AN ASSESSMENT OF VIRGINIA'S LAW REQUIRING THE FORFEITURE OF ANY VEHICLE DRIVEN BY A PERSON UNDER LICENSE SUSPENSION OR REVOCATION

by

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ABSTRACT

In Virginia an individual arrested for the first time for driving while his driver's license is suspended or revoked is subject to the following penalties:

1. He will be jailed for not less than ten days and not more than six months (Va. Code Ann. § 46.1-350(b));

2. he may, in addition, be fined up to $200.00 (Va. Code Ann. § 46.1-350(b)); and

3. he will be required to forfeit his vehicle to the state (Va. Code Ann. § 46.1-351.1).

Virginia is alone among the fifty states in requiring the mandatory forfeiture (seizure followed by public sale) of any motor vehicle driven by a person while his driver's license is suspended or revoked. The forfeiture statute has been the object of considerable criticism by the commonwealth's attorneys charged with its enforcement.

The purpose of this study was to examine Virginia's vehicle forfeiture law, Va. Code Ann. §§ 46.1-351.1 and 46.1-351.2, to determine the merits of the criticisms which have been expressed against the statute and to evaluate its effectiveness as a highway safety measure.

FINDINGS AND RECOMMENDATIONS

Findings

(1) The forfeiture statute is not applied uniformly throughout the state. While many jurisdictions do require the mandatory forfeiture of a vehicle driven by a person while his driver's license is suspended or revoked, a significant number of jurisdictions vary their enforcement from the prescribed rule of the statute. Some apply the statute with discretion, using it to provide additional punishment for particularly culpable offenders, while others have simply elected not to enforce the statute at all.

(2) Sixty-seven percent of the commonwealth's attorneys and 48 percent of the police chiefs surveyed believed that local officials should be able to exercise their discretion in applying the forfeiture statute, as opposed to the present mandatory rule.

(3) Forty-eight percent of the commonwealth's attorneys responding believe that the present forfeiture statute is too strict in the context in which it is administered, and 37 percent of the same group believe that the statute is of no value in deterring violations of license revocation and suspension periods. The frequency of the police chiefs' responses to these same two questions was 14 percent in both instances. These negative attitudes towards the statute have an eroding effect on the enforcement of the statute in those jurisdictions where it is held in low regard.

(4) The forfeiture statute is both costly and time consuming to administer. It takes about 7.5 hours of local officials' time to process a forfeiture completely to the public sale of the vehicle. This process costs the state about $150 per vehicle forfeited, while the average proceeds received by the state from the public sale of such vehicles is only about $45. It costs about $55 per vehicle to seize it, store it, and then turn it over to an innocent owner or lienholder. A total net cost of about $180,000 is incurred annually in administering the forfeiture statute.

(5) Apparently the forfeiture statute does produce some positive highway benefits in terms of reducing accident levels statewide, and these benefits may in fact exceed the costs presently associated with its enforcement.

(6) The present forfeiture statute contains a serious loophole in that a lienholder who has a vehicle released to him by a commonwealth's attorney without a trial on the information against the vehicle requesting its forfeiture to the state apparently has no legal recourse but to return the vehicle to the offender. This anomaly occurs because, if the offender is not in default on his obligation to his lienholder, the mere force of the commonwealth's attorney's exercise of discretion pursuant to Va. Code Ann. § 46.1-351.2(a1) is not sufficient to give the lienholder a legal right to the vehicle over that of the offender.

(7) The commonwealth's attorneys' median estimate of the number of persons whose driver's license was suspended or revoked and who were unaware of the provisions of the forfeiture statute was 50 percent.

(8) Two factors were identified as the principal forces exerting pressure on jurisdictions to vary the application of the forfeiture from the required scheme of mandatory application:

A. The statutes' diffuse benefit return combined with the high cost associated with its enforcement on the local level; and

B. the negative attitudes of many enforcement officials towards the statute.

Both of these factors can be expected to continue to influence jurisdictions to apply the forfeiture statute with discretion or to abandon its enforcement altogether.

Recommendations

(1) The forfeiture statute should be repealed and replaced by a statute prescribing the impoundment for the remaining period of driver license denial of the license plates and certificate of registration of any vehicle driven by a person whose license was suspended or revoked. Such an impoundment statute has four principal advantages over the present forfeiture statute:

A. It would cost far less to administer which may produce a higher and more uniform level of enforcement than has been realized under the present forfeiture statute.

B. It would be judicially more efficient, because it would require only one court proceeding as opposed to the two necessary to enforce the present forfeiture statute.

C. It would encroach on far fewer individual property rights than does the present statute.

D. It would just as effectively remove offenders from the road as does the forfeiture statute, while at the same time being far less costly to administer.

(2) A memorandum should be sent to all district court judges in the state requesting them to ensure that all individuals convicted in their court who will lose their driver's license are fully informed of the severe legal sanctions to which they will be subjected should they violate their license revocation or suspension period.

INTRODUCTION

Selecting an Optimum Sanction to Deter Driving Under Revocation and Suspension

The vehicle forfeiture provision of § 46.1-351.1 is an extension of Virginia's license suspension and revocation laws. These laws are directed at a class of drivers who have violated the highway laws of the state to a degree which has been legislatively determined to merit revocation or suspension of their driving privilege. The thrust of such laws may be viewed as threefold:

(1) To punish the offender;

(2) to deter future violations; and

(3) to rehabilitate the offender by making him realize that the cost of his aberrant driving behavior is too great for it to be continued.

One of the basic premises supporting driver licensing laws in general and revocation and suspension procedures in particular is the assumption that those persons who are denied their driving privileges will refrain from driving. However, studies show that this assumption must be qualified. Many individuals who have their license suspended or revoked continue to drive. A study done for the California Department of Motor Vehicles revealed that 33 percent of the drivers under suspension and 68 percent of the drivers under revocation continued to drive during their suspension or revocation.[1] Similarly, in a recent survey of the driver licensing administrators of the 50 states, the median estimate given by the license administrators of the number of drivers who continue to drive during revocation or suspension was 50 percent.[2]

Most states impose severe sanctions for driving under suspension or revocation.[3] In Virginia the individual convicted for driving under suspension or revocation, in addition to having his car confiscated, faces a mandatory jail sentence of ten days, which cannot be suspended entirely, and a fine of "not less than $100 nor more than $200."[4] The fact that many individuals continue to drive after their license is suspended or revoked suggests that many people are either ignorant of the law or are willing to disregard it. It is unlikely that anyone who has had his license suspended or revoked reasonably believes that he may legally drive without his license; therefore, it appears that many must elect to disregard the law.

The system of traffic laws is founded on the premise that the individual driver will respond rationally to the existence of traffic laws. Aside from any moral attribute of the law which might influence drivers to obey it, a rational driver would be expected to conform to prescribed driving norms whenever the consequences for deviating from those norms were considerable and the likelihood of being caught was great. To the extent that actual driver behavior is not the product of rational responses to the highway environment a serious problem is presented to highway safety researchers and administrators, because traffic laws aimed at deterring violations and rehabilitating offenders cannot be expected to alter driving behavior which is not the result of rational mental processes.

Highway safety research suggests that there may be two definable classes of individuals who violate traffic laws. The first class, and certainly the larger of the two, is comprised of "normal persons who succumbed to temptation when circumstances were favorable and it was expedient to take a chance."[5/] Well researched traffic laws coupled with scientific enforcement programs can be expected to influence this class of drivers to obey the law. The second class of offenders are those individuals whose abnormal driving behavior is a symptomatic manifestation of some deeper psychological or social problem.[6/]

The traffic offender dichotomy is not intended to be a mutually exclusive categorization. In practice many offenders would surely fall somewhere between the two classes. This classification is proposed as an analytic tool by which the impact of traffic laws on the driving public can be systematically examined.

The "negligent" or "high risk" driver has been the focus of much academic attention in an effort both to identify him and to find viable ways to rehabilitate him. A study done for the U. S. Department of Transportation, testing the hypothesis that a required court appearance would have a beneficial effect on the subsequent driving records of those required to appear, revealed that there were no differences in subsequent accidents or moving violations between the required court appearance group and the nonappearance, "pay-the-clerk" group.[7/] Other inquiries in this area have produced some more encouraging results.[8/] The Michigan Highway Traffic Safety Center tested the effect of various driver improvement techniques in reducing the subsequent number of accidents of 4,216 drivers and found that "in comparing the differential effectiveness of the driver improvement interview, the statistical tests of significance showed that instruction produced significantly more improvement than probation and suspension and probation significantly better than suspension."[9/] These results reinforce the hypothesis that at least some drivers will respond rationally to traffic laws and driver improvement programs.

The deterrence of violations is a major goal of all traffic laws. Section 46.1-351.1's vehicle forfeiture provision is intended to deter violations of suspension and revocation periods. Therefore, whether or not the existence of severe legal sanctions will in fact cause some drivers who would otherwise drive illegally to obey the law is a crucial question in this inquiry. The answer to this question is complex, and the studies in this area have produced equivocal results.

D. H. Schuster's research indicates that caution and much careful research should precede any movement towards increasing the punishment for traffic offenses, for the results of his studies "suggest that punitive action has just the opposite effect to that intended; to wit, severe action accorded a beginning problem driver has the effect of telling him that he is a problem driver and he drives accordingly. The converse also appears to hold."[10/]

The equivocal ability of traffic sanctions to deter problem driving is further illustrated by a California Department of Motor Vehicles study which indicated that many drivers who are caught driving under suspension or revocation continue to drive after having been apprehended.[11/] Such behavior occurs despite the fact that individuals so apprehended will be imprisoned in the county jail for not less than five days nor more than six months and are subject to a fine of up to $500.00.[12/]

More encouraging are the results of a recent study done at Tel Aviv University in Israel which investigated the relationship between the type and severity of punishment and the length of time before the next traffic offense, and found that punishment, while not deterring subsequent violations entirely, does increase the length of time between offenses.[13/]

A recent study of the Virginia Habitual Offender Statute[14/] indicates that even the felony provisions of that act do not absolutely deter the subsequent driving of those adjudicated habitual offenders. It was found that 23 percent of the habitual offenders in the study group received a motor vehicle conviction and/or were involved in a traffic accident as a driver after their adjudication. Convictions and accidents are only those instances where state authorities have been aware of the habitual offender's driving subsequent to adjudication; therefore, the 23 percent figure "must represent a most conservative estimate of the number of habitual offenders who continue to drive."[15/] These results should nor surprise the reader, as the habitual offender is most certainly a member of the class of offenders who seem to be nearly impervious to the existence of traffic laws.

While the high rate of illegal driving among habitual offenders may be explained by the irresponsible behavior patterns generally associated with members of that class or the simple need to drive in order to get from one place to another, adjudged habitual offenders represent less than 0.5 percent of the total number of persons who annually have their license suspended or revoked in Virginia. Many of the persons who drive under suspension or revocation must be otherwise normal drivers. One explanation of why normal persons would continue to drive in direct contravention to the law is that driving has become a virtual social and economic necessity to the citizen of the 1970's. The physical act of driving itself is innocuous and has become a ritualized part of everyday life. This fact, coupled with an individually perceived low probability of being detected as long as the traffic laws are religiously observed, may prompt these persons to risk driving under suspension or revocation.

Traffic laws seem to be a unique species within the genus of criminal law. Little stigma attaches to their violation, as compared with most other criminal laws. Moreover, violations of traffic laws are widespread, it is a rare person who has neither committed a traffic violation nor witnessed one. About 40 percent of the licensed drivers in Virginia admit to having been convicted of a moving violation, e.g., speeding, running a red light, reckless driving.[16] The present 55 mph speed limit is being routinely disregarded by large numbers of American drivers despite the existence of legal sanctions for speeding.[17]

The preceding discussion suggests that there is a continuum of reaction to traffic laws along which the class of traffic offenders may be plotted. An offender's position on the continuum is a function of (1) his attitude toward the traffic offense, (2) his perception of his chances of being apprehended, (3) his view of the negative effect of the applicable punishment, and (4) his perceived need to drive illegally. At one end of the reaction continuum is the rational driver, an otherwise normal citizen, who unwittingly violates the law. Next is the normal citizen who practices highway gamesmanship — the person, late for an appointment, who decides to speed to make up time. Moving further along the continuum, offenders are encountered who are increasingly less likely to consider the law as a real obstacle to their illegal driving behavior. At the end of the continuum are those persons destined to be adjudged habitual offenders, individuals who seem nearly impervious to the existence of traffic laws.

Persons who drive under revocation or suspension may be found at nearly every point along the reaction continuum. A

normal citizen who has his license revoked for speeding may view the necessity of his having to drive to work as far outweighing the possibility of being caught with its attendant consequences. Thus, the selection of an appropriate sanction to deter driving under revocation or suspension becomes highly complicated when one considers the wide range of persons against whom such a law will potentially act.

The results of the studies discussed in this introduction suggest that the deterrent quality of a given traffic law may be more a function of the extent to which the public is informed of the statute's provisions and their subsequent willingness to conform to them, than of the severity of the sanctions imposed by the law. It seems that the prophylactic character of traffic sanctions are subject to the law of diminishing returns. There is a threshold point in the spectrum of possible penalties which could be invoked against an individual for driving under revocation or suspension which will successfully contain all those persons who would respond rationally to the law. To enact a law imposing penalties beyond those of the threshold point is to engage in legislative overkill as the more severe penalties will not significantly increase the deterrent capacity of the law but may in fact actually decrease its deterrent impact. To illustrate this point by an extreme example, imagine the negative impact a mandatory five year jail sentence for driving under revocation or suspension would have on both a traffic officer's willingness to arrest and the court's willingness to convict under such a law, when it was brought to bear against an individual on the lower (normal driver) end of the hypothesized reaction continuum. The point of this discussion is to emphasize the importance of selecting a sanction level for driving under revocation or suspension that the motoring public will implicitly recognize as both reasonable and necessary.

A scientific attitude is of primary importance in considering reform of Virginia's forfeiture law. The law must be firmly grounded in empirical research foundations and uniformly enforced if it is to earn the respect among the driving public which is so critical to its role as a viable vehicle of highway control.[18] Each additional highway program and traffic law must be closely analyzed to ensure that its marginal productivity exceeds its cost. As was pointed out at a recent highway safety symposium:

> Slogans and myths have pervaded the highway safety field for decades. These myths have hindered good safety programs from being implemented and have aided in retaining unproven and ineffective programs. In truth, the bad safety program drives out the good.[19]

DISCUSSION OF THE STATUTE

The following is a general description of the forfeiture provisions of Va. Code Ann. § 46.1-351.1 (1972), which are set forth in their entirety in Appendix A. For a highly detailed discussion of these forfeiture proceedings see Appendix B.

Virginia alone among the fifty states requires the immediate forfeiture of any motor vehicle determined to have been driven by a person whose driving privilege has been suspended or revoked. Section 46.1-351.1 provides that when any officer charged with enforcing the motor vehicle laws of the Commonwealth arrests a person whom he reasonably believes to be driving while his driving license is suspended or revoked, he is to seize the motor vehicle being so driven. A check is then made with the Division of Motor Vehicles to determine whether by their records the individual was driving under suspension or revocation. In actual practice seizure of the vehicle is often delayed until the Division of Motor Vehicles has confirmed the fact that the individual was driving under suspension or revocation.

If the Division of Motor Vehicles' record search reveals that the individual was driving under suspension or revocation, the vehicle is then seized. The next step is to determine who is the legal owner of the offending vehicle. If the vehicle owner and driver are the same, forfeiture is mandatory. However, if the vehicle is owned by a person other than the driver or has a lien registered against it, the Commonwealth must prove that the owner or lienor had actual knowledge of the illegal use of "his" motor vehicle before forfeiture will occur.

If the local commonwealth's attorney is satisfied that the vehicle's owner, who is other than the charged driver, was unaware that his vehicle was being driven illegally, or, in the case where there is a lienholder, that he is ignorant of the illegal driving and that the amount of his lien exceeds the appraised value of the vehicle, then the commonwealth's attorney may release the vehicle to its owner or to the lienholder without a trial. However, if the commonwealth's attorney believes a trial is necessary, it will be held after the criminal conviction of the individual for driving under revocation or suspension. The forfeiture proceeding is an independent civil action against the seized vehicle completely separate from the criminal action against the offender himself for driving under revocation or suspension, although an acquittal on the criminal charge operates as a complete bar to the subsequent civil forfeiture proceeding.

The provisions of § 46.1-351.2(a1) which allow the commonwealth's attorney to release a seized vehicle to a lienholder on the vehicle without a trial on the information work a curious anomaly. While the lienholder may be instructed by the commonwealth's attorney not to return the vehicle to the offender-owner, it seems that he has no other choice but to do exactly that. If the offender-owner is not in default on his obligation, his lienholder has no legal right to his vehicle, because there has been no legal affirmation of the lienholder's right to the vehicle which would authorize him to break his loan contract with his debtor, the offender-owner. Clearly the offender-owner has a right to a full and fair hearing to ensure his right to substantive due process before his vehicle can be taken from him, i.e., released to his lienholder.

Ironically, it seems that the only persons against whom the forfeiture statute may legally work are the offender-owners who own their vehicles free and clear and elect to violate their revocation or suspension and the conniving third party owner or lienholder. In nearly every instance where there is a lienholder, he could successfully raise his ignorance of the offender's illegal driving as a defense to the forfeiture. The vehicle would then be turned over to him and he would then give it back to his debtor, the offender-owner.

A forfeiture action which proceeds to trial, if successful, climaxes in the public sale of the motor vehicle. Any surplus remaining after paying the costs of storing and forfeiting the vehicle is paid into the State Literary Fund. Va. Code Ann. § 46.1-351.2 (1972), specifies an elaborate procedure (there is a detailed discussion of this in Appendix B) which the forfeiture must follow to ensure that the constitutional rights of the vehicle's owner will not be violated. The Court of Appeals of Virginia upheld the constitutionality of forfeitures under this statute in Commonwealth v. One 1970, 2 Dr. H. T. Lincoln Auto., 212 Va. 597 (1972), stating clearly that the statute was not violative of the individual's constitutional rights to due process and equal protection of the law, nor did the forfeiture constitute an excessive, arbitrary and unreasonable penalty.

METHODOLOGY

Questionnaires were sent to all of the commonwealth's attorneys in the state and to all the police chiefs of cities, counties and towns whose population exceeded 1,000. The purpose of the survey was to obtain an accurate picture of the practical application of the statute and to canvass the opinions of those charged with the enforcement of the statute as to its effectiveness.

One hundred and twenty-seven questionnaires were sent to the commonwealth's attorneys, of which 99, or 78 percent were completed and returned. Two hundred and eight questionnaires were sent to police chiefs of which 151, or 73 percent, were completed and returned. In some instances individual respondents were contacted by telephone in order to clarify their responses or to have them explain some facet of the administration of the statute which they had mentioned in their questionnaire response.

In general the cells of the data tables represent the percentage of the respondents of that category (indicated by the column heading) who made that particular response. The percentages used are column percentages adding up to 100 percent. In each instance the actual number of respondents who answered that particular question is shown below the respective column by the notation "(N = 108)" which means that 108 individuals responded to that question.

A three step process was used in the analysis of the statute, and each is the subject of a separate section of the study.

1. PART I: APPLICATION OF THE STATUTE. Summary statewide data on the number of individuals and vehicles affected by the forfeiture statute were compiled to determine the physical dimensions of the statute's application. It was also necessary to determine to what extent the practical application of the statute differed from the procedure prescribed by the statutory language.

(Once the physical parameters of the problems associated with the enforcement of the forfeiture statute were defined, the analysis explored the crucial question of why the statute was being irregularly enforced.)

2. PART II: ENFORCEMENT ATTITUDE ANALYSIS: The attitudes and opinions of the commonwealth's attorneys and police chiefs as to the relative merits of the statute were analyzed to determine to what extent dissatisfaction with the statute led to discretionary enforcement or finally to no enforcement at all.

3. PART III: COST-BENEFIT ANALYSIS: A cost-benefit analysis of the statute was made to assess the program efficiency of the statute as a highway safety measure, as many commonwealth's attorneys seemed to be of the opinion that it was simply "not worth it" to enforce the statute.

In order to identify those factors influencing a jurisdiction to vary the application of the statutes from the mandatory forfeiture rule, at numerous points in the analysis of the statute the responses of those commonwealth's attorneys whose jurisdictions do not forfeit any vehicles at all were compared with the responses of those commonwealth's attorneys whose jurisdictions forfeited at least one vehicle a year. The commonwealth's attorneys, as opposed to the police chiefs, were chosen as the focus of the comparative study because they are the local officials having the power to decide whether the forfeiture action against a seized vehicle will proceed or be dismissed.

PART I: APPLICATION OF THE STATUTE.

The first part of the analysis examines the actual application of the statute. Table 1 clearly indicates that only about 31 percent of those individuals who are arrested for driving under suspension or revocation have their automobiles seized pursuant to the statute, and only about 7 percent of those arrested eventually forfeit their vehicles to the state.

Table 1: Summary of Annual Statewide Arrest, Seizure and Forfeiture Figures*

Arrests		Seizures		Forfeitures	
Actual Responses	Estimate For State	Actual Responses	Estimate For State	Actual Responses	Estimate For State
6,287	8,600	1,858	2,700	405	600
(N = 122)		(N = 88)		(N = 88)	

*The actual responses were produced by the questionnaire returns. The following will illustrate the method used to calculate the state estimates:

Eighty-eight commonwealth's attorneys, or 69.2% of the 127, who represent the various municipalities of Virginia, responded that they seize 1,858 vehicles annually.

$$\frac{1{,}858 \text{ (Total No. Reported Seized)}}{.692 \text{ (Respondees as \% Total State)}} = 2{,}685$$

This figure was rounded to 2,700 to yield an estimate for the state.

Similar calculations produced a 585 figure for forfeitures which was rounded to 600, and an 8,612 figure for arrests which was rounded to 8,600.

While the questionnaire did not ask the police chiefs to explain why persons who were arrested for driving under revocation or suspension did not always have their vehicles seized, this question was asked by telephone of five police chiefs, who gave the following explanations;

(1) The attitude of the local commonwealth's attorney towards forfeiture was often cited as the reason for not seizing the vehicle, either because he does not enforce the statute or because as a practical matter he usually just returned the vehicle to its owner.

(2) Some cars are destroyed by their owners before they can be seized. It is not clear whether these cars are destroyed as a result of an accident or by the intentional act of the owner to avoid forfeiture under the statute.

(3) Some jurisdictions do not have the capability to store the large number of vehicles which could potentially be seized pursuant to the statute; consequently vehicles are not seized because there is simply no place to put them.

(4) It is more trouble than it is worth to seize vehicles bearing out-of-state license plates. The statutory requirements of identifying the legal owner of the seized vehicle and then having to notify him of the seizure and forfeiture proceeding is particularly burdensome when applied to the out-of-state vehicle.

(5) People often lie to the arresting officer as to why they have no driver's license; consequently he does not seize the offender's vehicle.

(6) A jurisdiction other than the arresting one may seize the offender's vehicle, and this accounts for some of the variance between the number of arrests and number of seizures. If jurisdictional overlap were the principal reason for the great disparity between the number of arrests and the number of vehicle seizures, there should be some jurisdictions where the number of seizures exceed the number of arrests, but in no instance was this reported to be the case.

None of the above reasons alone can entirely explain why the police do not always seize the offender's vehicle pursuant to the statute, but these can be taken to be indicia of the types of circumstances that will result in nonforfeiture in some jurisdictions. In practice the greatest single reason why many vehicles are not seized pursuant to arrest for driving under suspension or revocation is because the commonwealth's attorney's inquiry (or the police inquiry) to the Division of Motor Vehicles as to the legal ownership of the vehicle driven by the offender often reveals that the vehicle's owner of record is either a person other than the driver or that the vehicle has a lien registered against it. In either case this raises the real possibility, particularly in the case where there is a lienholder, that a viable defense to forfeiture exists. The statute permits the commonwealth's attorney to return the vehicle to its lawful owner when such owner was ignorant of its illegal use (see Appendix B, comments to § 46.1-351.2(a1)), or, if the vehicle has not yet been seized to inform the police that seizure is not warranted. While this feature of the statute in many cases justifiably relieves the commonwealth's attorney of having to go through the costly and complicated forfeiture procedure, it also harbors the spectre of abuse when the commonwealth's attorney personally believes that the statute is of little substantive value and is too expensive to enforce except in extreme cases. The attitude of the local commonwealth's attorney toward forfeiture may well be the greatest single factor influencing the willingness of the police to seize vehicles as prescribed by the statute.

Both police chiefs and commonwealth's attorneys were asked to explain why seized vehicles were not always forfeited. The following reasons were given:

Table 2: Reasons Why Seized Vehicles Are Not Forfeited (Frequency of Mention)

Commonwealth's Attorneys	Police	
76%	50%	Vehicle released to lienholder
53%	20%	Vehicle released to innocent owner
23%	9%	Forfeiture too expensive
12%	4%	Forfeiture too time-consuming
21%	38%	Other (We don't enforce it, commonwealth's attorney returns vehicle to owner, etc.)
(N = 88)	(N = 108)	

The percentage entries in Table 2 reflect the relative number of respondents who mentioned the reason indicated for non-forfeiture as compared with the total number of individuals (N) in their group who volunteered an explanation. For example, 76% of the 88 commonwealth's attorneys who volunteered an explanation indicated that they often released seized vehicles to lienholders rather than forfeiting them.

"Release to lienholder" and "release to innocent owners" are the only reasons for nonforfeiture recognized by the statute. To the extent that other reasons are accepted as grounds for dismissal of the forfeiture action against the vehicle, local authorities have elected to disregard the clear language of the statute.

Table 3: Jurisdictional Breakdown of Annual Seizures and Forfeitures (Commonwealth's Attorneys)

Actual No. Vehicles	Jurisdictions Seizing This No. of Vehicles	Jurisdictions Forfeiting This No. of Vehicles
0	3%	24%
1 - 4	11%	45%
5 - 9	19%	16%
10 - 19	26%	10%
20 - 29	20%	4%
30 - 39	7%	-
40 - 49	4	-
50 +	10%	1%
	100%	100%
	(N = 90)	(N = 91)

The data breakdown in Table 3 shows that 24 percent of the commonwealth's attorneys responding indicated that on the average their jurisdictions did not forfeit any vehicles at all. The commonwealth's attorneys were then asked to explain why their jurisdictions did not forfeit any vehicles pursuant to the statute, but only seven commonwealth's attorneys responded directly to this question. Four of these simply said that the statute was too strict to enforce, and the remaining three said they had not been in office long enough to have a case arise under the statute.

Tables 4 through 19 compare the responses of the commonwealth's attorneys who reported that their jurisdictions did not

forfeit any vehicles with those of the commonwealth's attorneys whose jurisdictions forfeit at least one vehicle annually. Tables 4 through 6 are responses of the commonwealth's attorneys to the question:

> To the extent that your jurisdiction does allow the motor vehicle owner who drove his motor vehicle under suspension or revocation to show cause why his vehicle should not be forfeited, i.e., your jurisdiction makes a case by case decision as to whether or not to require the forfeiture of the automobile, what factors are considered?

Table 4. Do You Consider the Economic Status of the Charged Individual, i.e., Can He Afford To Lose His Vehicle?

	Forfeit No Vehicles	Forfeit One or More
Yes	29%	19%
No	71%	81%
	100%	100%
	(N = 17)	(N = 64)

Table 5: Do You Allow Subjective Considerations, e.g., Is The Offender a Good Citizen, to Enter Your Forfeiture Decision?

	Forfeit No Vehicles	Forfeit One Or More
Yes	29%	22%
No	71%	78%
	100%	100%
	(N = 17)	(N = 64)

Table 6: Do You Consider the Circumstances Under Which the Individual Was Arrested, e.g., Was He Committing Another Traffic Violation As Opposed to Simply Being Caught in a License Check?

	Forfeit No Vehicles	Forfeit One or More
Yes	41%	17%
No	59%	83%
	100%	100%
	(N = 17)	(N = 64)

The preceding three tables show that while both groups allow factors other than those prescribed by the statute to be considered in their decision as to whether to require forfeiture of the offender's vehicle, the commonwealth's attorney whose jurisdiction forfeits no vehicles appears to be more receptive to defenses other than those envisioned by the statute than is his counterpart whose jurisdiction requires forfeiture.

The information shown in Tables 7 through 10 was obtained by asking the respondents to explain in their own words why some vehicles were seized but not subsequently forfeited. The answers volunteered were coded and the results were summarily set forth earlier in this discussion in Table 2. However, at this point a comparative analysis of the responses of the forfeiting and non-forfeiting commonwealth's attorneys will be made in an effort to further explain why some seized vehicles are not forfeited.

Table 7: The Seized Vehicle is Released to a Lienholder

	Forfeit No Vehicles	Forfeit One or More
Yes	71%	78%
No	29%	22%
	100%	100%
	(N = 21)	(N = 67)

Table 8: The Seized Vehicle is Released to an Innocent Owner

	Forfeit No Vehicles	Forfeit One or More
Yes	40%	58%
No	60%	42%
	100%	100%
	(N = 20)	(N = 67)

The responses in Tables 7 and 8 above are the only two defenses, or explanations for nonforfeiture, recognized by the statute. Tables 9 and 10 reflect explanations for nonforfeiture which are not recognized by the statute, reasons which theoretically are legally impermissible.

Table 9: Economic Reasons, i.e., It Costs More To Forfeit Than It's Worth

	Forfeit No Vehicles	Forfeit One or More
Yes	33%	19%
No	67%	21%
	100%	100%
	(N = 21)	(N = 66)

Table 10: It Takes Too Much Time to Forfeit

	Forfeit No Vehicles	Forfeit One or More
Yes	20%	9%
No	80%	91%
	100%	100%
	(N = 20)	(N = 66)

The data shown in Table 10 may simply be a variation of the economic reasons shown in Table 9, but time considerations were cited as distinct from money considerations often enough to warrant inclusion as a separate reason for nonforfeiture.

The fact that any of the commonwealth's attorneys would mention time and cost considerations as reasons for nonforfeiture is an important finding. It suggests that some of them have made individual benefit assessments of the statute and have consequently decided that it is simply not worth it to require forfeiture in all cases as mandated by the statute. The reasons precipitating this economic decision not to forfeit are not as important as the fact that here is revealed yet another set of factors (a cost benefit judgement) which can be expected to exert pressure on enforcement officials to move away from the inflexible forfeiture rule of the statute towards discretionary application. A detailed analysis of the cost-benefit features of the statute is undertaken in Part III. Tables 9 and 10 show that those commonwealth's attorneys expressing concern for the economic efficiency of the statute tend to be found most often in those jurisdictions that on the average do not forfeit any vehicles at all, which suggests that some of the nonforfeiting commonwealth's attorneys may have made the complete transition from the level of discretionary enforcement of the statute to the level of no enforcement.

To test the proposition as to whether the statute's time table for seizure and initiation of the forfeiture action was an obstacle to enforcement, both the commonwealth's attorneys and police chiefs were asked whether the thirty-day period in which the vehicle must be seized was sufficient to implement action. The groups responded as shown in Table 11.

Table 11: Is the Thirty Day Time Period Sufficient?

Commonwealth's Attorneys	Police	
61%	93%	Yes, time is sufficient
39%	7%	No, time is too short
100%	100%	

The police chiefs do not seem to find that the time demands of the statute are a significant obstacle to enforcement. It is surprising that the commonwealth's attorneys would indicate that they find the time limitations more of an obstacle than do the police at whom the statutory time table is specifically

directed. Section 46.1-351.2 contains specific provisions (§ 46.1-351.2(a)) designed to relieve the local commonwealth's attorneys of any time pressure with regard to initiation of the forfeiture action against a seized vehicle by providing that, if for any reason the commonwealth's attorneys fail to file the forfeiture action against the seized vehicle within 60 days of its seizure, the attorney general may file the information against the vehicle for the local commonwealth's attorney so long as it is within a year of the vehicle's seizure.

To try to assess to what extent those individuals against whom the statute could potentially be invoked were informed as to its provisions, both groups were asked the question in Table 12.

Table 12: How Many Persons Who Have Their Licenses Suspended or Revoked are Aware of the Forfeiture Statute?

Commonwealth's Attorneys	Police	Percent Estimate of Persons Aware of the Forfeiture Statute
39%	15%	1 - 9%
24%	15%	10 - 49%
18%	22%	50 - 74%
24%	27%	75 - 99%
5%	21%	All
100%	100%	
(N = 62)	(N = 104)	

Fifty-three percent of the commonwealth's attorneys and 30% of the police chiefs responding believe that at least half of those individuals having their license suspended or revoked are unaware of the forfeiture statute. The local commonwealth's attorney's perception as to how widely knowledge of the forfeiture statute is disseminated among the class of revoked and suspended drivers against whom it is to be potentially invoked may be a factor influencing him not to require forfeiture, and, as Table 13 shows, 82% of the nonforfeiting commonwealth's attorneys, as compared with 46% of the forfeiting commonwealth's attorneys, believe that at least half of the revoked and suspended drivers are unaware that they will lose their vehicle if they continue to drive.

Table 13: How Many Persons Who Have Their Licenses Suspended or Revoked are Aware of the Forfeiture Statute?

Percent Estimate of Persons Aware of Forfeiture Statute	Commonwealth's Attorneys Forfeit No Vehicles	Forfeit One or More
1 - 9%	36%	27%
10 - 49%	46%	19%
50 - 74%	9%	21%
75 - 99%	9%	25%
All	0	8%
	100%	100%
	(N = 11)	(N = 48)

Finally, both groups were asked to characterize the application of the statute in their jurisdictions. Their responses are shown in Table 14.

Table 14: How Would You Describe the Enforcement of the Forfeiture Statute in Your Jurisdiction?

Commonwealth's Attorneys	Police	
37%	22%	Discretionary: it is used only in the most severe cases
58%	72%	Mandatory: it is invoked whenever it is learned that the individual was driving under suspension or revocation
6%	6%	Other
100%	100%	
((N = 92)	(N = 116)	

The statute as it is written and as the courts have interpreted it requires MANDATORY ENFORCEMENT. It is to be invoked whenever it is learned that an individual was driving under suspension or revocation without regard to the facts of his individual case. However, 36% of the commonwealth's attorneys responding characterized the enforcement of the statute in their jurisdiction as DISCRETIONARY.

Given the inflexible forfeiture rule of the statute, at some point some commonwealth's attorneys in the state began to apply the statute with discretion using it only in the most severe cases. Some of the discretionary enforcement group have eventually allowed the statute to lapse into nonenforcement, and Table 15 shows that indeed two thirds of the nonforfeiting commonwealth's attorneys characterize their enforcement of the statute as discretionary as opposed to only 24% of the forfeiting commonwealth's attorneys. Conversely, only 24% of the non-forfeiting commonwealth's attorneys characterize their application of the statute as mandatory, as compared with 70% of the forfeiting commonwealth's attorneys.

Table 15: How Do You Describe the Enforcement of the Statutes in Your Jurisdiction (Commonwealth's Attorneys)

Forfeit No Vehicles	Forfeit One or More	
67%	24%	Discretionary: it is used only in the most severe cases
24%	70%	Mandatory: it is invoked whenever it is learned that the individual was driving under suspension or revocation
9%	6%	Other
100%	100%	
(N = 21)	(N = 67)	

PART II. ENFORCEMENT ATTITUDE ANALYSIS

The objectives of any regulatory statute will be subverted to the extent that those charged with its enforcement elect to disregard explicit provisions of the statute. As seen from the foregoing analysis, the pattern of enforcement of the forfeiture statute is not uniform throughout the state and varies in a number of jurisdictions from the mandatory scheme envisioned by the drafters. The decision not to enforce the forfeiture statute may be the product of either one or both of the following factor sets:

(1) A rudimentary cost benefit decision. The individual police officer or commonwealth's attorney may simply feel that it is not worth it in terms of his time and the state's money to enforce the statute. The cost benefit aspect of the statute will be discussed in detail in Part III of this study.

(2) Opinion of the enforcement officials as to the efficacy of the statute. The world in which the police and the commonwealth's attorney work is very different from the antiseptic model in which every law passed is enforced to the letter. The attitudes of those charged with the enforcement of a law as to its effectiveness will often be reflected by the manner in which they subsequently enforce it. A law held in low esteem may lapse into nonenforcement, as appears to be the case with the forfeiture statute in at least 21 jurisdictions in Virginia, or it may simply come to occupy a low priority in the enforcement program of a locality.

An analysis of the attitude of the local officials charged with the enforcement of the statute will be the focal point of this part of the analysis. Tables 16 through 18 depict the attitudes of the police chiefs and commonwealth's attorneys with respect to the forfeiture statute and other related issues.

Table 16. Opinion as to Whether Local Enforcement Officials Should be Allowed to Exercise Their Discretion as to Whether or Not an Offender's Motor Vehicle Should Be Forfeited?

Commonwealth's Attorneys	Police	
67%	48%	They should be allowed to exercise their discretion
33%	52%	Forfeiture should be mandatory in all cases
100%	100%	
(N = 87)	(N = 120)	

The fact that 67% of the commonwealth's attorneys and 49% of the police chiefs believe that they should be allowed to exercise their discretion as to whether to require forfeiture can be taken to be a direct measure of their dissatisfaction with the present statutory scheme which requires mandatory forfeiture in all cases, except when a viable innocent owner or lienholder defense is available.

In addition to facing possible forfeiture of his vehicle, an individual convicted for driving while under suspension or revocation shall be sentenced to at least ten days in jail, which cannot be entirely suspended, and fined at least $100.

Both groups were asked "If you require in all cases to forfeit the motor vehicle of the offender without regard to individual circumstances, which of the following would best describe your opinion of the state of the law?" (See Table 17.)

Table 17: Opinion of the Present State of the Law

Commonwealth's Attorneys	Police	
48%	14%	Too strict
45%	60%	About right
7%	26%	Not strict enough
100%	100%	
(N = 86)	(N = 125)	

The question shown in Table 17 depicts the statute in the context in which it was intended to be administered, i.e., forfeiture of the offender's vehicle accompanied by his being fined, jailed and having the period of his revocation or suspension extended. As can be seen nearly half of the commonwealth's attorneys would characterize the administration of the statute as "too strict," if they were required to forfeit the offender's vehicle in every case without regard to individual circumstances as is required by the present wording of the statute. The present innocent or lienholder owner defense to forfeiture recognized by the statute is not a mitigating factor to be considered as part of the offender's case, but rather is a procedural safeguard designed to protect the property rights of innocent third party owners whose vehicles are driven by persons under suspension or revocation.

Table 18 shows some important findings. It would appear that there is a significant segment of the enforcement population whose experience would indicate to them that the statute is of no deterrent value whatsoever. This belief coupled with the high cost of forfeiting a vehicle under the statute (see Part III of this study) can be expected to produce an erractic pattern of enforcement of the statute throughout the state, as is in fact the case as evidenced in the discussion of Part I of this study.

Table 18: Opinion of Deterrent Value of the Statute

Commonwealth's Attorneys	Police	
37%	14%	No deterrent value
47%	56%	Some deterrent value
16%	30%	Great deterrent value
100%	100%	
(N = 89)	(N = 140)	

Tables 19 through 21 show the results of the breakdown of the responses of the commonwealth's attorneys shown in the preceding three tables into the forfeiting-nonforfeiting dichotomy. In each instance it appears that those commonwealth's attorneys whose jurisdictions forfeit no vehicles harbor opinions more adverse to the statute than do their colleagues in forfeiting jurisdictions. This suggests that the hardening of the commonwealth's attorneys attitudes against the statute has a consequent negative effect on its enforcement in his jurisdiction. The extent to which the negative attitudes of local enforcement officials towards the statute will lead to its discretionary enforcement in a given situation cannot be precisely measured, but it can be said that dissatisfaction with the present statute is a factor exerting considerable pressure in some jurisdictions to either apply the statute with discretion on a case by case basis or to allow it to lapse into complete nonenforcement.

Table 19: Opinion as to Whether Local Officials Should be Allowed to Exercise Their Discretion (Companion to Table 16.)

	Forfeit No Vehicles	Forfeit One or More
They should be allowed to exercise their discretion	86%	60%
Forfeiture should be mandatory in all cases	14%	40%
	100%	100%
	(N = 15)	(N = 63)

Table 20: Opinion of the Present State of the Law (Companion to Table 17.)

	Forfeit No Vehicles	Forfeit One or More
Too strict	75%	41%
About right	19%	51%
Not strict enough	6%	8%
	100%	100%
	(N = 16)	(N = 61)

Table 21: Opinion of the Deterrent Value of the Statute (Companion to Table 18.)

	Forfeit No Vehicles	Forfeit One or More
No deterrent value	47%	37%
Some deterrent value	35%	48%
Great deterrent value	18%	15%
	100%	100%
	(N = 17)	(N = 62)

Both groups were asked to make any comments on the statute which they felt would be relevant to the study. The relative complexion of the comments is shown in Table 22.

Table 22: Comments

Commonwealth's Attorneys	Police	
68%	24%	Against Statute
19%	28%	Favor Statute with reservations
13%	48%	Favor Statute
100%	100%	
(N = 59)	(N = 25)	

Many of the comments were highly critical of the statute. One respondent characterized the statute as a "farce." The entirety of this comment and others are set forth in Appendix C. The reader is encouraged to read the comments as this will engender in the reader the real tenor of the problems posed to local officials by the present statute that cannot be obtained by merely studying the data tables of this report. The comments reflect the problems of enforcing the statute in graphic detail and in many instances provided the stimulus for inquiry into problems with the statute's administration that were not envisioned when the initial questionnaire was constructed.

PART III. COST-BENEFIT ANALYSIS

The inquiry into the practical application of the statute (Part I) revealed that many local officials believed that the high costs associated with the forfeiture statute presented a serious obstacle to its continued enforcement in their jurisdictions. The cost-benefit assessment of this section is an attempt to logically assess the efficiency of the forfeiture statute as a highway safety measure. It is felt that this discussion will provide the reader with a much better overall picture of the economics of the forfeiture statute than would a descriptive discussion of the subjective comments of the respondents as to the statute's relative faults and merits.

Three facts should be borne in mind as the cost-benefit analysis is read:

(1) By way of qualification, it should be noted that the external costs and benefits associated with the statute's enforcement are not considered here. It would be dysfunctional to attempt to quantify such spillover effects of the statute as the cost to an individual's family of the loss of its only vehicle.

(2) At many points throughout the analysis subjective judgements had to be made as to the choice of variables, methodology, relative factor weights, etc. At all times an effort was made to give the statute the benefit of the doubt by conservatively recording costs and liberally assessing benefits.

(3) The products of this analysis do not provide administrators with an exact actuarial assessment of the forfeiture statute from which a conclusive judgement as to its retention can be made, but rather they provide a useful analytic tool to both isolate the direct costs associated with the statute's administration and to logically identify and approximate in monetary equivalents the highway safety benefits accruing from its enforcement.

A. Costs

To determine the costs of administering Va. Code Ann. § 46.1-351.1, questionnaires were sent to the commonwealth's

attorneys of 15 selected cities and counties in Virginia. Table 23 shows the average costs per vehicle forfeited calculated from the responses to the questionnaire.

Table 23: Code of Vehicle Forfeiture Pursuant To § 46.1-351.1

	Dollars	Hours
Vehicle Towing	$ 20.00	—
Vehicle Storage	30.00	—
Commonwealth's Attorney's Time	60.00	3.5
Police Time	15.00	3.0
Court Time	25.00	1.0
Gross Cost of Forfeiture/Vehicle	$150.00	7.5

On the average about $45.00 are realized from the public auction of the forfeited vehicle. Many of the forfeited vehicles were characterized by both commonwealth's attorneys and police chiefs as "junkers." The net cost to the Commonwealth per forfeited vehicle is:

Gross Cost of Forfeiture per Vehicle	$150.00
Less Monies From Sale of Vehicle	45.00
Net Cost of Forfeiture per Vehicle	$105.00

The average estimate given by the commonwealth's attorneys of the cost of processing a vehicle which is seized but not forfeited, i.e., the vehicle is not sold at public auction but is returned to the innocent owner or lienholder, was $55.00.

The following formulas were used to calculate the annual net cost to the Commonwealth of administering § 46.1-351.1:

1. (No. Vehicles Forfeited/Yr) X (Net Cost of Forfeiture/Vehicle)

   (600) X ($105) = $63,000

2. (No. Vehicles Seized but Not Forfeited/Yr.) X (Cost of Processing a Seized Vehicle Which Which is Not Forfeited)

   (2 100) X ($55) = $115,500

Total Net Cost/Yr. of Administering § 46.1-351.1 = $178,500

The observation might be made that, since the commonwealth's attorneys are paid a flat salary, the state does not really incur any additional cost in terms of their salaries by enforcing the statute. Such an observation overlooks the fact that the time spent on forfeiting a vehicle could be spent on dispensing other state related functions whose performance may now go wanting because of the time spent on the forfeiture proceedings; so the cost of the commonwealth's attorneys time is a real cost directly associated with the statute's enforcement.

An incidental observation on one possible effect of the length of time required to forfeit a vehicle is warranted at this time. The commonwealth's attorneys are part-time state officials, and it may be that the time required to forfeit a vehicle seems excessive to some commonwealth's attorneys confronted by the exigency of both having to appear in court to represent the state and devoting time to their private practice.

B. Benefits

To the extent that the forfeiture provision of § 46.1-351.1 is successful, it benefits the public by removing from the highways certain drivers thereby theoretically lowering highway accident and fatality rates. To assess the impact of the statute it is necessary to equate the benefits accruing from it with some monetary value. Extensive efforts have been devoted to calculating the costs to society of each highway accident. It can be said that the societal benefits of the forfeiture statute are the costs saved by the prevention of the accidents that would otherwise have occurred, involving members of that class of individuals who drive under revocation or suspension, had the state not seized their motor vehicles.

Restated, the basic premise upon which this benefit evaluation is based is that the seizure of offenders' vehicles removes them from the road and this reduces the number of accidents which will occur.

It has been repeatedly shown that the vast majority of highway accidents involve persons with normal driving records.[20,21,22] The North Carolina Highway Safety Research Center recently made a four-year study of the driving records of 2,502,240 North Carolina drivers to assess the relationship between accidents and prior traffic violations, and found that about 90% of the accidents that occurred in a two-year period involved drivers who had had one or no traffic violations in the previous two-year period.[23] It was also found that the driving population had to be distilled until only

that 0.5% of the driving population with the worst driving records remained before a class of drivers was identified that was involved in three times their share of accidents.

Each year about 103,000, or 3.4% of Virginia's 2.9 million licensed drivers, have their drivers' licenses suspended or revoked. On the average the individuals comprising the class of drivers who will have their drivers' license suspended or revoked within that year have worse driving records in terms of accidents and violations than the remaining 96.6% of Virginia drivers whose licenses will not be suspended or revoked. If the rate of accident involvement of the defined class was the same as that of the remaining driving population of the state, they would be involved in approximately 3.4% of the total accidents. However, if, according to the North Carolina Study, their accident involvement rate equaled that of the 0.5 percent worst drivers in the state, their rate of accident involvement would be about three times the normal rate, or in this case, the 3.4 percent of the driving population in the defined class could be expected to be involved in about 10 percent of the total accidents that occur each year. Therefore, the actual number of total accidents that occur each year involving members of the defined class should be somewhere in the range of from 3.4 to 10 percent of the total accidents occurring that year. Since the members of the defined class are not the 0.5 percent of the driving population with the worst driving records, it is estimated that the defined class will be involved in about 8 percent of the total number of accidents that occur each year. By taking 8 percent of the total state accident figures, an estimate of the number of accidents that will occur annually involving members of the above defined class can be obtained.

Table 24 shows the estimated number of accidents which theoretically would occur involving members of the class of drivers who will have their licenses suspended or revoked within that year if such drivers were to drive uninterruptedly the entire year, i.e., the accident reduction impact of revocation and suspension procedures is not shown in Table 24.

The average length of time for which a license is suspended or revoked in Virginia is approximately 115 days or .32 years;* therefore, only 32 percent of the annual accidents (figures in Table 24) involving drivers whose license will be suspended or revoked could possibly be prevented by revocation and suspension procedures in Virginia, because these individuals are driving the remainder of the year. By taking 32 percent of the accident figures of Table 24, assuming revocation and suspension are 100 percent effective, an estimate of the number of accidents prevented by the driver removal effect of such procedures can be made as shown in Table 25.

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*Average derived from figures provided by Virginia Division of Motor Vehicles.

Table 24: Estimated Annual Number of Accidents That Involve Persons Who Will Have Their Licenses Suspended or Revoked Within That Year*

Deaths	100
Nonfatal disabling injuries	3,243
Property damage accidents (including minor injuries)	10,589

*The statistics of Table 24 were calculated using figures drawn from Virginia Crash Facts 1973, Virginia Department of State Police. To obtain the Table 24 statistics the following formulas were used:

A. Deaths (1,256) X .08 = 100.4
B. Nonfatal Disabling Injuries (40,537) X .08 = 3,242.9
C. Property Damage Accidents (132,360) X .08 = 10,588.8 (Including minor injuries.)

Some adjustments had to be made in order to obtain state accident figures to correspond with the groupings used by the National Safety Council, which defined "Nonfatal disabling injuries" as any injury which was disabling beyond the day of the accident, which could include anything from a broken finger to a loss of limb. To obtain analogous accident injury figures for Virginia, the following procedures were used.

Virginia injury accidents are categorized as follows:

Seriously injured	32,378
Slightly injured	6,452
Complaint of pain	10,134
Not stated	3,414
Total injury accidents	52,378

The following were added to get a "Nonfatal disabling injury" category:

Seriously injured	32,378
Slightly injured	6,452
Not stated divided by 2	1,707
Total nonfatal disabling injuries	40,537

The following were added to get a "Property damage accidents (including minor injuries)" category:

Property Damage Accidents	120,519
Complaint of Pain	10,134
Not stated divided by 2	1,707
Total Property Damage Accidents (including minor injuries)	132,360

Table 25: Annual Number of Accidents That Would Be Prevented by Revocation and Suspension If Such Procedures Were 100% Effective

Deaths	32
Nonfatal Disabling Injuries	1,038
Property Damage Accidents (including minor injuries)	3,388

However revocation and suspension procedures are not 100 percent effective. To the extent that persons who have their driver's license suspended or revoked continue to drive the accident reduction effect of revocation and suspension procedures is reduced; therefore, it is necessary to adjust the figures of Table 25 downward. Studies indicate that approximately 50 percent of those persons who have their driver's license suspended or revoked continue to drive.[24/] It will be assumed that the rate of compliance with revocation and suspension procedures in Virginia in the absence of the forfeiture statute would be 50 percent, and the estimates of Table 24 will be reduced by 50 percent to produce an estimate of the number of accidents that would be prevented in the absence of the forfeiture statute. The adjusted estimates are shown in Table 26.

Table 26: (Adjusted) Annual Number of Accidents That Would Be Prevented By Revocation and Suspension in the Absence of the Forfeiture Statute (50% Compliance Rate)

Deaths	16
Nonfatal disabling injuries	519
Property damage accidents (Including minor injuries)	1,694

To measure the increment in accident reductions contributed by the forfeiture statute, it is necessary to estimate how much the compliance rate with revocation and suspension orders is increased by the presence of the forfeiture statute. The key issue here is how many more drivers will respond to the sanction scenario of jail, fine, and forfeiture, who would not respond to simply jail and fine. This estimate of the increase in the

compliance rate with revocation and suspension orders produced by the forfeiture statute is the most sensitive estimate in this benefit analysis, because there was little research upon which to base an estimate and a variation of just a few percentage points in the estimate of the compliance rate would result in a distortion of the final benefit projections in the range of tens of thousands of dollars.

The cost data discussed in the preceding section indicate that most of the vehicles forfeited under the statute are of low value. The public sale of such vehicles produces only about $45.00 per vehicle in gross receipts to the state. The forfeited vehicles were often characterized as "junkers" by both the commonwealth's attorneys and the police chiefs; therefore, the financial impact of the individual's losing his vehicle may not be as great as was perhaps imagined when the statute was originally drafted. The possibility of losing one's vehicle when the vehicle is worth only about $45.00 does not appear likely to add much in the way of deterrence to driving under revocation or suspension to the individual who has already elected to drive illegally, knowing that if he is apprehended he will be subject to a jail sentence and a fine whose minimum value may well exceed the market value of his auto by several times. Furthermore, as was discussed in the introduction to the study, any increment of compliance added by the presence of the forfeiture statute would be subject to the law of diminishing returns. It is therefore projected that, viewed in its most favorable light, the forfeiture statute would deter only about 10 percent of those drivers who were unaffected by the presence of simply the jail sentence and fine from driving under revocation or suspension.

Reference to Figure 1 will clearly show the process by which the approximate number of individuals who would be deterred from driving under revocation or suspension by the presence of the forfeiture statute was estimated. This number is estimated to be about 2,750 drivers, or 2.6 percent of the 103,000 persons having their licenses revoked or suspended within a given year.

The effect of the forfeiture statute is to make revocation and suspension 100 percent effective for those drivers against whom it is invoked. Table 25 shows the number of accidents that would be prevented annually if revocation and suspension were 100 percent effective for all of the 103,000 drivers who have their licenses suspended or revoked. By taking 2.6 percent of the accident levels of Table 25, an estimate of the number of accidents prevented each year by the presence of the forfeiture statute can be obtained, as shown in Table 27.

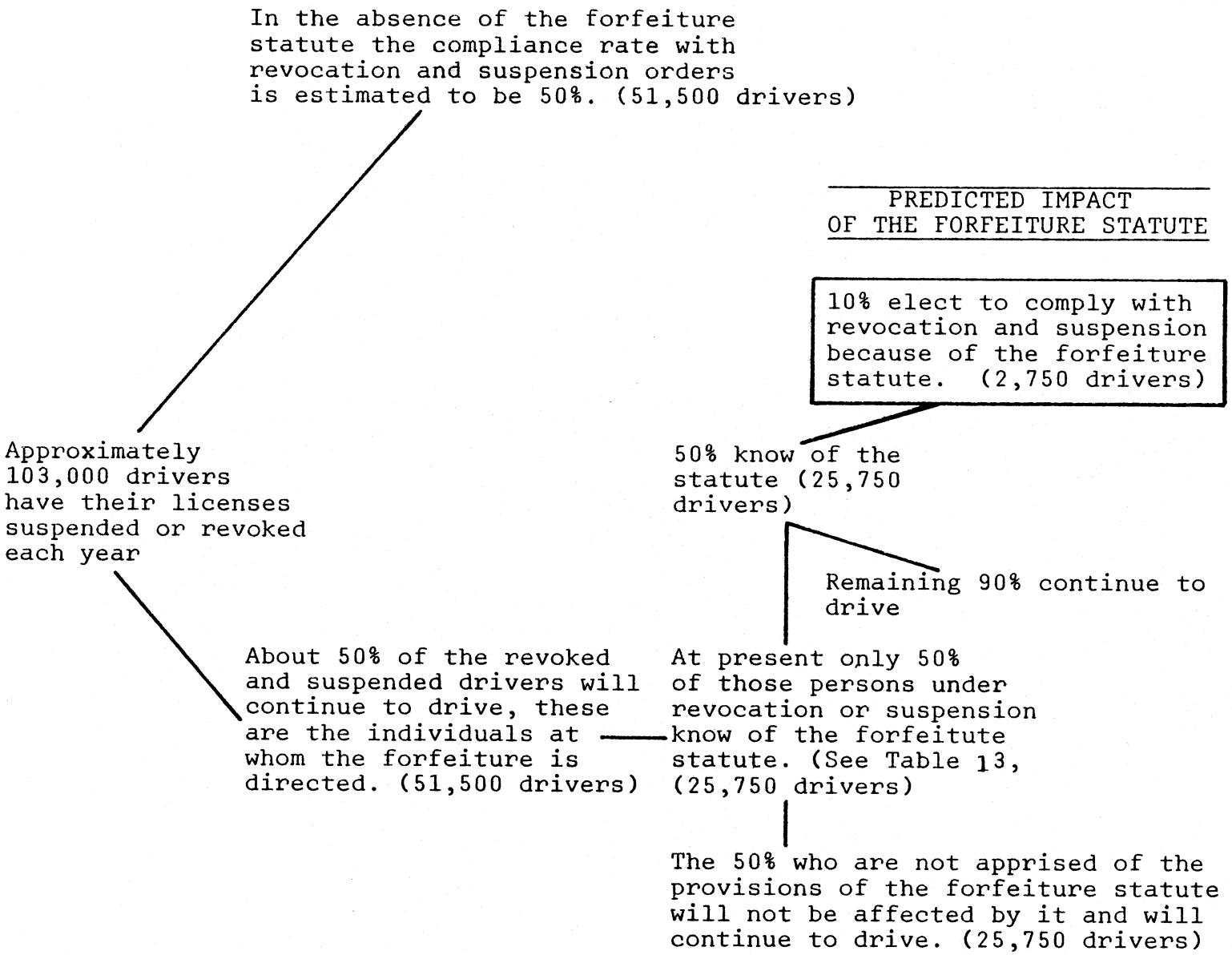

Figure 1. Logic tree used to predict present impact of the forfeiture statute.

Table 27: Estimated Number of Accidents Prevented Each Year By the Presence of the Forfeiture Statute

Deaths	0.8
Nonfatal Disabling Injuries	27
Property Damage Accidents (Including minor injuries)	88

The cost estimates of the National Safety Council[25/] were used to convert these accidents reduction levels into the monetary equivalents shown in Table 28.

Table 28: Average Cost Per Accident

Deaths	$90,000
Nonfatal Disabling Injuries	3,700
Property Damage Accidents (Including minor injuries)	500

Multiplying the accident reduction increment attributable to the forfeiture statute from Table 27 by the respective cost estimates from Table 28 will produce the projected highway safety benefits accruing from the forfeiture statute set forth in Table 29.

Table 29: Estimated Annual Benefits Produced by the Forfeiture Statute in Terms of Accident Reduction

Deaths	$72,000
Nonfatal Disabling Injuries	99,900
Property Damage Accidents (Including minor injuries)	44,000
Total Benefits	$215,900

The $215,900 benefit figure is a gross estimate whose valuation was dependent in many instances on subjective judgements

which were always resolved in favor of the statute. However, this figure can be taken to be indicative of the order of magnitude of the benefit levels produced by the forfeiture statute. The forfeiture statute does apparently produce some positive highway safety benefits, and these benefits may in fact exceed the net cost of administering the statute which is estimated to be about $180,000 per year.

In closing, it is important to note that the suggested statutory alternative to the forfeiture statute, the impoundment of the license plates and registration card of the offender, can be expected to produce approximately the same benefits as are presently realized from the forfeiture statute while at the same time being far less costly to administer.

DISCUSSION AND CONCLUSIONS

Application of the Statute

The enforcement of the forfeiture statute varies from jurisdiction to jurisdiction across the state. At one end of the enforcement continuum are those jurisdictions that enforce the statute strictly as it was intended by the General Assembly, seizing vehicles as mandated by the statute and recognizing only the innocent owner or lienholder defense to forfeiture. At the other end of the continuum are those jurisdictions which have elected not to enforce the statute at all. Passing from the strict enforcement end of the continuum to the no enforcement end one finds many enforcement variations. The nearer a jurisdiction approaches the no enforcement level, the more willing local officials appear to be to accept reasons other than those prescribed by the statutes as grounds for dismissal of the forfeiture action against the vehicle. An erratic pattern in the enforcement of the forfeiture statute has emerged because many local authorities have elected to inject a discretionary enforcement scheme into a statute intended to be mandatory in its operation.

As a result of the aforementioned factors the uniform application of justice in the Commonwealth with regard to the forfeiture statute has disintegrated to the point that in one jurisdiction an individual forfeits his vehicle when convicted of driving under revocation or suspension while in a neighboring jurisdiction the same individual convicted of the same offense under the same circumstances may not lose his vehicle.

Enforcement Attitude Analysis

Significant numbers of the enforcement population have come to believe that the forfeiture statute is "too strict" and has "no deterrent value". Many of the enforcement officials dislike the statute's inflexible rule requiring mandatory forfeiture in every case except where an innocent owner or lienholder defense exists. The low esteem in which the statute is held in some jurisdictions of the state can be expected to produce an enforcement pattern other than that prescribed by the wording of the statute. The findings of Part I indicate that the enforcement of the statute in a number of jurisdictions in the state is already suffering from the erosion of local support for the statute.

Cost-Benefit Analysis

The individual commonwealth attorney charged with enforcing the statute sees firsthand that the statute costs him both money and time to enforce while the only apparent benefits produced by it are the meager returns (about $45 per vehicle forfeited) realized from the public sale of the few vehicles which are actually processed to forfeiture. The local commonwealth attorney working within his personal jurisdiction cannot be expected to perceive the beneficial effect in reducing highway accidents statewide which the vehicle forfeiture in his jurisdiction helps to achieve, this apparently contributes to his reluctance in many cases to invoke the complicated forfeiture procedure.

PART IV. THE STATUTORY ALTERNATIVE

Va. Code Ann. §§ 46.1-351.1 and .2 should be repealed and replaced by a statute requiring impoundment for the remaining period of the offender's license denial of the license plates and registration card of any vehicle determined to have been driven by an individual under revocation or suspension. This suggested replacement statute is set forth in Appendix D.

The present forfeiture statute should be repealed for the following reasons:

(1) The existence of the jail sentence and fine for driving under revocation or suspension will deter those individuals having their licenses suspended or revoked, who would respond rationally to the existence of traffic sanctions. It is highly unlikely that the existence of the post hoc (imposed after conviction) forfeiture statute would deter anyone from driving under revocation or suspension who had already decided that the necessity of his having to drive was worth the risk of going to jail and being subjected to a fine whose amount may exceed the value of his vehicle by several times.

(2) The enforcement of the forfeiture statute is not uniform throughout the state. Some jurisdictions strictly enforce the statute, while others do not enforce it at all.

(3) The irregular enforcement of the statute is a product of the low esteem in which the statute is held and which is itself a product of two principal factors:

   (a) The belief of many of those charged with enforcement of the statute that it is of little practical value; and

   (b) the high cost of forfeiting a vehicle under the statute combined with an individually perceived low benefit return from the statute.

In the place of a forfeiture statute it is recommended that Virginia pass legislation requiring the mandatory impoundment of the license plates and registration card of any vehicle driven by a person convicted of driving under revocation or suspension. Such a statute would enact the recommendation of a recent study

of methods to improve the enforcement of driver license suspension and revocation conducted for the U. S. Department of Transportation. This study stated:

> we suggest that this consequence [for driving under revocation or suspension] should be the mandatory confiscation of the registration plate and certificate of a vehicle — not of the car itself — whose driver is apprehended while violating a denial.[26]

The principal advantages to be realized by the proposed license plate impoundment statute as opposed to the present forfeiture statute, are:

(1) The simplified procedure of the proposed license plate impoundment statute would cost less to administer than the present highly complicated forfeiture statute. The less enforcement costs in terms of both time and money the more enforcement there is likely to be. Any attempt to reduce the present costs associated with forfeiture under § 46.1-351.1 by streamlining the forfeiture procedure is likely to run afoul of the citizen's constitutional right to due process of law with regard to the state taking his property.

(2) The proposed statute would be relatively simple to administer as compared to the forfeiture statute. The arresting officer could inform the arrestee at the time of his arrest for driving under revocation or suspension that when he appeared in court he must bring his vehicle license plates and his registration card with him. The license plates and certificate of registration surrendered by the offender could be kept with the clerk of the court of the arresting jurisdiction. Only ten percent of the police chiefs responding said that their jurisdictions arrested more than 70 individuals per year for driving under revocation or suspension; therefore, it is unlikely

that any single jurisdiction will be unduly burdened by having to store the surrendered license plates and registration cards, which in many cases will have to be stored for only a few months. Nor is it likely that an unwieldly number of license plates will accumulate because, if the license plates and certificate of registration expire before they are redeemed, they become worthless and may be destroyed by their custodians.

(3) The property rights of innocent third party owners and lienholders of the offender's vehicle are protected as well by the proposed statute as they are under the old forfeiture statute.

(4) The license plate impoundment statute would be judicially more efficient than the present forfeiture statute. There would be only one proceeding pursuant to the proposed statute, the offender's appearance in court to answer the criminal charge of driving under suspension or revocation. Under the present forfeiture statute two court proceedings are required: (1) the criminal proceeding against the individual for illegally driving, and (2) the civil in rem forfeiture proceeding against the offender's vehicle.

(5) The proposed statute would as effectively remove offenders from the road as does the present forfeiture statute, while at the same time it would be far less disruptive of the property rights of both the offender and his immediate family who may depend upon his car for transportation than is the forfeiture statute.

(6) The proposed statute envisions a discretionary scheme of application. The license plate impoundment would be another sanction available to the local judge in addition to the jail sentence and fine of Va. Code Ann. § 46.1-350. A discretionary scheme of application was selected over a mandatory one in deference to the attitudes of the Police Chiefs and Commonwealth's Attorneys reflected in Table 16 and the fact that it was the inflexible rule of the present forfeiture statute which is one of the principal causes for the statute's irregular enforcement.

Both Minnesota[27/] and Ohio[28/] have statutes similar to the proposed license plate impoundment statute. The attorney general's office of each of these two states was contacted to determine their opinion of license plate impoundment in view of their experiences. In Ohio it appears that the statute is working relatively smoothly, while in Minnesota it seems that license impoundment has encountered many snarls similar to those Virginia has encountered with forfeiture, producing a low rate of enforcement of the license impoundment statute. The National Highway Traffic Safety Administration is of the opinion that license plate impoundment would work successfully to counter violations of license suspensions and revocations if given the full support of enforcement officials and driver licensing administrators. The proposed license impoundment statute is not offered as a panacea for the problem posed to highway safety by violators of driver's license suspension and revocation, but it is felt that such a statute would remedy most of the problems associated with the enforcement of the forfeiture statute while accomplishing essentially the same purpose.

The results of this study also indicate that even if the forfeiture statute is not replaced by the proposed license plate impoundment statute, it should be repealed. The forfeiture statute's diffuse benefit return and the negative attitudes of many enforcement officials towards the statute are two factors which can be expected to continue to exert pressure across the state for jurisdictions to vary their enforcement from the mandatory rule of the statute or to abandon its enforcement altogether. If enforced regularly, the jail sentence and fine of Va. Code Ann. § 46.1-450 should deter driving under revocation and suspension among that class of inidividuals who will respond rationally to traffic laws.

FOOTNOTES

1. R. S. Coppin, and G. Van Oldenbeck, Driving Under Suspension and Revocation, Report 18 (California Department of Motor Vehicles, January 1965), p. 30.

2. William E. Timberland, A Study of Procedures Used to Deter Driving While Under Suspension or Revocation (Northwestern University Traffic Institute, February 1970). p. 26, See also a study of high accident drivers in Indiana which found that large numbers of drivers who had their license suspended or revoked also had citations for driving while their license was suspended or revoked. (John E. Goodson, Changing Characteristics of High Accident Drivers Over a Five Year Period, Joint Highway Research Project No. C-36-150 (Indiana University, 1972), p. 51.)

3. Anthony Antony, Suspension and Revocation of Driver's Licenses, Highway Users Federation for Safety and Mobility (Washington, D. C., 1970).

4. Va. Code Ann. § 46.1-350 (1972).

5. T. C. Willett, Criminal on the Road, International Library of Criminology, Delinquency, and Deviant Social Behavior, No. 12, Tavistock Publications (1964), p. 302.

6. Criminal on the Road, pp. 25-38. W. Allen Ames and Steven L. Micas, Programs and Problems in Rehabilitation of the High Risk Driver, Virginia Highway Research Council, (Charlottesville, 1972). See also H. S. Penn, Causes and Characteristics of Single Car Accidents, Parts 3 and 4, California Highway Patrol (January 1965).

7. Two Experimental Studies of Traffic Law, Vol. II, The Effect of Court Appearance on Traffic Law Violators, DOT HS-800-826. National Highway Traffic Safety Administration (Washington, D. C., February 1973).

8. M. W. Chalfant and G. F. King, The Effectiveness of Driver Improvement Procedures, Michigan Highway Traffic Safety Center (1961). D. H. Schuster, "Follow-up Evaluation of the Performance of Driver Improvement Classes for Problem Drivers." Journal of Safety Research, Vol. 1, No. 2 (June 1969), pp. 80-88. But cf. R. S. Coppin and G. Van Oldenbeck, Control of the Negligent Driver, Part III, California Department of Motor Vehicles, HPR B-2-1 (August 1966); results of this study suggest that the hard core negligent driver does not improve his driving record to any appreciable degree in spite of repeated driver improvement contracts.

9. Chalfant and King, The Effectiveness of Driver Improvement Procedures, p. 30.

10. D. H. Schuster, "The Effect of Official Action Taken Against Problem Drivers," Proceedings of the Iowa Academy of Science, No. 77, (1970), pp. 315-321. Schuster has modified his position somewhat from that indicated from the cynical quotation in the text. See Schuster, "The Effectiveness of Official Action Taken Against Problem Drivers: A Five Year Follow-up," Iowa State University (Feb. 1974), where he concludes that while positive action programs such as driver improvement interviews will have little effect on the driver's subsequent violation record, they will affect his rate of subsequent accidents and that consistent and progressively severe action should be taken against a given problem driver.

11. Coppin and Van Oldenbeck, Control of the Negligent Driver, Part III, p. 5.

12. West's Ann. Cal. Code § 14601 (1971).

13. S. Shoham, et al., The Effectiveness of Punishment Policies for Reducing Traffic Accidents, Tel Aviv University (1972).

14. Edward G. Modell, The Habitual Offender Statute and Its Limited Impact as a Highway Safety Countermeasure, Virginia Highway Research Council, (Charlottesville, 1974), p. 44.

15. Ibid., p. 44.

16. Data derived from Table 2a, p. 9, W. Allen Ames and Eric Peters, Driving Under the Influence of Alcohol: Determining an Optimum Sanction, Virginia Highway Research Council, VHRC 71-R13 (Nov. 1971).

17. "Highway Paradox — Many Drivers Exceed the 55 mph Limit But Do Slow Down," Wall Street Journal, Vol. CLXXXIV, No. 24 (August 2, 1974).

18. See John H. Reese, Power, Policy, People: A Study of Driver Licensing Administration, Highway Research Board Special Report 123, National Academy of Sciences (Washington, D. C., 1971), for a very edifying discussion of the relationship between the law and driver licensing administration.

19. Patricia F. Waller, ed., "Highway Safety Myths," Highway and Traffic Safety: A Problem of Definition, Vol. 2, Sec. 2, North Carolina Symposium of Highway Safety (Raleigh, Spring 1970), p. 67.

20. J. Richard Stewart and B. J. Campbell, The Statistical Association Between Past and Future Accidents and Violations, The University of North Carolina Highway Safety Research Center (Raleigh, 1972).

This study compared the accident and violation records over a two year period of 2,502,240 North Carolina drivers with their driving records in a successive two year period and concluded that 70 percent of the accidents that occur in the future will involve drivers who do not have a past record of accidents and violations. About 90 percent of the accidents that occur in the second two-year period will involve drivers having only one or no traffic violations on their records in the previous two year period. It was also found that the worst (by driving records) 5 percent of all drivers in North Carolina during one time period has 1.5 percent of the accidents in the succeeding two year period or three times their share of accidents in the next period.

21. R. C. Peck, R. S. McBride, and R. S. Coppin, "The Distribution and Prediction of Driver Accident Frequencies," Accident Analysis and Prevention, Vol. 2, No. 4, (March, 1971), pp. 243-299.

From an examination of the records of 223,000 California drivers over a three-year period, it was concluded that "The fact that traffic accident frequencies are not largely predictable and the accident population is largely comprised of different numbers from year to year indicates that the role of person-centered variables (proneness) is not large in most driving populations." (p. 285).

22. T. W. Forbes, "The Normal Automobile Driver as a Traffic Problem," Journal of General Psychology, Vol. 20 (1939), pp. 471-474.

Forbes examined the records of Connecticut drivers over two consecutive three-year periods, 1931-33 and 1934-36. His findings were that if all drivers with two or more accidents during the first three-year period were removed from the highways for the subsequent three-year period, a net reduction of 3.7% would result. However, 96.3% of all accidents during the 1934-36 period would still have occurred since they involved drivers with zero or one accident during the initial three-year period.

23. Steward and Campbell, Statistical Association Between Past and Future Accidents, p. 38.

24. Coppin and Van Oldenbeck, Driving Under Suspension and Revocation and Timberlake's Study of Procedures Used to Deter Driving.

25. "Traffic Safety Memo," No. 133, National Safety Council (July 1974). It was felt that the National Safety Council figures were the most realistic of those available. Other higher estimates have recently been criticized as being inflated. See "Need to Improve Benefit-Cost Analyses in Setting Motor Vehicle Safety Standards," General Accounting Office Report No. B-164497 (3), dated 1974, which criticizes specifically the figures used by the National Highway Traffic Safety Administration.

26. Exotech System Incorp., Improving the Enforcement of Driver License Denials, Suspensions and Revocations: Part I, Preliminary Guidelines, U. S. Department of Transportation. NHTSA, DOT/HS-800 322, p. 5.

27. Minn. Stat. Ann. § 168.041 (1960).

28. Page's Ohio Rev. Code Ann. § 4507.16.4, 4507.38.

APPENDICES

APPENDIX A

STATUTES

§ 46.1-351.1. Seizure of vehicle upon arrest of person believed to have violated §§ 46.1-350, 46.1-351, or 46.1-387.8; report to Commonwealth's attorney; notification to Commissioner; certificate of Commissioner concerning seized vehicle; exception. — (a) Where any officer charged with the enforcement of the motor vehicle laws of this State reasonably believes that he has arrested any person who will be subject to the penalties prescribed by § 46.1-350, 46.1-351, or 46.1-387.8, he shall seize and take possession, either at the time of arrest or within thirty days after such arrest, of the motor vehicle being operated by such person at the time of arrest, and deliver the same to the sheriff of the county or the city in which such arrest was made, taking his receipt therefor in duplicate. The officer making such seizure shall also forthwith report in writing, of such arrest and seizure to the attorney for the Commonwealth for the county or city in which such arrest or seizure was made. In the case of any seizure made subsequent to the arrest, the officer may seize and take possession of the vehicle anywhere in the Commonwealth pursuant to this section, and return and deliver the vehicle and report as required by this section to such county or city.

(b) The attorney for the Commonwealth shall forthwith notify the Commissioner of the Division of Motor Vehicles of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, and the amount thereof. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county and city wherein such seizure was made.

The certificate of the Commissioner, concerning such registration and lien shall be received in evidence in any proceeding, either civil or criminal, under any provision of this section or that of § 46.1-351.2, in which such facts may be material to the issue involved.

(c) This section shall not apply to any person operating a farm vehicle upon the highways when it is necessary to move such vehicle from one tract of land used for agricultural purposes to another tract of land used for the same purposes, provided that the distance between the said tracts of land shall not exceed ten miles. (1964, c. 396; 1968, c. 366; 1970, cc. 705, 744; 1971, Ex. Sess., c. 155; 1974, c. 468.)

The 1974 amendment added subsection (c).

Law Review. — For survey of Virginia law on commercial law for the year 1972-1973, see 59 Va. L. Rev. 1426 (1973).

Applied in Commonwealth v. One 1970, 2 Dr. H.T. Lincoln Auto., 212 Va. 597, 186 S.E.2d 279 (1972); Dale Wegner Chevrolet, Inc. v. Commonwealth, 213 Va. 337, 192 S.E.2d 750 (1972); Smith v. Swoope, 351 F. Supp. 159 (W.D. Va. 1972).

§ 46.1-351.2. Proceedings concerning vehicles seized under § 46.1-351.1.—(a) Within sixty days after receiving notice of seizure under § 46.1351.1 the attorney for the Commonwealth shall file in the name of the Commonwealth, an information against the seized property, in the clerk's office of the circuit court of the county, or of the corporation court, hustings court, or other court of record having jurisdiction in the city, wherein the arrest or seizure was made. Should the attorney for the Commonwealth, for any reason, fail to file such information within such time, the same may, at any time within twelve months thereafter, be filed by the Attorney General, and the proceedings thereon shall be the same as if it had been filed by the attorney for the Commonwealth.

Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of the seized property, and shall pray that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such property should not be condemned and sold to enforce the forfeiture.

The owners of and all persons in any manner then indebted or liable for the purchase price of the property, and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice hereinafter provided for, in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on the information, if they be residents of this State; and if they be unknown or nonresidents, or cannot with reasonable diligence be found in this State, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in such county or city; or if none be published therein, then in some newspaper having general circulation therein, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of such conveyance or vehicle.

(a1) In lieu of filing an information, as provided in subsection (a), the attorney for the Commonwealth may, upon payment of costs incident to the custody of the seized property, return the seized property to an owner or lienor, without requiring that such owner or lienor file bond as provided in subsection (b), if he believes that such owner was the actual bona fide owner of the conveyance or vehicle at the time of the seizure, that he was ignorant of such illegal use thereof, and that such illegal use was without his connivance or consent, express or implied, or if he believes that such lienor was ignorant of the fact that such conveyance or vehicle was being used for illegal purposes, when it was so seized, that such illegal use was without such lienor's connivance or consent, express or implied, that he held a bona fide lien on such property and had perfected the same in the manner prescribed by law, prior to such seizure and that the lien is equal to or more than the value of the conveyance or vehicle.

In the event the conveyance or vehicle has been sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid the provisions of § 46.1-351.1 and this section, the Commonwealth shall have a right of action against such seller for the proceeds of the sale.

(b) If the owner or lienor of the seized property shall desire to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the clerk of the court where such information is filed.

The sheriff of the county or the city in which the trial court is located shall promptly inspect and appraise the property, under oath, at its fair cash value, and forthwith make return thereof in writing, to the clerk's office of the court in which the proceedings are pending, upon the return of which the owner or lienor may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the conveyance or vehicle plus the court costs which may accrue, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court, on the trial of the information, and with a further condition to the effect that, if upon the hearing on information, the judgment of the court be that such property, or any part thereof, or such interest and equity as the owner or lienor may have therein, be forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized and forfeited and costs, upon which judgment, execution may issue, on which the clerk shall endorse, "no security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lienor.

(c) Any person claiming to be the owner of such seized property, or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in either case, such defendant

shall set forth fully any reason or cause which he may have to show against the forfeiture of the property.

(c1) The hearing on the information shall in no case be held prior to final judgment in the trial for the violation of § 46.1-350 or 46.1-351. If the person operating the seized conveyance or vehicle is acquitted or the charges are for any reason dismissed, such acquittal or dismissal shall entirely relieve the property from forfeiture.

(d) In the event there is no judgment of acquittal or dismissal of the charges, if any person claiming to be the owner of the seized conveyance or vehicle or to hold a lien thereon shall deny that the conveyance or vehicle was being operated under conditions that the operator was violating the provisions of § 46.1-350, 46.1-351, or 46.1-387.8; and shall demand a trial by jury of the issue thus made, the court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed by law, and if such jury shall find on the issue in favor of such claimant, or if the court, trying such issue without a jury, shall so find, the judgment of the court shall be to entirely relieve the property from forfeiture, and no costs shall be taxed against such claimant.

(e) If, on the other hand, the jury, or the court trying the issue without a jury, shall find against the claimant, or if it be admitted by the claimant that the conveyance or vehicle at the time of the seizure was being operated under conditions that the operator was violating the provisions of § 46.1-350, 46.1-351, or 46.1-387.8; nevertheless, if it shall appear to the satisfaction of the court that such claimant, if he claims to be the owner, was the actual bona fide owner of the conveyance or vehicle at the time of the seizure, that he was ignorant of such illegal use thereof, and that such illegal use was without his connivance or consent, express or implied, and that such innocent owner has perfected his title to the conveyance or vehicle, if it be a motor vehicle, if application for the title is made ten days prior to its seizure or within ten days from the time it was acquired, the court shall relieve the conveyance or vehicle from forfeiture and restore it to its innocent owner, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law.

Where it is shown to the satisfaction of the court that the conveyance or vehicle for the forfeiture of which proceedings have been instituted was stolen from the person in possession, relief shall be granted the owner or lienor, either or both, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law.

(f) If any such claimant be a lienor, and if it shall appear to the satisfaction of the court that the owner of the conveyance or vehicle has perfected his title to the conveyance or vehicle if it be a motor vehicle, prior to its seizure, or within ten days from the time it was acquired, and that such lienor was ignorant of the fact that such conveyance or vehicle was being used for illegal purposes, when it was so seized, that such illegal use was without such lienor's connivance or consent, express or implied, and that he held a bona fide lien on such property and had perfected the same in the manner prescribed by law, prior to such seizure (if such conveyance or vehicle be an automobile the memorandum of lien on the certificate of title issued by the Commissioner of the Division of Motor Vehicles on the automobile shall make any other recordation of the same unnecessary), the court shall, by an order entered of record establish the lien, upon satisfactory proof of the amount thereof; and if, in the same proceeding, it shall be determined that the owner of the seized property was himself in possession of the same, at the time it was seized, and that such illegal use was with his knowledge or consent, the forfeiture hereinbefore in this section declared, shall become final as to any and all interest and equity which such owner, or any other person so illegally using the same, may have in such seized property, which forfeiture shall be entered of record. In the last mentioned event, if the lien established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor, and the costs of the proceedings shall be paid by the Commonwealth as now provided

by law; if the lien is less than the value of the conveyance or vehicle, the lienor may have the conveyance or vehicle delivered to him upon the payment of the difference. Should the lienor not demand delivery as aforesaid, an order shall be made for the sale of the property by the sheriff of the county, or the city, as the case may be, in the manner prescribed by law, out of the proceeds of which sale shall be paid, first, the lien, and second, the costs; and the residue, if any, shall be paid into the Literary Fund.

(g) If, however, no valid lien is established against the seized property, and upon the trial of the information, it shall be determined that the owner thereof was himself using the same, at the time of the seizure, or that such illegal use was with his knowledge or consent, the property shall be completely forfeited to the Commonwealth, and an order shall be made for the sale of such property by the sheriff of the county or the city, as the case may be, in the manner prescribed by law. Out of the proceeds of such sale shall be paid the costs, and the residue shall be paid into the Literary Fund.

(h) In all cases, the actual expense incident to the custody of the seized property, and the expense incident to the sale thereof, including commissions, shall be taxed as costs. (1964, c. 396; 1968, c. 366; 1970, cc. 238, 705, 744; 1971, Ex. Sess., c. 155.)

APPENDIX B

EXPLANATION OF THE STATUTES

46.1-351.1(a): Whenever any officer charged with enforcing the motor vehicle laws of the Commonwealth arrests any one whom he reasonably believes to be driving while his driving privilege has been suspended or revoked, he shall seize the motor vehicle being driven by the suspected offender. This seizure shall be at the time of the arrest or within 30 days thereof. The seized vehicle shall be delivered to the police department of the city or county in which the arrest was made. The officer making the seizure shall report in writing of the arrest and seizure to the attorney for the Commonwealth for the jurisdiction in which the arrest was made. Seizures pursuant to this section may be made anywhere within the Commonwealth.

46.1-351.1(b): Whenever any attorney for the Commonwealth receives a report of a vehicle seizure pursuant to § 46.1-351.1, he shall notify the Commissioner of the Division of Motor Vehicles of the seizure and of the motor number of the seized vehicle. The Commissioner shall promptly certify to the attorney for the Commonwealth the name and address of the registered owner of the seized vehicle together with the name of any lienors having an interest in the vehicle, and the amount of this interest. The Commissioner shall also notify in writing the registered owner and lienors of the reported seizure and indicate to them the county or city in which the seizure was made.

46.1-351.2(a): The proceedings under this section are *in rem* (civil legal action defining rights in property) action against the motor vehicle itself and are a completely separate legal action apart from the charge against the individual driver for driving under suspension or revocation, which is a criminal action under *Va. Code Ann.* § 46.1-350. Within 60 days after receiving notice of the seizure under § 46.1-351.1 the attorney for the commonwealth, usually the Commonwealth's Attorney for the city or county in which the vehicle was seized, shall file an information, a legal rubric, denoting a type of format legal accusation against the seized property in the clerk's office of any court of record having jurisdiction in the city or county, where the arrest was made. Should the attorney for the Commonwealth fail to file the information within the required 60 day period, the Attorney General may institute proceedings within 12 months of the date on which the attorney for the Commonwealth received the written notice of the seizure.

The information shall set forth in general terms the grounds for forfeiture and shall request that the property be condemned and sold at public auction with the proceeds being disposed of as prescribed by law, which is to say that any residue remaining after the costs associated with the seizure of the vehicle have been paid will be paid into the State Literary Fund. All persons concerned or interested in the property shall be cited to appear and show cause why such property should not be condemned and sold to enforce the forfeiture.

The owner of the seized vehicle together with all persons in any way liable for the purchase price of the vehicle and any person having a lien on the vehicle shall be made parties to the proceeding. If they are residents of the Commonwealth, they shall be served with notice at least 10 days before the hearing on the information. If any of the interested parties are nonresidents or cannot be found with reasonable diligence, they will be sufficiently served by publication of notice once a week for two successive weeks in a newspaper of general circulation in the city or county of the seizure, and a notice of the seizure shall be sent by registered mail to the last known address of each party.

The attorney for the Commonwealth may return the seized vehicle to the owner or lienor without filing an information, provided that he is satisfied that (1) the bona fide owner was ignorant of the illegal use of his vehicle and that such use was without his consent express or implied; or (2) in the case of a bona fide lienor, that he was ignorant of the illegal use of the vehicle and that the value of his lien is at least equal to the appraised value of the vehicle, and such owner or lienor pays the costs incident to the seizure of the vehicle.

In the event the vehicle was sold to a bona fide purchaser after the arrest but before seizure of the vehicle in an effort to avoid the forfeiture provisions of this statute, the Commonwealth has a cause of action against the seller for the proceeds of the sale.

46.1-351.2(b): Should the attorney for the Commonwealth decide not to turn the vehicle over to the nondriver owner or lienor as described above, such owner or lienor may obtain possession of his seized vehicle before the hearing on the information by posting a bond payable to the Commonwealth with the clerk of the court in which the forfeiture hearing is to be held. The bond shall be in an amount equal to the appraised value of the vehicle plus the costs incurred incident to the seizure.

46.1-351.2(c): Any person claiming to have a financial interest in the seized property may be made a party defendant to the suit against the vehicle at any time before final judgement of the trial court. Such defendant shall by answer, a formal written legal reply, set forth the nature of this financial interest in the seized property, and state any reasons which he may have to show against forfeiture of the property.

46.1-351.2(c1): The hearing on the information shall not be held prior to final judgement in the driver's trial for driving under suspension or revocation. An acquittal of the driver or a dismissal of the charges against him shall entirely relieve the property from forfeiture and no costs incident to the seizure shall be taxed against any person.

46.1-351.2(d): Should the forfeiture proceed to the point of the hearing on the information, any person claiming to be the owner or a valid lienholder of the seized vehicle may demand that the issue of his knowledge of the driver's illegal driving of the vehicle be submitted to the jury, which will consist of five members. (Note: This is part of the civil action against the vehicle and not part of the criminal action against the individual driver, which to reach this point in the civil action on the information had to find the driver guilty of driving under suspension or revocation.)

46.1-351.2(e): A finding in the forfeiture hearing that the driver of the vehicle was in fact driving under suspension or revocation does not automatically require that the interest of the financially interested, nondriver party be forfeited. If the nondriver owner or lienholder can show to the satisfaction of the court that they were ignorant of the illegal driving of the vehicle, the court shall relieve the vehicle from forfeiture and return it to the innocent owner or lienholder, and the costs of the proceedings will be paid by the Commonwealth.

46.1-351.2(f): If any claimant to the vehicle is a lienor, who perfected his title within 10 days from the time it was seized by the state, and that lienor was ignorant of the illegal use of the vehicle by the offending driver and his lien is equal to or more than the value of the vehicle, then the vehicle shall be delivered to the lienor and the costs of the proceedings shall be paid by the Commonwealth. Should the lienor not have demanded delivery of the vehicle from the Commonwealth and have been ignorant of the illegal use of the vehicle, he shall have the right to have his lien satisfied from the proceeds of the public sale of the vehicle before any costs to the Commonwealth shall be satisfied. Any residue from the sale is to be paid into the State Literary Fund.

If the lienor has knowledge of the fact that his car was being driven by a person whose driving privilege had been suspended or revoked, his interest in the vehicle will be forfeited, just as if he had been the guilty driver.

46.1-351.2(g): If there was no lien on the vehicle and in the trial upon the information against the vehicle, it is determined that the vehicle was being driven illegally, then that vehicle shall be completely forfeited to the Commonwealth. Similarly, if the non-driver owner of the vehicle had knowledge of the illegal use of the vehicle, then his interest shall be forfeited to the Commonwealth.

46.1-351.2(h): In all cases the actual expenses of seizing and storing vehicles pursuant to the statute shall be taxed as costs.

APPENDIX C

COMMENTS OF POLICE CHIEFS AND COMMONWEALTH'S ATTORNEYS

Comments Favorable to Statute

While this office is in wholehearted support of the provisions of § 46.1-351.1, the procedure does present serious related problems. Generally the vehicles seized are best classified as semi-junk. They will remain a storage problem until the date, if any, of eventual sale. This office has been forced, by sheer lack of space for their proper impoundment, to request additional unbudgeted funds from our county government to pay for storage on private property, and even this space is generally difficult to find. — Police Chief —

Excellent enforcement tool if not abused and is equally enforced by this court. — Police Chief —

We feel that the statute would be more effective in our jurisdiction particularly if forfeiture would be carried through. It seems unfair that a violator who owns a vehicle in good condition with no lien should lose his vehicle, while others who have old cars or owe money on them should have them returned. — Police Chief —

If the current practices are followed, we do not feel the expense of towing and storing the vehicle should be incurred until, and unless, the court has confiscated the vehicle. The man hours lost in processing the vehicle by this Division, the Sheriff's Department and the Commonwealth's Attorney cannot be justified when no serious action is taken to confiscate the vehicle. — Police Chief —

The statute is effective as a deterrent to most people after suspension and revocation, and those that it does not deter will drive whether the statute is in effect or not. — Police Chief —

The basic problem seems to be lack of awareness by both the police and the public of the consequences of operating a vehicle after suspension or revocation. — Police Chief —

I believe the laws as they exist are adequate, however, due to numerous reasons sentences are reduced and offenders are permitted to get by without losing vehicles. — Police Chief —

I think that the law is a good law and a deterrent to some degree if strictly enforced. I do not feel that liens are too often considered by the court and vehicles never confiscated the way the law provides. In many cases, the cars are of such little value the courts feel that it is not worth the expense of the transaction. It is my feeling that this law, if not strictly enforced, should be repealed. — Police Chief —

It appears that some jurisdictions are not following the statutory requirements. I feel that enforcement of the existing law should either be made uniform throughout the state or amended. — Commonwealth's Attorney —

I think the statute is worthwhile and should be retained. — Commonwealth's Attorney —

Comments Against the Statute

I think the law should be repealed because we find that a majority of the ones driving on revoked licenses are driving a wreck that won't bring the towing fee. Often the lien against it is more than it is worth ... — Police Chief —

Forfeiture is a serious remedy, i.e., [it] ought to be applied sparingly. In my jurisdiction, most vehicles seized for forfeiture are of little value for owner has little equity after lien. — Commonwealth's Attorney —

In our area motor vehicles that are seized are of little value or they are under heavy liens. I believe that § 46.1-351.1 should be repealed ... — Police Chief —

The seizure of vehicles upon arrest for driving on revoked or suspended operator's licenses has been a problem for my department. Storage space, wrecker use and possible stealing of items in or on the car is certainly a problem. — Police Chief —

To be quite candid the statute is more trouble than it is worth, however, so long as it is on the books it should be strictly enforced by all concerned. — Police Chief —

In the cases that I have worked on the Commonwealth's Attorney has been too lax in the matter of forfeiture of these vehicles. There should be a more mandatory rule as to what time the car can be released or sold instead of leaving the matter to the Commonwealth's Attorney to decide. — Police Chief —

It is my best judgement that the seizure of automobiles under the statute has had absolutely no effect as a deterrent to others in operating motor vehicles after revocation. — Commonwealth's Attorney —

I feel that the law leaves a lot to be desired. A lack of uniformity in handling cases is the problem. — Police Chief —

Statute is of minimum value. Its benefits to society are totally outweighed by the time and expense caused the Commonwealth. — Commonwealth's Attorney —

The statute is a farce... so far as I am concerned, there is not one virtue in the statute and many vices. I would repeal all of them. — Commonwealth's Attorney —

§ 46.1-351.1 has been rigidly enforced in my jurisdiction. The habitual offenders simply secure a cheap car or one with a major lien and continue to drive. This statute is a nuisance and without value. — Commonwealth's Attorney —

... 95% of all autos seized are not worth the time to proceed against them because of their low value. The law seems to affect only the poor and uneducated. — Commonwealth's Attorney —

I find the statute cumbersome in great part, and would appreciate some creative thought to smoothing it out, however, most legislative changes are for the worse in such statutes, and the local Commonwealth Attorneys who enforce this law have already worked out office practices to deal with this. — Commonwealth's Attorney —

It appears to me to be somehow unfair that some drivers suffer both criminal and civil losses while other suffer only criminally. — Commonwealth's Attorney —

The main problem with this law is that the person you want to catch (the one who habitually drives on a revocation) knows enough to title his car in someone else's name, this defeats the purpose of the law... Virginia State Police practice of seizing wrecked vehicles is absolutely absurd. — Commonwealth's Attorney —

Something should be done concerning the position of a lienholder — 85% of all forfeitures are generally returned to a lienholder who then returns the car to the violator. — Commonwealth's Attorney —

The people who drive vehicles after their licenses have been revoked or suspended have cars that are of no value, drive other people's cars knowing the Commonwealth released the vehicle and drive cars with liens, knowing the Commonwealth released the vehicle. — Commonwealth's Attorney —

The statute is not a fair statute which treats everyone with equal punishment. — Commonwealth's Attorney —

... In 95% of the cases the motor vehicle has a lien which exceeds market value or the car is junk and not worth the cost of sale. — Commonwealth's Attorney —

... Under the present statute, I will never recomment confiscation. — Commonwealth's Attorney —

It is rare in our county that a vehicle is seized thereunder which is not an old car, or wreck, or has a lien in favor of a bank, etc. — Commonwealth's Attorney —

Confiscation is a cumbersome procedure and usually works hardships too severe for the offense on the accused and especially on other members of his or her family. — Commonwealth's Attorney —

Officers, following the mandate of the statute, seize the vehicle, but then it develops [that the] Commonwealth cannot make out a proper case because of the innocent owner, the innocent lienholder, or the lack of equity. The end result is that the Commonwealth pays for the storage of the vehicle for a period of time and invariably sustains a loss. Also, the statute tends to penalize the owner-driver who has equity value in his car and he is a rather rare bird. — Commonwealth's Attorney —

... No common sense is ever used by the State Police in seizure, and the Attorney General's office having to get into it to me is absurb. — Commonwealth's Attorney —

The car confiscation law is a failure. It does not produce enough revenue to justify the paper work. It does not keep revoked drivers off the road. It is not uniformly applied. — Commonwealth's Attorney —

I should think that the purpose of the statutes requiring revocation and forfeiture of a vehicle driven by an operator whose license was revoked is to protect the public, not to punish the defendant. If that is so, I don't think the statutes are reasonable. There is no proof to me that a person whose license is revoked because of speeding twice in a year, or even reckless driving, is not more of a hazard than anyone else as my guess is that 95% of the drivers who violate the speed law twice every month maybe also drive recklessly. I do not think the law was well considered before passing; I understand that it was introduced by a nut... — Commonwealth's Attorney —

All revocations by a court made mandatory by statute are deliterious, because the lack of flexibility as to sentences produces no prosecution at all in many cases... — Commonwealth's Attorney —

My office finds that the forfeiture statute is a nuisance to enforce because most vehicles we seize have liens which exceed the market value of the vehicle — we are called upon to go

through the motions — consume time needlessly — and end up turning the vehicle over to the lender who in turn gives it back to the offender. — Commonwealth's Attorney —

The undersigned is of the opinion that the present law for confiscation does not serve any worthwhile purpose, as a majority of the automobiles which are seized are bank financed and in many instances the owner has fallen in arrears in payments. — Commonwealth's Attorney —

The poor person suffers no punishment whereas a person who has paid for his vehicle is severely punished. The law ought to be either repealed or changed so as to eliminate inequities referred to above. — Commonwealth's Attorney —

The great majority of the vehicles involved in legal forfeiture proceedings should be categorized as "junker." In my judgement, the expenditure of time by the officer, the prosecutor, and the court when weighed against what I consider the minimal deterrent act, does not justify the continued existence of the forfeiture law. — Commonwealth's Attorney —

I do not have any disagreement with the intention and purpose of the law, but in practice I have found from my experience as a Commonwealth's Attorney, that the law is ineffective for accomplishing the purposes for which it is designed, which I feel is to deter the driving of motor vehicles by persons whose licenses are under revocation or suspension. — Commonwealth's Attorney —

APPENDIX D

THE PROPOSED LICENSE PLATE IMPOUNDMENT STATUTE

§ 46.1-351.1 Impoundment of registration card and license plates of persons convicted for violating § 46.1-350, 46.1-351, or 46.1-387.8.

(a) When any person is convicted of violating § 46.1-350, 46.1-351 or 46.1-387.8, the court may impound the license plates and registration card of any motor vehicle driven by such person for the remaining period of his driver's license suspension or revocation or any portion thereof. If the offender is not the owner of such motor vehicle, but his use of such motor vehicle was with the consent of the vehicle's owner who had knowledge of the fact that the offender's license was suspended or revoked prior to the commission of the offense, the court may impound such owner's license plates and registration card just as if the owner were the offending driver. Knowledge of the offender's license revocation or suspension will be imputed to members of his household.

(b) The court shall issue a receipt for the impoundment of license plates and registration card, and except as provided in subsection d and f, the court shall retain possession of the plates and card until such time as the driver presents himself to the clerk of the court with a valid driver's license or until such time as the plates and card expire as described in § 46.1-63.

(c) At the time of ordering the surrender of the registration plates and registration card of a violator or owner the court shall notify the Commissioner of the Division of Motor Vehicles of that fact. Except as provided in subsection d or f, no new or duplicate license plates or registration card shall be issued to such violator or owner until his card and driver's license have been reissued or reinstated.

(d) Any such offender or owner may apply to the Division of Motor Vehicles for new license plates which shall bear a special series number which may be readily identified by traffic law enforcement officers. The Division shall forthwith notify the court of such application. If the court approves of the issuance of the special series license plates, it may then send the registration card of such violator or owner to the Division of Motor Vehicles, together with its consent to the issuance of the special license plates to the offender or owner. Thereupon the Division shall issue such new license plates and a new registration card. Until the drivers license of such offender is reinstated, any new license plates issued to him or to an owner whose plates have been impounded shall bear a special series number.

(e) A fee of five dollars shall be charged for every set of special license plates which are issued in accordance with this section, except upon renewal as specified in section 46.1-63, when the regular fee as provided in § 46.1-149 shall be charged. Whenever a set of special license plates is exchanged, by reason of the reinstatement of the operator's or chauffeur's license of the owner, for those ordinarily issued, no fee shall be charged.

(f) If an owner wishes to sell a motor vehicle during the time its license plates and registration card are impounded he may apply to the court which impounded such plates and card, for consent to transfer title to the motor vehicle. If the court is satisfied that the proposed sale is in good faith and for a valid consideration, that the owner will thereby be deprived of the custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provisions of this section, it may send the registration card containing the relevant sale information to the Division of Motor Vehicles who will then record the transfer. If during the time the license plates and registration card are impounded the title to the motor vehicle is transferred by the foreclosure of a chattel mortgage, the cancellation of a conditional sale contract, a sale upon execution, or by decree or order of a court of competent jurisdiction, the court shall send the impounded registration card to the Division of Motor Vehicles notifying them of such action.

Subd. 8. Nothing contained in this section is intended to change or modify any provision of this Title with respect to the taxation of motor vehicles or the time within the taxes thereon shall be paid.

Subd. 9. Any person who fails to surrender any license plates or registration card to the court upon demand or who operates any motor vehicle on a street or highway at a time when a court has ordered the surrender of its license plates and registration card is guilty of a misdemeanor.