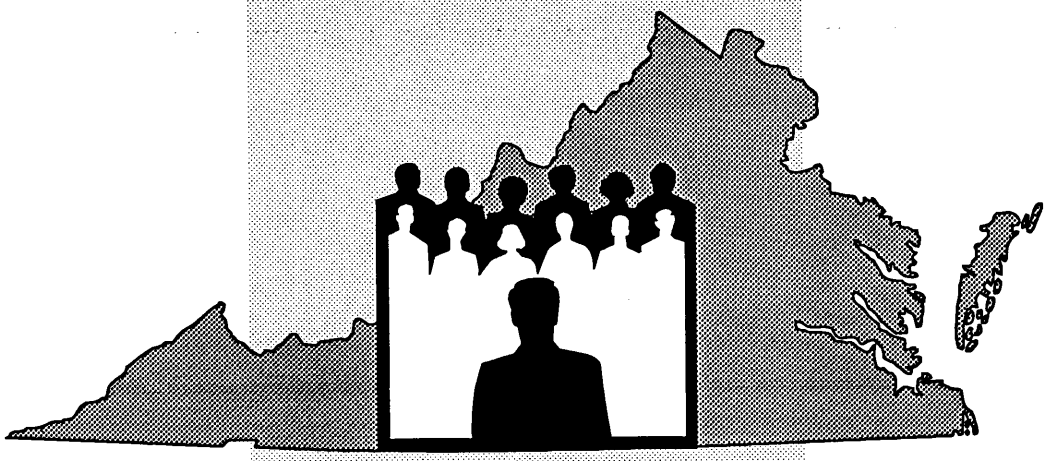
FINAL REPORT

AN INVESTIGATION OF THE EFFECTIVENESS OF THE VIRGINIA HABITUAL OFFENDER ACT



CHERYL W. LYNN
Senior Research Scientist

JACK D. JERNIGAN
Senior Research Scientist

PATRICIA J. FRONING
Graduate Legal Assistant

ANTHONY J. NORRIS
Graduate Legal Assistant

VIRGINIA TRANSPORTATION RESEARCH COUNCIL

Standard Title Page — Report on State Project

Report No.	Report Date	No. Pages	Type Report: Final	Project No. : 9752–040–940
VTRC 94-R11	Sept. 1993	62 pages	Period Covered: 1986–1991	Contract No. :

Title and Subtitle

An Investigation of the Effectiveness of the Virginia Habitual Offender Act

Key Words

habitual traffic offenders
habitual offenders
traffic safety
license suspension
license revocation

Author(s)

Cheryl W. Lynn, Jack D. Jernigan, Patricia J. Froning, & Anthony J. Norris

Performing Organization Name and Address:

Virginia Transportation Research Council
Box 3817, University Station
Charlottesville, Virginia 22903-0817

Sponsoring Agencies' Names and Addresses

Virginia Department of Transportation
1401 E. Broad Street
Richmond, Virginia 23219

University of Virginia
Charlottesville
Virginia 22903

Department of Motor Vehicles
P.O. Box 27412
Richmond, VA 23269

Supplementary Notes

This study was conducted for the Advisory Committee to the Virginia Commission on VASAP.

Abstract

In 1968, Virginia passed the Habitual Offender Act (the Act), one of the first laws in the United States directed at motorists who repeatedly violate traffic laws. Persons adjudicated as habitual offenders are subject to long-term license revocation, and those who violate this revocation may be incarcerated. This study was conducted to determine the effectiveness of the Act in enhancing traffic safety in Virginia.

A sizable number of individuals whose driving records include a sufficient number of convictions to allow DMV to certify them as habitual offenders are never brought before the courts on the charge. The existence of such a group of certified yet nonadjudicated habitual offenders is an indication that the procedures implementing the Act need to be changed to promote a more global implementation. However, the existence of this group allowed the researchers to compare a sample of certified habitual offenders to a group of adjudicated habitual offenders.

In general, the adjudicated group had more prior DUI convictions and the certified group had more convictions for operating under a suspended operator's license and more convictions for minor offenses as defined under the Act. However, the adjudicated group had fewer subsequent traffic convictions and crashes and were conviction free and crash free for a longer period of time. These data indicate that adjudication under the Act may enhance traffic safety.

Since adjudicated habitual offenders may be incarcerated for not less than 12 months for violating the habitual offender revocation, the researchers also examined the population of incarcerated habitual offenders. The investigation showed that as of September 1, 1991, between 864 and 1,219 habitual offenders had been incarcerated under the provisions of the Act. Only an additional 385 non–habitual offenders had been incarcerated as of that date for other traffic convictions.

The researchers recommend several changes in the procedures and record keeping implemented under the Act. Further, they recommend a number of enhancements to the habitual offender program.

FINAL REPORT

AN INVESTIGATION OF THE EFFECTIVENESS OF THE VIRGINIA HABITUAL OFFENDER ACT

A Study Conducted by the Virginia Transportation Research Council for the Advisory Committee to the Commission on VASAP

Cheryl W. Lynn
Senior Research Scientist

Jack D. Jernigan
Senior Research Scientist

Patricia J. Froning
Graduate Legal Assistant

Anthony J. Norris
Graduate Legal Assistant

Virginia Transportation Research Council
(A Cooperative Organization Sponsored Jointly by the Virginia Department of Transportation and the University of Virginia)

Charlottesville, Virginia

September 1993
VTRC 94-R11

SAFETY RESEARCH ADVISORY COMMITTEE

W. H. LEIGHTY, Chairman, Deputy Commissioner, Department of Motor Vehicles

J. D. JERNIGAN, Executive Secretary, Senior Research Scientist, VTRC

D. AUSTIN, Transportation Engineering Program Supervisor, Department of Rail & Public Transportation, VDOT

J. L. BLAND, Chief Engineer, Department of Aviation

R. J. BREITENBACH, Director, Transportation Safety Training Center, Virginia Commonwealth University

J. L. BUTNER, Traffic Engineering Division Administrator, VDOT

MAJ. J. K. COOKE, Assistant Chief of Law Enforcement, Department of Game and Inland Fisheries

V. L. CROZIER, Associate Specialist, Driver's Education, Virginia Department of Education

W. S. FELTON, JR., Administrative Coordinator, Commonwealth's Attorneys' Services and Training Council

P. D. FERRARA, Ph.D., Director, Division of Forensic Sciences, Department of General Services

D. R. GEHR, Assistant Commissioner—Operations, VDOT

J. T. HANNA, Assistant Professor, Transportation Safety Training Center, Virginia Commonwealth University

T. A. JENNINGS, Safety/Technology Transfer Coordinator, Federal Highway Administration

SGT. P. J. LANTEIGNE, Operations & Tactics Bureau, Virginia Beach Police Department

W. T. McCOLLUM, Executive Director, Commission on VASAP

S. D. McHENRY, Director, Division of Emergency Medical Services, Department of Health

MAJ. R. P. MINER, Commander, Traffic Division, Fairfax County Police Department

LT. S. E. NEWTON, Commander, Patrol Division, Albemarle County Police Department

J. T. PHIPPS, Director, Roanoke Valley ASAP

LT. COL. C. M. ROBINSON, Director, Bureau of Field Operations, Department of State Police

J. A. SPENCER, ESQ., Assistant Attorney General, Office of the Attorney General

E. W. TIMMONS, Director of Public Affairs, Tidewater AAA of Virginia

A. R. WOODROOF, ESQ., Manakin-Sabot, Virginia

Subcommittee on Habitual Offenders
Commission on VASAP

Del. James F. Almand, Jr.
Chairman, Advisory Committee to the Commission on VASAP
Arlington, Virginia

Mr. James T. Phipps
Chairman, Subcommittee on Habitual Offenders, Commission on VASAP
Director, Court Community Corrections Program
Salem, Virginia

Mr. Richard E. Adams
Programs Manager, Department of Motor Vehicles
Richmond, Virginia

Mr. Oscar R. Brinson, Esq.
Counsel to the Commission on VASAP
Richmond, Virginia

Mr. Donald S. Caldwell, Esq.
Commonwealth's Attorney
Roanoke, Virginia

Mr. Wayne S. Ferguson
Research Manager, Virginia Transportation Research Council
Charlottesville, Virginia

Mr. Peter J. Larkin
Director, Arlington ASAP
Arlington, Virginia

Mr. William H. Leighty
Deputy Commissioner, Department of Motor Vehicles
Richmond, Virginia

Mr. William McCollum
Executive Director, Commission on VASAP
Richmond, Virginia

Mr. Jeffrey Spencer, Esq.
Assistant Attorney General, Office of the Attorney General
Richmond, Virginia

The Honorable Clifford Weckstein
23rd Circuit Court
Roanoke, Virginia

Mr. Gene Johnson
Deputy Director, Virginia Department of Corrections
Richmond, Virginia

ACKNOWLEDGMENTS

The authors wish to thank the many people whose consultation and active cooperation made this report possible. First, thanks go to the members of the Subcommittee on Habitual Offenders for their initial interest in the study and their direction of the research and, in particular, to Del. James Almand. In addition, James Phipps, Director of the Court Community Corrections Program, provided valuable guidance and considerable review as the report progressed. Thanks also go to William Leighty, Deputy Commissioner of the Department of Motor Vehicles; Karen Ruby, Driver Monitoring Manager; and their staffs for consulting with the authors concerning the Habitual Offender Program. In particular, profuse thanks go to David Mosley, Transportation Safety Research and Evaluation Director, and his staff for all of their work in obtaining the driver histories for incarcerated habitual offenders. The authors are also grateful to Helen Henshaw and her staff at the Department of Corrections for their considerable efforts in extracting and providing data on which habitual offenders were incarcerated in both Virginia prisons and local jails. The Division of Criminal Justice Services is also thanked for consulting with the authors on previous data collection efforts with regard to habitual offenders. Finally, thanks go to Sharon Clark for typing the many drafts of the report, to Linda Evans for editing the manuscript, and to the staff of the publications group for preparing the final report.

TABLE OF CONTENTS

LIST OF TABLES

PREFACE

Prior to the publication of this report, its results and recommendations were passed on to the Commission on VASAP, Subcommittee on Habitual Offenders, and from them to the legislature. In the 1993 session of the Virginia General Assembly, 11 pieces of legislation were passed that substantively changed the Habitual Offender Act. Most took effect July 1, 1993. These legislative changes are as follows:

1. Under the previous version of the Act, adjudicated habitual offenders were required to wait 10 years before petitioning the court to relicense them. The General Assembly changed this period to 5 years.

2. The new Act introduced a 2-tiered system of penalties for driving after adjudication. Under the previous Act, adjudicated habitual offenders who were caught driving after adjudication were incarcerated for 12 months in jail or 1 to 5 years in prison. The minimum penalty was 12 months or 1 year. If the habitual offender's driving did not endanger life, limb, or property and if this was a first offense, a 90-day jail or prison sentence would be imposed, 10 days of which could not be suspended except where an extreme emergency led to the offense. In addition to the 90-day sentence, the habitual offender would pay a fine of no more than $2,500. The previous penalties would be imposed in all other cases.

3. An intervention component was added to the program. After a potential habitual offender added a second qualifying offense to his or her record, he or she would be notified that he or she must enroll in the Virginia Alcohol Safety Action Program within 60 days. No stipulation was made concerning the type of treatment the potential offender would receive.

4. Attempts were made to reconcile the provisions of the administrative license revocation program run by DMV and the provisions of the Habitual Offender Act. HB 1267 ensured that habitual offenders petitioning for restoration be credited with time revoked for a second or third DUI under the administrative revocation program prior to their adjudication as habitual offenders.

5. Because of the mobility of certified habitual offenders as a group, difficulties in serving the offender with the show cause order often resulted in many cases never coming to trial. Under the new act, service can be made not just in the jurisdiction of residence of the offender, but also in any jurisdiction in the state where the case may be heard. Venue for cases may be changed by order of the original court on motion from either party. If the current DMV certification for a habitual offender was issued more than 5 years after the offender's last conviction, the court *may* refuse to adjudicate.

6. Also, because of the difficulty in serving certified habitual offenders, the legislature stipulated that DMV could not issue a new or duplicate license to a certified habitual offender until the show cause proceeding had been held.

7. For persons whose adjudication was based *solely* on DSOLs where the original suspensions were for failure to pay obligations, petition for license restoration may be made as soon as the obligations are satisfied, rather than 1 year after they are satisfied. For persons whose adjudication is based *in part* on these DSOLs, the period prior to being eligible for restoration was reduced from 5 years to 3 years.

8. Aggravated involuntary manslaughter was added to the list of major convictions. The threshold for requiring an individual to stay at the scene of a property damage accident was raised from $500 to $1,000.

EXECUTIVE SUMMARY

In 1968, Virginia enacted the Habitual Offender Act (the Act), the third oldest such law in the United States, preceded only by those of Colorado and Delaware. Under the Act, the Virginia Department of Motor Vehicles (DMV) will certify a driver as a habitual offender if within a 10-year period he or she is convicted of 3 major offenses, such as driving under the influence (DUI) or driving on a suspended or revoked license (DSOL); 12 minor offenses, such as refusing to take a blood or breath test or failing to maintain insurance; or a total of 12 major and minor offenses. Once certified, each habitual offender's case is then referred to the Commonwealth's Attorney in the offender's locality of residence. If the case is pursued and if the certified driver can be located and served with a show cause order, the circuit court may either adjudicate the driver as a habitual offender or dismiss the case. Adjudication results in the permanent revocation of a driver's license, although there are provisions for relicensure after revocations as short as 1 year. Driving after being adjudicated to be a habitual offender is a felony and may result in a sentence of 1 to 5 years in prison or 12 months in jail, with 12 months or 1 year being the mandatory minimum penalty.

REVIEW OF LITERATURE: Only three states have attempted to evaluate all or part of their habitual offender program. One was a purely administrative evaluation, and the other two evaluated the impact of the program on subsequent driving behavior. The results of the two impact evaluation studies were contradictory.

SURVEY OF OTHER STATES: Nineteen states other than Virginia have enacted habitual offender legislation in which long-term license revocation may be imposed and any violation of the revocation may result in incarceration. Most of these states require 3 major offenses accumulated over 3 to 10 years for habitual offender status. DUI and hit and run accompanied by an injury are counted as major offenses by all states but 1. DSOL, vehicular manslaughter, and vehicular homicide are counted as major offenses in at least 17 states. Eleven states declare a driver a habitual offender administratively, and 9 states, including Virginia, do so judicially. Most states allow reinstatement of a revoked license after 1 to 6 years. The length of incarceration for driving after revocation ranges from 10 days to 6 years.

PROCEDURAL REVIEW OF ACT: The DMV is responsible for certifying habitual offender records to the Commonwealth's Attorney in the locality in which the offender resides. Once received, however, the Commonwealth's Attorney must report to the DMV only cases in which an offender was adjudicated or the charges were dismissed. In cases where no action was taken, either because service of the show cause order could not be made or because the case was not pursued, the DMV was notified only voluntarily. Thus, the DMV, as the central agency responsible for the program's operation, does not have information on the number of cases in progress and has no authority to investigate the outcome of cases.

From the voluntary reporting by some Commonwealth's Attorneys, it is clear that inability to serve the show cause order is a major reason for the inactivity among outstanding cases. Thus, the service requirements were examined. Accord-

ing to the Code of Virginia, service must be made in person. Since a significant portion of all addresses in the driver history file may change in a given year, and since voluntary reporting of address change tends to be low, many addresses in DMV records are incorrect. Hence, service of driver-related documents, such as a show cause order, can be extremely difficult.

Another procedural problem involves the imposition of the felony offense for driving after adjudication. In many cases, even though the circuit court judge is required to determine the habitual offender status of the defendant, many persons driving after adjudication are not convicted of the felony offense. Although the penalty of incarceration is mandated by statute, some judges may feel that incarceration is too severe and, thus, may not impose this penalty under some circumstances. In addition, any delay by the clerks in filing notice of a habitual offender adjudication with the DMV or any delay by the DMV in posting the adjudication may result in the exclusion of the adjudication from the copy of the driver history record that a judge sees.

A final procedural problem involves record keeping. Early return of driving privileges is permitted for individuals whose adjudication was based on at least one DUI. Such offenders who can demonstrate that they are no longer a threat to public safety may apply for a restricted license after 3 years and for full license restoration after 5 years. Those whose adjudication was based *in part* on DSOL where the suspension violated was for failure to satisfy financial obligations may apply for restoration of their license after 5 years, or 1 year after all obligations are satisfied if the adjudication was based *solely* on DSOL where the suspension violated was for failure to satisfy financial obligations. Although it is easy to determine whether individuals have a DUI on their record, it is difficult, and in some cases impossible, to determine which suspension resulted in a DSOL violation. One reason for this difficulty is that after a financial obligation is satisfied, reference to the suspension is deleted from the record after 2 years. Further, an individual may have multiple suspensions for various reasons at the time of a DSOL violation. Thus, it is almost impossible for the DMV to confirm whether an individual is eligible to have driving privileges restored based on the DSOL waiver for suspensions due to financial obligations.

IMPACT OF ACT ON TRAFFIC SAFETY: Driving records for 25% of all drivers adjudicated in 1986 and all drivers who were certified or recertified in 1986 were selected for investigation. After the two groups were compared regarding the convictions that resulted in their certification, the following were noted:

1. The adjudicated group had significantly more prior DUIs than the certified group.

2. The certified group had more prior DSOLs and prior traffic convictions.

After differences in previous records between the two groups was controlled for, the subsequent records of the adjudicated and certified groups were compared for (1) number of subsequent convictions for DUI, (2) number of subsequent traffic offenses resulting in conviction, (3) number of subsequent crashes, and (4) number

of days between adjudication or certification and the next traffic crash or offense that resulted in a conviction. *The certified group had more subsequent DUI and traffic convictions, more subsequent crashes, and fewer days between certification and their next crash or offense than did the adjudicated group.*

Thus, the habitual offender program appears to have had a positive effect on the driving behavior of adjudicated drivers. An alternate explanation for these results is that some of the adjudicated habitual offenders may have been incarcerated for violating the habitual offender revocation and, thus, may have had fewer driving events than the certified group because they were incarcerated. After adjudicated drivers who may have been incarcerated were removed from the analysis, the certified group still had worse subsequent driving records than did adjudicated offenders. In fact, the data showed that the habitual offenders who had been convicted of the felony offense that would have resulted in incarceration actually had more subsequent driving events than the other adjudicated drivers.

IMPACT OF ACT ON DUI OFFENDERS: As mentioned previously, habitual offenders whose adjudication was based on at least one DUI can petition for a restricted license restoration after 3 years, or for full license restoration after 5 years, but only if they meet the following requirements: (1) they were alcohol addicted at the time of their preadjudication offenses, (2) they are no longer addicted to alcohol or drugs, and (3) a court determines that they are no longer a threat to public safety. Because this group is treated differently from other habitual offenders, the effect of the program on this group was examined. Compared to habitual offenders whose previous driving record contained no DUI, those whose adjudication was based on three or more DUIs had more total subsequent DUIs during the first 4 years of revocation. Thus, this group, which could have been relicensed during the fourth year following adjudication, actually had worse driving records than non-DUI offenders who were not eligible for relicensure until 10 years after adjudication. In addition, even though adjudication generally resulted in fewer convictions and crashes, it had no significant impact on the subsequent record of drivers whose adjudication was based on three or more DUIs.

NUMBER AND CHARACTERISTICS OF INCARCERATED HABITUAL OFFENDERS: In order to determine the number of individuals incarcerated under the provisions of the Act, a listing of all traffic offenders incarcerated as of September 1, 1991, was generated by the Virginia Department of Corrections (DOC). Driver history records for these individuals were then generated by the DMV and used to confirm individuals' habitual offender status and whether they had committed an offense for which they could have been incarcerated as of September 1, 1991. According to the DOC, there were 1,604 traffic offenders in state prisons or local jails on that date. According to DMV records, 864 of these committed offenses after habitual offender adjudication for which they could have been incarcerated as of September 1, 1991. DOC records also indicated that an additional 355 habitual offenders were incarcerated for driving after adjudication, but their DMV records provided no indication that they had been convicted of postadjudication offenses that would have resulted in incarceration as of September 1, 1991. Thus, between 864 and 1,219 habitual offenders were incarcerated as of that date. Also, according

to DOC records, another 385 *non*–habitual offenders had been incarcerated for other traffic offenses.

Of the 864 habitual offenders with confirmed postadjudication offenses, 281 were convicted of the felony offense either alone or in combination with one or more offenses committed the same day. Another 365 were convicted of the felony offense, but these individuals had also been convicted of at least one other postadjudication offense committed on another date. The remaining 218 incarcerated habitual offenders had been convicted of at least one traffic offense after adjudication but were not incarcerated under the felony offense. Thus, it is clear from these data that habitual offenders who are caught driving after adjudication are not always convicted of the felony offense. Further, a number had nonfelony convictions prior to the conviction that led to their incarceration. Again, this may be due to the fact that judges are unaware that a defendant is a habitual offender, or it may be that some judges are unwilling to incarcerate habitual offenders for their initial charges of driving after adjudication.

Finally, one of the questions most often asked concerning incarcerated habitual offenders is: How many were declared habitual offenders because they drove after their driver's license was suspended for failure to satisfy financial obligations? There have been concerns expressed by legislators and the public that incarcerating this type of habitual offender is in essence creating a debtors' prison. However, a DSOL may occur when a driver has multiple suspensions for various reasons. Further, once a driver suspended for nonpayment makes restitution, reference to the suspension is removed from his or her driving record after 2 years. Thus, if there were multiple suspensions or if the obligation has been satisfied for more than 2 years, there is no way for the DMV to confirm that the original suspension was based on failure to satisfy financial obligations. Thus, it may be impossible to determine if incarcerated drivers were adjudicated based on DSOLs caused by violation of suspensions for failure to satisfy financial obligations.

RECOMMENDATIONS: The recommendations following from this research fall into two categories: (1) procedures and record keeping and (2) program development.

Procedures and Record Keeping: One of the major findings of this research is that although the Act has a positive impact on the driving records of adjudicated drivers, a large number of drivers certified by the DMV to be habitual offenders are not adjudicated. A number of recommendations address the need to administer the habitual offender program uniformly.

1. *The DMV should support legislation requiring Commonwealth's Attorneys to report the status of all certified habitual offender cases to the DMV after a period of 6 months.* Although the DMV is the central agency responsible for administering the habitual offender program, the agency is not receiving enough information to manage cases. Further, the DMV has no authority or ability to encourage Commonwealth's Attorneys to adjudicate habitual offenders. Since Commonwealth's Attorneys must report only on adjudications and dismissals,

the DMV cannot accurately state the status of certified drivers' cases. That is, the DMV does not know whether these cases have been or will be pursued. The DMV currently sends a letter to Commonwealth's Attorneys to ascertain what happened to these certified individuals if it has not heard from the Commonwealth's Attorney within about 6 months from the time of certification. If Commonwealth's Attorneys were required to report on cases where service was unsuccessfully attempted, perhaps the DMV could pursue additional information on the offender. Also, reporting on the status of all cases might encourage Commonwealth's Attorneys to give habitual offender prosecution a higher priority, although more stringent means might be necessary to ensure that service is at least attempted in all cases.

2. *Now that the process that triggers habitual offender certification is automated, the DMV should begin keeping additional information on certified habitual offenders to promote efficient case management and prompt adjudication of all offenders.* For instance, case status and service history might be recorded. Also, better and more current addresses may be available for offenders from the DMV vehicle file or from other state agencies. The most promising state agency for the purpose is the Department of Taxation; however, it is prohibited by law from releasing address information. As of September 1, 1992, the DMV began accessing address data from Virginia Employment Commission files, and as of July 1, 1993, the DMV should be able to access address data from its vehicle file.

3. *The Subcommittee on Habitual Offenders should look into the possibility of amending service requirements for habitual offenders so that offenders who avoid service would be less likely to avoid adjudication at the same time.* Service requirements for habitual offenders are similar to those for individuals called to court for other reasons; however, there are essentially no penalties for avoiding service in the case of habitual offenders, and in fact, there are incentives. In the case of other court matters, individuals who avoid service will likely be pursued further, and in cases where offenders are nonresidents of the state, the circuit court can take action in the absence of the individual. However, for the habitual offender, once service is avoided, almost no additional pursuit will follow until the individual commits another traffic violation and is recertified. Innovative methods for serving show cause orders on habitual offenders have already been suggested, such as serving the certified individual at the local DMV office when he or she initiates a title or license transaction. The Subcommittee should develop a series of recommendations supporting innovative methods of serving certified habitual offenders.

4. *The DMV should consider amending the driver history file to include all suspensions in the driver history file and to indicate when the suspension is ended, rather than purging it from the records.* Since the DMV purges information regarding suspensions after 2 years and since the courts often do not indicate whether suspensions are for failure to satisfy obligations, the DMV often cannot verify cases in which an individual convicted of DSOL was suspended for failure

to satisfy obligations. Thus, any habitual offender whose adjudication was based on DSOLs might claim the waiver.

5. *The DMV should develop a system to record which suspensions were active during each DSOL violation.* In the current records, it is very difficult to relate DSOLs to a particular suspension. This is especially true, since courts often do not provide information concerning which suspensions trigger the DSOLs. This information is important in cases where a DSOL offender has several concurrent suspensions on his or her record. In addition, other penalties such as community service, fines, and incarceration are not listed in the driver record. If court-imposed sanctions are designed to remediate drivers' behavior, then a history of previous sanctions is necessary for judges to determine and impose appropriate penalties. Since many courts have access to automated records systems and in many cases are already linked to centralized files, court clerks could record penalty information along with case outcome. A study of the feasibility of amending the driver history file to link DSOL convictions to suspensions and include penalties should be initiated. Such a study should also link all suspensions active at the time of a DSOL violation in the event a driver is under more than one suspension.

6. *Judges as well as Commonwealth's Attorneys should be informed of the effectiveness of habitual offender adjudication in enhancing traffic safety in an attempt to improve implementation of the Act.*

Program Development: Although this study has shown that the current habitual offender program is having a positive impact on adjudicated drivers, there are other enhancements that can be made in the program that might increase its impact.

1. *Precertification options should be developed to deter individuals who are one conviction away from certification from committing another offense.* As the program stands, there are only four components—certification, adjudication, violation of and penalty for driving on habitual offender revocation (i.e., incarceration), and license restoration. Other components might improve the program's deterrent effect. For instance, anecdotal evidence indicates that there are a number of potential habitual offenders who are unaware of the consequences of further violation of traffic laws. A warning letter for these individuals, one they might not avoid the way they do a show cause order, could inform persons who are one qualifying offense away from certification of their impending habitual offender status. Warning letters have been shown to be moderately effective in a number of instances in affecting driving behavior. The letter could be computer generated and would be a very low-cost program component. Another more proactive approach to averting habitual offender qualification would be the issuance of a restricted license to drivers after their conviction for a second qualifying offense. Having to forfeit their full privilege to drive could underscore the seriousness of their position. In addition, if the restriction of driving privileges was accompanied by some other means of intervention, such as counseling or supervised probation, driving behaviors might be changed before the individual officially became a habitual offender.

2. *Minor violations that are more closely related to driving behavior than are current violations should be developed.* If a more meaningful set of minor violations were adopted, one that was more strongly related to driving behavior, this portion of the program might have more impact. As part of this study, the driving records of many habitual offenders were examined. It was found that the vast majority were certified based on 3 major offenses. In none of the cases examined did the driver qualify for habitual offender status based on 12 minor violations, and only a few qualified based on a combination of 12 major and minor convictions. This was felt to be due, in part, to the somewhat esoteric nature of many of the minor violations.

   Minor violations are defined as any nonmajor violation for which a 30-day suspension is mandatory. Currently, the minor violations are as follows:

   - Fraudulent use of a driver's license (46.2-347)
   - Fraudulent application for license—Felony (A46.2-348)
   - Fraudulent application for license—Misd. (B46.2-348)
   - Knowingly operating an uninsured motor vehicle (A46.2-707)
   - Permitting operation of an uninsured motor vehicle (A46.2-707)
   - Uninsured motor vehicle—previous action (D46.2-707)
   - Stopping vehicle of another, blocking access to premises, damaging or threatening commercial vehicle or operator thereof (46.2-818)
   - Reckless driving—Racing (46.2-865).

3. *The DMV should develop and support legislative changes to enact alternatives to incarceration for habitual offenders.* If the deterrent effect of incarceration is to continue to work, it must be applied consistently. However, if incarceration is viewed as too harsh a penalty, other alternatives for first-time postadjudicated offenders might be considered, employing incarceration for multiple postadjudicated violators. As mentioned earlier, many adjudicated habitual offenders incur postadjudication driving offenses prior to being convicted of the felony offense of driving after adjudication. Thus, the penalty of incarceration is not uniformly imposed.

   Alternatives to incarceration that may be considered include the following:

   - *House arrest and electronic surveillance.* Incarceration is an expensive form of remediation, even though it is effective in keeping habitual offenders off the highways during incarceration. Recently, electronic monitoring for traffic offenders has been used successfully in Virginia on a small scale. The average cost of house arrest is less than the cost of incarceration, and house arrest allows the offenders to continue employment, pay the daily fee for house arrest, and continue to support their family and pay taxes. House ar-

rest also results in less family disruption and reduces the negative effect of placing a traffic offender in a criminal environment.

- *Vehicle impoundment or confiscation.* Virginia has a history of enforcing confiscation of vehicles for driving under suspension or revocation. The forfeiture statute (Va. Code Ann. S46.1-351.1, 1972) was passed in 1972 and repealed in 1989. The forfeiture program was time-consuming to administer, and costs for processing, storage, and public auction were not offset by the proceeds from the sale of the vehicle. Jointly owned vehicles were routinely returned, and those not paid for were returned to the lien holder, who had no legal recourse but to return the vehicle to the owner/driver. Thus, the only persons against whom this forfeiture would legally work were offenders who owned their vehicles free and clear, a small percentage of the offender population (Wetsel, 1975). Impoundment, on the other hand, would be less costly to administer, require fewer court proceedings than confiscation, encroach on fewer property rights, and apply to all vehicles, not just those wholly owned by offenders. Several Canadian provinces have begun impoundment programs for persons driving under revocation. Alberta and Manitoba now impound all vehicles driven after revocation for 30 days for the first offense. If the joint owner of the vehicle or the individual who has loaned the vehicle to the driver can prove that he or she was unaware that the driver's license had been revoked, the person can get the vehicle back. However, this defense is difficult to prove and can be used only once. It is recommended that the Subcommittee on Habitual Offenders study the feasibility of both impoundment and house arrest as alternatives to imprisonment for first offenders.

- *Use of ignition interlocks.* Another alternative could be directed specifically at habitual offenders whose adjudication or postadjudication offenses were based wholly or in part on DUI convictions. An interlock device requires the driver to blow into a hand-held unit that measures the blood alcohol concentration (BAC) of the breath sample prior to starting his or her vehicle. If the BAC is lower than a prescribed level, the driver can start the vehicle. If not, the device activates the ignition interlock, preventing the vehicle from being started (Wilson & Stoke, 1990). An ignition interlock program could be used in conjunction with probation or electronic monitoring to ensure that offenders no longer drive under the influence. Several states operate ignition interlock programs as a supplement to probation or restricted licensing for DUI offenders. In such programs, when the DMV is notified of a DUI conviction, an offender may receive a restricted license only if he or she submits proof of installation of the interlock device to the DMV. Offenders generally pay the purchase or lease price of the equipment, as well as installation and service costs. Some states provide a fund for indigent offenders who cannot afford the devices, and others reduce the DUI fines to offset the costs.

  There are several possible problems with the use of ignition interlock devices. For example, some devices require that the driver be retested after a

specified period of time, and there is concern about the safety of retesting while a vehicle is being operated. In addition, there are various concerns about possible circumvention of the interlock device, such as storing alcohol-free breath samples in containers, using filtering material, leaving the vehicle idling while the driver is drinking, or having another person give the breath sample (Wilson & Stoke, 1990). This last method of circumvention can be lessened somewhat by requiring a personal identification number to initiate the test and by making it a misdemeanor to assist in circumventing the device.

Overall, the administrative costs of such a program would be low, and although the use of the devices could not perfectly ensure that drivers would not circumvent the process, the devices would result in improved deterrence.

4. *The DMV should develop and support legislative changes to reduce the number of DSOL violations.* From an examination of DMV records, it is clear that some individuals incur DSOLs at least in part because of a suspension that was received for failure to satisfy financial obligations. Thus, there is a need to reduce the number of such suspensions. One of the major questions posed in this study was whether the administration of the Act had inadvertently created a debtors' prison situation by adjudicating and later incarcerating drivers initially suspended for failure to satisfy financial obligations. This question was prompted by the feeling that incarceration of persons adjudicated for DSOL based on failure to satisfy obligations was too extreme a penalty. Recent legislation allowing relicensure 1 year after satisfying obligations for such offenders reflects this sentiment. One way to approach this problem involves innovative methods of collecting fines, court costs, and judgments. However, this solution does not address the root cause of the problem. The question should be asked: Is suspension the appropriate penalty for failure to satisfy judgments, fines, or court costs, and is this penalty effective in terms of prompting payment of obligations? In addition, only payment of traffic fines, court costs, and judgments is tied to the driver's license; other such criminal penalties are not. Eliminating license suspension as a penalty for failing to satisfy obligations would reduce the number of suspensions and DSOLs and would at the same time make consistent the penalty for failure to pay criminal and traffic fines, court costs, and judgments. Thus, it is recommended that the Subcommittee on Habitual Offenders consider the feasibility of pursuing innovative collection methods and changes in the penalty for failure to meet financial obligations.

FINAL REPORT

AN INVESTIGATION OF THE EFFECTIVENESS OF THE VIRGINIA HABITUAL OFFENDER ACT

A Study Conducted by the Virginia Transportation Research Council for the Advisory Committee to the Commission on VASAP

Cheryl W. Lynn
Senior Research Scientist

Jack D. Jernigan
Senior Research Scientist

Patricia J. Froning
Graduate Legal Assistant

Anthony J. Norris
Graduate Legal Assistant

INTRODUCTION

A number of states have enacted statutes targeting motorists who repeatedly violate traffic laws. These "habitual offender" statutes seek to provide maximum safety for all drivers by denying the privilege of driving to persons convicted of specified numbers and types of traffic offenses. Persons convicted as habitual offenders are subject to long-term license revocation, and those who violate this revocation may be incarcerated.

In 1968, Virginia enacted one of the first habitual offender laws in the United States, preceded only by Colorado in 1953 and Delaware in 1958. The Virginia Traffic Safety Study Commission recommended the legislation in a report to the Governor and the General Assembly in 1967, stating its belief that there were many serious offenses that warranted permanent revocation of driving privileges. The Commission endorsed and recommended the passage of a modified version of a habitual offender bill that had been drafted by the Virginia Association of Insurance Agents, Inc.

Since the enactment of Virginia's Habitual Offender Act (the Act) more than 20 years ago, there have been no published studies on its effectiveness in promoting traffic safety. Likewise, there has been no analysis of whether the sanctions imposed by the Act have accomplished the objective of reducing the number of crashes and convictions of persons adjudicated as habitual offenders. Due to the lack of information concerning the Act's effectiveness, some members of the Advisory Com-

mittee to the Commission on VASAP urged the Committee's Subcommittee on Habitual Offenders to conduct a review of the Act. The Subcommittee requested that the Virginia Transportation Research Council (VTRC) study how the Act has affected traffic safety and identify possible problems associated with implementation of the Act.

The Act defines a habitual offender as any resident or nonresident whose driving record, as maintained by the Virginia Department of Motor Vehicles (DMV), shows an accumulation of 3 major offenses, 12 minor offenses, or a total of 12 major and minor offenses, all within a 10-year period. Major offenses include (1) voluntary or involuntary manslaughter resulting from the operation of a motor vehicle; (2) driving while under the influence of drugs or alcohol (DUI); (3) driving on a suspended or revoked license (DSOL); (4) perjury as to matters pertaining to the motor vehicle laws; (5) any felony involving the motor vehicle laws or the use of a motor vehicle; and (6) hit and run involving injury, death, or property damage in excess of $500. Minor offenses under the Act are those that require the DMV or authorize a court to suspend or revoke a driver's license for a period of 30 days or more. The court does not actually have to suspend or revoke a license in order for an offense to be counted toward habitual offender certification.

Out-of-state convictions and convictions under local Virginia ordinances that substantially conform to the offenses listed in the Act are included for habitual offender status. In court proceedings, the burden of rebutting the presumption that an out-of-state or local conviction substantially conforms to the offenses included in the Act is placed on the defendant.

Multiple offenses committed in a 6-hour period are counted as one offense, provided a driver has no prior violations qualifying under the Act. Once a driver has one or more chargeable convictions, all future convictions are counted separately regardless of the time period in which they occurred. The Act also stipulates that the violations must be separate offenses arising out of separate acts. The test applied by the courts to determine whether there are separate acts sustaining several offenses is whether the same evidence is required to sustain them.

Once a driver's record has been identified by the DMV as qualifying under the Act, the DMV must certify three abstracts of the convictions that counted toward the habitual offender certification to the Commonwealth's Attorney of the political subdivision in which the person resides. In the case of a nonresident, the Commonwealth's Attorney of Richmond is sent the three abstracts. The abstract is *prima facie* evidence that the person was duly convicted. If a person denies any of the convictions on the abstract, he or she has the burden of proving that the questioned information is incorrect.

The Commonwealth's Attorney then has the discretion to pursue one of the following courses of action:

1. to file an information against the certified driver in a court of jurisdiction (an *information* is an official criminal charge presented by the Commonwealth's Attorney without the interposition of a grand jury)

2. not to file an information (i.e., the Commonwealth's Attorney makes a decision not to pursue the adjudication of particular certified drivers)

3. to ignore the certification (i.e., the Commonwealth's Attorney does not decide in favor or against pursuing adjudication).

If an information is filed, a show cause order must be properly served upon the driver. If the driver is properly served, the circuit court can adjudicate the driver as a habitual offender or dismiss the case if the driver successfully rebuts the presumptions in the Act. In the case of nonresidents, the Commonwealth's Attorney of Richmond must file the information in the Circuit Court of Richmond. If the accused is a prisoner in a state correctional facility, the locality where the person is confined is the jurisdiction for the habitual offender proceedings.

The circuit court where the information is filed directs the person named in the abstract to show cause why he or she should not be barred from driving a motor vehicle in the Commonwealth. Copies of the show cause order and the abstract are served on the accused to provide notice of the proceedings. For nonresidents, service is made by leaving copies of the show cause order and the abstract with the Secretary of the Commonwealth, who subsequently mails the papers by certified or registered mail to the accused at his or her last known address.

If the accused denies that he or she was convicted of one of the offenses that counted toward certification, a court may either settle the dispute with the available evidence or certify the decision to the court where the disputed conviction occurred. The court to which the certification is made is directed to hold a hearing to decide the issue and send a copy of the findings to the adjudicating court.

If the court finds that the accused is not the person named in the abstract or that the individual is not a habitual offender under the terms of the Act, the proceedings are dismissed and the DMV is notified of these results. If the person is found to be a habitual offender, the court directs the person to surrender to the court his or her license to drive a motor vehicle. The court further orders the offender not to drive on the Commonwealth's highways. The clerk of the court is required to file a copy of the order with the DMV. If the accused does not appear for the judicial proceedings after having been duly served, the clerk mails a copy of the court order to the offender's last known address.*

In any case where the accused is charged with DSOL, the Act directs the court to determine whether the person is currently under a habitual offender revocation. If the court finds that the accused has been held to be a habitual offender, it certifies the case to a court of record for trial. Any person who is under a habitual

*Throughout this paper, the authors refer to two groups of habitual offenders:

1. **Certified:** those drivers whose driving records have been certified by DMV as qualifying them for habitual offender status yet who, for any of several reasons, have never appeared in court to be officially adjudicated. These individuals may or may not know that they have qualified to be habitual offenders.

2. **Adjudicated:** those drivers whose driving records have been certified by DMV as qualifying them for habitual offender status and who have appeared in court and have been declared by the court to be habitual offenders.

offender revocation and is subsequently convicted of violating that order is confined to a state correctional facility for not less than 1 and not more than 5 years or confined in jail for 12 months. No part of the sentence may be suspended except any portion in excess of 1 year or where the accused drove in the case of an extreme emergency to save life or limb. The Act further states that a habitual offender may operate a farm tractor on the highways for agricultural purposes if the distance traveled is no more than 5 miles.

Although the court order is for a permanent revocation, the offender may petition the court for reinstatement after a 10-year period. The burden of persuasion is on the petitioner to show good cause why the revocation should be lifted. The court, at its discretion, may restore the person's driving privileges under whatever conditions it prescribes.

There are three exceptions where the revocation period may be shortened. The first is for individuals who were adjudged to be habitual offenders based in part on findings of "not innocent" as juveniles. The offender may petition the court for a return of driving privileges after turning 18 years old.

The second exception is for individuals adjudged habitual offenders based on at least one conviction for DUI. The most current version of the Act allows offenders to petition for a restricted license after 3 years and for full restoration after 5 years. The court may reinstate the license provided that (1) the petitioner was psychologically dependent on or addicted to alcohol or drugs at the time of the previous conviction; (2) the petitioner is not addicted to or psychologically dependent on alcohol or drugs at the time of the hearing; and (3) the petitioner is no longer perceived as a threat to himself or herself or the public while operating a motor vehicle.

The third exception is for individuals who were found to be habitual offenders based on convictions for DSOL where the suspension violated was due either to a failure to pay fines or court costs; a failure to furnish proof of financial responsibility; or a failure to satisfy a judgment, provided the judgment was paid before the petition was filed. If habitual offender status is based *in part* on such DSOLs, individuals may petition the circuit court for license restoration after a 5-year period provided the court determines that the petitioner is no threat to himself or herself or others while operating a motor vehicle. As of July 1, 1993, if their adjudication was based *solely* on DSOLs resulting from nonpayment of fines, court costs, or judgments, the Act, as amended, will allow this group of offenders to petition for restoration 1 year after their financial obligations are satisfied. (See Appendix A for this and other recent amendments to the Act.)

The Act provides for an appeal to the Virginia Court of Appeals from any final action entered under the Act. An appeal proceeds in the same manner as a criminal case even though the order adjudging a person a habitual offender is entered under a civil proceeding.

Finally, the Act states that nothing in its construction shall be interpreted as amending, modifying, or repealing any existing law or ordinance of Virginia or any political subdivision relating to the driving or licensing of motor vehicles, the licens-

ing of persons to drive motor vehicles, or the penalties provided for violations. One such law coexisting with the Act is the Code section providing for the administrative revocation of a driver's license upon conviction of a "DUI third offense," which is a specific charge and not the same as three DUI convictions.

In accordance with § 46.2-391, the DMV Commissioner is required to administratively revoke a person's driving privilege for an indefinite period of time upon receipt of a conviction of "DUI third offense." The DMV does not, however, have the statutory authority to administratively impose an indefinite revocation based on a cumulative total of three convictions of DUI.

Persons whose driving privilege was revoked administratively must petition the circuit court of their residence for restoration of driving privileges. This process is essentially the same as for habitual offenders adjudicated in whole or in part based on DUI convictions. Although the Code states that, under administrative revocation, the person may petition for restoration after a period of 10 years from the date of revocation, it also allows for restoration 5 years from the date of the last conviction under the same conditions applying to habitual offenders with a previous DUI. The administrative revocation statute does differ from the Act, however, in that it does not allow for the granting of restricted driving privileges after 3 years.

LITERATURE REVIEW

Three major studies evaluating the effectiveness of the habitual offender statutes in North Carolina, California, and Pennsylvania have been conducted and are reviewed here. These three studies indicated that very little impact of habitual offender programs has been documented in other states. However, none of these studies is definitive because of the limited time frames examined and the flawed experimental designs employed.

North Carolina

Li and Waller (1975) conducted an evaluation of North Carolina's habitual offender statute—a law very similar to Virginia's. Under the statute, drivers accumulating either 3 major violations or 12 minor convictions (those that would result in a 30-day license suspension or revocation) within a 7-year period are subject to a 5-year license revocation. Any person convicted of violating this revocation can be incarcerated for 1 to 5 years.

Because some district attorneys did not take action on habitual offender referrals, the records of a large group of pending cases existed that could be compared with those of habitual offenders who had been through the court system. The authors hypothesized that if the law was having the intended effect, the habitual offenders whose referrals had been acted on by the district attorneys should have better subsequent driving records than those who had not been through the courts.

The study compared convictions and crashes for a 1- and a 2-year period after habitual offender certification. The authors found that no consistent significant differences existed between those cases processed through the court system and those on which no action was taken. They concluded that although the habitual offender law may serve as a deterrent to persons not yet qualifying for habitual offender status, the time and money put into the program could be better invested in other driver improvement activities.

However, because the study was conducted only a few years after the habitual offender program was enacted and because only 2 years of subsequent driving records were used in the statistical comparison, any effects of the legislation may not have yet been reflected by the data. The North Carolina legislature repealed the habitual offender law 1 year after the study was conducted.

California

Helander (1986) selected a sample of drivers to be evaluated from the group of drivers identified as habitual traffic offenders under California's original habitual traffic offender law, which was implemented in February 1984. Under the original statute, any driver with a suspended or revoked license was categorized as a habitual traffic offender when he or she accumulated 2 major convictions, 3 minor convictions, 3 crashes, or 3 instances of failure to appear in court during any 12-month period of disqualification. Mandatory penalties included 30 days in jail and a $500 fine for a first offense and 180 days in jail and a $1,000 fine for a second or subsequent offense.

The study did not address whether the sanctions reduced the poor driving behavior of persons identified as habitual traffic offenders but rather focused on the procedural problems associated with the implementation of the program. Most district attorneys refused to prosecute identified habitual traffic offenders because of concerns about "double jeopardy" and the lack of personnel to handle the caseload. During the first 9 months of the program, 13,725 habitual traffic offenders were identified, but the California DMV was notified of an intent to prosecute for only 538 drivers—less than 4% of those identified. Only 21% of the 538 cases the district attorneys intended to prosecute actually resulted in a conviction, which resulted in an overall conviction rate of less than 1%.

Since this study, the first-time offender fines have been doubled and drivers who are classified as habitual offenders under other Code sections (e.g., under DUI statutes) are now expressly covered.

Pennsylvania

Staplin (1989) investigated the effectiveness of Pennsylvania's habitual offender law, under which a person accumulating 3 major convictions within a 5-year

period would be subject to a 5-year license revocation. Any additional convictions within this 5-year period could result in a revocation for an additional 2 years.

Staplin compiled extensive data on habitual offenders extracted from the records of the Pennsylvania DMV and also interviewed a sample of habitual offenders. The study concluded that the revocation had a limited deterrence value since 75% of those drivers interviewed indicated that they continued to drive even after having their license revoked. The data did indicate that habitual offenders showed a sharp decline in the number of traffic violations after license revocation, although there was no control group to which a statistical comparison could be made to determine whether it was the sanctions that produced the results or some other factor. The Pennsylvania legislature has not amended the habitual offender statute since the study was completed.

PURPOSE AND SCOPE

The initial purpose of this study was to answer a question commonly posed by legislators: Has the Act been effective? In particular, this study concentrated on the issues of whether the Act and its current method of implementation have had a positive impact on traffic safety in the Commonwealth. As the study progressed, additional questions arose concerning the exceptions to the Act's indefinite suspension—particularly the early restoration of license based on DUI convictions or on convictions for failure to satisfy financial obligations. This study further sought to determine what types of offenses typically result in an individual being certified as a habitual offender and whether certain types of offenses are more likely to result in an individual being later adjudged as a habitual offender. This study also investigated the demographic differences between those individuals merely certified as habitual offenders and those both certified and adjudged as habitual offenders.

This study also sought to answer questions commonly asked by legislators concerning the incarcerated population of habitual offenders. Specifically, this study sought to determine how many individuals had been incarcerated under the provisions of the Act as of a particular time, the typical offenses that resulted in their status as habitual offenders, and their demographic characteristics.

Although the report includes an analysis of the statutes that exist in other states, the scope of the empirical portion of the study was limited to the actual and potential impact of the Act as it applies within the Commonwealth. This study was also limited by the amount and type of data that are maintained by the DMV and the Virginia Department of Corrections (DOC). For example, the DMV does not maintain a great deal of demographic data, such as an individual's race or educational attainment. Moreover, it is not always possible to determine directly from DMV records what specific offenses triggered an individual's certification, adjudication, or incarceration as a habitual offender. Likewise, if an individual was incarcerated under the provisions of the Act but was also incarcerated for a more serious offense (e.g., armed robbery), the data maintained by the DOC would not identify the inmate as being a habitual offender.

METHOD

This study was conducted in four parts, investigating the following:

1. how the habitual offender program operates
2. how other states' habitual offender programs differ from Virginia's
3. the impact of Virginia's Act on traffic safety
4. the number and characteristics of incarcerated habitual offenders.

How the Habitual Offender Program Operates

In order to understand the operations of the Act, several legal analyses were conducted prior to an examination of the Act's impact. First, a review of the implementation of the Act was conducted, based on the statutory and procedural requirements outlined in the Code of Virginia and on discussions with DMV personnel in charge of habitual offender processing. Case law pertaining to the Act was then reviewed (see Appendix B). Studies investigating the effectiveness of similar habitual offender programs in other states were then critically reviewed and summarized.

How Other States' Habitual Offender Programs Differ from Virginia's

Based on previous research, it was determined which states have habitual offender programs that are commensurate with Virginia's. This discrimination was based on one major element: the distinctive feature of Virginia's Act is the possible incarceration for a violation of the habitual offender revocation. The habitual offender statutes and program descriptions were solicited from the 19 other states whose habitual offender programs include these provisions for incarceration.

Impact of Virginia's Act on Traffic Safety

Given that the Act was designed to remove unsafe drivers from the highways, the most direct measure of the Act's effectiveness would be how many of those drivers who had their privilege to drive revoked no longer operated a motor vehicle. However, determining whether habitual offenders still drive is both methodologically and practically impossible. Instead, the performance measure chosen for this study was the effectiveness of the Act in reducing subsequent traffic crashes and offenses—its ultimate intent. Thus, even if those persons adjudicated under the Act continued to drive, albeit illegally, the Act would be considered effective if those adjudicated became less of a traffic safety risk by driving less, driving more safely, or both.

In order to carry out this study, the driving records of habitual offenders who had been certified under the Act but not adjudicated were compared with those of habitual offenders who had been both certified and adjudicated. Because many certified habitual offenders are not brought to trial, an adequate sample of such drivers could be compared with a sample of those who were adjudicated by the court system and had their license revoked.

Driver history data for both samples were obtained from the internal DMV "transcript of record" printouts, which are the most comprehensive DMV driver history records. The researchers initially hoped to draw a single sample of 25% of individuals who were certified as habitual offenders by the DMV in 1986. Going back to 1986 would allow individuals to be tracked for up to 5 years, during which time some of the cases would have been adjudicated and others would not. However, this proved to be impossible because the certification date is purged from the driver history file once a certified habitual offender is adjudicated. Hence, DMV records cannot identify those habitual offenders certified in 1986 and later adjudicated. (As of December 1992, the DMV amended their procedures to retain this information.) In order to rectify this problem, a 25% sample of those certified in 1986 who had not yet been adjudicated by 1990 and a 25% sample of those who were adjudicated in 1986 were selected.

Once records of certified habitual offenders were examined, however, it became clear that it was a common practice for the DMV to recertify drivers as new convictions were recorded. In addition, in some cases, these recertified drivers were then adjudicated, thus placing them in the adjudicated group. These discrepancies in group membership could have been alleviated by restricting both the adjudicated and certified groups to drivers who had been certified only once. However, since the certification date and the record of certification are purged from the DMV record once a certified habitual offender has been adjudicated, it was impossible to identify recertified drivers in the adjudicated group. Since it was impossible to remove equivalent recertified drivers from both the adjudicated and certified groups, it was decided that recertified drivers would be included in the analysis. In addition, there were a few drivers who had been readjudicated, but because of their small number, they were left in the adjudicated group and not subjected to separate analysis. Thus, two groups of drivers were compared in this study:

1. *adjudicated*: those drivers who had been certified and then adjudicated at least once

2. *certified*: those drivers who had been certified at least once but were never adjudicated.

An obvious limitation of this sampling strategy was that the certified and adjudicated groups did not represent a random sample of all drivers qualifying for habitual offender status. That is, there are likely reasons why an individual might fall into one group or another. It might be the case that Commonwealth's Attorneys pursue adjudication against only the offenders they perceive to be the greatest threat or that the certified group is composed of a transient population that is more

difficult to contact and, thus, cannot be served with a show cause order. Hence, it was necessary for the researchers to determine whether the two samples were comparable in terms of their previous driving record prior to analyzing their subsequent driving behavior.

Using a *t* test at the 0.05 significance level, the groups were compared on five variables: age, sex, number of prior convictions for DUI, number of prior convictions for DSOL, and number of prior convictions for minor violations under the Act. As Table 1 indicates, there were significant differences between the prior driving records of the certified and adjudicated groups. The adjudicated group had more previous DUI convictions than the certified group, but the certified group had more prior DSOL and minor violation convictions. There were no differences between the two groups in terms of age and sex.

Because of the statistically significant differences between the prior records of the adjudicated and certified groups, a direct comparison of records was not appropriate. In order to compare the subsequent records, an analysis of variance (controlling for previous driving record) was used in order to adjust the data to make the prior driving records equivalent. Using prior driving record as a covariate tests the independent effect of adjudication by holding factors such as number of previous DUIs constant for the adjudicated and certified groups.

The groups' subsequent records were compared on four variables: (1) number of subsequent convictions for DUI, (2) number of subsequent traffic events (i.e., crashes or violations resulting in a conviction), (3) number of subsequent crashes, and (4) number of days between adjudication or last certification date and the date of the first crash or the first traffic offense resulting in a conviction. For the certified group, subsequent offenses are those that resulted in a conviction and were committed after the 1986 certification date listed on the driver history file. For the adjudicated group, subsequent offenses are those that resulted in a conviction and were committed after the adjudication date listed on the driver history file.

Table 1
PRIOR CONVICTIONS AND DEMOGRAPHIC CHARACTERISTICS: CERTIFIED VS. ADJUDICATED HABITUAL OFFENDERS

Variable	Mean		*T*	Significance
	Certified	Adjudicated		
Age	30.996 (n = 661)	31.759 (n = 611)	–1.41	N.S.
Sex	.051 (n = 662)	.044 (n = 613)	.61	N.S.
DUI	1.631 (n = 662)	1.940 (n = 613)	–4.36	$p < .01$
Minor violations	1.100 (n = 662)	.936 (n = 613)	2.40	$p < .05$
DSOL	2.113 (n = 662)	1.915 (n = 613)	2.27	$p < .05$

Number and Characteristics of Incarcerated Habitual Offenders

As mentioned previously, if an adjudicated habitual offender is convicted of driving after the habitual offender revocation has been put into effect, he or she may be convicted of the felony violation of "operating after habitual offender revocation," with a mandatory penalty of either a 12-month jail sentence or a 1- to 5-year prison sentence. In order to study the incarcerated population of habitual offenders, the VTRC staff initially requested that the DOC search its data base on imprisoned individuals, the Offender Based State Correctional Information System (OBSCIS), and provide information on all habitual offenders who were in prison on a specified date under the provisions of the Act. This approach was intended to provide information on how many habitual offenders were in prison on a given day. Because only one offense code is provided in OBSCIS, a cross check of DMV driver history data would be necessary to confirm that these offenders were incarcerated as a result of driving under habitual offender revocation.

However, one problem in identifying incarcerated habitual offenders quickly surfaced. After working with the staff of the Department of Information Technology, the Department of Criminal Justice Services (DCJS), and the DOC, the researchers learned that since 1989, data specifically relating to habitual offenders who receive a 12-month jail sentence instead of a 1- to 5-year prison sentence have not been routinely maintained. Because individuals who are jailed for less than 1 year are the financial responsibility of the locality, the DOC was no longer required to record data on those individuals. Thus, habitual offenders who received a jail sentence were not a part of the OBSCIS data base.

To resolve this problem, the researchers first sought a way to identify jailed habitual offenders. The DOC maintains a financial data base, DCJ7, that is essentially a census of the jail population. However, prior to July 1, 1991, this data base did not include an inmate's social security number or any other form of individual identification. Since then, social security numbers have been recorded, along with some portions of inmates' names, usually the first two letters of the last name. To allow several months for the identification system in DCJ7 to be "debugged," September 1, 1991, was chosen for surveying both the jail and prison populations.

There were a few limitations to using the OBSCIS and DCJ7 data. Because Virginia's prisons are overcrowded, some individuals who receive prison sentences are housed in jails. Thus, both the DOC's prison and jail data bases will include some inmates who should be in prison but are housed in a local jail. This double counting was easily eliminated, however, by searching for and removing cases with duplicate social security numbers from both the OBSCIS and DCJ7 files.

In addition, the OBSCIS and DCJ7 data bases do not list individuals as habitual offenders who are incarcerated under the provisions of the Act but are also incarcerated for a more serious offense (e.g., armed robbery). This is because only the most serious offense triggering the incarceration is coded on the offender's record. This determination of severity is made based on the National Criminal Information Center Codes (NCIC). Interestingly, the NCIC defines a DUI charge as

more serious than a habitual offender charge. Thus, some habitual offenders might be listed as having been incarcerated for DUI instead of for a violation of the Act. For instance, a habitual offender caught driving drunk might be convicted of both a DUI and the felony offense of driving under habitual offender revocation. Since the felony charge is included with the NCIC code for habitual offender status, and since this offense is considered less severe than that for some other traffic offenses, a habitual offender charged with any other offense that requires incarceration may not be coded as a habitual offender in OBCSIS or DCJ7.

In order to address the issue, the entire class of incarcerated traffic offenders was cross checked with DMV records to determine which were incarcerated under the provisions of the Act. The VTRC requested that the DOC provide an electronic copy of both the prison and jail data to speed this analysis of traffic offender records.

Prior to the analysis of incarcerated habitual offenders, data were received from the DOC from the OBSCIC and DCJ7 data bases on all traffic offenders incarcerated as of September 1, 1991. After the duplicate cases were removed, identifying information was then forwarded to the DMV, where the driving records of these individuals were accessed, printed, and returned. Two attempts about 6 weeks apart were made to access each DMV record.

The driving history of each incarcerated traffic offender was then reviewed to determine in which of the following categories he or she belonged:

1. *Habitual offender with subsequent recorded convictions.* If, according to the DMV record, the individual had been adjudicated and had subsequently been convicted of a traffic violation or had been involved in a crash, he or she was classified as a habitual offender incarcerated for driving after adjudication. There were several subgroups of such confirmed habitual offenders:

    - those who were convicted only of the felony offense of driving after habitual offender adjudication
    - those who were convicted of the felony offense and at least one other traffic offense occurring the same day (i.e., the traffic conviction plus their previous adjudication triggered the felony revoked conviction)
    - those who were convicted of the felony offense but also had been convicted of other postadjudication traffic offenses occurring on other days
    - those who were convicted of postadjudicated traffic offenses other than the felony offense.

2. *Nonhabitual traffic offender.* If, according to the DMV record, the person had not been adjudicated as a habitual offender at the time of his or her conviction for a violation that resulted in incarceration, he or she was

classified as a nonhabitual traffic offender. In these instances, the conviction noted in the NCIC code entered by the DOC was compared to the DMV record to confirm which offense had resulted in incarceration.

3. *Habitual offender without subsequent recorded convictions.* If the DOC data base listed an individual as an adjudicated habitual offender and the DMV record contained a habitual offender adjudication with no subsequent convictions that could result in the prison or jail sentence indicated on the DOC record, the individual was categorized as a habitual offender with an unconfirmed reason for incarceration.

Only inmates whose DOC and DMV records confirmed that they were adjudicated and had qualifying postadjudication convictions were included in the analysis of incarcerated habitual offenders.

In addition to these categories, there were 124 individuals for whom DMV records were not found. This was partially due to an artifact in record keeping. In the DCJ7 file, only the first two letters of the last name were recorded, along with the social security number. If the social security number for these individuals was not properly recorded, there was no name to use to help locate the driving record. However, there were also some cases where full names were available and DMV records were sought by name but could not be located.

RESULTS

How the Habitual Offender Program Operates

As a first step, the procedures used in implementing Virginia's Act and their efficiency were reviewed. As noted previously, adjudication subsequent to habitual offender certification is by no means certain, and in some cases, the frequency of these outcomes is difficult to ascertain from DMV records. These outcomes are affected by the statutory and administrative procedures imposed on DMV and the Commonwealth's Attorneys.

Outcomes of Habitual Offender Certification

Since the Act was passed in 1968, the DMV has certified more than 61,000 drivers as habitual offenders (see Table 2). Data available from the DMV show the number of drivers certified and adjudicated as habitual offenders annually and the number of drivers processed by the courts and found either to be or not to be habitual offenders. The number of cases in which the Commonwealth's Attorneys voluntarily reported that they were unable to serve the driver with the show cause order is also shown, although many do not report on these cases. The data in this table do not account for all certified habitual offenders for several reasons:

Table 2
VIRGINIA HABITUAL OFFENDER CERTIFICATION AND ADJUDICATION DATA: 1969–1990

Date	No. Certified	No. Not Adjudicated Habitual Offender	No. Unable to Serve	No. Adjudicated Habitual Offender
1969	531	0	0	143
1970	1,212	27	186	559
1971	794	7	91	502
1972	266	13	28	391
1973	569	46	85	361
1974	720	47	87	380
1975	2,034	50	218	943
1976	1,703	152	258	1,191
1977	1,085	77	156	641
1978	1,877	69	367	879
1979	2,017	81	425	948
1980	2,546	96	685	1,348
1981	2,404	36	784	1,243
1982	2,828	10	666	1,353
1983	3,648	9	957	1,605
1984	3,567	10	1,340	2,033
1985	4,126	[a]	[a]	2,116
1986	4,417 (1,852)[b]	26	2,005	1,932
1987	4,375 (1,808)	34	2,065	2,503
1988	3,824 (1,851)	15	2,088	2,151
1989	3,536 (1,418)	27	2,216	1,798
1990	13,430 (1,247)	79	4,724	3,914
Total	61,509 (8,176)	911	19,431	28,934

[a] Data unavailable.
[b] ( ) = recertified.

1. *There is no specific provision in the Act that requires the Commonwealth's Attorneys to notify the DMV when they have decided not to file an information or have simply ignored the certification due to a heavy caseload or another reason.* Once an information is filed, however, if a show cause order has been duly served and the court has declared the driver a habitual offender, the clerk of court is required, under the Act, to file a copy of the order with DMV. Va. Code § 46.2-355 (1989). If the person has been found not to be a habitual offender, the clerk is also required to notify the DMV. Thus, the frequencies of other outcomes of certification are unknown.

2. *Commonwealth's Attorneys are not required to report to the DMV when a court is unable to serve the show cause order upon a certified driver.* Currently, if it has not heard anything within about 6 months, the DMV sends out letters to Commonwealth's Attorneys to find out what happened to the cases of certified individuals. Thus, since the only source of information on this category is the voluntary response by some Commonwealth's Attorneys, the number shown in Table 1 under the heading "un-

able to serve" represent the minimum number of cases in this category, but not necessarily all cases.

3. *The Commonwealth's Attorneys do not necessarily act immediately on certifications, which may result in recertification by the DMV for each additional offense incurred after the driver is certified.* Thus, it is difficult to determine whether some of the numbers relating to such outcomes as "unable to locate" or "no action taken" actually represent double-counting of the same drivers who have been certified and recertified.

4. *Drivers certified in a given year may be adjudicated in a subsequent year.* Therefore, it is not possible to state in exact percentages the percentage of certified drivers who are adjudicated each year. Thus, although the number of habitual offenders adjudicated annually can be ascertained with certainty from DMV records, the other outcomes resulting from certification cannot be determined with any degree of certainty.

Even though the numbers on service of the show cause order shown in Table 2 represent the minimum number of cases, it is clear that failure to serve a show cause order is one of the major reasons a large number of those drivers certified are never adjudicated. Given the substantial number of certified drivers in this category, it can be inferred that one of three things has occurred in each case: (1) an attempt was made to serve the driver with a show cause order but this was never reported to the DMV; (2) the Commonwealth's Attorneys may have decided not to file an information after receiving the certification; or (3) the Commonwealth's Attorney may have delayed addressing the certification or ignored it for some other reason.

The discretion of the Commonwealth's Attorneys is something that cannot be eliminated unless a statute is enacted requiring them to report all outcomes of certification or allowing for the automatic declaration of drivers as habitual offenders accompanied by revocation of license through an administrative process outside the judicial system. Although a purely administrative process may be just as problematic (for reasons discussed in this report), the inability to serve drivers with a show cause order involves problems that are not necessarily insurmountable.

Habitual Offender Service Requirements

Service requirements for habitual offender adjudication are stricter than those for criminal penalties. According to § 8.01-296 of the Code of Virginia, a person may be served by either delivering a copy of the order in person or using a substituted manner of service. These substituted methods include either delivering a copy of the order to a family member over 16 years of age who is found at the "usual place of abode" or posting a copy of the order on the main entrance of such place of abode and thereafter mailing a copy of the order not less than 10 days before default judgment may be entered. Va. Code § 8.01-296(2)(1991). However, service for habitual offender adjudication must be made in person. Regardless of these differences, with any of these methods, not knowing the current residence of the certified

driver leads to the inability to comply with the statutory service requirements. Unfortunately, since driver's license address changes are self-reported, there is little that the DMV can do in-house to make their records more current, outside of cross referencing their driver's license file with the vehicle registration file, in which vehicle owners' addresses are updated every 1 or 2 years. The DMV began cross referencing their files during 1992.

Unlike Virginia residents, nonresidents may be served by leaving a copy of the order with the DMV Commissioner, along with a specified fee, and subsequently mailing the order by registered or certified mail to the driver at the last known address of the nonresident. Va. Code § 8.01-312 (1984). If no address can be ascertained with due diligence, serving the Commissioner of DMV without the mailing is sufficient. Va. Code § 8.01-313 (1991). Thus, the service requirements of Virginia's Act are actually less problematic when a nonresident driver is involved.

Given the problems in service of certified habitual offenders and the existence of the DMV's administrative sanctions for multiple DUI offenders, there has been some interest in altering the certification process. In this alteration, the judicial adjudication would be replaced by an administrative declaration similar to the process used in several other states. At first glance, this option appears to solve many of the administrative problems inherent in the current certification/adjudication system, since offenders would automatically have their license revoked for an indefinite period of time upon receipt of the "triggering" conviction by the DMV. This process would certainly improve the DMV's position with relation to information concerning habitual offenders, since the agency could track every offender and would not be dependent on voluntary reporting by Commonwealth's Attorneys. However, many of the existing problems would be replicated in the new system. For instance, administratively declared habitual offenders must still be provided an administrative hearing, which would require additional DMV personnel and resources. Also, proof of service and a court adjudication would still be required before additional penalties such as incarceration could be imposed. Obviously, the "teeth" of the habitual offender program is the threat of incarceration for driving under habitual offender revocation. The DMV's administrative revocation carries no additional penalty for driving during the revocation. Further, even if additional penalties could be imposed on administratively declared habitual offenders who violated the revocation, they could use the defense that they were never served notice of the declaration. Thus, service requirements would still remain a problem, and administrative declaration in the absence of the offender would likely add little to the deterrent value of the program.

Procedural Problems with Imposing the Felony Offense

One final problem with the procedural requirements of the habitual offender laws concerns the imposition of the felony offense for driving after being declared a habitual offender. Even though the Act requires a judge to inquire into the habitual offender status of those charged with DSOL, the driver history records show that often those already declared habitual offenders are not convicted of the felony of-

fense. See Va. Code § 46.2-357 (1991). One reason for this could be a delay by the court clerk in filing a copy of the habitual offender order with the DMV or a delay by DMV personnel in entering the habitual offender order into the driver history file. In either case, when drivers commit offenses shortly after having been declared habitual offenders, the judge, in reviewing their driving records, may not be aware of their prior habitual offender adjudication. However, some driver records examined in this study indicate that even when judges may be aware of the habitual offender status of those before the court, as indicated by a longer time period between the initial habitual offender adjudication and a subsequent offense, some habitual offenders are not convicted of the felony offense. This phenomenon is discussed in a later section of this report.

How Other States' Habitual Offender Programs Differ from Virginia's

A number of states' "habitual offender" programs deal with less serious offenders and fall under the purview of a driver improvement program. These programs are different from Virginia's habitual offender program and were excluded from this multistate comparison. The distinctive feature of Virginia's Act is the possibility of incarceration for a violation of the habitual offender revocation. Nineteen states other than Virginia have attempted to deal with habitual violators by revoking driving privileges and instituting provisions for incarceration following a violation of that revocation.

In defining the type of offenses used in qualifying a driver for habitual offender status, Virginia's Act differentiates between major and minor offenses (see Table 3). Twelve other states also make a distinction between major and minor offenses, and 4 states have no provision for minor offenses. Montana's unique system of assigning points to weighted offenses includes all motor vehicle violations. Similarly, in California's system, offenses for the habitual offender law are counted only if (1) a person has been convicted for DSOL, and (2) the revocation or suspension is based on a conviction for DUI or negligent driving. Subsequent offenses are based on a point system with a large number of varying categories.

Like Virginia, 14 states require 3 major offenses for being declared a habitual offender. Although Indiana's statute provides a category for 3 major offenses, it further designates a "most serious" category that requires only 2 convictions. Under this provision, 2 convictions of reckless homicide, manslaughter, hit and run causing injury or death, or operation of a vehicle while intoxicated resulting in death can result in habitual offender declaration. Vermont requires 8 major offenses, and Wisconsin 4. California and Montana use a point system that varies in the number of offenses required, depending on the number of points assigned for each violation.

The number of years in which the major offenses must be accumulated varies among the states from 3 to 10. Only Virginia and Indiana extend the time period to 10 years. Colorado uses 7 years, Iowa uses 6, eleven other states use 5, and the remaining four states use 3. Under California's system, the number of qualifying offenses are counted during the 12-month period after a specified triggering offense.

Table 3
STATUTORY DEFINITION OF HABITUAL OFFENDER

State	No. Major Offenses	Within No. Years	No. Minor Offenses	Within No. Years
California[a]	—	—	—	—
Colorado	3	7	10	5
Delaware	3	5	10	3
Florida	3	5	15	5
Georgia	3	5	—	—
Indiana	2 (most serious) 3 (serious)	10	10	10
Iowa	3	6	6	2
Kansas	3	5	—	—
Maine	3	5	—	—
Massachusetts	3	5	12	5
Montana[b]	*	3	—	—
New Hampshire	3	5	12	5
Oregon	3	5	20	5
Rhode Island	3	3	6	3
South Carolina	3	3	10	3
Tennessee	3	3	—	—
Vermont	8	5	—	—
Virginia	3	10	12	10
Washington	3	5	20	5
Wisconsin	4	5	12	5

[a] Major offenses are counted only after a person has been convicted for DSOL where the revocation or suspension is based on a conviction for DUI or negligent driving. The number of qualifying offenses are counted during a 12-month period after specified offenses.
[b] Weighted offenses in point system add up to 30 points.

Of the twelve states that use major and minor offense categories, Virginia and three other states require 12 minor offenses, two states require 20, one state requires 15, four states require 10, and two states require only 6. As in the major offense category, only Virginia and Indiana extend the time period for minor offense accumulation to 10 years. Seven states use 5, three states use 3, and one state uses 2.

Table 4 lists the type of major offenses chargeable in each of the 20 states under a habitual offender statute. All states except California include DUI and failure of a driver to stop when involved in an accident resulting in death or injury. In Maine, a person will not be found to be a habitual offender when (1) all of the person's convictions are based on DSOL and the original suspension is based on a failure to give or thereafter maintain proof of financial responsibility; (2) a driver is convicted of driving without a license and that license was not suspended or revoked; or (3) a person is convicted of DSOL when the suspension is based on failure to appear in court or failure to pay a fine. Table 5 summarizes the major offenses most often listed and the number of states classifying an offense as a major violation. Other offenses not listed include racing and passing a stopped school bus.

As can be seen in Table 6, the states are almost evenly split on the procedure followed in declaring a driver a habitual violator, with 11 states implementing an administrative process and 9 requiring court proceedings. The procedures used in states in which court action is taken resemble the process followed in Virginia, where the department in charge of motor vehicle records certifies a driver's record to a prosecutor, who in turn brings the action in a court proceeding. The states that require administrative action have varying procedures. Some states automatically revoke a driver's license after the threshold conviction, some provide a hearing after the revocation, and others provide an administrative hearing before the revocation.

Upon declaring a person a habitual offender, all states except California revoke the individual's privilege to drive (see Table 7). Maine and Virginia impose indefinite revocations, and Indiana imposes a 10-year revocation. The remainder of the states vary the revocation from 1 to 6 years, with 5 years being the most common limit. In addition to license revocation, Delaware levies a fine of $100 to $1,000 and imposes an incarceration of 30 days to 12 months. Although California has no license revocation, upon finding a person a habitual offender, he or she is subject to a $1,000 fine and 30 days in jail.

Once a person's privilege to drive has been revoked, additional penalties are imposed if this revocation is violated. As shown in Table 8, all 20 states included in this analysis impose incarceration, but some states further provide for fines and an additional revocation period. Indiana extends the violator's license suspension indefinitely if the initial revocation is violated. Montana extends the revocation period for an additional year. The imposition of a fine varies from $50 in Massachusetts to a possible $100,000 in Oregon. The differences in the length of incarceration among the states are numerous. Indiana and Washington have a system of graduated penalties depending on the number of times the habitual offender revocation is violated, but the remainder of the states provide a single penalty for each conviction. The most lenient incarceration length, 10 days, is imposed by Massachusetts and Washington upon the first subsequent conviction. Tennessee allows for the most stringent length, a possible 6-year prison term. The typical sentence is between 1 and 5 years, as is imposed in Virginia.

As can be seen in Table 9, the states further provide different procedures for license restoration. California is the only state that does not list the applicable license restoration process or cross reference any other relevant statutes. Of the remaining states, 12 provide administrative procedures for the driver to regain his or her license, and 7 states, including Virginia, require the driver to petition the court for license restoration.

It can be seen from this analysis that some of the 19 states' habitual offender programs are similar to Virginia's but that many states have approached the certification and adjudication of offenders differently. The alternate methods employed by other states may suggest potential changes in Virginia's program.

Table 4
SERIOUS OFFENSES QUALIFYING DRIVERS FOR HABITUAL OFFENDER STATUS

State	Vehicular Manslaughter/ Homicide	DUI	Felony Using a Motor Vehicle	Hit and Run Property Damage	Hit and Run Injury	DSOL	Negligent/ Reckless Driving	Eluding Police	False Affidavit/ Perjury	Driving without a License	Other
California[a]											
Colorado	•	•			•	•	•		•		
Delaware	•	•	•	•	•	•	•	•	•	•	Driving under occupational license restriction
Florida	•	•	•		•	•					
Georgia	•	•	•	•	•			•	•		Racing
Indiana	•[b]	•	•	•	•[b]	•	•			•	Racing
Iowa	•	•	•	•	•	•			•		
Kansas	•	•	•	•	•	•			•		No insurance coverage
Maine	•	•	•	•	•	•	•	•	•	•	
Massachusetts		•	•	•	•	•	•		•	•	
Montana	• 15 pts 12 pts	• 10 pts	• 12 pts	• 4 pts	• 8 pts	• 6 pts	• 5 pts			• 2 pts	Racing–5 pts Speeding–3 pts All other moving violations –2pts
New Hampshire	•	•	•	•	•	•	•		•		Driving without consent of owner Concealing identity of vehicle Possession of master keys Disobeying an officer Racing

Continues

Table 4 (continued)

State	Vehicular Manslaughter/ Homicide	DUI	Felony Using a Motor Vehicle	Hit and Run Property Damage	Hit and Run Injury	DSOL	Negligent/ Reckless Driving	Eluding Police	False Affidavit/ Perjury	Driving without a License	Other
Oregon	•	•		•	•	•	•	•			
Rhode Island	•	•	•	•	•	•			•	•	
South Carolina	•	•	•		•	•	•				
Tennessee	•	•		•	•	•	•			•	Drag racing Passing stopped school bus
Vermont		•		•	•	•	•	•			Operation without owner's consent Speeding over 20 mph Failure to obey officer Failure to yield to emergency vehicle Failure to yield to pedestrian Failure to yield to blind person Illegal passing of school bus
Washington	•	•		•	•	•	•	•			
Wisconsin	•	•	•	•	•	•	•	•	•		Refusing breath test
Virginia	•	•	•	•	•	•			•		

[a] Offenses are based on an extensive point system.
[b] These are classified as Most Serious (4 offense classifications resulting in death in use of motor vehicle).

Table 5
SUMMARY OF QUALIFYING OFFENSES[a]

Major Offenses	No. States
DUI	19
Hit and run (injury)	19
DSOL	18
Vehicular manslaughter/homicide	17
Hit and run (property damage)	16
Felony using a motor vehicle	14
Negligent/reckless driving	13
False affidavit/perjury	11
Eluding police	7
Driving without a license	7

[a]Excluding California.

Table 6
PROCEDURES FOR ADJUDICATING/PROCESSING A HABITUAL OFFENDER

State	Department Certifies/ Court Convicts	Administrative Action
California	•	
Colorado		•
Delaware	•	
Florida		•
Georgia		•
Indiana		•
Iowa	•	
Kansas	•	
Maine		•
Massachusetts		•
Montana	•	
New Hampshire	•	
Oregon		•
Rhode Island	•	
South Carolina		•
Tennessee	•	
Vermont		•
Virginia	•	
Washington		•
Wisconsin		•

Table 7
PENALTIES FOR A HABITUAL OFFENDER UPON ADJUDICATION

State	Term of Revocation	Fine	Jail Term
California	—	$1,000	30 days
Colorado	5 yr	—	—
Delaware	5 yr major offense 3 yr minor offense	$100 to $1000	30 days to 12 mo
Florida	5 yr	—	—
Georgia	5 yr	—	—
Indiana	10 yr major offense[a] 5 yr minor offense		
Iowa	2–6 yr major offense 1 yr minor offense	—	—
Kansas	3 yr	—	—
Maine	Indefinite	—	—
Massachusetts	4 yr	—	—
Montana	3 yr	—	—
New Hampshire	1–4 yr	—	—
Oregon	5 yr	—	—
Rhode Island	1–5 yr	—	—
South Carolina	5 yr	—	—
Tennessee	3 yr	—	—
Vermont	2 yr	—	—
Virginia	Indefinite	—	—
Washington	5 yr	—	—
Wisconsin	5 yr	—	—

[a]Upon petition for judicial review, a court may grant a probationary license.

Table 8
PENALTIES FOR DRIVING AFTER BEING DECLARED A HABITUAL OFFENDER

State	Revocation	Fine	Jail Term
California[a]	—	$2,000	180 days
Colorado	—	$1,000	2 yr
Delaware	—	———	1–5 yr
Florida	—	———	≤1 yr
Georgia	—	$750	1–5 yr
Indiana	Indefinite	1st offense $10,000[b] Subsequent $10,000	1 1/2 yr[b] 4 yr
Iowa	—	$5,000	≤2 yr
Kansas	—	$5,000	1–5 yr
Maine	—	———	≤5 yr
Massachusetts	—	$50–$100	≤10 days
Montana	1 yr	$1,000	≤1 yr
New Hampshire	—	———	1–5 yr
Oregon	—	$100,000	5 yr
Rhode Island	—	———	<5 yr
South Carolina	—	———	1–5 yr
Tennessee	—	$1,000	1–6 yr
Vermont	—	$5,000	≤2 yr
Virginia	—	———	1–5 yr
Washington	—	1st offense $500 2nd offense $500 Subsequent $500	10 days–6 mo 90 days–1 yr >1 yr
Wisconsin	—	$5,000	≤180 days

[a] Within 7 years of prior conviction.
[b] A lesser penalty of a $500 fine and a prison term of not more than 1 year can be imposed at the discretion of the court.

Table 9
LICENSE RESTORATION PROCEDURES

State	Mandatory Minimum No. Years	Petition Court	Action by Administrative Agency
California[a]			
Colorado	5 yr		•
Delaware	5 yr	•	
Florida	1 yr		•
Georgia	2 yr		•
Indiana	10 yr major offense 5 yr minor	•	
Iowa	2 yr major offense 1 yr minor		•
Kansas	3 yr	•	
Maine	1 yr		•
Massachusetts	4 yr		•
Montana	3 yr		•
New Hampshire	1 yr	•	
Oregon	5 yr		•
Rhode Island	1 yr	•	
South Carolina	2 yr		•
Tennessee	3 yr	•	
Vermont	2 yr		•
Washington	2 yr		•
Wisconsin	2 yr		•
Virginia	10 yr[b]	•	

[a] License restoration procedure not listed or cross referenced.
[b] Five years for full restoration or 3 years for a restricted license where one or more of the qualifying offenses was a DUI; 5 years if based in part on DSOLs where suspension was due to nonpayment of a financial obligation; 1 year if *solely* based on DSOLs due to such suspensions.

General Findings

As can be seen in Table 10, after the prior records of the groups were statistically equated, the comparison of the subsequent driving records of the certified and adjudicated groups yielded the following information:

1. The group of certified drivers had more subsequent convictions for DUI and for other traffic events than did the adjudicated group.
2. The group of certified drivers had more subsequent traffic crashes than did the adjudicated group.
3. The group of certified drivers did not remain conviction free and crash free as long as the adjudicated group.

This type of post hoc analysis, although not definitive, suggests that the Act had a positive impact on traffic safety. An alternate explanation, however, has been posed to explain these findings. As mentioned previously, persons who are adjudicated as habitual offenders and are subsequently convicted of the felony offense may be sent to a local jail for 12 months or a state prison for 1 to 5 years. This is not true of persons who are merely certified. It has been hypothesized that the reason adjudicated drivers were found to have fewer subsequent convictions and crashes than certified drivers is that a number of adjudicated drivers were incarcerated during the data collection period and, thus, were physically prevented from driving and incurring convictions and crashes. In order to test this alternative explanation, those adjudicated drivers who had incurred a felony conviction were removed from the analysis. As seen in Table 11, with these drivers removed, the results of this analysis still supported the finding that the Act had a positive impact on adjudicated drivers.

Table 10
SUBSEQUENT OFFENSES: CERTIFIED (N = 662) VS. ADJUDICATED (N = 613) CONTROLLING FOR PREVIOUS DSOL VIOLATIONS, PREVIOUS DUIs, AND PREVIOUS MINOR VIOLATIONS

		Deviation from Grand Mean		Significance Testing	
Offense	Grand Mean	Certified	Adjudicated	F[a]	Significance
DUI convictions	.192	.04	–.05	11.56	$p < .01$
Crashes	.073	.03	–.04	18.35	$p < .01$
Traffic events	.809	.29	–.32	68.96	$p < .01$
Days to event	1,116.78	–68.16	73.61	27.53	$p < .01$

[a]1 degree of freedom.

Table 11
SUBSEQUENT OFFENSES: CERTIFIED (N = 662) VS. ADJUDICATED (N = 497)
CONTROLLING FOR PREVIOUS DSOL VIOLATIONS,
PREVIOUS DUIs, AND PREVIOUS MINOR VIOLATIONS
(Excluding Possibly Incarcerated Offenders)

Offense	Grand Mean	Deviation from Grand Mean		Significance Testing	
		Certified	Adjudicated	F[a]	Significance
DUI convictions	.169	.07	−.09	33.92	$p < .01$
Crashes	.072	.03	−.04	19.98	$p < .01$
Traffic events	.745	.35	−.47	113.84	$p < .01$
Days to event	1,165.57	−116.73	155.48	104.51	$p < .01$

[a]1 degree of freedom.

Impact on DUI Offenders

Adjudicated Drivers

As mentioned earlier, if a habitual offender adjudication is based on at least one DUI, restoration of a restricted license may be made after 3 years and complete restoration may be made after 5 years from the date of adjudication. Since this DUI exemption currently accounts for most early restorations, the impact of the Act on drivers whose previous DUI convictions contributed to their habitual offender adjudication was also investigated.

First, it was necessary to examine the philosophy and intention of the statute with relation to DUI offenders. In general, there are two intended impacts of the statute: (1) to keep dangerous drivers off the road, and (2) to impose a penalty on drivers convicted of numerous traffic violations that would both punish offenders and deter potential offenders.

The Virginia Court of Appeals has determined that the intent of the Act was followed by allowing certain DUI offenders to petition for reinstatement of their driver's license after only 5 years rather than 10. The court stated that this law

> distinguishes between a class of people who have suffered from the debilitative diseases of alcohol or drug addiction, but who have been cured, and a class of people who have violated the laws of the Commonwealth for no apparent reason. This statutory classification is based on the rationale that the unlawful acts of the alcoholics or drug addicts will stop when these individuals are cured of their chemical dependence. The rationale does not apply to individuals who, for no apparent reason, repeatedly and intentionally violate the law. *Salama v. Commonwealth*, 380 S.E.2d 433, 435 (Va. App. 1989).

Several assumptions underlie the provisions of the DUI exemption. First, it is assumed that problem driving resulting from alcohol or drug addiction is a condition that can be cured with treatment. Conversely, the exemption implies that problem driving not stemming from problem drinking or drug abuse (or as noted in *Salama*, violation of traffic laws for no apparent reason) cannot be cured.

Also, it assumes that if the alcohol-addicted habitual offender receives treatment, is no longer alcohol addicted, and has been under sanction for 3 to 5 years, he or she may no longer be at special risk for traffic crashes and convictions. However, since there is no exemption for non-DUI habitual traffic offenders and "noncured" DUI offenders, these other groups are still considered to be at special risk for at least 5 more years. Finally, the exemption seems to imply that a 3- to 5-year penalty is sufficient punishment for "cured" DUI habitual offenders and is a sufficient deterrent for potential DUI offenders and that a 3- to 5-year penalty is not a sufficient punishment or deterrent for non-DUI traffic offenders. From what is known about alcohol addiction and problem drinking and driving, these hypotheses may require additional scrutiny.

The ideal method to analyze whether early license restoration is warranted for DUI offenders would be to match drivers who petition and receive relicensure after 5 years with a randomly selected and demographically similar group of non-DUI traffic offenders who are also relicensed after 5 years. By comparing the two groups in terms of crashes and convictions during the 4 years following relicensure (what would have been the 6th through 10th years of their adjudication), it could be determined whether the DUI population was no longer at special risk for traffic accidents and convictions. If DUI offenders had significantly better driving records during the 6th through 10th year, their records would justify the early relicensure denied other multiple traffic offenders. Obviously, for the purposes of this study, this definitive analysis was impossible. However, it was possible to compare records of DUI and non-DUI habitual offenders during the first 4 years of their revocation status.

Table 12 compares the number of subsequent DUIs, number of subsequent crashes, and number of subsequent traffic events for drivers whose adjudication was based on at least one DUI with those drivers whose adjudication was not based on any DUIs. From these data it can be seen that there was only one significant difference in subsequent driving records between the two groups of adjudicated drivers—those with one or more DUIs had more traffic events in the 2nd year following adjudication. There were no differences in any other category in any of the 4 years or in the total numbers of convictions or crashes. Thus, in terms of driving behavior during the first 4 years after adjudication, habitual offenders with one or more DUIs were essentially similar to those with no DUIs.

For the purposes of the Act, persons whose adjudication is based on one DUI combined with two other major violations are treated the same as those whose adjudication is based on at least three DUIs. There is no previous research or data that support treating a driver with only one DUI as alcohol addicted. In addition, these data indicate that there is no rationale for treating habitual offenders with at least one previous DUI differently from those with no previous DUI.

However, when the subsequent driving records of those persons whose adjudication was based on three or more DUIs were compared with those having no DUI, there were significant differences (see Table 13). Drivers whose adjudication was based on three or more DUIs had more subsequent DUIs during the first

Table 12
SUBSEQUENT DRIVING RECORDS OF ADJUDICATED DRIVERS WITH ONE OR MORE PREVIOUS DUIs (N = 503) AND THOSE WITH NO PREVIOUS DUI (N = 110)[a]

			Deviation from Grand Mean		Significance Testing	
Year	Offense	Grand Mean	No DUI	1 or More DUIs	F[b]	Significance
First	DUI convictions	.038	–0.03	0.01	1.46	N.S.
	Traffic events	.135	–0.05	0.01	0.68	N.S.
Second	DUI convictions	.031	–0.03	0.01	2.33	N.S.
	Crashes	.008	–0.01	0.00	2.01	N.S.
	Traffic events	.108	–0.08	0.02	4.78	$p < .05$
Third	DUI convictions	.041	–0.02	0.00	0.97	N.S.
	Crashes	.008	–0.01	0.00	1.07	N.S.
	Traffic events	.103	–0.02	0.01	0.44	N.S.
Fourth	DUI convictions	.036	0.00	0.00	0.00	N.S.
	Crashes	.020	–0.01	0.00	0.58	N.S.
	Traffic events	.116	–0.01	0.00	0.13	N.S.
Total	DUI convictions	.145	–0.08	0.02	3.29	N.S.
	Crashes	.036	–0.03	0.01	3.06	N.S.
	Traffic events	.462	–0.17	0.04	3.39	N.S.
	Time to next event	1,201.018	90.39	–19.77	3.73	N.S.

[a]Controlling for previous DSOL violations and previous suspensions.
[b]1 degree of freedom.

Table 13
SUBSEQUENT DRIVING RECORDS OF ADJUDICATED DRIVERS WITH THREE OR MORE PREVIOUS DUIs ($N = 220$) AND THOSE WITH NO PREVIOUS DUI ($N = 110$)[a]

Year	Offense	Grand Mean	Deviation from Grand Mean		Significance Testing	
			No DUI	3 or More DUIs	F[b]	Significance
First	DUI convictions	.039	–0.03	0.01	1.48	N.S.
	Traffic events	.118	–0.02	0.01	0.30	N.S.
Second	DUI convictions	.021	–0.02	0.01	1.80	N.S.
	Crashes	.006	–0.01	0.01	2.37	N.S.
	Traffic events	.091	–0.07	0.03	2.99	N.S.
Third	DUI convictions	.045	–0.05	0.02	3.70	N.S.
	Crashes	.009	–0.01	0.01	1.45	N.S.
	Traffic events	.100	–0.03	0.02	0.69	N.S.
Fourth	DUI convictions	.033	0.00	0.00	0.00	N.S.
	Crashes	.018	0.00	0.00	0.00	N.S.
	Traffic events	.118	0.00	0.00	0.01	N.S.
Total	DUI convictions	.139	–0.10	0.05	4.77	$p < .05$
	Crashes	.033	–0.03	0.01	1.69	N.S.
	Traffic events	.427	–0.13	0.06	2.02	N.S.
	Time to next event	1,220.876	52.14	–26.07	1.06	N.S

[a]Controlling for previous DSOL violations, previous suspensions, and previous failure-to-stop-at-the-scene-of-an-accident (misdemeanor) violations.
[b]1 degree of freedom.

4 years after adjudication. In terms of other convictions, there were no significant differences between the two groups. Although not definitive, these results do not support the early relicensing of habitual offenders whose adjudication was based on at least three DUI convictions.

Adjudicated vs. Certified Drivers

Another question pertaining to this DUI population is the effect of the Act on DUI offenders as opposed to non-DUI offenders. In order to answer this question, the subsequent driving records of adjudicated drivers were compared to those merely certified for three groups: drivers whose adjudication or certification was based (1) solely on non-DUI traffic offenses, (2) on at least one DUI, and (3) on three or more DUIs.

Interestingly, the impact of the program on habitual offenders with one or more previous DUIs was very similar to the impact on those with no DUI (see Tables 14 and 15). For both groups, the adjudicated group had fewer subsequent traffic events than did the certified group in each of the 4 years and in total. The adjudicated drivers in both DUI groups also had fewer total subsequent crashes and remained crash free and conviction free longer than did certified drivers. Where the group with one or more previous DUIs differed from the no-DUI group was in terms of subsequent DUIs. The DUI-adjudicated group had fewer subsequent DUIs in the third year and fewer total DUIs than the DUI-certified group. This was not the case for the no-DUI group. This would indicate that the positive impact of the Act was similar for both groups except that adjudication resulted in fewer subsequent DUIs for the group with one or more previous DUIs on their record.

Very different results are noted for those drivers whose adjudication was based on three or more DUIs. As seen in Table 16, there were no significant differences between the number of subsequent DUIs, crashes, or traffic events accumulated by the adjudicated and certified groups who had three or more DUIs. Thus, although there was a significant positive effect of adjudication shown for drivers with no previous DUI and for those with at least one previous DUI, there was no positive effect shown for those drivers with three or more previous DUIs. This would indicate that the Act was not effective in reducing either the amount of driving or the negative consequences of driving for drivers with three or more prior DUIs—the drivers who are the most likely to have a serious drinking problem. This finding suggests that persons with fewer than three DUIs contributing to their adjudication may have benefited from the Act but the group with three or more DUIs did not.

Number and Characteristics of Incarcerated Habitual Offenders

As seen in Table 17, according to the DOC, 1,604 traffic offenders were in jail or prison on September 1, 1991. Of these, 864 were confirmed by DOC and DMV records to be incarcerated habitual offenders. A total of 646 of the confirmed incarcerated habitual offenders had been convicted of the felony charge: 144 had been

Table 14
SUBSEQUENT DRIVING RECORDS OF ADJUDICATED (N = 110) AND CERTIFIED DRIVERS (N = 156) WITH NO PREVIOUS DUI[a]

			Deviation from Grand Mean		Significance Testing	
Year	Offense	Grand Mean	Certified	Adjudicated	F[b]	Significance
First	DUI convictions	.026	0.00	–0.00	0.26	N.S.
	Traffic events	.259	0.08	–0.11	5.09	$p < .05$
Second	DUI convictions	.034	0.02	–0.02	2.69	N.S.
	Crashes	.019	0.01	–0.02	3.83	$p < .05$
	Traffic events	.248	0.10	–0.15	11.44	$p < .01$
Third	DUI convictions	.019	0.01	–0.01	0.55	N.S.
	Crashes	.041	0.02	–0.03	3.10	N.S.
	Traffic events	.312	0.14	–0.20	15.53	$p < .01$
Fourth	DUI convictions	.049	0.00	–0.01	0.11	N.S.
	Crashes	.038	0.02	–0.03	3.70	N.S.
	Traffic events	.376	0.16	–0.23	13.46	$p < .01$
Total	DUI convictions	.128	0.03	–0.04	2.01	N.S.
	Crashes	.098	0.05	–0.08	8.37	$p < .01$
	Traffic events	1.195	0.48	–0.69	30.62	$p < .01$
	Time to next event	1,023.470	–110.06	156.08	17.12	$p < .01$

[a]Controlling for previous DSOL violations and previous suspensions.
[b]1 degree of freedom.

Table 15
SUBSEQUENT DRIVING RECORDS OF ADJUDICATED (N = 503) AND CERTIFIED DRIVERS (N = 506) WITH ONE OR MORE PREVIOUS DUIs[a]

			Deviation from Grand Mean		Significance Testing	
Year	Offense	Grand Mean	Certified	Adjudicated	F[b]	Significance
First	DUI convictions	.053	0.01	–0.01	2.16	N.S.
	Traffic events	.181	0.04	–0.04	5.62	$p < .05$
Second	DUI convictions	.046	0.01	–0.01	1.46	N.S.
	Crashes	.010	0.00	0.00	0.00	N.S.
	Traffic events	.152	0.04	–0.04	6.04	$p < .05$
Third	DUI convictions	.056	0.01	–0.01	1.42	N.S.
	Crashes	.022	0.01	–0.01	7.76	$p < .01$
	Traffic events	.019	0.08	–0.08	20.26	$p < .01$
Fourth	DUI convictions	.055	0.02	–0.02	7.17	$p < .01$
	Crashes	.035	0.01	–0.01	3.83	$p < .05$
	Traffic events	.184	0.06	–0.07	18.27	$p < .01$
Total	DUI convictions	.209	0.05	–0.05	9.83	$p < .01$
	Crashes	.066	0.02	–0.02	8.96	$p < .01$
	Traffic events	.708	0.22	–0.23	35.93	$p < .01$
	Time to next event	1,141.375	–55.35	55.68	13.42	$p < .01$

[a]Controlling for previous DSOL violations, previous suspensions, previous administrative revocations for DUI, previous ASAP attendance, and previous failure-to-stop-at-the-scene-of-an-accident (misdemeanor) violations.
[b]1 degree of freedom.

Table 16
SUBSEQUENT DRIVING RECORDS OF ADJUDICATED (N = 220) AND CERTIFIED DRIVERS (N = 151) WITH THREE OR MORE PREVIOUS DUIs[a]

Year	Offense	Grand Mean	Deviation from Grand Mean		Significance Testing	
			Certified	Adjudicated	F[b]	Significance
First	DUI convictions	.049	0.00	0.00	0.04	N.S.
	Traffic events	.129	0.02	–0.02	0.68	N.S.
Second	DUI convictions	.032	0.00	0.00	0.19	N.S.
	Crashes	.011	0.00	0.00	0.05	N.S.
	Traffic events	.113	0.03	–0.02	1.90	N.S.
Third	DUI convictions	.054	–0.02	0.01	1.24	N.S.
	Crashes	.019	0.01	–0.01	2.24	N.S.
	Traffic events	.108	0.01	0.00	0.11	N.S.
Fourth	DUI convictions	.030	0.00	0.00	0.04	N.S.
	Crashes	.032	0.02	–0.01	1.91	N.S.
	Traffic events	.121	0.01	–0.01	0.34	N.S.
Total	DUI convictions	.164	–0.01	0.01	0.18	N.S.
	Crashes	.062	0.03	–0.02	2.65	N.S.
	Traffic events	.472	0.08	–0.05	1.94	N.S.
	Time to next event	1,224.593	–11.50	7.90	0.18	N.S.

[a]Controlling for previous DSOL violations, previous suspensions, and previous failure-to-stop-at-the-scene-of-an-accident (misdemeanor) violations.
[b]1 degree of freedom.

Table 17
NUMBER OF INCARCERATED TRAFFIC OFFENDERS AND THEIR CONVICTION CATEGORIES

Category	No.
Habitual Offenders with Subsequent Recorded Convictions	
Felony only	144
Felony plus another violation on same day	137
Felony plus other violations on different days	365
Other moving violations	190
Nonmoving violations	28
Habitual Offenders without Subsequent Recorded Convictions	
No DMV confirmation	280
No DMV record	64
No adjudication	11
Nonhabitual Traffic Violators	
DUI	140
DSOL	35
Hit and run	32
Moving violations	29
Miscellaneous traffic offenses	14
Reckless driving	6
Nonmoving violations	6
No DMV record	62
No confirmation of traffic violation on record	61
Total	1,604

convicted of the felony charge alone, 137 had been convicted of both the felony charge and at least one other violation on the same day, and 365 had been convicted of the felony charge but also had at least one other postadjudication conviction on a different day. The remaining 218 were not convicted of the felony offense: 190 were incarcerated for moving violations, and 28 were incarcerated for nonmoving violations. There were an additional 355 for whom the reason for incarceration was unconfirmed.

There were 385 individuals who were incarcerated for non–habitual offender traffic offenses. Of these, 140 were incarcerated for DUI offenses, 35 for DSOL, 32 for hit and run, 29 for other moving violations, and 6 for reckless driving.

Table 18 shows that the felony group and the group of habitual offenders incarcerated due to other convictions were on average close to the same age—about 35; however, habitual offenders without subsequent recorded convictions and non–habitual traffic offenders tended to be younger. In the felony group, those who were convicted only of the felony offense were significantly younger than those who had an additional postadjudication conviction. Confirmed incarcerated habitual offenders were more often male than were nonhabitual traffic offenders. Habitual offenders whose incarceration was triggered by something other than a felony conviction were more likely to be white than those whose incarceration was triggered by a

Table 18
DEMOGRAPHIC CHARACTERISTICS OF INCARCERATED TRAFFIC OFFENDERS BY CONVICTION CATEGORY AND STUDY GROUP

Study Group	Average Age (Yr)	
1. Felony Offense	35.7	
—FO only	33.7	
—FO plus other violations on same day	35.5	$x^2_{FO} = 33.4, p < .01$
—FO plus other violations on different days	36.6	
2. Other Violations (Not FO)	35.5	
3. Unconfirmed Habitual Offenders	34.8	
4. Traffic Offenders (Not Habitual Offender)	31.6	

	Sex	
Study Group	Male (%)	Female (%)
1. Felony Offense	96.4	3.6
—FO only	94.4	5.6
—FO plus other violations on same day	98.5	1.5
—FO plus other violations on different days	96.4	3.6
2. Other Violations (Not FO)	97.7	2.3
3. Unconfirmed Habitual Offenders	96.6	3.4
4. Traffic Offenders (Not Habitual Offender)	94.8	5.2

	Race	
Study Group	White (%)	Nonwhite (%)
1. Felony Offense	56.2	43.8
—FO only	55.6	44.4
—FO plus other violations on same day	60.6	39.4
—FO plus other violations on different days	54.8	45.2
2. Other Violations (Not FO)	67.4	32.6
3. Unconfirmed Habitual Offenders	61.1	38.9
4. Traffic Offenders (Not Habitual Offender)	64.9	35.1

felony conviction. They were also slightly more likely to be white than were nonhabitual traffic offenders.

The length of sentence given to the different groups was then examined (see Table 19). Interestingly, the group of habitual offenders incarcerated due to an offense other than the felony offense tended to receive longer sentences than did the felony group. The question arose as to why this was the case. There were several possible explanations:

1. The judges, Commonwealth's Attorneys, and enforcement personnel may have been unaware that the individual was a habitual offender.

2. The judges and Commonwealth's Attorneys may have been aware of habitual offender status but preferred to convict on or charge other offenses that did not require incarceration.

Table 19
LENGTH OF SENTENCE FOR INCARCERATED TRAFFIC OFFENDERS BY CONVICTION CATEGORY

Study Group	Average Sentence (Days)
1. Felony Offense	832
—FO only	490
—FO plus other violations on same day	513
—FO plus other violations on different days	1,084
2. Other Violations (Not FO)	907
3. Unconfirmed Habitual Offenders	613
4. Traffic Offenders (Not Habitual Offender)	304

$F = 20.6$; $p < .01$.

3. The judges or Commonwealth's Attorneys may have convicted on or charged other offenses that had longer sentences.

4. There may have been a combination of the above, in which judges and Commonwealth's Attorneys did not convict on or charge the felony offense and in which judges did not impose the maximum penalty for violation of habitual offender revocation unless more than one postadjudication conviction had been accumulated.

Although the first three hypotheses cannot be tested, the fourth can. The sentence length of habitual offenders with various numbers of recorded postadjudication convictions is shown in Table 20. For each group, as the number of other

Table 20
RELATION BETWEEN SENTENCE LENGTH AND NUMBER OF POSTADJUDICATION CONVICTIONS (Confirmed Habitual Offenders Only)

No. Postadjudication Convictions	Average Sentence (Days)
1. Felony Offense	832
0	495
1	589
2	825
3	909
4	1,164
5 or more	1,219
2. Other Violations (Not FO)	907
1	665
2	967
3	987
4	1,112
5 or more	1,191

$x^2 = 75.8$; $p < .01$.

convictions increased, so did the average length of sentence. Those habitual offenders with a felony conviction (i.e., those with only one postadjudication conviction on their record) received an average of 495 days. Progressively longer sentences occurred as the number of postadjudication convictions increased. The same trend was seen for those habitual offenders incarcerated for convictions other than the felony offense, except that at each level, the sentence was significantly higher than that given to the felony group.

DISCUSSION

Nineteen states other than Virginia have enacted habitual offender legislation in which long-term license revocation may be imposed and any violation of that revocation may result in incarceration. The states are about evenly split between administratively and judicially declaring a driver a habitual offender. However, little or nothing can be said about the effectiveness of these programs in promoting traffic safety because so few studies have been conducted. Thus, even detailed comparisons cannot produce a model program. Therefore, the remainder of this report concentrates on the positive and negative features of Virginia's Act.

Procedural Problems

DMV is responsible for certifying habitual offender records to the Commonwealth's Attorney in the locality in which the offender resides. Once received, however, the Commonwealth's Attorney must report back to the DMV only cases in which an offender was adjudicated or the charges were dismissed. In cases where no action was taken, because either service of the show cause order could not be made or the case was not pursued, the DMV was notified only voluntarily. Thus, the DMV, as the central agency responsible for the program's operation, does not have information on the number of cases in progress and has no authority to investigate the outcome of cases. Also, the Commonwealth's Attorneys are under no obligation to pursue habitual offender adjudications.

Inability to serve the show cause order is a major reason for the inactivity among outstanding cases. An incorrect address makes compliance with service requirements difficult. Since many addresses in the driver history file may change in a given year, and since voluntary reporting of an address change tends to be low, service of driver-related documents such as the show cause order can be extremely difficult.

Another procedural problem involves the imposition of the felony offense for driving after adjudication. In many cases, even though the judge is required to check into the habitual offender status of the offender, many persons driving after adjudication are not convicted of the felony offense. Some judges may feel that incarceration is too severe and, thus, may not impose it unless an individual has more

than one postadjudication conviction. In addition, if there is a delay in the clerk's filing copies of the habitual offender orders with the DMV, or the posting at the DMV is delayed, the adjudication may not be included on the copy of the driver history record that a judge sees.

A third procedural problem involves record keeping. Early return of driving privileges is granted to two groups of habitual offenders. Individuals whose adjudication was based on at least one DUI are allowed to apply for restoration for a restricted license after 3 years and for full restoration after 5 years. Those whose adjudication was based *in part* on DSOL where the suspension violated was for failure to satisfy financial obligations may apply for restoration of their license after 5 years, or as of July 1, 1993, if the adjudication was based *solely* on DSOL where the suspension was for failure satisfy obligations, 1 year after all obligations are satisfied. It is easy to determine whether individuals have a DUI on their record. However, convictions for DSOL are not expressly connected to the reason for the suspension in DMV records. Further, once an obligation is satisfied, reference to the original suspension is deleted from the record after 2 years. Thus, it is often impossible for the DMV to confirm whether an individual falls into the DSOL waiver group. An additional problem with this DSOL group arises when a driver convicted for DSOL has several outstanding suspensions in effect concurrently. If a driver has two suspensions, one for a moving violation and one for failure to satisfy obligations and subsequently receives three DSOL convictions and is adjudicated a habitual offender, is he or she considered to be violating the suspension for the moving violation or for the failure to satisfy obligations? Since it is common to have multiple suspensions in effect, the DMV should develop a system to record which suspensions were active during each DSOL violation.

Impact of Virginia's Act on Traffic Safety

General Impact

After comparing the adjudicated and certified groups on convictions that resulted in their certification, it was noted that the adjudicated group had significantly more DUIs than the certified group and that the certified group had more DSOLs and prior traffic convictions. After controlling for differences in previous records between the two groups, the certified group had more DUI and traffic convictions, more crashes, and fewer days between certification and their next crash or offense. A possible explanation for these results is that some of the adjudicated habitual offenders may have been incarcerated for violating the habitual offender revocation and would naturally have fewer driving events. After this factor was controlled for, the certified group still had worse subsequent driving records than did adjudicated offenders. Thus, the habitual offender program appears to have had a positive effect on the driving behavior of adjudicated drivers.

Impact on DUI Offenders

Habitual offenders whose adjudication was based on at least one DUI can petition for a restricted license after 3 years if they were alcohol addicted at the time of their preadjudication offenses, if they are no longer alcohol addicted, and if the court determines they are no longer a threat to the public safety. However, compared to habitual offenders whose previous driving record contained no DUI, those whose adjudication was based on three or more DUIs had more DUIs during their third year of revocation and more total DUIs during the first 4 years of revocation. Thus, the group that could have been relicensed during the fourth year of this study actually had worse driving records than those who were not eligible for relicensure. In addition, adjudication had no significant impact on improving the record of drivers with three or more DUIs prior to adjudication. Theoretically, this problem should be alleviated by the three statutory requirements for restoration. Unfortunately, until recently, judges have not been given specific guidelines on how to determine if these requirements have been met. Thus, it is possible that some habitual offenders who still pose a threat to public safety are being relicensed based on the DUI waiver.

Number and Characteristics of Incarcerated Habitual Offenders

Of the incarcerated habitual offenders, 365 had been convicted of at least one other postadjudication violation prior to the one for which they were incarcerated. Another 190 were not convicted for the felony offense but were incarcerated for another moving violation. Thus, it is clear from these data that habitual offenders who are caught driving after adjudication are not always convicted of the felony offense and are not always incarcerated as the result of their first postadjudication offense.

Finally, one of the questions most often asked concerning incarcerated habitual offenders is: How many were declared habitual offenders because they drove after being suspended for not satisfying financial obligations? There have been concerns, therefore, that incarcerating this type of habitual offender is in essence creating a debtors' prison. However, once a driver suspended for nonpayment makes restitution, all reference to the suspension is removed from his or her driving record after 2 years. Thus, if the judgment was paid, there may be no way to know if the original suspension was based on nonpayment and no way to determine if incarcerated drivers were adjudicated based on DSOLs that resulted from suspensions for failure to satisfy obligations.

In light of concerns regarding the administration and effects of incarcerating habitual offenders, alternative forms of punishment may be worthy of further study. Three such alternatives are vehicle confiscation/impoundment, house arrest, and use of ignition interlocks.

1. *Vehicle confiscation/impoundment.* Virginia has a history of enforcing confiscation of vehicles for DSOL offenses. A forfeiture statute was passed in 1972

and repealed in 1989 that required mandatory forfeiture of a vehicle of any person convicted of DSOL. Va. Code § 46.1-351.1 (1972). The forfeiture program was time-consuming to administer, and costs for processing, storage, and public auction of vehicles were not offset by the proceeds from the sale of those vehicles (Wetsel, 1975). Jointly owned vehicles were routinely returned and those not fully owned by the driver were returned to the lien holder, who had no legal recourse but to return the vehicle to the owner/driver. Thus, the only persons against whom this forfeiture would legally work were offenders who owned their vehicles free and clear, a small percentage of the offender population. In addition to these problems, a majority of Commonwealth's Attorneys and law enforcement personnel believed the statute was too strict, had no deterrent value, and thus resulted in low enforcement of the statute (Wetsel, 1975).

Although forfeiture clearly raises many problems, impoundment for a limited period would be less costly to administer, require fewer court proceedings than confiscation, encroach on fewer property rights, and apply to all vehicles, not just those wholly owned by offenders. Several Canadian provinces currently have impoundment programs for persons driving under suspension or revocation. Alberta and Manitoba impound all vehicles driven after revocation for 30 days for the first offense. Manitoba also requires impoundment for 60 days if the owner has had two or more vehicles seized within 2 years ("Manitoba amends," 1991). Under these programs, if the joint owners of the vehicle or the individuals who have loaned the vehicle to the driver can prove that they were unaware that the driver's license had been revoked, they can get their vehicle back. This provision for "innocent owners" is necessary to prevent infringing on their due process rights. To show that they are unaware of the driver's suspended license, Manitoba owners must show that they *could not* have known about the suspension. Thus, this defense may be difficult to prove if they are members of the same household. Obviously, this defense can be used only once.

Overall, impoundment may be a better option than forfeiture. However, even though it is a lesser burden, impoundment still imposes extra costs on the system because of the required hearings for innocent owners, as well as the costs of towing, processing, and storing. Therefore, the second alternative of house arrest, which is already in effect in Virginia, may be a better option.

2. *House arrest.* The DCJS has funded 10 local house arrest, or electronic monitoring, programs. The funding for these consists of a one-time start-up grant, after which the programs become self-sustaining. All programs are operated by the Sheriff's Office in the particular locality or are administered jointly by the county government and Division of Court Services. Statutory authorization for electronic monitoring programs is granted in Va. Code § 53.1-131.

The programs in Virginia employ three systems and methods of administration (Kuplinski, 1990). The first type is a *passive system*, consisting of random or scheduled computer-generated telephone calls to which an offender responds by inserting a bracelet into a verifier attached to the telephone line (or by activating a visual monitor). The second type is an *active system*, which involves continuous

contact between a transmitter worn by the offender and a receiving unit attached to the telephone line. Whenever such communication is broken, the receiving unit informs a central computer. The third system is a combination of the other two, primarily using the active mode but invoking the passive mode when the active communication link is broken.

With all of the programs, the computer monitoring is supplemented with home or job visits, telephone calls, and weekly office visits. In addition, depending on their history, some offenders may be required to submit to periodic alcohol or drug testing. The offenders placed in electronic monitoring programs pay a fee that varies from $5 to $10 per day (Kuplinski, 1990).

Offenders are selected for the programs by various methods. Some are placed in the program by judges immediately upon sentencing, and others enter the program after serving time in jail or prison and are selected by U.S. Bureau of Prisons personnel or probation, program, or jail personnel. Most programs attempt to select offenders already participating in minimum security programs, such as work release. Factors considered when selecting offenders for the program include the offenders' prior records, circumstances of the offenses, jail files, and personal interviews.

Traffic offenders already constitute a significant portion of the total offenders in the electronic monitoring program. Of 373 offenders involved in electronic monitoring programs from 1986 until the evaluation report was written in 1990, traffic offenders comprised 36.7% of those in the program, for a total of 137 cases. Of these, 87 were DUI offenders, 20 were convicted for DSOL, and 16 were habitual offenders convicted for driving after being adjudicated (Kuplinski, 1990).

Overall, electronic monitoring has been successful, with only 9.9% of all program participants terminated unsuccessfully. The most common reasons for these terminations include the use of drugs or alcohol, deviation from their schedule, failure to report change in work status, or failure to answer their telephone.

One of the major reasons for implementing electronic monitoring of offenders, along with preventing prison and jail overcrowding, is its cost-effectiveness compared to the costs of incarceration in jails and prisons. According to the 1990 DCJS evaluation, the average cost for the programs in use in Virginia, including equipment costs, supplies, and personnel expenses, ranged from $9.25 per day to $29.22 per day. When one-time expenses such as equipment purchases were excluded, the estimated daily costs dropped to $3.75 per day to $20.69 per day (Kuplinski, 1990). The difference between these two estimates results from differences in program requirements, number of offenders, number of days in the program, different monitoring equipment costs, and whether full-time staff was needed to administer the program. In comparison, the average cost of traditional incarceration in these localities ranged from $15.00 per day to $43.20 per day. This differential between jail costs and electronic monitoring costs, when multiplied by the number of days in each program, resulted in a total savings of between $10,272 to $256,607 (Kuplinski, 1990).

In addition to the direct operating cost savings, there may be indirect cost savings with electronic monitoring as opposed to incarceration. Along with paying for a portion of the operating costs through a daily fee, offenders can contribute to the support of their family if allowed to continue their employment, which could save the state welfare costs the offenders' family might otherwise require (Latessa, 1986). Also, employed offenders in the program continue to pay taxes. Finally, house arrest programs may be "socially cost-effective" since they alleviate the psychological and physical disruption that results from breaking up the offender's family, the possibility of losing a job, or the possibility of being stigmatized by carrying out a jail or prison sentence (Petersilia, 1986).

There are concerns with the electronic monitoring programs that should also be addressed. The major concern is that these types of programs could have a "net-widening" effect. The fear is that defendants are placed in the program who would have been treated less punitively in the absence of the program (Kuplinski, 1990). Electronic monitoring is intended to be an alternative to jail or prison according to § 53.1-131.2, rather than an additional form of probation. Because of the wide discretion judges enjoy in sentencing, it would be difficult to determine how often this net-widening occurs. If procedures outlined in the current Virginia statute continue to be followed by judges, this problem might not occur. However, since there is evidence that judges often do not incarcerate habitual offenders the first time they violate their habitual offender revocation, some net-widening might occur.

A second concern is that electronic monitoring used in place of incarceration may compromise the goal of public safety. However, since only offenders who pose the least risk are chosen for these programs, this concern should be minimal. Also, with regard to traffic offenders specifically, these programs may be particularly appropriate since they keep offenders at home and away from their automobiles and would be effective in preventing future traffic offenses (Petersilia, 1986).

There have been a few legal concerns regarding whether electronic monitoring is an unlawful intrusion by the government into the privacy of the home. However, this concern is generally dismissed rather easily since these programs are considered alternatives to incarceration, which is surely much more intrusive in terms of an individual's privacy rights (Del Carmen & Vaughn, 1986). If an offender does not agree, he or she may choose the incarceration option.

A final concern is that these programs raise possible equal protection issues. Because of the daily fee an offender must pay, some argue that those eligible for the programs may be disproportionately white collar offenders. This problem is currently being resolved in Virginia by using a "sliding scale" fee schedule for offenders based on their ability to pay.*

Overall, the benefits of using electronic monitoring of offenders seem to outweigh any of the concerns that have been raised. With regard to traffic offenders, as long as the offender does not have access to his or her automobile, specific deterrence is accomplished. Also, since administering electronic monitoring programs is

*Telephone conversation with Daniel Catly, DCJS, October 30, 1992.

less costly than incarceration, and many traffic offenders are already involved in these programs, expanding the house arrest program to include habitual offenders who would otherwise be incarcerated may be a viable option.

3. *Use of ignition interlocks.* Another possible alternative to incarceration could be directed specifically at habitual offenders whose adjudication or postadjudication offenses were based wholly or in part on DUI convictions. An interlock device requires the driver to blow into a hand-held unit that measures the blood alcohol concentration (BAC) of the breath sample prior to starting his or her vehicle. If the BAC is lower than a prescribed level, the driver can start the vehicle. If not, the device activates the ignition interlock, preventing the vehicle from being started (Wilson & Stoke, 1990). An ignition interlock program could be used in conjunction with probation or electronic monitoring to ensure that offenders no longer drive under the influence. Several states operate ignition interlock programs as a supplement to probation or restricted licensing for DUI offenders. In such programs, when the DMV is notified of a DUI conviction, an offender may receive a restricted license only if he or she submits proof of installation of the interlock device to the DMV. Offenders generally pay the purchase or lease price of the equipment, as well as installation and service costs. Some states provide a fund for indigent offenders who cannot afford the devices, and others reduce the DUI fines to offset the costs.

There are several possible problems with the use of ignition interlock devices. For example, some devices require that the driver be retested after a specified period of time, and there is concern about the safety of retesting while a vehicle is being operated. In addition, there are various concerns about possible circumvention of the interlock device, such as storing alcohol-free breath samples in containers, using filtering material, leaving the vehicle idling while the driver is drinking, or having another person give the breath sample (Wilson & Stoke, 1990). This last method of circumvention can be lessened somewhat by requiring a personal identification number to initiate the test and by making it a misdemeanor to assist in circumventing the device.

Overall, the administrative costs of such a program would be low, and although the use of the devices could not perfectly ensure that drivers would not circumvent the process, the devices would result in improved deterrence.

RECOMMENDATIONS

The recommendations following from this research fall into two categories: (1) procedures and record keeping and (2) program development.

Procedures and Record Keeping

One of the major findings of this report is that although the Act has a positive impact on the driving records of adjudicated drivers, a large number of drivers

certified by the DMV to be habitual offenders are not adjudicated. The following recommendations address the need to implement the habitual offender program uniformly.

1. *The DMV should support legislation requiring Commonwealth's Attorneys to report the status of all certified habitual offender cases to the DMV after a period of 6 months.* Although the DMV is the central agency responsible for administering the habitual offender program, the agency is not receiving enough information to manage cases. Further, the DMV has no authority or ability to encourage Commonwealth's Attorneys to adjudicate habitual offenders. Since Commonwealth's Attorneys must report only on adjudications and dismissals, the DMV cannot accurately state the status of certified drivers' cases. That is, the DMV does not know whether these cases have been or will be pursued. The DMV currently sends a letter to Commonwealth's Attorneys to ascertain what happened to these certified individuals if they have not heard from the Commonwealth's Attorney within about 6 months from the time of certification. If Commonwealth's Attorneys were required to report on cases where service was unsuccessfully attempted, perhaps the DMV could pursue additional information on the offender. Also, reporting on the status of all cases might encourage Commonwealth's Attorneys to give habitual offender prosecution a higher priority, although more stringent means might be necessary to see that service is at least attempted in all cases.

2. *Now that the process that triggers habitual offender certification is automated, the DMV should begin keeping additional information on certified habitual offenders to promote efficient case management and prompt adjudication of all offenders.* For instance, case status and service history might be recorded. Also, better and more current addresses may be available for offenders from the DMV vehicle file or from other state agencies. The most promising state agency for the purpose is the Department of Taxation; however, that department is prohibited by law from releasing address information. As of September 1, 1992, DMV began accessing address data from Virginia Employment Commission files, and as of July 1, 1993, the DMV should be able to access address data from its vehicle file.

3. *The Subcommittee on Habitual Offenders should look into the possibility of amending service requirements for habitual offenders so that offenders who avoid service would be less likely to avoid adjudication at the same time.* Service requirements for habitual offenders are similar to those for individuals called to court for other reasons; however, there are essentially no penalties for avoiding service in the case of habitual offenders, and in fact, there are incentives. In the case of other court matters, individuals who avoid service will likely be pursued further, and in cases where offenders are nonresidents of the state, the circuit court can take action in the absence of the individual. However, for the habitual offender, once service is avoided, almost no additional pursuit will follow until the indi-

vidual commits another traffic violation and is recertified. Innovative methods for serving show cause orders on habitual offenders have already been suggested, such as serving the certified individual at the local DMV office when he or she initiates a title or license transaction. The Subcommittee should develop a series of recommendations supporting innovative methods of serving certified habitual offenders.

4. *The DMV should consider amending the driver history file to include all suspensions in the driver history file and to indicate when the suspension is ended, rather than purging it from the records.* Since DMV purges information regarding suspensions after 2 years and since the courts often do not indicate whether suspensions are for failure to satisfy obligations, the DMV often cannot verify cases in which an individual convicted of DSOL was suspended for failure to satisfy obligations. Thus, any habitual offender whose adjudication was based on DSOLs might claim the waiver.

5. *The DMV should develop a system to record which suspensions were active during each DSOL violation.* In the current records, it is very difficult to relate DSOLs to a particular suspension. This is especially true since courts often do not provide information concerning which suspensions trigger the DSOLs. This information is important in cases where a DSOL offender has several concurrent suspensions on his or her record. In addition, other penalties such as community service, fines, and incarceration are not listed in the driver record. If court-imposed sanctions are designed to remediate drivers' behavior, then a history of previous sanctions is necessary for judges to impose appropriate penalties. Since many courts have access to automated records systems and in many cases are already linked to centralized files, court clerks could record penalty information along with case outcome. A study of the feasibility of amending the driver history file to link DSOL convictions to suspensions and include penalties should be initiated. Such a study should also prioritize suspensions in the event a driver is under more than one suspension when convicted of a DSOL violation.

6. *Judges as well as Commonwealth's Attorneys should be informed of the effectiveness of habitual offender adjudication in enhancing traffic safety in an attempt to improve implementation of the Act.*

Program Development

Although this study has shown that the current habitual offender program is having a positive impact on adjudicated drivers, there are other enhancements that can be made in the program that might increase its impact.

1. *Precertification options should be developed to deter individuals who are one conviction away from certification from committing another offense.*

As the program stands, there are only four components—certification, adjudication, violation of and penalty for driving on habitual offender revocation (i.e., incarceration), and license restoration. Other components might improve the program's deterrent effect. For instance, anecdotal evidence indicates that there are a number of potential habitual offenders who are unaware of the consequences of further violation of traffic laws. A warning letter for these individuals, one that they might not avoid the way they do the show cause order, could inform persons who are one qualifying offense away from certification of their impending habitual offender status. Warning letters have been shown to be moderately effective in a number of instances in affecting driving behavior. The letter could be computer generated and would be a very low-cost program component. Another more proactive approach to averting habitual offender qualification would be the issuance of a restricted license to drivers after their conviction for a second qualifying offense. Having to forfeit their full privilege to drive could underscore the seriousness of their position. In addition, if the restriction of driving privileges were accompanied by some other means of intervention, such as counseling or supervised probation, driving behaviors might be changed before the individual officially became a habitual offender.

2. *Minor violations that are more closely related to driving behavior than are current violations should be developed.* If a more meaningful set of minor violations were adopted, one that was more strongly related to driving behavior, this portion of the program might have more impact. As part of this study, the driving records of many habitual offenders were examined. It was found that the vast majority were certified based on 3 major offenses. In none of the cases examined did the driver qualify for habitual offender status based on 12 minor violations, and only a few qualified based on a combination of 12 major and minor convictions. This was felt to be due, in part, to the somewhat esoteric nature of many of the minor violations.

   Minor violations are defined as any nonmajor violation for which a 30-day suspension is mandatory. The current minor violations are as follows:

   - Fraudulent use of a driver's license (46.2-347)
   - Fraudulent application for license—Felony (A46.2-348)
   - Fraudulent application for license—Misd. (B46.2-348)
   - Knowingly operating an uninsured motor vehicle (A46.2-707)
   - Permitting operation of an uninsured motor vehicle (A46.2-707)
   - Uninsured motor vehicle—previous action (D46.2-707)
   - Stopping vehicle of another, blocking access to premises, damaging or threatening commercial vehicle or operator thereof (46.2-818)
   - Reckless driving—Racing (46.2-865).

3. *The DMV should develop and support legislative changes to enact alternatives to incarceration for habitual offenders.* If the deterrent effect of incarceration is to continue to work, it must be applied consistently. However, if incarceration is viewed as too harsh a penalty, other alternatives for first-time postadjudicated offenders might be considered, employing incarceration for multiple postadjudicated violators. As mentioned earlier, many adjudicated habitual offenders incur postadjudication driving offenses prior to being convicted of the felony offense of driving after adjudication. Thus, the penalty of incarceration is not uniformly imposed.

   Alternatives to incarceration that may be considered include:

   - *House arrest and electronic surveillance.* Incarceration is an expensive form of remediation, even though it is effective in keeping habitual offenders off the highways during incarceration. Recently, electronic monitoring for traffic offenders has been used successfully in Virginia on a small scale. The average cost of house arrest is less than the cost of incarceration, and house arrest allows the offenders to continue employment, pay the daily fee for house arrest, and continue to support their family and pay taxes. House arrest also results in less family disruption and reduces the negative effect of placing a traffic offender in a criminal environment.
   - *Vehicle impoundment or confiscation.* Virginia has a history of enforcing confiscation of vehicles for DSOL convictions. The forfeiture statute (Va. Code Ann. § 46.1-351.1, 1972) was passed in 1972 and repealed in 1989. The forfeiture program was time-consuming to administer, and costs for processing, storage, and public auction were not offset by the proceeds from the sale of the vehicle. Jointly owned vehicles were routinely returned, and those not paid for were returned to the lien holder, who had no legal recourse but to return the vehicle to the owner/driver. Thus, the only persons against whom this forfeiture would legally work were offenders who owned their vehicles free and clear, a small percentage of the offender population (Wetsel, 1975). Impoundment, on the other hand, would be less costly to administer, require fewer court proceedings than confiscation, encroach on fewer property rights, and apply to all vehicles, not just those wholly owned by offenders. Several Canadian provinces have begun impoundment programs for persons driving under revocation. Alberta and Manitoba now impound all vehicles driven after revocation for 30 days for the first offense. If the joint owner of the vehicle or the individual who has loaned the vehicle to the driver can prove that he or she was unaware that the driver's license had been revoked, the person can get the vehicle back. However, this defense is difficult to prove and can be used only once. It is recommended that the Subcommittee on Habitual Offenders study the feasibility of both impoundment and house arrest as alternatives to imprisonment for first offenders.
   - *Use of ignition interlocks.* Another alternative could be directed specifically at habitual offenders whose adjudication or postadjudication

offenses were based wholly or in part on DUI convictions. An interlock device requires the driver to blow into a hand-held unit that measures the blood alcohol concentration (BAC) of the breath sample prior to starting his or her vehicle. If the BAC is lower than a prescribed level, the driver can start the vehicle. If not, the device activates the ignition interlock, preventing the vehicle from being started (Wilson & Stoke, 1990). An ignition interlock program could be used in conjunction with probation or electronic monitoring to ensure that offenders no longer drive under the influence. Several states operate ignition interlock programs as a supplement to probation or restricted licensing for DUI offenders. In such programs, when the DMV is notified of a DUI conviction, an offender may receive a restricted license only if he or she submits proof of installation of the interlock device to the DMV. Offenders generally pay the purchase or lease price of the equipment, as well as installation and service costs. Some states provide a fund for indigent offenders who cannot afford the devices, and others reduce the DUI fines to offset the costs.

There are several possible problems with the use of ignition interlock devices. For example, some devices require that the driver be retested after a specified period of time, and there is concern about the safety of retesting while a vehicle is being operated. In addition, there are various concerns about possible circumvention of the interlock device, such as storing alcohol-free breath samples in containers, using filtering material, leaving the vehicle idling while the driver is drinking, or having another person give the breath sample (Wilson & Stoke, 1990). This last method of circumvention can be lessened somewhat by requiring a personal identification number to initiate the test and by making it a misdemeanor to assist in circumventing the device.

Overall, the administrative costs of such a program would be low, and although the use of the devices could not perfectly ensure that drivers would not circumvent the process, the devices would result in improved deterrence.

4. *The DMV should develop and support legislative changes to reduce the number of DSOL violations.* From an examination of DMV records, it is clear that some individuals incur DSOLs at least in part because of a suspension that was received for failure to satisfy financial obligations. Thus, there is a need to reduce the number of such suspensions. One of the major questions posed in this study was whether the administration of the Act had inadvertently created a debtors' prison situation by adjudicating and later incarcerating drivers initially suspended for failure to satisfy financial obligations. This question was prompted by the feeling that incarceration of persons adjudicated for DSOL based on failure to satisfy obligations was too extreme a penalty. Recent legislation allowing relicensure 1 year after satisfying obligations for such offenders reflects this sentiment. One way to approach this problem involves innovative

methods of collecting fines, court costs, and judgments. However, this solution does not address the root cause of the problem. The question should be asked: Is suspension the appropriate penalty for failure to satisfy judgments, fines, or court costs, and is this penalty effective in terms of prompting payment of obligations? In addition, only payment of traffic fines, court costs, and judgments is tied to the driver's license; other such criminal penalties are not. Eliminating license suspension as a penalty for failing to satisfy obligations would reduce the number of suspensions and DSOLs while at the same time make consistent the penalty for failure to pay criminal and traffic fines, court costs, and judgments. Thus, it is recommended that the Subcommittee on Habitual Offenders consider the feasibility of pursuing innovative collection methods and changes in the penalty for failure to meet financial obligations.

REFERENCES

Del Carmen, Rolando V., & Vaughan, Joseph, B. (1986). Legal issues in the use of electronic surveillance in probation. *Federal Probation, 50*, 60-69.

Helander, C.J. (1986). *An evaluation of the California habitual traffic offender law.* Sacramento: Department of Motor Vehicles.

Kuplinski, John R. (1990). *Electronic offender monitoring in Virginia's evaluation report.* Richmond: Department of Criminal Justice Services.

Latessa, Edward J. (1986). The cost-effectiveness of intensive supervision. *Federal Probation, 50*, 70-73.

Li, L.K., & Waller, P.F. (1976). *Evaluation of the North Carolina habitual offender law.* Chapel Hill: Highway Safety Research Center.

Manitoba amends vehicle impoundment laws. *Impact, 2*, September 1991.

Petersilia, J. (1986). Exploring the option of house arrest. *Federal Probation, 50*, 50-55.

Staplin, L.K. (1989). *Effectiveness of current sanctions against habitual offenders.* Malvern, PA: Ketron, Inc.

Wetsel, J.E. (1975). *An assessment of Virginia's law requiring the forfeiture of any vehicle driven by a person under license suspension or revocation.* Charlottesville: Virginia Transportation Research Council.

Wilson, C. B., & Stoke, C. B. (1990). *Motor vehicle ignition interlocks, in-vehicle devices that monitor alcohol levels of vehicle operators.* Charlottesville: Virginia Transportation Research Council.

Appendix A
RECENT ACTIONS OF THE GENERAL ASSEMBLY REGARDING THE HABITUAL OFFENDER ACT

ARTICLE 9

Habitual Offenders.

§46.2-351. Habitual Offender defined; petition of certain persons for restoration of privilege of operating motor vehicle.—An habitual offender shall be any resident or nonresident person whose record, as maintained in the office of the Department, shows that he has accumulated the convictions, or findings of not innocent in the case of a juvenile, for separate offenses, committed within a ten-year period, the conviction for which is included in subdivision 1, 2, or 3 as follows:

1. Three or more convictions, or findings of not innocent in the case of a juvenile, singularly or in combination, of the following separate offenses arising out of separate acts:

a. Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

b. Driving or operating a motor vehicle while under the influence of intoxicants or drugs in violation of §18.2-266 or subsection A of §46.2-341.24;

c. Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked in violation of §§18.2-272, 46.2-301, 46.2-302, or former §46.1-350 or §46.1-351;

d. Knowingly making any false affidavit or swearing or affirming falsely to any matter or thing required by the motor vehicle laws or as to information required in the administration of such laws in violation of §46.2-105;

e. Any offense punishable as a felony under the motor vehicle laws of Virginia or any felony in the commission of which a motor vehicle is used;

f. Failure of the driver of a motor vehicle in an accident resulting in the death or injury of any person to stop close to the scene of the accident and report his identity in violation of §§46.2-894 through 46.2-899; or

g. Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of $500 to stop close to the scene of the accident and report his identity or otherwise report such accident in violation of law.

2. Twelve or more convictions, or findings of not innocent in the case of a juvenile, of separate offenses, singularly or in combination, in the operation of a motor

vehicle which are required to be reported to the Department and the commission of which requires the Department or authorizes a court to suspend or revoke the privilege to drive motor vehicles on the highways in the Commonwealth for a period of thirty days or more and the conviction shall include those offenses enumerated in subdivision 1 above when taken with and added to those offenses described herein.

3. The offenses included in subdivisions 1 and 2 of this section shall be deemed to include offenses under any valid county, city, or town ordinance paralleling and substantially conforming to the state statutory provisions cited in subdivisions 1 and 2 of this section and all changes in or amendments thereof, and any federal law, any law of another state or any valid county, city, or town ordinances of another state substantially conforming to the aforesaid state statutory provisions.

Where more than one offense included in subdivision 1, 2 or 3 is committed within a six-hour period, multiple offenses shall, on the first such occasion, be treated for the purposes of this article as one offense provided the person charged has no record of prior offenses chargeable under this article. (1968, c. 476, §46.1-387.2; 1970, cc. 507, 724; 1974, c. 453; 1982, c. 655; 1984, c. 780; 1989, cc. 705, 727; 1992, c. 875.)

§46.2-352. (Effective until July 1, 1993) Commissioner to certify transcript or abstract of conviction documents of habitual offender to attorney for Commonwealth; when court may refuse to enter order under §46.2-355; transcript or abstract as evidence.

§46.2-352. (Effective July 1, 1993) Commissioner to certify transcript or abstract or conviction documents of habitual offender to attorney for Commonwealth; when court may refuse to enter order under §46.2-355; transcript or abstract as evidence.—The Commissioner shall certify, from the Department's records, substantially in the manner provided for in §46.2-215, three transcripts or abstracts of those conviction documents which bring the person named therein within the definition of an habitual offender, as defined in §46.2-351, to the attorney for the Commonwealth of the political subdivision in which the person resides according to the records of the Department or the attorney for the Commonwealth of the City of Richmond if the person is not a resident of the Commonwealth. After certification of any person as an habitual offender, the Department shall not thereafter issue a new or duplicate driver's license to any such person until (i) a show cause proceeding has been held under §46.2-355 or (ii) an order of license restoration has been received by the Department as otherwise provided in this article. Any license issued in contravention of this provision shall be invalid.

In any proceeding under §46.2-354, the court may refuse to enter any order as provided in §46.2-355 if such certification was made more than five years after the date of the most recent of the convictions which bring the person within the definition of habitual offender and the person would be otherwise eligible for restoration of his privilege under §46.2-360. The transcript or abstract may be admitted as evidence as provided in §46.2-215. The transcript or abstract shall be *prima facie* evidence that the person named therein was duly convicted, or held not innocent in

the case of a juvenile, by the court wherein the conviction or holding was made, of each offense shown by the transcript or abstract. If the person denies any of the facts as stated therein, he shall have the burden of proving that the fact is untrue. (1968, c. 476, §46.1-387.3; 1982, c. 655; 1983, c. 621; 1989, c. 727; 1992, c. 858.)

§46.2-353. Information to be filed by attorney for the Commonwealth.

§46.2-355. (Effective July 1, 1993) Order of court.—If, pursuant to the show cause proceeding as provided for in §46.2-354, the court finds that the person is not the same person named in the transcript or abstract, or that he is not an habitual offender under this article, the proceeding shall be dismissed and the clerk of the court shall file with the Department a notice of the dismissal. If the court finds that the person is the same person named in the transcript or abstract and that the person is an habitual offender, the court shall so find and by appropriate order direct the person not to operate a motor vehicle on the highways in the Commonwealth and to surrender to the court all licenses or permits to drive a motor vehicle on the highways in the Commonwealth for disposal in the manner provided in §46.2-398. The clerk of the court shall file with the Department a copy of the order which shall become a part of the permanent records of the Department. Unless it appears from the record of the case that the person was present at the hearing in which the court found him to be an habitual offender, the clerk shall cause to be mailed to the person at his last known address appearing in the records of the case a copy of the habitual offender order. (1968, c. 476, §46.1-387.6; 1987, c. 394; 1989, c. 727; 1992, c. 858.)

§46.2-356. Period during which habitual offender not to be licensed to drive motor vehicle.

§46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.—It shall be unlawful for any person to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the order of the court prohibiting such operation remains in effect. However, an order shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract or lane used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles. Any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the order of the court prohibiting such driving is in effect, shall be punished by confinement in the state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended except that (i) if the sentence is more than one year in the state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been held an habitual offender and, by reason of this holding, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been held to be an habitual offender, it shall certify the case to the court of record of its jurisdiction for trial. (1968, c. 476, §46.1-387.8; 1970, c. 507; 1980, c. 436; 1988, c. 559; 1989, c. 727; 1990, c. 828.)

§46.2-358. Restoration of privilege of driving motor vehicle; when petition may be brought; terms and conditions.

§46.2-360. Restoration of privilege of operating motor vehicle; restoration of privilege to persons convicted under certain other provisions of Habitual Offender Act.—Any person who has been found to be an habitual offender where the adjudication was based in part and dependent on a conviction as set out in subdivision 1b of §46.2-351, may petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of the adjudication. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe, subject to other provisions of law relating to the issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drug; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle.

2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of the adjudication. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of §18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs, (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs, and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. (1976, c. 158, §46.1-387.9:2; 1977, c. 408; 1987, c. 409; 1989, c. 727; 1990, c. 828.)

§46.2-361. Restoration of privilege revoked or suspended for failure to pay fines or costs or furnish proof of financial responsibility.—

A. Any person who has been found to be an habitual offender, where the adjudication was based in whole or part and dependent on a conviction as set out in subdivision 1c of §46.2-351, may, after five years from the date of the adjudication, petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the Commonwealth.

B. Any person who has been found to be an habitual offender, where the adjudication was based entirely upon convictions as set out in subdivision 1c of §46.2-351, may, after one year from the date of payment in full of all outstanding fines, costs and judgments relating to his adjudication, and furnishing proof of financial responsibility, if applicable, petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the Commonwealth.

C. This section shall apply only where the conviction resulted from a suspension or revocation ordered pursuant to (i) §46.2-395 for failure to pay fines and costs, (ii) §46.2-459 for failure to furnish proof of financial responsibility or (iii) §46.2-417 for failure to satisfy a judgment, provided the judgment has been paid in full prior to the time of filing the petition.

D. On any such petition, the court, in its discretion, may restore to the person his privilege to drive a motor vehicle, on whatever conditions the court may prescribe, if the court is satisfied from the evidence presented that the petitioner does not constitute a threat to the safety and welfare of himself or others with respect to the operation of a motor vehicle, and that he has satisfied in full all outstanding court costs, court fines and judgments relating to his adjudication and furnished proof of financial responsibility, if applicable. (1984, c. 660, §46.1-387.9:3; 1985, c. 292; 1987, c. 334; 1989, c. 727; 1992, c. 568.)

Appendix B
CASE LAW ANALYSIS

An evaluation of existing relevant Virginia Supreme Court and Court of Appeals cases was conducted. The majority of cases reviewed concerned technical applications of the Habitual Offender Act, and others involved the effectiveness or difficulty of administering the Act.

Technical Issues

Several of the cases studied involved issues of technical interpretation of the Act. For instance, one issue was whether other states' laws conform to the Code violations that constitute the basis for the habitual offender declaration. The Virginia courts have held that the certified abstract is *prima facie* evidence that the Commissioner of the DMV has made a tentative determination of the conformity. Thus, the defendant has the burden of going forward with evidence to rebut this presumption.[1] *Davis v. Commonwealth*, 219 Va. 808, 252 S.E.2d 299 (1979). Additionally, in *Bouldin v. Commonwealth*, 4 Va. App. 166, 355 S.E.2d 352 (1987), the appellate court found that certified abstracts created the *prima facie* presumption that county ordinances conform to the Habitual Offender Act.[2]

A second technical interpretation of the Act involves the provision regarding multiple offenses committed within a 6-hour period. The Supreme Court of Virginia held that the General Assembly's intent was that multiple offenses committed within six hours would constitute only one offense when the driver had no previous convictions of the offenses in the Habitual Offender Act. *Commonwealth v. Stanley*, 232 Va. 57, 348 S.E.2d 231 (1986). A similar interpretation of the Act regarding two convictions arising out of one occasion of driving an automobile was addressed in *Estes v. Commonwealth*, 212 Va. 23, 181 S.E.2d 622 (1971). The court held that a defendant could be convicted of a DUI offense and DSOL for the same incident. The court reasoned that "one occasion of driving an automobile may give rise to several acts and the test of whether there are separate acts sustaining several offenses is whether the same evidence is required to sustain them." *Id.* at 24, 181 S.E.2d at 624.

Two final issues regarding the technical interpretation of the Act involve the classification of offenses as indicated in the language of the Act. In the first case,

---

1. In *Rufty v. Commonwealth*, 221 Va. 836, 275 S.E.2d 584 (1981), the court held that the Commonwealth's Attorney does have the burden to show that out-of-state DUI laws conform to Virginia's laws. "The showing made by the certified transcript was insufficient to carry the Commonwealth's burden of proving substantial similarity and to shift to the defendant the burden of going forward with evidence of dissimilarity." *Id.* at 838, 275 S.E.2d at 585. However, *Rufty* involved a criminal prosecution for a subsequent DWI offense based on an out-of-state conviction. The court stressed that this decision was distinguished from the presumption in *Davis*, which was civil in nature. *Id.* at 839, 275 S.E.2d at 586.

2. Fairfax County Code §82-4-21, relating to driving while intoxicated, has been ruled invalid because the Fairfax County Code provided for less punishment than provided under state law. *Commonwealth v. Holtz*, 12 Va. App. 1151, 408 S.E.2d 561 (1991).

the defendant was indicted and tried for the felony offense of driving after being declared a habitual offender. However, he was convicted of operating a motor vehicle without a valid license. *Edenton v. Commonwealth*, 227 Va. 413, 316 S.E.2 736 (1984). The defendant argued that the misdemeanor offense was not a lesser-included offense of the Habitual Offender felony provision, and the Supreme Court agreed, reversing his conviction. The court reasoned that the character of the two offenses is quite different and different elements must be proved to convict for each. *Id.* at 417, 316 S.E. 2d at 738. The court's rationale was also based on one of the administrative problems in the Act involving delays in gathering and entering data on habitual offender orders. The court stated:

> Handicapped by such delays, a district court may be unable to discover the existence of an habitual offender order before it convicts the accused of the misdemeanor charge. In such case, the driver would be immunized from punishment for the felony he had committed, because conviction of a lesser-included offense bars prosecution of the offense in which it is included. Such a result would effectively defeat the public policy goals declared in the Habitual Offender Act.

Id. at 417-418, 316 S.E. 2d at 738.

The second peculiar result of a technical classification regarding the Act is found in *Davis v. Commonwealth*, 12 Va. App. 408, 404 S.E.2d 377 (1991). The defendant in *Davis* was an adjudicated habitual offender who, in the process of driving recklessly to elude police, crashed head on into another police car, killing the passenger in the defendant's car. Because the act of driving after being declared a habitual offender is a felony, and the defendant was driving recklessly to further this felonious act, he was convicted of second-degree murder. *Id.* at 414, 404 S.E.2d at 380.

Procedural Issues

Other cases touched on issues more closely related to the effectiveness of the Act. The first procedural issue involves the service of the show cause order for certified drivers. In one case decided by the Court of Appeals, a nonresident defendant claimed that his habitual offender adjudication was invalid because he did not receive the show cause order. The appellate court rejected this argument, holding that when process is delivered to the Commissioner of DMV and a copy is sent to the last known address of a *nonresident* defendant, a valid service has been made regardless of whether the defendant actually received the notice. *Steed v. Commonwealth*, 11 Va. App. 175, 397 S.E.2d 281 (1990). See also *Russ v. Commonwealth*, 2 Va. 282, 343 S.E.2d 373 (Va. 1986). This issue had previously been addressed by the Supreme Court of Virginia in which a defendant's habitual offender adjudication was reversed because service was invalid. *Slaughter v. Commonwealth*, 222 Va. 787, 284 S.E. 2d 824 (1981). Here, the certification of the defendant indicated that the defendant was a nonresident when incontroverted evidence at trial indicated he was a Virginia resident and received no notice of the habitual offender adjudication until he was arrested for driving after being declared a habitual offender.

The court found that although earlier abstracts showed an out-of-state address, the latest DMV records actually showed the defendant's residence as a Virginia address. The Attorney General claimed that because DMV sent mail to this Virginia address that was returned undelivered, and the defendant was obligated to notify the DMV of an address change, the DMV legitimately certified him as a nonresident. The court rejected this argument, holding that this conclusion was not justified. *Id.* at 792, 284 S.E.2d at 827. Thus, the adjudication of the defendant was void due to invalid service.

A second common procedural problem regarding the Act was addressed in *Potter v. Commonwealth*, 10 Va. App. 113, 390 S.E.2d 196 (1990). The defendant claimed that because the Commonwealth's Attorney did not file the habitual offender information until 11 months after he was certified, this delay violated the requirement that the information be filed "forthwith." The court held that "forthwith" means "reasonable promptness without unnecessary delay." *Id.* at 115, 390 S.E.2d at 197. The only reason given for the delay in the court's filing was a heavy caseload, and the court held that the filing was not forthwith. The defendant then claimed this failure to file forthworth was prejudicial to him because in petitioning the court for the restoration of his license after 5 years, he was deprived of his driving privileges 11 months longer than necessary because of the delay in filing. The court rejected this argument since at the time of the certification, he was already under a suspension until 1994, at least 5 years past adjudication. Therefore, the effect on the delay was not prejudicial toward him. *Id.* at 116, 390 S.E.2d at 198. Nonetheless, the important point to derive from this case is that the Court of Appeals has indicated that the Commonwealth's Attorney cannot wait as long as 11 months to file an information for no other reason than a heavy caseload. It should be noted, however, that this is not a binding Supreme Court decision. Also, a possible negative result of this case may be that Commonwealth's Attorneys will ignore the certifications if they do not have time to deal with them soon after their receipt. Nonetheless, since drivers are recertified after each additional offense, this problem would be alleviated if a new time period for adjudication began with each recertification.

A related "delay" problem at another stage in the habitual offender process was addressed in the *Bouldin* case. The defendant in *Bouldin* claimed that because the DMV did not certify him until more than 4 years after his last conviction, the habitual offender proceeding was time-barred. The court rejected this claim because the Act, in §46.2-352, contemplates that only in cases where the habitual offender proceedings follow the last conviction by more than 5 years may the court in its discretion refuse to enter the order for untimeliness. *Id.* at 171, 355 S.E.2d at 355. *In dicta*, the court did state that "[a]lthough we abhor a lengthy delay which allows persons with a demonstrated indifference for the safety and welfare of others to continue to use the public highways of this Commonwealth, we recognize that certain delays are unavoidable." *Id.* at 171, 355 S.E.2d at 355.

Finally, the last two cases of relevance deal with license restoration, the last phase of the habitual offender process. In a recent opinion by the Court of Appeals, a defendant successfully argued that his conviction for driving after having been de-

clared a habitual offender 14 years after his habitual offender adjudication was invalid. *Davis v. Commonwealth*, 12 Va. App. 246, 402 S.E. 2d 711 (Va. App. 1991). The defendant's habitual offender adjudication revoked his license for 10 years and contained no provision that he must petition the court at the end of 10 years to restore his driving privilege. When he did not petition the court for restoration and was subsequently convicted of the felony offense, he claimed the conviction was invalid. The court agreed, finding that the subsequent driving is unlawful only while the court *order* remains in effect. *Id.* at 249, 402 S.E.2d at 712. This opinion, although not a binding Supreme Court opinion, indicates the existence of confusion about the Act, which actually requires a permanent revocation with a *possibility* of restoration after 10 years. If courts are not precise about this statutory mandate in their orders, the habitual offender process may be defeated.

The final case involved an equal protection challenge regarding the provision of the Act that allows the court to restore a habitual offender's license after 5 years if the certification was based in whole or part on alcohol- or drug-related offenses. An earlier provision, 46.2-352, gives a trial court discretion to refuse to enter a habitual offender order if the DMV certification occurs more than 5 years after the triggering conviction, when the driver would otherwise be eligible for license restoration. The defendant claimed that since this discretion could be exercised only for those whose certifications involved alcohol or drug offenses, the result is unequal treatment between different classes of drivers. *Salama v. Commonwealth*, 8 Va. App. 320, 380 S.E.2d. 433 (Va. App. 1989). The Court of Appeals rejected this argument and held that the distinction between those convicted of alcohol- and drug-related offenses and those not convicted of such offenses was justified because the classification bears a reasonable relationship to the government's objective. *Id.* at 324, 380 S.E.2d at 435.

The *Salama* opinion also contains a discussion regarding the purpose of the Act and the rationale for the distinction between alcohol- and drug-related offenders and others. The court first noted that the purpose of the Habitual Offender Act is to remove drivers who are dangerous and pose a threat to public safety from the Commonwealth's highways. *Id.* at 323, 380 S.E.2d at 435. The court recognized that the Act severely restricts the court's authority to refuse to enter the habitual offender order or restore the license in cases where the person shows that he or she is no longer addicted and poses no threat to safety. *Id.* at 384, 380 S.E.2d at 435. Then the court discussed the rationale for the statute's distinction between different types of drivers, as follows:

> This statutory classification is based on the rationale that the unlawful acts of the alcoholics or drug addicts will stop when these individuals are cured of their chemical dependence. The rationale does not apply to individuals who, for no apparent reason, repeatedly and intentionally violate the law. *Id.* at 324, 380 S.E.2d at 435.