

were driving immobilized for a set period (30 days to 6 months). The vehicle is immobilized using a "club" or "boot" device on the property of the offender. This penalty reduces some of the logistical problems associated with vehicle impoundment in that the need for towing and storage facilities is reduced. The immobilization devices themselves are relatively inexpensive. Implementation of the law has been accompanied by a public awareness campaign directed primarily at impaired driving offenders (who would be at risk of immobilization). When the study is completed, it will provide further information on the practicality of this type of vehicle sanction, the types of logistical problems encountered, and the degree to which the countermeasure has specific and general deterrence effects.

Based on the previous studies of vehicle-based sanctions discussed here, as well as other research on impaired driving countermeasures, it appears that:

- Vehicle-based penalties can be implemented that reduce the logistical problems usually associated with such penalties;
- Wide implementation of the penalties is likely to improve both specific and general deterrence;
- Public awareness campaigns are likely to increase general deterrence;
- Cooperation among law enforcement, the courts, and motor vehicle licensing agencies is necessary for effective implementation.

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APPENDIX C9

CAN ADMINISTRATIVE PROGRAMS CONTROL THE PERSISTENT DRINKING DRIVER?

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INTRODUCTION

In the U.S. impaired driving is managed through a troika program. In the lead are the police on whom all elements of the control system depend. They feed the courts and the driver licensing departments which carry out the sanctioning and educational elements of the program. Given that the perceived risk of apprehension appears to be the most significant factor in producing deterrence (Ross, 1984), enforcement may be the most important element in the system. However, there is considerable feed back from the sanctioning process, which conditions the intensity and efficiency of the enforcement effort. This paper focuses on the processing-sanctioning-educational element of the control system, looking to the extent that executive agencies (ie motor vehicle departments) through administrative procedures can control the persistent drinking driver.

The problem encountered in processing impaired drivers through the lower courts in the U.S. are familiar to all those who have conducted research on the criminal justice system. There are significant delays between the offence and trial or disposition of DUI cases. Plea bargaining and pretrial diversion results in a conviction on a reduced charge which in turn avoids a drunk driving conviction on the driver record. "Mandatory" sentencing guide lines are often ignored and loss of license avoided or reduced in length or a hardship license provided (Ross, 1976). Required attendance at treatment programs is often avoided due to the limited staff available to the court to supervise those on probation. These problems have led to a national movement to persuade all 50 states to pass administrative license revocation laws which provide for immediate suspension of the license of drivers who refuse a BAC test or provide a result over the limit. This places the burden of action on an executive agency, the state motor vehicle department. Just how far can we take this model?

DMV Authority

Traditionally motor vehicle departments have had some limited powers to suspend the licenses of drivers with physical or mental disabilities. They have also suspended "problem" drivers based on high point counts or multiple serious offenses. The largest number of departmental suspensions however have been for financial responsibility. Many of these drivers are DUI offenders who can not afford the higher insurance rates which result from a DUI

conviction. These powers flow from the broad responsibility of the motor vehicle administrator to protect the public from unsafe drivers. The states' power to suspend licenses has been a source of controversy with officials claiming that a driver's license is a "privilege" not a "right." The Supreme Court sidestepped the issue by finding that the license was an important "interest" and that a department was required to provide for a hearing before the license could be suspended.

Recently there has been a trend to extending the powers and program responsibilities of motor vehicle departments in the management of programs for drinking drivers. Such states as New Jersey and California among others have laws which provide that suspended DUIs must complete an education/treatment program in order to be eligible for reinstatement. This effectively shifts from the courts to the DMV the responsibility for supervising attendance at treatment. Minnesota has a law giving the DMV the power to suspend the vehicle registration and seize the vehicle tag of third DUI offenders. Several states have similar laws (Voas, 1992). The States of Washington and Oregon had laws (now sunsetted) that allow the police officer who apprehended an unlicensed driver to seize the vehicle registration and give the driver a 60 day temporary registration and to place a "Zebra" sticker on the vehicle tag. The presence of this sticker authorized any officer to stop the vehicle at any time and check the license of the operator (Voas and Tippetts, 1994B).

Until recently, all alcohol safety interlock programs have been implemented under the supervision of the courts. However, a recent NHTSA report (Voas and Marques, 1993), recommended that because of their complexity and the limited staff available to the courts, that interlock programs should be managed by state agencies. Recently there has been a trend in this direction with states such as Maryland, California and West Virginia assigning this function to the motor vehicle department. Ohio has assigned to the motor vehicle department the responsibility for collecting the "service charge" for installing and removing the "Club" immobilization device placed on the cars of multiple DUI offenders (Stewart and Voas, 1994.) The Ohio DMV also has its own enforcement department with officers located around the state who are empowered to seize license plates of DUIs and drivers who fail to establish financial responsibility (Voas, 1992).

The Suspended Driver Problem

This growth in functions being assigned to motor vehicle departments leads to the question of how far this trend can take us in the development of effective DUI control procedures? Does it offer a method for avoiding the problems encountered in using the criminal justice system as the primary method for handling drunk drivers? Before we deal

directly with this question, it is important to be aware of the approaching crisis presented by growing numbers of suspended drivers. It has been recognized for over 30 years that many, if not most, of the offenders whose licenses are suspended continue to drive at least to some extent (Sadler and Perrine, 1984). Over the years the number of suspended operators driving illicitly has grown as DUI enforcement intensified and the frequency with which the suspension penalty was imposed increased. Voas and Tippetts (1994A) have reported that in the state of Washington, where the suspension is 90 days for first offenders, over half remain suspended after 5 years! suspended.

The unlicensed multiple offender who kills an innocent motorist produces a sharp public outcry about the lack of control repeat DUI offenders. Never the less, relatively little attention has been devoted to this problem by safety professionals because suspended drivers have a lower crash rate since they drive less frequently and, perhaps, more carefully. Voas and Tippetts (1994) have shown that suspended DUIs have crash and offence rates less than half of those of reinstated offenders. Satisfaction with this state of affairs must be tempered with the knowledge that many of these illicit drivers are uninsured. Since they are driving with impunity outside the driver control system, they are a challenge to the credibility of the driver licensing system. Their growing number demonstrates our inability to enforce driver licensing laws.

CURRENT ADMINISTRATIVE ACTIONS

Administrative license revocation

The most effective use of the administrative power of the state to date has been in the implementation of administrative license revocation (ALR) laws. The best application of this system which has been adopted by 38 states, allows the officer to seize the license on the spot if the driver provides a breath sample over the legal BAC limit, has been demonstrated to be effective in reducing alcohol related fatal crashes (Klein, 1989). It increases the certainty and speed of punishment and thereby increases deterrence. It strengthens the hands of the officer, and where the required hearing system is handled properly, it reduces the time officers spend outside their enforcement activities compared to the requirements of the judicial system.

Actions against vehicle tags

Unlicensed drivers can be apprehended only if there is probable cause to stop their vehicle. Since there is no external indication of whether the driver is licensed, interest has increased in laws which provide for the administrative

withdrawal of registration, seizure and destruction of vehicle tags or at least the marking of vehicle plates owned by convicted DUIs and driving under suspension offenders (Voas, 1992). Several states, including Ohio and Virginia, provide for the withdrawal of the registration of the offender's vehicle for the same period of time as the driver's license suspension. Such laws are only partially effective because the notice of registration suspension is sent out after conviction and it is difficult to obtain the return of the vehicle tags, so that the offender can continue to use the car. The state of Ohio has a special enforcement unit in the Department of Motor Vehicles (DMV) with offices across the state who are responsible for finding suspended motorists who do not respond to departmental correspondence.

As noted the states of Washington and Oregon have enacted legislation which allowed police officers who apprehended an unlicensed driver to seize the vehicle registration and mail it to the DMV, leaving the motorist with a temporary sixty day registration. At the same time, the officer placed a "Zebra" sticker over the annual renewal sticker on the license plate. This forced the owner to clear the sticker by demonstrating that he or she was validly licensed. If this was the case, the owner paid a small fee (\$16), and the registration was cleared. However, an unlicensed driver could not clear the sticker and faced withdrawal of the vehicle registration in sixty days. With their cars marked with a sticker which provides the police with probable cause to stop the vehicle they should be deterred from driving while suspended. Voas and Tippetts (1994B) have provided evidence that this law was effective in Oregon. It did not, however, appear to be effective in Washington.

Perhaps the best evidence for the superiority of administrative actions against vehicles compared to court administered programs was provided by the study conducted by Alan Rodgers (1994) who measured the effectiveness of a 1988 license plate impoundment law for third DUI offenders in Minnesota which was managed by the courts with an administrative impoundment procedure which began when the law was amended in 1991. During the 29 months when the law was managed through the judicial system only 464 or 6 percent of the 7,698 eligible third time violators had their license plates impounded. During the 21 months after the 1991 amendment, when the law was administered by the Department of Public Safety, 3,136 or 68 percent of the 4,593 third DUI offenders had vehicle plates impounded.

Analysis of the recidivism records of these offenders indicated that there was no difference during the time the program was managed by the court between offenders whose plates had been impounded and those who had not received this sanction. In contrast during the period when the program was managed administratively, offenders who lost their vehicle plates had a lower rate of recidivism than those that did not.

Thus, the administrative impoundment system that required the officer to seize and destroy the plates at the time of arrest and provided for the Department of Public Safety to back up this action with a mailed impoundment order not only resulted in a more complete application of the penalty but also made the penalty more effective in protecting the public against repeat offenders. The courts because of the great amount of discretion that judges enjoy and because of the limited administrative manpower available, are not effective managers of systems designed to control the driving of offenders.

Interlocks

The higher crash and offense rates demonstrated by reinstated DUIs (Voas and Tippetts, 1994A) suggests the need for a transitional system which will reduce the crash risk of those returning to licensed status. The alcohol safety interlock system is being offered in some states (California and West Virginia for example) as a means for offenders to return to licensed status following a minimum period of full suspension. In theory this provides a number of potential benefits. The offender is allowed to use the vehicle for vocational purposes while the public is protected from being victimized in an alcohol related crash. If the offender was driving illicitly transition to the interlock could reduce crash involvement. Strong evidence for the effectiveness of the interlock is lacking perhaps because the programs which have been evaluated to date have been managed through the courts which lack the personnel and resources to administer them properly (EMT Group, 1990, Marques and Voas, 1993. See however Elliot and Morse, 1993, Jones, 1993, Collier, 1994). Assigning responsibility for program administration to the state DMVs should improve their application and perhaps, provide evidence of their effectiveness.

Treatment/Education

Another traditional feature of the handling of DUIs by the lower courts has been the provision for requiring treatment as a condition of probation (Stewart and Ellingsadt, 1988, McKnight and Voas, 1991). As noted, several states have laws providing that offenders must complete a treatment/education program before they can apply for license reinstatement. While this would appear to be a good means of motivating attendance at treatment programs, it is problematic since as Voas and Tippetts (1994A) have shown, half or more of the DUI offenders do not apply for reinstatement when they are eligible and may remain suspended for some years. Attaching treatment to relicensing results, at a minimum, in delay of any beneficial effects from such programs.

Recently, Marques and Voas (1994) have suggested integrating a case management system with an interlock program. A test of this concept will begin later this year in Alberta, Canada. This procedure provides that following a one year suspension, multiple DUI offenders can enter an interlock program in lieu of another year of full suspension if they complete a treatment program, install the interlock and attend interviews with a case manager each month when they come in to have the interlock unit read and serviced. The case manager will have the results of diagnostic measures collected during the treatment program. Thus, he will be in a position to refer the client to a broad range of health and social services to support recovery from the alcohol/drug problem which produced the license suspension. The information from the interlock data recorder assists in this process by highlighting the problems that the client may be having in maintaining sobriety, thereby allowing an early intervention by the case manager. This procedure appears to provide a model by which a DMV responsible for insuring treatment attendance and managing an interlock program can combine the two successfully.

PROPOSED MODEL ADMINISTRATIVE SYSTEM

These examples suggest that an administrative system for controlling the drinking driver can be implemented with elements which have been demonstrated in one or more states. This administrative system would target two key behaviors; driving while suspended as a result of a DUI offense and repeating the DUI offence within a short period (2 years?) of the original offence. Such a law would have the following provisions:

- 1) Drivers with a DUI conviction within the last 2 years would be subject to having (a) their vehicle plates seized and destroyed (as is done in Minnesota or (b) their vehicle registration seized and their vehicle plates marked (as was done in Oregon and Washington) by the arresting officer, if they were apprehended driving while suspended for the original DUI offence or were apprehended driving over the limit a second time.

- 2) Over-the-limit offenders would be unable to clear their vehicle registrations since they would be suspended. Provisions would be made for "family" plates such as are used in Ohio and Minnesota (Voas, 1992) to allow family members to use the vehicle subject to the police having probable cause to stop the vehicle to check the operators license. Marking the vehicle tag together with suspending the registration for the period of the license suspension should reduce the amount of illicit driving by these offenders and motivate them to reinstate their licenses when eligible.

- 3) If the vehicle belonged to an innocent party the registration could be cleared by owners by showing that they

were validly licensed. These innocent owners would, however, have to sign a document indicating that they understand that if the offender is apprehended driving their vehicle while still suspended or while over the BAC limit, they, the innocent owner, will be barred from clearing the vehicle registration a second time.

- 4) Suspended offenders following a minimum period of suspension, could be given the option of reinstating their licenses (and vehicle registrations) early if they agree; a) to attend a treatment program, b) install an interlock and c) to attend regular sessions with a case manager. This element of the program would be designed to bring offenders back into legal, licensed status through early treatment and supportive services while protecting the public from the consequences of drinking relapses.

THE CRIMINAL JUSTICE SYSTEM

If this administrative system were to become the primary method of dealing with the impaired driver, what would be the role of the courts? Decriminalizing the drunk driving control system would be a mistake because, aside from the need to incarcerate the really bad actors, the criminal law has an educational effect (Andenaes, 1988) which plays a role in establishing normative behavior. An important benefit of the citizen activist movements insistence that drunk driving is a crime and should be punished by incarceration, has been a change in public attitudes regarding driving after drinking which may be as responsible for recent downward trends in alcohol related crashes as the increased enforcement and legislative activity. Therefore, it would appear to be important to maintain the criminal offence of drunk driving perhaps at the .15 BAC level while implementing administrative procedures at .08. Experience indicates that such two level systems have limitations. Drivers with BACs above .15 would undoubtedly be frequently allowed to be processed through the administrative rather than criminal track. This would not be a major problem if the administrative program is well administered. Problem drinkers who escaped criminal penalties would still lose their licenses, their vehicle registrations, be required to attend treatment and install an interlock. Meanwhile the principle that drunken driving is a crime would be preserved.

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APPENDIX C10

A BRIEF HISTORY OF THE USE OF IN-VEHICLE DEVICES FOR PREVENTING ALCOHOL-IMPAIRED DRIVING

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Other papers in this series have discussed vehicle sanctions which, in some manner, separate the driver from his or her vehicle. There is an alternative to this action when it is determined that the convicted drunk driver should be allowed to retain either limited or unrestricted vehicle use. There are situations where arguments can be made that allowing the convicted drunk driver to retain use of his or her vehicle has less impact on society than vehicle seizure. Also, there are cases where seizure or impoundment of a vehicle only keeps the driver from the targeted vehicle, but where vehicle alternates are available.

One thing is certain, however, we do not want to allow the convicted drunk driver to operate a motor vehicle when (s)he is drunk.

There are alternatives to seizure or impoundment which allow the driver to drive, but which prevent impaired vehicle operation. These systems are installed in the individual's vehicle; and, depending on the device, determine the presence