

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 656
Committee Substitute Favorable 5/1/13

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, 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 That person's drivers license was revoked as a result of a prior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
36 precautions to prevent the use of the motor vehicle by this particular



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22 defendant's drivers license was revoked, or (ii) that the defendant did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26 offense, knew that (i) the defendant's drivers license was revoked, or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

1 and for towing and storage costs incurred for the motor vehicle after the time
2 the motor vehicle became subject to seizure.

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

5 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
6 certificate of title for a motor vehicle is issued at the time of seizure.

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

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

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

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

14 ...

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

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

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

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

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

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

38 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was
39 damaged while the defendant operator was committing the underlying ~~offense involving~~
40 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the
41 motor vehicle, the Division shall determine the name of any insurance companies that are the
42 insurers of record with the Division for the motor vehicle at the time of the seizure or that may
43 otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle
44 was involved in an accident, the Division shall notify the insurance companies that the claim
45 for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of
46 superior court of the county where the motor vehicle driver was charged to be held and
47 disbursed pursuant to further orders of the court. Any insurance company that receives written
48 or other actual notice of seizure pursuant to this section shall not be relieved of any legal
49 obligation under any contract of insurance unless the claim for property damage to the seized
50 motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The
51 insurance company paying insurance proceeds to the clerk of court pursuant to this section shall

1 be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a
2 result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall
3 disburse the insurance proceeds pursuant to further orders of the court.

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

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

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

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

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

- 45 (1) The identity of the person as a motor vehicle owner;
46 (2) The existence of financial responsibility to the extent required by Article 13
47 of this Chapter or by the laws of the state in which the vehicle is registered;
48 and
49 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.
50 (4) The execution ~~of~~ of:

- 1 a. ~~an~~ An impaired driving acknowledgment as defined in subdivision
2 (a1)(1) of this ~~section~~ section if the seizure was for an offense
3 involving impaired driving; or
4 b. A speeding to elude arrest acknowledgment as defined in subdivision
5 (a1)(1a) of this section if the seizure was for violation of
6 G.S. 20-141.5(b) or (b1).

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

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

23 "

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

25 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
26 **impaired driving while license revoked or without license and**
27 **insurance.**insurance, and for felony speeding to elude arrest.

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

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

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

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

43 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
44 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall
45 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the
46 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to
47 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle
48 driven by a person not listed as an authorized driver on the rental contract, the officer shall not
49 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the
50 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was
51 not listed as an authorized driver on the rental contract. Probable cause may be based on the

1 officer's personal knowledge, reliable information conveyed by another officer, records of the
2 Division, or other reliable ~~source-sources~~. The seizing officer shall notify the ~~executive agency~~
3 ~~designated under subsection (b1) of this section~~ Division as soon as practical but no later than
4 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures
5 established by the ~~executive agency designated under subsection (b1) of this section~~ Division.

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

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

37 ...

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

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

- 45 (1) The motor vehicle has been seized for not less than 24 hours;
- 46 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
- 47 (3) A bond in an amount equal to the fair market value of the motor vehicle as
48 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit
49 in the full amount of the bond, by a recordable deed of trust to real property
50 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at
51 least one solvent surety, payable to the county school fund and conditioned

1 on return of the motor vehicle, in substantially the same condition as it was
2 at the time of seizure and without any new or additional liens or
3 encumbrances, on the day of any hearing scheduled and noticed by the
4 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been
5 permanently released;

6 (4) Execution of either:

7 a. ~~an~~ An impaired driving acknowledgment as described in
8 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an
9 offense involving impaired driving; or

10 b. A speeding to elude arrest acknowledgment as defined in
11 G.S. 20-28.2(a1)(1a) if the seizure was for violation of
12 G.S. 20-141.5(b) or (b1).

13 (5) A check of the records of the Division indicates that the requesting motor
14 vehicle owner has not previously executed an acknowledgment naming the
15 operator of the seized motor vehicle; and

16 (6) A bond posted to secure the release of this motor vehicle under this
17 subsection has not been previously ordered forfeited under G.S. 20-28.5.

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

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

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

39 (1) ~~A~~ If the seizure was for an offense involving impaired driving, a defendant
40 motor vehicle owner may file a petition with the clerk of court seeking a
41 pretrial determination that the defendant's license was not revoked pursuant
42 to an impaired driving license revocation as defined in G.S. 20-28.2(a). The
43 clerk shall schedule a hearing before a judge of the division in which the
44 underlying criminal charge is pending for a hearing to be held within 10
45 business days or as soon thereafter as may be feasible. Notice of the hearing
46 shall be given to the defendant, the district attorney, and the attorney for the
47 county board of education. The clerk shall forward a copy of the petition to
48 the district attorney for the district attorney's review. If, based on available
49 information, the district attorney determines that the defendant's motor
50 vehicle is not subject to forfeiture, the district attorney may note the State's
51 consent to the release of the motor vehicle on the petition and return the

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

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

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

40 In the event a defendant motor vehicle owner who obtains temporary
41 possession of a seized motor vehicle pursuant to this subdivision does not
42 return the motor vehicle on the day of the forfeiture hearing as noticed by the
43 district attorney under G.S. 20-28.2(c) or otherwise violates a condition of
44 pretrial release of the seized motor vehicle as set forth in this subdivision,
45 the bond posted shall be ordered forfeited, and an order of seizure shall be
46 issued by the court. Additionally, a defendant motor vehicle owner who
47 willfully violates any condition of pretrial release may be held in civil or
48 criminal contempt.

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

- 50 (1) A lienholder may file a petition with the clerk of court requesting the court
51 to order pretrial release of a seized motor vehicle. The lienholder shall serve

1 a copy of the petition on all interested parties which shall include the
 2 registered owner, the titled owner, the district attorney, and the county board
 3 of education attorney. Upon 10 days' prior notice of the date, time, and
 4 location of the hearing sent by the lienholder to all interested parties, a
 5 judge, after a hearing, shall order a seized motor vehicle released to the
 6 lienholder conditioned upon payment of all towing and storage costs
 7 incurred as a result of the seizure and impoundment of the motor vehicle if
 8 the judge determines, by the greater weight of the evidence, that:

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

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

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

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

45 ...

46 (k) County Board of Education Right to Appear and Participate in Proceedings. – The
 47 attorney for the county board of education shall be given notice of all proceedings regarding
 48 offenses involving impaired driving related to a motor vehicle subject to forfeiture. forfeiture
 49 under this section. However, the notice requirement under this subsection does not apply to
 50 proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education
 51 shall also have the right to appear and to be heard on all issues relating to the seizure,

1 possession, release, forfeiture, sale, and other matters related to the seized vehicle under this
2 section. With the prior consent of the county board of education, the district attorney may
3 delegate to the attorney for the county board of education any or all of the duties of the district
4 attorney under this section. Clerks of superior court, law enforcement agencies, and all other
5 agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor
6 vehicles are authorized and directed to provide county boards of education with access to that
7 information and to do so by electronic means when existing technology makes this type of
8 transmission possible.

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

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

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

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

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

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

49"

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

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

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

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

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

21 "**§ 20-28.8. Reports to the Division.**

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

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

34 "**§ 20-54.1. Forfeiture of right of registration.**

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

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

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

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

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

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

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