

G.S. 20-13.3: Civil License Revocations for Provisional Licensees Some Questions and Answers (For Offenses Committed On or After October 1, 2012)

Prepared by Shea Denning, UNC School of Government
July 25, 2012

With acknowledgements to Matt Osborne, Associate Legal Counsel for the Administrative Office of the Courts, who prepared the list of covered offenses and whose insights as to other aspects of the law are reflected herein

G.S. 20-13.3 provides for the immediate civil revocation of the permit or license of a provisional licensee charged with a misdemeanor or felony motor vehicle offense that is defined as a criminal moving violation. The provisions of G.S. 20-13.3 were amended by S.L. 2012-168, effective for offenses committed on or after October 1, 2012. Set forth below in a question and answer format is information about the amended provisions of G.S. 20-13.3 effective for offenses committed on or after October 1, 2012. The provisions of G.S. 20-13.3 applicable to offenses committed January 1, 2012 through September 30, 2012 are described in a paper available at the following link: <http://bit.ly/LO3z2K>.

Which drivers may be subjected to civil license revocation under G.S. 20-13.3?

G.S. 20-13.3 applies to drivers who are 16 or 17 years old who have a limited learner's permit or a provisional license issued by NC DMV pursuant to G.S. 20-11. These drivers are defined as "provisional licensee[s]." G.S. 20-13.3(a)(4). Persons who are 15 years old who have a limited learner's permit issued by NC DMV also are considered provisional licensees. However, because license revocation under G.S. 20-13.3 before the 2012 amendments required that the person be arrested and brought before a magistrate for an initial appearance, it was clear that 15-year-olds (who may not be arrested nor subjected to an initial appearance) were not subject to G.S. 20-13.3. (In North Carolina all 16- and 17-year-olds, although considered juveniles for some purposes, are treated as adults when they commit crimes or infractions, including violations of the motor vehicle laws.)

S.L. 2012-168 amends G.S. 20-13.3 to permit issuance of a revocation order without an arrest and initial appearance. Nevertheless, it appears that 15-year-old provisional licensees continue to be ineligible for license revocation under G.S. 20-13.3. One of the triggering conditions for a G.S. 20-13.3 revocation is that the provisional licensee be "charged with" a criminal moving violation. A juvenile may not be arrested, nor may criminal process issue, for a covered offense. Instead, the pleading in a juvenile action is a petition drawn by the juvenile court counselor or clerk, or, in emergency situations, by the magistrate. Moreover, a petition alleges delinquency based on the juvenile's commission of a crime or infraction, rather than charging the juvenile criminally with the underlying crime or infraction.

Because some criminal moving violations are felonies, it bears mention that the district court may transfer jurisdiction over a juvenile to superior court if the juvenile was 13, 14, or 15 years of age at the time the juvenile committed an offense that would be a felony if committed by an adult. See G.S. 7B-2200. Upon such a transfer, the superior court acquires jurisdiction over the felony offense (and any related misdemeanors), see G.S. 7B-2203(c), and the case is tried as in the case of an adult, see G.S. 7B-2204.

It does not appear, however, that the General Assembly intended for a G.S. 20-13.3 revocation to issue when a juvenile provisional licensee is charged with a felony criminal moving violation that is transferred to superior court. The transfer to superior court necessarily will occur some days, and likely weeks, after commission of the criminal moving violation. The law enforcement officer with reasonable grounds to believe the juvenile committed a criminal moving violation will not be directly involved in the issuance of criminal process against the juvenile in such a circumstance, depriving the officer of any ready opportunity to advise the juvenile of the impending revocation or to “expeditiously” file a revocation report as required by G.S. 20-13.3(c).

Moreover, the likely impetus for the legislative amendments permitting issuance of a revocation without an arrest and initial appearance is unrelated to the exclusion of juveniles from the statutory provisions. The amendments apparently were enacted to eliminate the requirement that provisional licensees charged with minor traffic violations be arrested in order to trigger issuance of a civil license revocation.

Finally, it bears noting that the Juvenile Code, Chapter 7B of the North Carolina General Statutes, already addresses juveniles’ driving privileges to some extent. Once a juvenile has been adjudicated delinquent, for any offense, the court may order that the juvenile not be licensed to operate a motor vehicle for as long as the juvenile court has jurisdiction or for a shorter time. The clerk is required to notify NC DMV of any such order. *See* G.S. 7B-2506(9).

Had the General Assembly intended to subject juveniles to civil license revocation, it presumably would have amended the provisions of G.S. 20-13.3 to comport with the juvenile delinquency procedures in Chapter 7B, amended the Juvenile Code to deal with revocations, or both.

Which offenses trigger this license revocation?

The revocation is triggered by commission of a criminal moving violation, defined as a violation of Part 9 or 10 of Article 3 of Chapter 20 that is punishable as a misdemeanor or felony offense. G.S. 20-13.3(a)(2). Offenses listed in G.S. 20-16(c) for which no points are assessed are not included. Equipment violations codified in Part 9 of Article 3 of Chapter 20 likewise are not included.

The following offenses are criminal moving violations:

- G.S. 20-137.4: Operating a school bus while using a mobile phone
- G.S. 20-137.4A: Operating a school bus while using a mobile phone to text or access electronic email
- **G.S. 20-138.1: Driving while impaired**
- **G.S. 20-138.2: Driving while impaired in a commercial vehicle**
- **G.S. 20-138.2A: Operating a commercial vehicle after consuming**
- **G.S. 20-138.2B: Operating a school bus, school activity bus, or child care vehicle after consuming alcohol**
- **G.S. 20-138.3: Operating a motor vehicle by person less than 21 after consuming alcohol or drugs**
- **G.S. 20-138.5: Habitual impaired driving**
- **G.S. 20-138.7(a): Operating a motor vehicle while there is an open container of alcohol in the passenger area and while the driver is consuming or has consumed alcohol**

- G.S. 20-140: Reckless driving
- G.S. 20-141(j1): Speeding more than 15 mph over limit or more than 80 mph
- G.S. 20-141(j3): Speeding in a commercial motor vehicle carrying a load that is subject to the permitting requirements of G.S. 20-119 and (i) driving 15 mph or more over the posted speed, or (ii) driving 15 mph or more over the permit speed
- G.S. 20-141.3: Operating a motor vehicle willfully in a prearranged speed competition, or operating a motor vehicle willfully in speed competition, or allowing one's vehicle to be operated in a prearranged speed competition, or wagering on a prearranged speed competition
- **G.S. 20-141.4: Felony death by vehicle, misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony serious injury by vehicle, aggravated felony death by vehicle, repeat felony death by vehicle**
- G.S. 20-141.5: Speeding to elude arrest
- G.S. 20-141.6: Aggressive driving
- G.S. 20-149(b): Improper operation by an overtaken driver causing a collision resulting in serious bodily injury, bodily injury, or property damage
- G.S. 20-157(a), (h), (i): Failing to move over for law enforcement or emergency vehicle giving warning signal, or violating G.S. 20-157 and causing damage to property or injury, or violating G.S. 20-157 and causing serious injury or death
- G.S. 20-166(a), (a1), (b), (c), (c1): Failing to stop and remain after a crash resulting in serious bodily injury or death, or failing to stop and remain after a crash resulting in injury, or failing to provide information or render assistance following a crash, or failing to stop and remain after a crash resulting in damage to property or non-apparent injury
- G.S. 20-166.1: Failing to notify law enforcement or other owner following crash, or failing to provide proof of insurance to DMV upon request
- G.S. 20-166.2: Failing, when a passenger in a vehicle involved in a crash, to remain at the scene, or provide information, or render assistance
- G.S. 20-167.1: Transporting spent nuclear fuel without notifying NCSHP in advance

(Note: The offenses in bold type are implied consent offenses that trigger a separate civil license revocation pursuant to G.S. 20-16.5. A judicial official may not enter a G.S. 20-13.3 revocation if the provisional licensee is subject to a G.S. 20-16.5 civil revocation for the same underlying conduct.)

When is a provisional licensee's license subject to civil revocation?

A provisional licensee's permit or license is subject to revocation under G.S. 13-3 if: (1) a law enforcement officer has reasonable grounds to believe that the provisional licensee has committed a criminal moving violation, (2) the provisional licensee is charged with that offense, and (3) the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5 for the same underlying conduct.

What is the procedure for ordering the civil revocation of a provisional licensee's license?

If a provisional licensee's permit or license is subject to revocation under G.S. 20-13.3, the law enforcement officer must execute a revocation report (AOC-CVR-12) and must ensure that the report is expeditiously filed with the appropriate judicial official.

Initial appearance

If an initial appearance is required on the underlying criminal moving violation, (which is the case if the provisional licensee is arrested for the offense), the law enforcement officer must file the revocation report (AOC-CVR-12) with the judicial official conducting the initial appearance (typically, a magistrate). If a properly executed revocation report concerning a provisional licensee is filed before a judicial official when the person is present before the official, the judicial official must, after completing any other proceedings involving the provisional licensee, determine whether there is probable cause to believe the conditions requiring civil license revocation are met. If the judicial official finds probable cause that the conditions in G.S. 20-13.3(b) are met, he or she must enter an order (AOC-CVR-13) revoking the provisional licensee's permit or license.

In addition to setting it out in the order, the judicial official must personally inform the provisional licensee of the right to a hearing pursuant to new G.S. 20-13.3(d2) to contest the validity of the revocation and that the provisional licensee's permit or license remains revoked pending the hearing.

The provisional licensee is not required to physically surrender his or her permit or license, though he or she is not authorized to drive at any time or for any purpose during the period of revocation.

No initial appearance

If no initial appearance is required on the underlying criminal moving violation at the time the person is charged (which is the case if the law enforcement officer issues a citation charging the defendant with a misdemeanor criminal moving violation but does not arrest the defendant), the law enforcement officer must tell the provisional licensee that his or her permit or license is subject to revocation pursuant to G.S. 20-13.3 and must provide the provisional licensee with a written form containing notice of the process for revocation and hearing under G.S. 20-13.3. (The Administrative Office of the Courts will develop a form providing the required notice.)

When no initial appearance is required, the revocation report must be filed with the clerk of superior court in the county in which the underlying criminal charge is brought. When the clerk receives a properly executed revocation report and the provisional licensee named in the report is not present before the clerk, the clerk must determine whether there is probable cause to believe that (1) the law enforcement officer had reasonable grounds to believe the provisional licensee committed a criminal moving violation; (2) the provisional licensee is charged with that offense; and (3) the provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5.

If the clerk determines there is such probable cause, the clerk must issue a revocation order and send it to the provisional licensee by first-class mail. The order must inform the provisional licensee that: (1) the period of revocation is for 30 days; (2) the revocation becomes effective on the fourth day after the order is deposited in the U.S. mail and continues for 30 additional calendar days; (3) the provisional licensee may request a hearing to contest the validity of the revocation pursuant to G.S. 20-13.3(d2); and (4) the revocation remains in effect pending the hearing. (The Administrative Office of the Courts will create a form for revocation orders entered by the clerk pursuant to G.S. 20-13.3(d1).)

The provisional licensee is not required to physically surrender his or her permit or license, though he or she is not authorized to drive at any time or for any purpose during the period of revocation.

What happens if a provisional licensee’s permit or license also is subject to revocation under G.S. 20-16.5?

If the provisional licensee’s permit or license also is subject to civil revocation under G.S. 20-16.5, then only the G.S. 20-16.5 revocation may be imposed. G.S. 20-13.3(b). For example, if a 17-year-old with a full provisional license is charged with driving after consuming alcohol or drugs in violation of G.S. 20-138.3 and the requirements for a G.S. 20-16.5 civil revocation are satisfied at the initial appearance, only the G.S. 20-16.5 revocation may be imposed.

What if a G.S. 20-16.5 civil license revocation is imposed after the initial appearance but while the provisional licensee civil revocation still is in effect?

When a defendant’s blood is withdrawn for analysis in an implied consent case, the results of that analysis necessarily will be reported after the defendant’s initial appearance. In such a case, the conditions for civil license revocation under G.S. 20-16.5 may not exist at the time of the initial appearance. If the defendant is under 18, and the other requirements for G.S. 20-13.3 revocation are satisfied, a provisional licensee civil revocation may issue.

A civil revocation subsequently ordered pursuant to G.S. 20-16.5 for the same underlying conduct terminates any earlier-issued G.S. 20-13.3 revocation. G.S. 20-13.3(f).

Suppose a provisional licensee whose license is revoked under G.S. 20-16.5 drives during the revocation period and is charged with a criminal moving violation that is not an implied consent offense. Is the person’s license subject to civil revocation pursuant to G.S. 20-13.3(f)?

Yes. This driver is subject to the G.S. 20-13.3 civil license revocation since it is premised on different conduct than that giving rise to the earlier-imposed G.S. 20-16.5 civil license revocation. G.S. 20-13.3(f) provides that “[r]evocations under this section are independent of and run concurrently with any other revocations, except for a revocation pursuant to G.S. 20-16.5.” The G.S. 20-16.5 exception to the concurrent rule reflects that both types of civil revocations may not be simultaneously imposed for a single occurrence. In the scenario described above, the G.S. 20-13.3 revocation is premised on different conduct than the G.S. 20-16.5 revocation; thus, it appears that the G.S. 20-13.3 revocation may run concurrently with the previously imposed G.S. 20-16.5 civil license revocation.

How long does the provisional licensee civil revocation last?

The period of revocation is 30 days. G.S. 20-13.3(d).

Revocation orders entered by the clerk when the provisional licensee is not present become effective on the fourth day after the order is deposited in the U.S. mail and continue for 30 additional calendar days. G.S. 20-13.3(d1).

Since the civil license revocation is a civil action, see G.S. 20-13.3(g), the civil counting rules of G.S. 1A-1, Rule 6(a) apply. Pursuant to Rule 6(a), the revocation ends at 12:01 a.m. on the thirtieth day after the revocation order is entered unless that date falls on a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions, in which case the revocation remains in effect until the next day that the courthouse is open for transactions.

Is a written revocation order required?

Yes. The judicial official must give the provisional licensee a copy of the revocation order (AOC-CVR-13). G.S. 20-13.3(d). The order must state the date on which the provisional licensee's permit or license again becomes valid and must inform the provisional licensee of the right to a hearing to contest the validity of the revocation pursuant to G.S. 20-13.3(d2). (The Administrative Office of the Courts will amend the current revocation order form (AOC-CVR-13) to provide notice of the right to a hearing and will develop a new revocation order form for use by clerks issuing revocations pursuant to G.S. 20-13.3(d1), which also will notify the provisional licensee of the right to a hearing to contest the validity of the revocation.)

Is the provisional licensee required to surrender his or her license or permit?

No. The provisional licensee keeps his or her license or permit. G.S. 20-13.3(d), (h). The provisional licensee is not, however, authorized to drive during the revocation period.

Must the court inform DMV of the revocation?

Yes. The clerk must notify DMV of the issuance of a provisional licensee civil revocation within two business days of the issuance of the revocation order. G.S. 20-13.3(e). The notice must specify the beginning and end date of the revocation period.

May a provisional licensee be awarded a limited driving privilege?

No. G.S. 20-13.3(f) provides that a person whose license is revoked pursuant to G.S. 20-13.3 is not eligible for a limited driving privilege.

Must the licensee pay a fee to end the civil revocation?

No. The person's permit or license becomes valid by operation of law at the conclusion of the revocation period. Payment of a fee is not required.

Are driver's license or insurance points assessed for such revocations?

No. G.S. 20-13.3(h) provides that no driver's license or insurance surcharge may be assessed for a G.S. 20-13.3 revocation.

May a provisional licensee appeal from the entry of a G.S. 20-13.3 civil revocation order?

A provisional licensee may request in writing a hearing to contest the validity of a G.S. 20-13.3 revocation. G.S. 20-13.3(d2). The request may be made at the time of the person's initial appearance or within ten days of the effective date of the revocation. The written request may be made to the clerk or to a magistrate designated by the clerk and may specifically request that the hearing be conducted by a district court judge.

Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district court judge to conduct such hearings. If the provisional licensee requests that a district court judge hold the hearing, the hearing must be conducted within the district court district by a district court judge assigned to conduct such hearings.

The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within ten working days if the hearing is before a district court judge. If the hearing is not held and completed in three working days of the written request (in the case of a hearing before a magistrate) or ten working days of the written request (in the case of a hearing before a district court judge), the judicial official must enter an order rescinding the revocation unless the provisional licensee who requested the hearing contributed to the delay in completing the hearing.

The request for the hearing must specify the grounds on which the validity of the revocation is challenged and the hearing must be limited to the specified grounds.

A witness may submit evidence via affidavit unless subpoenaed to appear. Any person who appears and testifies may be questioned by the judicial official conducting the hearing. The judicial official may adjourn the hearing to seek additional evidence if he or she is not satisfied with the accuracy or completeness of the evidence. The provisional licensee may, but is not required to, testify on his or her own behalf.

Unless contested by the provisional licensee, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under G.S. 20-13.3(b) is contested ((1) law enforcement officer had reasonable grounds to believe provisional licensee committed a criminal moving violation, (2) provisional licensee is charged with that offense, and (3) provisional licensee is not subject to a civil revocation pursuant to G.S. 20-16.5), the judicial official must find by the greater weight of the evidence that the condition was met to sustain the revocation. At the conclusion of the hearing, the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the provisional licensee and any other party as to any other proceedings that involve facts bearing on the conditions in G.S. 20-13.3(b) considered by the judicial official. The decision of the judicial official is final and may not be further appealed.

If the provisional licensee requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he or she forfeits the right to a hearing.

G.S. 20-13.3(d2) requires the Administrative Office of the Courts to develop a hearing request form for any provisional licensee requesting a hearing. The AOC also will develop a form order for entry of the judicial official's determination regarding the validity of the revocation.