

Motor Vehicle Law Update

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SCHOOL OF GOVERNMENT

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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)



Civil License Revocation (CVR)

1. Reasonable grounds to believe person committed implied consent offense
2. Person is charged with offense
3. Compliance with implied consent procedures
4. Person
 - a. Willfully refuses
 - b. A/C of 0.08 or more
 - c. A/C of 0.04 or more
 - d. Any A/C if person <21





Appeal from CVR
AOC-CVR-5

STATE OF NORTH CAROLINA
County: _____
Requester: _____
Respondent: _____
Date: _____

REQUEST FOR HEARING TO CONTEST LICENSE REVOCATION

TO THE APPROPRIATE JUDICIAL OFFICIAL:

I request a hearing to contest the validity of the revocation of my driver's license which was entered on the date and for cause:

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

NOTE: Use the spaces to provide cause on or both on the revocation order which you wish to contest.

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

Completion of this hearing will resolve the grounds specified in this request and final the revocation of the driver's license. If you are not satisfied with the hearing, you may appeal to the District Court Judge. If you are not satisfied with the District Court Judge's decision, you may appeal to the State Superior Court. If you are not satisfied with the State Superior Court's decision, you may appeal to the State Supreme Court.

I understand that the decision of the Magistrate or District Court Judge at the hearing is final, and that there is no right of appeal from the decision.

Magistrate/Judge: _____
Requester: _____
Respondent: _____

HEARING SETTING HEARING

The scheduled hearing requires a hearing. The undersigned hereby sets a time, date and location of hearing as shown below.

Date of hearing: _____
Time of hearing: _____
Location of hearing: _____

PLANS AND REQUIREMENTS

This request must be filed by the Requester within 60 (60) days of the effective date of the revocation order with one of the following:

1. District official at the initial appearance or
2. The State of Superior Court or
3. A Magistrate designated by the Clerk of Superior Court to receive such requests.

PLS/CMS/3, Rev. 2/07
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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

PLS/CMS/3, Rev. 2/07
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Anomalies in process

- Magistrate/clerk employs PC standard
 - Standard on appeal is greater weight of the evidence
- 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

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Have you heard a contested CVR?

1. Yes
2. No

Response	Percentage
Yes	50%
No	50%

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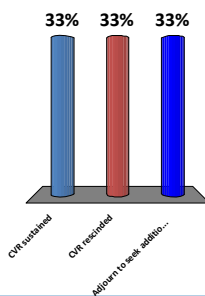
Consider the case of Danielle Driver

- Danielle is arrested for DWI on 3/20/12
- Her AC is 0.08.
- Her license is civilly revoked by the magistrate.
- On 3/22/12 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 3/27/12.

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What's your ruling?

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



Ruling Option	Percentage
CVR sustained	33%
CVR rescinded	33%
Adjourn to seek additional evidence	33%

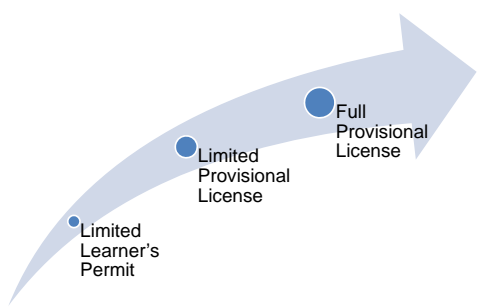
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Driving While License Civilly Revoked

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

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Graduated Licensing: G.S. 20-11



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What about Daniel?

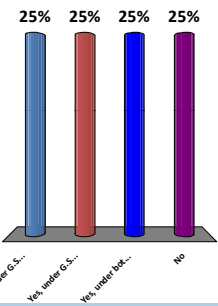
- Daniel is 17. He has an NC full provisional license.
- He is charged with speeding 51 in a 35 mph zone on January 5, 2012.
- Must Daniel be arrested for this offense?
- Is Daniel's license subject to revocation?



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Is Daniel's license subject to revocation?

1. Yes, under G.S. 20-13.3
2. Yes, under G.S. 20-16.5
3. Yes, under both G.S. 20-13.3 and G.S. 20-16.5
4. No




Option	Percentage
Yes, under G.S. 20-13.3	25%
Yes, under G.S. 20-16.5	25%
Yes, under both G.S. 20-13.3 and G.S. 20-16.5	25%
No	25%

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What about Lilly?

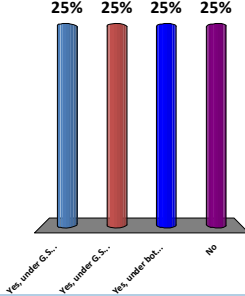
- Lilly is 16. She has an NC limited provisional license.
- She is charged with driving after consuming by a person under 21
- The results of her breath test are 0.02
- Is Lilly's license subject to civil revocation?
- Under what provision?



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Is Lilly's license subject to revocation?

1. Yes, under G.S. 20-13.3
2. Yes, under G.S. 20-16.5
3. Yes, under both G.S. 20-13.3 and G.S. 20-16.5
4. No




Option	Percentage
Yes, under G.S. 20-13.3	25%
Yes, under G.S. 20-16.5	25%
Yes, under both G.S. 20-13.3 and G.S. 20-16.5	25%
No	25%

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Daniel is back . . .

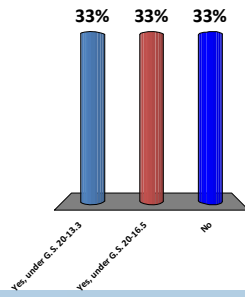
- Daniel is stopped 14 days after the provisional licensee CVR is issued
- He is charged with DWI and DWLR
- He refuses to provide a breath sample
- Is Daniel's license subject to civil revocation?
- Under what provision?



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Is Daniel's license subject to revocation?

1. Yes, under G.S. 20-13.3
2. Yes, under G.S. 20-16.5
3. No



Option	Percentage
Yes, under G.S. 20-13.3	33%
Yes, under G.S. 20-16.5	33%
No	33%

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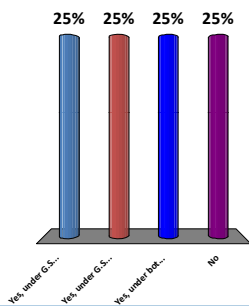
What about Christopher?

- Christopher is 17. He has a full provisional license.
- He is charged with DWI and driving after consuming while under 21.
- Christopher is unable, due to breathing difficulties, to submit a sufficient breath sample for analysis.
- Christopher submits to a request for a blood draw.
- Is Christopher subject to a civil license revocation?
- Under what provision?



Is Christopher's license subject to revocation?

1. Yes, under G.S. 20-13.3
2. Yes, under G.S. 20-16.5
3. Yes, under both G.S. 20-13.3 and G.S. 20-16.5
4. No

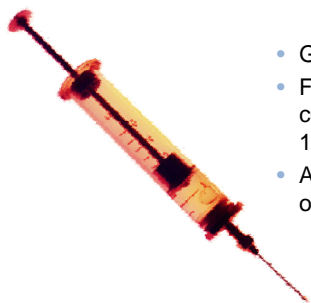


Run & You're Done

- S.L. 2011-271 (H 427)
- G.S. 20-141.5(g) – (j)
- Effective for offenses committed 12/1/2011 or later
- MV driven in felony speeding to elude
- Must be seized upon arrest of defendant
- Delivered to Sheriff
- Magistrates not involved



Misdemeanor Death by Vehicle



- G.S. 20-141.4(a2)
- For offenses committed on/after 12/1/2011
- An implied consent offense

CAM



- S.L. 2011-191
- Amended 15A-534(i)
 - Authorizes abstinence from alcohol and CAM as pre-trial release condition
 - for a defendant charged with an offense involving impaired driving
 - who has been convicted of an offense involving impaired driving within 7 years of current offense

New G.S. 20-17.8A

- S.L. 2011-381
- Effective December 1, 2011
- Tampering with ignition interlock device
- Class 1 misdemeanor