



# MOTOR VEHICLE LAW ISSUES

SEPTEMBER 2020 CLERKS OF SUPERIOR COURT CONFERENCE

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## AGENDA

- Implied-consent CVR issues – revocation period, incorrect orders, and license returns
- Vehicle seizure issues – speeding to elude by driver under 16, ownership problems (“title gap”), and defendant-owner release petitions



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## PART ONE: IMPLIED-CONSENT CVR ISSUES

- What is the revocation period?
- What if the magistrate's CVR order appears to be incorrect, or the magistrate should have entered a CVR order but did not?
- What requirements govern the return of the license at the end of the CVR period?



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### ISSUE #1: WHAT IS THE REVOCATION PERIOD? (G.S. 20-16.5(E) & (F))

- One way to think of the total CVR period is that it is three sections of time added together:
  - the time between the effective date of the order and the date of surrender +
  - the time between surrender and the end of the statutory period +
  - the time between the end of the statutory period and the payment of the CVR fee.
- See G.S. 20-16.5(e) (person-present CVR): “The revocation under this subsection begins at the time the revocation order is issued and continues until the person’s license has been surrendered for the period specified in this subsection, and the person has paid the applicable costs.”



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## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- *See also* G.S. 20-16.5(f) (person-not-present CVR): “A revocation under this subsection begins at the date specified in the order and continues until the person’s license has been revoked for the period specified in this subsection and the person has paid the applicable costs.” (Note: Like subsection (e), subsection (f) counts the statutory period from the date of surrender.)
- Situation #1 – Person-present CVR: For a *person-present* CVR order entered at the initial appearance, the revocation begins immediately upon the entry of the CVR order, and the statutory period lasts for 30 days from the date the defendant surrenders the license. Once the 30 days have run, the defendant must pay the CVR fee in order for the clerk to comply out the CVR.



## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- So, in a person-present situation, if the defendant surrenders the license to the magistrate immediately, the CVR will last 30 days from the date of the initial appearance (and until the defendant pays the CVR fee).
- If, however, the defendant delays the surrender, the delay will be added to the total CVR period.
- For example, if a defendant waits 3 days to surrender the license, the total CVR period will be  $3 + 30 = 33$  days from the date of the initial appearance (and until the defendant pays the CVR fee).
- If the defendant does not surrender the license within 5 business days of the magistrate’s CVR order, the clerk must issue a pick-up order using form CVR-4.



## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- Situation #2 – Person-not-present CVR: In a *person-not-present* CVR situation (i.e., where the clerk enters the CVR order at a later point in the case), the revocation begins on the fourth day after the order is placed in the U.S. Mail, and ordinarily lasts for 30 days from the date the defendant surrenders the license. Once the period has run, the defendant must pay the CVR fee in order for the clerk to comply out the CVR.
  - Just as in the person-present situation, if the person delays the surrender beyond the effective date of the order, this delay will lengthen the total amount of time the CVR is in effect.
  - For example, if a defendant waits 3 days from the effective date of the order to surrender the license, the total CVR period will be  $3 + 30 = 33$  days from the effective date of the order (and until the defendant pays the CVR fee).



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## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- If the defendant does not surrender the license within 5 business days of the effective date of the order, the clerk must issue a pick-up order using form CVR-4.
- In a person-not-present CVR situation, there is another consequence of the defendant delaying the surrender beyond 5 working days – the statutory CVR period becomes 45 days.
- So, for example, if the defendant waits 7 days from the effective date of the order to surrender, the total CVR period is  $7 + 45 = 52$  days from the effective date of the clerk's order (and until the defendant pays the CVR fee).
- Note: This 45-day rule applies only to person-not-present CVR orders. It does not apply to person-present CVR orders entered at the initial appearance.



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## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- In certain circumstances, a CVR that ordinarily would last only 30 (or 45) days will remain in effect indefinitely.
- If at the time of the current offense, the defendant has a prior CVR-triggering offense that still is pending, the current CVR remains in effect until both the prior offense and the current offense are finally disposed (including any appeals).
- For example, a defendant is charged with DWI in March and receives a CVR. While the March offense still is pending, the defendant is charged again with DWI in June and receives another CVR.
  - The March CVR lasts the usual amount of time (i.e., a 30- or 45-day period).
  - The June CVR, however, is indefinite. It will remain in effect until both the March DWI offense and the June DWI offense have been finally disposed, including appeals.



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## WHAT IS THE REVOCATION PERIOD? (CONTINUED)

- Note: Even if both offenses are quickly disposed, the second CVR must remain in effect for at least the amount of time it would have remained in effect had it not been indefinite (i.e., at least 30 or 45 days).



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ISSUE #2: WHAT IF THE MAGISTRATE’S CVR ORDER APPEARS TO BE INCORRECT, OR THE MAGISTRATE SHOULD HAVE ENTERED A CVR ORDER BUT DID NOT?

- **Situation #1 – Incorrect order:** Occasionally, the clerk will notice from the case record that the magistrate may have entered an incorrect CVR order.
  - For example, the magistrate may have ordered a regular 30-day CVR, but the clerk believes that the CVR should be indefinite because of a prior pending implied-consent offense.
  - For another example, the magistrate may have selected order option no. 1 indicating that the 30-day period began to run immediately, but there is no license card or affidavit in the file indicating that the defendant surrendered.



WHAT IF THE MAGISTRATE’S CVR ORDER APPEARS TO BE INCORRECT, OR THE MAGISTRATE SHOULD HAVE ENTERED A CVR ORDER BUT DID NOT? (CONTINUED)

ORDER		
It is ORDERED that the above-named person's <b>drivers license or privilege to drive be revoked</b> . 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 <b>at least thirty (30) days</b> from:		
<input type="checkbox"/> 1. this date		
<input type="checkbox"/> 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.		
<input type="checkbox"/> 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 <b>and</b> 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.		
<b>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.</b>		
I informed the above-named person of his/her rights to a hearing and gave him/her a copy of this Order.		
Date	Name Of Judicial Official (Type Or Print)	Signature Of Judicial Official
<b>NOTE: See reverse for supplemental findings and order, and for disposition of license.</b>		
<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		



WHAT IF THE MAGISTRATE'S CVR ORDER APPEARS TO BE INCORRECT, OR THE MAGISTRATE SHOULD HAVE ENTERED A CVR ORDER BUT DID NOT? (CONTINUED)

- The NCAOC has advised *against* the clerk making any changes to the magistrate's CVR order. There is no clear authority in G.S. 20-16.5 for a clerk to overrule or modify a magistrate's CVR order.
- Rather, the NCAOC has advised the clerk to bring the issue to the attention of the magistrate, and defer to the magistrate to decide whether to modify the order under G.S. 20-16.5(m).
- Situation #2 – No order at all: The clerk also may notice that the magistrate did not enter a CVR order despite the availability of the alcohol concentration results (or evidence of a willful refusal) at the time of the initial appearance.



WHAT IF THE MAGISTRATE'S CVR ORDER APPEARS TO BE INCORRECT, OR THE MAGISTRATE SHOULD HAVE ENTERED A CVR ORDER BUT DID NOT? (CONTINUED)

- It appears that neither the magistrate nor the clerk may later enter a CVR order in this situation.
- Under G.S. 20-16.5(d)(1), if the chemical analysis results (or the facts indicating a refusal) are available at the time of the initial appearance, then "the judicial official with whom the revocation report *must* be filed" (emphasis added) is the judicial official conducting the initial appearance.
- So, if the supporting information is available at the time the magistrate conducts the initial appearance, it appears that the CVR order must be entered then or not at all. The clerk cannot remedy this oversight with a person-not-present order.



### ISSUE #3: WHAT REQUIREMENTS COVER THE RETURN OF THE LICENSE AT THE END OF THE CVR PERIOD? (G.S. 20-16.5(H))

- The clerk may return the license if the following three criteria are met:
  - the license has been surrendered for the applicable statutory period; and
  - the defendant has paid the \$100.00 CVR fee; and
  - the defendant is eligible to use the returned license.
- As noted earlier, the defendant must surrender (by submitting the license card or filing an affidavit of lost license/no license) in order for the statutory period to run. If the defendant does not surrender, the defendant is not entitled to the compliance of the CVR simply because time has passed.
- Also as noted earlier, even if the defendant has surrendered for the required period, the CVR will remain in effect until the defendant has paid the CVR fee.



### WHAT REQUIREMENTS COVER THE RETURN OF THE LICENSE AT THE END OF THE CVR PERIOD? (CONTINUED)

- Even if the defendant has surrendered the license for the required period and has paid the CVR fee, the clerk may not return the license if the defendant is not eligible to use it.
- Ineligibility example #1: If the defendant has a second, indefinite CVR, then the clerk may not return the license at the end of the first, regular CVR. Instead, the clerk should transfer the license to the file for the second, indefinite CVR.
- Ineligibility example #2: If the defendant has a refusal revocation that is in effect when the CVR ends, the defendant is not eligible to use the license and the clerk may not return it. Instead, the clerk must forward the license to DMV.





## WHAT REQUIREMENTS COVER THE RETURN OF THE LICENSE AT THE END OF THE CVR PERIOD? (CONTINUED)

- If the license has expired while it was in the court file, the clerk may return it, but the clerk must caution the defendant that the license no longer is valid.
- The clerk should indicate the disposition of the license on side two of the CVR order form (CVR-2 or CVR-3).
- G.S. 20-16.5(h) governs the compliance of the CVR and the return of the license. The content of subsection (h) appears on the next two slides.



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## WHAT REQUIREMENTS COVER THE RETURN OF THE LICENSE AT THE END OF THE CVR PERIOD? (CONTINUED)

- G.S. 20-16.5(h) provides, in pertinent part, as follows:

“Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

- (1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j) [i.e., has paid the CVR fee]; or
- (2) The magistrate or judge has ordered the revocation rescinded.”



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## WHAT REQUIREMENTS COVER THE RETURN OF THE LICENSE AT THE END OF THE CVR PERIOD? (CONTINUED)

- G.S. 20-16.5(h) further provides:

“If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division [i.e., the NC DMV] or in another state, the clerk must mail it to the Division . . . . If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) [i.e., the CVR fee] must still be paid before the revocation under this section is terminated.”



## PART TWO: VEHICLE SEIZURE ISSUES

- Is a vehicle seizure appropriate when a person under 16 commits what would be felony speeding to elude if committed by an adult?
- What if the petitioning owner is not the owner of record with DMV?
- What are the release options where the owner also is the defendant?



### ISSUE #1: IS A VEHICLE SEIZURE APPROPRIATE WHEN A PERSON UNDER 16 COMMITS WHAT WOULD BE FELONY SPEEDING TO ELUDE IF COMMITTED BY AN ADULT?

- If a person under 16 engages in behavior that, if committed by an adult, would be felony speeding to elude, the NCAOC does not believe a seizure order is appropriate, at least not initially.
- For a felony speeding to elude seizure to be appropriate, the driver must be charged with that offense. G.S. 20-28.3(a1).
- Immediately following the driving event, there is no pending criminal charge to support the seizure because the driver is being processed as a juvenile.
- Accordingly, a seizure order will not appropriate unless and until the case is transferred to adult court.



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### IS A VEHICLE SEIZURE APPROPRIATE WHEN A PERSON UNDER 16 COMMITS WHAT WOULD BE FELONY SPEEDING TO ELUDE IF COMMITTED BY AN ADULT? (CONTINUED)

- If the clerk receives a seizure order from a magistrate in a juvenile case, the NCAOC advises the clerk (i) to notify the magistrate of the issue and (ii) *not* to place the CR-323B order in a public case file.
- The NCAOC advises the magistrate to amend the CR-323B order to rescind the seizure and direct the release of the vehicle, and then forward the rescinded/corrected seizure paperwork to the juvenile court counselor.
- If the defendant later is transferred to adult court, then the officer may decide to seek a CR-323B seizure order at that time, perhaps after consultation with the DA's Office under G.S. 7A-61 or the officer's agency counsel.



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## ISSUE #2: WHAT IF THE PETITIONING OWNER IS NOT THE OWNER OF RECORD WITH DMV?

- A situation that arises from time to time is a petitioner who recently purchased a vehicle and does not yet show as the owner in DMV's records. When the clerk reviews STARS following the seizure, the seller still is listed as the owner.
- In this situation, neither the buyer nor the seller have clear standing to petition.
- G.S. 20-28.2(a1)(3a) defines a "motor vehicle owner" for seizure law purposes as "[a] person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure."
- So, if DMV has not yet issued a registration card or title certificate in the buyer's name, then the buyer does not appear to be an owner for seizure law purposes.
- Having assigned all of his or her interest in the vehicle to the buyer, the seller does not appear to qualify as an owner either.



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## WHAT IF THE PETITIONING OWNER IS NOT THE OWNER OF RECORD WITH DMV? (CONTINUED)

- The NCAOC refers to this as the "title gap" situation.
- A common approach over the years has been for the buyer to file a motion in the cause in the criminal case and ask a judge to hear the matter.
- There are two theories underlying this approach:
  - First, judges have inherent authority that they exercise in appropriate circumstances.
  - Second, G.S. 20-28.3(b1) provides in its last sentence that a court may authorize the transfer of the title to a seized vehicle.
- It is the judge's decision whether he or she has the authority to hear the buyer's motion and enter an order. It is not something the seizure law expressly addresses.



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## WHAT IF THE PETITIONING OWNER IS NOT THE OWNER OF RECORD WITH DMV? (CONTINUED)

- Special Rule #1: There is a special rule that applies when the motor vehicle is part of the resale inventory of a licensed motor vehicle dealer.
  - Under G.S. 20-73 and G.S. 20-75, when a licensed dealer takes a vehicle into its inventory for the purpose of resale, the dealer is not required to title or register the vehicle in its name.
  - Accordingly, the NCAOC's view is that a licensed motor vehicle dealer has standing to petition for the release of a seized motor vehicle that was being held in the dealer's inventory for resale even if the dealer does not appear in STARS as the owner of the vehicle.



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## WHAT IF THE PETITIONING OWNER IS NOT THE OWNER OF RECORD WITH DMV? (CONTINUED)

- Special Rule #2: There is another special rule that applies when the petitioner possesses a temporary registration for the vehicle.
  - Upon the sale of a vehicle, the dealer often will provide the buyer with a temporary registration tag and temporary registration certificate. See G.S. 20-79.1(c) ("Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.")
  - DMV informed the NCAOC in May 2015 that "DMV considers the person with the temporary tag and the registration certificate provided by the dealer to be the owner of the vehicle."
  - So, in this situation, the NCAOC recommends that clerks honor DMV's position, and recognize the buyer with the temporary tag and temporary registration as the owner for seizure law purposes.



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### ISSUE #3: WHAT ARE THE RELEASE OPTIONS WHERE THE OWNER ALSO IS THE DEFENDANT? (G.S. 20-28.3(E2))

- The defendant-owner release options are different depending on whether the seizure is an impaired driving seizure or a felony speeding to elude seizure.
- For an *impaired driving seizure*, the defendant's only option is to demonstrate that, at the time of the offense that resulted in the seizure, the defendant's license was not revoked as the result of an impaired driving revocation.
  - The defendant-owner files the petition (form CR-333A) with the clerk. The clerk (i) schedules a hearing before a judge and (ii) forwards a copy to the DA's Office.
  - If the DA's Office consents to the release, then the clerk enters an order releasing the vehicle upon proof of liability insurance coverage, and there is no need for the hearing.
  - If the DA's Office does not consent, then the judge will make the release determination at the previously scheduled hearing.



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### WHAT ARE THE RELEASE OPTIONS WHERE THE OWNER ALSO IS THE DEFENDANT? (CONTINUED)

- For a *felony speeding to elude* seizure, the defendant's only option is to seek temporary bond release.
  - The defendant-owner files the petition (form CR-333B) with the clerk, and the clerk makes the release decision.
  - The motor vehicle must have been seized for at least 24 hours prior to the release, the defendant-owner must execute a bond for the fair market value of the vehicle as shown in STARS (using form CR-331B), and a bond posted to secure the release of this same motor vehicle under this same defendant-owner statutory release provision has not previously been ordered forfeited.
- The impaired driving release on form CR-333A is a permanent release. The felony speeding to elude release on form CR-333B is a temporary release.



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## WHAT ARE THE RELEASE OPTIONS WHERE THE OWNER ALSO IS THE DEFENDANT? (CONTINUED)

- The defendant-owner also is entitled to release if he or she is not convicted of the offense that triggered the seizure. G.S. 20-28.4(a). Forms CR-336A and CR-336B cover this situation. (At a later stage of the case, though, the vehicle no longer may be available for release. The statewide contractor already may have sold the vehicle under the G.S. 20-28.3(i) expedited sale provision.)
- For a comparison of impaired driving seizure and felony speeding to elude seizure, see the 4 November 2013 memo on JUNO entitled, "Changes to DWI Seizure and Felony Speeding to Elude Seizure Laws." The comparison table begins on page 5 of the memo.



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# THANK YOU

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