



## Run and You're Done -- Part 2

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[Part I](#) of this post ended by noting that, like the racing forfeiture provisions in [G.S. 20-141.3](#)—and unlike the DWI seizure and forfeiture laws—the [new felony speeding to elude seizure and forfeiture provisions in G.S. 20-141.5](#) fail 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).

Perhaps the legislature’s failure to address this issue reflects the view that an entity in the regular business of towing and storing motor vehicles that contracts with a sheriff to tow and store vehicles seized pursuant to G.S. 20-141.5 acquires a possessory lien for reasonable charges for towing and storage. See [G.S. 44A-2](#)(d) (providing that “[a]ny person who . . . tows[] or stores motor vehicles in the ordinary course of the person’s business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such . . . towing [and] storing”); *State v. Davy*, 100 N.C. App. 551, 561 (1990) (recognizing that a private storage facility acquired a lien for storage fees for a truck impounded as an item of evidence pursuant to G.S. 15-11.1 and declining the defendant’s request to “create a judicial exception to N.C.G.S. sec. 44A-1 [by holding] that when property is seized by a law enforcement agency who thereafter directs the local storage facility to store and retain said property . . . the lawful owner is entitled to immediate possession of said property and the law enforcement agency is thereafter held accountable for all storage liens”). Possessory liens under Chapter 44A arise when the lienor acquires possession of the property and terminate when the lienor voluntarily relinquishes possession of the property. [G.S. 44A-3](#). Given that a motor vehicle seized and held pursuant to G.S. 20-141.5 cannot be sold until it is relinquished by the entity holding it in storage, the requirement in G.S. 20-141.5(h)(1) that towing and storage fees be deducted from sale proceeds accounts for any payments the sheriff is required to make to obtain the motor vehicle’s release.

Even if the entities in the business of towing and storing motor vehicles acquire possessory liens for reasonable towing and storage charges, which they may enforce by refusing to release motor vehicles before sale without payment of the lien by the party seeking release, questions remain regarding who bears towing and storage expenses when either no lien arises or any lien that was acquired has been terminated by the lienor’s relinquishment of the motor vehicle to another.

As discussed in Part I, new G.S. 20-141.5(g) requires that the law enforcement agency that arrests a person for felony speeding to elude seize the motor vehicle driven and deliver it to the sheriff. Thus, with some frequency, motor vehicles will be seized by a law enforcement agency other than the sheriff’s department. That law enforcement agency must then itself tow or pay a private company to tow the seized motor vehicle for delivery to the sheriff. If the law enforcement agency tows the vehicle itself, no possessory lien arises since law enforcement agencies do not tow or store vehicles in the “ordinary course of . . . business.” See [G.S. 44A-2](#)(d). If a private company in the business of towing tows the vehicle for delivery to the sheriff, may it refuse that delivery until the sheriff pays reasonable charges for towing? If private entities may enforce their possessory liens by refusing to release vehicles to owners and lienholders absent payment of reasonable towing and storage charges, it seems to me the same rules would apply to the sheriff. If that is so, the sheriff will be required to pay any private towing company to obtain possession of the

seized motor vehicle. Of course, if the motor vehicle is sold, this is among the amounts that the sheriff may recover from sale proceeds.

Likewise, even if the sheriff initially seizes the vehicle but arranges for it to be towed to a storage facility by a private entity that is not also the storage entity, it seems unlikely that the private tower would relinquish possession of the motor vehicle to the storage facility—thereby terminating its lien—absent payment by the sheriff. And, again, while these amounts may be recovered if the motor vehicle is sold, if the vehicle is permanently released before sale to a lienholder or qualifying owner, there is no statutory mechanism for exacting payment of those towing charges, for which there is no lien, from the party obtaining the motor vehicle's permanent release.

Thus, in circumstances that may arise with some frequency, it appears to me that the sheriff bears the burden of paying for towing and for expenses associated with storage (if carried out by an entity not in the business of storing motor vehicles) without the prospect of being reimbursed from the proceeds at sale.

It's worth noting, however, that my views on the payment of towing and storage fees differ from those expressed by some other experts. The North Carolina Sheriff's Association has advised sheriffs that the law does not require the sheriff to pay a towing company for vehicles seized when the arrest is made by another law enforcement agency and that the person seeking a motor vehicle's release always must pay towing and storage fees to obtain the motor vehicle's release.

Other aspects of the law not discussed in this or the earlier post are explored in [this memorandum](#) from the Administrative Office of the Courts. If you have questions about the new law or views that expound upon or differ from those expressed above, please use the comment feature to share your thoughts.