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The Law of Vehicle Seizure and Forfeiture in North Carolina

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Introduction

Seizing and forfeiting a person's vehicle[1] can have an incredible impact on their finances, employment, or education. Both the United States and the North Carolina constitutions protect against seizure and forfeiture of property without due process.[2] Due process guarantees (1) notice and (2) a meaningful opportunity to be heard before being deprived of any property interest. As a result, for any seizure or forfeiture, there are prerequisite conditions that must be met and procedures that must be followed.[3] Because proceedings for the forfeiture of property are statutory proceedings, they are authorized by statute and must comply with statutory procedures.[4] There are also different procedures for vehicles to be released pending a final determination of forfeiture, and ways they can be returned to their owners notwithstanding a conviction in the underlying case. These conditions, procedures, and release provisions vary depending on the reason for which a given vehicle was seized. A vehicle may be seized or forfeited (1) when it is, or when it contains, evidence of a crime; (2) when it is used as an instrumentality of a crime; (3) to satisfy a debt or judgment; or (4) as a consequence of it being used in the commission of certain crimes. This bulletin focuses on the fourth circumstance: seizure and forfeiture as a consequence of being used in the commission of certain crimes. Even within this category, the rules and procedures that apply vary based on the underlying statutory authority.

This bulletin addresses these rules and procedures; the content is organized by the statutory authority for the initial seizure. But first, it's helpful to address other common justifications for seizing vehicles.

Vehicle Seizures Not Substantively Addressed in This Bulletin

I. Being, or Containing, Evidence of a Crime

Case law provides that law enforcement may seize vehicles during the investigation of a crime if they have probable cause that seizing a vehicle would aid in the apprehension or conviction of the offender.[5] In *State v. Mitchell*, a white Ford Pinto was seized, in part, because tire prints left

1. "Vehicle" is broadly defined to include "[e]very device in, upon, or by which any person or property is or may be transported or drawn upon a highway," except for certain personal assistive mobility devices. Chapter 20, Section 4.01(49) of the North Carolina General Statutes [hereinafter G.S.]. Where used in this bulletin, "motor vehicle" refers to a narrower subset within the meaning of "vehicle," defined by G.S. 20-4.01(23) as "[e]very vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term shall not include mopeds or electric assisted bicycles."

2. The due process guarantees of the Law of the Land Clause in the North Carolina Constitution (Article 1, Section 19) are equivalent to those set out in the Due Process Clause in the Fourteenth Amendment to the United States Constitution. State v. Collins, 169 N.C. 323 (1915); Buchanan v. Hight, 133 N.C. App. 299 (1999).

3. "It is fundamental that due process requires that a property interest not be divested finally without some kind of a hearing." Davis v. Fowler, 504 F. Supp. 502 (D. Md. 1980) (citing Wolff v. McDonnell, 418 U.S. 539, 557–58 (1974)).

4. United States v. Lane Motor Co., 199 F.2d 495, 496–97 (10th Cir. 1952), *aff'd,* 344 U.S. 630 (1953).

5. State v. Mitchell, 300 N.C. 305 (1980).

at the scene of an armed robbery matched those of the vehicle.[6] Seizing the vehicle permitted law enforcement to document this connection and preserve the vehicle as potential evidence for any upcoming court proceedings or trial.

Pursuant to G.S. 15-11.1, law enforcement may keep custody of property lawfully seized "as long as necessary to assure that the property will be produced at and may be used as evidence in any trial." That said, there are a few ways a vehicle may be returned to its owner once seized for use as evidence. If the district attorney has satisfactory evidence of ownership, either upon their own determination or after application by the lawful owner or possessor of the vehicle, they may release the vehicle to that applicant once the vehicle is no longer useful or necessary for trial. If the district attorney refuses to release the vehicle, the lawful owner or possessor of the vehicle may apply to the court for relief. After notice to all parties and a hearing, the court may return the property or enter "such order as may be necessary" to make sure the evidence will be available for trial while protecting the rights of all parties.[7]

If the vehicle is evidence of a violation of (1) Article 16 (Larceny), Article 16A (Organized Retail Theft), or Article 18 (Embezzlement) of G.S. Chapter 14 or (2) G.S. 14-100 (Obtaining Property by False Pretenses), the district attorney may apply for an order authorizing the return of the property to the lawful owner.[8] This application may be made by the district attorney on their own initiative or after a request by the lawful owner. After a defendant receives notice and is provided with at least ten business days to inspect and photograph the vehicle in question, the court must release the vehicle after a hearing if (1) the defendant has been given notice and opportunity to inspect and photograph the vehicle before the hearing, (2) photographs or other identifications or analyses will provide sufficient evidence of the vehicle at trial, (3) the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial, and (4) there is satisfactory evidence of ownership of the vehicle.[9]

When the only basis for the vehicle seizure is its potential use as evidence, once the criminal proceedings have terminated, "the general rule is that seized property other than contraband should be returned to its rightful owner."[10] That said, intervening factors may prevent a vehicle's release. In *State v. Davy*, a truck that was lawfully seized could not be returned to the defendant after the proceedings terminated because the storage fees amounted to more than the value of the truck.[11] As a result, the vehicle was subject to a lien for the storage fees[12] and was not returned to the owner.

II. Use as an Instrumentality of a Crime

In addition to being seized for evidentiary value, vehicles may be seized on the basis of having been used as an instrumentality of a crime.[13] In *State v. Mitchell*, the North Carolina Supreme Court stated that "a car reasonably viewed to be the fruit, instrumentality, or evidence of a

6. *Id*. at 307.
7. G.S. 15-11.1(a).
8. *Id.* § 11.1(b2).
9. *Id*.
10. United States v. LaFatch, 565 F.2d 81, 83 (6th Cir. 1977), *cert. denied,* 435 U.S. 971 (1978), *quoted in* United States v. Farrell, 606 F.2d 1341, 1343 (D.C. Cir. 1979).
11. 100 N.C. App. 551 (1990).
12. G.S. 44A-2(d) grants a lien for the repair, servicing, towing, or storage of a motor vehicle during the repair, servicing, or storage.
13. State v. Isleib, 319 N.C. 634 (1987).

crime can be seized whenever found in plain view."[14] In support of this conclusion, the court relied on a California Supreme Court case, *North v. Superior Court*;[15] a North Carolina Court of Appeals case, *State v. Young*;[16] and a respected treatise on search and seizure law.[17] The seizure of a vehicle based on its use as an instrumentality of a crime is rooted in the vehicle's possible later usefulness as evidence, and it serves as the initial seizure that may facilitate a later search properly justified by probable cause. This basis permits the seizure of a vehicle without necessarily establishing that it is, or that it contains, evidence of the crime being investigated. Upon seizing a vehicle as an instrumentality, law enforcement may then more readily investigate and determine the vehicle's usefulness as evidence.

In *Mitchell*, the court's primary inquiry was "whether the officers had probable cause to believe that the white Pinto had been utilized in the commission of the armed robbery or itself constituted evidence of the crime."[18] The court's analysis of the facts focused primarily on whether there was probable cause to believe that the vehicle would "aid in the apprehension or conviction of the offender."[19] It concluded that the circumstances established probable cause that "the white Pinto had been used by Mitchell in two robberies and that the vehicle itself constituted criminal evidence which might lead to the apprehension and conviction of Mitchell."[20]

While *Mitchell* appears to authorize the initial seizure of a vehicle on the basis that it has been used in the commission of a crime, the continued custody and release of such a vehicle is nonetheless governed by G.S. 15-11.1. As a result, any continued detention of the vehicle must be justified by the need for it to be produced or used as evidence at trial.

III. Satisfaction of Debt or Judgment

A vehicle also may be seized or forfeited to satisfy a debt or judgment. Three circumstances where this may occur are in the case of a motor vehicle lien, a writ of possession, or a writ of execution.

A *motor vehicle lien* covers reasonable charges for the repair, servicing, towing, or storing of vehicles.[21] It arises when the person providing the service for a vehicle acquires possession of the vehicle and lasts until that person voluntarily relinquishes the vehicle or when the vehicle owner satisfies the amount owed to the person in possession of the vehicle. Subject to additional procedures, if the owner does not satisfy the amount of the lien, the person in possession of the vehicle may lawfully sell the vehicle to recoup their expenses, pay for the sale, and satisfy any other lienholders.[22] Any surplus after that point would then be returned to the vehicle owner.

14. 300 N.C. 305, 309 (1980).
15. 502 P.2d 1305 (Cal. 1972).
16. 21 N.C. App. 369 (1974).
17. Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.3(a) (1978).
18. 300 N.C. at 309.
19. *Id.* at 310.
20. *Id.*
21. G.S. 44A-2(d).
22. *Id.* § 4.

A *writ of possession* may be used to seize a vehicle when that vehicle is the property that secures a debt, oftentimes the debt incurred to purchase the vehicle in the first place.[23] Commonly referred to as repossessions, these writs permit the creditor to take possession of the vehicle when there has been a default on the secured debt.

A *writ of execution*, on the other hand, does not start with a vehicle being secured on a debt or necessarily involve a creditor of such a debt. Writs of execution are issued for unsatisfied money judgments and are a way for sheriffs to levy on and sell personal property, such as vehicles, to satisfy such judgments.[24] If the judgment is paid by the sale, the remaining proceeds are returned to the vehicle owner after any additional junior or tax liens are paid.[25]

Vehicles Seized and Forfeited as a Consequence of Criminal Conduct

As mentioned above, the primary aim of this bulletin is to discuss the seizure and forfeiture of a vehicle based on the criminal conduct of its driver. This type of seizure is notable because it is not intended to satisfy a debt or judgment, and unlike a seizure based on evidentiary value, it is not designed to secure evidence for the purpose of some other proceeding. Instead, this seizure is performed so that a vehicle may be forfeited if its driver-defendant is found to be responsible for the underlying offense with which they are charged. As the grants of authority for seizure and forfeiture vary in their application, procedure, and requirements, each will be addressed separately based on the underlying authority.

One concern may be that seizure and forfeiture of vehicles pursuant to these authorities has double jeopardy implications. Similar actions, such as the forfeiture of a defendant's house, have been considered by the courts to be civil sanctions and, as a result, were found not to have constituted "punishment" for purposes of double jeopardy.[26] The United States Supreme Court has formulated a two-part test for determining whether a civil sanction is so punitive in nature it constitutes punishment: (1) Did the legislature expressly or impliedly indicate that the sanction was criminal or civil? (2) If the answer is that the sanction was civil in nature, is the sanction so punitive in either purpose or effect so as to transform it into a criminal punishment?[27] Other actions that have not constituted punishment include a 30-day pretrial driver's license revocation[28] and a 1-year commercial driver's license disqualification.[29] Further, in an

23. G.S. 1-313.

24. *Id.* § 305.

25. *Id.* § 339.70. For more information on civil procedure for motor vehicles and property seizure and forfeiture, see the *North Carolina Clerk of Superior Court Manual Series*, edited by School of Government faculty member Meredith Smith.

26. United States v. Ursery, 518 U.S. 267 (1996). The forfeiture of the defendant's house after his manufacturing marijuana conviction, based on the same underlying events, was found to have qualified as a civil proceeding. That both the conviction and forfeiture were tied to criminal activity was ruled insufficient to render both punitive, and as a civil sanction, the forfeiture of the house did not constitute punishment.

27. Hudson v. United States, 522 U.S. 93, 99 (1997).

28. State v. Evans, 145 N.C. App. 324 (2001).

29. State v. McKenzie, 225 N.C. App. 208, *rev'd based on dissent*, 367 N.C. 112 (2013).

unpublished case, the North Carolina Court of Appeals declined to find that an unlawful vehicle seizure and subsequent prosecution for impaired driving constituted multiple punishments for the purposes of double jeopardy.[30]

I. Impaired Driving Offenses and Felony Speeding to Elude Arrest[31]

A. Applicability

A motor vehicle must be seized and is subject to forfeiture when it is driven by a person charged with felony speeding to elude arrest or with any offense involving impaired driving when additional conditions are met. A person commits felony speeding to elude when (1) they operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer in the lawful performance of their duties and (2) two or more statutory aggravating factors are present.[32] Offenses involving impaired driving are set out in G.S. 20-4.01 and include impaired driving and other criminal offenses where a conviction includes or is based on impaired driving.[33] One of two additional conditions must be met for an offense involving impaired driving to mandate the seizure of the motor vehicle involved in the offense. One is when a person is charged with an offense involving impaired driving and their driver's license was revoked due to a prior impaired driving license revocation,[34] and the other is when a person is charged with an offense involving impaired driving and they were not validly licensed and were not covered by an insurance policy at the time of the offense.[35]

A motor vehicle seizure made pursuant to this authority must be approved by a magistrate.[36] This may occur at the time of a defendant-driver's arrest, or it may occur later if law enforcement has not yet seized the vehicle driven by the defendant. A magistrate approves a vehicle seizure by

30. State v. Leskiw, 211 N.C. App. 198 (2011) (unpublished). For more information on double jeopardy, see Robert Farb, *Double Jeopardy and Related Issues*, *in* North Carolina Superior Court Judges' Benchbook (UNC School of Government, Oct. 2013).

31. The process afforded to motor vehicle owners for vehicles seized under this authority, otherwise known as the "DWI seizure statutes," was found to satisfy state and federal due process demands in *State v. Chisholm*, 135 N.C. App. 578 (1999).

32. G.S. 20-141.5. The aggravating factors are as follows: speeding greater than 15 miles per hour over the speed limit; gross impairment of the driver's faculties due to an impairing substance or a blood-alcohol concentration of 0.14 or more; reckless driving as proscribed by G.S. 20-140; negligent driving leading to an accident causing personal injury or property damage in excess of $1,000; driving when the person's driver's license is revoked; driving in excess of the speed limit in a school zone or a highway work zone; passing a stopped school bus as proscribed by G.S. 20-217; or driving with a child under 12 years of age in the vehicle.

33. Offenses involving impaired driving are as follows: impaired driving under G.S. 20-138.1; any offense under G.S. 20-141.4 when the conviction is based on impaired driving; first- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when the conviction is based on impaired driving; any offense committed in another jurisdiction which prohibits substantially similar conduct; any repealed or superseded offense substantially similar to impaired driving; impaired driving in a commercial motor vehicle under G.S. 20-138.2; and habitual impaired driving under G.S. 20-138.5. G.S. 20-4.01(24a).

34. Impaired driving license revocations are as follows: revocations (1) pursuant to (a) G.S. 20-13.2, -16(a)(8b), -16.2, -16.5, -17(a)(2), -17(a)(12), or -138.5 or (b) G.S. 20-16(a)(7), -17(a)(1), -17(a)(3), -17(a)(9), or -17(a)(11), if the offense involves impaired driving, as well as (2) pursuant to the laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which, if committed in North Carolina, would result in an aforementioned revocation. G.S. 20-28.2(a).

35. G.S. 20-28.3(a).

36. *Id.* § 28.3(c).

finding that the person driving the vehicle has been properly charged with either felony speeding to elude or with an offense involving impaired driving, that one of the two additional conditions have been met in the case of an offense involving an impaired driving arrest, that a check of law enforcement records verifies that the vehicle has not been reported stolen, and that the vehicle is not a rental vehicle with a person other than the defendant listed as the authorized driver.[37]

B. Motor Vehicle Storage

In impaired driving and felony speeding to elude arrest seizures, the motor vehicle involved will be towed pursuant to a statewide or regional contract, pursuant to a contract with the county board of education, or by a commercial towing company selected by the law enforcement agency that seizes the motor vehicle.[38] If the motor vehicle is towed by a commercial towing company selected by law enforcement, the motor vehicle must be retrieved within ten business days by the county board of education or its agent and (1) transferred to the facility of a state or regional contractor as designated by the board or (2) stored on the board's own property. If the board chooses to store the vehicle itself, it may not charge more than $10 per calendar day for such storage. Boards may contract with commercial storage facilities or other private entities to store motor vehicles, provided such facilities/entities do not charge more than $10 per calendar day.[39]

In all other circumstances, when a seized motor vehicle is stored pursuant to a state or regional contract, the State Surplus Agency retains constructive possession of the vehicle and may store the motor vehicle at a location it designates on behalf of the state or may deliver the motor vehicle to its agent pending its release or sale.[40]

Regardless of where a seized motor vehicle is stored, it will accrue storage fees every day it is being held. To prevent the value of a motor vehicle from being consumed by storage fees, the motor vehicle may be sold via an "expedited sale." An expedited sale of a seized motor vehicle may be conducted if

1. ninety days have passed since the date of seizure and the fair market value of the motor vehicle is less than $1,500;
2. the towing and storage fees for the motor vehicle have exceeded 85 percent of its fair market value, regardless of the motor vehicle's fair market value or the amount of time the motor vehicle has been seized; or
3. the motor vehicle owner(s) consent(s) to the sale.[41]

After an expedited sale, the proceeds are first used to pay all outstanding towing and storage fees. The remaining proceeds are then held by the clerk of superior court. If the court later orders the vehicle forfeited, the remaining proceeds go to the county board of education in the same manner as if the motor vehicle was sold at the resolution of the defendant's case. If the court

37. The officer's affidavit and magistrate's order for an offense involving impaired driving arrest motor vehicle seizure are found in form AOC-CR-323A; for a felony speeding to elude arrest motor vehicle seizure, the affidavit and order are found in form AOC-CR-323B.

38. G.S. 20-28.3(d).

39. *Id*.

40. *Id*.

41. *Id.* § 28.3(i).

determines that the motor vehicle would not have been subject to forfeiture, the remaining proceeds are used to satisfy any liens, and then any remaining balance is returned to the motor vehicle's owner(s).[42]

C. Pretrial Release

Motor vehicles seized pursuant to this authority may be released pretrial, either permanently or temporarily. Permanent release resolves the question of forfeiture and does not require the motor vehicle to be brought back to court. Temporary release does not resolve the question of forfeiture and requires the motor vehicle to be brought back to court for the forfeiture hearing.

1. Permanent Release

There are three circumstances when a seized motor vehicle may be permanently released before a forfeiture hearing: (1) when innocent owners are involved, (2) when there has been an improper seizure, and (3) when lienholders are involved. In each of these circumstances, the motor vehicle is released without a requirement that a bond be posted, and there is no possibility of later forfeiture.

a. Innocent Owners

A motor vehicle may be permanently released before a forfeiture hearing if the motor vehicle's owner is not the person charged with the underlying offense and they demonstrate that they are an "innocent owner."[43] There are five ways a motor vehicle owner may be considered an innocent owner.

1. In the case of an impaired driving motor vehicle seizure, the owner did not know and had no reason to know that the defendant's driver's license was revoked or that the defendant did not have a driver's license and did not have insurance.
2. The defendant drove the motor vehicle without the owner's consent and the owner files a police report and agrees to prosecute the defendant for unauthorized use of a motor vehicle.[44]
3. The motor vehicle was reported stolen.[45]
4. The owner is a rental car company and the defendant is not listed as an authorized driver on the rental agreement, or the defendant is listed as an authorized driver but the company had no actual knowledge that the defendant's license was revoked (in the case of an impaired driving seizure), or the rental agreement expressly prohibits the use of the motor vehicle while committing a felony (in the case of a felony speeding to elude seizure).
5. In the case of an impaired driving seizure, the owner is in the business of leasing motor vehicles, holds title to the vehicle as lessor at the time of seizure, and had no actual knowledge that the lessee's driver's license was revoked.[46]

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42. *Id.*

43. *Id.* § 28.3(e1).

44. This applies for felony speeding to elude seizures and applies in impaired driving seizures where the owner knew that the defendant's driver's license was revoked or knew that the defendant did not have a driver's license or insurance.

45. This does not require the innocent owner or law enforcement to know the identity of the driver or to assemble the information that would otherwise be needed to establish probable cause for a theft offense.

46. G.S. 20-28.2(a1)(2). An innocent owner may file form AOC-CR-330A with the clerk of superior court to ask that the motor vehicle be released pretrial.

For an innocent owner to recover a seized motor vehicle, they must execute an "impaired driving acknowledgment" or a "speeding to elude arrest acknowledgment," as the case may be.[47] If, at a later time, the same defendant is driving the motor vehicle in question and it is seized again, this acknowledgment requires the otherwise-innocent owner to show, by the greater weight of the evidence, that they (1) took all reasonable precautions to prevent the use of the motor vehicle by this particular person and (2) immediately reported any unauthorized use to law enforcement upon discovery. If the motor vehicle owner fails to establish that they are an innocent owner, the issue may be reconsidered by the court at the forfeiture hearing.[48]

b. Improper Seizure

In certain impaired driving cases, a motor vehicle may be permanently released before trial and without a forfeiture hearing if it was improperly seized. In cases where the basis of the seizure is that the defendant's driver's license was revoked for an impaired driving revocation at the time of the offense, if the defendant establishes that their license was, in fact, not revoked for an impaired driving revocation, the motor vehicle must be released. These hearings are held before a judge in the division in which the underlying charge is pending. If the district attorney determines that the seizure was improper, they may consent to the release, and the clerk of superior court may order a release order without having a hearing.[49] If the defendant fails to establish that their license was not revoked for an impaired driving revocation, the issue may be reconsidered by the court at the forfeiture hearing.[50]

c. Lienholders

Finally, a lienholder may obtain the permanent release of a seized motor vehicle before trial and without a forfeiture hearing.[51] After filing a petition for the motor vehicle's release with the clerk, if the registered and titled owner(s), district attorney, and county board of education attorney waive their rights to notice and a hearing, and if the lienholder agrees not to sell the motor vehicle to the defendant or the motor vehicle owner, the clerk may release the motor vehicle to the lienholder.[52] If the interested parties do not waive their rights, the lienholder must seek release before a judge. At such hearing, the lienholder must show that (1) there has been a default on the obligation secured by the motor vehicle, (2) as a result of that default the lienholder is entitled to possession of the motor vehicle, and (3) the motor vehicle had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or vehicle owner. The lienholder must agree to sell the motor vehicle and provide the clerk with the proceeds (minus the amount of the lien and towing and storage fees) and, like in cases where the interested parties agree to the release, may not sell the motor vehicle to the defendant or the motor vehicle owner.[53]

If a lienholder's request for pretrial release of a seized motor vehicle has been denied, the controlling statute does not address whether they may be heard again. By specifically permitting vehicle owners denied relief in G.S. 20-28.3(e1) and (e2) to be heard again at the forfeiture hearing without including similar language for lienholders, it appears that the statute does not

47. *Id.* § 28.2(e)(4).
48. *Id.* § 28.3(e1).
49. *Id.* § 28.3(e2)(1). This may be initiated by filing form AOC-CR-333A with the clerk.
50. *Id.*
51. *Id.* § 28.3(e3).
52. *Id.* § 28.3(e3)(2).
53. *Id.* § 28.3(e3). A lienholder can initiate this process by filing form AOC-CR-334A.

allow lienholders to be reheard at the forfeiture hearing. One possible justification for this is that motor vehicle owners must first be heard by the clerk, while lienholders must be heard by a judge. This is notwithstanding the fact that G.S. 20-28.2(f), setting forth the same requirements for motor vehicle release to lienholders at the forfeiture hearing, does not expressly require the lienholder to be making this request for the first time. As a result, at this time there appears to be support for either position, and a court may or may not permit a lienholder to be heard again if their request for permanent release pretrial has been denied.

2. Temporary Release

The avenues for securing the temporary release of a seized motor vehicle vary based on whether the applicant is a non-defendant motor vehicle owner or a defendant motor vehicle owner. In these circumstances, the motor vehicle release is secured by a bond, and the vehicle must be returned for the forfeiture hearing.

a. Non-Defendant Motor Vehicle Owners

For a vehicle seized in connection with an impaired driving offense or felony speeding to elude arrest, if the motor vehicle owner seeking temporary release of the motor vehicle is not the defendant in the underlying case, they may seek pretrial temporary release of the motor vehicle.[54] Non-defendant motor vehicle owners initiate this process by filing a petition with the clerk.[55] The clerk must release the motor vehicle to the non-defendant owner once the following six conditions have been met:

1. the motor vehicle has been seized for at least twenty-four hours;
2. a bond equal to the fair market value of the motor vehicle has been posted by cash deposit, by a recordable deed of trust to real property in the full amount (fair market value), by a bail bond under G.S. 58-71-1(2), or by at least one surety, payable to the county board of education and conditioned on return of the motor vehicle for the forfeiture hearing in substantially the same condition and without any new liens;
3. an impaired driving acknowledgment (in the case of an impaired driving offense seizure) or a speeding to elude arrest acknowledgment (in the case of a speeding to elude seizure) has been executed;
4. a check of N.C. Division of Motor Vehicles records indicates that the requesting motor vehicle owner has not previously executed an impaired driving or a felony speeding to elude acknowledgment naming the operator of the motor vehicle;
5. a bond posted to secure the release of the motor vehicle in question has not previously been ordered forfeited under G.S. 20-28.5; and
6. all towing and storage fees incurred as a result of the initial seizure of the motor vehicle have been paid.[56]

54. *Id.* § 28.3(e).

55. Non-defendant motor vehicle owners may initiate this hearing by filing form AOC-CR-330A in impaired driving cases or form AOC-CR-330B in speeding to elude cases. Clerks may subsequently rule on the owner's petition using form AOC-CR-332A for impaired driving cases or form AOC-CR-332B for speeding to elude cases.

56. G.S. 20-28.3(e).

b. Defendant Motor Vehicle Owners

When the motor vehicle owner seeking the release of the motor vehicle is also the defendant in the underlying case, the law only permits pretrial temporary release when the motor vehicle has been seized for felony speeding to elude arrest.[57] If a defendant motor vehicle owner's vehicle has been seized for an offense involving impaired driving, there is no avenue for temporary release of the motor vehicle.

Defendant motor vehicle owners initiate the release process by filing a petition with the clerk.[58] In speeding to elude cases, the clerk must release the motor vehicle to the defendant owner once the following four conditions have been met:

1. the motor vehicle has been seized for at least twenty-four hours;
2. a bond equal to the fair market value of the motor vehicle has been secured by cash deposit, by a recordable deed of trust to real property in the full amount (fair market value), by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county board of education and conditioned on return of the motor vehicle in substantially the same condition and without any new liens on the date of a properly noticed forfeiture hearing;
3. a bond posted to secure the release of the motor vehicle in question under this subsection has not previously been ordered forfeited under G.S. 20-28.5; and
4. all towing and storage fees incurred as a result of the initial seizure of the motor vehicle have been paid.[59]

c. Failure to Return The Motor Vehicle

Temporary possession of a seized motor vehicle pretrial comes with a penalty beyond an order of seizure if the owner does not return the motor vehicle or violates a condition of pretrial release of the motor vehicle: mandatory bond forfeiture. If the motor vehicle is not returned for the forfeiture hearing, or if any condition of pretrial release of the motor vehicle is violated, the court must issue an order of seizure for the motor vehicle and order that the bond posted by the defendant be forfeited.[60] This means that it is possible that the motor vehicle owner will forfeit the fair market value of the vehicle twice (less costs and any towing and storage fees) to the county board of education: once by forfeiting the bond they posted, and again if the motor vehicle is later ordered forfeited at the forfeiture hearing.

3. Multiple Owners

A motor vehicle may be owned by more than one person. If one of the owners is the defendant in an impaired driving case where the vehicle was seized, another owner may nonetheless apply for permanent or temporary release of the motor vehicle pretrial. So long as an owner meets the definition of motor vehicle owner[61] at the time of the vehicle seizure, G.S. 20-28.3(e1) permits "a nondefendant motor vehicle owner" to seek a determination that they are an innocent owner and to apply for a permanent release of the motor vehicle. Likewise, G.S. 20-28.3(e) permits "a motor

57. *Id.* § 28.3(e2)(2).

58. A defendant motor vehicle owner may initiate this hearing by filing form AOC-CR-333B, which also includes the clerk's order either ordering temporary pretrial release of the vehicle or denying release.

59. G.S. 20-28.3(e2)(2).

60. *Id.* § 28.3(e), (e2)(2).

61. G.S. 20-28.2(a1)(3a) defines *motor vehicle owner* as "a person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure."

vehicle owner" to apply for temporary release of a seized motor vehicle. As a result, an owner meeting these requirements would be able to obtain the permanent or temporary release of their motor vehicle pretrial in an impaired driving case, notwithstanding who else is listed as a named owner on the vehicle's title.

D. Calendaring and Appeal Provisions

When a motor vehicle is seized in connection with an offense involving impaired driving, G.S. 20-28.3(m) requires expedited district court proceedings on the underlying criminal charges. In these cases, the district court trial must be set on the arresting officer's next court date or within thirty days, whichever comes first. Once set, the statute provides that the case may not be continued absent a written motion to continue and notice to the opposing party. The judge may only continue the case for a "compelling reason" and must include the motion and their findings in the record. Although district court is not a court of record, because the statute requires these things to be attached to the record, it appears that the motion and findings must be in writing. If an impaired driving defendant is found guilty, the judge must conduct a forfeiture hearing immediately or as soon thereafter as feasible.[62] If the defendant is acquitted, there is no forfeiture hearing, and the motor vehicle is released pursuant to G.S. 20-28.4.

G.S. 20-28.3(m) also addresses petitions for the release of motor vehicles following appeals of district court convictions to superior court. It permits any party who has not previously been heard on a petition for permanent motor vehicle release as an innocent owner or lienholder, or any party whose motor vehicle has not been the subject of a forfeiture hearing, to be heard on a request for permanent release by the same authority that would have heard the petition pretrial. The rules providing for temporary release of vehicles continue to apply pending trial in superior court.[63] Any motor vehicle already temporarily released may continue to be released under the same terms and conditions of the original bond.[64] An order of forfeiture entered by the district court is stayed pending appeal for trial in superior court. Following a conviction in superior court, the superior court then considers the issue de novo.[65]

E. Forfeiture Hearings

Unless a motor vehicle seized in an impaired driving or a speeding to elude case has been permanently released pretrial or the defendant has been acquitted, the court must hold a forfeiture hearing to determine the motor vehicle's disposition. The hearing may occur (1) at the sentencing hearing for the underlying offense, (2) at a separate hearing after conviction of the defendant, or (3) on a date at least sixty days after the defendant failed to appear at the scheduled trial for the underlying offense and where the defendant's order for arrest has not been set aside. If the defendant is acquitted or the charge is otherwise dismissed, the motor vehicle, insurance proceeds, or expedited sale proceeds must be returned to the motor vehicle owner after the satisfaction of towing and storage costs and any other administrative or sales costs incurred.[66]

62. G.S. 20-28.3(m). For further discussion of the expedited calendaring provisions, see Belal Elrahal, *Calendaring Offenses Involving Seized Motor Vehicles*, N.C. Crim. L.: A UNC Sch. of Gov't Blog (Jan. 8, 2025).
63. G.S. 20-28.3(m).
64. *Id.*
65. *Id.* § 28.5(e).
66. *Id.* § 28.2(d).

At the forfeiture hearing, the court's task is to determine whether the motor vehicle in question is subject to forfeiture and whether proper notice has been given. The grounds for forfeiture mirror the grounds for the initial seizure of the motor vehicle. A motor vehicle is subject to forfeiture when

1. the defendant was charged with an impaired driving offense and their license was revoked at the time pursuant to an impaired driving revocation, and the greater weight of the evidence shows that the defendant is guilty of the underlying offense and that the defendant's license was revoked pursuant to an impaired driving revocation;[67]
2. the defendant was charged with an impaired driving offense and they were not validly licensed to drive and did not have liability insurance, and the greater weight of the evidence shows that the defendant is guilty of the underlying offense and that they did not have a valid driver's license and were not covered by liability insurance;[68] or
3. the defendant was charged with felony speeding to elude, and the greater weight of the evidence shows that the defendant is guilty of felony speeding to elude.[69]

If a judge determines that a seized motor vehicle is subject to forfeiture and does not order the motor vehicle released to a lienholder, the judge must authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use.[70] If the motor vehicle has been sold or if there are insurance proceeds, the funds held by the clerk are to be disbursed to the board, and any outstanding insurance claims are to be assigned to the board if the motor vehicle was damaged in an accident incident to it being seized.[71]

II. Prearranged Speed Competitions and Street Takeovers

A. Applicability

A motor vehicle must be seized and is subject to forfeiture when it is driven by a person charged with prearranged racing.[72] While spontaneous racing is prohibited as well, motor vehicle seizures are not authorized in those cases.[73] When a motor vehicle is driven by a person charged with a street takeover,[74] law enforcement has discretion whether to seize the motor vehicle. If a motor vehicle used in a street takeover is seized, its storage, release, and forfeiture are governed by the same procedures as in prearranged speed competition cases.[75]

67. *Id.* § 28.2(b).
68. *Id.* § 28.2(b1).
69. *Id.* § 28.2(b2).
70. *Id.* § 28.2(f).
71. *Id.* § 28.2(d)(2).
72. Prearranged racing, a Class 1 misdemeanor, is the willful operation of a motor vehicle on a street or highway in a prearranged speed competition with another motor vehicle. *Id.* § 141.3(a).
73. Willful racing is a Class 2 misdemeanor and is comprised of the same elements as prearranged racing except that the speed competition is not prearranged. *Id.* § 141.3(b).
74. Street takeovers are "the unauthorized taking over of a portion of highway, street, or public vehicular area by blocking or impeding the regular flow of traffic with a motor vehicle to perform a motor vehicle stunt, contest, or exhibition." *Id.* § 141.10(a)(8).
75. *Id.* § 141.10(f).

B. Motor Vehicle Storage

When a defendant's motor vehicle is seized based on either prearranged racing or street takeover charges, law enforcement must deliver it to the sheriff of the county in which the offense was committed. If delivery of the motor vehicle to the sheriff is impractical, the sheriff may store it at another location, including one which may charge a fee, under the sheriff's constructive possession. This remains the case pending trial or pretrial release of the vehicle.[76]

C. Pretrial Release

There are two avenues for pretrial release of motor vehicles seized for prearranged speed competitions or street takeovers. A motor vehicle owner in such a case may obtain possession of their motor vehicle pretrial by executing a bond, in double the amount of the motor vehicle's fair market value, with sufficient sureties. The bond must be approved by the sheriff and conditioned on return of the motor vehicle to the custody of the sheriff on the day of trial.[77] Lienholders may petition for and obtain possession of a motor vehicle seized in such a case, with terms and conditions set in the judge's discretion. A lienholder who sells a released motor vehicle must file an accounting of the proceeds and give the court any proceeds above the amount of the lien.[78]

D. Forfeiture Hearings

In most circumstances, if a defendant charged with prearranged racing or street takeover is convicted, the court must order a sale of the seized motor vehicle at public auction. Upon such sale, the following obligations must be paid in order of listing: (1) expenses for keeping the motor vehicle, (2) the fee for the motor vehicle's seizure, (3) the costs of the sale, and (4) any liens on the motor vehicle. Any remaining funds go to the county board of education.[79] If a motor vehicle ordered to be sold has been specially equipped or modified, the court must order that the special equipment or modification be removed or destroyed prior to sale. If the modification is so extensive that it would be impractical to remove or destroy, the motor vehicle may be used by a governmental agency or public official for official duties only and may not be sold or disposed of other than as junk.[80] If a defendant charged with prearranged racing or street takeover is acquitted, the sheriff must return the motor vehicle connected with the offense to the owner. If the owner cannot be found, the motor vehicle may be sold or otherwise disposed of after public notice procedures are followed.[81]

If, at the time of a hearing or other proceeding in which the matter is considered, a motor vehicle owner can establish to the satisfaction of the court that (1) the motor vehicle was used in a prearranged speed competition without the knowledge or consent of the owner and (2) the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court must return the motor vehicle to the owner. The owner is entitled, upon their own request, to a jury trial to determine these issues.[82]

76. *Id.* § 141.3(g)(1).
77. *Id*.
78. *Id.* § 141.3(g)(2).
79. *Id.* § 141.3(g)(3).
80. *Id.* § 141.3(g)(5).
81. *Id.* § 141.3(g)(4), (1).
82. *Id.* § 141.3(g)(3).

III. Transporting Nontaxpaid Alcohol in Violation of ABC Law

A. Applicability

When any conveyance, including a motor vehicle, is used to transport nontaxpaid alcoholic beverages in violation of state alcoholic beverage control (ABC) laws,[83] it is subject to seizure and forfeiture.[84] The only exception is when the motor vehicle at issue was used unlawfully by someone other than the owner and the owner did not consent to the unlawful use.[85]

A seizure pursuant to this authority is initiated by law enforcement applying to a judge for an order authorizing the seizure. This order may only be issued after criminal process has been issued for an ABC-law violation in connection with the motor vehicle. The order of seizure must describe the motor vehicle and contain the facts establishing probable cause to believe it is subject to forfeiture.[86]

B. Motor Vehicle Storage

In these cases, storage of the motor vehicle is the responsibility of the law enforcement agency that seized it. If the officer with custody of the motor vehicle is satisfied that it will be returned at trial, the officer may temporarily release the motor vehicle to the owner upon receiving a bond for its fair market value, which is subject to forfeiture to the court if the motor vehicle is not returned for trial.[87]

C. Pretrial Release

Any time before an order for forfeiture of a motor vehicle is entered in a transporting nontaxpaid alcoholic beverages case, the owner of the seized motor vehicle or the holder of an interest in the motor vehicle may apply for permanent release of the motor vehicle to any judge that has jurisdiction to hear the underlying offense. If the judge finds that the interested party or owner did not consent to the unlawful use of the motor vehicle, the judge has three options: (1) return the motor vehicle if it is not needed for trial; (2) return the motor vehicle after resolution of the case; or (3) if the motor vehicle has been sold, pay the interest holder a sum from its sale.[88]

D. Forfeiture Hearings

In a case where transporting nontaxpaid alcoholic beverages has been charged, the permissible outcome of a forfeiture hearing depends on several factors. If the owner or possessor of the motor vehicle connected with the offense is found guilty, the judge may order that the motor vehicle be forfeited. If the owner or possessor is acquitted or if the charges are dismissed, the judge must order that the motor vehicle be returned. If the motor vehicle is also needed as evidence at an administrative hearing, any release order is delayed until the ABC Commission

83. The terms "ABC law" or "ABC laws" mean (1) any statute or statutes in G.S. Chapter 18B or in Article 2C of G.S. Chapter 105 and (2) the rules issued by the N.C. Alcoholic Beverage Control Commission under the authority of Chapter 18B. G.S. 18B-101(1). The ABC Commission was established by G.S. 18B-200.

84. *Id.* § 504(a).

85. *Id.* § 504(b).

86. *Id.* § 504(c).

87. *Id.* § 504(d).

88. *Id.* § 504(h).

determines that it is no longer needed for an administrative hearing.[89] If ownership of the motor vehicle is uncertain, and if ownership has not been determined after the motor vehicle has been held in order to investigate its ownership, it must be forfeited.

When issuing an order of forfeiture of a motor vehicle, a judge also may decide how to dispose of the motor vehicle. The judge may order that the motor vehicle be sold at public auction or sold at an auction after notice to certain named individuals or groups if only a limited number of people would have use for it. The judge also may order that the motor vehicle be delivered to a named state or local law enforcement agency if it is not suited for sale (with preference given in the following order: the agency that seized the motor vehicle, the ALE division within the state Department of Public Safety,[90] the ABC Commission, the local board of the jurisdiction in which the motor vehicle was seized, and the N.C. Department of Justice). Finally, the judge also may order that the motor vehicle be destroyed if it would otherwise be unlawful to possess and could not be used or is not wanted for law enforcement purposes.[91] If the motor vehicle is sold, the proceeds go to the board of education in the county in which it was seized. Those proceeds are reduced by any interest of an innocent party and the costs of storage and sale.[92]

IV. Larceny and Similar Crimes

A. Applicability

Under G.S. 14-86.1, when any conveyance, including a vehicle, is used to unlawfully conceal, convey, or transport property as part of the commission of larceny or a similar crime,[93] it is subject to seizure and forfeiture.[94] Seizure under this subsection may be ordered by process issued by a district or superior court having original jurisdiction over the charged offense, or it may occur without process if the seizure is incident to an arrest or search pursuant to a search warrant.[95] A vehicle that is the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under G.S. 14-86.1 may be seized without process.[96] Exceptions apply. A vehicle is not subject to forfeiture when

1. the vehicle is hired, and it is generally offered to the public for hire, unless it appears that the owner or other person in custody or control of the vehicle consented to or was aware of the underlying violation;
2. the vehicle is unlawfully in the possession of a person other than the owner;
3. the underlying offense is a misdemeanor or infraction;

89. *Id.* § 504(e).

90. "ALE" refers to Alcohol Law Enforcement.

91. G.S. 18B-504(f).

92. *Id.* § 504(g).

93. The "similar" crimes that subject a vehicle to forfeiture under this section are as follows: (1) receiving stolen goods; receiving or possessing goods represented as stolen (G.S. 14-71); (2) possessing stolen goods (G.S. 14-71.1); (3) receiving or transferring stolen vehicles (G.S. 14-71.2); (4) armed robbery; common law robbery; chop shop activity (G.S. 14-72.7); (5) any larceny where the value of the property stolen is greater than $2,000; (6) breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft (G.S. 14-56); and (7) organized retail theft (G.S. 14-86.6).

94. G.S. 14-86.1(a).

95. "Process" as used in this subsection does not include search warrants. *In re* 1990 Red Cherokee Jeep, VIN 1J4FJ38L4LL146261, 131 N.C. App. 108 (1998).

96. G.S. 14-86.1(b).

4. the vehicle is encumbered by a bona fide security interest; if this is the case, it is subject to the interest of the secured party provided that party had no knowledge of and did not consent to the underlying criminal offense;
5. the owner of the vehicle did not know or have reason to believe that it was being used in the commission of the underlying offense; or
6. the trial judge in the criminal proceeding for the underlying offense finds that forfeiture is inappropriate.[97]

B. Vehicle Storage

A vehicle seized pursuant to this authority is deemed to be in the custody of the law enforcement agency that seized it. The law enforcement agency may either store the vehicle or request that the N.C. Department of Justice or Department of Public Safety take custody and store the vehicle pending further proceedings.[98]

C. Pretrial Release

A vehicle owner may obtain temporary possession of their vehicle pending trial for larceny or a similar crime by executing a bond in an amount equal to double the fair market value of the vehicle, which must be approved by an officer of the agency that seized the vehicle. Release is conditioned on the return of the vehicle to the custody of said officer on the day of trial.[99]

D. Forfeiture Hearings

If a vehicle is ordered forfeited in a case involving larceny or similar charges, the law enforcement agency that seized it may retain the vehicle for official use. Upon application by either the N.C. Department of Justice or Department of Public Safety, the presiding judge may transfer the vehicle to the applying department for official use. Finally, the vehicle may be sold as surplus property in the same manner as other vehicles sold by the seizing agency. The proceeds of the sale are then paid to the board of education in the county in which the vehicle was seized, minus costs of the sale. If the vehicle has been modified from its original manufactured condition, it cannot be sold in that condition. It must either be retained by the seizing law enforcement agency for use in the performance of official duties, or any special equipment or modifications must be removed or destroyed. Once returned to its original manufactured condition, the vehicle may be sold.[100]

Vehicles subject to forfeiture under this authority are to be forfeited pursuant to the procedures for the forfeiture of vehicles used to conceal, convey, or transport intoxicating beverages as found in G.S. 18B-504 (discussed above).[101]

97. *Id.* § 86.1(a)(1)–(6).
98. *Id.* § 86.1(c).
99. *Id*.
100. *Id.* § 86.1(d).
101. *Id.* § 86.1(e).

V. Drug Offenses

A. Applicability

Under G.S. 90-112, vehicles used as part of an offense related to controlled substances[102] are subject to seizure and forfeiture. If a vehicle is used to unlawfully conceal, convey, or transport any unlawful controlled substance, it is subject to seizure and forfeiture. This also applies to any money, raw material, products, and equipment of any kind which are acquired, used, or intended for use in selling, purchasing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance.[103]

Vehicles subject to forfeiture under this subsection may be ordered seized by any district or superior court with jurisdiction over the vehicle, may be seized without process if the seizure is incident to an arrest or search pursuant to a search warrant, or may be seized without process when the vehicle has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under the North Carolina Controlled Substances Act (Article 5 of G.S. Chapter 90).[104]

A vehicle is not subject to seizure if it is hired, and generally offered to the public for hire, unless the owner or other person in charge of the vehicle consented to or was aware of the underlying violation. A vehicle is also not subject to seizure if (1) it was unlawfully in the possession of a person other than the owner, (2) the violation is not a felony, or (3) the vehicle is subject to the interest of a bona fide security interest holder who had no knowledge of and did not consent to the violation.[105]

B. Vehicle Storage

A vehicle seized pursuant to G.S. 90-112 is deemed to be in the custody of the law enforcement agency that seized it and shall not be "repleviable" (subject to a replevin action).[106] The seizing agency may place the vehicle under seal, remove the vehicle to a place it designates, or request that the N.C. Department of Justice take custody of the vehicle and move it to an appropriate location for disposition. In any event, the vehicle must be held in safekeeping until a disposition order is entered by the judge.[107]

C. Pretrial Release

A vehicle seized pursuant to G.S. 90-112 must be held in safekeeping as provided by law until a judge enters a disposition order. The vehicle may not be returned on a permanent or temporary basis before final disposition or the forfeiture hearing.[108]

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102. G.S. Chapter 90, Article 5, "North Carolina Controlled Substances Act," defines and sets out the law of controlled substances.

103. G.S. 90-112(a)(4).

104. *Id.* § 112(b).

105. *Id.* § 112(a)(4)(a)–(d).

106. Replevin actions are otherwise known as "claim and delivery" actions and are actions to recover personal property that is being unlawfully held.

107. G.S. 90-112(c).

108. *Id.*

D. Forfeiture Hearings

At a forfeiture hearing for a vehicle seized under G.S. 90-112, a third-party claimant may achieve the return or mitigation of the vehicle seized if they can prove three things: (1) they have an interest in the vehicle obtained in good faith, (2) they had no knowledge or reason to believe that the vehicle was being used or would be used in violation of the controlled substance law, and (3) their interest is in an amount in excess of or equal to the fair market value of the vehicle.[109]

Vehicles subject to forfeiture under this authority are to be forfeited pursuant to the procedures for the forfeiture of vehicles used to conceal, convey, or transport intoxicating beverages as found in G.S. 18B-504 (discussed above).[110]

If a vehicle seized under G.S. 90-112 is ordered forfeited, the law enforcement agency with custody of the vehicle has three options: (1) retain the vehicle for official use, (2) transfer the vehicle to the N.C. Department of Justice upon the department's application and the judge's approval for official use, or (3) sell the vehicle as surplus upon a determination by the director of the seizing agency that the vehicle is of no further use to the agency for use in official investigations, provided that the proceeds after deducting the cost of the sale are paid to the board of education in the county in which the vehicle was seized. If the vehicle has been modified to increase its speed, it may only be used in the performance of official duties or disposed of as junk.[111]

VI. Wildlife Conservation Offenses

The N.C. Department of Environmental Quality (DEQ) is tasked with all law enforcement relating to the conservation of marine and estuarine resources.[112] This is carried out by Marine Fisheries Inspectors (inspectors) and Wildlife Protectors (protectors). Inspectors are employees of the DEQ who are sworn in as officers and assigned duties that include law enforcement powers under Subchapter IV of G.S. Chapter 113.[113] Protectors are employees of the N.C. Wildlife Resources Commission who are also sworn in as officers and assigned duties which include law enforcement powers.[114] The Marine Fisheries Commission has jurisdiction over the conservation of marine and estuarine resources.[115] The Wildlife Resources Commission has jurisdiction over the conservation of wildlife resources.[116]

A. Applicability

When an inspector or protector cites a person or has probable cause for believing that a person has violated a law under their jurisdiction, they may seize any vessel or instrumentality of the crime. They are not required to arrest a person for the violation in order to exercise

109. *Id.* § 112.1(b).
110. *Id.* § 112(f).
111. *Id.* § 112(d)(1)–(4).
112. G.S. 113-8.
113. *Id.* § 128(5).
114. *Id.* § 128(7).
115. *Id.* § 132(a).
116. *Id.* § 132(b).

this authority.[117] A vehicle may be seized from a person who refuses to return live fish to the appropriate bottoms or waters. This seizure applies to the conveyance or vessel on which the fish are located or which was used to transport the fish.[118]

B. Vehicle Storage

Seized vehicles must be safeguarded pending trial by the inspector or protector initiating the underlying prosecution. The inspector or protector may, in their discretion (subject to any orders from their administrative superiors), make provisions for safeguarding vehicles seized pending trial with the sheriff of the county in which the trial is to be held. If doing so requires storage or handling costs, the costs must be paid (1) by the defendant if they are convicted but the court nevertheless returns the vehicle, (2) from proceeds of the sale of the vehicle if it is sold in accordance with this section, or (3) by the DEQ or the Wildlife Resources Commission if there is no other provision for payment.

Rather than safeguard a seized vehicle, an inspector or protector may decide to leave it with the defendant, with the understanding that the vehicle will be subject to a later disposition order. It is a class 1 misdemeanor for a defendant to fail to keep a vehicle in the condition ordered by the court. A defendant may not be allowed to keep a vehicle if there is a substantial risk of its being used in further unlawful activity.[119]

C. Pretrial Release

Pending trial for a wildlife conservation offense, a defendant may petition for temporary release of their seized vehicle. It must be released if the court is satisfied that the return of the vehicle will not facilitate further violations of the law and the defendant posts a bond equal to double the amount of the vehicle's value.[120]

A non-defendant owner of a vehicle seized in a wildlife conservation case may obtain its release pending trial if they satisfy the Secretary[121] or Executive Director[122] that they own the vehicle and that they had no knowledge of or culpability for the underlying offense. If the Secretary or Director is unable to determine who the owner of the vehicle is, the vehicle may be sold in accordance with G.S. 113-137(c).

D. Forfeiture Hearings

Upon a defendant's conviction for a wildlife conservation offense, the court must order that the defendant's seized vehicle be sold. Unless otherwise specified by the court, such sales are held by DEQ or the Wildlife Resources Commission, depending upon the agency involved. The agency may conduct the sale or may turn the property over to another agency for sale, provided there is a proper accounting for the proceeds of the sale and the sale properly considers claims by non-defendant interest holders.[123] If the vehicle cannot be lawfully sold or if sale proceeds are unlikely to exceed sale costs, the vehicle may be destroyed or used by a public agency.[124]

117. *Id.* § 137(b), (c).
118. *Id.* § 137(d).
119. *Id.* § 137(f).
120. *Id.* § 137(h).
121. DEQ Secretary.
122. Executive Director of the Wildlife Resources Commission.
123. Procedures for considering claims of non-defendant interest holders are set out in G.S. 113-137(j).
124. G.S. 113-137(i).

Upon a defendant's acquittal for the underlying crime, the vehicle must be returned unless it has been sold. If it has been sold, the net proceeds must be returned to the vehicle owner.[125] Except where a non-defendant owner has successfully asserted a claim[126] or where the proceeds have been returned to an acquitted defendant, the net proceeds of any sale are payable to the board of education in the county in which the vehicle was seized.[127]

125. *Id.* § 137(e).
126. Pursuant to procedures established in G.S. 113-137(j).
127. G.S. 113-137(k).

Appendix

Chart of Authorities and Forms

Underlying Authority	Applicability	Storage	Pretrial Release	Forfeiture	Forms* (AOC-CR)
Impaired driving offenses and felony speeding to elude arrest	G.S. 20-28.3(a), (a1)	G.S. 20-28.3(d)	G.S. 20-28.3(e), (e1), (e2), (e3)	G.S. 20-28.2(d)	-323A, -323B, -324A, -324B, -330A, -330B, -331A, -331B, -332A, -332B, -333A, -333B, -334A, -334B, -335A, -335B, -337, -924A, -924B
Prearranged speed competitions and street takeovers	G.S. 20-141.3(g)(1)	G.S. 20-141.3(g)(1)	G.S. 20-141.3(g)(1), (2)	G.S. 20-141.3(g)(3), (5)	
Transporting nontaxpaid alcohol	G.S. 18B-504(a)(1), (b), (c)	G.S. 18B-504(d)	G.S. 18B-504(d)	G.S. 18B-504(e), (f), (h)	-921M
Larceny and similar crimes	G.S. 14-86.1(a), (b)	G.S. 14-86.1(c)	G.S. 14-86.1(c)	G.S. 14-86.1(d), (e); 18B-504(e), (f), (h)	
Drug offenses	G.S. 90-112(a)(4), (b)	G.S. 90-112(c)	G.S. 90-112(c)	G.S. 90-112(d), (f); 18B-504(e), (f), (h)	
Wildlife conservation offenses	G.S. 113-137(b), (c)	G.S. 113-137(d)	G.S. 113-137(h)	G.S. 113-137(j), (i)	

*All listed forms begin with the designation "AOC-CR." To avoid repetition, only the form numbers following "AOC-CR" are set out in this table. For example, "-921M" refers to form AOC-CR-921M.