Drennan/IOG
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DWI Vehicle Seizure and Forfeiture Provisions
GS 20-28.2—28.9

1) *Coverage.* **To support seizure must have charge from (a) and revocation from (b). To support forfeiture must have conviction on charge and revocation in effect at time of charge, or if defendant does not appear, must prove the offense and the revocation at the forfeiture hearing held in defendant's absence**
   a) Charges that trigger a seizure and possible forfeiture
      i) Impaired driving and habitual impaired driving
      ii) Felony death by vehicle
      iii) Murder, involuntary manslaughter based on impaired driving
      iv) Impaired driving in commercial vehicle
   b) Revocations that trigger a seizure and possible forfeiture
      i) Consuming alcohol/drugs while under 21-GS 20-13.2
      ii) Revocation for impaired driving on military base-GS 20-16(a)(8)
      iii) Chemical test refusal-GS 20-16.2
      iv) CVR revocation-GS 20-16.5
      v) Conviction of impaired driving or commercial DWI-GS 20-17(a)(2)
      vi) Conviction of habitual DWI-GS 20-138.5
      vii) Transporting open container of alcohol, 2nd or subsequent—GS 20-17(a)(12)
      viii) Court order not to drive vehicle-GS 20-17.2
      ix) DWI out of state resulting in NC revocation-GS 20-16(a)(7)
      x) Manslaughter or second degree murder-GS 20-17(a)(1)
      xi) Assault with motor vehicle involving impaired driving-GS 20-17(a)(11)
      xii) Felony involving use of motor vehicle, involving impaired driving-GS 20-17(a)(3)
      xiii) Felony Death by Vehicle-GS 20-17(a)(9)
      xiv) Revocation by another jurisdiction for conduct that would support a covered revocation in this state-GS 20-28.2(a)(3) *(eff. 12/1/99)*
2) *Officers and magistrates duty.* Officer with probable cause that covered charge and covered revocation is present should seize vehicle and seek review of seizure by magistrate. Officer must notify DMV of seizure within 24 hours. Magistrate must review case and if probable cause present must authorize continued custody of vehicle, or if vehicle not yet seized, must order it to be seized.
   a) Exceptions to seizure requirement. GS 20-28.3(b) Officers do not seize vehicles meeting criteria above if:
      i) Vehicle has been reported stolen, or
      ii) Vehicle was a rental vehicle and the driver was not an authorized driver under the rental contract
         (1) Officer must make reasonable effort to contact rental company
3) *Pretrial release of vehicles.* In various instances, vehicle may be released to the vehicle owner. In all such cases, the towing and storage fees must be paid by the party seeking release.

a) Non driving owner (Innocent owner, hereafter IO) GS 20-28.3(e); (e1)
   i) Pretrial release of vehicle pending the resolution of the case. IO must petition the clerk and must post bond equal to vehicle value. Must also sign acknowledgment that he or she did not know driver had revoked license, or that if knew, vehicle was driven without consent, and this is first such acknowledgement. Vehicle released must be returned to court for forfeiture hearing
   ii) Permanent pretrial release. IO may seek permanent return of vehicle by petition before clerk. Clerk must consider the petition and make a decision as soon as feasible. No judge or prosecutor involved in that decision; clerk's return of vehicle under this provision terminates forfeiture proceeding, although state may seek to establish liability for unpaid towing and storage costs pursuant to GS 20-28.3(*l*). GS 20-28.3(e1).
   iii) Owner is innocent if he or she:
      (a) Did not know and had no reason to know defendant's license revoked,
      (b) Knew license was revoked, but defendant drove without permission and owner filed report of unauthorized use to police and agreed to prosecute
      (c) Reported the vehicle as stolen,
      (d) Rented the vehicle and the defendant was not authorized to drive the vehicle, or
      (e) Leased the vehicle to another party and the lessor has no knowledge of defendant's revocation status.
b) Lienholder GS 20-28.3(e3)
   i) Lienholder may seek release by petition. Hearing is required for vehicle release. If owner is in default and lienholder entitled to possession and agrees to sell vehicle under UCC, return excess funds to clerk, and not sell to driver or owner, vehicle is released to lienholder.
c) Defendant owner GS 20-28(e2)
   i) Permanent pretrial release. Defendant may seek permanent return of vehicle by petition
      (1) Prosecutor may consent to release, and clerk releases vehicle to defendant
      (2) If no consent, judge holds hearing within 10 days to determine if defendant entitled to vehicle due to error in revocation status; pending criminal charge is not at issue in this hearing. Defendant may raise same issue at later forfeiture hearing

4) Forfeiture hearing *(GS 20-28.3 (k) allows the school board to appear, and with consent of the DA, to conduct forfeiture hearings)*
   a) Nonappearing defendant GS 20-28
      i) If defendant fails to appear and does not thereafter appear for 60 days, may conduct hearing in his absence.
         (1) If order for arrest set aside, right to hold hearing is lost
         (2) State must show that both grounds for forfeiture are present, but standard of proof is greater weight of the evidence on both criminal charge and revocation status

(3) Statute not clear on what happens if defendant later shows up and is found not guilty; apparently forfeiture not affected by that
(4) Innocent owner may appear and contest forfeiture and if successful vehicle released to IO—GS 20-28.2(e). Lienholder may also appear—GS 20-28.2(f)
(5) Prosecutor must notify defendant, each owner and any lienholder at least 10 days before hearing

b) At or after conviction GS 20-28.2 (b),(d); 20-28.4(d)
i) If defendant convicted of charge supporting forfeiture and vehicle has not been permanently released, must hold forfeiture hearing
(1) Possible issues include defendant's revocation status, 'innocence' of non-driving owner, lienholder right to vehicle
(2) State has burden of showing revocation status, by greater weight of evidence
(3) IO or lienholder, as petitioners, apparently have burden of proof on issues raised by their petitions
ii) Forfeiture hearings "shall be heard by the judge immediately, or as soon thereafter as feasible" after conviction –GS 20-28.3(m)
iii) District court trials of cases involving seized vehicles "shall be scheduled on the arresting officer's next court date or within 30 day of the offense, whichever occurs first"; continuance from that schedule allowed only for compelling reason on written motion
(1) No similar rule applicable to felony charges involving seized vehicles

c) Appeals—GS 20-28.5(e); 20-28.2(e)
i) Order of forfeiture stayed pending appeal of conviction
ii) If district court conviction that is basis for "order of forfeiture" appealed, "issue of forfeiture" is heard de novo
(1) Not clear from text of statute whether a determination that vehicle to be returned to owner is also heard de novo; if "order of forfeiture" refers only to instances in which the vehicle is forfeited, then it is not subject to de novo treatment
iii) Appeal from final order of forfeiture is to court of appeals
(1) That is apparently the rule when district court conviction not appealed to superior court; maintaining and preparing verbatim record of district court forfeiture hearings may be an issue
iv) Determination that owner not "innocent" made at forfeiture hearing is final judgment and immediately appealable to Court of Appeals; unclear what happens when the a district court conviction is appealed to superior court—does (ii) above apply, or does it go straight to Court of Appeals

5) *Fees and Restitution GS 20-28.3(d), (l)*
a) Fees are a maximum of $10 per day for storage, and may be assessed entity in custody of vehicle, including school board
b) Fees must be paid by person seeking to recover vehicle, even if found to be innocent owner or not guilty defendant; *effective 1/1/02, waiver of fees explicitly prohibited by GS 20-28.3(n), -28.2 (h) and –28.4*

   c) If defendant convicted, must be ordered to pay restitution for towing and storage fees to owner, school board or lienholder to extent that vehicle sale proceeds do not cover those fees; apparently no such requirement if vehicle returned to innocent owner or lienholder instead of being forfeited
   d) Restitution also reduced to civil judgment
6) *Sale or disposition of vehicle GS 20-28.2(d); GS 20-28.3(h), (i); 20-28.5; 20-28.9*
   a) Wrecked vehicle—proceeds of insurance subject to forfeiture in same manner as vehicle
   b) Vehicle forfeited may be sold by school board or retained for its use
      i) Statewide contract for towing, storage and sales is also authorized, and if enacted, that contractor stands in shoes of school board
   c) Pre-hearing sales
      i) If fees exceed 85% of vehicle value, vehicle may be sold
      ii) If vehicle worth $1500 or less, may be sold after 90 days of storage
7) *Registration revocation (GS 20-54.1)*
   a) DMV will revoke registration of vehicle driven by defendant convicted of charge covered by forfeiture statute, and at time license was revoked for offense covered by statute
   b) In addition, any other vehicles owned by defendant will have registration revoked
   c) Revocation lasts until defendant's driver's license restored