

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 427  
PROPOSED COMMITTEE SUBSTITUTE H427-PCS30271-SA-16

Short Title: Run and You're Done.

(Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE SEIZURE, FORFEITURE, AND SALE OF MOTOR  
VEHICLES USED BY DEFENDANTS IN FELONY CASES INVOLVING SPEEDING  
TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-28.2 reads as rewritten:

**"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving  
license ~~revocation~~ revocation; forfeiture for felony speeding to elude arrest.**

(a) Meaning of "Impaired Driving License Revocation". – The revocation of a person's  
drivers license is an impaired driving license revocation if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or  
20-138.5; or
- (2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if  
the offense involves impaired driving; or
- (3) The laws of another state and the offense for which the person's license is  
revoked prohibits substantially similar conduct which if committed in this  
State would result in a revocation listed in subdivisions (1) or (2).

(a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7,  
20-28.8, and 20-28.9, the following terms mean:

- (1) Impaired Driving Acknowledgment. – A written document acknowledging  
that:
  - a. The motor vehicle was operated by a person charged with an offense  
involving impaired driving, and:
    1. That person's drivers license was revoked as a result of a prior  
impaired drivers license revocation; or
    2. That person did not have a valid drivers license, and did not  
have liability insurance.
  - b. If the motor vehicle is again operated by this particular person, and  
the person is charged with an offense involving impaired driving,  
then the vehicle is subject to impoundment and forfeiture if (i) the  
offense occurs while that person's drivers license is revoked, or (ii)  
the offense occurs while the person has no valid drivers license, and  
has no liability ~~insurance~~; and insurance.



\* H 4 2 7 - P C S 3 0 2 7 1 - S A - 1 6 \*

- 1 c. A lack of knowledge or consent to the operation will not be a defense  
2 in the future, unless the motor vehicle owner has taken all reasonable  
3 precautions to prevent the use of the motor vehicle by this particular  
4 person and immediately reports, upon discovery, any unauthorized  
5 use to the appropriate law enforcement agency.
- 6 (1a) Speeding to Elude Arrest Acknowledgment. – A written document  
7 acknowledging that:
- 8 a. The motor vehicle was operated by a person charged with felony  
9 speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
- 10 b. If the motor vehicle is again operated by this particular person, and  
11 the person is charged with felony speeding to elude arrest pursuant to  
12 G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment  
13 and forfeiture.
- 14 c. A lack of knowledge or consent to the operation will not be a defense  
15 in the future, unless the motor vehicle owner has taken all reasonable  
16 precautions to prevent the use of the motor vehicle by this particular  
17 person and immediately reports upon discovery any unauthorized use  
18 to the appropriate law enforcement agency.
- 19 (1b) Fair Market Value. – The value of the seized motor vehicle, as determined in  
20 accordance with the schedule of values adopted by the Commissioner  
21 pursuant to G.S. 105-187.3.
- 22 (2) Innocent Owner. – A motor vehicle owner:
- 23 a. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving  
24 offense, did not know and had no reason to know that (i) the  
25 defendant's drivers license was revoked, or (ii) that the defendant did  
26 not have a valid drivers license, and that the defendant had no  
27 liability insurance; or
- 28 b. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving  
29 offense, knew that (i) the defendant's drivers license was revoked, or  
30 (ii) that the defendant had no valid drivers license, and that the  
31 defendant had no liability insurance, but the defendant drove the  
32 vehicle without the person's expressed or implied permission, and the  
33 owner files a police report for unauthorized use of the motor vehicle  
34 and agrees to prosecute the unauthorized operator of the motor  
35 vehicle; vehicle, or who, if the offense resulting in seizure was a  
36 felony speeding to elude arrest offense, did not give the defendant  
37 express or implied permission to drive the vehicle, and the owner  
38 files a police report for unauthorized use of the motor vehicle and  
39 agrees to prosecute the unauthorized operator of the motor vehicle; or
- 40 c. Whose vehicle was reported stolen; or
- 41 d. Repealed by Session Laws 1999-406, s. 17.
- 42 e. Who is in the business of renting vehicles, and the vehicle was driven  
43 by a person who is not listed as an authorized driver on the rental  
44 contract; or
- 45 f. Who is in the business of leasing motor vehicles, who holds legal  
46 title to the motor vehicle as a lessor at the time of seizure ~~and~~ and, if  
47 the offense resulting in seizure was an impaired driving offense, who  
48 has no actual knowledge of the revocation of the lessee's drivers  
49 license at the time the lease is entered.

- 1 (2a) Insurance Company. – Any insurance company that has coverage on or is  
2 otherwise liable for repairs or damages to the motor vehicle at the time of the  
3 seizure.
- 4 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage  
5 to a seized motor vehicle less any payments actually paid to valid lienholders  
6 and for towing and storage costs incurred for the motor vehicle after the time  
7 the motor vehicle became subject to seizure.
- 8 (3) Lienholder. – A person who holds a perfected security interest in a motor  
9 vehicle at the time of seizure.
- 10 (3a) Motor Vehicle Owner. – A person in whose name a registration card or  
11 certificate of title for a motor vehicle is issued at the time of seizure.
- 12 (4) Order of Forfeiture. – An order by the court which terminates the rights and  
13 ownership interest of a motor vehicle owner in a motor vehicle and any  
14 insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.
- 15 (5) Repealed by Session Laws 1998-182, s. 2.
- 16 (6) Registered Owner. – A person in whose name a registration card for a motor  
17 vehicle is issued at the time of seizure.
- 18 (7) Repealed by Session Laws 1998-182, s. 2.

19 ...  
20 (b2) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Felony  
21 Speeding to Elude Arrest. – A judge may determine whether the vehicle driven at the time of  
22 the offense becomes subject to an order of forfeiture. The determination may be made at any of  
23 the following times:

- 24 (1) A sentencing hearing for the underlying felony speeding to elude arrest  
25 offense.
- 26 (2) A separate hearing after conviction of the defendant.
- 27 (3) A forfeiture hearing held at least 60 days after the defendant failed to appear  
28 at the scheduled trial for the underlying offense, and the defendant's order of  
29 arrest for failing to appear has not been set aside.

30 The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence  
31 shows that the defendant is guilty of felony speeding to elude arrest pursuant to  
32 G.S. 20-141.5(b) or (b1).

33 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a  
34 prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture  
35 under this section and the motor vehicle has not been permanently released to a nondefendant  
36 vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or  
37 a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor  
38 vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that  
39 the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's  
40 interest. The notice may be served by any means reasonably likely to provide actual notice, and  
41 shall be served at least 10 days before the hearing at which an order of forfeiture may be  
42 entered.

43 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was  
44 damaged while the defendant operator was committing the underlying ~~offense involving~~  
45 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the  
46 motor vehicle, the Division shall determine the name of any insurance companies that are the  
47 insurers of record with the Division for the motor vehicle at the time of the seizure or that may  
48 otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle  
49 was involved in an accident, the Division shall notify the insurance companies that the claim  
50 for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of  
51 superior court of the county where the motor vehicle driver was charged to be held and

1 disbursed pursuant to further orders of the court. Any insurance company that receives written  
2 or other actual notice of seizure pursuant to this section shall not be relieved of any legal  
3 obligation under any contract of insurance unless the claim for property damage to the seized  
4 motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The  
5 insurance company paying insurance proceeds to the clerk of court pursuant to this section shall  
6 be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a  
7 result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall  
8 disburse the insurance proceeds pursuant to further orders of the court.

9 (d) Forfeiture Hearing. – Unless a motor vehicle that has been seized pursuant to  
10 G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1),  
11 a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3),  
12 the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be  
13 held at the sentencing hearing on the underlying ~~offense involving impaired driving offense~~  
14 resulting in seizure, at a separate hearing after conviction of the defendant, or at a separate  
15 forfeiture hearing held not less than 60 days after the defendant failed to appear at the  
16 scheduled trial for the underlying offense and the defendant's order of arrest for failing to  
17 appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor  
18 vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been  
19 given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a  
20 forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant  
21 to this section and proper notice of the hearing has been given, the judge shall order the motor  
22 vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the  
23 evidence, that such motor vehicle owner is an innocent owner as defined in this section, in  
24 which case the trial judge shall order the motor vehicle released to the innocent owner pursuant  
25 to the provisions of subsection (e) of this section. In any case where the motor vehicle is  
26 ordered forfeited, the judge shall:

- 27 (1) a. Authorize the sale of the motor vehicle at public sale or allow the  
28 county board of education to retain the motor vehicle for its own use  
29 pursuant to G.S. 20-28.5; or  
30 b. Order the motor vehicle released to a lienholder pursuant to the  
31 provisions of subsection (f) of this section; and  
32 (2) a. Order any proceeds of sale or insurance proceeds held by the clerk of  
33 court to be disbursed to the county board of education; and  
34 b. Order any outstanding insurance claims be assigned to the county  
35 board of education in the event the motor vehicle has been damaged  
36 in an accident incident to the seizure of the motor vehicle.

37 If the judge determines that the motor vehicle is subject to forfeiture pursuant to this section,  
38 but that notice as required by subsection (c) has not been given, the judge shall continue the  
39 forfeiture proceeding until adequate notice has been given. In no circumstance shall the  
40 sentencing of the defendant be delayed as a result of the failure of the prosecutor to give  
41 adequate notice.

42 (e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a  
43 nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the  
44 motor vehicle was being driven by a person who was not the only motor vehicle owner or had  
45 no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the  
46 petitioner is an "innocent owner", as defined by this section, a judge shall order the motor  
47 vehicle released to that owner, conditioned upon payment of all towing and storage charges  
48 incurred as a result of the seizure and impoundment of the motor vehicle.

49 Release to an innocent owner shall only be ordered upon satisfactory proof of:

- 50 (1) The identity of the person as a motor vehicle owner;

- 1 (2) The existence of financial responsibility to the extent required by Article 13  
 2 of this Chapter or by the laws of the state in which the vehicle is registered;  
 3 and  
 4 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.  
 5 (4) The execution of:  
 6 a. ~~an~~ An impaired driving acknowledgment as defined in subdivision  
 7 (a1)(1) of this ~~section~~ section if the seizure was for an offense  
 8 involving impaired driving; or  
 9 b. A speeding to elude arrest acknowledgment as defined in subdivision  
 10 (a1)(1a) of this section if the seizure was for violation of  
 11 G.S. 20-141.5(b) or (b1).

12 If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor  
 13 agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the  
 14 defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or  
 15 transfer possession of a seized motor vehicle to the defendant or any person acting on the  
 16 behalf of the defendant shall not be liable for damages arising out of the refusal.

17 No motor vehicle subject to forfeiture under this section shall be released to a nondefendant  
 18 motor vehicle owner if the records of the Division indicate the motor vehicle owner had  
 19 previously signed an impaired driving acknowledgment or a speeding to elude arrest  
 20 acknowledgment, as required by this section, and the same person was operating the motor  
 21 vehicle while that person's license was revoked unless the innocent owner shows by the greater  
 22 weight of the evidence that the motor vehicle owner has taken all reasonable precautions to  
 23 prevent the use of the motor vehicle by this particular person and immediately reports, upon  
 24 discovery, any unauthorized use to the appropriate law enforcement agency. A determination  
 25 by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the  
 26 petitioner is not an innocent owner is a final judgment and is immediately appealable to the  
 27 Court of Appeals.

28 ...."

29 **SECTION 2.** G.S. 20-28.3 reads as rewritten:

30 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**  
 31 **impaired driving while license revoked or without license and**  
 32 **insurance.** ~~insurance, and for felony speeding to elude arrest.~~

33 (a) Motor Vehicles Subject to ~~Seizure~~ Seizure for Impaired Driving Offenses. – A  
 34 motor vehicle that is driven by a person who is charged with an offense involving impaired  
 35 driving is subject to seizure if:

- 36 (1) At the time of the violation, the drivers license of the person driving the  
 37 motor vehicle was revoked as a result of a prior impaired driving license  
 38 revocation as defined in G.S. 20-28.2(a); or  
 39 (2) At the time of the violation:  
 40 a. The person was driving without a valid drivers license, and  
 41 b. The driver was not covered by an automobile liability policy.

42 For the purposes of this subsection, a person who has a complete defense, pursuant to  
 43 G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a  
 44 valid drivers license at the time of the violation.

45 (a1) Motor Vehicles Subject to Seizure for Felony Speeding to Elude Arrest. – A motor  
 46 vehicle is subject to seizure if it is driven by a person who is charged with the offense of felony  
 47 speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

48 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor  
 49 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall  
 50 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the  
 51 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to

1 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle  
2 driven by a person not listed as an authorized driver on the rental contract, the officer shall not  
3 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the  
4 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was  
5 not listed as an authorized driver on the rental contract. Probable cause may be based on the  
6 officer's personal knowledge, reliable information conveyed by another officer, records of the  
7 Division, or other reliable ~~source~~.sources. The seizing officer shall notify the ~~executive agency~~  
8 ~~designated under subsection (b1) of this section~~ Division as soon as practical but no later than  
9 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures  
10 established by the ~~executive agency designated under subsection (b1) of this section~~ Division.

11 (b1) Written Notification of Impoundment. – Within 48 hours of receipt within regular  
12 business hours of the notice of seizure, ~~an executive agency designated by the Governor shall~~  
13 ~~issue written notification of impoundment to the Division, the Division shall issue written~~  
14 ~~notification of impoundment~~ to any lienholder of record and to any motor vehicle owner who  
15 was not operating the motor vehicle at the time of the offense. A notice of seizure received  
16 outside regular business hours shall be considered to have been received at the start of the next  
17 business day. The notification of impoundment shall be sent by first-class mail to the most  
18 recent address contained in the Division's records. If the motor vehicle is registered in another  
19 state, notice shall be sent to the address shown on the records of the state where the motor  
20 vehicle is registered. This written notification shall provide notice that the motor vehicle has  
21 been seized, state the reason for the seizure and the procedure for requesting release of the  
22 motor vehicle. Additionally, if the motor vehicle was damaged ~~while the defendant operator~~  
23 ~~was committing an offense involving impaired driving while the operator was committing an~~  
24 ~~offense resulting in seizure~~ or incident to the seizure, the ~~agency~~ Division shall issue written  
25 notification of the seizure to the owner's insurance company of record and to any other  
26 insurance companies that may be insuring other motor vehicles involved in the accident. The  
27 Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle  
28 owner unless authorized by court order.

29 (b2) Additional Notification to Lienholders. – In addition to providing written  
30 notification pursuant to subsection (b1) of this section, within eight hours of receipt within  
31 regular business hours of the notice of seizure, the ~~executive agency designated under~~  
32 ~~subsection (b1) of this section~~ Division shall notify by facsimile any lienholder of record that  
33 has provided the ~~executive agency~~ Division with a designated facsimile number for notification  
34 of impoundment. The facsimile notification of impoundment shall state that the vehicle has  
35 been seized, state the reason for the seizure, and notify the lienholder of the additional written  
36 notification that will be provided pursuant to subsection (b1) of this section. The ~~executive~~  
37 ~~agency~~ Division shall establish procedures to allow a lienholder to provide one designated  
38 facsimile number for notification of impoundment for any vehicle for which the lienholder is a  
39 lienholder of record and shall maintain a centralized database of the provided facsimile  
40 numbers. The lienholder must provide a facsimile number at which the ~~executive~~  
41 ~~agency~~ Division may give notification of impoundment at anytime.

42 ...  
43 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, other than the  
44 driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of  
45 superior court in the county where the charges are pending for pretrial release of the motor  
46 vehicle.

47 The clerk shall release the motor vehicle to a nondefendant motor vehicle owner  
48 conditioned upon payment of all towing and storage charges incurred as a result of seizure and  
49 impoundment of the motor vehicle under the following conditions:

- 50 (1) The motor vehicle has been seized for not less than 24 hours;
- 51 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

- 1 (3) A bond in an amount equal to the fair market value of the motor vehicle as  
2 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit  
3 in the full amount of the bond, by a recordable deed of trust to real property  
4 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at  
5 least one solvent surety, payable to the county school fund and conditioned  
6 on return of the motor vehicle, in substantially the same condition as it was  
7 at the time of seizure and without any new or additional liens or  
8 encumbrances, on the day of any hearing scheduled and noticed by the  
9 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been  
10 permanently released;
- 11 (4) Execution of either:
- 12 a. ~~an~~ An impaired driving acknowledgment as described in  
13 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an  
14 offense involving impaired driving; or
- 15 b. A speeding to elude arrest acknowledgment as defined in  
16 G.S. 20-28.2(a1)(1a) if the seizure was for violation of  
17 G.S. 20-141.5(b) or (b1).
- 18 (5) A check of the records of the Division indicates that the requesting motor  
19 vehicle owner has not previously executed an acknowledgment naming the  
20 operator of the seized motor vehicle; and
- 21 (6) A bond posted to secure the release of this motor vehicle under this  
22 subsection has not been previously ordered forfeited under G.S. 20-28.5.

23 In the event a nondefendant motor vehicle owner who obtains temporary possession of a  
24 seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of  
25 the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise  
26 violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection,  
27 the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court.  
28 Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any  
29 condition of pretrial release may be held in civil or criminal contempt.

30 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor  
31 vehicle owner may file a petition with the clerk of court seeking a pretrial determination that  
32 the petitioner is an innocent owner. The clerk shall consider the petition and make a  
33 determination as soon as may be feasible. At any proceeding conducted pursuant to this  
34 subsection, the clerk is not required to determine the issue of forfeiture, only the issue of  
35 whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an  
36 innocent owner, the clerk shall release the motor vehicle to the petitioner subject to the same  
37 conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall  
38 send a copy of the order authorizing or denying release of the vehicle to the district attorney  
39 and the attorney for the county board of education. An order issued under this subsection  
40 finding that the petitioner failed to establish that the petitioner is an innocent owner may be  
41 reconsidered by the court as part of the forfeiture hearing conducted pursuant to  
42 G.S. 20-28.2(d).

43 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. –

- 44 (1) ~~A~~ If the seizure was for an offense involving impaired driving, a defendant  
45 motor vehicle owner may file a petition with the clerk of court seeking a  
46 pretrial determination that the defendant's license was not revoked pursuant  
47 to an impaired driving license revocation as defined in G.S. 20-28.2(a). The  
48 clerk shall schedule a hearing before a judge of the division in which the  
49 underlying criminal charge is pending for a hearing to be held within 10  
50 business days or as soon thereafter as may be feasible. Notice of the hearing  
51 shall be given to the defendant, the district attorney, and the attorney for the

1 county board of education. The clerk shall forward a copy of the petition to  
2 the district attorney for the district attorney's review. If, based on available  
3 information, the district attorney determines that the defendant's motor  
4 vehicle is not subject to forfeiture, the district attorney may note the State's  
5 consent to the release of the motor vehicle on the petition and return the  
6 petition to the clerk of court who shall enter an order releasing the motor  
7 vehicle to the defendant upon payment of all towing and storage charges  
8 incurred as a result of the seizure and impoundment of the motor vehicle,  
9 subject to the satisfactory proof of the identity of the defendant as a motor  
10 vehicle owner and the existence of financial responsibility to the extent  
11 required by Article 13 of this Chapter, and no hearing shall be held. The  
12 clerk shall send a copy of the order of release to the attorney for the county  
13 board of education. At any pretrial hearing conducted pursuant to this  
14 subsection, the court is not required to determine the issue of the underlying  
15 offense of impaired driving only the existence of a prior drivers license  
16 revocation as an impaired driving license revocation. Accordingly, the State  
17 shall not be required to prove the underlying offense of impaired driving. An  
18 order issued under this subsection finding that the defendant failed to  
19 establish that the defendant's license was not revoked pursuant to an  
20 impaired driving license revocation as defined in G.S. 20-28.2(a) may be  
21 reconsidered by the court as part of the forfeiture hearing conducted  
22 pursuant to G.S. 20-28.2(d).

23 (2) If the seizure was for a felony speeding to elude arrest offense, a defendant  
24 motor vehicle owner may apply to the clerk of superior court in the county  
25 where the charges are pending for pretrial release of the motor vehicle. The  
26 clerk shall release the motor vehicle to the defendant motor vehicle owner  
27 conditioned upon payment of all towing and storage charges incurred as a  
28 result of seizure and impoundment of the motor vehicle under the following  
29 conditions:

- 30 a. The motor vehicle has been seized for not less than 24 hours;  
31 b. A bond in an amount equal to the fair market value of the motor  
32 vehicle as defined by G.S. 20-28.2 has been executed and is secured  
33 by a cash deposit in the full amount of the bond, by a recordable deed  
34 of trust to real property in the full amount of the bond, by a bail bond  
35 under G.S. 58-71-1(2), or by at least one solvent surety, payable to  
36 the county school fund and conditioned on return of the motor  
37 vehicle, in substantially the same condition as it was at the time of  
38 seizure and without any new or additional liens or encumbrances, on  
39 the day of any hearing scheduled and noticed by the district attorney  
40 under G.S. 20-28.2(c), unless the motor vehicle has been  
41 permanently released;  
42 c. Execution of speeding to elude arrest acknowledgment as described  
43 in G.S. 20-28.2(a1)(1a); and  
44 d. A bond posted to secure the release of this motor vehicle under this  
45 subdivision has not been previously ordered forfeited under  
46 G.S. 20-28.5.

47 In the event a defendant motor vehicle owner who obtains temporary  
48 possession of a seized motor vehicle pursuant to this subsection does not  
49 return the motor vehicle on the day of the forfeiture hearing as noticed by the  
50 district attorney under G.S. 20-28.3(c) or otherwise violates a condition of  
51 pretrial release of the seized motor vehicle as set forth in this subsection, the

bond posted shall be ordered forfeited, and an order of seizure shall be issued by the court. Additionally, a defendant motor vehicle owner who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e3) Pretrial Release of Motor Vehicle to Lienholder. –

(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

- a. Default on the obligation secured by the motor vehicle has occurred;
- b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;
- c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;
- d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and
- e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

(2) The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision ~~(1)(d)~~(1)d. above. A lienholder who refuses to sell, give, or transfer possession of a seized motor vehicle while the motor vehicle is subject to forfeiture, or a forfeited motor vehicle after the forfeiture hearing, to:

- a. The defendant;
- b. The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or
- c. Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

1 ...  
2 (k) County Board of Education Right to Appear and Participate in Proceedings. – The  
3 attorney for the county board of education shall be given notice of all proceedings regarding  
4 offenses ~~involving impaired driving~~ related to a motor vehicle subject to ~~forfeiture~~ forfeiture  
5 under this section. However, the notice requirement under this subsection does not apply to  
6 proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education  
7 shall also have the right to appear and to be heard on all issues relating to the seizure,  
8 possession, release, forfeiture, sale, and other matters related to the seized vehicle under this  
9 section. With the prior consent of the county board of education, the district attorney may  
10 delegate to the attorney for the county board of education any or all of the duties of the district  
11 attorney under this section. Clerks of superior court, law enforcement agencies, and all other  
12 agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor  
13 vehicles are authorized and directed to provide county boards of education with access to that  
14 information and to do so by electronic means when existing technology makes this type of  
15 transmission possible.

16 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized pursuant  
17 to this section is convicted ~~of an offense involving impaired driving~~, of the underlying offense  
18 resulting in the seizure of a motor vehicle pursuant to this section, the defendant shall be  
19 ordered to pay as restitution to the county board of education, the motor vehicle owner, or the  
20 lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the  
21 extent the costs were not covered by the proceeds from the forfeiture and sale of the motor  
22 vehicle. If the underlying offense resulting in the seizure is felony speeding to elude arrest  
23 pursuant to G.S. 20-141.5(b) or (b1) and the defendant's conviction is for misdemeanor  
24 speeding to elude arrest pursuant to G.S. 20-141.5(a), whether or not the reduced charge is by  
25 plea agreement, the defendant shall be ordered to pay as restitution to the county board of  
26 education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing and  
27 storage of the motor vehicle. In addition, a civil judgment for the costs under this section in  
28 favor of the party to whom the restitution is owed shall be docketed by the clerk of superior  
29 court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall  
30 become effective and be docketed when the defendant's conviction becomes final. If the  
31 defendant is placed on probation, the civil judgment in the amount found by a judge during the  
32 probation revocation or termination hearing to be due shall become effective and be docketed  
33 by the clerk when the defendant's probation is revoked or terminated.

34 (m) Trial Priority. – District court trials of ~~impaired driving~~ offenses involving  
35 forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting  
36 officer's next court date or within 30 days of the offense, whichever comes first.

37 Once scheduled, the case shall not be continued unless all of the following conditions are  
38 met:

- 39 (1) A written motion for continuance is filed with notice given to the opposing  
40 party prior to the motion being heard.
- 41 (2) The judge makes a finding of a "compelling reason" for the continuance.
- 42 (3) The motion and finding are attached to the court case record.

43 Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge  
44 immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders  
45 pursuant to G.S. 20-28.2(d).

46 Should a defendant appeal the conviction to superior court, any party who has not  
47 previously been heard on a petition for pretrial release under subsection (e1) or (e3) of this  
48 section or any party whose motor vehicle has not been the subject of a forfeiture hearing held  
49 pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to  
50 subsection (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also  
51 apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was

1 released pursuant to subsection (e) of this section pending trial in district court, the release of  
2 the motor vehicle continues, and the terms and conditions of the original bond remain the same  
3 as those required for the initial release of the motor vehicle under subsection (e) of this section,  
4 pending the resolution of the underlying offense involving impaired driving in superior court.

5 (n) Any order issued pursuant to this section authorizing the release of a seized vehicle  
6 shall require the payment of all towing and storage charges incurred as a result of the seizure  
7 and impoundment of the motor vehicle. This requirement shall not be waived."

8 **SECTION 3.** G.S. 20-28.4(a) reads as rewritten:

9 "(a) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized pursuant  
10 to G.S. 20-28.3:

- 11 (1) Is subsequently not convicted of ~~an offense involving impaired driving~~the  
12 underlying offense resulting in seizure due to dismissal or a finding of not  
13 guilty; or
- 14 (2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) ~~fails~~  
15 ~~to find that the drivers license was revoked as a result of a prior impaired~~  
16 ~~driving license revocation as defined in G.S. 20-28.2;~~ finds that the criteria  
17 for forfeiture have not otherwise been met; and
- 18 (3) The vehicle has not previously been released to a lienholder pursuant to  
19 G.S. 20-28.3(e3),

20 the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to  
21 G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner conditioned  
22 upon payment of towing and storage costs. The court shall not waive the payment of towing  
23 and storage costs. The court shall include in its order notice to the owner of the seized motor  
24 vehicle still being held, that within 30 days of the date of the court's order, the owner must  
25 make payment of the outstanding towing and storage costs for the motor vehicle and retrieve  
26 the motor vehicle, or give notice to Division of Motor Vehicles requesting a judicial hearing on  
27 the validity of any mechanics' lien on the motor vehicle for towing and storage costs."

28 **SECTION 4.** G.S. 20-28.8 reads as rewritten:

29 **"§ 20-28.8. Reports to the Division.**

30 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any  
31 other information that must be reported pursuant to this Chapter, the clerk of superior court  
32 shall report to the Division by electronic means the execution of an impaired driving  
33 acknowledgment as defined in G.S. 20-28.2(a1)(1), a speeding to elude arrest acknowledgment  
34 as defined in G.S. 20-28.2(a1)(1a), the entry of an order of forfeiture as defined in  
35 G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and  
36 G.S. 20-28.4. Each report shall include any of the following information that has not previously  
37 been reported to the Division in the case: the name, address, and drivers license number of the  
38 defendant; the name, address, and drivers license number of the nondefendant motor vehicle  
39 owner, if known; and the make, model, year, vehicle identification number, state of  
40 registration, and vehicle registration plate number of the seized vehicle, if known."

41 **SECTION 5.** G.S. 20-54.1 reads as rewritten:

42 **"§ 20-54.1. Forfeiture of right of registration.**

43 (a) Upon receipt of notice of conviction of a violation of an offense involving impaired  
44 driving while the person's license is revoked as a result of a prior impaired driving license  
45 revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor  
46 vehicles registered in the convicted person's name and shall not register a motor vehicle in the  
47 convicted person's name until the convicted person's license is restored, except in such cases to  
48 abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice  
49 of revocation of registration from the Division, the convicted person shall surrender the  
50 registration on all motor vehicles registered in the convicted person's name to the Division  
51 within 10 days of the date of the notice.

1       (a1) Upon receipt of notice of conviction of a felony speeding to elude arrest offense  
2 under G.S. 20-141.5(b) or (b1), the Division shall revoke the registration of all motor vehicles  
3 registered in the convicted person's name and shall not register a motor vehicle in the convicted  
4 person's name until the convicted person's license is restored. Upon receipt of notice of  
5 revocation of registration from the Division, the convicted person shall surrender the  
6 registration on all motor vehicles registered in the convicted person's name to the Division  
7 within 10 days of the date of the notice.

8       (b) Upon receipt of a notice of conviction under subsection (a) or (a1) of this section,  
9 the Division shall revoke the registration of the motor vehicle seized, and the owner shall not  
10 be allowed to register the motor vehicle seized until the convicted operator's drivers license has  
11 been restored. The Division shall not revoke the registration of the owner of the seized motor  
12 vehicle if the owner is determined to be an innocent owner. The Division shall revoke the  
13 owner's registration only after the owner is given an opportunity for a hearing to demonstrate  
14 that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of  
15 revocation of registration from the Division, the owner shall surrender the registration on the  
16 motor vehicle seized to the Division within 10 days of the date of the notice."

17       **SECTION 6.** G.S. 20-141.5 reads as rewritten:

18       "**§ 20-141.5. Speeding to elude arrest.**

19       ...

20       (f) Each law enforcement agency shall adopt a policy applicable to the pursuit of  
21 fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically  
22 include factors to be considered by an officer in determining when ~~it is advisable to break off a~~  
23 ~~chase to stop and apprehend a suspect.~~ to initiate or terminate a pursuit. The Attorney General  
24 shall develop a model policy or policies to be considered for use by law enforcement agencies.

25       (g) If a person is convicted of a violation of subsection (b) or (b1) of this section, the  
26 motor vehicle that was driven by the defendant at the time the defendant committed the offense  
27 of felony speeding to elude arrest becomes property subject to forfeiture in accordance with the  
28 procedure set out in G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5."

29       **SECTION 7.** This act becomes effective December 1, 2011, and applies to  
30 offenses committed on or after that date.