



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Legal and Legislative
Services Division

Peter E. Powell
Legal and Legislative Administrator

PO Box 2448, Raleigh, NC 27602
T 919 890-1300 F 919 890-1914

MEMORANDUM

(via E-Mail)

TO: Senior Resident Superior Court Judges
Chief District Court Judges
Clerks of Superior Court
District Attorneys
Public Defenders

FROM: Matt Osborne, Associate Legal Counsel

DATE: 4 November 2013

RE: Changes to DWI Seizure and Felony Speeding Elude Seizure Laws

Effective for offenses committed on or after 1 December 2013, the General Assembly has amended the statutes governing impaired driving motor vehicle seizures and felony speeding to elude motor vehicle seizures.

The General Assembly's purpose in making these changes is for law enforcement, the Division of Motor Vehicles (DMV), the court system, and the Department of Public Instruction (DPI) to process felony speeding to elude seizures in the same basic manner as impaired driving seizures.

Accordingly, for those persons who have worked with the impaired driving seizure law in the past, the new procedures for felony speeding to elude seizures will be very familiar.

For more detailed information on these changes, please see the sections of this memorandum that follow, as well as the comparison table that appears as an appendix to this memorandum.

1. Legislation and Effective Date

The General Assembly enacted these motor vehicle seizure changes in S.L. 2013-243 (HB 656). The full text of the bill is available from the following link:

<http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H656v5.pdf>

Because of a technical drafting oversight in HB 656 relating to the seizure of rental vehicles, the General Assembly made an additional change to the seizure law in Section 18 of S.L. 2013-410 (HB 92). Section 18 appears on page 10 of the bill, which is available using the following link:

<http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H92v7.pdf>

As noted above, these changes to the impaired driving and felony speeding to elude seizure laws will apply to offenses committed on or after 1 December 2013.

2. Changes to the Impaired Driving Seizure Law and Related Forms

As mentioned above, the primary purpose of this new legislation is to provide for the processing of felony speeding to elude seizures in the same basic manner as impaired driving seizures.

Accordingly, there are only two substantive changes to the impaired driving seizure law:

- **Rental car company as an “innocent owner” (G.S. 20-28.2(a1)(2)):** Under current law, a rental car company is deemed to be an “innocent owner” under the impaired driving seizure law if the person operating the motor vehicle at the time of seizure was not listed as an authorized driver on the rental contract (i.e., the company rented the car to A, but B was driving at the time of the offense). For offenses committed on or after 1 December 2013, the General Assembly has expanded this provision so that a rental car company will be considered to be an innocent owner if either (i) the person operating the motor vehicle at the time of seizure was not listed as an authorized driver on the rental contract or (ii) the person operating the motor vehicle at the time of seizure was listed as an authorized driver on the rental contract, but the rental car company had no actual knowledge of the person’s drivers license revocation at the time the rental agreement was executed.
- **Post-trial release when forfeiture criteria not satisfied (G.S. 20-28.4(a)):** Under current law, even where the defendant is convicted of the underlying impaired driving offense that triggered the seizure, the court may not forfeit the motor vehicle (and must release the motor vehicle to the owner) if the court finds at the forfeiture hearing that at the time of the offense, the defendant’s license was not revoked as the result of an impaired driving license revocation. This current provision, however, does not account for the second basis for an impaired driving seizure, which is that at the time of the offense, the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy. The General Assembly has addressed this oversight by providing that even if the defendant is convicted of the underlying impaired driving offense that triggered the seizure, the court may not forfeit the motor vehicle (and must release the motor vehicle to the owner) if the court finds “that the criteria for forfeiture have not . . . been met.” In other words, this exception is no longer limited to just the “already revoked” basis for seizure.

To account for these two 1 December 2013 changes, the criminal forms subcommittee has approved revised versions of the CR-330, CR-332 and CR-336 forms. In addition, in order to account for the new felony speeding to elude seizure procedures, the criminal forms subcommittee has identified the impaired driving seizure forms as the “A” versions, and the new felony speeding to elude seizure forms as the “B” versions. So, for example, the three impaired driving seizure forms just mentioned now will be forms CR-330A, CR-332A, and CR-336A. The corresponding forms for felony speeding to elude seizures will be CR-330B, CR-332B, and CR-336B. For the “A” versions, the proper edition to use will be the “Rev. 12/13” edition. The new “B” versions are identified as “New 12/13” in the bottom left corner.

The forms applicable at each stage of the seizure process, both for impaired driving seizures and for felony speeding to elude seizures, are referenced in the appendix to this memorandum.

3. Changes to the Felony Speeding to Elude Seizure Law and New Forms

As previously mentioned, for offenses committed on or after 1 December 2013, the felony speeding elude seizure process will mirror the longstanding impaired driving seizure process.

This means that, unlike the current felony speeding to elude seizure law,

- there will be a required review of the seizure by the magistrate,
- the motor vehicle will be held by one of the statewide contractors rather than the sheriff,
- pretrial temporary bond release will be processed by the clerk rather than the sheriff,
- “innocence” will be defined for purposes of innocent owner release,
- the motor vehicle will be subject to the pretrial expedited sale provision,
- DMV and the clerks will make the necessary entries into the STARS system, and
- DPI and the statewide contractors, rather than the sheriff, will conduct forfeiture sales.

For a complete side-by-side comparison of the impaired driving seizure procedures and the new felony speeding to elude seizure procedures for each stage of the process, please see the appendix to this memorandum.

Those persons already familiar with the impaired driving seizure process may want to focus on the instances in which the new felony speeding to elude seizure process will differ from the impaired driving seizure process. These differences are noted in the appendix in **blue**.

The two most significant differences between the new felony speeding to elude seizure process and the longstanding impaired driving seizure process are the following:

- The types of “innocence” for purposes of innocent owner release are different.
- The defendant-owner release option is a temporary bond release.

The appendix also contains references to the forms used at each stage of the process. As noted above, the felony speeding to elude seizure forms will be the “B” versions.

4. Processing Felony Speeding to Elude Seizures for Offenses Occurring Prior to 1 December 2013

The current felony speeding to elude seizure law will continue to apply to offenses occurring prior to 1 December 2013. For more on these procedures, please see the following memorandum that the NCAOC distributed when the felony speeding to elude seizure law first was enacted in 2011:

<https://cis1.nccourts.org/intranet/aocapps/crimprod/documents/legalmemos/speedingtoeludeseizurememo2011.pdf>

The forms for this process (CR-275, CR-276, CR-277, and CR-278) will remain available, but they will contain a note in the title box indicating that they apply only to offenses occurring from 1 December 2011 through 30 November 2013.

Please share this memorandum and the appendix with others in your office, county or district, as you deem appropriate. The NCAOC also will post a copy of this memorandum to the Legal Memos section of the North Carolina Courts Intranet under the “DMV & DWI” heading:

<https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/dmvdwi.jsp>

For system entry and workflow questions concerning these changes, please contact your county’s NCAOC court services analyst, or the NCAOC’s Procedural Help Desk.

For legal questions concerning these changes, contact Matt Osborne at matt.e.osborne@nccourts.org, or (919) 890-1301.

Please note that the NCAOC is not permitted to provide legal advice to persons such as law enforcement officers and private attorneys who are not Judicial Branch officers or employees.

This page intentionally left blank.

<p>Notice of Seizure</p> <p>G.S. 20-28.3(b), (b1), (b2) & (c)</p>	<p>If the magistrate orders a seizure, the officer must notify DMV (and DMV must, in turn, notify the parties with an interest in the motor vehicle and place a hold on the motor vehicle title to prevent its transfer). The magistrate provides the seizure order to the clerk (who, in turn, provides a copy to the district attorney and the school board attorney).</p> <p>Form CR-323A (<u>see</u> notes at bottom of form)</p>	<p>Same as the DWI seizure notice process.</p> <p>Form CR-323B (<u>see</u> notes at bottom of form)</p>
<p>Towing and Storage of Motor Vehicle</p> <p>G.S. 20-28.3(d); G.S 20-28.9</p>	<p>The motor vehicle will be towed and stored locally, then eventually will be obtained by one of the two statewide towing and storage companies that has a contract with the NC Department of Public Instruction. The statewide contractor pays the towing and storage fees of the local company. The contractor will recoup these fees, along with its own towing and storage fees, when the motor vehicle eventually is released or sold.</p>	<p>Same as the DWI seizure towing and storage process.</p>
<p>Retrieval of Personal Property Left in Motor Vehicle</p> <p>G.S. 20-28.3(j)</p>	<p>“At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.”</p>	<p>Same as the DWI seizure personal property retrieval process.</p>

<p>Pretrial Permanent Innocent Owner Release</p> <p>G.S. 20-28.3(e1)</p>	<p>The clerk must find the following by the greater weight of the evidence:</p> <ul style="list-style-type: none"> ▪ The petitioner is a person or entity other than the defendant. ▪ DMV had issued a registration or title for the motor vehicle in the petitioner's name at the time of seizure. ▪ The petitioner is an innocent owner as defined in G.S. 20-28.2(a1) (<u>see</u> the next entry in this table). ▪ The motor vehicle is covered by an automobile liability insurance policy, as required by Article 13 of Chapter 20, at the time of release. ▪ The petitioner has executed an impaired driving acknowledgment, as defined in G.S. 20-28.2(a1). ▪ If the petitioner is a lessor, the petitioner agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant or any person acting on behalf of the defendant. ▪ If the petitioner previously has executed an acknowledgment for the defendant, and the defendant was operating on this occasion the same motor vehicle that was the subject of the prior acknowledgment, the petitioner on this occasion took all reasonable precautions to prevent the use of the motor vehicle by the defendant and immediately reported to law enforcement, upon discovery, the defendant's unauthorized use of the motor vehicle. <p>Any release order shall be conditioned on the owner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>The clerk must provide a copy of the order, whether it authorizes or denies release, to the DA and the school board attorney.</p> <p>Forms CR-330A and CR-332A</p>	<p>Same as the DWI seizure innocent owner requirements, except that the petitioner must execute a speeding to elude arrest acknowledgment (rather than an impaired driving acknowledgment), and except that the innocent owner categories are different, as noted in the next entry in this table.</p> <p>Forms CR-330B and CR-332B</p>
---	--	--

<p>Types of “Innocence” for Purposes of Innocent Owner Release</p> <p>G.S. 20-28.2(a1)</p>	<p>The petitioner is an innocent owner if at least one of the following is true:</p> <ul style="list-style-type: none"> ▪ The petitioner did not know and had no reason to know that (i) the defendant’s drivers license was revoked or (ii) the defendant did not have a valid drivers license and had no liability insurance. ▪ The petitioner knew that the defendant’s license was revoked, or that the defendant had no valid drivers license and no liability insurance, but the defendant drove the motor vehicle without the petitioner’s express or implied permission, and the petitioner files a police report for unauthorized use and agrees to prosecute the defendant for unauthorized use. ▪ The motor vehicle was reported stolen. ▪ The petitioner is a rental car company as defined in G.S. 66-201(a) and (i) the motor vehicle was driven by a person who was not listed as an authorized driver on the rental agreement as defined in G.S. 66-201, or (ii) the motor vehicle was driven by a person who was listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but the rental car company had no actual knowledge of the revocation of the renter-defendant’s drivers license at the time the rental agreement was entered. ▪ The petitioner is in the business of leasing motor vehicles, held legal title to the motor vehicle as a lessor at the time of seizure, and had no actual knowledge of the revocation of the defendant-lessee’s drivers license at the time the lease was entered. <p>Forms CR-330A and CR-332A</p>	<p>The petitioner is an innocent owner if at least one of the following is true:</p> <ul style="list-style-type: none"> ▪ The petitioner did not give the defendant express or implied permission to operate the motor vehicle, and the petitioner files a police report for unauthorized use and agrees to prosecute the defendant for unauthorized use. ▪ The motor vehicle was reported stolen. ▪ The petitioner is a rental car company as defined in G.S. 66-201(a) and (i) the motor vehicle was driven by a person who was not listed as an authorized driver on the rental agreement as defined in G.S. 66-201, or (ii) the motor vehicle was driven by a person who was listed as an authorized driver on the rental agreement as defined in G.S. 66-201, but the rental agreement expressly prohibited the use of the motor vehicle while committing a felony. ▪ The petitioner is in the business of leasing motor vehicles and held legal title to the motor vehicle as a lessor at the time of seizure. <p>Forms CR-330B and CR-332B</p>
--	--	--

<p>Pretrial Temporary Bond Release</p> <p>G.S. 20-28.3(e)</p>	<p>The clerk must find the following by the greater weight of the evidence:</p> <ul style="list-style-type: none"> ▪ The petitioner is a person or entity other than the defendant. ▪ DMV had issued a registration or title for the motor vehicle in the petitioner's name at the time of seizure. ▪ The motor vehicle has been seized for at least 24 hours. ▪ A bond in an amount equal to the fair market value of the motor vehicle as determined by DMV (which will be shown in STARS) has been posted, and is secured by cash, by a deed of trust to real property, by a bail bond, or by a solvent surety. (The bond is conditioned on the return of the motor vehicle, in substantially the same condition as it was at the time of seizure, and without any new or additional liens or encumbrances, on the date of any forfeiture hearing scheduled by the DA's Office.) ▪ The petitioner has executed an impaired driving acknowledgment, as defined in G.S. 20-28.2(a1). ▪ The petitioner previously has not executed an acknowledgment naming this same defendant. ▪ A bond posted to secure the release of this same motor vehicle previously has not been ordered forfeited. <p>Any release order shall be conditioned on the petitioner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>If the petitioner fails to return the motor vehicle when required and in the condition required, the bond shall be forfeited and the court shall order the re-seizure of the motor vehicle. The petitioner also is subject to being held in civil or criminal contempt.</p> <p>Forms CR-330A, CR-331A, and CR-332A</p>	<p>Same as the DWI seizure temporary bond release requirements, except that the petitioner must execute a speeding to elude arrest acknowledgment (rather than an impaired driving acknowledgment).</p> <p>Forms CR-330B, CR-331B, and CR-332B</p>
---	--	---

<p>Pretrial Defendant-Owner Release</p> <p>G.S. 20-28.3(e2)</p>	<p>The DA's Office or the court (as explained below) must determine the following:</p> <ul style="list-style-type: none"> ▪ DMV had issued a registration or title for the motor vehicle in the defendant-petitioner's name at the time of seizure. ▪ At the time of the underlying impaired driving offense that triggered the seizure, the defendant-petitioner's drivers license was not revoked as the result of an impaired driving license revocation. <p>The defendant-petitioner files the petition with the clerk, and the clerk forwards a copy to the DA's Office.</p> <p>If the DA's Office consents to the release, then the clerk enters an order of release if the clerk is satisfied that the motor vehicle is covered by an automobile liability insurance policy, as required by Article 13 of Chapter 20, at the time of release. The clerk must provide a copy of the release order to the school board attorney.</p> <p>If the DA's Office does not consent to the release, then the clerk schedules a hearing before a judge to take place within 10 days of the filing of the petition, or as soon thereafter as may be feasible. The clerk provides notice of the hearing to the defendant-petitioner, the DA's Office, and the school board attorney. The judge at the hearing then determines whether the defendant-petitioner is entitled to release.</p> <p>Any release order shall be conditioned on the defendant-petitioner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>This release order is for a permanent release.</p> <p>CR-333A</p>	<p>The clerk must find the following by the greater weight of the evidence:</p> <ul style="list-style-type: none"> ▪ DMV had issued a registration or title for the motor vehicle in the defendant-petitioner's name at the time of seizure. ▪ The motor vehicle has been seized for at least 24 hours. ▪ A bond in an amount equal to the fair market value of the motor vehicle as determined by DMV (which will be shown in STARS) has been posted, and is secured by cash, by a deed of trust to real property, by a bail bond, or by a solvent surety. (The bond is conditioned on the return of the motor vehicle, in substantially the same condition as it was at the time of seizure, and without any new or additional liens or encumbrances, on the date of any forfeiture hearing scheduled by the DA's Office.) ▪ A bond posted to secure the release of this same motor vehicle previously has not been ordered forfeited. <p>Any release order shall be conditioned on the defendant-petitioner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>This release order is for a temporary release. If the defendant-petitioner fails to return the motor vehicle when required and in the condition required, the bond shall be forfeited and the court shall order the re-seizure of the motor vehicle. The defendant-petitioner also is subject to being held in civil or criminal contempt.</p> <p>CR-333B and CR-331B</p>
---	--	--

<p>Pretrial Permanent Lienholder Release</p> <p>G.S. 20-28.3(e3)</p>	<p>The lienholder files a release petition with the clerk.</p> <p>If (i) all the interested parties (the owner(s), the DA's Office, and the school board attorney) waive their rights to notice and a hearing by signing side two of the petition and order form, and (ii) the lienholder agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant or the owner, the clerk may enter an order releasing the motor vehicle to the lienholder.</p> <p>If the lienholder is not able to obtain the signatures of all the interested parties, the lienholder must obtain a hearing date, and must serve a copy of the petition and a notice of hearing on all the interested parties at least 10 days prior to the hearing date. After the hearing, the court shall order the release of the motor vehicle to the lienholder if it finds all of the following by the greater weight of the evidence:</p> <ul style="list-style-type: none"> ▪ The lienholder held a perfected security interest in the motor vehicle at the time of seizure. ▪ There has been a default on the obligation secured by the motor vehicle. ▪ As a result of the default, the lienholder is entitled to possession of the motor vehicle. ▪ The lienholder agrees to sell the motor vehicle in accordance with the terms of the security agreement and Part 6 of Article 9 of Chapter 25 of the General Statutes. The lienholder agrees to pay any net proceeds from the sale (i.e., any proceeds over and above the lien amount and the towing and storage amount) into the clerk's office for later disposition by the court. ▪ The lienholder agrees not to sell, give or otherwise transfer possession of the motor vehicle to the defendant or the owner. <p><i>(Continued on next page.)</i></p>	<p>Same as the DWI seizure pretrial lienholder release process.</p> <p><i>(Continued on next page.)</i></p>
---	---	---

<p>Pretrial Permanent Lienholder Release</p> <p>G.S. 20-28.3(e3)</p>	<p><i>(Continued from previous page.)</i></p> <ul style="list-style-type: none"> ▪ This motor vehicle has not been released previously to the lienholder as the result of a prior seizure involving the same defendant or the same owner. <p>Any release order shall be conditioned on the lienholder's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>A lienholder who violates a condition of release is subject to being held in civil or criminal contempt.</p> <p>CR-334A</p>	<p><i>(Continued from previous page.)</i></p> <p>CR-334B</p>
<p>Insurance Proceeds</p> <p>G.S. 20-28.2(c1); G.S. 20-28.3(h)</p>	<p>If the seized motor vehicle is damaged during the offense or during the seizure, DMV will direct the insurance company to pay the insurance proceeds into the clerk rather than to the policy holder. The clerk holds the proceeds pending an order from the court on their disposition.</p> <p>If the insurance company declares the motor vehicle a total loss, the insurance company may petition, through the school board attorney, for the release of the motor vehicle by the clerk to the insurance company following the payment into the clerk of the net insurance proceeds (i.e., any insurance proceeds remaining after payment of the towing and storage costs and any valid liens). The clerk must provide a copy of the release order to DMV. The clerk holds the proceeds pending an order from the court on their disposition.</p> <p>Form CR-924A</p>	<p>Same insurance procedures as DWI seizure.</p> <p>Form CR-924B</p>

<p>Expedited Sale by DPI and Statewide Contractors</p> <p>G.S. 20-28.3(i); G.S. 20-28.5(a)</p>	<p>The Department of Public Instruction, through the statewide contractors, may sell the seized motor vehicle without a court order when one of the following is true:</p> <ul style="list-style-type: none"> ▪ 90 days have passed from the date of seizure and the motor vehicle has a fair market value of \$1,500.00 or less; or ▪ The towing and storage costs have reached a level at which they exceed 85% of the fair market value of the motor vehicle; or ▪ The motor vehicle owner(s) has(have) consented to the sale of the motor vehicle. <p>The public sale is conducted in accordance with G.S. 20-28.5(a). Accordingly, the statewide contractor may not sell, give or otherwise transfer possession of the motor vehicle to the defendant, the motor vehicle owner, or any person acting on behalf of the defendant or owner.</p> <p>The statewide contractor shall pay any net proceeds of the sale (i.e., any proceeds remaining after removing the towing and storage amount) into the clerk. The clerk holds the proceeds pending an order from the court on their disposition.</p>	<p>Same pretrial sale procedures as DWI seizure.</p>
<p>Trial on Underlying Offense</p> <p>G.S. 20-28.3(m)</p>	<p><u>District court trials</u> involving a seized motor vehicle shall be scheduled on the arresting officer's next court date, or within 30 days of the offense date, whichever comes first.</p> <p>The district court judge may permit a continuance only if</p> <ul style="list-style-type: none"> ▪ The party seeking the continuance files a written motion with notice to the opposing party; ▪ The judge finds that there is a "compelling reason" for the continuance; and ▪ The motion and the judge's finding of a compelling reason are made a part of the case record. <p>CR-337</p>	<p>This does not apply to felony speeding to elude seizures because a felony speeding to elude charge will not be tried in district court (although a district court judge could accept a plea to Class H felony speeding to elude).</p> <p>No form needed.</p>

<p>Restitution for Towing and Storage Costs</p> <p>G.S. 20-28.3(l)</p>	<p>If the defendant is convicted of the underlying offense that triggered the seizure, the court shall order the defendant to pay restitution to the county board of education, the owner of the motor vehicle, or the lienholder, for the costs for the towing, storage and sale of the motor vehicle to the extent these costs were not covered by the forfeiture sale proceeds.</p> <p>The clerk shall docket a civil judgment for this restitution amount. The clerk docket the judgment (i) at the time of final conviction if the defendant receives an active sentence or (ii) at the time of probation revocation or termination (for the amount determined by the judge as still owing) if the defendant receives a suspended sentence.</p>	<p>Same restitution and civil judgment requirements as under the DWI seizure law.</p> <p>In addition, where the defendant is charged with felony speeding to elude, but ultimately is convicted only of misdemeanor speeding to elude, the court nevertheless shall order the defendant to pay restitution to the county board of education, the motor vehicle owner, or the lienholder, for the costs for the towing and storage of the motor vehicle.</p>
<p>Need for Forfeiture Hearing</p> <p>G.S. 20-28.2(d)</p>	<p>If the defendant is convicted of the underlying offense that triggered the seizure and the motor vehicle and/or proceeds related to the motor vehicle are still subject to seizure, the court must hold a forfeiture hearing to determine the disposition of the motor vehicle and/or proceeds.</p> <p>Accordingly, if no motor vehicle or proceeds are subject to seizure following conviction (e.g., the motor vehicle was permanently released prior to trial, or was sold under G.S. 20-28.3(i) prior to trial and there were no net sale proceeds paid into the clerk), there is no need to conduct a forfeiture hearing.</p>	<p>Same analysis as under the DWI seizure law.</p>
<p>Post-Trial Release if No Conviction for Triggering Offense</p> <p>G.S. 20-28.4(a)</p>	<p>If the defendant is not convicted of the underlying offense that triggered the seizure, there is no need to hold a forfeiture hearing, and the court shall order the motor vehicle and/or proceeds still subject to seizure to be released to the owner.</p> <p>If the court orders the release of the motor vehicle, the release order shall be conditioned on the owner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>Form CR-336A</p>	<p>Same analysis as under the DWI seizure law.</p> <p>Form CR-336B</p>

<p>Timing of Forfeiture Hearing</p> <p>G.S. 20-28.2(b), (b1), (b2) & (d); G.S. 20-28.3(m)</p>	<p>G.S. 20-28.3(m) provides that “[u]pon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible.”</p> <p>G.S. 20-28.2(b), (b1) and (d) provide that the forfeiture determination may be made at any of the following times:</p> <ul style="list-style-type: none"> ▪ At the sentencing hearing for the underlying offense that triggered the seizure. ▪ At a separate hearing following conviction for the underlying offense that triggered the seizure. ▪ At a hearing held 60 days or more after the defendant has failed to appear at the scheduled trial for the underlying offense that triggered the seizure (assuming the court has not set aside the defendant’s order for arrest for failing to appear). 	<p>Same timing options as under the DWI seizure law.</p> <p>Note that G.S. 20-28.2(b2) is the new provision that addresses the timing of the forfeiture hearing where the seizure is based on a felony speeding to elude arrest charge.</p>
<p>Notice of Forfeiture Hearing</p> <p>G.S. 20-28.2(c) & (d)</p>	<p>If a forfeiture hearing is necessary, the DA’s Office shall provide notice of the hearing to the defendant, the motor vehicle owner(s), and any lienholder with a security interest in the motor vehicle.</p> <p>The DA’s Office may use any means of service “reasonably likely to provide actual notice,” and must serve the notice at least 10 days before the forfeiture hearing.</p> <p>If the DA’s Office does not provide proper prior notice, “the judge shall continue the forfeiture proceeding until adequate notice has been given,” but “[i]n no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice [of the forfeiture hearing].”</p> <p>Form CR-324A</p>	<p>Same notice requirement as under the DWI seizure law.</p> <p>Form CR-324B</p>
<p>Post-Trial Release to Innocent Owner or Lienholder</p> <p>G.S. 20-28.2(e) and (f)</p>	<p>At the forfeiture hearing, the court may order the release of the motor vehicle to a qualifying innocent owner (G.S. 20-28.2(e)) or lienholder (G.S. 20-28.2(f)).</p> <p>Forms CR-330A, CR-332A, and CR-334A</p>	<p>Same release possibilities as under the DWI seizure law, except for the differences noted above with regard to the innocent owner acknowledgments and the innocent owner categories.</p> <p>Forms CR-330B, CR-332B, and CR-334B</p>

<p>Criteria for Forfeiture</p> <p>G.S. 20-28.2(b), (b1), (b2) & (d)</p>	<p>The court shall order the forfeiture of the motor vehicle and/or proceeds if (i) there is no party entitled to release and (ii) the court finds by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and at the time of the offense either</p> <ul style="list-style-type: none"> ▪ the defendant already was revoked as the result of an impaired driving license revocation <u>or</u> ▪ the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy. 	<p>The court shall order the forfeiture of the motor vehicle and/or proceeds if (i) there is no party entitled to release and (ii) the court finds by the greater weight of the evidence that the defendant is guilty of the offense of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).</p>
<p>Post-Trial Release If Forfeiture Requirements Not Met</p> <p>G.S. 20-28.4(a)</p>	<p>If, at the forfeiture hearing, the court finds that the criteria for forfeiture are not met, the court shall order the release of the motor vehicle and/or proceeds to the owner.</p> <p>If the court orders the release of the motor vehicle, the release order shall be conditioned on the owner's payment of the outstanding towing and storage charges. These fees may not be waived.</p> <p>Form CR-336A</p>	<p>Not applicable to the speeding to elude seizure law.</p> <p>If the defendant is not convicted of felony speeding to elude there is no further inquiry needed and G.S. 20-28.4(a) requires the release of the motor vehicle and/or proceeds to the owner. (See the last row on page 14, above.)</p>
<p>Forfeiture to School Board</p> <p>G.S. 20-28.2(b), (b1), (b2) & (d)</p>	<p>If the court finds by the greater weight of the evidence that the criteria for forfeiture have been met, the court shall order the forfeiture of the motor vehicle and/or proceeds to the school board.</p> <p>Form CR-335A</p>	<p>Same forfeiture analysis as under the DWI seizure law, except that, as explained above, the specific forfeiture criteria are different.</p> <p>Form CR-335B</p>
<p>Sale or Retention of Motor Vehicle Following Forfeiture</p> <p>G.S. 20-28.2(d); G.S. 20-28.5</p>	<p>The school board may choose to take the net proceeds from the public sale of the motor vehicle by the statewide contractor, or it instead may opt to retain the actual motor vehicle.</p> <p>Neither the statewide contractor nor the school board may sell, give or otherwise transfer possession of the motor vehicle to the defendant, the motor vehicle owner, or any person acting on behalf of the defendant or owner.</p>	<p>Same options as under the DWI seizure law.</p>
<p>Payment of Towing and Storage Costs Always Required</p> <p>G.S. 20-28.2(h); G.S. 20-28.3(n)</p>	<p>Any pretrial or post-conviction release order must require the payment of the outstanding towing and storage costs.</p> <p>These costs may not be waived.</p>	<p>Same requirement as under the DWI seizure law.</p>

<p>Rights of School Board Attorney</p> <p>G.S. 20-28.3(k)</p>	<p>Except for a pretrial innocent owner release proceeding conducted by the clerk, the school board attorney must receive notice “of all proceedings regarding offenses related to a motor vehicle subject to forfeiture.”</p> <p>The school board attorney has “the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section.”</p> <p>Further, if the school board consents to the delegation, the DA’s Office may delegate to the school board attorney “any or all of the duties of the district attorney” under G.S. 20-28.3.</p> <p>Finally, “[c]lerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.”</p>	<p>Same rights as under the DWI seizure law.</p>
---	--	--

<p>Failure to Retrieve Released Motor Vehicle</p> <p>G.S. 20-28.4</p>	<p>G.S. 20-28.4(a) provides, in pertinent part, as follows: “The court shall include in its [release] order notice to the owner of the seized motor vehicle still being held, that within 30 days of the date of the court’s order, the owner must make payment of the outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or give notice to [the] Division of Motor Vehicles requesting a judicial hearing on the validity of any mechanics’ lien on the motor vehicle for towing and storage costs.” (This notice is included on the various NCAOC release order forms.)</p> <p>G.S. 20-28.4(b) provides as follows: “Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court’s order, the possessor of the seized motor vehicle has a mechanics’ lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes. Notice of the right to a judicial hearing on the validity of the mechanics’ lien given to the owner of the motor vehicle in open court in accordance with subsection (a) of this section or delivery to the owner of the vehicle of a copy of the court’s order entered in accordance with subsection (a) of this section shall satisfy the notice requirement of G.S. 44A-4(b).”</p>	<p>Same retrieval window as under the DWI seizure law.</p>
<p>STARS Entries by Clerk</p> <p>G.S. 20-28.8</p>	<p>The clerk, using STARS, must report acknowledgments, release orders, and forfeiture orders to DMV.</p>	<p>Same STARS requirements as under the DWI seizure law.</p>

<p>Registration Stops</p> <p>G.S. 20-54.1</p>	<p>If the defendant is convicted of an offense involving impaired driving, and the court finds that at the time of the offense the defendant's drivers license was revoked as the result of a prior impaired driving license revocation as defined in G.S. 20-28.2, then DMV must revoke the registration of all motor vehicles registered in the <u>defendant's</u> name and shall not register a motor vehicle in the defendant's name until it has restored the defendant's license.</p> <p>If the defendant is convicted of an offense involving impaired driving, and the court finds that at the time of the offense the defendant's drivers license was revoked as the result of a prior impaired driving license revocation as defined in G.S. 20-28.2, then DMV shall prohibit the <u>owner at the time of seizure</u> from registering the seized motor vehicle until it has restored the defendant's license. This prohibition does not apply to an owner the court has determined to be an innocent owner.</p> <p>Even though the statute requires DMV to enter these registration stops, historically the clerks have entered these stops into STARS because the clerks are in the best position to know (i) that the triggering events have occurred and (ii) whether the owner at the time of seizure has been determined by the court system to be an innocent owner.</p>	<p>If the defendant is convicted of felony speeding to elude under G.S. 20-141.5(b) or (b1), DMV must revoke the registration of all motor vehicles registered in the <u>defendant's</u> name and shall not register a motor vehicle in the defendant's name until it has restored the defendant's license.</p> <p>If the defendant is convicted of felony speeding to elude under G.S. 20-141.5(b) or (b1), then DMV shall prohibit the <u>owner at the time of seizure</u> from registering the seized motor vehicle until it has restored the defendant's license. This prohibition does not apply to an owner the court has determined to be an innocent owner.</p> <p>As noted at left, even though the statute requires DMV to enter these registration stops, historically the clerks have entered impaired driving revocation stops into STARS because the clerks are in the best position to know (i) that the triggering events have occurred and (ii) whether the owner at the time of seizure has been determined by the court system to be an innocent owner. For the same reasons, the clerks will enter the new felony speeding to elude registration stops into STARS.</p>
---	---	---