

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 656
Committee Substitute Favorable 5/1/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H656-PCS30573-RK-71

Short Title: Forfeiture for Speeding to Elude Revisions.

(Public)

Sponsors:

Referred to:

April 10, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LAWS GOVERNING THE SEIZURE, FORFEITURE, AND
3 SALE OF MOTOR VEHICLES USED BY DEFENDANTS IN FELONY CASES
4 INVOLVING SPEEDING TO ELUDE ARREST.

5 The General Assembly of North Carolina enacts:

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

7 "§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving
8 license ~~revocation~~revocation; forfeiture for felony speeding to elude arrest.

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

- 11 (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
12 20-138.5; or
13 (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
14 the offense involves impaired driving; or
15 (3) The laws of another state and the offense for which the person's license is
16 revoked prohibits substantially similar conduct which if committed in this
17 State would result in a revocation listed in subdivisions (1) or (2).

18 (a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7,
19 20-28.8, ~~and 20-28.9, 20-54.1, and 20-141.5,~~ the following terms mean:

- 20 (1) Impaired Driving Acknowledgment. – A written document acknowledging
21 that:
22 a. The motor vehicle was operated by a person charged with an offense
23 involving impaired driving, and:
24 1. That person's drivers license was revoked as a result of a prior
25 impaired drivers license revocation; or
26 2. That person did not have a valid drivers license, and did not
27 have liability insurance.
28 b. If the motor vehicle is again operated by this particular person, and
29 the person is charged with an offense involving impaired driving,
30 then the vehicle is subject to impoundment and forfeiture if (i) the
31 offense occurs while that person's drivers license is revoked, or (ii)
32 the offense occurs while the person has no valid drivers license, and
33 has no liability ~~insurance; and~~insurance.
34 c. A lack of knowledge or consent to the operation will not be a defense
35 in the future, unless the motor vehicle owner has taken all reasonable



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- 1 precautions to prevent the use of the motor vehicle by this particular
2 person and immediately reports, upon discovery, any unauthorized
3 use to the appropriate law enforcement agency.
- 4 (1a) Speeding to Elude Arrest Acknowledgment. – A written document
5 acknowledging that:
- 6 a. The motor vehicle was operated by a person charged with felony
7 speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).
- 8 b. If the motor vehicle is again operated by this particular person and
9 the person is charged with felony speeding to elude arrest pursuant to
10 G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment
11 and forfeiture.
- 12 c. A lack of knowledge or consent to the operation will not be a defense
13 in the future unless the motor vehicle owner has taken all reasonable
14 precautions to prevent the use of the motor vehicle by this particular
15 person and immediately reports upon discovery any unauthorized use
16 to the appropriate law enforcement agency.
- 17 (1b) Fair Market Value. – The value of the seized motor vehicle, as determined in
18 accordance with the schedule of values adopted by the Commissioner
19 pursuant to G.S. 105-187.3.
- 20 (2) Innocent Owner. – A motor vehicle owner:
- 21 a. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving
22 offense, did not know and had no reason to know that (i) the
23 defendant's drivers license was revoked, or (ii) that the defendant did
24 not have a valid drivers license, and that the defendant had no
25 liability insurance; or
- 26 b. ~~Who~~ Who, if the offense resulting in seizure was an impaired driving
27 offense, knew that (i) the defendant's drivers license was revoked, or
28 (ii) that the defendant had no valid drivers license, and that the
29 defendant had no liability insurance, but the defendant drove the
30 vehicle without the person's expressed or implied permission, and the
31 owner files a police report for unauthorized use of the motor vehicle
32 and agrees to prosecute the unauthorized operator of the motor
33 vehicle; vehicle, or who, if the offense resulting in seizure was a
34 felony speeding to elude arrest offense, did not give the defendant
35 express or implied permission to drive the vehicle, and the owner
36 files a police report for unauthorized use of the motor vehicle and
37 agrees to prosecute the unauthorized operator of the motor vehicle; or
- 38 c. Whose vehicle was reported stolen; or
- 39 d. Repealed by Session Laws 1999-406, s. 17.
- 40 e. ~~Who is in the business of renting vehicles,~~ (i) a rental car company as
41 defined in G.S. 66-201(a), and the vehicle was driven by a person
42 who is not listed as an authorized driver on the rental contract;
43 agreement, as defined in G.S. 66-201; or (ii) is an authorized driver
44 and if the offense resulting in seizure was an impaired driving
45 offense, the rental car company has no actual knowledge of the
46 revocation of the renter's drivers' license at the time the rental
47 agreement is entered, or if the offense resulting in seizure was a
48 felony speeding to elude arrest offense, the rental agreement
49 expressly prohibits use of the vehicle while committing a felony; or
- 50 f. Who is in the business of leasing motor vehicles, who holds legal
51 title to the motor vehicle as a lessor at the time of seizure and and, if

1 the offense resulting in seizure was an impaired driving offense, who
2 has no actual knowledge of the revocation of the lessee's drivers
3 license at the time the lease is entered.

4 (2a) Insurance Company. – Any insurance company that has coverage on or is
5 otherwise liable for repairs or damages to the motor vehicle at the time of the
6 seizure.

7 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage
8 to a seized motor vehicle less any payments actually paid to valid lienholders
9 and for towing and storage costs incurred for the motor vehicle after the time
10 the motor vehicle became subject to seizure.

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

13 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
14 certificate of title for a motor vehicle is issued at the time of seizure.

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

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

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

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

22 ...

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

27 (1) A sentencing hearing for the underlying felony speeding to elude arrest
28 offense.

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

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

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

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

46 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was
47 damaged while the defendant operator was committing the underlying ~~offense involving~~
48 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the
49 motor vehicle, the Division shall determine the name of any insurance companies that are the
50 insurers of record with the Division for the motor vehicle at the time of the seizure or that may
51 otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle

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

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

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

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

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

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

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

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

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

30"

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

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

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

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

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

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

50 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
51 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall

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

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

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

44 ...

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

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

- 1 (1) The motor vehicle has been seized for not less than 24 hours;
2 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
3 (3) A bond in an amount equal to the fair market value of the motor vehicle as
4 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit
5 in the full amount of the bond, by a recordable deed of trust to real property
6 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at
7 least one solvent surety, payable to the county school fund and conditioned
8 on return of the motor vehicle, in substantially the same condition as it was
9 at the time of seizure and without any new or additional liens or
10 encumbrances, on the day of any hearing scheduled and noticed by the
11 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been
12 permanently released;
13 (4) Execution of either:
14 a. ~~an~~ An impaired driving acknowledgment as described in
15 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an
16 offense involving impaired driving; or
17 b. A speeding to elude arrest acknowledgment as defined in
18 G.S. 20-28.2(a1)(1a) if the seizure was for violation of
19 G.S. 20-141.5(b) or (b1).
20 (5) A check of the records of the Division indicates that the requesting motor
21 vehicle owner has not previously executed an acknowledgment naming the
22 operator of the seized motor vehicle; and
23 (6) A bond posted to secure the release of this motor vehicle under this
24 subsection has not been previously ordered forfeited under G.S. 20-28.5.

25 In the event a nondefendant motor vehicle owner who obtains temporary possession of a
26 seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of
27 the forfeiture hearing as noticed by the district attorney under ~~G.S. 20-28.3(e)~~ G.S. 20-28.2(c) or
28 otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this
29 subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by
30 the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully
31 violates any condition of pretrial release may be held in civil or criminal contempt.

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

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

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

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

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

- 32 a. The motor vehicle has been seized for not less than 24 hours;
33 b. A bond in an amount equal to the fair market value of the motor
34 vehicle as defined by G.S. 20-28.2 has been executed and is secured
35 by a cash deposit in the full amount of the bond, by a recordable deed
36 of trust to real property in the full amount of the bond, by a bail bond
37 under G.S. 58-71-1(2), or by at least one solvent surety, payable to
38 the county school fund and conditioned on return of the motor
39 vehicle, in substantially the same condition as it was at the time of
40 seizure and without any new or additional liens or encumbrances, on
41 the day of any hearing scheduled and noticed by the district attorney
42 under G.S. 20-28.2(c), unless the motor vehicle has been
43 permanently released;
44 c. 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 subdivision does not
49 return the motor vehicle on the day of the forfeiture hearing as noticed by the
50 district attorney under G.S. 20-28.2(c) or otherwise violates a condition of
51 pretrial release of the seized motor vehicle as set forth in this subdivision,

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

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

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

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

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

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

49 shall not be liable for damages arising out of such refusal. However, any
50 subsequent violation of the conditions of release by the lienholder shall be
51 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"

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

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

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

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

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

27 **"§ 20-28.8. Reports to the Division.**

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

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

40 **"§ 20-54.1. Forfeiture of right of registration.**

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

50 (a1) Upon receipt of notice of conviction of a felony speeding to elude arrest offense
51 under G.S. 20-141.5(b) or (b1), the Division shall revoke the registration of all motor vehicles

1 registered in the convicted person's name and shall not register a motor vehicle in the convicted
2 person's name until the convicted person's license is restored. Upon receipt of notice of
3 revocation of registration from the Division, the convicted person shall surrender the
4 registration on all motor vehicles registered in the convicted person's name to the Division
5 within 10 days of the date of the notice.

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

15 **SECTION 6.** G.S. 20-141.5(g) through (j) is repealed.

16 **SECTION 7.** G.S. 20-141.5 is amended by adding a new subsection to read:

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

21 **SECTION 8.** This act becomes effective December 1, 2013, and applies to
22 offenses committed on or after that date.