

## **Limited Driving Privileges for Defendants less than 21 Years of Age**

This is a compilation of some research I did on the subject of limited driving privileges for drivers under the age of 21. I undertook this research after a number of attorneys reported to me that the Division of Motor Vehicles had rejected limited licenses submitted for defendants under the age of 21. The text of the relevant statutes is in blue, below

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First, even though an 18, 19 or 20 year old driver is convicted of a DWI under the provision of G.S. 20-138.1, I think that G.S. 20-138.3 also applies. It reads, in part, as follows:

### **§20-138.3. Driving by a person less than 21 years old after consuming alcohol or drugs.**

(a) Offense – It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

An 18, 19, or 20-year-old driver convicted of DWI under the provisions of G.S. 20-138.1 is also violative of G.S. 138.3. The next step is to look to G.S. 20-13.2.

### **§20-13.2. Grounds for revoking provisional license.**

(a) The division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

A judge may issue a limited driving privilege to partially negate the revocation under certain circumstances. The specifics of the issuance of a limited privilege are set forth in G.S. 20-138.3

### **§20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements.

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3 (b) (1) c. G.S. 20-179.3 (e) shall not apply. All other terms, conditions and restriction provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

If a defendant blew a .04 (for example) he would be guilty of violating G.S. 20-138.3 only. He would not be convicted under G.S. 20-138.1 and therefore would be eligible for a limited driving privilege. As mentioned above, G.S. 13.2 would also appear to revoke the license of a driver when he is convicted of impaired driving under G.S. 20-138.1 or any other offense involving impaired driving under G. S. 20-4.01(24a) that occurs while he or she is under the age of 21. Again, the revocation under G.S. 20-13.2 lasts for one year.

### **§20-13.2. Grounds for revoking provisional license.**

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(d) The length of revocation under this section shall be one year. Revocations under this section run concurrently with any other revocations.

I think that the death knell for any limited license for a driver under 21 convicted of a DWI is G.S. 179.3(e) which, in conjunction with G.S. 13.2(b), would prohibit the issuance of a limited license.

### **§20-179.3. Limited Driving Privilege.**

(e) Limited Basis for and Effect of Privilege. – A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction

substantially similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

Now, I will try to apply all of this to the situation where a licensee under 21 years of age is convicted of a DWI under G.S. 20-138.1. First G.S. 20-13.2(b) and (d) would result in a revocation of his license for 1 year. Then, if you turn to G.S. 179.3 to see if the person could get a limited drivers license you would find that he would be eligible only if his license were revoked solely under G.S. 20-17(2). Because the licensee would have lost his license under a section other than 20-17(2) [i.e. G.S. 13.2(b)] he would be precluded from getting a limited license.

A good deal of this information was gleaned from an Institute of Government publication written by Ben Loeb and Jim Drennan. If you find some flaw in the analysis, please let me know. - SJB