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ADMINISTRATIVE *PER SE* REQUIREMENTS AND IGNITION INTERLOCKS IN IMPAIRED DRIVING OFFENSES

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In 1999, the North Carolina General Assembly enacted two separate provisions to regulate the behavior of convicted impaired drivers. Both impose more restrictive conditions on those drivers' licenses than the conditions that are applicable to the general public. One imposes, as a condition attached to the restoration of the convicted person's drivers license, a *per se* alcohol concentration that is lower than the level applicable to the general public. A *per se* alcohol concentration is the level above which it is unlawful, in and of itself, to drive a vehicle at any relevant time after consuming the alcohol that causes the elevated alcohol concentration. (A relevant time is any time in which the alcohol being tested is alcohol that was in the person's body before or during the driving.) The second provision requires the driver to install ignition interlock devices on his or her vehicles. Ignition interlock devices are instruments attached to the ignition system of a vehicle that measure a potential driver's alcohol concentration and prevent persons with more than a specified amount of alcohol from starting the vehicle or from continuing to operate the vehicle.

These provisions are neither congruent nor mutually exclusive. Some drivers will be subject to one, some to the other, and some to both, although many more people are subject to the *per se* levels than are subject to the interlock requirements.

This memo discusses each provision. It will list the drivers who are covered by each provision and the length of time the provision is applicable. It will also discuss the methods by which each is enforced, and the consequences of violation of each provision. Finally it will discuss the effects when a person is subject to both provisions at the same time.

Lower *Per Se* Levels

GS 20-19(c3)-(c6) establishes the lower *per se* levels and the enforcement procedures applicable to them. One important point about these statutes needs to be emphasized. *These statutes do not create a new kind of DWI criminal offense.* Drivers who exceed these new *per se* levels do not commit the offense of driving while impaired. The primary enforcement

mechanism for this new *per se* level is through the Division of Motor Vehicles (DMV) administrative hearing process. The result of that process is that the driver's license may be revoked, although in some cases officers may charge the offender with the criminal offense of driving in violation of a restriction on the person's license, in violation of GS 20-7(e).

Applicability

People who lose their drivers license for convictions of certain impaired driving offenses are subject to the lower *per se* levels when their license is restored. This requirement applies to drivers license restorations for convictions of offenses committed on or after July 1, 2000.

Being subject to this *per se* level means that the person may not drive a vehicle on a highway or public vehicular at any relevant time after the driving with an alcohol concentration that exceeds the limits specified for his or her license. For this purpose the definitions of vehicle, highway, public vehicular area, alcohol, alcohol concentration, and relevant time after the driving are the same as for all other impaired driving offenses. Each of those words or phrases is defined in GS 20-4.01. The offenses that are covered by this provision, the applicable *per se* level, and the duration of the restrictions are as follows:

1. Driving while impaired (GS 20-138.1). These offenders are subject to the *per se* level of 0.04 for three years if the person's license has not been previously restored for a revocation based on a DWI conviction, and to a *per se* level of 0.00 if the person has a previous license restoration for a DWI conviction. This 0.00 level applies to the person for three years unless the license is permanently revoked under GS 20-19(e); in that case, it applies for seven years.
2. Driving a commercial vehicle while impaired (GS 20-138.2). These offenders are subject to a *per se* level of 0.00 for a period of three years, unless the license is permanently revoked; in that case it applies for seven years.
3. Driving while less than 21 years of age after consuming alcohol or drugs (GS 20-138.3). These offenders are subject to a *per se* level of 0.00 until their 21st birthday.
4. Vehicular homicides involving impaired driving (felony death by vehicle—GS 20-141.4—, manslaughter, or negligent homicide). These offenders are subject to a *per se* level of 0.00 for a period of seven years.
5. Offenses by residents of this state, which occur in other states or in federal court, are substantially similar to those listed in 1-4 above and which result in license revocations under GS 20-23 and -23.2, will be treated in the same manner as if they had occurred in this state. For example, a person convicted of impaired driving in another state who loses his license in this state as a result of that conviction will be subject to the *per se* level of 0.04 the first time he or she receives a restored license, for a period of three years, as described in no. 1. above. For a second such restoration, the level is reduced to 0.00 and the period remains three years. For purposes of counting prior restorations, revocations based on both in-state and out-of-state convictions, as defined in G.S. 20-4.01, count.

Restrictions

When a person receives a restored license subject to this requirement, the DMV will assign a restriction code to the person's license, similar to the restrictions placed on licenses for persons requiring corrective lenses (which is restriction # 1). The restrictions are as follows:

- 19—means that the person is subject to a *per se* level of 0.04
- 20—means that the person is subject to a *per se* level of 0.04 and in addition must have an ignition interlock device on his or her vehicle
- 21—means that the person is subject to a *per se* level of 0.00
- 22—means that the person is subject to a *per se* level of 0.00 and in addition must have an ignition interlock device on his or her vehicle

There are two other restriction codes that may be present on drivers' licenses.

- *9—means that the person has a conditionally restored license that is subject to some restriction. The restriction could reflect a license conditionally restored under GS 20-19(d) or (e) for revocations based on multiple DWI convictions, a license conditionally restored under GS 20-19(i) for a permanent revocation based on an alcohol-involved

conviction of death by vehicle or manslaughter, or a restriction related to a person's medical condition. The specific restriction is listed on the back of the license.

- 23—means that the person is subject to an interlock requirement, but is not subject to a lower *per se* level (other than as a part of the interlock requirement). Licenses subject to this restriction will be rare, since in virtually every case in which a license is restored subject to an interlock requirement, it will also be subject to a lower *per se* requirement.

Licenses subject only to these last two restrictions are not subject to the enforcement provisions of the new *per se* laws.

In addition to the lower *per se level,* a person seeking restoration must agree to two other conditions to be eligible for a restored license. First, the person must agree to submit to a chemical analysis in accordance with the procedures established in GS 20-16.2 to obtain that analysis when a law enforcement officer has reasonable grounds to believe that the person has driven in violation of the restriction. Second, the person must agree to be transported to a test site if requested to do so by a law enforcement officer.

Enforcement

A person who is subject to these lower alcohol concentrations has a valid drivers license. The license is just restricted in the sense that the driver may not drive if his or her alcohol concentration exceeds the level specified in the restriction. What happens if the person drives in a manner that violates that restriction? *This discussion applies only to a driver whose license is subject only to the lower alcohol concentration restriction. If the person also is subject to the interlock requirement, different procedures, discussed below, apply. The discussion also does not apply to a person who is charged with impaired driving and with violation of this restriction; that situation is also discussed below.*

It is important first to note what does not happen. A violation of the restriction is not an impaired driving criminal offense. It is also not the offense of driving while license revoked, as would be true if the person violated an interlock restriction (discussed below). Because there is no alcohol related charge associated with a violation of this restriction, there is also no civil revocation (CVR) under GS 20-16.5.

GS 20-19(c3)-(c6) provides a procedure for dealing with violations other than refusals to submit to a chemical analysis. Refusals are discussed below. A law enforcement officer who believes that the driver is violating the restriction may request that the person accompany him or her to the place where the chemical analysis will be administered. At the test site, a chemical analysis administered pursuant to GS 20-16.2 (and 20-139.1) may be administered. If the driver's alcohol concentration exceeds the applicable *per se* level, the officer is directed to complete an affidavit (Form AOC-CVR-1) and send it to the DMV.

The DMV, when it receives the affidavit, if it properly alleges a violation, must revoke the driver's license, effective ten days after the notice of revocation is mailed to the driver. The driver is entitled to a hearing on the issue before a DMV hearing officer, but the hearing is limited to the following issues:

1. Did the officer have reasonable grounds to believe that the driver had violated the *per se* restriction?
2. Was the driver notified of his rights as required by GS 20-16.2(a)?
3. Did the driver have a license restricted to a *per se* level?
4. Did the person submit to a chemical analysis under GS 20-16.2 and if so, was the concentration above the applicable *per se* level?

Apparently the result of an alcohol screening test admininstered pursuant to GS 20-16.3 is not admissible to establish a violation of this restriction. Alcohol screening tests are generally administered on the roadside using approved portable breath testing instruments. While useful to determine the existence of alcohol in a person's body, they serve a different purpose than the breath or blood analsyses done pursuant to the provisions of GS 20-16.2 and 20-139.1. The administrative *per se* restriction requires that an "alcohol concentration" (as that term is defined in GS 20-4.01) be established, and alcohol screening test results do not meet that standard of precision. The only breath tests that do are the chemical analyses (Intoxilyzers) administered pursuant to GS 20-16.2 and GS 20-139.1. In addition GS 20-16.3 (d) limits the use of alcohol screening test results to establish reasonable grounds for an implied consent offense or as circumstantial evidence of the presence of drugs. Several criminal or infraction statutes make it a violation of law to drive with any alcohol in the body, and those statutes specifically allow the use of alcohol screening tests to establish the presence of alcohol. GS 20-138.2A; 20-138.2B; 20-138.3; 20-179.3(j). There

is no similar language in the statutes establishing the administrative *per se* restrictions. These statutes, read together, suggest that alcohol screening test results are not admissible to establish a violation of the administrative *per se* restriction.

The procedures for the conduct of the hearing are contained in GS 20-19(c5) and (c6) and are similar to the procedures used for persons whose licenses are revoked for refusing to submit to a chemical analysis of his or her breath or blood, as specified in GS 20-16.2. The main differences between the two procedures are the issues that are considered and the appeal rules. Appeals of the DMV's ruling in the *per se* cases are subject to a much more limited review. In *per se* cases, the appeal is to the superior court. That court has the discretion to either review or decline to review the matter. If it grants a review, the review is on the record of the DMV's hearing to determine if the DMV hearing officer followed proper procedure and made sufficient findings of fact to support the revocation. There is no appeal beyond the superior court. In contrast, in refusals, the person has a right to a superior court review. The review is *de novo.* And the superior court's decision may be appealed to the appellate courts under GS 7A-27(b).

Revocation for violation of restriction

If the DMV concludes that these questions are all answered positively, then the DMV must revoke the driver's license for one year. If the person received his or her license on a conditional restoration before the full revocation period had been served, then any time that person had remaining on that original revocation must be served before the one-year revocation begins.

This hearing appears to be the primary method by which the legislature intended for this restriction to be enforced. However, since the driver is subject to a restriction on his or her drivers license, it is possible that the driver commits the offense of driving a motor vehicle without complying with a valid license restriction. GS 20-7(e) makes that offense "the equivalent of operating a motor vehicle without a license." The legislation establishing the lower *per se* levels is silent on this issue. It does establish a separate non-criminal enforcement mechanism that results in the driver's license being revoked. One construction of that statute is that the legislature specifically chose an administrative route to respond to violations of this restriction. In the same enactment, the legislature also added the new interlock requirements in which it did make violations of the interlock restrictions a crime. That could be read to suggest that the legislature did not intend for the lower *per se* levels to be enforced using the criminal law. However, GS 20-7(e) can be read to include the *per se* level restrictions; it can be argued that the legislature did not need to specify any criminal enforcement mechanisms since there was already an applicable criminal offense. Unless the legislature clarifies its intent on this issue, it will have to be resolved by the courts.

DWI and per se violations in same case

In some cases a person will be charged with a violation of the *per se* restriction and will also be charged with impaired driving. In that case, normally the charging officer will arrest the person for the impaired driving charge and follow the normal procedures for an arrest. Those procedures usually include the officer seeking a chemical analysis of the person's breath, blood or other bodily substance. In that case the officer should, in addition, insure that the affidavit he or she completes (AOC-CVR-1) also indicates that the person charged is subject to a drivers license restriction. Each of those proceedings is independent of the other, and each can result in a revocation of the person's drivers license. GS 20-19(c3) specifies what happens if the person's license had been returned conditionally before the person had fully served a revocation for a second or subsequent impaired driving revocation. In that case any remaining period of the person's original revocation must be served, and the revocation imposed for the person's violation of the *per se* restriction does not begin until that period is served. That statute does not indicate if a revocation for an impaired driving convction would run concurrently with either of those other revocations. The general rule, however, is that revocations begin as soon as they are legally effective, and do not run consecutive to each other unless there is a specific statute that delays the start of the revocation period until other revocations have been served.

Refusal to submit to chemical analysis for *per se* violation

If a person subject to the *per se* violation refuses to submit to a chemical analysis of his breath or blood after having been stopped or detained by an officer with probable cause to believe that the person has violated the *per se* restriction, the provisions of GS 20-16.2 apply to that refusal. GS 20-19(c4). The result is that the person's license is revoked for one year, but the procedures to review that decision are found in that statute and not in GS 20-19. The procedures are the

same ones used to enforce a refusal when a person is charged with DWI and then refuses a chemical analysis.

Interlock

There are two related provisions requiring an ignition interlock. *Both apply only to persons convicted of the offense of impaired driving under GS 20-138.1.* Both requirements apply to drivers license actions based on convictions of offenses committed on or after July 1, 2000.

The first, GS 20-179.3(g5) requires any limited privilege issued to a person who is found to have an alcohol concentration of 0.16 or more to include conditions requiring an ignition interlock on the vehicle the defendant is authorized to drive. The second, GS 20-17.8, requires some persons seeking to have their drivers license restored after a revocation for a conviction under GS 20-138.1 to install ignition interlocks on all vehicles they drive or that are titled in their name.

Limited driving privilege (GS 20-179.3(g5))

This statute applies to any person revoked for a conviction of GS 20-138.1 who has an alcohol concentration of 0.16 or more. There are several important things that should be noted about those provisions.

1. Because it applies to persons convicted of GS 20-138.1, persons convicted of impaired driving offenses in other states who apply for limited driving privileges in this state are not subject to the mandatory ignition interlock requirement. A judge, however, may still require an interlock under GS 20-179(g3).
2. Because the person must have an alcohol concentration of 0.16 or more, a chemical analysis is required. If the person refuses a chemical analysis under GS 20-16.2, the mandatory ignition interlock provision is not applicable. Again, a judge, in the exercise of his or her discretion, may require an interlock.
3. The requirement that a specific alcohol concentration be present is not a fact that can be determined solely from the charge of which the defendant is convicted. All that is necessary to support a conviction (once the basic elements such as driving are established) is an alcohol concentration of 0.08 or a finding of appreciable impairment of the defendant's faculties caused by an impairing substance. To trigger the mandatory interlock requirement the court must make a finding as to the alcohol concentration. That finding may be made either on the impaired driving judgment form AOC-CR-310 or AOC-CR-342, or on the impaired driving aggravating factors form, AOC-CR-311 (Aggravating factor number 2 on that form).
4. A person who has a limited privilege is not subject to the *per se* restrictions that are discussed above and imposed by G.S. 20-19. GS 20-179.3, the statute that authorizes the limited privilege, imposes a 0.00 *per se* level, however. The difference between the two is in the enforcement mechanisms—a violation of the zero *per se* level imposed on a limited privilege holder constitutes the offense of driving while license revoked. As noted above, violations of the *per se* restrictions imposed under GS 20-19 are enforced using the administrative hearing process described above, or perhaps by charging the offense of driving without a license, but not by charging driving while license revoked.

If a person is subject to this requirement or if the judge chooses to impose an interlock requirement, then any limited driving privilege must be issued conditioned on the defendant's:

1. Operating only a vehicle designated by the court in the limited privilege. Thus, even if a defendant does not own a vehicle, the vehicle or vehicles that defendant intends to drive must be identified by the court, and those are the only vehicles he or she may drive. A defendant may identify a vehicle that someone else owns as the vehicle he or she intends to drive and the court may designate that vehicle as a vehicle the defendant is permitted to drive.
2. Operating only a vehicle that is equipped with a functioning ignition interlock system set to prohibit driving when the driver has an alcohol concentration of greater than 0.00, and is of a type approved by the Commissioner of Motor Vehicles. This requirement means that individual judges do not have the authority to impose additional or different requirements from those specified by the Commissioner in approving an ignition interlock device. This would apply to matters

such as the frequency of retesting, the frequency with which the defendant must report to the interlock provider, etc.

3. Personally activating the ignition interlock system before driving the designated motor vehicle.

The only authorized exception to these conditions is for driving for work-related purposes. If the defendant's employer files with the court a written document authorizing the defendant to drive a vehicle owned by the employer for work-related purposes, the defendant may drive that vehicle without an interlock device for work-related driving. GS 20-179.3(g4). This statute seems to require that the employer be someone other than the defendant, so self-employed persons are not eligible for this exemption.

For a defendant subject to this requirement, there is no exception authorizing the defendant to drive to the ignition interlock site. But there is also no requirement that the court require that an ignition interlock be installed before issuing a limited privilege. This practical problem may be addressed in several ways. A defendant may anticipate the court's decision to grant a limited privilege and have it installed before applying for a limited privilege. A court may defer the granting of a limited privilege until an interlock device is installed. Or the court may issue the limited privilege on the expectation that someone other than the defendant will drive the defendant to the site at which the interlock will be installed.

If a defendant does not comply with one or more of these conditions, he or she commits the offense of driving with a revoked license to GS 20-179.3(j). That is the general statute applicable to all restrictions on a limited privilege. It would include driving at a time or place not authorized by the privilege, or driving with alcohol in the person's body in violation of the zero *per se* limitation required by GS 20-179.3(h), or violations of the interlock requirements. Some of those interlock violations may occur in ways that do not involve driving by the defendant. The most common would be the defendant's failure to meet his or her regular maintenance appointments with the interlock provider. In that case, the defendant does not have an interlock device that is "functioning". That violates an explicit requirement of the limited privilege contained in form AOC-CR-340, and would be grounds to revoke the limited privilege under GS 20-179.3(g). It is not as clear that the violation would constitute the crime of driving while license revoked if there is no evidence that the defendant had driven the vehicle without a "functioning" interlock. The simple fact that the defendant failed to meet a maintenance appointment, without evidence that the vehicle is being driven, probably does not violate the limited privilege. That privilege places conditions on the defendant's driving, but it does not require the defendant to drive. He or she may simply elect not to drive. If that is the case, having a vehicle that is not equipped with an interlock would be legal.

If a defendant is charged with driving while license revoked by violating a limited driving privilege restriction, GS 20-179.3(j) requires that the person's limited privilege be suspended pending the outcome of the criminal charge of driving while license revoked. Form AOC-CR-341 is the form that is used to note that fact and to give the defendant notice that he or she may no longer drive legally under that limited privilege.

Interlock as a condition of license restoration (GS 20-17.8)

This interlock requirement applies to defendants convicted of impaired driving under GS 20-138.1 who either have an alcohol concentration of 0.16 or have a previous conviction of another offense involving impaired driving that occurred within seven years immediately preceding the date of the current offense. Offenses that count as prior convictions for this purpose are impaired driving under GS 20-138.1, impaired driving in a commercial vehicle under GS 20-138.2, felony death by vehicle under GS 20-141.4, any other homicide caused by impaired driving, or convictions in other states that are substantially similar to these North Carolina offenses.

This provision applies when a person receives a drivers license after serving the revocation for the conviction based on impaired driving (GS 20-17(a)(2)). The conditions apply in two kinds of cases.

The first category are those offenders convicted of impaired driving who receive their license back after completing the prescribed period of revocation. In this category are "first offenders" who have a one-year revocation or offenders who receive a four-year revocation under GS 20-19(d) (which occurs when the defendant also has another conviction of an offense involving impaired driving in the previous three years), and who serve the entire four years. These offenders are entitled to receive a drivers license if they are otherwise eligible (pass the test, have no physical impairments, etc.) However, their licenses are granted on the condition they comply with the interlock requirement. These offenders receive a regular drivers license, with an interlock restriction added.

The second category are the convicted impaired drivers who receive four year revocations under GS

20-19(d) or those who receive permanent revocations under GS 20-19(e) (which occur when the driver has certain combinations of convictions) and who are able to demonstrate to DMV that they should have their license restored early. These offenders receive a conditional license, which means that if they violate the conditions, the original revocation that they were serving is reinstated.

In either category, the interlock conditions on which the license is restored require the defendant to:

1. Operate only a vehicle that is equipped with a functioning ignition interlock system that is of a type approved by the Commissioner of Motor Vehicles.
2. Personally activate the ignition interlock system before driving a motor vehicle.
3. Install ignition interlocks on all vehicles owned by and registered to the defendant unless the defendant demonstrates that one or more specified vehicles are relied on by other members of his or her family for transportation and are not in the defendant's possession.

The DMV will not issue a license to a person subject to this requirement unless the person has an interlock installed on at least one designated vehicle. If the person does not own a vehicle and does not have permission from some other vehicle owner to have an interlock installed on that vehicle, the DMV will not issue a license to the person, since it is illegal to drive any vehicle that is not interlock-equipped for the period applicable to the person.

The length of time these requirements apply depend on the length of the original revocation. If the revocation was for one year, the requirements apply for one year. If the revocation was for four years, the requirements apply for three years. If the revocation was permanent, the requirements apply for seven years. Any time that a person had an interlock installed pursuant to a valid limited driving privilege issued in the same offense is credited against this period of time.

For restorations under this section, the ignition interlocks are calibrated to detect violations, and in some instances to either prevent the vehicle from starting, or to sound a continuous alarm during the vehicle's operation, at two levels—0.00 and 0.04. For defendants subject to the requirement only because they had an alcohol concentration of 0.16, that level is 0.04, unless the defendant was also convicted of a vehicular homicide charge, impaired driving in a commercial vehicle or the provisional licensee zero *per se* offense (GS 20-138.3). For defendants also convicted of any of those charges or defendants who are subject to the requirement because they have multiple offenses, the level is 0.00.

This interlock requirement, unlike the interlock requirement for limited privileges, may be enforced either by charging the defendant with the crime of driving while license revoked for a violation of the conditions or by pursuing an administrative enforcement through the DMV.

If the officer detecting the alleged violation chooses the criminal route, he or she may charge the offense of driving while license revoked under GS 20-28 in the usual manner. GS 20-17.8 specifies that this particular charge of driving while license revoked is an implied consent offense. That means that the person charged may be requested to submit to a chemical analysis of breath or blood under GS 20-16.2, and the provisions of that statute apply as they do to any other implied consent offense. In addition, if the judicial official reviewing the charge determines that there is probable cause for the charge, the judicial official must revoke the license of the person charged until the criminal charge is resolved. That procedure is similar to the one employed for charges of violations of impaired driving limited privileges, but in this case the judicial official is revoking a drivers license, not a court-ordered limited privilege. Interlock reports may not be used to establish proof that the person was violating a condition of the interlock, unless the interlock report establishes that the vehicle was driven at an alcohol concentration that exceeds the prescribed limit for the offender. AOC form AOC-CR-341 is available for use by court officials in recording the taking of the license in these cases. The DMV must give credit to the defendant for any time the license was in the custody of the court unless the person's license was also revoked under the immediate, pretrial revocation under GS 20-16.5 (known in court files as a CVR); consequently the court should report to the DMV both the date on which the license was taken and the date the charge was disposed of, if any.

It is important to note that some of the interlock conditions may be violated without the defendant driving at all if a defendant has vehicles registered in his name on which no interlock devices have been installed.

The statute allows the DMV to exempt a vehicle the defendant owns from the interlock requirement if another member of the defendant's family relies on the vehicle for transportation and it is not in the defendant's possession. If, however the DMV declines to make such an exception or the defendant does not request one, and the defendant is charged with DWLR solely because not all his or her vehicles are equipped with an interlock device, the court may revisit the

issue. If the court makes that determination, it must dismiss the charge (the statute literally requires the court to find the person not guilty, and that would be applicable to district court judges, but not if the issue arises in superior court). The issue most likely to cause difficulty in this determination is "possession". This exception was apparently intended to cover students who are away at college or other places and still using a parent's vehicle. While it will cover those cases, it is not clear that it is limited to college students or similarly situated children. In any event, if the defendant can demonstrate to the satisfaction of the court that he or she is not in possession of the vehicle, that demonstration will satisfy the elements of this exemption.

GS 20-17.8 requires all defendants with an alcohol concentration of 0.16 or more to have an interlock installed for at least one year. But if the person has an interlock installed as a condition of a limited privilege for the same conviction, he or she will get credit for the time the interlock was actually installed as a condition of a limited privilege pursuant to GS 20-17.8(d). To receive the credit the defendant must have been eligible for the limited privilege and the interlock must have been installed. Thus one does not receive credit for time in which an interlock was installed pursuant to a limited privilege that was invalidly issued, or for time in which a privilege was issued, but no interlock had actually been installed in the vehicles listed in the privilege.

GS 20-17.8 applies to those convicted of DWI who "had an alcohol concentration of 0.16." It is not clear from the text of the statute what level of proof of that fact is necessary to support an action by DMV to impose an interlock requirement. Clearly a finding by the court on the DWI judgment form or on the aggravating factors form is sufficient. Currently the DMV acts only if the court has found that the alcohol concentration was 0.16 or more. It is not clear if any other form of evidence of alcohol concentration would be sufficient, in the absence of, or in contradiction to, a finding by the court.

Enforcement by administrative action instead of criminal charge

As noted earlier, an officer who detects a violation of the interlock requirements imposed on a person with a restored license may pursue the administrative remedy of license revocation without lodging a charge of driving while license revoked. GS 20-17.8(g) and (j). In those cases, the officer must submit an affidavit to the DMV alleging a violation of an interlock condition. The DMV may then, based on the affidavits, revoke the person's license for one year. That one year may not begin until any other revocations have been terminated, so if the person originally had a revocation as a repeat DWI offender under GS 20-19(d) or (e) and was conditionally restored before fully serving all of that revocation, any unserved portion of the original revocation must be served before the one year revocation begins. GS 20-17.8(h).

The procedure for the conduct of the hearing is as provided by GS 20-17.8(j). It is limited to consideration of whether the drivers license of the person had an ignition interlock requirement and whether the person was driving a vehicle not equipped with an interlock, or did not personally activate the interlock, or drove the vehicle with an alcohol concentration of 0.04 or higher. Appeals are as provided for in GS 20-25.

If the person's license is revoked before he or she completes the period in which he or she is subject to the ignition interlock requirements, then the person must reinstall the devices when his or her license is restored for the remainder of the original period of service. GS 20-17.8(k).

Violation of both per se and interlock requirements simultaneously

Many people are subject to both a lower *per se* level and to the interlock requirement. It is possible that a person can violate the interlock requirement without violating the *per se* requirements. In that case the enforcement proceedings for the interlock requirements are applicable. However, in cases in which the violation occurs because the driver exceeds the *per se* level applicable to both the interlock and the lower *per se* level imposed as a condition of restoration, both conditions are violated. In those cases, the criminal charge of driving while license revoked is appropriate for the interlock violation. That offense is an implied consent offense, so the officer will likely use that charge as a basis for requesting a chemical analysis under GS 20-16.2. If the results also indicate a violation of the administrative *per se* restriction, the officer may include that allegation in any AOC-CVR-1 affidavit completed in the case, and if the officer sends the affidavit to the DMV, the administrative enforcement mechanism for violations of that restriction may be triggered.

The effects on a person's drivers license who violates both restrictions can be quite complex. Each violation triggers a separate license revocation, and how it affects a particular individual is determined by

that person's record. Each revocation must be satisfactorily terminated under the statutory provision governing the revocation before the person may drive legally. If any of the revocations remains in effect the person may not legally drive.

Effects of Interlock and Administrative *Per Se* Statutes on Civil Revocation Statute

In most actions to enforce these statutes, the driver will have consumed alcohol, and that raises the possibility that the person may also be subject to the civil revocation (CVR) provisions of GS 20-16.5. Briefly, that statute authorizes a revocation of a driver's license if the driver is charged with an implied consent offense, there are reasonable grounds for the offense and the person either refuses a valid request to submit to a chemical analysis, or submits to the analysis and has an alcohol concentration that exceeds an applicable *per se* level. The per se levels are as follows:

- For most offenders, 0.08.
- For drivers of commercial motor vehicles (as defined by GS 20-4.01 (3d)), 0.04.
- For drivers under age 21, 0.00.

A violation of the administrative *per se* statutes (or a refusal to be tested to determine if a violation is present), standing alone would not support a CVR. It is not an implied consent offense, as that term is defined in GS 20-16.2(a1). A person subject to an administrative *per se* enforcement action may be asked to submit to a chemical analysis, but that request is based on the person's agreement to be tested pursuant to GS 20-19(c3), not GS 20-16.2.

If the person subject to subject to the administrative *per se* enforcement action is also charged with impaired driving or any other criminal offense, the applicability of the CVR statute is determined by the criminal offense charged, not the administrative *per se* enforcement action.

An interlock requirement may be enforced by the criminal charge of driving while license revoked. As noted, that charge may be used in limited driving privilege cases and in cases in which the person's license is restored subject to the interlock requirement. In both cases, the charge is an implied consent offense (GS 20-179.3(j) and GS 20-17.8(f)). Whether a CVR is authorized, however, is still determined by the person's alcohol concentration, or his or her refusal. In most cases, the alcohol concentration will have to be more than 0.08, and in that case, a charge of impaired driving under GS 20-138.1 is likely to be lodged as well. The fact that the driver is exceeding the *per se* imposed by the interlock requirements is not sufficient to trigger the CVR statute. The provisions of GS 20-16.5 must also be satisfied to support a CVR.

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