



NORTH CAROLINA **Judicial** COLLEGE

Initial Appearances for DWI: CVRs, Seizures & Holds



November 8, 2012 

Shea Denning




Implied consent offenses

- Impaired driving: G.S. 20-138.1
- Impaired driving in a commercial vehicle : G.S. 20-138.2
- Habitual impaired driving: G.S. 20-138.5
- Death by vehicle or serious injury by vehicle under G.S. 20-141.4
- First- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18, when based on impaired driving
- Driving by a person <21 after consuming: G.S. 20-138.3
- Violating no-alcohol condition of limited privilege: G.S. 20-179.3
- Impaired instruction: G.S. 20-12.1
- Operating comm. motor vehicle after consuming alcohol : G.S. 20-138.2A
- Operating school bus, school activity bus, or child care vehicle after consuming alcohol: G.S. 20-138.2B
- Transporting open container of alcoholic beverage: G.S. 20-138.7(a)
- Driving in violation of ignition interlock restriction: G.S. 20-17.8(f).



What is implied consent?

- Obtaining a defendant's breath or blood is a search within the meaning of the Fourth Amendment
- Generally, must have warrant to render search reasonable under Fourth Amendment
- Do any of the exceptions to the warrant requirement apply?
 - Consent?
 - Exigency?
 - Search incident to lawful arrest?





Implied Consent Testing

North Carolina Department of Health and Human Services
Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Under N.C.G.S. 20-16.2(a)

Last First MI

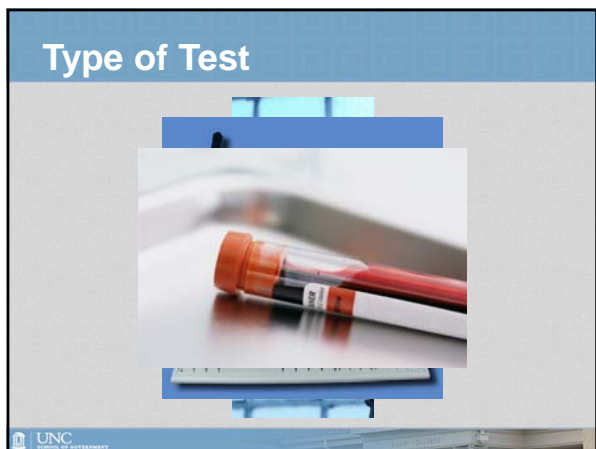
Driver License Number / State Date of Birth Citation Number

Breath **Blood** **Subsequent Test**

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Date _____ Time _____ [] a.m. [] p.m. _____ Signature of Person Charged

Did defendant call an attorney and/or witness? [] NO [] YES Time _____ [] a.m. [] p.m.



Type of Test

G.S. 20-16.5 Civil License Revocation (CVR)

1. LEO has reasonable grounds to believe person committed implied consent offense
2. Person is charged with offense
3. LEO and CA complied with implied consent procedures re chemical analysis
4. Person
 - a. Willfully refuses
 - b. A/C of 0.08 or more
 - c. A/C of 0.04 or more if CMV
 - d. Any A/C if person <21



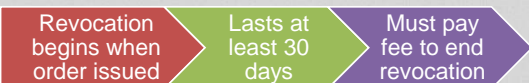
CVRs in Implied Consent Cases

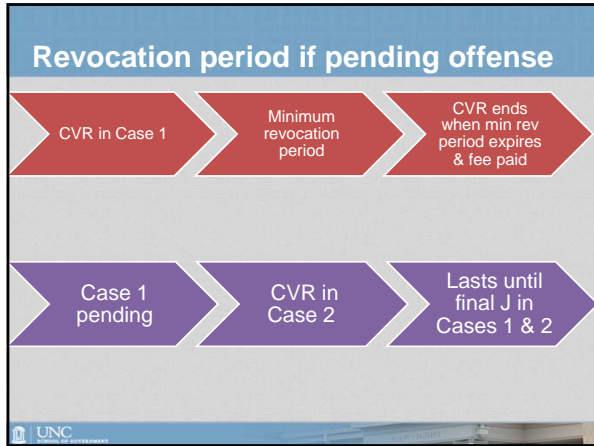
CVRs “provide for swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts”

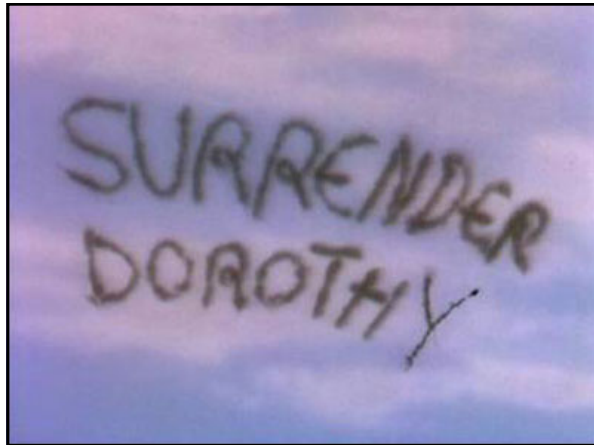
(NHTSA 2011 Highway Safety Countermeasure Guide at 1-11)



Revocation period







Affidavit - No License
AOC-CVR-8

STATE OF NORTH CAROLINA		In the
County		General Court Of Justice
IN THE MATTER OF		Declaratory Court Division
Name And Address	AFFIDAVIT - NO LICENSE	
County Of Residence	State Of Residence	0-8 (01-01)
NORTH CAROLINA RESIDENTS		
I, the undersigned, being that duly sworn, say that I am a resident of the county and state named above, and at the time of the charge:		
<input type="checkbox"/> I was not lawfully licensed to drive in the State of North Carolina because:		
<input type="checkbox"/> My license was revoked	<input type="checkbox"/> My license was expired	
<input type="checkbox"/> I have never had a license	<input type="checkbox"/> Other _____	
<input type="checkbox"/> I am validly licensed to drive in North Carolina but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:		

OUT-OF-STATE RESIDENTS		
I, the undersigned, being that duly sworn, say that I am a resident of the county and state named above, and at the time of the charge:		
<input type="checkbox"/> I was not lawfully licensed to drive in the State of North Carolina and did not have a valid driver's license from another state because:		
<input type="checkbox"/> My license was revoked	<input type="checkbox"/> My license was expired	
<input type="checkbox"/> I have never had a license	<input type="checkbox"/> Other _____	
<input type="checkbox"/> I am validly licensed to drive by the State of _____ but am unable to locate my card. The circumstances of the loss and the efforts I have made to find the license card are:		

SWORN AND SUBSCRIBED TO BEFORE ME		Notary Public
Date	_____	

SUPPLEMENTAL FINDINGS AND ORDER

It is further found that the person named herein appeared before the undersigned judicial official at _____ AM _____ PM on this _____ day of _____, and,

1. surrendered his/her drivers license to the Court.

2. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.

3. demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation of the drivers license of the person named herein:

1. remains in effect for at least thirty (30) days from the above time and date and until payment of a \$100 fee has been made to the Clerk of Superior Court.

2. unless this action #Findings For Probable Cause No. 8 on reverse side is checked is indefinite and remains in effect for at least thirty (30) days from the above time and date until a final judgment, including appeals, has been entered for the current offense and all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a \$100 fee to the Clerk of Superior Court.

Date _____ Signature Of Judicial Official _____

Name Of Judicial Official /Type Or Print _____ Judge Magistrate
 Clerk/CSC Assistant CSC Clerk Of Superior Court

AOC-CVR-2, Side Two

Appeal from CVR
AOC-CVR-5

STATE OF NORTH CAROLINA

County _____

IN THE MATTER OF _____

Requester Name _____

State Vehicle No. _____

REQUEST FOR HEARING TO CONTEST LICENSE REVOCATION

11/30/2012

TO THE APPROPRIATE JUDICIAL OFFICIAL:

I request a hearing to contest the validity of the revocation of my drivers license which was ordered on _____ at the date and time above.

I challenge the validity of the revocation on the following specific grounds:

NOTE: List the things to be contested on or before the Revocation Order which is to be contested.

I respectfully request that the hearing be conducted by a District Court Judge.

I understand that the hearing will be recorded. I hereby request that the recording of this hearing be made available to me in a format that I can use for my defense. I further request that the recording be made available to me in a format that I can use for my defense. I further request that the recording be made available to me in a format that I can use for my defense.

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ORDER SETTING HEARING

The undersigned hereby sets a time, date and location of hearing as shown below:

Hearing Date: _____

Hearing Time: _____

Hearing Location: _____

This record must be filed to the Recorder within 105 days of the effective date of the revocation order with any of the following:

1. Order of appeal or the order of appeal.
2. The Clerk of Superior Court or
3. A Magistrate designated by the Clerk of Superior Court to receive such requests.

APPROVED: My self _____ Magistrate
11/30/2012

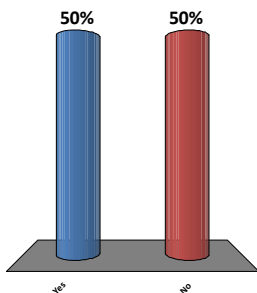
- Hearing to contest CVR**
- Time for hearing
 - Within 3 working days if before magistrate
 - Within 5 working days if before judge
 - If deadline missed, revocation rescinded (unless person contesting CVR contributed to delay)
 - Issue(s) on appeal
 - Was contested condition under G.S. 20-16.5 satisfied?
 - Was there a pending offense for which license had been or is revoked under G.S. 20-16.5?
 - Standard of review
 - Judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation
 - Unless contested, may accept statements on revocation report as true

Anomalies in process

- DA does not represent State
- Judicial official may question witnesses
- Judicial official may adjourn to seek additional evidence
 - But hearing still must be completed in 3 or 5 days
 - Unless person contesting revocation contributed to delay

Have you heard a contested CVR?

1. Yes
2. No



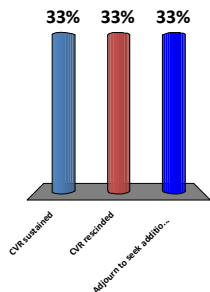
Consider the case of Danielle Driver

- Danielle is arrested for DWI on 10/20/12
- Her AC is 0.08.
- Her license is civilly revoked by the magistrate.
- On 10/22/12 Danielle files a written request for a hearing contesting the CVR.
- She contends the LEO did not have probable cause to charge her with DWI.
- She also contends CA did not comply with procedures for implied consent testing.
- Hearing held 10/25/12.



What's your ruling?

1. CVR sustained
2. CVR rescinded
3. Adjourn to seek additional evidence



State v. Shockley, 201 N.C. App. 431 (2009)

g/210 L	Time
0.16	6:05 a.m.
.**	6:06 a.m.
0.15	6:23 a.m.
.**	6:24 a.m.
TEST REFUSED	



CVR?

Test	g/210 L	Time
AIR BLK	.00	6:03 am
ACCY CHK	.08	6:04 am
AIR BLK	.00	6:04 am
SUB TEST	.10	6:05 am
AIR BLK	.00	6:06 am
SUB TEST	.**	6:07 am
TEST TIME OUT		
Test	g/210 L	Time
AIR BLK	.00	6:08 am
ACCY CHK	.08	6:09 am
AIR BLK	.00	6:09 am
SUB TEST	.11	6:10 am
AIR BLK	.00	6:10 am
SUB TEST	.**	6:12 am
AIR BLK	.00	6:12 am
NO TEST		



CVR?

Test	g/210 L	Time
AIR BLK	.00	6:03 am
ACCY CHK	.08	6:04 am
AIR BLK	.00	6:04 am
SUB TEST	.10	6:05 am
AIR BLK	.00	6:06 am
SUB TEST	.13	6:07 am
AIR BLK	.00	6:07 am

CVR?

Test	g/210 L	Time
AIR BLK	.00	6:03 am
ACCY CHK	.08	6:04 am
AIR BLK	.00	6:04 am
SUB TEST	.10	6:05 am
AIR BLK	.00	6:06 am
SUB TEST	.13	6:07 am
AIR BLK	.00	6:07 am
SUB TEST	.11	6:08 am
AIR BLK	.00	6:08 am

Violation of A/C restriction on license NOT implied consent offense

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form. **ATTACH TEST RECORD TICKET HERE**

STATE OF _____

NOTE: A "born-on" _____

Name _____

Address _____

City _____

State _____

The undersigned _____ day of _____ at _____ (a-3)(b) (m), a law enforcement officer _____ to believe the above named person, hereinafter referred to as driver, operated a vehicle _____ in the above named county upon _____ while committing _____ consent offense in that _____

1. I am a law enforcement officer _____

2. The driver has a drivers license restriction: alcohol concentration ignition interlock conditional restoration (Rev. 9/8)

3. The driver violated a drivers license restriction by: refusing to be transported for testing not having an operable ignition interlock on the vehicle being driven failing to personally activate the ignition interlock on the vehicle being driven exceeding the driver's alcohol concentration limitation.

4. The driver was charged with the implied consent offense of G.S. 20-138.1, Other implied consent offense _____ and the driver has one or more pending offenses in the following county(ies) _____ for which the drivers license had been or is revoked under G.S. 20-165.

5. After the driver was charged, I took the driver before _____ a chemical analyst authorized to administer a test of the driver's breath.

6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to _____

What about violation of an ignition interlock restriction?

- DWLR
- If alcohol consumed, then DWLR for ignition interlock violation *is* implied consent offense
- Separate revocation under G.S. 20-17.8(f)
 - Lasts until case is resolved



Driving While License Civilly Revoked

- DWLR 20-28
- If minimum revocation period has expired, then ***punished*** as if convicted of NOL, but offense is still DWLR




Motor Vehicle Seizure & Impoundment:
G.S. 20-28.3




**Motor Vehicle Seizure & Impoundment:
G.S. 20-28.3**

- A motor vehicle driven by a person charged with a ***an offense involving impaired driving*** is subject to seizure if
 - At the time of the violation, the person's license was revoked as a result of a ***prior impaired driving license revocation, or***
 - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy




Exceptions to Seizure

1. Vehicle reported stolen
2. Rental Vehicle; Driver Not Listed in Contract



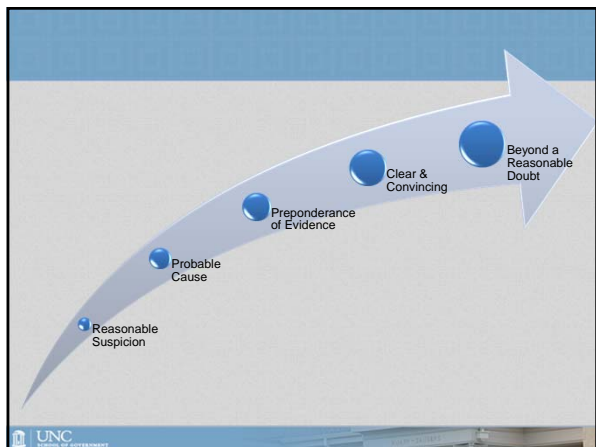
Detention of Impaired Driver

- G.S. 20-38.4
 - Upon finding PC for an implied consent offense, consider whether defendant "is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed."



Detention of Impaired Driver

- G.S. 15A-534.2
 - Applies to initial appearances for **offenses involving impaired driving (pg. 11 of Knoll bulletin)**
 - If magistrate finds
 - **clear and convincing evidence** that impairment of defendant's physical or mental faculties
 - presents a danger if defendant is released of physical injury to defendant or others or damage to property
 - magistrate must order defendant held in custody



Detention of Impaired Driver: AOC-CR-270

STATE OF NORTH CAROLINA

County: _____

At the General Court of Justice
 District Superior Court Division

STATE VERSUS _____

DETENTION OF IMPAIRED DRIVER

FINDINGS G.S. 15A-534.2

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

- The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(2)(a).
- At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that (check as needed):

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official (JCO/JC) that the defendant be detained in the custody of the Sheriff or an appropriate law enforcement officer.

- The defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.
- A police responsible shall be willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date: _____ Time: _____ AM PM

Signature of Judicial Official: _____

Magistrate Clerk of Superior Court
 Judge Deputy Judge
 District Superior Court Judge

RELEASE FROM DETENTION ORDER

The undersigned judicial official (JCO/JC) that the defendant be released from the detention under impaired drive because:

- The defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of

Detention of Impaired Driver

- Magistrate must inform defendant that he/she will be held until
 - magistrate determines that defendant's physical and mental faculties are no longer impaired to the extent that defendant presents a danger OR
 - a sober, responsible adult is willing and able to assume responsibility for defendant until the defendant's physical and mental faculties are no longer impaired.
- A defendant may never be held longer than 24 hours pursuant to an impaired driving hold.



UNC
UNIVERSITY OF NORTH CAROLINA

May request periodic breath tests

- Less than 0.05, no longer impaired
- Unless evidence that defendant still impaired from combination of alcohol and some other impairing substance or condition



UNC
UNIVERSITY OF NORTH CAROLINA

Implied Consent Offense Notice: AOC-CR-271

STATE OF NORTH CAROLINA

County _____ In The General Court Of Justice
Before The Magistrate

STATE VERSUS _____

IMPLIED CONSENT OFFENSE NOTICE

TO THE DEFENDANT:

The undersigned magistrate will conduct all proceedings and take other proceedings as the law requires your immediate arrest or substantial restraint unless you are provided in writing with this form and instructions and this form by electronic mail or hereby notified of this procedure.

CONTACT PERSONS

TO THE DEFENDANT:

Pursuant to G.S. 20-16.4(a)(2), you are required to list all persons you wish to contact and their telephone numbers. Attach additional sheets if necessary.

Name	Telephone Number
1. _____	_____
2. _____	_____
3. _____	_____

do not wish to contact anyone.

By signing below, the defendant indicates that he/she has received notice of the control and observation procedure and has listed all contacts that he/she wishes to contact.

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 10A and G.S. 20-58.8(b):

- An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
- The undersigned received all existing laws, criminal records and history from law enforcement officers, sentencing information and the circumstances of the arrest, and observed the defendant.
- The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-50.2 should have been imposed.
- The undersigned informed the defendant in writing of the established procedure to have others assist at the jail to observe the

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Established jail procedures

Procedure for the Observation of Prisoners
Charged with Impaired Driving Offenses
Paragraph in N.C.G.S. 20-27.4

1. Any person seeking to observe jailed or incarcerated impaired drivers shall first check in with the Staff Duty Officer or Detention staff on duty at the Guilford County Sheriff's Office. Observations are limited to the first twenty-four hours following the defendant's admission into the jail.
2. The Staff Duty or Detention Officer shall immediately notify the arresting officer and Booking officer that a witness is present to observe the defendant. The time of this notification shall be documented by Booking in the Booking log book and by the dispatcher on the attached witness observation form.
3. Booking shall inform the jail supervisor on-duty of the witness's presence in the facility. The supervisor shall seek a detention officer to escort the witness to the jail or appropriate viewing area. The escorting officer shall obtain the form and complete the information concerning the name of the witness, the person to be observed, the time and date the witness was escorted to the jail and the time and date of the completion of the observation.
4. A witness seeking to observe the defendant shall be admitted to observe the defendant in an area designated by the Sheriff for observation of the defendant. Jail staff shall note the time the witness is admitted to the jail and the time the observation begins.
5. All witnesses shall be required to submit to a search of their person and belongings prior to entry into the jail. Witnesses must comply with all jail or facility regulations prior to being admitted into any secured area.
6. Guilford County Sheriff's Office staff shall not hold or retain any personal property items for the witness.