

# What Happens After A DWI Arrest?



## SURVIVAL TIPS

- Do not answer any questions other than name and address.
- Do not agree to blow into a handheld breath tester.
- Usually you should consent to a breath or blood test, if you asked to take one.
- Do not agree to perform any roadside tests.
- BE POLITE.
- PRODUCE REQUESTED DOCUMENTS.

## DRIVING PRIVILEGE:

1. If you register .08 or greater in a blood or breath test, or are alleged to have refused, you lose your privilege to drive in North Carolina (and your license, if it is a North Carolina license) for at least 30 days.
2. Often you are eligible for a privilege to drive after 10 days if you comply with the statutory procedure.

## Court Dates:

Sometimes you can be excused from appearing at court dates.

## Suppression Hearing:

The Court may suppress some or all of the evidence against you if your constitutional rights have been violated. We will file motions to suppress. This hearing can occur as soon a week after the charge, and as long as years later.

## Trial:

First there is a trial to a judge sitting as judge and jury. If you are found guilty, you can appeal and ask for a jury of twelve to hear your case. They will not be told of the first verdict.

## Sentencing:

The Court imposes a sentence after a conviction at trial or after a plea bargain is accepted and a plea entered. Sentences may include jail time, in home detention, inpatient or outpatient treatment, public service, alcohol classes, community service, license suspension, supervised probation and fines.

## Summary of the Law

In North Carolina there are two types of DWI's that are felonies. Felony death by motor vehicle, which a person is charged with if someone dies in an accident that was caused by a drunk driver.

Felony death by motor vehicle can also be charged as second degree murder.

The other felony is habitual DWI, which a person is charged with if it is their fourth DWI conviction within ten years. A plea or verdict of guilty of habitual DWI requires a judge to sentence you to no less than one year in the Department of Corrections. That sentence cannot be suspended and is the absolute minimum sentence. Most judges give a much longer sentence than the minimum for habitual DWI. A conviction also means you can never have a license in North Carolina.

All other DWI's are misdemeanors.

After a conviction of misdemeanor DWI, the judge must hold a separate sentencing hearing and determine the appropriate level of punishment. At that hearing, the judge determines if there are any grossly aggravating factors. These factors include prior DWI convictions, driving while license revoked for DWI or alcohol related offenses, serious injury to another person, or driving with a child under the age of 16 years old in the car. After any conviction of a DWI, the Judge must require an assessment for alcohol problems, and for you to complete all recommended treatment.

Two or more grossly aggravating factors leads to a Level 1 sentence. One grossly aggravating factor makes you a Level 2 Conviction. If there are no grossly aggravating factors, the judge will weigh aggravating and mitigating factors to determine if you should be sentenced under Level 3, 4 or 5. If the aggravating factors outweigh the mitigating factors, Level 3 punishment is imposed. If the aggravating and mitigating factors are equal, Level 4 punishment is imposed. If the mitigating factors outweigh the aggravating factors, Level 5 punishment will be imposed.

Level 1 offenders get 30 days minimum and 2 years maximum and usually get supervised probation, fines, and other tasks to complete. No privilege is available for the period DMV suspends your license (from 1 year to permanently).

Level 2 offenders get 7 days in jail minimum and one year maximum, and will typically get order supervised probation, fines and other tasks to complete. No privilege is available for the period DMV suspends your license (from 1 year to permanently).

Level 3 offenders choose one of the two following options: (1) 72 hours of community service (\$200 fee, or (2) 72 hours in jail (\$15 per day fee).

Plus, if you are convicted and sentenced at Level 3, the judge will order you to pay a fine between \$250-\$1000 plus the cost of court. In addition, at Level 3 the judge can sentence you to an active sentence of up to 120 days in jail. Most judges do not sentence people to active terms on level three, four, or five.

Under Level 4, the same conditions will apply as noted in the Level 3 paragraph above, except you will choose between 48 hours of community service, and 48 hours of jail. The fine ranges from \$200-\$1000 plus as the cost of court. The maximum jail term is 90 days.

If you are convicted and sentenced at Level 5, the same conditions will apply as noted above in the Level 3 paragraph, except that you will be ordered to chose between 24 hours of community service, and 24 hours of jail. The fine ranges from \$100-\$1000 as the cost of court. The maximum jail term is 60 days.

Under Level 3, 4, and 5 the judge will likely impose a suspended sentence and place you on unsupervised probation, though supervised probation is an option. Your license will be suspended for at least one year and you will generally be allowed a limited driving privilege, which allows you to drive to and from work and

for other reasons- I work hard to get you a very good and flexible privilege.

Now, I know all of this is probably confusing. And that's because it actually is confusing.

Sometimes the law is just that way.