DISPOSITION OF PROPERTY BY LAW ENFORCEMENT

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I. GENERAL PROVISIONS

A. ACQUISITION OF PROPERTY

Every day various types of personal property come into the possession of law enforcement agencies. These articles generally include confiscated evidence, recovered stolen property, and lost or abandoned objects. Agencies also acquire property by purchasing equipment and other necessary items for its officers. This publication will outline and review the applicable laws which establish the procedures for law enforcement agencies to handle and dispose of acquired personal property.

Officers should discuss these motions and orders with the district attorney or city/county police attorney, when appropriate, prior to presenting the request to the judge. Court orders to dispose of property should be maintained by the agency to document such disposition.

B. RECORDS (G.S. § 15-11)

Every sheriff's office and police department in North Carolina ***must*** keep and maintain a book or register for recording all articles of personal property which have been seized or confiscated by the department, or have come into its possession in the discharge of the department's or officer's duty.

This register must contain:

1. A description of the property;
2. The name of the person from whom it was seized, if the name is known;
3. The date and place of seizure of the property;
4. If the property was not taken directly from the person, a brief explanation of the place and circumstances regarding how the property came into the department's possession; and
5. The manner, date, and to whom the property was disposed or delivered, and if sold, who received the proceeds of the sale.

*(**NOTE**: It appears that most local governments retain these records for at least three (3) years from the date of sale. You should however discuss your agency's records retention schedule with officials at the Government Records Branch at (919) 807-7350 to ensure compliance with this state law.)*

C. DISPOSAL OR RELEASE

1. Property Used as Evidence (G.S. § 15-11.1)

Unless there are specific laws providing for forfeiture or disposition of a particular item, contained in another general statute, property seized as evidence should be disposed of pursuant to G.S. § 15-11.1.

a. When a law enforcement officer seizes property to use as evidence in a trial, he shall keep the property safe under the direction of the court or magistrate.

b. The District Attorney may release any such property either on his own determination or upon application by the lawful owner or person entitled to possession. However, he may order release only when he determines that such property is no longer needed as evidence in the criminal trial and he is presented with satisfactory evidence of ownership. (G.S. § 15-11.1(a))

   If the District Attorney refuses to release the property, the lawful owner or person entitled to possession may petition the court for return of the property. The court, after giving notice to all parties and conducting a proper hearing, may also order such property returned to the lawful owner or person entitled to possession. The court may enter an order to assure that the evidence will be available at the time of trial.

c. In the case of an unknown or unapprehended defendant, or of a defendant that is willfully absent from the court's jurisdiction, the court shall determine if an attorney should be appointed to represent and protect the interests of the unknown or absent defendants. (G.S. § 15-11.1(b))

d. After the criminal trial and all possible appeals have been completed, all property lawfully seized by law enforcement authorities should be disposed of as ordered by the court. Officers may ascertain the status of a case on appeal through their district attorney's office. Officers should work with their local district attorney's office to establish a procedure for obtaining a court order disposing of the property at the time of final judgment.

e. Firearms confiscated by law enforcement officers which are no longer needed as evidence must be disposed of in a manner consistent with the specific requirements found in G.S. § 15-11.1(b1). **These requirements, however, do not apply to firearms seized in connection with a violation of a state wildlife law or any local wildlife hunting ordinance as provided in G.S. § 113-137 or to a firearm subject to disposition under G.S. § 14-269.1** (following the convictions for certain offenses involving firearms). Before a law enforcement agency may dispose of a firearm pursuant to G.S. 15-11.1(b1), the district attorney must:

   1) determine the firearm is no longer necessary or useful as evidence in a criminal trial;

2) notify all parties known or believed by the district attorney to have an ownership or possessory interest in the firearm, including the defendant; and

3) apply to the court for an order of disposition of the firearm.

After a hearing, the judge may order the disposition of the firearm in ***one*** of the following ways:

4) return the firearm to its rightful owner, when the owner is someone other than the defendant and upon findings by the court that the person, firm or corporation determined by the court to be the rightful owner:

   a) is entitled to possession of the firearm; and

   b) was unlawfully deprived of the firearm or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

5) return the firearm to the defendant, but only if the defendant:

   a) is not convicted of any criminal offense in connection with the possession or use of the firearm;

   b) is the rightful owner of the firearm; and

   c) is not otherwise ineligible to possess such a firearm.

6) turn the firearm over to the sheriff of the county in which the firearm was seized to be destroyed if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification, or

   (***NOTE***: *The sheriff shall maintain a record of the destruction of the firearm.*)

7) turn over the firearm to a law enforcement agency in the county of trial for:

   a) official use of the agency; or

   b) sale, trade or exchange by the agency to a federally licensed firearm dealer.

*(**NOTE**: This section applies only to firearms with a legible, unique identification number. Proceeds from the sale of the firearm shall be remitted to the county finance officer as provided by G.S. § 115C-452. The law enforcement agency must maintain a record and inventory of all firearms received under this section. (15-11.1(b1))*

2. **Unclaimed Property** (Other than firearms) (G.S. § 15-12 through G.S. § 15-16)

Unclaimed property that has been seized, confiscated or otherwise received by any sheriff's office or police department may be sold as long as the department complies with certain requirements.

a. WAITING PERIOD - The property must remain unclaimed by the person who may be entitled to it for at least 180 days (60 days for bicycles) from the date of receipt by the law enforcement agency maintaining custody.

b. NOTICE OF UNCLAIMED PROPERTY - After the specified period of time, the department must publish a notice of unclaimed property in a newspaper published in the county. Publication of this notice is required only one time. The notice of unclaimed property must contain a brief description of the property, specify that the listed items are in the custody of the department giving notice, and state that any person who may have or claim any interest in the property must report that claim to the department within 30 days of the date of publication of the notice. This notice should also include a statement that any unclaimed property will be sold or otherwise disposed.

If the property is a bicycle, the department may donate it to a charitable organization exempt under § 501(c)(3) of the Internal Revenue Code. If it is to be donated, the notice of unclaimed property must state that is the intended disposition if not claimed by rightful owner.

c. NOTICE OF SALE - Under G.S. § 15-14, the department must also advertise the sale of the unclaimed property prior to selling it. This requirement is in addition to the "notice of unclaimed property" mentioned above. The notice of sale must:

1) be published at least one time in a newspaper published in the county;

2) be posted at the courthouse door;

3) be posted at three other public places in the county;

4) be published and posted at least 10 days prior to the sale;

5) specify the time and place of the sale; and

6) contain a sufficient description of the property to be sold.

*(**NOTE**: The "notice of unclaimed property" and the "notice of sale" may be combined for publication as long as all requirements for both notices are met.)*

d. SALE OF PROPERTY - Under G.S. § 15-13, and G.S. § 15-14, if property remains unclaimed for the 30 days required by the "notice of unclaimed property," and both notices (or a combined notice) have been properly published, then the property may be sold by the department. The property must be sold at public auction, for cash, to the highest bidder. The auction sale may be either: at the courthouse door; the county law enforcement headquarters if the sale is conducted by the sheriff; or the city police headquarters. The department is not required to let the sale lay open after the auction for increased bids or objections, but may deem the sale closed when the purchaser at the sale pays the amount of the accepted bid.

*(**NOTE**: The statute does not prohibit the department from utilizing an auctioneer or other city or county personnel to actually conduct this sale. However, it remains the department's responsibility to ensure that the sale was properly and legally conducted.)*

e. ELECTRONIC AUCTION – Under G.S. § 15-14.1, a sheriff or police department may sell property through an electronic auction service.

*(**NOTE**: This requires the same notification requirements as a public auction described above.)*

f. PROCEEDS OF SALE - Under G.S. § 15-15, the proceeds realized from the sale of unclaimed property shall be first used to pay the costs and expenses of the sale. Then, any balance remaining from the proceeds shall be paid, within 30 days after the sale, to the treasurer of the county Board of Education for the benefit of the public schools in that county.

*(**NOTE**: The county Board of Education always receives these types of proceeds, even if a city school system exists and/or the sale is conducted by the city's police department.)*

g. LIABILITY - Under G.S. § 15-16, no sheriff, police department, or other officer shall be liable for any damages or claims arising from the sale or disposition of unclaimed property, provided the sale was conducted in compliance with the provisions contained in Chapter 15.

3. Unclaimed Firearms not Confiscated or Seized as Trial Evidence. (G.S. § 15-11.2)

Unclaimed firearms that have either been found or received by a law enforcement agency may be sold as long as the department complies with certain requirements.

*(**NOTE**: This section does not apply to firearms disposed of pursuant to G.S. § 15-11.1 or G.S. § 14-269.1.)*

a. WAITING PERIOD – The firearm must remain unclaimed by the person who may be entitled to it for at least 180 days from the date of receipt by the law enforcement agency maintaining custody.

b. NOTICE OF UNCLAIMED PROPERTY – After the specified period of time, the department must publish a notice of unclaimed property in a newspaper published in the county. Publication of this notice is required only one time. The notice of unclaimed firearm must contain a brief description of the firearm, specify that the firearm is unclaimed and is in the custody of the department giving notice, and state that any person who may have or claim any interest in the property must report the claim to the department within 30 days of the date of publication of the notice. The notice should also include a statement that any unclaimed property will be sold or otherwise disposed of.

c. DISPOSITION OF UNCLAIMED FIREARM – If the firearm remains unclaimed for 30 days after the notice has been published, then the head or chief of the law enforcement agency shall order the disposition of the firearm in one of the following ways:

1) by having the firearm destroyed if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification and will not be disposed of pursuant to number (3) below. The head or chief of the law enforcement agency must maintain a record of the destruction of the firearm

or

2) by sale, trade, or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable State and federal firearm laws or by sale of the firearm at a public auction to persons licensed as firearms collectors, dealers, importers, or manufacturers

*(**NOTE:** This section applies only to firearms with a legible, unique identification number.)*

or

3) by maintaining the firearm for training or experimental purposes or transferring the firearm to a museum or historical society.

d. PROCEEDS OF SALE – The proceeds of the sale shall be retained by the law enforcement agency for law enforcement purposes. The receiving law enforcement agency must maintain a record and inventory of all firearms received pursuant to this section, as well as the disposition of the firearm, including any funds received from a sale of a firearm or any firearms or other property received in exchange or trade of a firearm.

4. Claimed and Found Property Other than Firearms

a. CLAIMED PROPERTY - When a person claims to be the rightful owner of property in the possession of a law enforcement agency, that agency should obtain enough information, including identification, to satisfy the agency that the person claiming ownership is the rightful owner. If the agency has doubts regarding the "claimant," or if more than one person claims the same property, the agency should not release the property. The person trying to obtain the property can petition the court for the property. After a hearing to determine ownership of the property, the court will enter an order designating the person (or persons) to whom the agency should release the property.

b. FOUND PROPERTY - Often citizens find property with no identification as to ownership and turn in this property to a police department or sheriff's office. When the original owner fails to file a lost property report or otherwise cannot be located, the department must decide whether to return the found property to the citizen or to dispose of it as unclaimed property.

If the original owner is not found, and the finder of the property does not request that the property be returned to him, then the property meets the definition of unclaimed property and should be disposed of in the manner outlined above. However, if the true owner cannot be found, and the finder does request that the property, usually money, be returned to him, then the property is **not** unclaimed property.

Many people remember the old saying "Finders keepers, losers weepers." The finder of lost property is a holder of the property in trust for the true owner, with certain rights and obligations. Ray Andrew Brown, The Law of Personal Property § 3.1 at 24 (3d ed. 1975). The finder of lost property has a better claim and right to the found property than anyone else, except, of course, the original and rightful owner. Thus, the department should make reasonable and just efforts to find the original owner and restore his property to him. It is advisable for the department to keep the property for at least 60 days prior to returning it to the finder. If the department is unsuccessful in locating the original owner, after a reasonable effort, the finder is entitled to the property.

5. DNA and other Biological Evidence (G.S. § 15A-268)

A custodial agency must preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution.

*(**NOTE:** Disposition of blood and urine specimens subject to chemical analysis under G.S. § 20-139.1 is subject to the specific provisions of that statute. See number 6 below.)*

a. Biological evidence includes:

1) The contents of a sexual assault kit; or

2) Any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably incriminate or exculpate any person in the criminal investigation.

b. The time periods for which evidence must be maintained are contained in G.S. § 15A-268(a6).

c. A custodial agency must preserve any physical evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Upon written request by the defendant, the custodial agency must prepare an inventory of the biological evidence relevant to the defendant's case that is in the agency's custody. If the evidence was destroyed through court order or other written directive, the custodial agency must provide the defendant with a copy of the court order or written directive. Custodial agencies may dispose of biological evidence prior to the expiration of the period of time set out in G.S. § 15A-268(a6) if the following statutory requirements are met:

1) The agency notifies the District Attorney of the agency's intent to dispose of the evidence;

2) The District Attorney sends a written notice to the proper parties including the defendant;

3) 90 days lapsed from the receipt by the defendant of the DA's notice and the custodial agency did not receive a written request to preserve the evidence.

If the custodial agency receives a written request for preservation, there must be a court hearing. The court's decision will be a final and appealable order. The defendant shall have 30 days to file this appeal.

The custodial agency must not dispose of the evidence while an appeal is pending or before the expiration of the time to appeal.

6. Blood and Urine Specimens for DWI Investigations (G.S. 20-139.1)

Notwithstanding any other provision of law, a blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance pursuant to G.S. 20-139.1 may be destroyed by the analyzing agency 12 months after the later of (1) when the case is filed or (2) when the case is concluded in the trial court and not under appeal. The agency need not provide notice to the parties. However, if either party has filed a motion to preserve such evidence, the evidence shall remain in the custody of the analyzing agency or the collecting agency until a court of

competent jurisdiction issues a dispositive order.

II. GOVERNMENT OWNED PROPERTY

City, county and state governments are authorized to purchase and/or otherwise acquire equipment and other necessary materials for use by their employees. For law enforcement agencies, these purchases range from uniforms and badges to patrol cars and weapons. This section will discuss the methods by which governmental agencies are authorized to dispose of property owned by them.

A. STATE

State law enforcement agencies must abide by Chapter 143C of the North Carolina General Statutes in disposing of any surplus or used property. Although the agencies may actually conduct the sale of their property, they must coordinate their efforts with the North Carolina State Surplus Property Agency.

Any governmental agency or non-profit organization may buy state property directly from the agency for a pre-set price, without having to submit to the bidding process. If the surplus is not disposed of in this manner, it is placed for sale on a bid sheet at State Surplus.

(***NOTE**: G.S. § 143-63.1 provides certain exceptions for the sale of surplus firearms by a state law enforcement agency. With the exception of the Highway Patrol, SBI, and the North Carolina Division of Adult Correction of the Department of Public Safety, no state law enforcement entity may directly dispose of its surplus firearms. See Section III, B., 4.*)

B. CITY AND COUNTY (Chapter 160A, Art. 12 (160A-266) and Chapter 153A, Art. 8, Part 3 (153A-176)).

The city or county may dispose of real or personal property belonging to it by: 1) private negotiation and sale; 2) advertisement for sealed bids; 3) negotiated offer, advertisement, and upset bid; 4) public auction; or 5) exchange. Section 153A-176 makes the same provisions in Chapter 160A apply to county agencies.

1. Private Negotiation and Sale (G.S. § 160A-266(b))

A city or county may by private negotiations and sale, dispose of personal property valued at less than $30,000.00 for any one item or group of similar items.

Generally, real property of any value or personal property valued at $30,000.00 or more may be exchanged or sold by any other permitted method other than private negotiations and sale. However, real property of any value or personal property valued at $30,000.00 or more for one item or group of similar items may be disposed of by private negotiation and sale where:

a. said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to

other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and

b. said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and

c. where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

   See G.S. § 160A-279 for exceptions for sales to public or private entities which carry out a public purpose, particularly the provision regarding surplus automobiles).

d. When the council/board wants to dispose of property by private sale, it must, at a regular meeting, adopt a resolution authorizing an appropriate city/county official to dispose of the property by private sale at a negotiated price. The resolution must identify the property to be sold and may specify a minimum price. A notice regarding the resolution shall be published once, and no sale may be held until 10 days after its publication. (G.S.§ 160A-267)

e. A city/county may also adopt regulations allowing the disposal of property valued at less than $30,000. The regulations shall require fair market value for all disposed property, may provide that notice be published, and may authorize certain officials to determine what personal property is surplus and its fair market value. A written report on property disposed in this manner shall describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or consideration received.

   (Note: A city/county may discard any personal property that is determined to have no value, remains unsold or unclaimed after the city/county has exhausted efforts to sell the property using applicable procedure under Article 12 of Chapter 160A, or poses a potential threat to the public health or safety.)

2. Advertisement for Sealed Bids (G.S. § 160A- 268)

The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for the opening bids.

3. **Negotiated Offer, Advertisement, and Upset Bids** (G.S. § 160A- 269)

A city/county may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. If the council/board accepts an offer, the person making the offer must deposit 5% of his bid with the city/county clerk. A notice of this offer, including a general description of property and the amount of terms of the offer, must be published and then within 10 days, any person may raise the bid by not less than 10% of the first $1,000.00 and 5% of the remainder. This new bidder must also deposit 5% of the increased bid with the city/county clerk. The clerk must re-advertise the offer at the increased bid. This procedure will continue until there are no further upset bids, with the sale going to the highest bidder if accepted by the council. The council may reject any and all offers at any time.

4. **Public Auction** (G.S. § 160A- 270)

The council/board shall at a regular meeting adopt a resolution authorizing a public auction of real or personal property. The resolution shall identify the property to be sold and set out the date, time, place and terms of the sale. The resolution may, but not need, require the highest bidder to make a bid deposit in a specified amount. The resolution must state that any offer or bid must be accepted and confirmed by the council/board before the sale will be effective. The resolution shall be published at least once and not less than thirty days before the auction for real property and at least once and not less than ten days before the auction for personal property. The council may conduct an electronic auction. Notice of an electronic auction must meet the same notice requirements as for public auctions and provide the electronic address where information about the property may be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means shall be approved by the governing board of the political subdivision.

5. **Exchange** (G.S. § 160A- 271)

A city/county may exchange any of its real or personal property by private negotiations for full and fair consideration. A resolution must authorize the exchange. Notice of the exchange shall be given by publication at least 10 days prior to the resolution being taken up by the council/board. This notice must include a description of the property and the consideration being exchanged. Additionally, G.S. § 143-129.7 allows the state and local governmental entities to include an offer to "trade in" property when setting specifications for the purchase of supplies, materials, and equipment.

III. SPECIAL SITUATIONS

Without a doubt, a vast majority of the property seized or confiscated by law enforcement constitutes illegal or dangerous possessions that may be destroyed pursuant to a court order authorized by Chapter 15 when the property is no longer needed as evidence. Destruction by officers should follow the

department's procedure and certainly should be recorded. Other Chapters in the North Carolina General Statutes address unique items as discussed below.

A. Alcohol and Gambling

1. **Alcohol** (G.S. § 18B-503)

Before trial, a judge may order that the alcoholic beverages be destroyed, sold or stored. Non-taxpaid alcohol and malt beverages should never be sold.

After trial, if the defendant is found guilty of the charge relating to the alcoholic beverages, the judge may order the sale or destruction of the alcohol. If the charges against the defendant are resolved in his favor, the alcohol should be returned to him as long as possession of the alcohol is lawful; otherwise it must be sold or destroyed.

Wine, fortified or unfortified, is to be sold at public auction, unless those wines would likely become spoiled or lose value in the time required to arrange a public auction. If spoilage is likely, the wine may be sold at a wholesale price, determined by the Commission, to one or more people with the proper wine permits. Liquor is to be sold only to the local ABC board serving the city or county where the liquor was seized, or if there is no local ABC board, to the nearest local board. The sale price of the liquor shall be at least 10% less that the price the local board would pay for the same liquor bought through the State warehouse. The proceeds of the sale shall be paid to the school fund. The defendant may receive the proceeds only if the charges are resolved in his favor and his possession was lawful at the time the alcohol was seized. The agency making the sale may deduct and retain the amount of the cost to store and conduct the sale from the proceeds to the school board but may not deduct those costs when the proceeds are to be turned over to the owner or possessor of the alcoholic beverages. (See G.S. § 18B-503 for the provisions regarding the disposition of seized alcoholic beverages.)

2. **Gambling** (G.S. § 14-299)

Except as provided in Chapter 18C of the General Statutes or in G.S. § 14-292, the disposition of money and property used in gambling is governed by G.S. § 14-299. Money seized shall be turned over to the treasurer of the general fund of the county in which it is seized. Property seized which is only suitable for gambling must be destroyed. All other property seized shall be sold and the proceeds shall be paid to the treasurer of the general fund of the county.

B. WEAPONS

1. **Deadly Weapons** (G.S. § 14-269.1)

Upon conviction of any person for violation of G.S. §§ 14-269 (carrying a concealed weapon), 14-269.7 (possession of handgun by a minor), or any other offense involving the use of a deadly weapon (referred to in G.S. § 14-269), the weapon shall be ordered

confiscated and disposed of by the presiding judge in his discretion in one of the following ways:

a. By ordering the weapon returned to its rightful owner, when:

1) The person is not the defendant, and has filed a petition for recovery of the weapon at the time of the conviction; and

2) The judge finds that the person is entitled to possession of the weapon, and was unlawfully deprived of the weapon without the person's consent.

b. By ordering the weapon turned over to the sheriff of the county of trial or his authorized agent to be destroyed if the firearm does not have a legible, unique identification number or is unsafe for use because of wear, damage, age, or modification. The sheriff must maintain a record and inventory of all weapons destroyed.

c. Order the weapon, if the weapon has a legible unique identification number and there has been a written request by the head or chief of the law enforcement agency, turned over to a law enforcement agency in the county of trial for the official use of such agency or for sale, trade or exchange by the agency to a federally licensed firearm dealer in accordance with all applicable state and federal firearms laws. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received. If the agency sells the firearm, the proceeds shall be given to the county finance officers, as provided in G.S. § 115C-452, to be used for the public school fund.

d. Order the weapon turned over to the North Carolina State Crime Laboratory's weapons reference library for official use by that agency. The Crime Lab shall maintain a record and inventory of all weapons received.

e. Order the weapon turned over to the NC Justice Academy for official use by that agency. The Academy shall maintain a record and inventory of all weapons received.

2. Firearms and Domestic Violence Orders (G.S. § 50B-3.1)

Upon the issuance of an emergency or ex parte domestic violence protection order, the court must order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds that any of the following have occurred:

a) The defendant has used or threatened the use of a deadly weapon or exhibited a pattern of prior conduct involving the use or threatened use of a firearm against persons;

b) The defendant threatened to seriously injure or kill the aggrieved party or minor child;

c) Defendant threatened to commit suicide; or

d) The defendant has inflicted serious injuries upon the aggrieved party or minor child.

1. Surrender and Storage

Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership or control of the defendant. If this is not possible at the time the order is served, the defendant shall surrender the items within 24 hours of service at a time and place specified by the sheriff.

The sheriff must store the firearms or contract with a licensed firearms dealer to provide storage and may charge the defendant a reasonable fee for such storage of firearms and ammunition. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

The fees are payable to the sheriff. The sheriff must then transmit the fees to the county finance officer and the fees are earmarked for the use of the sheriff in implementing this law or for any other law enforcement purpose. The sheriff will not release firearms, ammunition, or permits without a court order granting the release, and defendant shall remit all fees owed prior to the return of any such items.

2. Retrieval

Pursuant to G.S. § 50B-3.1(e), if the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. This provision pre-supposes the court has entered an order for the return of the items.

3. Motion for Return by Defendant (G.S. § 50B-3.1(f))

The defendant may request the return of firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the

current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order no later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court will schedule a hearing and provide written notice to the

plaintiff and the sheriff who each have a right to attend the hearing and be heard. After a hearing the court must determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. This inquiry will include the following questions:

a) Whether the protective order has been renewed.

b) Whether the defendant is subject to any other protective orders.

c) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law. A finding that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law will result in the court's denial of the return of firearms, ammunition or permits.

d) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the Current Protective Order.

4. Motion for Return by Third Party Owners (G.S. § 50B-3.1 (g))

A third party owner of firearms, ammunition, or permits may also file a motion requesting the return of any such items to that party that are in the possession of the sheriff seized as a result of the entry of a domestic violence protective order as long as:

a) The motion is filed no later than 30 days after seizure by the sheriff AND

b) The third party is eligible to possess such items. If the court, upon a hearing, determines that the third party is disqualified from owning or possessing above items pursuant to State or federal law, return of the items will not be ordered. Then weapons should be disposed of as described below.

5. Disposal of Firearms (G.S. § 50B-3.1(h))

The sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and apply to the court for an order of disposition of the firearms, ammunition, or permits if:

a) The defendant does not file a motion requesting the return of any firearms, ammunition or permits surrendered within the time period described above;

b) The court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered; or,

c) The defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of firearms, ammunition, or permits.

Upon a hearing, the judge may order the disposition of the firearms, ammunition, or permits in accordance with G.S. § 14-269.1, subsections (4), (4b), (5), or (6).

(**NOTE**: If a sale by the sheriff occurs, the proceeds, after deducting any cost associated with the sale, shall be provided to the defendant only if requested by the defendant by motion before the hearing and ordered by the judge.

3. Other Seized Weapons

In some cases, a weapon may be seized although there is no conviction or arrest for a crime. Also, weapons may be found and turned into a law enforcement agency, or abandoned and received by the agency. Whenever the weapon is in the possession of the law enforcement agency, but does not involve a conviction provided for in G.S. § 14-269.1, the provisions of G.S. § 15-11 through G.S. § 15-17 govern the disposition of the weapon. These statutes are discussed at the beginning of this publication. (*See* Section I)

4. Weapons Owned by Law Enforcement Agencies

Many times state law enforcement agencies have weapons that they can no longer use or have accumulated over a period of time. These weapons are surplus property and should be disposed of through the North Carolina Department of Administration.

a. State Agencies (G.S. § 143-63.1)

1) Except as provided below, any employee, officer or official of the State *in the exercise of his official duties* may *not* sell or dispose of any pistol, revolver, shotgun or rifle to any person, firm,

corporation, county or local governmental unit, law enforcement agency, or other legal entity.

2) The Department of Administration, in the exercise of official duty, may sell any pistol, revolver, shotgun or rifle in its possession to any county or local governmental unit, law enforcement agency in the State. The law enforcement agency must file a written and notarized statement with the Department of Administration certifying that the weapon is needed in law enforcement by the agency.

3) All weapons not sold within one year of being declared surplus shall be destroyed by the Department of Administration.

4) The North Carolina State Highway Patrol, North Carolina State Bureau of Investigation, and the North Carolina Division of Adult Correction of the Department of Public Safety may sell, trade, or dispose of any or all surplus weapons they possess to any federally licensed firearms dealer in a manner prescribed by the Department of Administration. Any money or property from the sale, trade or disposal shall go to the general fund.

   Surplus weapons are sold through the State Surplus office upon notification to the office that such weapons are surplus. The office shall make available to federal firearms dealers a list of weapons to be sold and a statement of when they may be inspected. Sales shall be made by sealed bids.

b. Retired and Deceased Members of State and Local Law Enforcement Agencies (G.S. § 20-187.2)

1) Surviving spouses, or if no surviving spouse, surviving children of members of North Carolina State, city or local law enforcement agencies that are killed in the line of duty or who was a member at the time of his/her death, and retiring members of such agencies shall receive, at no charge to them, the badge worn or carried by such deceased or retiring member.

2) The governing body of a law enforcement agency may, in its discretion, award to a retiring member or surviving relatives of the member, upon request, the service side arm of the deceased or retiring member, at a price determined by the governing body.

   The governing body must determine that the retired member or relative is not ineligible to own, possess, or receive a firearm under the provisions of State or federal law.

If the member or relative is ineligible, the weapon shall have been rendered incapable of being fired.

Governing Body:

I) For local ABC officers, the county or local board of alcohol control;
ii) Law enforcement officers of the county, the board of county commissioners;
iii) Law enforcement officers of a municipality or town, the city or town council; or
iv) State law enforcement officers, the head of the department.

3) Active members of state law enforcement agencies, upon change of the type of weapons they use, can purchase the weapons worn or carried by the member at a price equal to the average yield to the State from the sale of similar weapons during the preceding year. (G.S. § 20-187.2(b)).

c. Local agencies (G.S. § 160A-266 and G.S. § 160A-267)

*(**NOTE**: G.S. § 153A-176 makes the same provisions in Chapter 160A apply to county law enforcement agencies.)*

1) A city/county may dispose of weapons owned by it valued at less than $30,000.00 by private negotiations and sale. (G.S. § 160A-266(b)):

a) When a city/county decides to dispose of property by private sale, it must adopt a resolution or order at a regular council meeting authorizing an official to dispose of the weapons at a negotiated price.

b) The resolution or order must identify the property to be sold and may specify a minimum price.

c) A notice summarizing the contents of the resolution or order must be published and no sale can be conducted until 10 days after the notice is published.

2) A city/county may also adopt regulations for disposing of property valued at less than $30,000. (G.S. § 160A-166(c)). Since most weapons owned by a city/county are worth less than $30,000, this procedure may be the easiest.

a) The regulation must be designed to secure fair market value for the property.

b) The regulation may, but need not, require published notice.

c) The regulation may provide for either public or private exchanges and sales.

d) The regulation may authorize one or more officials to declare the property surplus, to set its fair market value, and to convey title to the property for the city.

e) The authorized official must maintain a written report on property disposed of in this manner.

3) Some special problems under G.S. § 14-234.

G.S. § 14-234(a) prohibits any appointed or elected city/county official or employee from buying at a sale of city/county property **if** the official or employee authorized the sale or had control over the sale. If any official violates G.S. § 14-234, the official is guilty of a misdemeanor. There are some exceptions to this prohibition.

G.S. § 14-234(a) does not apply to officials presiding in towns with a population of no more than 15,000 people.

Officers and employees of the city may not be prohibited from buying at the sale. Therefore, law enforcement officers may buy at the sale unless they authorized the sale or had control over the sale.

4) Anyone buying weapons at the city/county sale must obtain a permit as required by G.S. § 14-402.

A law enforcement officer authorized to carry firearms does not have to obtain a permit as long as the officer identifies himself as authorized to carry firearms and that the purpose for purchasing the firearms is directly related to his official duties.

C. UNAUTHORIZED SUBSTANCES TAX (CHAPTER 105, ART. 2D)

Often law enforcement officers seize illegally possessed controlled substances or illicit alcoholic beverages which are possessed along with the fruits or instrumentalities of a crime, such as money or vehicles. If such contraband does not bear the appropriate tax stamp, officers should contact the Controlled Substance Excise Tax Section of the North Carolina Department of Revenue. Pursuant to Article 2D of Chapter 105 of the North Carolina General Statutes, an excise tax is levied on controlled substances or illicit alcoholic beverages possessed by dealers, either actually or constructively.

A dealer is a person who possesses more than:

42.5 grams of marijuana;
7 or more grams of any other controlled substance that is sold by weight;
10 or more dosage units of any other controlled substance that is not sold by weight;
possesses illicit spirituous liquor or illicit mixed beverage for sale; or
possesses mash in violation of Chapter 18B.

The tax levied on controlled substances or illicit spirituous liquor, mash, and illicit mixed beverages are set forth in G.S. § 105-113.107.

The Department of Revenue shall remit 75% of the part of the unencumbered tax proceeds that was collected by assessment to the State or local law enforcement agency that conducted the investigation of the dealer that led to the assessment, with the remainder of the unencumbered tax proceeds credited to the General Fund. If more than one law enforcement agency conducted the investigation, then each agency shall receive an equitable share based upon its contribution to the investigation.

A law enforcement agency must report to the Department of Revenue within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. G.S. § 105-113.108.

D. FORFEITURES

1. ABC Law Violations (G.S. § 18B-504)

If a person violates any of the ABC laws set out in Chapter 18B, the alcohol as well as the property involved in the violation may be confiscated. Section III-A discussed the disposition of the alcohol seized. This section discusses how property subject to forfeiture should be handled.

a. Property subject to forfeiture (G.S. § 18B-504(a)):

1) Any vessel or conveyance used to transport non-tax paid alcohol in violation of the ABC laws; i.e., cars, boats, airplanes;

2) Containers for alcohol made, possessed, sold or transported in violation of ABC laws; and

3) Equipment or ingredients used to manufacture illegal alcohol.

b. Exempt Property (G.S. § 18B-504(b))

If the property can be possessed lawfully but was used unlawfully by someone other than the owner and the owner did not consent to the unlawful use, the property is not subject to forfeiture.

c. Procedure for seizure (G.S. § 18B-504(c))

If property subject to forfeiture has not already been seized as part of an arrest or search, a law enforcement officer must request a court order authorizing a seizure, and may do so only after criminal process has been issued for an ABC law violation. The order must describe the property to be seized and state the facts establishing probable cause to believe the property is subject to forfeiture.

d. Disposition pending trial (G.S. § 18B-504(d))

The law enforcement officer must provide for safe storage of the property.

The officer may destroy stills and perishable materials if storage is impractical and as long as the destruction of the property will not adversely affect the rights of the defendant to defend the charges against him.

The officer may return property to the owner if possession is lawful, the officer is assured that the property will be returned at the time of trial, and the owner gives a bond for the value of the property, signed by sufficient sureties.

e. Disposition after trial (G.S. § 18B-504(e))

After the charge against the defendant is resolved, the presiding judge may do the following:

1) Order property forfeited if the owner/possessor of the property is found guilty, or if ownership cannot be determined with reasonable effort, or if the property cannot be possessed lawfully.

2) Order property returned to the owner/possessor if the charge against the owner/possessor is resolved in his favor.

3) Postpone his order going into effect if the property is needed for an administrative hearing.

f. Disposal of forfeited property (G.S. § 18B-504(f))

1) After the judge has ordered a forfeiture of the property, he may order the property disposed of by sale at public auction, or by sale at auction, after notice to certain individuals who have special use of the property.

2) If the property is not suited for sale, the judge may order the property delivered to a designated state or local law enforcement agency.

(**NOTE**: Preference to be given in the following order: 1) The agency that seized the property; 2) ALE Section; 3) the Commission; 4) Local board of the jurisdiction in which the property was seized; 5) the Department of Justice.)

3) If possession of the property would be unlawful and the property cannot be used for law enforcement, or sale or other disposition is impractical, the judge may order the property destroyed.

g. Proceeds of Sale (G.S. § 18B-504(g))

If the property is sold, the proceeds of the sale, minus the costs of storing the property and conducting the sale, shall go to the school fund in the county in which the property was seized.

h. Innocent Parties (G.S. § 18B-504(h))

The owner of the property or holder of a security interest, if other than the defendant, may apply to a judge to protect his/her interest. If the owner or secured party did not consent to the unlawful use of the property and possession by either would be lawful, the judge may order the property returned if the property is not needed as evidence at trial or order the property to be returned following the resolution of the case. If the property is to be sold after trial, the judge may order a specified sum from the proceeds of the sale be given to the owner or holder of the security interest.

I. Unavailable Defendant (G.S. § 18B-504(I))

If property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture by an action against the property.

If the owner is known and has been charged with an offense but is unavailable for trial, the district attorney may seek forfeiture by an action against the property or by motion in the criminal case.

j. No Criminal Charge is Made (G.S. § 18B-504(j))

If no criminal charge has been made in connection with the seized property, the owner may apply to a judge within a reasonable time to have the property returned to him as long as possession is lawful.

k. Law Enforcement Notification to Commissioner of Motor Vehicles (G.S. § 20-114(c))

Any motor vehicle seized by law enforcement officers for illegal transportation of alcoholic beverages must be reported to the Commissioner of Motor Vehicles.

No sale of the vehicle shall be conducted until notice on a form approved by the Commissioner has been given to the Commissioner 20 days before the sale.

2. **Larceny and Similar Crimes** (G.S. § 14-86.1)

a. Conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. § 14-71 (receiving stolen goods), G.S. § 14-71.1 (possessing stolen goods), G.S. § 20-106 (receiving or transporting stolen vehicles), or used by any person in the commission of armed robbery, common law robbery, or larceny of property valued more than $2,000.00, shall be subject to forfeiture.

b. Exceptions -- No conveyance shall be forfeited if:

1) It was used by a common carrier who had no knowledge of or did not consent to the criminal activity; or

2) The owner of the conveyance had no knowledge of or did not consent to the criminal activity while the conveyance was in the unlawful possession of another person; or

3) The violation was not a felony; or

4) The holder of a bonafide security interest had no knowledge of or did not consent to the criminal activity; or

5) The owner of the conveyance had no knowledge that the conveyance was being used in the commission of criminal activity.

(**Note**: A trial judge in a criminal proceeding may order a seized vehicle to be returned to the owner if he finds the forfeiture inappropriate.)

c. Any property subject to forfeiture may be seized by any law enforcement officer with process issued by a district or superior court judge. Property may be seized without process if the seizure is incident to an arrest or search warrant, or the property has been the subject of a prior judgment in favor of the State.

d. The seized property is in the custody of the law enforcement agency seizing it. After seizure, the law enforcement agency may place the property under seal, remove it to a designated place, or request that the N.C. Department of Justice or Department of Public Safety take custody of the property.

e. The conveyance shall be returned to the owner upon execution of a good and valid bond in a sum double the value of the property. The return shall be conditioned upon the return of the property by the owner on the day of trial.

f. After the conveyance is forfeited, the law enforcement agency may:

1) Retain the property for official use;

2) Transfer any conveyances to the N.C. Department of Justice or Department of Public Safety for official use if ordered by the court after an application was made by one of those agencies; or

3) Sell a vehicle, vessel, or aircraft as surplus property, in the same manner as other vehicles owned by the law enforcement agency, after a determination by the agency director that the vehicle, etc., is of no further use to the agency. The proceeds from such a sale, after deducting the cost of the sale, shall go to the school fund of the county in which the vehicle, etc., was seized.

If any vehicle has been modified to increase speed, it can only be used to perform official duties. These vehicles cannot be disposed of in any other fashion except as junk unless the modification has been removed and destroyed and the vehicle restored to its original manufactured condition.

g. All conveyances subject to forfeiture shall utilize the forfeiture procedures found in G.S. § 18B-504.

3. **Vehicle Seizure and Forfeiture: DWI and Felony Speeding to Elude Arrest**

a. Generally: Sections 20-28.2 through 20-28.9 of the General Statutes govern the seizure, forfeiture, and disposition of motor vehicles involved in any of the following scenarios:

1) The driver is charged with an "offense involving impaired driving," and at the time of the violation the drivers license of the driver was revoked as the result of a prior "impaired driving license revocation" (as defined in G.S. § 20-28.2(a)).

2) The driver is charged with an "offense involving impaired driving," and at the time of the violation the driver was without a valid drivers license <u>and</u> the driver was not covered by an automobile liability policy.

3) The driver is charged with an offense of felony speeding to elude arrest pursuant to G.S. § 20-141.5(b) or (b1).

b. "Offense involving impaired driving" and "impaired driving license revocation"

1) Offenses involving impaired driving (G.S. § 20-4.01(24a)):

a) Impaired driving (G.S. § 20-138.1) and habitual impaired driving (G.S. § 20-138.5);

b) Offenses under G.S. § 20-141.4 when conviction is based upon impaired driving to include: Felony death by motor vehicle, Felony Serious injury by Vehicle, Aggravated Felony Serious Injury by Vehicle, Aggravated Felony Death by Vehicle;

c) Murder, involuntary manslaughter based on impaired driving (G.S. § 14-17 or 14-18);

d) Impaired driving in commercial vehicle (G.S. § 20-138.2);

e) An offense committed in another jurisdiction which prohibits substantially similar conduct as "NC Offenses Involving Impaired Driving"; and

f) A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. § 20-138 or G.S. § 20-139.

2) Impaired driving license revocation (G.S. § 20-28.2(a)): A license revocation resulting from any of the following:

a) Consuming alcohol/drugs while under 21 (G.S. § 20-13.2)

b) Revocation for impaired driving on military base (G.S. § 20-16(a)(8b))

c) Chemical test refusal (G.S. § 20-16.2)

d) CVR revocation (G.S. § 20-16.5)

e) Conviction of impaired driving or commercial DWI (G.S. § 20-17(a)(2))

f) Conviction of habitual DWI (G.S. § 20-138.5)

g) Transporting open container of alcohol, 2nd or subsequent (G.S. §20-17(a)(12))

h) DWI out-of-state resulting in NC revocation (G.S. § 20-16(a)(7))

I) Manslaughter (G.S. § 20-17(a)(1))

j) Assault with motor vehicle involving impaired driving (G.S. § 20-17 (a)(11))

k) Felony involving use of motor vehicle, involving impaired driving (G.S. § 20-17(a)(3))

l) Felony Death by Vehicle (G.S. § 20-17(a)(9))

m) Out-of-state revocation for an offense which is substantially similar to any of the above (*See* G.S. § 20-28.2(a)(3))

Note: See the Administrative Office of the Courts' website: www.nccourts.org for the commonly used forms regarding DWI vehicle seizure and forfeiture.

c. Charging Officer's Duties (G.S. § 20-28.3(b))

A charging officer with probable cause to believe that a motor vehicle may be subject to forfeiture under section 20-28.3 shall seize the motor vehicle and have it impounded, except when the officer determines prior to seizure that the vehicle has been reported stolen. Neither shall the officer seize the vehicle if he or she determines it is a rental vehicle driven by a person other than the authorized driver on the rental contract, but shall instead make reasonable effort to notify the rental vehicle owner. For purposes of the officer's actions under this section, probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division of Motor Vehicles, or other reliable sources. The seizing officer shall notify the DMV of the seizure as soon as practical but no later than 24 hours after the seizure in accordance with procedures established by the DMV.

d. Notifications and Actions by DMV (G.S. §§ 20-28.2(c1), 20-28.3(b1), (b2))

Within the time periods specified by statute, the DMV must provide written notifications to any lienholder(s) of a seized vehicle and to any motor vehicle owner who was not operating the vehicle at the time of the offense. If a vehicle subject to forfeiture was damaged during the defendant's operation while committing the underlying offense resulting in seizure, the DMV shall direct the payment of insurance proceeds by any insurance company of record to the clerk of superior court of the county where the defendant was charged, to be disbursed pursuant to further court order.

e. Review by Magistrate (G.S. § 20-28.3©)

If a charging officer determines there is probable cause to support a vehicle seizure, he or she shall present to a magistrate of the county where the driver was charged an affidavit of impoundment setting forth the basis for the vehicle seizure. The magistrate determines, based upon a review of the affidavit of impoundment, whether the requirements of section 20-28.3 have been met. If so, the magistrate shall order the vehicle held. If not, the magistrate shall order the vehicle released to a vehicle owner upon payment of towing and storage fees. If the vehicle has not yet been seized, and the magistrate determines seizure is

appropriate, the magistrate shall issue an order of seizure of the vehicle. A copy of the order shall be provided to the clerk of court, who will provide copies to the district attorney and the attorney for the county board of education.

Affidavits for impoundment are AOC-CR-323A for offenses involving impaired driving and AOC-CR-323B for felony speeding to elude arrest.

Note that a magistrate may consider other information besides the affidavit of impoundment and may hear from the defendant, if present.

f. Towing and Custody of Seized Vehicle (G.S. §§ 20-28.3(d), 20-28.9)

If a statewide or regional contract is in place, the seized vehicle shall be towed in accordance with the contract and delivered to a designated location or agent to be held in the constructive possession of the Department of Public Instruction. If a contract with the county board of education is in place, the vehicle shall be towed in accordance with the contract and delivered to a designated location or agent to be held in the constructive possession of the county board of education. If no towing contract is in place, the seized vehicle shall be towed by a commercial towing company designated by the seizing law enforcement agency. In this event, the vehicle shall then be retrieved by the county board of education within a reasonable time, not to exceed ten (10) days, and the county board of education must pay towing and storage fees to the commercial towing company upon retrieval of the vehicle.

Provisions governing storage of vehicles by a county board of education or by the Department of Public Instruction are governed by G.S. § 20-28.3(d) and G.S. § 20-28.9, respectively. Storage fees charged by either government entity or by a private entity must be reasonable and must not exceed ten dollars ($10.00) per day.

g. Pretrial Release of Seized Vehicle (G.S. § 20-28.3(e)-(e3))

In various instances, the vehicle may be released to a vehicle owner or lienholder before the criminal trial. In all such cases, the towing and storage fees must be paid by the party seeking release, (G.S. § 20-28.3(n)) along with any other applicable conditions. See the statutes listed below for detailed information regarding the process by which the following individuals may seek pretrial release of a vehicle. Any such release must be by petition to the clerk of court in the county where the criminal charges are pending.

1) Non-driving owner (G.S. § 20-28.3(e))
2) Innocent owner (G.S. § 20-28.3(e1))
3) Lienholder (G.S. § 20-28.3(e3))
4) Defendant owner – impaired driving offense (G.S. § 20-28.3(e2)(1))
5) Defendant owner – felony speeding to elude (G.S. § 20-28.3(e2)(2))

h. Rights and Powers of County Board of Education (G.S. § 20-28.3(h)-(k))

Additional rights and powers of the county board of education, including with respect to negotiations for insurance proceeds, expedited vehicle sales, and appearance in forfeiture proceedings, are set forth in the statute. Expedited vehicle sales may be conducted at any time when storage fees exceed 85% of the vehicle value or with the consent of all motor vehicle owners consent. If the vehicle is worth $1,500 or less, it may be sold after 90 days of storage.

I. Trial Priority (G.S. § 20-28.3(m))

Trial priority and appeals to superior court for offenses involving forfeitures of motor vehicles are governed by this section. District court trials of cases involving seized vehicles "shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever occurs first." Continuance from that schedule will be allowed only for compelling reason on written motion. (There is no similar rule applicable to felony charges involving seized vehicles.) (G.S. § 20-28.3(m))

j. Forfeiture Hearing; Disposition; Restitution (G.S. §§ 20-28.2, 20-28.3(l))

If the defendant is convicted of a charge supporting forfeiture and the vehicle has not been permanently released, the court must hold a forfeiture hearing (at any of the times permitted by statute) to determine whether, by the greater weight of the evidence, forfeiture is required. (G.S. § 20-28.2(b)-(b2), (d)) If so, the vehicle shall be ordered forfeited unless a motor vehicle owner establishes, by the greater weight of the evidence, that he or she is an innocent owner as defined by G.S. § 20-28.2(a1)(2) and subject to the provisions of G.S. § 20-28.2(e).

In any case where the vehicle is ordered forfeited, the judge shall either 1) authorize the sale of the vehicle at public sale or allow the county board of education to retain the vehicle for its own use in accordance pursuant to G.S. § 20-28.5; or 2) order the vehicle released to a lienholder pursuant to G.S. § 20-28.2(f). Additionally, the judge shall order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education. The judge shall further order any outstanding insurance claims be assigned to the county board of education.

Additionally, a convicted defendant shall be ordered to pay restitution, if applicable, pursuant to G.S. § 20-28.3(l). Pursuant to G.S. § 20-54.1, the DMV shall revoke the registration of any and all motor vehicles registered to the defendant. The DMV shall revoke the registration of the seized motor vehicle, and the owner of the vehicle shall not be allowed to register said vehicle until the

convicted defendant's drivers license has been restored. However, the DMV shall not revoke the registration of an innocent owner.

In the event a defendant is not convicted, whether due to dismissal of the charge(s) or finding(s) of not guilty, or the judge finds the criteria for forfeiture are not met, the vehicle will be released to the vehicle owner subject to the provisions of G.S. § 20-28.4, provided the vehicle was not already released to a lienholder.

4. Vehicle Seizure and Forfeiture: Prearranged Speed Competition
(G.S. § 20-141.3(g))

a. Seizure: When a law enforcement officer discovers that a person has operated or is operating a motor vehicle willfully in prearranged speed competition with another motor vehicle on a street or highway, the motor vehicle must be seized and delivered to the sheriff of the county in which such offense is committed or to the constructive possession of said sheriff if delivery of actual possession is impractical.

b. Restoration Bond: The sheriff shall restore possession of the seized vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property. This bond shall be approved by said sheriff and be conditioned upon the return of the motor vehicle to the sheriff on the trial date of the person(s) accused.

c. Disposition After Trial: Upon acquittal on the charge of prearranged speed competition, the sheriff shall return the vehicle to the owner thereof.

Upon conviction of an operator in violation of G.S. § 20-141.3(a), the court shall order a sale at public auction of the vehicle. The officer making the sale, after deducting the expenses of keeping the vehicle, the fee for the seizure, and the costs of the sale, shall pay all bona fide liens, according to priority, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for the purpose. All liens against the sold vehicle shall be transferred from the vehicle to the proceeds of sale. The balance of proceeds shall be paid to the proper officer of the county who receives fines and forfeitures used for the school fund of the county.

d. Innocent Owner: A vehicle owner may, at the time of the hearing or through other proceeding in which the matter is considered, attempt to establish to the satisfaction of the court that the vehicle was used for a prearranged speed competition without the owner's knowledge or consent, and that the owner had no reasonable grounds to believe the vehicle would be used for such purpose. If the court so finds, it shall not order a sale of the vehicle but shall restore it to the

owner. The vehicle owner is entitled, upon request, to a trial by jury on such issues.

e. Unknown Owner: If the owner of the vehicle cannot be found, the taking of the vehicle and a description thereof shall be advertised in some newspaper published in the city or county where taken, or, if no such newspaper is available, in a newspaper having circulation in the county, once a week for two weeks, and by handbills posted in three public places near the place of seizure. If said owner does not appear within 10 days after the last publication of the advertisement, the property shall be sold or otherwise disposed of in accordance with the statute.

f. Reclamation by Lienholder: Upon timely petition by a lienholder, the court, in its discretion, may allow reclamation by the same. In such event, the lienholder must file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the lien amount.

g. Specially Equipped or Modified Vehicle: For any vehicle seized pursuant to this statute and found to be specially equipped or modified from its original manufactured condition in order to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court finds it is impractical to do so, the court may order the vehicle turned over to such governmental agency or public official within its territorial jurisdiction as the court shall see fit, to be used in the performance of official duties only. In such case, vehicle will not be available for resale, transfer, or disposition except as junk. Nothing in this section of the statute shall affect the rights of lienholders and other claimants as set forth in G.S. § 141.3.

5. Racketeer Influenced and Corrupt Organizations Act (RICO) Chapter 75D

Chapter 75D of the North Carolina General Statutes, the RICO Act, makes it a civil offense to engage in, directly or indirectly participate in, or maintain any interest in a racketeering activity. Any property used for or derived from a racketeering activity is subject to forfeiture to the State. The Attorney General institutes the civil forfeiture proceeding.

Any questions concerning RICO should be directed to:

North Carolina Department of Justice, Special Litigation Section: (919) 716-6900.

6. Controlled Substances Act Violations (G.S. § 90-112 - G.S. § 90-113.2).

Certain property may be forfeited when a person has committed an offense under the Controlled Substances Act.

a. Property subject to forfeitures (G.S. § 90-112):

1) All controlled substances; and

2) All money, raw materials, products, and equipment acquired, used, or intended for use in violation of the statute; and

3) All property used or intended for use as a container for property used in violation of this statute; and

4) All conveyances including vehicles, vessels or aircraft which are used or intended for use to unlawfully conceal, convey, transport or in any manner to facilitate the unlawful concealment, conveyance or transportation of property in violation of this statute; and

5) All books, records and research used in the criminal activity.

b. Exceptions -- No conveyance shall be forfeited if:

1) It was used by a common carrier who had no knowledge of or did not consent to the criminal activity;

2) The owner of the conveyance had no knowledge of or did not consent to the criminal activity while the conveyance was in the unlawful possession of another person;

3) The holder of a bona fide security interest had no knowledge of or did not consent to the criminal activity;

4) The violation involved is **not** a felony under this Article.

c. Any property subject to forfeiture may be seized by any law enforcement officer with process issued by a district or superior court judge. Property may be seized without process if the seizure is incident to an arrest or search warrant, or the property has been the subject of a prior judgment in favor of the state. (G.S. § 90-112(b))

d. The seized property is in the custody of the law enforcement agency seizing it and cannot be returned upon request of a person who claims the property was wrongfully taken or detained. Property seized by a State or local law enforcement officer shall be held in safekeeping until an order of disposition is properly entered by the judge. (G.S. § 90-112©)

e. After seizure, the law enforcement agency may place the property under seal, remove it to a designated place, or request that the N.C. Department of Justice take custody of the property. (G.S. § 90-112©).

f. After the property is forfeited, the law enforcement agency may:

1) Retain the property for official use;

2) Sell the property not required to be destroyed and not harmful to the public. Proceeds go to the forfeiture proceedings: sale, seizure, custody, advertising, and court costs;

3) Transfer any conveyances to the N.C. Department of Justice for official use if ordered by the court after application has been made by the NCDOJ;

4) Sell a vehicle, vessel, or aircraft as surplus property, in the same manner as other vehicles owned by the law enforcement agency, after a determination by the agency director that the vehicle, etc., is of no further use to the agency. The proceeds from such a sale shall be turned over to the treasurer to go to the school fund of the county in which the vehicle etc., was seized. If any vehicle has been modified to increase speed, it can only be used to perform official duties and can only be disposed of as junk. (G.S. § 90-122(d)).

g. Substances included in Schedules I through VI (G.S. § 90-89 through G.S. § 90-94) and any plants from which substances in Schedules I, II, and VI may be derived in violation of this statute are contraband and shall be summarily forfeited to the State.

If a person occupying or controlling the land upon which the plants are growing or being stored cannot produce proof that he has lawful authority to grow or store the plants, then the plants shall be seized and forfeited. (G.S. § 90-112(e)).

h. All other property subject to forfeiture shall be forfeited as in the case of conveyances used to conceal, convey, or transport alcoholic beverages. (G.S. § 90-112(f)).

I. In any proceeding in court for a forfeiture of a conveyance under this section, the court shall have exclusive jurisdiction to continue, remit or mitigate the forfeiture. The burden of proving any exemption or exception set forth in this Article shall be on the person claiming its benefit. No liability shall be imposed based on this Article upon a duly authorized officer, engaged in the lawful enforcement of this Article. (G.S. § 90-112.1 and G.S. § 90-113.1.)

7. **Gang Forfeitures** (G.S. § 14-50.23)

The Gang Suppression Act of 2007 requires that all property used or intended for use in criminal street gang activity be seized and forfeited pursuant to the provisions of G.S. § 14-2.3.

E. **WILDLIFE PROVISIONS** (G.S. § 113-136 and G.S. § 113-137)

1. **Authority of Inspectors and Protectors** (G.S. § 113-136)

Wildlife protectors and inspectors have the power of peace officers in North Carolina. Their jurisdiction extends to all matters within the jurisdiction of the Wildlife Resources Commission, including jurisdiction over all offenses involving property of or leased by the Commission and all offenses occurring on wildlife refuges, game lands, or boating and fishing access areas managed by the Commission. They are authorized to make certain arrests without a warrant under G.S. § 15A-401(b) for felonies, breaches of the peace, assaults upon them or in their presence, and offenses flouting their authority or constituting a threat to public peace, when there is probable cause.

2. **Search, Seizure and Confiscation, and Disposition of Confiscated Property.** (G.S. § 113-137)

Every inspector and protector who arrests a person for a violation of the law over which he has jurisdiction can search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person is or might have been arrested. The inspector or protector may seize any fish, wildlife, weapons, equipment, vessels, or other evidence or instrumentalities connected with a violation of which he has probable cause to believe has occurred. If he decides to issue a citation instead of arresting the person he may seize all evidence as to which he has arrest jurisdiction and probable cause.

The provisions for disposition of the property seized by an inspector or protector pending trial and after trial, including sale of the items are set forth in G.S. § 113-137.

(**Note:** The wildlife provisions are very detailed. For questions concerning the statutes, contact the Attorney General's Office at (919) 716-6800.)

a. If the owner satisfies the authorities that he is an innocent owner without knowledge or guilt, the property must be returned to the owner. If after due diligence, the owner cannot be determined or located, the property may be sold.

b. The Commission may provide for summary disposition of live or perishable fish or wildlife seized. This means that the inspector or protector may seize and immediately dispose of the wildlife without a court order. If the property consists

of live fish and can be returned to the waters, the inspector or protector may require the person in possession to transport it back to the waters. If the person refuses to return it back, the protector must take appropriate steps which may include seizure of the vessel if the vessel was one on which the fish were located or was used to take the fish. (G.S. § 113-137(d)).

If the fish or wildlife are dead or cannot be returned to the waters, the protector must dispose of it in a charitable or noncommercial manner in accordance with the directions of his administrative superiors.

c. Pending trial (G.S. § 113-137(e))

1) An inspector or protector may make his own provisions for storing or safekeeping the property before trial. He may deposit it with the sheriff. If there is a charge for storing the property, the charge is to be paid: by the defendant, if convicted and the property is returned to him; from the proceeds of the sale of the property if sold under court order; or by the Department of Environment or Natural Resources or the Wildlife Commission.

2) The protector may leave the property with the defendant with the understanding that the property is subject to the orders of the court when the case is disposed of. The property should not be left with the defendant if there is any risk that the property will be used in further unlawful activity. (G.S. § 113-137(f))

3) When the pending prosecution involves seized saleable, and perishable or seasonal fish, the protector may apply to the court for an order permitting the sale of the fish. The proceeds of the sale shall be deposited with the court. If the sale is not lawful for public health reason, is impractical, or if prosecution is not pending, disposal of the fish is to be conducted in a charitable and noncommercial manner according to the administrative superiors. (See G.S. § 113-137(d) and (g))

4) Pending trial, the defendant or owner of any non-perishable and non-consumable property seized may apply for return of the property and the property must be returned if possession would not be unlawful and the defendant or owner posts a bond for double the value of the property.

d. After trial

1) Upon a conviction of the defendant, the court disposes of the seized property.

The Wildlife Resources Commission may confiscate weapons, equipment, vessels, conveyances, fish, wildlife, and other evidence or fruits of the offense whether or not seized before trial. If lawfully saleable, the property must be sold; otherwise, it must be disposed of in accordance with this section.

The Commission may provide for an orderly public sale which may include turning the property to be sold over to another agency for sale. If the property cannot be sold lawfully, or is unlikely to sell for a sufficient amount to cover the costs of the sale, the Commission may order the destruction or legitimate utilization of the property by some public agency.

Before sale, the Commission or agency conducting the sale must provide for public notice to allow innocent owners or lienholders to assert their claims on the property. Notice should contain a description of the property and the circumstances of its seizure. If the claims are found to be valid, but the property has been sold, the proceeds from such sale shall go to the claimant entitled to the property.

Proceeds of all sales must be deposited in the school fund of the county in which the property was seized.

2) Upon an acquittal, the property must be returned to the defendant except:

   a) When the property was fish and was disposed of by returning the fish to the waters or in a charitable or noncommercial manner. (See G.S. § 113-137(d));

   b) When possession of the property is unlawful; or

   c) When property has been sold pending trial (See G.S. § 113-137(g)). Therefore, the proceeds of the sale must be paid to the defendant or owner.

3) An acquitted defendant or established owner may want compensation for the wildlife and/or property that was seized and/or disposed. Where property was seized summarily and is not available for return to the defendant, and the defendant was arrested pursuant to probable cause, the acquitted defendant or owner is not entitled to compensation for the property. If the defendant is acquitted of a citation, he or the owner may seek reimbursement for live fish that was seized and summarily disposed. Within twenty days after the final court adjudication of the citation, the

Department of Environment and Natural Resources or Commission must notify the acquitted defendant or established owner of the procedures to be followed to seek reimbursement. The defendant or owner must commence an action for reimbursement within thirty days of the notice. After thirty days, no claim can be asserted. (See G.S. § 113-137(e))