


Civil License Revocations & Impaired Driving Holds

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February 2024



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Roadmap



Civil License Revocations

- Basics
- Procedure
- Timing
- Forms



Impaired Driving Holds

- Factors
- Prerequisites
- Procedure
- Forms

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DWI Five Step Protocol

1. Determine probable cause.
2. Set conditions of release.
3. Does person's impairment pose a danger?
4. Is the motor vehicle subject to seizure?
5. Must person's license be revoked?

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What Is a CVR?

License revocation that is entered by the magistrate at the person's initial appearance for an implied consent offense

Lasts for at least 30 days

Begins with an affidavit and revocation report filed by the officer and chemical analyst

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Why impose a CVR?


I. Deterrence: Laws

Countermeasure	Effectiveness	Cost	Use	Time
1.1 Administrative License Revocation or Suspension (ALR/ALS)	★★★★★	\$\$\$	High	Medium
1.2 Open Container	★★★	\$	High	Short
1.3 High-BAC Sanctions	★★★	\$	Medium	Short
1.4 BAC Test Refusal Penalties	★★★	\$	Unknown	Short
1.5 Alcohol-impaired Driving Law Review	☆☆	\$\$	Unknown	Medium

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CVRs in Implied Consent Cases

- CVRs “provide for swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts”
- (NHTSA 2020 Highway Safety Countermeasure Guide at 1-16)



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Why is it a *civil* license revocation?

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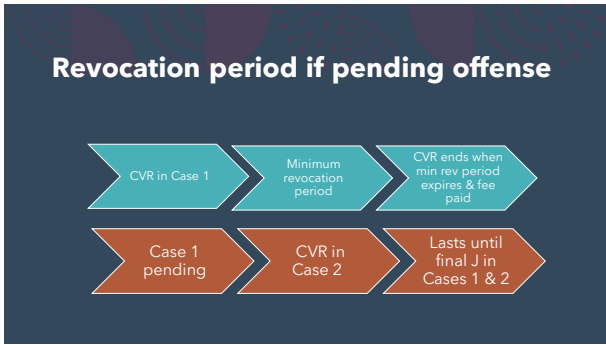
- ### Four Conditions
1. LEO had reasonable grounds to believe person committed implied consent offense.
 2. Person was charged with offense.
 3. Statutory procedures for chemical analysis were followed.
 4. Person
 - a. Willfully refused;
 - b. Had AC of 0.08 or more;
 - c. Had AC of 0.04 or more if commercial motor vehicle; or
 - d. Had any AC if under 21.

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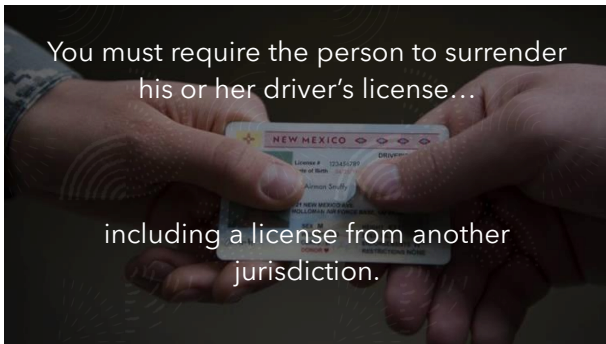
Keep in Mind

- When you issue a CVR, it is effective immediately
- CVR will last for at least 30 days and does not end until person pays \$100 fee to clerk.
- Countdown of days begins upon license surrender
- If the person has a pending offense for which the person's license is or was revoked under G.S. 20-16.5, then the revocation lasts for at least 30 days and until final judgment in both cases

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License Surrender

- One of the following will happen:
 1. Person may turn over license and accomplish surrender
 2. Person may demonstrate that he or she has no license (because it is revoked or because the person lost it) and accomplish surrender
 1. If license is lost, person must file affidavit
 3. Person may not be able to surrender because person does not have the license on hand
 - Such a person must surrender the license later to the clerk
- Magistrate must note on [AOC-CVR-2](#) which of the above occurred

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Right to Review

- The magistrate must tell person that they have the right to ask for a hearing to review the revocation.
- Person may make request at initial appearance or within 10 days using [AOC-CVR-5](#).
- Hearing must be held
 - in 3 working days if before magistrate
 - in 5 working days if before district court judge

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Review Hearing

- Witness may submit evidence via affidavit unless subpoenaed
- Judicial official may question witnesses
- Unless contested, statements in revocation report may be accepted as true
- Judicial official may adjourn to seek additional evidence
 - But hearing still must be completed in 3 or 5 days
 - Unless person contesting revocation contributed to delay

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Questions about Civil License Revocations?

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Impaired Driving Holds

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DWI Five Step Protocol

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Pretrial Release factors to consider:

- Nature and circumstances of offense
- Weight of the evidence
- Family ties, employment, financial resources, character, and mental condition
- Whether D is intoxicated to such a degree that he would be endangered by being released without supervision
- Length of residence in community
- Record of convictions
- History of flight or failure to appear
- Any other relevant evidence

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When May a Magistrate Impose a Hold?
G.S. 15A-534.2

At an initial appearance for an *offense involving impaired driving*.

Where the magistrate finds by clear and convincing evidence that the person's impairment would make the person a danger if the person were released.

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Offense involving impaired driving

Clear and convincing evidence that the impairment presents a danger

§ 15A-534.2. Detention of impaired drivers.
 (a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.
 (b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

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Offenses involving impaired driving

- 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 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
- 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

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When is a defendant impaired to the extent they present a danger?

What specific facts lead you to that conclusion?

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AOC-CR-270

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When does hold end?

§ 15A-534.2. Detention of impaired drivers.

(a) A judicial official conducting an initial appearance for an offense involving driving while impaired shall follow the procedure in G.S. 15A-511 to determine whether the defendant is impaired to the extent that he or she presents a danger to himself or herself or others or to property. If the defendant is so impaired, the judicial official shall order that the defendant be held in custody until the defendant is no longer impaired to that extent. The judicial official shall not be required to impede a defendant's right to communicate with counsel and friends.

(b) If at the time of the initial appearance the judicial official finds by convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody until the defendant is no longer impaired to that extent. If the defendant is held in custody, the judicial official shall determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

- (1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or
- (2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be denied pretrial release under this section for a period no longer than 24 hours, and after such detention may be released only upon meeting the conditions of pretrial release set in accordance with G.S. 15A-534. If the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired

No longer impaired to extent that he presents danger

No longer than 24 hours

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How do you determine that a defendant is no longer impaired to the extent that they present a danger?


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Who is a sober, responsible adult willing and able to assume responsibility for the defendant?

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Remember

 Only a judicial official may release a defendant from an impaired driving hold

 [AOC-CR-270](#)

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Implied Consent Offense Notice

- In any implied consent case in which a defendant is detained following his or her appearance, the magistrate must:
 - Ask the defendant to fill out the Implied Consent Offense Notice (AOC-CR-27.1); and
 - Give the defendant a copy of the local procedures for contacting witnesses from the detention center.

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Implied Consent Offense Notice

Defendant's consent or admission to additional chemical analysis

5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.

The defendant returned this form to the undersigned at the initial appearance.

The defendant failed to return this form at the initial appearance.

Date: _____ Time: AM PM Signature Of Magistrate: _____

The defendant returned this form to the undersigned after the initial appearance.

Date: _____ Time: AM PM Signature: _____

Magistrate Assistant CSC
 Deputy CSC Clerk Of Superior Court

NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. (G.S. 20-38.4a)(4)

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Questions?

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