

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY  
OF VIRGINIA  
ON  
CONFISCATION OF MOTOR VEHICLES**



**HOUSE DOCUMENT NO. 37**

**COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1975**

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OF THE  
VIRGINIA STATE CRIME COMMISSION  
TO: THE HONORABLE MILLS E. GODWIN, JR.  
GOVERNOR OF VIRGINIA  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA

Pursuant to House Joint Resolution No. 219, 1974 Session, the sub-committee of the State Crime Commission, as listed below, offers the following report on the Confiscation of Motor Vehicles.

This report is also included with other information as a part of the Annual Report of the State Crime Commission.

Respectfully submitted,

  
Stanley C. Walker,  
Chairman

MEMBERS OF COMMISSION

Stanley C. Walker, Chairman

Erwin S. Solomon, Vice Chairman

George S. Aldhizer, II

Claude W. Anderson

L. Ray Ashworth

Andrew P. Miller

Theodore V. Morrison, Jr.

William N. Paxton, Jr.

A. L. Philpott

George F. Ricketts

George M. Warren, Jr.

STAFF

Lewis W. Hurst, Executive Director

STUDY GROUP

Claude W. Anderson

C. M. Boldin

J. deKoven Bowen

J. Samuel Glasscock

Reno S. Harp, III

Joseph Higgins

Lewis W. Hurst

N. B. Rogerson

Garnett A. Shumaker, Jr.

J. B. Wyckoff

SR 9434 COMMITTEE AMENDMENT IN THE NATURE  
OF A SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 219

(Proposed by the House Committee on Rules)

*Requesting the Virginia State Crime Commission to study the laws relating to the confiscation of motor vehicles used in the commission of certain crimes.*

Whereas, the laws of the Commonwealth presently provide for the confiscation, before trial, of motor vehicles used in the commission of certain crimes, such as transportation of illegal alcoholic beverages, illegal drugs and certain stolen property; and

Whereas, much consideration ought to be given to all such confiscation laws before they are amended or broadened to ensure uniformity and ensure that constitutional property rights are adequately provided for; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the Virginia State Crime Commission is requested to study all laws relating to the confiscation of motor vehicles used in the commission of crimes, including the need for uniformity in such laws, and to examine closely the problems of confiscation and holding of automobiles prior to a finding of guilt by a court of competent jurisdiction in regard to the alleged criminal act which precipitated the confiscation.

The Commission is further requested to complete its study and report its recommendations to the Governor and General Assembly not later than November one, nineteen hundred seventy-three.

## CONFISCATION OF MOTOR VEHICLES

At the request of the 1973 General Assembly, the Crime Commission conducted a study of Virginia laws relating to the confiscation of motor vehicles used in the commission of certain crimes. A Confiscation of Motor Vehicles Advisory Group was formed in the summer of 1973 to undertake the study and to report to the 1974 General Assembly.

This study group was chaired by Delegate Claude W. Anderson of Buckingham. Its membership represented a cross-section of individuals directly involved with the establishment and enforcement of the vehicle confiscation statutes, including Delegate J. Samuel Glasscock of Suffolk, Virginia State Police Major C. M. Boldin of Richmond, Charlottesville Police Chief J. deKoven Bowen, Deputy State Attorney General Reno S. Harp, III, Richmond; Police Vice Lieutenant Joseph Higgins, Richmond; Crime Commission Executive Director Lewis W. Hurst, Norfolk Police Lieutenant N. B. Rogerson, Buckingham County Sheriff Garnett A. Shumaker, Jr., and Amherst County Commonwealth's Attorney J. B. Wyckoff.

The advisory group held a public hearing in late October, 1973, at the State Capitol to afford private citizens and representatives of organizations such as the Virginia Bankers Association an opportunity to discuss their concerns regarding possible changes in the confiscation laws. The staff conducted a survey of a number of sheriffs, police chiefs and commonwealth's attorneys, soliciting specific information on the handling of such cases in the localities.

Virginia's laws presently provide for confiscation, before trial, of motor vehicles used in the commission of crimes such as transportation of illegal alcoholic beverages, illegal drugs and certain stolen property. These laws have caused a great deal of frustration among law enforcement officials throughout the state. Many commonwealth's attorneys also have expressed a dislike for the manner in which they have to function pertaining to these statutes.

### Majority Report

The study group met for a final session November 30, 1973. A majority of the members passed the following recommendations.

1. To reduce the confusion caused by a lack of uniformity in present laws, all such confiscation statutes should be combined in Title 46.1 of the Code of Virginia.
2. To add a measure of flexibility to present statutes, provide that prior to court disposition and on motion of the commonwealth's attorney, the car can be released to the lienholder if the lien exceeds the value of the car.
3. Amend the statute to provide that when a car has been driven by the owner, seized, and a conviction results, the car although subject to forfeiture is returned to the lienholder under the applicable provisions of the law. The lienholder shall then be on notice that the vehicle has been subject to forfeiture because of the action of the owner. If the owner drives the vehicle again, contrary to the law, subjecting the vehicle to seizure and forfeiture a second time, the lien is automatically dissolved.

### Dissent of Delegate J. Samuel Glasscock to Majority Report

For a penalty to be effective, it should be reasonably fair, equally applied and imposed with some degree of certainty. These tests are not met by present vehicle confiscation system, which I believe fails for the following reasons: (1) punishment is applied in an unequal and unfair manner; (2) it takes time of law officers and prosecutors which could be spent more effectively on other activities; (3) it involves special problems, i. e., storage of vehicles seized but not forfeited, and (4) it unnecessarily involves innocent parties, such as innocent owners and lending institutions.

Take the example of three persons convicted of racing, (A) driving his \$4,000 car on which no money was owed, (B) driving his \$4,000 car with a bank lien of \$3,500, and (C) driving his older \$400 car on which no money was owed. Under our present laws, (A) and (C) would lose their cars, one worth \$4,000 and



the other \$400, while (B) would lose \$500 (or possibly nothing if the car were released to the lienholder who returned it to (B). Obviously, an unequal punishment has been imposed on these three persons for the same offense.

Of the 1,907 vehicles seized by State Police between January, 1971, and September, 1973, and on which cases were closed 1,570 (82%) were released to lienholders or owners and only 231 (12%) were actually sold, with the sales netting the state \$26,409. It is evident that of the cases concluded, the state netted less than \$14 for each motor vehicle seized. Obviously more time and effort by law enforcement officers and prosecutors was involved than is represented by the money actually sold.

Additionally, if financial institutions must from time to time negotiate with the authorities about whether their secured motor vehicles should be released or forfeited, then the cost of making such loans is increased. They should not be required to participate in the punishment procedure as they now must under present laws.

Our present confiscation system is unfair, inefficient and should be abolished. The only possible justification for involving the motor vehicle in the situations where confiscation is now permitted is to create a lien to help insure payment of a fine--a cumbersome and not particularly desirable procedure, though it might be justified if experience indicates some difficulty in securing payment of fines.

Based on the three recommendations of the Committee, a bill was introduced in the 1974 Session of the General Assembly. The bill was carried over due to difficulties in the language of the statutes. The bill will be redrawn and submitted to the 1975 General Assembly.

