revocation

Class F felony

12-59 months

12 months

Not specified

None

Permanent Revocation

Other State Laws Related To Alcohol Use:
Laws Requiring BAC Chemical Tests on
 Persons Killed in Traffic

Accidents:
 State Has Such a Law (Yes/No):
 BAC Chemical Test Is Given to the
 the Following Persons:
 Driver:
 Vehicle Passengers:
 Pedestrian:

No

Laws Establishing the Minimum Ages
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
 Minimum Age (Years) Possession:
 Minimum Age (Years) Consumption:

21 §§18B-302(a) and (b)

21 §§18B-301(f)(4) and 18B-302(b) Employment exemption §18B-302(h)

21 §18B-301(f)(4)

Special Note: If a person is convicted of a DWI offense while driving with a license revoked for a previous DWI offense conviction (within 7 years), the Court must impose Level 1 punishment. §20-179(c).

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §§18B-120 et seq.⁹²⁰ Note: The law limits recovery to \$500,000. §18B-123.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes. *Estate of Mullis by Dixon v. Monroe Oil*, 505 S.E.2d 131 (N.C. 1998)⁹²¹ and *Smith v. Winn Dixie Charlotte, Inc.*, 542 S.E.2d 288 (N.C. App 2001) (review denied 548 S.E.2d 528 (N.C. 2001).

Dram Shop Actions-Social Hosts:

Yes. Under general negligence principles of common law, a social host may be held liable for the injuries caused by intoxicated guests. *Hart v. Ivey*, 420 S.E.2d 174 (N.C. 1992). **Comment:** Although the *Hart* case concerned injuries caused by intoxicated minors, language by the court indicates that liability could also result from injuries caused by intoxicated adult guests. A licensee is not liable for the injuries sustained by a voluntarily intoxicated patron. *Sorrells v. M.Y.B. Hospitality Ventures*, 423 S.E.2d 72 (N.C. 1992)

Other:

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Class 1 Misdemeanor §§18B-102 and 18B-305 **1 to 120 days** The length of the imprisonment term is determined in part by the number of prior criminal convictions. §15A-1340.23

Term of Imprisonment:

Fine (\$ Range):

The fine amount is discretionary with the court.⁹²² §15A-1340.23

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes. Board's discretion as to whether to suspend or to revoke. §§18B-104 and 18B-305.

⁹²⁰ These statutory provisions create a Dram Shop type of liability in situations involving minors (those persons under 21 years old) who cause damages while DWI. The law places limitations on damage amounts which can be awarded in such actions. However, the law specifically does not limit or prohibit Dram Shop actions based either on other statutes or on "common law." §18B-128. Note: A person (or the estate of a person) injured (killed) via the actions of an intoxicated individual is generally not entitled to recover damages for such injuries (death) if the injured (dead) person "aided or abetted" the intoxicated individual by purchasing alcoholic beverages for him/her. *Estate of Darby v. Monroe Oil Co., Inc.*, 488 S.E.2d 828 (N.C. App. 1997)

⁹²¹ See also, *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 305 S.E.2d 734 (N.C. 1983)), *Freeman v. Finney*, 309 S.E.2d 531 (N.C. App. 1983) (discretionary review denied by the North Carolina Supreme Court 315 S.E.2d 702 (N.C. 1984)), and *Chastain v. Litton Systems, Inc.*, 694 F.2d 957 (CA4, 1982) (cert. den., 462 U.S. 1106 (1983))

⁹²² Administrative fines may also be imposed on a permittee: first offense – up to \$500; second offense – up to \$750; third offense – up to \$1,000. §18B-104

Length of Term of License Withdrawal:	Suspension – Not more than 3 years . Revocation period is not specified in the statute.
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:</u> Type of Criminal Action:	Class 1 Misdemeanor §§18B-102, 18B-302 and 18B-302A 1 to 120 days The length of the imprisonment term is determined in part by the number of prior criminal convictions. ⁹²³ §15A-1340.23
Term of Imprisonment:	
Fine (\$ Range):	The fine amount is discretionary with the court. §15A-1340.23
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes ⁹²⁴ Left to the Board's discretion as to whether to suspend or to revoke. §§18b-104 and 18B-302 Suspension – Not more than 3 years . Revocation period is not specified in the statute.
Length of Term License Withdrawal:	
<u>Anti-Happy Hour Laws/Regulations:</u>	Yes (Regulation) T04: 02S.0232 ⁹²⁵
<u>Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:</u>	
Open Container Law (Yes/No):	Yes Driver and passengers §§18B-401(a) ⁹²⁶ and 20-138.7 ⁹²⁷

⁹²³ I. If the court does not impose “active punishment,” it must nevertheless impose the following sanctions: first offense – **\$250 fine and at least 25 hours of community service**; and, subsequent offense (within 4 years) – **\$500 fine and at least 150 hours of community service**. §18B-302A. II. The following administrative fines may also be imposed on a permittee: first offense – **up to \$500**; second offense – **up to \$750**; third offense – **up to \$1,000**. §18B-104

⁹²⁴ In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than \$5,000. §18B-104

⁹²⁵ North Carolina Administrative Code

⁹²⁶ This law provides that “[i]t shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer’s unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.” §18B-401(a)

⁹²⁷ This law provides that “[n]o person shall drive a motor vehicle on a highway or the right-of-way of a highway: (1) while there is an alcoholic beverage in the passenger area in other than the unopened manufacturer’s original container, and (2) while the driver is consuming alcohol or while alcohol remains in the driver’s body.” In addition, “[n]o person shall possess an alcoholic beverage other than in the unopened manufacturer’s original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right-of-way

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §§18B-401(a) and 20-138.7

Regulating Beverage Kegs:

Yes – Keg permit required for off-premises consumption if more than any of the following is purchased: 80 liters of malt beverage, 50 liters of unfortified wine, or 8 liters of fortified wine or spirituous liquors or some combination of the two spirits. §§ 18B-101, 18B-303(a)