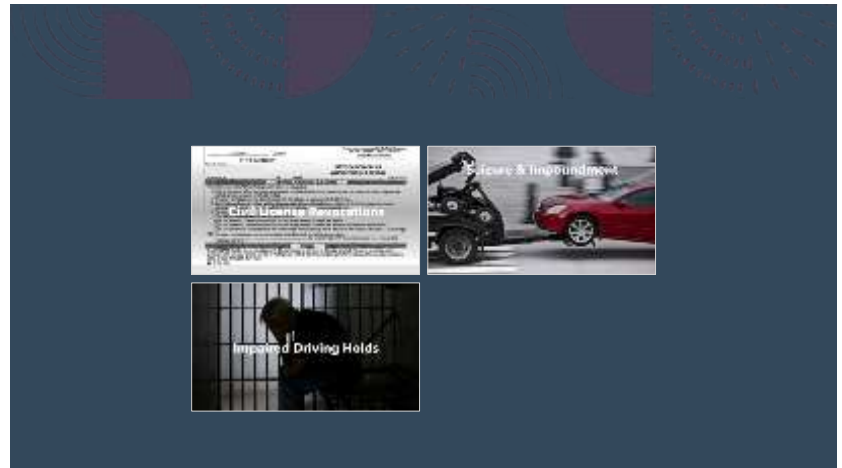




1



2

DUPLIN County In The General Court Of Justice
District Court Division

IN THE MATTER OF
Name And Address
WALLACE NC 28466

**REVOCATION ORDER
WHEN PERSON PRESENT**

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above named person committed an offense subject to the implied-consent provision of G.S. 20-10.2(a);
2. The above named person has been charged with that offense as provided in G.S. 20-15.2(a);
3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-15.2 and 20-159.1 in requesting the above named person's admission to or procuring a chemical analysis; and
4. The above named person:
 - a. willfully refused to submit to a chemical analysis;
 - b. had an alcohol concentration of 0.08 or more at any relevant time after the driving;
 - c. had an alcohol concentration of 0.04 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.
5. The above named person has one or more pending offenses in the following county(ies) _____ for which the person's drivers license had been or is revoked under G.S. 20-18.6.

ORDER

It is ORDERED that the above named person's drivers license or privilege to drive be revoked. The above named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect at least thirty (30) days from:

1. this date.

3



4

STATE OF NORTH CAROLINA
County _____ In The General Court Of Justice
District Court Division

NOTE: A "commercial motor vehicle" is as defined in G.S. 20-401(b).

IN THE MATTER OF _____
AFFIDAVIT AND REVOCATION REPORT OF
 LAW ENFORCEMENT OFFICER
 CHEMICAL ANALYST

The charged offense is implied supervision in violation under G.S. 20-12.1. Accordingly, substitute "supervision/monitor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c), 20-139.1

Name _____
Address _____
City _____ State _____ Zip _____
Race _____ Sex _____ Date Of Birth _____ Driver's License No. _____ State _____ Vehicle Type _____ CMV? _____ Reg. No. _____ Driver's Age _____

The undersigned being first duly sworn says:

1. I am a law enforcement officer. On the _____ day of _____, A.D. _____, if _____ (a) (b) (c) _____, a law enforcement officer had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle _____ (commercial motor vehicle) in the above named county upon _____ (State Street, Highway, Or Public Vehicle Area) while committing an implied-consent offense in that _____.

(List Sufficient Facts To Establish Probable Cause)

2. The driver has a drivers license restriction: alcohol concentration, ignition interlock, conditional restriction (Year: _____)

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, refusing a chemical analysis (if refusal, also complete items 11 and 15 below, as appropriate for the case).

4. The driver was charged with the implied-consent offense of: G.S. 20-139.1, Other: _____

4a. 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. 20-16.5.

5

STATE OF NORTH CAROLINA
County _____ In The General Court Of Justice
District Court Division

File No. _____

IN THE MATTER OF _____
REVOCATION ORDER
WHEN PERSON PRESENT
G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above-named person committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
2. The above-named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above-named person's submission to or procuring a chemical analysis; and
4. The above-named person:
 - a. willfully refused to submit to a chemical analysis;
 - b. had an alcohol concentration of 0.08 or more at any relevant time after the driving;
 - c. had an alcohol concentration of 0.04 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.
5. The above-named person has one or more pending offenses in the following county(ies) _____ for which the person's drivers license had been or is revoked under G.S. 20-16.5.

ORDER

It is ORDERED that the above-named person's **drivers license or privilege to drive be revoked**. The above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect at **least thirty (30) days** from:

1. this date

6

Why impose a CVR?

I. Deterrence: Laws

Countermeasure	Effectiveness	Cost	Use	Time
1.1 Administrative License Revocation or Suspension (ALR/ALS)	★★★★★	\$\$\$	High	Medium
1.2 Open Container	★★★	\$	High	Short
1.3 High-BAC Sanctions	★★★	\$	Medium	Short
1.4 BAC Test Refusal Penalties	★★★	\$	Unknown	Short
1.5 Alcohol-Impaired Driving Law Review	☆☆	\$\$	Unknown	Medium

7

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 2020 Highway Safety Countermeasure Guide at 1-16)



8

Why is it a *civil* license revocation?

9

Henry v. Edminston, 315 NC 474 (1986)

- Remedial highway safety measure - not punishment

10

State v. Oliver, 343 NC 202 (1996)

- "Any deterrent effect" "merely incidental to overriding purpose of protecting the public's safety"

11

Minimum CVR period



10 days 30 days

12

State v. Evans, 145 NC App 324 (2001)

- Purpose still is “remov[ing] from our highways drivers who either cannot or will not operate a motor vehicle safely and soberly”

13



What about CVRs related to commercial vehicles?

14



May the driver get his or her CDL back after 30 days?

15

A CVR issued against the holder of a CDL disqualifies that person from driving a commercial motor vehicle for one year.

G.S. 20-17.4(a)(7)

16

State v. McKenzie, 367 NC 112 (2013)

- 1-year commercial driver's license disqualification based on CVR for DWI in noncommercial vehicle car is civil sanction rather than criminal punishment
- CDL disqualification does not bar subsequent criminal prosecution

17

Four Conditions

1. LEO had reasonable grounds to believe person committed implied consent offense.
2. Person was charged with offense.
3. Statutory procedures for chemical analysis were followed.
4. Person
 - a. Willfully refused;
 - b. Had AC of 0.08 or more;
 - c. Had AC of 0.04 or more if commercial motor vehicle; or
 - d. Had any AC if under 21.

18

1. Probable Cause?

Evidence of drinking

+

Indicators of impairment from field sobriety tests

or

Unexplained faulty driving consistent with impairment

=

Probable cause

19

2. Charged?

- A person is charged with an offense if the person has been arrested for it or if criminal process has been issued.
- G.S. 20-16.2(a1)

20

3. Statutory procedures followed

- Taken before chemical analyst who designates type of test
- Advised of rights orally and in writing
- If breath test, observed for 15 minutes
- Request to submit to testing
- If breath test, test results from two consecutively collected samples that do not differ by more than 0.02
 - Lower of two results is the alcohol concentration

21

Chemical Analysis of Blood or Urine

- If the defendant is asked to consent to the withdrawal of blood after being asked to provide breath sample, the defendant must first be readvised of his/her implied consent rights. G.S. 20-139.1(b5).

23

4. Willfully refused or BAC

Person

- a. Willfully refused;
- b. Had AC of 0.08 or more;
- c. Had AC of 0.04 or more if commercial motor vehicle; or
- d. Had any AC if under 21.

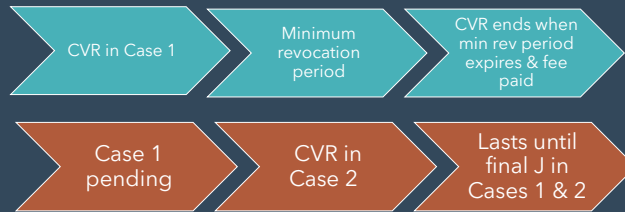
24

Keep in Mind

- When you issue a CVR, it is effective immediately
- CVR will last for at least 30 days and does not end until person pays \$100 fee to clerk.
- Countdown of days begins upon license surrender
- If the person has a pending offense for which the person's license is or was revoked under G.S. 20-16.5, then the revocation lasts for at least 30 days and until final judgment in both cases

25

Revocation period if pending offense



26

The magistrate must require the person to surrender his or her driver's license, including a license from another jurisdiction.

27

License Surrender

- One of the following will happen:
 1. Person may turn over license and accomplish surrender
 2. Person may demonstrate that he or she has no license (because it is revoked or because the person lost it) and accomplish surrender
 1. If license is lost, person must file affidavit
 3. Person may not be able to surrender because person does not have the license on hand
 - Such a person must surrender the license later to the clerk
- Magistrate must note on AOC-CVR-2 which of the above occurred

28

Let's Practice

1. Dane
 - A/C: 0.12; 0.11
 - Has license on person
2. Diane
 - A/C: 0.14; 0.15
 - Does not have a license (revoked)
3. Dan
 - A/C: 0.06; 0.07
 - Has license on person

29

STATE OF NORTH CAROLINA

County: _____ In The General Court Of Justice
District Court Division

IN THE MATTER OF _____
State Driver
DUI Case No. _____

**REVOCATION ORDER
WHEN PERSON PRESENT** G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

- The above-named person has been charged with that offense as provided in G.S. 20-16.5(a).
- The law enforcement officer used the chemical analysis, completed with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above-named person's submission to or procuring a chemical analysis, and:
 - A written refusal to submit to a chemical analysis.
 - Had an alcohol concentration of 0.08 or more at any relevant time after the driving.
 - Had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
- The above-named person has one or more pending offenses in the following category(ies): _____ for which the person's driver license has been or is revoked under G.S. 20-16.5.

ORDER

It is ORDERED that the above-named person's driver license or privilege to drive be **revoked**. The above-named person is prohibited from operating a motor vehicle in the highways of North Carolina during the period of revocation. The revocation remains in effect for **at least thirty (30) days** from _____ day date.

The state traffic supervisor neither shows license or privilege to drive to the Court, or demonstrates that license is not currently required to drive.

Upon the entry of this Order for Probable Cause No. 2 above it is noted that the state traffic supervisor neither shows license or privilege to drive to the Court, or demonstrates that license is not currently required to drive and accordingly, with a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver license or privilege to drive had been or is revoked under G.S. 20-16.5.

The above-named person's privilege to drive in North Carolina is **revoked** and will remain **revoked** until the person has actually surrendered his/her license for the period specified above and has paid a \$100 fee to the Clerk of Superior Court.

NOTE: The venue for supplemental findings and order and for disposition of license or privilege to drive is the Clerk of Superior Court.

Signature of Judicial Official: _____ Date: _____

30

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:

- surrendered his/her driver's license to the Court.
- was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the driver's license.
- demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that the Revocation of the driver's license of the person named herein remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee has been made to the Clerk of Superior Court.

when the venue of Findings For Probable Cause No. 2 on reverse side is checked is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver's 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 Deputy Clerk Of Superior Court

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the _____ day of _____:

- surrendered his/her license to the officer serving the Pick-Up Order.
- demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

- remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee to the Clerk of Superior Court.
- when the venue of Findings For Probable Cause No. 2 on reverse side is checked is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver's 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: _____

Disposition Of License Or Privilege: Clerk Of Superior Court Assistant Clerk Of Superior Court

31

2.

County: _____ In The General Court Of Justice
District Court Division

IN THE MATTER OF _____
State Driver
DUI Case No. _____

**REVOCATION ORDER
WHEN PERSON PRESENT** G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

- The above-named person has been charged with that offense as provided in G.S. 20-16.5(a).
- The law enforcement officer used the chemical analysis, completed with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above-named person's submission to or procuring a chemical analysis, and:
 - A written refusal to submit to a chemical analysis.
 - Had an alcohol concentration of 0.08 or more at any relevant time after the driving.
 - Had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
- The above-named person has one or more pending offenses in the following category(ies): _____ for which the person's driver license has been or is revoked under G.S. 20-16.5.

It is ORDERED that the above-named person's driver license or privilege to drive be **revoked**. The above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect for **at least thirty (30) days** from _____ day date.

The state traffic supervisor neither shows license or privilege to drive to the Court, or demonstrates that license is not currently required to drive.

Upon the entry of this Order for Probable Cause No. 2 above it is noted that the state traffic supervisor neither shows license or privilege to drive to the Court, or demonstrates that license is not currently required to drive and accordingly, with a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver license or privilege to drive had been or is revoked under G.S. 20-16.5.

The above-named person's privilege to drive in North Carolina is **revoked** and will remain **revoked** until the person has actually surrendered his/her license for the period specified above and has paid a \$100 fee to the Clerk of Superior Court.

NOTE: The venue for supplemental findings and order and for disposition of license or privilege to drive is the Clerk of Superior Court.

Signature of Judicial Official: _____ Date: _____

32

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:

- surrendered his/her driver's license to the Court.
- was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the driver's license.
- demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that the Revocation of the driver's license of the person named herein remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee has been made to the Clerk of Superior Court.

when the venue of Findings For Probable Cause No. 2 on reverse side is checked is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver's 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 Deputy Clerk Of Superior Court

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the _____ day of _____:

- surrendered his/her license to the officer serving the Pick-Up Order.
- demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

- remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee to the Clerk of Superior Court.
- when the venue of Findings For Probable Cause No. 2 on reverse side is checked is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which driver's 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: _____

Disposition Of License Or Privilege: Clerk Of Superior Court Assistant Clerk Of Superior Court

33

34

35

Alcohol
Concentration
Restrictions

19 = AC of 0.04

20 = AC of 0.04 + ignition
interlock

21 = AC of 0.00

22 = AC of 0.00 + ignition
interlock

23 = ignition interlock only

36

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

37

What about violation of an ignition interlock restriction?

- DWLR for impaired driving (G.S. 20-17.8(f))
- Revocation under G.S. 20-17.8(f)
 - Lasts until case is resolved
 - AOC-CR-341
- If alcohol consumed, then DWLR for ignition interlock violation *is* implied consent offense
- So CVR also may issue

38

Ignition Interlock & LDP Violations

If holder of LDP is charged with DWLR for violating a restriction contained in privilege, LDP is suspended pending resolution of case and judicial official must require holder to surrender LDP.

39

Driving While License Civilly Revoked

DWLR 20-28(a2)

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

40

Right to Review

- The magistrate must tell person that they have the right to ask for a hearing to review the revocation.
- Person may make request at initial appearance or within 10 days using AOC-CVR-5.
- Hearing must be held
 - in 3 working days if before magistrate
 - in 5 working days if before district court judge

41

Review Hearing

- Witness may submit evidence via affidavit unless subpoenaed
- Judicial official may question witnesses
- Unless contested, statements in revocation report may be accepted as true
- 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

42



43

Five Step Protocol

1. Determine probable cause.
2. Set conditions of release.
3. Does person's impairment pose a danger?
4. Is the motor vehicle subject to seizure?
5. Must person's license be revoked?

44

Motor Vehicle Seizure & Impoundment

- 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.
 - The person's license was revoked as a result of a **prior impaired driving license revocation** or
 - The person was driving without a valid driver's license *and* was not covered by an automobile insurance policy

45

(TYPE OR PRINT IN BLACK INK)
STATE OF NORTH CAROLINA
 County

File No. _____

In The General Court Of Justice
 District Court Division

**OFFICER'S AFFIDAVIT FOR SEIZURE AND
 IMPOUNDMENT AND MAGISTRATE'S ORDER -
 IMPAIRED DRIVING** G.S. 20-28.3

Name And Address Of Defendant _____

AOC-CR-323A State _____ Name And Address Of Motor Owner _____

Vehicle Identification No. _____ Vehicle License No. _____

Year _____ Make _____ Body Style _____ Present Location Of Motor Vehicle _____

Date Of Offense _____ Date Of Seizure _____ Time Of Seizure _____ AM _____ PM _____

I. OFFICER'S AFFIDAVIT

The undersigned being duly sworn, deposes and says:
 I, a law enforcement officer, do on about the date of offense shown above, had probable cause to believe that the defendant named above drove the motor vehicle described above in the above county upon a (Overstreet, highway or public vehicular way) _____ while committing an offense involving impaired driving in violation of G.S. 20-136.3 G.S. 20-136.5 G.S. _____ (See Section II for answer to a list of offenses involving impaired driving) in that: (List sufficient facts to constitute probable cause.) _____

46

III. OFFENSES INVOLVING IMPAIRED DRIVING

G.S. 20-4.012(a) and/or offense involving impaired driving" to include the following:

- impaired driving under G.S. 20-136.1
- any offense under G.S. 20-141.4 based on impaired driving;
- first or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when the charge is based on impaired driving;
- impaired driving in a commercial vehicle under G.S. 20-136.2;
- Actual Impaired Driving under G.S. 20-136.5

IV. IMPAIRED DRIVING LICENSE REVOCATIONS - G.S. 20-28.2(a)

Under G.S. 20-28.2(a), the revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to any of the following statutes:

- G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
- G.S. 20-164(b)(5) - Military Driving While Impaired
- G.S. 20-16.2 - Refused Chemical Test
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired
- G.S. 20-136.5 - Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-136.5 - Habitual Driving While Impaired
- G.S. 20-174(a)(2) - Transporting Open Container - 2nd Or Subsequent
- G.S. 20-164(a)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
- G.S. 20-17(a)(1) - Manslaughter Involving Driving While Impaired
- G.S. 20-174(a)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
- G.S. 20-174(a)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
- G.S. 20-174(a)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
- G.S. 20-26.3(a)(2) - Laws of another state when the offense for which the person's driver license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above.

V. GROUNDS FOR SEIZURE - G.S. 20-28.3(a)

A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving as listed in Section III above and at the time of the offense:

- the driver's license is revoked for one of the reasons listed in Section IV above; or

47

Exceptions

A motor vehicle may not be seized if:

1. It has been reported stolen; or
2. It is a rental vehicle and the driver is not listed as an authorized driver on the rental contract

48



Innocent Owners

49

Who is an innocent owner?

1. Did not know/no reason to know
 - Defendant's DL was revoked or
 - Defendant did not have DL and Insurance
2. Defendant drove without permission
 - Owner filed police report for unauthorized use and agrees to prosecute
3. Vehicle reported stolen
4. Rents vehicles
 - Defendant not authorized driver or company had no knowledge of revocation
5. Leases vehicles, no knowledge of defendant's revocation

50

Release to Lienholder

- Default
- Lienholder entitled to possession
- Agrees to sell, pay net proceeds to clerk
- Agree not to sell to defendant or owner
- No previous release of this MV to this lienholder if seizure involved same defendant or owner



51

Expedited Sales

\$1500 or less, may be sold after 90 days
When towing & storage costs > 85% FMV

52

Trial priority: G.S. 20-28.3(m)

District court trials of impaired driving offenses involving forfeiture of motor vehicles must be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

The case must not be continued unless the following conditions are met:

- | | | |
|---|---|---|
| (1) a written motion for a continuance is filed with notice given to the opposing party before the motion is heard; | (2) the judge makes a finding of a compelling reason for the continuance; and | (3) the motion and finding are attached to the court case record. |
|---|---|---|

53

Remedy for violation?

54

Purpose of vehicle seizure?

"[K]eeping impaired drivers and their cars off the roads"

State v. Chisholm, 135 N.C. App. 578, 584 (1999)

Vehicle impoundment for DWI offenders "reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released."

NHTSA, 2020 Highway Safety Countermeasure Guide at 1-51.

55

DWI Seizure & Impoundment

No waiver of towing and storage fees!

G.S. 20-28.3(c): if requirements for seizure not met, the magistrate must order motor vehicle released to owner "upon payment of towing and storage fees"

56

Impaired Driving Holds

57

"I'm setting a \$1,000 bond, and I am ordering you held. Anyone who drives while impaired is dangerous. You'll need to call a parent to pick you up. I'm not letting you leave with anyone else."

MAGISTRATE

58

When May a Magistrate Impose a Hold?

G.S. 15A-534.2

At an initial appearance for an offense involving impaired driving

Where the magistrate finds by clear and convincing evidence that the person's impairment would make the person a danger if the person were released

59

When does hold end?

Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired

No longer impaired to extent that he presents danger

No longer than 24 hours

What's the big deal?

60

61

State v. Knoll, 322 N.C. 535 (1988)

- If the State violates a defendant’s statutory right to pretrial release by impermissibly holding the defendant; **and**
- The defendant is—during the crucial time period following his or her arrest—denied access to witnesses;
- The defendant may be entitled to **dismissal** of the charges.

G.S. 20-38.4

AOC-CR-271

- Magistrate: I informed the defendant in writing of the access procedures.

Procedures for Access

Procedures for the Observation of Prisoners Charged with Implied Consent Offenses Pursuant to N.C.G.S. 20-38.5

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 send 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.

Defendant must list contacts and phone #s

Magistrate: I informed defendant in writing of access procedures