



*A Guidebook to Navigating the DWI DUI Legal System
in North Carolina*

Presented to you by





*“Helping others, both in good times and bad, is what we do.”
-Bill Powers*

It is our strong belief at Powers Law Firm PA that information and preparation make for good decisions. We want you to understand your case and how the legal system works.

People charged with Driving While Impaired often have a lot of questions such as:

- What is the Worst Case Scenario?
- What Should I do?
- Do I have to go to Court?
- What Happens to my License?
- What are the Costs?

Hopefully this booklet will help explain what to expect. There is likely more information we can share about the individual aspects of the case.

Therefore, I encourage you to call now for a free, confidential consultation:

(704) 342-4357

Super Lawyers

NORTH CAROLINA 2018



2018



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CRIMINAL LAW
SPECIALIST

BUSINESS NORTH CAROLINA'S
LEGAL ELITE
2018



Bill received special commendation with the "Ebbie Award" for exceptional service and inspired commitment to the North Carolina Advocates for Justice, formerly known as NCATL. Put simply, Bill Powers is respected by his peers. For more information on membership standards and criterion of inclusion in the mentioned professional organizations, see below:

- CarolinaAttorneys.com
- BestLawFirms.USNews.com
- SuperLawyers.com
- DUIDLA.org
- BusinessNC.com
- Justia.com
- NBLSC.us
- TheNationalTrialLawyers.org
- BestLawyers.com

Bill Powers has been included on the 2018 "Top 100" North Carolina and "Top 25" Charlotte *Super Lawyers* List.

Bill Powers has been included in the 2017 *U.S. News – Best Lawyers® "Lawyer of the Year"* publication. Powers Law Firm PA has been named a Charlotte Tier 1 "Best Law Firms" for the area of DUI / DWI Defense. Bill Powers is also listed individually within the *The Best Lawyers in America* 2018 publication for his work in DUI / DWI Defense and Criminal Defense: General Practice.



How Much are Legal Fees?

Our fee structure centers on what you want. Starting out, it makes sense to ask yourself a series of important questions:

- What is my goal?
- What are my options?
- What can I afford?
- What is the best case scenario?
- What is the worst case scenario?
- Do I want to plead guilty?
- Do I want a trial?

We offer several different options to meet your needs, such as:

Review & Confirm

The attorneys at the firm will review important court documentation and provide an honest assessment of Options and Possible Outcomes.

The “Review & Confirm” aspect centers on Confirming whether the State has a case and the realistic possibility of avoiding a conviction.

What We Do:

- We will assemble the documents necessary for the Judge to review, seeking to make the process as quick and painless as possible.



- We will guide you through a sometimes complex legal system.
- We will help you understand how to move forward.

It makes sense before making any important decision to seek out Experienced Legal Advice. The Review & Confirm Option allows clients to confirm, at a competitive legal fee, they have made a good-faith effort to review the materials and are making the best decision that suits their needs.

“We offer help and compassion. We also let the client decide what is best for them.”

-Bill Powers

If we see grounds to challenge the charges, we will advise you of that. You may thereafter decide to proceed forward with additional legal services that may involve filing of Motions and Trial.

District Court Motions & Trial

Most DWI cases (but not all) are handled in District Court and ruled upon by a District Court Judge.

In District Court the Judge acts as both Judge and Jury.

- Sometimes cases rise or fall on Legal Arguments to Judges
- Other cases involve a Trial to the Reasonable Doubt standard
- And some cases necessitate Motions and a Trial

Driving While Impaired cases often are an exercise in patience. The consequences of being charged and convicted are very serious and sometimes life-changing. It is therefore wise to proceed with care and caution.

Legal Fees for District Court trials are based in part on an estimate of the time and resources necessary for the firm to repeatedly attend Court. In setting fees, Lawyers also take into consideration their level of training, experience and professional accolades. You should too.

Superior Court Pre-Trial Motions

There are times when neither the Client nor the Lawyer are satisfied with the Legal Ruling or Findings in District Court. That is in no way meant to disparage the Court. Reasonable minds can and do occasionally differ on complicated cases.

It is also why there is a process to “appeal” the District Court Judgment and ruling, giving you the opportunity to litigate the issue in Superior Court. Superior Court appeals may involve re-hearing on a Motion, bringing a new Motion to Dismiss or Motion to Suppress.

That appeal process, even for issues that have been previously argued in District Court, take time and in many instances, require filing of more formalized documentation challenging the Legal issues.

Superior Court Jury Trial

Some cases or disputes just have to be heard by a Jury. In North Carolina Superior Court, Juries normally determine what happened factually. Juries are therefore traditionally known as the “Finders of Fact.”

In Superior Court, the Superior Court Judge, who is different than the District Court Judge, is deemed the “Finder of Law.” Judges decide Legal Issues such as whether law enforcement had Reasonable Suspicion and Probable Cause to proceed.

Remember, in a North Carolina Superior Court**:

- Jury = Finder of Fact
- Judge = Finder of Law

While a Superior Court Judge may Rule on the Admissibility of Evidence or even Dismiss a case when legally appropriate, they often do not decide Guilt or Innocence.**

Make no mistake, the Superior Court Judge has considerable authority and discretion in determining what Evidence is admissible and therefore what Evidence the Jury hears. The Constitution of North Carolina provides to you, in a DWI case, the right to a Trial by Jury. It's an important right afforded to you.

**There is now an important exception in North Carolina. The Constitution of the State of North Carolina was amended in 2015 to allow a Superior Court Trial by Judge in certain instances. For more information, please seek out the advice of competent legal counsel.



Is This What You Want?

Hopefully you have seen a pattern: We set legal fees based on the services you want. We will follow your direction.

- Do you want help getting through the process, thinking you likely want to plead guilty and move on?
- Do you prefer to challenge the allegations, knowing that in every case there are many different variables to consider?

We have experience helping people. We believe the best decisions are made after considering good information. At regular intervals throughout our representation we like to ask:

“Is this what you want?”

“We want to explain your options, give sound legal advice and then let you decide what makes sense for you.” -Bill Powers

What is Driving While Impaired?

You, a friend or a family member may have been charged with “Driving While Impaired” or “DWI.” In the past, this was often referred to as “DUI,” or “Driving Under the Influence.”

A driver can be “impaired” by substances other than alcohol, like drugs such as:

- Opiates
- Cocaine
- Marijuana
- Prescription Medications

The term “DWI” was meant to include all substances that might “impair” normal mental or physical faculties, or both, to an appreciable extent. “DUI” tended to relate more to alcohol only.

Impaired Driving charges are criminal cases. They have special rules for their presentation in court, some

Call now at **(704) 342-4357**
or check our website at
CarolinaAttorneys.com
for more information.



Driving After a DWI

A charge of Driving While Impaired in North Carolina can result in an immediate thirty day revocation of your driving privilege. . . just for being charged. After the arrest, a Pre-Trial Limited Driving Privilege may be obtained in certain circumstances.

We will prepare it for you as part of our legal representation. Obviously you must qualify for the privilege and otherwise complete the required steps for the privilege to be issued.

I Need to Drive to Work What Should I Do?

STATE OF NORTH CAROLINA

File No. _____

In The General Court Of Justice
District Court Division

_____ County

IN THE MATTER OF:

Name And Address Of Applicant _____

Race	Sex	Height	Weight
Hair Color	Eye Color	Date Of Birth	

Date Of Offense _____

Drivers License No. _____ State _____

Date Of Revocation If Different From Offense Date _____

NOTE: Use this form only for revocations under G.S. 20-16.5.

FINDINGS

Upon application of the defendant for a limited driving privilege, the Court finds that:

1. The defendant's license is currently revoked under G.S. 20-16.5.
2. At the time of the alleged offense, the applicant held either a valid drivers license or a license that had been expired for less than one year.
3. On (name date) _____, the applicant
 surrendered his/her license as defined in 20-16.5(a)(5).
OR
 demonstrated that he/she was not currently licensed at the time of the offense.
4. The applicant does not have any unresolved pending charges involving impaired driving except for the charge which led to this current revocation under G.S. 20-16.5.

_____ for an offense involving impaired driving since being charged for the



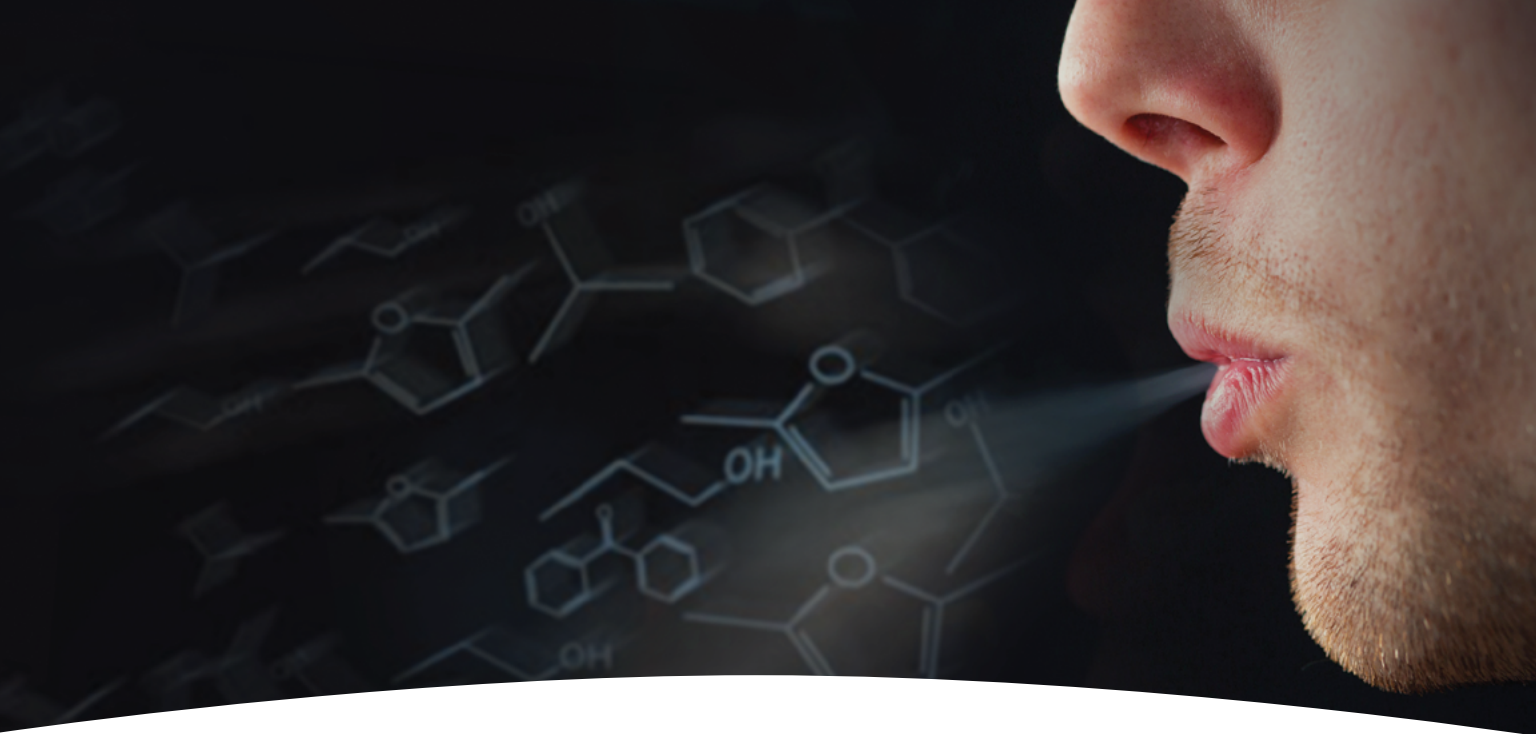
Prior to obtaining the Pre-Trial Limited Driving Privilege, there are several primary requirements that clients assist us in completing or obtaining:

- Alcohol Assessment
- DL-123 or Equivalent
- Work Hours Documentation
- Associated Application Materials
- Signed Privilege
- Affidavit

Alcohol Assessment

The client must obtain an Alcohol Assessment at a properly licensed facility. It is a requirement of the North Carolina General Assembly. Normally, the assessment includes two questionnaires that are approved by the State of North Carolina. Without going into great detail, the process helps to determine whether one might have a potential problem with alcohol or other substances.

The cost for the assessment is \$100 Dollars. In most instances, payment is accepted at the time of the appointment. If your schedule requires a weekend or evening visit, advance payment may be required by the assessing agency. There may be additional charges associated with an alcohol assessment.



Standardized Field Sobriety Tests (SFST) and Dexterity Tests

Police often request roadside field sobriety tests, including:

- The Horizontal Gaze Nystagmus (HGN)
- Walk & Turn / Heel to Toe
- One Leg Stand

Officers also occasionally perform other tests such as making one say their ABC's, count on their fingers or answer questions.

Another common testing device is the AlcoSensor. The AlcoSensor is a portable alcohol-screening device normally given on the scene prior to arrest. The court may consider "positive" AlcoSensor results to establish whether probable cause existed for arrest.

Alcohol Screening / Evidentiary Breath Testing Devices

Roadside dexterity tests work hand-in-hand with alcohol "screening" devices. The PBT (Preliminary Breath Test) result is only one of many factors the officer considers in determining whether the suspect should be arrested for DWI.

- The PBT should never be the sole basis for a DWI arrest.
- The PBT should be properly maintained and calibrated.
- The Charging Officer should possess the requisite training and experience to conduct testing.
- PBT test results are different from Evidentiary Testing.



ALCO-SENSOR III



ALCO-SENSOR FST



EC / IR II

The purpose of breath testing devices is to obtain a representative sample of the different chemicals expelled from the bloodstream and into the respiratory system through the lungs. Put simply, it seeks to capture what was most recently floating about in the bloodstream

These devices implement the use of a fuel cell to measure alcohol in one's breath. The key to fuel cell testing is to utilize chemical compounds that create an electrical current only when exposed to ethyl alcohol or ethanol. By measuring the current created, the device can determine the amount of alcohol in one's breath and thereby estimate the ethanol level in the bloodstream.



**YOU MAY STILL BE CHARGED FOR DRIVING
WHILE IMPAIRED EVEN WITH A LOW BLOOD
ALCOHOL CONTENT READING!**

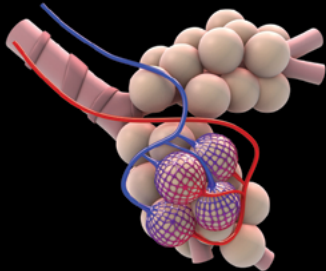
Blood & Breath Alcohol Concentration

Upon receiving notice of a BAC (Blood Alcohol Concentration) or BrAC (Breath Alcohol Concentration) that exceeds the legal limit (.08 or Higher), the Clerk of Court is directed to send Notice to the Department of Transportation, Division of Motor Vehicles.

Driving While Impaired charges may be brought even in instances where there are low readings and/or where results from a blood sample have not yet been determined. The State may proceed based solely on an Officer's opinion of "appreciable impairment." Therefore, do NOT assume the case will be automatically dismissed when the reading is low or when there are no test results due to a willful refusal or other lack of BAC or BrAC readings.

"I WAS MARKED AS A REFUSAL? WHAT DOES THAT MEAN?"

A "refusal" results in an automatic twelve-month (1 Year!) suspension. If you deny refusing OR if there are circumstances whereby the charging officer did not have the legal right to demand a sample, you may challenge the revocation. You must challenge the "willful refusal" via formal letter within ten (10) days of the revocation notice. This is VERY important.



"I DIDN'T WANT TO BLOW. CAN I STILL CHALLENGE?"

In certain circumstances, yes. For example, one cannot be suspended for willfully refusing the testing if Probable Cause to arrest for impaired driving did NOT exist. It is an extremely complex aspect of DWI law and therefore is best discussed with legal counsel after exploring the law and facts of the charges.

"IS CERTIFIED MAIL TO THE DMV REQUIRED?"

No. But it is the only real proof you requested the hearing in time. If you miss the filing deadline, ***YOU WAIVE YOUR RIGHT TO FIGHT THE REFUSAL SUSPENSION.***

"THE POLICE COMPELLED A BLOOD DRAW. CAN THEY DO THAT?"

That question is frankly hard to answer. It is a developing area of law and one that promises litigation in the future. Caselaw exists on both sides of the argument. "Forcing" a blood test, in certain circumstances, may be an improper intrusion on your Constitutional Rights.



Alcohol Influence Report (AIR)

Officers may be provided an AIR form, or something similar, by their respective law enforcement agencies. The AIR reports the observed effects of alcohol on the accused. They may also be referred to as “DWIR” reports.

AIR / DWIR forms may include how a person was dressed, how their speech sounded, whether their eyes were red & glassy and describe in a detailed fashion the SFST performance. In some cases, police officers also record their recollections of the arrest within personal notes. That type of documentation may be provided after discourse with the District Attorney’s Office.

Charging Officer's Affidavit

An affidavit is a sworn statement in writing made under oath or on affirmation before an authorized person. Within the Arrest Affidavit the officer writes down his or her impressions of the DWI arrest. They normally state why the accused was pulled over, how they acted, and how they performed on the various psychophysical dexterity tests.

The Charging Officer's Affidavit can give counsel a basic idea of what the officer believed during the arrest investigation. It may provide a basis for a Motion to Suppress or Dismiss. It may explain why an officer acted a certain way. It also may help remind clients about certain details of the arrest they have forgotten.

What If I Work On the Day the Officer is Assigned to Court?

As tough as it may sound, you may need to take the day off from work.



What Does 18-CR-00001 Mean?

Each person charged with a crime is assigned a case number. Case numbers are normally written on the charging materials. They also may be written on the ticket or uniform citation if they are available to the police officer. Case numbers begin with the year of the offense, for example “18-CR-xxxxx.” The “18” indicates the year 2018. “CR” is the Clerk of Court’s designation of a criminal offense.

The numbers following “CR” are normally assigned in the order in which people are arrested or charged with various offenses. The first person charged or cited on January 1, 2018 is given the case number of “18-CR-00001.”

If your paperwork reflects 18-CRS, the “S” denotes a criminal case in Superior Court.





How To Get Court Date & Location Information

1. You can call our firm

You can contact our office by phone at:

(704) 342-4357

We offer a confidential consultation with an attorney, at which time we would be more than willing to explain the court process, discuss how the legal system works and confirm upcoming court dates.

During the consultation we normally review the paperwork associated with the case.

The consultation is free.

If you seek only to determine the court date, you may wish to review the charging documentation provided or follow options 2 and 3 below.

2. You can call the Clerk of Court

You also can call the Clerk of Court. Please reference www.nccourts.org/county/ for Clerk of Court listings in North Carolina. Be advised, their phone systems are busy. Usually Thursdays and Fridays are good days to call. You will need your case numbers if you decide to try calling.

3. You can check on-line

www1.aoc.state.nc.us/www/calendars/CriminalQuery.html

Given the very serious consequences for missing court, like going to jail for a “Failure to Appear,” checking multiple sources and confirming appearances makes sense.



COURTHOUSE

I Saw a Video Tape in the Police Car. Can I See That?

Video and audio tapes are occasionally utilized in trials for impaired driving offenses. It is important to note some officers do NOT have audio-video equipment in their patrol vehicle or on their person. Police agencies have internal policies regarding recording devices.

Obtaining materials in the preparation of a defense is a sometimes complicated, time-consuming process. It may involve the filing of Motions, requests for Voluntary Discovery, issuance of Subpoenas and the like. Upon being properly retained, we request available documentation from the respective law enforcement agencies and/or custodians of records when appropriate.

USE

Preparation Is Key

Preparation is key for a zealous DWI defense. Although documentation is provided to people upon release from jail, some important forms may not be available. As such, we obtain the important paperwork for the client, once we are retained.

The following materials can be important to obtain before trial:

1. Charging Officer's Affidavit
2. Alcohol Influence Report (AIR) or (DWIR)
3. Video Recordings
4. Notes, Drawings and Documentation regarding the arrest



DL-123 (10-89) DRIVER LICENSE LIABILITY INSURANCE CERTIFICATION

Insured Driver _____

Date of Birth _____

Policyholder(s) _____

Insurance Company _____

Policy Number _____

Effective Date _____

Agency Name _____

Expiration Date _____

Agents Signature _____

Date this DL-123 completed _____

Notes _____

This form is valid for 30 days after completion by insurance agent.



*Bill
Powers*

Information and preparation make for good decisions. With that in mind, we hope this booklet has helped you to learn more about how to protect your legal interests and navigate the legal process. Remember, even in the worst cases, there are defense options. You are presumed “innocent until proven guilty.”

Please call now for your free consultation.
We look forward to hearing from you!

Powers Law Firm PA

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