

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 451
Committee Substitute Favorable 4/28/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H451-PCS70303-RV-48

Short Title: DWLR Penalties Increased/Vehicle Seizures.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR DRIVING WHILE LICENSE REVOKED BY SETTING MINIMUM FINES FOR THE INITIAL AND SUBSEQUENT CONVICTIONS AND BY PROVIDING FOR THE SEIZURE AND FORFEITURE OF THE VEHICLE BEING OPERATED BY A DRIVER WHOSE LICENSE OR DRIVING PRIVILEGES ARE REVOKED IF THE DRIVER HAS TWO PRIOR CONVICTIONS FOR DRIVING WHILE LICENSE REVOKED AND IT IS THE THIRD SUCH OFFENSE IN A TEN-YEAR PERIOD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of (i) a Class 1 misdemeanor or misdemeanor for a first or second offense or (ii) a Class A1 misdemeanor for a third or subsequent offense. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

- (1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and
- (2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
- b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or



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- 1 (3) At the time of the offense the person had met the requirements of
2 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the
3 person's drivers license privilege as provided therein.

4 In addition, a person punished under this subsection shall be treated for drivers license and
5 insurance rating purposes as if the person had been convicted of driving without a license under
6 G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be
7 so treated.

8 (a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a
9 Class 1 misdemeanor if:

- 10 (1) The person operates a motor vehicle upon a highway while that person's
11 license is revoked for an impaired drivers license revocation after the
12 Division has sent notification in accordance with G.S. 20-48; or
13 (2) The person fails to appear for two years from the date of the charge after
14 being charged with an implied-consent offense.

15 Upon conviction, the person's drivers license shall be revoked for an additional period of
16 one year for the first offense, two years for the second offense, and permanently for a third or
17 subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle
18 upon the highways of the State without maintaining financial responsibility as provided by law
19 shall be punished as for driving without a license.

20 ...

21 (e) Fines. – In addition to any period of revocation required by this section, any person
22 convicted for violation of subsection (a) of this section shall pay a fine of not less than two
23 hundred fifty dollars (\$250.00) for the first offense, one thousand dollars (\$1,000) for the
24 second offense, and two thousand five hundred dollars (\$2,500) for the third or subsequent
25 offense.

26 (f) Vehicles Subject to Seizure. – In addition to any other fine or penalty required by
27 this section, if a person is convicted of a third or subsequent violation under subsection (a) of
28 this section occurring within a 10-year period, the motor vehicle driven by the defendant at the
29 time the defendant committed the most recent offense of driving while the person's license or
30 driving privileges are revoked becomes property subject to forfeiture in accordance with the
31 provisions of G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5."

32 **SECTION 2.** G.S. 20-28.2 reads a rewritten:

33 "**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
34 **license ~~revocation~~ revocation; forfeiture for multiple driving while license**
35 **revoked convictions.**

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

- 38 (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
39 20-138.5; or
40 (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
41 the offense involves impaired driving; or
42 (3) The laws of another state and the offense for which the person's license is
43 revoked prohibits substantially similar conduct which if committed in this
44 State would result in a revocation listed in subdivisions (1) or (2).

45 (a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7,
46 20-28.8, and 20-28.9, the following terms mean:

- 47 (1) Impaired Driving Acknowledgment. – A written document acknowledging
48 that:
49 a. The motor vehicle was operated by a person charged with an offense
50 involving impaired driving, and:

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

1 f. Who is in the business of leasing motor vehicles, who holds legal
2 title to the motor vehicle as a lessor at the time of seizure and who
3 has no actual knowledge of the revocation of the lessee's drivers
4 license at the time the lease is entered.

5 (2a) Insurance Company. – Any insurance company that has coverage on or is
6 otherwise liable for repairs or damages to the motor vehicle at the time of the
7 seizure.

8 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage
9 to a seized motor vehicle less any payments actually paid to valid lienholders
10 and for towing and storage costs incurred for the motor vehicle after the time
11 the motor vehicle became subject to seizure.

12 (3) Lienholder. – A person who holds a perfected security interest in a motor
13 vehicle at the time of seizure.

14 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
15 certificate of title for a motor vehicle is issued at the time of seizure.

16 (4) Order of Forfeiture. – An order by the court which terminates the rights and
17 ownership interest of a motor vehicle owner in a motor vehicle and any
18 insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

19 (5) Repealed by Session Laws 1998-182, s. 2.

20 (6) Registered Owner. – A person in whose name a registration card for a motor
21 vehicle is issued at the time of seizure.

22 (7) Repealed by Session Laws 1998-182, s. 2.

23 ...

24 (b2) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Multiple
25 Driving While License Revoked. – A judge may determine whether the vehicle driven at the
26 time of the offense becomes subject to an order of forfeiture. The determination may be made
27 at any of the following times:

28 (1) A sentencing hearing for the underlying driving while license revoked
29 offense.

30 (2) A separate hearing after conviction of the defendant.

31 (3) A forfeiture hearing held at least 60 days after the defendant failed to appear
32 at the scheduled trial for the underlying offense, and the defendant's order of
33 arrest for failing to appear has not been set aside.

34 The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence
35 shows that the defendant is guilty of driving while license revoked under G.S. 20-28(a) and the
36 defendant has two or more prior convictions for driving while license revoked under
37 G.S. 20-28(a) and at least two of the prior convictions are for offenses occurring within 10
38 years of the date of this offense.

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

49 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was
50 damaged while the defendant operator was committing the underlying ~~offense involving~~
51 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the

1 motor vehicle, the Division shall determine the name of any insurance companies that are the
2 insurers of record with the Division for the motor vehicle at the time of the seizure or that may
3 otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle
4 was involved in an accident, the Division shall notify the insurance companies that the claim
5 for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of
6 superior court of the county where the motor vehicle driver was charged to be held and
7 disbursed pursuant to further orders of the court. Any insurance company that receives written
8 or other actual notice of seizure pursuant to this section shall not be relieved of any legal
9 obligation under any contract of insurance unless the claim for property damage to the seized
10 motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The
11 insurance company paying insurance proceeds to the clerk of court pursuant to this section shall
12 be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a
13 result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall
14 disburse the insurance proceeds pursuant to further orders of the court.

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

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

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

48 (e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a
49 nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the
50 motor vehicle was being driven by a person who was not the only motor vehicle owner or had
51 no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the

1 petitioner is an "innocent owner", as defined by this section, a judge shall order the motor
2 vehicle released to that owner, conditioned upon payment of all towing and storage charges
3 incurred as a result of the seizure and impoundment of the motor vehicle.

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

- 5 (1) The identity of the person as a motor vehicle owner;
- 6 (2) The existence of financial responsibility to the extent required by Article 13
7 of this Chapter or by the laws of the state in which the vehicle is registered;
8 and
- 9 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.
- 10 (4) The execution ~~of~~ of:
 - 11 a. ~~an~~ An impaired driving acknowledgment as defined in subdivision
12 (a1)(1) of this ~~section~~ section if the seizure was for an offense
13 involving impaired driving; or
 - 14 b. A revoked license acknowledgment as defined in subdivision
15 (a1)(1a) of this section if the seizure was for multiple violations of
16 G.S. 20-28(a).

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

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

32"

33 **SECTION 3.** G.S. 20-28.3 reads as rewritten:

34 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
35 **impaired driving while license revoked or without license and**
36 **insurance, insurance, and for multiple driving while license revoked**
37 **convictions.**

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

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

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

50 (a1) Motor Vehicles Subject to Seizure for Multiple Driving While License Revoked
51 Convictions. – A motor vehicle is subject to seizure if that vehicle is being driven by a person

1 who is charged with the offense of driving while license revoked pursuant to G.S. 20-28(a) and
2 the person has two or more prior convictions for driving while license revoked under
3 G.S. 20-28(a) and at least two of the prior convictions are for offenses occurring within 10
4 years of the date of this offense.

5 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
6 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall
7 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the
8 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to
9 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle
10 driven by a person not listed as an authorized driver on the rental contract, the officer shall not
11 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the
12 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was
13 not listed as an authorized driver on the rental contract. Probable cause may be based on the
14 officer's personal knowledge, reliable information conveyed by another officer, records of the
15 Division, or other reliable ~~source-sources.~~ The seizing officer shall notify the ~~executive agency~~
16 ~~designated under subsection (b1) of this section~~ Division as soon as practical but no later than
17 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures
18 established by the ~~executive agency designated under subsection (b1) of this section~~ Division.

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

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

50 ...

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

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

- 8 (1) The motor vehicle has been seized for not less than 24 hours;
9 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
10 (3) A bond in an amount equal to the fair market value of the motor vehicle as
11 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit
12 in the full amount of the bond, by a recordable deed of trust to real property
13 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at
14 least one solvent surety, payable to the county school fund and conditioned
15 on return of the motor vehicle, in substantially the same condition as it was
16 at the time of seizure and without any new or additional liens or
17 encumbrances, on the day of any hearing scheduled and noticed by the
18 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been
19 permanently released;
20 (4) Execution of either:
21 a. ~~an~~ An impaired driving acknowledgment as described in
22 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an
23 offense involving impaired driving; or
24 b. A revoked license acknowledgment as defined in
25 G.S. 20-28.2(a1)(1a) if the seizure was for multiple violations of
26 G.S. 20-28(a).
27 (5) A check of the records of the Division indicates that the requesting motor
28 vehicle owner has not previously executed an acknowledgment naming the
29 operator of the seized motor vehicle; and
30 (6) A bond posted to secure the release of this motor vehicle under this
31 subsection has not been previously ordered forfeited under G.S. 20-28.5.

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

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

1 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – ~~A~~If the seizure was for an
2 offense involving impaired driving, a defendant motor vehicle owner may file a petition with
3 the clerk of court seeking a pretrial determination that the defendant's license was not revoked
4 pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall
5 schedule a hearing before a judge of the division in which the underlying criminal charge is
6 pending for a hearing to be held within 10 business days or as soon thereafter as may be
7 feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the
8 attorney for the county board of education. The clerk shall forward a copy of the petition to the
9 district attorney for the district attorney's review. If, based on available information, the district
10 attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district
11 attorney may note the State's consent to the release of the motor vehicle on the petition and
12 return the petition to the clerk of court who shall enter an order releasing the motor vehicle to
13 the defendant upon payment of all towing and storage charges incurred as a result of the seizure
14 and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the
15 defendant as a motor vehicle owner and the existence of financial responsibility to the extent
16 required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy
17 of the order of release to the attorney for the county board of education. At any pretrial hearing
18 conducted pursuant to this subsection, the court is not required to determine the issue of the
19 underlying offense of impaired driving only the existence of a prior drivers license revocation
20 as an impaired driving license revocation. Accordingly, the State shall not be required to prove
21 the underlying offense of impaired driving. An order issued under this subsection finding that
22 the defendant failed to establish that the defendant's license was not revoked pursuant to an
23 impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the
24 court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

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

- 26 (1) A lienholder may file a petition with the clerk of court requesting the court
27 to order pretrial release of a seized motor vehicle. The lienholder shall serve
28 a copy of the petition on all interested parties which shall include the
29 registered owner, the titled owner, the district attorney, and the county board
30 of education attorney. Upon 10 days' prior notice of the date, time, and
31 location of the hearing sent by the lienholder to all interested parties, a
32 judge, after a hearing, shall order a seized motor vehicle released to the
33 lienholder conditioned upon payment of all towing and storage costs
34 incurred as a result of the seizure and impoundment of the motor vehicle if
35 the judge determines, by the greater weight of the evidence, that:
- 36 a. Default on the obligation secured by the motor vehicle has occurred;
 - 37 b. As a consequence of default, the lienholder is entitled to possession
38 of the motor vehicle;
 - 39 c. The lienholder agrees to sell the motor vehicle in accordance with the
40 terms of its agreement and pursuant to the provisions of Part 6 of
41 Article 9 of Chapter 25 of the General Statutes. Upon sale of the
42 motor vehicle, the lienholder will pay to the clerk of court of the
43 county in which the driver was charged all proceeds from the sale,
44 less the amount of the lien in favor of the lienholder, and any towing
45 and storage costs paid by the lienholder;
 - 46 d. The lienholder agrees not to sell, give, or otherwise transfer
47 possession of the seized motor vehicle while the motor vehicle is
48 subject to forfeiture, or the forfeited motor vehicle after the forfeiture
49 hearing, to the defendant or the motor vehicle owner; and
 - 50 e. The seized motor vehicle while the motor vehicle is subject to
51 forfeiture, or the forfeited motor vehicle after the forfeiture hearing,

1 had not previously been released to the lienholder as a result of a
2 prior seizure involving the same defendant or motor vehicle owner.

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

12 a. The defendant;

13 b. The motor vehicle owner who owned the motor vehicle immediately
14 prior to seizure pending the forfeiture hearing, or to forfeiture after
15 the forfeiture hearing; or

16 c. Any person acting on the behalf of the defendant or the motor vehicle
17 owner,

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

21 ...

22 (k) County Board of Education Right to Appear and Participate in Proceedings. – The
23 attorney for the county board of education shall be given notice of all proceedings regarding
24 offenses ~~involving impaired driving~~ related to a motor vehicle subject to ~~forfeiture~~forfeiture
25 under this section. However, the notice requirement under this subsection does not apply to
26 proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education
27 shall also have the right to appear and to be heard on all issues relating to the seizure,
28 possession, release, forfeiture, sale, and other matters related to the seized vehicle under this
29 section. With the prior consent of the county board of education, the district attorney may
30 delegate to the attorney for the county board of education any or all of the duties of the district
31 attorney under this section. Clerks of superior court, law enforcement agencies, and all other
32 agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor
33 vehicles are authorized and directed to provide county boards of education with access to that
34 information and to do so by electronic means when existing technology makes this type of
35 transmission possible.

36 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized pursuant
37 to this section is convicted ~~of an offense involving impaired driving, of the underlying offense~~
38 resulting in the seizure of a motor vehicle pursuant to this section, the defendant shall be
39 ordered to pay as restitution to the county board of education, the motor vehicle owner, or the
40 lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the
41 extent the costs were not covered by the proceeds from the forfeiture and sale of the motor
42 vehicle. In addition, a civil judgment for the costs under this section in favor of the party to
43 whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant
44 is sentenced to an active term of imprisonment, the civil judgment shall become effective and
45 be docketed when the defendant's conviction becomes final. If the defendant is placed on
46 probation, the civil judgment in the amount found by a judge during the probation revocation or
47 termination hearing to be due shall become effective and be docketed by the clerk when the
48 defendant's probation is revoked or terminated.

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

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

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

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

10 Should a defendant appeal the conviction to superior court, any party who has not
11 previously been heard on a petition for pretrial release under subsection (e1) or (e3) of this
12 section or any party whose motor vehicle has not been the subject of a forfeiture hearing held
13 pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to
14 subsection (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also
15 apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was
16 released pursuant to subsection (e) of this section pending trial in district court, the release of
17 the motor vehicle continues, and the terms and conditions of the original bond remain the same
18 as those required for the initial release of the motor vehicle under subsection (e) of this section,
19 pending the resolution of the underlying offense involving impaired driving in superior court.

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

23 **SECTION 4.** G.S. 20-28.4(a) reads as rewritten:

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

- 26 (1) Is subsequently not convicted of ~~an offense involving impaired driving~~the
27 underlying offense resulting in seizure due to dismissal or a finding of not
28 guilty; or
- 29 (2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) ~~fails~~
30 ~~to find that the drivers license was revoked as a result of a prior impaired~~
31 ~~driving license revocation as defined in G.S. 20-28.2;~~ finds that the criteria
32 for forfeiture have not otherwise been met; and
- 33 (3) The vehicle has not previously been released to a lienholder pursuant to
34 G.S. 20-28.3(e3),

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

43 **SECTION 5.** G.S. 20-28.8 reads as rewritten:

44 "**§ 20-28.8. Reports to the Division.**

45 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any
46 other information that must be reported pursuant to this Chapter, the clerk of superior court
47 shall report to the Division by electronic means the execution of an impaired driving
48 acknowledgment as defined in G.S. 20-28.2(a1)(1), a revoked license acknowledgment as
49 defined in G.S. 20-28.2(a1)(1a), the entry of an order of forfeiture as defined in
50 G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and
51 G.S. 20-28.4. Each report shall include any of the following information that has not previously

1 been reported to the Division in the case: the name, address, and drivers license number of the
2 defendant; the name, address, and drivers license number of the nondefendant motor vehicle
3 owner, if known; and the make, model, year, vehicle identification number, state of
4 registration, and vehicle registration plate number of the seized vehicle, if known."

5 **SECTION 6.** G.S. 20-54.1 reads as rewritten:

6 "**§ 20-54.1. Forfeiture of right of registration.**

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

16 (a1) Upon receipt of notice of conviction of a third or subsequent conviction of driving
17 while license revoked pursuant to G.S. 20-28(a), the Division shall revoke the registration of all
18 motor vehicles registered in the convicted person's name and shall not register a motor vehicle
19 in the convicted person's name until the convicted person's license is restored. Upon receipt of
20 notice of revocation of registration from the Division, the convicted person shall surrender the
21 registration on all motor vehicles registered in the convicted person's name to the Division
22 within 10 days of the date of the notice.

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

32 **SECTION 7.** This act becomes effective December 1, 2012, and applies to
33 offenses committed on or after that date.