

Interim Review  
of the  
Results of Abusive Driver Fees in Virginia  
and Other States



Joint Commission on Transportation Accountability

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Pursuant to § 30-283 of the *Code of Virginia*, the Joint Commission on Transportation Accountability may request that the staff of the Joint Legislative Audit and Review Commission (JLARC) conduct studies, research, and budget analyses.

**JLARC Staff for This Review**

Hal Greer, Division Chief  
Ashley Colvin, Project Leader  
Bradley Marsh, Senior Associate Legislative Analyst

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## Interim Review of the Results of Abusive Driver Fees in Virginia and Other States

Pursuant to § 30-283 of the *Code of Virginia*, the staff of the Joint Legislative Audit and Review Commission (JLARC) may be requested to act as staff to the Joint Commission on Transportation Accountability. As directed by the Chair of the Joint Commission on Transportation Accountability, JLARC staff have prepared this review of abusive driver fees in Virginia and the experiences of other states.

This interim review presents preliminary information regarding the results of Virginia's recently enacted abusive driver fee legislation. This review is intended to provide the General Assembly with information which may be useful in improving the legislation. Steps which may be considered include enhancing the ability of State and local agencies to use payment plans for the collection of abusive driver fees and statutory fines, and clarifying which offenses are subject to an abusive driver fee. These and other steps may improve the effectiveness of the program and enhance the revenues estimated to result from abusive driver fees. Although revenue projections are inherently uncertain, the final revenue estimate prepared in March 2007 represents a concerted effort to develop a projection based on the best available information.

In the course of this review, JLARC staff contacted staff in the Office of the Secretary of Transportation, the Office of the Attorney General, the Office of the Executive Secretary of the Supreme Court of Virginia, the Department of Motor Vehicles, the Department of State Police, and agencies in other states. JLARC staff with primary responsibility for this review were Hal Greer (Division Chief), Ashley Colvin (Project Leader), and Bradley Marsh.

### BACKGROUND AND DATA REGARDING VIRGINIA'S ABUSIVE DRIVER FEES

The civil remedial fees created by House Bill 3202 (2007) are intended to "generate revenue from drivers whose proven dangerous driving behavior places significant financial burdens upon the Commonwealth." These fees, also known as "abusive driver fees," are codified in § 46.2-206.1 of the *Code of Virginia*. By the time the fees are fully implemented in fiscal year (FY) 2010, the fees are projected to generate revenues of \$65.4 million annually.

All of the offenses for which an abusive driver fee may be charged (excluding fees derived from eight or more demerit points) result from a conviction for a misdemeanor or felony. These offenses are criminal acts, in contrast to traffic infractions which are violations of public order and are not criminal in nature. If a driver fails to pay an abusive driver fee, his or her driver's license will be suspended and will not be reinstated until all fees have been paid.

Virginia's abusive driver fee program has two components. The first component levies an abusive driver fee on all misdemeanor and felony convictions under Titles 18.2 and 46.2 of the *Code of Virginia*. The second component levies an abusive driver fee on any person who has eight or more demerit points on their driving record on July 15<sup>th</sup> of any year

beginning in 2008 even if they were not convicted of a misdemeanor or felony under Titles 18.2 and 46.2. Since almost all driving and motor vehicle-related felonies and misdemeanors result in the assignment of points, a person may be subject to abusive driver fees both for a specific conviction and for exceeding eight demerit points, depending upon the number of demerit points they already had. In that instance, an individual would be responsible for paying both fees.

How Many Virginia Drivers Typically Have Eight or More Demerit Points?

**Based on Department of Motor Vehicles (DMV) data, there may be as many as 138,000 Virginians with eight or more demerit points on a given day (Table 1).**

Table 1		
Snapshot of September 1, 2006 Shows that About 138,000 Virginians Had Eight or More Demerit Points		
Number of Demerit Points	Number of Virginia Drivers	Abusive Driver Fee
8	33,798	\$100
9	22,607	175
10	21,032	250
11	11,854	325
12	16,457	400
13	6,153	475
14	5,162	550
15	4,172	625
16 or more	16,891	700
<b>TOTAL</b>	<b>138,126</b>	
Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.		

This estimate is based on taking a one-day snapshot of the number of points accumulated by each Virginia driver for the previous two years. This figure represents 2.5 percent of the approximately 5.5 million persons with a Virginia driver’s license. Most of the drivers with eight or more points have less than 16 total demerit points, but about 17,000 have 16 or more based on this one-day snapshot. The DMV data indicate that more than 6,000 have 20 or more points at any given time and that 39 persons had 50 or more points as of this date.

As delineated in §46.2-206.1 (G) of the *Code of Virginia*, any Virginia resident with a Virginia driver’s license (including commercial driver’s licenses or learner’s permits) who has eight or more driver demerit points on July 15<sup>th</sup> will be subject to a points-based abusive driver fee. Every person with exactly eight points will be assessed a fee of \$100. Persons with more than eight points will be assessed an additional \$75 for each demerit point up to a maximum of \$700 (for persons with 16 or more demerit points).

What Types of Offenses Are Subject to Abusive Driver Fees?

Abusive driver fees apply to persons convicted of driving on a suspended or revoked driver’s license, reckless driving, and driving while intoxicated or under the influence of alcohol or drugs (DWI/DUI). In addition, abusive driver fees apply to all other driving and motor vehicle-related misdemeanors in Titles 18.2 and 46.2 of the *Code of Virginia*. This includes convictions for not having a driver’s license, operating an uninsured motor vehicle without payment of a fee, and failure to stop at the scene of an accident. Abusive driver fees also apply to all driving and motor vehicle-related felony convictions in Titles 18.2 and 46.2, including being a habitual offender, a third conviction of DWI/DUI, and eluding police (Table 2). The individual offenses, and average number of annual convictions, are listed in Appendix A.

Table 2 Types of Offenses Subject to Abusive Driver Fees and Related Fee Amounts		
Category	Type of Offense	Annual Fee Amount
C1	Driving on a suspended or revoked driver’s license	\$250
C2	Reckless driving	350
C3	Driving while intoxicated (DWI/DUI)	750
C4	Any other driving and/or motor vehicle-related misdemeanor in Titles 18.2 or 46.2	300
C5	Any driving or motor vehicle-related felony in Titles 18.2 or 46.2	1,000

Source: JLARC staff.

The five categories of offenses subject to the abusive driver fee program are delineated in § 46.2-206.1 (C) of the *Code of Virginia*. Table 2 indicates the amount of the abusive driver fee for each category. Any violation of categories C1 through C4 is a misdemeanor, and category C4 serves as a catchall for “any other misdemeanor conviction for a driving and/or motor vehicle related violation of Title 18.2 or this title [46.2]” that is not included in categories C1, C2, or C3. Category C5 includes all felony offenses. These fees are charged for three consecutive years, so the total fee amount paid by a driver is three times the annual amount listed in Table 2.

What Other Fines and Penalties Are Already Imposed?

**Each conviction encompassed by the abusive driver fee program is either a misdemeanor or felony and therefore existing statutory penalties also apply. In addition to the statutory fines, a person convicted of any felony, or a Class 1 or Class 2 misdemeanor, may also be imprisoned.**

Table 3 indicates the maximum statutory fines outlined in §§ 18.2-10 and 11 of the *Code of Virginia* for misdemeanors and the average annual number of convictions for each category of offense (C1 through C4). There have also been about 3,450 driver or motor

vehicle-related felony convictions annually, on average, over the last three years. Most have been Class 6 felonies with a maximum fine of \$2,500.

Table 3 Average Annual Number of Convictions by Type of Misdemeanor and Maximum Amount of Statutory Fine (FYs 2005 to 2007)				
Category (Type of Offense)	Class 1 (\$2,500)	Class 2 (\$1,000)	Class 3 (\$500)	Class 4 (\$250)
C1 (Suspended/Revoked License)	50,636	1,276	n/a	n/a
C2 (Reckless Driving)	85,244	262	n/a	n/a
C3 (DWI / DUI)	27,303	n/a	663	n/a
C4 (Other Misdemeanors)	4,597	60,618	8,424	2,125
Note: Data represent convictions of persons holding a Virginia driver's license who were convicted by a court in Virginia or in another state.				
Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.				

How Will Abusive Driver Fees Be Collected and How May This Process Affect Revenues?

**As required by HB 3202, the court that enters a conviction must collect the first annual payment “at the time of conviction.” The second and third payments will be collected by DMV, as will the demerit point-based fees. Presently, there is considerable variation among the different courts in their collection practices for statutory fines, and this may lead to variation in abusive driver fee collection rates.**

Presently, statutory fines for convictions of traffic infractions, misdemeanors, and felonies are collected by the court where the conviction is entered. This includes juvenile and domestic relations courts, general district courts, and circuit courts. In general, it is the responsibility of the court clerk to collect the fees. If a payment or payment plan has not been made in 40 days, the delinquent account becomes the responsibility of the commonwealth’s attorney.

Each court clerk may choose from a variety of collection methods for statutory fines. According to a Compensation Board report, *Fiscal Year 2006 Assessment and Collection of Fines and Fees*, 85 percent of Virginia court clerks allow the use of payment plans. In some cases, judges will prescribe the payment plan from the bench. In addition, 41 percent of court clerks report garnishing wages, and 49 percent of court clerks report that their court allows community service to count as payment. Commonwealth’s attorneys use a variety of third-party collection agents to collect on delinquent accounts.

As a result of variation in collection practices and methods, the collection rate for all statutory fines varies statewide. In FY 2007, for the types of offenses subject to an abusive driver fee, the collection rate varied from a high of 75 percent in Rappahannock County to a low of 15 percent in Wise County. The statewide collection rates for specific convictions vary

as well. Generally, collection rates are highest for traffic infractions and lowest for convictions of driving on a suspended license. For example, in FY 2005 there were 1,162 felony convictions for operating a motor vehicle by persons adjudicated to be habitual offenders (§ 46.2-357); the collection rate for the resulting statutory fines was five percent. In contrast, there were 1,325 convictions for going 20 miles per hour over the speed limit at a school crossing (§ 46.2-873), and the collection rate was 90 percent. As discussed below, the revenue estimate for the abusive driver fees uses the collection rates for specific types of convictions to calculate five different collection rates, one for each category of offense (C1 through C5).

It is currently unclear if all procedures currently used by courts will be allowable or appropriate for the collection of abusive driver fees. A Roanoke case suggests that some courts may be interpreting the abusive driver fee statute to require an immediate payment, and that failure to make one will result in an immediate suspension of the individual’s driver’s license (Circuit Court for Roanoke County, Case No. 07-918). However, the clerk of the general district court in Chesterfield County informed JLARC staff that he will offer payment plans to qualified individuals, and that he considers that a person is in compliance with the abusive driver fee statute if the payment plan is followed. As a result, the individual’s driver’s license would not be suspended.

How Many Annual Convictions Are There for Each Type of Offense?

**Reckless-driving related misdemeanors (category C5) comprise the largest number of convictions (85,506), on average, followed by general misdemeanors (75,764). The number of convictions in each category (except felony) increased from 2005 to 2007 (Table 4).**

Table 4 Average Annual Number of Convictions by Abusive Driver Fee Category (FYs 2005 to 2007)		
Category (Type of Offense)	Average Annual Number of Convictions	Percentage Change
C1 (Suspended / Revoked License)	51,912	4.2%
C2 (Reckless Driving)	85,506	18.3
C3 (DWI / DUI)	27,966	1.1
C4 (Other Misdemeanors)	75,764	10.7
C5 (Felony)	3,457	-3.5

Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.

Within each of the five categories, certain convictions occur much more frequently than others, on average. For example, 43 percent of reckless driving convictions (category C2) are for persons speeding more than 80 miles per hour, and another 36 percent are for persons going more than 20 miles over the speed limit. In contrast, only 0.1 percent of reckless driving convictions (91) were for failure to use turn signals. Most of the DWI/DUI convictions in category C3 were for a first offense.

Among category C4 misdemeanors, 57 percent were for persons driving without a driver's license (§ 46.2-300). Another seven percent resulted from convictions for operating an uninsured motor vehicle without paying the uninsured motor vehicle fee. The third most frequent C4 misdemeanor—failing to stop at the scene of an accident with property damage—accounts for two percent of convictions in this category.

The most frequent felony, operation of a vehicle by a habitual offender, accounts for 31 percent of all category C5 convictions, on average. This is followed by convictions for a third DWI/DUI (26 percent) and eluding police (18 percent).

#### AMBIGUITY AS TO OFFENSES AND CONDUCT SUBJECT TO ABUSIVE DRIVER FEES

Virginia's civil remedial fees are codified in § 46.2-206.1 of the *Code of Virginia*. As discussed above, subsection C lists five categories of offenses, and the statute expressly applies the abusive driver fees to all driving and motor vehicle-related misdemeanors and felonies. However, there appears to be some confusion regarding which offenses are subject to these fees. Some conduct which is defined in statute as constituting reckless driving—and should therefore be subject to an abusive driver fee—is apparently treated as a traffic infraction instead.

#### Are All Driving and Motor Vehicle-Related Felonies and Misdemeanors Subject to an Abusive Driver Fee?

**This is not certain. One provision of the statute specifically states that any driving or motor vehicle-related conviction or violation pursuant to Titles 18. 2 or 46.2 shall be subject to the abusive driver fee program. However, another provision states more generally that the fees apply to “dangerous driving behavior [that] places significant financial burdens upon the Commonwealth.” According to officials, the determination has been made to exclude 46 misdemeanor and five felony offenses from the fees because they are not dangerous driving behavior or do not impact the cost to the Commonwealth of maintaining Virginia's highways. However, the revenue estimate could increase by \$2.9 million in FY 2010 if these additional offenses were included.**

The Supreme Court has prepared guidance for use by lower courts as to which sections of the *Code of Virginia* are subject to the abusive driver fees. The document lists 72 misdemeanors and 28 felonies to which an abusive driver fee applies, as shown in Appendix A. They include a relatively wide range of offenses such as operating an uninsured motor vehicle, eluding police, and hauling prohibited cargo through a tunnel. The Supreme Court guidance apparently was developed based on consultation with DMV. Presently, staff in the Office of the Secretary of Transportation indicate that the final decision on what offenses are subject to abusive driver fees will be made by individual judges.

The guidance document excludes 46 misdemeanor and five felony offenses in Titles 18.2 and 46.2 which are driving and motor vehicle-related, and potentially could be offenses subject to abusive driver fees. The rationale offered by officials is that the excluded offenses



are not related to “dangerous driving behavior [that] places significant financial burdens upon the Commonwealth,” as required by the statute. However, if this is the basis for excluding certain offenses, then it is not clear why some offenses were excluded. For example, the final revenue estimate and the Supreme Court’s list exclude the offenses of using counterfeit inspection stickers and damaging a bridge or tunnel because of an over-height vehicle.

According to a Supreme Court official, lower courts will probably not be collecting abusive driver fees for violations that are not listed in the guidance document unless a judge orders the imposition of the fees for an unlisted offense. Attached as Appendix B is a list of the misdemeanors and felony offenses that may be covered by the legislation but which are excluded from the Supreme Court’s list.

Including the additional 46 misdemeanors and five felonies increases the revenue estimate in FY 2010 by \$2.9 million.

Will Conduct Defined as Reckless Driving in Statute Consistently Result in the Imposition of an Abusive Driver Fee?

**No. Drivers often are not convicted of reckless driving for conduct that is defined as reckless driving under Virginia law. Instead, these drivers are convicted of traffic infractions which are not subject to the abusive driver fees. Between 2005 and 2007, more than 50,000 Virginia drivers found to be traveling 20 or more miles over the speed limit were convicted of speeding instead of reckless driving. The State could gain an additional \$18 million annually starting in FY 2010 in forgone revenue by prosecuting these cases as reckless driving cases.**

Virginia’s reckless driving statute is contained in Article 7 of Title 46.2 of the *Code of Virginia*. The specific offenses prohibited under this article include exceeding the speed limit by 20 miles or more, driving in excess of 80 miles an hour, passing on the crest of a hill, passing a stopped school bus, and failure to use proper signals (Va. Code §§ 46.2-853–867). The statute also defines reckless driving generally as driving that “endanger[s] the life, limb or property of any person” (Va. Code § 46.2-852).

One of the most frequently charged reckless driving offenses specifically prohibited in Article 7 is driving “at a speed of twenty miles per hour or more in excess of the applicable maximum speed limit” (Va. Code § 46.2-862). However, not all law enforcement officers or courts appear to apply this reckless driving statute as written. Despite the plain language of the reckless driving statute, Virginia drivers who exceed the speed limit by 20 miles per hour are more likely to be convicted of speeding instead of reckless driving.

Between 2005 and 2007, there were 51,946 convictions annually, on average, under Article 8 of Title 46.2 (Speeding) for instances where the driver was driving 20 or more miles over the speed limit. Over that same time period, there were 30,931 convictions for reckless driving for going 20 or more miles over the speed limit (Table 5). The difference in fines and fees between a speeding and reckless conviction is substantial. A reckless driving

conviction can result in a fine of up to \$2,500 along with the \$900 abusive driver fee. In contrast, a speeding conviction results only in a fine of around \$100-\$200.

<p style="text-align: center;">Table 5 Average Number of Annual Convictions for Exceeding Posted Speed Limit by 20 Miles Per Hour (FY 2005 – FY 2007)</p>		
Statute	Description	Average Annual Number of Convictions
<b>§ 46.2-862</b>	<b>Misdemeanor reckless driving *</b>	<b>30,931</b>
§ 46.2-870	Speeding	18,828
§ 46.2-871	Speeding in school bus	7
§ 46.2-872	Speeding with special permit	19
§ 46.2-873	Speeding at school crossing	1,467
§ 46.2-874	Speeding in business or residential district	5,002
§ 46.2-875	Speeding in city/town	7,569
§ 46.2-876	Speeding while towing	9
§ 46.2-878	Speeding	18,868
§ 46.2-881	Speeding on bridge	121
§ 46.2-882	Speeding	54
	<b>Total of Speeding Convictions</b>	<b>51,946</b>
<p>Note: * Excludes misdemeanor reckless driving convictions for exceeding 80 MPH, and all other reckless driving convictions. Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.</p>		

One of the reasons for the inconsistent application of the law appears to be the opinion of some in law enforcement that for conduct to constitute reckless driving it must endanger life or property, as required under the general reckless driving provision (§ 46.2-852). However, there is no language in the reckless driving statute that requires conduct specifically defined as reckless to also meet the endangerment standard in order to constitute reckless driving. The Office of Attorney General has confirmed that conduct which is specifically defined as reckless driving in statute does not have to endanger life or property. It is possible that the interpretation by some law enforcement officers that reckless conduct must endanger life or property has resulted in inconsistent application of Virginia law with regard to the other offenses specifically listed in statute as reckless driving offenses.

The inconsistent application of the law may also be the result of law enforcement officers and judges simply deciding to treat some violators more leniently. Judges sometimes amend reckless charges to speeding. In addition, according to State Police officials, law enforcement officers are sometimes reluctant to charge violators with reckless driving given the greater administrative costs associated with charging an individual with a misdemeanor, which is more likely to be contested than a traffic infraction of speeding.

Therefore, some officers are reported to be more likely to write a summons as a speeding ticket rather than a reckless driving citation. Law enforcement officers and judges have historically exercised this discretion and have continued to do so since enactment of the abusive driver fee as illustrated by case examples of actual citations issued since July 1, 2007:

***Driver is charged in Albemarle County on July 17, 2007, with speeding for traveling 67 MPH in a 45 MPH zone.***

***Driver is charged in Chesterfield County on August 6, 2007, with speeding for traveling 82 MPH in a 60 MPH zone.***

***Driver is charged in Fairfax County on August 27, 2007, with speeding for traveling 78 MPH in a 55 MPH zone.***

***Driver is charged in the City of Chesapeake on October 7, 2007, with speeding for traveling 66 MPH in a 45 MPH zone.***

The apparent variation in application of the reckless and speeding provisions of the *Code of Virginia* raises at least two concerns with regard to the abusive driver fees. The first concern is one of fairness. As many as 51,946 Virginians each year may be found to have engaged in conduct that constitutes reckless driving under Virginia law but are not required to pay an abusive driver fee because they are convicted of speeding instead of reckless driving (Table 5). However, 30,931 other Virginians found to have engaged in similar conduct will be convicted of a misdemeanor and required to pay the \$900 abusive driver fee along with a substantial statutory fine.

In addition, decisions by law enforcement and the courts not to fully enforce the reckless driving statute will lead to substantially less revenue each year, from both statutory fines and the abusive driver fees. If there continue to be as many as 52,000 Virginians charged with speeding for traveling in excess of 20 miles over the speed limit, then the State could gain an additional \$18 million annually starting in FY 2010 in forgone revenue by prosecuting these cases as reckless driving cases.

#### CHANGES IN THE NUMBER OF ARRESTS AND POTENTIAL DETERRENT EFFECT

A potential effect of the abusive driver fees is that it will have a deterrent effect on dangerous driving. The only currently available information to assess the potential effect of the abusive driver fees is State Police arrest data for the first four months of FY 2008. Although the abusive driver fees may have an independent effect upon highway safety, they are part of a wider system of sanctions for traffic violations. Other programs, such as “Click It or Ticket,” “Operation Air, Land and Speed,” and the Virginia Alcohol Safety Action Program are also intended to improve highway safety and compliance with motor vehicle laws.

What Do Available Data Show Regarding Arrests Since the Abusive Driver Fees Became Effective on July 1, 2007?

The most recent information from the Virginia Department of State Police show that the number of arrests for reckless driving have decreased in the four months from July to October of 2007 compared to the same time period in 2006. However, arrests for DUI and speeding have increased (Table 6).

Table 6 Number of Arrests by Virginia State Troopers by Type of Offense			
Date	DUI	Reckless	Speeding
July 2006	524	9,591	21,711
August 2006	649	9,809	20,242
September 2006	521	7,990	16,461
October 2006	503	6,232	10,756
<b>TOTAL</b>	<b>2,197</b>	<b>33,622</b>	<b>69,170</b>
July 2007	555	7,430	19,523
August 2007	712	8,616	21,590
September 2007	531	6,571	15,876
October 2007	597	7,437	17,463
<b>TOTAL</b>	<b>2,395</b>	<b>30,054</b>	<b>74,452</b>

Source: JLARC staff analysis of data provided by the Virginia Department of State Police on November 27, 2007.

The State Police report that the number of arrests made by State Troopers for reckless driving decreased by 10.6 percent in July-October of 2007 compared to the same time period in 2006 (Table 6). However, during that same time period the number of DUI arrests rose by nine percent and the number of arrests for speeding increased by 7.6 percent.

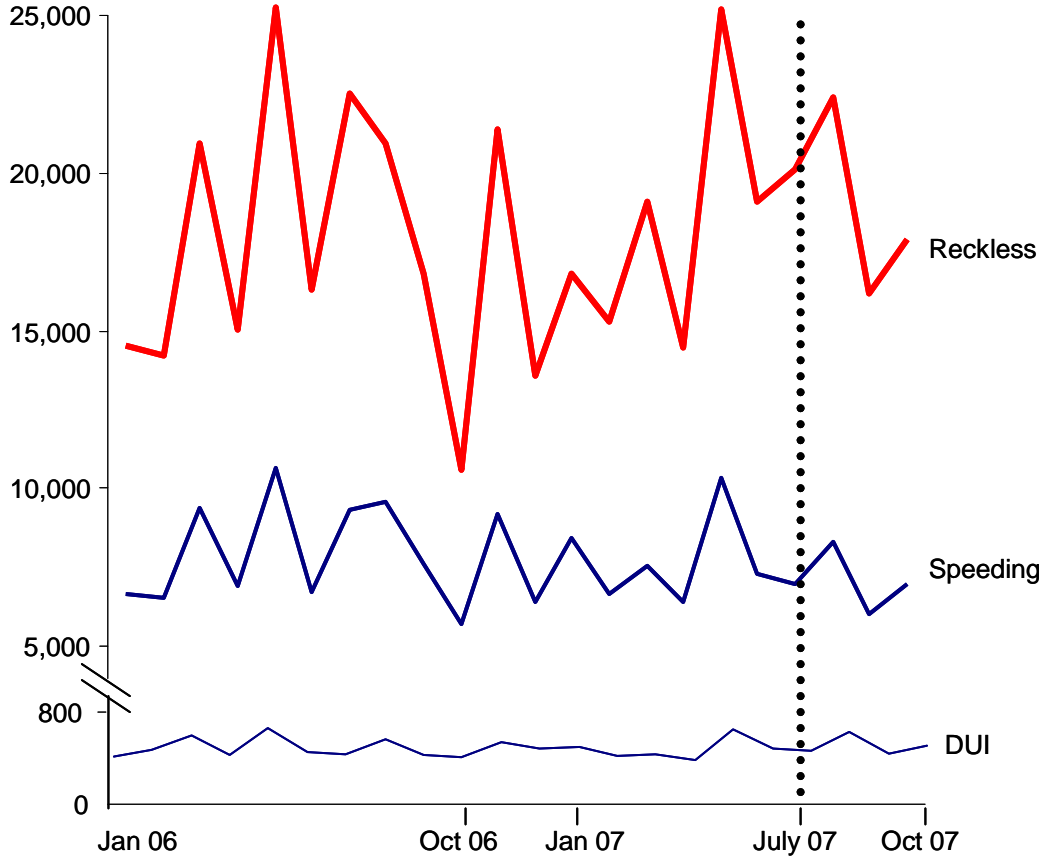
The use of arrest data to consider the potential effects of the abusive driver fees, as opposed to conviction data, should be treated with caution for two reasons. First, considerable variation exists from month to month in the number of arrests, as shown in Figure 1. Second, it appears that there is a lack of consistency in the data reported by the State Police. The database used by the State Police has certain limitations in its ability to analyze data, and as new data are added a previously reported number may change, even for data from a previous year.

Does There Appear to be a Deterrent Effect?

**In light of these various data limitations, the magnitude of the deterrent effect, if any, is not readily discernible.**

Figure 1

Number of Arrests by Type of Offense  
(January 2006 to October 2007)



Source: JLARC staff analysis of data from the Virginia Department of State Police

An examination of the data currently available suggests that one possible conclusion is that the abusive driver fee program has had a deterrent effect with regard to reckless driving, given that the number of reckless driving arrests have decreased from the same period last year. However, the data do not show a similar deterrent effect for driving under the influence or speeding. A second possible explanation is that the behavior of law enforcement has changed. As discussed above, some law enforcement officers may charge a driver for speeding for behavior that fits the statutory definition of reckless driving. One possible effect of the abusive driver fee program is that this phenomenon has increased, and more speeding summons are being issued for conduct that fits the statutory definition of reckless driving. Although it does not appear that national data on the number of arrests in other states are available, Appendix C presents comparative interstate information on traffic fatalities per 100,000 people.

## MAIN AREAS OF UNCERTAINTY IN THE REVENUE ESTIMATE THAT COULD AFFECT ACCURACY OF PROJECTED REVENUES

Because some key assumptions and information on which this revenue estimate is based are essentially unknown, the projected revenues for abusive driver fees could be considerably different than presently estimated.

The final revenue estimate for HB 3202 projected that the abusive driver fee program would generate a total of \$65.4 million in revenue annually once fully implemented in 2010, after deducting the 18 percent collection fee estimated by DMV. The \$65.4 million consists of revenues from fees associated with demerit points plus the misdemeanor and felony (C1-C5) convictions, which represent 23 and 77 percent of the estimated revenues, respectively.

The projected revenues in FY 2010 are higher than the revenues in the first and second years of the program, FYs 2008 and 2009. This results from the fact that conviction-based abusive driver fees are paid on a three-year basis. The statute requires that a person who is convicted of an offense in FY 2008 make their first payment at the time of conviction, followed by a second payment in FY 2009 and a final payment in FY 2010. The revenue estimate projects that FY 2008 revenues will equal \$19.7 million, and FY 2009 revenues will equal \$53.2 million. (These amounts are net of the 18 percent collection fee.)

To calculate these estimates, several assumptions were made about both the number of points and convictions which would be subject to an abusive driver fee. It appears that a one-day snapshot of the number of drivers with eight or more demerit points was used as the basis for point-based revenue estimates. The conviction-based revenue estimates were based on the number of convictions in Virginia courts in FY 2005.

The final revenue estimate also made assumptions about the percentage of abusive driver fees that will actually be paid. This was done by calculating collection rates, and the revenue estimate calculated a single rate for demerit point revenues and five separate rates for conviction-based revenues. The collection rate for demerit points was based upon the collection rate for points experienced by New Jersey's abusive driver fee program. In contrast, the collection rates for conviction-based revenues were based upon FY 2005 data on the frequency with which statutory fines were collected by Virginia courts.

### Is the Total Revenue Estimate a Reasonable Effort to Address Known Uncertainties in the Available Information?

**Yes. The estimate was developed based on prior conviction and collection experience in Virginia, in the form of data provided by the courts and the Department of Motor Vehicles. However, there was one calculation error related to out-of-state convictions, and the resulting correction reduces the revenue estimate by \$1.03 million in FY 2010.**

The revenue estimate was developed by using data from Virginia courts and DMV on the number of convictions for driver and motor vehicle-related offenses and demerit points in FY 2005. The gross revenue estimate was then developed by multiplying the

number of convictions and points by the dollar amounts of the various abusive driver fees. Based on prior experience, the assumption was made that not all potential revenue would be collected and therefore a collection rate percentage was applied to the gross revenue. A collection fee of 18 percent was then subtracted.

The estimates were thorough in many respects, as indicated by the creation of separate collection rates for each category of offense (C1 through C5), and accounted for many potential factors that could affect the estimates. Changes made to the final estimate also increased the conservative nature of the estimates. These changes included:

- Reducing the number of demerit points to account for (a) the fact that not all drivers who have demerit points will accumulate additional points, and (b) that some drivers may go to a driving school to reduce their demerit points.
- Decreasing the number of convictions to eliminate offenses committed by Virginians in another state. Because the abusive driver fees only apply to offenses committed “on the highways of Virginia,” the number of convictions was reduced by seven percent to account for convictions made by courts in another state or by a U. S. District Court. However, a calculation error occurred in adjusting the number of DWI/DUI convictions to account for convictions in another state. Correcting this error reduces the revenue estimate in FY 2010 by \$1.03 million.
- Decreasing the rate at which revenues were assumed to increase from the first to the second year, and from the second to the third year. This was based on the assumption that the collection rates would decrease in the second and third years as individuals were less inclined to make the second and third payments.

#### Does Uncertainty Exist Regarding the Number of Demerit Points?

**In part. The decision to use the prior experience in Virginia regarding the number of demerit points as a basis for estimating future revenue from points appears to be reasonable. However, the adjustment factor used to reduce the estimated revenue seems more questionable and may result in a revenue estimate for FY 2010 and subsequent years that is too conservative by as much as \$8.7 million annually.**

The demerit point revenue estimate was determined by calculating the number of points that are predicted to be accumulated by Virginia drivers in future years and multiplying those point totals by the abusive driver fee amounts for points. To calculate the number of demerit points that would be subject to the abusive driver fees, it appears that a single-day snapshot of the number of drivers with eight or more demerit points was used. Based on the assumption that only 63 percent of drivers with demerit points accrue additional points, the number of points was reduced by 37 percent for each year starting in FY 2009.

Demerit points remain on a driver’s record for two years, and the revenues from demerit point fees will be collected every July 15<sup>th</sup>, starting in 2008 (which falls in FY 2009). This will be done by assessing the fees against all drivers who have eight or more

demerit points on that date. Because the point-based fees only apply to points accrued after July 1, 2007, the first assessment on July 15, 2008, will only be applied to one year's worth of demerit points. Therefore, adjusting the number of points downward for the FY 2009 estimate seems reasonable.

However, continuing to adjust the revenue estimate downward in FY 2010 and subsequent years by 37 percent appears to be too conservative. This is because beginning in FY 2010, a full two years of demerit points will be available for assessment. Eliminating this 37 percent decrease in the number of demerit points starting with the 2010 estimate would increase the revenue estimate for FY 2010 and subsequent years by \$8.7 million annually.

#### Does Uncertainty Exist Regarding the Collection Rate for Demerit Point Fees?

**Yes. Based on the experience of other states, it may be too optimistic.**

Virginia does not have any experience collecting fees or fines for accumulated demerit points, and this hinders an assessment of reasonableness. According to documentation provided by DMV, it appears that the 80 percent collection rate is based on the experience of New Jersey's abusive driver fees.

However, this assumed collection rate may be too optimistic given the experiences of other states. According to a 2006 report by the New Jersey Motor Vehicle Commission, New Jersey has collected 71 percent of the total amount of point-based fees assessed under its program. A 2007 report by the Texas Department of Public Safety indicates that Texas has achieved a 60 percent collection rate. Although differences between Virginia's abusive driver fee programs and the programs in other states limit the usefulness of interstate comparisons, it may be reasonable to assume a lower collection rate in the light of the newer information. If a collection rate of 70 percent were assumed, then revenues in FY 2010 would decrease by \$1.9 million.

#### Do Updated Conviction Data Change the Revenue Estimates?

**Yes. The use of updated conviction data from FY 2006 and 2007 to create a three-year average increases the revenue estimate in FY 2010 by \$3.4 million. (Note: This increase does not include the additional misdemeanors and felonies that were excluded from the final revenue estimate.)**

#### Does the Revenue Estimate Attempt to Account for the Potential Deterrent Effect?

**No. As noted above, the abusive driver fee program may have a deterrent effect, but it is not possible to determine its extent using available data. If a consistent deterrent effect results from the abusive driver fees, then the number of convictions and demerit points will be lower than currently assumed and thus the revenue could be less than estimated.**



Does the Revenue Estimate Attempt to Account for the Potential Effect of Judicial Discretion?

**No.** As noted above, the final decision on what offenses are subject to abusive driver fees will be made by individual judges. If judges determine that certain offenses are not subject to abusive driver fees, then the number of convictions subject to the fees will decrease, thereby lowering the revenue estimate. Alternatively, if judges determine that certain offenses not currently included in the guidance document prepared by the Supreme Court are subject to abusive driver fees, then the number of convictions will increase.

Although the Supreme Court has provided guidance on what offenses are subject to abusive driver fees, the guidance document states that it “does not represent an order of or statement by the Supreme Court of Virginia. This general explanation is meant neither as legal advice nor as a ‘how to’ guide. It is strictly informational.” Staff in the Office of the Executive Secretary of the Supreme Court state that individual judges can determine which offenses in Titles 18.2 and 46.2 are, and are not, subject to the abusive driver fees.

Does Uncertainty Exist Regarding the Collection Rates for Conviction-Based Fees?

**Yes.** Although FY 2005 collection rates in Virginia for statutory fines were used as the basis for estimating the collection rates for abusive driver fees, there is some uncertainty regarding how useful the collection experience for fines will be as a predictor of collection rates for abusive driver fees.

The revenue estimate used five different collection rates for conviction-based fees. These rates, which were based upon FY 2005 collection data from Virginia courts, varied widely among the five categories of offenses:

- C1 (Suspended / Revoked License) 13 percent
- C2 (Reckless Driving) 59 percent
- C3 (DWI / DUI) 44 percent
- C4 (Other Misdemeanors) 30 percent
- C5 (Felony) 5 percent

Although these collection rates are based on the actual collection rates for fines in Virginia general and circuit courts, there are two reasons why more conservative collection rates may be advisable.

First, as discussed above, the individual courts will remain responsible for collecting the first of the three annual payments. It is not clear whether courts will tend to be less inclined to work with offenders and suspend their license, as directed by the legislation, if the offender does not make payment or agree to a payment plan.

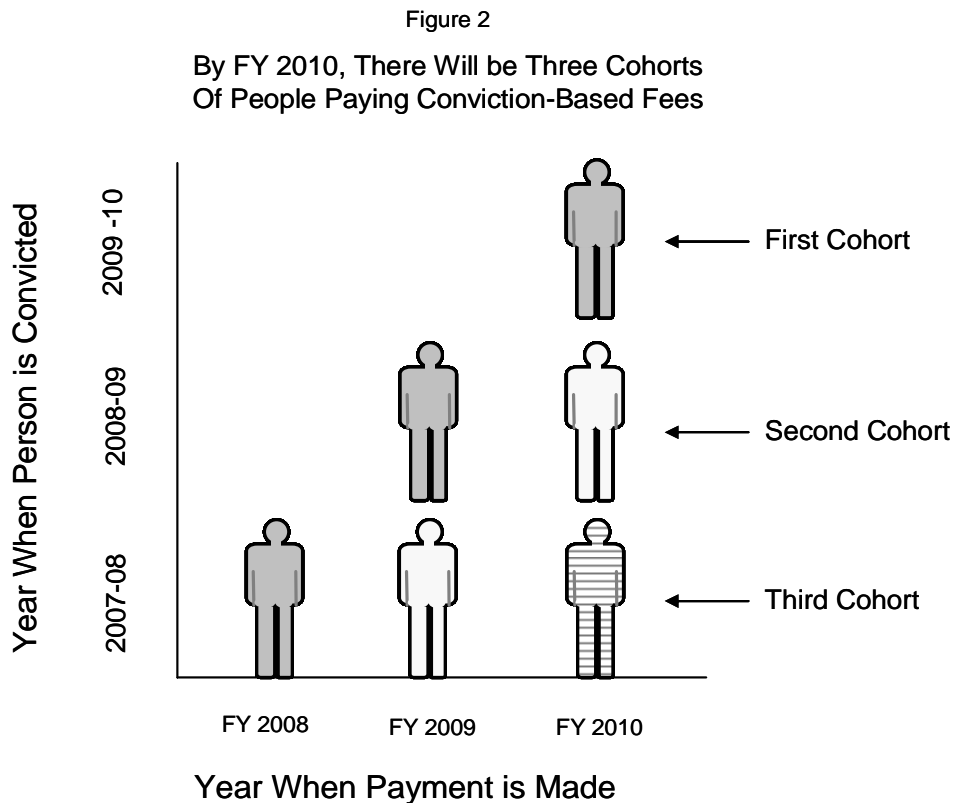
Second, because the abusive driver fees are in addition to the existing statutory fines and court costs, historical collection rates may over-estimate the extent to which drivers can or will pay the fees. For example, in FY 2005 there were 22,816 convictions of a first DWI/DUI offense. These individuals were assessed a mandatory \$250 statutory fine, and

only 46 percent of all assessed fines were collected. Under the abusive driver fee program these individuals would be required to pay the \$250 statutory fine plus \$2,250 in abusive driver fees. It is reasonable to assume that as the cost of the total payment increases, collection rates will decrease. As discussed further in Appendix D, in other states with abusive driver fees, actual collection rates for DWI/DUI abusive driver fees are substantially lower than Virginia’s estimated collection rate of 44 percent: Texas (29 percent), Michigan (34 percent), and New Jersey (35 percent).

Does Uncertainty Exist Regarding the Projected Revenues for FY 2010?

**Yes. The revenue estimates assume that DMV will be less able to collect the abusive driver fees than the individual courts, resulting in a reduced collection rate over time. However, this assumption is not strongly supported and may result in a revenue estimate for FY 2010 and subsequent years that is too low by as much as \$28.2 million annually.**

In the first year of the abusive driver fee program, FY 2008, the projected revenues are based on multiplying the number of convictions and demerit points by the different abusive driver fees. In that first year, the only people who will be paying conviction-based fees are people who were convicted in that same year. Starting with the second year of the program (FY 2009), there will be two cohorts of people paying the conviction-based abusive driver fees: (a) people convicted in the first year who are making their second payment, and (b) people convicted during the second year who are making their first payment. These cohorts are illustrated in Figure 2.



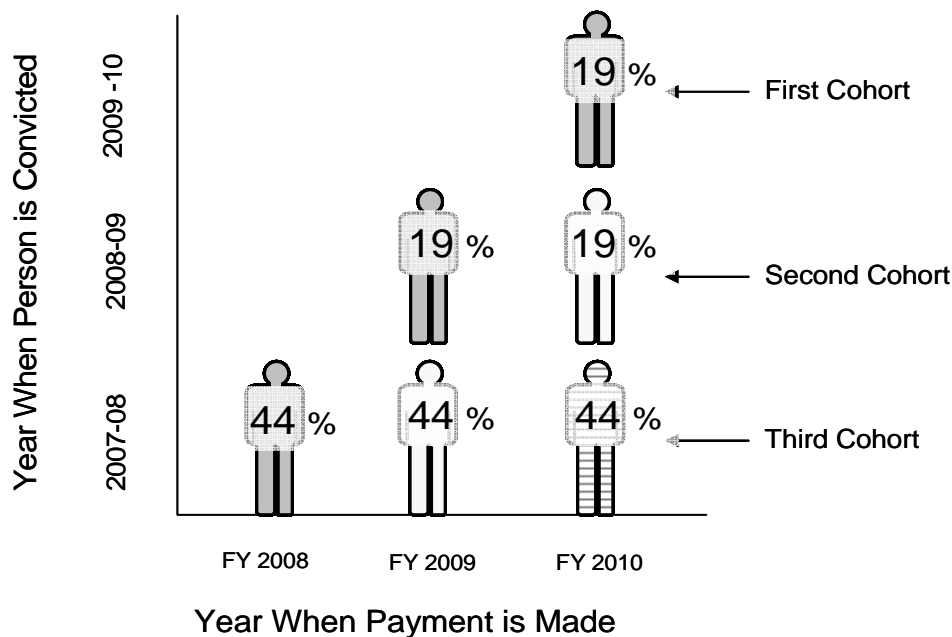
Source: JLARC staff.

However, the revenue estimate assumes that people will be less likely to pay the fees after their first payment. According to DMV staff and other officials, this results from the fact that DMV, unlike the courts, has no authority to implement payment plans. As a result, the revenue estimate assumes that the collection rate will decrease for persons making their second and third payments.

The assumed decrease is based upon the specific collection rate for that category of offense. For example, as noted above the collection rate for DWI/DUI convictions is 44 percent. To account for the assumption that fewer people will pay their second and third payments, the collection rate for these two payments is 44 percent of the first year's collection rate. The result is a 19 percent collection rate for the second and third payments. However, because there will be three cohorts of people making payments by FY 2010, people in the third cohort (who are making their first payment) are assumed to still have a 44 percent collection rate. The effect of this assumption is a blending of collection rates after FY 2008, as shown in Figure 3.

Figure 3

By FY 2010, the Estimate Assumes that  
There Will Be More than One Collection Rate  
(DWI / DUI Collection Rate Is Illustrated)



Source: JLARC staff.

An alternative assumption would be to assume that the collection rates stay the same for the second and third payments. Under the alternative assumption, which represents an upper bound on conviction-based revenues, all other things being equal, revenues in the second year (FY 2009) would be twice as high as revenues in the first year. Subsequently, revenues in the third year (FY 2010) would be three times higher than in the

first year, and would flatten out thereafter. If revenue increases in the second and third years followed the alternative assumption, then revenue estimates in FY 2010 would increase by \$28.2 million. Changes to other assumptions, such as the number of convictions or the five conviction-based collection rates, could decrease or increase this figure.

#### EFFECT ON DRIVER'S LICENSE SUSPENSIONS RESULTING FROM THE ABUSIVE DRIVER FEES

**If the strict language of the abusive driver fee legislation is enforced, and all persons who do not pay abusive driver fees lose their driving privileges, then as many as 137,000 suspensions could occur in FY 2008, and another 181,000 suspensions could occur in FY 2009.**

As delineated in § 46.2-206.1 (E) and (F), the penalty for failure to pay the abusive driver fees is suspension of driving privileges. The statute adds that “no license shall be reissued or reinstated until all fees assessed pursuant to this section have been paid...”. Although there appears to be some variation at the local level regarding the use of payment plans and the resulting decision to order suspension of driving privileges, it does not appear that DMV will have the same latitude. Therefore, based on the assumptions used in the revenue estimate, a substantial number of Virginians could lose their driving privileges.

As noted above, FY 2005 collection rates for statutory fines indicate that not all fines are paid. (The collection rates measure the total amount of fines collected, not the number of people paying fines, and so they are not compliance rates.) Only five percent of fines assessed for felonies are collected, and only 13 percent of fines for driving on a suspended or revoked license. Therefore, using these collection rates it is estimated that as many as 137,000 suspension orders could be issued in FY 2008. (This estimate is an upper bound, because the conviction data may be duplicated, and compliance rates are not available.)

However, the final revenue estimate assumes that the collection rates will decrease after the first of the three payments is made, because DMV does not have the legal authority to use payment plans. Therefore, it is assumed that some persons who paid the first payment will not pay the second payment. Based on this assumption, another 44,000 suspension orders could be issued in FY 2009. Because an additional group of people will make their first payment in FY 2009 (the second cohort) and the collection rates assume that not all of them will make that payment, an additional 137,000 Virginians (the first year of the second cohort) may receive a suspension order in FY 2009. This could result in, at most, the issuance of 181,000 suspension orders in FY 2009. (This is in addition to the 137,000 in FY 2008.)

This accords with the experience of other states with driver responsibility programs. Individuals at the Texas Department of Public Safety indicate that there has been an increase in the number of individuals charged with driving on a suspended license since the inception of their driver fees program. This is likely a result of the increased number of people whose privileges were suspended because of fee non-payment but who continue to drive. Staff at the Michigan Department of State indicate they were able to collect only about 20 percent of their Driver Responsibility Fees until the agency began suspending individuals' licenses, at which point collection rates rose to 50 percent. Michigan now issues

8,000-10,000 suspension orders per week for unpaid driver responsibility fees. Lastly, New Jersey data indicate that suspensions are concentrated in a small group of individuals who accumulate multiple suspension orders.

The American Association of Motor Vehicle Administrators estimates that as many as 75 percent of suspended drivers continue to drive. In Virginia, among the felonies subject to the abusive driver fees, the most frequently occurring felony is a violation of § 46.2-357, operation of a motor vehicle by a habitual offender. On average, there were 1,077 felony convictions of this violation annually from FY 2005 to 2007. To reduce the number of persons driving on a suspended or revoked driver's license, other states have used a variety of programs. Some states block registration of vehicles by drivers lacking a valid license, or require the use of special license plates by individuals convicted of driving without a license. Other states have also implemented vehicle impoundment, seizure, and immobilization programs for repeat offenders.

## CONCLUSION

Although the abusive driver fee program is less than a year old, there are some conclusions and observations that can be made based on presently available information. There does appear to be some ambiguity regarding what offenses and conduct will trigger imposition of an abusive driver fee. Some driver and motor vehicle-related offenses are not considered subject to the abusive driver fee program even though the legislation appears to direct that such offenses be included. In addition, it appears that Virginia drivers who are found to have committed offenses covered by the abusive driver fee program, such as reckless driving, often are not charged with or convicted of such offenses and therefore are not subject to the abusive driver fee program.

There is limited information on which to judge the deterrent effect of the program. There has been a steady decline in reckless driving arrests by the State Police since the program became effective July 1, 2007, but there has been an increase in DUI arrests.

Overall, the actual revenues derived from abusive driver fees are subject to uncertainty. The revenue estimate represents a concerted effort to develop a projection based on the best available data, but there are many remaining unknowns about the abusive driver fee program and the actual revenues that will result.



## Appendix A

This appendix provides a list of the misdemeanors and felony offenses that are covered by the abusive driver fee legislation, grouped by category. The right-most column includes the average annual number of convictions from FY 2005 to 2007, based on an analysis of Department of Motor Vehicles (DMV) data. Because of differences in the grouping of similar types of convictions, the DMV data in this appendix may differ slightly from the list of convictions in the materials prepared by the Supreme Court of Virginia.

<b>Driving and Motor-Vehicle Related Misdemeanors and Felonies in Titles 18.2 and 46.2 Included in the Revenue Estimate</b>		
Statutory Section	Description	Average Number of Annual Convictions (FY 2005-2007)
<b>Category C1 - Driving on a Suspended or Revoked Driver's License</b>		
18.2-272(A)	Operate vehicle during suspension or revocation	1,630
18.2-272(A)	Operate vehicle during susp. or revocation 2 <sup>nd</sup> offense	0
18.2-272(B)	Operate vehicle during suspension, revocation, restriction with a BAC of 0.02 or more *	89
46.2-301	Driving on a suspended license, fine and cost	10,696
46.2-301	Driving under revocation or suspension	38,157
46.2-302	Driving on a suspended license before giving proof of financial responsibility	1,194
46.2-341.21	Violating out of service order	4
46.2-341.21	Driving commercial motor vehicle while disqualified	78
46.2-391(D)	Driving while privileges revoked because of 2 <sup>nd</sup> DUI	46
46.2-391(D)	Driving while privileges revoked because of 3 <sup>rd</sup> DUI	19
<b>Category C2 - Reckless Driving</b>		
46.2-852	Reckless driving generally	12,158
46.2-853	Operate vehicle with faulty brakes/improper control	3,261
46.2-854	Passing on the crest of a hill	48
46.2-855	Driving with the driver's view obstructed	89
46.2-856	Passing two vehicles abreast	20
46.2-857	Driving with two vehicles abreast	25
46.2-858	Passing at a railroad crossing	17
46.2-859	Passing a stopped school bus (recklessly)	464
46.2-860	Failing to give proper turn signal	91
46.2-861	Driving too fast for conditions	345
46.2-862	Speeding in excess of 80 miles per hour	37,012
46.2-862	Speeding 20 or more MPH above posted speed limit	30,931
46.2-863	Fail to yield right-of-way when entering highway	335
46.2-864	Reckless driving on parking lots, etc	291

<b>Statutory Section</b>	<b>Description</b>	<b>Average Number of Annual Convictions (FY 2005-2007)</b>
46.2-865	Racing	157
46.2-868.1	Aggressive driving	262
<b>Category C3 – Driving while intoxicated (DWI/DUI)</b>		
18.2-266	DWI / DUI, 1 <sup>st</sup> offense	23,218
18.2-266	DWI / DUI, 2 <sup>nd</sup> offense	4,072
18.2-266.1	Drive after consuming alcohol – person under age 21	657
46.2-341.24	Drive CMV with BAC .04 or more *	6
46.2-341.24	Drive CMV with BAC .08 or more 1 <sup>st</sup>	9
46.2-341.24	Drive CMV with BAC .08 or more, 2 <sup>nd</sup> w/in 5 yrs	1
46.2-341.24	Drive CMV with BAC .08 or more, 3 <sup>rd</sup>	0
46.2-341.24	Drive CMV influence drugs/alcohol, 1 <sup>st</sup> offense	4
46.2-341.24	Drive CMV influence drugs/alcohol, 2 <sup>nd</sup> offense	0
46.2-341.24	Drive CMV influence drugs/alcohol, 3 <sup>rd</sup> offense	0
<b>Category C4 – Other Driving and Motor Vehicle Related Misdemeanors</b>		
18.2-102	Unauthorized use of motor vehicle	160
18.2-147	Enter or set in motion a vehicle	37
18.2-263.3	Refusing blood or breath test, 2 <sup>nd</sup> offense	18
18.2-263.3	Refusing blood or breath test, 3 <sup>rd</sup> offense	8
18.2-323.1	Consuming alcohol while operating a vehicle	1,203
46.2-300	Driving without a drivers license	56,490
46.2-301.1(E)	Knowingly authorizing operation of vehicle by person whose license has been suspended or revoked	41
46.2-328	Drive without required license endorsements	645
46.2-329	Operate in violation of restricted license	639
46.2-335	Learner's permit violation	1,036
46.2-339	Operate school bus without license	0
46.2-341.6	Drive CMV with more than one license	2
46.2-341.7	Drive CMV without license	438
46.2-341.7(A)	Drive CMV without commercial driver's license	12
46.2-341.7(A)	Drive CMV without proper endorsement	18
46.2-341.7(C)	Drive CMV in violation of CDL restriction or limits *	0
46.2-341.10	CDL instruction permit violation	8
46.2-341.16	Operate commercial motor vehicle without endorsement(s)	37
46.2-341.19	Use CMV to distribute controlled substance	0
46.2-346	Driver's license violation	165
46.2-349	Permit unlicensed person to drive	995
46.2-357	Operating after declared habitual offender	1,437
46.2-371	Fail to notify police of accident with injury or death	37
46.2-704	Operate overweight vehicle or refuse to weigh	791
46.2-707	Operate or permit operation of uninsured vehicle	7,279
46.2-815	Haul prohibited cargo through tunnel	0



<b>Statutory Section</b>	<b>Description</b>	<b>Average Number of Annual Convictions (FY 2005-2007)</b>
46.2-817	Eluding police	1,021
46.2-817	Attempting to elude police	38
46.2-817	Disregarding police signal to stop	79
46.2-818	Assaulting, willfully stopping, impeding or damaging vehicle	46
46.2-818(1)	Stopping vehicle with purpose of impeding travel	87
46.2-818(2)	Blocking access to service facility	0
46.2-818(3)	Damaging a vehicle / vehicular assault	0
46.2-829	Passing or overtaking a moving emergency vehicle	16
46.2-866	Aiding and abetting racing (recklessly)	9
46.2-894	Fail to stop at/report accident with property damage	1,488
46.2-896	Fail to stop at/report accident with unattended property	1,095
46.2-921.1	Fail to reduce speed or yield right-of-way to stationary emergency vehicle	232
46.2-933	Fail to stop for pedestrian with guide dog or white cane	3
46.2-1042	Operate vehicle with below standard tires	0
46.2-1077.01	Obscene video image visible outside of vehicle	0
46.2-1088.4	Operate vehicle with working N2O device	0
46.2-1090	Operate school bus without warning device	0
46.2-1091	Operate school bus without wearing safety belt	4
46.2-1104	Exceeding weight, height, size, speed limits on restricted highway	8
46.2-1134	Fail to discontinue operating commercial vehicle	0
46.2-1137	Refusing to drive to weigh station	3
46.2-1139	Violating highway size and weight haul permit	177
<b>Category C5 – Other Driving and Motor Vehicle Related Felonies</b>		
18.2-35	Manslaughter in vehicle	1
18.2-36	Involuntary manslaughter in vehicle	10
18.2-36.1(A)	Involuntary manslaughter because of DUI	14
18.2-36.1(B)	Aggravated involuntary manslaughter from DUI	2
18.2-51.4	Maiming resulting from DUI, 1 <sup>st</sup> offense	4
18.2-51.4	Maiming resulting from DUI, 2 <sup>nd</sup> offense	0
18.2-51.4	Maiming resulting from DUI, 3 <sup>rd</sup> or subsequent	0
18.2-102	Unauthorized use of motor vehicle	257
18.2-266	DWI / DUI, 3 <sup>rd</sup> or subsequent offense	931
18.2-272(A)	Driving after forfeiting license, 3 <sup>rd</sup> off. in 10 years	0
46.2-357	Operating vehicle after declared habitual offender	1,077
46.2-391(D)	Driving while privileges revoked because of 2 <sup>nd</sup> DUI	23
46.2-391(D)	Driving while privileges revoked because of 3 <sup>rd</sup> DUI	29
46.2-817	Eluding police	611
46.2-852	Reckless driving generally	4

<b>Statutory Section</b>	<b>Description</b>	<b>Average Number of Annual Convictions (FY 2005-2007)</b>
46.2-853	Operate vehicle with improper brakes/control	3
46.2-854	Passing on the crest of a hill	0
46.2-855	Driving with the driver's view obstructed	0
46.2-856	Passing two vehicles abreast	0
46.2-857	Driving with two vehicles abreast	0
46.2-858	Passing at a railroad crossing	0
46.2-859	Passing a stopped school bus (recklessly)	0
46.2-860	Failing to give proper turn signal	0
46.2-861	Driving too fast for conditions	0
46.2-862	Speeding in excess of 80 miles per hour	40
46.2-862	Speeding 20 or more MPH above posted speed limit	7
46.2-863	Fail to yield right-of-way when entering highway	1
46.2-864	Reckless driving on parking lots, etc	0
46.2-865	Racing	0
46.2-865.1(A)	Injuring person or causing death while racing	0
46.2-894	Fail to stop at accident with property damage	392
46.2-1086	Operate vehicle with smoke screen or flame thrower	3

Note: \* BAC = Blood Alcohol Content, CMV = Commercial Motor Vehicle, CDL = Commercial Driver's License.

Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.

## Appendix B

This appendix provides a list of the misdemeanor and felony offenses that could potentially be covered by the abusive driver fee legislation but for which abusive driver fees are not being collected.

<b>Driving and Motor-Vehicle Related Misdemeanors and Felonies in Titles 18.2 and 46.2 that were Excluded from the Revenue Estimate</b>		
<b>Statutory Section</b>	<b>Description</b>	<b>Average Number of Annual Convictions (FY 2005-2007)</b>
<b>Category C4 – Other Driving and Motor Vehicle Related Misdemeanors</b>		
18.2-146	Tampering with vehicle	78
18.2-323.1.B	Possess open container of alcohol	78
46.2-105.1	Unauthorized use of DMV materials	2
46.2-347	Fraudulent use of driver license or identification card	12
46.2-348	Fraudulent application for license	13
46.2-370	Fail to return suspended or revoked driver's license or plates	2
46.2-372	Fail to report accident to DMV	0
46.2-612	Fail to surrender title or license plates	8
46.2-613(2)	Improper or fictitious registration, title, or plates	1,972
46.2-613(4)	Fail or refuse to surrender plate, registration, or title	5
46.2-613(5)	False statement or identity for registration or title	4
46.2-617	Sale of motor vehicle without title	11
46.2-618	Posses certificate of title issued to another	132
46.2-628	Fail to deliver title	13
46.2-687	Operate motor vehicle without payment of fee	9
46.2-703	Operate or permit operation of vehicle without International Registration Plan	518
46.2-722	Altered or forged license plates	1,855
46.2-752	No county or city tag	15,311
46.2-832	Injuring highway signs	19
46.2-895	Fail to report accident	50
46.2-897	Hit and run as a passenger	25
46.2-936	Fail to answer summons	308
46.2-1110	Damage to bridge or tunnel because of excessive vehicle height	155
46.2-1163	Fail to display inspection sticker	29
46.2-1172	Unauthorized use of inspection sticker	1,560
46.2-1173	Use of counterfeit inspection sticker	693
46.2-902.1	Fail show to proof of insurance / pay uninsured motor vehicle fee	42

<b>Statutory Section</b>	<b>Description</b>	<b>Average Number of Annual Convictions (FY 2005-2007)</b>
46.2-936	Fail to answer summons	308
46.2-1163	Fail to display inspection sticker	29
46.2-1172	Unauthorized use of inspection sticker	1,560
46.2-1173	Use of counterfeit inspection sticker	693
46.2-1247	Counterfeit disabled parking plates / placard	0
46.2-1248	Use counterfeit disable parking plates / placard	1
46.2-1249	Alter disabled parking plates / placard	2
46.2-1250	Unauthorized use of disabled parking plates / placard	41
46.2-1251	Fraudulently obtain disabled parking plates / placard	0
46.2-1252	Sell/exchange disabled parking plates / placard	0
46.2-1253	Allow use disabled parking plates / placard	0
46.2-1508	Unlawful sale of motor vehicles	10
46.2-1550	Improper use of dealer plates	40
46.2-1556	Operate vehicle under foreign dealer license	1
46.2-1561	Altered temporary tags	23
46.2-1564	Fail to destroy temporary plate	22
46.2-1565	Expired temporary registration	281
46.2-2011.20	Unlawful use of registration / identification marker	9
46.2-2099.1	Contract passenger carrier violation	37
46.2-2129	Motor carrier fail to display identification	214
<b>Category C5 – Other Driving and Motor Vehicle Related Felonies</b>		
46.2-105.2	Obtaining documents not entitled to	10
46.2-348	Fraudulent application for license	1
46.2-605	Alter or forge certificate of title / registration	31
46.2-1074	Remove, change, alter or conceal vehicle VIN number	3
46.2-1075	Possess motor vehicle without VIN number	4
Source: JLARC staff analysis of data provided by the Virginia Department of Motor Vehicles.		

## Appendix C

This appendix provides comparative interstate information on the number of traffic fatalities per 100,000 people, ranked by the largest percentage decrease in fatalities from 1996 to 2006. States with driver responsibility programs are shaded, and the year their program was enacted is indicated in the rightmost column.

<b>Change in Traffic Fatalities per 100,000 Population (1996-2006)</b>				
State	Traffic Fatalities per 100,000 population, 1996	Traffic Fatalities per 100,000 population, 2006	Change in Traffic Fatalities per 100,000 Population, 1996-2006	Year Driver Responsibility Program Enacted
Michigan	15.4	10.7	-4.7%	2003
Texas	19.3	14.8	-4.6	2003
Colorado	15.7	11.3	-4.5	
D.C.	10.8	6.4	-4.5	
Utah	15.5	11.3	-4.3	
Nevada	20.9	17.3	-3.6	
Oregon	16.2	12.9	-3.3	
Idaho	21.4	18.2	-3.2	
Washington	12.8	9.9	-2.9	
New Mexico	27.7	24.8	-2.9	
Georgia	21.0	18.1	-2.9	
Minnesota	12.2	9.6	-2.7	
Illinois	12.2	9.8	-2.4	
Indiana	16.7	14.2	-2.4	
Missouri	21.1	18.8	-2.4	
North Carolina	19.9	17.6	-2.3	
Nebraska	17.5	15.2	-2.3	
Alaska	13.3	11.0	-2.3	
Kansas	18.7	16.9	-1.8	
New Hampshire	11.4	9.7	-1.7	
Oklahoma	23.1	21.4	-1.7	
Ohio	12.4	10.8	-1.6	
Tennessee	22.9	21.3	-1.6	
Wisconsin	14.6	13.0	-1.5	
Iowa	16.1	14.7	-1.4	
<b><i>U.S. Average</i></b>	<b><i>15.6</i></b>	<b><i>14.2</i></b>	<b><i>-1.4</i></b>	
New Jersey	10.0	8.8	-1.1	1983
New York	8.6	7.5	-1.0	2005
Vermont	14.8	13.9	-0.9	
California	12.5	11.6	-0.8	

<b>State</b>	<b>Traffic Fatalities per 100,000 population, 1996</b>	<b>Traffic Fatalities per 100,000 population, 2006</b>	<b>Change in Traffic Fatalities per 100,000 Population, 1996-2006</b>	<b>Year Driver Responsibility Program Enacted</b>
Arizona	21.7	20.9	-0.8	
Connecticut	9.3	8.6	-0.7	
South Carolina	24.5	24.0	-0.5	
<b>Virginia</b>	<b>13.0</b>	<b>12.6</b>	<b>-0.4</b>	<b>2007</b>
Maryland	11.9	11.6	-0.3	
Arkansas	23.9	23.7	-0.3	
Alabama	26.5	26.3	-0.2	
Massachusetts	6.7	6.7	-0.1	
Florida	18.5	18.7	0.1	
Kentucky	21.5	21.7	0.2	
Hawaii	12.3	12.5	0.2	
Pennsylvania	12.0	12.3	0.2	
Maine	13.5	14.2	0.7	
Rhode Island	6.8	7.6	0.8	
South Dakota	23.6	24.4	0.8	
Delaware	15.7	17.3	1.7	
Mississippi	29.5	31.3	1.8	
Louisiana	20.5	22.9	2.4	
West Virginia	19.1	22.5	3.5	
North Dakota	13.1	17.5	4.4	
Montana	22.6	27.8	5.3	
Wyoming	29.3	37.9	8.6	
Source: JLARC staff analysis of Fatality Analysis Reporting System data from the National Highway Traffic Safety Administration.				

## Appendix D

This appendix provides information on the experiences of other states with regard to their abusive driver fee programs, which are generally referred to as driver responsibility fee programs.

### What Collection Rates Have Been Found by Other States?

**Four other states have driver responsibility fee (DRF) programs—Michigan, New Jersey, New York, and Texas—and there are large differences between their collection rates for different types of offenses (Table 7).**

However, there are some consistencies, and the collection rate for driving without a license is very low in most states. In comparing collection rates, it is important to consider the variation in DRF amounts because collection rates may be lower for offenses with higher fees. It appears that the collection rate for driver points fees, which are less costly, are much higher than the collection rates for DUIs. Notably, collection rates are lower for driving without a license than they are for DUIs. This may indicate a particular problem with collecting fees from individuals convicted of driving without a license.

	Driving Without a License	DUI/DWI	Points-Based fees
Texas	22%	29%	60%
New Jersey	25	35	71
Michigan	19	34	N/A

Note: Texas compliance rates are from inception, September 30, 2004, to April 27, 2007. New Jersey compliance rates include collection rates for no license, suspended license, and no insurance. Michigan compliance rates are for the first year of the program from October 1, 2003, to September 28, 2004.

Source: JLARC staff.

### How Do Other States Collect Fees?

**Other states use a variety of collection methods, including payment plans, amnesty programs, and retention of tax refunds.**

In the four other states with a DRF program, all program fees are administered centrally by a single state agency, most often the agency in charge of licensing drivers. Collection of the fees is sometimes done at this agency but can also be performed by state treasury or tax agencies, or outsourced to private collection firms. A Texas report notes that the use of multiple collection agencies adds value because it allows the state to pay different rates based on the effectiveness of the collection agency and the age of the debt (older debts are generally more difficult to collect.)

Individuals in other states contacted by JLARC staff identified the use of payment plans as an effective means of aiding the ability of low income individuals to pay fees, and a report by the Texas Legislative Budget Board indicates that flexibility in payment plans could help to increase collection rates. In addition, New Jersey and Michigan’s programs allow garnishment of wages and withholding of tax refunds and other state payments. Periodic amnesty programs can be useful to bring individuals back into compliance with the law. New Jersey collected \$17.5 million through a 60-day amnesty program in 2003, which almost doubled the total amount collected during that period.

Do Other States’ Driver Responsibility Programs Apply to Out-of-State Drivers?

**Partially. Some other states with driver responsibility programs apply their fees to out-of-state drivers who commit offenses in their state (Table 8).**

Table 8		
Do Other States Apply Abusive Driver Fees to Out-of-State Drivers?		
	Offense-Based Fees	Point-Based Fees
Michigan	Yes	Yes
New Jersey	No	No
New York	Yes	Yes
Texas	Yes	No

Source: JLARC staff.

Two states (New York and Michigan) with driver responsibility programs apply both the offense-based fees and points-based fees to out-of-state drivers. Staff at the Texas Department of Public Safety indicate that Texas applies their offense-based fees to out-of-state drivers but does not apply points-based fees to non-residents. According to a researcher at Rutgers University who was the lead author of a recent study of New Jersey’s program, the fees do not apply to out-of-state drivers.

Although a state cannot suspend an individual’s driver’s license if it was issued by another state, any state can suspend that individual’s driving privileges in their state and also that person to the National Driver Registry. Most states participate in this registry, and non-payment of fines in another state will generally prevent an individual from renewing their license in their home state. That being said, member states appear to have some latitude in enforcing these suspensions in cases where the laws in another state do not “substantially conform” to their own laws.

Do Other States Charge Their Own Residents for Offenses Committed in Another State?

**Partially. Applicability of driver responsibility fees to offenses committed in another state differs among the four states with driver responsibility programs (Table 9).**



Table 9		
Do Other States Charge Their Own Residents for Offenses Committed in Another State?		
	Offense-Based Fees	Point-Based Fees *
Michigan	No	Yes
New Jersey	Yes	Yes
New York	DUIs Only	Yes
Texas	DUIs Only	Yes

Note: \* Fees apply for points resulting from offenses committed in another state only if the law in another state substantially conforms to the laws of the home state.

Source: JLARC staff.

The states differ as to whether they apply offense-based charges for traffic violations committed in other states. New Jersey charges for out-of-state offenses. Although Michigan law indicates that it applies to violations of other state’s laws that are substantially similar to Michigan law, individuals at the Michigan Department of State said that the offense-based fees do not apply to out-of-state offenses. New York only charges for DUIs committed in another state. The Texas program also only applies fees to convictions in another state for intoxication offenses. Lastly, New Jersey, New York, Michigan, and Texas all apply points-based fees to out-of state convictions if the offense is similar to the laws of their state.

Have Other States Studied the Deterrent Effect?

**No. Instead, most studies have focused on the deterrent effect of non-monetary sanctions such as increased jail time, car impoundment, and driver safety classes rather than the effect of higher fees.**

There is currently a study underway in New Jersey which is reviewing the effect of driver responsibility fees on recidivism rates, but it will not be released until early next year. In addition, staff at the Michigan Department of State indicate that traffic offenses in Michigan have decreased since the inception of the program, but they could not attribute the cause to their abusive driver fees.