

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

**ALTERNATIVE MEANS OF
SANCTIONING HABITUAL
DUI OFFENDERS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 26

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

Senator Ken Stolle
Chairman

Rich Savage
Director

December 8, 1998

To: The Honorable James S. Gilmore III, and
Members of the Virginia General Assembly:

Senate Joint Resolution 200, agreed to by the 1998 General Assembly, directed the Virginia State Crime Commission to conduct a study on additional or alternative sanctions for habitual DWI offenders and to submit its findings and recommendations to the Governor and 1999 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1998. I have the honor of submitting herewith the study report.

Respectively submitted,

A handwritten signature in cursive script, appearing to read "K. Stolle".

Kenneth W. Stolle
Chairman

KWS:hvk

VIRGINIA STATE CRIME COMMISSION
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The Honorable William G. Petty

Attorney General's Office

The Honorable Mark L. Earley

Executive Summary



Virginia State Crime Commission

Alternative Means of Sanctioning Habitual DUI Offenders

January 1999

In 1998, the Virginia General Assembly passed Senate Joint Resolution 200 directing the Virginia State Crime Commission to study additional or alternative means of sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses. Specifically, SJR 200 requested that the Crime Commission:

- Review drunk-driving charges and penalties;
- Examine the severity and violence of the crime and the problem of repeat offenders; and
- Develop additional or alternative methods to reduce drunk driving

and to restrict the ability of persons with DUI convictions to have access to motor vehicles, either by increased jail penalties or by other penalties levied on habitual offenders.

Findings

The Crime Commission found:

- According to data compiled and provided by the Department of Motor Vehicles (DMV), 25% of all drinking-driver fatalities are alcohol related. The total number of alcohol-related traffic fatalities as related to the total number of traffic fatalities for the last ten year period, has decreased only 10.1%.
- According to information provided by the DMV, there continues to be a consistently high percentage of drivers convicted of driving under the influence who are repeat offenders.
- Further, DMV records indicate that of all licensed drivers in the Commonwealth, 7% have been convicted of at least one § 18.2-266 offense in the last ten years.
- At present, Virginia Code § 46.2-351 provides for enhanced penalties for "habitual offenders."

Executive Summary

- Repeat offenders are a class of individuals in need of more continued supervision and treatment.
- There is a strong desire by judges, attorneys and other interested parties to facilitate and ease the administration of the judicial process and the prosecution of the Commonwealth's DUI laws.
- Current requirements for providing certificates of analysis need to be modified in order to further the administration of justice pursuant to the duties and responsibilities entrusted to the Commonwealth's law enforcement officers and attorneys.
- The Commission should continue its study to develop means of deterring chronic offenders and reducing the risk they pose to the Commonwealth and its citizens.

Recommendations

Based on these findings, the Crime Commission recommended:

- Third and subsequent driving under the influence offences within ten years be designated as Class 6 felonies under § 18.2-270; fourth and subsequent offences

be subject to a one year mandatory minimum jail sentence.

- All persons convicted of a second offence DUI be required to enter into an alcohol safety action program prior to being considered for any level of license reinstatement.
- Those convicted of a second offence of driving while their license has been suspended for failure to pay fines be required to report to a Virginia Alcohol Safety Action Program for an intervention in accordance with § 18.2-271.1.
- Persons with restricted licenses issued pursuant to § 18.2-271.1 be allowed to operate a car necessary to transport a minor child to and from school, day care, and facilities housing medical service providers.
- Courts be allowed to require that the defendant remain on probation pursuant to the terms of any suspended sentence for the same period of license suspension, not to exceed three years.
- Judges be allowed to issue restricted driver's licenses to persons who have had their license suspended for failure to pay fines.

Executive Summary

- The determination and adjudication provisions of the Habitual Offender Act be repealed and stricter license revocation provisions be added to §§ 18.2-36.1 and 18.2-54.1

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Introduction

Authority for Study

The 1998 General Assembly approved Senate Joint Resolution 200 sponsored by Senator Joseph V. Gartlan, Jr. directing the Crime Commission to study additional or alternative means of sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses.

Virginia Code § 9-125 establishes the Virginia State Crime Commission and provides that the Commission is to “study, report and make recommendations on all areas of public safety and protection.” Furthermore, pursuant to Virginia Code § 9-127, the Commission “shall have the duty and power to make studies and to gather information and data in order to accomplish its purposes.” With respect to the performance of the functions, duties, and powers enumerated to the Commission, Virginia Code § 9-134 provides that the Commission shall be authorized to maintain offices, hold meetings and functions, conduct private and public hearings, and designate a member of the Commission to preside over such hearings. The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of additional or alternative sanctions for habitual offenders convicted of DUI offenses.

Members Appointed to Serve

At the May 19, 1998 meeting of the Crime Commission, Chairman Kenneth W. Stolle selected Senator Thomas K. Norment to serve as Chairman of the Public Safety Subcommittee and Delegate Raymond R. Guest, Jr. to serve as chairman the Governmental Affairs Subcommittee. The following members of the Crime Commission were selected to serve on the respective subcommittees:

Public Safety Subcommittee

Senator Thomas K. Norment, Jr., Chair
Sheriff Terry W. Hawkins
Senator Janet D. Howell
The Honorable Robert J. Humphreys
Delegate Clifton A. Woodrum
Senator Kenneth W. Stolle, ex-officio

Governmental Affairs Subcommittee

Delegate Raymond R. Guest, Jr., Chair
Delegate R. Creigh Deeds
The Honorable Mark L. Earley
Delegate A. Donald McEachin
The Honorable William C. Petty
Senator Kenneth W. Stolle, ex-officio

Subsequent to this meeting, SJR 200 was assigned to the Public Safety Subcommittee for further investigation and examination pursuant to the legislative mandate of the General Assembly.



Introduction

Report Organization

The remaining sections of this report present the results of the Virginia State Crime Commission's analysis for sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses. Section III presents background information. Study objectives and issues are discussed in Section IV, the report's findings and recommendations are presented in Section V, and acknowledgements are contained in Section VI.



Study Design

A Crime Commission work group was convened to examine the issues identified in the study resolution. This workgroup was comprised of the following individuals and their respective organizations:

Delegate Brian J. Moran, Chair
Brenda Altman, Mothers Against Drunk Driving
Oscar Brinson, Defense Bar
Trudy Brisendine, Fairfax County Department of Family Services
Sheriff Michael J. Brown, Virginia Sheriffs Association
Dennis Collins, Chesterfield County Office of the Commonwealth's Attorney
Judge Vincent Lilley, Roanoke County General District Court
Pete Marone, Division of Forensic Science
Lieutenant Colonel W. Gerald Massengill, Department of State Police
Bill McCollum, Virginia Alcohol Safety Action Program
Karen Ruby, Department of Motor Vehicles
Dana Schrad, Virginia Association of Chiefs of Police

The Crime Commission, chaired by Senator Kenneth W. Stolle, held public meetings at which the resolution reports were presented. Those reports provided progress updates pertaining to the study, staff and workgroup developments, and subcommittee discussions.

Further, the Public Safety Subcommittee, chaired by Senator Thomas K. Norment, Jr., held meetings at which a full study and workgroup report concerning the resolution was presented. The Public Safety Subcommittee was responsible for reporting to the full Commission on the progress of the study..

The workgroup met on four separate occasions to discuss issues relevant to the resolution and Virginia DUI laws and policies within the scope of the study. The workgroup was responsible for presenting its findings and recommendations to the Public Safety Subcommittee.

Given the nature of the workgroup compiled here, staff looked to rely on their collective experiences and expertise. In an effort to further develop the discussion, findings and recommendations contained herein, staff constructed a research design which included data collection, reduction, and display components. Summarizing, first, staff gathered evaluations of other state efforts geared towards sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offences. This information was combined with both primary (statutes/statistics) and secondary (current event accounts and other evaluating information) Virginia specific information.

Linking these details with those gleaned from on-going work group meetings, the data collected was reduced, and in some instances, prepared for display within the report. In



Study Design

performing these data reduction and display functions, further questions and hypotheses which served as the basis for subsequent work group discussions followed. From this foundation, findings and recommendations followed. Those findings and recommendations were presented to the members of the Virginia State Crime Commission for consideration in the 1999 General Assembly.



Background

Resolution Development

In 1997, the Fairfax County Board of Supervisors expressed a concern that highway traffic fatalities from DUI crashes in Fairfax County increased over the previous year. Subsequently, several newspaper articles featured accidents which were caused by repeat offenders and reported the number of individuals who had been convicted of repeat DUI offenses. At the same time, Senator Joseph Gartlan was working with the American Automobile Association (AAA) to assess the results of a survey on DUI issues conducted through the Association's monthly magazine.

The survey's results, combined with the concerns voiced by both interested citizens and organizations, and the identification of DUI as a continued problem in the state combined both the Fairfax County Board of Supervisors and Senator Joseph Gartlan to seek legislative redress. Subsequently, a legislative study geared towards learning more about the problems caused by DUI offenders and the effectiveness of habitual offender legislation in discouraging repeat offenses was discussed. Working with Fairfax County, Senator Joseph Gartlan and Delegate David Albo decided to initiate identical study resolutions which were referred to the Rules Committee of the Senate and House, respectively. The bills became SJR 200, which directed the Crime Commission to perform a study on habitual DUI offenders.

Definition of the Crime

Virginia Code § 18.2-266 defines driving a motor vehicle while intoxicated as the operation of "any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article [or] (ii) while such person is under the influence of alcohol...."

Criminal Penalties & Repeat Offenders

The criminal penalty associated with driving under the influence is prescribed under Virginia Code § 18.2-270 which states that "[a]ny person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor."

Second Offense

Virginia Code § 18.2-270 additionally provides for enhanced penalties and mandatory sentences for subsequent offenses and prior convictions. In relevant part, §18.2-270 states that "[a]ny person convicted of a second offense...shall be punishable by a fine not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year." This section provides a timeframe in which mandatory confinement sanctions shall be imposed. If a second offense is committed within five years, then forty-eight hours of any



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confinement is a mandatory sentence not subject to judicial suspension. If the second offense is committed within a period of five to ten years there is no legislatively mandated minimum confinement prescribed.

Third & Subsequent Offense

Penalties for third and subsequent offenses of § 18.2-266 are defined in a similar manner as previous offenses, with increases in the mandatory confinement period and fine to be imposed. Pursuant to § 18.2-270, “[a]ny person convicted of a third offense or subsequent offense ... under § 18.2-266 shall be punishable by a fine of not less than \$500 [increased from \$200] nor more than \$2500 and by confinement in jail for not less than two months [increased from one month] nor more than one year.” If the third offense occurs within a period of five years, then thirty days of any confinement is a mandatory, minimum sentence not subject to judicial suspension. If the offense is the third of its kind within a period of five to ten years, then ten days of any confinement sentence is prescribed a non-judicially suspendable mandatory minimum.

The Habitual Offender Act

Definition

Under Virginia Code § 46.2-351, an habitual offender is defined as “any resident or nonresident person whose record, as maintained in the office of the Department [of Motor Vehicles], shows that he has accumulated the [requisite] convictions, or findings of not innocent in the case of a juvenile, for separate offenses, committed within a ten year period....”

The requisite convictions are divided into two subsections providing for either three major qualifying offenses or twelve minor qualifying offenses. Major qualifying offenses include voluntary or involuntary vehicular manslaughter, driving under the influence, false affidavit to the Department of Motor Vehicles, driving while suspended or revoked, and failure of a driver involved in an accident to stop at the scene where there has been death, injury to person, or damage in excess of \$1000. Minor qualifying offenses include all traffic violations which require the Department of Motor Vehicles or authorize a court of law to suspend or revoke an individual’s driving privileges for at least thirty days. Both major and minor qualifying offenses include all applicable offenses in violation of the laws of the Commonwealth, any political subdivision thereof or any other state substantially conforming to the aforementioned state statutory provisions.

Penalty

Following either an administrative determination by the Commissioner of the Department of Motor Vehicles or a judicial determination by a court of law as an habitual



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offender in accordance with the procedures provided under Article 9 of Title 46.2 of the Virginia Code, a person's license shall be immediately revoked and not thereafter reissued for a period of ten years.

Thereafter, Virginia Code § 46.2-357(A) provides that “[i]t shall be unlawful for any person to drive any motor vehicle ... on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect.” The section provides a dual sanction structure under which an individual in violation of driving while an habitual offender can be either sentenced by either a misdemeanor or a felony depending on the nature of the subsequent offense.

If the operation of the vehicle is found not to “of itself, endanger life, limb, or property of another” such driver is to be found guilty of a misdemeanor punishable by confinement in a jail for no more than 90 days and/or a fine not to exceed \$2500. This provision furthermore provides under subsection (B) that any unlawful operation of a motor vehicle by a person found to be an habitual offender shall be punishable as a felony “[i]f such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers life, limb or property ... and one of the offender's underlying convictions is for [a violation of] ... § 18.2-266.” If such person is found guilty of a felony, the person will be punished by confinement in a state correctional facility for not less than one year nor more than five years. Any portion of such jury or court imposed sentence may be suspended if in excess of one year in a state correctional facility or if the illegal operation of the vehicle was necessitated due to “extreme emergency.” Any subsequent offense, regardless of whether the driving endangered life, limb, or property, is punishable as a felony as provided above.

Administrative Penalties and Repeat Offenders

The administrative license penalties that are imposed on individuals found to have been operating a motor vehicle while under the influence of intoxicants are provided under Virginia Code § 46.2-389, which states:

The Commissioner shall forthwith revoke, and not thereafter reissue for one year ... the driver's license of any resident or nonresident on receiving a record of his conviction ... of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law

The “crimes” mentioned above include voluntary or involuntary manslaughter resulting from the operation of a motor vehicle, a violation of § 18.2-266, failure of a driver involved in an accident to stop at the scene of the accident, the making of a false affidavit or



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statement to the Department of Motor Vehicles, or any other violation of state motor vehicle laws punishable as a felony.

Second Offense

The Virginia Code provides for an enhanced period of revocation following an offense subsequent to a first DUI offense. Specifically Virginia Code § 46.2-391(A) states that “[t]he Commissioner shall forthwith revoke and not thereafter reissue for three years the driver’s license of any person on receiving a record of conviction of any person who is adjudged to be a second offender in violation of the provisions of ... § 18.2-266.”

Third Offense

Similar to the handling of a second DUI offense, a third or subsequent offense will result in even more severe administrative sanctions. Pursuant to Virginia Code § 46.2-391(B), “[t]he Commissioner shall forthwith revoke and not thereafter reissue the driver’s license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of ... § 18.2-266. The section further adds that “[a]t the expiration of ten years from the date of the revocation hereunder, the person may petition the circuit court in the county or city he resides, and for good cause shown, his license may in the discretion of the court be restored on such conditions as the court may prescribe.”

Administrative License Suspension (ALS)

Following a national trend to impose more immediate penalties on drunk drivers, the General Assembly enacted Virginia Code § 46.2-391.2 which provides:

If a breath test is taken pursuant to § 18.2-268.2 [preliminary breath test] or any similar ordinance of any county, city or town and the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or the person refuses to submit to the breath test ... the person’s license shall be suspended immediately for seven days

The person is immediately served with notice of suspension by the arresting officer and possession of the license is taken and transferred to a magistrate. The magistrate then in turn must deliver the license to the clerk of the general district court, or appropriate court overseeing the matter, together with any petition, summons or warrant, and the results of the breath test. A copy of the notice of suspension must all be provided to the appropriate court and the Department of Motor Vehicles.



Background

The suspended license is to be promptly returned to the individual upon expiration of the seven day period. The person may choose to either pick up the suspended license in person, have it mailed to the address on the license or any other address as may be provided.

Civil Penalties

In addition to the criminal and administrative penalties to sanction unlawful conduct by drunken drivers, Virginia Code § 8.01-44.5 states:

In any action for personal injury or death arising from the operation of a motor vehicle, engine or train, the finder of fact may, in its discretion, award exemplary damages to the plaintiff if the evidence proves that the defendant acted with malice toward the plaintiff or the defendant's conduct was so willful or wanton as to show a conscious disregard for the rights of others.

The section furthermore provides the definitions of the conduct to be considered "sufficiently willful" or "wanton." The specific provisions state:

A defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (i) when the incident causing the injury or death occurred the defendant had *a blood alcohol concentration of 0.15 percent or more* by weight by volume (ii) at the time the defendant began, or during the time he was, drinking alcohol, he knew that he was going to operate a motor vehicle, engine or train and (iii) the defendant's intoxication was a proximate cause of the injury to or death of the plaintiff (*Emphasis added*).



Study Objectives & Issues

Senate Joint Resolution 200, sponsored by Senator Joseph Gartlan, directs the Crime Commission to study additional or alternative means of sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses.

In conducting its study, the resolution states that the Crime Commission shall (i) review drunk-driving charges and penalties, (ii) examine the severity and violence of the crime and the problem of repeat offenders, and (iii) develop additional or alternative methods to reduce drunk driving and to restrict the ability of persons with DUI convictions to have access to motor vehicles, either by increased jail penalties or by other penalties levied on habitual offenders. Senate Joint Resolution 200 is provided in full in *Appendix A*.

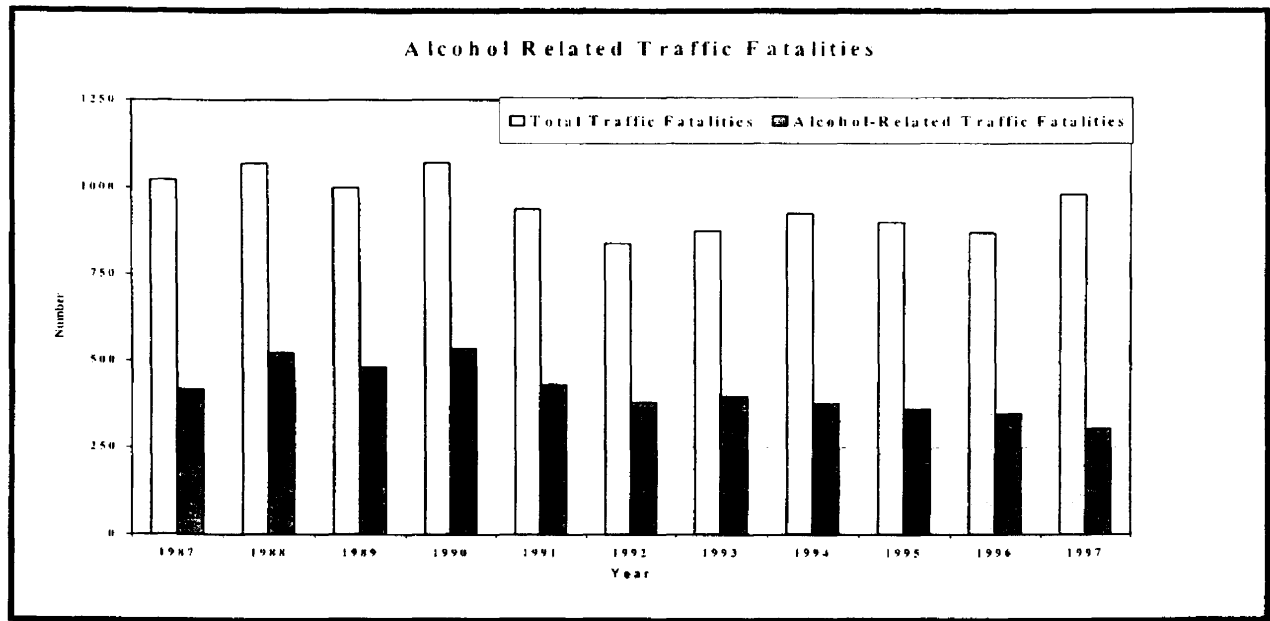
In addition to the objectives specifically delineated by the resolution, the workgroup identified several supplemental goals to be examined. First, the need to develop a structure that encourages judicial and administrative enforcement of DUI laws and procedures. Second, a legislative scheme that facilitates uniform and consistent enforcement and application of the law. Third, a sufficiently flexible scheme that allows for judicial discretion and freedom to individualize the treatment, education, rehabilitation, and incarceration elements of any sentence or sanction imposed.



Findings and Recommendations

Violence of Driving Under the Influence Crime

Trends for the *total* number of traffic fatalities and alcohol-related fatalities for Virginia for the ten-year time period between 1987 and 1997 is provided in Figure 1 below.



In examining the total number of traffic fatalities for the last ten-year period, the number of traffic deaths went from 1022 in 1987 to 981 in 1997, a 4% decrease. The ten-year period was marked by a low of 839 fatalities in 1992 and high of 1071 fatalities in 1990.

Additionally, of the 302 *total* alcohol-related fatalities in 1997, 14% were under the age of 21, 24% were between the ages of 21 and 30, and 26% were between the ages of 31 and 40. Of those 302 fatalities, 236 or 78% were male.

Of the 196 alcohol-related *driver* fatalities, 10.7% were between the ages of 16 and 20, 25.5% were between the ages of 21 and 30, and 29.1% were between the ages of 31 and 40. Of those 196 *driver* fatalities, 163 or 83.2% were male.

Access to Motor Vehicles and Repeat Offenders

Table 1 below depicts the total number of in and out-of-state driving under the influence of intoxicants convictions for the calendar years 1995-1997. According to information provided by the Department of Motor Vehicles, in 1995, 1996, and 1997, 18%,



Findings and Recommendations

17%, and 16% - respectively - of drivers convicted of driving under the influence were repeat offenders.¹

Table 1: First, Second, and Third or Subsequent Driving Under the Influence Conviction

	Counts			
	First	Second	Third or Subsequent	Total
1995	24,417	4,152	1,094	29,663
1996	24,090	3,931	1,158	29,179
1997	24,386	3,701	1,079	29,166

Source: Department of Motor Vehicles, DUI Conviction Numbers

Additionally, DMV records show that out of 5,021,813 licensed drivers, 350,111, or almost 7%, have active event records, meaning those individuals that have committed and been convicted of at least one §18.2-266 offense in the last ten years.

¹ These percentages were arrived at by adding the numbers contained in the "Second" and "Third or Subsequent" conviction columns of Table 1, and then dividing those results by the "Total Number of Convictions" for each calendar year.



Findings and Recommendations

Table 2 below reflects that 40,834 individuals or 12% of Virginia drivers have more than one DUI conviction, while almost 2% have three or more DUI convictions.

Table 2: Total Number of Active Repeat Offender Records

§18.2-266 Convictions	Number of Individuals
2	35,370
3	4,770
4	585
5	80
6	21
7	6
8	2
Total	40,834

Source: Department of Motor Vehicles, Repeat DUI Offender Records

Habitual Offender Act Convictions

According to information provided by the Department of Motor Vehicles (DMV), in 1997, there were 3,137 individuals convicted of a misdemeanor and 653 of a felony pursuant to penalties provided for under §18.2-357.

In 1997, of the 7,326 *administratively* imposed habitual offender determinations made by the DMV, 46% came as a result of at least one DUI qualifying offense and 30% came as the result of multiple DUI qualifying offenses. Of the total DMV determined habitual offenders, 11% were so determined on the sole basis of DUI qualifying convictions. A detailed breakdown of administratively imposed habitual offender determinations for the last three years is given in Table 3 below.



Findings and Recommendations

Table 3: DMV Determined Habitual Offenders

	Total Orders	DMV Determination			
		1 DUI	2 DUI's	3 DUI's	3+ DUI's
1996	24,612	4,182	5,092	3,194	553
1997	7,326	1,172	1,363	758	51

Source: Department of Motor Vehicles, Repeat DUI Offender Records

In 1997, of the 2,150 *judicially* imposed habitual offender determinations made by a court of law, 67% came as the result of at least one DUI qualifying offense while 51% came as the result of multiple DUI qualifying offenses. Of the total judicially determined habitual offenders, 28% were so determined on the sole basis of DUI qualifying convictions. A detailed breakdown of judicially imposed habitual offender determinations for the last three years is given in **Table 4** below.

Table 4: Court Adjudicated Habitual Offenders

	Total Orders	Adjudicative Determination			
		1 DUI	2 DUI's	3 DUI's	3+ DUI's
1995	5,613	1,063	1,487	1,318	263
1996	2,747	506	633	551	131
1997	2,150	361	481	467	137

Source: Department of Motor Vehicles, Adjudication of Habitual Offender Records

State Felony Statutes

According to the National Highway Traffic Safety Administration (NHTSA), 14 states, including Virginia, have enacted legislation establishing an illegal *per se* blood alcohol content (BAC) level of 0.08. Thirty-six states have enacted similar legislation setting the BAC level at 0.10 with one, Texas, establishing that level at 0.20. Two states, Massachusetts and South Carolina, have no illegal *per se* laws but rather use enacted BAC levels as an indication of impairment.



Findings and Recommendations

Of the 14 states employing a BAC level of 0.08, four states, California, Hawaii, Kansas, and Utah, impose felony charges on a third DUI offense. An additional three states, Alaska, New Mexico, and North Carolina impose felony charges on the fourth DUI offense. One state, Florida, makes a fifth offense chargeable as a felony.

Of the 36 states employing a 0.10 BAC level, three states, Indiana, New York, and Oklahoma have enacted legislation making a second offense punishable as a felony while an additional 15 states make a third offense chargeable as a felony. Six states, including the tiered legislative scheme of Idaho, have enacted felony legislation for fourth time offenders while only North Dakota has established a felony statute for fifth time offenders.

Of the remaining three jurisdictions, Massachusetts and Texas establish a third offense as a felony while South Carolina marks the fourth offense as a felony.

At present, Virginia Code §§ 46.2-351-357 provides for enhanced felony penalties with respect to driving under the influence only upon violation of operating a vehicle while a judicial or administrative revocation determination of a three-time offender as an “habitual offender” is in effect. Under these circumstances, a driver who has been determined as an habitual offender will be charged as a felon if such driving “of itself endangers the life, limb, or property of another” or while such person is driving under the influence pursuant to §18.2-266.”

Recommendation

Designate third and subsequent driving under the influence offenses within 10 years as Class 6 felonies under § 18.2-270; fourth and subsequent offenses should be subject to a one year mandatory minimum jail sentence.

Alcohol Safety Action Program Treatment and Supervision

Pursuant to Virginia Code § 18.2-271.1, “[a]ny person convicted of a first offense of §18.2-266 ... shall or upon second conviction of a second offense thereunder, *may*, be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program” (*Emphasis added*).

According to workgroup discussion, repeat offenders are a class of individuals in more need of continued supervision and treatment. A second DUI offense is one indicator that may point to a convicted driver’s chronic and problematic drinking habits. As such, this class of individual is more likely to benefit from the continued services provided by the Virginia Alcohol Safety Action Program.



Findings and Recommendations

Table 5: Penalties Imposed on First Time Offenders

	First Time Offenders	VASAP with Restricted License	VASAP with One Year Revocation
1995	24,417	16,474	3,619
1996	24,090	15,274	2,337
1997	24,386	13,905	1,523

Source: Department of Motor Vehicles, Penalties Imposed on First Time Offenders

Approximately 82 percent of first time DUI offenders receive sentences including an alcohol safety action program. **Table 5** above summarizes the penalties imposed on first time DUI offenders in terms of the license restrictions and VASAP treatment mandated.

Approximately 51 percent of second time offenders receive sentences including an alcohol safety action program. **Table 6** below summarizes the penalties imposed on second time DUI offenders in terms of the license restrictions and VASAP treatment mandated.

Table 6. Penalties Imposed on Second Time Offenders

	Second Time Offenders	VASAP with Restricted License	VASAP with One Year Revocation
1995	4,152	1,363	781
1996	3,931	1,376	608
1997	3,701	1,390	640

Source: Department of Motor Vehicles, Penalties Imposed on Second Time Offenders

Recommendation

Amend the *Code of Virginia* to require all persons convicted of a second offense DUI to enter into an alcohol safety action program prior to being considered for any level of license reinstatement.



Findings and Recommendations

Recommendation

Amend the *Code of Virginia* to require those convicted of a second offense of driving while their license has been suspended for failure to pay fines to report to a Virginia Alcohol Safety Action Program for an intervention in accordance with § 18.2-271.1.

Recommendation

Amend the *Code of Virginia* to allow restricted licenses issued pursuant to § 18.2-271.1 to operate a car necessary to transport a minor child to and from school, day care, and facilities housing medical service providers.

Judicial Administration and Failure to Pay Fines

Pursuant to information collected, together with workgroup discussion, the following recommendations were approved and adopted by the workgroup in order to facilitate and ease the administration of the judicial process and the prosecution of the Commonwealth's DUI laws.

Recommendation

Amend § 18.2-270 of the *Code of Virginia* to allow courts to require that the defendant remain on probation pursuant to the terms of any suspended sentence for the same period of license suspension, not to exceed three years.

Recommendation

Amend the *Code of Virginia* to repeal the determination and adjudication provisions of the Habitual Offender Act and add stricter license revocation provisions to §§18.2-36.1 and 18.2-54.1.

Continued Study

The work conducted under this resolution indicates a need for further study. The Commission found that some drivers in Virginia are chronic offenders of the Commonwealth's laws regarding the operation of motor vehicles. Furthermore, these drivers often ignore judicial and administrative steps to punish or rehabilitate, and, as such, pose an increase treat to Virginia Citizens and the Commonwealths resources. Accordingly, The Virginia State Crime Commission should continue its study to develop means of deterring these drivers and reducing the risk they pose to the Commonwealth and its citizens.

Acknowledgements

The members and staff of the Crime Commission wish to extend their special thanks to the following agencies, organizations, and individuals for their cooperation and assistance without which this study would not have been possible:

Delegate Brian J. Moran

Senator Joseph V. Gartlan, Jr.

Brenda A. Altman, State Chair, Mothers Against Drunk Driving

Oscar Brinson, Esquire

Trudy Brisendine, Policy Analyst, Fairfax County Department of Family Services

Sheriff Michael J. Brown, Bedford County

Dennis Collins, Assistant Commonwealths Attorney, Chesterfield County

Linda Cosgrove, Traffic Safety Programs, National Highway Traffic Safety Administration

Bud Cox, Department of State Police

Colleen Danos, National Center for State Courts

James Fell, Office of Alcohol and State Programs, National Highway Traffic Safety Administration

Pete Marone, Virginia Department of Criminal Justice Services

Lt. Col. W. Gerald Massengill, Director of the Bureau of Field Operations, Department of State Police

Bill McCollum, Executive Director, Virginia Alcohol Safety Action Program

David Moseley, Department of Motor Vehicles

Karen Ruby, Administrator of Driver Licensing and Records Services, Department of Motor Vehicles

Dana Schrad, Executive Director, Virginia Association of Chiefs of Police

Lt. Thomas Turner, Records Management Division, Department of State Police

Capt. R. Lewis Vass, Records Management Division, Department of State Police

Linda Volevik, Mothers Against Drunk Driving



Appendix A

SENATE JOINT RESOLUTION NO. 200

Directing the Virginia State Crime Commission to study additional or alternative means of sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses.

Agreed to by the Senate, February 13, 1998

Agreed to by the House of Delegates, March 12, 1998

WHEREAS, the Virginia Department of Motor Vehicles (DMV) reported that 11,220 alcohol-related crashes occurred in Virginia in 1996, resulting in 346 fatalities; and

WHEREAS, DMV further reported that 9,083 individuals were injured in these accidents, resulting in emergency medical treatment and expenses, pain and suffering, loss of time from work, car repairs; and, in many cases, significant injury, permanent disability, loss of a career, and the inability to live a full and normal life; and

WHEREAS, in 1996, 30,288 individuals were arrested for DUI and 26,099 were convicted; and

WHEREAS, 29,240 individuals had a blood alcohol content (BAC) that tested in excess of the legal limit of .08; and

WHEREAS, in 1995, 3,897 people in Virginia were convicted of a second DUI, and an additional 1,063 people were convicted of a third or subsequent charge; and

WHEREAS, drunken-driving deaths in Northern Virginia alone rose 56 percent in the first 10 months of 1997 to 28 deaths, according to Mothers Against Drunk Driving (MADD), which attributes part of the increase to chronic drunk drivers; and

WHEREAS, repeat offenders are a growing concern because even second and third DUI offenses are classified as misdemeanors rather than felonies and carry maximum penalties of one year imprisonment; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to study additional or alternative means of sanctioning habitual offenders convicted of driving under the influence of intoxicants (DUI) offenses. In conducting its study, the

Commission shall (i) review drunk-driving charges and penalties, (ii) examine the severity and violence of the crime and the problem of repeat offenders, and (iii) develop additional or alternative methods to reduce drunk driving and to restrict the ability of persons with DUI convictions to have access to motor vehicles, either by increased jail penalties or by other penalties levied on habitual offenders.

Technical assistance for this study shall be provided by the State Police. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.



VIRGINIA STATE CRIME COMMISSION
STAFF

Rich Savage
Director

Sylvia A. Reid
Executive Assistant

Judy R. Philpott
Policy Analyst

Lawrence L. Schack
Legislative Analyst/Methodologist

Herschel V. Keller
Staff Attorney

Katharina E. Cron
Research Analyst
