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Assessment of Impoundment and Forfeiture Laws for Drivers Convicted of DWI

Phase I Report: Review of State Laws and their Application

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Dr. Marvin Levy served as Contracting Officer's Technical Representative throughout the project.

16. Abstract

Ensuring that DWI offenders who receive the license suspension penalty actually do not drive is a major problem in most states. This is clearly demonstrated by the fact that many suspended drivers continue to be involved in crashes and receive traffic citations during periods of license suspension.

This report covers a study of vehicle impoundment and forfeiture laws and vehicle tag impoundment laws which have potential for preventing illicit driving by suspended DWI offenders.

This is a report by the National Public Services Research Institute to the National Highway Traffic Safety Administration covering Phase I of Contract No. DTNH22-89-C-07026. This report summarizes the results of a study of the laws covering actions against vehicles and vehicle tags designed to discourage or prevent driving by individuals whose licenses have been suspended as a result of Driving While Impaired (DWI) conviction. The final report under this contract will cover Phase II of this research effort; an evaluation of laws in the States of Oregon and Washington which provide for the suspension of vehicle registration and the placing of stickers on vehicle tags by police.

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EXECUTIVE SUMMARY

OVERVIEW

Ensuring that Driving While Impaired[1] offenders who receive the license suspension penalty actually do not drive is a major problem in most states. Many suspended drivers continue to be involved in crashes and to receive traffic citations during periods of license suspension. This Phase I report, submitted to NHTSA by the National Public Services Research Institute, summarizes the findings of a study to identify the major features and application of state laws which aim to deter or prevent DWI by targeting the operator's vehicle (e.g.,impoundment or forfeiture) or license plate (impoundment, family plates, etc.). Phase II of this effort involves an evaluation of the impact effectiveness of laws in Oregon and Washington states directed against the license plates (license plate "sticker" sanctions) of drivers who have had their operator's license suspended as a result of a DWI conviction. A final report on the methodology used and finding from this effort will be prepared during Calendar 1992.

Phase I of this study had three objectives:

1. To identify States with laws providing for the impoundment of vehicle tags or the impoundment and forfeiture of the vehicle itself for the DWI offense or for Driving While Suspended[2] as a result of a DWI offense;

2. To determine the extent to which these laws have been applied, problems associated with their application and actions which might increase their use; and,

3. To determine whether adequate and sufficient data exists to support an impact evaluation of these impoundment and forfeiture laws.

STUDY METHODS

Phase I data were collected between April 1990 and March 31, 1991 (12 months) and involved the following activities:

1. *Review of the State laws* - At a minimum, the laws of every state with an impoundment or forfeiture sanctions program were reviewed and documented.

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[1] States vary in the title applied to their drunk driving law(s). This report uses Driving While Impaired (DWI) to refer to all laws relating to impaired driving.

[2] States vary in the titles applied to the offense of operating a vehicle with a suspended or revoked driving license. This report uses Driving While Suspended (DWS) to refer to such laws.

2. *Review of Reports* - When available, technical reports, dealing with the implementation of a process or an impact evaluation of identified impoundment or forfeiture programs, were reviewed and assessed.

3. *Telephone Contact with Officials* - If the review of laws or reports suggested the program might be a candidate for an effectiveness evaluation, calls were made to state officials to collect information on the use of the law.

4. *Site Visits* - For the most promising candidates, a few states were visited in an effort to obtain more detailed information on the application of the law, relevant issues, problems, etc.

Findings on State Laws Involving Impoundment, Forfeiture and Other Sanctions Directed Against Vehicles and License Plates

A total of 32 states, the Virgin Islands, and the City of Portland Oregon were identified as having one or more laws affecting vehicle registration, vehicle tags, or the vehicle itself which could impact the illicit driving of offenders suspended as a result of a DWI conviction.

Actions against vehicles which states have employed in an effort to limit or eliminate driving by DWIs are as follows:

1. *Vehicle Forfeiture* - involves the state confiscating the vehicle of a DWI offender. States having legislation providing for vehicle forfeiture as a penalty for multiple DWI or DWS offenses include Alaska, California, Maine, New York, North Carolina, and Texas. Two States, Pennsylvania and Tennessee, permit vehicle forfeiture of first-time DWI offenders. Also, one locality (Portland, Oregon) has a local ordinance providing for vehicle forfeiture for driving while suspended as a result of a DWI offense.

2. *Vehicle Impoundment* - Overnight impoundment of the vehicle of an individual arrested for drunken driving is a typical practice in most states. Several States have laws which permit longer term impoundments, usually for repeat DWS or DWI offenders. States with such laws include California, Delaware, Nebraska, New York, New Mexico, Oregon, and Wisconsin. The State of California provides for 30 days impoundment for a first-time DWI offense. Montana provides for impoundment of vehicles of drivers under the age of 18.

3. *Vehicle Immobilization* - Motorists can be prevented from driving their vehicles by police use of a wheel locking "Boot." The State of New Mexico specifically provides for this type of vehicle action.

Many States take action against the vehicle registration and/or the vehicle tag in order to control DWI convicted drivers.

1. *Suspension of Vehicle Registration and License Plate Impoundment* - In a number of States convicted first time or repeat DWI offenders will have their vehicle registration suspended pending demonstration of financial responsibility. Failure by the offender to provide such evidence may result in the withdrawal of registration, and even in the impounding of the vehicle's plates. States with such laws are Arizona, Indiana, Iowa, Minnesota, New Hampshire, New York, North Dakota, Ohio, Oregon, South Dakota, Virginia, and Wyoming.

2. *Special Tags* - Three States — Minnesota, Iowa, and Ohio — have provisions for issuing special plates to drivers with withdrawn vehicle registrations in order to permit the use of the vehicle for vocational purposes or by family members. Minnesota provides for the issuance of plates with special identity numbers to third-time DWI offenders. Ohio provides bright yellow "Family Plates" to first-time or multiple-time DWI offenders at the option of the court.

3. *Sticker Programs* - Oregon and Washington state have laws which provide for the tagging of license plates of cars operated by suspended drivers, where many of the suspensions are related to a DWI offense. The laws involve a roadside procedure in which the police officer takes possession of the vehicle registration and affixes a Zebra-striped sticker to the vehicle tag (over the annual sticker). Suspended drivers who are vehicle owners are not able to show they are properly licensed, and cannot clear their registration and obtain a new license plate. Because police officers can stop these cars without probable cause to check for a valid operator's license, drivers with a suspended license should have a heightened risk of being caught for DWS.

Findings on the Application of Impoundment and Forfeiture Laws

An objective of this study was to determine the extent to which vehicle and vehicle tag impoundment was being applied to DWI offenders. Contacts with state officials and samples of court data indicated that use of vehicle impoundment and forfeiture are rare, both because such laws are generally reserved for the most severe cases (third-time and fourth-time DWI offenders) and because of administrative difficulties in applying these penalties. In most instances, it even proved to be impossible to obtain an accurate count of the vehicle impoundment and forfeiture cases because no state-wide data system exists for recording these actions. [It would be necessary to review the trial records in every court jurisdiction in a state to obtain these data.] Actions against the vehicle tag were easier to evaluate because state-wide records of such actions are available. For example, information on sticker plate programs indicated that these programs affect a sizeable number of DWI cases (1,200 to 10,000/year).

None of the contacts made in this study led to the identification of an impoundment or forfeiture program that had been demonstrated to be effective in reducing illicit driving and recidivism among DWI offenders.

Factors Which are Important in Implementing These Programs

1. *Owner Records* - While determining the ownership of the vehicle would appear to be a straightforward matter (requiring only a quick check of the Department of Motor Vehicles (DMV), Vehicle Registration File), ownership records are not routinely obtained by the courts. Problems also arise where there is joint ownership. Further, some defendants are successful in transferring ownership before a court appearance or before the DMV can take action against their registration.

2. *Seizure, Storage and Sale of Vehicles* - Problems encountered by communities in seizing and storing vehicles include liability for the vehicle seized and paying for towing and storage charges. These charges can be a major issue when the sale of such vehicles does not cover the towing and storage costs incurred and the community has to pay the difference.

3. *Paperwork Concerns* - Processing the paperwork required to seize, impound, or forfeit a vehicle involves significant effort on the part of the police department, the court, or the DMV. Police are particularly concerned that the seizing of the vehicle will add to their paperwork and involve increased court appearances by arresting officers.

4. *Court Issues* - As with all efforts to limit driving by DWI offenders, the court is concerned with the impact on innocent family members and the employment of the offender. Where impoundment is viewed as a threat to the livelihood of the offender or family members, the court may be unwilling to take action.

Feasibility of Conducting an Impact Evaluation

States were screened on a number of factors (total number of DWI offenders actually affected by the law, availability of useful data and records, extent of state and local cooperation, the severity of the sanction, etc.). Based on this review, Phase II of this research will involve an evaluation of the Oregon and Washington "Zebra Sticker" programs. This evaluation is designed to determine whether these law are effective in reducing DWI recidivism and crashes for drivers previously convicted of DWI.

RECOMMENDATIONS

A number of recommendations were developed to handle issues or problems raised by this research effort:

Type Of Legal Process. In general, criminal laws providing for vehicle forfeiture should be avoided since they appear to be rarely used. Emphasis should be placed on legislation which provides for administrative impoundment of vehicles or plates and civil forfeiture of vehicles.

Timing of Vehicle or Plate Seizure. If either the vehicle or the plate is to be impounded, the legislation should provide for seizure at the time of the arrest, not after conviction when it may be difficult to locate the offender or his vehicle.

If Vehicle Owner is Not the Offender. Owners should pay the towing and storage costs and sign an affidavit that they will not permit the offender to drive the car. If the offender is apprehended driving the owner's car again, the owner forfeits all claim to the vehicle (as is done in Portland).

Concern for Family Members. Administrative laws which provide for cancellation of vehicle registration should include a provision for family plates (as in the Minnesota statute). Statutes or ordinances providing for vehicle impoundment or forfeiture should provide for the return of the vehicle to a family member with an ownership interest in the car, upon the payment of towing and storage fees, and the execution of an affidavit that the offender will not be allowed to use the vehicle.

Reducing the Cost of Impoundment. Lower cost alternatives to vehicle impoundment should be considered, such as vehicle immobilization or the impoundment of the vehicle plates.

Recording of Impoundment and Forfeiture Sanctions. States should establish a record system which would summarize vehicle impoundment and forfeiture cases for the state as a whole in order to permit a determination of the extent to which this kind of legislation is being implemented.

Defining Responsibility for Determining Vehicle Ownership. An agency should be designated to be responsible for determining vehicle ownership for the court prior to trial. Procedures should be established to provide for rapid notification of the DMV in the event of a vehicle sale or transfer. Also, transfers to individuals with the same surname or in the same household should be subject to special investigation to ensure that offenders are not transferring ownership to avoid the impoundment penalty.

Impoundment and Forfeiture Should Be Used for Lesser Offenses. States that limit the use of impoundment and forfeiture laws to third- and fourth-time offenders should consider applying these laws to the broader segment of DWI or DWS drivers convicted of lesser offenses, e.g., second-time DWI offenders or DWS offenders where the suspension was based on a DWI conviction.

Authority to Stop Vehicle. Laws providing for special plates (e.g., family plates, stickered plates) should incorporate a provision that acceptance of such plates implies consent to the vehicle being stopped at any time by the officer to check the license of the operator.

FORWARD

This report by the National Public Services Research Institute to the National Highway Traffic Safety Administration covers Phase I of Contract No. DTNH22-89-C-07026. This report summarizes the results of a study of the laws covering actions against vehicles and vehicle tags designed to discourage or prevent Driving While Impaired (DWI) and driving by individuals whose licenses have been suspended as a result of a DWI conviction. The final report under this contract will cover a second phase of this research effort; an evaluation of laws in the states of Oregon and Washington which provide for the suspension of vehicle registration and the placing of stickers on vehicle tags by police.

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THE PROBLEM

If license suspension worked perfectly, all of the Driving While Impaired (DWI)[1] offenders who lost their driving permits would have no accidents and no violations on their driving record during the suspension period. Unfortunately, there is good evidence that many of these offenders continue to drive at least to some extent. Williams, Hagen, and McConnell (1984) found that almost one-third (32%) of suspended second-time DWI offenders accumulated driver record entries during the period of their suspension while almost two-thirds (61%) of the revoked third-time offenders accumulated traffic offenses or accidents on their records during the suspension period. Similar results have been reported by Peck, Sadler, and Perrine (1985) and McKnight and Voas (1991).

Despite this tendency of some individuals to ignore their suspension and drive anyway, taking the driving license is effective in reducing driving by suspended DWI offenders because some do stop driving while others reduce their driving and/or drive more carefully in order to avoid being stopped by police for a traffic offense which could result in their being charged with the serious Driving While Suspended (DWS) offense (Ross and Gonzales, 1988). As a result of these changes in behavior, suspending the driving license has been found to be an effective penalty for the DWI offense because it reduces the numbers of crashes and offenses during the period of suspension. This finding is supported by a large number of studies in several different locations, including the States of Washington, California and North Carolina. (See Peck, Sadler, and Perrine, 1985; Nichols and Ross, 1989; McKnight and Voas, 1991 for reviews of these studies.)

Despite the evidence that losing the driver's license produces considerable annoyance and discomfort for the DWI offender, there is evidence that many drivers do not reinstate their license when they are eligible to do so. Sadler and Perrine (1984) found that six months after the termination of the suspension, 37% of the offender group had not reinstated their license and even a year after the end of the suspension period, 26% remained unlicensed. Voas and McKnight (1991) found that in the State of Washington, only 29% of first-time DWI offenders who were given a 90-day suspension reinstated their license within three months of their reinstatement eligibility. Another third (32%) reinstated within two years of their eligibility and nearly four in ten (39%) did not reinstate within two years of the date they were eligible.

Driving While Suspended is difficult to detect because there is no way for the police officer to determine whether the driver is properly licensed except by stopping the vehicle (Exotech, 1970). Under the 4th Amendment, in order to stop a driver, the officer must have "probable cause." Individuals who avoid contact with police by driving carefully are unlikely

1. States vary in the terms used to denote the drunk driving offense. In this paper, DWI (Driving While Impaired) will be used to refer to this offense and DWS (Driving While Suspended) to denote unlicensed operation of a vehicle.

to be apprehended. Recent trends in DWI enforcement suggest that the problem of controlling illicit driving by DWI offenders is likely to get worse:

1. States are enacting legislation which lowers the per se BAC limits placing more drinking drivers at risk for license suspension.

2. States are enacting administrative per se legislation which makes it more certain that a DWI offender will be suspended.

3. Insurance rates are rising which makes it more difficult for offenders to get insurance so that they can reinstate their driving permit.

4. Incarceration, a potentially significant penalty for driving while suspended, is not generally available due to lack of jail space.

These factors highlight the need for improved methods for preventing illicit driving by DWIs. Vehicle I F laws [2] provide one method for reducing illegal operation by DWIs.

A SOLUTION?

One approach to preventing illicit driving by DWI offenders is to deny them the use of their vehicle by impounding or forfeiting the automobile or by seizing or marking the vehicle license plate. These actions prevent offenders from using vehicles registered in their name to commit Driving While Suspended offenses. They do not, of course, prevent offenders from using vehicles that belong to others; their employers, their spouses, or their friends. However, most offenders will have limited access to vehicles which they do not own, particularly if the owner is aware that the offender does not have a drivers license. Thus, seizing the vehicle or the vehicle tag is an imperfect preventative (as most countermeasures are), but wide application of these sanctions has the potential to significantly reduce the opportunity of suspended drivers to operate vehicles illicitly. Thirty-four jurisdictions have laws providing for the impoundment of a vehicle or of vehicle tags. Many of these laws were enacted not to limit illicit driving by DWI offenders, but to ensure that the vehicles owned by offenders were covered by insurance. Whatever their initial purpose, many of the impoundment laws currently in place in the States have considerable potential for limiting illicit driving by DWI offenders through the removal of access to their vehicles. The extent to which these laws are effective in reducing illicit driving by DWI offenders and thereby reducing recidivism and crash involvement remains to be determined. This study describes an initial review of these laws and the extent to which they appear to be applied to DWI offenders.

2. The term Vehicle I F laws will be used in this paper to designate laws which provide for vehicle impoundment or forfeiture or laws which provide for vehicle registration cancellation and plate seizure or marking.

OBJECTIVES OF THIS STUDY

Phase I of this study has four objectives:

1. To identify States with laws providing for the impoundment of vehicle tags or the impoundment and forfeiture of the vehicle itself, which might reduce illicit driving by DWI offenders;

2. To determine the extent to which these laws are actually applied in the field;

3. To identify the factors which determine the extent of their application, including actions which might increase their use; and

4. To determine whether sufficient data exists in any of the States studied to support an impact evaluation of one or more Vehicle I F laws.

LAWS INCLUDED IN THE STUDY

The Vehicle I F laws reviewed in this report are those that have or could have an impact upon illicit driving by convicted DWI offenders or on impaired driving by DWI offenders. States typically take action against vehicle registrations for safety inspection failures, for failure to establish financial responsibility, for an accumulation of driving offenses and for driving while suspended or revoked as well as for a conviction for DWI. Convicted DWI offenders can lose their vehicle registration for any of these reasons, but the focus of this study is on those laws which are designed to prevent illicit driving by DWI offenders. Thus, this study is generally limited to actions resulting from DWI convictions themselves or from convictions for DWS or a combination of both offenses, since these actions are most directly related to the control of illicit or impaired driving by DWI offenders.

Initially, 19 States were identified as having laws affecting vehicle registration, vehicle tags, or the vehicle itself which could impact the driving of DWI offenders. During the course of the study (data collected between April 1, 1990, and March 3, 1991), additional relevant laws were discovered or additional States enacted legislation and this report summarizes information on 32 States, the Virgin Islands, and the City of Portland, Oregon (See Table I-1).

The impoundment/forfeiture laws identified in these 34 jurisdictions can be classified under five headings:

1.	TARGET OF LAW
2.	PENALTY
3.	OFFENSE
4.	TYPE OF PROCESS (CRIMINAL, CIVIL, OR ADMINISTRATIVE)
5.	TYPE OF CONTACT

Table I–1: Jurisdictions which have legislation or case law relating to the impoundment of plates or the impoundment or forfeiture of vehicle

No	State	Target of Law	Penalty	Offense	Type of Process (Criminal, Civil, or Administrative)	Type of Contact	Notes
1	Alaska	Vehicle	Forfeiture	2nd DWI	Criminal	Telephone	
2	Arizona	Vehicle	Forfeiture	DWI while DWS or 3rd DWI	Criminal	Visit	
		Plate	Suspension	1st DWI	Criminal		1
3	Arkansas	Vehicle	Forfeiture	4th DWI	Criminal	Telephone	
		Plate	Impoundment	DWS for DWI	Criminal		2
4	California	Vehicle	Forfeiture	3rd DWI	Criminal	Visit	
		Vehicle	Impoundment	1st DWI	Criminal		3
5	Delaware	Vehicle	Impoundment	DWS for DWI	Criminal	Telephone	4
		Plate	Impoundment	DWS for DWI	Criminal		
6	Illinois	Vehicle	Temp. Impoundment	1st DWI	Criminal	Telephone	5
7	Indiana	Plate	Suspension	2nd DWI	Criminal	Telephone	6
8	Iowa	Plate	Suspension	3rd DWI	Criminal	Telephone	7
		Plate	Special Plates	3rd DWI	Administrative		8
9	Maine	Vehicle	Forfeiture	DWI while DWS	Criminal	Telephone	9
		Plate	Suspension	1st DWI	Criminal		9
10	Maryland	Plate	Suspension	DWS for DWI	Criminal	Telephone	10
11	Michigan	Plate	Forfeiture		Criminal	Telephone	23
12	Minnesota	Plate	Suspension	3rd DWI	Administrative	Telephone	7
		Plate	Special Plates	3rd DWI	Administrative	& Report	8
13	Montana	Vehicle	Impoundment	1st DWI (<18)	Criminal	Telephone	22
14	Nebraska	Vehicle	Impoundment	DWS	Criminal	Telephone	11
15	New Hampshire	Plate	Revocation	1st DWI	Criminal	Telephone	9,7
16	New Mexico	Vehicle	Impoundment	2nd DWI	Criminal	Telephone	
		Vehicle	Immobilization	2nd DWI	Criminal	& Report	13
17	New York	Vehicle	Forfeiture	2nd DWI (Felony)	Civil	Telephone	
		Vehicle	Impoundment	DWI while DWS	Criminal		12
		Plate	Suspension	1st DWI	Criminal		7
18	North Carolina	Vehicle	Forfeiture	DWI while DWS	Criminal	Telephone/Report	

Table I-1: Jurisdictions which have legislation or case law relating to the impoundment of plates or the impoundment or forfeiture of vehicle

No	State	Target of Law	Penalty	Offense	Type of Process (Criminal, Civil, or Administrative)	Type of Contact	Notes
19	North Dakota	Vehicle	Forfeiture	3rd DWI	Criminal	Telephone	
		Plates	Suspension	1st DWI	Criminal		
20	Ohio	Plate	Suspension	1st DWI	Criminal	Visit	7
		Plate	Special Plates	1st DWI	Administrative		14
21	Oregon	Vehicle	Impoundment	2nd DWI	Criminal	Visit	10
		Plate	Sticker	DWS	Administrative		15
22	Portland	Vehicle	Forfeiture	DWS for DWI	Civil	Visit	
23	Pennsylvania	Vehicle	Forfeiture	1st DWI	Criminal	Telephone	16
24	Rhode Island	Vehicle	Forfeiture	4th DWI	Criminal	Telephone	
25	South Carolina	Vehicle	Forfeiture	4th DWI or 4th DWS	Criminal	Telephone	9
26	South Dakota	Plate	Suspension	1st DWI	Criminal	Telephone	7
27	Tennessee	Vehicle	Forfeiture	1st DWI	Criminal	Telephone	16
28	Texas	Vehicle	Forfeiture	3rd DWI	Criminal	Telephone	
29	Utah	Vehicle	Temp. Impoundment	1st DWI	Criminal	Telephone	17
30	Virginia	Plates	Suspension	1st DWI	Criminal	Telephone	18
31	Virgin Islands	Vehicle	Impoundment	Failure to Appear	Criminal	No Contact	19
32	Washington	Plate	Sticker	DWS	Administrative	Visit	20
33	Wisconsin	Vehicle	Impoundment	DWS	Criminal	Telephone & Report	21
34	Wyoming	Plate	Suspension	2nd DWI	Criminal	Telephone	7

Table I–1: *Jurisdictions which have legislation or case law relating to the impoundment of plates or the impoundment or forfeiture of vehicle*

Notes:
1 – Registration susp. for same length of time as license susp.
2 – 90 days if susp. was a result of a DWI conviction
3 – 30 days 1st, 90 days 2nd DWI conviction
4 – 90 day imp. of vehicle or plates for DWS if susp. was for DWI
5 – 6 hours only
6 – 6 months for felony DWI
7 – susp. for same period as drivers license
8 – special plates if needed by family member
9 – mandatory
10 – 120 days
11 – applies to drivers under age 18
12 – for "aggravated" DWS conviction
13 – immobilization apparently not used
14 – family plates required by some judges for limited use
15 – results in susp. of registration in 60 days
16 – forfeiture under common law, court must consider family
17 – short term imp. to protect public safety
18 – susp. for 1 year withdrawn if offender attends rehabilitation program
19 – court may impound car for failure to appear
20 – applies only to suspended drivers who own the vehicle, see note 15
21 – vehicle may also be imp. for failure to post security following an accident
22 – 30 day impoundment for DWS offense
23 – license plates confiscated for 2nd DWI offender

Actions Against Vehicles

There are three types of actions against vehicles which States have employed in an effort to limit or eliminate driving by DWI offenders who have had their driving licenses suspended.

1. *Vehicle Forfeiture* - The strongest of these actions is vehicle forfeiture. Most State laws provide that an instrument such as a gun or a vehicle used in a felony may be forfeited to the State under common law. However, first-offense DWI is generally a misdemeanor, not a felony. Generally, it is only in those States which classify multiple DWI convictions or multiple Driving While Suspended (DWS) convictions as felonies that the State confiscates the vehicle of a DWI offender. Eleven States have legislation providing for vehicle forfeiture as a penalty for multiple DWI or DWS offenses; Alaska, Arizona, Arkansas, California, Maine, New York, North Carolina, North Dakota, South Carolina, Rhode Island and Texas. Two States, Pennsylvania and Tennessee, have provisions under common law for vehicle forfeiture. One locality (Portland, Oregon) has a local ordinance providing for civil forfeiture for driving while suspended as a result of a DWI offense.

2. *Vehicle Impoundment* - Overnight impoundment of the vehicle of an individual arrested for drunken driving is a typical practice in most States. In such short-term impoundments (specified by law in Illinois and Utah), however, the offender is normally able to retrieve the vehicle the next morning, provided he or she is properly licensed and sober. Several States have laws which permit longer term impoundments for certain offenses, usually for repeat DWS or DWI offenders. States with such laws include California, Delaware, Nebraska, New York, New Mexico, Oregon, and Wisconsin. Of these States, the laws in New York and California are of particular interest because of their potential deterrent effect. New York provides for impoundment of the vehicle in certain "aggravated" offenses until the date of the trial, or until such time as the offender clears himself of the offense. The State of California provides for 30 days impoundment for first-offense DWI. Montana provides for impoundment of vehicles of drivers under the age of 18.

3. *Vehicle Immobilization* - A third action which the court can take to prevent a DWI offender from using his or her vehicle is to immobilize it using a "Denver Boot," which prevents the vehicle from moving. The State of New Mexico is the only jurisdiction which specifically provides for this type of vehicle action.

Actions Against Vehicle Registrations

4. *Suspension of Vehicle Registration* - 12 States provide that in addition to suspending the operator's license of an individual convicted of first or multiple DWI offenses, the State will suspend vehicle registration pending the demonstration of financial responsibility by the offender. In this type of law, individuals can avoid having their registration withdrawn by producing an

SR-22 Form from their insurance company. This guarantees that not only are they are insured, but that the company will notify the State should their insurance lapse. Failure by the offender to provide such evidence of insurance may result in the withdrawal of registration, and even in the impounding of vehicle plates through the issuance of an order by the Motor Vehicle Department to the local Sheriff to pick up the plates. Some States have their own enforcement departments which send out investigators to pick up the plates. States with such laws are Arizona, Indiana, Iowa, Minnesota, New Hampshire, New York, North Dakota, Ohio, Oregon, South Dakota, Virginia and Wyoming. In addition, nine States withdraw the vehicle registration of DWS offenders where the original license action resulted from a DWI offense; Arkansas, Delaware, Maryland, Michigan, Minnesota, Ohio, Oregon, South Dakota, and Washington. Minnesota has legislation which permits the administrative seizure by the police for drivers charged with a third-time DWI offense.

5. *Special Tags* - Three States, Iowa, Minnesota, and Ohio, have provisions for issuing special plates to drivers whose vehicle registration has been withdrawn in order to permit the use of the vehicle for vocational purposes or by family members. Minnesota provides for the issuance of plates with special identity numbers to third-time DWI offenders. Ohio provides bright yellow "Family Plates" to first- or multiple-DWI offenders at the option of the court. Such plates can be used to alert the police to the possibility that the vehicle may be operated by an unlicensed driver.

6. *Sticker Programs* - Two States, Oregon and Washington, have laws which provide for withdrawing the vehicle registration of cars operated by suspended drivers. These laws involve an administrative procedure in which the police officer takes possession of the vehicle registration at the roadside when making an arrest for the DWS offense. The registration is forwarded to the Motor Vehicle Department. The officer gives the driver a notice that the registration will be canceled in 60 days unless action is taken by the vehicle owner to reestablish the registration. At the same time, the officer affixes to the vehicle tag (over the annual sticker) a Zebra-striped sticker which effectively cancels the annual registration. This requires the vehicle owner to go to the Department of Motor Vehicles and purchase a new annual sticker as well as pay a small administrative fee. However, in order to replace the annual sticker and avoid the cancellation of the vehicle registration, the owner must demonstrate that he or she is properly licensed. Suspended drivers who are vehicle owners are not able to clear their registration and will have their registration canceled. These Zebra Sticker programs involve large numbers of drivers. In 1990, nearly 31,000 vehicles were stickered in the State of Oregon.

STUDY METHODS

This study employed five data collection procedures involving different amounts of effort and contact with State and local officials:

1. *Detailed review of the State law* - This was the minimum effort applied to a program. In some cases, the laws had been enacted so recently that no additional follow-up was undertaken. Minnesota and Iowa, for example, enacted new legislation providing for administrative license plate impoundment effective January 1, 1991, too late for evaluation in the present study. In addition, some impoundment laws were of little interest to the objectives of the present study. For example, Illinois and Utah have laws which provide for the short-term impoundment of the vehicle of a DWI offender. These, however, just put into legislation the common practice of the police to tow the offender's vehicle at the time of arrest and hold it overnight. These laws are listed among the 45 studied, but no attempt was made to determine the extent of their application.

2. *Review of Reports* - This study uncovered few research reports on impoundment and forfeiture laws. Where such reports were available, they were reviewed and information from the reports is included in the study results.

3. *Telephone Contact with Officials* - If, from the review of laws or reports, it appeared that the program could have significant application to DWI offenders, calls were made to State officials to collect information on the utilization of the law. Individuals to be contacted were identified through knowledgeable staff members at the Office of Highway Safety.

4. *Site Visits* - A limited number of the States with laws of special interest were visited by project staff in an effort to obtain more detailed information.

5. *Impact Evaluation* - The collection of data on the effectiveness of an impound law is underway in Phase II of this effort. Phase II was initiated based on the evidence collected during Phase I that an impact evaluation of the States of Oregon and Washington sticker programs was feasible.

Factors Determining Study Activities

Six factors were considered in determining how far to pursue the study of an impound law in any State. Table I-2 provides estimates for these six factors for the 34 jurisdictions and 45 laws listed in Table I-1. During Phase I, three issues were of principal importance:

1. *Total number of offenders potentially affected by the law.* This was determined by the provisions of the law and the number of DWI offenders convicted each year. The third column of Table I-2 provides an estimate in thousands of the DWI offenders potentially affected by the law. This estimate was derived by taking the specification of the law (whether it applied to first-, second-, or

multiple-time DWI offenders) and the figures provided by the States for the "Rating of the States" Survey, conducted by Mothers Against Drunk Driving (MADD, 1991). A table of arrest and conviction data from this report is provided in Appendix B.

2. *Estimated number of offenders who were actually affected by the law.* This was dependent upon information gained from phone calls or site visits. The fourth column provides an estimate of the number of actions per year. These estimates were generally derived from telephone calls to knowledgeable officials in the State. With a few exceptions, numbers are not provided because a count of actions could only be obtained by going through hardcopy files of each local court system to determine the number of convicted offenders who received the sanction.

3. *The significance or severity of the penalty.* The significance of the penalty related to the estimated probability that it would actually prevent the DWI offender from illicit driving while suspended and its impact on the offender. Thus, the loss of the vehicle was viewed as more severe than the loss of the vehicle tag. The fifth column provides a numeric classification according to the six types of impound laws. The numerical designation ranks the potential actions from vehicle forfeiture and impoundment down through licensed actions in order of severity.

In addition to these three factors, which were important in determining which sites were visited during the Phase I effort, three additional factors were considered in determining whether an impact evaluation should be conducted during Phase II:

4. *Availability of data and records.* This involved a determination as to whether the evaluation study would involve interrogating an electronic file, such as a State driver record, or whether there would be a requirement for dealing with a hardcopy file such as those found in most court record systems. Column 6 of Table I-2 shows the type of data file which would have to be consulted in order to obtain information on the operation of the law.

5. *Extent of the effort required of State and local officials.* This was determined by both the time commitment required of any one person and the total number of officials who would need to be contacted to obtain the necessary information. Whether the official support required would be large or small is indicated in Column 7 of Table I-2.

6. *Expected cost of the Phase II evaluation data collection effort.* Whether this cost is estimated to be low, medium, or high, is indicated in Column 8 of Table I-2.

TABLE I-2: Factors Considered in Determining the Opportunity for Impact Evaluation

No	State	No. of offenders potentially affected[1]	Estimated No. of Actions per year[2]	Severity of Penalty[3]	Availability of data[4]	Official support required[5]	Cost[6]	Comments[7]
1	Alaska	1	F	1	Court hard copy files	Large	High	Only applies to 2 DWIs, almost never used
2	Arizona	2	F	1	Court hard copy files	Large	High	Too selective in application, too few cases.
	Arizona	6	L	6	Electronic and hard copy files	Large	Low to High	Principally, a financial responsibility action
3	Arkansas	1	F	1	Court hard copy files	Large	High	Applies only to 4th DWI in 3 years. In effect since 1/1/90.
	Arkansas	8	S	6	Court hard copy files	Large	High	Applies to DWIs driving while DWS
4	California	6	F	1	Court hard copy files	Large	Very High	Too selective in application, too few cases
	California	300	>500	2	Court hard copy files	Large	Very High	Potentially very important but almost never used
5	Delaware	1	F	2	State police hard copy records	Large	High	Enforced only on multiple DWIs with "junk" cars
	Delaware	1	F	6	Court hard copy files	Large	High	Applies to DWIs driving while DWS
6	Illinois	49	L	6	Police hard copy records	Large	High	Unimportant — only one night impoundment
7	Indiana	10	M	6	Court hard copy files	Large	Very High	Applied too selectively

No	State	No. of offenders potentially affected[1]	Estimated No. of Actions per year[2]	Severity of Penalty[3]	Availability of data[4]	Official support required[5]	Cost[6]	Comments[7]
8	Iowa	2	—	6	Court hard copy files	Large	High	Applies only to 3rd DWIs, law effective July 1991
	Iowa	2	—	4	State DMV electronic files	Small	Low	Applies only to 3rd DWIs, law effective January 1991
9	Maine	4	F	1	Court hard copy records	Large	High	Applies to DWIs driving while DWS
	Maine	9	L	6	State DMV elecronic and hard copy files	Small	Low to High	Principally for financial responsibility
10	Maryland	15	M	6	Court electronic copy files	Small	Moderate	Applies to DWI while driving DWS
11	Michigan	20	5	6	DMV file	Small	Moderate	Applies to 2nd DWO offense
12	Minnesota	8	240	6	DMV file and county court records	Small	Moderate	Law has changed — state doing report. Applies to 3rd DWIs only.
	Minnesota	8	168	4	DMV file and county court records	Small	Moderate	Law has changed — state doing report. Applies to 3rd DWIs only.
13	Montana	?	?	2	Juvenille court files	Large	High	Not used — juvenille court records closed
14	Nebraska	33	F	2	Court or police files	Large	High	Not used
15	New Hampshire	?	L	6	DMV electronic and hard copy files	Large	High	Principally for financial responsibility

No	State	No. of offenders potentially affected[1]	Estimated No. of Actions per year[2]	Severity of Penalty[3]	Availability of data[4]	Official support required[5]	Cost[6]	Comments[7]
16	New Mexico	10	M	2	Court hard copy files	Large	High	Judges say applied "capriciously" rather than "uniformly".
	New Mexico	10	F	3	Court hard copy files	Large	Moderate to High	Judges say applied "capriciously" rather than "uniformly"
17	New York	20	F	1	Court hard copy files	Large	High	Too selective in application.
	New York	30	M	2	State police files	Very Large	Very high	Possibly important law because administrative in character but too selective in application.
	New York	60	L	6	DMV electronic and hard copy files	Large	High	Principally for financial repsponsibility
18	North Carolina	26	F	1	Court hard copy files	Limited	High	Too selective in application
19	North Dakota	11	F	1	Court hard copy files	Limited	High	Could not verify any forfeiture cases
	North Dakota	2	S	6	Court hard copy files	Limited	High	Could not verify any plate impoundment cases
20	Ohio	24	13,600	6	DMV hard copy and DMV automated files	Small	Low to Moderate	Too few — too selective, only 320 cases out of 49,165 DWIs in 1989.
	Ohio	24	312	4	DMV hard copy and electronic files	Small	Moderate	Principally for financial responsibility applied selectively. (157 DWI cases).

No	State	No. of offenders potentially affected[1]	Estimated No. of Actions per year[2]	Severity of Penalty[3]	Availability of data[4]	Official support required[5]	Cost[6]	Comments[7]
21	Oregon	3	F	2	Court hard copy files	Large	High	Impoundment rare
	Oregon	32	32,000	5	DMV Automated files	Small	Low to Moderate	Broadly applied impact unknown
22	Portland	-	-	1	City hard copy	Small	Moderate	Important penalty, too feww to evalutate.
23	Pennsylvania	34	F	1	Court hard copy	Large	High	Common law only rarely applied
24	Rhode Island	0	0	1	Unavailable	Small	?	Court administrators doubt that DMV records go back far enough to record 4th DWI offenders
25	South Carolina	5	30	1	Microfish records	Small	High	Too few — only applies to 4th offenders
26	South Dakota	5	M	6	Court hard copy files	Large	High	Primarily for financial responsibility — can be cleared by SR-22
27	Tennesee	9	F	1	Court hard copy files	Large	High	Common law only rarely applied
28	Texas	20	1	1	None	Small	?	Only one case reported, a 20-time DWI offender!
29	Utah	13	L	7	Police hard copy files	Large	Moderate	Little interest — overnight impoundment only
30	Virgnia	40	L	6	DMV automated files	Small	Moderate	Primarily for financial responsibility — can be cleared by SR-22 or treatment program

No	State	No. of offenders potentially affected[1]	Estimated No. of Actions per year[2]	Severity of Penalty[3]	Availability of data[4]	Official support required[5]	Cost[6]	Comments[7]
31	Virgin Islands	?	?	2	?	?	?	No contact made
32	Washington	7	6,710	5	DMV electronic files	Small	Low	Good opportunity to evaluate stickering
33	Wisconsin	3	F	2?	DMV automated files	Small	Low	Report recommends not impounding because cost can not be recovered.
34	Wyoming	1	F	6	DMV electronic and hard copy files	Small	Moderate	Primarily for financial responsibility

1. Number in Thousands
2. Few = < 50; Small = <300; Moderate = 300 to 1,000; Large > 1,000
3. 1 = Vehicle Forfeiture; 2 = Vehicle Impoundment; 3 = Vehicle Immobilization;
4. Type of data file
5. Large or small amount of official support required
6. Estimated cost of program evaluation
7. Reason for recommending or not recommending impact evaluation.

Based on these criteria, visits were made to States to study the laws which appeared to have the greatest potential for limiting illicit driving by DWIs. In several cases (California, Ohio, and Portland, Oregon), visits were made to sites where it was known that relatively few DWI offenders were receiving an impoundment sanction. Because the particular legislation appeared to have significant potential for limiting illicit driving, it appeared to be worthwhile to make these trips to find out why the legislation was not more widely implemented and to determine the extent to which it appeared to be effective within its limited application.

In other cases, laws and programs were not pursued in the present study because their potential impact on illicit driving by DWI offenders appeared to be small, or because it was clear that little or no data would be available on the programs of interest. Among those laws which were not pursued were the following examples:

1. *Laws providing for overnight impoundment by the police of the vehicle of an arrested drinking driver* - As noted, this is a standard practice in most States and these laws simply add this type of impoundment to the Vehicle Code.

2. *Impoundment laws involving underage drivers* - While vehicle impoundment may be a very effective deterrent for drivers under age 18, the records of juvenile courts are generally sealed. There is no practical way of collecting sufficient information on the basis of which to gauge the extent of vehicle impoundment for this special group. Therefore, such laws as the one in Montana were not pursued. However, knowledgeable State officials believed that such impoundments were very infrequent, if not nonexistent.

3. *Common law forfeitures* - Common law forfeitures can occur in most States since a basic principle of the common law is that the instruments used in a felony can be seized and confiscated by the State. However, such actions in the case of drunk driving offenses are unusual because most State laws classify DWI as a misdemeanor, not a felony. Most such seizures would take place in the lower courts, which are not courts of record, and it would be difficult, if not impossible, to obtain reliable information on which to base the frequency of such forfeitures.

4. *Special court policies* - Lower court judges have wide discretion in the handling of DWI cases and some courts adopt interesting procedures which are not specifically provided for in legislation. One such example is the practice in some Minnesota courts of accepting the vehicle registration and plate as bail for the DWI offense in the case of drivers who are unable to post bail while awaiting trial.[3] This procedure has the potential value of preventing impaired driving by the offender while awaiting trial.

Because of the limitations in the data available, and the selected study of the laws and policies related to impoundment, it is important that the reader understand that this report is not intended to present a comprehensive picture of the use of impoundment to control illicit driving by DWI offenders. Rather, it presents highlights of those programs which are either most widely implemented or appear to have the greatest potential for controlling illicit driving by DWI offenders.

3. Personal communication from Steve Simon, Law Center, Minneapolis, Minnesota.

OVERVIEW OF THE STUDY

Contacts with State agencies on the implementation of impoundment and forfeiture laws demonstrated that information on these programs is difficult to obtain because vehicle impoundment and/or forfeiture is handled at the court level and generally does not appear on any State record system. While the State Department of Motor Vehicles normally has a State-wide file on the suspension of vehicle registration, the seizing of vehicle plates is generally accomplished for various offenses so it is difficult to determine the number of cases that resulted from DWI as compared to other sources of actions such as failure to demonstrate financial responsibility. It was generally necessary to contact judges, prosecutors, or police officers who were known by the State Offices of Traffic Safety to have been involved in impound programs in order to obtain information on impoundment. In some States, senior agency staff were unfamiliar with the State's impoundment and forfeiture laws and many of those who were aware of such statutes appeared to be convinced that these laws were not very useful or at least were not working well. Thus, the initial impression gained by calling State agencies was that these laws were not widely implemented.

If the trail of referrals from State agencies is followed to the local level, it is usually possible to uncover one or perhaps two officials who have made use of the law and believe it to be an effective means of dealing with the drinking driver. In North Carolina, for example, we contacted an officer on the "Attack Task Force" of the Durham Police Department, Traffic Safety Section, who developed training programs for fellow officers on vehicle forfeiture procedures under North Carolina law. This law provides for vehicle impoundment for operators who are found to be DWI while driving on a revoked or suspended license. This office had been involved with half a dozen forfeiture cases during the two months before we spoke with the officer, and he had four cases pending. While this officer clearly makes good use of the North Carolina law, he admits that it is not used as much as it should be and that many officers and officials do not know about it. Our correspondents in North Carolina indicated that there were no more than 50 vehicle forfeitures in the entire State last year, despite the fact that this law is potentially applicable to even first-time DWI offenders if they are apprehended for DWI while driving under a suspension for some other offense.

Individual prosecutors can be found throughout the country who are active in using criminal prosecutions of DWI offenders as a means of obtaining vehicle forfeiture. The Chief County Prosecutor in Tucson, Arizona, actively prosecutes third-time DWI forfeiture cases, but most forfeiture actions are for other drug-related offenses. A prosecutor in the Brooklyn District Attorney's Office initiated a policy of using a civil process under Article 13-A of the New York Civil Code to seize the vehicles of drivers charged with a second DWI offense within 10 years, which is a felony offense in the State of New York. Article 13-A was enacted principally to deal with vehicles used in drug traffic but this prosecutor's lead has been taken up by some other county prosecutors, and occasional forfeitures under 13-A are resulting from felony DWI offenses.

In other localities, judges are taking the lead in making use of impoundment laws. Ohio has a procedure for the impoundment of *license plates*, if the owner has had the driver license suspended and revoked, and provides for the issuance of family plates so that the vehicle can

be used by family members. Judges in New Philadelphia and Circleville, Ohio have been using this provision to mark the vehicles of offenders to whom they grant limited licenses. These judges require drivers who are provided with a limited vocational license to turn in their regular plates and obtain family plates (a bright-yellow license with red numbers) for the cars. This identifies for the police the vehicles within their jurisdiction which are owned by suspended drivers. This procedure has been picked up by several other judges within Ohio; however, the total number of family plates issued remains small, approximately 320 out of more than 24,000 DWI convictions each year.

These anecdotes are mentioned only to illustrate the general under-utilization of impoundment and forfeiture laws. Unless there is an official such as a police officer, district attorney, or judge who takes a particular interest in the impound or forfeiture law, it is unlikely to be frequently applied. We were unable to find any quantitative or objective evidence that any of the impoundment and forfeiture laws which we studied were effective in reducing recidivism in crash involvement by DWI offenders. In part, this reflected the lack of evaluation studies of these laws. We were able to find one partial process evaluation report of vehicle impoundment and immobilization in New Mexico and a study of the cost and revenue involved in a vehicle confiscation program in Wisconsin which was related to financial responsibility laws rather than DWI offenders.

The closest study to an impact evaluation was a report by the State of Minnesota of its license plate confiscation and special plate program for third-time DWI offenders. This study demonstrated that these procedures were used much less frequently than provided by law and that few offenders had their vehicle plates impounded and received special plates. Most of the data collected in the present study consist of the opinions of State and local government officials regarding the utility of a given law or procedure. At best, our informants could generally give us information only on the number of cases in their own jurisdiction, and even these cases had not been followed to determine the impact of forfeiture or impoundment actions on recidivism and crashes. Even where these anecdotal reports suggested that these laws might be effective in denying a vehicle to a suspended DWI offender and thereby reducing the risk that individual would drive while suspended, laws appear to be applied too selectively and infrequently to provide sufficient data for evaluation.

The exceptions to this general finding were the Zebra sticker laws of Oregon and the State of Washington. In Oregon, 32,000 unlicensed drivers have their vehicles stickered each year. In the course of a year, approximately 10,000 of these drivers were individuals who had lost their licenses due to a DWI conviction. In Washington, 6,700 suspended drivers have their vehicle tags stickered for DWS, and a third to a half of these are drivers who lost their licenses as a result of a DWI offense. The Sticker Law in Washington has been in place for 3 years and the sticker law in Oregon has been in place for a year and a half. This provides a sufficient length of time for an impact evaluation of the sticker program on illicit driving by DWI offenders. This evaluation study will be conducted in the course of Phase II of the current contract.

Other opportunities for evaluation of impound and forfeiture laws exist which could not be exploited in the current research. The State of Minnesota passed a novel administrative license tag suspension program for third-time DWI offenders which became effective January 1, 1991, too late for current study. This program is being evaluated by the Office of Traffic Safety in Minnesota. Iowa passed a law similar to that in Minnesota which, however, does not become effective until July 1, 1991; also too late for this research. Finally, there is a need to study the impact of financial responsibility laws on the driving of DWI offenders. A number of States such as Ohio, Virginia, and New York, provide for the suspension of the vehicle registration for the same period as the driving permit is suspended in the event of a DWI conviction. Offenders who obtain an SR-22 Form (proof of insurance form) from their insurance companies can prevent the cancellation of their vehicle registration. These laws, which apply to first offenders potentially affect large numbers of DWI offenders each year. However, it is not clear to what extent these provisions actually prevent the offender from using his or her vehicle. Aside from providing the SR-22, the vehicle registration can be transferred or the individual can simply ignore the notice from the State Motor Vehicle Department and continue to drive since it is difficult for the State to actually take possession of the vehicle tag.

The remainder of this report describes the information collected during Phase I of the present study. The purpose of this study was to provide an overview of the types of impoundment and forfeiture laws and a general indication of the extent of their utilization by the States. Section II of this report describes the information collected on laws which target the vehicle registration and plates. Section III describes the laws which provide for vehicle impoundment or forfeiture.

No attempt was made to describe in detail the procedures applied by individual States, nor did the resources of the project permit a determination of the number of cases in which the impoundment/forfeiture law was utilized each year, except in a few special cases where State records could provide these data. Tables I-1 and I-2 summarize data on each State law identified in the current study and Appendix C gives a brief synopsis of the law with a reference to the State code.[4] Individuals interested in determining the utilization of an impoundment or forfeiture law in their own State should contact State officials for the details on State and local policies which were not part of the current study.

4. Taken from the National Highway Traffic Safety Administration Compendium of Alcohol Safety Legislation.

SECTION II: ACTIONS AGAINST VEHICLE PLATES

WITHDRAWAL OF REGISTRATION WHEN LICENSE SUSPENDED

In twelve States (See page 4), the vehicle registration may be suspended for any DWI offense for the same length of time as the drivers license is suspended. In some cases, this cancellation of registration is left to the discretion of the court—in others, it is mandatory. The principle purpose of suspending the registration in conjunction with driver license suspension is to make sure that the offender's vehicle is properly insured.

Virginia Registration Suspension Law

The State of Virginia provides an example of this use of registration cancellation. The Administrator of the Driver Services Administration reported that an offender whose registration has been suspended can have the registration reinstated during the period of driver license suspension by paying a $30 reinstatement fee and filing proof of future financial responsibility. This is accomplished by obtaining an SR-22 Form from the offender's insurance company. When the vehicle registration is reinstated by this means, the vehicle can legally be used by other individuals.

The Virginia law is interesting because the registration of a co-owned vehicle is suspended in the same manner as a wholly owned vehicle. The owners must pay the $30 reinstatement fee and provide the SR-22 Form in order to obtain reinstatement. Vehicles belonging to other individuals even though used by a DWI offender at the time of the offense are unaffected by the Virginia law. The offender may avoid losing his or her registration by transferring the vehicle prior to being convicted of the DWI offense, or the vehicle can be sold even though the registration has been canceled because the new owner merely applies for a new registration. This is possible since the registration does not remain with the vehicle, but rather each owner applies for registration when they purchase a vehicle.

When the driver license is suspended or revoked for a conviction of Driving While Intoxicated, the Department of Motor Vehicles issues an order of suspension or revocation to the offender and directs that he or she return the vehicle registration form. If the offender does not respond to this mail notice, a warrant is issued or could be issued. Warrants are rarely issued; however, the operator would be subject to further penalties if apprehended operating the vehicle while its registration is suspended. Three such offenses would make the offender subject to being adjudged a habitual offender and result in losing the driving privilege for ten years. A second effect of this type of registration withdrawal may be to prevent the offender from operating while suspended. However, if, as is the case of Virginia, little effort is made to actually pick up the license plate if the offender fails to respond to the mail notice. There is no direct impact on the vehicle or its tag which would prevent the individual from using the car. The driver is at risk for further penalties, but only if he is stopped for some other offense, and, as a result of that stop, a check is made with the Department of Motor Vehicles.

Ohio Registration Suspension Law

The State of Ohio has a law somewhat similar to that of Virginia in that, at the court's discretion, the registration certificate and license plates may be suspended if a vehicle's owner has his or her license suspended for DWI. An interesting difference, however, between Virginia and Ohio is that Ohio's Department of Motor Vehicles has an Enforcement Division with 36 staff members, 26 of which are Field Motor Vehicle Enforcement Investigators. The prime responsibility of the enforcement division's field units is to locate individuals who have lost their driving and vehicle registration privileges by reason of noncompliance with financial responsibility laws or as a result of a DWI offense or other safety offenses. If these offenders cannot be brought into compliance with department regulations, the investigators can confiscate the offenders' drivers license, vehicle registration, and license plates. However, they make an attempt to assist offenders in complying with the motor vehicle laws of the State of Ohio. The enforcement division also conducts special background investigations for special license requests such as hardship licenses for underaged teenagers. Finally, the Enforcement Division is responsible for physical inspections of motor vehicles titled in another State that are being transferred to Ohio.

The Enforcement Division receives cases from two sources within the Department of Motor Vehicles: the Division of Safety Responsibility, which is concerned with financial responsibility issues, and the Division of Driver Safety, which is concerned with DWI and other offenders. The number of cases coming from each source is approximately equal. A picture of the annual activity of this division is provided by Table II-1. Note that the division handled approximately 14,000 cases from the Driver Safety Division (many of which were DWI offenses) in 1989, a year in which there were 29,000 convictions for DWI in Ohio.

Table II-1
Activities of Enforcement Field Service Division of the Ohio Department of Motor Vehicles

Cases brought forward from 1988	8,127
Total cases received from Safety Responsibility	10,961
Total cases received from Driver Safety	13,996
Grand total of all cases received in 1989	24,957
Total cases completed from Safety Responsibility	11,199
Total cases completed from Driver Safety	13,579
Grand total of all cases completed in 1989	24,778
Total cases on hand December 31, 1989	7,611

The resolution of these cases does not necessarily involve seizing the vehicle plates. Frequently, the contact with the Enforcement Field Service Division results in the individual providing an SR-22 Form or transferring the vehicle to another driver so that the case can be closed without actually seizing the plates. In October of 1988, the Enforcement Division established a special program to get high-risk, drunk drivers off the road entitled, "A Substance Abuse Squad." During 1989, that squad confiscated 37 drivers' licenses and 12 sets of license plates and registrations in the course of bringing 157 multiple-DWI cases into compliance. This clearly is a small number compared to the total number of license plates (5,000 to 10,000) seized by the enforcement division each year. Many other DWI offenders must be affected by their activity.

Because the Enforcement Division Field investigators were tasked with the responsibility of going into the field, contacting offenders, and, where necessary, seizing the vehicle plates and registration, a special effort was made to collect information on their experience. With the cooperation of the Ohio Motor Vehicle Department, a 7-item questionnaire was distributed to 24 of the 26 investigative staff. These investigators reported confiscating between three and twelve vehicle plates per week. The process began by the sending of a registered letter to the owner of the vehicle informing him or her that the vehicle registration had been suspended and that plates and registration had to be surrendered at the DMV. If this did not result in the delivery of these items to the DMV, then the investigator attempted to contact the offender through an employer or relative and visit the offender's home, if necessary, to find the car and remove the tags and pick up the vehicle registration.

In some cases, the documents that must be surrendered are not in the possession of the offender, since they may be held by a court or they may have simply been lost. In these cases, the investigator has the offender sign a statement noting that he understands that his driving privilege and/or vehicle registration have been suspended. This can then be used by the State to rebut a claim that the offender was unaware of the suspension, should the individual be found driving at a later date.

With a few exceptions, the investigators for the enforcement division are not law enforcement officers, and they do not have the power to make arrests. We asked the investigators whether they found it necessary to obtain law enforcement assistance in order to carry out their job. The response indicated that, for the most part, they did not need to involve the local sheriff or police. They felt that in any case, the police would be too busy to provide assistance except where there might be some threat to the safety of the investigator. Such cases were apparently quite rare. There were some complaints from investigators that the local enforcement agencies were not always willing to make checks of their files to help determine the residence of an offender. Overall, it appeared that the investigators had little trouble obtaining the tags and registration if they could locate the whereabouts of the offender.

The experience provided by the Ohio Motor Vehicle Department Enforcement Division demonstrates that it is possible for the State Motor Vehicle Agency to take steps directly to enforce driver license and vehicle registration laws and regulations. It is difficult to determine whether the cost of the effort involved is justified by the increased safety for motorists on Ohio highways. It appears that at least half or more of their work is related to

financial responsibility cases rather than impaired driving cases. It would also be necessary to determine whether successfully closing a case results in denying the vehicle to a suspended DWI offender. Since offenders can re-register their vehicle with an SR-22 Form, and since many transfer their vehicles or were in any case driving someone else's vehicles, the impact of the program is difficult to assess.

The establishment of an investigation division within the Department of Motor Vehicles is unique and potentially important in limiting driving by at least the worst of the DWI offenders. Only by actually seizing the plates can a change in the appearance of the vehicle be affected, which is likely to incapacitate the offender from using that vehicle. Cancellation of the registration, while the offender retains the plates, may increase the fear of apprehension and thereby reduce the amount of illicit driving, but in many cases it may not have a very significant impact on an individual who is willing to take the risk of driving without an operator's permit, since the only possibility of apprehension is if the offender is stopped for a traffic offense.

Recommendations

Suspension of the vehicle registration when the driver is convicted of DWI and has his or her driving permit suspended is potentially a powerful method for reducing illicit driving by DWI offenders, since it is applied to first-time as well as multiple-time DWI offenders. In many of the larger States with such laws, this action could be applied to thousands of DWI offenders. On the other hand, these laws have yet to be evaluated in terms of their impact on illicit driving. Because of the significant administrative and labor costs involved in seizing vehicle plates, it is important that the cost effectiveness of this type of program be evaluated. Assuming that this evaluation indicated the program was effective, three recommendations grow out of this study:

1. Motor vehicle departments should establish field enforcement units, since local sheriff's and police departments are overloaded and have limited capability to take action on Department of Motor Vehicles cases.

2. The law should provide for action on the vehicle registration at the time of arrest. The vehicle registration should be seized and the vehicle license plate stickered as is done in the Oregon and Washington Sticker programs (see below) or the vehicle plate seized at the time of arrest as is done in Minnesota for third-time DWI offenders. This would reduce the cost of later administrative processing and field investigation activity by forcing the vehicle owner to come to the Department of Motor Vehicles to clear the vehicle registration.

3. Owners who have lost their driving privilege due to a DWI offense should be required to use special plates on their vehicles so that the use of the vehicle can be better supervised by the police.

THE USE OF SPECIAL (FAMILY) PLATES

Of the States which have laws suspending registration and impounding plates for DWI offenses, three have made provision for the issuance of special plates to owners of vehicles whose licenses have been suspended: Iowa, Minnesota and Ohio. These plates are intended to allow family members to operate the vehicle while inhibiting the use of the vehicle by the suspended owner through the display of special colors or numbers which attract the attention of the police officers informing them that the vehicle is registered in the name of a suspended driver. The State of Minnesota passed the first such law in 1955, Ohio enacted a similar law in 1967, and Iowa has just enacted a similar law which will go into force on July 1, 1991.

All three of these laws are clearly intended to mark the vehicle through its plates in a way which will permit the police to identify it as one that is registered in the name of a suspended driver; presumably, so that police can stop the vehicle and check the driver's registration. However, it is not clear that the presence of such a plate on the vehicle constitutes "probable cause" for the police to stop the vehicle. Iowa attempts to handle this issue through an implied consent statement:

> "Application for, and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time." (Paragraph 321J.4A.)

Neither Minnesota nor Ohio have a similar statement in their law. Interviews with judges, prosecutors and police in Ohio indicated that it was unclear to these officials whether or not the special license plate in and of itself provided probable cause for a stop. In most cases, it was suggested both by the police and by prosecutors that the license plate, *together with other evidence*, might constitute a basis for stopping the vehicle, as when a vehicle with special plates is seen driving into a bar parking lot late at night. Clearly, if there is probable cause to stop the vehicle for other reasons, such as speeding, then the presence of the plate should alert the officer to be particularly careful to check the license status of the driver. However, since this is a standard check performed by officers at nearly all traffic stops, it is unlikely that the presence of the plates would greatly increase the likelihood of apprehension of an individual driving while suspended if the police must have, independent of the plates, probable cause for the stop.

Ohio Special Plate Law

While the Ohio Special Plate Law became effective December 14, 1967, it has rarely been used until recently, when several judges in the State became interested in the use of these plates to help control drinking drivers who were granted limited driving privileges. Table II-2 gives the number of family plates issued during recent years. As can been seen, even in 1989, only 312 such special plates were issued in the State in which there were 25,000 convictions for drunken driving. Several judges in the smaller cities in Ohio, such as New Philadelphia, Circleville, and Lancaster are using these plates, which are yellow with bright red numbers, to assist the police in supervising DWI offenders who are given limited licenses.

Table II-2
Family Plates Issued by Special Plate Division of Ohio Motor Vehicle Department

YEAR	NUMBER
1982	26
1983	119
1984	N/A
1985	117
1986	207
1987	N/A
1988	N/A
1989	312

The procedures for implementing family plates varies from judge to judge, but can be illustrated by the procedures established for use in New Philadelphia, Ohio, where approximately 30% of all offenders were given family plates in 1989. The judge generally allows the offender 30 days to apply for family plates. (Such plates are currently only available from the Department of Motor Vehicles in Columbus.) Then, the offender must bring in the regular white license plates to the court, which holds them through the period of license suspension. [5] The operator's permit is confiscated at the time of sentencing if it has not already been confiscated by the arresting officer under Ohio's new administrative suspension law which went into effect in July 1989. Even where the license has been picked up at the time of arrest, it may have been returned by the time of the trial since the mandatory hard suspension period is only 15 days. When the judge picks up the operator's license at the trial, he provides the operator with a temporary license which allows vocational use of the automobile. At the end of the suspension period, the owner may turn in the family plates and receive back the regular plates from the court if they are still valid or apply to the Department of Motor Vehicles for a new set of regular plates.

Interviews with Police Chiefs in New Philadelphia and Circleville indicated that special plates can be useful in monitoring the driving of suspended offenders. However, the Police Chiefs indicated that there was no written policy on stopping vehicles with family plates and that most officers would only stop a vehicle under special circumstances such as late at night or in a high crime area. Special plates are probably particularly useful where the suspended offender is given a limited license to drive to and from work. However, use of special plates is too limited to determine their impact on illicit driving by DWI offenders.

5. When asked about the compliance of offenders with this requirement to return with their plates, the court clerk indicated that it was very rare for the individual not to return on time and for the court to have to issue a warrant for the individual's arrest.

Special (Family) Plates In Minnesota

Minnesota has had a law providing for family plates for over 45 years. The purpose of this law (M.S. 168.041) was, according to the Attorney General, "to eliminate from the highways or to subject to ready identification the unlicensed or violation prone motorist in order to promote greater highway safety." The law provides for impounding the vehicle license plates and registration certificate of any vehicle registered or leased to a person involved in three implied consent violations and/or three DWI convictions within a 5-year period or four or more such offenses within 10 years. Thus, this application is much more limited than the Ohio law which can, at the option of the court, be applied to first DWI offenders.

A comprehensive evaluation report on the plate impoundment law was issued by the Office of Traffic Safety of the Minnesota Department of Public Safety to the legislature in February of 1990. This study covered both the impoundment of license plates for third-time offenders, and the issuance of special license plates when there were validly licensed members of the offender's household who used the offender's vehicle. This report estimates that approximately 200 persons become eligible for plate confiscation each month. This should have produced approximately 3,400 plate confiscations during the study period running from August 1, 1988, and December 28, 1989. However, during that period, only 334 persons were actually ordered to surrender their license plates in accordance with this law. This is only 10% of the expected figure. A survey was made of judges, attorneys, court administrators, and police administrators regarding the use of plate impoundment and from that study, seven reasons for the underutilization of this law were developed:

1. Judges are unaware of the law or possibly unwilling to implement it.

2. New laws require time before they are widely used and understood.

3. The courts encountered difficulty in obtaining motor vehicle registration information in time for the offender's first court appearance and this may have precluded plate impoundment.

4. Some courts wait until the offender has been convicted of DWI rather than impounding the license plate at the first court appearance.

5. Offenders often sell or transfer vehicles registered in their name prior to appearing in court.

6. Persons involved in multiple alcohol-related incidents are often driving vehicles that are not registered to themselves and, therefore, do not have a vehicle plate which the court can impound.

7. Courts in some counties failed to report all license plate impoundments to the Department of Motor Vehicles.

These problems combined to significantly reduce the total number of offenders whose plates were impounded and, therefore, the number of offenders who were motivated to apply for special plates. Of the 334 persons who were ordered to surrender their license plates as the result of a third DWI offense, only 27, or 8%, requested special plates. The report attributed this failure of eligible offenders to request plates to a lack of knowledge of the availability of this option.

Overall, it was clear that the revised law of 1988, which provided for plate impoundment for third-time offenders with the opportunity for special plates, was not being applied as originally intended. As a result, the law was modified in 1990 to provide for administrative suspension of registration and impoundment of plates for third-time DWI offenders. This law became effective as of January 1, 1991. Under this law, the police officer becomes an agent of the Commissioner of Public Safety and may issue a Notice of Intent to Impound and actually order the impoundment of the vehicle plates if the violation is the third DWI violation within five years or a fourth DWI violation within ten years. This permits the officer, at the time of the arrest when the vehicle is towed to the impoundment lot, to have the license plate removed from the vehicle.

In such cases, the police officer is empowered to issue a temporary vehicle registration notice which is displayed in the rear window of the vehicle. This temporary registration permits the offender to recover his vehicle and take it to a location where it can be stored until his or her driving permit and vehicle registration are restored. The temporary permit is for seven days if issued directly to the offender who is the vehicle owner. The temporary permit is valid for 45 days where the driver who receives the notice is not an owner of the vehicle. The owner who is not the violator may petition for return of the plates and registration if he or she can demonstrate that (1) they are the registered owner of the vehicle, (2) they were not a passenger in the vehicle at the time of the violation, and (3) that he or she is aware that the violator may not drive or be in physical control of the vehicle without a valid drivers license.

The law provides for an administrative review within 15 days and for the petition for judicial review within 30 days following the notice of impoundment. The law also provides for the issuance of special registration plates which "must bear a special series of numbers or letters so as to be readily identifiable by traffic law enforcement officers." The plates can be issued if (1) a member of the violator's household has a valid driver license, (2) the violator or registered owner has a limited license, (3) the registered owner is not the violator and the registered owner has a valid or limited drivers license, or (4) a member of the registered owner's household has a valid drivers license. The fee for issuing such licenses is $25. To prevent the transfer of the vehicle to avoid plate impoundment, the law provides that the sale of a vehicle must be for "valid consideration," and that the transferee cannot reside in the same household as the registered owner.

Information provided by the Office of Traffic Safety at the time of this report indicated that 514 persons had plates administratively impounded under the new law during January and February of 1991. During this period, another 100 persons were eligible for plate impoundment, but the law enforcement officer did not impound the plates. A subsequent check by the Department of Motor Vehicles indicated that these 100 offenders did not have

any vehicles registered in their names. A check on the issuance of special plates during this same two-month period indicated that only 19 of these plates had been issued. During the same period, approximately 25 impoundment recessions had been approved where the vehicle owner had "innocently" lent the offender his vehicle.

Iowa Special Plate Law

In the Spring of 1991, the Iowa legislature passed a plate registration impoundment law with a provision for issuing special plates (Paragraph 32IJ.4A). The law applies to third or subsequent DWI offense convictions. The registration certificate and plates of all vehicles owned by the defendant are impounded upon conviction and are not reissued until the defendant's drivers license has been reissued or reinstated. However, during this period, if there is a member of the offender's household who has a valid license, special registration plates with distinctive numbers and letters that are "readily identifiable" by law enforcement officers may be issued for these vehicles. A special feature of the law not present in the laws of either Ohio or Minnesota is that an application for and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time.

This program had not been implemented at the time of the current study. It became effective on July 1, 1991. The legislation provides that the registration and tags are to be surrendered to the court who will then forward them to the County Treasurer's Office. If special plates are issued, they will be distributed through the County Treasurer's Office. Since Iowa has an administrative per se law, it is possible, in some cases, that the Department of Transportation will have already corresponded with the offender and arranged for pickup of the registration and license revocation prior to the occurrence of a trial. During 1990, there was 780 drivers convicted of third or multiple DWI offenses in Iowa, so up to about 800 drivers a year could be affected by this new law.

While Ohio uses the family tags as a method of monitoring the driving by the offender himself, if the offender is provided with a limited license in Iowa, the current plan is to require the offender to place an alcohol safety interlock on the car if the offender is given limited driving privileges. In addition, the offender will have to obtain special plates. This is apparently the only case where the use of the interlock is combined with special plates. Since the acceptance of the special plates allows the police to stop the vehicle at any time, the police will have the opportunity to check for the presence of the interlock for those cases in which the offender is allowed to continue operating a vehicle under a limited license. While the number of drivers to which the law applies is limited and the number of those offenders who actually apply for special plates may be only a fraction of the total who are eligible, it may be well worth following the application of this law because of its unique features which involve the combined use of alcohol safety interlock and of special plates, and the authorization through implied consent for the police to stop vehicles with special plates.

Recommendations

The requirement that vehicles owned by a DWI offender who has a suspended license display special license plates seems to be an effective means of reducing illicit driving by these offenders. However, when the application of the family plate is left principally to the court, they tend to be used in a small fraction of the eligible cases as demonstrated by the experience in Minnesota and in Iowa. To overcome this limitation, Minnesota has enacted an Administrative suspension law which takes effect at the time of arrest for the third DWI offense. This law should be considerably more effective in limiting illicit driving by third-time DWI offenders because the officers seize the plate and the registration at the time of arrest. However, the use of a special plate is still up to the individual offender who must apply for that plate, but since the offender is prevented from transferring that card to another family member, the only way for the family member to use the car is for the offender to apply for the special plate. The provisions of the new laws in Minnesota and Iowa suggest a number of useful features. Keeping in mind that neither of these has been evaluated, the following recommendations can be made:

1. The plate and registration should be suspended administratively to ensure the application of this penalty to all eligible offenders. Experience with earlier laws in Minnesota demonstrated that courts frequently failed to apply this sanction to eligible offenders.

2. The seizure of the vehicle plate and registration should occur at the time of arrest. This reduces the administrative enforcement costs of finding the offender following a DWI conviction and obtaining the vehicle plate.

3. The provision of the Iowa law which makes acceptance of a special plate implied consent to having the vehicle stopped by a police officer at any time to check the driver's license should be a feature of any special plate law in order to avoid the current uncertainty with regard to whether the presence of the special plate provides probable cause for stopping the vehicle.

ZEBRA STICKER PROGRAMS

States With These Programs: Washington and Oregon

The west coast States of Washington and Oregon have unique programs directed at the problem of driving while suspended or revoked. These programs provide for the arresting officer to place a sticker over the annual sticker on the vehicle tag of a car driven by an individual who is suspended or revoked. At the same time, the officer picks up the vehicle registration and sends it to the Department of Motor Vehicles providing the motorist with a notice that he or she has the opportunity to have a hearing but that unless action is taken, the vehicle registration will be canceled in 60 days.

The similarity of the laws in the two States is shown in Table II-3. The State of Washington was the first to pass the Zebra Tag law in July of 1988. The State of Oregon modeled its law on that of Washington and the law became effective in January 1, 1990. The

TABLE II-3
COMPARISON OF "ZEBRA" STICKER LAWS IN WASHINGTON AND OREGON

FEATURE	WASHINGTON	OREGON
ACTION	STICKER	STICKER
PLACEMENT	Over date sticker on rear license plate	Over date sticker on rear license plate
INITIAL DATE	July 1, 1988	January 1, 1990
APPLICATION		
OFFENDER IS OWNER	Suspended or revoked drivers (6,710 in 1989)	Suspended and revoked drivers* (approximately 20,000 in 1990)
OFFENDER IS NOT OWNER	None	Suspended and revoked drivers * (approximately 12,000)
STICKER ON VEHICLE	Reason to stop	Reason to stop
NOT APPLICABLE TO	Out of state vehicles and drivers	Out of state vehicles and drivers
TEMPORARY PERMIT	60 Days	60 Days
REGISTRATION CANCELLATION	60 Days	60 Days
TIME TO APPEAL	15 Days	15 Days

***Includes drivers operating outside of limits (i.e., driver with Lerners Permit, but no adult in car, etc.)**

principle difference between the two laws is in the scope of offenses for which the seizing of the vehicle registration and the stickering of the vehicle plate is authorized. In the State of Washington, it is authorized only for offenders who are the owners of the vehicles in which they are apprehended and it covers only individuals suspended or revoked for serious driving offenses such as DWI. In the State of Oregon, on the other hand, the law applies to almost all individuals who are unlicensed. Thus, the vehicles belonging to innocent owners will be stickered as well as those which belong to the offender. In addition, the categories of licensed offenses for which the vehicle can be stickered is broader in Oregon than in Washington and includes, for example, drivers operating outside the limits of a permit such as a driver with a learners permit but no adult in the car.

Both laws in the State of Washington and in the State of Oregon provide that the presence of a sticker on the vehicle is probable cause for a stop. Thus, Section 3 of Chapter 891 of the Oregon Vehicle Code states:

> "Any police officer who sees a vehicle with registration plates marked ... (with a Zebra Tag) ... being operated on a highway or on the premises open to the public, may stop the vehicle for the sole purpose of ascertaining whether the driver is operating the vehicle in violation of Driving While Suspended laws."

The section goes on to say nothing which prohibits the arrest or citation of a person for an offense if the officer has probable cause to believe the person has committed the offense. This permits an officer who stops a vehicle because of the Zebra Tag to cite the individual for a license (or DWI) offense if there is probable cause to do so.

In each State, the driver receives a temporary vehicle registration good for 60 days and the registration is canceled after 60 days if no action is taken by the vehicle owner. The owner has a right to a hearing within 15 days of the arrests or citation. Hearings can consider only four issues: (1) was the driver operating the vehicle while driving privileges were suspended or revoked, (2) was the driver the registered owner of the vehicle at the time of arrest or citation, (3) is the vehicle registered in the driver's name, and (4) was the driver provided adequate notice. Note that the DMV does not require the police officer to attend the hearing though the individual motorist may do so.

The operation of this law in Oregon is summarized in Table II-4 for the calendar year 1990. Overall, just under 31,000 stickers were issued. Of these, 18,000 or 59%, were to vehicles owned by offenders and 41% were to vehicles owned by others. The basis for these citations is shown under "Types of Cites or Arrests." Note that only 2% of the sticker actions were found to be invalid because either the vehicle or the driver was not subject to the legislation. (Note: if the vehicle is from out-of-State, it's not subject to being stickered).

Over half of the sticker actions resulted from suspensions related to failure to demonstrate financial responsibility. It is probable that a significant proportion of these cases ultimately evolved from DWI convictions which cause a steep rise in insurance rates and resulted in cancellation of insurance by the offender. The second largest number, amounting to 30% of stickers, were applied to vehicles of drivers who were suspended for various reasons

TABLE II-4
OREGON VEHICLE SERVICES BRANCH VEHICLE DECEMBER 1990 REPORT

	DECEMBER	1990 YEAR TO DATE
CITATIONS OR ARRESTS	1,938	30,776
Driver Owner	1,010 (52%)	18,121 (59%)
Driver Not Owner	928 (48%)	12,655 (41%)
TYPES OF CITATIONS OR ARRESTS		
Felony	227 (14%)	3,855 (12%)
Financial Responsibility	1,080 (56%)	16,544 (54%)
Expired License	62 (3%)	643 (2%)
No License/Other Reasons Under ORS 807.010	511 (26%)	9,217 (30%)
Vehicle or Driver Not Subject	8 (>1%)	507 (2%)
AGENCIES PARTICIPATING		
Oregon State Police	313 (16%)	5,718 (19%)
Sheriff's Office	346 (18%)	5,705 (19%)
City Police	1,278 (66%)	19,252 (62%)
No Agency Entered	1 (>1%)	98 (>1%)
CASES CLOSED	1,969	22,037
Due to Title Transfer	281 (14%)	3,258 (15%)
Owner Obtaining a Valid License/Permit	307 (16%)	3,480 (16%)
Notice Never Received Or Received After 15 Days	0 (0%)	179 (1%)
Driver Not Owner	1,109 (56%)	12,106 (55%)
Other	272 (14%)	3,014 (14%)
HEARINGS		
New Cases	5	91
Closed Cases	1	72
Cases Pending	4	4
Extensions Due To Hearing	3	21 (23%)

(including DWI under ORS 807.010). The majority of these are believed to be DWI-related. Interviews with the responsible officials in the Department of Motor Vehicles indicated that at least 25% to 30% of all the sticker citations were for Driving While Suspended as a result of a DWI offense.

The next section of Table II-4 provides an indication of the distribution of the citations between the major categories of police departments. Most of the citations are provided by the various city police departments, but both the State Police and the County Sheriff participate, accounting together for almost 40% of all the citations.

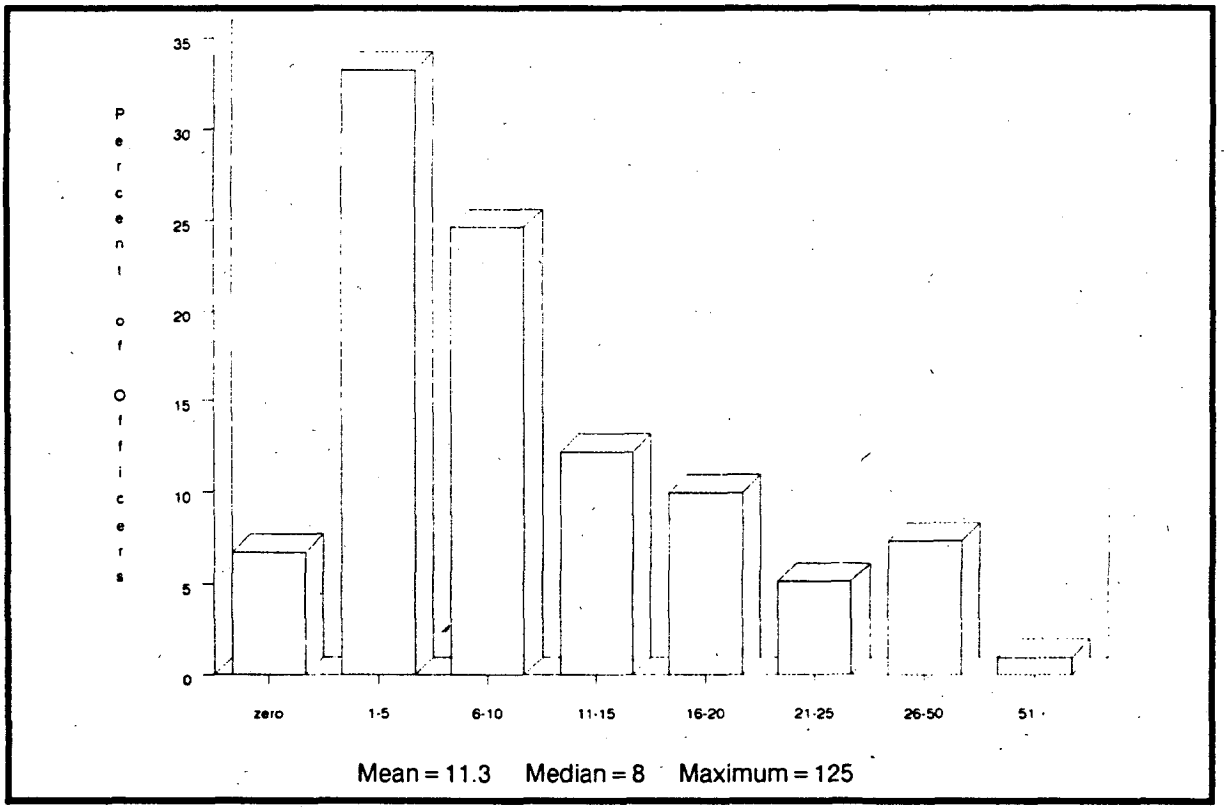
The data on "closed cases" provides a glimpse into the methods by which offenders are clearing their vehicles of the sticker and reinstating their vehicle registration. Note that during the entire year there were 12,655 citations placed on the vehicles owned by an individual who was not the offender and that by the end of the year, 12,106 of these had been cleared. Thus, there is evidence that these cases are being cleared very rapidly by the non-offender owners. They are able to clear them by going down to the local Department of Motor Vehicle office and paying a $6.00 reinstatement fee and an $11.00 annual fee to obtain a new annual sticker. Thus, the "innocent" owner faces only a very small fine and the annoyance of a trip to the Department of Motor Vehicles.

On the other hand, the offender-owner is apparently having significantly more trouble clearing the sticker from his or her vehicle. Note that approximately 3,000, or only 18%, of the 18,000 driver-owners apparently cleared their vehicle by transferring the title. Approximately the same proportion cleared their vehicle by obtaining a valid drivers license while another 3,000 were able to clear their stickers by unspecified means. Overall, by the end of the year, only 54% of the owner-offenders were able to clear the stickers. The others presumably still have the stickers on their cars and may have had their vehicle registration canceled. This suggests that the sticker program could be effective in reducing the amount of illicit driving by suspended operators.

The information at the bottom of the table on hearings provides evidence that the system is working smoothly since there were only 167 hearings requested out of the 30,776 sticker citations; a rate of about one-half of one percent. Overall, the data shown in Table II-4 suggest that in Oregon the Zebra system is working effectively at an operational level. There is no evidence for a large backlog of cases. Owners who are not offenders are able to clear their vehicles rapidly and at the same time, there is evidence that at least half of the offender owners are being caught with stickers on their cars and presumably suspended registrations for significant periods of time.

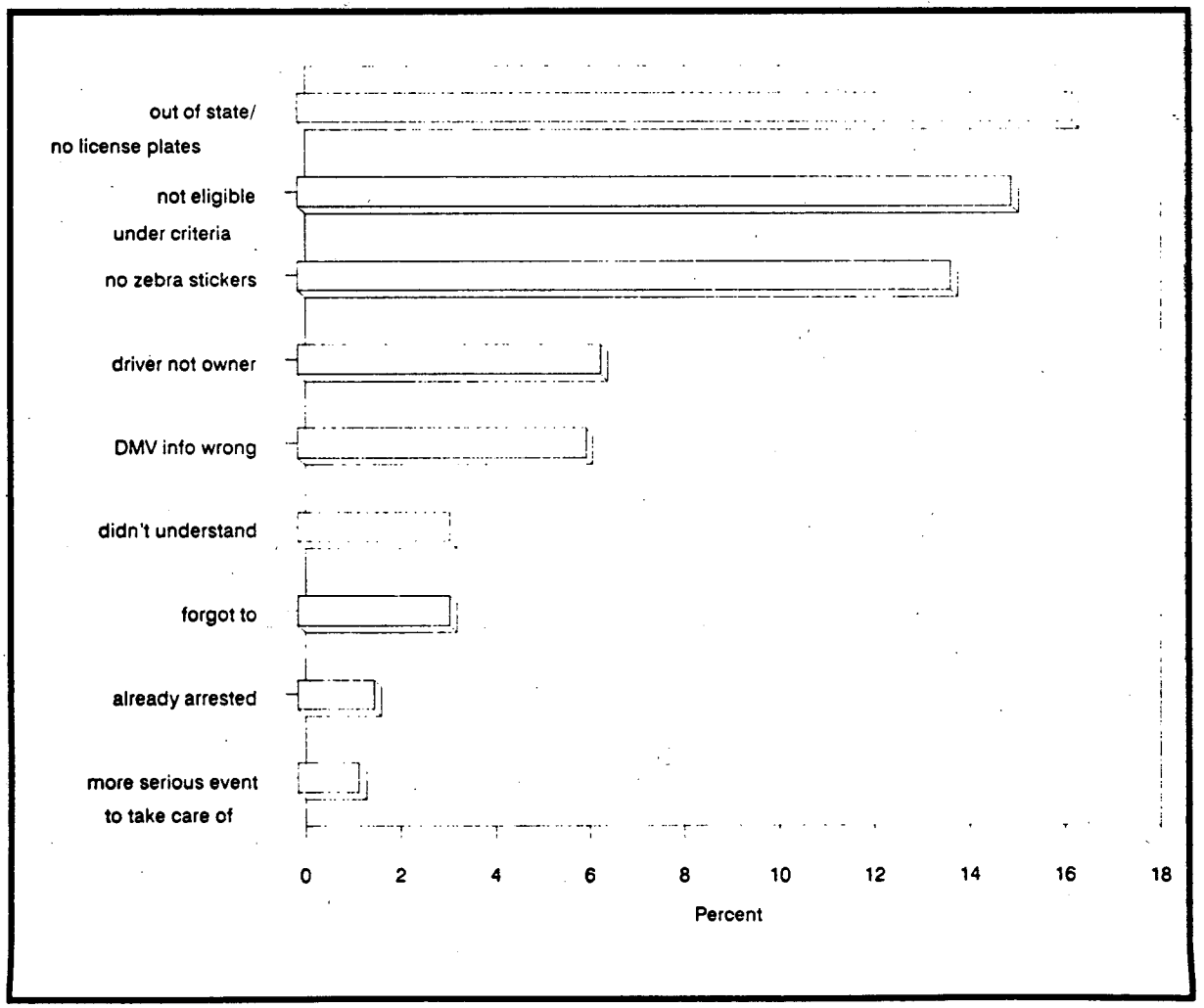
These data indicate that the Zebra Tag Program should be effective in reducing illicit driving by these offenders if the law is actively enforced by the police. The Oregon State Police offered to assist this study by obtaining information on the extent of enforcement and particularly on the individual officer's view of the Zebra Tag Program. They received 96 responses to their questionnaires (which included essentially all the officers regularly on traffic patrol). Figure II-1 shows the distribution of the number of vehicles that the officers reported that they had stickered during the first 6 months of the implementation of the Zebra Tag Program (January 1 to June 30, 1990). Only 5% indicated they had not tagged any vehicles and over one-third of the officers had tagged 11 or more vehicles. One officer reported having placed Zebra Tags on 125 vehicles!

FIGURE II-1
NUMBER OF VEHICLES STICKERED IN THE FIRST 6 MONTHS OF 1990 BY 96 OFFICERS OF THE OREGON STATE PATROL



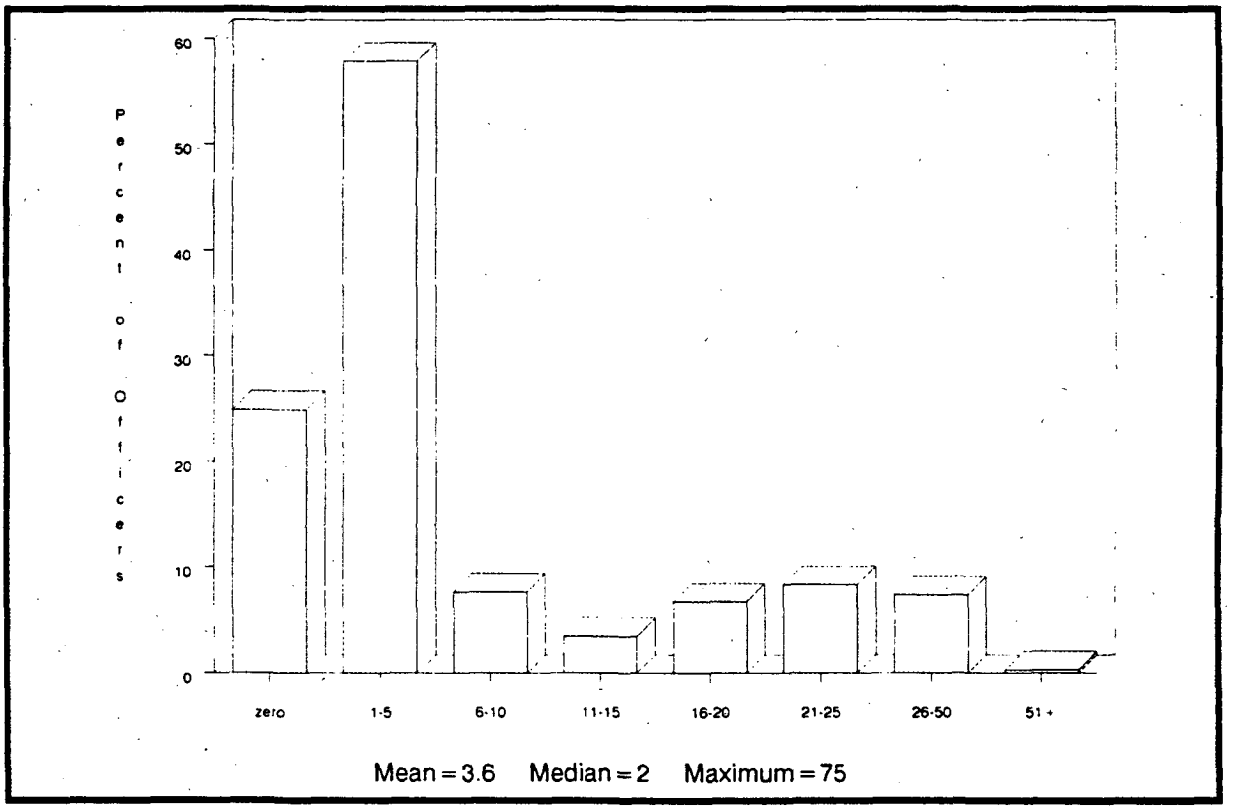
When asked whether they consistently tag all vehicles, one in three indicated that they did so. The other two-thirds indicated that they were not always consistent in tagging vehicles. When this group was asked why they did not tag some vehicles, they gave a variety of reasons (shown in Figure II-2). The principle reasons related to limitations in the law which did not provide for tagging out-of-State vehicles or individuals not covered by the criterion (such as a driver whose license had expired but had been expired for less than 1 year). For a period of time early in the program, the State Police were so active in placing stickers on cars that they ran out of stickers because the Motor Vehicle Department underestimated the number that would be needed. This resulted in a number of offenders avoiding having stickers placed on their car for a short period until the supply was replenished. In a few cases, the officers exercised discretion in cases that might have otherwise been stickered. Three indicated, for example, that they had not bothered to sticker the car when they found that the driver was not the owner of the vehicle.

FIGURE II-2
REASONS GIVEN BY OREGON STATE POLICE OFFICERS FOR NOT STICKERING VEHICLES



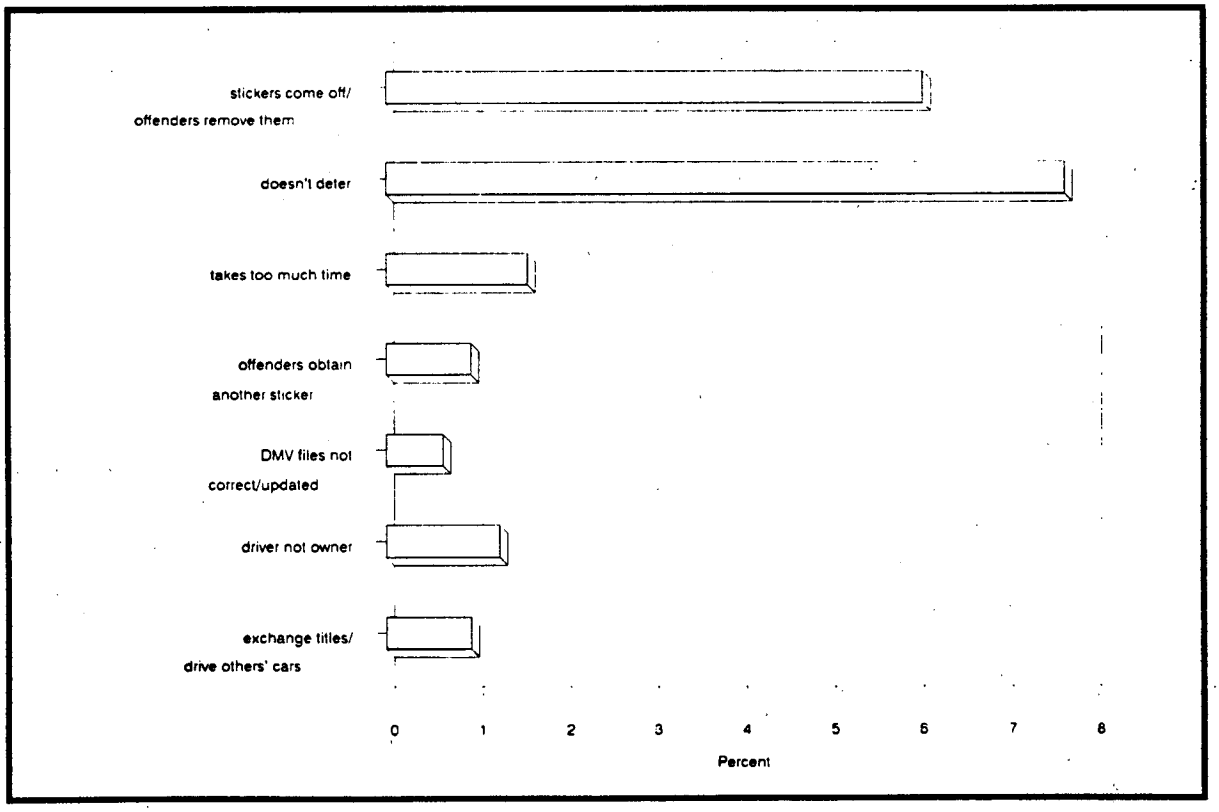
Of particular interest in terms of creating deterrence through the use of the Sticker Law is the readiness of the police officers to stop a stickered vehicle. As noted, the law specifically states that the presence of a sticker on the license plate is probable cause to stop the vehicle and check the driver's license. When the 96 officers of the Highway Patrol were asked how many vehicles with stickers they had stopped, they gave responses ranging from zero to 30 as shown in Figure II-3. The modal response appeared to be between one and five. When asked under what situations they would not stop a Zebra-tagged vehicle, there was near unanimity among the officers that they *always* stopped a Zebra-tagged vehicle.

FIGURE II-3
NUMBER OF VEHICLES WITH ZEBRA STICKERS STOPPED BY THE OREGON STATE POLICE DURING THE FIRST 6 MONTHS OF 1990



When asked for their opinion regarding the law, over 80% of the officers felt that the law was useful and effective. However, 15% had some doubts about the law's effectiveness. Some of the specific reasons why the 15% felt the law was ineffective are shown in Figure II-4. One problem was that the stickers would come off or that offenders might be able to remove them. On more detailed questioning, it emerged that when a sticker had to be applied in the rain, it was difficult to make it stick to the plate. Most of the officers did agree, however, that once the sticker was on, while it could be removed, the annual sticker which was underneath would be removed in the process. Thus, at a minimum, while the offender might get rid of the Zebra sticker, he or she would then be without a valid annual sticker. Other problems with the Sticker Program were only occasionally mentioned.

FIGURE II-4
REASONS GIVEN BY OREGON STATE PATROL OFFICERS WHO FELT ZEBRA TAG LAW WAS NOT EFFECTIVE



Overall, it appeared that the State Police were relatively enthusiastic about the Zebra Law and generally felt that it could be effective. This, together with the evidence that the sticker law is effective in marking offender owned vehicles for a significant period of time, suggests that this law may be effective in reducing illicit driving by DWI offenders. Phase II of the current contract will attempt to measure the impact of this law on illicit driving by suspended DWI offenders.

Recommendations

While neither the Washington nor Oregon Sticker Programs has been evaluated, there is good evidence that, at least in Oregon, stickers are being placed on the vehicles of a large number of convicted drinking drivers who were apprehended driving while suspended. Because the sticker provides probable cause for stopping the automobile to check the licensed status of the driver, the presence of a sticker on the car of a suspended DWI should deter the individual from illicit driving. Whether this is the case will hopefully be determined in Phase II of the current study program. Assuming that sticker programs can be demonstrated to be effective, information collected in this portion of the study leads to a number of suggestions for varying improvement

SECTION III: ACTIONS AGAINST VEHICLES

VEHICLE IMPOUNDMENT AS A SANCTION FOR THE DWI OFFENSE

Several States provide for vehicle impoundment in their criminal codes as a penalty for the DWI offense. This penalty is generally reserved for multiple-time offenders. However, the State of California provides for 30-day impoundment for a first offender and a 90-day vehicle impoundment for a second- or multiple-time offender. New Mexico and Oregon provide for vehicle impoundment for second-time offenders.

More direct, and presumably more effective than actions against the vehicle tags, are actions taken against the vehicle itself which remove the vehicle from the offender's control thereby preventing its operation by an unlicensed driver. Six types of actions against vehicles were identified in this survey.

California Impoundment Laws

The California Impoundment Law potentially has a very wide application because it provides for 30 days impoundment for a first-time DWI conviction and 90 days for a second-time and subsequent DWI convictions. In 1989 California had 336,000 DWI arrests and nearly 100,000 of these produced multiple DWI convictions. The potential impact of this penalty or illicit driving by DWI offenders could be large if it were widely applied. Unfortunately, it appears to be rarely used. The Office of Research of the California Department of Motor Vehicles conducted a survey in 1989 of the 194 courts in the State of California. Replies were received from 149 of these courts. Of those who replied, only six reported using impounding authority in DWI cases half of the time or more. As part of the present project, a follow-up was conducted with these six courts. Whereas the Wasco Branch of the Arvin-LaMont District of the South Karan Municipal Court had reported to DMV that they "always" impounded vehicles, when contacted as part of this study they indicated that they did not impound vehicles. We had a similar experience in checking with the clerks of the other five courts identified through their response to Tashima's survey. (See Table III-1).

The Clerk of the Freemont District Newark Municipal Court indicated that judges "sometime" impound but that records are not kept of the impoundments. Impounding was left entirely to the discretion of the individual judges and the Court Clerk indicated that the only possible method of determining the number of impoundments would be to go through all the court case records to find those that involved DWI and determine in each individual case whether impoundment had occurred. This would be a major task since the cases are not arranged by offense, but are arranged sequentially by number. It would be necessary to go through the entire file in order to find relevant cases.

TABLE III-1
COMPARISON OF THE CURRENT STUDY WITH TASHIMA SURVEY ON THE USE OF IMPOUDMENT IN CALIFORNIA DWI CASES

Court	Reply to Tashima	Reply to Current Survey
Stanislaus Municipal Court, Modesto	"Half the time"	Estimate 30 impounds in 3,400 DUI cases
Willow Justice Court, Glenn County	"Half the time"	0 impounds in 1989, 4 or 5 in 1988
Concord Branch, Diablo Municipal Court	"Half the time"	"Courts impounds only rarely"
Newark Municipal Court, Freemont District	"Usually"	"Sometime impounds"
Banning Branch Municipal Court, San Jacinto District	"Usually"	No information available from court
Wasco Branch, Arvin-Lamong District, South Karan Municipal Court	"Always"	"Does not impound"

Our follow up to the Tashima survey indicated clearly that the use of impoundment was not summarized in any court report and that the only way to determine whether impoundment had been ordered would be to obtain the case record itself. In many courts, this would involve going though literally thousands of cases since DWI cases are not separately filed. Despite the difficulty of obtaining this information, it was decided to select one court for a more detailed survey of the individual trial records because of the potential importance of the impoundment law as a sanction for first-offense DWI offenders. With the assistance of Commissioner Costellanos, we obtained the cooperation of the Sacramento Municipal Court to permit us to go through the disposition records of 200 DUI cases, 100 for each of two judges who handled most of the DWI offenders in this court. Commissioner Costellanos had indicated that she normally handles on the order of 80 to 100 cases a day, and that in her experience only 1 or 2 would result in an impound order. Nevertheless, we felt it would be worthwhile to sample a sufficient number of cases to verify the general conclusion from our interviews which was that the impound penalty was assessed in no more than about 1% of the cases.

Table III-2 shows the result of our hand search of approximately 100 cases for two judges in the Sacramento Municipal Court. About 60% of the cases were first offenders. Out of a total of 126 first-DWI offender cases, the word impound was mentioned in only one, and that was the statement that no impound would be assessed. Thus, in this particular sample, impound was not used at all for first offenders.

Our sample contained 76 second-time offenders; in 50% of these cases there was no mention of impound at all, while in another 40% the only mention was a statement of no impound. Seven cases were identified in which there was a mention of the possibility of impound. In four of these, there was a claim that the vehicle had been transferred and the court record showed a continuation of that issue pending proof. In one case, it was mentioned

TABLE III-2
MENTIONS OF IMPOUND BY JUDGES IN SACRAMENTO

	Judge A	Judge B
FIRST OFFENSE		
No mention at all	68	57
"No Impound" stated	0	1
SUBTOTAL	(68)	(58)
SECOND OFFENSE (OR MORE)		
No mention at all	27	11
"No Impound" state	9	22
Mention of transfer - continue to proof	3	1
Mention of car as junk - continue for proof	1	0
Mention of need to have car for work	1	0
Mention of impound - continue for proof	0	1
SUBTOTAL	(41)	(35)
TOTAL	109	93

that the car was junked and that case was continued for proof. In another case, there was a mention of the need of the car for work, presumably in this case no impound was ordered. Finally, there was one case in which there was a mention of impound, but the case was continued, apparently to obtain further information. Thus, even among the 76 second-time offenders, there was no definitive case of vehicle impound. This is a small non-representative sample but it does support the conclusion from interviews with the clerks of those courts that

had previously been identified by Tashima as using "impoundment" — that impoundments were rare. There is a large number of reasons which allow the court to avoid having impoundment ordered. An example of those reasons is provided by the impoundment order form itself, an example of which is shown in Figure III-1. Aside from a finding that a defendant was not the registered owner of the vehicle he was driving at the time of arrest, impoundment can be avoided if the court determines that it would result in loss of employment for the defendant or a member of the defendant's family. It can also be avoided if impoundment would impair the ability of the defendant to attend school or obtain medical care. Impoundment can also be avoided if the court determines that the defendant might lose the vehicle because of his inability to pay the storage fees. Finally, the vehicle will not be impounded if it is community property. Since California is a community property State, many if not most, of the vehicles of married offenders will be community property. If these reasons were not sufficient, the court can provide for additional reasons and "compelling facts."

To explore further the use of impoundment as a penalty for DWI, a focus group was held in Sacramento which included two local judges, a member of the defense bar and representatives from the California Highway Patrol and the Sacramento City Police Department. During the course of this round table, it became clear that from the judges' point of view, a major barrier to taking action to impound offender's cars was the lack of clerical assistance in the court. One judge indicated, for example, that between 8:30AM and 10:00AM that morning she had presided over 78 DWI cases. At 10:30AM, 33 more DWI cases were calendared, while following our session there would be 50 more DWI cases on the afternoon docket. She indicated that the court clerk was overwhelmed with simple paper work of making out forms on this large number of offenders. There was, therefore, no one in the court who could make a check to determine whether the offender was the owner of the vehicle in which he had been stopped. It was apparent that no department, neither the police nor the prosecutor, felt responsible for obtaining that information.

There was some reluctance on the part of the judges to have the defendant queried by court clerks on the matter that could result in impoundment. They felt that to obtain information on vehicle ownership, it was necessary for the judge to interrogate the offender. But with the numbers involved, that was clearly out of the question. Other factors which appeared to mitigate against the impoundment sanction mentioned by the judges were the likelihood that the offender would transfer his vehicle, if in fact he owned it outright. Many of those who retained lawyers would be advised to transfer the vehicle registration before trial. In addition, considerable concern was expressed about the potential for the offender to lose his or her job and for there to be hardship on family members. The judges noted that "It was different out in California compared to the East. A vehicle was more necessary for maintaining employment in California." One judge indicated that when he did make a decision to impound the vehicle, rather than having the offender take the vehicle to an impound lot, he merely impounded the license plates.

Aside from employment, the judges also noted that under the California Senate Bill 38, the offenders were required to attend weekly treatment sessions and that they needed a car to get to the treatment location. Other reasons given for failure to impound was that the offender was using someone else's vehicle, or that the vehicle was in a crash and essentially totalled, or

FIGURE III-1
IMPOUNDMENT ORDER - CALIFORNIA

STANISLAUS COUNTY MUNICIPAL COURT

ORDER RE: IMPOUNDMENT OF VEHICLE
PURSUANT TO VEHICLE CODE SECTION 23195

CASE NO. _____ DEFENDANT _____

Vehicle Ordered Impounded

I. _____ Per Vehicle Code Section 23195(a) the Court finds that the defendant is the registered owner of the vehicle involved in this case. Defendant's motor vehicle IS ordered impounded for _____ days as a condition of probation.

Proof of satisfaction of this impoundment condition is to be presented to the Court on _____ date.
Defendant is ordered to return on that date.

Vehicle Not Ordered Impounded

II. _____ Per Vehicle Code Section 23195(a) the defendant's vehicle IS NOT ordered impounded for the following reason(s):

A. ____ The Court finds that the defendant is not the registered owner of the vehicle involved in this case.

B. ____ The Court finds this to be an unusual case where the interests of justice would best be served by not ordering impoundment based upon the following specific circumstances(s):

1. ____ Impoundment would result in a loss of employment of the defendant and/or the defendant's family;

2. ____ Impoundment would impair the ability of the defendant and/or the defendant's family to attend school or obtain medical care;

3. ____ Impoundment would result in the loss of the vehicle because of inability of the defendant to pay impoundment fees;

4. ____ Impoundment of the vehicle would infringe upon community property rights as specified in Vehicle Code Section 23159(b);

5. ____ Other relevant and compelling facts, to wit:

_____

_____

_____

_____

that the vehicle was community property. It was clear that the many bases provided by the law for avoiding impoundment, together with the general belief of the judges that a vehicle was necessary to employment, not only of the offender but of family members, and the serious doubts these judges entertained regarding the effectiveness of the penalty would result in relatively infrequent use of impoundment, even if the court staff were increased to make it possible to process the paper work involved in determining vehicle ownership.

This failure to impose the impoundment occurred despite the fact that this penalty would involve little cost to the State since the offender is required to take his vehicle to an impound facility and turn it in and have the custodian sign for the vehicle. The offender then must return to the impound lot with a signed release to have his vehicle returned. Any storage or other costs involved in this impoundment must be paid by the offender. Thus, except for the limited effort involved in filling in the form there is no burden on the court; and the police department is not involved at all. This makes the impoundment sanction particularly attractive in comparison to sanctions such as jail or probation which may cost the local jurisdiction considerably more.

The New Mexico Impoundment Law

New Mexico provides for impoundment on second and subsequent DWI offenses. In addition, New Mexico provides as an alternative to impoundment, the use of immobilization, which is a unique feature not provided in legislation of any of the other States. In New Mexico, impoundment is authorized by legislation for 30 days for the second offense and 60 days for the third offense. The action is not mandatory on the court and the court is allowed the alternative of immobilizing the vehicle for a similar period (Paragraph 66-8-102(i)).

The University of New Mexico School of Law, Institute of Public Law, conducted a survey of vehicle impoundment and mobilization by magistrates and municipal, district and metropolitan court judges in New Mexico. In all, 202 questionnaires were sent out of which 109, or 54%, were returned. Forty-four of these responses were from municipal judges who are not authorized under the statute to use impoundment. These researchers found that over half of the magistrates authorized to use impoundment reported doing so in their survey. The use of this penalty varied among the magistrates with two of the magistrates accounting for over a third of all the impoundments. The principle reason given by the magistrates for not imposing the impoundment penalty was uncertainty over the ownership of the vehicle. Other reasons given included that the vehicle was not worth the impoundment fee, lack of proper forms and concern for the families of offenders living in areas having no mass transit.

The University of New Mexico study attempted to obtain information on issues which frequently limit the sanctions applied to second-time and multiple-time offenders. They asked the magistrates about the issue of proving a prior conviction. Some of the magistrates indicated that they did require certified copies of prior convictions, although most appeared to be willing to accept motor vehicle department records unless they were challenged by the defense. The judges were also asked whether there was a more aggressive defense as a result of the law providing for vehicle impoundment. Only 29% of the respondents thought that the defense

had become more aggressive. The majority also felt that the number of jury trials had not increased. The University of New Mexico report concludes that:

> "Overall, judges felt that the law didn't have much impact, was difficult to administer and sometimes confusing, was unfair to families and was applied capriciously rather than uniformly to offenders throughout the State. Some express concern that new forms were needed or that the law had to be run through a court test for constitutionality to determine whether (impoundment) is a mandatory penalty or is discretionary.[6]

In order to obtain an estimate of the usage of the impoundment penalty, we obtained the cooperation of the Court Administrator of the Bernalillo Country metropolitan court to provide a sample of 116 cases involving second-time and multiple-time DWI offenders for whom some decision was made regarding impoundment in 1989. These data are summarized in Table III-3. In 52 cases, 30- or 60-day impoundments were ordered. In another 10 cases, an impoundment was ordered but the record failed to reflect the length of time. In addition to ordering the impoundment at the time of sentencing, the court order may be entered at the time of the pre-sentence review but no action would be taken until the time of sentencing. In 15 cases, such an order was given at the time of the pre-sentence review, but not followed up at the time of sentencing. Based on the pre-sentence review, some offenders voluntarily impound their vehicles in order to receive more favorable consideration at the time of sentencing. This occurred in 8 cases. Table III-3 also lists the reasons for failing to impound. It is interesting that the most frequently mentioned reason is inability to prove ownership. One would expect that would be more straight forward being dependent principally on a query to the motor vehicle department than the matter of proof of prior DWI where, frequently, affidavits of previous convictions are required.

This record for 1989 indicates a 60% use of impoundment despite the reaction of the judges reported by the University of New Mexico study. As in California, the responsibility for impounding the vehicle is placed upon the offender who must take the vehicle to an impoundment lot and pay whatever storage fees are involved.

Vehicle Immobilization in New Mexico

A unique feature of the New Mexico law is the use of immobilization. This may provide a less expensive alternative to the offender than having his vehicle stored in an impound lot while providing the same control over the operation of the vehicle. The initial purchase price of immobilization devices is apparently an issue since a number of the judges in the New Mexico report indicated that immobilization devices were not available[7].

6. University of New Mexico (1989) p. 4.

7. University of New Mexico (1989).

TABLE III-3
SUMMARY OF THE IMPOUNDMENTS WHICH OCCURRED IN BERANLILLO COUNTY METROPOLITAN COURT, IN ALBUQUERQUE DURING 1989
(INFORMATION PROVIDED BY COURT CLERK)

NO. OF IMPOUNDMENTS	TYPE OF IMPOUNDMENT
45	Vehicle impounded for 30 days
7	Vehicle impounded for 60 days
10	Vehicle impounded; no specific number of days
8	Voluntary impoundment
70	TOTAL

NO. OF CASES OF NO IMPOUNDMENT	REASON FOR FAILURE TO IMPOUND
2	Impoundment waived
15	Impoundment ordered at time of PSR but no action taken at time of sentencing
1	Vehicle totalled
2	No proof of prior DWI
11	Could not prove ownership
2	Served jail in lieu of impoundment
2	Sold vehicle
5	No reason given
2	No prosecution by the District Attorney
1	Vehicle dismantled
1	Paid fine in lieu of impoundment
1	Suspended sentence
1	Failure to impound
46	TOTAL

A system for purchasing such devices and leasing them to the offenders would seem to be indicated. The cost of the lease to the offender could probably be set at an amount considerably below the daily charge for vehicle storage.

The report by the University of New Mexico indicated that magistrates and metropolitan court judges used 30-day immobilization in about one-third of their 30-day vehicle actions (38 immobilization and 69 impoundments for a total of 107 actions reported). Some concern was expressed over the possibility that an immobilized vehicle might be vandalized. Normally, the vehicles are parked at the residence of the offender where they can be under the offender's surveillance. A check with the Bernalillo County Metropolitan Court indicated that there was no recorded instance of vandalism against an immobilized vehicle.

The Oregon Impoundment Law

The impoundment law in the State of Oregon is similar to that in New Mexico in that it applies to second and subsequent offenders. It is discretionary for the court and it is limited to not more than 120 days. As in the case of both California and New Mexico, the offender pays the cost of the vehicles removal and storage. This sanction in Oregon also applies to a driver apprehended driving while his or her license is suspended or revoked. As in California and New Mexico, the use of impoundment is entirely up to the court and the records are kept at the court level not available in State record systems. We did not, as a part of this study, attempt to survey court records but the indication from contact with police departments, departments of motor vehicles and judges was that the impoundment penalty was used very infrequently.

Summary

The lack of use of the impoundment penalty in California is disappointing since it appears that it could provide a striking but expressive penalty. The greater use of this penalty by the courts in New Mexico suggest that it can be implemented where the judges honor its use. Immobilization offers an alternative which may cost the offender less, but provides the same incapacitating effect as impoundment.

Recommendations

1. Responsibility for determining vehicle ownership in court proceedings needs to be clearly assigned to the police, the prosecutor or the court clerk so that this evidence is available to the court.

2. The reasons that may be used by the court to avoid impoundment should be minimized.

3. The cost effectiveness of immobilizing the vehicle instead of impounding it should be explored.

VEHICLE IMPOUNDMENT FOR DRIVING WHILE SUSPENDED

A number of States (Delaware, New York, and Wisconsin) provide for vehicle impoundment for certain Driving While Suspended (DWS) offenses and for combinations of driving while suspended and DWI. The laws in the States of Delaware and Wisconsin have perhaps the broadest application since they provide for conviction for first offense driving while suspended or revoked. The law in Delaware is slightly more limited since it provides for impoundment for driving while suspended only if the suspension results from a DWI offense. The law in New York is applicable to a slightly smaller group since impoundment is provided only for "aggravated" unlicensed driving which involves a second driving while suspended offense, or being apprehended driving under the influence while also suspended.

Vehicle Impoundment for DWS

Section 21, paragraph 2756 of the Delaware Motor Vehicle Code provides for impoundment of a vehicle or surrender of license plates and registration for a period of 90 days for first offense and 1 year for subsequent offenses, if the operator was apprehended while driving with a suspended license when the suspension was for a DWI offense. This appears to be a law which could provide significant deterrent potential for a sizable number of drivers since, in 1989, there were 6,659 DWI arrests in the State of Delaware. Any of those who lost their license as a result of a DWI conviction or implied consent or administrative per se law suspension would be exposed to having their vehicle impounded if they were detected driving while suspended. However, the contact with the Motor Vehicle Division of Delaware indicated that the law providing for vehicle impoundment was being used sparingly because of the expense of vehicle storage. This was confirmed by the Delaware State Police. They indicated that the Vehicle Impoundment Law of Delaware was being enforced only on second-time and multiple-time offenders and principally on those with "junk" cars. These are individuals whose cars would be towed to the impound lot from the site of arrest but were in such poor shape that the individual might not pay the $50 towing charge in order to repossess the car. The commercial storage companies charge $10 per day per vehicle, which in the case of an indigent offender, will have to be paid by the local government. Because of this cost, few vehicles are impounded. The State Police indicated that it would do little good (through legislation) to make the defendant responsible for cost since, in most of the cases in which they currently acted, the defendant either did not have the ability to pay the costs or the impounded car was not worth redeeming after 90 days at $10 per day. Despite this problem, wherever the State Police were convinced that a multiple-time offender would continue to drive, they did in fact hold onto the car, usually by parking it at the police barracks. However, of course, they were unable in this situation to lock up the lot and they felt there was considerable danger of theft or vandalism. The State Police indicated that they might currently impound 100 cars a year. When asked if it would be possible to identify these cases, the State Police indicated that the source of the information would be in the files of each of the eight State Police Troop barracks.

Where a car that was impounded had significant value, the offender normally immediately obtained a lawyer who would seek to have the car released. In this case, there was too much hassle and paperwork involved to continue the impoundment so the car was

usually released. The State was able, on the other hand, to hold the car between the time of arrest and the court date in the cases where the offender could not pay the $50 towing bill. Thus, the impoundment law was only being applied to indigent drivers with junk cars.

The Delaware State Police suggested that an effective law might provide that vehicles seized at the time of arrest be confiscated by the Attorney General's Office. Subsequently, the spouse or other person with an interest in the vehicle must contact the Attorney General's Office and take action to have the car returned. The Attorney General's Office could return the vehicle but would admonish the spouse or lien holder that, if the convicted offender were allowed to drive that car again during the impoundment period then the car would be confiscated.

Delaware appears to highlight the problem of the expense of towing and storage of vehicles combined with the problem that many of the habitual offenders are driving vehicles of little value. A successful impoundment law must provide a means of meeting these expenses without burdening the State and without requiring a commercial storage company to absorb the expense through the failure of the offender to redeem his or her vehicle. A method must also be found for the court to impound the vehicle without adding significantly to the paperwork of the police department. It is notable that the State Police officer indicated that, to his knowledge, the State Police had never gone out and seized a vehicle based on a court order. Rather, the vehicles that had been impounded were those that were seized at the time of the arrest and never returned to the offender because the vehicle was of little worth and the offender was unable to redeem the vehicle by paying the towing and storage costs.

Wisconsin Vehicle Impoundment for DWS

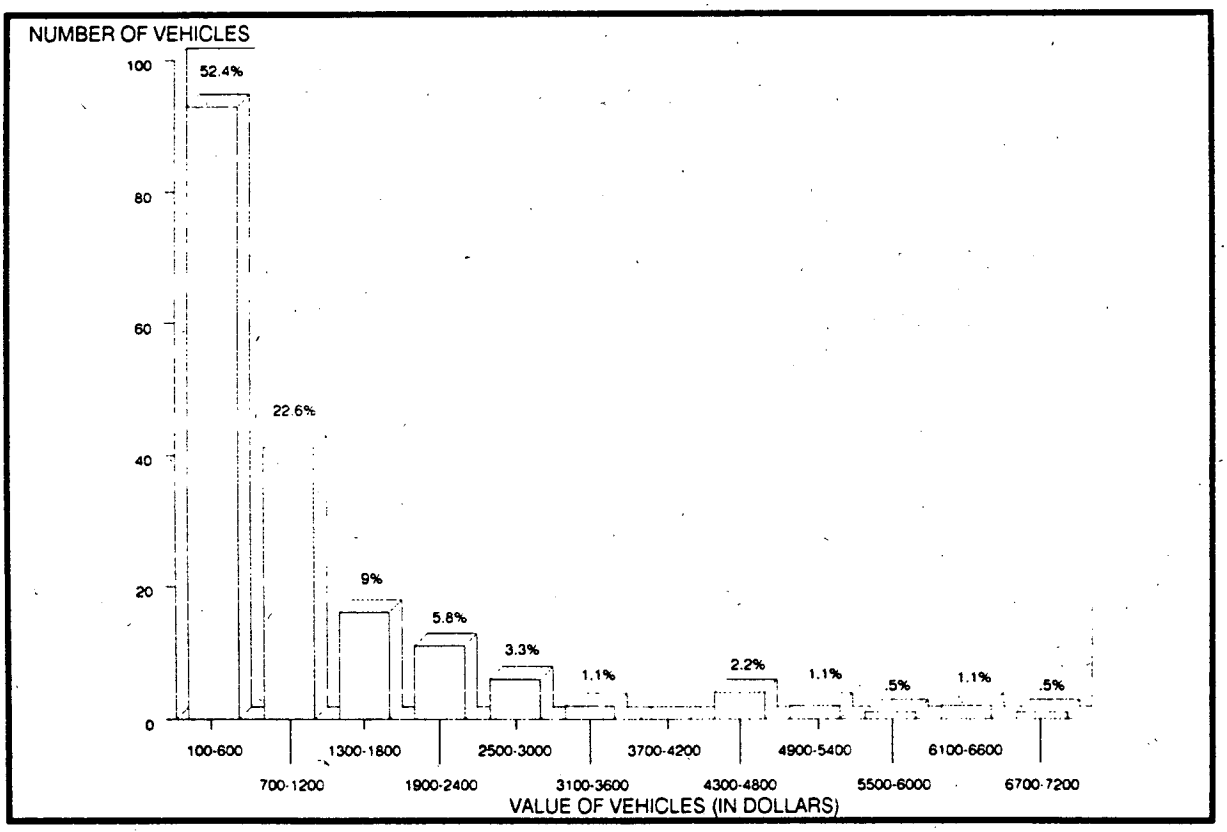
The Wisconsin Impoundment Law provides that the vehicle of a person guilty of Driving While Suspended in a motor vehicle which he or she owns may be impounded at the discretion of the court. The court may determine the manner and period of impoundment. The cost of storage constitutes a lien on the vehicle. Contacts with state officials indicated that this impoundment provision was rarely used. A number of reasons were provided for the failure to impound cars. Among them were (1) the value of the impounded vehicle would not cover the expense for impoundment when the vehicle was sold at auction, (2) the impact of impoundment on the family, (3) the offender was not the owner of the vehicle, (4) the paper work was an administrative nightmare, and (5) the penalty is discretionary with the court.

The principle problem mentioned by most of our correspondents was the cost of the impoundment program. In 1983, Gelderman, et al, made a study of impoundment costs and revenues, and came to the conclusion that current impoundment procedures would produce a loss for the State. While their study focused on impoundment for financial responsibility, the basic revenue and expense figures would be similar for the impoundment of vehicles of drivers operating while suspended. They identify three types of costs involved in impounding vehicles: (1) a pre-impoundment cost which represents administrative costs in identifying offenders subject to impoundment, (2) a post-impoundment cost which represents the department's cost involved in overseeing the management and storage of vehicles, and (3) the costs involved in selling the vehicle which include the costs to tow, store, advertise and sell.

They estimate the total cost of handling and, if necessary, selling the vehicle (as of 1983) to be $508.

Figure III-2 shows the range of values of vehicles for uninsured motorists involved in crashes in 1983 in the State of Wisconsin. These values are based on undamaged vehicles. However, 41% of the vehicles subject to impoundment that year had been damaged in an accident. Since for all types of enforcement some of the vehicles involved will be damaged, the average value would tend to be even lower than shown. As a result, they report that the average vehicle impoundment was worth $295 or 42% less than the cost of handling the vehicle.

FIGURE III-2
1983 UNINSURED MOTORIST'S VEHICLE VALUES IF UNDAMAGED IN THE STATE OF WISCONSIN



This study applies to the 1982 - 1983 period and is now somewhat out of date. Moreover, it is not directly applicable to vehicles of DWI and DWS offenders. Nevertheless, it does illustrate the potential budget problems presented in impounding vehicles where many of the cars are of little value and where, as a result, the offender may forfeit the vehicle rather than pay the impoundment costs. In this case, the State or the local jurisdiction will be required to pick up the difference. Note that in Wisconsin, as well as in Delaware, while the law provides for impoundment, not confiscation, the costs related to vehicle forfeiture and sale to determine

the cost effectiveness of impoundment because the limit in impoundment charges is generally the value of the vehicle which is seized.

New York: Impoundment for "Aggravated Unlicensed Driving"

The New York State Vehicle Code contains a provision which should be a powerful deterrent to driving while suspended by convicted DWI offenders. Section 511-B "Aggravated Unlicensed Operation" (AUO) permits the arresting officer to impound the vehicle of a motorist with a suspended license found to be driving while impaired. There are three degrees of the AUO and, for the first and second degrees, the vehicle is seized at the time of the arrest and towed to a storage yard. The vehicle is not returned to the owner/offender until that owner can demonstrate that (1) he is legally licensed to drive, and (2) that the charges against him have been adjudicated and he has paid his fine and/or served his jail time and been released by the court. Since such multiple-time offenders may already be on lengthy license suspensions (up to 3 years) and since it may take several months to a year for the case to come before the court, impoundment under Section 511-B may amount to forfeiture of the vehicle, because by the time the owner/offender is qualified to retrieve the car, the towing and storage costs will have mounted up to more than the value of the vehicle.

On its face, this law appears to have many of the virtues of administrative per se laws. The action is taken — not by the court — but by the police officer at the time of the arrest when the vehicle is in hand. "Punishment" is sure and swift. At the same time, the rights of innocent parties are protected by their ability to go to the court and arrange for return of the vehicle. This is similar to the provision of a hearing in administrative per se laws. If the vehicle is owned by someone other than the guilty operator, that person may retrieve the vehicle by petitioning the court and paying towing and storage charges. This innocent owner then has a cause of action against the operator/offender to recover the costs paid for storage and towing.

This law has been in effect for some time, long enough to already have been modified once in an attempt to make it more effective. The principle problem for the application of Section 511-B is the cost of the impoundment process. The original law provided that the innocent owner, who was not the operator/offender, could go to the private towing company and pick up the car without paying the towing and storage charges. Much of the time, that resulted in the private operator footing the bill which, of course, discouraged their participation in the impoundment program. To overcome this, the sanction was amended to require the innocent owner to pay these bills but with the provision that the owner had the right to sue the offender to recover his costs. Of course, much of the time, the offender can't pay, so the innocent owner foots the bill. (This, of course, may not be all bad because it should add to the caution of owners in loaning their cars to individuals they know are suspended and who may be at risk for drunken driving.)

Potentially, this law could apply to a large number of offenders. In 1988, there were 24,000 Aggravated Unlicensed Operation offenses. However, this penalty is only applicable to the most serious of these offenses (driving drunk while also suspended). Nevertheless, it appears that several thousand vehicles would be impounded if the law was fully applied. Several localities have attempted to apply the law to some extent.

The County District Attorney for Albany, New York, indicated she had handled approximately seventy-five 511-B cases during 1989. She estimated that the department as a whole must have handled 200 in 1989. She noted that her cases involved temporary impoundments in which the vehicle was held for a period of time until the offender obtained a lawyer and agreed to a plea bargain and court date. After that, she might release the vehicle and not hold it until the time of the trial. It is clear from her statement that she used the release of the impounded vehicle as a method of encouraging the offender and to keep the case moving. She noted that it generally required a couple of weeks for an offender to obtain a lawyer and agree to a plea, so that even in these cases the vehicle would be impounded for at least two weeks.

In the case involving an accident, the car would not be released until it could be determined whether the vehicle was likely to be needed for evidence at the trial. Normally, the impoundment would last until, at least, an accident reconstruction expert could analyze the vehicle and get the necessary information for the trial.

She indicated that, in her experience, the vehicle which was impounded usually did not belong to the offender. This was in part because, when an offender was prosecuted under 511-B, the individual would be required as a condition of probation not to own or operate a vehicle. Therefore, many who were caught for a second time would be operating someone else's vehicle. When asked when an innocent owner attempted to put pressure on her to release a vehicle, she resisted by indicating that she was not invoking the charge of facilitating unlicensed operation which is a separate offense applicable to the vehicle owner.

The Prosecutor indicated that she felt the 511-B law was very effective and that she had encountered no problems in using it in prosecution. She noted that the only requirement on her was to issue the order for the release of the vehicle since the impoundment was taken care of by the police. She clearly felt that the impoundment under 511-B gave her leverage with the offender that would not be there without the law.

Calls to other judicial districts suggested that the use of 511-B varied considerably among district attorney's in New York. As in other States, impoundment and forfeiture occur at the local court level and there is no State record system which will provide a State-wide count of the number of impoundment actions.

VEHICLE FORFEITURE FOR MULTIPLE DWI AND DWS OFFENDERS

Twelve States (Alaska, Arkansas, Arizona, California, Maine, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, and Texas) have laws which provide for vehicle confiscation for multiple DWI offenses or for a combination of DWI and DWS offenses. Because these penalties generally apply to multiple-time offenders, the proportion of all DWI drivers who are affected may be small but the seizing and forfeiting of the vehicle is a salient penalty which could have significant impact at least upon the most difficult to control motorists, those who have repeat DWI and DWS convictions.

Determining the number of forfeitures which occur in any State is very difficult since there is no central State file for recording forfeitures and each court keeps its own record of forfeiture actions. Even within a given court, it may be necessary to go through individual trial records to determine when a forfeiture action was taken. As part of this study, an effort was made through telephone contact with court clerks, prosecutors and other State officials to determine the extent to which the vehicles of eligible DWI offenders are being confiscated. Overall, it appeared that while in most States vehicle confiscation for drug crimes was reasonably frequent, the number of confiscation resulting from DWI offenses were few. To provide an example of the current use of confiscation, a brief description of the information gained in six of the 12 States with confiscation laws is described below.

The Arizona Forfeiture Law

The State of Arizona has a law (Paragraph 28-692.06 (a) of the State Vehicle Code) which provides for vehicle forfeiture on the third or subsequent DWI offense or if the individual is apprehended driving while suspended or revoked as a result of a previous DWI offense. Under this law, vehicles are picked up by the arresting agency and sold at auction with 85% of the proceeds going to the county and 15% to the agency. Between the time of arrest and conviction, forfeiture notices are sent out by the Prosecutor's Office to preclude sale of the vehicle or transfer of the ownership. If the vehicle is leased, it is returned to the leaser (unless there was prior knowledge on the part of the leaser of the renter's DUI conviction). If there is a lien on the vehicle, this is normally negotiated with the finance company. If the vehicle is community property or registered in two names, then it will still be sold but one-half the proceeds will go to the co-owner.

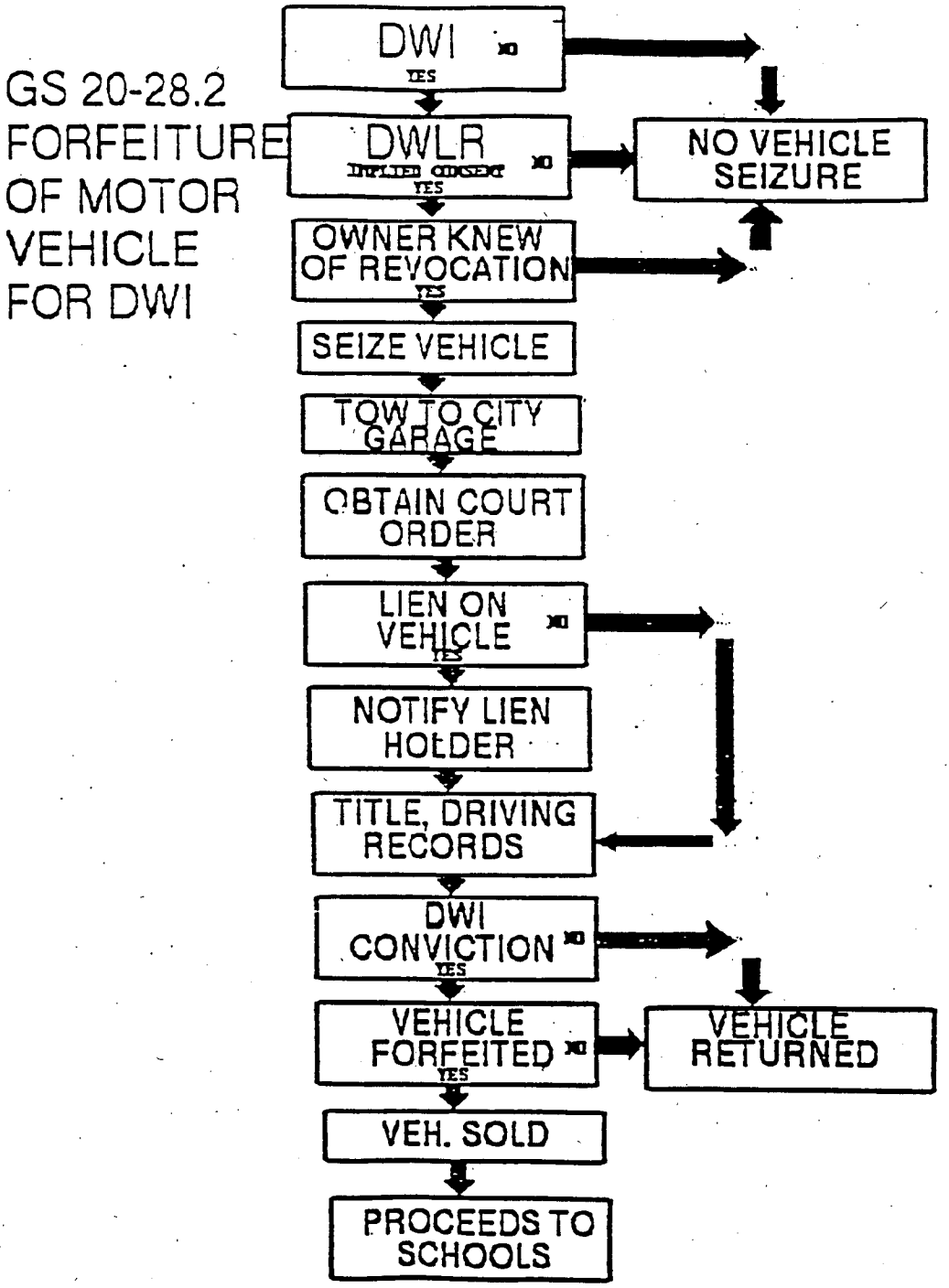
In 1989, in Pima County, which includes the City of Tucson, there were 78 forfeitures of which approximately five were for DUI. In the larger county of Maricopa (Phoenix), there were 202 forfeitures of which none were for DWI. Thus, it appears that in Arizona the vehicle forfeiture, provided for third-time and multiple-time DWI offenders, is rarely used.

The North Carolina Forfeiture Law

The North Carolina Vehicle Code (Paragraph 20-28.2) provides that a driver's vehicle may be subject to forfeiture if the operator was driving over the per se limit while his or her license was revoked or suspended for a previous DWI offense. As in other States, there is no State-wide registry of vehicle forfeitures and, therefore, it is necessary to contact local courts or police departments to get some indication of how frequently forfeiture occurs. In North Carolina, we were referred to an officer of the "ATTACK" task force of the Durham Police Department Traffic Section, who developed a training program for fellow officers on the process for forfeiting vehicles under North Carolina law. That procedure is diagramed in Figure III-3.

This procedure provides a good illustration on how a forfeiture system can operate with immediate effect by seizing the vehicle at the time of original arrest. The system places much of the work upon the arresting officer. To begin with, the officer, after arresting the subject for Driving While Impaired, must determine whether the offender is operating on a license which was revoked for a DWI or implied consent offense and, if this is the case, whether the

FIGURE III-3
FORFEITURE PROCEDURE IN NORTH CAROLINA



owner knew his license had been revoked. If these facts are determined, the officer can seize the vehicle, then fill out an "Order of Preliminary Seizure" and provide that to the District Attorney's office. The vehicle can then be held until a trial, a forfeiture hearing, or a court release is received by the offender. The officer is also responsible for obtaining a copy of the driving history of the offender and making a title search on the vehicle to determine whether there are any lienholders. While the prosecuting attorney is responsible for corresponding with lienholders, normally the responsibility for identifying lienholders falls upon the police officer. Lienholders are notified by mail.

At the forfeiture hearing (if one is held), the judge is responsible for determining:

1. Whether the vehicle is subject to forfeiture,

2. Whether the vehicle is primarily used by the defendant's family, for the household or business purposes, or for driving to and from work or school,

3. Whether all potential innocent parties have been notified, and

4. Whether the owner has proved that he or she was an innocent party.

As a result of these findings, the Judge can then release the vehicle to a non-offender owner if:

1. The non-offender owner did not know and had no reason to know that the defendant's drivers license had been revoked.

2. The non-offender owner knew that the defendant's license had been revoked but the defendant drove the vehicle anyway and could not be stopped by the innocent party.

After a forfeiture, a non-offender owner may apply to obtain the proceeds from the sale. If the Judge orders the forfeiture of the vehicle, he must also order the sale. The proceeds go to the school system of the county in which the forfeiture occurs. If there is no hearing or court proceeding, the vehicle may be awarded to the police department as part of a plea bargaining arrangement. Our contact in the Durham Police Department noted that the forfeiture law is not used as much as it should be and that most people do not know about it. Our correspondents in North Carolina indicated that there were no more than 50 vehicle forfeitures in the whole State last year.

Vehicle Forfeiture in the State of Rhode Island

In Rhode Island, vehicle forfeiture is discretionary for the fourth DWI or subsequent violations within a 5-year period. This law would be expected to apply to a relatively small group of offenders since they must experience almost one DWI per year in order to accumulate four within 5 years. The group at risk is further reduced because the law applies only to the offenders who own the vehicles in which they were apprehended.

Contact was made with the Administrator of the Rhode Island District Court. He indicated that it was very unlikely that this provision of the law had been implemented in Rhode Island since up to 2 years before, there was no State-wide computer record of DWI convictions in the State. Since Rhode Island has eight court divisions, it was possible for a motorist to have a DWI offense in one division and have no record of it in another division. Thus, a multiple-time offender could avoid being charged as a second-, third-, or fourth-time offender. Since the establishment of the computer system, there is now a tracking system for DWI offenses. The Manager of the DWI Tracking System agreed that there were no fourth-time offenders on that system at the time of our contact.

The Court Administrator indicated that the Rhode Island courts must apply the *Baldezar vs Illinois* decision which requires that in order to establish a prior offense, it must be shown that the individual had legal counsel or formally waived counsel. Therefore, even in a case where an individual had four DWI offenders on the tracking system file, there might not be an acceptable record of priors for the purpose of implementing the provisions of the Rhode Island Vehicle Seizure Law. It appeared, therefore, at the time of our survey (Fall 1990) that while there was provision in Rhode Island legislation for seizing the vehicle of a fourth-time DWI offender, this law had yet to be implemented.

Forfeiture in the State of South Carolina

South Carolina has provision for forfeiture for the fourth-time DWI offense or for the fourth DWS offense within 10 years. The law states that forfeiture of the vehicle driven at the time of the offense *must* occur if the offender is the owner of record or is resident in the household of the owner of record and that the vehicle is to be confiscated at the time of arrest by the officer. If the offender is convicted of the fourth-time DWS, a Show Cause Order is issued which allows 10 days for the owner to show why the vehicle should not be sold by the government. If the vehicle is auctioned, the resulting revenues go to the City or the County after towing and storage expenses have been paid, unless the vehicle was seized by the State Police in which case the proceeds go to the State.

In 1989, there were 300 cars forfeited State-wide in South Carolina. Because the records are localized, it is not possible to determine how many of these were for DWI, but the estimates of our contacts was that only a very few of these resulted from DWI and the vast majority resulted from drug and other criminal offenses.

Confiscation in the State of Texas

The State of Texas has a forfeiture law for the third or subsequent DWI conviction (Article 67011-7 of the State Vehicle Code). The forfeiture is discretionary with the court and the law specifies that the proceeds of the sale will go first to a lien holder and the remainder (if any) to the county treasury. Our calls to the State Office of Highway Safety and to several district attorney's in Texas could uncover only one case of a vehicle being confiscated. That belonged to a man with 20 convictions for DWI! The reasons given for the lack of forfeitures included the fact that the funds went to the County Treasury no matter which enforcement unit seized the vehicle so this limited the motivation to take action under the statute. In addition, the vehicle used during the arrest frequently belonged to someone else and the police

and prosecutors frequently found it difficult to schedule a hearing to meet the requisite 20-day time limit required by the statute. It was also noted that the accused can plea bargain to keep the vehicle. The general view of the law was that vehicle confiscation was not worth the time and the effort required.

Forfeiture in the State of New York

Article 13-A of the New York Civil Code provides for civil action in the event of a felony DWI conviction. Felony DWI includes the occurrence of two DWI offenders within a 10-year period. The Brooklyn District Attorney's Office initiated a policy of using the occurrence of two DWI convictions within 10 years as a basis for taking civil action to impound the vehicles of DWI offenders. This initiative has been taken up by some other county prosecutors and a few forfeitures under 13-A of the Civil Code are currently occurring in New York State, but their numbers are very limited. In a limited survey of district attorney offices in New York, we were only able to find one or two other district attorneys that appeared to be using Section 13-A to forfeit motor vehicles for DWI. As in other States, most vehicle forfeitures resulted from a drug or other criminal offenses.

Summary

These examples of States with provisions for vehicle forfeiture illustrate the very limited use of this procedure in DWI adjudication. Forfeiture is, in most instances, discretionary with the court rather than mandatory. Because of the additional paperwork and administrative costs involved as well as the low value of the vehicles and the possibility that the locality will lose money, the courts are discouraged from exercising this sanction even though in some States, such as New York, it might apply to a large number of DWI offenders. Even in those States in which it is limited to third- and fourth-time offenders, it still would apply to some of the most dangerous and difficult-to-control drivers. Forfeiture seems to be utilized primarily in those localities where the vehicle can be seized at the time of arrest and held pending trial.

Recommendations

1. Civil rather than criminal forfeiture should be used because action can proceed independent of prosecution of the criminal case.

2. The vehicle should be seized and held at the time of arrest to prevent the offender from continuing to drive while impaired and from transferring ownership.

3. Non-offender owners who were present in the vehicle at the time of the offense should lose their right to the vehicle.

4. Proceeds from sales should go to the jurisdiction in which the arrest and prosecution occurred.

CIVIL FORFEITURE

The basic distinction between criminal forfeitures and civil forfeitures is the question of whether the penalty is assessed against the person or the object to be seized. A criminal forfeiture is based on conviction for a criminal offense and is viewed as a penalty for having committed that offense. In such actions, it is the individual who is charged and who must plead guilty or not guilty and who is ultimately judged to be at fault and penalized by, among other means, losing property through forfeiture. Civil forfeitures, on the other hand, focus upon the unlawful use of a piece of equipment or other property irrespective of the owner's culpability. The owner is usually not mentioned directly in the suit and it is not necessary for the owner to be convicted of a crime for the forfeiture to proceed. The action is taken against the vehicle because it has become a public nuisance, not as a penalty for criminal behavior. Therefore, the seizing and the confiscation of the vehicle can proceed before the trial and conviction of the operator for a criminal offense. The seizure does not depend upon a conviction.

Civil Forfeiture in Portland, Oregon

On February 8, 1989, the City Council of Portland enacted Ordinance No. 161616 which provided that:

> "A vehicle operated by a person whose operator license is suspended or revoked as a result of a conviction for driving under the influence of intoxicants ... may be impounded at the time of arrest or citation for Driving While Suspended or revoked and be forfeited as a nuisance ..."

The background to this action was a serious problem that had developed in Portland and to a certain extent, in the State as a whole in the enforcement of Driving While Suspended laws. The principle penalty for this serious offense was a jail sentence. However, Oregon jails were overloaded and many were under court restraining orders. Therefore, many of the offenders convicted of DWS could not be accommodated in a timely manner and ultimately, some sentences had to be suspended. The inability to effectively sanction offenders led to a search for alternative methods of preventing Driving While Suspended. An initial effort was made to amend the State forfeiture law to provide for the impoundment and forfeiture of vehicles driven by suspended drivers where the suspension resulted from a drunk driving conviction. The State legislature, however, failed to act on the bill, thus the City Council of Portland took action. The original ordinance was passed in February 1989, but provided that it would not take effect until 90 days after the adjournment of the legislative assembly and then only if the assembly failed to enact a State-wide system for impounding vehicles operated by persons whose license had been suspended. Since the legislature failed to act, the ordinance came into effect and began to be enforced on December 15, 1989.

If Portland Police determine that an individual is driving while suspended and that the suspension resulted from a DWI offense, the officer has grounds for seizing the vehicle and having it towed to an impound lot. The officer then completes an impoundment form in triplicate and provides the original to the individual in charge of the vehicle at the time of the seizure. Normally, the officer will also cite the driver for Driving While Suspended, however, this is not a requirement of the civil forfeiture ordinance. Currently, the vehicle is towed to a

commercial wrecker's lot and held there pending release from the police. A program is underway, however, to build a city impoundment lot and, ultimately, vehicles seized under this ordinance will be towed directly to the city lot or moved from the commercial impound lot to avoid high commercial storage rates. The vehicle owner, or anyone else having a valid interest in the vehicle, has 15 days (if the vehicle is worth less than $1,000 or up to 60 days if the value is over that amount) to file a claim with the City Attorney for return of the vehicle.

The ordinance provides for an expeditious hearing within five days after impoundment of a vehicle should a registered owner or holder of a security interest file a written request with the Hearing Officer for a hearing to show why the vehicle should not remain impounded. At such a hearing, the interested party can overturn the impoundment by demonstrating that the officer did not have probable cause to make the stop or that the operator of the vehicle was not suspended or revoked for driving under the influence of intoxicants. If a hearing is not requested or the hearing determines that the impoundment action was valid, then the City Attorney may institute legal proceedings to forfeit to the city within 42 days after impoundment. If the City Attorney does not take that action within 42 days, the vehicle is released to the registered owner.

First-year Experience With the Portland Ordinance

Table III-4 summarizes the experience during calendar year 1990 with the City of Portland Vehicle Forfeiture Ordinance for drivers operating while suspended for DWI. In total, 197 vehicles were seized of which 117 were ultimately released and 80 forfeited to the city. Of those 80, 30 have actually been auctioned at the time of this report. During this period, only one offender whose vehicle was seized has requested a hearing on the issue of probable

TABLE III-4
CITY OF PORTLAND, OREGON VEHICLE SIEZURE AND FORFEITURE STATISTICS FOR DWS/DUII OFFENSES FROM JANUARY THROUGH DECEMBER, 1990

	VEHICLES				
	SEIZED	RELEASED	PENDING	FORFEIT	AUCTIONED
DWS/DUII	197	117	0	80	30

cause to seize the vehicle. In that case, the judge determined that the seizure was valid and the forfeiture process proceeded. That 60% of these vehicles were released might at first suggests that the forfeiture program is not working, however, most of these releases are to third parties who had a financial interest in the vehicle. These owners or lien holders must pay the towing and storage cost in order to repossess their vehicle as well as execute a stipulated judgment form which requires them not to return the car to the suspended driver. On this form, they agree that if they allow the offenders to use the vehicle and he or she is again apprehended using the vehicle while his or her license is suspended, the vehicle will be forfeited to the city and the owner's, or lien-holder's interest in the vehicle will be forfeited. An example of such a stipulated judgment form is shown in Figure III-4.

FIGURE III-4
STIPULATED JUDGEMENT FOR FOR STATE OF OREGON

IN THE DISTRICT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

CITY OF PORTLAND, a municipal corporation, Plaintiff, v. 1989 BMW 530I, OREGON LICENSE NO. ZED 001, Defendant.	No. 91C 010000 STIPULATED JUDGMENT

Comes now plaintiff and claimant John Doe, and stipulate to the entry of judgment in the above-entitled matter according to the following terms:

1. Defendant vehicle will be released to claimant upon payment by him of all costs associated with the towing and storage of defendant vehicle and the provision to the plaintiff of evidence of insurance as required by the terms of the Oregon Motor Vehicles Code.

2. Claimant further agrees to pay plaintiff no later than July 15, 1991 the sum of $115.70 made payable to the "City of Portland" and to be mailed or hand delivered to the City Attorney's Office, Attn: Forfeiture Counsel, 1220 SW 5th Avenue, Portland, OR 97204.

3. Claimant agrees and acknowledges that in the event he is arrested in Portland for conduct defined in ORS 167.007, his interest in defendant motor vehicle shall immediately forfeit to the City of Portland without further notice to him.

Page 1 - STIPULATED JUDGMENT

Office of City Attorney, City of Portland
315 City Hall, Portland, Oregon 97204

FIGURE III-4
STIPULATED JUDGEMENT FOR FOR STATE OF OREGON (cont.)

4. Claimant acknowledges that the release of defendant automobile is unrelated to and has no bearing or relevance to the disposition of any criminal charges that are or may be pending against him.

5. In the event claimant fails to comply with the terms of (2) above, the City shall have the right to immediately seize defendant motor vehicle and forfeit claimant's interest therein without further notice to him.

6. Claimant hereby waives any and all objections he may have to any defect in notice and waives any claim for damage, loss, injury or liability, cost or expense including court and appeal costs and attorney fees and expenses arising out of the seizure of defendant motor vehicle.

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Page 2 - STIPULATED JUDGMENT

Office of City Attorney, City of Portland
315 City Hall, Portland, Oregon 97204

FIGURE III-4
STIPULATED JUDGEMENT FOR FOR STATE OF OREGON (cont.)

7. Claimant hereby accepts service of the summons and complaint in the above-entitled action.

IT IS SO STIPULATED:

John Doe Claimant	Paul C. Elsner, OSB #82047 Deputy City Attorney
Attorney for Claimant	Sgt. Roger Hediger Portland Police Bureau

MONEY JUDGMENT

1.	JUDGMENT CREDITOR:	CITY OF PORTLAND
2.	JUDGMENT CREDITOR'S ATTORNEY:	PAUL C. ELSNER
3.	JUDGMENT DEBTOR(S):	JOHN DOE
4.	AMOUNT OF JUDGMENT:	$115.70
5.	PRE-JUDGMENT INTEREST:	NOT APPLICABLE
6.	POST-JUDGMENT INTEREST:	9% SIMPLE
7.	ACCRUAL INFORMATION:	9% ON ENTIRE BALANCE

IT IS SO ORDERED AND ADJUDGED:

DATED this _____ day of January, 1991.

Donald H. Londer
Presiding Judge

Submitted by:
Paul C. Elsner
OSB #82047
forfeit\plead\

Vehicle releases occur under the following situations:

1. *Stolen Vehicles* - The vehicle will be returned to the registered owner if it can be proven that the vehicle was stolen and if the registered owner pays all costs of towing and storage and any other costs of impoundment.

2. *Security Interest Holder* - The vehicle will be returned to a bank or other security interest holder providing that the interest holder pays all costs of towing, storage, and impoundment and executes the stipulated judgement promising that the vehicle will not be returned to the offender.

3. *Vehicles Owned by Employer* - Vehicles owned by employers are also, at the discretion of the City Attorney, returned to employers providing the employer pays all the costs of towing, storage and impoundment and executes the stipulated judgment.

4. *Crash Involved Vehicles* - Vehicles that are of little value because they are severely damaged in crashes are normally released to the offender since they have no value for the city. An offender who wishes to retrieve a vehicle must pay the towing, storage and impoundment costs plus the vehicle must be repaired sufficiently to meet the safety requirements of the State for use on State highways. In many cases, this involves a much greater expense than the value of the damaged vehicle so the vehicle is frequently turned over by the offender to the wrecking yard for sale as scrap.

5. *"Junk" vehicles* - Vehicles with a value of less than $500 are not permitted on the highways of Oregon by State law. Where a vehicle confiscated from an offender has a value of less than $500, the vehicle will normally be released by the City Attorney to the offender. However, the offender will not be able to take the vehicle on to the highway under State law.

Thus, many of the actions listed as a release of vehicle deprive the offender of the use of that vehicle even though the City of Portland does not receive the income that would result from a forfeit and sale at auction. These exceptions to the forfeit procedure, however, make the ordinance workable in that they protect the rights of innocent owners and lien holders (though these individuals must still pay out-of-the pocket for towing, storage, and impoundment costs). This procedure also avoids running up the city's expense for forfeiting and auctioning vehicles with very little value where the costs of this action would probably exceed the price that could be obtained from the vehicle.

Cost of the Vehicle Forfeiture Program in Portland, Oregon

Table III-5 summarizes expenditures and revenues presented in an annual report to the City Council by Commissioner Earl Blumenouer on January 16, 1991. The budget shows revenues from car sales in the 1990 budget year of $60,000 with this increasing to $166,000 in the 1991-1992 year. This cash flow is based on the assumption of an average sale price of $980 per auctioned car which has been the experience to date. In the FY 1991-1992 period, the city plans to open a storage lot of its own; therefore, it will create a new source of revenue from storage payment by the owners or lien holders of vehicles seized under the ordinance.

TABLE III-5
SUMMARY OF EXPENDITURES AND REVENUES
CITY OF PORTLAND, OREGON
VEHICLE SEIZURE AND FORFEITURE STATISTICS
January Through February, 1990

II. DUII/DWS SEIZURES AND FORFEITURES:

VALUE OF VEHICLE	VEHICLES SEIZED	VEHICLES PENDING	VEHICLES FORFEITED	PERCENT FORFEITED
$ 0 - 500	23	3	11	48%
$ 501 - $1,000	13	5	5	38%
$ 1,001 - $ 5,000	13	3	8	62%
$ 5,001 - $10,000	2	1	1	50%
$10,001 - $15,000	1	0	1	100%
$15,001 - $20,000	1	0	1	100%
$20,001 - or More	0	0	0	-
Not Available	1	0	0	-
SUBTOTAL	54	13	27	50%
GRAND TOTAL ALL CASES	108	21	37	34%

Table III-5 indicates the value of the first 54 vehicles. As can be seen, approximately 40% of the vehicles were valued at less than $500, a typical problem throughout the country in dealing with multiple-time DWI offenders, many of whom drive junk cars. However, 60% of the vehicles had significant value and as noted, the average price received on action of a vehicle was $980. Clearly, the more expensive vehicles are likely to have bank liens or belong

to non-offender owners and, therefore, are subject to being released provided the owners pay the expenses involved.

The budget shown in Table III-6 indicates that the program will be subsidized from public funds in the amount of approximately $70,000 for the FY 1991-1992 year. While this

TABLE III-6
INDICATED VALUE OF VEHICLES
Vehicle Forfeiture Enforcement Program
Assuming 300 vehicles seized seek forfeiture on 240

	FY '90 - 91 Budgeted	FY '91-92 Projected
Expenditures		
Police Data Tech I	80,937 (3)	53,985 (2)
Police Sargeant	50,442	50,442
Tow Charges	50,000	16,500 ($55*300)
Legal Notices	30,000	28,440 ($237*120)
Retows To New City Lot	0	500 ($25*20)
Miscellaneous	13,490	13,490
1/3 Tow Lot Expenses		73,458
City Attorney's Office	50,000	70,00
Total	274,869	312,493
Revenues		
Storage Refunds	0	3,360 (60*7*$8)
Tow Refunds	40,000	3,300 ($55*60)
Car Sales	60,000	166,600**
General Fund	174,869	139,233
Total	294,869	312,493

** Assuming $980 per car average is maintained, number of vehicles seized remains constant and percentage of vehicles forfeited goes up 50%. Additional assets of $68,600 will be seized in FY 91-92 but will not be realized until the next fiscal year.

Actual public subsidy for program: 139,233 - 68,600 = $70,633

program is not self-supporting, it should be kept in mind that the community would experience a considerable expense were these offenders given the more traditional penalty of time in jail. Data on the cost of alternative criminal prosecution of these offenders are not available, but it is clear that significant costs arise in prosecuting, convicting, and supervising individuals guilty of driving while suspended. Vehicle forfeiture programs have the potential benefit that since they do raise some revenue to offset the costs of the program, it is possible that the amount of revenue raised could be increased if program costs were added to the towing and storage charges which are paid by individuals to whom vehicles are released. In a companion program covered under the same city ordinance which provides for the seizure and forfeiture of vehicles used in prostitution, a "mission" cost is added to the payment for vehicles seized in this program. The "mission" cost is calculated by determining the number of hours of police officer time involved in apprehending the "Johns" who are cruising areas to find street prostitutes. The cost of the program is divided by the number of cars seized and the assessment based on this amount. The assessment of a similar "mission" cost for the DWS/DWI forfeiture might make this program self-sufficient.

Police Reaction to Forfeiture Ordinance

An interview was held with officers of the Traffic Division of the Portland Police Department to determine their view of the ordinance and to obtain information on their experience with handling offenders whose vehicles were forfeited. The general reaction of the officers involved was one of strong support for the ordinance. They found it easy to apply since there was only one form that needed to be filed out and the vehicle could be handled by calling the storage company which would tow it to the impound lot. All of the officers agreed that this procedure was a great improvement over the situation prior to the enactment of the ordinance when most of them believed that little action was being taken on Driving While Suspended cases. This offense was essentially not being enforced because of the lack of a significant penalty since jail sentences could not be carried out.

Despite the general support for the ordinance, police officers did have some complaints regarding the law. Several mentioned that they felt too many of the vehicles were being released rather than forfeited thus watering down the impact of the forfeiture law. When asked whether they always impounded a vehicle when they encountered a suspended driver, the officers indicated that on several occasions they had not done so. In one case, the officer found that the offender did not own the car and decided it was not worth the trouble. In another case, an officer missed an opportunity because the communications system with the Department of Motor Vehicles was overloaded and he could not get the necessary driver record information. Another noted that the information indicating that an individual is suspended and the suspension was for DWI was not checked on the Department of Motor Vehicle abstracts and that sometimes this is missed by the dispatcher unless the officer makes a special effort to request that information.

An interview was also held with the owner of the private towing company which is used by the Portland Police Department for picking up and storing vehicles under the forfeiture ordinance. The company representative indicated that the procedure presented no problem to them and that the police towing business was profitable. When called by the police, they

would pick up the car and tow it to their storage lot and hold it until the owner arrived with a release form from police department. The vehicle was then returned to the owner upon payment of the towing costs of $55 plus $12 a day storage. If the owner could not, or would not pay the bill, the Police Department would then take action to have the vehicle forfeited to them by obtaining the owner's address from the Department of Motor Vehicles and sending certified letters to any owner and lien holders of record. Unless these owners appeared to pay the cost and receive the car, the vehicle would be sold at public auction. Since it costs relatively little to store it on their lot, they apparently found this procedure to be generally profitable.

Legal Challenges to the Forfeiture Ordinance

To date, there have been approximately 395 vehicle seizures under the Portland Ordinance if those relating to prostitution are added to the DWI offenses. Only one of these seizures has been challenged in court and the ensuing trial in the District Court of Multinomah County resulted in a finding in favor of the ordinance and an affirmation of the seizure.[8] The plaintiff in this case put forward six issues challenging the validity of the ordinance and, in an unusual action, the court provided a lengthy written opinion with respect to each of the issues. The issues raised and the court's response are significant since many of these issues are raised by critics of forfeiture laws. The issues raised are described below:

1. The claimant challenged the ordinance on the basis that it violated his rights under the 4th Amendment of the United States Constitution ... in that it authorized the seizure of a motor vehicle for forfeiture without requiring the issuance of a warrant. The Court's opinion cites several State and federal cases which support the case of crimes involving an automobile as an exception to the Constitutional warrantless requirement. The court notes that the mobility of the automobile justifies its warrantless seizure under an otherwise valid forfeiture ordinance.

2. The claim was also made that the ordinance violates the due process clause of the 14th Amendment in that it required the claimant to provide a $10 dollar cash bond. In this particular case, the issue was moot because the City Attorney had waived the bond. The judge indicated that this might be an issue if the complainant was indigent but was not relevant in the present case.

3. The claim was made that the statute violates the individual's right against self-incrimination in that it requires him to submit a written claim concerning his asserted interest in the property. However, the form does not contain information on the offense itself but, rather on the ownership of the vehicle. In any case, the judge argued that the claimant should have filled out the form leaving any information blank which he feels involves self-incrimination.

8. *City of Portland vs Toyota.* Case No. 90V704841. June, 1990.

4. The claim was made that the ordinance is actually a criminal law rather than a civil enactment and, that the claimant is entitled to the full protection afforded the defendant in a criminal proceeding including that of an appointed council. The judge finds, however, that the claimant's culpability is not a prerequisite to the forfeiture. The judge notes that a conviction for an offense is not a requirement for the forfeiture which would be the case if it was viewed as a criminal forfeiture. The judge notes that "No opporobium can attach against any claimant as the mere result of a judgement of forfeiture. A registered owner or lien-holder (other than a financial institution) might lose as much or more than an owner-occupant such as this claimant, but all that a judgment of forfeiture announces as to any of them is that they did not successfully assert a claim or affirmative defense. The proceeding is not even brought against a person by name."

5. The claim was also made that the ordinance violated Article One, Section 25 of the Oregon Constitution that prevents "Forfeiture of Estate." However, the judge notes that this provision relates to the taking of estate as a penalty for an individual's conviction and has not been applied to confiscation of personal property used in the commission of a crime.

6. The final claim was that the ordinance affected a "Taking" of property in violation of the 14th Amendment, and Article One Section 20 of the Oregon Constitution. Here, the Judge noted that the "Taking Clause" related to the confiscation of property for public use without just compensation. In this case, the property is not confiscated for public use but to eliminate a public nuisance.

SUMMARY

Despite the relatively small number of cases to which the forfeiture ordinance has been applied within the City of Portland, this innovative effort provides a unique field demonstration of the potential for using civil forfeiture as a tool for preventing driving while suspended by convicted DWI offenders. The numbers of offenders affected are too small to provide a statistically valid evaluation of the impact of the ordinance. The annual report on the program issued by the City Attorney's Office notes that whereas in 1987 and 1988 there had been 935 alcohol-related felony DWS cases, there were only 197 vehicles seized during the 1990 year. This report suggest that this indicates that the ordinance is having a deterrent effect.

The noteworthy features of this ordinance include:

1. The vehicle is seized at the time of the original stop and arrest.

2. The basis for the forfeiture is relatively clear and generally easily determined from the driving record which involves three elements: (a) being in charge of the vehicle, (b) having the driver license suspended or revoked, and (c) that revocation or suspension resulted from a DWI conviction.

3. The offender is provided with an opportunity for hearing. (However, only one in 400 offenders has requested such a hearing.)

4. The impoundment of a vehicle can proceed whether or not the individual is prosecuted for a criminal offense.

5. Procedures are established for safeguarding the rights of innocent lien holders and vehicle owners while, at the same time, assuring that those who provide vehicles to the offender are penalized through the requirement to pay expenses and must execute a guarantee that they will not return the vehicle to the offender.

6. Provision is made for rapidly releasing vehicles which have little or no value. Such releases are principally in those cases such as crash damage to the vehicle in which the vehicle cannot be successfully repossessed by the offender.

7. The program generates considerable funds to offset costs. While not self-sufficient, it may represent a relatively inexpensive approach to controlling the suspended driver.

RECOMMENDATIONS

1. A fee should be added to the recovery cost of a vehicle in order to make the program self-sufficient.

2. Lienholders should be encouraged to take out insurance which would cover the cost of recovery of the car and pass this on to the car loan customers.

SECTION IV: SUMMARY AND RECOMMENDATIONS

SUMMARY

The results of this descriptive study of State impoundment/forfeiture laws appear to support the following conclusions:

1. As of January 1991, 30 States, the City of Portland, and the Virgin Islands, had legislation or common law provisions for suspension of vehicle registration and/or impoundment of vehicle plates or for the impoundment or forfeiture of the vehicle itself for individuals apprehended driving while under the influence or driving while suspended or a combination of both.

2. Vehicle forfeiture can still occur in those States without specific legislation since the common law provides for the seizure and confiscation by the State of a vehicle used in the commission of a felony. While most DWI offenses are misdemeanors, multiple offenses are frequently classified as felonies and, therefore, action can be taken to seize and forfeit the vehicle in felony DWI cases.

3. No evidence was uncovered that any of the statutes or enforcement practices reviewed in this report have been shown through adequate evaluation studies to have had impact on illicit driving by convicted DWI offenders or on the recidivism and crash involvement of DWI offenders. While an impact evaluation of the States of Washington and Oregon registration cancellation laws is currently underway in Phase II of this study, the material in this Phase I report is limited to describing the extent to which impoundment statutes and programs have been implemented and describing the apparent strengths and weaknesses of these programs as reported by local government officials.

4. Relative to the number of offenders who, under current State laws, could have their vehicle confiscated, forfeiture for the DWI offense is extremely rare.

5. The use of vehicle impoundment is rare. However, the State of New Mexico, frequently uses vehicle impoundment as a penalty for the second DWI offense and the State of New York uses it for particularly serious cases of driving while suspended.

6. Several impoundment and forfeiture programs with significant potential for reducing illicit driving by DWI offenders were identified in the course of the study. While the numbers of DWI offenders involved in these programs were generally too small to permit an evaluation of the program's effectiveness, they deserve further study because of their potential for reducing illicit driving by DWI offenders. Among the programs of special interest were:

   A. The 511-B Impoundment Program in the State of New York

   B. The Civil Forfeiture Program in the City of Portland, Oregon

   C. The registration cancellation combined with special license plate programs in Minnesota, Ohio, and Iowa

   D. The use of short-term vehicle impoundment as a penalty for DWI in California and New Mexico

   E. The use of license plate stickers in the States of Washington and Oregon

7. Several States have legislation permitting or requiring suspension of the vehicle registration for the same period as the suspension of the driver's license on conviction of a DWI offense. These laws are primarily directed at ensuring financial responsibility but they clearly affect the registration status of vehicles owned by many DWI offenders. From the information available in this study, it is not clear to what extent these actually reduce illicit driving by DWI offenders. An evaluation of the effectiveness of these laws in reducing recidivism in crash involvement is needed.

RECOMMENDATIONS

This study of States with impound and forfeiture laws for vehicle or vehicle plates has led to the identification of 10 significant issues which need to be considered by any jurisdiction that might be planning to use action against the vehicle tag or the vehicle itself as a method for reducing illicit driving by individuals convicted of driving while impaired. This summary section attempts to describe each of these issues briefly and makes a recommendation based on the experience of the research team for the action most likely to produce an effective program.

Issue 1: Type Of Legal Process

The laws and programs reviewed in this study involved administrative procedures, civil suits, and criminal prosecutions. Each of these procedures has certain advantages and limitations. Administrative procedures have the advantage that they involve only the police and the motor vehicle department unless the offender chooses to appeal to the courts; an expensive and time consuming process. The further advantage is that the seizure or the marking of the vehicle tag occurs at the time of arrest and suspension of registration occurs in a time-certain period, unless the individual successfully prevails at a hearing or appeals to the

courts. The major drawback of the administrative procedure is that it applies only to state programs, such as driver licensing and vehicle registration. Thus, only the vehicle tag or the vehicle registration can be removed by administrative procedures.

Civil action is differentiated from criminal process in that the target of the action is the item to be forfeited, the vehicle, rather than the offender. The requirement of proof is based on the preponderance of evidence rather than beyond a reasonable doubt which is the criteria for criminal prosecution. The civil action does not require conviction for a misdemeanor or a felony, but can proceed even if the criminal charge is dropped. The advantage of the civil process over the administrative procedure is that the civil process can seize and forfeit the vehicle, whereas the administrative programs are limited to the vehicle tags and registration.

The criminal justice process makes the seizing of the vehicle or of the tags a part of the sanction for the offense. As such, it can generally not be applied until the individual is convicted and sentenced though some provision can be made for seizing the vehicle at the time of arrest and holding it pending trial.

Overall, the programs which have affected the largest number of DWI offenders have been the administrative programs which tag the license plate and suspend the vehicle registration. In Oregon, approximately 10,000 DWI offenders may be affected. In the State of Washington, several thousand DWI offenders are affected, and in the State of Minnesota, currently 200 DWI offenders per month are losing their license plates. In contrast, those programs which are based on criminal prosecutions have generally affected only a small portion of the potential candidates as witnessed by the program in California where less than one in 100 DWI offenders receives the 30-day impoundment sanction. This impoundment sanction is used more frequently in New Mexico, but it applies only to second offenders and is actually imposed on only a small portion of those eligible for the sanction. Civil forfeiture may offer an option to criminal prosecution when the program involves a rather simple set of facts and minimizes the effort required by the police as in the Portland forfeiture ordinance.

Recommendation: Emphasis should be placed on legislation which provides for administrative impoundment of plates and civil forfeiture of vehicles. In general, criminal laws providing for forfeiture should be avoided since they appear to be rarely used by the courts.

Issue 2: Vehicle And/Or Plate Seizure

An important factor in the effectiveness of impound and forfeiture laws is the time and circumstances of the seizure of the vehicle or of the vehicle plates by the government authority. The most effective programs, such as the administrative vehicle tag suspension programs in Oregon, Washington, and Minnesota, and the civil impoundment statue in Portland, Oregon, provide for the seizure of the vehicle or of the vehicle plate, or alternatively of marking the vehicle plate at the time of the initial stop and arrest. This appears to work more effectively than programs which attempt to take custody of the vehicle or the vehicle plate after conviction for the offense. The impact of the immediate loss of vehicle or plate is likely to have a greater deterrent effect according to deterrence theory because it minimizes the time between offense and penalty. Moreover, where there is a delay in seizing the vehicle or the plate, the offender is given the opportunity to sell or to transfer the vehicle to avoid having the plate or the car

seized. Finally, unless the vehicle plate is picked up at the time of sentencing, it may be difficult to locate the offender and take possession of either the plate or the vehicle.

Recommendation: If either the vehicle or the plate is to be impounded, the legislation should provide for seizure at the time of the arrest, not after conviction.

Issue 3: Owner Not Offender

A significant problem for all of the impoundment and forfeiture laws, whether they relate to the plate or particularly when they relate to the vehicle itself, is the handling of the claims of owners who were not the offender. These owners are generally viewed by the court as being "innocent" and as meriting the return of the vehicle or the vehicle plate without any penalty. Nevertheless, many of the impound laws do provide that the owner, even if innocent, must pay costs of towing and storage. See, for example, the Portland, Oregon, ordinance or the 511-B law in New York State which specify that the innocent owner has a claim against the offender and the right to sue to recoup the cost of the towing and storing. An important principle here would seem to be that, barring theft of the vehicle, the owner who is not an offender is not entirely innocent. There is a presumption in common law that the operator has the permission of the owner to use the vehicle. Individuals who loan their cars should be responsible for determining that the person who will be driving is properly licensed.

Recommendation: The claims of owners who are passengers in the car at the time of the offense should be limited (as is done in North Carolina) and should be required to pay the towing and storage costs. Finally, the non-offender owner should be required to sign an affidavit stating that he or she will not permit the offender to drive the car and that if the offender is apprehended driving the car again, he or she (the "innocent" owner) forfeits all claim to the vehicle (as is done in the Portland ordinance).

Issue 4: Hardship For Family Members

Perhaps no reason (excuse) is more frequently given by the court for the failure to impose either the suspension of the vehicle registration or the impoundment or forfeiture of the vehicle itself than concern for hardship on family members. Several States with laws that provide for the cancellation of vehicle registrations and, ultimately, the seizing of the plates of vehicles owned by individuals convicted of drunken driving, are providing for family members through the issuance of family plates (Ohio, Minnesota, and Iowa). The purpose of these family plates is to allow the family members to use the vehicle owned by the offender during the period that the offender's driving privilege is suspended. In some cases, as in Ohio, the offender is also allowed to operate the vehicle under a vocational driving permit. Presence of the special plates on the vehicle permit the police to supervise its use more closely than for drivers of vehicles with normal plates. This, in turn, should create greater deterrence to illicit driving. This procedure is effective for laws relating to vehicle plates but does not solve the problem for laws relating to the seizing of a vehicle. This can, however, be handled in much the same way as was just described for the non-offender owner. The spouse can be required to pay the towing and storage costs and to sign an affidavit that the vehicle will not be driven by the offender.

Recommendation: Administrative laws which provide for vehicle tag cancellation should include a provision for family plates (as in the Minnesota statute). Statutes or ordinances providing for vehicle impoundment or forfeiture should provide for return of the vehicle to a family member with an ownership interest in the car, upon the payment of towing and storage fees, and the execution of an affidavit that the offender will not be allowed to use the vehicle.

Issue 5: Vehicles With Little Monetary Value

A major problem for most of those jurisdictions which provide for impoundment or forfeiture of vehicles is the fact that the multiple offenders to which most of these statutes apply are likely to drive vehicles of very little value. The towing and storage charges are frequently can mount up to more that the value of the vehicle. As a result, if the vehicle is held for a long period of time, the costs mount up and the offender does not attempt to repossess his or her car. In this case, the State or locality must then sell it, usually at a loss. The most effective handling of "junk vehicles" encountered in this review was the procedure used in Portland in which vehicles with a low value were promptly released back to the offender who was then faced with paying towing and storage costs. The key to this procedure was the early release before storage costs mounted up to the point where the local jurisdiction or the wrecking company lost a significant amount of money.

Recommendation: Vehicle impound and forfeiture laws should provide a means for the locality to release low-value vehicles to the offender to avoid storage expenses. Simplified systems for wreckers to seize and sell vehicles which are not repossessed by owners should be established.

Issue 6: Limiting The Costs Of Impoundment And Forfeiture

The cost of towing, storage, and administration of vehicle impoundment and forfeiture laws is high. Frequently, the cost is greater than the value of the majority of cars that can be seized under DWI laws. Storage costs obviously vary from jurisdiction to jurisdiction, with $5 per day being typical in North Carolina and $20 per day being the standard charge in the New York metropolitan area. Limiting the towing and storage costs can be a significant facilitator of impoundment and forfeiture programs. In Portland, there is a nominal storage charge; interviews with the wrecking companies indicated that ample storage space was available and that these costs are low enough that the company can make money on the towing and storage of forfeited vehicles. Forfeiture costs may be reduced in the future by the building of city storage facilities. Other methods for reducing costs of vehicle impoundment were noted in the course of this study. New Mexico, for example, provides for vehicle immobilization which should be lower in cost to the offender than vehicle impoundment. Another alternative to vehicle impoundment is seizure of the vehicle plates. Some laws provided for an alternative to impounding or plate seizure. In one case in California, a judge used plate impoundment as an alternative to vehicle impoundment. The limitation with plate impoundment, of course, does not assure when the vehicle is not used, it may be possible for the offender to borrow or even steal plates from other vehicles.

Recommendation: Lower cost alternatives to vehicle impoundment should be considered, such as vehicle immobilization or the impoundment of the vehicle plates.

Issue 7: Impoundment And Forfeiture Records

Our survey of vehicle impoundment and forfeiture laws indicated that it was practically impossible to determine the number of such actions in the State because there was no central recording of this information. Impoundment and forfeiture records existed only in local courts or possibly local police departments and could not be obtained without contacting (depending on the size of the State) from 50 to more than 100 different agencies. Moreover, even these individual agencies could frequently not give an account of the number of impoundments. These data could only be obtained by actually going through the individual trial records and finding those in which impoundment was mentioned.

Recommendation: States should establish a record system which would summarize vehicle impoundment and forfeiture actions in the State as a whole in order to permit a determination of the extent to which forfeiture legislation is being implemented.

Issue 8: Vehicle Ownership Records

The problem of determining vehicle ownership was frequently cited by the courts as a reason for failure to order vehicle impoundment or registration suspension. In part, this problem appeared to result from a lack of definition as to what agency was responsible for determining ownership, whether it was the police, the prosecutor's office, or the court itself. Since this is generally undefined, obtaining this information is frequently overlooked and vehicle ownership information is not available to the court at the time of sentencing. A problem with the vehicle registration files themselves occurs when the registration moves with the vehicle rather than with the owner. In Oregon, for example, the reporting of many vehicle transfers is delayed by the failure of new owners to title their vehicles in their name. They continue to drive the vehicle registered in the name of the previous owner. This may result in the offender having no record as the owner of the vehicle and thus, not appearing to be subject to vehicle impoundment or forfeiture.

Another problem that frequently arose in the implementation of impoundment or vehicle registration cancellation laws was the transfer of title by the offender. In California, it was claimed that this was a major reason for not applying the impound penalty for first and second DWI offense. On the other hand, in Oregon, the proportion of offenders transferring their title to avoid having the vehicle registration canceled was small, amounting to around 15 to 20% of the unlicensed offenders. Some motor vehicle departments take action to prevent title transfers by offenders to avoid impoundments and forfeitures. This is done by restricting transfers to individuals with the same surname or living at the same address.

Recommendation: Laws providing for impoundment of vehicles or license plates should specify the agency responsible for determining vehicle ownership prior to trial and should provide for rapid notification of the department of motor vehicles in the event of a vehicle sale or transfer. Finally, transfers to individuals with the same surname or in the same household

should be subject to special investigation to ensure that offenders are not transferring ownership to avoid the impoundment penalty.

Issue 9: Extent Of Application Of Impoundment Laws

Most of the impoundment laws are applied to multiple-time offenders; this is particularly true in the case of forfeiture laws. As a result, the number of offenders to which they apply is limited. Those laws that are applied to first DWI or first Driving While Suspended offenses affect a much larger group of drivers. This, of course, is true only if they are imposed. The Oregon and Washington Zebra sticker laws apply to first time offenders and are widely implemented producing thousands of cases each year. The laws which provide for impoundment or forfeiture of vehicles for the relatively few third- and fourth-time offenders are likely to have relatively less impact than laws which provide for forfeiture for the more numerous first- and second-time offenders.

Recommendation: Impound and forfeiture laws should apply at least to second-time DWI offenders and to DWS offenders where the suspension is based on a DWI conviction.

Issue 10: Probable Cause To Stop

The basic problem which vehicle and tag impound and forfeiture programs are designed to solve is the difficulty in identifying the unlicensed driver except by stopping the vehicle to examine the driving permit. Since stopping a vehicle is not constitutional without "reason to believe" that an offense has been committed, the driver who takes reasonable care to avoid attracting police attention through his or her driving is very unlikely to be apprehended for driving while suspended.

The purpose of vehicle and tag impoundment laws is either to prevent the use of the vehicle in the first place or to mark the vehicle in such a way that the police officer's attention is called to it and the officer has probable cause to stop the vehicle. The States of Oregon and Washington have written into their Zebra tag laws the provision that the presence of the sticker on the plate of a vehicle provides the officer with probable cause to stop the vehicle. This provision in the law has not been tested in court.

The State of Iowa has taken a different approach and provided that acceptance of family plates gives implied consent to having the vehicle being stopped at any time. This provision has also not been tested in court, however, given the precedent of implied consent to chemical test laws, it is to be expected that it would resist court challenge. Whatever method is used it is important to provide the police with the basis for recognizing the vehicle owned by a suspended driver and with cause for stopping the vehicle.

Recommendation: Laws providing for family plates or temporary plates for offenders should incorporate a provision that acceptance of such plates implies consent to the vehicle being stopped at any time for the officer to check the license of the operator.

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APPENDIX A: Data from MADD Survey of the States

STATE	DWI ARRESTS	LICENSE SUSPENSIONS	DWI CONVICTIONS	MULITPLE DWI CONVICTIONS
Alabama	33263	32025	27276	10910
Alaska	4076	4023	3872	1359
Arizona	6306			
Arkansas	17927	17927	15238	
California	336059	336059	302453	90736
Colorado	38579	29706	35493	8873
Connecticut	16690	14020		
Delaware	6659	1206	1206	494
Florida	67032	46922	46922	9056
Georgia	28282			
Hawaii	7308	3929	3929	
Idaho	11232	5616	7638	
Illinois	49170	44351	7720	1776
Indiana	41306	20653	29740	
Iowa	17259	18944	15188	3038
Kansas	15780	12624	12624	8711
Kentucky	34000	27200	27200	10608
Louisiana	19832			2904
Maine	11951	9680	8605	2065
Maryland	36573	13166	23041	
Massachusetts	33709			
Michigan	62974		53435	
Minnesota	34562	31451		
Mississippi	25581	17651		
Missouri	35308	21608	16842	4396
Montana	7500	6375	6375	1913
Nebraska	11923	3338	8108	2586

STATE	ARRESTS	LICENSE SUSPENSIONS	DWI CONVICTIONS	MULITPLE DWI CONVICTIONS
Nevada	10561	9822	8026	
New Hampshire	N/A			
New Jersey	43151	43151	38836	7767
New Mexico	21000	19740	18900	10395
New York	68264	60072	60072	
North Carolina	80354	53096	53096	16991
North Dakota	4124	2598	1856	890
Ohio	29644	24308	24308	8678
Oklahoma	14226*		7309	
Oregon	27997	21838	10079	2822
Pennsylvania	40039	34000		
Rhode Island	4044*			
South Carolina	25561			
South Dakota	7698	5440	5440	1251
Tennessee	6477*			2729
Texas	124167	29800	84434	30396
Utah	13000	11700	11700	2925
Vermont	4051	3200	3200	499
Virginia	46603		40218	12146
Washington	44497			
West Virginia	8568		2251	900
Wisconsin	3543			
Wyoming	3700	3560		1031

* Additional figures obtained by telephone contact.

APPENDIX B

APPENDIX B
STATES WITH VEHICLE OR PLATE IMPOUNDMENT/CONFISCATION LAWS

State: Alaska

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:

Yes §28.35.036. A vehicle used in a DWI (or refusal) offense may be subject to forfeiture if the operator has been previously convicted of such offense.

Other:

Under §28.35.038, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.

State: Arizona

Plate/Registration Suspension

Vehicle License Plate/Registration Suspension. Vehicle registration and license plates are suspended for the same period of time as the vehicle owner's driver's license. For second or subsequent offenses (within 36 months) this suspension is mandatory. §28-1259

Vehicle Forfeiture

Forfeiture. (1) If a person has been convicted of a 3rd of subsequent DWI offense or (2) if they have had their license suspended/revoked for a DWI offense and they are convicted of another DWI offense while in a suspension/revocation status for a DWI offense, their vehicle is forfeited. §28-692.06(A)

State: Arkansas

Impoundment

Note: License plates shall be impounded for 90 days if a driver has been arrested for driving while suspended/revoked where such suspension/revocation was based on an alcohol offense conviction. §5-65-106

Vehicle Forfeiture

Forfeiture. For a 4th DWI offense (within 3 years), a court may order the defendant's motor vehicle forfeited; see §5-65-177(a).

State: California

Vehicle Impoundment

Impoundment. 1st DWI offense - (1) The vehicle may be impounded for a DWI offense from 1 to 30 days; 2nd and subsequent DWIs offense (within 5 years) - The vehicle may be impounded from 1 to 90 days Vehicle Code

Vehicle Forfeiture

Forfeiture. However, a defendant's vehicle may be subject to forfeiture if they have been convicted of (10 a DWI vehicle homicide offense, (2) a non-injury related DWI offense and have had two or more (or combinations of) convictions within 7 years for either a vehicular homicide offense or a non-injury/injury related DWI offense or (3) a DWI serious injury offense and have had one or more (or combinations of) convictions within 7 years for either a vehicular homicide offense or a non-injury/injury DWI offense; see Vehicle Code

Terms Upon Which Vehicle Will Be Released:

There are no special terms which have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners expense; see Vehicle Code §23195.

State: Delaware

Vehicle Impoundment/Confiscation

Note: Impoundment of a vehicle or surrender of license plates/registration (for 90 days for a 1st offense and 1 year for a sub offense) is authorized if the vehicle operator was operating his/her vehicle while they were under license suspension or revocation for a DWI offense, implied consent refusal or other situations which require mandatory license revocation. See 21§2756.

State: Illinois

Vehicle Impoundment

Limited Impoundment. Following a DWI arrest, a person's vehicle may be impounded for not more than 6 hours by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DWI offense; see Ch. 95%, ¶4-20(e).

State: Indiana

Plate/Registration Suspension

Vehicle registration plates shall be suspended/revoked for 6 months if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offense); see IC9-2-1-5(b)(3) & (d)(1).

State: Iowa

Plate/Registration Impoundment

Registration/Plate Impoundment. For a 3rd or subsequent DWI offense conviction, the registration certificate and plates of all vehicles owned by the defendant shall not be issued until the defendant's license has been reissued or reinstated. However, if a member of the household has a valid license, "special registration plates" with distinctive numbers and letters, that are "readily identifiable" by law enforcement officers, may be issued for such vehicles. The law states that "[a]application for and acceptance of special plates constitutes implied consent for law enforcement officers to stop the vehicle bearing special plates at any time." See §321J.4A.

State: Maine

Vehicle Impoundment/Confiscation (Plate Suspension/Forfeiture)

(1) A defendant's vehicle registration (including the right to register a vehicle) and plates must be suspended for the same length of time as their license suspension. See 29 MRSA §2241-H. See Footnote 2.
(2) A person's (sole owner's) vehicle must be forfeited if they operate their vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense. See 29 MRSA §1312-I.

State: Maryland

Supervision of Vehicle Registration

If a person drives a motor vehicle while his or her license is suspended or revoked for an alcohol offense, the registration of the motor vehicle he or she was driving may be suspended for not more than 120 days. Trans: §13-705.1

State: Minnesota

Vehicle Impoundment Confiscation

Under §168.041, subd. 3, for a 1st or 2nd DWI offense, the defendant may be required to surrender their vehicle's registration plates and certificate. However, for either a 3rd DWI offense (within 5 years) or a 4th DWI offense (within 10 years), the registration plates (tags) of the vehicle used in the violation and/or those vehicles owned by the defendant **shall be impounded**; see §168.042, subd. 1. The registration plates and certificate are reissued when the driver's license is reinstated; see §168.041, subd. 4 & §168.042, subd. 11. Note: Notwithstanding the above, "special plates" may be issued if one of the vehicle's drivers in the family has a regular license or the offender has a limited (restricted) license; see §169.042, subd. 12.

State: Montana

Vehicle Impoundment

For a 2nd or subsequent DWI offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

State: Mexico

Vehicle Impoundment

For persons under 18. The vehicle owned by or used them may be impounded for 60 days. § 61-8-723

State: New Hampshire

Vehicle Impoundment

§66-8-102(I) - Impoundment; 2nd offense-30 days; 3rd offense-50 days (As an alternative, the vehicle may be "immobilized" for the periods indicated.) This action is not mandatory; see State v. Barber, 778 P.2d 456 (CA 1989), cert. den. by the N.M. Supreme Court, 778 P.2d 911 (N.M. 1989).

State: New York

Vehicle Forfeiture

Forfeiture. A defendant's vehicle may be subject to forfeiture if they have been convicted of a DWI felony offense (e.g., a second DWI offense within 10 years). This sanction is not mandatory. Civil Practice Law & Rules §1301(5) & §1311)(1)(a) and Holtzman v. Bailey, 503 N.Y.S.2d 473 (Sup. 1986)

Vehicle Impoundment

Upon marking an arrest or upon issuing a summons or an appearance ticket for the crime of the aggravated unlicensed operation of a motor vehicle in the 1st or 2nd degree committed in his presence, an officer shall remove or arrange for the removal of the vehicle to a garage, automobile pound, or other place of safety where it shall remain, impounded. The vehicle shall be entered into the New York State-wide police information network as an impounded vehicle and the impounding police department shall promptly notify the owner and the local authority that the vehicle has been impounded. Chapter 756 §511-B.1 New York Motor Vehicle Code.

Registration Suspension/Revocation

Registration Suspension/Revocation. The registration of a defendant's vehicle may be suspension/revocation Registration suspension/revocation periods are the same as the license suspension/revocation periods for DWI offense convictions. V&T Law §1193(2).

State: North Carolina

Vehicle Forfeiture

A driver's vehicle may be subject to forfeiture if the driver was operating a vehicle (1) while DWI and (2) while his/her license has been revoked for a previous DWI offense, implied consent refusal, or other mandatory revocation that involved alcohol. §20-28.2

State: North Dakota

Plate Impoundment

License plates may be impounded following a conviction for an alcohol driving offense; see §39-08-01(3)

Vehicle Forfeiture

For three or more DWI offense convictions (within 5 years), a defendant's vehicle may be subject to forfeiture; see §39-08-01.3.

State: Ohio

Plate/Registration Impoundment

Special Note: A vehicle's registration certificate and license plates may be impounded if the owner thereof has had their driver's license either suspended or revoked; see §4507.164. Note: This applies not only to DWI suspension/revocations but also to suspension/revocations for other types of traffic law offenses.

Special License Plates

Special license plates for motor vehicles whose standard plates have been impounded. No motor vehicle registered in the name of a person whose certificate of registration and identification license plates have been impounded shall be operated or driven on any highway in this state unless is displays identification license plates which are a different color from those regularly issued and carry a special serial number that may be readily identified by law enforcement officers. The registrar of motor vehicles shall designate the color and serial number to be used on such license plates, which shall remain the same from year to year and shall not be displayed on any other motor vehicle. §4503.231

State: Oregon

Vehicle Impoundment

Yes-Impoundment for 2nd or subsequent DWI offenses §809.700

Terms Upon Which Vehicle Will Be Released:

After a period of impoundment of not more than 120 days and after paying the costs of the vehicles removal and storage. See ORS §809.700(1)(a).

Registration/Cancellation and Plate Marking

The officer shall confiscate the vehicle registration card and place a sticker on the vehicle license plate of any operator found to be driving while suspended or revoked. The officer shall issue a temporary vehicle registration that expires in 60 days after the arrest. Chapter 891, Oregon Laws 1989, ORS, 809.110.

City of Portland, Oregon

Vehicle Forfeiture

"A vehicle operated by a person whose operator license is suspended or revoked as a result of a conviction for driving under the influence of intoxicants in violation of the provisions of this Chapter No. 813 (DWI) of the Oregon Revised Statutes, may be impounded at the time of an arrest or citation for Driving While Suspended or revoked ad be forfeited as a nuisance..." Ordinance NO. 161616

State: Pennsylvania

Vehicle Forfeiture

Vehicle forfeiture for a DWI offense under "common law". See Commonwealth v. Crosby, 586 A.2d 233 (Pa. Super. 1990).

State: Rhode Island

Vehicle Impoundment/Confiscation

4th or subsequent DWI offense (within 5 years) - A person's vehicle may be forfeited (confiscated) by the State; see §31-27-2(d).

State: South Carolina

Vehicle Forfeiture

Either for a 4th DWI offense (within 10 years) or a 4th offense (within 10 years) of driving while license is suspended/revoked, the driver's vehicle must be forfeited; see §56-5-6240(A).

State: South Dakota

Vehicle Registration Suspension

For any offense conviction, where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended; see §23-35-44.

State: Tennessee

Vehicle Impoundment/Confiscation

Provided in Common Law, note however State v. Bouldin, 717 S.W.2d 584 (Tenn. 1986), where a temporary vehicle forfeiture provision of a DWI plea bargaining/probation agreement was voided by the Tennessee Supreme Court.)

State: Texas

Vehicle Forfeiture

A defendant's vehicle may be subject to forfeiture by the State following three or more DWI convictions. Art. 67011-7

State: Utah

Vehicle Impoundment/Confiscation

(Note: Under §41-60-44.30, an unattended vehicle may be temporarily impounded following a DWI arrest in order to protect the public safety.)

State: Virginia

Vehicle Impoundment/Confiscation

Under §46.2-389(A), a person's vehicle registration and plates are revoked by the licensing agency for 1 year following a DWI conviction; however, under §46.2-389(B), such revocation shall be withdrawn if the defendant has entered a rehabilitation program under §18.2-271.1. Notwithstanding the above, the licensing agency must still suspend/revoke a person's vehicle registration and plates if the court orders such; see §46.2-389(B).

State: Virgin Islands

Vehicle Impoundment/Confiscation

Limited See Footnote No. 1 on p. 3-454. (Note: For failure to appear in court on a DWI charge, a person's vehicle may be impounded for such time as the court thinks proper; see 20 §544(c).)

State: Washington

Confiscation of Registration and Marking of Plates

At the time of arrest for violation of ... (Driving While Suspended) ... the arresting officer shall confiscate the Washington State Vehicle registration of the vehicle being driven or by the arrested driver and mark the vehicle Washington State license plates. The officer shall replace the confiscated vehicle registration with a temporary registration that expires 60 days after the arrest. RCW 46.16.710.

State: Wisconsin

Vehicle Impoundment/Confiscation

Vehicles may be impounded as a result of an operator-owner's failure to post security for an accident; see §344.14 and for a conviction of driving while license is either suspended or revoked; see —343.44(4).

State: Wyoming

Vehicle Impoundment/Confiscation

For a subsequent DWI conviction (within 2 years), a defendant's vehicle registration shall be suspended for the same period as their license revocation/suspension; see §31-7-128(c).