Seizure of Vehicles in DWI Cases

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Three bills introduced in the General Assembly this session provide for seizure and forfeiture of motor vehicles involved in certain motor vehicle offenses. House Bill 451 provides for seizure of motor vehicles driven by persons charged with driving while license revoked if the person has two or more prior convictions for driving while license revoked. House Bill 427 and Senate Bill 271 provide for seizure of vehicles driven by defendants charged with felony speeding to elude. Each bill provides for forfeiture of the vehicles, subject to certain exceptions, upon conviction. H 451 and S 271 incorporate procedures set forth in G.S. 20-28.3, which currently govern the seizure and forfeiture of vehicles in certain impaired driving cases, while H 427 amends G.S. 20-141.5 to set forth offense-specific procedures for seizure and forfeiture.

Given this proposed legislation, I thought it might be worthwhile to review the seizure and forfeiture of motor vehicles driven in impaired driving offenses. Certain vehicles driven by repeat DWI offenders have been subject to forfeiture upon conviction since enactment of the Safe Roads Act in 1983. However, exceptions for vehicles used by other family members and vehicles subject to liens resulted in infrequent use of the penalty as initially drafted. *See* James C. Drennan and Ben F. Loeb, Jr, *Motor Vehicles*, *in* North Carolina Legislation 1997 245 (John L. Saxon, ed. 1997). That changed, however, with the enactment of S.L. 1997-379, which required law enforcement officers to seize motor vehicles subject to forfeiture and limited the ability of non-defendant owners to reclaim such motor vehicles. *Id.*

G.S. 20-28.3 currently provides that a motor vehicle driven by a person charged with an offense involving impaired driving is subject to seizure if at the time of the violation (1) the driver's license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation or (2) the person was not validly licensed and was not covered by an automobile liability policy.

According to this report to the General Assembly, from October 1, 2009 until September 30, 2010, more than 4,000 motor vehicles were seized from drivers charged with impaired driving offenses. Of those, 3,596 were impounded by one of the three contractors authorized to tow, store, and sell such vehicles pursuant to a contract with the state's Department of Public Instruction: Tarheel Specialties, Eastway Wrecker Services and Martin Edwards and Associates.

Most of these vehicles were sold under the expedited sales provisions in G.S. 20-28.3(i), which permits sale of the vehicle before the underlying criminal case is resolved and without a court order. A motor vehicle valued at $1500 or less may be sold after ninety days from the date it was seized. In addition, a seized motor vehicle may be sold any time outstanding towing and storage costs exceed 85 percent of the vehicle's fair market value. Such a vehicle also may be sold with the consent of all the motor vehicle owners. Any net proceeds from such a sale are deposited with the clerk of court in the county where the charges are pending. When (as is typically the case) there are no net proceeds, this is the end of the process, and no forfeiture order is entered. In fact, only 71 of the more than 4,000 motor vehicles seized in 2009-2010 were ordered forfeited by the courts.

Net proceeds from the sale of forfeited vehicles as well as a portion of storage proceeds are paid to the county schools in the county in which the motor vehicle was ordered forfeited. G.S. 20-28.5(b). County schools received $348,401 in proceeds from October 1, 2009 through September 30, 2010. An additional $90, 868 was deposited with clerks of court to be paid to county schools upon entry of an order of forfeiture. Contractors retained about $1.1 million in proceeds for

storage.

Of course, vehicles aren't seized from repeat DWI offenders for the purpose of generating revenue. Instead, the measure is aimed at "keeping impaired drivers and their cars off the roads." State v. Chisholm, 135 N.C. App. 578, 584 (1999). Indeed, the National Highway Traffic Safety Administration concluded in a 2011 Highway Safety Countermeasure Guide that vehicle impoundment for DWI offenders "reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released." (NHTSA Guide at 1-34). NHTSA reported that "[a]n evaluation of California's impoundment law found both first-time and repeat offenders whose vehicles were impounded had fewer subsequent arrests for driving with a suspended license and fewer crashes." *Id.* at 1-35.

Owners of motor vehicles driven by another person in the commission of an impaired driving offense as well as lienholders may secure release of seized motor vehicles before they are sold or ordered forfeited upon satisfying certain conditions and by paying towing and storage costs (which may never be waived). A defendant-owner may secure a motor vehicle's early release only by demonstrating that his or her license was not revoked for a prior impaired driving revocation, see G.S. 20-28.3(e2), or—presumably—by demonstrating that he or she had a valid license and/or insurance (if this condition is the basis for the seizure). I say "presumably," because when G.S. 20-28.3(a)(2) (the no license/no insurance basis for seizure) was enacted in 2006, no corresponding amendments were made to G.S. 20-28.3(e2) to allow a defendant to reclaim a seized vehicle by demonstrating that he or she in fact was licensed and/or insured. Arguably, however, affording a defendant the right to make such a showing is required by due process, and a court could construe the statute accordingly.

For readers who want to know more about DWI vehicle seizure and the process for reclaiming seized vehicles, the AOC has published this guide containing answers to frequently asked questions.