

# North Carolina Criminal Law

A UNC School of Government Blog

## The License Revocation that Immediately Follows Arrest for DWI

Posted on [Aug. 22, 2018, 6:46 pm](#) by [Shea Denning](#)



I spent much of the afternoon teaching magistrates, and one of the topics we covered was the immediate license revocation that often is ordered upon a person's arrest for impaired driving.

[G.S. 20-16.5](#) provides that a person's driver's license is subject to revocation if the following four criteria are satisfied:

1. A law enforcement officer has reasonable grounds to believe the person has committed an [implied consent offense](#);
2. The person is charged with that offense;
3. The law enforcement officer and the chemical analyst comply with the provisions of [G.S. 20-16.2](#) and [G.S. 20-139.1](#) in requiring that the person submit to or procuring a chemical analysis; and
4. The person (a) willfully refuses to submit to the chemical analysis; (b) has an alcohol concentration of 0.08 or more within a relevant time after the driving; (c) has an alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; or (d) has any alcohol concentration at any relevant time after the driving and the person is under 21.

**Revocation report.** When these criteria are met at the time of the person's initial appearance on the implied consent charge, a law enforcement officer must execute a revocation report ([AOC-CVR-1A](#)) before the magistrate conducting the initial appearance.

The magistrate then determines whether there is probable cause to believe that each of the criteria is met. If she determines that there is, she must enter an order ([AOC-CVR-2](#)) revoking the person's driver's license. These revocations are commonly referred to as "civil license revocations" or CVRs.

**An exception (because there always is one).** The magistrate is not required to issue a revocation order if the person has a currently revoked driver's license, has no limited

privilege, and will not become eligible to have his license restored or to receive a limited driving privilege during the period of the civil license revocation. A magistrate who relies on this exception must document the evidence in support of that determination.

**Length of revocation.** A license revoked by a magistrate under G.S. 20-16.5 will remain revoked for at least 30 days and until the person pays a \$100 fee to the clerk for its return.

If the person has one or more pending offenses for which his license had been or is currently revoked under G.S. 20-16.5, the revocation remains in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses.

**License surrender.** A magistrate who enters an order imposing a civil license revocation under G.S. 20-16.5 must order the person to surrender his driver's license. If necessary, the magistrate may order a law enforcement officer to seize the license. Licenses or learner's permits issued by NC DMV, licenses issued by a similar agency in another jurisdiction, and limited driving privileges issued by a North Carolina court all are subject to surrender.

**Review of revocation order.** A person may request a hearing to contest the validity of the revocation. That request must be in writing ([AOC-CVR-5](#)) and may be made at the person's initial appearance or within 10 days of the revocation to the clerk or a magistrate designated by the clerk. The person may request that the hearing be conducted by a district court judge. If no such request is made, the hearing is before a magistrate. The person's license remains revoked pending the hearing. The hearing must be held within three working days if it is before a magistrate and within five working days if before a district court judge.

**Not every case.** While the G.S. 20-16.5 revocation-criteria may be satisfied at most initial appearances for DWI and other implied consent offenses, the criteria will not be met in all cases. Sometimes the defendant's alcohol concentration will be ascertained by a blood test rather than a breath test. Those results will not be available at the time of the initial appearance. In such circumstances, a revocation report may be filed with the clerk after the blood is analyzed and the results reported. For implied consent offenses based on an allegation of impairment by drugs or another psychoactive substances besides alcohol, the criteria under G.S. 20-16.5 will only be satisfied if the defendant willfully refuses chemical testing under the implied consent statutes. The remaining components of the fourth criteria under G.S. 20-16.5(b) are alcohol-dependent.

**Limited driving privilege.** A person whose license has been revoked by the magistrate under G.S. 20-16.5 may petition a district court judge in the district where the charge is pending for a limited driving privilege ([AOC-CVR-9](#)) if the following criteria are satisfied:

1. At the time of the alleged offense, the person held either a valid driver's license or a license that had been expired less than a year;
2. The person does not have an unresolved pending charge involving impaired driving except the charge for which the person's license is currently revoked under G.S. 20-16.5 or additional convictions of an offense involving impaired driving since being charged with the violation for which the license is currently revoked;
3. The person's license has been revoked for at least 10 days; and
4. The person has obtained a substance abuse assessment from a mental health facility and has registered for and agreed to participate in any recommended training or treatment program.

A person whose license has been indefinitely revoked by the magistrate because of another pending implied consent offense may apply for a limited driving privilege after 30 days, but it may only be issued if necessary to overcome undue hardship. The person also must show that:

1. At the time of the alleged offense, the person held either a valid driver's license or a license that had been expired less than a year;
2. At the time of the alleged offense, he or she had not within the preceding seven years been convicted of an offense involving impaired driving;
3. Subsequent to the alleged offense, the person has not been convicted of, or had an unresolved charge lodged against the person for, 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 the restoration of a driver's license.

Category: [Motor Vehicles](#) | Tags: [20-16.5](#), [CVRs](#), [DWI](#), [license revocations](#), [limited driving privilege](#), [magistrate](#)

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NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

ATTACH TEST RECORD TICKET HERE

# STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice  
District Court Division

NOTE: A "commercial motor vehicle" is as defined in G.S. 20-4.01(3d).

## IN THE MATTER OF

## AFFIDAVIT AND REVOCATION REPORT OF

LAW ENFORCEMENT OFFICER

CHEMICAL ANALYST

The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

Name		State		Zip		Vehicle Type		CMV	Haz. Mat.	Citation No.
Address										
Race	Sex	Date Of Birth	Drivers License No.	State						

The undersigned being first duly sworn says:

1. I am a law enforcement officer. On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.)(p.)m., 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 \_\_\_\_\_ (Give Street, Highway, Or Public Vehicular 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 restoration (Restr: \*9).
- 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 no. 14 and 15 below, as appropriate for this case).
- 4. The driver was charged with the implied-consent offense of:  G.S. 20-138.1.  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. 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 conduct chemical analyses of the breath utilizing the Intox EC/IR II.
- 7. I informed the driver orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 4081.
- 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods/rules approved by the Department of Health and Human Services at \_\_\_\_\_ (a.)(p.)m. on the \_\_\_\_\_ day of \_\_\_\_\_.
- 9. On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (a.)(p.)m., I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1 based on the (check one)  AOC-CR-155 search warrant issued and executed in this case.  totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox EC/IR II, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox EC/IR II on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.
- 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.15 or more.
- 13. The driver consented to the obtaining of a sample of his/her blood or urine for a chemical analysis, which was collected as indicated on the attached DHHS 4081.
- 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached  DHHS 4082.  DHHS 4081.  The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.
- 15. After the driver's willful refusal, a blood sample was obtained based on the (check one)  AOC-CR-155 search warrant issued and executed in this case.  totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.

### SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Chemical Analyst/Law Enforcement Officer      DHHS Permit No.

Date	Signature Of Official Authorized To Administer Oaths	Print Name Of Chemical Analyst/Law Enforcement Officer
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		
<input type="checkbox"/> Notary SEAL	Date My Commission Expires	County Where Notarized
		Agency Name

## NOTES TO LAW ENFORCEMENT OFFICER/CHEMICAL ANALYST

### **NOTE TO LAW ENFORCEMENT OFFICER WHO IS NOT GOING TO** *administer breath test or read the implied-consent rights:*

1. Complete the identifying information at the top,
2. Check the "Law Enforcement Officer" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-5 (and if the driver is unconscious or incapable of refusing so that the implied-consent rights need not be read, also review and check as appropriate paragraph 10), and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

### **NOTE TO LAW ENFORCEMENT OFFICER WHO CHARGES DRIVER AND IS CHEMICAL ANALYST** *who administers the breath test or reads the implied-consent rights for a blood test:*

1. Complete the identifying information at the top,
2. Check both the "Law Enforcement Officer" and "Chemical Analyst" blocks under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

### **NOTE TO CHEMICAL ANALYST WHO IS NOT THE CHARGING OFFICER:**

1. Complete the identifying information at the top,
2. Check the "Chemical Analyst" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 6-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

## INSTRUCTIONS

1. This form should be used in District Court to prove alcohol concentration in implied-consent criminal cases.
2. This form should be used before the Magistrate for the pretrial civil revocation (CVR) when the driver is charged with DWI or another implied-consent offense and the driver
  - a. has an alcohol concentration of 0.08 or more;
  - b. has an alcohol concentration of 0.04 or more and was operating a commercial motor vehicle;
  - c. is under age 21 and has an alcohol concentration of 0.01 or more; or
  - d. refuses the breath test and/or a blood or urine test.
3. This form should be used to notify DMV of (i) an alcohol concentration of 0.15 or more or (ii) a refusal to submit to a breath test and/or a blood or urine test.
4. This form should be used to notify DMV of violations of the following drivers license restrictions<sup>+</sup>:
  - a. \*9= the driver has a Conditional Restoration of his or her drivers license
  - b. 19= alcohol concentration (A/C) of 0.04
  - c. 20= A/C 0.04+ignition interlock
  - d. 21= A/C 0.00
  - e. 22= A/C 0.00+ignition interlock
  - f. 23= ignition interlock only

+ When a driver has violated a restriction and paragraphs 2 and 3 on Side One are completed, ALL sections in these paragraphs that apply must be checked. For example, if the driver had a restriction 20 and violated both the alcohol concentration and the ignition interlock provisions, both the "alcohol concentration" and the "ignition interlock" blocks should be checked in paragraph 2. The same applies to paragraph 3.
5. File the original and copies of this form, with a copy of the test record ticket attached, as follows:
  - a. Original - To the Magistrate for the pretrial civil revocation (CVR).
  - b. Second copy - To the Court for the criminal case.
  - c. Yellow copy - To DMV for violation of any alcohol or ignition interlock restriction on drivers license, alcohol concentration of 0.15 or more, or for refusal to submit to a breath test and/or a blood or urine test. DMV's address is: DMV, Information Processing Services, 3120 Mail Service Center, Raleigh, NC 27699-3120.
  - d. Pink copy - To the Law Enforcement Officer/Chemical Analyst.
  - e. Green copy - To the driver.

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

Name And Address

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
2. the date he/she surrenders his/her drivers license or privilege to drive to the Court, or demonstrates that he/she is not currently licensed to drive.
3. (check this option if Findings For Probable Cause No. 5 above is checked) the date he/she surrenders his/her drivers license or privilege to drive 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 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.

I informed the above-named person of his/her rights to a hearing and gave him/her a copy of this Order.

Table with 3 columns: Date, Name Of Judicial Official (Type Or Print), Signature Of Judicial Official

NOTE: See reverse for supplemental findings and order, and for disposition of license.

- Judge, Magistrate, Deputy CSC, Assistant CSC, Clerk Of Superior Court

NOTICE

If at the time of this Order you have only a temporary driving certificate, you must surrender the certificate, and then you also must surrender your license card immediately when you later receive it in the mail from DMV.
If at the time of this Revocation you were not licensed to drive by the North Carolina Division of Motor Vehicles and did not have a valid drivers license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.
You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so, a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.
If your license is revoked under Paragraph 1 or 2 of this Order, at the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court.
If your license is revoked under Paragraph 3 of this Order, that revocation remains in effect at least thirty (30) days and until a final judgment, including appeals, is entered for this current offense and for all pending offenses for which your license has been or is revoked under G.S. 20-16.5. At the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been revoked under G.S. 20-16.5.
The \$100 fee may be paid at any time, even prior to the end of the period of revocation, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be made in cash or by certified check, cashier's check or money order. Payment by mail must be made by certified check, cashier's check or money order, payable to the Clerk of Superior Court. If you wish to have your drivers license returned to you by mail, please enclose a stamped, self-addressed envelope with your payment.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO. THE DIVISION OF MOTOR VEHICLES MAY ALSO DISQUALIFY YOU FROM OPERATING A COMMERCIAL MOTOR VEHICLE UNDER G.S. 20-17.4.

**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 date and until payment of a \$100 fee has been made to the Clerk of Superior Court.
- 2. (check this option if Findings For Probable Cause No. 5 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 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)	<input type="checkbox"/> Judge <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> 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 \_\_\_\_\_, \_\_\_\_\_:

- 1. surrendered his/her license to the officer serving the Pick-Up Order.
- 2. 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:

- 1. 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.
- 2. (check this option if Findings For Probable Cause No. 5 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 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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**DISPOSITION OF LICENSE OR PRIVILEGE**

- 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
- 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
- 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:

- 4. Limited driving privilege withheld and record forwarded to \_\_\_\_\_ County.
- 5. Other: \_\_\_\_\_

Date	Signature
Date License Mailed	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of my license.

Date	Signature Of Licensee
Date \$100 Fee Paid	Signature
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	



**STATE OF NORTH CAROLINA**

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
District Court Division

IN THE MATTER OF

Name And Address Of Petitioner

**REQUEST FOR HEARING TO  
CONTEST LICENSE REVOCATION**

Home Telephone No.

Work Telephone No.

G.S. 20-16.5

**TO THE APPROPRIATE JUDICIAL OFFICIAL:**

I request a hearing to contest the validity of the revocation of my drivers license which was ordered revoked on the date set forth below.

I challenge the validity of the revocation on the following specific ground(s):

**(NOTE:** List the finding(s) for probable cause, as set forth on the Revocation Order, which you believe to be wrong.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

I understand that the hearing will be limited to the grounds I specify in this request and that the revocation of my drivers license remains in effect pending the hearing. I further understand that this hearing must be held and completed within three (3) working days following the date of this request, or within five (5) working days if I have requested a District Court Judge to conduct the hearing. I also understand that my failure to appear at the hearing will result in the forfeiture of my right to a hearing.

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.

Date License Revoked

Date

Signature Of Petitioner

**ORDER SETTING HEARING**

The defendant having requested a hearing, the undersigned hereby sets a time, date and location of hearing as shown below.

Date Of Hearing

Time Of Hearing

AM  PM

Date

Location Of Hearing

Signature

Deputy CSC

Assistant CSC

Clerk Of Superior Court

Magistrate

**FILING INSTRUCTIONS**

This request must be filed by the Petitioner within ten (10) days of the effective date of the revocation order with one of the following:

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

\_\_\_\_\_ County

In The General Court Of Justice  
District Court Division

**IN THE MATTER OF**

*Name And Address Of Petitioner*

**FINDINGS AND ORDER  
IN CONTESTED LICENSE REVOCATION**

G.S. 20-16.5

The Court finds that the petitioner filed a timely Request For Hearing To Contest License Revocation form setting forth the specific grounds upon which the validity of the revocation is challenged.

The Court, having considered the evidence and arguments presented at the hearing, finds by the greater weight of the evidence the following:

1. The hearing

- a. was held and completed within the required time limits.
- b. was not held and completed within the required time limits.

2. As to each condition alleged by the law enforcement officer and chemical analyst in this matter,

- a. all were met.
- b. at least one was not met.
- c. other than the current offense, there are no additional pending offenses for which the person's drivers license had been or is revoked under G.S. 20-16.5.

Based upon the foregoing findings of fact, the Court CONCLUDES and ORDERS that the revocation of the petitioner's license be:

- a. sustained.
- b. rescinded.
- c. the indefinite suspension is rescinded and a separate order shall be entered by an appropriate judicial official revoking the petitioner's drivers license for an appropriate period.

<i>Date</i>
<i>Name Of Judicial Official (Print Or Type)</i>
<i>Signature Of Judicial Official</i>
<input type="checkbox"/> <i>Judge</i> <span style="margin-left: 200px;"><input type="checkbox"/> <i>Magistrate</i></span>

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

File No.

In The General Court Of Justice  
District Court Division

Name And Address Of Defendant

**OFFICER'S AFFIDAVIT FOR SEIZURE AND  
IMPOUNDMENT AND MAGISTRATE'S ORDER -  
IMPAIRED DRIVING**

G.S. 20-28.3

Defendant's Drivers License No.

State

Name And Address Of Vehicle Owner

Vehicle Identification No.

Vehicle License No.

State

Year

Make

Model

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 first duly sworn says:

1. I am a law enforcement officer. On or about the date of offense shown above, I had probable cause to believe that the defendant named above drove the motor vehicle described above in the above county upon (Give street, highway or public vehicular area.) \_\_\_\_\_ while committing an offense involving impaired driving in violation of  G.S. 20-138.1  G.S. 20-138.5  G.S. \_\_\_\_\_ (See Section III on reverse for a list of offenses involving impaired driving.) in that: (List sufficient facts to constitute probable cause.) \_\_\_\_\_

(Check if defendant charged under G.S. 20-138.5.) and a check of the Division of Motor Vehicles' records or other reliable information indicates that the defendant has been convicted of three (3) or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ten (10) years of the date of offense shown above.

2. I charged the defendant with an offense in violation of the statute cited above.

3. A check of the records of the Division of Motor Vehicles or other reliable information indicates that, at the time of the above offense,  the defendant's drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a). (See Section IV on reverse for a list of impaired driving license revocations.)  the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.

4. A check of law enforcement records or other reliable information indicates that the motor vehicle described above has not been reported stolen.

5. The motor vehicle described above is not a rental vehicle, or if it is a rental vehicle, the defendant is listed as an authorized driver on the rental contract.

6.  (a) On the date of seizure shown above, I seized the vehicle described above and it is presently at the location shown above.

(b) The motor vehicle has not yet been seized.

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Signature Of Seizing Officer

Date

Signature Of Official Authorized To Administer Oaths

Name Of Seizing Officer (type or print)

Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court

Name Of Department Or Agency Of Officer

Notary

Date My Commission Expires

**SEAL**

County Where Notarized

**II. MAGISTRATE'S ORDER**

On the basis of the facts set forth in the above Affidavit and any additional information furnished under oath, the undersigned finds that the requirements of G.S. 20-28.3 for the seizure and impoundment of the motor vehicle described above  have  have not been met.

1.  a. It is ORDERED that the above described motor vehicle be impounded and held pending further orders of the court.

b. It is ORDERED that any officer with authority and jurisdiction seize the above described motor vehicle and that it be impounded and held pending further orders of the court.

2. It is ORDERED that the above described motor vehicle be released to the motor vehicle owner upon payment of all towing and storage charges incurred as a result of the seizure of that vehicle.

Date

Name Of Magistrate (type or print)

Signature Of Magistrate

**NOTE TO OFFICER:**

The seizing officer shall notify the Division of Motor Vehicles (DMV) of the seizure as soon as practical, but not later than 24 hours after the seizure of the motor vehicle. G.S. 20-28.3(b). The seizing officer should complete form LT-176 and forward it to the officer's DCI terminal operator. The terminal operator will then transmit the information to DMV via DCI. This Order authorizes any officer with jurisdiction to enter the property of the defendant to seize the motor vehicle. Consent or a search warrant is required to enter the private property of another. G.S. 20-28.3(c1).

**NOTE TO MAGISTRATE:**

The magistrate shall provide the original of this form to the Clerk. G.S. 20-28.3(c). The magistrate should provide copies to the defendant and to the seizing officer.

**NOTE TO CLERK:**

If a seizure is ordered, the Clerk shall provide copies of this form to the district attorney and the attorney for the county board of education. G.S. 20-28.3(c).

(Over)

### III. OFFENSES INVOLVING IMPAIRED DRIVING

G.S. 20-4.01(24a) defines "offense involving impaired driving" to include the following:

- impaired driving under G.S. 20-138.1;
- any offense set forth 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. 20-138.2;
- habitual impaired driving under G.S. 20-138.5.

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

Under G.S. 20-28.2(a), the revocation of a person's drivers 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. 20-16(a)(8b) - 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
- Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-138.5 - Habitual Driving While Impaired
- G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
- G.S. 20-16(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. 20-17(a)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
- G.S. 20-17(a)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
- G.S. 20-17(a)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
- G.S. 20-28.2(a)(3) - Laws of another state when the offense for which the person's drivers 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
- the driver does not have a valid drivers license and is not covered by an automobile liability insurance policy.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

## DEFENDANT OWNER'S PETITION FOR RELEASE OF SEIZED VEHICLE AND ORDER - IMPAIRED DRIVING

G.S. 20-28.3(e2)(1)

Name Of Defendant/Petitioner	
Defendant/Petitioner's Drivers License No.	State
Vehicle Identification No.	
Vehicle License No.	State
Vehicle Type	Make
Year	Date Of Seizure
	Date Of Offense

### I. PETITION

The undersigned petitions for a pretrial determination that the petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the petitioner's motor vehicle, and says:

- The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. I was charged with committing an impaired driving offense and it was alleged that at the time of the offense my drivers license was revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a).
- I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure**.
- At the time of the seizure, my drivers license was not revoked as a result of an impaired driving license revocation as defined in G.S. 20-28.2(a) because:
  - a. Any periods of revocation had expired prior to the date of the alleged offense.
  - b. If my drivers license was revoked at the time of the alleged offense, it was not as a result of an impaired driving license revocation.
  - c. I do not hold a North Carolina drivers license and my privilege to drive in North Carolina has not been revoked pursuant to an impaired driving license revocation.
  - d. Other: (specify) \_\_\_\_\_
- I have financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes.

Name And Address Of Defendant/Petitioner (type or print)	Telephone No. Of Defendant/Petitioner
	Date
	Signature Of Defendant/Petitioner

### II. STATE'S DETERMINATION ON RELEASE OF VEHICLE

- (check one)
- Based on available information, the district attorney has determined that the motor vehicle described above is not subject to forfeiture under G.S. 20-28.2 because the drivers license of the defendant/petitioner named above was not revoked pursuant to an impaired driving license revocation. Therefore, **the State consents** to the release of the motor vehicle to the defendant/petitioner.
  - Based on available information, the district attorney has determined that the defendant/petitioner has not satisfied the requirements for release under G.S. 20-28.3(e2)(1). The State **does not consent** to the release of the motor vehicle to the defendant/petitioner.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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### III. CLERK'S ORDER RELEASING MOTOR VEHICLE TO DEFENDANT ON STATE'S CONSENT

On the petition of the defendant/petitioner named above for a pretrial determination that the defendant/petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the defendant/petitioner's motor vehicle, the undersigned finds:

- The State has noted on the petition its consent to the release of the vehicle.
- The defendant/petitioner is a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure**.
- The Clerk has been furnished proof of the existence of financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, and is satisfied that the defendant/petitioner is financially responsible.

THEREFORE, it is ordered that the motor vehicle described above be released to the petitioner named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**NOTE TO CLERK:** The Clerk shall send a copy of the order of release to the county school board attorney, G.S. 20-28.3(e2), and shall report the entry of an order of release to DMV by electronic means (STARS), G.S. 20-28.8.

**IV. NOTICE OF HEARING**

To the defendant/petitioner, to the District Attorney for the prosecutorial district that includes the county named above, and to the attorney for the board of education of the county named above:

A hearing on the above petition will be held on the date and at the time and location shown below.

Date Of Hearing	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

**NOTE TO CLERK:** "If the seizure was for an offense involving impaired driving, a defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education." If the State has consented to the release on Side One, a hearing is unnecessary. G.S. 20-28.3(e2)(1).

**V. ORDER ON PETITION AFTER HEARING**

This matter is before the Court on the petition of the defendant/petitioner named on the reverse side for a pretrial determination that the defendant/petitioner's drivers license was not revoked pursuant to an impaired driving license revocation and for release of the motor vehicle described on the reverse side. A hearing was held before the Court on this date. On the basis of the evidence presented and the entire record in this action, the Court finds by the greater weight of the evidence that:

- The motor vehicle described on the reverse side was seized on the date shown above pursuant to G.S. 20-28.3. The defendant/petitioner was charged with committing an impaired driving offense and it was alleged that at the time of the offense the defendant/petitioner's drivers license was revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a).
- The defendant/petitioner is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of the seizure.
- The defendant/petitioner has established that at the time of the above offense, the defendant/petitioner's drivers license was not revoked as a result of an impaired driving license revocation as defined in G.S. 20-28.2(a).
- The Court has been furnished proof of the existence of financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, and is satisfied that the defendant/petitioner is financially responsible.

Therefore, it is ORDERED that:

- The motor vehicle described on the reverse side be released to the defendant/petitioner named on the reverse side upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle.
- The petition is denied because the petitioner has failed to establish the facts necessary to support one or more of the findings required for release of the vehicle. The motor vehicle shall remain impounded pending further orders of the Court. If this Order is entered after a hearing on pretrial release, it may be reconsidered by the Court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

Date	Signature	Name (type or print)
		<input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge

**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** The Clerk shall report the entry of an order of release to DMV by electronic means (STARS), G.S. 20-28.8. The Clerk may also send a copy of the order of release to the county school board attorney.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice

District  Superior Court Division

## DEFENDANT OWNER'S PETITION FOR TEMPORARY RELEASE OF SEIZED VEHICLE AND ORDER - FELONY SPEEDING TO ELUDE

G.S. 20-28.3(e2)(2)

Name Of Defendant/Petitioner		
Defendant/Petitioner's Drivers License No.	State	
Vehicle Identification No.		
Vehicle License No.	State	
Vehicle Type	Make	Year

Date Of Seizure	Date Of Offense
-----------------	-----------------

### I. PETITION

The undersigned petitions for the temporary pretrial release of the motor vehicle described above, and says:

1. The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. I was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
2. I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure.**
3. The motor vehicle has been seized for at least 24 hours.
4. I am posting a bond equal to the fair market value of the motor vehicle as evidenced by the attached form AOC-CR-331B.
5. No bond posted by me to secure the release of the motor vehicle described above previously has been ordered forfeited.

Name And Address Of Defendant/Petitioner (Type Or Print)	Telephone No. Of Defendant/Petitioner
	Date
	Signature Of Defendant/Petitioner

### II. CLERK'S ORDER ON PETITION FOR TEMPORARY RELEASE

On the petition of the defendant named above for the temporary pretrial release of the motor vehicle described above pending a hearing on the forfeiture of the vehicle, the undersigned finds as follows:

1. The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3. The defendant named above was charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
2. The defendant is a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time of the seizure.**
3. The motor vehicle has been seized for at least 24 hours.
4. The defendant has properly executed an adequate "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Felony Speeding To Elude," AOC-CR-331B.
5. A check of the appropriate records of the Court or the Division of Motor Vehicles indicates that a bond posted by the defendant to secure the release of the motor vehicle described above has not previously been ordered forfeited.

It is ORDERED that: (**NOTE: If all findings above are checked, check Order No. 1 below. If any finding is not checked, check Order No. 2 below.**)

1. The motor vehicle described above be released to the defendant named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the vehicle, on condition that the defendant return the vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the District Attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released.

**NOTE: Failure to return the vehicle will result in forfeiture of the defendant's bond for the motor vehicle and seizure of the vehicle, and may result in the issuance of an order to show cause why the defendant should not be held in contempt.**

2. The petition is denied and the motor vehicle shall remain impounded pending further orders of the Court.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** Do not remove the title hold in STARS upon the entry of an order for temporary release.

### CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Defendant		<p><b>NON-DEFENDANT OWNER'S                  PETITION/APPLICATION FOR RELEASE                  OF SEIZED MOTOR VEHICLE                  ACKNOWLEDGMENT -                  IMPAIRED DRIVING</b></p> <p>G.S. 20-28.2(e), 20-28.3(e), 20-28.3(e1)</p>		
Defendant's Drivers License No.	State			
Vehicle Identification No.				
Vehicle License No.	State			
Vehicle Type	Make			

The motor vehicle described above was seized on the date shown above while being driven by the defendant named above. The defendant was charged with committing an impaired driving offense and it is alleged that at the time of the violation (1) the defendant's drivers license was revoked pursuant to a prior impaired driving license revocation or (2) the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy. The petitioner named on the reverse side applies for the release of that motor vehicle and any funds paid into this Court as a result of any damage to or sale of the vehicle incident to its seizure. Release is requested:

(check all that apply)

- Temporarily pending a proceeding before the Clerk on this Petition or pending a hearing on the forfeiture of the vehicle.  
**NOTE:** Check this option if you want immediate temporary release of your vehicle. You must execute and file a bond. Use "Bond To Secure Temporary Pretrial Release Of Motor Vehicle - Impaired Driving," AOC-CR-331A.
- Permanently after a proceeding before the Clerk on this Petition to be held as soon as may be feasible after the filing of this Petition.
- Permanently after a hearing conducted by the court on the forfeiture of the vehicle.

I state:

1. The petitioner is:
  - a. an individual.
  - b. a business firm or corporation acting through the undersigned agent.
2. I am a person in whose name a registration card or certificate of title for the motor vehicle was issued **at the time the vehicle was seized.**
3. I was not the driver at the time of the underlying offense resulting in the seizure.
4. I am an innocent owner because:  
 (check all that apply) (**NOTE:** This item does not apply to temporary release petitions.)
  - a. I did not know and had no reason to know that  the defendant's drivers license was revoked.  the defendant did not have a valid drivers license and that the defendant had no liability insurance.
  - b. I knew that  the defendant's drivers license was revoked,  the defendant did not have a valid drivers license and that the defendant had no liability insurance, but the defendant drove the motor vehicle without my expressed or implied permission, and I filed a police report for unauthorized use of the motor vehicle and have agreed to prosecute the unauthorized operator of the motor vehicle.
  - c. The motor vehicle was reported stolen.
  - d.  (applicable to offenses committed prior to December 1, 2013) I am in the business of renting vehicles, and the defendant is not listed as an authorized driver on the rental contract.  
 (applicable to offenses committed on or after December 1, 2013) I am a rental car company as defined in G.S. 66-201 and  the defendant is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201.  the defendant is listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but I had no actual knowledge of the revocation of the defendant's license at the time the rental agreement was entered.
  - e. I am in the business of leasing motor vehicles, held legal title to the motor vehicle as lessor at the time the vehicle was seized, and had no actual knowledge of the revocation of the defendant's drivers license at the time the lease was entered.

(Over)

5. I acknowledge that:

- a. The motor vehicle described above was operated by the defendant named above who was charged with an offense involving impaired driving and it is alleged that at the time of the violation  the defendant's license was revoked as a result of a prior impaired drivers license revocation.  the defendant did not have a valid drivers license and did not have liability insurance.
- b. If the vehicle is again operated by the defendant and the defendant is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if at the time of the violation (i) the defendant's drivers license is revoked as a result of a prior impaired driving license revocation or (ii) the defendant does not have a valid drivers license and does not have liability insurance.
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless I have taken all reasonable precautions to prevent the use of the vehicle by the defendant and immediately report, upon discovery, any unauthorized use to the appropriate law enforcement agency.

6. (check applicable box) (NOTE: This item does not apply to temporary release petitions.)

- a. I have not previously executed an acknowledgment naming the defendant named on the reverse side as operator of the vehicle described on the reverse side.
- b. I have previously executed an acknowledgment naming the defendant named on the reverse side as operator of the vehicle described on the reverse side and have taken all reasonable precautions to prevent the use of the vehicle by the defendant named on the reverse side and immediately reported, upon discovery, any unauthorized use to the appropriate law enforcement agency.

7. (check if you are a lessor) I agree not to sell, give, or otherwise transfer possession of the motor vehicle to the defendant or to any person acting on the defendant's behalf. **NOTE:** "A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal." G.S. 20-28.2(e).

8. (NOTE: This item does not apply to temporary release petitions.) I have financial responsibility to the extent required by Article 13 of Chapter 20 of the General Statutes, or to the extent required by the laws of the state outside North Carolina in which my vehicle is registered. (NOTE: Form FS-1, which can be obtained from your insurance company, will provide proof of financial responsibility.)

9. (check if applying for temporary release) The motor vehicle has been seized for at least 24 hours, I am posting a bond equal to the fair market value of the motor vehicle as evidenced by the attached form AOC-CR-331A, I have not previously executed an acknowledgment naming the defendant named on the reverse side, and no bond posted by me to secure the release of this motor vehicle has previously been ordered forfeited.

Name, Address And Telephone No. Of Petitioner/Applicant (Type Or Print)	Date
	Signature Of Petitioner/Applicant
	Drivers License No. (Individual Petitioner Only)      State

**NOTE TO CLERK:** Immediately upon the filing of this form, report the owner's acknowledgment to DMV using STARS.

# STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

 District  Superior Court Division

Name Of Defendant

Defendant's Drivers License No.

State

Vehicle Identification No.

Vehicle License No.

State

Vehicle Type

Make

Year

Date Of Seizure

G.S. 20-28.2(d), 20-28.2(f), 20-28.3(e3)

Date Of Offense

## LIENHOLDER'S PETITION FOR RELEASE OF SEIZED MOTOR VEHICLE NOTICE OF HEARING/WAIVER AND ORDER - IMPAIRED DRIVING

### I. PETITION

The motor vehicle described above was seized on the date shown above pursuant to G.S. 20-28.3(a). The undersigned petitions for:

(Check one or both, as applicable)

- pretrial release of the motor vehicle pursuant to G.S. 20-28.3(e3), after a hearing on this Petition to be held upon ten (10) days prior notice to all interested parties.
- post-trial release of the motor vehicle pursuant to G.S. 20-28.2(f), after the hearing on the forfeiture of the vehicle.

The undersigned states:

1. The petitioner is:

- a. an individual.
- b. a firm or corporation acting through the undersigned agent.

2. The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.

3. Default on the obligation secured by the motor vehicle has occurred and the vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.

**NOTE:** The court may require petitioner to present documentation that supports the allegation that the vehicle owner is in default.

4. As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.

5. The petitioner agrees to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.

6. The petitioner agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** A lienholder who refuses to sell, give or transfer possession of the motor vehicle to the defendant, the motor vehicle owner or any person acting on behalf of the defendant or the motor vehicle owner shall not be liable for damages arising out of such refusal. G.S. 20-28.2(f); G.S. 20-28.3(e3).

7. The motor vehicle has not previously been released to the petitioner.

Name, Address And Telephone No. Of Petitioner (Type Or Print)

Date

Signature Of Petitioner

Drivers License No. (Individual Petitioner Only)

Date

### II. NOTICE OF HEARING (FOR PRETRIAL RELEASE PETITION)

To each registered owner and titled owner of the motor vehicle described above, to the attorney for the board of education of the county named above, and to the District Attorney for the prosecutorial district that includes the county named above:

A hearing on the above petition will be held on the date and at the time and location shown below.

Date Of Hearing

Time Of Hearing

 AM  
 PM

Location Of Hearing

Date

Name Of Petitioner

Signature Of Petitioner

**NOTE TO PETITIONER SEEKING PRETRIAL RELEASE:** If, when this petition is filed, all parties have not signed the "Waiver Of Hearing And Consent To Release" on Side Two, you must obtain a date, time and location for a hearing on this petition in accordance with any calendaring practices in effect in this district. You must insert that information in the "Notice Of Hearing" on Side One, date and sign the "Notice Of Hearing," and serve a copy of the Petition and Notice of Hearing on all interested parties. You must then file a certificate of service in this case, showing who was served and by what means. Service may be made by delivering a copy to the person to be served or mailing a copy to that person at the person's last known address.

(Over)

**III. WAIVER OF HEARING AND CONSENT TO RELEASE  
(FOR PRETRIAL RELEASE PETITION)**

Each undersigned party waives a hearing on the above Petition and consents to the release of the motor vehicle described above to the petitioner pursuant to G.S. 20-28.3(e3).

Party	Name	Date	Signature
Registered Owner			
Titled Owner			
District Attorney			
School Board Attorney			

**IV. CLERK'S ORDER RELEASING MOTOR VEHICLE ON PARTIES' CONSENT  
(FOR PRETRIAL RELEASE PETITION)**

On the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side, the undersigned finds:

- All interested parties have waived notice and a hearing on the petition and have consented to the release of the motor vehicle to the petitioner, as evidenced by their signatures above.
- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and appears on the title to the vehicle.
- The petitioner has agreed not to sell, give, or transfer possession of the motor vehicle to the defendant named on the reverse side, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

Therefore, it is **ORDERED** that the motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.

**NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3). In addition, see the NOTICE TO PARTY OBTAINING RELEASE below.

Date	Signature	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**V. JUDGE'S ORDER ON PETITION AFTER HEARING**

This matter is before the Court on the petition of the lienholder named on the reverse side for release of the motor vehicle described on the reverse side. A hearing was held before the Court on this date. If this is a petition for pretrial release, a copy of the petition and a notice of the hearing were served by the petitioner on all interested parties at least ten (10) days prior to the hearing, as evidenced by the petitioner's certificate of service on file in this case.

On the basis of the evidence presented and the entire record in this case, the Court finds by the greater weight of the evidence that:

- The petitioner holds a security interest in the motor vehicle that had been perfected at the time of the seizure and that appears on the title to the vehicle.
- Default on the obligation secured by the motor vehicle has occurred and the motor vehicle owner is in default under the terms of the security instrument evidencing the petitioner's interest in the vehicle.
- As a consequence of the default, the petitioner is entitled to possession of the motor vehicle.
- The petitioner has agreed to sell the motor vehicle in accordance with the terms of the security agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes, and pay to the Clerk of Superior Court the proceeds from the sale, less the amount of the lien and less the towing and storage costs paid by the petitioner.
- The petitioner has agreed not to sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner.
- The motor vehicle has not previously been released to the petitioner.

It is ORDERED that:

1. The motor vehicle described on the reverse side be released to the petitioner upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk of Superior Court shall disburse to the lienholder any funds being held by the Clerk representing proceeds of insurance for damage to the motor vehicle. The petitioner shall not sell, give or otherwise transfer possession of the motor vehicle to the defendant, to the motor vehicle owner or to any person acting on behalf of the defendant or the motor vehicle owner. **NOTE:** Violation of this condition shall be punishable by civil or criminal contempt. G.S. 20-28.3(e3).
2. The petition is denied. The motor vehicle shall remain impounded pending further orders of the Court.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

**CERTIFICATION**

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court	<input type="checkbox"/> Assistant CSC
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**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means (STARS) the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.

# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District     Superior Court Division

## ORDER RELEASING SEIZED MOTOR VEHICLE TO DEFENDANT-OWNER OR NON-DEFENDANT MOTOR VEHICLE OWNER AFTER DISPOSITION OF CRIMINAL CHARGES - IMPAIRED DRIVING

G.S. 20-28.4

Name Of Defendant			
Defendant's Drivers License No.	State		
Name Of Motor Vehicle Owner (See Note)			
Motor Vehicle Owner's Drivers License No.	State		
Vehicle Identification No.	Vehicle Type	Make	Year
Vehicle License No.	State	Date Of Seizure	Date Of Offense

**NOTE:** [Use this form only to enter an order releasing a motor vehicle to the defendant-owner or other motor vehicle owner (1) after the defendant has been found not guilty of the underlying offense involving impaired driving, or (2) after the charge has been dismissed without leave, or (3) after the defendant has pled to or been convicted of a lesser offense, or (4) after the Court otherwise has failed to find that the criteria for forfeiture in G.S. 20-28.2(b) or (b1) have been met. To enter an order forfeiting a seized motor vehicle, use "Order Forfeiting Motor Vehicle After Hearing-Impaired Driving," AOC-CR-335A.] In the space labeled "Name Of Motor Vehicle Owner" above, enter the name of the owner to whom the motor vehicle is to be released. If this is the defendant, enter the defendant's name here as well as in the space for "Name Of Defendant."

### FINDINGS OF FACT

This matter is before the Court to determine whether the vehicle described above shall be forfeited pursuant to G.S. 20-28.2. Based on the evidence presented and the entire record in this case, the Court finds that:

1. The motor vehicle was seized on the date shown above while being driven by the defendant named above. The vehicle was seized pursuant to G.S. 20-28.3(a).
2. The motor vehicle owner named above is a person in whose name a registration card or certificate of title for the motor vehicle was issued at the time of seizure.
3. The defendant was subsequently not convicted of an offense involving impaired driving, or if the defendant was convicted the Court finds that  (applicable to offenses committed prior to December 1, 2013) the defendant's drivers license was not revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).  (applicable to offenses committed on or after December 1, 2013) the criteria for forfeiture in G.S. 20-28.2(b) or (b1) otherwise have not been met.

### CONCLUSIONS OF LAW

On the basis of the foregoing findings of fact, the Court concludes as a matter of law that the vehicle described above is not subject to forfeiture pursuant to G.S. 20-28.2.

### ORDER

It is ORDERED that the motor vehicle described above and any funds held by the Clerk representing proceeds of insurance be released to the motor vehicle owner named above upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of that vehicle, and the Clerk shall disburse to the motor vehicle owner all funds held by the Clerk representing proceeds of the sale of the motor vehicle.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
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**NOTICE TO PARTY OBTAINING RELEASE:** "[W]ithin 30 days of the date of the court's [release] order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics' lien on the motor vehicle for towing and storage costs." G.S. 20-28.4.

### CERTIFICATION

The foregoing is a true and correct copy of the original on file in this office.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
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**NOTE TO CLERK:** The Clerk shall report to DMV by electronic means [STARS] the entry of an order of release. G.S. 20-28.8. The Clerk also may send a copy of the order of release to the county school board attorney and District Attorney.



# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
 District  Superior Court Division**STATE VERSUS**

Name Of Defendant

Date Of Birth

**DETENTION OF IMPAIRED DRIVER**

G.S. 15A-534.2, 20-38.4

**FINDINGS**

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

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. 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 (*specify reasons*):

**DETENTION ORDER**

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. 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 or
2. a sober, responsible adult is 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 <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Superior Court Judge

**RELEASE FROM DETENTION ORDER**

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

1. 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.
2. \_\_\_\_\_ (*name*), a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.
3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date	Signature Of Sober Responsible Adult
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The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Superior Court Judge

**NOTE:** "If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed." G.S. 20-38.4(a)(3).

**NOTE:** If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. Use form AOC-CR-271 for this purpose. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION FOR COMMUNICABLE DISEASE TESTING

G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that (specify reasons):

[NOTE: Do not include any information indicating that the defendant has or may have a communicable disease. Describe only the nature of the exposure that would pose a significant risk of transmission of the AIDS or Hepatitis B virus if the defendant were infected. Note that mere contact of the defendant's bodily fluids with a subject's clothing or unbroken skin does not pose a significant risk of transmission of either virus. A significant risk of transmission occurs when the defendant's bodily fluids come into contact with the subject's broken skin or mucous membranes. For example, a bite by the defendant that does not break the subject's skin does not pose a significant risk of transmission. Contact that may pose a significant risk includes things like a needlestick or a bite that actually breaks the subject's skin.]

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

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

Date Time AM PM Magistrate Clerk Of Superior Court
Deputy CSC District Court Judge
Assistant CSC Superior Court Judge

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

- 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148.
2. the period of detention has reached twenty-four (24) hours.

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date Time AM PM Magistrate Clerk Of Superior Court
Deputy CSC District Court Judge
Assistant CSC Superior Court Judge



# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
Before The Magistrate**STATE VERSUS****IMPLIED CONSENT OFFENSE NOTICE**

Name Of Defendant

G.S. 20-38.4

**OBSERVATION PROCEDURE****TO THE DEFENDANT:**

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

**CONTACT PERSONS****TO THE DEFENDANT:**

Pursuant to G.S. 20-38.4(a)(4), 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. \_\_\_\_\_

I do not wish to contact anyone for the purposes of observing me at the jail or administering an additional chemical analysis.

**NOTE TO DEFENDANT:** *You still may contact other persons for other purposes, like an attorney, a bail bondsman, family members, or friends, according to the jail's regular procedures for those contacts.*

**SIGNATURE**

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact for the purposes of observing him/her at the jail or administering an additional chemical analysis.

Date

Signature Of Defendant

**MAGISTRATE'S CERTIFICATION**

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or to administer an additional chemical analysis.
5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.  
 The defendant returned this form to the undersigned at the initial appearance.  
 The defendant failed to return this form at the initial appearance.

Date

Time

 AM  
 PM

Signature Of Magistrate

The defendant returned this form to the undersigned after the initial appearance.

Date

Time

 AM  
 PM

Signature

 Magistrate     Assistant CSC  
 Deputy CSC     Clerk Of Superior Court

**NOTE:** *If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).*

