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HEARINGS FOR PERSONS WHOSE VEHICLES HAVE BEEN TOWED BY LAW ENFORCEMENT OFFICER--ROUND TWO

Joan G. Brannon

On July 1, a new statute (G.S. 20-220 through -225; Ch. 420, S.L. 1983) takes effect governing the towing of vehicles by law enforcement officers. The new provision replaces the law enacted by the 1981 General Assembly (G.S. 20-161.2) which automatically expires on June 30. Knowledge about the new law is of particular importance to law enforcement officers since it will have a greater impact on their practice than other officials. Basically the new statute sets out procedures a law enforcement officer must follow before or soon after having a vehicle towed and provides a hearing before a magistrate for those vehicle owners who wish to contest the towing.

TO WHOM DOES THE ACT APPLY

The new law applies to any towing of a vehicle carried out under the direction of any law enforcement officer for any purpose except (1) when seizing a vehicle for forfeiture as allowed by law¹; (2) when seized as evidence in a criminal proceeding; or (3) when seized under execution. The law also applies to a towing from public school grounds pursuant to G.S. 115C-46 or from a state-owned lot pursuant to G.S. 143-340 when the towing is authorized by someone other than a law enforcement officer.

¹Examples of forfeiture laws are G.S. 14-86.1 (vehicles used in the commission of committing a larceny); G.S. 18B-504 (vehicles used to transport nontaxpaid alcoholic beverages); G.S. 90-112 (used to transport controlled substances); and G.S. 113-137 (as evidence of fisheries violation).

If a city or county operates in such a way that when its officers authorize a vehicle to be towed, the city or county itself, rather than the garageman tower, collects the towing fees, it may provide its own hearing procedure. However, the officer authorizing the towing must give notice to the owner, as provided in the section below. The law also allows community colleges or colleges or universities which collect their own towing fees to adopt their own procedures for hearings. It should be remembered that most cities, counties and colleges that tow vehicles do not collect the towing fees themselves. Rather, the officer calls a private tower who tows the vehicle, claims a towing lien in it, and the vehicle owner pays the tower to reclaim the vehicle. In that situation all the provisions of G.S. 20-220 through -225 must be followed.

DUTIES OF LAW ENFORCEMENT OFFICER OR
OFFICER ORDERING TOWING

Towing vehicle with valid registration plate or registration.

If a law enforcement officer² orders the towing of a vehicle that has a valid registration plate or registration, the officer must notify the registered owner of the vehicle of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the violation with which the owner is charged, if any;
- (4) the procedure the owner must follow to have the vehicle returned to him; and
- (5) the procedure the owner must follow to request a probable cause hearing about the towing.

If the vehicle has a North Carolina registration the notice must be given within twenty-four hours after the towing. If the vehicle has an out-of-state registration, the notice must be given within seventy-two hours. The statute provides that the notice must be given by telephone if feasible, and in addition notice must be mailed to the registered owner's last address by first class mail unless he gives a written waiver of notice.

The only time a law enforcement officer is likely to get a written waiver would be if the vehicle owner comes to the office to ask what happened to his car. In that situation the law enforcement officer should tell him about his car and ask him to sign a waiver of written notice. Generally, however, the officer will be notifying the owner over the telephone or will not be able to reach him at all and therefore, the officer must send notice by

²These notice provisions also apply to other persons who authorize a towing from public school grounds under G.S. 115C-46 or from a state-owned lot pursuant to G.S. 143-340(19).

mail. Attached at the end of this memo as Appendix A is a proposed notice to be read over the telephone and to be mailed to the vehicle owner.

Each law enforcement agency should develop a department procedure for notifying persons whose cars are towed. One possibility is to designate one person on duty at each shift to be notified by an officer who orders a vehicle towed. That person would then be responsible for determining the name and last known address of the registered owner, for trying to telephone the owner, and for mailing a copy of the notice to the registered owner. The name and address of the registered owner can be determined through the Police Information Network (PIN) and for vehicles registered in a state other than North Carolina through NLETS. Since the law requires telephone notice if possible, the person designated to give notice after determining the name and address of registered owner should check the telephone directory in the city given to determine if the owner of the vehicle has listed telephone number. If there is no listing in the directory, in my opinion, the department need take no additional steps to try to give notice by telephone and should merely mail the notice first class mail to the owner. If there is a telephone listing, the person designated to give notice should attempt to telephone the owner and should mail a copy of the notice to him. Each department should develop some rules about hours between which notification will be given to vehicle owners and the number of attempts that will be made. The department need not make numerous attempts to telephone the owner. Two or three attempts should be sufficient, and if the call must be made out-of-state at a substantial cost (for instance to California) one call should be sufficient. Even if the owner is given notice over the telephone, written notice must still be mailed to the owner.

Towing a vehicle without valid registration plate or registration.

Whenever a law enforcement officer (or other officer pursuant to G.S. 115C-46 or 143-340) orders a vehicle without a valid registration plate or registration to be towed, the law enforcement officer must make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and notify him in the same manner as the owner of a vehicle with a valid registration plate or registration. However, if such notice cannot be given to the owner, the officer may not authorize the towing of the vehicle unless notice of the proposed towing has been posted on the windshield or some other conspicuous place at least seven days before the towing occurred. Notice by posting need not be given when the vehicle is impeding the flow of traffic or otherwise jeopardizes the public welfare so that immediate towing is necessary. If the vehicle does not have a valid registration the officer should send the vehicle identification number to DMV through PIN to determine whether the vehicle is

registered in North Carolina, and if so, the name and address of the registered owner. Of course if the vehicle has been stolen, it will show up on NCIC. If the owner of the vehicle is determined by this check, the officer tows the vehicle without posting a notice on it and gives notice as provided for a vehicle with a valid registration plate. If the check of the two sources do not indicate the owner and immediate towing is not necessary, the officer should post a notice on the vehicle indicating that it will be towed if not removed within seven days. After seven days the officer may authorize the vehicle to be towed. A copy of a form notice that may be placed on a vehicle is attached as Appendix B at the end of this memo.

Probable Cause Hearing. The new law continues the procedures for contesting a towing now found in G.S. 20-161.2. The owner of the vehicle or any other person entitled to possession (for example, a lienholder after default or a college student) may make a written request for a hearing before a magistrate who will determine if probable cause existed for the towing. The request must be filed in the county where the vehicle was towed. If there is more than one magistrate's office in the county, the request must be filed in the magistrate's warrant-issuing office in the county seat or may be filed in any other office designated to receive requests by the chief district judge. The magistrate must set the hearing within 72 hours of receiving a request. The law requires the owner, the person who requested the hearing if different from the owner, the tower, and the person who authorized the towing to be notified of the hearing but does not specify whether the clerk or magistrate is responsible for giving the notice. The clerk and magistrate in each county should determine the procedure to be used for giving notice. In most cases it will probably be most efficient for the magistrate himself to give the notice since there is such a short time period allowed between the request and the hearing. It would take too long for the paperwork to get from the magistrate's office to the clerk, notice be given to the parties, and then the paperwork returned to the magistrate. Also if a request for a hearing were to be made on Friday at 5 p.m. the hearing would have to be held no later than 5 p.m. on Monday and the clerk's office would be closed all weekend.

Any interested person may present evidence at the hearing. The tower or person who authorized the towing may submit an affidavit rather than appear in person if he so chooses.

At the hearing the magistrate is to determine whether probable cause existed for the towing. For example, if the officer authorized the vehicle to be towed pursuant to G.S. 20-161, the magistrate must find probable cause the believe that:

(1)(a) The vehicle was parked or left standing in violation of the law and (b) that it was interfering with the regular flow of traffic or otherwise constituted a hazard, or (2) that the vehicle

was left standing upon the right-of-way of a public highway for a period of 48 hours or more.

For cities for which the magistrate holds probable cause hearings if an officer authorized the towing because of a violation of a city parking ordinance, the magistrate must find probable cause to believe that the vehicle was parked in violation of the ordinance.

If the vehicle was towed from a handicapped space or for blocking a curb ramp (outside the city limits, or not covered by a city ordinance), it was towed pursuant to G.S. 20-37.6. For a violation of G.S. 20-37.6(e)(1) magistrate must find probable cause to believe that (1) the vehicle was parked in a space designated for handicapped or visually impaired persons; (2) the vehicle did not display the required distinguishing license plate or placard; and (3) that the space was marked by the use of an upright sign marked reserved parking with a handicapped symbol on it. For violation of G.S. 20-37.6(e)(3) the magistrate must find probable cause to believe that the vehicle was parked so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the Building Code or as designated in G.S. 136-44.14. If the vehicle was towed from a fire lane (outside the city limits or not covered by a city ordinance), it was towed pursuant to G.S. 20-162(b). The magistrate must find probable cause to believe that the vehicle was parked upon a public vehicular area, street, highway or roadway in any area designated as a fire lane.

If the vehicle was towed from a state parking lot (pursuant to G.S. 143-340(19)), the magistrate must find probable cause to believe that (1) the lot was clearly designated a state-owned parking lot by a sign no smaller than 24 inches by 24 inches at the entrance and (2) that the car was parked in violation of the "Rules and Regulations Governing State-Owned Parking Lots."

Thus at each hearing, the magistrate must determine the basis for and whether probable cause existed for the towing.

If the magistrate finds probable cause for the towing the tower's lien continues and the tower need not release the vehicle until paid. If no probable cause is found, the lien is extinguished and the tower must return the vehicle to the owner or other person entitled to claim possession who requested the hearing. If the lien is extinguished, the tower may look to the city, county, school or state agency whose officer authorized the towing for compensation. The law requires every agency whose officers authorize the towing of vehicles to provide compensation to the tower if the court finds no probable cause. The law grants a right of appeal from a magistrate's decision to the district court judge.

The owner may obtain possession of his vehicle at any time by paying the towing fee or by posting a bond for double the amount of the towing fee. If the owner posts a bond, the tower may bring an action under Chapter 44A to enforce his lien.

APPENDIX A
NOTICE OF TOWING

To _____
(name of registered owner)

On the _____ day of _____, 19____, at _____
o'clock A.M. |__| P.M. |__| this department authorized the towing of
a vehicle described below which is registered to you.

The vehicle is a _____
(give model, make and year, and color
_____ with a serial identification number of _____
vehicle)
_____ and a license plate number of _____.

The towing was authorized by _____
(name of officer)

The vehicle is now being stored at _____
(give name and address of tower)
_____. (Complete the following sentence only if a violation
has been charged.) You have been charged with a violation of

(insert statute or ordinance)

In order to have your vehicle returned to you, you may go to
the place where it is stored and pay the towing and storage fees or
you may post a bond of double the amount of the towing and storage
fees with the clerk of court. If you wish to contest the towing,
you have a right to a hearing before a magistrate in _____
(where towed)
County. To get a hearing you must present a written request for a
hearing to the magistrate on duty at the warrant-issuing office lo-
cated at _____
(fill in address of warrant-issuing office in county seat)

If you make a written request for a hearing, the magistrate will
set a hearing time within 72 hours after your request. At that
hearing the only question for the magistrate to decide is whether
there was probable cause for the towing of your vehicle. If the
magistrate finds probable cause for the towing, the tower will be
entitled to hold your vehicle until you pay the fees or put up a
bond. If the magistrate finds no probable cause for the towing,
your vehicle will be returned without your having to pay a towing
fee. Either party has a right to appeal an adverse decision by the
magistrate to the district court judge.

If you have any questions about the towing, you may call
Officer _____ at _____.

Signature

Official Title

Type in name of department

APPENDIX B

NOTICE TO BE PLACED ON VEHICLE
WITHOUT REGISTRATION BEFORE TOWING

This vehicle will be towed if it is not removed by

_____ o'clock | | A.M. | | P.M. _____ month

_____ day _____ year

If you have any questions, please contact the _____ (name

_____ at _____ department) _____ (give telephone number)

Signature

Title of officer who placed notice on
vehicle

Type in name of department

APPENDIX C

PROPOSED ORDER BY MAGISTRATE

STATE OF NORTH CAROLINA

ORDER

County of _____

This cause being heard before me, and the claimant, being the [] owner [] person entitled to claim possession of the vehicle described below, having presented evidence, and the tower, the person authorizing the towing of the vehicle, having [] presented evidence by affidavit; [] testified in person; [] not presented any evidence at the hearing.

It is Ordered that

[] there was probable cause for the towing of the vehicle and the tower is entitled to assert his lien in the vehicle.

[] there was no probable cause for the towing of the vehicle, and the tower listed below is hereby ordered to release the vehicle to the claimant without any payment of towing fees, and to proceed to collect the fees from the agency authorizing the towing which is responsible for paying the compensation owed.

Vehicle make, model, year and color	Date issued
License plate number or if none vehicle identification number	Signature
Name of claimant	Magistrate
Name of tower	
Name of agency authorizing towing	