Public Schools and Vehicles Forfeited for Drunk Driving

by James C. Drennan

THE BASIC OPERATION of the 1997 driving while impaired (DWI) amendments on forfeiture of motor vehicles in DWI cases was fairly clear.[1] A vehicle was subject to forfeiture if it was driven by a person (a) who was charged with a specified impaired driving offense and (b) whose driver's license was revoked, at the time of that offense, for specified conduct involving impaired driving. The law enforcement officer lodging the charge was directed to seize the vehicle, and the judicial official reviewing the charge had to determine if there was probable cause to support the charge and the seizure.

After the vehicle was seized, it was towed to a site designated by the local school board. It could be a commercial site owned by an entity contracting with the school board, or it could be the school board's own site. The vehicle generally was held until the court entered a judgment regarding the impaired driving charge that supported the seizure. If the person charged was not convicted of the impaired driving offense, the vehicle was returned to its owner. If the driver was convicted, the court had to conduct a hearing to determine if the vehicle should be forfeited. If the court ordered the vehicle forfeited, the school board could either keep it or sell it.

The 1997 DWI amendments included provisions to enable a vehicle owner (other than the driver charged with impaired driving) and/or a lienholder to obtain pretrial release of a seized vehicle. If the vehicle owner could demonstrate to the court in a forfeiture hearing that he or she did not know that the defendant's driver's license had been revoked or that the vehicle was being driven without permission, the owner could recover the vehicle permanently. (This type of owner is hereinafter referred to as an "innocent owner.")

As the 1997 law began to be administered, several things became obvious. First, the number of vehicles potentially subject to the law was larger than anticipated. Second, vehicles seized under the new law often were not owned by the driver who was charged with impaired driving and often did not have a high market value. Third, the seized vehicles were not being disposed of quickly. Fourth, the mechanisms for an innocent owner or a lienholder to recover a seized vehicle were not very effective. These factors led to some concern on the part of school officials, who worried about the rising costs and administrative burdens involved in storing seized vehicles, and ultimately to a number of news stories suggesting that the law was not serving one of its intended purposes, namely, to provide financial assistance to school systems by giving them the proceeds from the sale of these vehicles.

The 1998 DWI amendments failed to address the basic desire of school boards—to transfer all responsibility for the seized vehicles to some law enforcement agency—but they did address most of the other concerns with respect to implementation of the 1997 law. The 1998 changes to the DWI vehicle seizure law—SL 1998-182—address its scope and coverage, the manner in which pretrial release of seized vehicles is handled,

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1. The statutes dealing with vehicle forfeitures in impaired driving cases are codified as N.C. GEN. STAT. §§ 20-28.2 through 28.9 (hereinafter G.S.).

the timely disposition of these cases, the fees charged for storing seized vehicles, and the means of storing and selling seized vehicles. This article presents an overview of these amendments and the impact of these changes on the use of forfeited vehicles by the public schools.

Coverage

SL 1998-182 does not alter the law's basic approach to determining whether a vehicle may be seized. For a vehicle to be subject to seizure, (a) the driver must be charged with a specified offense and (b) at the time the driver is so charged, his or her driver's license must have been revoked for specified conduct involving impaired driving. SL 1998-182 extends the law's coverage by expanding the list of specified offenses and specified license revocations that trigger the seizure of a motor vehicle.

Under the 1997 law, the first of the two elements required for seizing a vehicle was satisfied if the vehicle was driven by a person who was charged with impaired driving or habitual impaired driving. Under SL 1998-182, this element is satisfied if the driver is charged with impaired driving, habitual impaired driving, impaired driving in a commercial vehicle, or homicide arising from impaired driving.

The second element required for the seizure of a vehicle was satisfied if the defendant's driver's license was, at the time of the specified offense, revoked for any one of several reasons related to impaired driving. Under SL 1998-182, the list of types of license revocations that will satisfy the second element is extended to include revocations for convictions of the felony offenses of habitual impaired driving, and impaired driving that results in an assault with a motor vehicle or a homicide.

SL 1998-182 also enacts two exceptions to the DWI vehicle seizure law. If a vehicle is reported as stolen or is a rental vehicle driven by an unauthorized driver, the vehicle should not be seized, even if the law's two basic requirements for seizure exist.

Pretrial Release of Vehicle

Under the 1997 vehicle seizure law, a "defendant-owner" (the owner of a vehicle who was driving the vehicle at the time it was seized) had no right to get his or her vehicle back before trial for impaired driving. Innocent owners and lienholders were treated differently.

An innocent owner was allowed to obtain possession of his or her vehicle pending the defendant's trial for impaired driving or the forfeiture hearing after the defendant's trial. In order to obtain pretrial release of the vehicle, the innocent owner had to file an acknowledgment indicating that he or she understood the unlawful nature of the conduct leading to the seizure and that, if this type of conduct occurred again involving the same driver and the same vehicle, he or she would not be eligible to recover the vehicle. This requirement was not changed by the 1998 amendments. The innocent owner also had to post a bond equal to twice the value of the vehicle. The bond could not be posted by a bail bondsman but had to be provided by a commercial bonding company. This requirement proved problematic due to the mandated amount of the bond and to the fact that few commercial bonding companies were interested in writing such bonds.

For these reasons, many innocent owners were unable to obtain pretrial release of their vehicles. In some counties, court officials interpreted ambiguous provisions in the forfeiture statutes to mean that a seized vehicle could be permanently released to its owner before the defendant's trial if the officials were satisfied that the vehicle's owner was in fact an innocent owner. Most court officials, however, did not read the statutes this way and instead required innocent owners to post a bond for pretrial release of the vehicle or wait until the court resolved the criminal case.

SL 1998-182 radically changes the procedure for pretrial release of seized vehicles. It retains an innocent owner's right to obtain pretrial release of his or her vehicle but reduces the bond amount to the vehicle's actual value and allows bail bondsmen to write these bonds. In addition, SL 1998-182 allows an innocent owner to petition the court at any time for the permanent release of his or her vehicle. If the district attorney's office consents, the vehicle is released permanently. If that office does not consent, the court must promptly hold a hearing to determine if the petitioner is an innocent owner; if the answer is yes, the vehicle must be returned to that person. The owner also may seek possession of his or her vehicle at a post-trial forfeiture hearing regardless of whether he or she asked for pretrial release of the vehicle.

A lienholder is a party who loans money to a person to purchase a vehicle and who retains a security interest (lien) in the vehicle until the loan is paid. Under the 1997 law, lienholders were entitled to pretrial release of a seized vehicle under the same rules as innocent

owners. They were not entitled to permanent possession of the vehicle, however, even if the loan was in default. They also were not entitled to permanent release at a forfeiture hearing unless the lien was equal to or greater than the vehicle's value.

SL 1998-182 changes those rules dramatically. A lienholder may now apply only for permanent pretrial release. If the vehicle owner is in default on the loan and the loan contract allows for repossession and sale in that instance, the lienholder is entitled to repossess the seized vehicle. If the loan is not in default, the lienholder's rights under the loan contract and lien may not be enforced until the forfeited vehicle is sold.

SL 1998-182 also gives defendant-owners a limited opportunity for pretrial release of their vehicles. A defendant-owner may seek pretrial release of his or her vehicle if it was seized because of an error in determining whether the owner's driver's license was, at the time of the alleged impaired driving offense, revoked for one of the types of impaired driving conduct specified in the vehicle seizure law. If the defendant-owner believes that the seizure was in error because he or she is not guilty of the impaired driving offense, a determination on this cannot be made until his or her trial on the impaired driving charge. A defendant-owner may not regain temporary possession of his or her vehicle pending trial by posting a bond, as innocent owners may do.

All of these pretrial release provisions apply to vehicles that are in the custody of school boards on the effective date of the new law as well as to any seized after that date. The result of these new provisions should be the early release of vehicles for which there is no chance of forfeiture. That should reduce the number of vehicles that school boards are required to store.

Expedited Processing of Forfeiture Cases

The combination of a large number of vehicle seizures and the inability of vehicle owners to recover their vehicles led inexorably to a substantial buildup of vehicles in storage. In most counties, the possession of a seized vehicle could not be permanently and finally determined until the court had entered a judgment on the underlying criminal charge. That, in turn, led to questions about why it took so long to dispose of impaired driving cases.

SL 1998-182 does not address this problem directly, but it does include provisions intended to speed up the disposition of seized vehicle cases. Under these provisions such cases, if they are in district court, must be scheduled for trial at the next court date of the officer making the arrest or within thirty days, whichever is sooner. To continue the case past that date, a party must file a written motion for continuance and the court must find, in writing, that there is a compelling reason to continue the case.

After disposition of the criminal charge in district court, any forfeiture hearing "shall be heard by the court immediately, or as soon thereafter as feasible." There is no similar rule for cases in superior court, but parties may request a review to determine if the vehicle should be released.

"No-shows" were another problem before the 1998 amendments. Under the 1997 statute, a forfeiture hearing could not be held unless the defendant was convicted of the impaired driving offense. Under North Carolina law, a criminal trial cannot be held unless the defendant is present. If a defendant in an impaired driving case failed to appear for trial and could not be found, the seized vehicle was left in limbo. It could not be returned without a hearing, and the forfeiture hearing could not be held until the defendant was tried for the impaired driving charge.

For vehicles seized on or after December 1, 1998, SL 1998-182 addresses the "no-show" problem by authorizing courts to hold vehicle forfeiture hearings if a defendant in an impaired driving case fails, for a period of at least sixty days, to appear for trial as ordered. At this hearing the State must prove, by the greater weight of the evidence, that the defendant committed the offense as charged and that his or her license was revoked for a covered revocation. If the State proves this, the vehicle is forfeited (unless an innocent owner or lienholder is entitled to the vehicle). The court's decision regarding forfeiture of the vehicle, however, does not amount to a conviction of the defendant for the underlying impaired driving charge. After the forfeiture hearing, a "no-show" defendant remains subject to arrest and trial on the impaired driving charge. If the defendant is subsequently tried and acquitted on the impaired driving charge, there is no provision for the return of the forfeited vehicle or any of the proceeds that a school board receives from the vehicle's sale. Although this procedure for forfeiting vehicles driven by "no-show" defendants is not applicable to vehicles held before December 1, 1998, some vehicles seized before that date may be disposed of without a trial, as noted below.

Fees for Towing and Storage

Questions about the circumstances in which fees for the towing and storage of seized vehicles apply arose almost immediately after the 1997 statute took effect. SL 1998-182 answers such questions with one simple, sweeping answer. If a vehicle is seized, the towing fee and any storage fees are always assessed against the vehicle's owner, but in some cases an innocent owner or lienholder may recover these costs from the defendant.

An extreme case will illustrate the point. Mr. Green leaves town on a two-month vacation. The next day, a thief breaks into Mr. Green's home and steals his car from the garage. The thief's driver's license has been revoked for conduct involving impaired driving. While driving Mr. Green's car, the thief is arrested for impaired driving, and Mr. Green's car is seized under the DWI vehicle seizure law. Since the vehicle has not been reported as stolen, the exemption from seizure for such vehicles does not apply. When Mr. Green returns from his vacation, he receives a notice that his stolen vehicle has been recovered (and seized because of the thief's impaired driving) and that as an innocent owner, he can recover his vehicle after he pays the towing charge and fees for two-months of storage (which could be as high as $600).

SL 1998-182 adds a requirement that the court order a defendant convicted of the underlying offense to pay any towing or storage fees that remain unpaid when the vehicle is sold. The requirement to pay towing and storage fees must be included as restitution in any criminal judgment, and the clerk must enter a civil judgment against the defendant for the amount of these unpaid fees. Restitution payments may be made to the vehicle's owner, the school board, or a lienholder, as appropriate. A defendant's obligation to pay towing and storage fees applies "to the extent" that those costs are not covered by the sale of the vehicle. It is not clear, however, whether this language requires that the vehicle be forfeited and sold before the restitution requirement is triggered. In any event, a court may, in its discretion, order a defendant to pay restitution even if the vehicle is not forfeited or sold.

The maximum storage fee under the 1997 law was $5 per day; school boards, however, were prohibited from charging any storage fees for vehicles stored on their own property. SL 1998-182 raises the maximum allowable storage fee to $10 per day and allows a school board to assess a storage fee if it stores the vehicle on its own property. The likely result of this fee increase, combined with the delays that often result in impaired driving cases, is that in many cases owners of seized vehicles will be assessed thousands of dollars in storage fees.

Sale of Seized Vehicles

Many vehicles seized under the 1997 law were of relatively little value, usually old and in poor shape. In such cases the towing and storage fees (which can total hundreds—even thousands—of dollars) may easily exceed the vehicle's value. SL 1998-182 addresses this problem in three ways. First, it allows a school board to sell the vehicle with the consent of the owner. This option might be exercised by an owner in order to limit the storage fee liability. Second, it allows a school board to sell a seized vehicle before trial if the vehicle is worth $1,500 or less and has been held for at least ninety days; this sale does not require the owner's consent. Third, a school board may sell a seized vehicle whenever towing and storage fees exceed 85 percent of the vehicle's value; this, too, may be done without the owner's consent. In each of these instances, any funds remaining after the towing and storage fees are paid are retained by the court clerk and are subject to forfeiture in a forfeiture hearing. Court approval is not required for these sales, but in order to provide documentation and to facilitate the transfer of title to the vehicle, some school boards may seek court approval before selling seized vehicles under this new authority.

The provisions of SL 1998-182 regarding the sale of seized vehicles also apply to vehicles seized before the law's effective date. School boards may use this new authority to dispose of vehicles seized under the original version of the law. This is especially useful in cases where the defendant has failed to appear for trial. If a vehicle seized before December 1, 1998, is sold pursuant to this new authority, a school board must refund any fees for storage and towing if a court finds that the vehicle owner is not obligated to pay them.

The sale of vehicles, under any scenario, is a time-consuming and potentially costly process for school boards. The 1997 statute required school boards to use a judicial sale procedure that is commonly used to dispose of property that is the subject of civil actions. It is not, however, a procedure that was commonly used by school boards. SL 1998-182 authorizes school boards to sell seized vehicles using a procedure they had already been using to dispose of surplus property, with some modifications made to provide notice to the interested

parties, and it repeals the requirement that seized vehicles be sold under the judicial sale procedure. If a lienholder chooses to purchase a vehicle at a forfeiture sale and its bid is no greater than its lien, the lienholder need not post any cash to purchase the vehicle. The lienholder must have the highest bid for this provision to apply.

In addition, SL 1998-182 authorizes the State Board of Education to contract with one or more private entities for regional or statewide towing, storage, and sale of seized vehicles. If such a contract is entered into, the school boards in the counties covered by the contract will no longer provide these services. The rules that apply to school boards with respect to the sale of forfeited vehicles appear to apply to contractors under this provision, although their applicability likely will be dealt with in the contract itself. Thus the contractor, like the school board, must give ten days notice to the owner and the lienholder before conducting any sale and must allow the lienholder to purchase the vehicle without making a cash payment if the lienholder's bid is the highest bid for the vehicle.

School Board Representation

The 1998 revisions authorize the district attorney to allow the school board to appear in forfeiture hearings to represent the State's interests. This representation may be in lieu of or in addition to representation by the district attorney.

Miscellaneous Changes

SL 1998-182 makes other important changes to the DWI vehicle seizure law. If a seized vehicle was wrecked in an accident that occurred as a result of the conduct that led to a charge being lodged against the driver of the vehicle, SL 1998-182 provides that the proceeds of any insurance settlement are to be paid to the clerk of court. Those proceeds are subject to forfeiture in the same manner as a vehicle.

SL 1998-182 also redefines *owner* to mean the person in whose name a registration card or title certificate is issued at the time of a seizure. This is an important definition because it helps to determine who can rightfully claim to be an innocent owner. In many cases, there is a substantial gap in time between the date that a vehicle title is transferred and the date that the title certificate issued by the Division of Motor Vehicles (DMV) shows that person as the vehicle's owner. During this gap, it may be unclear as to who can exercise the right to seek relief as an innocent owner.

When a vehicle is seized, notice must be given to a number of people or agencies: innocent owners, lienholders, the local school board, the district attorney, the DMV, and insurance companies. SL 1998-182 tries to streamline the notice process by directing the officer seizing the vehicle to notify a state executive agency designated by the governor and requiring that agency to notify the owner, the lienholder, the DMV, and if the vehicle is wrecked, the appropriate insurance company and inform them of their rights and responsibilities in the matter. (The governor has designated the DMV as the executive agency to provide the notices required by SL 1998-182.) In addition, when a magistrate finds probable cause for a seizure, the magistrate must notify the clerk of court, who in turn notifies the district attorney and the school board that the vehicle has been seized.

Effective Date

Most of the revisions became effective on December 1, 1998. The provisions allowing for the pretrial sale of a seized vehicle worth $1,500 or less or for which storage fees equal 85 percent of the value of the vehicle are to be applied retroactively to vehicles held before that date, as are the provisions allowing for pretrial release to innocent owners, lienholders, and defendant-owners. ■