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APPENDIX C7
VEHICLE-BASED SANCTIONS--AN OVERVIEW

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Traditionally, social policy directed at drinking drivers attempted to modify the offenders, either through affecting their motivations or loading the illegal act with a punishment threat sufficient to deter. Policy interventions based on this approach have been evaluated and found effective to some degree. However, this is not necessarily the case for the committed and persistent offender, who drinks heavily whenever possible and who, when he has access to a vehicle, drives while impaired.

The persistent offender demonstrates by his repeated violation of the law that he is not affected by the law's deterrent threat. He is also demonstrably immune to the programs routinely applied to offenders, such as education and therapy, and the experience of jail. These facts are not unanticipated, given the commitment to drinking on the part of repeat drunk driving offenders and the notorious weakness of education and therapy among heavy consumers of alcohol. Many of the persistent offenders have attenuated relationships with conforming persons and easily accept the stigmatization and unpleasantness of jail terms because they have nothing to lose in the way of reputation. The most hopeful approach to controlling these individuals is not so much reform as incapacitation, rendering the crime difficult or impossible for those who would otherwise be motivated to commit it.

License suspension and revocation are techniques meant to get the persistent offender off the road. License actions are not without effect, but suspended and revoked drivers rarely refrain totally from driving. Rather, they do less of it, and drive in a more cautious manner, and thus more safely, in order to avoid apprehension. License actions are worthwhile policy, but they fail to remove many dangerous determined drunk driving offenders from the highway.

Imprisonment would of course be a nearly perfect incapacitative policy. Repeat offenders serving lengthy sentences would not be able to recidivate during incarceration. Moreover, jail would have the advantage of symbolizing the seriousness with which the community views drunk driving. However, judges are unwilling to incarcerate for lengthy time periods those drunk drivers -- the vast majority -- who have not caused a crash or harmed someone else. In order to have a significant effect on the casualty rate incarceration would have to be extensive. Minnesota researchers have calculated that if all 36,000 third offenders

in the state were incarcerated for 4 years, some three dozen lives might be saved. However, the cost to the public treasury of such incarceration, along with the cost of lost income to the families and therefore of public welfare, would not be acceptable. Moreover, there would be a principled reluctance to imprison for four years a person guilty only of exceeding the blood-alcohol standard on three or even more occasions.

This paper discusses a family of policies that aim at separating potential drunk drivers (heavy drinkers) from vehicle access. They assume that the persistent offender is an unusually heavy drinker, whether because of addiction and alcoholism or more generally because drinking lies at the center of his social existence. This approach accepts the difficulty of deterring potential offenders as well as reforming them. It attempts to incapacitate them in a less extreme, and therefore cheaper, way than incarceration, by rendering vehicle access more difficult.

The most straightforward approach to intervening between a drinker and a vehicle is some variation of temporarily or permanently taking the vehicle as part of the punishment for a repeat drunk driving offense. Most extremely, the vehicle used in the offense, if owned by the offender, is confiscated by the state. Less extremely, it is immobilized for some time, either impounded in a tow lot or on the offender's property, using "Denver Boot" technology. A variation on impoundment takes the vehicle's license plate, which makes it impossible to drive the car without attracting police attention, or stickering the plate to achieve the same effect.

There is a small literature concerning confiscation of serious offenders' vehicles, most notably in the City of Portland, Oregon (Voas 1992). An important finding is that because vehicles driven by bad drivers tend to be old and of little value, the programs are not self-supporting. However, if they yield significant incapacitation, they may be worth their cost. But application of impoundment and confiscation penalties is not straightforward when, as is typical, the offender is caught while driving a vehicle registered to someone else, such as a spouse or friend or a former owner when registration is not transferred on sale (Ross, Simon and Cleary, forthcoming). Typical statutes permit the registered non-offender owners to recover the vehicles; they also respect the rights of lienholders such as finance companies. (Insurance premiums that would discourage vehicle ownership can also be evaded by the offending driver's registering his vehicle in others' names.) Moreover, as previously noted, multiple offenders tend to be driving old and low-value cars, so the financial penalty associated with confiscation can be disregarded.

When impoundment is left to the criminal justice system it seems to be seldom used. Judges see problems of liability in temporarily storing as well as confiscating vehicles. They also dislike taking action that they perceive as damaging the offender's employability and the welfare and mobility of an entire family. Impoundment seems to work better when it can be applied administratively by police without the need to obtain a criminal conviction.

There is evidence from Minnesota experience that license plate confiscation applied by police is capable of reducing recidivism of repeat drunk driving offenders, and this can probably be generalized to sticker programs and vehicle immobilization techniques (Rodgers 1994). The effect is far from complete incapacitation, but given the modest cost of the program it would seem to be cost effective.

Interlock devices attempt to incapacitate more narrowly, affecting the repeat offenders only when they are impaired. Interlocks can be based on either breath-alcohol testing technology or performance tests. They can either prevent starting and operating the car, or they can display warnings like flashing headlights and horn blasts that will alert police patrol. The technology of interlocks is improving. However, they are expensive to install and require considerable maintenance, making them unsuitable for the general vehicle fleet. When applied as a condition of probation to vehicles owned by offenders, they can be easily and simply evaded, just like impoundment, by using a different car than the one to which the interlock is applied. Some research has found evidence of considerable incapacitative competence for interlocks (e.g., Elliott and Morse 1993), but the methodology of most existing studies is inadequate to support firm conclusions of effectiveness in light of the potential for avoidance of the penalty (see also Jones 1993).

In sum, vehicle-based sanctions seem to have a part to play in managing the problem of the persistent drunk driving offender. They do not require changing individual motivation or successfully stating a legal threat. They do not require painful, expensive and lengthy incarceration. They have been found to reduce recidivism by an important fraction, although far from perfectly. Most of these sanctions can be applied at relatively modest cost. They appear to be cost-effective measures, if not ultimate solutions to the problem of controlling the persistent offender.

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APPENDIX C8
STREAMLINED VEHICLE-BASED SANCTIONS: SPECIFIC AND GENERAL DETERRENCE EFFECTS

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Statutes mandating or allowing vehicle-based sanctions for impaired driving exist in many states. These sanctions are usually applied to offenders who repeat the driving while impaired (DWI) offense a certain prescribed number of times within a given time span or who drive while under a license suspension or revocation imposed for an impaired driving offense. Thus, they are of considerable interest as a strategy for dealing with the persistent drinking driver. Some states do include vehicle sanctions on the books for first offenders, but these are rarely, if ever, applied.

Vehicle sanctions are of two general types: One type attempts to remove the vehicle from use by the offender altogether by confiscating, impounding or immobilizing it. The second type of sanction tries to limit use of the vehicle to times, places or circumstances prescribed by law or the sentence of the court (e.g., only to and from work, only while sober). This second type of strategy often involves devices (such as an alcohol interlock or on-board data recorders) attached to the vehicle. These strategies will be discussed elsewhere in this document.

Vehicle-based sanctions are presumed to serve two general purposes: 1) They add to the incapacitating effects of license sanctions by removing at least one vehicle from potential use by the offender; and 2) they serve as general deterrents for others who might drink and drive or who might drive while suspended or revoked. Both the specific and general deterrence effects are most relevant to the population of drivers who are at risk of multiple instances of impaired driving.

As summarized in a review by Voas (1992), laws allowing vehicle-based sanctions are widespread, however, their use has been quite limited. A major reason for the limited use of the sanctions is the logistical and legal problems involved. For example, penalties that involve impoundment or confiscation of vehicles require facilities for storage, which can be quite costly. In cases where vehicles are confiscated and sold, frequently the vehicles are of such little value that the proceeds from the sale do not even compensate for the costs of towing and storage. Similarly, in cases where vehicles are impounded, often it is more economical for the offender simply to abandon them and buy another car rather than to pay the storage fees and fines. Legal difficulties include the problem of applying penalties in the case of an "innocent owner" other than the offender who may not have knowingly allowed an unlicensed or intoxicated driver to use a vehicle.

Even when the laws are applied, they usually apply only to the vehicle driven in the course of the offense (although Minnesota, for example, applies a penalty to all vehicles owned by the offender). Use of a vehicle penalty does not guarantee that the offender will not have access to other vehicles.

The lack of ability to apply vehicle penalties widely reduces their specific deterrent impact, of course, in that few offenders are actually subjected to the penalties. If the penalties are applied rarely, their general deterrence impact is also likely to be weakened: It is difficult to maintain the credible threat of swift and certain punishment if few offenders receive the punishment.

Two recent projects of the National Public Services Research Institute explore the use of vehicle-based sanctions that attempt to reduce the logistical problems discussed above, thus, it is hoped, increasing the likelihood that the penalties will be applied and therefore increasing the specific and general deterrence effects.

The first project (Voas and Tippetts, 1994), recently completed, evaluated the effects of programs in Oregon and Washington in which special "zebra stickers" were applied to the license plates of offenders who had been convicted of driving on a driver's license that had been suspended or revoked as the result of an impaired driving offense. The penalty had the advantage of being relatively easy to carry out: The arresting officer would simply apply the sticker at the time of arrest. The sticker subsequently served as a signal to police that the vehicle was owned by someone who should not be driving. The sticker constituted probable cause for stopping the vehicle to determine whether the person driving had a valid license.

The sticker law in Oregon was imposed on 31,000 offenders during the one year study period and resulted in measurable specific and general deterrence effects. The sticker law in Washington applied to fewer offenders and was imposed only 7,000 times during the study period. It resulted in no specific or general deterrence effects.

In general, it appeared that this type of penalty was relatively easy to implement, and, if intensively applied, could reduce the extent to which impaired driving offenders drive while suspended or revoked. Thus, at least some portion of the problem of continued drinking and driving by offenders might be reduced.

The second study, now in progress, examines a penalty now being used in some parts of Ohio. Offenders who are convicted of a second impaired driving offense within 5 years or of driving on a suspended license have the vehicle that they