



# Magistrate Procedures for Ordering Civil License Revocations and the Seizure and Impoundment of Motor Vehicles

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## I. Introduction

Several issues in this series focus on the procedures magistrates should follow in conducting initial appearances. The procedures involving criminal cases generally are described in detail in Jessie Smith, *Criminal Procedure for Magistrates*, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/08 (UNC School of Government, Dec. 2009). Criminal cases involving implied consent laws, such as a charge of suspicion of impaired driving or an alcohol-related offense, may require magistrates to carry out several additional processes during the initial appearance. For example, magistrates may be required to revoke a defendant's driver's license, order that a vehicle driven by a defendant be seized and impounded, consider whether a defendant should be detained because his or her impairment poses a danger to others, and inform a defendant of the procedure for having witnesses appear at the jail to observe his or her condition or perform additional chemical analyses. The applicability of these procedures depends on the existence of factors specific to each. The procedures for detaining impaired drivers and for informing defendants of their right to secure witnesses and to obtain further chemical analyses are described in Shea Riggsbee Denning, *What's Knoll Got to Do with It? Procedures in Implied Consent Cases to Prevent Dismissals under Knoll*, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/07 (UNC School of Government, Dec. 2009).

This bulletin focuses on the aforementioned procedures governing civil license revocation and the seizure and impoundment of motor vehicles. This discussion is flanked at the beginning by a review of police processing procedures in implied consent cases and at the end by two appendixes. Appendix A contains Administrative Office of the Courts (AOC) forms referenced in the discussion, and Appendix B presents flowcharts illustrating the processes for ordering the revocation of a civil license and the seizure of motor vehicles.

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## II. Police Processing Duties in Implied Consent Cases

To understand the procedures applicable in connection with an initial appearance for an implied consent offense, one must first consider the activities undertaken by law enforcement officers and chemical analysts before that appearance.

When a person is arrested for an implied consent offense, or if criminal process has been issued, including a citation, a law enforcement officer who has reasonable grounds to believe that the person charged has committed the offense may require that person to undergo chemical analysis.<sup>1</sup> The officer is authorized to transport the accused to any location within North Carolina for the purposes of administering one or more chemical analyses.<sup>2</sup>

North Carolina law defines “chemical analysis” as a test or tests of the breath, blood, or other bodily fluid or substance of a person performed in compliance with statutory requirements to determine the person’s blood alcohol level or the presence of an impairing substance.<sup>3</sup> The concentration of alcohol in a person is expressed either as grams of alcohol per 100 milliliters of blood or as grams of alcohol per 210 liters of breath.<sup>4</sup> The results of a defendant’s alcohol concentration determined by a chemical analysis are reported to the hundredths, with any result between hundredths reported to the next-lower hundredth.<sup>5</sup>

Before any type of chemical analysis is administered, a person charged with an implied consent offense must be taken before a “chemical analyst,” defined as a person granted a permit by the Department of Health and Human Services under Section 20-139.1 of the North Carolina General Statutes (hereinafter G.S.) to perform such analyses.<sup>6</sup> The analyst must first inform the person charged as to, and provide that person with notice in writing of, the following rights:

- (1) You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
- (2) [*repealed, 2006*]
- (3) The test results, or the fact of your refusal, will be admissible in evidence at trial.
- (4) Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
- (5) After you are released, you may seek your own test in addition to this test.
- (6) You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.<sup>7</sup>

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1. Section 20-16.2(a) of the North Carolina General Statutes (hereinafter G.S.).

2. G.S. 20-38.3(2).

3. *Id.* § 20-4.01(3a).

4. *Id.* § 20-4.01(1b). The alcohol concentration for breath tests is based on an assumption that a breath alcohol concentration of 0.10 grams per 210 liters of breath is equivalent to a blood alcohol concentration of .10 percent, or, in other words, a 2100 to 1 blood-breath ratio. *See State v. Cothran*, 120 N.C. App. 633, 635, 463 S.E.2d 423, 424 (1995).

5. G.S. 20-4.01(1b).

6. *Id.* § 20-4.01(3b).

7. *Id.* § 20-16.2(a).

If a law enforcement officer has reasonable grounds to believe that a person has committed an implied consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusing the test, the officer may direct the taking of a blood sample or the administration of any other type of chemical analysis that may be effectively performed.<sup>8</sup> There is no requirement under state law that the chemical analyst inform such a person of the implied consent rights in G.S. 20-16.2(a) or that the person be asked to submit to the analysis pursuant to G.S. 20-16.2(c).<sup>9</sup>

The law enforcement officer or the chemical analyst designates the type of test or tests to be administered, that is, a test of blood, breath, or urine.<sup>10</sup> The officer or chemical analyst then asks the person to submit to the designated type of chemical analysis.<sup>11</sup> A person's refusal prevents testing under the implied consent laws but does not preclude testing pursuant to other applicable procedures of law,<sup>12</sup> such as pursuant to a search warrant or the exigency exception to the search warrant requirement of the Fourth Amendment to the United States Constitution.<sup>13</sup>

Chemical analyses are most frequently obtained through utilization of a breath-testing instrument.<sup>14</sup> The North Carolina Department of Health and Human Services approves breath-testing instruments on the basis of results of evaluations by the department's Forensic Tests for

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8. *Id.* § 20-16.2(b).

9. *Id.*

10. *Id.* § 20-16.2(c). Tests of urine are the only type of test of "other bodily fluid[s] or substances[s]" currently conducted pursuant to the implied consent procedures.

11. *Id.*

12. *Id.*; see also *State v. Davis*, 142 N.C. App. 81, 87, 542 S.E.2d 236, 240 (2001) (holding that results of blood and urine tests obtained pursuant to search warrant issued after defendant refused blood test were properly admitted at defendant's impaired driving trial, as "the General Assembly does not limit the admissibility of competent evidence lawfully obtained").

13. See G.S. 20-139.1(d1) (providing that if a person refuses to submit to a test, a law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine for analysis if the officer reasonably believes that the delay necessary to obtain a court order would result in the dissipation of the percentage of alcohol in the person's blood or urine) and *State v. Fletcher*, 202 N.C. App. 107, 688 S.E.2d 94 (2010) (finding exigent circumstances warranting blood draw and upholding G.S. 20-139.1 as constitutional); see also *Schmerber v. California*, 384 U.S. 757 (1966) (concluding that an officer's warrantless taking of the defendant's blood incident to his arrest for driving while impaired was constitutional under the Fourth Amendment where the officer reasonably believed he was confronted with an emergency in which the delay necessary to obtain a warrant threatened the dissipation of alcohol in the defendant's blood and where the blood was taken in a hospital environment according to accepted medical practices); *State v. Steimel*, 921 A.2d 378 (N.H. 2007) (upholding as constitutional warrantless blood draw to detect drugs incident to defendant's arrest for aggravated driving while intoxicated and refusing to distinguish between metabolization of alcohol and controlled drugs for purposes of applying the Fourth Amendment's exigency exception); *People v. Ritchie*, 181 Cal. Rptr. 773 (Cal. Ct. App. 1982) (upholding as constitutional warrantless blood draw to detect drugs incident to defendant's arrest for driving under the influence of drugs).

14. See Title 10A, Subchapter 41B, Section .0101(2) of the North Carolina Administrative Code (hereinafter N.C.A.C.); see also G.S. 20-139.1 (rendering a chemical analysis of the breath administered pursuant to the implied consent law admissible in court if it is performed in accordance with rules of the Department of Health and Human Services (DHHS) and the person performing the analysis had a current permit issued by DHHS authorizing him or her to perform a breath test using the type of instrument employed).

Alcohol Branch.<sup>15</sup> The breath-testing instrument currently authorized and used is the Intoximeter, Model Intox EC/IR II.<sup>16</sup> The operational procedures for the instrument are prescribed by statute and administrative regulation.<sup>17</sup> The person being tested must be observed to ensure that he or she has not ingested alcohol or other fluids or regurgitated, vomited, eaten, or smoked in the fifteen minutes immediately prior to the collection of a breath specimen.<sup>18</sup> At least two sequential breath samples must be tested.<sup>19</sup> The results of the chemical analysis of all breath samples is admissible in evidence in any court or administrative hearing if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration of more than 0.02.<sup>20</sup> Only the lower of the two test results of the consecutively administered tests may be used to prove a particular alcohol concentration.<sup>21</sup> A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis amounts to a refusal to submit to testing under G.S. 20-16.2(c).<sup>22</sup> A person's refusal to give the second or subsequent breath sample renders the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose.<sup>23</sup>

A person's willful refusal to submit to a chemical analysis may, depending on other factors, result in the revocation of his or her driver's license for a period of twelve months—in addition to resulting in the immediate civil revocation of his or her driver's license for a period of at least thirty days.<sup>24</sup> A refusal is “the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey.”<sup>25</sup> A *willful* refusal occurs when a person (1) is aware that he or she has a choice to take or refuse a test, (2) is aware of the time limit within which he or she must take the test, and (3) voluntarily elects not to take the test or knowingly permits the prescribed thirty-minute time limit to expire before electing to take the test.<sup>26</sup> In essence, a willful refusal is a refusal that occurs after the defendant is advised of his or her implied consent rights and is asked to submit to a chemical analysis.<sup>27</sup>

At a law enforcement officer's discretion, a person may be asked to submit to a chemical analysis of his or her blood or urine in addition to or in lieu of a chemical analysis of his or her breath.<sup>28</sup> If a subsequent chemical analysis is requested, the person must again be advised of the

15. 10A N.C.A.C. 41B, § .0313.

16. *Id.* § .0322.

17. G.S. 20-139.1; 10A N.C.A.C. 41B, § .0322.

18. 10 N.C.A.C. 41B, § .0101(6).

19. G.S. 20-139.1(b3).

20. *Id.*; see also 10A N.C.A.C. 41B, § .0322 (directing the collection of two breath samples and providing that if the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected).

21. G.S. 20-139.1(b3).

22. *Id.*

23. *Id.*

24. *Id.* § 20-16.2(d); -16.5.

25. *Joyner v. Garrett*, 279 N.C. 226, 233 (1971) (quoting BLACK'S LAW DICTIONARY (4th ed. 1951)).

26. *Etheridge v. Peters*, 301 N.C. 76, 81 (1980).

27. See, e.g., *Rice v. Peters*, 48 N.C. App. 697, 700–01 (1980) (holding that purpose of refusal-revocation statute is “fulfilled when the petitioner is given the option to submit or refuse to submit to a breathalyzer test and his action is made after having been advised of his rights in a manner provide by the statute”).

28. G.S. 20-139.1(b5).

implied consent rights under G.S. 20-16.2(a).<sup>29</sup> When a law enforcement officer specifies a blood or urine test as the type of chemical analysis to be conducted, a physician, registered nurse, emergency medical technician, or other qualified person must withdraw the blood sample or obtain the urine sample.<sup>30</sup> A person's willful refusal to submit to a blood or urine test constitutes a willful refusal to submit to testing under G.S. 20-16.2.<sup>31</sup>

In an implied consent case in which a defendant is asked to submit to a chemical analysis, the law enforcement officer and the chemical analyst (who may be the same person) complete a form called AOC-CVR-1A (Affidavit and Revocation Report; see Appendix A) averring that the implied consent testing procedures have been followed. The affidavit, which in certain cases (discussed below) serves also as a revocation report, typically is sworn and subscribed before a magistrate at the charged person's initial appearance.

After completing all investigatory and other specified procedures, crash reports, and chemical analyses, a law enforcement officer must take the person charged before a judicial official for an initial appearance.<sup>32</sup>

The procedures set forth in Article 24 of Chapter 15A of the General Statutes govern initial appearances in implied consent cases just as they do in other criminal cases, except where those procedures are modified by the implied consent offense procedures set forth in Article 2D of G.S. Chapter 20. The implied consent offense procedures permit a magistrate to hold an initial appearance at any place within the county and require, "to the extent practicable," that a magistrate "be available at locations other than the courthouse when it will expedite the initial appearance."<sup>33</sup> To determine whether there is probable cause to believe a person charged with an implied consent offense is impaired, a magistrate may review all alcohol screening tests<sup>34</sup> and chemical analyses and may receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest.<sup>35</sup> The magistrate also may observe the person arrested.<sup>36</sup>

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29. *Id.*

30. *Id.* § 20-139.1(c).

31. *Id.* § 20-139.1(b5).

32. *Id.* § 20-38.3(5).

33. *Id.* § 20-38.4(a)(1).

34. A valid alcohol screening test must be performed with an approved portable breath-testing device, such as an ALCO-SENSOR. G.S. 20-16.3(b), (c); 10A N.C.A.C. §§ 41B .0501–.0503. A law enforcement officer may use "[t]he fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result," in determining probable cause for an implied consent offense. G.S. 20-16.3(d). An officer also may use a driver's refusal to submit to an alcohol screening test in determining probable cause. *Id.*

A different rule governs the use of alcohol screening tests in cases in which a defendant is charged with driving by a person less than 21 years old after consuming alcohol. *See* G.S. 20-138.3(b2). In such cases, a law enforcement officer, court, or administrative agency may use the results of an alcohol screening test to determine whether alcohol was present in the driver's body. *Id.* Thus, not only may the results of the test be used in such cases, but reliance on the results also is not limited to determining probable cause.

35. *Id.* § 20-38.4(a)(2).

36. *Id.*

### III. Civil License Revocations

State law requires the immediate civil revocation of driver's licenses of certain persons charged with implied consent offenses.<sup>37</sup> When the results of a chemical analysis or reports indicating a refusal to submit to a chemical analysis are available at the time of the initial appearance, the law enforcement officer and chemical analyst involved in the case must execute a revocation report before the magistrate.<sup>38</sup> The magistrate must, after completing any other proceedings involving the person charged, determine whether there is probable cause to believe that the conditions requiring civil license revocation are met.<sup>39</sup>

#### A. Conditions Requiring Civil License Revocation

A person's driver's license is subject to civil revocation under G.S. 20-16.5 if each of the following four conditions is satisfied:

1. A law enforcement officer has reasonable grounds to believe that the person has committed an implied consent offense (see sidebar).
2. The person is charged with an implied consent offense.
3. The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and -139.1 in requiring the person to submit to or in procuring a chemical analysis.
4. The person:
  - a. willfully refuses to submit to the chemical analysis,
  - b. has an alcohol concentration of .08 or more within a relevant time after the driving,
  - c. has an alcohol concentration of .04 or more at any relevant time after the driving of a commercial motor vehicle, or
5. has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

Notwithstanding the statutory use of the present tense "has," it appears that a magistrate must base the determination of the first condition, namely, whether a law enforcement officer has reasonable grounds to believe the person has committed an implied consent offense, on whether those grounds existed at the time the implied consent testing procedures were initiated and not upon

#### Implied Consent Offenses

1. Impaired driving (G.S. 20-138.1).
2. Impaired driving in a commercial vehicle (G.S. 20-138.2).
3. Habitual impaired driving (G.S. 20-138.5).
4. Death by vehicle or serious injury by vehicle (G.S. 20-141.4).
5. First- or second-degree murder (G.S. 14-17) or involuntary manslaughter (G.S. 14-18) when based on impaired driving.
6. Driving by a person less than 21 years old after consuming alcohol or drugs (G.S. 20-138.3).
7. Violating no-alcohol condition of limited driving privilege (G.S. 20-179.3).
8. Impaired instruction (G.S. 20-12.1).
9. Operating commercial motor vehicle after consuming alcohol (G.S. 20-138.2A).
10. Operating school bus, school activity bus, or child care vehicle after consuming alcohol (G.S. 20-138.2B).
11. Transporting an open container of alcohol (G.S. 20-138.7(a)).
12. Driving in violation of restriction requiring ignition interlock (G.S. 20-17.8(f)).

*Note:* See G.S. 20-16.2(a1); -4.01(24a).

<sup>37</sup> *Id.* § 20-16.5.

<sup>38</sup> *Id.* § 20-16.5(c).

<sup>39</sup> *Id.* § 20-16.5(e).

whether reasonable grounds exist at the time of the initial appearance. If this interpretation is correct, the magistrate must *not* base the reasonable grounds determination on the results of the chemical analysis or on the defendant's willful refusal. This construction of G.S. 20-16.5 best comports with the statutory provisions that (1) permit implied consent testing only in circumstances in which a law enforcement officer has reasonable grounds to believe that a person has committed an implied consent offense<sup>40</sup> and (2) require the magistrate also to determine, before issuing a civil license revocation under G.S. 20-16.5, that "the law enforcement officer and the chemical analyst compl[ie]d with the procedure of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or [in] procuring a chemical analysis."<sup>41</sup>

The second condition for civil revocation of a person's driver's license requires that the person be charged with an implied consent offense. Again, this condition appears to refer to the grounds that existed before the implied consent testing procedures were initiated. A person is charged with an implied consent offense if the person is arrested for the offense or if criminal process for the offense has been issued.<sup>42</sup>

The third condition requires that the magistrate determine whether the law enforcement officer and chemical analyst complied with the implied consent testing procedures set forth in G.S. 20-16.2 and -139.1, which were discussed earlier in this bulletin in the section on the police processing duties in implied consent cases.

Finally, before civil license revocation can occur, the magistrate must determine whether the person charged willfully refused to submit to a chemical analysis or had an alcohol concentration at or exceeding the threshold level. The concept of willful refusal and the requirements for reported alcohol concentrations likewise are discussed in the earlier section on police processing duties.

Although normally a person submits to chemical analysis only after he or she is arrested and charged with an implied consent offense, a person who is stopped or questioned by a law enforcement officer who is investigating whether that person may have committed an implied consent offense may request that a chemical analysis be administered before any arrest or other charge is made.<sup>43</sup> Upon such a request, the officer must afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b).<sup>44</sup> The notice of rights required prior to administration of a pre-charge test is prescribed by statute and differs slightly from the notice provided in a case in which the person already has been charged with an implied consent offense.<sup>45</sup> A pre-charge chemical analysis can give rise to a license revocation if the following conditions are satisfied:<sup>46</sup>

1. The person requested a pre-charge chemical analysis pursuant to G.S. 20-16.2(i) and
2. The person has
  - a. an alcohol concentration of 0.08 or more at any relevant time after driving,
  - b. an alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle, or

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40. *Id.* § 20-16.2(a).

41. *Id.* § 20-16.5(b)(3).

42. *Id.* § 20-16.2(a1).

43. *Id.* § 20-16.2(i).

44. *Id.*

45. *Id.*

46. *Id.* § 20-16.5(b1).

- c. any alcohol concentration at any relevant time after driving and the person is under 21 years of age, and
- 3. The person is charged with an implied consent offense.

***Driving in Violation of an Alcohol Restriction That Is Not an Implied Consent Offense***

When a person's license is restored after having been revoked as a result of his or her conviction for being under the age of 21 and driving after consuming alcohol or drugs, for impaired driving, or for another offense involving impaired driving specified in G.S. 20-19, the license is restored with the restriction that the person not operate a motor vehicle while having an alcohol concentration greater than 0.04 or, in the case of a second or subsequent restoration or conviction of certain specified offenses involving impaired driving, a concentration exceeding 0.00.<sup>47</sup> A person seeking to have his or her license restored must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe that the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction. The person must also agree to be transported by the officer to the place where the chemical analysis is to be administered.

Magistrates frequently question whether a person who drives in violation of such a restriction is subject to civil license revocation based merely on the violation of the alcohol restriction. The usual answer is no. Driving in violation of an alcohol restriction imposed as a condition of a license restoration pursuant to G.S. 20-19(c3) is *not* an implied consent offense, so the conditions for civil license revocation are not met based merely on violating such a restriction. That said, there may be instances in which there is probable cause to believe that a person with an alcohol restriction has, in addition to violating the conditions of a restricted license, also committed an implied consent offense. In such a case, if the other conditions for civil license revocation exist, the civil revocation must be issued.

One reason for the confusion may be that in addition to its use in the civil revocation context, the AOC-CVR-1A form is used also to report violations of alcohol concentration restrictions to the North Carolina Department of Motor Vehicles (DMV). G.S. 20-16.2(c1) requires that when a person's driver's license has an alcohol concentration restriction and the results of a chemical analysis establish a violation of that restriction, or when a law enforcement officer has reasonable grounds to believe that the person has violated another provision of the restriction, the law enforcement officer must execute an affidavit regarding the violation and "immediately mail" it to the DMV.

The officer must designate in item 2 of AOC-CVR-1A the type of driver's license restriction and specify in item 3 of the form the nature of the restriction violation. Upon receipt of a properly executed AOC-CVR-1A setting forth a restriction violation, the DMV must notify the person that his or her driver's license is revoked for the period of time specified under G.S. 20-19, effective on the tenth calendar day after the mailing of the revocation order, unless before the effective date of the order the person requests in writing a hearing before the DMV.<sup>48</sup>

<sup>47</sup>. *Id.* § 20-19(c3).

<sup>48</sup>. *Id.* § 20-19(c5).

### ***Driving in Violation of Ignition Interlock Restriction***

Certain persons convicted of impaired driving may have their licenses restored only in conjunction with an ignition interlock restriction.<sup>49</sup> A person whose license is revoked as a result of a conviction of impaired driving pursuant to G.S. 20-138.1 who had either (1) an alcohol concentration level of 0.15 or higher or (2) a prior conviction for an offense involving impaired driving, that offense having occurred within seven years immediately preceding the date of the offense for which the person's license is revoked, may have his or her license restored only with an ignition interlock restriction.<sup>50</sup> This requires that a person operate only a vehicle that is equipped with a functioning ignition interlock system.<sup>51</sup> The person must personally activate the ignition interlock system before driving the vehicle.<sup>52</sup> An alcohol concentration restriction of 0.04 or 0.00 also applies, with the level dependent on the circumstances of the conviction giving rise to the ignition interlock requirement.<sup>53</sup>

A person who violates an ignition interlock restriction commits the offense of driving while license revoked (DWLR) under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section.<sup>54</sup> If a law enforcement officer has reasonable grounds to believe that a person subject to an ignition interlock restriction has consumed alcohol while driving or has driven while any previously consumed alcohol remains in his or her body, the suspected offense of DWLR is an alcohol-related offense subject to the implied consent provisions of G.S. 20-16.2.<sup>55</sup>

Thus, certain violations of ignition interlock restrictions constitute implied consent offenses. If a person is charged with such an offense and the other requirements of G.S. 20-16.5 are satisfied, the magistrate must order the person's driver's license civilly revoked under G.S. 20-16.5.

The person's license also will be suspended pursuant to G.S. 20-17.8, which provides that when a person subject to an ignition interlock restriction is charged with DWLR based on a violation of the ignition interlock restrictions set forth in G.S. 20-17.8(b)<sup>56</sup> and the judicial official finds probable cause for the charge, the person's license is suspended pending resolution of the case. G.S. 20-17.8 provides that the judicial official must require the person to surrender the license and inform the person that he or she is not entitled to drive until the case is resolved.

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49. *Id.* § 20-17.8.

50. G.S. 20-17.8(l) sets forth a medical exception to the ignition interlock requirement for people who establish that they are not capable of personally activating the ignition interlock system.

51. *Id.* § 20-17.8(b)(1).

52. *Id.* § 20-17.8(b)(2).

53. *Id.* § 20-17.8(b)(3).

54. *Id.* § 20-17.8(f).

55. *Id.*

56. These restrictions are that the person (1) operate only a vehicle equipped with interlock, (2) personally activate the ignition interlock before driving, and (3) comply with the alcohol concentration restrictions. The requirement that a person subject to ignition interlock have all registered vehicles owned by him or her equipped with ignition interlock unless the DMV determines that one or more vehicles owned by that person are relied upon by a family member for transportation and that such a vehicle is not in the possession of the restricted person is contained in G.S. 20-17.8(c1). Thus, a violation of this requirement alone does not give rise to a G.S. 20-17.8(f) revocation. Nor would it constitute an implied consent offense, since it would not involve the consumption of alcohol while driving or driving while previously consumed alcohol remains in the body.

## B. Affidavit and Revocation Report (AOC-CVR-1A)

In implied consent cases in which a law enforcement officer and a chemical analyst determine that the conditions requiring an immediate civil license revocation exist, the law enforcement officer and chemical analyst (who may be the same person) must execute an AOC-CVR-1A.<sup>57</sup> This report is a sworn statement (affidavit) by a law enforcement officer and chemical analyst containing facts indicating that the conditions requiring a civil license revocation are met and reporting whether the person has a pending offense for which his or her license had been or is revoked under the civil revocation statute.<sup>58</sup>

A law enforcement officer must ensure that the AOC-CVR-1A is expeditiously filed with the appropriate judicial official. If no revocation report has previously been filed and the results of the chemical analysis or the reports indicating the defendant's willful refusal to submit to a chemical analysis are available, the law enforcement officer must file the report with the judicial official conducting the initial appearance on the underlying criminal charge—typically a magistrate.<sup>59</sup>

After completing any other proceedings involving the person charged, the magistrate must determine whether there is probable cause to believe that the conditions requiring civil license revocation are satisfied.<sup>60</sup> If the magistrate determines that the requirements are met, the magistrate must enter an order revoking the defendant's license for the requisite period, unless the exception for revoked licenses, described below, applies.<sup>61</sup> The revocation begins at the time the order is issued.<sup>62</sup>

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57. The charging officer may also perform the work of the chemical analyst—the person authorized to conduct chemical analyses of the breath—if the officer has a current permit issued by the Department of Health and Human Services authorizing him or her to perform a breath test using the type of instrument employed. G.S. 20-139.1(b1).

58. *Id.* § 20-16.5(a)(4). If the charging officer and the chemical analyst are different people, the officer will complete the pertinent part of one AOC-CVR-1A (paragraphs 1–5), and the chemical analyst will complete the remaining portions (paragraphs 6–14) of a separate AOC-CVR-1A. If one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his or her rights and responsibilities under G.S. 20-16.2, the affidavit and report must include the statements of both analysts. The officer also must state in the last block of paragraph 4 of the AOC-CVR-1A whether the person charged has a pending offense for which the person's license has been or is revoked under G.S. 20-16.5, as this will affect the length of the revocation period.

59. *Id.* § 20-16.5(d)(1). If no report has previously been filed and the results or reports indicating a refusal were not available at the initial appearance, the report must be filed with a judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present. *Id.* § 20-16.5(d)(2). If neither G.S. 20-16.5(d)(1) nor (d)(2) is applicable at the time the law enforcement officer must file the report, the report must be filed with the clerk of superior court in the county in which the underlying criminal charge has been brought. *Id.* § 20-16.5(e).

60. *Id.* § 20-16.5(e).

61. A person's license is subject to immediate civil revocation if the aforementioned statutory requirements are met—even if the person was driving a vehicle for which no license was required, such as a moped, bicycle, or lawn mower.

62. G.S. 20-16.5(e).

***Exception for Revoked Licenses***

If the magistrate finds that the person whose license is subject to civil revocation has a currently revoked driver's license, no limited driving privilege, and will not become eligible for restoration of his or her license or a limited driving privilege during the period of civil revocation, the magistrate is not required to issue the civil revocation order.<sup>63</sup> If this exception applies and the revocation order is not issued, the magistrate must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he or she relied in making that determination.<sup>64</sup>

***Multiple Offenses***

A person may be charged with more than one implied consent offense arising from a single event. For example, as a result of one episode of driving while impaired, a person may be charged under G.S. 20-138.1 as well as under G.S. 20-138.3 if the driver is less than 21 years old. Both of these offenses are implied consent offenses that, when combined with other requisite factors, require a civil license revocation. However, when a defendant is charged with more than one offense requiring a civil license revocation based on conduct arising from a single occurrence, only one civil license revocation should be issued.

**C. Revocation Order When the Person Is Present (AOC-CVR-2)**

The form a magistrate must use to enter a revocation order is AOC-CVR-2 (Revocation Order When Person Present; see Appendix A). The magistrate must check the appropriate box under paragraph 4 of the findings for probable cause section of the form to indicate whether the defendant (a) willfully refused to submit to a chemical analysis, (b) had an alcohol concentration of 0.08 or more at any relevant time after driving, (c) had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle, or (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. If the defendant has been charged with an offense for which his or her license had been or is revoked pursuant to G.S. 20-16.5 and that offense is pending, the magistrate must so indicate by checking paragraph 5 in the same section.

The magistrate must then complete the order portion of AOC-CVR-2. There, the magistrate must indicate that the revocation is in effect for at least thirty days from one of three dates: (1) the date the order is entered [box 1], (2) the date the defendant surrenders his or her driver's license to the court or demonstrates that he or she is not currently licensed to drive [box 2], or (3) the date the defendant, if found in the probable cause section of AOC-CVR-2 to have certain offenses pending against him or her, surrenders his or her driver's license to the court or demonstrates that he or she is not currently licensed to drive; in this circumstance, the magistrate must also indicate that the defendant will remain ineligible to drive indefinitely, until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses for which his or her driver's license had been or is revoked under G.S. 20-16.5 [box 3]. If the person surrenders his or her license at the time of revocation and has no pending offenses for which the license was or is revoked under G.S. 20-16.5, the magistrate checks box 1. If the person does not surrender his or her license at the time of the revocation but has no pending offenses for which the license was revoked, the magistrate checks box 2. If the magistrate

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63. *Id.* § 20-16.5(n).

64. *Id.*

checked box 5 in the findings for probable cause section, indicating that the person has a pending offense for which his or her license is or was civilly revoked, the magistrate must check box 3 in the order portion of the form, indicating that the current civil revocation is indefinite in duration. Again, these provisions provide the starting date for measuring the minimum term of the revocation. The revocation begins at the time the revocation order is issued by the magistrate.<sup>65</sup>

### ***Notifying the Defendant***

The magistrate must give the defendant a copy of the revocation order. Although G.S. 20-16.5 does not require that the magistrate orally notify the defendant of the revocation period, a magistrate should, in the interest of securing compliance with the revocation, inform the defendant that his or her license is revoked for at least thirty days. If box 3 of the order portion of AOC-CVR-2 is checked, indicating an indefinite revocation, the magistrate should inform the defendant that his or her license is revoked for at least thirty days and that it remains revoked indefinitely, until a final judgment is entered for the current offense and all pending offenses for which his or her license had been or is revoked under G.S. 20-16.5. The magistrate must state in the order and personally inform the defendant that he or she may request a hearing to contest the validity of the revocation order and that his or her license remains revoked pending that hearing.<sup>66</sup>

### ***Surrender of License***

Upon entering the revocation order, the magistrate must order the person charged to surrender his or her license and, if necessary, may order a law enforcement officer to seize the license.<sup>67</sup> Licenses issued by jurisdictions other than North Carolina are covered by the surrender provisions and must, like North Carolina driver's licenses, be surrendered to the magistrate.<sup>68</sup>

If within five working days of the effective date of the order the person does not surrender his or her license or demonstrate that he or she is not currently licensed, the clerk must immediately enter a Drivers License Pick-Up Order (AOC-CVR-4; see Appendix A).<sup>69</sup>

A person may surrender a driver's license by turning over to a court or a law enforcement officer his or her most recent, valid driver's license or learner's permit or a limited driving privilege issued by a North Carolina court.<sup>70</sup> In July 2008, the North Carolina DMV launched a central system for issuing licenses.<sup>71</sup> Under this system, a person who applies to renew his or her driver's license does not receive a newly minted license from the local DMV office.<sup>72</sup> Instead, the person receives a temporary driving certificate valid for twenty days.<sup>73</sup> In the interim, the person's driver's license is produced at a central location and then mailed to the applicant.<sup>74</sup> When a magistrate orders a civil license revocation for a person who has a temporary driving certificate rather than a renewed license, the magistrate should require the driver to surrender

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65 *Id.* § 20-16.5(e).

66 *Id.*

67 *Id.*

68 *Id.* § 20-16.5(a)(5).

69 *Id.* § 20-16.5(e).

70 *Id.*

71 *See id.* § 20-7(f)(5).

72 *Id.*

73 *Id.*

74 *Id.*

the temporary certificate. The magistrate should further instruct the person that upon receiving his or her renewed license in the mail, he or she must surrender it to the office of the clerk for superior court for the remainder of the revocation period.

#### ***No License or Lost License (AOC-CVR-8)***

A person who is validly licensed but is unable to locate his or her license may surrender the license by filing ***with the clerk of superior court*** form AOC-CVR-8 (Affidavit—No License; see Appendix A), indicating why, though validly licensed, he or she does not possess the license card.<sup>75</sup> Because an affidavit establishing that a person has lost his or her license may only be filed with the clerk, the magistrate should never check box 2 in the supplemental findings section of the AOC-CVR-2.<sup>76</sup> Instead, the clerk must check this box upon his or her receipt of the affidavit of lost license. In contrast, a person who is not licensed to drive by North Carolina or by any other jurisdiction and who, thus, has no license may complete form AOC-CVR-8 and submit the affidavit to ***either the magistrate or the clerk***. A charged person also may demonstrate to the magistrate that he or she is not licensed by producing appropriate identification that the magistrate can check against North Carolina DMV records. If a person submits AOC-CVR-8 to establish that he or she does not have a license or otherwise demonstrates to the magistrate that he or she has no license, the magistrate must check box 3 in the supplemental findings and order section on side two of AOC-CVR-2, indicating that the person demonstrated that he or she was not currently authorized to drive in North Carolina, and must record the time and date in the first sentence of this section of the form. The magistrate must then sign and date the supplemental findings and order section.

#### ***Revocation Period***

A civil license revocation ordered by a magistrate begins at the time the revocation order is issued and continues until the person's license has been surrendered for the minimum revocation period (discussed below) and the person has paid the applicable costs.<sup>77</sup> Revocations under G.S. 20-16.5 are never shorter than thirty days from the date the person surrenders the license. The revocation period may be longer, depending on whether, at the time of the present implied consent offense, the person has a pending offense for which his or her license was or has been revoked under G.S. 20-16.5.

The sidebar sets forth the revocation period for persons who *do not* have an implied consent charge pending at the time of the current offense. For a person who, at the time of the new offense has a pending implied consent charge for which his or her license was or is civilly revoked under

#### **For Persons Who *Do Not* Have a Pending Implied Consent Charge at the Time of the Current Offense, the Civil Revocation Concludes When:**

1. The person has surrendered his or her license or has demonstrated to the court that he or she has no license or has lost his or her license;
2. Thirty days (forty-five days if the person fails to surrender his or her license within five working days after the effective date of a revocation order issued by a clerk and served by mail) have passed since the license was surrendered; and
3. The person has paid the \$100 in costs.

<sup>75</sup> *Id.* § 20-16.5(a)(5).

<sup>76</sup> In checking this box, the magistrate is indicating that he or she—not, as is appropriate, the clerk—received the person's lost license affidavit.

<sup>77</sup> G.S. 20-16.5(e).

G.S. 20-16.5, the new civil revocation is indefinite and lasts until a final judgment (including all appeals) has been entered for the current offense and all pending implied consent offenses. In no event may the revocation period be shorter than thirty days. This indefinite revocation period applies regardless of whether the *civil revocation* in the earlier case was in place at the time of the instant offense; the key is whether the prior implied consent charge itself is still pending.

#### **D. Contesting a License Revocation (AOC-CVR-5)**

As previously mentioned, a person whose license is revoked under G.S. 20-16.5 may request a hearing to contest the validity of the revocation. The request must be in writing and may be made at the time of the person's initial appearance or within ten days of the effective date of the revocation.<sup>78</sup> The appropriate form for the hearing request is AOC-CVR-5 (Request for Hearing to Contest License Revocation; see Appendix A). The hearing request must be made to the magistrate at the initial appearance or, if made after the initial appearance, to the clerk or a magistrate designated by the clerk.<sup>79</sup> The written request must specify the grounds upon which the revocation is challenged.<sup>80</sup> The ensuing hearing must be limited to the grounds specified in that request.<sup>81</sup>

The person may specifically request that the hearing be conducted by a district court judge.<sup>82</sup> If the person does not make that request, the hearing must be conducted by a magistrate assigned by the chief district court judge to conduct such hearings.<sup>83</sup> The General Statutes are silent on the matter, but in order to ensure an impartial review, the hearing where the validity of the license revocation is being challenged should be held by a magistrate other than the magistrate who entered the initial revocation order. If the person does request that a district court judge hold the hearing, it must be conducted within the district court district by a district court judge assigned to conduct such hearings.<sup>84</sup> The revocation remains in effect pending the hearing.<sup>85</sup> The hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if before a district court judge.<sup>86</sup> If the hearing is not held and completed by a magistrate within three working days or by a district court judge within five working days of the written request, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay.<sup>87</sup> If the person requesting the hearing fails to appear at the hearing or at any rescheduled hearing after having been properly notified, he or she forfeits the right to a hearing.<sup>88</sup>

A witness may submit evidence via affidavit at the hearing unless the witness is subpoenaed.<sup>89</sup> Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if

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78. *Id.* § 20-16.5(g).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

he or she deems it necessary.<sup>90</sup> If the hearing is adjourned, it must be reconvened and the matter resolved within the applicable time limit (three working days if held by the magistrate, five working days if held by a district court judge).<sup>91</sup> The person contesting the validity of the revocation may, but is not required to, testify on his or her own behalf.<sup>92</sup> Unless contested by the person requesting the hearing, statements in the revocation report may be accepted as true by the judicial official.<sup>93</sup> If any relevant condition under G.S. 20-16.5(b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation.<sup>94</sup> At the end of the hearing, the judicial official must enter an order on side two of AOC-CVR-5 sustaining or rescinding the revocation. The decision of the judicial official is final and may not be appealed.<sup>95</sup>

### E. Return of License

After the applicable period of revocation has passed, or if a magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of the surrendered license. The clerk generally keeps surrendered licenses rather than mailing them to the DMV. An exception applies if the person's license is revoked pursuant to G.S. 20-16.5 and revoked under another section of G.S. Chapter 20. In such cases, the clerk must surrender the license to the DMV if the G.S. 20-16.5 revocation can end before the other revocation.<sup>96</sup> The \$100 in costs<sup>97</sup> still must be paid before the G.S. 20-16.5 civil revocation may be terminated, even after the other revocation ends.<sup>98</sup>

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90. *Id.*

91. *Id.* As previously noted, an exception to the requirement that the revocation be rescinded if the hearing is not timely held and completed applies when the person contesting the revocation contributed to the delay.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. An exception applies for out-of-state licenses revoked because the driver refused to submit to a chemical analysis. When a person refuses to submit to a chemical analysis, the person's license is revoked by the DMV for twelve months, unless the person requests a hearing on the matter and the DMV concludes that certain statutory requirements are not met. G.S. 20-16.2(d). Upon refusal to submit to testing by a nonresident and out-of-state license holder, the DMV may revoke only the person's privilege to drive in North Carolina—not the person's privilege to drive in his or her home state. *See id.* § 20-16.2(f) (providing for notice to other states of revocation of nonresident's privilege to drive a motor vehicle in North Carolina based on a refusal to submit to a chemical analysis); *see also* State v. Streckfuss, 171 N.C. App. 81, 85–87, 614 S.E.2d 323, 326–327 (2005) (implicitly recognizing that North Carolina lacks authority to prohibit a nonresident from driving in his or her home state). For this reason, the DMV will not accept out-of-state licenses, and the clerk must return such licenses to the license holder upon satisfaction of the conditional revocation period and payment of costs. The DMV will, however, pursuant to the provisions of G.S. 20-16.2(f), notify both the state of the person's residence and any state in which the person is licensed of the revocation of the North Carolina driving privilege.

97. Of the total fee, 50 percent is credited to the state's general fund; 25 percent must be used for the statewide chemical alcohol testing program administered by the Forensic Tests for Alcohol Branch of the Department of Health and Human Services; and the remaining 25 percent must be remitted to the county as reimbursement for jail expenses incurred due to enforcement of the impaired driving laws. G.S. 20-16.5(j).

98. *Id.* § 20-16.5(h).

Upon application, a clerk must return a person's license if (1) the applicable period of revocation has passed and the person has paid the \$100 in costs or (2) the magistrate or judge has rescinded the revocation.<sup>99</sup> If the license has expired, the clerk may return it to the person with a caution that it is no longer valid.<sup>100</sup> If the person has surrendered his or her copy of a limited driving privilege and is no longer eligible to use it, the clerk must make a record that the limited driving privilege was withheld.<sup>101</sup> The clerk must then forward that record to the clerk in the county in which the limited driving privilege was issued for inclusion in the case file.<sup>102</sup>

#### F. Nature of Revocation

Civil license revocations imposed pursuant to G.S. 20-16.5 are intended to “prevent unsafe and unfit drivers from operating vehicles and endangering the citizens of North Carolina”<sup>103</sup> rather than to punish drivers for conduct for which they have not yet been convicted. A civil revocation pursuant to G.S. 20-16.5 revokes a person's privilege to drive in North Carolina regardless of the source of his or her authorization to drive.<sup>104</sup> Revocations under G.S. 20-16.5 are independent of and run concurrently with other revocations.<sup>105</sup> A court that imposes a period of revocation upon conviction of an offense involving impaired driving may not give credit for any period of revocation imposed under G.S. 20-16.5.<sup>106</sup>

#### G. Limited Driving Privileges

A person whose license is civilly revoked under G.S. 20-16.5 for thirty or forty-five days may apply to the court for a limited driving privilege<sup>107</sup> if the following conditions are met: (1) at the time of the alleged offense, the person held a valid driver's license or one that had been expired for less than one year; (2) except for the charge for which the license is currently revoked, the person does not have (a) an unresolved pending charge involving impaired driving or (b) additional convictions for an offense involving impaired driving since being charged for the violation for which the license is currently revoked under G.S. 20-16.5; (3) the person's license has been revoked for at least ten days if the revocation period is thirty days or for at least thirty days if the revocation period is forty-five days; and (4) the person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.<sup>108</sup> Any district court judge authorized to hold court in the judicial district where the case is pending is authorized to issue such a limited privilege.<sup>109</sup> Other judicial officials, such as clerks and magistrates, are not authorized to do so.

A person whose license has been indefinitely revoked under G.S. 20-16.5 (which occurs when the person has a pending charge for an implied consent offense involving impaired driving at

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99. *Id.*

100. *Id.*

101. *Id.* § 20-16.5(h).

102. *Id.*

103. *State v. Evans*, 145 N.C. App. 324, 332–33, 550 S.E.2d 853, 859 (2001).

104. G.S. 20-16.5(i).

105. *Id.*

106. *Id.*

107. A limited driving privilege is a judgment issued by a court authorizing a person with a revoked driver's license to drive for limited purposes and at limited times. *Id.* § 20-179.3(a).

108. *Id.* §§ 20-16.5(i), (p).

109. *Id.* § 20-16.5(p)

the time of the instant alleged offense) may, after completing thirty days of revocation or forty-five days if the license was surrendered more than five working days after the effective date of the revocation order entered by the clerk, apply for a limited driving privilege.<sup>110</sup> A judge of the division in which the instant charge is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the following eligibility requirements: (1) at the time of the offense, the person held either a valid driver's license or a license that had been expired for less than one year; (2) at the time of the offense, the person had not within seven years been convicted of an offense involving impaired driving; (3) after the current offense, the person has not been convicted of, or charged with, 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 restoration of a driver's license.<sup>111</sup>

#### H. Driving While License Civilly Revoked

A person who drives while his or her license is civilly revoked commits the offense of driving while license revoked (DWLR) under G.S. 20-28. This is true even when the minimum revocation period has expired at the time of the driving and the person is eligible to have his or her license returned upon payment of costs. G.S. 20-28(a1) provides that a person convicted of DWLR for driving after the minimum revocation period had expired but before reclaiming his or her license is punished as if the person has been convicted of the less serious offense of driving without a license. This reduced punishment does not alter the charge or conviction of DWLR.

### IV. Vehicle Seizure and Impoundment

The final procedure discussed in this bulletin is vehicle seizure and impoundment. This procedure applies only to offenses involving impaired driving, which constitute a subset of the broader category of implied consent offenses. G.S. 20-28.3 provides that a motor vehicle driven by a person charged with an offense involving impaired driving is subject to seizure if at the time of the violation (1) the driver's license of the person driving the motor vehicle was revoked as the result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a) or (2) the person was not validly licensed and was not covered by an automobile liability policy.<sup>112</sup>

A judge later determines at the defendant's sentencing or other hearing whether a motor vehicle driven by an impaired driver and seized and impounded pursuant to G.S. 20-28.3 is subject to an order of forfeiture.<sup>113</sup> The proceeds of any forfeiture sale are disbursed to the county board of education.<sup>114</sup>

#### A. Key Terms Defined

An understanding of several terms is required to determine whether a motor vehicle is subject to seizure pursuant to G.S. 20-28.3. The terms "motor vehicle," "offenses involving impaired driving," "prior impaired driving license revocations," "driving without a valid drivers license,"

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110. *Id.*

111. *Id.*

112. *Id.* § 20-28.3(a).

113. *Id.* § 20-28.2.

114. *Id.* § 20-28.2(d).

and driving while “not covered by an automobile liability policy” are defined in the following paragraphs. The second and third terms also are defined on side two of form AOC-CR-323 (Officer’s Affidavit for Seizure and Impoundment and Magistrate’s Order; see Appendix A).

### ***Motor Vehicle***

The term “motor vehicle” is defined as “[e]very vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.”<sup>115</sup> The term does not include mopeds,<sup>116</sup> which are vehicles with “two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface.”<sup>117</sup> Only ***motor vehicles*** are subject to seizure pursuant to G.S. 20-28.3.

### ***Offenses Involving Impaired Driving***

The term “offenses involving impaired driving” is defined in G.S.20-4.01(24a) to consist of the following offenses:

- impaired driving under G.S. 20-138.1;
- habitual impaired driving under G.S. 20-138.5;
- impaired driving in commercial vehicle under G.S. 20-138.2;
- any offense under G.S. 20-141.4 based on impaired driving (felony death by vehicle and felony serious injury by vehicle);
- first- or second-degree murder under G.S. 14-17 based on impaired driving;
- involuntary manslaughter under G.S. 14-18 based on impaired driving;
- substantially similar offenses committed in another state or jurisdiction.

As previously noted, a motor vehicle driven by a person during the commission of an impaired driving offense (defined above) is subject to seizure in two circumstances: (1) if, at the time of the violation, the person’s driver’s license was revoked as a result of a prior impaired driving license revocation or (2) if, at the time of the violation, the person was not validly licensed and was not covered by an automobile liability policy.

### ***Prior Impaired Driving License Revocations***

This term is defined by G.S. 20-28.2(a) to include revocations made under any of the following statutes:

- G.S. 20-13.2: consuming alcohol or drugs or willful refusal by driver under age 21 to submit to chemical analysis;
- G.S. 20-16(a)(8b): driving while impaired on a military installation;
- G.S. 20-16.2: refusal to take a chemical test;
- G.S. 20-16.5: pretrial civil license revocation;
- G.S. 20-17(a)(2): impaired driving or impaired driving in a commercial vehicle;
- G.S. 20-138.5: habitual impaired driving;
- G.S. 20-17(a)(12): transporting an open container of alcohol;
- G.S. 20-17.2: court order not to operate motor vehicle (repealed effective December 1, 2006);

115. *Id.* § 20-4.01(23).

116. *Id.*

117. *See id.* § 20-4.01(27)(d1) (incorporating definition of moped in G.S. 105-164.3(22)).

- G.S. 20-16(a)(7): impaired driving while out of state resulting in revocation of North Carolina driver's license;
- G.S. 20-17(a)(1): manslaughter or second-degree murder involving impaired driving;
- G.S. 20-17(a)(3): felony involving use of motor vehicle involving impaired driving;
- G.S. 20-17(a)(9): felony or misdemeanor death or felony serious injury by vehicle involving impaired driving;
- G.S. 20-17(a)(11): assault with motor vehicle involving impaired driving;
- G.S. 20-28.2(a)(3): the laws of another state and the offense for which the person's license is revoked prohibit substantially similar conduct that, if committed in North Carolina, would result in a revocation under any of the statutes listed above.

### ***Driving without a Valid Driver's License***

With respect to the provision for seizure of a vehicle driven by a person charged with an impaired driving offense who was driving without a license and without liability insurance, it is important to note that a person who has a complete defense pursuant to G.S. 20-35 to a charge of driving without a driver's license is considered to have had a valid driver's license at the time of the violation. Thus, a motor vehicle driven by such a person is not subject to seizure.<sup>118</sup> A person may *not* be convicted of the offense of driving a motor vehicle without a driver's license if the person demonstrates the following: (1) that at the time of the offense, the person had an expired license, (2) that the person renewed the license within thirty days after it expired, and (3) that the person could not have been charged with driving without a license if the person had the renewed license when charged with the offense.<sup>119</sup> In essence, this provision establishes a thirty-day grace period for renewing one's driver's license. Moreover, a person's simple failure to carry a license on his or her person does not satisfy the "driving without a license" prong so as to subject his or her vehicle to seizure.

### ***Driving While Not Covered by Automobile Liability Policy***

In addition to having probable cause to believe that the driver was charged with an impaired driving offense and did not have a valid license, in order to seize a motor vehicle under G.S. 20-28.3(a)(2), a law enforcement officer must have probable cause to believe that the driver was not at the time of the violation covered by an automobile liability policy. G.S. 20-309 requires financial responsibility in the form of a liability insurance policy, financial security bond, or financial security deposit or by qualification as a self-insurer, as a prerequisite to registration. G.S. 20-313 makes it a Class 1 misdemeanor for the owner of a motor vehicle registered or required to be registered in North Carolina to operate the motor vehicle or permit the motor vehicle to be operated in the state without having the required financial responsibility. It is important to note that G.S. 20-28.3(a)(2)b. refers to whether the driver—not the motor vehicle—is covered by an automobile liability policy. A person who drives a motor vehicle owned by someone else with the owner's permission is covered by the automobile liability policy for the motor vehicle being driven, if such a policy exists.<sup>120</sup> In addition, the authorized driver may be covered by an automobile liability insurance policy under which he or she is an insured driver, even if the motor vehicle itself is not listed on a policy.

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118. *Id.* § 20-28.3(a).

119. *Id.* § 20-35(c).

120. *Id.* § 20-279.21(b)(2).

## B. Procedure for Ordering Seizure and Impoundment

Law enforcement officers who seize or plan to seize a motor vehicle pursuant to G.S. 20-28.3 must present to a magistrate within the county where the driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture.<sup>121</sup> AOC-CR-323 is the form on which the officer may complete an affidavit in support of the seizure and/or impoundment. Upon determining that the statutory requirements for seizure are met, the magistrate must order the vehicle held. The magistrate may do so on the bottom portion of the same form (designated magistrate's order). In addition to reviewing the officer's affidavit, the magistrate may request additional information and may hear from the defendant if the defendant is present.<sup>122</sup> If the motor vehicle has not yet been seized and the magistrate determines that seizure is warranted, the magistrate must issue an order of seizure.<sup>123</sup> If the vehicle already has been seized and the statutory conditions for seizure are satisfied, the magistrate will order that the seized vehicle be impounded and held.<sup>124</sup> The magistrate must provide a copy of the order to the clerk of court, who, in turn, must provide copies to the district attorney and the attorney for the county board of education.<sup>125</sup> If the magistrate determines that the statutory requirements for seizure and impoundment are *not* satisfied, he or she must order the vehicle released to its owner upon payment of towing and storage fees.<sup>126</sup> Towing and storage fees may not be waived—even when the magistrate orders the vehicle released based on a finding that the statutory requirements for seizure have not been met.<sup>127</sup>

## C. Exceptions to Seizure

There are two important exceptions to the above-described requirements for seizure of a motor vehicle. A motor vehicle may not be seized if it has been reported stolen or if it is a rental vehicle and the driver is not listed as an authorized driver under the rental contract.<sup>128</sup> Other types of what the statute refers to as “innocent owners” may secure the release of their motor vehicles from impoundment, but those circumstances are not relevant to the magistrate's consideration of whether to order the vehicle seized and impounded.<sup>129</sup>

## D. Executing an Order of Seizure

Orders of seizure under G.S. 20-28.3 are valid anywhere in North Carolina and may be carried out by any officer with territorial jurisdiction who has subject matter jurisdiction for violations of G.S. Chapter 20.<sup>130</sup> Such an officer may use reasonable force to seize the motor vehicle and may enter upon the property of the defendant in order to accomplish the seizure.<sup>131</sup> If an officer has probable cause to believe that the motor vehicle is located on the property of someone other than the defendant, the officer may obtain a search warrant to enter that property for the purpose of seizing the vehicle.<sup>132</sup>

121. *Id.* § 20-28.3(c).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* § 20-28.3(n).

128. *Id.* § 20-28.3(b).

129. *See id.* §§ 20-28.3(e1), (e2), (e3).

130. *Id.* § 20-28.3(c1).

131. *Id.*

132. *Id.*

## **V. Conclusion**

In conducting initial appearances in implied consent cases, magistrates may be required to carry out procedures in addition to those generally required for all criminal offenses. This bulletin has described the steps for two of those additional processes: civil license revocation, required in certain implied consent cases, and vehicle seizure and impoundment, required in connection with offenses involving impaired driving, a subset of implied consent cases. The following AOC forms and procedural flowcharts are presented (in the appendixes) to assist magistrates in completing the procedures associated with initial appearances in implied consent cases.

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

ATTACH TEST RECORD TICKET HERE

File No.

STATE OF NORTH CAROLINA

County

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

In The General Court Of Justice District Court Division

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, Address, City, State, Zip, Race, Sex, Date Of Birth, Drivers License No., State

Vehicle Type, CMV, Haz. Mat., Citation No.

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 \_\_\_ 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.
4. The driver was charged with the implied-consent offense of: \_\_\_ G.S. 20-138.1; \_\_\_ Other Implied-Consent Offense: \_\_\_; \_\_\_ and 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. For blood or urine, I directed the taking of a blood or urine sample by a person qualified under G.S. 20-139.1.
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.
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. A sample of the driver's blood or urine was collected for a chemical analysis 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.

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

Magistrate, Deputy CSC, Assistant CSC, CSC

Agency Name

Notary, Date My Commission Expires, County Where Notarized

SEAL

### 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 1-14, 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 6-14, 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.

<b>STATE OF NORTH CAROLINA</b>		File No. _____
_____ County		In The General Court Of Justice District Court Division
<b>IN THE MATTER OF</b>		<b>REVOCATION ORDER WHEN PERSON PRESENT</b>  G.S. 20-16.5
<small>Name And Address</small> _____		
<b>FINDINGS FOR PROBABLE CAUSE</b>		
<p>The undersigned judicial official finds probable cause to believe that:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. The above named person has been charged with that offense as provided in G.S. 20-16.2(a);</li> <li>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</li> <li>4. The above named person:             <ul style="list-style-type: none"> <li><input type="checkbox"/> a. willfully refused to submit to a chemical analysis.</li> <li><input type="checkbox"/> b. had an alcohol concentration of 0.08 or more at any relevant time after the driving.</li> <li><input type="checkbox"/> c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle.</li> <li><input type="checkbox"/> 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.</li> </ul> </li> <li><input type="checkbox"/> 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.</li> </ol>		
<b>ORDER</b>		
<p>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:</p> <ol style="list-style-type: none"> <li><input type="checkbox"/> 1. this date.</li> <li><input type="checkbox"/> 2. the date he/she surrenders his/her drivers license to the Court, or demonstrates that he/she is not currently licensed to drive.</li> <li><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 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 had been or is revoked under G.S. 20-16.5.</li> </ol> <p><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></p> <p>I informed the above named person of his/her rights to a hearing and gave him/her a copy of this Order.</p>		
<small>Date</small>	<small>Name Of Judicial Official (Type Or Print)</small>	<small>Signature Of Judicial Official</small>
<b>NOTE:</b> See reverse for supplemental findings and order, and for disposition of license.		<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
<b>NOTICE</b>		
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>The \$100 fee may be paid at any time, <b>even prior to the end of the period of revocation</b>, 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.</p> <p><b>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.</b></p>		
AOC-CVR-2, Rev. 5/11		Original-File Copy-Person Whose License Revoked (Over)
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**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
------	-----------	--

**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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

<b>STATE OF NORTH CAROLINA</b>		File No. _____
_____ County		In The General Court Of Justice District Court Division
<b>IN THE MATTER OF</b>		<b>AFFIDAVIT - NO LICENSE</b>
<i>Name And Address</i>		
<i>County Of Residence</i>		G.S. 20-16.5
<i>State Of Residence</i>		
<b>NORTH CAROLINA RESIDENTS</b>		
<p>I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:</p> <p><input type="checkbox"/> I am not currently licensed to drive in the State of North Carolina because:</p> <p style="margin-left: 20px;"> <input type="checkbox"/> my license is revoked.                      <input type="checkbox"/> my license has expired.  <input type="checkbox"/> I have never had a license.                      <input type="checkbox"/> other: _____         </p> <p><input type="checkbox"/> I am validly licensed to drive in North Carolina but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<b>OUT-OF-STATE RESIDENTS</b>		
<p>I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:</p> <p><input type="checkbox"/> I am not currently licensed to drive in the State of North Carolina and do not have a valid drivers license from another state because:</p> <p style="margin-left: 20px;"> <input type="checkbox"/> my license is revoked.                      <input type="checkbox"/> my license has expired.  <input type="checkbox"/> I have never had a license.                      <input type="checkbox"/> other: _____         </p> <p><input type="checkbox"/> I am validly licensed to drive by the State of _____, but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		<i>Signature Of Affiant</i>
<i>Date</i>	<i>Signature</i>	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
<input type="checkbox"/> Notary	<i>Date Commission Expires</i>	
<b>SEAL</b>	<i>County Where Notarized</i>	
<p>AOC-CVR-8, Rev. 3/10 © 2010 Administrative Office of the Courts</p>		

<b>STATE OF NORTH CAROLINA</b>				File No. _____
_____ County			In The General Court Of Justice District Court Division	
<b>IN THE MATTER OF</b>				<b>DRIVERS LICENSE PICK-UP ORDER</b>
Name And Address _____ _____				
Race	Sex	Height	Weight	
Hair Color	Eye Color	DOB	Drivers License No. _____ State _____	
G.S. 20-16.5				
<b>TO ANY LAW ENFORCEMENT OFFICER:</b>				
You are ORDERED to pick up the drivers license issued to the person named above in accordance with G.S. 20-29 and deliver it to the undersigned within three (3) days of the surrender.				
Date	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	
<b>RETURN OF SERVICE</b>				
I certify that this Order was received and served as follows:				
Date Received		Date Served		
<input type="checkbox"/> 1. by personally serving the person named above and picking up the attached drivers license. <input type="checkbox"/> 2. the person named above demonstrated that he/she is not currently licensed. <input type="checkbox"/> 3. the person named above was not served for the following reason: _____ _____				
Date Of Return	Signature Of Law Enforcement Officer		No.	
		Department Or Agency		
<b>NOTICE TO PERSON SERVED</b>				
<p><b>Your license to drive is revoked.</b> Unless the revocation is indefinite, your license will remain revoked for at least a _____ day period beginning on the day you surrender your license or show that you are not currently licensed to drive. If the revocation is indefinite, your license will be revoked for that period or until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which your drivers license had been or is revoked under G.S. 20-16.5.</p> <p>At the end of the revocation period you are still prohibited from driving until you have paid a \$100 fee to the Clerk of Superior Court. This \$100 fee may be paid at any time, even prior to the end of the revocation period, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be paid in cash, by certified check or money order. Payment by mail must be made by certified check or money order, made payable 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 or is revoked under G.S. 20-16.5.</p> <p>If prior to the effective date of this Order you were not licensed by the North Carolina Division of Motor Vehicles or did not have a valid 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.</p> <p>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.</p>				
<b>IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO.</b>				
AOC-CVR-4, Rev. 8/07 © 2007 Administrative Office of the Courts				

<b>STATE OF NORTH CAROLINA</b>		File No. _____ In The General Court Of Justice District Court Division
_____ County		
IN THE MATTER OF		<h2 style="margin: 0;">REQUEST FOR HEARING TO CONTEST LICENSE REVOCATION</h2>
Name And Address Of Petitioner		
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.)

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

<b>STATE OF NORTH CAROLINA</b>	<i>File No.</i>
_____ County	In The General Court Of Justice District Court Division
<b>IN THE MATTER OF</b> <i>Name And Address Of Petitioner</i>	<b>FINDINGS AND ORDER IN CONTESTED LICENSE REVOCATION</b>
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: 150px;"><input type="checkbox"/> <i>Magistrate</i></span>

<p><b>(TYPE OR PRINT IN BLACK INK)</b>  <b>STATE OF NORTH CAROLINA</b>          _____ County</p>	<p style="text-align: right;">File No. <span style="border: 1px solid black; display: inline-block; width: 20px; height: 15px; vertical-align: middle;"></span></p> <p style="text-align: center;">In The General Court Of Justice District Court Division</p>
--	--

Name And Address Of Defendant		<b>OFFICER'S AFFIDAVIT FOR SEIZURE AND IMPOUNDMENT AND MAGISTRATE'S ORDER</b>		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	<input type="checkbox"/> AM <input type="checkbox"/> 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.

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		Signature Of Seizing Officer
Date	Signature Of Official Authorized To Administer Oaths	Name Of Seizing Officer (Type Or Print)
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Name Of Department Or Agency Of Officer
<input type="checkbox"/> Notary		Date My Commission Expires
<b>SEAL</b>		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
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**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 ENF-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:** The Clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education. G.S. 20-28.3(c).

### 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:

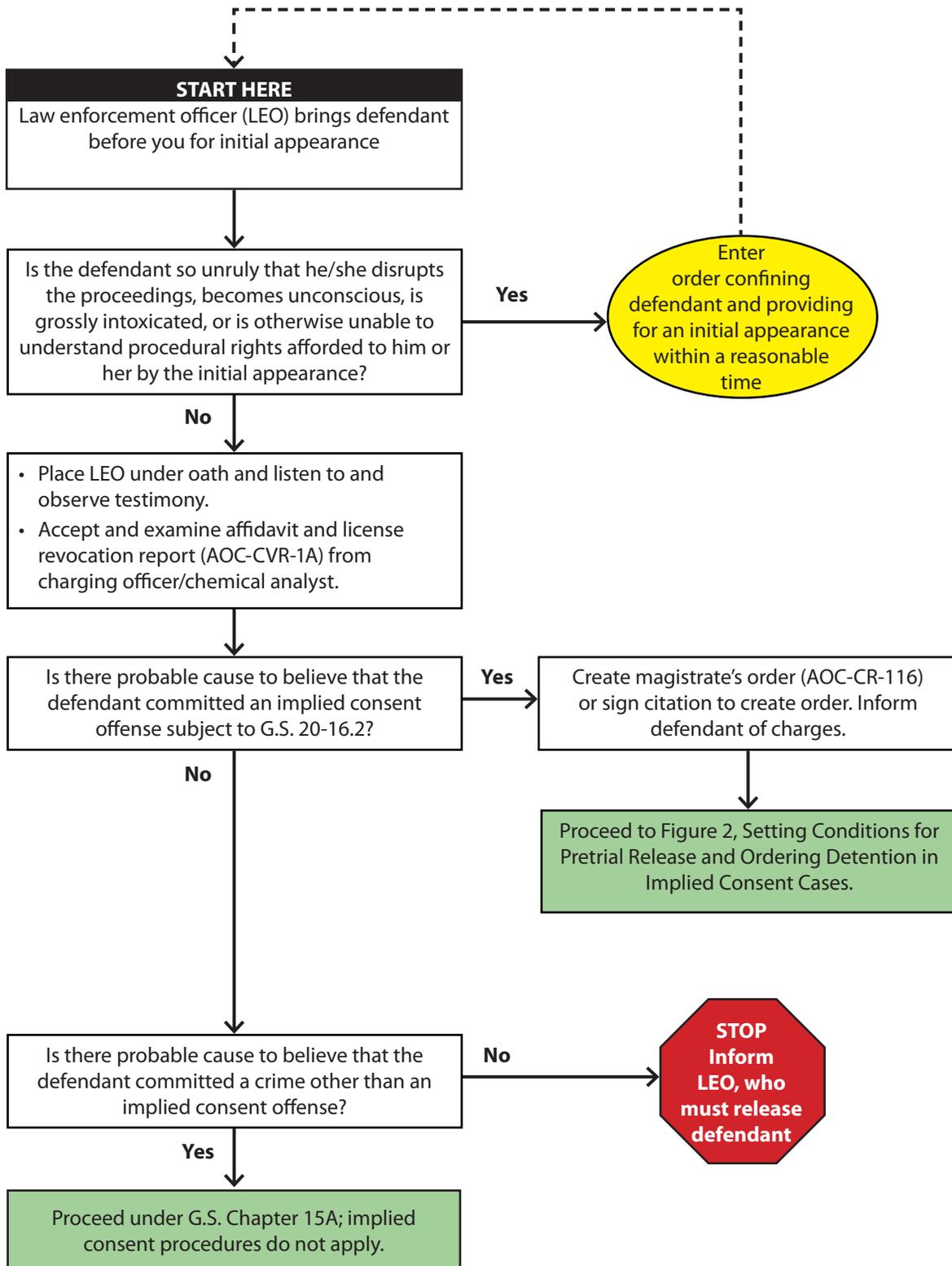
- G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
- G.S. 20-16(a)(8b) - Military Driving While Impaired
- G.S. 20-16.2 - Refused Chemical Test
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired  
Driving While Impaired In Commercial Motor Vehicle
- G.S. 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)

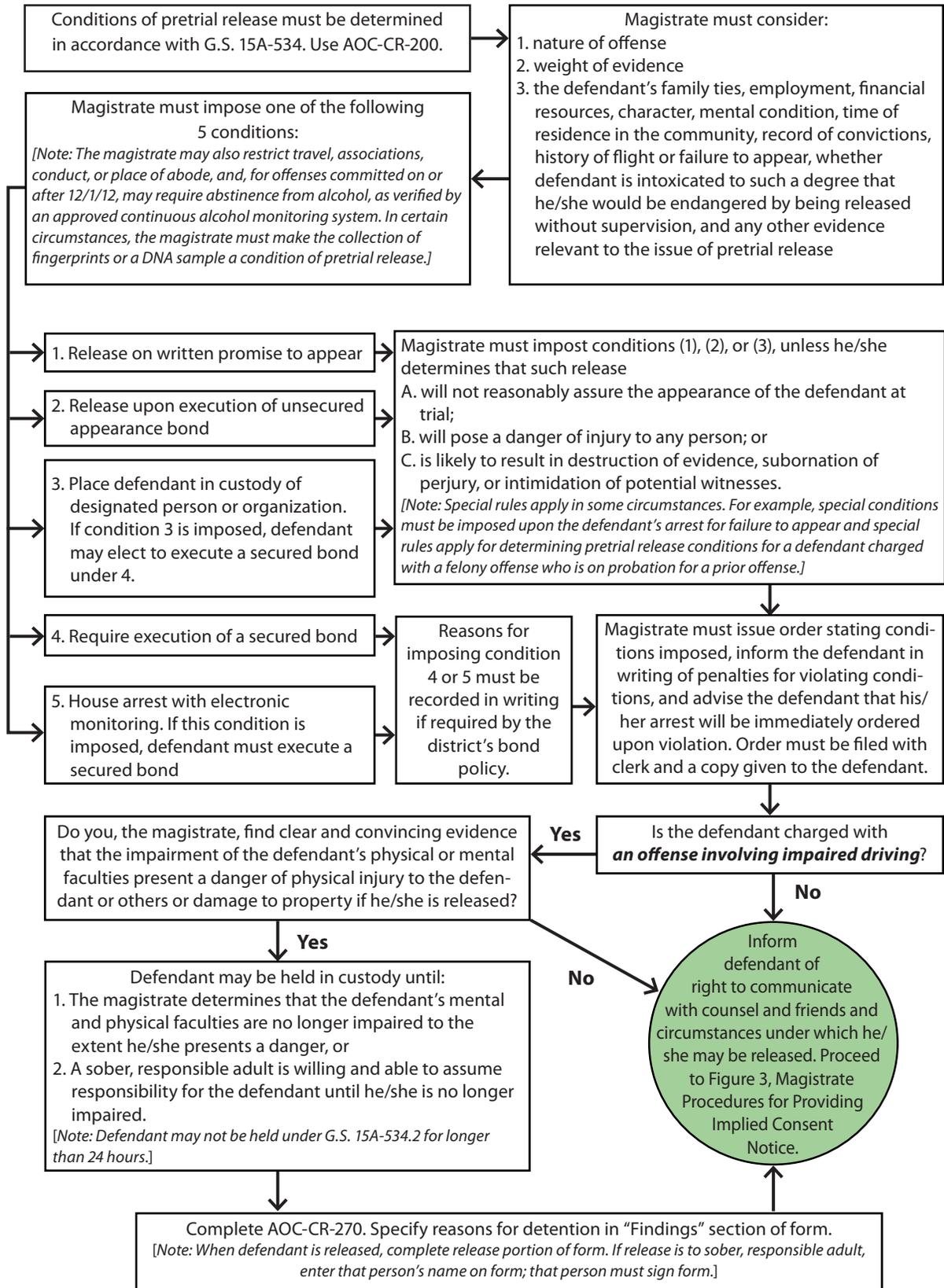
A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving as listed in Section III above and at the time of the offense

- 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.

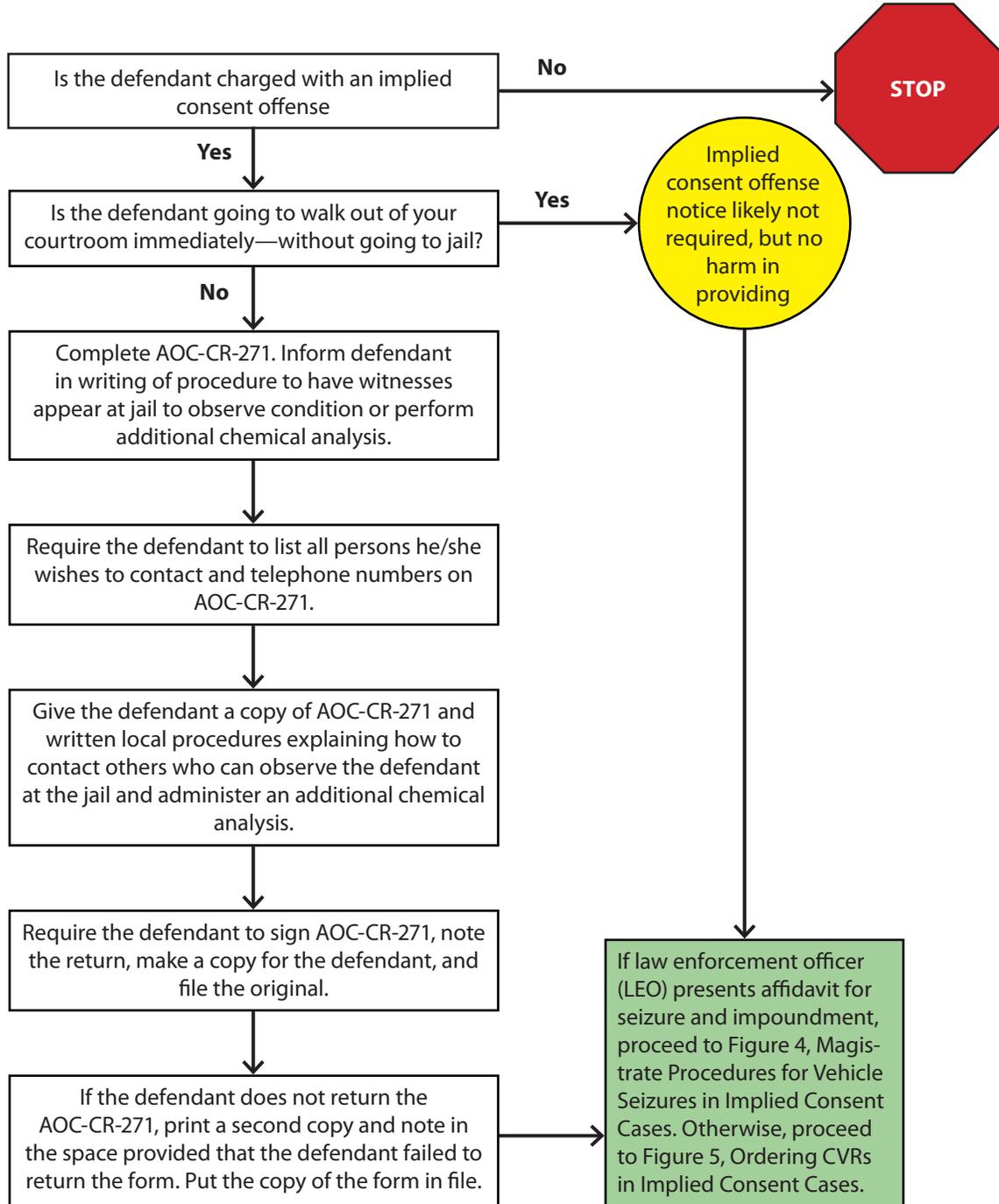
**Figure 1. Magistrate Procedures for Initial Appearances in Implied Consent Cases**



**Figure 2. Setting Conditions for Pretrial Release and Ordering Detention in Implied Consent Cases**



**Figure 3. Magistrate Procedures for Providing Implied Consent Offense Notice**

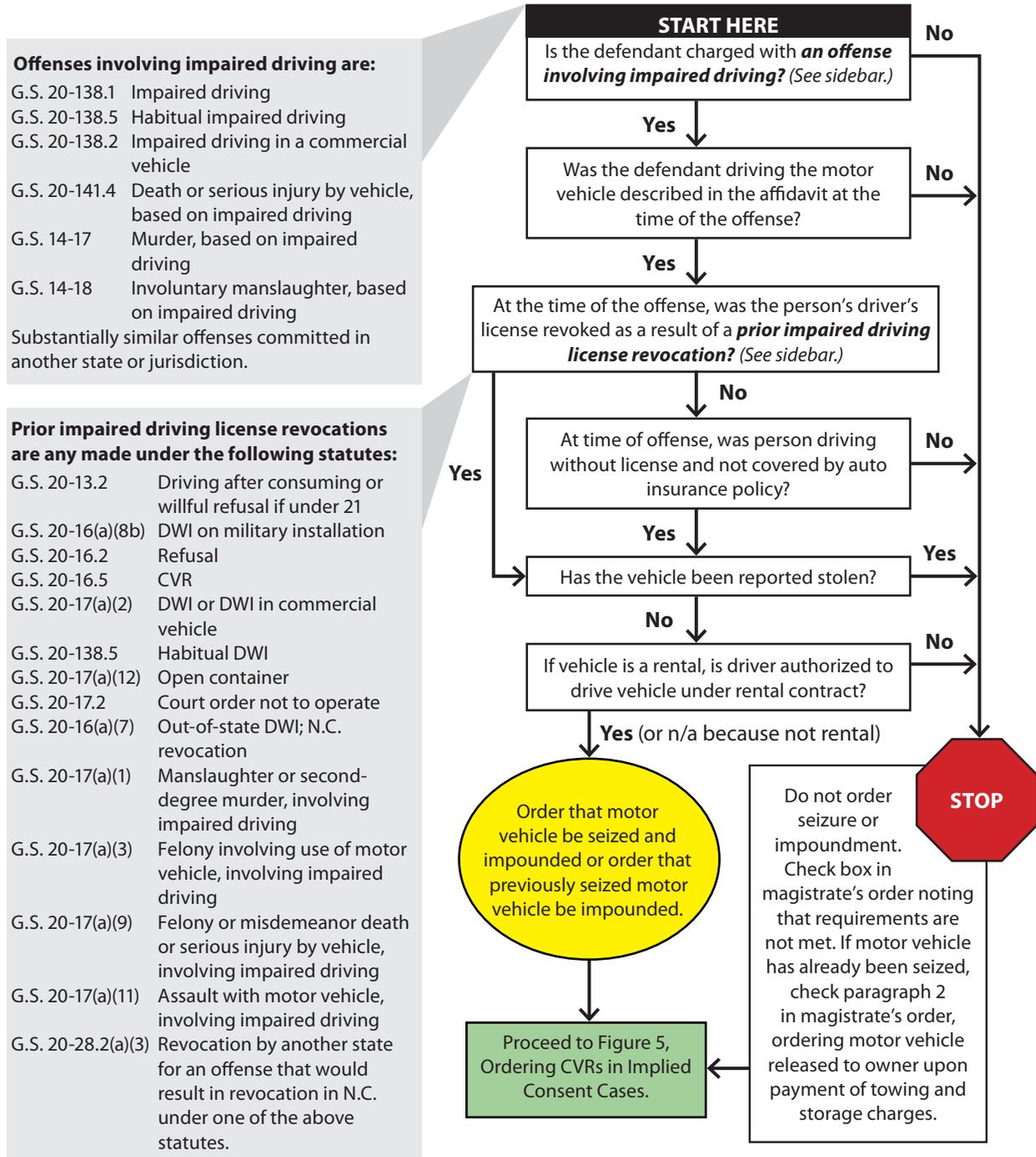


### Figure 4. Magistrate Procedures for Motor Vehicle Seizures in Implied Consent Cases

**First—complete steps from:**

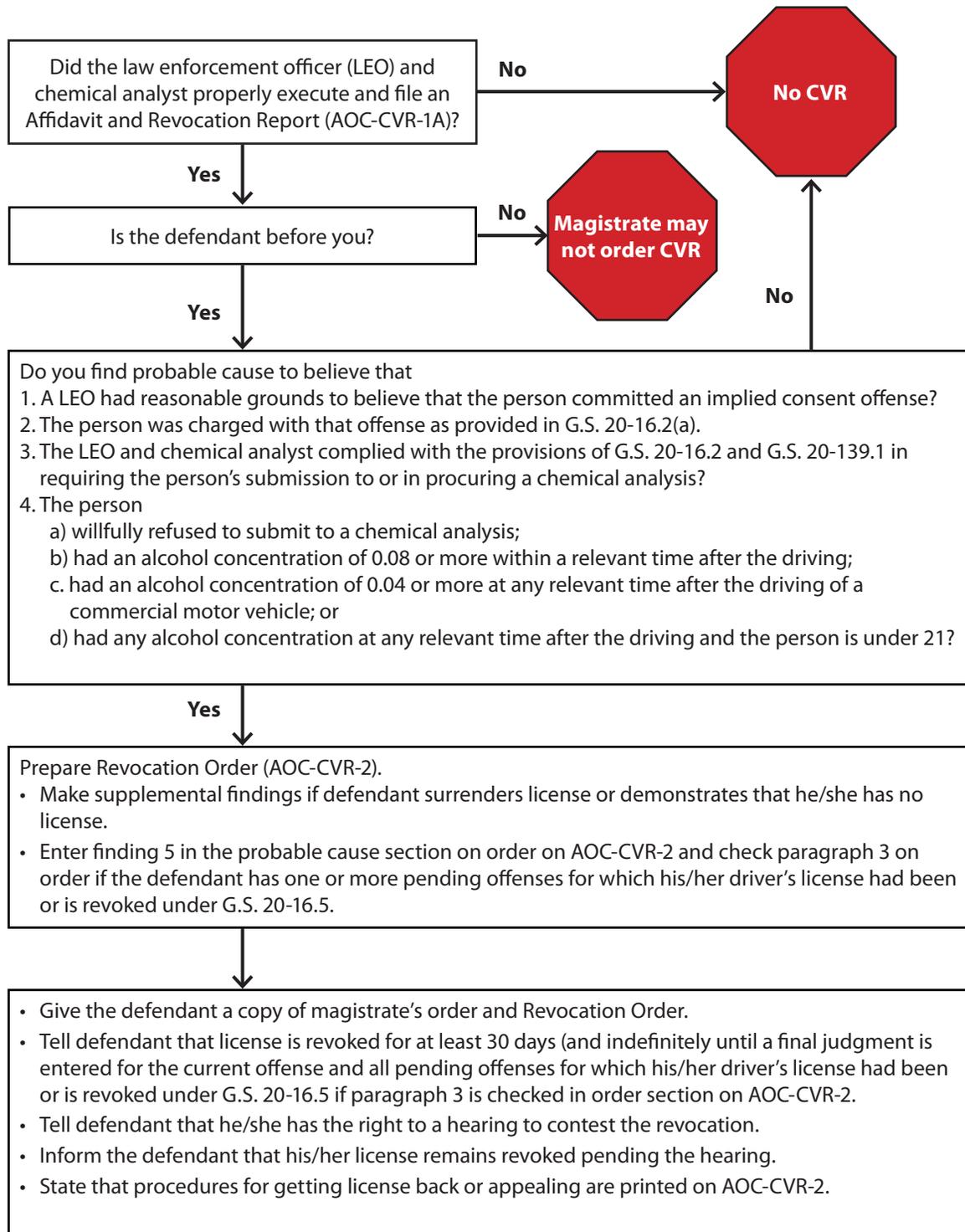
- Figure 1, Magistrate Procedures for initial Appearances in Implied Consent Cases,
- Figure 2, Setting Conditions for Pretrial Release and Ordering Detention in Implied Consent Cases, and
- Figure 3, Magistrate Procedures for Providing Implied Consent Notice.

**Proceed to this flowchart** if a law enforcement officer presents an affidavit for seizure and impoundment (AOC-CVR-323); **otherwise proceed to Figure 5**, Ordering CVRs in Implied Consent Cases.



Order that motor vehicle be seized and impounded or order that previously seized motor vehicle be impounded.

Proceed to Figure 5, Ordering CVRs in Implied Consent Cases.

**Figure 5. Ordering CVRs in Implied Consent Cases**

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