

Alcohol Concentration Restrictions and Ignition Interlock: What's the Law?

Posted on Jan. 11, 2017, 2:38 pm by Shea Denning

Among the questions I am most frequently asked is: What is the proper charge when a person violates an alcohol concentration restriction on his or her driver's license? As soon as I answer that question, the next one comes in: Is the answer the same if the person violates an ignition interlock restriction? When I say that it is not, additional questions follow. If you too are unsure about the rules for charging and processing a person who is suspected of violating one of these types of license restrictions, I'm hoping the rest of this post will clear things up.

Alcohol concentration restrictions. When the North Carolina Division of Motor Vehicles (DMV) restores a person's North Carolina driver's license after it has been revoked for impaired driving or driving by a person under 21 after consuming, the license is restored subject to certain conditions. See G.S. 20-19(c3).

- If the person's driver's license was revoked for impaired driving and this is the first time the person's license has been restored, the license is restored subject to the condition that the person not operate a vehicle with an alcohol concentration of 0.04 at any relevant time after the driving. This restriction is denoted on the person's physical license card as Restriction 19.
- If the person's driver's license was revoked for driving after consuming by a person under 21, the license is restored subject to the condition that the person not operate a vehicle with an alcohol concentration of 0.00 at any relevant time after the driving. This restriction is denoted on the person's physical license card as Restriction 21. Restriction 21 also applies to a person whose license is restored for a second or subsequent time following a conviction of impaired driving.
- The licensee must agree to submit to a chemical analysis (breath, blood or urine test) at the request of a law enforcement officer who has reasonable grounds to believe that the licensee is operating a motor vehicle on a highway or public vehicular area in violation of the license restrictions. The person must also agree to be transported by the law enforcement officer upon the officer's request to the place where chemical analysis is to be administered.

Driving in violation of license restriction. G.S. 20-7(e) makes it unlawful for the holder of a restricted license to operate a motor vehicle without complying with the restriction and provides that this conduct "is the equivalent of operating a motor vehicle without a license." Thus, a person who operates a motor vehicle in violation of an alcohol

concentration restriction or who refuses to be transported for chemical testing commits the offense of failure to comply with a license restriction, a Class 3 misdemeanor.

Additional revocation. A law enforcement officer who has probable cause to believe that a person has violated a restriction imposed pursuant to G.S. 20-19(c3) must complete an affidavit indicating the restriction violated and must mail the affidavit to DMV. The form affidavit used to report such a violation is the same form used to report a person's refusal to submit to a test of his breath, blood or urine. Upon receipt of a properly executed affidavit, DMV must notify the person that his or her driver's license is revoked for one year.

Ignition interlock restriction. In addition to imposing alcohol concentration restrictions, DMV must require ignition interlock for drivers whose licenses are restored following a conviction for impaired driving if any of the following is true:

- The person had an alcohol concentration of 0.15 or more;
- The person has been convicted of another offense involving impaired driving, which occurred within seven years of the offense for which the person's license is revoked; or
- The person was sentenced at Aggravated Level One.

An ignition interlock restriction requires the following:

- The licensee may operate only a vehicle that is equipped with ignition interlock.
- The licensee must personally activate the ignition interlock system before driving the motor vehicle.
- The license must contain an alcohol concentration restriction of (i) 0.04 if ignition interlock is required only because of a 0.15 alcohol concentration (Restriction 20); (ii) 0.00 if ignition interlock is required because of a prior conviction or an Aggravated Level One sentence (Restriction 22); or (iii) 0.00 if the ignition interlock is required because of an alcohol concentration of 0.15 and the person has been convicted of another specified alcohol-related offense based on the same circumstances (Restriction 22).

Violation of ignition interlock restriction. A person who violates an ignition interlock restriction commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1), a Class 1 misdemeanor. G.S. 20-17.8(f). If a magistrate finds probable cause for driving while license revoked based on an ignition interlock violation, the magistrate must notify the person that his or her license is suspended pending the resolution of the case and must require the person to surrender the license. (The form revocation order is AOC-CR-341.) The magistrate must also inform the person that he or she is not entitled to drive until the case is resolved.