

# JUDGES CONFERENCE 2011

DMV ISSUES  
Presented By:  
Reita Smolka  
Chris Brooks  
Debbie Jones  
Jackie Mitchell

# ORDERS SUPPRESSING BAC LEVELS

## Blood Alcohol Content "Suppression Orders"

Ignition Interlock as a condition/requirement of Limited Driving Privilege.  
G.S. § 20-179.3

Ignition Interlock as requirement of restoration of Driving Privilege.  
G.S. § 20-17.8

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007  
SESSION LAW 2007-493  
SENATE BILL 999

SECTION 28. G.S. 20-17.8(a) reads as rewritten:

"(a) Scope. – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

- (1) The person had an alcohol concentration of ~~0.160~~0.15 or more; or
- (2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the Division to determine that person's alcohol concentration."

SECTION 29. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.160.15 or more, a judge shall include all of the following in a limited driving privilege order:

- (1) A restriction that the applicant may operate only a designated motor vehicle.
- (2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court."

SECTION 30. G.S. 20-179.3 is amended by adding a new subsection to read:

"(c1) Privilege Restrictions for High-Risk Drivers. – Notwithstanding any other provision of this section, any limited driving privilege issued to a person convicted of an impaired driving offense with an alcohol concentration of 0.15 or more at the time of the offense shall:

- (1) Not become effective until at least 45 days after the final conviction under G.S. 20-138.1;
- (2) Require the applicant to comply with the ignition interlock requirements of subsection (g5) of this section; and
- (3) Restrict the applicant to driving only to and from the applicant's place of employment, the place the applicant is enrolled in school, any court ordered treatment or substance abuse education, and any ignition interlock service facility.

For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court."

**SECTION 33.** Sections 26, 27, 28, 29, 30, and 31 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

The Courts and DMV

“The power to issue, suspend, or revoke a driver’s license is vested exclusively in the Department of Motor Vehicles, subject to review by the Superior Court and, upon appeal, by the appellate division.”

*Joyner v. Garrett*, 279 N.C. 226, 232, 182 S.E.2d 553, 558 (1971)  
(citations omitted)

Rights of Review  
G.S. § 20-25  
Writ of Certiorari  
Rule 19 of the General Rules of Practice  
Post-Conviction Motion for Appropriate Relief

*State v. Benbow*, 169 N.C. App. 613, 610 S.E.2d 297 (2005)  
(Application of GS 20-17.8 prior to Legislative changes in 2007 )

Collateral Estoppel

The requirements for the identity of issues to which collateral estoppel may be applied have been established by the North Carolina Supreme Court as follows:

1. the issues must be the same as those involved in the prior action;
2. the issues must have been raised and actually litigated in the prior action;
3. the issues must have been material and relevant to the disposition of the prior action, and
4. the determination of the issues in the prior action must have been necessary and essential to the resulting judgment.

Therefore, we must examine what issues were involved in the two respective actions. Specifically, we must determine what issues were fully litigated and finally decided by the jury’s verdict . . . .

*State v. Safrit*, 145 N.C. App. 541, 552-553, 551 S.E.2d 516, 523- 24(2001) (internal quotations and citations omitted)

**FAILURE TO APPEAR  
Sent in Error/Strike**

20-24.2(b) If an order is sent to the Division by the clerk through clerical mistake or other inadvertence, the clerk’s office that sent the report of noncompliance must withdraw the report and send notice to the Division which shall correct its records accordingly.

## LIMITED DRIVING PRIVILEGE

Always have certified MVR at time of issuance of limited driving privilege.