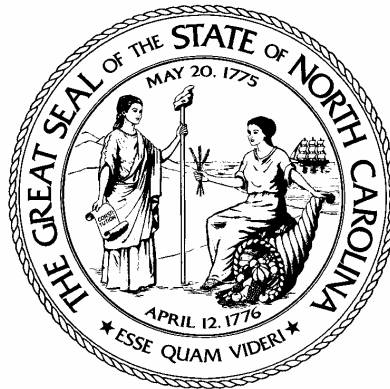


SUMMARY OF THE PROGRESSION OF A TYPICAL VEHICLE SEIZURE CASE



UPDATED DECEMBER 2006
**(Changes enacted during the 2006
legislative session are indicated in red.)**

NC ADMINISTRATIVE OFFICE OF THE COURTS

**SUMMARY OF THE PROGRESSION OF A TYPICAL
VEHICLE SEIZURE CASE (DECEMBER 2006)**

Table of Contents

I. Initial Stop and Seizure/Duties of Officer Page 3
(Covers the circumstances that require the seizure of a motor vehicle, exceptions to the seizure requirement, and the presentation of the seizure paperwork to the magistrate.)

II. Review by Magistrate/Notice to Interested Parties/Title Hold Pages 3-4
(Covers the review of the seizure by the magistrate, notice from the officer to DMV, notice from DMV to various interested parties, the storage of the motor vehicle, and the front-end title hold.)

III. Pretrial Release or Sale of Seized Motor Vehicle Pages 5-7
(Covers temporary pretrial bond release, pretrial innocent owner release, pretrial release to a defendant-owner, pretrial release to a lienholder, and pretrial sales by the Department of Public Instruction through the statewide contractor.)

IV. Other Pretrial Issues Page 7
(Covers insurance proceeds for seized motor vehicles that are damaged and the recovery of personal property left in a seized motor vehicle.)

V. Trial on Underlying Offense Page 7
(Covers the scheduling of the trial on the underlying offense and the granting of trial continuances.)

VI. Resolution of Underlying Offense and Forfeiture Hearing Pages 8-11
(Covers the situations in which a forfeiture hearing should be held, notice of the forfeiture hearing, the timing of the hearing, the criteria for forfeiture, the forfeiture of the motor vehicle to the local school board, and the post-trial release of the motor vehicle to an owner or a lienholder.)

VII. Appeals Page 12
(Covers appeals from the denial of a pretrial or post-trial release petition.)

VIII. Other Seizure/Forfeiture Issues Page 13
(Covers miscellaneous issues including the rights of the school board attorney in the seizure process, restitution for towing and storage costs, and registration stops.)

SUMMARY OF THE PROGRESSION OF A TYPICAL VEHICLE SEIZURE CASE (DECEMBER 2006)

I. Initial Stop and Seizure/Duties of Officer

- **Motor vehicles subject to seizure:** A motor vehicle is subject to seizure if
 - (1) the driver is charged with an offense involving impaired driving and
 - (2) at the time of the offense the defendant's license is revoked because of a prior impaired driving offense (**or at the time of the offense the defendant does not have a valid drivers license and is not covered by an automobile liability insurance policy**). 20-4.01(24a); 20-28.2(a); 20-28.3(a); AOC-CR-323 (Side Two)
- **Seizure and impoundment:** If the charging officer has probable cause to believe that these criteria are present, the officer must seize the motor vehicle and have it impounded. Seizure is required even if the defendant does not own the vehicle. 20-28.3(b); AOC-CR-323
- **Exceptions to seizure requirement:** The officer should not seize the motor vehicle if
 - (1) the motor vehicle has been reported stolen or
 - (2) the motor vehicle is a rental vehicle and the defendant is not listed on the rental contract as a person authorized to drive the vehicle. 20-28.3(b); AOC-CR-323
- **Presentation to magistrate:** The officer must present to a magistrate an affidavit of impoundment explaining the basis of the seizure. 20-28.3(c); AOC-CR-323

II. Review by Magistrate/Notice to Interested Parties/Title Hold

- **Review by magistrate:** The magistrate will review the officer's affidavit. If the magistrate determines that the criteria for seizure are present, the magistrate must order that the motor vehicle be held. (If for some reason the officer has not yet seized the vehicle, the officer may do so in accordance with the guidelines in 20-28.3(c1).) Otherwise, the magistrate must order the release of the vehicle to the owner upon the owner's payment of any towing and storage costs that have accrued. 20-28.3(c) and (c1); AOC-CR-323
- **Distribution of seizure order:** If the magistrate approves the seizure, the magistrate must forward a copy of the seizure order to the clerk. The clerk must then provide copies to the DA and the school board attorney. 20-28.3(c); AOC-CR-323 (note to clerk)
- **Notice from officer to DMV:** The officer must notify DMV of the seizure within 24 hours. The officer provides this notice through DCI. 20-28.3(b); AOC-CR-323 (note to officer)
- **Notice from DMV to interested parties:** Within 48 hours of receiving notice from the officer, DMV must notify by first-class mail any lienholder of record and any non-defendant owner of the vehicle. This notice from DMV must explain the procedure for seeking the release of the vehicle. If the motor vehicle was damaged during the offense or during the seizure, DMV must also send notice to the company insuring the vehicle. 20-28.3(b1)
- **When clock begins to run for notice from DMV to interested parties:** A notice of seizure received by DMV from the officer after regular business hours "shall be considered to have been received at the start of the next business day." 20-28.3(b1)

- **Special fax notice to lienholders:** In addition to the notice by first-class mail, DMV must also notify the lienholder by fax within 8 hours of the notice from the officer (or within 8 hours of the start of the next business day if DMV received the notice after regular business hours). This additional requirement applies only if the lienholder has previously provided DMV with a fax number for this purpose. 20-28.3(b2)
- **Custody of motor vehicle:** The motor vehicle will be held for a brief period of time at a local storage facility, but will eventually be retrieved by the statewide contractor, Tarheel Specialties, and delivered to its storage facility in Linden, North Carolina. Tarheel Specialties will pay the towing and storage amount owed to the local company. These local charges are added to the amount that must be paid to Tarheel Specialties when the motor vehicle is ultimately forfeited or released. 20-28.3(d); 20-28.9(a)
- **Amount of towing and storage fees:** The seizure statutes do not address the towing and storage fees charged by the local company that initially stores the motor vehicle. The seizure statutes also do not address the towing fee charged by Tarheel Specialties. Once the motor vehicle is in Linden, the Tarheel Specialties storage fee is limited by statute to \$10.00 per day. 20-28.3(d); 20-28.9(b)
- **Front-end title hold:** DMV will prohibit the transfer of the title to the seized motor vehicle until the vehicle is permanently released or is sold by the Department of Public Instruction through Tarheel Specialties. 20-28.3(b1); 20-54(7)

III. Pretrial Release or Sale of Seized Motor Vehicle

- **Temporary pretrial bond release to owner:** An owner other than the defendant may temporarily bond out the motor vehicle. The owner files a petition with the clerk. The clerk must release the motor vehicle to the owner if the following conditions are met:
 - (1) the motor vehicle has been seized for at least 24 hours,
 - (2) the owner posts a bond, payable to the county school fund, that is equal to the fair market value of the motor vehicle as shown in STARS and
 - (3) the owner has executed an acknowledgment.

The owner must return the motor vehicle at the time of the forfeiture hearing “in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances.” If the owner fails to return the motor vehicle or otherwise violates a condition of the release, the bond will be forfeited and the motor vehicle will be re-seized.

The owner may also be held in civil or criminal contempt. (Note: The owner may not bond out the motor vehicle if he or she has previously executed an acknowledgment for this same defendant or if he or she has previously forfeited a bond for this same vehicle.) 20-28.2(a1)(1) and (a1)(1a); 20-28.3(e); AOC-CR-330; AOC-CR-331; AOC-CR-332 (Side One)

- **Permanent pretrial release to innocent owner:** An owner other than the defendant may seek the permanent pretrial release of the motor vehicle by petitioning the clerk as an “innocent owner.” An innocent owner is one who
 - (1) did not know and had no reason to know that the defendant’s license was revoked (**or did not know and had no reason to know that the defendant did not have a valid drivers license and did not have automobile liability insurance**),
 - (2) knew the defendant’s license was revoked (**or knew that the defendant did not have a valid license and did not have liability insurance**), but the defendant operated the motor vehicle without the owner’s express or implied permission (Note: To qualify as an innocent owner under this option, the owner must file a police report for the unauthorized use of the motor vehicle by the defendant and “agree to prosecute” the defendant.),
 - (3) had reported the vehicle stolen,
 - (4) is in the business of renting vehicles and the defendant was not an authorized driver on the rental contract, or
 - (5) is in the business of leasing motor vehicles, held title to the vehicle at the time of seizure as a lessor and had no actual knowledge that the defendant’s license was revoked at the time the lease agreement was executed.

In addition to proving his or her innocent owner status, the petitioner must also

- (1) demonstrate that the motor vehicle is covered by a liability insurance policy or other financial responsibility as required by Article 13 of Chapter 20 and
- (2) execute an acknowledgment.

The clerk must review and rule on the petition “as soon as may be feasible.” The clerk must send a copy of the order to the DA and to the attorney for the county board of education.

(Note: The clerk may not release the motor vehicle if the owner has previously executed an acknowledgement for this same defendant driving this same motor vehicle unless the owner can demonstrate by the greater weight of the evidence that he or she “[took] all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately report[ed], upon discovery, any unauthorized use to the appropriate law enforcement agency.”) 20-28.2(a1)(1) and (a1)(2); 20-28.3(e1); AOC-CR-330; AOC-CR-332 (Side Two)

- **Permanent pretrial release to defendant-owner:** If the defendant is an owner of the motor vehicle, he or she may petition for release on the grounds that at the time of the offense, his or her license was not revoked because of a prior impaired driving offense. **(Note: The defendant release statute was not amended to account for the “no license/no insurance” seizure theory.)** The defendant files the petition with the clerk’s office. The clerk must then schedule a hearing before a judge to be held within 10 business days of the filing of the petition or “as soon thereafter as may be feasible.” Notice of the hearing must be provided to the defendant, the DA and the school board attorney (presumably by the clerk). The clerk must forward a copy of the petition to the DA. If the DA consents, the clerk orders the release of the vehicle to the defendant without the need for a hearing (if the defendant can provide proof of insurance). The clerk must also send a copy of the release order to the school board attorney. If the DA does not consent, then the hearing before the judge will take place as scheduled. 20-28.3(e2); AOC-CR-333
- **Permanent pretrial release to lienholder:** A lienholder may petition for the pretrial release of a motor vehicle in which it has a perfected security interest. There are two methods by which the lienholder may obtain pretrial release:
 - (1) **method #1 -- hearing before the court:** The lienholder must file a release petition with the clerk and obtain a hearing date. The lienholder must then serve a copy of the petition (which includes a notice of the hearing date, time and location) on the owner, the DA and the school board attorney. The lienholder must provide these other interested parties 10 days prior notice of the hearing. The court must order the release of the motor vehicle to the lienholder if, after the hearing, it determines by the greater weight of the evidence that
 - a. the lienholder has a security interest in the motor vehicle that had been perfected at the time of the seizure,
 - b. the obligor has defaulted,
 - c. because of the default the lienholder is entitled to possession of the motor vehicle,
 - d. the lienholder has agreed to sell the motor vehicle and pay into the clerk any net proceeds from the sale,
 - e. the lienholder has agreed not to sell (or otherwise transfer) the motor vehicle to the defendant or the owner (or anyone acting on their behalf) and
 - f. this same motor vehicle has not previously been released to the lienholder during the course of a prior seizure involving the same defendant or the same owner.
 - (2) **method #2 -- waiver by interested parties:** If the other interested parties waive their right to a hearing by signing the back of the lienholder’s petition, then the clerk may release the motor vehicle to the lienholder without the need for a hearing before the court. **(Note:** Although not entirely clear from the statute, it appears that a lienholder who receives the vehicle using this second method must also sell the vehicle and pay any net proceeds into the clerk. Just as with the first method, the lienholder is prohibited from selling or otherwise transferring the motor vehicle to the defendant or the owner.)
A violation by the lienholder of the conditions of release is punishable by civil or criminal contempt. 20-28.2(a1)(3); 20-28.3(e3); AOC-CR-334
- **Clerk’s duty to report pretrial release activity to DMV:** Whenever an owner executes an acknowledgment as part of a pretrial release petition, the clerk must enter the acknowledgment into STARS. Additionally, whenever a vehicle is released prior to trial, the clerk must remove the title hold in STARS. 20-28.8

- **No waiver of towing and storage costs:** Any order authorizing the pretrial release of a seized motor vehicle must require the party to whom the vehicle is released to pay towing and storage costs. “This requirement shall not be waived.” 20-28.3(n)
- **Pretrial sale by DPI:** The Department of Public Instruction, through Tarheel Specialties, may sell a seized motor vehicle at a public sale prior to trial if
 - (1) 90 days have passed since the date of seizure and the motor vehicle has a fair market value of \$1,500 or less, or
 - (2) the towing and storage costs exceed 85% of the fair market value, or
 - (3) the owner of the motor vehicle consents.
 The sale is conducted in the same manner as a post-trial sale of a vehicle under 20-28.5(a). Following the sale, Tarheel Specialties will pay the proceeds, less the towing and storage costs, into the clerk’s office. If the court subsequently enters an order of forfeiture, the proceeds are first used to pay off any outstanding liens. Any remaining balance is paid to the local school fund. If the court subsequently enters a release order, the proceeds are first used to pay off any outstanding liens. Any remaining balance is paid to the owner. (Note: Following a pretrial sale of the motor vehicle, DPI will remove the title hold in STARS and indicate in STARS whether there are any net sale proceeds.) 20-28.2(a1)(1a); 20-28.3(i)

IV. Other Pretrial Issues

- **Insurance proceeds for seized motor vehicles that are damaged:** If the motor vehicle is damaged during the course of the offense or during the course of the seizure, DMV must direct the insurance company to pay the insurance proceeds (minus the deductible) to the clerk. The clerk will later disburse the insurance proceeds pursuant to the direction of the court. Generally, the proceeds will be released or forfeited in the same manner as the seized vehicle. (Note: 20-28.3(h) sets out a special procedure that is used when the motor vehicle is totaled and the insurance company wants to take possession of the totaled vehicle.) 20-28.2(c1); 20-28.3(h); AOC-CR-924
- **Retrieval of personal property left in seized motor vehicle:** “At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.” 20-28.3(j)

V. Trial on Underlying Offense

- **Scheduling of trial on underlying offense:** “District [C]ourt trials of impaired driving offenses involving forfeitures of motor vehicles . . . shall be scheduled on the arresting officer’s next court date or within 30 days of the offense, whichever comes first.” 20-28.3(m)
- **Continuances:** A District Court trial of an impaired driving offense involving a seized vehicle may not be continued unless
 - (1) the party seeking the continuance files a written motion for a continuance and provides notice to the other party and
 - (2) the court finds that there is a “compelling reason” for the continuance. 20-28.3(m); AOC-CR-337

VI. Resolution of Underlying Offense and Forfeiture Hearing

- **Forfeiture hearing necessary if conviction plus vehicle or proceeds:** If the defendant is convicted of an offense involving impaired driving, the court should conduct a forfeiture hearing if (1) the motor vehicle is still seized or (2) the clerk is still holding insurance proceeds, lienholder sale proceeds, or pretrial sale proceeds. 20-28.2(d)
- **No need for forfeiture hearing if defendant not convicted of offense involving impaired driving -- motor vehicle released to owner:** If the defendant is not convicted of an offense involving impaired driving, the court must order the release of the motor vehicle to the owner. If the clerk is holding insurance proceeds, these are released to the owner after the owner has paid the outstanding towing and storage fees. If the clerk is holding lienholder sale proceeds, these are released to the owner. If there are pretrial sale proceeds, these proceeds must first be used to pay off outstanding liens on the motor vehicle, with any remainder going to the owner. 20-28.3(i); 20-28.4(a); AOC-CR-336
- **Notice from DA to interested parties:** If a forfeiture hearing is necessary, then the prosecutor must notify the defendant, any owner of the vehicle other than the defendant, the school board attorney and any lienholder that
 - (1) the motor vehicle (or proceeds) is (are) subject to forfeiture and
 - (2) the defendant, owner, or lienholder may seek to protect his or her interest in the vehicle (or proceeds) by filing a release petition and appearing at the hearing.The DA must serve this notice at least 10 days prior to the forfeiture hearing and may use “any means reasonably likely to provide actual notice.” If the DA fails to provide this notice, the court must continue the forfeiture hearing until the DA has given adequate notice to the interested parties. (Note: If the court orders such a continuance, it is a continuance only of the forfeiture issue. The continuance should not delay the sentencing of the defendant.) 20-28.2(c) and (d); 20-28.3(k); AOC-CR-324
- **Timing of hearing:** Once the defendant is convicted of the underlying impaired driving offense, “the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible.” The forfeiture hearing “may be held at the sentencing hearing on the underlying offense involving impaired driving [or] at a separate hearing after conviction of the defendant.” If the defendant failed to appear for the trial on the underlying offense, the forfeiture hearing should be held 60 days or more after the defendant failed to appear. 20-28.2(b), (b1) and (d); 20-28.3(m)

(Note: As rewritten during the 2006 short session, 20-28.2(b) and 20-28.2(b1) appear to indicate that the court, in a non-FTA situation, could make the forfeiture determination at a hearing prior to the defendant’s conviction. This is a departure from previous law and conflicts with 20-28.2(d), so it may be a drafting error resulting from the inadvertent omission of the word “sentencing” in 20-28.2(b)(1) and 20-28.2(b1)(1).)
- **Forfeiture determination:** The vehicle (or proceeds) will be forfeited to the school board if the court determines by the greater weight of the evidence that
 - (1) the defendant is guilty of an offense involving impaired driving and
 - (2) at the time of the offense the defendant’s license was revoked for a prior impaired driving offense **(or at the time of the offense the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy).** 20-28.2(b) and (b1); AOC-CR-335

(Note: As rewritten during the 2006 short session, 20-28.2(b) and (b1) appear to indicate that the court could determine the defendant to be not guilty, but still order the forfeiture of the vehicle so long as the underlying charge involved impaired driving. This is a departure from previous law and conflicts with 20-28.4(a)(1), so it may be a drafting error.)

- **Court finds no impaired driving revocation -- motor vehicle released to owner:** If at the forfeiture hearing the court does not find that the defendant's license was revoked at the time of the offense for a prior impaired driving offense, the court must order the release of the motor vehicle to the owner. If the clerk is holding insurance proceeds, these are released to the owner after the owner has paid the outstanding towing and storage fees. If the clerk is holding lienholder sale proceeds, these are released to the owner. If there are pretrial sale proceeds, these proceeds must first be used to pay off outstanding liens on the motor vehicle, with any remaining proceeds going to the owner. 20-28.3(i); 20-28.4(a); AOC-CR-336
(Note: Presumably a release would also be appropriate if the vehicle was seized under the "no license/no insurance" theory and the court were to determine that the defendant had a valid drivers license or was covered by a liability insurance policy at the time of the offense. 20-28.4 does not specifically address this, however.)
- **Forfeiture to school board:** If the court finds by the greater weight of the evidence that the forfeiture criteria are present, the court must order the forfeiture of the motor vehicle to the school board (unless an innocent owner or lienholder successfully petitions for the release of the vehicle). If the vehicle was not sold prior to trial, then the school board may either keep the vehicle for its own use or sell the vehicle at a public sale. If the clerk is holding insurance proceeds or lienholder sale proceeds, these are released to the school board. If there are pretrial sale proceeds, these proceeds must first be used to pay off outstanding liens on the motor vehicle, with any remaining proceeds going to the school board. 20-28.2(d); 20-28.3(i); AOC-CR-335
- **Clerk's duty to report forfeiture to DMV:** The clerk must report to DMV the entry of a forfeiture order. The clerk will do this via STARS. 20-28.8
- **Retention or sale of forfeited motor vehicle by school board:** As mentioned above, if the motor vehicle was not sold prior to trial, the school board may either
 - (1) keep the motor vehicle for its own use or
 - (2) sell the vehicle at a public sale.If the school board chooses to keep the motor vehicle, it must pay the towing and storage costs and satisfy any outstanding liens of record.
If the school board opts to sell the vehicle, it must mail a written notice of the sale to the owner, any lienholders and DMV at least 10 days prior to the date of sale. A lienholder may purchase the vehicle at the public sale. (However, the defendant, the owner, or any person acting on behalf of the defendant or the owner may not purchase the vehicle at the sale.)
The proceeds of the sale are allocated as follows:
 - (1) costs of the sale,
 - (2) towing and storage costs and
 - (3) satisfaction of any liens of record.Any remaining amount is paid to the county school fund. (Note: If the towing and storage costs exceed the sale price, it is Tarheel Specialties, not the State, that bears the loss). 20-28.2(d); 20-28.5; 20-28.9(a)

- **Release to innocent owner:** At the forfeiture hearing, the court may release the motor vehicle to an owner other than the defendant who is an “innocent owner.” To qualify as an innocent owner, the petitioner must prove by the greater weight of the evidence that he or she
 - (1) did not know and had no reason to know that the defendant’s license was revoked (**or did not know and had no reason to know that the defendant did not have a valid drivers license and did not have automobile liability insurance**),
 - (2) knew the defendant’s license was revoked (**or knew that the defendant did not have a valid license and did not have liability insurance**), but the defendant operated the motor vehicle without the owner’s express or implied permission (Note: To qualify as an innocent owner under this option, the owner must file a police report for the unauthorized use of the motor vehicle by the defendant and “agree to prosecute” the defendant.),
 - (3) had reported the vehicle stolen,
 - (4) is in the business of renting vehicles and the defendant was not an authorized driver on the rental contract, or
 - (5) is in the business of leasing motor vehicles, held title to the vehicle at the time of seizure as a lessor and had no actual knowledge that the defendant’s license was revoked at the time the lease agreement was executed.

In addition to proving his or her innocent owner status, the petitioner must also

- (1) demonstrate that the motor vehicle is covered by a liability insurance policy or other financial responsibility as required by Article 13 of Chapter 20 and
- (2) execute an acknowledgment.

If the clerk is holding insurance proceeds or lienholder sale proceeds, these are also released to the owner. If there are pretrial sale proceeds, these proceeds must first be used to pay off outstanding liens on the motor vehicle, with any remaining proceeds going to the owner.

(Note: The court may not release the motor vehicle to the owner if the owner has previously executed an acknowledgement for this same defendant driving this same motor vehicle unless the owner can demonstrate by the greater weight of the evidence that he or she “[took] all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately report[ed], upon discovery, any unauthorized use to the appropriate law enforcement agency.”) 20-28.2(a1)(1), (a1)(2) and (e); 20-28.3(i); AOC-CR-330; AOC-CR-332 (Side Two)

- **Release to lienholder:** At the forfeiture hearing, the motor vehicle may be released to a lienholder if the judge determines, by the greater weight of the evidence, that
 - (1) the lienholder has a security interest in the motor vehicle that had been perfected at the time of the seizure,
 - (2) the obligor has defaulted,
 - (3) because of the default the lienholder is entitled to possession of the motor vehicle,
 - (4) the lienholder has agreed to sell the motor vehicle and pay into the clerk any net proceeds from the sale,
 - (5) the lienholder has agreed not to sell (or otherwise transfer) the motor vehicle to the defendant or the owner (or anyone acting on their behalf) and
 - (6) this same motor vehicle has not previously been released to the lienholder during the course of a prior seizure.

If the clerk is holding insurance proceeds, these are also released to the lienholder. 20-28.2(a1)(3); 20-28.2(f); AOC-CR-334

- **Clerk’s duty to report post-trial release activity to DMV:** Whenever an owner executes an acknowledgment as part of a post-trial release petition, the clerk must enter the acknowledgment into STARS. Additionally, whenever a vehicle is released following trial, the clerk must remove the title hold in STARS. 20-28.8
- **No waiver of towing and storage costs:** Any order authorizing the post-trial release of a seized motor vehicle must require the owner or lienholder to pay towing and storage costs. “This requirement shall not be waived.” 20-28.2(h); 20-28.4(a)

VII. Appeals

- **Appeal of nondefendant owner from denial of pretrial bond release petition:** The seizure statutes do not provide for an appeal by an owner who unsuccessfully petitions the clerk for pretrial release using the bond procedure of 20-28.3(e).
- **Appeal of innocent owner from denial of pretrial petition:** Although there is no right of immediate appeal, if the clerk rules against the putative innocent owner at the pretrial hearing, the owner may seek the release of the vehicle again as an innocent owner at the post-trial forfeiture hearing. 20-28.3(e1)
- **Appeal of defendant from denial of pretrial petition:** Although there is no right of immediate appeal, if the court rules against the defendant's pretrial petition, the defendant may seek the release of the vehicle on the same grounds (i.e., that at the time of the offense, the defendant's license was not revoked for a prior impaired driving offense) at the post-trial forfeiture hearing. 20-28.3(e2)
- **Appeal of lienholder from denial of pretrial petition:** If the judge rules against the lienholder at the pretrial hearing, the lienholder may perhaps be able to seek the release of the vehicle again at the post-trial forfeiture hearing under 20-28.2(f). The seizure statutes do not specifically address this issue, however. Accordingly, a lienholder whose petition was denied at the pretrial stage may be barred from requesting release again at the forfeiture hearing under res judicata principles.
- **Post-forfeiture hearing appeal by defendant:** The defendant may appeal the underlying conviction and the forfeiture determination to the Superior Court. If the defendant appeals only the forfeiture determination, it appears that the appeal would be to the Court of Appeals because 20-28.5(e) provides that appeals from final orders of forfeiture are to the Court of Appeals. 20-28.5(e)
- **Post-forfeiture hearing appeal by innocent owner:** A putative innocent owner may appeal a denial of his or her post-trial petition to the Court of Appeals. (Note: When the defendant appeals the District Court conviction on the underlying offense, 20-28.5(e) provides that the Superior Court hears the forfeiture issue de novo. This may mean that if the defendant appeals the underlying conviction, the putative innocent owner must appeal the forfeiture determination to the Superior Court rather than to the Court of Appeals.) 20-28.2(e); 20-28.5(e)
- **Post-forfeiture hearing appeal by lienholder:** The seizure statutes do not expressly address a lienholder's appeal from a denial of its post-trial release petition. Presumably, though, a lienholder who unsuccessfully petitions for release at the forfeiture hearing may appeal under 20-28.5(e), which generally provides for an appeal from a final forfeiture order to the Court of Appeals. (Note: As mentioned above with regard to innocent owners, the lienholder's appeal may be to the Superior Court if the defendant has appealed the District Court conviction.) 20-28.5(e)
- **Appeals by the District Attorney:** The seizure statutes do not expressly provide for any appeals by the DA of pretrial or post-trial release orders. Both 20-28.2(e) and 20-28.5(e) contemplate the appeal of orders of forfeiture, not the appeal of orders of release.
- **Stay of forfeiture order pending appeal of conviction:** If the defendant appeals his or her conviction of the underlying impaired driving offense, any order of forfeiture is stayed pending the appeal. 20-28.5(e); AOC-CR-335 ("Appeal Entries" section)

VIII. Other Seizure/Forfeiture Issues

- **Rights of board of education attorney:** With the consent of the county board of education, the DA “may delegate to the attorney for the county board of education any or all of the duties” of the DA under 20-28.3. Even if these duties are not delegated to the school board attorney, he or she “shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture.” (Note: This notice requirement does not apply to innocent owner pretrial release proceedings before the clerk.) Further, he or she has “the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle.” Finally, all agencies with information regarding seizure, release, forfeiture and the like “are authorized and directed to provide county boards of education with access to that information.” 20-28.3(k)
- **Payment of towing and storage costs by defendant upon conviction:** If the defendant is convicted of the underlying impaired driving offense, the court must order the defendant “to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle.” The clerk must docket a civil judgment for these costs in favor of the party to whom the defendant owes the restitution. If the defendant receives active time, the civil judgment becomes effective (and the clerk must docket it) when the defendant’s conviction becomes final. If the court places the defendant on probation, “the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant’s probation is revoked or terminated.” 20-28.3(l)
- **Post-conviction registration stop against defendant for all motor vehicles:** If the defendant is convicted of the underlying offense and the court finds that the defendant’s license was revoked at the time due to a prior impaired driving offense, DMV must revoke the registration of all motor vehicles registered in the defendant’s name. Further, the defendant may not register any motor vehicle in his or her name until DMV has restored his or her license. (Note: As a practical matter, it is the clerk’s office that enters this registration stop against the defendant in STARS. However, while the clerk enters the stop, only DMV may lift it.) 20-54.1(a); AOC-CR-310 (note at bottom of Side Two); AOC-CR-335 (second note on Side Two)
- **Post-conviction registration stop against owner for seized motor vehicle:** If the defendant is convicted of the underlying offense and the court finds that the defendant’s license was revoked at the time as a result of a prior impaired driving offense, DMV must revoke the registration of the seized motor vehicle even if the defendant was not the owner at the time of seizure. The owner of the vehicle at the time of the seizure may not register this vehicle in his or her name until DMV restores the defendant’s license. If, however, the owner has established that he or she is an innocent owner, DMV will not revoke the owner’s registration for the motor vehicle. (Note: Again, as a practical matter, it is the clerk’s office that enters this registration stop against the owner. As noted above, though, only DMV may lift a registration stop.) 20-54.1(b); AOC-CR-310 (note at bottom of Side Two); AOC-CR-335 (second note on Side Two)