



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Trial Court Officials
FROM: Matt Osborne
Deputy Counsel
DATE: 23 May 2022
SUBJECT: S.L. 2021-182 (SB 183) – June 2022 Limited Driving Privilege and License Restoration Changes¹

On 18 November 2021 the Governor signed into law S.L. 2021-182 (SB 183, Ignition Interlock/Various Changes) (hereinafter “SB 183”).² This memorandum is the second of two memoranda addressing the motor vehicle law changes contained in SB 183.³

A previous memorandum, entitled “S.L. 2021-182 (SB 183) – December 2021 Limited Driving Privilege Change” was released on 30 November 2021,⁴ and addressed the portions of SB 183 that (i) repealed G.S. 20-179.3(c1), which had imposed special limited driving privilege restrictions on “high-risk drivers,” and (ii) mandated a study of certain issues relating to limited driving privileges. The repeal of G.S. 20-179.3(c1) took effect for limited driving privileges issued on or after 1 December 2021. The study provision took effect when the bill became law on 18 November 2021.

This new memorandum addresses the additional motor vehicle law provisions in SB 183. These provisions (i) lift several of the standard limited driving privilege restrictions in G.S. 20-179.3 when the privilege contains an ignition interlock condition, (ii) amend the restrictions placed on licenses restored by the Division of Motor Vehicles under G.S. 20-17.8 and G.S. 20-19, and (iii) enact a new G.S. 20-179.5 to assist persons who are unable to afford the costs of an ignition interlock system. These changes apply to limited driving privileges issued and drivers licenses restored on or after 1 June 2022, and are discussed in turn below.

I. Imposition of Fewer Driving Restrictions when Privilege Contains an Ignition Interlock Condition; Related Forms Changes – 1 June 2022

¹ For future reference, a copy of this memorandum will be available on the Administrative Office of the Courts (NCAOC)’s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo categories for Criminal Memos and DMV & DWI Memos.

² The full text of the bill is available at the following link: <https://www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S183v6.pdf>

³ SB 183 also contains provisions addressing sex offender satellite-based monitoring and criminal first appearances. The NCAOC has addressed these provisions in other memoranda.

⁴ The 30 November 2021 memorandum is available on the NCAOC’s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo categories for Criminal Memos and DMV & DWI Memos. Judicial officials also are encouraged to review the summary of the motor vehicle provisions in SB 183 prepared by Professor Shea Denning and published on the School of Government’s *North Carolina Criminal Law* blog. Professor Denning’s summary is available here: <https://nccriminallaw.sog.unc.edu/s-l-2021-182-amends-ignition-interlock-requirements/>

Under current law, a limited driving privilege issued under G.S. 20-179.3 is subject to a number of restrictions on the purposes and times of driving. These include the following:

- subsection (a) (recitation of essential driving purposes);
- subsection (f) (general restriction to driving for essential purposes as listed in subsection (a));
- subsection (g) (restrictions governing work-related driving during standard working hours);
- subsection (g1) (restrictions governing work-related driving during non-standard working hours);
- and
- subsection (g2) (restrictions governing driving for the purposes of household maintenance, community service, Alcohol and Drug Education Traffic School, substance abuse assessment or treatment, education, and religious worship).

Section 1.(b) of SB 183 amends G.S. 20-179.3(g3) (which authorizes the court to impose an interlock condition in its discretion) and G.S. 20-179.3(g5) (which mandates an interlock condition for a person convicted under G.S. 20-138.1 who had an alcohol concentration of 0.15 or more) to provide that when the limited driving privilege contains an ignition interlock condition, the limitations set forth in subsections (a), (f), (g), (g1), and (g2) do not apply so long as the person is operating the designated vehicle with a functioning interlock device. Accordingly, for privileges issued under G.S. 20-179.3 on or after 1 June 2022, a person whose privilege contains an interlock condition will have greater driving freedom than a person whose privilege does not contain an interlock condition.

This change will apply not only to privileges issued under G.S. 20-179.3 for persons convicted of impaired driving, but also to other limited driving privilege authorizations that feed into G.S. 20-179.3. These include privileges for revocations arising from the following:

- a conviction in another state or federal court for an offense substantially similar to G.S. 20-138.1 (see G.S. 20-179.3(b)(1));
- a conviction of an underage alcohol offense (see G.S. 18B-302(g) and G.S. 20-17.3);
- a conviction of the offense of driving after consuming while under age 21 (see G.S. 20-13.2(a) and G.S. 20-138.3(d));
- a chemical analysis willful refusal (see G.S. 20-16.2(d) and (e1));
- a pretrial civil revocation (see G.S. 20-16.5(e), (f), and (p)); and
- a second or subsequent conviction of an open container violation (see G.S. 20-17(a)(12) and G.S. 20-138.7(h)).⁵

To account for this change, the NCAOC has revised several limited driving privilege forms for privileges issued on or after 1 June 2022. These forms are as follows:

⁵ The court also may impose an interlock condition under G.S. 20-179.3(g3) in a limited driving privilege for a felony probationer (see G.S. 15A-1331.1(b) & (d), G.S. 20-15.1, and G.S. 20-179.3(b)(2); see also form AOC-CR-318), but it does not appear that this would afford the defendant any greater freedom to drive. This is because SB 183 does not amend the last sentence of G.S. 20-179.3(b)(2), which will continue to provide that a limited privilege granted to a felony probationer whose license has been revoked under G.S. 15A-1331.1(b) “must restrict the person to essential driving related to the purposes listed [in G.S. 20-179.3(b)(2)].” Accordingly, it appears that even if the court were to impose an interlock condition in a privilege for a person revoked under G.S. 15A-1331.1(b), the person still would be limited to the essential driving purposes specified in G.S. 20-179.3(b)(2) – namely, driving to support dependents, to remain gainfully employed, and to provide transportation to a health care facility for a dependent who requires serious medical treatment. For this reason, the NCAOC has not revised form AOC-CR-318. Relatedly, G.S. 20-166(e) authorizes a limited driving privilege for a person with a first conviction under G.S. 20-166(a1) (failing to stop when the driver’s vehicle is involved in a crash resulting in injury), and this privilege feeds into G.S. 20-179.3(b)(2), which is the provision that addresses limited driving privileges for felony probationers. So, it appears that an interlock condition also would not afford greater driving freedom for a G.S. 20-166(e) privilege holder. There currently is no NCAOC form for this G.S. 20-166(e) privilege.

- **AOC-CR-312** – This is the limited driving privilege form for revocations arising from convictions for the following:
 - driving while impaired under G.S. 20-138.1;
 - commercial driving while impaired under G.S. 20-138.2;
 - driving after consuming while under the age of 21 under G.S. 20-138.3;
 - a second or subsequent offense of transporting an open container of alcohol under G.S. 20-138.7(a);
 - providing alcohol to an underage person under G.S. 18B-302(a1); and
 - aiding or abetting an underage alcohol violation under G.S. 18B-302(c).

This form is designed for use when the court does not impose an ignition interlock restriction. The NCAOC has made technical and conforming changes to the form.

- **AOC-CR-340** – This is the companion form to the CR-312. It is designed for use when the court does impose an ignition interlock condition. The NCAOC has revised the form to reflect the fewer driving restrictions that apply to a person whose privilege requires the installation and use of an interlock device.
- **AOC-CR-313 (new A and B versions)** – This is the limited driving privilege form for a person who is revoked under G.S. 20-16.2 for willfully refusing a chemical analysis. For privileges issued on or after 1 June 2022, the NCAOC has separated this form into a CR-313A version for use when the court does not impose an ignition interlock condition, and a CR-313B version for use when the court does impose an ignition interlock condition.
- **AOC-CVR-9** – This is the limited driving privilege application for use by a person who has a civil revocation under G.S. 20-16.5. The NCAOC has made only technical changes to this form.
- **AOC-CVR-10 (new A and B versions)** – This form covers a person with a standard 30-day or 45-day civil revocation. For privileges issued on or after 1 June 2022, the NCAOC has separated this form into a CVR-10A version for use when the court does not impose an ignition interlock condition, and a CVR-10B version for use when the court does impose an ignition interlock condition.
- **AOC-CVR-11 (new A and B versions)** – This form covers a person with an indefinite civil revocation. For privileges issued on or after 1 June 2022, the NCAOC has separated this form into a CVR-11A version for use when the court does not impose an ignition interlock condition, and a CVR-11B version for use when the court does impose an ignition interlock condition.
- **AOC-CV-350** – This is the limited driving privilege application used by North Carolina residents revoked as the result of a conviction in the courts of another state or in federal court. The NCAOC has made only clarifying changes to this form.
- **AOC-CV-352 (new A and B versions)** – This form covers a North Carolina resident with a conviction in another jurisdiction of an offense substantially similar to driving while impaired under G.S. 20-138.1. For privileges issued on or after 1 June 2022, the NCAOC has separated this form into a CV-352A version for use when the court does not impose an ignition interlock condition, and a CV-352B version for use when the court does impose an ignition interlock condition.

A final change that SB 183 makes in the limited driving privilege context is an amendment to G.S. 20-179.3(g5) (the mandatory interlock provision) to require that the interlock device be set to prohibit driving with an alcohol concentration greater than 0.02. Under current law, this setting is 0.00. This change will apply to limited privileges issued on or after 1 June 2022. The revised CR-340 and the new CR-313B will account for this change by referencing a restriction of 0.02 in a new option specific to mandatory ignition interlocks under G.S. 20-179.3(g5) that will appear on side two of both forms.

The NCAOC will release these new and amended forms shortly before 1 June 2022. The NCAOC's Business Analysis and Process Management Division will provide notice via email once it has posted the forms for use.

II. **G.S. 20-17.8 and G.S. 20-19 Restored License Changes; Related Change to Form AOC-CVR-1A – 1 June 2022**

Sections 1.(c) and 1.(d) of SB 183 amend G.S. 20-17.8 ("Restoration of a license after certain driving while impaired convictions; ignition interlock") and G.S. 20-19 ("Period of suspension or revocation; conditions of restoration"), respectively, to amend the conditions that are imposed on licenses restored under these statutes.

These changes, which are discussed below, apply to licenses restored under G.S. 20-17.8 and G.S. 20-19 on or after 1 June 2022.

Changes for Licenses Restored Pursuant to G.S. 20-17.8

G.S. 20-17.8 applies to a person whose license is revoked as the result of a conviction of impaired driving under G.S. 20-138.1, and for whom any of the following is true:

- the person had an alcohol concentration of 0.15 or more;
- the person has been convicted of a prior offense involving impaired driving, and this prior offense occurred within seven years immediately preceding the date of the offense for which the person's license currently has been revoked; or
- the person was sentenced to Aggravated Level One punishment under G.S. 20-179(f3).

The statute also applies to a person whose license is revoked as the result of a conviction of habitual impaired driving under G.S. 20-138.5.

G.S. 20-17.8(b) provides that when DMV restores the license of a person who is subject to G.S. 20-17.8, the restored license must contain an ignition interlock requirement. G.S. 20-17.8(b) also imposes an alcohol concentration restriction on the restored license. SB 183 amends G.S. 20-17.8 to address (i) the vehicles on which the person must have an ignition interlock installed and (ii) the alcohol concentration restriction imposed:

- **interlock installation on designated vehicles:** Under current law, a person to whom G.S. 20-17.8 applies "shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system." SB 183 amends G.S. 20-17.8(c1) to provide instead that a person subject to G.S. 20-17.8 "shall designate in accordance with the policies of the Division [of Motor Vehicles] any registered vehicles owned by that person that the person operates or intends to operate and have the designated vehicles equipped with a functioning ignition interlock system." The bill makes conforming changes to other portions of G.S. 20-17.8(c1) and to G.S. 20-17.8(j).
- **uniform alcohol concentration restriction:** Under current G.S. 20-17.8(b)(3), the person may not drive with an alcohol concentration of 0.04 or greater, or greater than 0.00, depending on the particular factors that apply to the person whose license is being restored. SB 183 amends G.S. 20-17.8(b)(3) to mandate a uniform restriction of 0.02 for all licenses restored under G.S. 20-17.8. Accordingly, a person whose license is restored under G.S. 20-17.8 may not drive with an alcohol concentration of 0.02 or greater.

Changes for Licenses Restored Pursuant to G.S. 20-19

G.S. 20-19 governs the duration of license suspensions and revocations, and the conditions imposed on licenses restored by DMV. G.S. 20-19(c3) applies to persons whose licenses are revoked pursuant to the following:

- G.S. 20-13.2(a) (*i.e.*, a conviction of driving after consuming while less than 21 years of age pursuant to G.S. 20-138.3);
- G.S. 20-23 when the offense involved impaired driving (*i.e.*, a conviction in another state of an impaired driving offense);
- G.S. 20-23.2 (*i.e.*, a conviction in federal court of an impaired driving offense);
- G.S. 20-17(a)(2) (*i.e.*, a conviction of impaired driving under G.S. 20-138.1, or a conviction of impaired driving in a commercial motor vehicle under G.S. 20-138.2 where the person's alcohol concentration was 0.06 or greater);
- G.S. 20-17(a)(1) when the offense involved impaired driving (*i.e.*, a conviction of manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving);
- G.S. 20-17(a)(9) when the offense involved impaired driving (*i.e.*, a conviction of death by vehicle or serious injury by vehicle under G.S. 20-141.4 when the offense involved impaired driving);
- G.S. 20-138.5 (*i.e.*, a conviction of habitual impaired driving); and
- G.S. 20-19(c3) itself (*i.e.*, a situation where the person is revoked for violating a restriction on a license previously restored under subsection (c3)).

SB 183 amends G.S. 20-19(c3) to address (i) the alcohol concentration restrictions that apply to licenses restored under G.S. 20-19(c3) and (ii) the person's agreement to submit to a chemical analysis as a condition of restoration.

a. G.S. 20-19(c3) alcohol concentration restriction changes

G.S. 20-19(c3)(3) currently requires a license restriction prohibiting driving with an alcohol concentration of greater than 0.00 when DMV restores the license of a person to which one of the following applies:

- The person was convicted of driving while impaired in a commercial motor vehicle (G.S. 20-138.2), habitual impaired driving (G.S. 20-138.5), driving after consuming while less than 21 years of age (G.S. 20-138.3), felony death by vehicle (G.S. 20-141.4(a1)), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving; or
- DMV previously restored the person's license under G.S. 20-19(c3), and the person has been revoked under G.S. 20-19(c3) for violating a restriction of the restored license.

Section 1.(d) of SB 183 makes two changes to G.S. 20-19(c3)(3). First, SB 183 removes from the coverage of (c3)(3) persons convicted of driving after consuming while less than 21 years of age under G.S. 20-138.3. (SB 183 addresses these persons in a new G.S. 20-19(c3)(3a), discussed below.) Second, SB 183 increases the alcohol concentration limit to 0.02 (*i.e.*, the person is prohibited from driving with an alcohol concentration of greater than 0.02) for licenses that DMV restores under (c3)(3).

As noted in the preceding paragraph, SB 183 enacts a new G.S. 20-19(c3)(3a) covering the restoration of the drivers license of a person convicted of driving after consuming alcohol or drugs while

under 21 years of age pursuant to G.S. 20-138.3 (or revoked under G.S. 20-23 or G.S. 20-23.2 due to a conviction in another state or federal court of an offense substantially similar to G.S. 20-138.3). The new (c3)(3a) requires that the restored license contain a restriction that prohibits driving with an alcohol concentration of greater than 0.00.

SB 183 also adds a new G.S. 20-19(c3)(5) providing that when DMV restores a drivers license under G.S. 20-17.8 requiring installation of an ignition interlock system, the restored license must prohibit driving with an alcohol concentration of 0.02 or more. This provision tracks the changes to G.S. 20-17.8 discussed earlier in this memorandum.

b. G.S. 20-19(c3) agreement to submit to chemical analysis

Under current law, a person seeking restoration under G.S. 20-19(c3) “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 the person is operating a motor vehicle on a highway or public vehicular area *in violation of the restriction specified in this subsection.*” (Emphasis added.) SB 183 amends this language to read as follows: “[T]he person seeking restoration of a license 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 the person is operating a motor vehicle on a highway or public vehicular area *while consuming alcohol or at any time while the person has remaining in the person's body any alcohol or controlled substance previously consumed.*” (Emphasis added.)⁶

Change to Form AOC-CVR-1A

To account for the changes for restored licenses described above, DMV has established two new license restriction codes – restriction code 25 (alcohol concentration of 0.02) and restriction code 26 (alcohol concentration of 0.02 plus ignition interlock). The NCAOC has added these two new restrictions to the list in instruction no. 4 on side two of form AOC-CVR-1A. The NCAOC will make this new version of the form available shortly before 1 June 2022, and the NCAOC’s Business Analysis and Process Management Division will provide notice via email once it has posted the form for use.

III. New G.S. 20-179.5 Ignition Interlock Affordability Provision – 1 June 2022

Section 1.(e) of SB 183 enacts a new G.S. 20-179.5 to address persons who are unable to afford the costs associated with an ignition interlock device. The new statute provides as a general rule that the costs associated with an ignition interlock condition imposed by the court system or DMV “shall be paid by the person ordered to install the system,” and that the interlock vendor will collect these costs “under terms agreed upon by the ignition interlock system vendor and the person required to install the ignition interlock system.”

Notwithstanding this general rule, the new G.S. 20-179.5 provides that a person who is ordered by the court or DMV to install an ignition interlock device, but who is unable to afford the associated costs, may apply to the interlock vendor for a waiver of a portion of these costs.⁷ In order to request a waiver, the person must complete and submit to the vendor an affidavit form promulgated by DMV. The person

⁶ SB 183 also makes technical and clarifying changes to G.S. 20-19(c5), (d), (e1), (i), and (k).

⁷ Note that the application is presented to the interlock vendor. The court system is not involved in the interlock costs waiver process.

must aver that either (i) the person’s income is at or below 150% of the federal poverty line or (ii) the person is enrolled in any of five public assistance programs listed in the new G.S. 20-179.5. The person seeking the waiver must provide documentation to support the assertions in the affidavit.

If the waiver request complies with these requirements, the vendor “shall install the ignition interlock system in accordance with both of the following terms: (1) The applicant shall not be required to pay for installation or removal of the ignition interlock system or systems. (2) The applicant shall receive a fifty percent (50%) discount on the monthly service rate charged to persons who are not granted a waiver under this section.” If the vendor denies the waiver request, the person may seek a review by DMV of the denial.

This new waiver process for interlock costs applies to limited privileges issued and drivers licenses restored on or after 1 June 2022. The bill requires DMV to adopt rules to implement the new G.S. 20-179.5.

IV. Conclusion

Court officials with legal questions about the changes described above may contact me at matt.e.osborne@nccourts.org.

Questions about the use of the NCAOC’s automated systems, forms, and recordkeeping procedures should be directed to the field support analyst for the court official’s county from the NCAOC’s Business Analysis and Process Management Division. A map is available on Juno here: <https://juno.nccourts.org/resources/references/bapm-field-support-staff-assignments-map>

Law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the effect of the legislation discussed above should consult their respective counsel. The NCAOC Office of General Counsel cannot provide legal advice to entities outside the Judicial Branch.