

Adventures in Fantasyland

A Traffic Law Primer

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Introduction:

Adventures in Fantasyland. Preparing CLE materials for a legal seminar on Traffic Law forces one to travel a mystical, confusing fantasyland of sorts. . .where the roads are paved with good intentions and dangers abound at every bend. We've eaten a few poison apples, kissed a prince or two, and even consulted with the evil hag better known as D'Mevilia.

In the kingdom of North Carolina, King Insurance rules with a deadly mace. Fairies flutter about, dispensing ethereal, pixie-dust advice. Much of what the subjects of the kingdom have come to know as truth is sheer fantasy and based on dreams of a happy ending.

One would be hard-pressed to easily find much written on traffic law, or better yet, truly understand what is written. Have ANY of us ever attended an CLE on Traffic Law? We suspect most attorneys are simply afraid to ask, because "everyone knows what to do." At times, perhaps all of us have relied on "chambers justice," as opposed to reading the law and/or carefully discerning the implications of legal events.

Between the SDIP, NCIC, AOC, NDR, NCDMV and other lettered organizations, a cacophony of misinformation has ensued. A difficult task indeed it is to provide competent, zealous and ethical representation all for a reasonable fee in the fantasyland of North Carolina.

Naming our profession “the practice of law” was not a mistake. At what point does “practice” make perfect? Truth be told, it is a monumentally tough way to make a living. People’s lives, their well-beings, feelings and emotions rest squarely on our shoulders. It seems, at times, we make our living on others’ difficulties.

Like physicians, most of us are consulted when something has gone amiss. Normal, well-adjusted individuals prefer a root canal to retaining an attorney. Whether it be a car accident, bankruptcy, divorce or traffic violation, we often see people at their worst.

Because what we do makes a difference, good or bad, we strive to ever improve. We stop what we are doing, even for a brief period and focus on the “mundane.” We worry about what work isn’t getting done whilst sitting through an CLE. How many clients have called? What are their worries? How fast will we need to return their phone calls?

We truly pray this seminar is different for you. No matter how “advanced” any of us may be, it cannot hurt to consider some basic principles in an incredibly complicated (some would say convoluted) system for administering the right to drive.

I. Basics of Traffic Law in NC

North Carolina has two distinct point systems when dealing with traffic violations. The first is that which is enforced by the North Carolina Division of Motor Vehicles (hereafter “DMV”). Certain traffic citations will, if convicted, add points to a motorist’s driver’s license. An accumulation of these points can lead to an increase in insurance premiums and even eventual suspension of a motorist’s driver’s license. The second point system that runs in conjunction with the DMV point system is the insurance point system created by the Safe Driver Incentive Plan (SDIP). An accumulation of these insurance points will have a direct effect on insurance premiums up to a 400 % increase in rates.¹

¹ SDIP Rules (See Charts Infra)

II. Traffic offenses in general

Under N.C.G.S.A. § 58-20-16 a driver in North Carolina will receive Division of Motor Vehicles points for various moving and non-moving violations. These violations can accumulate anywhere from 2-5 points per conviction and lead to the suspension and revocation of a driver's license.² Certain offenses are considered waivable offenses in which the driver issued the citation may forgo an appearance in court by executing a written waiver of appearance or plead guilty to the said charge. NCGS 7A-148. If the court has not been furnished with a written waiver of appearance and the driver has not entered a guilty plea by the notified court date, the driver's license will be suspended until action by the driver is taken. Other more serious offenses are not waivable under the statute and require a mandatory court appearance. (See More: NCGS 7A-148) If the driver fails to appear in court on the date specified in the citation, an order for arrest will be issued and the driver will be arrested.

a. Revoking and Suspending a license

The DMV has the authority to temporarily suspend and permanently revoke a motorist's driving privilege.³ Under N.C.G.S.A. § 58-20-16 a license can be suspended or even revoked without any formal preliminary hearing. Upon making the determination that a license will be suspended, the DMV must notify the licensee in writing. If applicable a hearing may be requested by the licensee typically within 10 days of the suspension **notice**. One suspension in which DMV will offer no preliminary hearing is where a driver receives a conviction for traveling more than 15 mph over the posted speed limit where the posted speed limit is 55mph or more; or traveling 20 mph over the speed limit when the speed limit is at least 35mph; or traveling over 80 mph no matter how much in

² Under 20-4.01(36), 47 the words suspension and revocation have the same meaning. Formerly the different uses of the words were to differentiate between revocations that were mandatory by the DMV and suspensions that were within the DMV's discretion.

³ The words suspend and revoke for practical purposes are interchangeable. For example: A person who is pulled over for a traffic violation while their license is suspended, would be charged with Driving with a Revoked License.

excess of the speed limit the driver is traveling. Furthermore, a license may be automatically suspended by DMV for various reasons.⁴

1. The accumulation of 12 DMV points within a 3-year period. Or 8 points in the 3 years that immediately follow a period of license suspension due to a 12 point accumulation. When a license is suspended for accumulating too many points, the initial suspension may not be for more than 60 days. The second suspension shall not exceed 6 months and the third should be no more than 1 year.
2. The driver has within a period of 12 months received 2 or more convictions for speeding in excess of 55mph and not more than 80 mph.
3. The driver has within a period of 12 months received one or more charges of reckless driving AND 1 or more convictions for speeding in excess of 55mph and not more than 80 mph.
4. The Driver has been convicted of operating a motor vehicle at a speed greater than 75mph where the maximum speed is less than 70 mph.
5. The driver has been convicted of operating a motor vehicle at a speed greater than 80mph where the maximum speed is 70 mph.

b. Driving with a revoked license

Driving with a revoked license (hereafter DWLR) is considered a Class 1 misdemeanor in the State of North Carolina, thus making the driver subject to active jail time. Appearance in court is mandatory for this offense even if the driver is pleading guilty. Furthermore, if a person is convicted of a moving violation while his license is suspended, the revocation will be extended for one additional year.⁵ For example if a driver is charged with driving on a revoked license (DWLR) and a citation for speeding arising out of the same incident, even if the DWLR is voluntarily dismissed by the District Attorney, a conviction for speeding will still revoke that Driver's license. Although the actual charge was dismissed, the license is still in revoked status and a

⁴ DWI related suspensions are not included. Please see N.C.G.S.A. § 58-20-16 for DWI and certain other traffic offenses that allow the DMV to revoke a license.

⁵ Two additional years for a second conviction and permanently for third conviction.

conviction of any moving violation during a period of suspension will further revoke the license.⁶ If a driver is convicted of a moving violation while driving in a state of suspension, their driver's license will be suspended for an additional 12 months. If a driver is convicted of 3 moving violations while in a period of suspension, their license will be permanently revoked.⁷

III. Traffic offenses and Insurance points

The “primary purpose of law requiring insurance is to furnish at least partial compensation to innocent victims who have suffered injury and damage as a result of negligent operation of a motor vehicle upon a public highway.” Grant v. State Farm Mut. Auto. Ins. Co., 159 S.E.2d 368 (1968). Insurance companies must become a member of The North Carolina Rate Bureau (hereafter “Bureau”). The Bureau was created in part to propose and promote insurance rates for private passenger vehicles. N.C.G.S.A. § 58-36-1(3). These rates are then subject to review by the Commissioner of Insurance.

The Bureau must file what is known as the “Safe Driver Incentive Plan” (hereafter SDIP). This plan distinguishes among drivers who have safe driving records and drivers who have a record of at fault accidents and convictions for moving violations. Drivers who are convicted of certain moving violations and are found at fault in certain accidents will be assessed SDIP points and thereafter notice additional increases in their premiums. (SDIP Rule 5A)

a. What is a clean risk for insurance purposes?

Under the SDIP certain drivers that have safe driving records are considered “clean risks” by insurance companies and are entitled to greater discounts on their premiums. To be labeled as a clean risk, the owner, principle operator and each licensed operator in the owner's household must have at least 2 years of driving experience as a licensed

⁶ Furthermore, even if the court allows a Prayer for Judgment Continued for the moving violation, the Driver's license will be further suspended. A prayer for judgment is a conviction with no sentence imposed.

⁷ Their license cannot be reinstated without a formal DMV hearing.

driver and have had no SDIP points assessed against them during the 3 years immediately preceding the date of the application. N.C.G.S.A. § 58-37-35.

b. Moving violations and Insurance Points

The SDIP requires insurers to assess driving record points for various automobile related convictions. SDIP Rule 5B1a(4)(b). A conviction is defined as a plea of guilty, no contest or an actual adjudication of guilt by a judge or jury (even if no sentence is imposed). SDIP Rule 5B. This means that for the purpose of accumulating insurance points, a PJC counts as a conviction. However, the SDIP allows one PJC per household that will have no effect on insurance points once every three years.⁸ SDIP points generally range from 1 point for a violation such as speeding 10mph or less in excess of a speed limit under 55mph, to 12 points for a DWI.⁹

Chart for traffic violations and SDIP Points

DWI Prearranged highway racing Hit and Run Resulting in Bodily Injury or Death	12 SDIP points	400 percent rate increase
Highway racing Speeding to Elude Arrest	10 SDIP points	300 percent rate increase
DWLR (Driving with a revoked license)	8 SDIP points	220 percent rate increase
Reckless Driving Hit and Run (Property Damage Only) Passing a Stopped School Bus Speeding in excess of 75mph (<i>when the speed limit is less than 70mph</i>) Speeding in excess of 80mph (<i>when the speed limit is more than 70mph</i>) Driving After Consuming Under 21	4 SDIP points	180 percent rate increase
Illegal Passing Following too Closely Driving on the wrong side of the road Speeding more than 10 mph over the speed limit (<i>provided that the driver's total speed is over 55mph but less than 76mph</i>) Speeding 10mph or less than the speed limit (<i>where the speed limit greater than 55mph</i>)	2 SDIP points	45 percent rate increase

⁸ The effect of the preferred rate will be determined by the individual insurance co.

⁹ See detailed chart on page 6 & 7 for details and exemptions.

Speeding 10 mph or less (<i>where the speed limit is less than 55 mph</i>) All other moving violations	1 SDIP points	25 percent rate increase
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It should be noted that the above chart is superceded by the N.C.G.S.A. which states that any sub classification plan, such as the SDIP, shall provide that with respect to a conviction for speeding 10 mph or less over the posted speed limit there shall be no assessment of points unless there is a driving record consisting of a conviction(s) for a moving violation, except for a prayer for judgment continued, during the three years preceding the date of application.¹⁰ N.C.G.S. § 58-36-75 (f).

More specifically, the SDIP must also provide that, with respect to a prayer for judgment continued, there should be no assessment of points unless the vehicle owner, principle operator, or any licensed operator in the owner’s household has a driving record consisting of a prayer for judgment continued for a moving violation during the drivers “experience period.” As there are to be no insurance points issued for one PJC per household every three years a second PJC within the household may cause the assessment of SDIP points.

c. Accidents and Insurance Points

The SDIP can issue points for both major and minor at-fault accidents. A major accident is one that results in death, bodily injury or property damage of 3,000 dollars or more. A minor accident is one that results in property damage of less than 1,800 dollars. An at-fault accident where the property damage is more than 1,800 and less than 3,000 is classified as an intermediate accident.

Chart for accidents occurring on or after Jan. 1 2004¹¹ and SDIP.

A major at-fault accident: results in death or bodily injury (where the bodily injury is more than 1,800) or property damage of 3,000 or more.	3 SDIP points	65 percent rate increase
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¹⁰ The three years preceding the date of application or the preparation of the renewal is called the “Experience Period.”

¹¹ See SDIP Rules for details on at-fault accidents occurring before January 1,2004.

An intermediate at-fault accident results in property damage in excess of 1,800 but less than 3,000.	2 SDIP points	45 percent rate increase
A minor at-fault accident resulting in bodily injury of 1,800 or less and property damage of 1,800 dollars or less.	1 SDIP point	25 percent rate increase

It should once again be noted that notwithstanding the SDIP chart above, the N.C.G.S.A. states that there should be no assessment of points against a driver where the driver is involved in a minor accident in which there has been no conviction against him for a moving violation associated with that accident and neither the driver nor any other member of the drivers household has a driving record consisting of a moving violation conviction or another at-fault accident during the “experience period.” N.C.G.S. § 58-36-75(a)(1)

d. Determining fault in an at-fault accident

The SDIP requires insurers assess points for accidents where the driver was at-fault. SDIP Rule 5B1b. The rule further defines “at-fault” as synonymous with negligence. And states that no points will be issued where the driver is free of negligence. SDIP Rule 5B, Note 3. Furthermore, the insurers under the SDIP and *Prentiss v Allstate Insurance Company* are allowed to determine which party is at fault even where there has been no fault issued by the court system. *Prentiss v Allstate Insurance Company* 144 N.C. App.404, 408.

For example in *Prentiss* the driver insured by Allstate Insurance Company was involved in a two car accident and cited for “failing to see before turning from a direct line that such movement could be made in safety.” Although this citation was later dismissed in District court, Allstate Insurance Company found that the driver was at-fault and issued SDIP points thereby removing his safe-driver discount and increasing his premiums. The court in *Prentiss* concluded that SDIP not just allows but rather requires insurance companies to make determinations of fault in accidents. The court specified that an at-fault accident must mean one that is not adjudicated in court, as there is a wholly

separate SDIP provision that covers convictions. *Prentiss v Allstate Insurance Company*. Put simply, even if found not guilty and/or not “responsible” of a traffic violation, an insurance carrier (based on the damages pay out), may still assess insurance points.

IV. **DWI and the Provisional Licensee**

North Carolina follows a graduated driver-licensing plan for drivers between the ages of 15 and 18. In essence the plan is a gradual step-by-step scheme that exposes new drivers to greater driving privileges and responsibility. The purpose of the plan is to increase protections and safeguards for the newest of drivers before releasing them to drive on their own.

Other than the traditional time and supervision restrictions, it is also unlawful for an underage driver to drive a motor vehicle after consuming any amount of drugs or alcohol. The logical inference taken is that a minor is impaired (to a criminal level) by ANY amount of alcohol or other “impairing substance.” (N.C.G.S. § 20-138.3) An underage driver who drives under the **influence**, whether or not they exceed the legal limit of .08 for impairment, is guilty all the same of a class 2 misdemeanor. Although the driver would not be sentenced under the traditional DWI sentencing structure, the underage driver faces many of the same penalties as a driver subject to N.C.G.S. § 20-138.1. The underage driver will be subject, at the discretion of the court, to probation, community service, fines and a loss of driving privileges for one year. A driver convicted of the offense of Driving after Consuming Under 21 (§ 20-138.3), is **technically** eligible for a driving privilege if 18, 19, or 20 years old at the date of the offense and has not been previously been convicted of a similar offense.¹²

An underage driver who is convicted of a DWI, i.e. exceeding the .08 limit, is subject to statutory DWI sentencing with some special “interpreted” penalties imposed by DMV. Unlike the driving after consuming charge (under the legal limit, but above .01) an underage driver convicted of a DWI is currently NOT eligible for a limited driving

¹² See *N.C.G.S.* 138.3(d)(1) and 138.3(d)(2)

privilege. However, this may be lifted upon disposition of the *State v. Bowes* case currently pending in the North Carolina Supreme Court.

In *State v. Bowes*, Jeffrey Bowes, a nineteen-year-old driver on a provisional license, pled guilty to driving while impaired. The sentencing Judge placed Mr. Bowes on twelve months of unsupervised probation, Ordered him to pay \$290.00 in costs and fines, to obtain a substance abuse assessment, to surrender his driver's license, to complete 24 hours of community service, to submit to any test for the detection of alcohol or drugs requested by a law enforcement officer, and not to operate a motor vehicle until properly licensed to do so. Furthermore, in August of 2001, another District Court Judge granted Bowes a limited driving privilege during his period of revocation through DMV. The DMV notified Bowes that DMV “considers the [limited driving] privilege void and our records will not indicate [that he] has a limited driving privilege.”¹³ Under the current statute pertaining to a driving privilege when a driver is convicted with a DWI, there is no applicable age restriction as there is when a driver is charged with Driving After Consuming. As such, the main issue under debate in this case is the potential power of the DMV to ignore or invalidate a properly entered order by a District Court judge.

V. “Quick Tips” / And They All Lived Happily Ever After

Traffic

- PJC - DMV will recognize 2 PJC's w/in a 5 year period which may save some drivers from having their license suspended. However, for insurance purposes, only one PJC is recognized per household every 3 year period. Thus, while you may be able to save a client's Driver's license by using a PJC, their insurance rates may still be increased.
- Speeding – for purposes of DMV points, speeding determines the amount of points. Anything over 55 mph = 3 pts. **Regardless of the speed limit.** As such, a speed of 57 in a 55 mph zone is **3 points**. Thus two convictions of speeding 57 in a 55 mph zone w/in 12 months will lead to the driver's license being suspended.

¹³ *State v. Bowes*

Insurance Points

- When advising a client about insurance increases, be sure they understand each driver is given one free-be b/f a driver's rates are increased. Insurance companies will pay for one of two things w/in a 3-year period without raising insurance rates:
 - o 1. A speeding ticket 10 mph or less over the speed limit with no prior convictions in the last 3 years.
 - o 2. An accident where the insurance company had to pay 1,800 or less in damages.

Thus even if the driver has had no prior tickets or convictions, but for example wrecks his car (presumably worth more than 1,800.00) he has used his free-be for insurance purposes and will need a PJC if available to prevent insurance rates from rising.

DWLR

- If the client is "indefinitely" suspended due to a failure to appear in court (presumably for missing a court date on a prior traffic citation), caution should be taken when advising the client on how to dispose of the old citations. If a client merely goes and "pays off" a citation thinking it will resolve his driving issues, it may only send the client into another state of suspension.
- A driving record should be obtained first to advise the client of the best way to dispose of any unhandled tickets.