



DWI Vehicle Seizure

Frequently Asked Questions

(December 2006)

*** This information is not a substitute for the advice of an attorney.
If you have any questions regarding your legal rights and remedies, you should consult an attorney licensed to practice law in North Carolina.

Why has my vehicle been seized?

- In North Carolina, a law enforcement officer must seize a motor vehicle if the driver is charged with an impaired driving offense and at the time of the offense
 - ⇒ the driver's license is already revoked for a prior impaired driving offense **or**
 - ⇒ the driver is not validly licensed and not covered by an automobile liability insurance policy.
- The law enforcement officer must seize the vehicle even if the driver is not the owner of the vehicle.

Where is my vehicle now?

- The vehicle will first be towed to a local storage facility. To identify the local storage facility, contact the law enforcement agency that arrested the driver (e.g., State Highway Patrol, local police department, county sheriff).
- At some point, usually within 3 to 5 days, the vehicle will be towed to the facilities of the statewide contractor (Tarheel Specialties) in Linden, NC, which is on the Harnett County/Cumberland County line. To contact Tarheel Specialties, call (910) 897-6382, or visit their website at www.tarheelspecialties.com.

What will happen to my vehicle?

- Based on certain factors, the court will either
 - ⇒ return the vehicle to the owner (also known as "releasing" the vehicle) or
 - ⇒ transfer the vehicle to the local school board (also known as "forfeiting" the vehicle).
- There is also a possibility that the vehicle will be sold without a court order. These pretrial sales are discussed below.

How can I get my vehicle back if I believe that I should not be held responsible for the driver's actions?

- If you were the owner of the vehicle in DMV's records at the time of the seizure, but you were not the driver at the time of the seizure, you can regain the vehicle if you can demonstrate to the clerk's office that you are "innocent." There are five different ways that you can demonstrate your innocence:
 - ⇒ You did not know and had no reason to know that the driver's license was revoked, **or** you did not know and had no reason to know that the driver did not have a valid license and did not have liability insurance.
 - ⇒ You knew that the driver's license was revoked, **or** you knew that the driver did not have a valid license and did not have liability insurance, **but** the driver drove the vehicle without your permission and you have filed a police report for unauthorized use of the vehicle and you have agreed to prosecute the driver.
 - ⇒ You had reported the theft of the vehicle (i.e., the driver stole the vehicle from you and then used it to commit the offense).
 - ⇒ You are in the business of renting vehicles and the driver was not listed as an authorized driver on the rental contract.
 - ⇒ You are in the business of leasing motor vehicles, you held legal title to the motor vehicle as a lessor at the time of seizure and you did not know the driver's license was revoked at the time you entered into the lease agreement with the driver.
- There are other requirements that you must satisfy in addition to proving that you are innocent.
- You should ask the Clerk's Office for form AOC-CR-330. Once you complete and file this form, the clerk will review your petition as soon as feasible. Depending on the workload of the clerk and other factors, the clerk may not be able to review your petition immediately.

How else can I get my vehicle back if I am the owner, but was not driving?

- If you were the owner of the vehicle in DMV's records at the time of the seizure, but you were not the driver at the time of the seizure, you may post a bond equal to the fair market value of the vehicle.
- Posting the bond will allow you to take possession of the vehicle temporarily until the next court hearing on the vehicle.
- There are other requirements that you will need to satisfy in addition to posting the bond.
- You should ask the Clerk's Office for forms AOC-CR-330 and AOC-CR-331.

How can I get my vehicle back if I am the owner and the person charged with the impaired driving offense?

- If you were the driver and the owner of the vehicle in DMV's records at the time of the seizure, you can obtain the permanent release of the vehicle if you can demonstrate that, at the time of the seizure, your license was not revoked for a prior impaired driving offense.
- There are other requirements that you must satisfy.
- You should ask the clerk for form AOC-CR-333.

What if I am a lienholder on this vehicle? How can I get it back?

- If you are a lienholder you may secure the release of the vehicle if
 - ⇒ you held a perfected security interest in the vehicle at the time of the seizure,
 - ⇒ the owner is in default,
 - ⇒ as a result of the default you are entitled to possession of the vehicle,
 - ⇒ you agree to sell the vehicle and pay into the clerk's office the net sale proceeds and
 - ⇒ you agree not to sell, give, or otherwise transfer possession of the vehicle to the driver or the owner.

- There are other requirements that you must satisfy as a lienholder.
- You should ask the clerk's office for form AOC-CR-334. You must serve a copy of the form on the owner, the DA and the school board attorney. If these parties consent to your petition, the clerk will release the vehicle to you. If they do not consent, there will be a court hearing on your petition.

If the vehicle is released to me, am I required to pay the towing and storage costs?

- Yes. You must pay all accumulated towing and storage charges to the company holding the vehicle before the company will release the vehicle to you. There are no exceptions to this requirement.
- If the driver is convicted, the court may order the driver to repay you for this amount.

What if my pretrial release request is denied?

- You do not have a right to appeal immediately from a decision denying your pretrial release petition. You must wait until the court has acted on the impaired driving offense.
- If the defendant is not convicted, the court will permanently release the vehicle to the owner.
- If the defendant is convicted, the court will hold a "forfeiture hearing" on the status of the vehicle. Owners, defendant-owners and lienholders may request the release of the vehicle again at this hearing.

My vehicle has been sold prior to the driver's trial without a court order. What does this mean?

- The NC Department of Public Instruction, through Tarheel Specialties, is allowed to sell the vehicle without a court order if
 - ⇒ 90 days have passed since the date of seizure and the vehicle has a fair market value of \$1,500 or less,
 - ⇒ the accumulated towing and storage costs exceed 85% of the fair market value, or
 - ⇒ the owner of the vehicle has consented to the sale.
- Tarheel Specialties will pay the net proceeds of the sale into the clerk's office. These proceeds will later be used to pay off any outstanding liens, with any remainder being released to the owner or forfeited to the school board just as the vehicle would have been.

How may I recover personal property that I left in the vehicle?

- Contact the company that is storing the vehicle. You can retrieve your personal property if you can provide sufficient proof to the company that you own the items.

What if the vehicle was damaged during the offense?

- The NC Division of Motor Vehicles will instruct the insurance company to pay the insurance proceeds to the Clerk's Office rather than to the policy holder. The proceeds will later be released or forfeited in the same manner as the seized vehicle.
- There is a special procedure for totaled vehicles.

What if the court denies my request for release at the forfeiture hearing? May I appeal?

- Generally speaking, you may appeal the court's decision to the NC Court of Appeals.
- However, if the driver is convicted in District Court and appeals the conviction to Superior Court, your appeal of the release/forfeiture decision may have to be heard by the Superior Court.

If the vehicle is released to me, how do I retake possession of it?

- You must contact the company that is storing your vehicle to arrange a date and time to pick up the vehicle.
- The company will specify the items that you will need to bring with you to the storage site (for example, a photo ID, a certified copy of the release order, payment for the towing and storage costs).
- If the vehicle is stored in Linden and you would prefer not to travel to Linden, Tarheel Specialties will tow it back to your location for a fee.

Notes



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