Run and You're Done -- Part 1

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My nomination for catchiest short title of the 2011 legislative session goes to House Bill 427, enrolled and chaptered as S.L. 2011-271, and short-titled "Run and You're Done." The aptly captioned act provides for seizure and forfeiture of motor vehicles driven on or after December 1, 2011 in the commission of felony speeding to elude, an offense defined in G.S. 20-141.5. Defendants were charged with felony speeding to elude in about 1,600 cases in 2010, indicating that fewer than half the number of motor vehicles will be seized under new G.S. 20-141.5 than are currently seized pursuant to the seizure and forfeiture provisions for motor vehicles used for impaired driving. A lot of folks have asked about the act and I thought I'd spend a couple of posts reviewing what it says.

New subsections (g)–(j) of G.S. 20-141.5 require law enforcement agencies, upon arresting a defendant for felony speeding to elude, to seize the motor vehicle driven and to deliver it to the sheriff of the county in which the offense is committed. Where delivery of actual possession is impracticable, G.S. 20-141.5(g) provides for constructive possession by the sheriff. The sheriff must hold the vehicle pending trial of the driver or drivers charged with the felony offense unless the motor vehicle is released before trial pursuant to a petition made (depending upon the basis for release and the procedural posture of the case) to the sheriff, the clerk or to the district or superior court.

G.S. 20-141.5(g)(1) requires the sheriff to release a seized motor vehicle to an owner who executes a satisfactory bond in double the value of the motor vehicle conditioned upon the owner's return of the motor vehicle on the day of trial. The sheriff also must return the motor vehicle to its owner upon acquittal or dismissal of any felony charge. Lienholders may petition the court for pre-trial release of the motor vehicle. G.S. 20-141.5(g)(2); *see also* AOC-CR-276 (form petition for lienholder). The court with which this petition is made likely is the court before which the criminal case is pending at the time of the petition. Thus, if the defendant has not yet been bound over to superior court pursuant to G.S. 15A-612 (or been indicted), district court appears to be the appropriate venue for the lienholder's petition. If the lienholder sells the motor vehicle, it must file with the court an accounting of proceeds and pay into the court all proceeds in excess of the lien.

Certain other owners also may prevent a motor vehicle seized under these provisions from being sold. A court must restore a motor vehicle to its owner if the owner demonstrates at the forfeiture hearing or during any other proceeding at which the matter is considered the following three factors:

1) the defendant was an immediate member of the owner's family at the time of the offense;

2) the defendant had no previous convictions or previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years before the offense; and

3) the defendant was under the age of 19 at the time of the offense.

G.S. 20-141.5(h)(3); *see also* AOC-CR-277 (form owner's petition for release).

The owner is entitled to trial by jury on these issues. The owner of a motor vehicle driven by someone else in the commission of felony speeding to elude also may seek release of the motor vehicle by filing a petition with the clerk of

court seeking a pretrial determination that he or she is an innocent owner. G.S. 20-141.5(h)(4). While the term "innocent owner" is defined in G.S. 20-28.2(a1)(2) for purposes of obtaining the release of a motor vehicle seized from an impaired driver, the term is not separately defined for purposes of felony speeding to elude seizures. Because the "innocent owner" definition in G.S. 20-28.2(a1)(2) corresponds to the statutory bases for seizure under the impaired driving laws, which differ from those for felony speeding to elude, this definition does not provide much guidance for purposes of determining how a motor vehicle owner establishes his or her status as an innocent owner pursuant to G.S. 20-141.5(h)(4). The form petition and order created by the Administrative Office of the Courts, AOC-CR-275, reflects the ambiguity regarding how one establishes himself or herself as an innocent owner. In any event, if the clerk determines that the petitioner is an innocent owner, the clerk must release the vehicle to the petitioner. A determination by the clerk that the petitioner failed to establish that he or she is an innocent owner may be reconsidered by the court as part of the forfeiture hearing. G.S. 20-141.5(h)(4); *see also* AOC-CR-277 (form petition for reconsideration).

When a seized motor vehicle has been specially equipped or modified to increase its speed, the court must, before its sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. *See* G.S. 20-141.5(j). If the modifications are so extensive as to render restoration impractical, the court may order that the vehicle be turned over to a governmental agency or public official within the territorial jurisdiction of the court to be used for official duties. *Id.* These provisions do not affect the rights of lienholders and other claimants. *Id.*

If the driver of a seized motor vehicle is convicted, the court must order the motor vehicle sold at public auction, unless, as noted above, the vehicle has been reclaimed by a lienholder upon order of the court or restored to the owner pursuant to the criteria set forth above relating to use by a family member under the age of 19 or based on the owner's status as an innocent owner. *See* AOC-CR-278. Liens are paid from net proceeds of sale, after deducting storage expenses, the "fee for the seizure" (which presumably means towing expenses) and sale costs. The balance of the proceeds are payable to the county schools.

The provisions in new G.S. 20-141.5(h) governing sale proceeds are virtually identical to those governing the distribution of sale proceeds for motor vehicles seized and sold pursuant to G.S. 20-141.3 based upon their use in prearranged speed competitions. Like the racing forfeiture provisions—and unlike the DWI seizure and forfeiture laws—G.S. 20-141.5 fails to specify that payment of towing and storage costs is required to obtain the release of a motor vehicle before sale, giving rise to the question of who bears the towing and storage costs when a motor vehicle is seized but not sold. *Cf.* G.S. 20-28.3(e), (e2), (e3), and (n) (making "payment of all towing and storage charges" a condition of a motor vehicle's release). The matter of who pays is significant, particularly when one considers that towing and storage costs easily can equal or exceed the value of a motor vehicle before the underlying criminal case is resolved. I'll address this aspect of the new law in Part II of this post.