

North Carolina Traffic Tickets

North Carolina traffic tickets can be extremely costly and can even result in the suspension of driving privileges. The best way to avoid these problems is to heed the rules of the road and thereby avoid being ticketed in the first place. But what if you have already received a ticket for speeding, making an illegal turn, driving without insurance, or some other traffic violation? What should you do? This article explores the consequences of such violations (not including the more serious traffic violations such as driving while intoxicated) and some of the tools available to help avoid or mitigate those consequences.

Court Hearing Related Costs. Unless you are acquitted you will have to pay court costs, currently one hundred dollars. In addition, you may have to pay a fine, at the discretion of the judge, usually ten to twenty five dollars. If you choose to hire an attorney to represent you, the lawyer's fee will also run about a hundred dollars, more if you plead not guilty and your attorney represents you at a trial before a judge. But these costs are temporary and are usually much less significant than the potential legal consequences: insurance points, driver's license points, and suspension of driving privileges.

NC Motor Vehicle Insurance: North Carolina law requires that all drivers obtain and maintain insurance (NC Gen Stat 20-309). Motorists must have a policy that provides coverage with at least the following amounts: \$30,000 bodily injury for one injured person, \$60,000 bodily injury for two injured people, and \$30,000 property damage. (NC Gen Stat 279.5) Failure to maintain insurance is a class 1 misdemeanor (NC Gen Stat 20-313) punishable by up to 120 days in jail and a fine in the discretion of the court (NC Gen Stat 15A-1340.23). Your insurance company is required to notify the Department of Motor Vehicles (DMV) if your insurance is cancelled or terminated for any reason. (Additional information is available at the NC DMV web site: www.ncdot.org/dmv)

NC Insurance Points. The North Carolina Insurance Rate Bureau is authorized to make rules for the determination of motor vehicle insurance rates (NC Gen Stat 58-36-1, 65). It has made such rules, and they are called the Safe Driver Incentive Program (SDIP), which awards safe drivers with lower insurance rates. Or, more accurately, insurance companies are allowed to charge higher rates to motorists convicted of moving violations within the last three years, Motorists also receive points for most at fault accidents. Each point translates into an insurance rate increase. Accumulating even one point can increase your insurance rates by twenty five percent! For motorists with clean or nearly clean driving records over the last three years, who are in no danger of suspension, the most important consequence of a traffic ticket is the insurance points.

Here is a schedule of rate increases for each insurance point:

SDIP Points	Authorized Insurance Rate Increase
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1	25%
2	45%
3	65%
4	90%
5	120%
6	150%
7	180%
8	220%
9	260%
10	300%
11	350%
12	400%

Below is the schedule listing the number of SDIP points earned for various traffic convictions and at fault accidents.

<u>Incident</u>	<u>SDIP Points</u>
Manslaughter or negligent homicide	12
Prearranged highway racing or lending a car for prearranged highway racing	12
Hit and run resulting in bodily injury or death	12
Driving with a blood alcohol level of .08 or more	12
Driving commercial vehicle with blood alcohol level of .04 or more	12
Driving while impaired	12

Transporting illegal intoxicating liquor for sale	12
Highway racing or lending a car for highway racing	10
Speeding to elude arrest	10
Driving during revocation of suspension of license or registration	8
Reckless driving	4
Hit and run resulting in property damage only	4
Passing a stopped school bus	4
Speeding in excess of 75 mph where the speed limit is less than 70 mph	4
Speeding in excess of 80 mph where the speed limit is 70 mph or greater	4
Driving by a person less than 21 after consuming alcohol or drugs	4
At fault accident that occurs prior to January 1, 2004 resulting in death, bodily injury in excess of \$1,500 or property damage of \$2,500 or more**	3
At fault accident that occurs on or after January 1, 2004 resulting in death, bodily injury in excess of \$1,800 or property damage of \$3,000 or more	3
Illegal passing	2
Following too closely	2
Driving on the wrong side of the road	2
At fault accident that occurs before January 1, 2004 resulting in property damage in excess of \$1,500 but less than \$2,500	2
At fault accident that occurs on or after January 1, 2004 resulting in property damage in excess of \$1,800 but less than \$3,000	2
Speeding more than ten miles over the speed limit, provided the total speed is in excess of 55 mph, but less than 76 mph	2
Speeding 10 mph or less in excess of speed zone 55 mph or higher	2
All other moving violations	1
At fault accident that occurs prior to January 1, 2004 resulting in bodily injury of \$1,500 or less, or property damage of \$1,500 or less*	1
At fault accident that occurs on or after January 1, 2004 resulting in bodily injury of \$1,800 or less or property damage of \$1,800 or less*	1

*No SDIP points for at fault accident provided all of the following are true:

(1) Property damage only, (2) Damage amount is \$1,500 or less if accident occurred prior to January 1, 2004; or \$1,800 or less if accident was on or after January 1, 2004, (3) There is no conviction for a moving violation in connection with the accident, and (4) No licensed operators in the household have convictions or at fault accidents during the three year period.

**No SDIP points for speeding 10 mph or less providing all of the following are true: (1) Violation did not occur in a school zone; and (2) There are no other moving violations in the three year period [Isolated Prayer for Judgment Continued does not count as a prior conviction for purpose of this exception]

Driver's License Points. As you can see, traffic convictions result in SDIP points which, in turn, result in more expensive insurance. Insurance points thereby affect the *cost* of driving. Insurance points have nothing whatever to do with driver's license points, which are concerned with *the legal privilege to drive*. The privilege to drive and the cost of driving are governed by separate rules and a completely separate point schedule. Most traffic convictions result not only in insurance points, but also in driver's license points. ***The accumulation of twelve driver's license points within a three year period (or eight points within a three year period immediately following reinstatement of suspended privileges) will result in the suspension of driving privileges (NC Gen Stat 20-16).***

The schedule of driver's license points for private, non commercial vehicles is as follows:

Passing a stopped school bus	5
Aggressive driving	5
Reckless driving	4
Hit and run, property damage only	4
Following too closely	4
Driving on the wrong side of the road	4
Illegal passing	4
Failure to yield right of way to pedestrian pursuant to <u>NC Gen Stat 20-158(b)(2)(b)</u>	4
Failure to yield right of way to bicycle, motor Scooter, or motorcycle	4

Running through stop sign	3
Speeding in excess of 55 mph	3
Failing to yield right of way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
All other moving violations	2
Littering pursuant to NC Gen Stat 14-399 when littering involves use of a motor vehicle	1

Suspension of Driving Privileges. The DMV will suspend your driving privileges if you accumulate 12 points in a three-year period. Driving privileges will be suspended for a variety of other reasons, including some cases that you may not be aware of. Privileges will be suspended by the DMV where the licensee:

1. Has accumulated, within a three year period, twelve or more driver's license points (or eight or more in the three year period immediately following reinstatement of privileges suspended due to conviction of one or more traffic violations)
- 2.. Has made or permitted an unlawful or fraudulent use of such license or learner's permit, or represented as his own, a license or learner's permit not issued to him
3. Has committed an offense in another state, which if committed in North Carolina would be grounds for suspension or revocation
4. Has been convicted of illegal transportation of alcoholic beverages
5. Has been convicted of impaired instruction under NC Gen Stat 20-12.1 [Intoxicated while serving as supervising driver or driving instructor]
6. Has violated on a military installation a regulation of that installation prohibiting conduct substantially similar to conduct that constitutes impaired driving under NC Gen Stat 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the

commanding officer of the installation and that officer has general court-martial jurisdiction

7. Has, within 12 months, been convicted of (i) two or more charges of speeding in excess of 55 mph and not more than 80 mph, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 mph and not more than 80 mph, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 mph and not more than 80 mph

8. Has been convicted of operating a motor vehicle in excess of 75 mph on a public road or highway where the maximum speed is less than 70 mph

9. Has been convicted of operating a motor vehicle at a speed in excess of 80 mph on a public highway where the maximum speed limit is 70 mph

10. Has been sentenced by a court of record and all or part of the sentence has been suspended and a condition of the suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

11. Has been convicted in Federal court of an offense involving impaired driving (NC Gen Stat 20-23.2)

12. Has failed to appear for his/her trial or hearing or failed to pay a fine, penalty, or court cost ordered by the court (NC Gen Stat 20-24.1)

13. Has committed a moving violation during a period of suspension or revocation. (NC Gen Stat 20-28.1)

14. Has refused to submit to a chemical analysis to determine blood alcohol content when lawfully requested to do so by law enforcement official (NC Gen Stat 20-16.2).

Your Court Date: Your ticket will list the date and time that you are to appear in court and will identify the court building at which you are to appear. Most jurisdictions have more than one courtroom in the court building. Your ticket may or may not tell you which of these courtrooms your case will be heard in. If it does not, make sure to show up early enough to find the courtroom that your case will be in. There may be just one courtroom taking all the traffic cases. Ask the court clerk for assistance if you cannot readily find the appropriate court on your own. The ticket will tell you when your court session begins: usually 9:00 a.m. for the morning session or 2:00 p.m. for the afternoon session. You must show up *on time* for your case. The assistant district attorney (ADA) running that day's traffic court may have a calendar call at the beginning of the session: that is, the ADA will take a roll call at the beginning of the session. If you are absent during this roll call, you risk being listed as having failed to appear for your ticket. If you are late, letting the ADA know may help you to avoid this result.

Court Calendars on Line. The Administrative Office of the Courts (AOC) maintains an internet website which includes the court calendars in each North Carolina county. The web site can be found at <http://www1.aoc.state.nc.us/www/calendars/CriminalQuery.html>

Identify the name of the county, the court (most traffic cases are in District Court) and the name of the defendant that you are looking for. The site should provide you with a list of the court dates for that defendant in that county. Note however, that the web site is not always up to date. A court date may have been set so recently that it has not yet been inputted into the system, or perhaps delay in inputting was caused by a police officer who did not turn in the ticket in a timely manner, or some other inputting error maybe involved. Also, note that the names are occasionally misspelled; this is particularly likely if the police officer was not careful to write down the defendant's name legibly on the ticket. If typing in the name of the defendant does not reveal the information you are looking for, try alternate spellings of the defendant's last name. Notwithstanding the occasional problems, the AOC website is a very good source of obtaining information about calendars and other court information.

Failure to Appear You can make a bad situation far worse by failing to appear for your scheduled court date. Failing to appear can, and usually does, result in two very serious consequences. First, the judge will probably issue a warrant for your arrest. Secondly, unless you appear to answer the charge within twenty days after the scheduled appearance, the court must report your failure to appear to the DMV (NC Gen Stat 20-24.2). The DMV will then suspend your driving privileges indefinitely; that is, you will not be able to lawfully drive until you resolve your case in court. If your privileges are suspended for failing to appear and you thereafter are later found to be driving, you maybe cited for Driving While License Revoked (DWLR), a class 1 misdemeanor punishable by up to 120 days in jail and a fine at the discretion of the court. In addition, first conviction of DWLR carries a one-year suspension of driving privileges. (NC Gen Stat 20-28). Note that a motorist can be found guilty of DWLR even if s/he never had a drivers' license in the first place (NC Gen Stat 20-23.1). If you fail to appear, you should, as soon as possible, file a motion to quash the arrest warrant and to reschedule your case for another day. The court clerk should have the forms available to file such a motion, or you may wish to obtain the assistance of legal counsel. Be sure to bring your ticket with you so that you will have the pertinent information to fill out the form. If you retain an attorney to represent you, you may be able to avoid a court appearance and have counsel appear on your behalf. You should discuss this matter completely with your retained counsel prior to your court date.

Service Member Civil Relief Act. The Service Member Civil Relief Act (SCRA) is a Federal law (50 U.S. Appx 501-596) that gives military service members certain rights and protections concerning court proceedings and other matters. In certain cases, the service member is entitled to a delay of proceedings until such time as military duties no longer materially interfere with the service member's ability to appear and defend. However, as the name implies, the SCRA is only applicable to *civil* actions. ***The SCRA has no effect over criminal cases, including traffic tickets.*** If your military duties

interfere with your ability to appear for your scheduled court date (for example if you expect to be deployed on that date) you must arrange to resolve the scheduling conflict in some way; e.g., through dismissal of the charges, delay of the court case until you can get to court, or court-resolution prior to the scheduled date. Simply writing a letter to the court or sending a copy of your orders to the judge is generally NOT sufficient. Delaying your case to a different date beyond the completion of your deployment, dismissal, or moving up the hearing to a date prior to deployment will ordinarily require a conference with an assistant district attorney and/or obtaining the assistance of civilian counsel.

Your Traffic Ticket Toolbox. You have a number of choices concerning your response to a traffic ticket. You have a number of tools to use in your defense. You can mail in the ticket with full payment, delay, negotiate a settlement, request a Prayer for Judgment Continued (PJC), or you may plead not guilty and contest the matter in front of a judge. You may obtain counsel at your own expense to assist in fighting the charge.

Paying the ticket through the mail. For most minor violations, you will be given the option of pleading guilty and paying the fine through the mail. This option is the easiest to accomplish, avoids court costs and court appearances, but is not usually the preferred option. Paying through the mail will result in the assessment of driver's license points and, if you have been charged with an offense that is considered a moving violation, you will also be assessed costly insurance points. Through various devices explained below, you can often avoid or mitigate these consequences, particularly if you have a reasonable good driving record.

Delay. Delaying the case through a motion to continue is often a valuable tool for the traffic defendant. Delay may be necessary to investigate the law or the facts, to obtain legal counsel, or to gather together sufficient funds to pay the anticipated costs and fines. The judge or, in some cases, the ADA, may agree to grant your request. However, while delays are often granted, especially if it is the defendant's first request, there is no right to a delay. Remember also that suspension of driving privileges is sometimes based on accumulating a certain number of points or being convicted of certain offenses within a specified time period. For example, the accumulation of twelve points in a three-year period results in suspension. Delaying the court hearing may avoid suspension by ensuring that the points are accumulated in a period exceeding three years. Furthermore, delay may be useful in conjunction with a Prayer for Judgment Continued (PJC), discussed below.

Negotiation. When you show up to court, you or your attorney may want to discuss your case with the assistant district attorney (ADA) assigned to that day's traffic cases. You will not have long to speak with the ADA, who will be busy with the many cases assigned to the court that day. Do not expect to engage in a long discussion over the facts of the case. The ADA may be willing to dismiss one or more offenses in exchange for your plea to another offense. In some cases, the ADA may be willing to dismiss a moving violation in exchange for a plea to a non-moving violation (which results in no insurance points). If the ADA is willing to allow a plea to an equipment violation, then you will receive neither insurance points nor driver's license points. If you have multiple

citations, you may attempt a plea deal wherein you plead guilty to the non-moving violation; e.g., failure to register vehicle in exchange for dismissal of a moving violation. ADAs will be more disposed towards leniency if you can show that you have corrected the defect for which you have been cited: e.g., you were cited for failure to obtain insurance and have since obtained insurance and brought documentation thereof, or you were cited for DWLR or for driving without an operator's permit and have since obtained a valid driver's license. Sometimes, the ADA will allow a plea to a reduced charge, but will attach some conditions, such as a certain number of community service hours or the attendance at some driver improvement school.

Speed Reduction. If you are charged with speeding and can not persuade the ADA to dismiss your case or to allow you to plead to a non-moving violation, you may wish to negotiate a plea to a lesser speed than that charged. Remember, conviction of speeding 10 mile per hour or less over the speed limit does not result in insurance points as long as it is the only traffic violation within a three-year period and it did not occur in a school zone.

Prayer for Judgment Continued. Defendants who plead guilty to an offense or who are found guilty at trial of having committed an offense, may request that the court grant a Prayer for Judgment Continued (PJC). The judge has the discretion to grant or deny such a request. Or the judge may grant the request only if the defendant meets certain conditions, such as the performance of some community service. If the judge grants a PJC, the defendant will still be assessed court costs, but can not be required to pay a fine concerning the offense for which the PJC was granted. Furthermore, the PJC does not count as either a conviction or an acquittal; it is an indefinite postponing of the judgment. ***For insurance purposes, one PJC is available per household every three years to avoid insurance points.*** The PJC is an extremely valuable tool that should be used only when needed and not squandered uselessly.

Example 1: Defendant D was convicted ten months ago of speeding 64 in a 55 mph zone. Because it was his only traffic conviction and the speed was ten or less over the speed limit, D was not assessed any insurance points at the time of conviction. D is currently charged with illegal passing. If convicted of the illegal passing charge, D will be assessed two insurance points and four driver's license points for that offense. D will also be assessed two additional insurance points for the previous speeding conviction because it is no longer an isolated offense in a three-year period. The assessment of four insurance points will raise D's insurance 90%. On the other hand, if D asks for and is granted a PJC on the illegal passing charge, he will receive neither driver's license points nor insurance points.

Example 2: Same facts as example 1, except that this time D's teenage son has recently used a PJC. D no longer has a PJC to use to avoid insurance points: only one is authorized per household per three years. Suppose now that the teenage son used the PJC two years and ten months ago. If defendant D is able to delay his case at least two months, he will again have a PJC to use to avoid insurance points.

For purposes of avoiding driver's license points, every person is allowed to use two PJC's every five years. Appropriate use of the PJC can sometimes avoid suspension of driving privileges.

Example: Defendant D accumulates nine driver's license points in the last two years. His is then pulled over by a law enforcement officer for speeding 62 in 55 mph zone (3 DL point violation). When the policeman runs D's driver's license through a law enforcement database, it is discovered that D's insurance expired two months ago (another 3 DL point violation). The ADA refuses to dismiss either of the charges. If the court grants D's request for a PJC for each offense, D will avoid suspension of his driving privileges. He will not, however, avoid the imposition of insurance points.

Demand for Trial. The defendant cited for even a minor traffic violation has the right to plead not guilty and to make the state attempt to prove its case. There is no right to a jury trial; rather, a judge sitting without a jury will hear the case. Such trial sometimes result in complete acquittal; complete victory for the defendant: no insurance points, no driver's license points, no conviction, no need to use a PJC. However, trial is the most risky of the options and is rarely the preferable choice.

-If you lose at trial, you risk being convicted of the offense(s) charged and give up an opportunity to negotiate a plea. For example, defendant D is charged with speeding 63 in a 50 mph zone. The ADA is willing to allow D to plead to a lesser charge of 55/50. D, who has no traffic violations in ten years of driving, wants his day in court, insisting that the police officer and/or the radar equipment were wrong. If D took the plea offer, he would be assessed two driver's license points and no insurance points. If D loses at trial, D will be assessed three DL points and two insurance points (45% insurance rate increase). After conviction, D may request a PJC, but a judge may be less inclined to give it after D has previously denied the charge and has taken the court's time to do it.

-You may be required to go to court several times. If the state is not prepared to prosecute the case; for example if the police officer undergoing special training or is on vacation, the prosecutor will ask the judge to delay, or continue, the case to another date. The court is likely to grant the prosecutor's first such request. Additional requests may or may not be granted, depending on the justification provided by the prosecutor. The defendant will be required to show up for each court date.

-If you hire an attorney to represent you in your traffic matter, the attorney will probably charge you significantly more for a trial than for a negotiated plea.

Attorney Assistance. Military legal assistance attorneys can advise you concerning the applicable rules, your rights, and the options you have open to you. However, legal assistance attorneys will not represent you in court and will not negotiate a plea with the ADA on your behalf. You may therefore wish to hire local civilian counsel to represent you. Depending on the circumstances, your retained attorney may be able to appear on your behalf and you may be able to avoid having to personally appear in court, an especially important advantage if you are cited in a county distant from that

in which you live. Most importantly, experienced local counsel will not only know the law, they will also know the judges, local court procedures, and the ADAs, all of which can aid immeasurably in obtaining a favorable outcome. Unless you plan to contest the citation at trial, attorney fees for minor traffic violations will generally be about one hundred dollars.

The best way to deal with North Carolina traffic citations is not to get them. Failing that, you can help yourself by understanding the consequences of traffic convictions, understanding the tools you have to limit those consequences, showing up on time for court appearances, and obtaining legal counsel as needed.