HB
358

FISCAL NOTE

STATE OF ALASKA **BILL NO:** HB 358

1998 LEGISLATIVE SESSION

Revision Date: 02/17/98
Title: Impoundment or forfeiture of motor vehicles or aircraft
Sponsor: Rep. Kelly
Requestor: (H) Transportation

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: AST Director's Office
COMPONENT SERIAL NO. 0508

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 98) impact: $ 0

POSITIONS:

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: F/Sgt. Don Bowman
Division: Alaska State Troopers
Phone 269-5084
Date: 02/17/98

Approved by Commissioner: Ronald L. Otte (signed: [illegible] for)
Agency: Department of Public Safety
Date: 2/17/98

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STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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February 20, 1998

The Honorable Pete Kelly
Alaska State House of Representatives
State Capitol, Room 411
Juneau, AK 99801-1182

Re: Impounding and forfeiting vehicles for drunk driving

Dear Rep. Kelly:

This is in response to your request for our opinion about the feasibility of impounding and forfeiting vehicles for drunk driving offenses, as provided in House Bill 358. We have not provided a detailed analysis of the specific provisions in HB 358, but we can say that, for a number of reasons, impounding and forfeiting vehicles in drunk driving cases creates legal and practical problems.

As a practical matter, in many parts of the state there are no readily available commercial impound yards. Even when the service is available, commercial operators will often refuse to impound vehicles with insufficient value to cover the fees, or when there is no insurance company to pay the fees. In those cases the state must pay the towing and storage fees, and in some instances fees for disposal of the vehicle. Only three State Trooper posts currently have secure fenced storage for vehicles. Additional storage yards would need to be constructed or fees paid for commercial storage of vehicles impounded for forfeiture.

Impounding cars, much less aircraft or vessels, is complicated by the need to protect and maintain the impounded property. It must be protected from vandalism, whether damage, and other similar hazards. If the state fails to do so, the value of the vehicle will be diminished, and the state may be liable for damages to the vehicle if it is ultimately returned to the owner.

On the legal side, to forfeit a vehicle the state must file a civil lawsuit, or must file a motion in the underlying criminal case. The state is involved in over 3000 DWI cases each year, and therefore a tremendous amount of additional legal work will be required.

In many cases the state will be successful in forfeiting the vehicle, but there are many reasons why vehicles will not be forfeited. The primary reason is if the vehicle is owned by someone else who had no reason to believe the defendant would be driving drunk. Therefore, vehicles owned by employers, vehicles borrowed from friends or relatives, or stolen vehicles, will be given back to the owners.

Financial institutions, such as banks, savings and loans, and credit unions, also have financial interests in vehicles that will prevent the state from obtaining the full value of many forfeited vehicles. At most, the state will be able to obtain only the defendant's equity in the vehicle, which in many instances will be little or nothing once the costs of sale are deducted.

The practical and legal problems with forfeiture of vehicles will result in a program that will cost more to operate than it brings in. While this cost might be justified if there were a significant deterrent effect on drunk driving, it is hard to conclude that that would be the case. The law would strike unequally on each defendant. Persons with vehicles worth little or nothing, or those whose vehicles have large loans carried by a bank, or those who operate vehicles owned by someone else, will not be affected much, if at all. It will strike hardest on those who buy relatively new vehicles and pay cash. The best law is one that affects everyone with certain consequences.

In addition, House Bill 358 requires the state to pay the impound fees when the defendant is not convicted of drunk driving. There are many reasons, however, why drunk driving cases are dismissed or reduced, that have little or nothing to do with guilt or innocence. For example, in many cases it turns out that the breath test machine was not working, or was not properly calibrated, or for some other reason the breath test results were not admissible. Without breath test results, juries sometimes do not convict, so prosecutors often reduce such charges to negligent or reckless driving, or dismiss charges altogether, even though there is little doubt that the person had been drinking. In other cases, the person may be charged with a more serious offense, such as possession of drugs, and the drunk driving charge may be dismissed as part of a plea negotiation for a conviction for the more serious offense. If the state is required to pay the costs of towing and impoundment in such cases, it will further add to the cost of the program.

For these reasons, forfeiture of property in Alaska is particularly difficult and time consuming. Forfeiture of property under state law is rarely undertaken today, even when allowed. Current law allows the state to seize the vehicle of a person convicted of a second or subsequent DWI, but in practice this is almost never done because the cost is not justified by the amount returned to the state.

As mentioned above, this a program that can probably only be operated in urban areas that have towing companies and secure storage facilities. Yet those same urban areas can adopt local ordinances to set up a municipal forfeiture program, similar to the one operating in Anchorage. A municipal program, under municipal control, would not be subject to state budget cuts, and would seem to have several advantages over a program run by the state. Moreover, municipalities have a large degree of control over local alcohol use, such as by setting hours of operation for bars, by local police enforcement practices, or by local option elections. Because of the importance of municipal policies in this area, we recommend that municipalities interested in such programs adopt local ordinances to implement them. If a particular municipality believes it does not have sufficient legal authority to adopt such a program

because of limitations in Title 29 of the Alaska Statutes, then consideration should be given to amending state law.

Thank you for the opportunity to comment. If you have questions, please contact us.

RON OTTE
COMMISSIONER
DEPT. OF PUBLIC SAFETY

By: Del Smith by DJG
Delbert Smith
Deputy Commissioner
Department of Public Safety

BRUCE BOTELHO
ATTORNEY GENERAL

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the H. TRANS. Cmte.
Committee Name

Committee on House Bill 358 Dated 2-18-97
Bill / Subject

SIGNED: Patricia Mack
Testifier

Mothers Against Drunk Driving
Representing

412 Baranof Fairbanks 99701
Address / Phone Number 452-4924

HB358...TELECONFERENCE...TRANSPORTATION...February 18, 1998

Stiffer jail sentences and license suspensions have not reduced drunk driving sufficiently. We all know someone whose life has been touched by this continuing problem. Here in Fairbanks alone...the Eklunds, the Stenbergs and the Fosters have recently lost family members to drunk drivers. Closer to Juneau...Marty Clements was killed by a drunk driver Friday.

Throughout America, vehicle forfeiture laws are proving to be an effective deterrent.

Since 1989...Portland, Oregon has been taking away the vehicles of DWI offenders *and* those who choose to drive after their license has been suspended for DWI. Rearrests have been cut in half!

Since 1994...Anchorage has been impounding the vehicles of first offenders for thirty days...THIRTY DAYS! Repeat offenders lose their cars for good! Fatalities connected with drunk driving have been cut in half!

HB358 does not go far enough! Taking the best features of the Portland and Anchorage laws, Alaska needs:

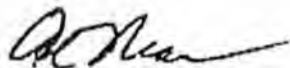
(1) A minimum 30 day impoundment for first offenders.

(2) Forfeiture for a second offense...and...

(3) Forfeiture for driving while a license is suspended or revoked for DWI.

Driving a car is a privilege...not a God given right. It's our responsibility to deny drunk drivers unlimited access to such lethal weapons.

Sincerely,



Al Near

DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

IMPOUNDMENT, REGISTRATION WITHDRAWAL OR CONFISCATION OF A VEHICLE FOR A DWI OFFENSE

IMPOUNDMENT[1]	REGISTRATION WITHDRAWN[1]		CONFISCATION	
California	Arizona	North Dakota	Alaska[5]	North Dakota[8]
Florida	Indiana[6]	Ohio[19]	Arizona[8]	Ohio[12]
Illinois[2]	Kansas[20]	Oregon[5]	Arkansas[11]	Pennsylvania[15]
Iowa[9]	Maine[5]	Rhode Island	California[10]	Rhode Island[16]
Missouri[3&21]	Minnesota	South Dakota	Georgia[12]	South Carolina[7]
Montana[4]	New Hampshire[13]	Virginia	Maine[9]	Tennessee[17]
Ohio[18]	New York	Wyoming[5]	Minnesota[16]	Texas[8]
Oregon[5]			Missouri[21]	Washington[13]
Wisconsin[17]			Montana[16]	Wisconsin[17]
			New York[14]	
TOTAL=9	TOTAL=14		TOTAL=19	

[1]The column titled "Impoundment" also includes States that immobilize vehicles. The column titled "Vehicle Registration Withdrawn" also includes States that impound license plates.
[2]Limited impoundment following a DWI arrest.
[3]Vehicle impoundment for persons under 18 who are convicted of a DWI offense.
[4]Vehicle impoundment only if the driver was under 18 years old.
[5]For a 2d offense w/n 6 years.
[6]For a subsequent DWI offense conviction, registration plates suspended.
[7]For a 4th DWI offense conviction within 10 years.
[8]For three (3) or more DWI offense convictions.
[9]For a 2nd or subsequent DWI offense conviction.
[10]An offender's vehicle is confiscated if they have had two (2) previous DWI offense convictions (within seven (7) years).
[11]For a 4th DWI offense conviction within 3 years.
[12]For a 4th DWI offense conviction within 5 years.
[13]Applies only for 2nd or subsequent DWI offense convictions.
[14]Possible for a 2nd or subsequent DWI offense convictions.
[15]Applies via "common law".
[16]For a 3rd or subsequent DWI offense conviction within 5 years.
[17]For a 3rd or subsequent DWI offense conviction within ten (10) years.
[18]For a 2nd offense within 5 years.
[19]Registration withdrawal applies to a 2nd offense and 3rd offenses within 5 years. For a 3rd offense within 5 years, the vehicle will also be "immobilized".
[20]License plate revocation for a 4th or subsequent offense.
[21]State law provides that cities may enact forfeiture ordinances.

DRUNK DRIVING STATUTORY AND CASE LAW SUMMARY

IMPOUNDMENT, REGISTRATION WITHDRAWAL OR CONFISCATION OF A VEHICLE FOR DRIVING WHILE SUSPENDED/REVOKED WHERE THE ORIGINAL LICENSING ACTION WAS FOR A DWI OFFENSE

IMPOUNDMENT	REGISTRATION WITHDRAWN[1]		CONFISCATION
California	Arkansas	Minnesota	Alabama
Delaware	Delaware	Ohio	California[7]
Michigan[3]	Maryland	Oregon	Arizona[2]
Nebraska	Michigan[5]	South Dakota	Maine[3]
New York[6]			North Carolina[2]
Oregon			South Carolina[4]
Wisconsin			
TOTAL=7	TOTAL=8		TOTAL=6

[1]The column titled "Vehicle Registration Withdrawn" also includes States that impound license plates.
[2]An offender's vehicle is confiscated if they drive while suspended/revoked for a previous DWI offense and commit another DWI offense.
[3]Applies only if the driver was the "sole owner" of the vehicle.
[4]For a 4th conviction within 10 years of driving while license is either suspended or revoked.
[5]The registration plates of the vehicle involved in the offense shall be confiscated and the vehicle impounded.
[6]For vehicles used in the offense, limited impoundment for 1st and 2nd offenses.
[7]Applies only if there was a prior misdemeanor offense either for driving while suspended or revoked or for habitual offender status.

TRAFFIC TECH

NHTSA Technology Transfer Series

Number 31 October 1992

SUMMARY OF IMPOUNDMENT AND FORFEITURE LAWS AND PRACTICES FOR DWI-INVOLVED DRIVERS

Ensuring that DWI offenders who receive the license suspension penalty actually do not drive is a major problem in most states. Many continue to drive, receive traffic citations and are involved in crashes during periods of license suspension. States have passed laws that directly affect the offender's vehicle, or license plates as a possible way of reducing this problem. For example, some states permit offenders' vehicles to be incapacitated (booted), impounded, or forfeited and sold. Other states permit their license plates to be removed and impounded. Still others permit specially marked license plates to be used.

Recently, Phase I of a NHTSA sponsored study was completed containing a description of these laws, information on their limitations and use, and the feasibility of conducting an impact evaluation for one or more of these laws.

Thirty-two states have passed these kinds of laws. Fourteen States (Alaska, California, Illinois, Montana, New Mexico, North Carolina, Nebraska, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Wisconsin) permit the impoundment, immobilization or forfeiture and sale of the vehicle of offenders who are convicted of DWI or driving while suspended as related to a DWI conviction. Laws in 11 States (Indiana, Iowa, Maryland, Michigan, Minnesota, New Hampshire, Ohio, South Dakota, Virginia, Washington, Wyoming) permit the suspension or revocation of the vehicle registration as well as the impoundment, destruction, or marking of plates. Also, 7 States (Arizona, Arkansas, Delaware, Maine, New York, North Dakota, Oregon) permit action to be taken against the registration, license plates and vehicle itself--depending on the offense.

Contact with State and local officials, members of the judiciary and police officers suggested that use of vehicle impoundment and forfeiture is rare, because such laws are generally reserved for multiple DWI offenders and because of administrative, liability, and other problems such as judges reluctance to impact innocent family members. Laws applying to license plates that are handled using an administrative procedure are used in only 5 states (Ohio, Oregon, Washington, Iowa, Minnesota) but have been applied more often. For example, in Oregon, thousands of "zebra striped" stickers have been placed by police on the plates of cars of DWI offenders stopped for driving on a suspended license. Use of these stickers precludes problems associated with vehicle liability or added costs for towing and storage as with vehicle impoundment or forfeiture laws.

In Phase II of this study, NHTSA is conducting an evaluation of the effectiveness of the sticker laws in Oregon and Washington State for drivers convicted of DWI. The primary question being addressed is what effect does the law have on driving while suspended.

A detailed technical report prepared by National Public Services Research Institute of Landover, Maryland entitled *Assessment of Impoundment and Forfeiture Laws for Drivers Convicted of DWI: Phase I Report* is now available. It should be a useful resource to States and Communities interested in vehicle sanction laws and practices as applied to DWI offenders. Also, States considering passage of license plate impoundment laws for multiple DWI offenders under the 410 Supplemental Grant Criterion may find it helpful.

For additional information about this project, contact:
Office of Program Development and Evaluation
Traffic Safety Programs, NHTSA, NTS-31
400 Seventh Street, S.W., Washington, DC 20590

WHY DOES A PERSON DRINK ALCOHOL IF NOT TO CHANGE THEIR STATE OF MIND? BAD DAY AT THE OFFICE--HAVE A DRINK--RELAX. GOOD DAY AT THE OFFICE---HAVE A DRINK CELEBRATE. UP TIGHT WITH PRESSING PROBLEMS GIVE YOUR BRAIN A REST--HAVE A DRINK. WHATEVER THE REASON GIVEN OR NOT GIVEN DRINKING ALCOHOL CHANGES YOUR STATE OF MIND. PLEASE BE AWARE DRINKING IS NOT THE ISSUE HERE. A PERSON HAS THE RIGHT TO DRINK AS MUCH AS THEY LIKE AS OFTEN AS THEY LIKE---OPERATING A MOTOR VEHICLE AFTER DRINKING ALCOHOL IS THE ISSUE.

NOT EVERY DRUNK DRIVER KILLS OR INJURES A PERSON. THE DRUNK DRIVERS THAT DO ARE THE ONES WE ARE CONCERNED ABOUT. CAN ANY ONE TELL ME WHO OR WHEN AN IMPAIRED DRIVER WILL KILL OR INJURE NEXT? THIS IS NOT SILLY TALK THIS IS REALITY WIVES, HUSBANDS, SONS, DAUGHTERS, MOTHERS AND FATHERS ARE KILLED AND INJURED EVERY DAY BY DRUNK DRIVERS. WHEN A PERSON CHOOSES TO DRINK AND ALSO CHOOSES TO DRIVE IT IS NOT AN ACCIDENT WHEN THERE IS AN INJURY OR FATALITY IT IS A VIOLENT CRIME.

GOVERNMENT IS BEST THAT GOVERNS LEAST. THIS IS A WONDERFUL IDEA AND IT WILL HAPPEN AS SOON AS SOCIETY AS A WHOLE ACCEPTS RESPONSIBILITY FOR THEIR INDIVIDUAL ACTIONS.

IT HAS BEEN PROVEN IN CITIES AND STATES THAT HAVE SUBSTANTIAL VEHICLE FORFEITURE LAWS THAT DRUNK DRIVING IS REDUCED. THE OBJECT IS TO MAKE THE STREETS AND HIGHWAYS SAFER FOR ALL. IT SAVES LIVES---IT'S THE RIGHT THING TO DO.

COST OF ENFORCEMENT IS AN ISSUE THAT SHOULD BE DISCUSSED WITH A SURVIVOR OF A DRUNK DRIVER. WHAT IS THE PRICE OF ONE HUMAN LIFE?

ON THURSDAY FEB. 12, I ATTENDED SENTENCING FOR A DRUNK DRIVER IN FAIRBANKS. SINCE 1990 THIS PERSON WAS ARRESTED FIFTEEN TIMES. YES, IT IS A PUBLIC RECORD --15 TIMES. FIFTEEN TIMES THE POLICE REMOVED THIS DRUNK FROM THE STREETS OF FAIRBANKS. FIFTEEN TIMES THE DISTRICT ATTORNEY PROSECUTED THE DRUNK DRIVER. BECAUSE THE DRUNK DRIVER HAD NO MONEY, FIFTEEN TIMES THE PUBLIC DEFENDER WENT TO COURT. FIFTEEN TIMES A JUDGE PASSED SENTENCE.

HOW MUCH DID THIS ONE INDIVIDUAL COST IN TAX DOLLARS? IT IS IMPOSSIBLE TO CALCULATE. WHO ARE THE MAJORITY OF OFFENDERS IN ALASKA JAIL? DRUNK DRIVERS. COULD THE MONEYS SAVED BY NOT HAVING TO PROSECUTE DRUNK DRIVERS BE USED IN A MORE PRODUCTIVE MANNER LIKE SCHOOLS, ROADS, HEALTH AND OTHER ISSUES?----I THINK YES.

IF IMPOUNDING THE VEHICLE OF A DRUNK DRIVER IS TO MUCH GOVERNMENT INVOLVEMENT IN PRIVATE PROPERTY WHAT IS AN ALTERNATIVE---RAISING TAXES TO PAY FOR MORE POLICE, ATTORNEYS, JUDGES AND JAILS?

THE REALIZATION OF A THIRTY DAY IMPOUNDMENT FOR FIRST TIME OFFENDERS WOULD REALLY MAKE A PERSON THINK BEFORE DRIVING IMPAIRED. SAFER ROADS FOR ALL OF US.

TAXPAYERS OUTNUMBER DRUNK DRIVERS. IT CAN ALSO BE SAID TAXPAYERS SUPPORT DRUNK DRIVERS.

THERE IS NO DOLLAR VALUE THAT CAN BE PLACED ON A LIFE. DRUNK DRIVERS KILL PEOPLE EVERY DAY.

WHEN A PERSON CHOOSES TO DRINK ALCOHOL AND ALSO CHOOSES TO DRIVE, IT IS NOT AN ACCIDENT--IT IS A VIOLENT,PREVENTABLE, CRIME.

AS I SAID IN THE BEGINNING, DRINKING ALCOHOL IS NOT THE ISSUE. DRIVING DRUNK IS.

PATRICIA MACK
412 BARANOF
FAIRBANKS, AK 99701   907 452-4924

7 of 8 intoxicated drivers involved in fatal crashes have no prior convictions within the past 3 years.

Repeat offenders are persistant drinkers and persistant drinking drivers. Whatever the judicial system did to them the first time they were arrested for DWI did not work, and changing behavior is difficult.

Sally Eklund
Erik - 21 years old - 3rd time offender

Civil Forfeiture in Portland, Oregon

A Program to Reduce Illicit Driving by Offenders

Robert B. Voas

Paper Presented at the

Transportation Research Board Meetings
Washington, D.C.
January 1992

National Public Services Research Institute
8201 Corporate Drive, Suite 220
Landover, Maryland 20785

INTRODUCTION

Ensuring that DWI offenders who receive the license suspension penalty actually do not drive is a major problem in most states. This is clearly demonstrated by the fact that many suspended drivers continue to be involved in crashes and to receive traffic citation during periods of license suspension. Moreover, research in the states of California and Washington and experience in a number of other states indicates that half of those drivers who have been suspended fail to apply for license restoration when they become eligible. Many of these drivers delay for a year or more before reapplying for their licenses. As administrative per se laws are passed in more of the states and BAC limits are lowered, it is likely that an increasing number of individuals will receive license suspensions as a result of DWI convictions and that this compliance problem will grow. This paper describes a vehicle forfeiture program designed to reduce this problem.

An important feature of the Portland Ordinance is that it provides for civil forfeiture. The basic distinction between criminal forfeitures and civil forfeitures is the question of whether the penalty is assessed against the person of the object to be seized. A criminal forfeiture is based on conviction for a criminal offense and is viewed as a penalty for having committed that offense. In such actions, it is the individual who is charged and who must plead guilty or not guilty and who is ultimately judged to be at fault and penalized by, among other means, losing property through forfeiture.

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

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

The background to this action was a serious problem that was developing in Portland and to a certain extent, in the state as a whole, in the enforcement of Driving While Suspended laws. The principle penalty for this serious offense was a jail sentence. However, Oregon jails were overloaded and many under court restraining orders. Therefore, many of the offenders convicted could not be accommodated in a timely manner and ultimately, some sentences had to be suspended.

The inability to effectively sanction offenders led to a search for alterative methods of preventing Driving While Suspended. An initial effort was made to amend the state forfeiture law to provide for the impoundment and forfeiture of vehicles driven by suspended drivers where the suspension resulted from a drunk driving conviction. The state legislature, however, failed to act on the bill, so the City Council of Portland took action. The original ordinance was passed in February 1989, but provided that it would not take effect until 90 days after the adjournment of the legislative assembly and then only if the assembly failed to enact a state-wide system for impounding vehicles operated by persons whose license had been suspended. Since the legislature failed to act, the ordinance came into effect and began to be enforced on December 15, 1989.

OPERATION OF ORDINANCE

Civil forfeitures, on the other hand, focus upon the unlawful use of a piece of equipment or other property irrespective of the owner's culpability. The owner is usually not mentioned directly in the suit and it is not necessary for the owner to be convicted of a crime for the forfeiture to proceed. The action is taken against the vehicle because it has become a public nuisance, not as a penalty for criminal behavior. Therefore, the seizing and the confiscation of the vehicle can proceed before the trial and conviction of the operator for a criminal offense. The seizure does not depend upon a conviction.

The forfeiture procedure provides for the stopping of a vehicle by a police officer based on abnormal or illegal driving or involvement in a crash. If an officer determines that the driver is

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

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

The ordinance provides for an expeditious hearing within 5 days after vehicle impoundment if the registered owner or a holder of other security interest files a written request for a hearing to show why the vehicle should not remain impounded. At such a hearing, the interested party can overturn the impoundment by demonstrating that the police officer did not have probable cause to make the stop or that the operator of the vehicle was not suspended or revoked for driving under the influence of the intoxicants. If a hearing is not requested or the hearing officer determines that the impoundment action was valid, then the City Attorney may institute legal proceedings to forfeit the vehicle to city within 42 days after impoundment. If the City Attorney does not take that action within 42 days, the vehicle is released to the registered owner.

FIRST-YEAR EXPERIENCE WITH THE PORTLAND ORDINANCE

Table 1 summarizes the experience during calendar year 1990 with the City of Portland Vehicle Forfeiture Ordinance for drivers operating while suspended for DWI. In total, 197 vehicles were seized of which 117 were ultimately released and 80 forfeited to the city. Of those 80, 30 have actually been auctioned. During this period, only one offender whose vehicle was seized has

requested a hearing on the issue of probable cause to seize the vehicle. In that case, the Judge determined that the seizure was valid and the forfeiture process proceeded. The fact that 60% of the vehicles were released might at suggest that the forfeiture program is not working. However, most of these releases are to third-parties who have a financial interest in the vehicle. These owners or lien holders must pay the towing and storage cost in order to repossess their vehicle as well as execute a stipulated judgement form which requires them not to return the car to the suspended driver. The form requires that if they do, and the offender is again apprehended using the vehicle while his or her license is suspended, the vehicle will be forfeited to the city and the owners, or lien-holders, interest in the vehicle will be forfeited.

Vehicle releases occur under the following situations:

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

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

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

4. *Crash-Involved Vehicles* - Vehicles that are of little value because they are severely damaged in crashes are normally released to the offenders since they have no value for the city. The offender, should he wish to retrieve the vehicle, must pay the towing, storage, and impoundment costs plus the vehicle must be

repaired sufficiently to meet requirements of the state for use on state highways. In many cases, this involves a much greater expense than the value of the damaged vehicle so the vehicle is frequently turned over by the offender to the wrecking yard for sale as scrap.

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

Thus, many of the actions listed as a release of a vehicle actually deprive the offender of the use of that vehicle. In these cases, the City of Portland does not receive the income that would result from a forfeit and sale at auction. Nor, on the other hand, does the City sustain a loss from paying for the storage of a junk vehicle. These exceptions to the forfeit procedure make the ordinance accessible to the public by protecting the rights of innocent owners and lien holders (though these individuals must still pay out-of-the-pocket for towing, storage, and impoundment costs). This procedure also avoids running up the city's expense for forfeiting and auctioning vehicles where the costs of this action would probably exceed the price that could be obtained from the vehicle.

Cost of the Vehicle Forfeiture Program in Portland, Oregon

Table 2 summarizes expenditures and revenues presented in an annual report to the City Council by Commissioner Earl Blumenauer on January 16, 1991. The budget shows revenues from car sales in the 1990 budget year of $60,000 with this increasing to $166,000 in the 1991-1992 year. This cash flow is based on the assumption of an average sale price of $980 per auctioned car, which has been the experience to date. In the FY 1991-1992 period, the city plans to open a storage lot of its own; therefore, it will create a new source of revenue from storage payments by the owners or lien holders of vehicles seized under the ordinance.

Table 3 indicates the value of the first 53 vehicles. As can be seen, approximately 70% of the vehicles were valued at less than $1,000. this low value is typical of multiple DWI offenders, many of whom drive junk cars. However, while the average price received on action for a vehicle was $980, a larger percentage of the more expensive vehicles were seized and sold by the City of Portland.

While the budget shown in Table 2 indicates that the program will be subsidized from public funds in the amount of approximately $70,000 for the FY 1991-1992 year, it should be kept in mind that the community would experience a considerable expense were these offenders given the more traditional penalty of time in jail. Data on the cost of alternative criminal prosecution of these offenders are not available, but it is clear that significant costs arise in prosecuting, convicting, and supervising individuals guilty of driving while suspended. Properly-run vehicle forfeiture programs have the potential benefit that since they raise some revenue to offset the costs of the program. It is possible that the amount of revenue could be increased, if program costs were added to the towing and storage charges which are paid by individuals to whom vehicles are released.

Police Reaction to Forfeiture Ordinance

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

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

An interview was also held with the owner of the private towing company which is used by the Portland Police Department for picking up and storing vehicles under the forfeiture ordinance. The company representative indicated that the procedure presented no problem to them and that the business was generally profitable. When called by the police, they would pick up the car and tow it to their storage lot and hold it until the owner arrived with a release form from the police department. The owner would then be required to pay their towing costs of $55 plus $12 a day storage. If the owner could not, or would not pay the bill, they could then take action to have the vehicle forfeited to them by communicating with the Department of Motor Vehicles and sending certified letters to any owner and lien holders of record. Unless these owners appeared to pay the cost and receive the car, the vehicle would be sold at public auction. Since it costs relatively little to store it on their lot, they apparently found this procedure to be generally profitable.

Legal Challenge to the Forfeiture Ordinance

To date, there have been approximately 395 vehicle seizures under the Portland Ordinance if those relating to prostitution are added to the DWI offenses. Only one of these seizures has been challenged in court and the ensuing trial in the District Court of Multinomah County resulted in

finding in favor of the ordinance and an affirmation of the seizure. The plaintiff in this case put forward six issues challenging the validity of the ordinance, and in an unusual action, the court provided a lengthy written opinion with respect to each of the issues. The issues are raised and the court's response are significant since many of these issues are raided by critics of forfeiture laws. The issues raised are described below:

1. The claimant challenged the ordinance on the basis that it violated his rights under the 4th Amendment of the U.S. Constitution... in that it authorized the seizure of a motor vehicle for forfeiture without requiring the issuance of a warrant. Judge Michael H. Marcus's opinion cites several state and federal cases which support the position that crimes involving an automobile can be an exception to the Constitutional requirement. He notes that the mobility of the automobile justifies its warrantless seizure under an otherwise valid forfeiture ordinance.

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

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

4. The claim was made that the ordinance is actually a criminal law rather than a civil enactment, and thus, that the claimant is entitled to the full protection afforded the defendant in a criminal proceeding including that of an appointed

council. The judge found, however, that the claimant's culpability is not a prerequisite to the forfeiture. The judge noted that a conviction for an offense is not a requirement for the forfeiture which would be the case if it was viewed as a criminal forfeiture. The judge notes that "No opprobrium can attach against any claimant as the mere result of a judgment of forfeiture. A registered owner or lien-holder (other than a financial institution) might loose as much or more than an owner-occupant such as this claimant, but all that a judgement of forfeiture announces as to any of them is that they did not successfully assert a claim or affirmative defense. The proceeding is not even brought against a person by name."

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

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

SUMMARY

Despite the relatively small number of cases to which the forfeiture ordinance has been applied within the City or Portland, this innovative effort provides a unique demonstration of the potential for using civil forfeiture as a tool for preventing driving while suspended by convicted DWI offenders. The numbers of offenders affected are too small to provide a statistically valid evaluation of the impact of the ordinance. However, it is noteworthy, as pointed out in the

annual report on the program, that whereas in 1987 and 1988, there had been 935 alcohol-related felony DWS cases, there were only 197 vehicles seized during the 1990 year. This may give some indication that the ordinance is having a deterrent effect.

The noteworthy features of this ordinance include:

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

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

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

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

5. Procedures are established for safeguarding the rights of innocent leinholders and vehicle owners. At the same time, the process assures that those who provide vehicles to the offender are penalized through the requirement to pay expenses. They must also execute a guarantee that they will not return the vehicle to the offender.

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

7. The program generates a substantial income to offset, at least in part, its cost.

While not self-sufficient, it may represent a relatively inexpensive approach to controlling the suspended driver.

TABLE 1

City of Portland, Oregon

Vehicle Seizure and Forfeiture Statistics

DWS/DUII

January through December, 1990

	VEHICLES				
	Seized	Released	Pending	Forfeit	Auctione[d]
DWS/DUII	197	117	0	80	30

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TABLE 2

Veh'cle Forfeiture Enforcement Program
Assuming 300 Vehicles Seized, Seek Forfeiture on 240

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

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

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

Table 3
City of Portland, Oregon
DUII/DWS Seizures and Forfeitures

Value of Vehicle	Vehicles Seized	Vehicles Pending	Vehicles Forfeited	Percent Forfeited
0 - 1,000	36	8	16	44%
1,000 - 5,000	13	3	8	62%
5,000 or more	4	1	3	75%

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US Department of Transportation
National Highway Traffic Safety Administration

DOT HS 807 870
Final Report
June 1992

Assessment of Impoundment and Forfeiture Laws for Drivers Convicted of DWI

Phase I Report: Review of State Laws and their Application

This document is available to the public from the National Technical Information Service, Springfield, Virginia 22161.

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15. Supplementary Notes

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

16. Abstract

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

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

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

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EXECUTIVE SUMMARY

OVERVIEW

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

Phase I of this study had three objectives:

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

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

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

STUDY METHODS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Findings on the Application of Impoundment and Forfeiture Laws

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

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

Factors Which are Important in Implementing These Programs

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

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

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

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

Feasibility of Conducting an Impact Evaluation

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

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

				DWI while DWS	Criminal	Telephone/Report	

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

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

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

Notes:

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

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THE USE OF VEHICLE AND PLATE SANCTIONS

Note: This is a summary of NHTSA research and evaluation programs looking at effects of vehicle sanctions on DUI/DWI offenders. These sanctions include vehicle impoundment, vehicle forfeiture, vehicle confiscation, vehicle immobilization, ignition interlocks, license plate impoundment, special license plates and license plate tagging programs.

In one study, 32 percent of suspended second time DWI offenders and 61 percent of third time offenders received violations or crashes on their driving record during their suspensions. Many drivers do not reinstate their license even when eligible to do so. In one study involving first time DWI offenders who had their licenses suspended for 90 days, 50 percent had not reinstated their licenses three years after they were eligible to be relicensed. Also, many of these offenders drive without auto insurance and do not attend treatment programs where such programs are a prerequisite for reinstatement. Thirty-five states have laws that can affect the vehicles or vehicle plates of offenders. Overnight impoundment of the vehicle of an individual arrested for impaired driving is a typical practice in most states. Several states have laws which permit longer term impoundments for certain offenses, usually for repeat DWI offenses or for Driving While Suspended (DWS) where the original offense was related to a DWI infraction. States which impound vehicles for these types of offenses include California, Delaware, Florida, Illinois, Iowa, Michigan, Missouri, Montana, Nebraska, Ohio, Oregon, and Wisconsin. Revoking or suspending a motorist's operators license is now a common penalty for many traffic infractions especially those related to impaired driving. Unfortunately, many of these offenders continue to drive. It is not unusual for suspended drivers to receive additional traffic citations or be involved in crashes during periods of license suspension. As a way of reducing this problem, many states have passed laws that directly affect the offender's vehicle or license plates as a sanction for the impaired driving offense or for driving with a suspended license. Some states now permit the vehicles of drivers convicted of certain impaired driving offenses to be impounded immobilized using a club or boot or forfeited and sold. Other states allow the license plates to be removed and impounded. Still others allow for the use of specially marked license plates and others allow for the installment of alcohol ignition interlock devices.

In 1994, 1.38 million people were arrested in the U S for driving under the influence (DUI) or driving while intoxicated (DWI), more than all other reported criminal offenses except larceny and theft. About one-third of all drivers arrested or convicted of DWI each year are repeat DWI offenders. Drivers with prior DWI convictions are also overrepresented in fatal crashes and have a greater relative risk of fatal crash involvement. Many second and third time convicted DWI offenders are required to install ignition interlock devices on their vehicles. In some jurisdictions interlocks may also be used for first offenders.

Contacts with state and local officials members of the judiciary and police officers suggest that while impoundment and forfeiture legislation is common, application of these laws is rare. The reasons cited include :

1. These laws are generally reserved for the relatively few multiple DWI offenders rather than

the more numerous first offenders;

2. There are difficulties in dealing with non- offender owners;
3. It is costly to store junk vehicles that are not reclaimed by their owners; and

4. Judges are reluctant to punish innocent family members.

Yet, some states have developed innovative ways for dealing with these problems. Minnesota experienced a twelve-fold increase in the use of its license plate impoundment law when they switched from court- based to administrative enforcement of the impoundment law. The following recommendations may help state legislators and local officials revise existing legislation or enact new legislation to increase the use and effectiveness of their laws. Pass legislation that provides for administrative impoundment of plates and civil forfeiture of vehicles. In general, try to avoid criminal laws providing for forfeiture since courts rarely use them. Enact legislation that allows for seizure at the time of arrest, if officers impound either the vehicle or plate. It is more difficult and costly to track down the offender's vehicle later and the delay gives the offender the opportunity to transfer vehicle ownership. Pass legislation that makes it unlawful for the owner of a motor vehicle to knowingly allow another person to drive the vehicle unless the owner determines the person possesses a valid driver's license. Also, require non- offender owners to sign an affidavit stating they will not allow the offender to drive the vehicle again while the suspension is in effect. In 18 states, the vehicle registration is withdrawn upon conviction of a DWI offense or a DWS offense, where the original licensing action can be related to a DWI offense. States which can withdraw vehicle registrations for a DWI or DWS offense are Arizona, Arkansas, Delaware, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, New Hampshire, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Virginia, and Wyoming. Some of these states have their own enforcement departments that send out investigators to pick up the license plates of these offenders. However, in general the vehicle license plate suspension provisions are poorly enforced. Twenty- one states permit the vehicle of multiple DWI or DWS offenders to be confiscated and sold. These states are Alaska, Alabama, Arizona, Arkansas, California, Georgia, Maine, Minnesota, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas,,Washington and Wisconsin.

One way courts can prevent a DWI or DWS offender from using his or her car is to immobilize the steering wheel by using a club or lock a wheel using the boot. Currently, only Ohio uses this type of sanction. A few states, Iowa Minnesota and Ohio, issue special license plates in order to permit the use of the vehicle by family members of convicted DWI offenders. Two states, Oregon and Washington, enacted laws which permitted officers to affix a zebra sticker over the annual year portion of the license plates of offenders.

Ignition Interlock:

The purpose of an ignition interlock is to prevent a person who has consumed alcohol from operating a vehicle The device measures alcohol concentration in the breath and is attached to a vehicle's ignition system. Before the car can be started a driver must blow a sample of his or her

breath into the interlock device If the driver's breath alcohol is below a specified concentration the driver will be able to start the vehicle's engine However, if the driver has a breath alcohol concentration above the established level, the vehicle cannot be started. Thirty- four(34) states have laws providing for either the discretionary or mandatory use of ignition interlock devices for repeat and chronic DWI offenders The ignition interlock is discretionary in 31 states. Alaska, Arkansas, Colorado, Delaware, Florida, and Georgia maintain a computerized state record keeping system to document vehicle impoundment and forfeiture and license plate actions. This allows states to monitor use of the sanctions, apply impoundment laws to all repeat DWI offenders and to all DWS offenders where the original infraction was for a DWI offense. This will encourage an increase in the use of impoundment since many courts do not apply this sanction to second time DWI offenders or to first time DWS offenders. Where the law provides for special license plates, including family plates, some license plate sticker laws incorporate a provision that permits officers to stop the vehicle for the sole purpose of checking whether the driver is operating the vehicle while their license is under suspension.

In Minnesota violators incurring three DWI violations in five years or four or more in ten years can have their license plates impounded and destroyed. An evaluation of the effects of the law found a significant decrease in recidivism for violators who had their plates impounded versus violators who did not. Violators whose license plates were impounded by the arresting officer at the time of arrest showed a 50 percent decrease in recidivism over a two year period when compared with DWI violators who did not experience impoundment.

In Franklin County, Columbus, Ohio, researchers are conducting a field test to study the deterrent effects that a combined impoundment and immobilization sanctions program has on crashes and violations for multiple DUI (Driving Under the Influence) and suspended license offenders. From September 1993 to September 1995, the vehicles of nearly 1,000 offenders were impounded and then immobilized. The recidivism rates of these offenders are being compared to eligible offenders who did not receive a vehicle sanction. So far those offenders whose vehicles were impounded and immobilized had lower rates of recidivism both during and after the termination of the sanction than did those eligible offenders who managed to avoid the impoundment and immobilization sanctions. The project will also provide information on methods and procedures for implementing such a program, the types of problems that may be experienced and recommendations for dealing with them.

NHTSA in conjunction with the State of California Department of Motor Vehicles is conducting a three-year effort to study the impact of California's new vehicle impoundment and forfeiture laws as applied to unlicensed and suspended license offenders. The innovative 30-day impoundment law is not typical of those found in most states but involves a civil action independent of a criminal DWS conviction for those caught driving without a license. Preliminary findings indicate

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Ford
2/13/98

CS FOR HOUSE BILL NO. 358( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KELLY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to impoundment or forfeiture of a motor vehicle or aircraft;
2 and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * **Section 1.** AS 28.35.036 is amended by adding a new subsection to read:
5 (f) A motor vehicle or aircraft may be impounded if the impoundment is
6 incident to a valid arrest by a peace officer and there is probable cause to believe the
7 motor vehicle or aircraft was operated or driven by a person while committing a
8 violation of AS 28.35.030 or 28.35.032. A motor vehicle or aircraft impounded under
9 this subsection shall be held for two days if the person has not been previously
10 convicted of violating AS 28.35.030 or 28.35.032 and shall be held for five days if the
11 person has been previously convicted of violating AS 23.35.030 or 28.35.032, unless
12 a court orders continuation of the impoundment. In this subsection, "previously
13 convicted" has the meaning given in AS 28.35.030, but does not include a conviction
14 for violating AS 28.33.030.

1 * **Sec. 2.** AS 28.35.038 is amended to read:

2 **Sec. 28.35.038. Municipal impoundment and forfeiture.** Notwithstanding
3 other provisions in this title, a municipality may adopt an ordinance providing for the
4 impoundment or forfeiture of a motor vehicle [,] or aircraft, involved in the
5 commission of <u>a felony offense or</u> an offense under AS 28.35.030, 28.35.032, or an
6 ordinance with elements substantially similar to AS 28.35.030 or 28.35.032. An
7 ordinance adopted under this section is not required to be consistent with this title or
8 regulations adopted under this title.

9 * **Sec. 3.** AS 29.35.010 is amended to read:

10 **Sec. 29.35.010. General powers.** All municipalities have the following
11 general powers, subject to other provisions of law:
12 (1) to establish and prescribe a salary for an elected or appointed
13 municipal official or employee;
14 (2) to combine two or more appointive or administrative offices;
15 (3) to establish and prescribe the functions of a municipal department,
16 office, or agency;
17 (4) to require periodic and special reports from a municipal department
18 to be submitted through the mayor;
19 (5) to investigate an affair of the municipality and make inquiries into
20 the conduct of a municipal department;
21 (6) to levy a tax or special assessment, and impose a lien for its
22 enforcement;
23 (7) to enforce an ordinance and to prescribe a penalty for violation of
24 an ordinance;
25 (8) to acquire, manage, control, use, and dispose of real and personal
26 property, whether the property is situated inside or outside the municipal boundaries;
27 this power includes the power of a borough to expend, for any purpose authorized by
28 law, money received from the disposal of land in a service area established under
29 AS 29.35.450;
30 (9) to expend money for a community purpose, facility, or service for
31 the good of the municipality to the extent the municipality is otherwise authorized by

1 law to exercise the power necessary to accomplish the purpose or provide the facility
2 or service;
3 (10) to regulate the operation and use of a municipal right-of-way,
4 facility, or service;
5 (11) to borrow money and issue evidences of indebtedness;
6 (12) to acquire membership in an organization that promotes legislation
7 for the good of the municipality;
8 (13) to enter into an agreement, including an agreement for cooperative
9 or joint administration of any function or power with a municipality, the state, or the
10 United States;
11 (14) to sue and be sued;
12 **(15) to adopt an ordinance providing for motor vehicle or aircraft**
13 **impoundment or forfeiture as provided under AS 28.35.038**.
14 * Sec. 4. This Act takes effect July 1, 1998.

Alaska State Legislature

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House District 31

House Of Representatives

February 17, 1998

Memorandum

To: Representative William Williams, Chair
House Transportation Committee

From: Representative Pete Kelly

Re: HB 358, changes from version A to version H.

House Bill 358 started out using the Municipality of Anchorage's forfeiture ordinance as a model for a statewide DWI vehicle forfeiture policy. The Anchorage model, however, is better suited to municipalities. Vehicle forfeiture provisions do not work well in remote areas of Alaska, especially those areas lacking towing services and storage yards.

Working with the Department of Public Safety and the Department of Law, HB 358 has been modified to focus on impoundment of vehicles incident to a DWI arrest.

Sections 1, 2, 3, 4, 5, 6, 7, 8, and 10 have been dropped from the bill. Section 9 has been shortened and modified to require impoundment for two days with the first DWI arrest, and five days upon the second or subsequent DWI arrest. Two new sections have been added to the bill reinforcing a municipality's authority to enact forfeiture laws for the seizure of vehicles incident to a DWI arrest or used in a felony crime.

These changes streamline the bill, yet provide for the immediate consequences desired by those seeking to reduce the incidence of DWI in Alaska.

Alaska State Legislature

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House District 31

House Of Representatives

Sponsor Statement

HB 358

House Bill 358 provides immediate consequences for individuals who choose to drink and drive. It allows police officers statewide to impound a vehicle for two days and for five days if it is a second arrest for drunk driving.

Impounding a vehicle for two days allows the individual to sober up before he drives his car away. The impoundment time helps keep the driver from re-offending immediately.

HB 358 also provides authority for municipalities to provide for the forfeiture of vehicles used by drunk drivers. Forfeiture works well in Anchorage, and can work in many municipalities, but it is problematic as a statewide policy.

House Bill 358 recognizes the tragedy and harm wrought by drunk drivers in Alaska and furthers the message that Alaska does not allow individuals to drink and drive.

CAR WARS - HOW TO TAKE THEM AND HOW TO GET RID OF THEM

By: Cliff John Groh and Scott A. Brandt-Erichsen

Cars and other vehicles pose some sticky problems. Two of the ways that they become problematic are the subject of this paper: 1) when they are used by drunk drivers and 2) when they are disposed of improperly. There are a couple of strategies which have been used lately to try to address both of these problems. To a certain extent they involve common issues and common procedures. Each will be discussed in turn.

The Municipality of Anchorage has been a leader in the field of DWI vehicle seizure and forfeiture in Alaska. Separately, the Ketchikan Gateway Borough has recently been making strides to address junked and abandoned vehicles. This report on experiences with these programs identifies the program and discusses some of the cases which have touched on relevant issues. The discussion of cases is not exhaustive, but is generally representative of the themes which are repeated in these areas.

I. VEHICLE IMPOUNDMENT AND FORFEITURE FOR DWI

A. Program

1. Context

Recognition of the carnage and destruction caused by Driving While Intoxicated (DWI) has increased in the past decade and a half. In four of the past 16 years. for example, a person in Anchorage was statistically more likely to be killed by a drunk driver than by someone using a firearm or a knife. This increased recognition has led to an increased emphasis on responding to the problem of DWI. The increased emphasis shows up in:

- increased devotion of police resources to enforcing the law against DWI
- improved techniques for detection of intoxicated drivers. including the use of standardized field sobriety texts, particularly the horizontal gaze nystagmus (HGN) test
- immediate administrative suspensions and revocations of the driver's license
- institution of the crime of Refusal to Submit to a Chemical Test (Refusal). making a crime of what formerly had led only to administrative license suspensions and

revocations

- mandatory minimum sentences, particularly the mandatory minimum three days in jail for the first offense of DWI

- the introduction of the crime of felony DWI, leading to longer jail sentences and more intensive probation for the worst recidivists

- impoundment and forfeiture of the vehicles driven by those arrested for DWI

Increased law enforcement and the use of improved detection techniques are widespread throughout the country. All the legal provisions listed above are applicable throughout Alaska except for impoundment and-forfeiture. In Alaska, only the Municipality of Anchorage and the City of Ketchikan routinely tow the vehicles of persons arrested for DWI. Only the Municipality of Anchorage tows vehicles of all DWI arrestees and seeks 30 days of impoundment for a first offense as well as forfeiture for a subsequent offense. The combination of these DWI countermeasures--particularly the three-day mandatory minimum sentence for a first offense and the impoundment/forfeiture program--give Anchorage the toughest laws against DWI in the United States.

2. State Statutes Concerning Impoundment and Forfeiture

AS 28.35.036 (Appendix A) provides that the State may move for forfeiture of the vehicle used in DWI or Refusal upon conviction for a third or subsequent offense. This provision is invoked relatively rarely, however, because the penalty is discretionary with the court and the police do not routinely seize the vehicles at the time of arrest. Even if the court does order forfeiture at sentencing, the order is often never executed because the vehicle cannot be located.

3. Municipality of Anchorage's Ordinances

The Municipality of Anchorage has enacted its own ordinances for impoundment and forfeiture of vehicles used in DWI and Refusal. AS 35.28. 038 (Appendix A) allows these ordinances, which are codified at AMC 9.28.020-.0' (Appendix B).

Anchorage's ordinances declare that the vehicles driven by drunk drivers are public nuisances and allow seizure of the vehicle incident to the arrest of the driver. Since the law was implemented in April of 1994, the police in Anchorage have routinely seized the vehicles used by drivers arrested for DWI. The Municipality seeks 30 days of impoundment if the offense is the driver's first, and seeks forfeiture of the driver's interest if it is a second or subsequent offense. Approximately one-third of the vehicles towed have been driven by a driver with a previous conviction within the past 10 years and are thus eligible for forfeiture. Also noteworthy is the license status of these arrested drivers. More than one-third of all drivers arrested for DWI have licenses which are revoked, suspended, or otherwise invalid. In many cases, the license is invalid because of a previous DWI conviction.

other than the driver through a civil action filed before the Municipality's administrative hearings officer. Service upon owners and lienholders is usually accomplished by mail. supplemented when necessary by or personal service or publication.

More than half of the vehicles seized are owned or co-owned by the driver charged with DWI. Whatever the ownership of the vehicle. an owner can get a vehicle released upon payment of a bond and the $160.00 administrative fee plus towing and storage fees. Bonds are set within two working days of the seizure of the vehicle. The bond on a vehicie is like bail on a person: it secures the release of the vehicle pending a civil administrative hearing, criminal trial, or other resolution of the matter. Vehicle return bonds are tied to the age of the vehicle as a proxy for the value of the vehicle. and minimum amounts for the bonds are set out in the ordinances.

The ordinances set out a number of consequences for someone who secures the release of a vehicle through posting a vehicle return bond and then fails to return the vehicle when ordered. The bond is routinely forfeited. The conduct is a civil offense exposing the offender of up to a $300 a day fine for each day the vehicle is not returned. The police may recover the vehicle.

4. Dispositions of Seized Vehicles

Vehicles seized are disposed of through: a) settlements or stipulations: b) release pursuant to dismissal or reduction of criminal charge or order at a hearing; c) recovery after 30 days of impoundment (in cases in which the Municipality is only seeking 30 days of impoundment); d) forfeiture and sale or other disposal; and e) abandonment after 30 days of impoundment and subsequent sale by the towing and storage contractor to satisfy the statutory towing and storage lien.

a. Settlements (Stipulations)

The civil actions against the interests of the owners and lienholders (other than the driver) are usually resolved through settlements, traditionally called stipulations. These stipulations typically involve the payment of fees, including an $160 administrative fee, costs of $6-$12, an attorney's fee of $102, and the towing and storage fees. Towing fees are $25 for a day-time tow and $1 for a night-time tow plus mileage fees of $4 per mile, and storage fees are $2 a day.

Stipulations also include a promise by the owner or lienholder recovering the vehicle not to allow the DWI arrestee to drive the vehicle while intoxicated or while unlicensed. The stipulation provides that the Municipality may seize the vehicle and sue for forfeiture if this promise is breached. If the Municipality is seeking forfeiture, a stipulation will also require that the person recovering the vehicle give the Municipality any equity owned by the DWI arrestee.

A stipulation ends the civil case and takes the vehicle out of the criminal case. thus ending the Municipality's efforts to obtain forfeiture or additional days of impoundment against the vehicle.

The Municipality will not stipulate with owners or lienholders who have promoted the offense. Evidence of such promotion can come from presence in the vehicle at the time of the arrest

or from an admission that the owner allowed the driver to use the vehicle with knowledge that the driver was not properly licensed.

b. Release of Vehicle Pursuant to Reduction or Dismissal of Criminal Charge or Order at Hearing

A disposition of a criminal case which results in other than a conviction for DWI or Refusal results in dismissal of the civil administrative case against owners or lienholders who are not the criminal defendant. Owners and lienholders may ask for a hearing on the civil administrative case and contest the impoundment or forfeiture.

Any person recovering a vehicle following a reduction or dismissal of a criminal charge or pursuant to a dismissal or order of release in the administrative case must pay the administrative fee and the towing and storage fee. The only two exceptions are (a) the police did not bring Municipal charges against the alleged driver or (b) the police had no reasonable suspicion to stop the vehicle or probable cause to arrest the alleged driver.

c. Recovery of Vehicles After 30 Days of Impoundment

Vehicles for which the Municipality is seeking 30 days of impoundment may be released to owners or lienholders at the end of the 30 days. Those recovering the vehicle pay administrative and towing and storage fees.

d. Forfeiture

About 10 percent of all vehicles towed incident to a DWI arrest are forfeited and sold at auction. This represents approximately one-third of all the vehicles for which the Municipality has sought forfeiture. To date, all vehicles forfeited have been sold at auction, but the ordinance also provides that the police may use forfeited vehicles for purposes of law enforcement.

Auctions of forfeited vehicles are held once a month, casually on the fourth Saturday of each month.

e. Sale of Abandoned Vehicles Pursuant to Towing and Storage Lien

Vehicles for which the Municipality seeks 30 days of impoundment are disposed of by the towing and storage contractor if no one recovers the vehicle after being sent notice of the intent to sell the vehicle if there is no recovery. This disposal occurs under the state's towing and storage lien created in AS 28.10.502.

f. Dispositions in Year to Date

Dispositions of Vehicles Towed Incident to DWI Arrest.

January 1 - October 31, 1996

Recovered after 30 days of impoundment	457
Released pursuant to stipulation	326
Forfeited and sold at auction	127
Abandoned after impoundment and sold	156
Pending/Other	498
	1,564

5. **Revenues and Costs of Program**

The Municipality has added staff at the Municipal Attorney's Office and the Anchorage Police Department to operate the DWI vehicle impoundment/forfeiture program. The Municipality also collects revenues from administrative fees, attorney's fees, net auction proceeds, and vehicle return bond forfeitures. It appears that the revenues will cover approximately three-quarters of the costs in 1996.

6. **Publicity**

Municipal ordinances require that bars, liquor stores, and restaurant which serve alcohol post signs warning of the impoundment/forfeiture law. The signs say "DRIVE DRUNK--LOSE YOUR CAR!" and "Don't Get Hooked on Drinking and Driving." These signs are intended to be eye-catching, with bold print underscoring the simple message. Additional publicity, particularly on radio and television, would also be helpful in increasing deterrence.

7. **Effects on Incidence of Driving While Intoxicated**

The program's effects on the incidence of DWI are difficult to measure. The number of DWI arrests fell in 1995--the program's first full year of operation--but appear likely to rise in 1996. The difficulty of assessing the program's effect on incidence of DWI is caused by an increased law enforcement focus on DWI which has occurred since the program started in April of 1994. The total number of Anchorage Police Department (APD) patrol officers has increased since that date. Probably more significant than the total number of patrol officers, however, is the number of hours of police resources specifically devoted to DWI enforcement. A special federal grant has allowed APD to pay overtime to officers to work on traffic enforcement. Enforcement of traffic laws against speeding, improper turns and lane changes, and stoplight violations, particularly at night, is a proven method of producing DWI arrests. Officers assigned to DWI enforcement also routinely process

persons arrested for DWI by other patrol officers. thus allowing patrol officers to be more efficient and increase their total DWI arrests. The use of grant-funded overtime for DWI enforcement dramatically increased beginning in the fall of 1995. and has generally stayed at a higher level since then (see Appendix J). The amount of grant-funded overtime for DWI enforcement was almost three times higher from June through September of 1996. for example. than for that four-month period in 1995.

A more accurate measure of the true incidence of DWI than the number of DWI arrests is the number of deaths from alcohol-related DWI automobile crashes.

Number of Deaths from Alcohol-Related DWI Automobile Crashes,

1990 - 1996

1990	13
1991	13
1992	12
1993	12
1994	13
1995	9
1996 (through 10-29-96)	7

Some anecdotal evidence of deterrence exists. In addition, the program does prevent an infrequent but troubling phenomenon occurring previously. In a number of cases over the years, the police recall arresting a person for DWI who would secure release on bail or on own recognizance who would return to the vehicle and drive drunk again, occasionally causing a crash with death or injury. Since the impoundment/forfeiture program began, no one has driven drunk in the same vehicle after being arrested for DWI that same night.

B. Law

The statutory provisions applicable are included in the appendix. The state provisions, AS 28.35.036 are in Appendix A. The ordinance used in Anchorage is in Appendix B.

The legal issues involved are seizure. due process, double jeopardy and excessive punishment questions.

1. Seizure

Under what circumstances may a vehicle be seized? Given the fact that DWI seizures are all accompanied by an arrest. the seizure itself does not present a difficult issue under 13 AAC 02.345. Some other instances in which seizure of a vehicle and related search issues may arise are noted

Given appropriate circumstances and sufficient time any vehicle may be seized with a warrant. We know this already and this is not where the problems usually come up. We will skip further discussion of seizures with a warrant at this point.

b. Without warrant

Warrantless seizure may be justified in several circumstances, most of which boil down to where the public interest in the vehicle being seized is sufficiently great to justify the intrusion on the constitutional rights of the owner or person entitled to possession. Those of primary relevance to DWI vehicle seizures are search and seizure incident to arrest. See State v. Richs, 816 P.2d 125 (Ak. App. 1991), and see 13 AAC 02.345(c). Other justifications which may arise in given circumstances are as follows:

> **Search in exigent circumstances** - Where there is a probable cause but insufficient time to obtain a warrant. See Gustafson v. State, 854 P.2d 751 (Ak. App. 1993);
>
> **Emergency aid doctrine** - Where there is reasonable grounds to believe that there is an immediate need to take action to prevent death or to protect persons or property from serious injury. See Williams v. State, 823 P.2d 1 (Ak. App. 1990); and
>
> **Protective search.** See Murdock v. State, 664 P.2d 589 (Ak. App. 1983).

Statutorily authorized search and seizure. Notable among these are evidentiary exceptions and where the vehicle is a public nuisance. Statutory authority to seize a vehicle includes the following:

> **Vehicle unsafe** - Vehicles which are so unsafe they should not be driven. See AS 28.05.091;
>
> **Outstanding parking tickets** - See, for example, AMC § 9.30.260;
>
> **Public Nuisance** - impound to summarily abate. See 13 AAC 02.345;
>
> **Accident** - AS 28.35.070; and
>
> **Vehicle obstructing a roadway or creating a hazard.** 13 AAC 02.345.

2. Due Process

Due process looks at what notice and opportunity to be heard must be afforded prior to seizure or disposal of a vehicle. It also may require a remission procedure for innocent owners, although after Bennis v. Michigan, 134 L.Ed.2d 68 (1996), the innocent owner defense is no longer available

under the U.S. Constitution. The State Supreme Court has not yet adopted the Bennis reasoning as applicable to claims under the Alaska Constitution. The test under state law look to three factors:

First, the private interest that will be affected by the official action: second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards: and, finally, the Government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

a. **State cases:**

Badoino v. State, 785 P.2d 39 (Ak. App. 1990).

Badoino involved forfeiture of certain money under AS 17.30 as part of a sentence for a conviction for misconduct involving a controlled substance in the third degree. The court held that it is satisfied that due process requires that a criminal defendant be given advance notice of the specific property which the state seeks to have forfeited. Where the property is not contraband, the defendant should be informed of the connection. The state will attempt to prove between the property to be forfeited and illegal activity. The defendant is also entitled to know in advance the steps he or she MUST take in order to contest forfeiture, who will have the burden of proof, and what the burden will be. Finally, a reasonable opportunity MUST be afforded the defendant to resist forfeiture. The court should make findings of fact regarding contested issues and set out its conclusions of law.

F/V American Eagle v. State, 620 P.2d 657, 667 (Alaska 1980).

American Eagle involved an action for civil in rem forfeiture of a vessel used in violation of crab harvest regulations under AS 16.05.195. The vessel owners challenged that the absence of an in rem procedure and a prompt post-service hearing denied the owners of due process of law. While this case resolved the due process issue on its particular facts, the court stated, in dicta, that we find no merit in the owners' apparent claim that due process requires that any owner of a vessel seized by the state for suspected use in illegal activity has an absolute right to obtain release of the property upon the posting of an adequate bond. To permit this would frustrate one purpose of forfeitures, which is to prevent possible use of the property in further illicit acts.

Graybill v. State, 545 P.2d 629, 631 (Alaska 1976).

Graybill was convicted of a game violation (attempted illegal transportation) and had his aircraft forfeited as part of his sentence. Graybill urged that where the property is not contraband forfeiture could not be pursued in the criminal case, but must be a separate civil proceeding. The court held that a separate civil proceeding was not necessary.

Hilbers v. Municipality of Anchorage, 611 P.2d 31, 36 (Alaska 1980).

Hilbers involved an appeal from a superior court order upholding ordinances regulating massage parlors. The court addressed the issue of due process holding that in order to determine what due process requires, three factors must be considered:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

State v. F/V Baranof, 677 P.2d 1245 (Ak. 1984).

This case was an in rem forfeiture of a vessel used for harvesting crab under AS 16.05.195. The court held that due process does not require notice or a hearing prior to seizure by government officials of property allegedly used in an illicit activity. However, when the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent.

State v. Rice, 626 P.2d 104 (Ak. 1981).

Rice was a big game guide convicted of an illegal transportation violation. The state sought forfeiture of a Cessna used in the violation under AS 16.05.195. Cessna Finance was an "innocent third party" with an interest in the aircraft. The court held that under substantive due process a remission procedure is mandated under the Alaska Constitution. Not to allow innocent owners and security holders to show that they have not been involved in the criminal activity that triggered the forfeiture proceeding violates Alaska's constitutional due process provision. It remains to be seen whether Bennis will revise this view.

b. Federal cases:

1. Supreme Court

Bennis v. Michigan, 116 S.Ct. 994 (1996).

Bennis involved a vehicle forfeiture under a Michigan law which provided for forfeiture of Mr. Bennis's car on the basis that he was convicted of patronizing a prostitute in the vehicle. The "innocent owner" issue has involved due to the fact that Mr. Bennis's wife was a joint owner of the vehicle. The Supreme Court rejected the innocent owner defense asserted by Ms. Bennis although all parties agreed she had no knowledge of the use to which the vehicle was put by her husband. The court rejected both due process and takings claims asserted by Ms. Bennis.

Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 40 L.Ed.2d 452 (1974).

In Pearson Yacht, a yacht owned by Pearson had been leased to two persons, one of whom used it for transportation of marijuana, and thus it was subject to seizure under a Puerto Rican forfeiture statute. The Supreme Court, in determining that there was no constitutional violation in such seizure, offered a succinct discussion of the applicable law in this area.

The Court observed that the history of forfeiture is deeply rooted in the common law with even Biblical origins. It has received widespread use and approval throughout the history of American jurisprudence. Despite this proliferation of forfeiture enactments, the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense.

Robinson v. Hanrahan, 409 U.S. 38 (1992).

Robinson involved proceedings for forfeiture of an automobile belonging to an accused who was in jail on a robbery charge. The notice of forfeiture proceedings was sent to the accused's home rather than the jail. The accused did not receive the notice until his release, after forfeiture had been ordered. The accused moved for, but was denied, a rehearing. The Supreme Court reversed on due process grounds. The court held that due process requires notice of forfeiture proceedings to be reasonably calculated to appraise the property owner of the proceeding.

2. Court of Appeals

Lee v. Thornton, 538 F.2d 27 (2d Cir. 1976).

In Lee. Plaintiffs' vehicles were detained by customs officials after crossing of the Canadian border. Plaintiffs challenged the statutory scheme under which the vehicles were detained. The vehicles were held without an opportunity for a prompt hearing. The court held that a prompt opportunity for a hearing, if only a probable cause hearing, should be provided within 24-72 hours.

United States v. One 1972 Chevrolet Blazer, 563 F.2d 1386 (9th Cir. 1977).

In One 1972 Chevrolet Blazer, the government sought forfeiture of a vehicle used to transport a contraband firearm. The district court granted summary judgment despite a thirty-party claim of equitable ownership. The Ninth Circuit remanded for full evidentiary hearing based on issues of fact precluding summarily denial of a petition for remission under federal forfeiture statute. The third-party owner of car alleged he had not known of or condoned the illegal carrying of a gun silencer in the vehicle by his father, and government had not alleged negligence by the owner.

3. District Courts

United States v. One Mercury Cougar XR7, 397 F. Supp. 1325 (C.D. Cal. 1975).

In One Mercury Cougar, the owner loaned her car to boyfriend to pick up passenger at airport and the car was seized when the boyfriend and passenger were arrested for sale of heroin. The court held that failure to return the car to the owner where record showed she had no awareness of the car's possible illegal use and had done all which reasonably could be expected to prevent the illegal use violated her due process rights. It is unclear whether this decision would survive Bennis.

3. Double Jeopardy

This has been a hot issue for the last year and a half or so. On the federal level it was settled this past year by a major decision in U.S. v. Ursery, 518 U.S. _____, 135 L.Ed.2d 549 (1996). This pretty much settled the issue on the national level, but we have yet to get a definitive decision on the state level.

The Alaska Court of Appeals recently considered a challenge to the Anchorage DWI forfeiture program in Skagen v. Municipality of Anchorage, Case No. A-5765/5795, Opinion No. 1474 issued June 21, 1996. This case involved both double jeopardy and waiver issues. The Court of Appeals did not squarely address double jeopardy as it found a waiver based on failure to assert a claim in the forfeiture action. The Court of Appeals adopted the Ninth Circuit's reasoning in U.S.

v. Washington. 69 F.3d 401 (9th Cir. 1995) (further discussion of Washington below).

Pg 17

a. State Cases

Calder v. State, 619 P.2d 1026 (Alaska. 1980).

Mr. Calder pled no contest to a reckless driving charge and was tried on an assault charge arising out of the same incident based upon his striking an officer with his vehicle. The jury convicted him of the lesser included offense of reckless driving. The court held no double jeopardy applying the rule for determining whether separate statutory crimes constitute the "same offense" for purposes of prohibiting double punishment, whether differences in intent or conduct between the statutory offenses are substantial in relation to the basic social interests protected or vindicated by the statutes.

Mitchell v. State, 818 P.2d 1163 (Alaska Ct. App., 1991).

Ms. Mitchell challenged conviction on two counts of unsworn falsification on double jeopardy grounds. Mitchell had signed an agreement to repay unlawfully obtained unemployment benefits. Subsequently, she was charged with unsworn falsification based upon her fraudulent unemployment applications. The court held that the civil repayment agreement, even with a penalty of 50%, would not take away the remedial character of the civil penalty and thus would not be sufficient for double jeopardy.

State of Alaska v. Kyle J. Zerkel, 900 P.2d 744 (Ak. App. 1995).

Several defendants on state or municipal DWI or refusal charges sought dismissal of criminal charges on double jeopardy grounds after having their driver's license revoked in an administrative proceeding. Administrative license revocation is premised on substantial remedial purposes. Even though administrative license revocation has always contained an element of deterrence, the case law demonstrates that it has traditionally been viewed as remedial rather than punitive. We conclude that administrative license revocation continues to be a "remedial" sanction, not a "punitive" sanction, for purposes of the federal double jeopardy clause. Therefore, the administrative revocation of the defendants' licenses is no impediment to their later prosecution for driving while intoxicated, refusing the breath test, or both.

City of New Hope v. 1986 Mazda 626, ____ N.W.2d ____, 1996 W.L. 175811 (Minn App.. April 16, 1996).

In City of New Hope, the lower court dismissed a civil action for forfeiture of a vehicle used in a DWI by a person who had previously been convicted of DWI. The Minnesota Court of Appeals found that the forfeiture was remedial in nature. The case was brought by the city separate from the criminal prosecution. The court

held that the vehicle was essential to the underlying offense as an instrumentality of the crime.

Loui v. Board of Medical Examiners. 78 Haw. 21, 889 P.2d 705, 711 (Hawaii 1995).

Mr. Loui was convicted of attempted first-degree sexual assault and kidnapping. Based on this conviction, the Hawaii State Board of Medical Examiners suspended him from practicing medicine for one year. Mr. Loui challenged the suspension on double jeopardy grounds. The court noted that while the imposition of the one-year revocation of Loui's license to practice medicine [for the attempted rape of his medical assistant] may 'carry the sting of punishment'... it is clear that the statute in question is not designed to 'punish' Loui; rather, it is designed to protect the public from unfit physicians."

b. **Federal Cases**

1. **Supreme Court**

Bell v. Wolfish. 441 U.S. 520 (1979).

Bell involved a class action prisoner challenge to practices of a federal short term custodial facility. Practices challenged included double-bunking, limits on hard cover books and limits on packages, among others. The court recognized that "Governmental action does not have to be the only alternative or even the best alternative for it to be reasonable, to say nothing of constitutional." at 538-42. This was in reference to the traditional test that the government action which is discomforting to the person acted upon is not "punishment" if it is reasonably related to a legitimate government objective.

Dept. of Revenue of Montana v. Kurth Ranch, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994).

Montana levied a civil tax on possession and storage of dangerous drugs. The tax rate was equivalent to $100 per ounce of marijuana. The Kurth family operated a marijuana farm and were arrested and convicted for the operation. The state then sought $900,000 in a separate proceeding for collection of taxes. The court held that post-conviction imposition of the civil "drug tax" constituted "punishment" and was barred by double jeopardy. The court relied heavily on the fact that the tax was only levied after an arrest and was purported to be a property tax, but the taxpayer neither owned nor possessed the property when the tax was imposed. Forfeitures may be distinguished from the drug tax imposed in Kurth Ranch. Kurth Ranch court did not apply the Halper analysis as to determining the appropriate level of tax to be compensation for law enforcement costs, but rejected the tax based on the manner of imposition.

Heath v. Alabama, 474 U.S. 82 (1985).

Mr. Heath hired two men to murder his wife. She was kidnapped from their home in Alabama and shot. Her body was found in Georgia. Mr. Heath pleaded guilty in Georgia and was subsequently charged in Alabama. He challenged his conviction in Alabama on double jeopardy grounds. The court held that the double jeopardy clause is inapplicable when separate governments prosecute the same defendant because the defendant has offended both sovereigns.

North Carolina v. Pearce, 395 U.S. 711 (1969).

Pearce involved two cases where the defendants were convicted and sentenced. After serving part of their sentences, their convictions were set aside and they were re-tried and re-convicted. The resulting sentences, when combined with time served, were more severe than the original sentences. The court ruled that the trial judge must affirmatively set forth the reasons for imposing a more severe sentence to ensure that there is not a retaliatory motive. The court also held that credit must be given for the time served on the first conviction. The court held that the double jeopardy clause protects against a second prosecution for the same offense after acquittal.

United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989).

Halper involved a conviction for making fraudulent claims on the government. The court held that collection of a civil fine ($130,000) more than 220 times the amount of which the government had been defrauded ($585.00) constituted "punishment" and was barred by the double jeopardy clause based upon the defendant's prior federal criminal conviction. Civil penalties which are grossly disproportionate to the damages caused by the offender are punitive for double jeopardy purposes. A civil penalty is grossly disproportionate if it is not rationally related to the goal of making the government whole.

U.S. v. Ursery, 518 U.S. _____, 135 L.Ed.2d 549 (1996).

Consolidated ruling reversing the 6th Circuit's decision in Director of Transportation Services in Ursery and the 9th Circuit's decision in U.S. v. 405,089.23 in U.S. Currency, 33 F.3d 1210 (9th Cir. 1994), held that double jeopardy does not prohibit the government from convicting a defendant for a criminal offense and forfeiting his property for that same offense in a separate civil proceeding. Future double jeopardy challenges must still satisfy a two-part test articulated in U.S. One Assortment of 89 Firearms, 465 U.S. 354 (1984); either 1) that the legislature intended the particular forfeiture to be a criminal penalty and not a civil sanction; or 2) that, regardless of the law's intent, it is so punitive in fact that

it cannot be considered civil in nature. This ruling distinguishes Harper as involving in personam penalties rather than in rem: Austin as relating to excessive fines rather than double jeopardy: and Kurth Ranch as dealing with a punitive state tax. not an in rem forfeiture statute.

2. Court of Appeals

Bae v. Shalala, 44 F.3d 489 (7th Cir.. 1995).

Bae involved a challenge to the Generic Drug Enforcement Act provision mandating permanent debarment of any individual convicted of a felony under federal law relating to development or approval of a drug product. Bae was convicted in 1990 for providing an FDA official with an "unlawful gratuity." By letter in 1993, the FDA notified Bae of the proposed debarment. The FDA ordered debarment. Bae appealed. The court held that lifetime disbarment from drug companies was sufficiently remedial under Halper. Bae's ex post facto argument was also rejected.

United States v. Payne, 2 F.3d 706, 710-11 (6th Cir. 1993).

Mr. Payne was a postal carrier. He didn't deliver all the mail. He was indicted for his misconduct. Before being indicted, he was fired and had his termination reviewed by an Administrative Law Judge. Mr. Payne prevailed in his challenge to the termination. Mr. Payne then sought dismissal of the indictment based upon collateral estoppel or double jeopardy. The court rejected the arguments holding that suspension of a mail carrier for illegal conduct was not "punishment" for double jeopardy purposes.

United States v. Furlett, 974 F.2d 839, 844 (7th Cir. 1992).

In Furlett, a commodities broker defrauded his clients. In an administrative proceeding, his license to deal commodities was revoked. He was later indicted for conspiracy, mail fraud, obstruction of justice, and subornation of perjury. The broker objected that this criminal prosecution violated the double jeopardy clause. The court held that the administrative order prohibiting the broker from engaging in commodities trading was not "punishment" for purposes of the double jeopardy clause.

United States v. Bizzell, 921 F.2d 263, 267 (10th Cir. 1990).

In Bizzell, two contractors committed fraud in the sale of various properties whose mortgages were held by the Department of Housing and Urban Development (HUD). The Tenth Circuit ruled that an order barring the two contractors from participating in HUD contracts for 18 and 24 months, respectively, was not "punishment" for their fraudulent conduct. The court said. "Removal of persons whose participation in those programs is detrimental to public purposes is remedial

by definition."

3. District Court

Orallo v. United States, 887 F.Supp. 1367 (D. Haw., 1995).

Orallo involved administrative forfeiture of a vehicle, cash and a cellular phone. Mr. Orallo received notice of the forfeiture proceedings. Orallo asserted that he filed a petition for remission of the property, but that the petition was denied. He then sought dismissal of his criminal charges for double jeopardy. The court held that a petition for remission does not contest the forfeiture and thus there was no adjudication of Orallo's culpability in the forfeiture action. Therefore, he was not placed in jeopardy or "punished." **But see Quinones-Ruiz v. U.S.**, 864 F.Supp. 983 (S.D. Cal. 1994).

Quinones-Ruiz v. U.S., 864 F.Supp. 983 (S.D. Cal. 1994).

Mr. Quinones-Ruiz entered a guilty plea to making a false statement to customs agents. Customs agents had seized $40,000 in cash when searching a vehicle at a border crossing. The government sought and obtained forfeiture of the funds after sending notices and publishing notice. Mr. Quinones-Ruiz did not respond to the notice, but sued for return of the money claiming he did not receive notice. The court held that the notice was adequate for due process purposes even though it was not sent to his criminal defense attorney. The court analyzed the issue of double jeopardy under Austin and U.S. v. $405,089.23, 33 F.3d 1210 (9th Cir. 1994), and concluded that the forfeiture was punitive. This case was decided prior to Ursery.

A sidelight [illegible] the double jeopardy analysis is the issue of whether a particular defendant waived the double [illegible]pardy by failing to contest the in rem forfeiture. After Ursery, this may be a non-issue. However, the following are some cases discussing waiver in the double jeopardy context:

United States v. Arreola-Ramos, 60 F.3d 188 (5th Cir., 1995).

Omar Arreola-Ramos was charged with drug related offenses. He sought dismissal of his drug charges based upon the civil forfeiture proceeding involving $11,408 in cash seized from his residence. The forfeiture was initiated after Mr. Arreola-Ramos had been indicted, but before his trial. He did not appear as a party to the civil forfeiture proceedings. The court held that summary forfeiture cannot be considered punishment when the defendant fails to respond or appear in the civil forfeiture.

United States v. Hudson, 14 F.3d 536, 541-42 (10th Cir. 1994).

In Hudson, the defendants were indicted under federal law for their alleged

illegal operation of several banks. The violations were based on the same lending transactions which were the subject of prior administrative sanctions imposed by the Comptroller of Currency. As part of the administrative proceedings, the defendants signed a consent order which included a waiver clause allowing other state or federal entities to bring other actions deemed appropriate. The court held that the waiver language was not sufficiently clear to be a valid waiver of the right to assert double jeopardy. The court implied that an explicit waiver may have been adequate, but was not present. Despite the lack of waiver, the court held that the administrative order barring defendants from future banking activities was not "punishment" for their illegal activities.

United States v. Washington, 69 F.3d 401 (9th Cir., 1995).

In Washington, Mr. Washington was arrested for a drug violation. At the time of his arrest, $1,150 was taken from his person. The government sought forfeiture of the money as proceeds of illegal narcotics transactions. Mr. Washington received notice, but did not submit a claim to the funds. The funds were forfeited. Mr. Washington then challenged his criminal charge on double jeopardy grounds. The court held that an owner who receives notice of an intended forfeiture and fails to claim an ownership interest in the property has effectively abandoned that interest. Because abandonment constitutes a relinquishment of all rights in the property, taking of such property imposes no "punishment" and does not place the former owner in jeopardy. The court reached the same conclusion in United States v. Cretacci, 62 F.3d 307, 310-311 (9th Cir. 1995), which is relied upon in Washington.

4. **Excessive Punishment**

The issue of excessive fines under the 8th Amendment to the U.S. Constitution and Article I, Section 12, of the Alaska Constitution is unlikely to arise in connection with a vehicle forfeiture. The value of the vehicle will rarely if ever cause a problem following the Austin analysis, particularly if the vehicle is used in the offense. Some relevant cases are as follows:

a. **State Cases**

McNabb v. State, 860 P.2d 1294 (Ak. App. 1993).

Elmer McNabb was charged with fishing violations. He pled guilty to one charge in exchange for a dismissal of nineteen others. The maximum fine for the violation was $15,000. He was sentenced to a fine of $15,000 with $5000 suspended. The court also ordered forfeiture of the fair market value of all of the fish aboard Mr. McNabb's boat on the date of violation, a total of $39,758.40, with $20,000 of that amount suspended. Mr. McNabb challenged the forfeiture and additional fine on several grounds including violation of the United States and Alaska Constitutional prohibitions against excessive fines. The court of appeals held

that "The Alaska Supreme Court has consistently held that Alaska Constitution does not require that penalties be proportionate to the offense. Only punishments that are 'so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of judgment' may be stricken as cruel and unusual under Alaska's Constitution." The court then concluded that the fine imposed in McNabb was not grossly disproportionate to Mr. McNabb's crime.

b. Federal Cases

Austin v. United States, U.S. 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993).

In Austin the defendant was convicted by the State of South Dakota for possession of cocaine for distribution and was sentenced to 7 years. The U.S. then filed a civil in rem action against Austin's home and business plus $4,700 in cash and other property seized at the time of arrest. Austin challenged the forfeiture under the excessive fines clause (8th Amendment). The court held that the excessive fines clause did not apply to civil forfeitures, but remanded the case for a determination of whether the clause was violated in Austin's case. The court recognized that forfeiture does not solely serve a remedial purpose.

5. Other rights

The right to counsel and right to jury trial may be raised as issues, but will not be problematic:

Baker v. City of Fairbanks, 471 P.2d 386, 402 (Alaska 1970).

Baker involved prosecution for assault under a city ordinance. Mr. Baker claimed that he was entitled to a jury trial. The Alaska Supreme Court extended the right of jury trial to a defendant in any "criminal prosecution". The court defined "criminal prosecution' to encompass any offense for which a conviction "may result in the [defendant's] loss of a valuable license, such as a driver's license or a license to pursue a common calling, occupation or business."

Resek v. State, 706 P.2d 288 (Ak. 1985).

Resek involved an in rem forfeiture of used or intended for use in violation of state drug laws under AS 17.30.112. The in rem case was filed after indictment but before the criminal trial. The court held that an indigent claimant does not have a constitutional right to appointed counsel at public expense in an in rem forfeiture proceeding, but acknowledging discretion of the trial court to require appointment of counsel, based in part on the self incrimination concern, where the forfeiture action precedes a criminal prosecution. The court also implied that civil forfeiture proceedings should be stayed pending the outcome of the criminal case. In Resek, the court noted that AS 17.30.116(c) specifically authorizes such a stay.

The exclusionary rule has been applied in civil forfeiture cases:

<u>One 1958 Plymouth Sedan v. Pennsylvania</u>, 380 U.S. 693 (1984).

This case involved a warrantless stop and search of an automobile by state liquor control board offices. Cases of liquor without state tax seals were discovered. The state sought forfeiture of the automobile. The Pennsylvania Supreme Court allowed the forfeiture, rejecting the argument that the exclusionary rule applied to civil forfeiture proceedings and confining the exclusionary rule to criminal cases. The Supreme Court reversed and applied the exclusionary rule. The court there also stated that vehicles are not instrumentalities of crime because "there is nothing even remotely criminal in possessing an automobile." This statement is undercut in DWI cases where the vehicle itself is essential to the crime. <u>See</u>, e.g., <u>City of New Hope</u> and <u>Bennis</u>.

Similarly, the right against self incrimination has been applied:

<u>United States v. United States Coin & Currency</u>, 401 U.S. 715, 28 L.Ed.2d 434 (1971).

<u>Coin and Currency</u> involved an action for forfeiture of money in possession of a person at the time of his arrest for illegal gambling. The Supreme Court held that the Fifth Amendment privilege against self incrimination could be invoked in forfeiture proceedings.

Finally, due to its outstanding and entertaining facts, <u>State v. Stagno</u> is worth noting for the reminder that ambiguities in criminal statutes must be read narrowly and strictly construed against the government.

<u>State of Alaska, v. Frank Stagno</u>, 739 P.2d 198 (Ct. App. 1987).

Stagno was convicted of DWI for driving an airboat down a roadway. The state sought revocation of Stagno's license to drive and forfeiture of the boat. The court, relying on the principle of statutory construction that ambiguities in criminal statutes must be narrowly read and construed strictly against the government, held that driving a boat did not fall within the terms of the license revocation and forfeiture statutes in effect at the time, but that discretionary license revocation might be available. The relevant statutes have since been revised.

II. JUNK AND ABANDONED VEHICLES

A. Program

The relevant statutes are set forth in AS 28.11. See Appendix C. Local provisions in Anchorage are in Appendix D. The Ketchikan Gateway Borough provisions are in Appendix E. Forms for Anchorage are in Appendix F and documents relating to the KGB program are in Appendix G-I.

1. Anchorage

The Municipality of Anchorage regulates both junk vehicles and abandoned vehicles, and recognizes that these categories overlap. The Anchorage ordinances prohibit leaving a junk vehicle in public view for more than five days. Notice is required before a junk vehicle can be seized. The notice can be delivered by personal service or certified mail, and is also left on the vehicle. Notice affixed to the vehicle satisfies the notice requirement if other methods of service on the owner are unavailing. Any vehicle--junk or not--left unattended on a street or highway for more than 72 hours is considered abandoned under the Anchorage Municipal Code, and be impounded without notice.

State law defines any vehicle left unattended on or within 10 feet of the traveled portion of a highway in excess of 48 hours as abandoned, and makes such vehicles subject to impoundment without notice. State law does not address individual junk vehicles per se.

Junk vehicles and abandoned vehicles may be sold at auction or destroyed after impoundment and the provision of post-impoundment notice. The provision of notice may be by publication if the owners are unknown. State statutes contain similar provisions, but do not provide for destruction.

The Municipality of Anchorage has recently been aggressively enforcing the ordinances regarding junk and abandoned vehicles in its "Clean Sweep" program.

2. Ketchikan

In May of 1996, the Ketchikan Gateway Borough enacted an ordinance designed to address junked and abandoned vehicles within the boundaries of the Borough. Some modifications are currently under consideration. A copy of the ordinance as it will appear if approved is attached in Appendix E. The provisions are based primarily on state law and parallel the procedure in state law for impoundment and forfeiture of motor vehicles. Main differences include the disposal by crushing option, and the lack of certified mail service prior to impoundment.

The Ketchikan Gateway Borough is still evaluating and has not yet decided whether to take advantage of the opportunity to increase motor vehicle registration fees and use the proceeds to fund a voluntary vehicle disposal system. The concept being considered would entail providing a service through a contractor where an individual with a junked or irreparable vehicle which is ready for disposal could deliver the vehicle to a disposal contractor free of charge or for a nominal fee for proper disposal, but would pay a penalty if the vehicle were disposed of in an improper manner.

Short of this system, the Ketchikan system uses a combination of an administrative enforcement officer and an administrative hearing process and a towing contractor. A copy of the request for proposals inviting contractor bids is attached as Appendix G, and a copy of a sample contract with the towing and disposal company is attached as Appendix H.

Schematically, what occurs is a vehicle may be observed that is either junked or abandoned or both. A notice is placed on the vehicle. A copy of this notice is provided to the State Troopers. After the requisite time period has elapsed (five days for a junked vehicle or one, two or thirty days for an abandoned vehicle), the vehicle is impounded and transported to the tow operator's storage lot. An additional notice is provided. A copy of this notice is sent, certified mail, return receipt requested, to any party with an ownership interest. The towing contractor also receives a copy. After the time period within which the vehicle could be claimed has elapsed, the vehicle may be auctioned (with an additional notice of auction provided) or destroyed. A schematic of the steps is attached as Appendix I.

Vehicles which are missing VIN numbers and license plates are considered refuse and may be impounded and disposed of without notice.

This program has not been in effect long enough to report any particular results.

POTENTIAL WEAKNESSES IN THE KGB APPROACH

From discussion with City of Ketchikan Attorney, Steve Schweppe, the method contemplated by the Ketchikan Gateway Borough takes three calculated risks which the City of Ketchikan does not take with its program. These risks relate to possible differing interpretations of the state abandoned vehicle statutes.

The first risk involves impoundment prior to service of notice by certified mail. The Ketchikan Gateway Borough system proposes placing a warning notice on the vehicle, but not providing notice by certified mail or publication until after impoundment. This manner of notice is predicated on AS 28.11.040 which addresses notice after the vehicle has been impounded. The City of Ketchikan follows a more conservative approach giving notice as provided for in AS 28.05.121 (certified mail, return receipt requested) prior to impoundment of the vehicle.

Second, associated with this difference in notice, the City of Ketchikan offers an opportunity for a hearing as provided for in AS 28.05.131 prior to impoundment, while the Ketchikan Gateway Borough system offers the opportunity for a "AS 28.05.131 hearing" following impoundment, but prior to disposition of the vehicle. Additionally, if upon hearing the impoundment is determined to be improper, then the Borough, rather than the owner, would bear the costs of impoundment and storage.

The third calculated risk relates to disposal of the vehicles. Disposition of vehicles under AS 28.11.070 contemplates sale at auction. The Borough method only contemplates sale for those vehicles with an estimated value over $250, but that vehicles with less than that amount may be disposed of by crushing and destruction without auction.

There is no clear guidance on these points, and in view of the lack of specific direction otherwise, the Ketchikan Gateway Borough has opted to try the more administratively convenient method which: 1) interprets the notice in AS 28.11.040 as sufficient to satisfy due process and maintains consistency with state statutes; 2) interprets the opportunity for a hearing following impoundment, but prior to auction or destruction, as sufficient to satisfy the requirement for a hearing conducted in the manner provided for under AS 28.05.131 - .141; and 3) interprets destruction of low value vehicles as "not inconsistent" with disposal under AS 28.11.170.

It is hoped that in the event there are judicial decisions on these points in the future that the Ketchikan Gateway Borough's interpretations will be upheld. This may be an area in which the Alaska Municipal Attorneys' Association would want to recommend changes to the state statutes to assist in streamlining the process.

3. State

The state procedures for impoundment and disposal of abandoned vehicles are set out in state statute in AS 28.11. See Appendix C. Apart from the language of the statute, there is very little guidance for implementation. In many areas of the state, the efforts of State Troopers in impounding and disposing of abandoned vehicles are hampered by a lack of funds.

B. Due Process

For an example of due process issues in an impoundment case, see:

Stypmann v. City and County of San Francisco, 557 F.2d 1338 (9th Cir. 1977).

This case involved a class action challenge to a California statute authorizing removal of vehicles from streets and highways without prior notice and opportunity for hearing and establishing a possessory lien for towing and storage fees. The statute did not provide for a hearing either before or after the lien attached. Plaintiffs did not pursue a challenge of the seizure, but focussed on the lien. The court held that due process required a hearing within a reasonable period of time.

SS/6M/CAR.WAR

APPENDICES
TO
"CAR WARS -
HOW TO TAKE THEM AND
HOW TO GET RID OF THEM"

By: Cliff John Groh and Scott A. Brandt-Erichsen

(A) State Vehicle Forfeiture Statutes: AS 35.28.036 & AS 35.28.038

(B) Anchorage DWI Vehicle Impoundment Forfeiture Ordinances (Anchorage Municipal Code Section 9.28.020-.027)

(C) AS 28.11, Regarding Abandoned Vehicles

(D) Anchorage Municipal Code (AMC) 15.20, Regarding Public Nuisances

(E) Ketchikan Gateway Borough (KGB) Code 29. 30

(F) Anchorage Impound Notice for Abandoned/Junk Vehicles

(G) KGB Impound Request For Proposal

(H) KGB Sample Contract For Disposal of Abandoned Vehicles

(I) KGB Schematic For Disposal of Abandoned Vehicles

(J) DWI Enforcement Grant Funded Overtime, Anchorage Police Department, January, 1994 - September, 1996

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Portland's Asset Forfeiture Program:

The Effectiveness of Vehicle Seizure in Reducing Rearrest Among "Problem" Drunk Drivers

Ian B. Crosby

A Joint Project of

The Reed College Public Policy Workshop

and

The Portland Police Bureau

August, 1995

PORTLAND'S ASSET FORFEITURE PROGRAM:

THE EFFECTIVENESS OF VEHICLE SEIZURE IN REDUCING REARREST AMONG "PROBLEM" DRUNK DRIVERS

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August, 1995

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CONTENTS

EXECUTIVE SUMMARY 1

BACKGROUND AND INTRODUCTION 2
- Forfeiture's Impact on Crime: Past Research and Debate 2
  - The Reed Forfeiture Project 2
  - The Federal "War on Drugs" 3
  - State and Local Efforts 5
  - Forfeiture and Policy Making: Need for Study 7
- Portland's Forfeiture Program 10
  - User Accountability 10
  - Questions and Concerns 11
  - The 1992 Survey of Offenders 11
  - The Current Study 12

DATA 14
- Sources 14
- Organization 14
  - Unobserved Sources of Heterogeneity 14
  - Structure of the Data Set 16
  - Enforcement Level Covariate Vector 17

METHODS 20
- Regression 20
  - Basic Concepts 20
  - Problems with Time-to-Event Data 20
- Event History Analysis 22
  - Basic Concepts 22
  - Advantages of the Cox Proportional Hazards Model 23
  - The Proportionality Assumption 23
  - Stepwise Regression and Model Building 24

RESULTS 26
- Effects of Variables on Rearrest Rate 26
- Interpretation 28

CONCLUSION 31

EXECUTIVE SUMMARY

Many drunk drivers are seemingly impervious to traditional sanctions and continue to drive when their licenses are suspended or revoked. Since 1989, Portland has used asset forfeiture to deprive these drivers of the instrumentality of their offenses: their vehicles. While Portland's asset forfeiture program is unique and innovative, it has arisen in the context of a burgeoning of policies nation-wide extending forfeiture to ever more areas of law enforcement. Yet even as forfeiture's targets have multiplied, serious study of its effectiveness has been neglected. In Portland, as in the rest of the nation, a question whose answer is crucial to the success of asset forfeiture has remained unanswered. Does the seizure of instrumental assets actually disrupt criminal activity and incapacitate or deter criminals? In Portland, it now appears that it has.

This study employs multivariate statistical analysis techniques to arrest data covering five years of forfeiture enforcement. With race, age, sex, prior arrest history and level of police enforcement held constant, perpetrators whose vehicles were seized could reliably be expected to be rearrested on average half as often as those whose vehicles were not. The most plausible explanations for this result point to a reduced threat to public safety from these problem motorists as a result of Portland's forfeiture program.

It is hoped that the information contained in this report will aid policy makers in informed decision making. Portland should share its experience through contacts with local, state and national law enforcement agencies, and encourage research on the effectiveness of forfeiture in combating the other activities against which it has been deployed.

BACKGROUND AND INTRODUCTION

FORFEITURE'S IMPACT ON CRIME: PAST RESEARCH AND DEBATE

The Reed Forfeiture Project

This study is a successor to another study of asset forfeiture initated in the Fall of 1991 by Professor Stefan Kapsch, director of the Reed College Public Policy Workshop (PPW). The PPW is a organization dedicated to the empirical study of "ideas in good currency" — policy issues generating great public interest and debate. Forfeiture was then and remains now such an issue. After languishing in relative disuse since prohibition, the wars on drugs and organized crime promulgated new statutes and an explosion of interest which revived first criminal and ultimately civil forfeiture as common prosecutorial tools. Across the nation in the late 1980s, many state and local jurisdictions passed measures authorizing novel uses of forfeiture against crime. In 1989 one such measure, Portland's Forfeiture Ordinance, began targeting problem drunk drivers. For the PPW, the Portland forfeiture program promised to afford a unique opportunity for empirical investigation of forfeiture's effectiveness against a highly recidivistic group of lawbreakers. The forfeiture study consisted of two stages: a comprehensive review of the literature on forfeiture in general and a survey to study Portland's program.

PPW researchers discovered an abundant body of literature regarding the legal issues surrounding forfeiture, but they were surprised to find little material relating to forfeiture's effectiveness in deterring crime. This dearth of research was even more bewildering in light of the frequency with which they found the effectiveness of forfeiture cited in justification of its employment. The introduction to their report states: "Considering the appeals that the courts so often make to the effectiveness of forfeiture as an apology for occasional abuses, it is astounding that so little empirical evidence of

that effectiveness has been produced."[1] Since the 1991 report, forfeiture has continued to be a frequent topic of articles in academic and legal publications, as well as the subject of court decisions and public debate. Unfortunately, this attention has done little to provide any systematic evidence of forfeiture's widely touted effectiveness against any of the many types of crime against which it is now frequently used.

The Federal "War on Drugs"

According to the U.S. Justice Department Executive Office for Asset Forfeiture (EOAF), "[t]he mission of the Department's Asset Forfeiture Program is to maximize the effectiveness of forfeiture as a deterrent to crime."[2] While, in the opinion of the EOAF, "revenue is an ancillary benefit,"[3] and not the primary goal of the forfeiture program, the amount of revenue derived from seizures and deposited in the Asset Forfeiture Fund "serves as a barometer to measure the success of the program."[4] This amount has grown from $27 million deposited in FY 1985 to more than one half billion dollars in FY 1993, and totals over $3.2 billion since the Fund's inception in 1985.[5] Excluding special

1. Kapsch, et al., Forfeiture: History, Precedents, and Current Debate (1991) (unpublished report of the Reed College Public Policy Workshop Forfeiture Project, on file with the Secretary of the Division of History and Social Science, Reed College).

2. EXEC. OFF. FOR ASSET FORFEITURE, U.S. DEP'T OF JUSTICE, ANNUAL REPORT OF THE DEP'T OF JUSTICE ASSET FORFEITURE PROGRAM at v (1994) [hereinafter EOAF ANNUAL REPORT].

3. *Id.* at 15.

4. *Id.* at 16.

5. *Id.*

deposits related to the Drexel Burnham Lambert case in 1989 and the Michael Milken case in 1991, regular deposits have increased in each year of the Fund's existence.[6]

If the fund truly is a barometer of the Asset Forfeiture Program's objective of deterring crime, we might expect to see an impact on the U.S. drug supply which roughly mirrors the growth in annual asset seizures. Yet in the case of cocaine, the flagship target of the national "war on drugs," prices have remained consistently low and purity has remained consistently high in recent years. The number of individuals reporting using cocaine at least once a week has remained relatively constant over the same period.[7] While the number of people reporting infrequent use of the drug has dropped dramatically since the mid-1980s, it is not clear whether this drop is related in any way to the Asset Forfeiture Program, or if it is the result of increased drug education, cultural trends or a combination of factors.[8] Absent a better measure of the impact of the Asset Forfeiture Program than the mere value of assets seized, it remains an open question whether, "[a]sset forfeiture has proven to be an effective tool in stripping criminals of the instrumentalities and proceeds of their illicit activities," as Attorney General Janet Reno asserts,[9] or whether criminals have merely absorbed the costs imposed by the Program as an inevitable cost of doing business in the multi-billion dollar international drug trade.

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6. *Id.* at 15.

7. NAT'L NARCOTICS INTELLIGENCE CONSUMERS COMM. (NNICC), U.S. DRUG ENFORCEMENT ADMIN., THE NNICC REPORT 1993: THE SUPPLY OF ILLICIT DRUGS TO THE UNITED STATES 1 (1994).

8. *See id.* at 1.

9. Att'y General Janet Reno, *Foreward* to EOAF REPORT, *supra* note 2.

State and Local Efforts

At the state and local level, a number of law enforcement jurisdictions have implemented enforcement programs which have included the use of forfeiture and other forms of administrative property seizure against a variety of criminal activities. Studies evaluating these programs, some of them quite sophisticated, nevertheless fail in a variety of ways to conclusively assess the effectiveness of forfeiture in any of the capacities in which it has been employed. Some efforts studied have targeted the "supply side" of criminal activities.

- In Phoenix Arizona, the attorney general's office used forfeiture to seize the assets of "chop shops" which dismantle stolen cars and sell their parts. Even as judgements under the program topped five million dollars, auto theft continued to increase far more quickly in Phoenix than nationally. The report was unable to conclude whether the theft rate would have increased even more had the program not been in place, or whether the effort was simply ineffectual.[10]
- In New York City, civil forfeiture was used to evict drug dealers from privately owned buildings by threatening or actually effecting the seizure of the properties. The program has been successful in removing problem drug dealers from chronically afflicted properties. The report does not address to what extent or whether drug activities resumed in the targeted properties after the evictions, nor the degree and duration of the disruption of the activities of the individual dealers evicted.[11]

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10. PETER FINN & MARIA O'BRIEN HYLTON, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, USING CIVIL REMEDIES FOR CRIMINAL BEHAVIOR: RATIONALE, CASE STUDIES, AND CONSTITUTIONAL ISSUES 31-35 (1994) [hereinafter USING CIVIL REMEDIES].

11. *Id.* at 46-49.

Other efforts have attempted to control or hold accountable individuals who use drugs, or whose possession and use of legal but controlled items, such as weapons, poses a threat to society:

- In Maricopa County, Arizona, a "demand reduction" program was implemented which included the seizure of the vehicles of individuals caught purchasing any quantity of illegal drugs.[12] Although a follow up study was conducted, it did not assess any independent effects of asset forfeiture in achieving the program's objectives.[13]
- In Los Angeles, authorities seized weapons from the mentally ill absent the commission of a crime and without search warrants under the Welfare and Institutions Code. While the report notes reasons why this strategy should have been effective, it offers no hard evidence that it actually reduced violence among the mentally ill or that the confiscated weapons were not simply replaced.[14]

Some programs have used forfeiture in combatting both supply and demand of illegal drugs:

- As part of "Operation 'Caine Break," a multi-pronged attack on the activities of drug dealers and users in Birmingham, Alabama, 32 vehicles were seized from 80 individuals charged with soliciting narcotics from undercover officers. During and after the operation, violent and property crimes in the targeted areas of the city stayed relatively constant, in contrast to sharp rises in other areas of the city. However, since forfeiture was only one part of a larger strategy, it is impossible to determine the extent to which it independently influenced this outcome. The report also

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12. JAN CHAIKEN, ET AL., NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT STRATEGIES: REDUCING SUPPLY AND DEMAND 7-9 (1990).

13. *See* JOHN R. HEPBURN, ET AL., NAT'L INST. OF JUSTICE, DEP'T OF JUSTICE, DO DRUGS. DO TIME: AN EVALUATION OF THE MARICOPA COUNTY DEMAND REDUCTION PROGRAM (1994).

14. USING CIVIL REMEDIES, *supra* note 10, at 26-30.

fails to address the concern that the reported results are consistent with the possibility that rather than reducing crime in Birmingham, 'Caine Break merely caused criminals to relocate their activities to non-targeted areas of the city.[15]

- In San Diego, asset forfeiture was used vigorously against dealers and purchasers as part of a comprehensive strategy to combat drug sales and use. While sophisticated multivariate techniques were used to test the effectiveness of certain elements of the strategy in obtaining convictions of suspects, no such techniques were employed to assess the effectiveness of forfeiture. A survey of offenders assessed their opinions on the importance of asset seizure in reducing drug use and sales. Offenders were ambivalent: 41% claimed that asset seizure was very important in achieving these goals, 41% said it was not important at all, and the remaining 18% felt that it was only somewhat important. While the report draws interesting conclusions about offender psychology from these results, it rightly does not attempt to draw any conclusions about the usefulness of forfeiture from them.[16]

While all of these studies provide interesting information on how forfeiture is being employed around the country to address a variety of law enforcement needs, none provides any conclusive evidence of forfeiture's effectiveness as a deterrent of crime.

Forfeiture and Policy Making: Need for Study

If any conclusive studies of forfeiture's effectiveness do indeed exist, certainly none have reached the attention of those who would have the greatest stake in citing their outcomes: the policy makers, public officials and academics who regularly square off in the forfeiture debate. Several papers delivered to a 1994 New York Law School Law

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15. CRAIG D. UCHIDA ET AL., NATIONAL INSTITUTE OF JUSTICE, U.S. DEP'T OF JUSTICE, MODERN POLICING AND THE CONTROL OF ILLEGAL DRUGS: TESTING NEW STRATEGIES IN TWO AMERICAN CITIES 33-51 (1992).

16. SUSAN PENNELL AND CHRISTINE CURTIS, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DRUG CONTROL STRATEGIES IN SAN DIEGO: IMPACT ON THE OFFENDER 152 (1994).

Review symposium[17] debating forfeiture assert that forfeiture is an effective crime deterrent. Yet none cites statistics which adequately substantiate this claim. At a 1993 congressional hearing in which civil forfeiture came under intense criticism sparked by well-publicized tales of abuse, a U.S. representative,[18] a state representative,[19] a high ranking Department of Justice official,[20] and a county sheriff[21] all characterized forfeiture as a "powerful weapon" against crime. Yet none cited studies to substantiate this characterization, nor do any documents entered into the record of the hearing contain references to any such studies. A 1992 report by the Bureau of Justice Statistics on drug crime characterizes forfeiture in an almost identical manner, again without citation of evidence.[22]

In academic and legal journals, in government reports, and ultimately before the political bodies where policy is shaped, forfeiture continues to be portrayed as a potent weapon against crime without the benefit of any systematic knowledge of its effectiveness. This does not seem to be the result of disingenuousness, but rather of a

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17. Symposium, *What Price Civil Forfeiture? Constitutional Implications and Reform Initiatives*, 39 N.Y.L. SCH. L. REV. 1 (1994).

18. *Review of Federal Asset Forfeiture Program: Hearing Before the Subcomm. on Legislation and Nat'l Security of the Comm. on Gov't Operations*, 103d Cong., 1st Sess. 11 (1993) (statement of Rep. McCandless).

19. *Id.* at 56 (statement of Florida State Rep. Elvin Martinez).

20. *Id.* at 71 (statement of Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture).

21. *Id.* at 307 (statement submitted for record of Robert L. Vogel, Sheriff, Volusia County, Fla.).

22. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, DRUGS, CRIME, AND THE JUSTICE SYSTEM 186 (1992) [hereinafter 1992 DRUG CRIME REPORT] (calling forfeiture a "powerful sanction against illegal drugs").

pervasive conflation of the power of forfeiture to seize assets, which neither proponents nor critics doubt, with the power of forfeiture to deter crime, which is untested. The two are not synonymous. The words of Cary H. Copeland, Director and Chief Counsel of the EOAF, suggest a martial analogy which illustrates why this distinction is crucial to the forfeiture debate. Copeland states: "Asset forfeiture can be to modern law enforcement what airpower is to modern warfare: it attacks and destroys the infrastructure of criminal enterprises."[23]

No matter how tactically successful airpower may be in destroying targets, if it fails to materially effect the ability of the enemy to wage war, then strategically it is little more than a waste of ordinance. The value of assets seized has little relevance to the effectiveness of forfeiture in achieving its stated goals if the deprivation of those assets neither deters criminals nor incapacitates them from engaging in further crime. Forfeiture is also of little practical use if its benefits are outweighed by the "collateral damage" — the unfortunate but inevitable civilian casualties, in current military euphemism — it inflicts. The need for proof that the benefits of forfeiture are tangible and significant increases with every *cause celebre* whose tale of alleged injustice is trumpeted in the newspaper headlines and paraded before congressional committees. Without knowing whether forfeiture achieves its ends, it is impossible to state whether the costs of its occasional abuse are justified. Rational public policy making requires well-defined, quantifiable assessments of what forfeiture has and has not achieved. Such assessments are sadly lacking from current policy debate.

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23. *Department of Justice Asset Forfeiture Program: Hearing Before the Subcomm. on Legislation and Nat'l Security of the Comm. on Gov't Operations*, 102d Cong., 2d Sess. 85 (1992)

PORTLAND'S FORFEITURE PROGRAM

User Accountability

The most well known, debated and publicized aspect of forfeiture in the U.S. in the last decade has been the cooperative efforts of federal, state and local law enforcement authorities to wage the war on drugs against the various parts of the organizations which supply narcotics, from the giant international cartels to the dealers on the street. However, asset forfeiture programs aimed at "[ensuring] user accountability"[24] have been employed in various jurisdictions at least since 1986.[25] Typically, these efforts have targeted the demand-side of the drug equation, seizing the property — typically vehicles — of users who attempt to purchase drugs. Portland has taken this approach to new areas by using forfeiture to target other crimes in the commission of which a motor vehicle is instrumental. Under Portland's Forfeiture Ordinance, in effect since December of 1989, vehicles may be seized and forfeited from offenders arrested for driving while their licenses are suspended or revoked (DWS) if the suspension resulted from driving under the influence of intoxicants (DUII), and from offenders who are arrested as habitual traffic offenders (HO) — people who have committed three or more serious traffic offenses, at least one of which must be a DUII to meet the criteria for forfeiture.[26]

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24. 1992 DRUG CRIME REPORT, *supra* note 22.

25. Todd S. Purdum, *New York Police Now Seizing Cars in Arrests for Possession of Crack*, N.Y. TIMES, Aug. 5, 1986, at A1-1. (describing cooperative effort between U.S. DEA and New York Police Department to seize vehicles of persons attempting to purchase small amounts of "crack" cocaine); Kirk Johnson. *Seized*, N.Y. TIMES, Oct 14, 1986, at B1-1 (reporting results of first month of New York seizure effort).

26. The Ordinance also authorizes the seizure of vehicles which are used in connection with the solicitation of prostitutes. The effectiveness of this aspect of the forfeiture program is not a subject of this study.

Questions and Concerns

Portland's program raises a number of questions and issues. Drinking and driving is a devastatingly serious problem, a problem which is made more troublesome by the fact that many perpetrators are hard-core recidivists whose behavior seems to be all but impervious to modification by means of conventional sanctions. The Forfeiture Ordinance targets these individuals specifically, since one must be a repeat offender to be subject to its provisions. Does seizing these people's vehicles succeed where other measures often fail, or, as some suspect, do they simply replace the seized vehicles with unregistered "junkers" and continue to drive?

In addition to the impact of the Ordinance on offenders, its impact on taxpayers and law-abiding citizens must be considered. Contrary to popular (and often cynical) beliefs about the financial benefits of asset forfeiture to law enforcement, the Portland forfeiture program costs more to administer than it takes in from sales of seized poperty. Most vehicles seized are never auctioned, but are instead released to third parties, such as spouses and lenders. Of those that are forfeited and auctioned, most tend to be older vehicles of relatively little value. Another concern with the widened use of forfeiture by law enforcement is its perceived potential for abuse. Although the Portland Ordinance contains important safeguards and is administered by men and women of the highest integrity, the entrustment of such a powerful tool to the hands of law enforcement should be accompanied by clear benefits to public safety. Only if the program is effective in protecting lives on the highways by depriving drunks of their weapon of choice will the real cost in tax dollars and potential cost in liberty seem worth paying.

The 1992 Survey of Offenders

In the Spring of 1992, the PPW conducted its planned survey to examine the effectiveness of the Portland program in deterring alcohol-related driving activity. The

study was designed as a phone survey of a target group consisting of households of offenders, as well as of a control sample of households selected at random from the Portland metropolitan area. It was decided to request to speak with the individual in each household with the birthday nearest to the survey date rather than ask to speak to the offenders directly. It was felt that asking for offenders by name and posing questions relating to their criminal histories might result in a large number of refusals, hang-ups or untruthful responses. The survey was conducted in coöperation with the Portland Police Bureau (PPB) using the facilities of the PPW and funded through a grant from the Rose E. Tucker Charitable Trust.

Analysis of the data from the survey unfortunately revealed problems with the target group data. Of the 194 households surveyed in the target group, only 78 reported that any member had been stopped for DUII. Of those, only 12 reported having had a vehicle seized or forfeited. This was especially puzzling given the care with which the survey instrument had been adapted from instruments which had already been tested and found to be relatively reliable. It must be concluded either that the perpetrators were no longer or never had been at the phone numbers provided from the PPB computer files, or that the respondents did not answer accurately or truthfully on a wide scale. While there are no doubt important methodological lessons to be learned from the 1992 survey results, they cannot be used to answer the question of whether Portland's forfeiture program has been an effective crime deterrent.

The Current Study

The current research effort seeks to answer this question using offender data acquired internally from PPB, rather than from a survey. For the purposes of this investigation, the broad notion of deterrence is addressed operationally along the lines of the familiar dichotomy between general deterrence and specific deterrence. General

deterrence is the reduction in criminal activity caused by the threat of a sanction in those potentially subject to its imposition. Specific deterrence is the reduction in criminal activity caused by the imposition of a sanction in those to whom it has actually been applied. Despite exploration of a variety of techniques to circumvent the inherent shortcomings of arrest data, the lack of crucial information regarding individual knowledge and perceptions of forfeiture as a sanction prevented a methodologically sound assessment of the general deterrent effect of the forfeiture program. This study therefore focuses on the impact of forfeiture as a specific deterrent in reducing rearrest rates among those whose vehicles have been subjected to it. The body of the report is organized in three sections. *Data* describes the sources from which the data for the study were collected and the organization of the data file used in the analysis. *Methods* gives an account of the rationale behind the choice of the statistical model employed, as well as a discussion of the basic concepts involved in regression and event-history analysis. It is written for the interested layman with little knowledge of statistics and may be glossed over by those either familiar with the subject matter or wholly uninterested by it. *Results* reports and discusses the interpretation of the outcome of multivariate analysis which tests the effect of the forfeiture sanction on rearrest rates among a sample of offenders. The study as a whole should be of interest to policy makers and law enforcement officials in Portland, as well as to those from other jurisdictions who wish to implement similar programs or evaluate the effectiveness their own forfeiture efforts.

DATA

SOURCES

The data for this study were acquired from PPB's Portland Police Data System (PPDS), from the PPB Asset Forfeiture Unit's vehicle seizure records, and from the monthly reports of the PPB Traffic Division. The PPDS data consists of all citations issued from January 1, 1989, to December 31, 1994, for DUII, felony DWS, and HO (N = 22,525). Data prior to 1989 were unavailable due to regular purging of old citation records by the Data Processing Division. Multiple citations may be issued for a single custody, and of course many perpetrators have multiple citations. Each record of a citation contains variables for unique PPB perpetrator and custody identification numbers, allowing grouping and relational linking of records by perpetrator or custody. There are 21,220 unique custodies and 16,801 unique perpetrators represen' d in the PPDS data set.

The vehicle seizure data consist of records for all seizures of vehicles for felony DWS or HO subsequent to the institution of the forfeiture ordinance in mid-December, 1989 (N = 746). Traffic Division data consist of a record of hours patrolled by Traffic Division officers by shift (morning or evening) and the total number of DUII citations they issued for each month from January, 1986, to December, 1993. There are gaps of missing values in these data due to transitions in record-keeping staff. The data sets for all analyses were created via manipulation of these three sources.

ORGANIZATION

Unobserved Sources of Heterogeneity

Any individual charged with HO, or with felony DWS during a license suspension for DUII, is potentially subject to vehicle seizure and subsequent forfeiture. In answering

the question of whether having a vehicle seized specifically deters, we wish to examine whether rearrest rates differ between individuals arrested for HO or felony DWS based on whether or not their vehicles were seized at the time of initial arrest. Ideally, there should not be any unobserved sources of heterogeneity — unmeasured differences between groups — which make people in one group more or less likely to be arrested than those in another. For example, if seizure were only applied to offenders with particularly egregious driving histories, and data about those driving histories were unavailable for inclusion as controls in analysis, we would be unable to sort out the effects of forfeiture on recidivism from the effects of having such a driving history. Fortunately, this is not the case. However, there is one difference which we must consider between the group of individuals whose vehicles were seized and the group whose vehicles were not.

We know that all individuals whose vehicles were seized for felony DWS were operating under a suspension for an alcohol related offense, since such a suspension is a criterion for seizure. However, due to the way that offenses are coded in the PPDS data and the purge by PPB Data Processing of all data prior to 1989, it is impossible to know whether the license of an individual charged with felony DWS whose vehicle was not seized was suspended for an alcohol related offense or for some other reason. However, the non-alcohol related license suspensions during which a felony (as opposed to misdemeanor) DWS citation may be issued are generally related to severe and relatively rare offenses, such as suspensions for negligent vehicular homicide or hit-and-run.[27] Consequently, only a very small proportion of felony DWS citations are given to individuals whose licenses were suspended for non-alcohol related reasons. This fact, the fact that we may introduce controls for recent alcohol related driving convictions from

27. OR. REV. STAT. § 811.182(3) (1993-94).

the available data, and the large sample size all make it unlikely that the inevitable inclusion of non-alcohol related felony DWS custodies in the group whose vehicles were not seized introduces significant bias.

It should also be noted that even if any bias were introduced by the inclusion of such custodies, such a bias would be conservative with respect to the effect of vehicle seizure on rearrest, if one assumes, plausibly, that offenders charged with felony DWS for driving during non-alcohol related suspensions are less likely to be subsequently commit alcohol-related offenses. All individuals charged with felony DWS whose vehicles were seized are known to have been operating during an alcohol related suspension. Some individuals charged with felony DWS whose vehicles were not seized presumably were operating under non-alcohol related suspensions. If the non-seizure group as a whole were somewhat less likely to offend, then any reduction of the risk of rearrest attributable to having one's vehicle seized would be *underestimated*, since the group of individuals whose vehicles had been seized would be in general more likely to offend. Since the null hypothesis we wish to reject is that seizure has no effect in reducing recidivism, if seizure exhibits such an effect in analysis, we can be certain that this effect is not due to an unobserved source of heterogeneity related to the inclusion of non-alcohol related felony DWS custodies, and that if the estimation of this effect is at all in error, then such an error is on the side of conservatism.

Structure of the Data Set

With this in mind, the data set was chosen to consist of all custodies between January 1, 1990, and December 31, 1994, for which a citation for felony DWS or HO was issued (N = 5,493). Only custodies for 1990 and later were used to allow the creation of a variable for number of prior offenses in the previous year. Since no data exist prior to 1989, including cases prior to 1990 in the analysis would have introduced bias, as the

prior arrest variable for such cases would not reflect a full year of data, as it would for all subsequent cases. For each case, a variable was created for the date on which the next subsequent felony DWS, HO or DUII arrest was observed for the individual involved in the custody. Many individuals were not rearrested within the observation period. A "dummy variable," that is, a dichotomous variable having the value of either one or zero, was created to indicate whether the rearrest variable contained the date of a subsequent arrest, or whether there was no rearrest observation in the study period. Cases for which there was no rearrest are considered to be *censored* by the end of the study period. Censoring of data is discussed in the methods section, below. Another dummy variable was flagged to indicate cases where there had been a vehicle seizure at the time of arrest (N = 610).[28] An additional dummy variable was flagged for cases for which the vehicle was subsequently auctioned (N = 226). In addition to these variables, each case contains a variable for age at time of offense and a dummy variable indicating the sex of the subject. The race of the offender was broken down in to six categories: White, Black, Hispanic, Asian, American Indian and Other.

Enforcement Level Covariate Vector

It is likely that the probability of being arrested at any given time depends in part on the level of police enforcement in effect at that time. Traffic enforcement is carried out both by the officers of the Traffic Division and by regular patrol officers on the street. There are, unfortunately, no available data on Bureau-wide traffic enforcement activity. Missing data can often be extrapolated from available data if a model with reasonable

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28. Due to errors in data entry in the PPDS system, a number of custodies where a citation for DWS was issued were not included in the sample, and thus there are fewer cases in the data set corresponding to seizures than there were actual seizures. As there is no reason to believe that these cases are not missing at random, their omission presents no difficulties for the data analysis.

assumptions can be fitted which reliably predicts missing values as a function of other complete data. The Traffic Division in the past has issued monthly reports containing information on its patrol activities. Complete data does exist for the total number of DUII citations issued per month Bureau-wide through December, 1994, as well as for the number of DUII citations per month issued by the Traffic Division through August, 1993. If a model were found which could reliably predict Traffic Division hours patrolled as a function of Traffic Division DUII citations issued, then this model could be used to predict Bureau-wide patrol hours on traffic enforcement from Bureau-wide DUII citations issued, assuming that regular officers, when engaged in traffic enforcement, are approximately as efficient at issuing citations as Traffic Division officers.

Unfortunately, the best model capable of being constructed with the available data was only able to account for approximately 39% of the variance in Traffic Division hours patrolled as a function of Traffic Division citations issued. Introduction of controls to account for seasonal variation in offense rates did not significantly improve the model. In other words, approximately 60% of the variation in DUII citations issued by the Traffic Division is accounted for by factors other than hours patrolled and seasonal variance. As sufficient data is not available to reliably predict missing values for Traffic Division hours patrolled, there is no way to predict Bureau-wide traffic enforcement, even if the assumption of equal enforcement efficiency were justified.

While we cannot extrapolate the total Bureau-wide traffic enforcement, the number of patrol hours by the Traffic Division in the evening (when most citations are issued) does significantly predict over 37% of the variance in Bureau-wide DUII citations issued. Traffic Division evening patrol hours may therefore be a significant predictor of a portion of the variance in the likelihood that an individual will be arrested for DWS, DUII or HO at any given time. We may test this hypothesis by analyzing the subset of cases for which complete Traffic Division evening patrol data are available. The data on

Traffic Division enforcement were used to create for each case a vector of 44 variables containing values for hours patrolled in each of the up to 44 months subsequent to the date of arrest for which data exist. Although this is less than ideal, the subset of complete cases from January, 1990, through August, 1993, is sufficiently large to allow testing of whether Traffic Division hours patrolled had a significant effect on rearrest rates.

METHODS

REGRESSION

Basic Concepts

Fitting a model to data which estimates how the value of a dependent variable, such as time to rearrest, depends on values for a number of independent variables, such as age, sex, vehicle seizure, etc., is usually accomplished by means of multiple regression. While there are many types of regression, in general each employs a "regression equation" which expresses the dependent variable as a function containing terms for each of the independent variables. Constants for each of the independent terms in the regression model are estimated in such a way as to maximize the goodness of fit of the predicted values with the actual values observed for the dependent variable. The significance of the contribution of a variable, that is, the likelihood that the variation in the dependent variable explained by it is attributable to random chance (often measured by the statistic *p*), can be assessed by constructing a restricted model from which the variable is omitted, and comparing the improvement of fit of the full model (including the variable) over the restricted model, given certain other parameters.

Problems with Time-to-Event Data

The most common regression methods are often inappropriate for analysis of the effects of independent variables on a dependent variable containing time to an event. In most techniques, values for the dependent variable be a number or must be dichotomous categorical. Although these methods can be used with time-to-event data, for example, if the dependent variable is coded to reflect whether or not, or how often, an event has occurred in an arbitrarily specified follow-up period, such an approach is wasteful of information for a number of reasons. First, and most obviously in the present case, all custodies whose follow-up period extends beyond the end of the study period would have

to be eliminated from analysis, since we could not specify a value for the dependent variable for them. If the follow-up period were, for example, one year, no custodies after December 31, 1993 could be used as cases in the analysis, since the period for which data exist ends December 31, 1994, and these custodies would not have a full year of subsequent observations for the determination of the dependent variable. Second, even for cases where the initial offense occurred before December 31, 1993, information about reoffenses which may occur subsequent to the follow-up period would be lost to analysis. Lengthening the follow-up period only reduces the number of usable cases by lengthening the period prior to the end of the study in which cases could not be used, while ameliorating the loss of cases by shortening the follow-up period exacerbates the loss of potentially interesting reoffense data beyond the follow-up period.

A third problem with customary regression techniques when applied to time-to-event data is apparent when we consider that in the case of criminal recidivism, the amount of time from initial offense to reoffense is highly interesting. This information is available in our data set, but is wasted when only whether or how often an individual is rearrested within a given period is considered. It might be thought that this deficiency could be corrected in a linear regression model by using time to reoffense as the dependent variable. However, for individuals who are not rearrested by the end of the study period, the value of the dependent variable is unknown, or *censored* by the arbitrary imposition of the time cut-off at the end of the study period. Assigning the end date of the study period to the dependent variable would introduce bias by underestimating the actual time to reoffense in most cases, while assigning any other date would be completely arbitrary and result in an under or overestimation for an unknowably large part of the sample. The only other alternative would be to treat censored cases as missing, and thus exclude them from analysis, introducing yet a different bias and losing valuable cases. A further problem with common regression methods for time-to-event data is the fact that

certain independent variables, such as an individual's age, are not constant, but vary through time. Ordinary regression techniques offer no way to estimate the effects of time-dependent variables. A different approach is obviously needed.

EVENT HISTORY ANALYSIS[29]

Basic Concepts

The various techniques of event history analysis are superior to other regression techniques for time-to-event data in that they allow censored observations adequately to be taken in to account, and they permit the use of time-dependent variables. A number of concepts are common to all methods of event history analysis. A case for which an event, such as reoffense, could occur at some time is said to be "at risk" at that time. The total number of cases at risk in any given time period is known as the "risk" set. The probability that an event will occur in a particular time period for a particular case in the risk set is termed the "hazard rate." Certain event history models incorporate regression techniques to allow the estimation the effects of covariates on hazard rates. Of these, the Cox proportional hazards log-linear regression model[30] is especially powerful and non-restrictive, given that certain assumptions are adequately fulfilled.

29. *See* PAUL D. ALLISON, EVENT HISTORY ANALYSIS: REGRESSION FOR LONGITUDINAL EVENT DATA (1984), for an accessible discussion of the various techniques of event history analysis and their relative merits.

30. D. R. COX, *Regression Models and Life Tables*, 34 JOURNAL OF THE ROYAL STATISTICAL SOCIETY, SERIES B at 187 (1972).

Advantages of the Cox Proportional Hazards Model

Two of the advantages which Cox models have over many other methods of event history are worthy of note. First, as we have noted, certain covariates, such as the age of a research subject, may change in value during the time that the subject is at risk, and Cox models can use time-dependent variables in regression analysis. Second, many other continuous-time methods use "parametric" models. Such models require the researcher to specify prior to analysis the over-all form of the hazard rate as a function of time. Often, there is very little information available on which to base such a specification. As "non-parametric" models, Cox models require no specific assumptions about the form of the underlying hazard function, and are thus much more general and flexible than parametric models. It is primarily because the Cox model combines the use of time dependent variables with a non-parametric model that it has become the method of choice for event history analysis when it is appropriate.

The Proportionality Assumption

Cox models are not, however, always appropriate for all data. For a Cox model to be appropriate, it must be assumed that the effects of differing values for the independent variables are proportional over time. For example, if the covariate "sex" is included in the model, the Cox model is appropriate just in case the hazard function for males differs from that for females only by a constant factor at all times. A simple statistical method of checking proportionality with respect to a variable is available by means of testing the significance of the effect of the interaction of that variable with the log of the time on study minus the log of the mean time to event for the entire sample. If the effect of this interaction variable is not significant at a chosen level of significance (as it is not for the variables used in this analysis at $p \leq 0.05$), then the data may be assumed to be roughly proportional and the Cox model may be used.[31]

Stepwise Regression and Model Building

Building the best model for predicting observed values of a dependent variable involves testing candidate independent variables for inclusion and removal from the model such that the final model contains only those independent variables which contribute significantly to the overall goodness of fit of the model, and excludes those which do not. With any more than a few explanatory variables, manually building a model can be very time consuming. A stepwise regression is an automated procedure for performing this potentially tedious task. In our analysis, variables considered likely to contribute to the model based on theoretical considerations and exploratory results were included in the model on the first step, and those considered unlikely to make a significant contribution were excluded. In subsequent steps, variables in the model were tested for removal and variables not in the model were tested for inclusion. Variables were removed if their removal did not significantly degrade the predictive accuracy of the model, and were included if their inclusion significantly improved the model (p to include$\leq$0.1, p to remove$\geq$0.15). Significance levels were calculated using the maximum partial likelihood ratio method. Stepwise regression proceeds iteratively until no variables meet the significance criteria for inclusion or removal. The variables still remaining at this point constitute the final model.

Constant explanatory variables tested for inclusion and removal were the sex and race of the subject, the number of prior felony DWS, HO or DUII offenses in the preceding year, whether the subject's vehicle had been seized at the time of custody, and

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31. HANS-PETER BLOSSFELD ET AL., EVENT HISTORY ANALYSIS: STATISTICAL THEORY AND APPLICATION IN THE SOCIAL SCIENCES 147-149 (1989); *but see* ALLISON, *supra* note 29, at 38 (suggesting that because of the generality of the proportional hazards model, concern for the violation of the proportionality assumption may often be exaggerated.)

whether the vehicle was subsequently auctioned. The time-dependent variable of the age of the perpetrator was tested using the entire sample, as was the monthly number of evening hours patrolled by the Traffic Division in a model using only cases through August of 1993.

RESULTS

EFFECTS OF VARIABLES ON REARREST RATE

Table 1 shows the effects of explanatory variables on time to rearrest in terms of regression coefficients with associated significance levels from the Cox proportional hazards regression model. Only variables having a significant effect on time to rearrest are included in Table 1. Evening hours patrolled by the Traffic Division did not have a significant effect on rearrest in the subset of cases through August, 1993. The model therefore was estimated using all available cases from January 1, 1990, through December 31, 1994.

Table 1
Effects of Explanatory Variables on Time to Rearrest

Variable	Coeff.	Predicted # Rearr./Mo. % Increase (Decrease)	Predicted Time to Rearr. % Increase (Decrease)
Sex (Male)	0.4467*	56.32	(36.03)
Age	-0.0192*	(1.90)	1.94
Race: Black	0.6900*	99.38	(49.84)
Asian	-1.8141*	(83.70)	513.50
Other	0.3934**	48.19	(32.52)
No. Prior Offenses	0.2543*	28.96	(22.46)
Vehicle Seized	-0.6887*	(49.78)	99.12

* $p \leq 0.01$.
** $p \leq 0.05$.

Model Chi-Square=724.02, DF=7, $p \leq 0.01$.

Regression coefficients indicate the magnitude and the direction of the effect of each explanatory variable on the hazard rate. A positive coefficient indicates a greater

number of expected rearrests in a one month period of time based on an increase of one unit in the value of an explanatory variable, and a shorter expected time to rearrest based on the same increase. A negative coefficient indicates the opposite effect. By calculating the exponent of the coefficient, we arrive at the percent increase or decrease in the hazard rate predicted by a positive change of one for an explanatory variable. Thus being male, as opposed to female (the arbitrarily chosen reference category), corresponds to a 56.32% increase in the number of expected rearrests per month. 100% minus the inverse of this percentage gives the percent expected increase or decrease in time to rearrest — for males, a 36.03% decrease in expected time to reoffense as opposed to females.

No entry for "Race: White" is included in Table 1, as Whites are the reference category for the categorical variable "race" (though any other category could have been chosen). All estimates for the effect of race contrast the effect of being in a certain racial category as opposed to being White. We can thus see that expected time to rearrest is slightly less than half as long for Blacks than for Whites, and over five times longer for Asians than for Whites. Time to rearrest did not differ significantly for Hispanics or American Indians from that for Whites, and these categories are therefore not shown in Table 1. Considered together, other races than those considered specifically had a predicted time to rearrest about a third shorter than that for Whites. Each additional year of age increased the expected time to rearrest by about 2%. We can also see that each prior arrest predicts a 32.52% decrease in expected time to rearrest. Most interestingly, having a vehicle seized nearly doubled expected time to rearrest. Having a vehicle actually forfeited did not have a significant effect over and above that associated with simply having it seized. All of these results are highly statistically significant. Vehicle seizure is a strong and significant predictor of reduced rearrest for DWS, HO and DUII with several other important factors taken into account.

INTERPRETATION

Interpretation of statistical results is not a deductive process, but rather involves choosing among explanations which are consistent with an outcome based on their plausibility. Before concluding that seizure has resulted in reduced recidivism, we must consider consistent alternatives. A classic example of a sanction reducing rearrest rates within a certain geographical area without affecting recidivism is the case of prostitution. There is good reason to believe that when stronger anti-prostitution enforcement is applied in a certain area, arrests in that area may fall, but often only because prostitutes and "johns" relocate to a different area where they may conduct their business with less interference. A similar phenomenon is common with respect to drug activity and enforcement. As state-wide data on offenders were not available for analysis, it may be questioned whether individuals whose automobiles were seized merely continued to reoffend in jurisdictions other than Portland, just as prostitutes or drug-dealers may ply their trades in less well-patrolled sections of town when enforcement is strengthened in their customary area of operations. Could individuals whose vehicles have been seized simply have continued to reoffend at the same rate, but in another jurisdiction as subsequent to vehicle seizure?

There is a fundamental difference between driving on the one hand, and prostitution and drug-dealing on the other, which suggests that the answer to this question is negative. Stepped-up enforcement in one area only requires that a prostitute or drug-dealer travel to a different area to conduct his or her business. No relocation of domicile is required. But an individual whose license has been suspended cannot simply continue to drive in another jurisdiction without relocating his or her place of residence. To completely avoid the prospect of seizure while continuing to drive, an offender must physically relocate his or her residence to another jurisdiction. Such an individual might theoretically reduce his or her chances of apprehension by striving to the greatest degree

possible to drive in other jurisdictions when conducting business, minimizing time spent driving within Portland. Yet such a strategy would still involve the risk of regular driving within the city limits, and require a great deal of additional time in performing even the most routine errands. It is highly unlikely that such relocation, either or domicile or driving, is responsible for the dramatic increase in expected time to rearrest predicted by vehicle seizure. More plausible than relocation is the possibility that offenders are continuing to drive after seizure or forfeiture, but that they are driving more carefully to avoid detection. While it is highly likely that this occurs, it seems doubtful that it accounts for the magnitude of the effect on rearrest rates. Presumably, the offenders did not try to get caught the first time. It should also be noted that even if the only effect of the forfeiture program were to run offenders out of town, to cause them to drive as much a possible in other jurisdictions or just to drive much more carefully, this result in itself would be highly desirable from the standpoint of Portland motorists.

If seizure does result in reduced recidivism, how does it do so? Could seizure of vehicles be physically preventing people from driving? While actual forfeiture did not predict any reduction in rearrest over and above that predicted by seizure alone, this does not mean that physical prevention of driving through the loss of a vehicle is not an important factor in reducing rearrest rates. Vehicles which are not forfeited are released to lien holders, spouses and other innocent owners on the understanding that their use will be withheld from offenders. Yet any offender who is able and who wishes to may purchase a beat-up used car for very little money, neglect to register and insure it, and continue driving. If offenders are not driving subsequent to seizure, it is likely not because, strictly speaking, they are physically prevented from doing so, but rather that they choose not to take the necessary steps and resume driving, that is, *they are deterred.*

Why would seizure deter where other sanctions have failed? While offenders may view brief jail terms with indifference and simply fail to pay fines, the loss of use of a

vehicle through seizure or forfeiture is a tangible penalty. Many offenders have few financial resources. The investment which is lost in a vehicle which is forfeited may be considerable to them, even if the vehicle was of relatively little value. The cost of replacing a vehicle can serve as an unavoidable fine, even if a vehicle is only seized and released, if an offender also loses access to it. With vehicles which are released, the consequenses incurred at the hands of third parties also may enhance the deterrent effect of seizure. New York prosecutor Sterling Johnson, speaking of suburbanites who travel to the city to buy crack and whose cars are seized, put it well: "When they come home without momma's car or without daddy's car, the criminal justice system is going to be the least of their worries...."[32]

32. Purdum. *supra* note 25, at A24-1.

Chapter 9.28

SERIOUS TRAFFIC OFFENSES

9.28.010 Reckless driving.
9.28.011 Failing to stop or eluding a police officer.
9.28.015 Careless driving.
9.28.020 Driving while intoxicated—Prohibited; sentencing.
9.28.021 Driving while intoxicated—Implied consent to chemical test.
9.28.022 Driving while intoxicated—Refusal to submit to chemical tests.
9.28.023 Driving while intoxicated—Chemical analysis of breath or blood.
9.28.024 Driving while intoxicated—Responsibility for costs of incarceration.
9.28.025 Driving while intoxicated—Administration of chemical tests without consent.
9.28.026 Driving while intoxicated—Impoundment and forfeiture of vehicle.
9.28.027 Failure to return a vehicle that has been released under a vehicle return bond.

admission of evidence relating to the test taken at the direction of a law enforcement officer. The fact that the person under arrest sought to obtain such an additional test, and failed or was unable to do so, is likewise admissible in evidence.

G. Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test, including the results of it, shall be made available to him or his attorney.
(CAC 9.28.020; AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 90-41; AO No. 94-68(S), § 12, 8-11-94)

Cross reference—Drinking while driving, § 9.36.200.

9.28.024 Driving while intoxicated—Responsibility for costs of incarceration.

A. The municipality may enter into agreements with the state regarding incarceration of persons charged with or convicted of violations of this Code.

B. Imprisonment under section 9.28.020 or section 9.28.022.D shall be served at such location as the commissioner of corrections may designate.

C. The cost of imprisonment resulting from the sentence imposed under section 9.28.020.C or section 9.28.022.D shall be paid to the municipality by the person being sentenced; provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed $1,000.00. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the municipality shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065.

D. The cost of imprisonment required to be paid under subsection C of this section by a convicted person shall be the amount determined and prescribed by regulation by the commissioner of corrections as the uniform average cost of imprisonment under AS 28.35.030(1).
(AO No. 94-68(S), § 13, 8-11-94; AO No. 94-236, § 1, 1-3-95)

9.28.025 Driving while intoxicated—Administration of chemical tests without consent.

A. If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

B. A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under section 9.28.021 and AS 28.35.031(a), and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

C. If a chemical test is administered to a person under subsection A or B of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032, 28.35.034 or section 9.28.022.
(AO No. 82-126; AO No. 83-168, 10-17-83)

9.28.026 Driving while intoxicated—Impoundment and forfeiture of vehicle.

A motor vehicle that is operated, driven or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.020, pertaining to driving while intoxicated, or an alleged violation of section 9.28.022, pertaining to refusal to submit to chemical tests, may be impounded and may be forfeited to the municipality in accordance with this section.

It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an

individual arrested for or charged with an alleged violation of either section 9.28.020 or section 9.28.022 has been so operated by the registered owners thereof or has been operated by another person with the knowledge and consent of the registered owners. A vehicle so operated is declared to be a public nuisance for which the registered owners hold legal responsibility subject only to the defenses as set forth by law. The proposes of this section and the criminal impoundment and forfeiture provisions of sections 9.28.020 and 9.28.022 include protecting the public, removing public nuisances, and deterring driving while intoxicated, but do not include the generation of revenues for the municipality.

A. *General provisions.*

1. In the case of an alleged violation of section 9.28.020 or 9.28.022, and in addition to the penalties set forth in those sections, the vehicle used in the alleged violation shall be impounded for 30 days if the person driving, operating, or in the actual physical control of the vehicle has not been previously convicted and shall be forfeited to the municipality if the person driving, operating, or in the actual physical control of the vehicle has been previously convicted. Impoundment may be accomplished through a seizure of the vehicle incident to an arrest or pursuant to a court order entered in the course of civil or criminal enforcement proceedings. Impoundment through a seizure of the vehicle incident to an arrest is at the discretion of the arresting officer.

2. A case seeking civil impoundment or forfeiture may be heard and decided by either the district court or a municipal administrative hearing officer pursuant to chapter 3.60. References in this section to "the court" or "a court" shall be interpreted to include either the district court or any municipal administrative hearing officer. An administrative hearing officer under this section may be a regular municipal employee, an independent contractor, or an employee of a municipal agency such as the parking authority. In addition to cases brought under this section an administrative hearing officer may hear other Code violations which may be disposed of by administrative hearing. Hearings before an administrative hearing officer shall take place no less than seven days and no more than 30 days after a registered owner or lienholder requests a hearing. Hearings before an administrative hearing officer shall be governed by chapter 3.60 to the extent that the provisions of chapter 3.60 do not conflict with this section. If the provisions of this section conflict with the provisions of chapter 3.60, the provisions of this section govern.

3. Upon the request of the municipality or a claimant, a civil proceeding seeking impoundment or forfeiture shall be held in abeyance until conclusion of any pending criminal charges arising out of the incident giving rise to the forfeiture or impoundment action under section 9.28.020 or section 9.28.022.

4. The court shall award the prevailing party in an impoundment or forfeiture case its reasonable attorneys' fees and costs. Costs under this section shall include but are not limited to filing costs, advertising costs, police officer time required for testimony, and such other costs incurred in processing the case, including any costs specified by this section.

5. Parties having an interest in the vehicle, including lienholders, as shown on the vehicle ownership records of the State of Alaska, division of motor vehicles or an agency with similar responsibilities in another state shall be served with notice of the civil action by certified mail, wit[illegible] eturn receipt requested and restricted delivery, sent to their address of record as shown in the vehicle ownership records of the State of Alaska or an agency with similar responsibility in another state or resi-

dence address as indicated in the police report. In a forfeiture action, if the owners or lienholders do not receive service through the mail, the owners or lienholders may be served at the municipality's option by personal service or by publication. If an owner or lienholder is served personally, service shall occur as provided for in Alaska Rule of Civil Procedure 4(d)(1)—(12). If an owner or lienholder is served by publication, a notice of forfeiture action accurately describing the vehicle, the date of impoundment, the place of impoundment, and directions as to who to contact for more information shall be published at least once per week for two consecutive weeks in a newspaper of general circulation and such owners and lienholders shall be deemed served. For the purposes of this section, a newspaper of general circulation is one which is recognized by the state as qualified to publish default sale notices. Any party failing to appear in an impoundment action within 20 days of service of notice or 30 days of the seizure of the vehicle, whichever comes first, waives the right to object to impound. Any party failing to appear in the civil action within 20 days of service of notice or completion of publication waives the right to object to forfeiture. Any party who requests a hearing in a civil action shall be deemed served. Any party who secures the release of a vehicle pending hearing shall accept service of notice of the civil action as a condition of release. For actions filed in district court, district court civil rules shall apply.

6. Any requests for release of a vehicle which is the subject of a civil impoundment or forfeiture action filed under this section which are brought by a person or entity who has not been charged with a violation of section 9.28.020 or 9.28.022 must be brought in the forum of the civil action.

7. At a hearing before the court in a civil action, a person who claims an ownership or security interest in the motor vehicle may avoid impound or avoid forfeiture of that person's interest if the claimant can establish by a preponderance of the evidence that:
   a. The claimant has an interest in the motor vehicle at the time of the alleged violation or, if acquired after the alleged violation, the interest was acquired in good faith and not for purposes of avoiding impound or forfeiture;
   b. A person other than the claimant was in possession of the vehicle and was responsible for or caused the act which resulted in the impound or forfeiture;
   c. If applicable, before permitting the alleged operator to gain custody or control of the motor vehicle, the claimant did not know or have reasonable cause to believe that if the vehicle were operated by the alleged operator it would be operated in violation of this Code; and
   d. A claimant that is a regulated lienholder meets its burden of proof under subsection A.7 of this section by filing with the court a copy of the vehicle's certificate of title or other security instrument reflecting the lien, together with an affidavit stating the amount of the lien and stating that the claimant is a regulated lienholder and was not in possession of the vehicle at the time of the act which resulted in the seizure of the vehicle. The presumptions provided in subsection A.7 of this section shall not apply to regulated lienholders.

For purposes of this section, when a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked, or cancelled license or in violation of a limited license or without a valid driver's

license, it is presumed that the claimant did have reasonable cause to believe that the vehicle would be used in violation of this Code. Also for purposes of this section, when the claimant and driver are not the same person and the claimant and driver have a familial relationship, such as husband and wife, father and daughter, mother and stepson, etc., it shall be presumed that the claimant is responsible and that the vehicle was operated by the driver, in violation of either section 9.28.020 or section 9.28.022, with the knowledge and consent of the claimant.

8. Upon receiving notice from the court of the time and place for a hearing in a civil action, the municipality shall, unless such notice has been provided by the court, provide to every person who has an ascertainable ownership or security interest in the motor vehicle as indicated by the State of Alaska, division of motor vehicles or any agency with similar responsibilities in another state written notice that includes:
   a. A description of the motor vehicle;
   b. The time and place of the forfeiture or impound hearing;
   c. The legal authority under which the motor vehicle may be impounded or forfeited;
   d. Notice of the right to intervene to protect the interest in the motor vehicle.

9. The municipality may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:
   a. Acceptance by the owner or lienholder of responsibility for meeting the requirements of subsection A.10 of this section;
   b. Agreement that the owner or lienholder will take reasonable steps to prevent the individual arrested for or charged with driving while intoxicated or with refusal to submit to chemical tests from operating the vehicle until properly licensed; and
   c. Acknowledgment by the owner or lienholder that failure to fulfill his or her obligations under the agreement may result in forfeiture of the vehicle at the option of the municipality. This requirement shall not apply to a regulated lienholder required by other law or by the terms of the agreement creating the lien to permit the individual to recover the vehicle upon payment of the lien or cure of any default.

10. Unless the release is pursuant to an agreement under section 9.28.026.A.9, the person seeking to redeem the vehicle must obtain an order authorizing release of the vehicle. A release shall not be granted unless the applicant can:
   a. Provide proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and
   b. Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees and any court costs imposed. The impound fee shall be the actual cost of impound plus an administrative charge to offset the municipality's processing costs. If the court makes a specific finding following a contested hearing or pursuant to a stipulation between the parties that the seizure of the vehicle was legally unjustified, the vehicle shall be released at no cost if the person seeking to reclaim the vehicle reclaims the vehicle within five days after the issuance of the court's decision making such a finding. A

vehicle ordered released at no charge under this subsection is subject to the provisions of AS 28.10.502 if the vehicle is not reclaimed within five days after the issuance of the court's decision. The provisions of chapter 9.50 do not apply to vehicles seized under the authority of section 9.28.026.

11. An acquittal or a conviction of a lesser offense in a criminal proceeding for a violation of chapter 9.28 provides a defense in a civil proceeding seeking impoundment or forfeiture of the vehicle if that civil proceeding is based on the same conduct that forms the basis for the criminal charge.

12. The provisions of this section shall be interpreted independently of state laws regarding impoundment or forfeiture of motor vehicles.

13. Release of vehicle pending hearing.

    a. A claimant who is not charged with a violation of section 9.28.020 or 9.28.022 may petition for setting or revision of bail release before a civil action is filed. Such petition shall be made to a court in the municipality.

    b. A vehicle return bond shall be set for each vehicle alleged in the complaint to have been used in an alleged violation of section 9.28.020 or 9.28.022. The purpose of setting a vehicle return bond on the vehicle is to secure the presence of the vehicle and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the vehicle is sold, transferred, or encumbered after the vehicle has been released pending hearing. If the vehicle's release has been obtained through the posting of a vehicle return bond and the vehicle is not returned pursuant to the court's order, the municipality may, in addition to obtaining the forfeited bond funds, seize the vehicle to implement the impoundment or forfeiture ordered by the court. A person who secures the release of a vehicle pursuant to a vehicle return bond must return the vehicle upon order of the court. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. A vehicle return bond may be posted in cash only. A vehicle return bond shall be set at a minimum of:

        i. Two hundred fifty dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has not been previously convicted;

        ii. Five hundred dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has been previously convicted and the vehicle is 20 years old or older;

        iii. One thousand dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has been previously convicted and the vehicle is 15 years old or older but less than 20 years old;

        iv. One thousand five hundred dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has been previously convicted and the vehicle is ten years old or older but less than 15 years old:

        v. Two thousand dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has been previously

convicted and the vehicle is five years old or older but less than ten years old; and

vi. Two thousand five hundred dollars if the person charged with a violation of section 9.28.020 or 9.28.022 has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is subject to an order setting a vehicle return bond may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of $160.00 to offset the municipality's processing costs. If the claimant who has secured the release of the vehicle pending hearing does not cause the vehicle to be returned to impoundment for the purpose of impoundment or forfeiture in accordance with an order entered in the case, the court may order all or any part of the vehicle return bond forfeited to the municipality and may also order that the proceeds of any sale, transfer, or encumbrance are forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while subject to a vehicle return bond. Personal property in a vehicle that is subject to a vehicle return bond under subsection A.13 of this section and has not been released pursuant to that vehicle return bond can be recovered from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.

14. As used in this section, the term "registered owner" refers to the owner of the vehicle at the time of offense as shown in the vehicle ownership records of the State of Alaska, division of motor vehicles or another agency with similar responsibilities in another state, but may include subsequent good faith purchasers.

15. For purposes of this section, time shall be calculated as set forth in Alaska Rule of Civil Procedure 6.

16. Assessed or appraised value of a motor vehicle shall be based upon the Automobile Dealers Association Book (Blue Book) for the same or similar make and model and accessorized motor vehicle. Should there be no Blue Book value for the motor vehicle, the value shall be $500.00.

17. For purposes of this section and only for purposes of proceedings before an administrative hearing officer under this section, the police report, which may include the narrative; accompanying documents; computer print-outs from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status of the driver, and the record of criminal convictions of the driver; and/or tape recordings, is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the municipality in a statement made under penalty of perjury.

18. For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to chemical tests arising out of a single transaction and a single arrest are considered one previous conviction. The term "previously convicted" means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft, or watercraft while intoxicated under section 9.28.020 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under section 9.28.022 or 28.35.032 or another law or ordinance with substantially similar elements.

19. The burden of proof for an action brought pursuant to this section is preponderance of the evidence.

20. For purposes of this section, the parties may agree to extend, reduce or otherwise alter the time limits set by this Code.

21. For purposes of this section, the terms "vehicle," "driver," "person" and "physical control" shall have those meanings as set forth in chapter 9.04 and this chapter. Other terms not specifically referenced shall have the meanings set forth in this title unless the context clearly indicates otherwise. For purposes of this chapter, the term "vehicle" shall have the same meaning as the term "motor vehicle" as defined in section 9.04.290.

22. The owner of a vehicle or the designated agent of the owner of a vehicle that is the subject of an impoundment or forfeiture action may relinquish to the municipality any ownership interest possessed by the owner as part of an agreement to resolve the action.

23. The term "regulated lienholder" as used in this section shall mean an entity whose lien on the vehicle is a result of lending activities that are subject to regulation by the National Credit Union Administration, the comptroller of the currency or other federal banking regulators, the Federal Trade Commission, or the state department of commerce and economic development.

24. Nothing in this section shall be construed to place upon a regulated lienholder a duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so shall not be usable as evidence against the regulated lienholder in any forfeiture proceeding or other civil action. Knowledge from other sources of the loan applicant's driving record is usable only to the extent that it is relevant under subsection A.7 of this section.

25. For purposes of this section, a seizure is legally unjustified only if there was:
    (1) No reasonable suspicion for the stop of the vehicle leading to an arrest for driving while intoxicated based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or
    (2) No probable cause for the arrest of an individual for driving while intoxicated based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

B. *Impoundment.*

1. A motor vehicle that is operated, driven, or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.020 or section 9.28.022 may be ordered impounded either upon conviction of the defendant of a violation of section 9.28.020 or section 9.28.022 or upon the decision of a court in a separate civil proceeding. To obtain an order for impoundment in a contested proceeding, the municipality must establish

by a preponderance of the evidence that the vehicle was operated, driven, or in the actual physical control of an individual who was acting in violation of section 9.28.020 or section 9.28.022.

2. A vehicle may be seized for impound under the circumstances set forth in subsection C.3 of this section.

3. If the seizure occurs incident to an arrest or otherwise prior to a conviction or court ordered impoundment the vehicle may not be held more than two days without a court order obtained to continue its detention. For purposes of computing the two-day period, the day the vehicle was seized is not to be included. For purposes of computing the two-day period, Saturdays, Sundays, and legal holidays are not to be included.

4. A vehicle which is ordered impounded under this section shall be held for a period of 30 days. An impoundment order may be made either upon conviction of the defendant of a violation of section 9.28.020 or 9.28.022, or upon decision of a court in a separate civil proceeding.

5. Vehicles ordered impounded under this section which are not claimed at the end of the 30-day, court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond under section 9.28.026.A.13 and has not been released pursuant to that vehicle return bond can be recovered from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.

C. *Forfeiture.*

1. To obtain an order for forfeiture under this section in a contested proceeding, the municipality must establish by a preponderance of the evidence that:

   a. The vehicle was operated, driven or in the actual physical control of an individual who was acting in violation of section 9.28.020 or 9.28.022; and

   b. The individual has been previously convicted.

2. A motor vehicle that is operated, driven or in the actual physical control of an individual arrested or charged with an alleged violation of section 9.28.020 or of section 9.28.022 may be forfeited to the municipality either upon conviction of the defendant of a violation of section 9.28.020 or of section 9.28.022, or upon decision of a court in a separate civil proceeding.

3. A motor vehicle may be seized and towed to a secure location by a peace officer or a peace officer's designee upon an order issued by a court having jurisdiction over the motor vehicle upon a showing of probable cause that the motor vehicle may be forfeited or impounded under this section, section 9.28.020 or 9.28.022. Seizure without a court order may be made if:

   a. The impoundment is incident to an arrest;

   b. The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed; or

   c. There is probable cause to believe that the motor vehicle was operated, driven or in the actual phys-

ical control of an individual in violation of section 9.28.020 or of section 9.28.022.

A motor vehicle impounded under this subsection may not be held for more than two days without a court order obtained to continue its detention.

4. A court may order impoundment of a motor vehicle subject to forfeiture in a civil action filed under subsection C of this section for a minimum of 30 consecutive days.

5. A motor vehicle seized for the purpose of forfeiture or impoundment shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle as designated in the first paragraph of this section and subsection C.3 of this section, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, section 9.28.020 or 9.28.022, the chief of police or his authorized designee may:

   a. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or

   b. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition. No private corporation may make or perform a contract to tow, store, or retain custody of motor vehicles seized or impounded under this section, section 9.28.020 or 9.28.022 if any of the owners of that private corporation have been convicted of a felony or any crime involving larceny, theft, or receiving and concealing stolen property within ten years before the date of execution of the contract or during the term of the contract. No private corporation may make or perform a contract to tow, store, or retain custody of motor vehicles seized or impounded under this section, section 9.28.020 or 9.28.022 if any of the employees of that private corporation have been convicted of a felony or any crime involving larceny, theft, or receiving and concealing stolen property within five years before the date of execution of the contract or during the term of the contract.

6. Following a forfeiture order under this section, section 9.28.020 or 9.28.022, the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Personal property in a vehicle that is subject to a vehicle return bond under subsection A.13 of this section and has not been released pursuant to that vehicle return bond can be recovered from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.

7. Upon service or completion of publication of notice of commencement of a forfeiture action under subsection A.5 of this section, a person claiming interest in the property shall file, within 30 days after service or completion of publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the municipality's allegations. If a claim and answer is not filed within the time specified, the motor vehicle described in the municipality's allegation must be ordered for-

feited to the municipality without further proceedings or showings. For a regulated lienholder, the requirement of a notice of claim and answer is met by the filing of the information required by subsection A.7.d of this section, and by adding to the affidavit required by that subsection a statement of the original amount of the loan giving rise to the lien and the current balance due on that loan.

8. A claimant may petition the court for sale of a motor vehicle before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the municipality. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

9. Property forfeited under this section, section 9.28.020, or section 9.28.022 shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section, section 9.29.020, or section 9.28.022 includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:

   a. Sell the property at an auction conducted by an auctioneer not employed by the impound contractor and use the proceeds for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and municipal attorney fees, provided that if such sale is arranged for by the impound contractor the municipality shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction of those vehicles regardless of whether the costs of impound and storage exceed the value of the forfeited vehicles sold;

   b. Take custody of the property and use it in the enforcement of the municipal and state criminal codes; or

   c. Destroy the property.

   Property forfeited and sold at auction pursuant to this section, section 9.28.020, and section 9.28.022 shall be sold by an auctioneer approved before the auction by the chief of police or his or her designee. Before the auction, the chief of police or his or her designee must approve in advance the auctioneer's costs or the method for determining the auctioneer's costs. The impound contractor shall provide to the chief of police or his or her designee a copy of the auctioneer's report of the auction notarized by the auctioneer. The municipal auditor shall certify the proper disposal of property forfeited under this section, section 9.28.020, and section 9.28.022. The chief of police may adopt rules and regulations to implement this section.

10. Upon a showing that a claimant is entitled to remittance in accordance with this section, the court shall order that:

    a. If the claimant is entitled to the motor vehicle, it shall be delivered to the claimant immediately subject to costs as described in section 9.28.060.A.10; or

    b. If the claimant is entitled to remittance of some value less than the total value of the motor vehicle, the claimant is entitled at the claimant's choice to receive either the value of the claimant's interest after the sale of the vehicle at an auction following deduction of the costs of the auction or, upon re-

quest and payment of the difference in value by the claimant, the motor vehicle itself.

When a vehicle is subject to forfeiture under this section, and when the vehicle is sold and the lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the municipality's costs.

11. The storage and impound costs as well as any court costs imposed, if any, for vehicles impounded under subsection C.3 of this section shall be borne by the person redeeming such vehicle as owner or in behalf of the owner or as having an interest in the vehicle. The amount of such costs shall be determined as provided in subsections A.4 and A.10 of this section.
12. In a contested forfeiture proceeding concerning a vehicle titled in the names of more than one owner on the certificate of title, the court shall follow this subsection.
    a. If one owner does not avoid forfeiture, the court may order the forfeiture of the entire interest of all the owners in a vehicle which is titled in the names of more than one owner in the disjunctive. Title in the disjunctive is significant by the use of the word "or" between the names of the owners listed on the certificate of title.
    b. If such owner does not avoid forfeiture, the court shall order the forfeiture of the interest of any owner in a vehicle which is titled in the names of more than one owner in the conjunctive. Title in the conjunctive is signified by use of the word "and" between the names of the owners listed on the certificate of title. Owners of a vehicle titled in the names of more than one owner in the conjunctive are presumed to own the vehicle in equal shares. In circumstances described in this subsection, the court shall order that the vehicle be sold at public auction and further order that the proceeds from the sale of the vehicle be held by the treasury division of the municipality's finance department. After deduction of the reasonable costs of the auction, an amount of the proceeds of the auction for the sale of that vehicle which is equal to the interests of the owners whose interests have ~~been~~ not been forfeited shall be returned to those owners if those owners apply to the treasury division of the municipality's finance department within 60 days of the auction. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the municipality subject to the rights of any other claimant to those funds.
13. Property subject to the interest of a lienholder whose interest has not been forfeited may not be disposed of as provided in this section without the consent of the lienholder. A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:
    a. The individual who allegedly used the vehicle in violation of section 9.28.020 or 9.28.022 is not the person whose dealings with the lienholder gave rise to the lien; or
    b. The vehicle which the individual was driving, operating, or was in actual physical control of at the time of the alleged violation was not the vehicle involved in the event giving rise to the conviction described in subsection C.1.b of this section.

(AO No. 82-205; AO No. 83-163, 10-17-83; AO No. 93-87(S-2), 1-1-94; AO No. 94-71(S), § 1, 4-26-94; AO No. 95-84(S-1), § 18, 4-27-95; AO No. 95-163(S), §§ 10—19, 8-8-95)

Cross reference—Administrative adjudication procedures, ch. 3.60.

State law reference—Authority, AS 28.35.030.

9.28.027 Failure to return a vehicle that has been released under a vehicle return bond.

It is unlawful for the person who has secured the release of a vehicle under a vehicle return bond under section 9.28.020, 9.28.022, or 9.28.026 to willfully fail to return that vehicle when ordered by a court or a municipal administrative hearing officer. Each day that a vehicle is not returned constitutes a separate offense under this section.
(AO No. 95-84(S-1), § 19, 4-27-95)

Post-it® Fax Note 7571	Date 11/12/97 # of pages ▶ 2
To LIO	From Robin Randall
Co./Dept.	Co.
Phone #	Phone # 479-7940
Fax # 456-3346	Fax #

* Pls forward to Kelly + Brice

P.O. Box 80847
Fairbanks, AK 99708
November 12, 1997

Dear Representative Kelly:

I'm writing in regards to a statewide vehicle forfeiture law. I am sickened and outraged by the blatant disregard drunk drivers have for the safety of others and the total disrespect they have for the loss of privilege of driving. Strong measures must be taken as they have been in Anchorage and many other cities in our country. Anchorage has had good success with their city ordinance. There is a committed group of concerned citizens who are going to make this ordinance happen in our community but we realize that our entire state has the problem with this very real menace of drunks on our highways.

We want a statewide law with substance, not wishy washy rhetoric. The current state statue (Sec. 28.35.036) states that the state may move the court to order the forfeiture of the vehicle if the convicted person has been previously convicted. This is not clear or strong enough language. It needs to be the state will move the court to order the forfeiture....the Anchorage law gives the individual just two chances; the first time the vehicle is mandatorily seized and towed for 30 days; the second offense the car is forfeited. This is the only way we will stop the repeat offenders from driving with suspended licenses and hurting and killing innocent motorists and pedestrians.

Please support a new statue that will help prevent any more tragic, needless deaths to the preventable crime of drinking and driving.. A response would be much appreciated.

Sincerely,

Robin Randall

CITY OF FAIRBANKS

FROM THE
CITY ATTORNEY'S OFFICE
PHONE NO. (907) 459-6750
FAX NO. (907) 459-6761

FAX COVER SHEET

DATE: 11-17-97

TO: Robin Randall

ATTENTION:

FAX #: 474-4052

FROM: Linda Dewey

NO. OF PAGES (including cover sheet): 8

COMMENTS: Robin - the attachments are too many to fax - here is Herb's memo.

IF YOU SHOULD HAVE ANY PROBLEMS WITH THIS TRANSMITTAL, OR IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT OUR OFFICE AT 459-6750.

City of Fairbanks

From the City Attorney's Office

MEMORANDUM

TO: Mayor Hayes and City Council Members

FROM: Herbert P. Kuss, City Attorney HK

SUBJECT: Vehicle Impoundment/Forfeiture for DWI and Refusal to Submit to Chemical Test

DATE: November 13, 1997

At the last regularly scheduled meeting the council requested commentary on Anchorage's impoundment and forfeiture ordinance of vehicles used in DWI and Refusal cases.

1. <u>State Statutes Concerning Impoundment and Forfeiture</u>.

AS 28.35.036 provides that the State may move for forfeiture of a vehicle used in a DWI or Refusal violation upon conviction for a third or subsequent offense. This provision is invoked relatively rarely, however, because the penalty is discretionary with the court and the police do not routinely seize the vehicles at the time of arrest. Even if the court does order forfeiture at sentencing, the order is often never executed because the vehicle cannot be located.

2. <u>Municipality of Anchorage's Ordinances</u>.

Unlike Fairbanks, Anchorage prosecutes its own DWI and Refusal cases.[1] It has enacted its own ordinances for impoundment and forfeiture of vehicles used in these cases. AS 28.35.038 (Exhibit "A") allows these ordinances, which are codified at AMC 9.28.020-.027 (Exhibit "B").

Anchorage's ordinance declares that the vehicles driven by drunk drivers are public nuisances and allows seizure of a vehicle incident to the arrest of the driver. Since the law was implemented in April of 1994, the police in Anchorage have routinely seized the vehicles used by drivers arrested for DWI.

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[1]/The City ceased prosecuting DWI cases in 1977 by repealing its DWI ordinance. The State assumed this prosecutorial function (reluctantly) and rumor has it that the current administration may seek a legislative change mandating that Fairbanks resume these prosecutions and assume the same responsibilities as Anchorage.

The Municipality seeks 30 days of impoundment if the offense is the driver's first, and seeks forfeiture of the driver's interest if it is a second or subsequent offense. Approximately one-third of the vehicles towed have been driven by a driver with a previous conviction within the past 10 years and were thus eligible for forfeiture. Also noteworthy is the license status of these arrested drivers. More than one-third of all drivers arrested for DWI had licenses which are revoked, suspended, or otherwise invalid. In many cases, the license is invalid because of a previous DWI conviction.

More than half of the vehicles seized in Anchorage were owned or co-owned by the driver charged with DWI. Whatever the ownership of the vehicle, an owner can get a vehicle released upon payment of a bond and the $160.00 administrative fee plus towing and storage fees. Bonds are set within two working days of the seizure of the vehicle. The bond on a vehicle is like bail on a person: it secures the release of the vehicle pending a civil administrative hearing, criminal trial, or other resolution of the matter. Vehicle return bonds are tied to the age of the vehicle as a proxy for the value of the vehicle, and minimum amounts for the bonds are set out in the ordinances.

The ordinance sets out a number of consequences for someone who secures the release of a vehicle through posting a vehicle return bond and then fails to return the vehicle when ordered. The bond is routinely forfeited. The conduct is a civil offense exposing the offender of up to a $300 a day fine for each day the vehicle is not returned. The police may recover the vehicle.

3. Disposition of Seized Vehicles.

Vehicles seized are disposed of through: (a) settlements or stipulations; (b) release pursuant to dismissal or reduction of criminal charge or order at a hearing; (c) recovery after 30 days of impoundment (in cases in which the Municipality is only seeking 30 days of impoundment); (d) forfeiture and sale or other disposal; and (e) abandonment after 30 days of impoundment and subsequent sale by the towing and storage contractor to satisfy the statutory towing and storage lien.

a. Settlements (Stipulations).

The civil actions against the interests of the owners and lienholders (other than the driver) are usually resolved through settlements, traditionally called stipulations. These stipulations typically involve the payment of fees, including an $160 administrative fee, costs of $6-12, an attorney's fee of $102, and

the towing and storage fees. Towing fees are $25 for a day-time tow and $1 for a night-time tow plus mileage fees of $4 per mile, and storage fees are $2 a day.

Stipulations also include a promise by the owner or lienholder recovering the vehicle not to allow the DWI arrestee to drive the vehicle while intoxicated or while unlicensed. The stipulation also provides that the Municipality may seize the vehicle and sue for forfeiture if this promise is breached. If the Municipality is seeking forfeiture, a stipulation also requires that the person recovering the vehicle give the Municipality any equity owned by the DWI arrestee.

A stipulation ends the civil case and takes the vehicle out of the criminal case, thus ending the Municipality's efforts to obtain forfeiture or additional days of impoundment against the vehicle.

The Municipality does not stipulate with owners or lienholders who have promoted the offense. Evidence of such promotion can come from presence in the vehicle at the time of the arrest; from an admission that the owner allowed the driver to use the vehicle with knowledge that the driver was not properly licensed; or from other evidence indicating a reasonable cause to believe that if the vehicle is returned to the owner that it would be operated in violation of law.

b. Release of Vehicle Pursuant to Reduction or Dismissal of Criminal Charge or Order at Hearing.

A disposition of a criminal case which results in other than a conviction for DWI or Refusal results in dismissal of the civil administrative case against owners or lienholders who are not the criminal defendant. Owners and lienholders may ask for a hearing on the civil administrative case and contest the impoundment or forfeiture.

Any person recovering a vehicle following a reduction or dismissal of a criminal charge or pursuant to a dismissal or order of release in the administrative case must pay the administrative fee and the towing and storage fee. The only two exceptions are (a) the police did not bring charges against the alleged driver or (b) the police had no reasonable suspicion to stop the vehicle or probable cause to arrest the alleged driver.

c. Recovery of Vehicles After 30 Days of Impoundment.

Vehicles for which the Municipality is seeking 30 days of impoundment may be released to owners or lienholders at the end of

the 30 days. Those recovering the vehicle pay administrative and towing and storage fees.

d. Forfeiture.

About 10 percent of all vehicles towed incident to a DWI arrest are forfeited and sold at auction. This represents approximately one-third of all vehicles for which Anchorage sought forfeiture. To date, all vehicles forfeited have been sold at auction, but the ordinance also provides that the police may use forfeited vehicles for purposes of law enforcement.

Auctions of forfeited vehicles are held once a month, casually on the fourth Saturday of each month.

e. Sale of Abandoned Vehicles Pursuant to Towing and Storage Liens.

Vehicles for which the Municipality seeks 30 days of impoundment are disposed of by the towing and storage contractor if no one recovers the vehicle after being sent notice of the intent to sell the vehicle if there is no recovery. This disposal occurs under the state's towing and storage lien created in AS 28.10.502.

f. Dispositions in 1996 (10 Month Period).

Disposition of Vehicles Towed Incident to DWI Arrest
January 1 - October 31, 1996

Recovered after 30 days of impoundment	457
Released pursuant to stipulation	326
Forfeited and sold at auction	127
Abandoned after impoundment and sold	156
Pending/Other	498
Total	1,564

4. Revenues and Costs of Program.

If the council adopts a forfeiture ordinance it needs to strongly consider adding a ½ time paralegal to be paid from the program. Anchorage has added staff at the Municipal Attorney's Office and the Anchorage Police Department to operate the DWI vehicle impoundment/forfeiture program. It also collects revenues from administrative fees, attorney's fees, net auction proceeds, and vehicle return bond forfeitures. It is estimated that revenues will cover approximately three-quarters of the costs in 1996.

5. **Publicity.**

Anchorage ordinances require that bars, liquor stores, and restaurants which serve alcohol post signs warning of the impoundment/forfeiture law. The signs say "DRIVE DRUNK-LOSE YOUR CAR!" and "Don't Get Hooked on Drinking and Driving." These signs are intended to be eye-catching, with bold print underscoring the simple message.

6. **Effects on Incidence of Driving While Intoxicated.**

According to the Anchorage police department, the program's effects on the incidence of DWI are difficult to measure. The number of DWI arrests fell in 1995 -- the program's first full year of operation -- but lose in 1996. The difficulty of assessing the program's effect on incidence of DWI appears to be caused by an increased law enforcement focus on DWI which occurred since the program started in April of 1994. The total number of Anchorage Police Department (APD) patrol officers has increased since that date. Probably more significant than the total number of patrol officers, however, is the number of hours of police resources specifically devoted to DWI enforcement. A special federal grant has allowed APD to pay overtime to officers to work on traffic enforcement. Enforcement of traffic laws against speeding, improper turns and lane changes, and stoplight violations, particularly at night, is a proven method of producing DWI arrests. Officers assigned to DWI enforcement also routinely process persons arrested for DWI by other patrol officers, thus allowing patrol officers to be more efficient and increase their total DWI arrests.

A probably more accurate measure of the true incidence of DWI than the number of DWI arrests is the number of deaths from alcohol-related DWI automobile crashes.

Number of Deaths from Alcohol-Related DWI Automobile Crashes 1990-1996

Year	Deaths
1990	13
1991	13
1992	12
1993	12
1994	13
1995	9
1996 (through 10/29/96)	7

In addition, the program appears to prevent an infrequent but troubling phenomenon. In a number of cases over the years, the Anchorage police recalled arresting a person for DWI who would

secure release on bail or on own recognizance who would return to the vehicle and drive drunk again, occasionally causing a crash with death or injury. Since the impoundment/forfeiture program began, no one has driven drunk in the same vehicle after being arrested for DWI that same night.

The legal issues arising in forfeiture ordinances are seizure, due process, double jeopardy and excessive punishment questions.

7. Judicial Review.

The only reported case involving a judicial council review of Anchorage's ordinance is Municipality of Anchorage v. Skagen, 920 P.2d 284 (Alaska 1996). Skagen challenged the ordinance on a double jeopardy argument - essentially that the ordinance exposed him twice to criminal sanctions in the form of vehicle forfeiture. The court disposed of the case on other grounds and no other constitutional issues were raised or discussed. Popular assertion that the Anchorage ordinance had been fully tested in court is misplaced. Nonetheless, case law from other jurisdictions (although somewhat split) tend to support civil forfeiture schemes.

8. Split Functions.

Anchorage has an advantage in pursuing vehicle forfeitures because it prosecutes its own DWI and Refusal cases. It can thus closely coordinate a total case resolution involving the criminal charges and the civil forfeiture action. In Fairbanks the State prosecutes DWI and Refusal cases. About 400 cases (DWI/Refusal) occur annually inside the City's limits.

Separate jurisdictional control over the criminal and civil cases will require considerable interaction and cooperation with the district attorney's office. No doubt there will be considerable paperwork generated on the civil forfeiture side as our experience in drug asset forfeiture cases have shown over the years.

With only one secretary I'm not at all certain we can add another mountain of paperwork. Another half-time secretary or paralegal (presumably funded through impoundment fees) will be needed to start-up and keep the program running smoothly. Unlike Anchorage I do not propose adding an attorney to prosecute these forfeitures unless experience later compels the council otherwise.

9. The Portland Experience.

I have attached a study completed by Ian Crosby in 1995 which

analyzed the effectiveness of vehicle seizure in reducing arrests among "problem" drunk drivers.

Notably at p.29 Crosby asks why seizure would deter where other sanctions have failed. He concludes that,

> While offenders may view brief jail terms with indifference and simply fail to pay fines, the loss of use of a vehicle through seizure or forfeiture is a tangible penalty. Many offenders have few financial resources. The investment which is lost in a vehicle which is forfeited may be considerable to them, even if the vehicle was of relatively little value. The cost of replacing a vehicle can serve as an unavoidable fine, even if a vehicle is only seized and released, if an offender also loses access to it. With vehicles which are released, the consequences incurred at the hands of third parties also may enhance the deterrent effect of seizure.

HPK/lmd