

**Magistrate Procedures for Ordering Civil License Revocations
and Seizure and Impoundment of Motor Vehicles**

Shea R. Denning, School of Government¹

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Civil License Revocations

G.S. 20-16.5 provides for a 30-day pre-trial civil revocation of an individual's driver's license for operating a motor vehicle with an alcohol concentration of .08 or greater or for refusing to submit to a chemical analysis. The revocation is designed not to punish impaired drivers but instead to "prevent unsafe and unfit drivers from operating vehicles and endangering the citizens of North Carolina."²

A person's driver's license is subject to immediate civil revocation under G.S. 20-16.5 if the following four circumstances exist:

1. A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2(a), which consist of the following offenses:
 - a. Impaired Driving (G.S. 20-138.1)
 - b. Drinking and driving by a person under 21 (G.S. 20-138.3)
 - c. Violating no-alcohol condition of limited privilege (G.S. 20-179.3)
 - d. Impaired instruction (G.S. 20-12.1)
 - e. Impaired Driving in commercial vehicle (G.S. 20-138.2)
 - f. Operating commercial vehicle after drinking (G.S. 20-138.2A)
 - g. Operating school bus, school activity bus, or child care vehicle after drinking (G.S. 20-138.2B)
 - h. Habitual Impaired Driving (G.S. 20-138.5)
 - i. Open Container (G.S. 20-138.7)
 - j. Driving in violation of restriction requiring ignition interlock (G.S. 20-17.8(f))
 - k. Felony death by vehicle or felony serious injury by vehicle (G.S. 20-141.4)
 - l. First or second degree murder or involuntary manslaughter if the offense involved impaired driving (G.S. 14-17; G.S. 14-18)

*Note: Driving in violation of an alcohol restriction imposed as a condition of a license restoration pursuant to G.S. 20-19(c3) is **not** an implied consent offense. This offense appears on AOC-CVR-1A because a law enforcement officer submits this form to DMV when a person violates a conditional restoration. The submission of the form triggers an administrative license revocation by DMV.*

2. The person is charged with an offense listed in paragraph 1, as provided in G.S. 20-16.2(a);
3. The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person to submit to or in procuring a chemical analysis; and
4. The person:
 - a. Willfully refuses to submit to the chemical analysis;
 - b. Has an alcohol concentration of .08 or more within a relevant time after the driving;

- c. Has an alcohol concentration of .04 or more at any relevant time after driving a commercial vehicle; or
- d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

A chemical analysis administered before the person is charged with an offense listed in paragraph 1 also can be the basis for a license revocation if:

1. The person requests a pre-charge chemical analysis pursuant to G.S. 20-16.2(i); and
2. The person has:
 - a. An alcohol concentration of .08 or more at any relevant time after driving;
 - b. An alcohol concentration of .04 or more at any relevant time after driving a commercial vehicle; or
 - c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and
3. The person is charged with an implied-consent offense.

A person's license is subject to immediate civil revocation if the aforementioned statutory requirements are met --- even if the person was driving a vehicle for which no license was required, such as a moped, bicycle, or lawn mower.

A person may be charged with more than one implied consent offense arising from a single transaction. For example, a person may be charged with impaired driving under G.S. 20-138.1 as well as driving by a person less than 21 years old after consuming under G.S. 20-138.3 based upon a single episode of driving while impaired. Both of these offenses are implied consent offenses that, when combined with other requisite factors, require a civil license revocation. **However, when a defendant is charged with more than one offense requiring civil license revocation based upon conduct arising from a single transaction or occurrence, only one civil license revocation may be issued.**

Affidavit and Revocation Report (AOC-CVR-1A). If a person's license is subject to civil revocation for an implied consent offense, the law enforcement officer and chemical analyst must execute a revocation report. A revocation report is a sworn statement by a law enforcement officer and a chemical analyst containing facts indicating that the person's license is subject to civil revocation. The appropriate AOC form is AOC-CVR-1A, which is captioned "Affidavit and Revocation Report."

To support the civil revocation the affidavit and revocation report must state:

1. The facts supporting the implied consent offense;
2. That the officer has charged the person with an implied consent offense;
3. The facts needed to determine whether the officer and chemical analyst complied with the implied consent statutes; and
4. The results of the test or whether there was willful refusal.

If a breath test was given, the test record ticket printed from the testing instrument, the Intox EC/IR II, will be attached to the front of the report. The charging officer may also perform the work of the chemical analyst – the person authorized to conduct chemical analyses of the breath -- if the officer has a current permit issued by the Department of Health and Human Services authorizing the officer to perform a breath test using the type of instrument employed.³ If the charging officer is also a chemical analyst and performs the breath test on the person, the officer-analyst will complete the entire affidavit and report. If the charging officer is a chemical analyst and reads the implied-consent rights but directs the taking of a blood or urine sample by a qualified individual, the officer will check the appropriate blocks and complete the appropriate portions of paragraphs 1 through 14.

If the charging officer and the chemical analyst are different people, the officer will complete the pertinent part of one AOC-CVR-1A (paragraphs 1-5) and the chemical analyst will complete the remaining portions (paragraphs 6-14) of a separate AOC-CVR-1A. If one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the affidavit and report must include the statements of both analysts. The AOC-CVR-1A also must state, in the last block of paragraph 4, whether the person has a pending offense for which the person's license has been or is revoked as this will affect the length of the revocation period.

A law enforcement officer must ensure that AOC-CVR-1A is expeditiously filed with a judicial official. A judicial official is defined by G.S. 20-16.5(a)(3) and G.S. 15A-101(5) as a "magistrate, clerk, judge, or justice of the General Court of Justice."

If the results of the chemical analysis or the reports indicating a refusal are available at the time of the person's initial appearance on the implied consent charge, the law enforcement officer must file the report with the magistrate who will then determine whether there is probable cause to believe that the conditions in G.S. 20-16.5(b) have been satisfied. Probable cause means there is a fair probability that a crime was committed and the person arrested or summoned committed the crime.

Exception for Revoked Licenses. If the judicial official required to issue the revocation report finds that the person whose license is subject to civil revocation pursuant to G.S. 20-16.5(b) has a currently revoked driver's license, no limited driving privilege, and will not become eligible for restoration of his license or a limited driving privilege during the period of civil revocation, the judicial official is not required to issue the civil revocation order.⁴ If this exception applies and the judicial official does not issue a revocation order, the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he or she relies in making that determination.

Revocation Order When Person is Present (AOC-CVR-2). If the magistrate finds probable cause that the four conditions for civil revocation are satisfied and the defendant is before the magistrate, the magistrate must enter an order revoking the person's driver's license for the requisite period. The form

for entering such an order is AOC-CVR-2, captioned "Revocation Order When Person Present." The magistrate must check the appropriate box under paragraph 4 of the Findings for Probable Cause section of AOC-CVR-2 indicating whether the defendant (a) willfully refused to submit to a chemical analysis; (b) had an alcohol concentration of .08 or more at any relevant time after driving; (c) had an alcohol concentration of .04 or more at any relevant time after the driving of a commercial motor vehicle; (d) had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.

If the defendant has been charged with an offense for which his or her license had been or is revoked under G.S. 20-16.5 and that offense is still pending, the magistrate must check paragraph 5 in the Findings for Probable Cause section of AOC-CVR-2.

The magistrate must then complete the Order portion of AOC-CVR-2. The magistrate must indicate whether the revocation is in effect at least 30 days from (1) the date the Order is entered [box 1]; (2) the date the defendant surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive [box 2]; or (3) the date he/she surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive and indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5 [box 3]. If the person surrenders his or her license at the time of revocation and has no pending offenses for which his or her license was or is revoked under G.S. 20-16.5, the magistrate checks box 1. If the person does not surrender his or her license at the time of the revocation but has no pending offenses for which his or her license was revoked, the magistrate checks box 2. If the magistrate checked box 5 in the Findings for Probable Cause section of AOC-CVR-2, the magistrate must check box 3 in the Order portion of the form.

Upon entering the revocation order, the magistrate must order the person to surrender his license and, if necessary, may order a law enforcement officer to seize the license.⁵ Licenses issued by jurisdictions other than North Carolina are covered by the surrender provisions and must, like North Carolina drivers licenses, be surrendered to the magistrate.⁶

The magistrate must give the defendant a copy of the revocation order. Though G.S. 20-16.5 does not require that the magistrate orally notify the defendant of the revocation period, a magistrate should, in the interest of securing compliance with the revocation, inform the defendant that his or her license is revoked for at least 30 days. If paragraph 3 of the Order portion of AOC-CVR-2 is checked, the magistrate should inform the defendant that his or her license is revoked for at least 30 days and indefinitely until a final judgment is entered for the current offense and all pending offenses for which his/her license had been or is revoked under G.S. 20-16.5. G.S. 20-16.5(e) requires that the magistrate state in the order and **personally inform** the defendant that he may request a hearing to contest the validity of the revocation order but that his or her license remains revoked pending the hearing.

The revocation begins at the time the revocation order is issued and continues until the person's license has been surrendered for the minimum revocation period (discussed below) and the person has paid the applicable costs. A defendant may surrender his license by turning over to a court or a law enforcement officer his most recent, valid driver's license or learner's permit or a limited driving privilege issued by a North Carolina court.

A person who is validly licensed but unable to locate his license may surrender his license by filing an affidavit with the clerk (AOC-CVR-8) setting out facts that indicate that he is unable to locate his license card and that he is validly licensed.⁷ A person who is not licensed to drive in North Carolina and thus has no license from North Carolina or elsewhere may complete AOC-CVR-8 (Affidavit – No License) and submit the affidavit to either the magistrate or the clerk.⁸ The person also may demonstrate to the magistrate that he or she is not licensed by producing appropriate identification that the magistrate can check against DMV records. If the defendant submits AOC-CVR-8 to establish that he or she does not have a license or otherwise demonstrates to the magistrate that he or she has no license, the magistrate must check box 3 in the Supplemental Findings and Order section on Side Two of AOC-CVR-2 and record the time and date in the first sentence of this section of the form. The Magistrate must then sign and date the Supplemental Findings and Order section.

If the person does not surrender his license or demonstrate that he is not currently licensed within five working days of the effective date of the order, the clerk of superior court must immediately enter a pick-up order (AOC-CVR-4).

Revocation Period. Revocations under G.S. 20-16.5 are never shorter than thirty days from the date the person surrenders his license, but the revocation period may be longer, depending upon whether, at the time of the instant implied consent offense, the person had a pending offense for which his license was or had been revoked under G.S. 20-16.5.

For persons who have no pending implied consent charge at the time of the instant offense, the revocation lasts until three things have occurred:

1. The person has surrendered his license or has demonstrated to the court that he has no license or has lost his license;
2. Thirty days (forty-five days if the person fails to surrender his license within five working days after the effective date of a revocation order served by mail) have passed since the license was surrendered; and
3. The person has paid the costs.

For persons with a pending implied consent charge, the civil revocation is indefinite and lasts until a final judgment (including all appeals) has been entered for the current offense and all pending offenses. In no event may the revocation period be shorter than thirty days. This indefinite revocation period

applies regardless of whether the *civil revocation* in the earlier case was in place at the time of the instant offense; the key is whether the prior impaired driving *charge* itself is still pending.

The simplest revocation period to calculate is that of a person with no pending offenses who is charged with an implied consent offense and is served with a revocation order by the magistrate at the conclusion of his initial appearance. If the person surrenders his license at the initial appearance, his license is revoked for thirty days from the date of order and surrender. At the conclusion of thirty days, he may obtain his license from the clerk upon payment of the \$100 in costs. If the person does not have his license with him at the initial appearance, the revocation period ends thirty days from the date he surrenders his license upon his payment of costs. If the person is validly licensed but cannot locate his license card, he may “surrender” his license by filing an affidavit of no license (AOC-CVR-8) with the clerk of superior court. The revocation period concludes thirty days from the date the application is filed, upon payment of costs. If the person does not have a valid license, he may submit an affidavit of no license on AOC-CVR-8 to either the clerk or the magistrate; the revocation period concludes thirty days from the date the application is filed upon payment of costs. If a person is not present when the revocation order is issued, he must do one of the following within five working days of the effective date of the order: (1) surrender his license to the clerk; (2) file an affidavit of lost license with the clerk; or (3) appear before the clerk and demonstrate that he has no license within five working days of the effective date of the order. If he does so, the revocation period concludes after thirty days from the date of the surrender, filing of the affidavit, or appearance, upon the person’s payment of costs. If the person fails to surrender his license or make the appropriate showing within five working days, the revocation period concludes (contingent upon payment of costs) forty-five days from the occurrence of one of the following: (1) the time the person’s driver’s license is picked up by law enforcement following service of a pick-up order; (2) the time the person demonstrates to a law enforcement officer who has a pick-up order that he is not currently licensed; (3) the time the person’s driver’s license is surrendered to the court; or (4) the time the person appears before the clerk to demonstrate that he is not currently licensed.⁹

Request for Hearing to Contest License Revocation (AOC-CVR-5). As previously mentioned, a person whose license is revoked under G.S. 20-16.2 may request a hearing to contest the validity of the revocation. The request must be in writing and may be made at the time of the person’s initial appearance or within 10 days of the effective date of the revocation. AOC-CVR-5 is the appropriate form. The written request must be made to the clerk or a magistrate designated by the clerk. The person may specifically request that the hearing be conducted by a district court judge.

If the defendant does not request that the hearing be conducted by a district court judge, the hearing must be conducted by a magistrate assigned by the chief district court judge to conduct such hearings. Though the general statutes are silent on the matter, the review hearing should be held by a magistrate different from the official who entered the initial revocation order to ensure the person an opportunity for impartial review. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district by a district court judge assigned to conduct such

hearings. The revocation remains in effect pending the hearing. The hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if it is before a district court judge. The request for a hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in that request.

A witness may submit evidence via affidavit at the hearing unless the witness is subpoenaed. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he deems necessary. The person contesting the validity of the revocation may, but is not required to, testify on his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true matters stated in the revocation report. If any relevant condition under G.S. 20-16.5(b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the end of the hearing, the judicial official must enter an order on side 2 of AOC-CVR-5 sustaining or rescinding the revocation. The decision of the judicial official is final and may not be appealed. If the hearing is not held and completed by a magistrate within three working days of the written request or by a district court judge within five working days, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. The clerk generally keeps surrendered licenses rather than mailing them to DMV. Unless the clerk finds that the person's license is revoked for another reason and will remain revoked beyond the G.S. 20-16.5 civil revocation period, he must return it if: (1) the applicable period of revocation has passed and the person has paid the \$100 in costs;¹⁰ or (2) the magistrate or judge has rescinded the revocation. If the license has expired the clerk may return it to the person with a caution that it is no longer valid. If the person's license is revoked for another reason and remains revoked, the clerk must mail the license to DMV.¹¹ If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked pursuant to G.S. 20-16.5 and under another section of Chapter 20, the clerk must surrender the license to DMV if the G.S. 20-16.5 revocation can end before the other revocation.¹² The \$100 in costs must still be paid before the G.S. 20-16.5 civil revocation may be terminated, even after the other revocation ends.¹³

A civil revocation pursuant to G.S. 20-16.5 revokes a person's privilege to drive in North Carolina regardless of the source of his authorization to drive.¹⁴ Revocations under G.S. 20-16.5 are independent of and run concurrently with any other revocations.¹⁵ No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under G.S. 20-16.5.¹⁶ A person whose license is revoked for 30 or 45 days may apply to the

court for a limited driving privilege if the following conditions are met: (1) at the time of the alleged offense the person held a valid driver's license or one that had been expired for less than one year; (2) The person does not have (a) an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked or (b) additional convictions for an offense involving impaired driving since being charged for the violation for which the license is currently revoked under G.S. 20-16.5; (3) the person's license has been revoked for at least 10 days if the revocation period is 30 days or for at least 30 days if the revocation period is 45 days; and (4) the person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.¹⁷ Only a judge can issue a limited privilege. Other judicial officials, such as clerks and magistrates, are not authorized to do so.

A person whose license has been indefinitely revoked (which occurs when the person has a pending charge for an implied consent offense involving impaired driving at the time of the instant alleged offense) may, after completing 30 days of revocation or 45 days if the license was surrendered more than five working days after the effective date of the revocation order, apply for a limited driving privilege. A judge of the division in which the instant charge is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the following eligibility requirements: (1) at the time of the offense, the person held either a valid driver's license or a license that had been expired for less than one year; (2) at the time of the offense the person had not within seven years been convicted of an offense involving impaired driving; (3) after the current offense, he has not been convicted of, or charged with, an offense involving impaired driving; and (4) the person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for restoration of a driver's license.

A person who drives while his license is civilly revoked commits the offense of driving while license revoked under G.S. 20-28. This is true even when the minimum revocation period has expired at the time of the driving and the person is eligible for return of his license upon payment of costs. G.S. 20-28(a1) provides that a person convicted of driving while license revoked for driving after the minimum revocation period expired but before reclaiming his or her license is ***punished*** as if the person has been convicted of the less serious offense of driving without a license. This reduced punishment does not alter the charge or conviction for driving while license revoked.

Vehicle Seizure and Forfeiture

Seizure of motor vehicles (AOC-CR-323). A motor vehicle driven by a person charged with ***an offense involving impaired driving*** is subject to seizure if at the time of the violation: (1) the driver's license of the person driving the motor vehicle was revoked as the result of a ***prior impaired driving license revocation*** as defined in G.S. 20-28.2(a); ***or*** (2) at the time of the violation, the person was not validly licensed and was not covered by an automobile liability policy.¹⁸ Law enforcement officers who seize or plan to seize a motor vehicle pursuant to G.S. 20-28.3 must present to a magistrate within the county where the driver was charged an affidavit of impoundment setting forth the basis upon which the motor

vehicle has been or will be seized for forfeiture.¹⁹ AOC-CR-323 is the form on which the officer may complete an affidavit in support of the seizure or impoundment. If the magistrate determines the requirements of G.S. 20-28.3 have been satisfied, he must order the vehicle held, and may do so on the bottom portion of the same form, designated for the “Magistrate’s Order.” In addition to reviewing the officer’s affidavit, the magistrate may request additional information and may hear from the defendant if the defendant is present.²⁰ If the motor vehicle has not yet been seized and the magistrate determines that seizure is warranted, the magistrate must issue an order of seizure. The magistrate must provide a copy of the order to the clerk of court, who, in turn, must provide copies to the district attorney and the attorney for the county board of education. If the magistrate determines that the statutory requirements for seizure and impoundment are **not** satisfied, the magistrate must order the vehicle released to its owner upon payment of towing and storage fees.

The definitions of two terms and two offenses are critical to the determination of whether a motor vehicle is subject to seizure pursuant to G.S. 20-28.3. The terms “offenses involving impaired driving,” “prior impaired driving license revocation,” are defined in the following paragraphs as well as on side two of AOC-CR-323. The offenses of “driving without a valid drivers license” or driving while “not covered by an automobile liability policy” also are defined in the following paragraphs.

Offenses involving impaired driving are defined in G.S. 20-4.01(24a) to consist of the following offenses:

- Impaired driving under G.S. 20-138.1
- Habitual impaired driving under G.S. 20-138.5
- Impaired driving in commercial vehicle under G.S. 20-138.2
- Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
- 1st or 2nd degree murder under G.S. 14-17 based on impaired driving
- Involuntary manslaughter under G.S. 14-18 based on impaired driving
- Substantially similar offenses committed in another state or jurisdiction

As previously noted, a vehicle driven by a person during the commission of an impaired driving offense (defined above) is subject to seizure in two circumstances: (1) if the person’s driver’s license was revoked as a result of a prior impaired driving license revocation; or (2) if the person was not validly licensed and was not covered by an automobile liability policy.

Prior impaired driving license revocations are defined by G.S. 20-28.2(a) as revocations made under any of the following statutes:

- G.S. 20-13.2: consuming alcohol/drugs or willful refusal by driver under 21
- G.S. 20-16(a)(8b): military driving while impaired
- G.S. 20-16.2: refused chemical test
- G.S. 20-16.5: pretrial civil license revocation
- G.S. 20-17(a)(2): impaired driving or commercial impaired driving
- G.S. 20-138.5: habitual impaired driving
- G.S. 20-17(a)(12): transporting open container
- G.S. 20-17.2: court order not to operate (repealed effective December 1, 2006)
- G.S. 20-16(a)(7): impaired driving out of state resulting in N.C. revocation
- G.S. 20-17(a)(1): manslaughter or 2nd degree murder involving impaired driving

- G.S. 20-17(a)(3): felony involving use of motor vehicle, involving impaired driving
- G.S. 20-17(a)(9): felony or misdemeanor death or serious injury by vehicle involving impaired driving
- G.S. 20-17(a)(11): assault with motor vehicle involving impaired driving
- G.S. 20-28.2(a)(3): The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed under any of the above statutes

Driving without a license. With respect to the provision for seizure of a vehicle driven by a person charged with an impaired driving offense who was driving without a license or liability insurance, it is important to note that a person who has a complete defense pursuant to G.S. 20-35 to a charge of driving without a driver's license is considered to have had a valid driver's license at the time of the violation; thus a vehicle driven by such a person is not subject to seizure.²¹ A person may **not** be convicted of the offense of failure to carry a regular driver's license if the person shows: (1) at the time of the offense, the person had an expired license; (2) the person renewed the license within 30 days after it expired; and (3) the person could not have been charged with driving without a license if the person had the renewed license when charged with the offense.²² A vehicle driven by a person who can make such a showing is not subject to seizure. Moreover, a person's simple failure to carry a license on his person does not satisfy the "driving without a license" prong so as to subject his vehicle to seizure. Thus, a motor vehicle driven by a person who has a valid license at the time of the offense is not subject to seizure under G.S. 20-28.3(a)(2).

Driving while not covered by automobile liability policy. In addition to having probable cause to believe that the driver was charged with an impaired driving offense and did not have a valid license, to seize a vehicle under G.S. 20-28.3(a)(2) an officer must have probable cause to believe that the driver was not covered by automobile liability policy. G.S. 20-309 requires financial responsibility, in the form of a liability insurance policy, financial security bond or financial security deposit, or by qualification as a self-insurer as a prerequisite to registration. G.S. 20-313 makes it a Class 1 misdemeanor for the owner of a motor vehicle registered or required to be registered in North Carolina to operate the motor vehicle or permit the motor vehicle to be operated in the state without having the required financial responsibility. It is important to note that G.S. 20-28.3(a)(2)(b) refers to whether the driver – not the motor vehicle – is covered by an automobile liability policy. A person who drives a motor vehicle owned by someone else with the owner's permission is covered by the automobile liability policy for the motor vehicle being driven, if such a policy exists. If the motor vehicle itself is not covered by an automobile liability policy, the authorized driver is covered by any automobile liability insurance policy under which he or she is an insured driver, if such a policy exists.

Exceptions to Seizure. There are two important exceptions to the above-described requirements for seizure of a motor vehicle. A motor vehicle may not be seized if it has been reported stolen or if it is a rental vehicle and the driver is not listed as an authorized driver under the rental contract.²³ Other types of "innocent owners" may secure the release of the vehicle from impoundment, but those

circumstances are not relevant to the magistrate's consideration of whether to order the vehicle seized and impounded.²⁴

Effecting an Order of Seizure. Orders of seizure are valid anywhere in the state and may be carried out by any officer with territorial jurisdiction who has subject matter jurisdiction for violations of Chapter 20.²⁵ Such an officer may use reasonable force to seize the motor vehicle and may enter upon the property of the defendant to accomplish the seizure. If an officer has probable cause to believe that the motor vehicle is located on property of someone other than the defendant, the officer may obtain a search warrant to enter upon the property for purposes of seizing the vehicle.²⁶ The magistrate must provide a copy of the order to the clerk of court.²⁷ The clerk must provide copies to the district attorney and the attorney for the county board of education.²⁸

¹ The material herein is based in part on Jessica Smith and Robert L. Farb, Criminal Procedure for Magistrates, Administration of Justice Bulletin No. 2004/09 (November 2004).

² State v. Evans, 145 N.C. App. 324, 332-333, 550 S.E.2d 853, 859 (2001).

³ G.S. 20-139.1(b1).

⁴ G.S. 20-16.5(n).

⁵ G.S. 20-16.5(e).

⁶ G.S. 20-16.5(a)(5).

⁷ G.S. 20-16.5(a)(5).

⁸ A magistrate may determine even without the submission of AOC-CVR-8 that the person has no license and is not currently authorized to drive in North Carolina and may indicate such a finding on Side Two of AOC-CVR-2.

⁹ G.S. 20-16.5(f).

¹⁰ Fifty percent of the fee is credited to the state's general fund. Twenty-five percent of the costs must be used for a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Health and Human Services. The remaining twenty-five percent of the costs must be remitted to the county to as reimbursement for jail expenses incurred due to enforcement of the impaired driving laws. G.S. 20-16.5(j).

¹¹ An exception applies for out-of-state licenses revoked because the driver refused to submit to a chemical analysis. When a person refuses to submit to a chemical analysis, the person's license is revoked by DMV for 12 months, unless the person requests a hearing on the matter and DMV concludes that certain statutory requirements are not met. G.S. 20-16.2(d). Upon refusal by a nonresident and out-of-state license holder, DMV may revoke only the person's privilege to drive in North Carolina -- not the person's privilege to drive in his home state. See G.S. 20-16.2(f) (providing for notice to other states of revocation of nonresident's privilege to drive a motor vehicle in North Carolina based upon a refusal to submit to a chemical analysis); see also State v. Streckfuss, 171 N.C. App. 81, 85-87, 614 S.E.2d 323, 326-327 (2005) (implicitly recognizing that North Carolina lacks authority to prohibit a nonresident from driving in his home state). For this reason, DMV will not accept out-of-state licenses, and the clerk must return such licenses to the license holder upon satisfaction of the conditional

revocation period and payment of costs. DMV will, however, pursuant to the provisions of G.S. 20-16.2(f), notify the state of the person's residence and any state in which the person is licensed of the revocation of the North Carolina driving privilege.

¹² G.S. 20-16.5(h).

¹³ Id.

¹⁴ G.S. 20-16.5(i).

¹⁵ Id.

¹⁶ Id.

¹⁷ G.S. 20-16.5(p).

¹⁸ G.S. 20-28.3(a).

¹⁹ G.S. 20-28.3(c).

²⁰ Id.

²¹ G.S. 20-28(a).

²² G.S. 20-35.

²³ G.S. 20-28.3(b).

²⁴ See G.S. 20-28.3(e), (e2), (e3).

²⁵ G.S. 20-28.3(c1).

²⁶ Id.

²⁷ G.S. 20-28.3(c).

²⁸ G.S. 20-28.3(c).