§ 511-c. Seizure and forfeiture of vehicles used in the unlicensed operation of a motor vehicle under certain circumstances. 1. For purposes of this section:

(a) The term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of this chapter.

(b) The term "security interest" shall mean a security interest as defined in subdivision (k) of section two thousand one hundred one of this chapter.

(c) The term "termination of the criminal proceeding" shall mean the earliest of (i) thirty-one days following the imposition of sentence; or (ii) the date of acquittal of a person arrested for an offense; or (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (v) six months from the issuance of an "adjournment in contemplation of dismissal" order pursuant to section 170.55 of the criminal procedure law, where the case is not restored to the court's calendar within the applicable six-month period; or (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the prosecuting authority elects not to prosecute such person.

2. Any motor vehicle which has been or is being used in violation of paragraph (a) of subdivision three of section five hundred eleven of this article may be seized by any peace officer, acting pursuant to his or her special duties, or police officer, and forfeited as hereinafter provided in this section.

3. A vehicle may be seized upon service of a notice of violation upon

the owner or operator of a vehicle. The seized motor vehicle shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers, Rochester and Buffalo the seized motor vehicle shall be delivered to the custody of the police department of such cities and such motor vehicle seized by a member or members of the state police shall be delivered to the custody of the superintendent of state police, together with a report of all the facts and circumstances of the seizure. Within one business day after the seizure, notice of such violation and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the department of motor vehicles or, for vehicles not registered in New York state, such equivalent record in such state of registration.

4. (a) The attorney general in seizures by members of the state police, or the district attorney of the county wherein the seizure is made, if elsewhere than in the cities of New York, Yonkers, Rochester or Buffalo, or where the seizure is made in such cities, the corporation counsel of the city shall inquire into the facts of the seizure so reported to him or her. If it appears that there is a basis for the commencement and prosecution of a forfeiture proceeding pursuant to this section, any such forfeiture proceeding shall be commenced in supreme court not later than twenty days after the date of receipt of a written demand by a person claiming ownership of the motor vehicle accompanied by the documentation required to be presented upon release of the vehicle pursuant to subparagraphs (i), (ii), and (iv) of paragraph (a) of subdivision five of this section.

(b) Where forfeiture proceedings are commenced and prosecuted pursuant to this section, the motor vehicle which is the subject of such proceedings shall remain in the custody of such district attorney, police department or superintendent of state police, as applicable, pending the final determination of such proceedings.

(c) To the extent applicable, the procedures of article thirteen-A of the civil practice law and rules shall govern proceedings and actions under this section.

5. A motor vehicle seized pursuant to this section shall be released when:

(a) (i) Such attorney general, district attorney or corporation counsel has made a determination not to institute forfeiture proceedings pursuant to this section or the time period within which a forfeiture proceeding could have been commenced pursuant to this section has elapsed and no such forfeiture proceeding was commenced or the criminal proceeding has been terminated in favor of the accused, as defined in subdivision three of section 160.50 of the criminal procedure law; and

(ii) The person seeking to claim the motor vehicle has furnished satisfactory evidence of registration and financial security and, if the person was the operator of the vehicle at the time of the violation of paragraph (a) of subdivision three of section five hundred eleven of this article, satisfactory evidence of payment of any fines or penalties imposed in connection therewith; and

(iii) Payment has been made for the reasonable costs of removal and storage of the motor vehicle. The owner of the motor vehicle shall be responsible for such payment provided, however, that if he or she was not the operator at the time of the offense, such person shall have a cause of action against such operator to recover such costs. Payment prior to release of the motor vehicle shall not be required in cases where the seized motor vehicle was stolen or rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a motor vehicle shall be liable for the costs of removal and storage of the motor vehicle to any entity rendering such service; and

(iv) If the motor vehicle is held as evidence, the person seeking to claim the motor vehicle has presented a release from the prosecuting authority providing that the motor vehicle is not needed as evidence.

(b) (i) Pending completion of forfeiture proceedings which have been commenced, the person seeking to claim the motor vehicle has posted a bond in a form satisfactory to such attorney general, district attorney or corporation counsel in an amount that shall not exceed an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle; and

(ii) The persons seeking to claim the motor vehicle has furnished

satisfactory evidence of registration and financial security.

6. Where a demand for the return of a motor vehicle is not made within ninety days after the termination of the criminal proceeding founded upon the charge of aggravated unlicensed operation of a motor vehicle in the first degree, such motor vehicle shall be deemed to be abandoned. Such vehicle shall be disposed of by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, in accordance with section twelve hundred twenty-four of this chapter or as otherwise provided by law.

7. Notice of the institution of the forfeiture proceeding shall be served:

(a) By personal service pursuant to the civil practice law and rules upon all owners of the seized motor vehicle listed in the records maintained by the department, or for vehicles not registered in New York state, in the records maintained by the state of registration; and

(b) By first class mail upon all individuals who have notified such attorney general, district attorney or corporation counsel that they are an owner of the vehicle and upon all persons holding a security interest in such motor vehicle which security interest has been filed with the department pursuant to the provisions of title ten of this chapter, at the address set forth in the records of such department, or for motor vehicles not registered in New York state, all persons holding a security interest in such motor vehicle which security interest has been filed with such state of registration, at the address provided by such state of registration.

8. Any owner who receives notice of the institution of a forfeiture action who claims an interest in the motor vehicle subject to forfeiture shall assert a claim for the recovery of the motor vehicle or satisfaction of the owner's interest in such motor vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action shall assert a claim for the satisfaction of such person's security interest in such vehicle by

intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. If the action relates to a vehicle in which a person holding a security interest has intervened pursuant to this subdivision, the burden shall be upon the designated official to prove by clear and convincing evidence that such intervenor knew that such vehicle was or would be used for the commission of a violation of subparagraph (ii) of paragraph (a) of subdivision three of section five hundred eleven of the vehicle and traffic law and either (a) knowingly and unlawfully benefitted from such conduct or (b) voluntarily agreed to the use of the vehicle for the commission of such violation by consent freely given. For purposes of this subdivision, such intervenor knowingly and unlawfully benefited from the commission of such violation when he or she derived in exchange for permitting the use of such vehicle by a person or persons committing such specified violation a substantial benefit that would otherwise not have accrued as a result of the lawful use of such vehicle. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

9. No motor vehicle shall be forfeited under this section to the extent of the interest of a person who claims an interest in the motor vehicle, where such person pleads and proves that:

(a) The use of such motor vehicle for the conduct that was the basis for a seizure occurred without the knowledge of such person, or if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the motor vehicle in order to avoid the forfeiture of such vehicle; or

(b) The conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the motor vehicle, while such motor vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

10. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the

designated official who instituted the action, or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

(b) Such application for the relief provided in paragraph (a) of this subdivision must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) of this subdivision must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) of this subdivision if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

11. The district attorney, police department or superintendent of state police having custody of the seized motor vehicle, after such judicial determination of forfeiture, shall, by a public notice of at least twenty days, sell such forfeited motor vehicle at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made, provided, however, that the net proceeds of the sale of a motor vehicle seized in the cities of New York, Yonkers, Rochester and Buffalo shall be paid into the respective general funds of such cities, and provided further that the net proceeds of the sale of a motor vehicle seized by the state police shall be paid into the state police seized assets account.

12. In any action commenced pursuant to this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited motor vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited motor vehicle, after deduction of the lawful expenses incurred by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, and storage of the motor vehicle between the time of seizure and the date of sale.

13. At any time within two years after the seizure, any person claiming an interest in a motor vehicle which has been forfeited pursuant to this section who was not sent notice of the commencement of the forfeiture action pursuant to subdivision seven of this section, or who did not otherwise receive actual notice of the forfeiture action, may assert in an action commenced before the justice of the supreme court before whom the forfeiture action was held such claim as could have been asserted in the forfeiture action pursuant to this section. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if the person claiming an interest in the motor vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action, and establishes either of the affirmative defenses set forth in subdivision nine of this section.

14. No action under this section for wrongful seizure shall be instituted unless such action is commenced within two years after the time when the motor vehicle was seized.