

ADMINISTRATIVE LICENSE REVOCATION (ALR)

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CONFERENCE OF DISTRICT ATTORNEYS

Current Law

- Driver has A/C of 0.08 or more
- Driver of CMV has A/C of 0.04 or more
- Driver under age 21 has A/C of 0.01 or more
- Driver refuses implied consent test

- Drivers license immediately revoked for 30 days & until pay \$100 fee
- After 10 days can obtain court issued Limited Driving Privilege for remaining 20 days – **On his honor he agrees not to drink & drive**
- After 30 days, drivers license is restored until court conviction or DMV hearing on refusal

Pre-trial ALR Recommended by:

- 2005 Governor's Task Force on Driving While Impaired
- 2014 Strategic Highway Safety Plan
- Governor's DWI Task Force 2016

Definition

- A civil revocation of a person's drivers **license** and **registration plate** of motor vehicles owned by driver imposed by DMV based upon the results of a breath or blood test or willful refusal to submit to the breath and/or blood tests.
- This revocation is intended to replace the current 30 day civil pretrial revocation imposed by G.S. 20-16.5 & the 1 year revocation for willful refusal to submit to a chemical analysis

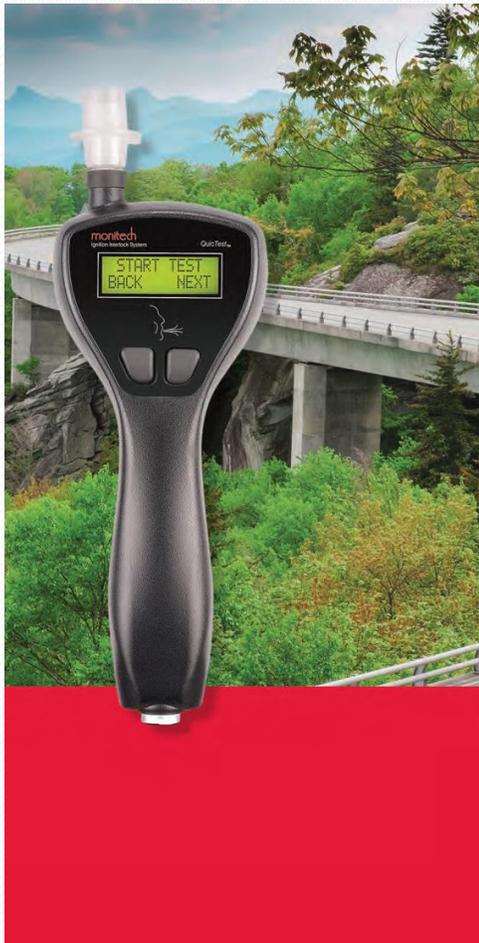
Drivers covered -

- a. All Drivers 0.08 or more
- b. Underage 21 0.01 or more
- c. Commercial motor Vehicle operators 0.01 or more
- d. Child care Vehicle operators 0.01 or more
- e. For Hire vehicle operators 0.01 or more
(with a passenger in vehicle)
- f. Ambulance, police, fire, etc 0.01 or more
- g. Drivers with 0.04 restrictions 0.04 or more
- h. Drivers with 0.00 restrictions 0.01 or more
- i. Drivers on limited driving privilege 0.01 or more
- j. Drivers who have no license & 0.01 or more
no liability insurance
- k. Drivers with revoked license 0.01 or more
for any reason
- l. All Drivers who refuse implied consent test

- Drivers who willfully refuse test **365 days** of alcohol free driving with ignition interlock
- All other licensed drivers **120 days** of alcohol free driving with ignition interlock
- Non-licensed drivers Indefinitely -Until properly licensed plus **120 days** of alcohol free driving with ignition interlock
- Driving involving death or serious injury(taken to hospital) **365 days** of alcohol free driving with ignition interlock
- If revoked for any other reason, then the conditions of the ALR apply when driver is eligible for reinstatement and applies for license

Length of revocation

Ignition interlock Providers



- **Alcohol free driving means that the ignition interlock did not record a breath alcohol result of 0.02 or more.**
- **A day of alcohol free driving requires the driver to start the vehicle and drive a sufficient length of time that a running retest result is recorded.**
- **When multiple drivers use the same car, the driver will be required to certify under threat of perjury that the driver drove the 120 days.**

Alcohol free driving

- Drivers license immediately revoked.
- Must surrender drivers license immediately & cannot drive for **10 days**
- Must request hearing within **10 days** of notification or waive right to hearing
- DMV must hold hearing within **30 days**
- If have valid license at time of revocation and have ignition interlock installed, DMV will issue **limited drivers license** after **10 days**
- If filed timely appeal, can pursue appeal while driving with ignition interlock
- Failure to file timely appeal or install ignition interlock requires surrender of all registration plates issued in driver's name even if another driver is also on registration (DMV issues pickup order if registration plate not surrendered)

Conditions of Revocation -Overview

- **Officer takes before magistrate who reviews paperwork and issues revocation order and notifies driver of right to appeal & ability to obtain a limited drivers license **after 10 days** if ignition interlock installed - Drivers license revoked immediately**
- **DMV notified by AOC of revocation and by DHHS of breath testing results or refusal and procedures followed by chemical analyst**
- **DMV sends driver a notice of revocation, right to appeal, right to limited license and surrender of registration plates in addition to one given the night of the arrest**

Revocation Procedure - Breath Test

- **Blood sample taken and sent to laboratory**
- **Officer sends arrest and test report to DMV through DHHS technology**
- **Laboratory notifies officer and DMV of results**
- **DMV notifies driver of revocation and appeal rights by mail- similar to refusal hearing under current law-**
- **Driver must surrender license within 4 days of date of letter (similar to process for 30 day pretrial revocation when blood test is the implied consent test)**
- **Driver must request hearing within 10 days or waived**
- **DMV determines if driver had a valid license and notifies driver if limited drivers license is available if driver installs ignition interlock**

Revocation Procedure - Blood Test

- **DMV must hold hearing within 30 days of request. If DMV cannot hold hearing within 30 days DMV issues limited license which prohibits drinking and driving but does **not** impose ignition interlock**
- **ONCE HEARING IS HELD - IGNITION INTERLOCK CAN BE REQUIRED**

Hearing - Issues

- (1) The person was charged with an implied-consent offense or violated the alcohol concentration restriction on the drivers license;
- (2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;
- (3) Whether the implied-consent offense charged involved death or critical injury to another person;
- (4) The person was notified of their implied consent rights; and
- (5) The results of any tests given and the result requires an ALR (e.g. result was 0.01 and was for hire driver with a passenger in the car, result of 0.01 and under age 21 , etc.) or that the person willfully refused to submit to a chemical analysis.



Hearing procedures

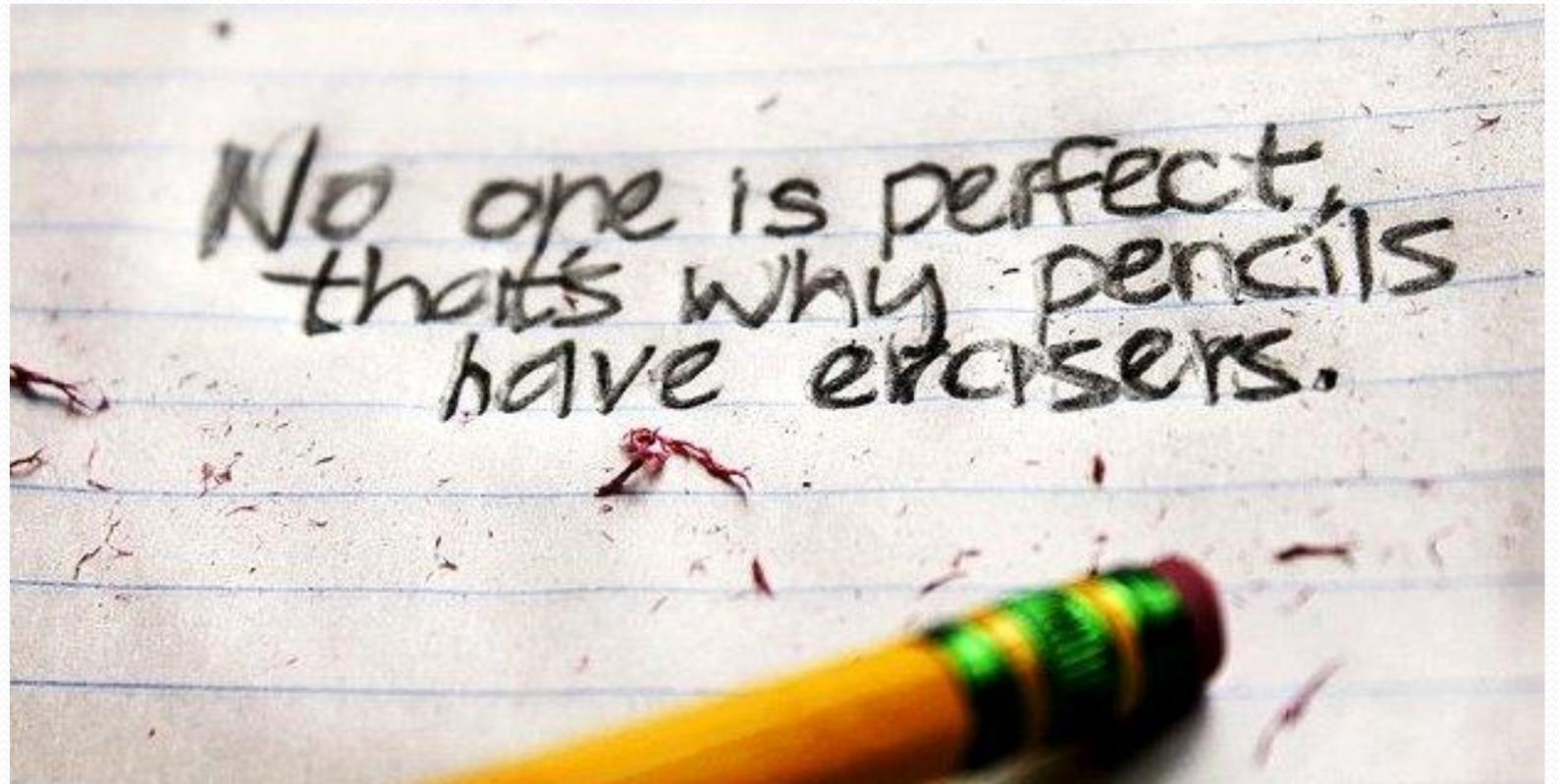
- **DMV can hold hearing by telephone, video or in person**
- **Under recently enacted law, driver will be required to pay a hearing fee. See SB 744, sec. 34.9 (S.L. 2014-100)**

- **Officer's reports, results of analysis or refusal admitted**
- **Numeric result of alcohol screening device or refusal and field sobriety tests or refusal is admissible to prove reasonable grounds.**
- **Officer can testify over the telephone or by video when required by DMV or driver**
- **If driver wants officer to testify, driver must pay in advance cost of officer's time (hourly rate) plus IRS mileage rate for travel. DMV issues rules on costs**
- **Burden is on driver to have officer present or otherwise testify**

Hearing - evidence

Hearing - result

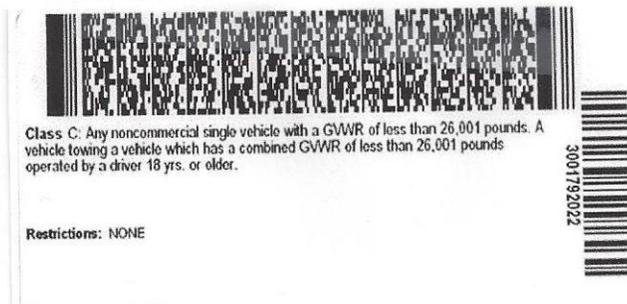
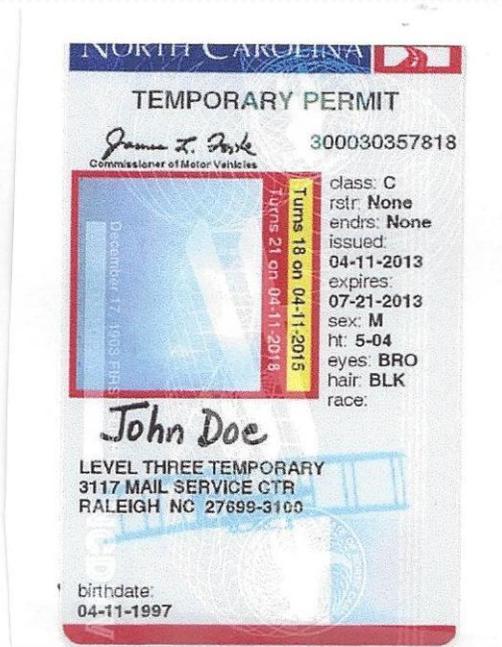
- DMV upholds revocation or reinstates drivers license



Hearing - appeal

- **First appeal from hearing officer is to Commissioner - who must decide within 5 days**
- **Second appeal to Superior Court who reviews procedures and determines if decision of DMV is supported by evidence presented**

Limited Drivers License



- For any person with a valid license (or if person demonstrates eligible for license) DMV issues a **limited license** which requires driver to drive only vehicle with ignition interlock – **No other restrictions on driving**
- Out of state drivers who reside out of state are allowed to obtain an ignition interlock from an approved interlock provider from their home state.
- Limited drivers license available after **10 days** even when have filed an appeal

Registration Plate

- If hearing is **not** requested, the driver notified to surrender registration plate within 30 days or a pick up order issued for tag, if do not install ignition interlock on all register vehicles within 30 days of arrest.
- If request hearing, license tag must be surrendered if do not install ignition interlock on all owned vehicles **within 30 days** of DMV decision upholding ALR- no stay for appeal to court
- No request for a hearing is filed or upon conclusion of the hearing and the license is revoked, DMV notifies the register owner(other than driver) of the vehicle driven at the time of the offense that the driver is revoked and cannot drive a vehicle without an ignition interlock. The registered owner is also informed that if the driver drives any vehicle registered to them that the vehicle is subject to seizure and forfeiture and their ability to register any vehicle is revoked for at least 1 year



Registration Revocation

- If eligible for limited drivers license, the failure to install an ignition interlock within 30 days will result in a revocation of **all registration plates** and a prohibition against registering a vehicle for one year.
- If transfer vehicle to another person, that person must sign an **acknowledgement** that if previous owner drives vehicle while revoked that vehicle is subject to forfeiture and the new owner will have all registration plates revoked and new owner's cannot register any vehicle for 1 year. DMV may issue temporary registration to allow for driving vehicle for the purposed of having ignition interlocks installed

Criminal case impact

- ALR is a separate civil proceeding. Determinations or rulings made in criminal cases and DMV hearings do not impact or apply to other proceedings (collateral estoppel does not apply).
- **ISSUANCE OF ANY LIMITED DRIVING PRIVILEGES MOVED FROM THE COURT SYSTEM TO DMV**
- Upon conviction of DWI, limited license issued by DMV for DWI revocation with credit given for time defendant had ignition interlock under ALR

Insurance rates impact

- No insurance points assigned unless convicted of DWI
- **Reduced** insurance points for DWI conviction while have vehicle equipped with ignition interlock

- **DMV & DHHS & the State Crime Laboratory, and all local government laboratories performing forensic analysis of blood to determine alcohol concentration shall establish a procedures for the electronic transfer of breath and blood test results to DMV and posting of the test result on a person's driving record.**
- **DMV shall enter on the driving and registration records and issue pick orders for all registration plates and driver license revocations pursuant to this ALR within 24 hours. AOC must notify DMV electronically of all revocations by magistrate**
- **DMV flags drivers driving record and registration record of drivers subject to ALR so officer will know to check for ignition interlock and/or to seize vehicle for forfeiture and so DMV will not register additional vehicles without proof of ignition interlock installation**

Technology

- **A vehicle without an ignition interlock which is driven by a person who has an ALR or who has a limited driving license requiring an ignition interlock (even when no alcohol is present) is subject to seizure and forfeiture.**
- **Change forfeiture law so that a driver who is subject to ALR law (e.g. has 0.08 or 0.01 under age 21) who is currently on an ALR, is revoked for any reason or has no license and no insurance will have vehicle seized by officer. Magistrate makes an initial determination of probable cause to believe vehicle properly seized. DMV will determine whether vehicle should be forfeited. An innocent owner can petition DMV and sign an acknowledgement similar to the current seizure and forfeiture law.**

Vehicle Forfeiture

**Vehicle forfeiture proceedings and hearings are transferred from the court to DMV.(Hearings on felony speeding to elude arrest forfeiture hearings can also be transferred to DMV or left with the court.)
Forfeiture based upon ALR determination not DWI convictions.**

Violations of ALR - criminal sanctions

- **Driving in violation of ALR is treated as driving while license revoked, G.S. 20-28(a1). A conviction of driving in violation of ALR will require alcohol free use of ignition interlock for an additional 120 days.**

Ignition Interlock settings

- **Fail point of 0.02 or more (currently warn 0.004 & high warn 0.009 - thousandths) for start and running test and will result in lock out if have 0.02 or more**
- **End of trip test (Not currently required - was required until 2011)**
- **Any test result 0.02 or more, failure to take running test or failure to take end of trip test requires 3 day recall to ignition interlock provider for data download and reporting to DMV..**

DMV Monitoring

- Any result from ignition interlock provider of 0.01 triggers warning letter from DMV and require ignition interlock provider to increase frequency of running retests
- Any result above 0.02, failure to take a running retest or end of trip test triggers requirement for additional 120 days of alcohol free use and increase frequency of running retests
- Any result of 0.08 or above triggers license and registration plate revocation by DMV for 120 days
- Not a defense that alcohol lawfully or unintentionally consumed
- Right to DMV hearing- ignition interlock personnel testify by video or telephone
- First appeal to Commissioner & second appeal to Superior Court on the record

- A. LIMITED DRIVING PRIVILEGE (LDP)- GS 20-20.2 : **\$100**
- B. FEE DUE AT END OF REVOCATION PERIOD - GS 20-16.5(J) **\$100**
- C. DRIVERS LICENSE RESTORATION FEE UNLICENSED DRIVERS-
GS 20-16.5(L) & 20-7(I1) **\$50.00 OR \$130** (FOR DWI)
- D. DMV HEARING FEE – TO BE DETERMINED
- E. **PROPOSED FEES –**
 - SEIZE OF TAG FEE **\$50**
 - REINSTATEMENT FEE FOR CANCELLED TAGS: **\$50**

FEES

Allow Alcohol Screening Device Result for PC

- See handout
- Will reduce court time by removing issue of Probable Cause to arrest from most criminal cases