

# North Carolina Criminal Law

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## S.L. 2021-182 Amends Ignition Interlock Requirements

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S.L. 2021-182 (S 183) enacted significant changes to the laws that require certain persons convicted of driving while impaired to have ignition interlock installed on their vehicles. Those changes include: (1) eliminating the 45-day delay for a limited driving privilege to become effective, (2) requiring that ignition interlock be installed only on the vehicle or vehicles the person drives rather than all the vehicles the person owns, (3) requiring that ignition interlock vendors waive a portion of ignition interlock costs for qualified persons, (4) removing the time and purpose restrictions on a limited driving privilege if a person has ignition interlock, (5) changing the alcohol concentration restrictions for ignition interlock from 0.04 and 0.00 to a universal standard of 0.02; and (6) directing a legislative committee to study ignition interlock expansion and related issues.

**Background.** Ignition interlock is a device attached to a vehicle that permits a vehicle to start only after a person has submitted a breath sample that registers below the programmed limit. Kaufan, Elinore J. & Wiebe, Douglas J., *Impact of State Ignition Interlock Laws on Alcohol-Involves Crash Deaths in the United States*, 106 AM. J. PUB. Health, No. 5, 865 (2016). The North Carolina Department of Motor Vehicles (NC DMV) authorizes private vendors to provide ignition interlock services (including equipment, installation, and monitoring) to satisfy driving and licensure requirements under State law.

Ignition interlock may be required in two circumstances. First, ignition interlock is sometimes required as a condition of a limited driving privilege issued by a court. Limited driving privileges authorize a person whose license is revoked to lawfully drive subject to the restrictions set forth in the privilege. Second, ignition interlock may be imposed as a condition of driving pursuant to a driver's license that is restored following revocation.

### Limited Driving Privilege Amendments

Two of the changes enacted by S.L. 2021-182 relate to ignition interlock requirements for limited driving privileges. A person whose license is revoked for a conviction of impaired driving under G.S. 20-138.1 may obtain a limited driving privilege if the person is sentenced at Levels Three, Four or Five and meets other requirements. See G.S. 20-179.3. If the person was convicted based on an alcohol concentration of 0.15 or more, the limited privilege **must** restrict the person to driving only a vehicle equipped with a functioning ignition interlock system that the person must personally activate. See G.S. 20-179.3(g5). (There is an exception for employer-owned vehicles that is beyond the scope of this post. See G.S. 20-179.3(g4).) For any other limited driving privilege issued to an eligible person whose license is revoked upon conviction of impaired driving, a judge **may**, but is not required to, impose an ignition interlock restriction. See G.S. 20-179.3(g3).

**45-day delay for limited driving privileges eliminated, effective December 1, 2021.** Before enactment of S.L. 2021-182, a limited driving privilege issued to a person convicted of impaired driving based on an alcohol concentration of 0.15 or more could not become effective until at least 45 days after final conviction. S.L. 2021-182 repealed G.S. 20-179.3(c1), the statutory provision imposing this 45-day delay, effective December 1, 2021 for limited driving privileges issued on or after that date. Now, a person convicted of impaired driving based on an alcohol restriction of 0.15 or more (termed a "High-Risk Driver") who satisfies the criteria for receiving such a privilege may be granted a limited driving privilege at sentencing that is immediately effective. As before, any limited driving privilege issued to such a person must require that the person drive only a vehicle equipped with ignition interlock. The repeal of G.S. 20-179.3(c1) also eliminated the heightened restrictions on driving that applied to limited privileges issued to high-risk drivers. These drivers are, at least for the time being, subject to the general time and purpose restrictions set forth in G.S. 20-179.3.

**Time and purpose restrictions on a limited driving privilege eliminated if a person has ignition interlock, effective June 1, 2022.** S.L. 2021-182 amends G.S. 20-179.3(g3) and (g5) to eliminate the time and purpose restrictions that otherwise apply to driving pursuant to a limited privilege for limited privileges that require ignition interlock. These amendments are effective June 1, 2022 for limited driving privileges issued on or after that date. Once effective, these provisions will mean that a person issued a limited driving privilege with an ignition interlock restriction may drive at all hours of the day for any purpose.

### Driver's License Restoration Amendments

G.S. 20-17.8 imposes ignition interlock requirements upon a driver's license that is restored after it was revoked for a conviction of driving while impaired if (1) the person had an alcohol concentration of 0.15 or more; (2) the person had been convicted of another offense involving impaired driving within seven years; or (3) the person was sentenced at Aggravated Level One. These restrictions also apply to a driver's license

restored following revocation for conviction of habitual impaired driving under G.S. 20-138.5.

S.L. 2021-182 makes several changes to these requirements, effective June 1, 2022 for licenses restored on or after that date.

**Ignition interlock will be required only on vehicles driven.** Current G.S. 20-17.8(c1) requires that a person subject to its requirements have all registered vehicles that he or she owns equipped with ignition interlock. A person may seek a waiver for any vehicle that he or she relied upon by another member of that person's family and that is not in possession of the person subject to the ignition interlock requirement (such as a vehicle possessed by an adult son or daughter who possesses the vehicle at his or her temporary university residence). S.L. 2021-182 amends G.S. 20-17.8(c1) to require that the person designate any registered vehicle that he or she owns and intends to operate and have that vehicle equipped with ignition interlock. A corresponding amendment to G.S. 20-17.8(j) makes clear that driving a vehicle that was not designated is a violation that may result in license revocation.

**Universal ignition interlock standard to be 0.02.** Current G.S. 20-17.8(b)(3) imposes different alcohol concentration restrictions (0.04 or 0.01) depending upon the reason ignition interlock is required. S.L. 2021-182 amends G.S. 20-17.8(b)(3) to require that a person subject to ignition interlock not drive with an alcohol concentration of .02 or greater – regardless of the reason for the ignition interlock requirement. The legislation makes conforming changes to G.S. 20-19(c3) to clarify that the alcohol concentration restriction for a person convicted of driving while less than 21 years old after consuming alcohol or drugs remains 0.00 – even if the person also is subject to ignition interlock. G.S. 20-19(c3) is further amended to impose an alcohol concentration restriction of 0.02 for certain drivers subject to ignition interlock. Finally, G.S. 20-19(c3) is amended to require that a person seeking restoration of a license agree to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person has driven a vehicle on a highway or public vehicular area while consuming alcohol or while the person has remaining in his or her body any alcohol or controlled substance previously consumed. The current version of the statute requires that the person agree to testing if the law enforcement officer has reasonable grounds to believe the person has so driven ***in violation of the applicable alcohol concentration restriction***. The amendment avoids the difficulty an officer might encounter in establishing reasonable grounds that a person had exceeded an alcohol concentration as low as 0.02 by requiring testing if the officer has reasonable grounds to believe the person has remaining in his or her body any alcohol at all.

#### Affordability

**Vendors will be required to waive a portion of ignition interlock costs for qualified persons.** New G.S. 20-179.5 allows a person required to install ignition

interlock who is unable to afford the cost of the system to apply to an authorized vendor for a waiver of the portion of the costs. The person must complete an affidavit stating that the person's income is at or below 150 percent of the federal poverty line or that the person is enrolled in specified public assistance programs. The person also must submit supporting documentation. A vendor that receives a supported waiver application must install ignition interlock without charging for installation and removal and must reduce the monthly service rate by 50 percent. An applicant denied a waiver may seek review of the vendor's determination by NC DMV. NC DMV must adopt rules to govern its review. These provisions are effective June 1, 2022 for driver's licenses restored on or after that date. In addition, by June 1, 2022, DMV must create a form affidavit for a waiver of ignition interlock costs and make it available on its website.

### Further Study

#### **Legislative committee to study ignition interlock expansion and other issues.**

S.L. 2021-182 requires the Joint Legislative Oversight Committee on Justice and Public Safety to study whether the use of an ignition interlock system as a condition of a limited driving privilege should be expanded and whether ignition interlock requirements should apply to limited driving privileges granted pretrial and granted to permit driving during the period of a revocation for refusal to submit to chemical testing. The committee is also directed to study whether NC DMV, rather than the courts, should be authorized to grant limited driving privileges and to supervise the use of ignition interlocks pursuant to that authority. The committee must report its findings, including any proposed legislation, prior to the convening of the 2022 Regular Session.

Category: [Motor Vehicles](#) | Tags: [G.S. 14-51.2\(e\)](#), [G.S. 20-17.8](#), [G.S. 20-179.3](#), [ignition interlock](#), [impaired driving](#), [license restoration](#), [limited driving privilege](#), [S 183](#), [sl 2021-182](#)

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