

Albuquerque's Forfeiture Ordinance

A Review of Re-arrest Rates After Vehicle Sanctions

March, 2004

March 05 Update

Division of Government Research, University of New Mexico
James W. Davis, Annaliese M. Mayette

Institute of Public Law, University of New Mexico School of Law
Carolyn Johnson

Table of Contents

Executive Summary	3
Effect of Albuquerque's Vehicle Sanctions One Year after Arrest	4
History and Description of Albuquerque's Forfeiture Program	5
1. Albuquerque's Seizure/Forfeiture Ordinance	5
2. Albuquerque's Current Numbers Summary (2003):.....	7
3. Law Enforcement Procedures	7
4. Legal Procedures	8
A. Administrative Hearing on Probable Cause:	8
B. Boot Agreement for second offenders or families of second offenders:.....	9
C. Innocent Owner/ Lienholder release agreement:	9
D. District Court Proceedings:	9
5. Auction Procedures.....	10
6. Media Publicity:	10
7. Other New Mexico Ordinances Currently in Place.....	11
8. Localities Considering Local Ordinances:.....	11
9. State Law Summary:.....	11
10. Proposed Statewide Forfeiture Law:	11
11. Recommendations:.....	12
Seizure and Forfeiture Forms	14
1. Albuquerque Ordinance, as amended 1/22/03	15
2. Notice of Vehicle Seizure	21
3. DWI Forfeiture Evaluation Sheet	23
4. City of Albuquerque Administrative Hearing Sheet	25
5. Owner Vehicle Release Agreement	27
6. Vehicle Immobilization and Release Agreement.....	31
7. Vehicle Immobilization and Release Agreement.....	37
8. Forfeiture Complaint	41
9. Disclaimer 1	45
10. Disclaimer 2.....	47
11. Request to MVD for Driver History.....	49
Division of Government Research, UNM APD Vehicle Forfeiture Study.....	51
Overview	51
Characteristics of study population.....	52
Comparison group	53
General deterrence.....	54
Conclusions	55

Executive Summary

This study combined data on drivers of vehicles seized under Albuquerque's vehicle forfeiture ordinance with data on DWI arrests of those drivers. At that time the ordinance applied to third time DWI and driving while revoked offenses. Data on 700 seizures between April 2001 and July 2002 was combined with DWI arrest records for July 1984 through July 2003.

This provided a DWI arrest history for each driver involved, and the ability to monitor re-arrests after the seizure for an average of 1.5 years. This is a relatively short period to monitor repeat offenses, as the expected number of re-arrests would be fairly small. The time frame was dictated by data availability, and it was not possible to use a longer follow up period.

A comparison group of people arrested for DWI between April 2001 and July 2002 was selected from adjacent counties (Sandoval, Santa Fe and Valencia) and re-sampled to match the seizure group in terms of gender and number of prior arrests. The re-arrest rates were compared between the drivers of seized vehicles and the comparison group.

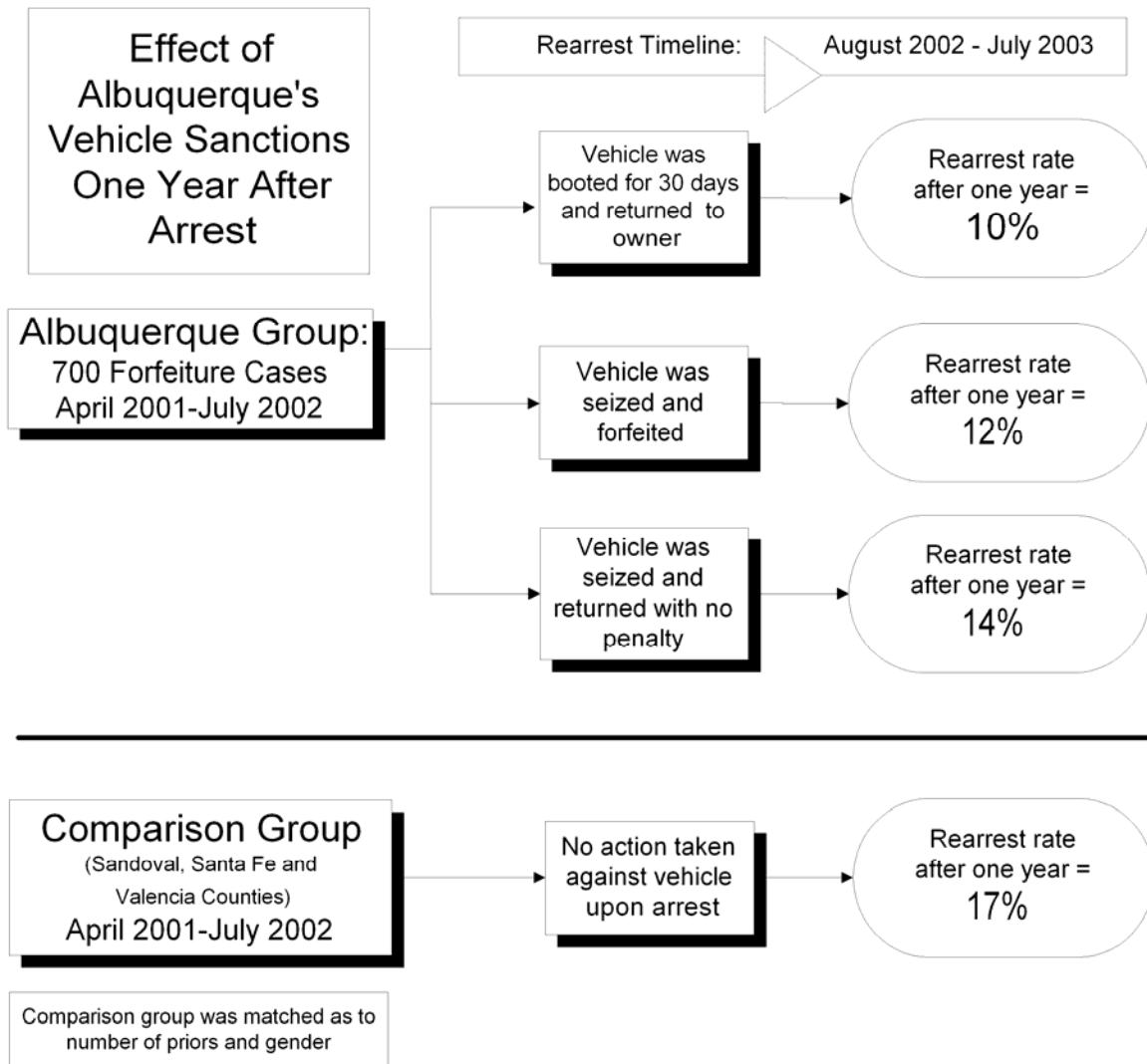
In addition, the trends in the number of alcohol-involved crashes in Albuquerque were examined for a general deterrence effect. If the publicity surrounding the forfeiture program produced a perception of swift and sure punishment in the driving population, we would expect the number of alcohol-involved crashes to decrease as the number of seizures stepped up.

Findings

- This study is limited by the relatively short follow up time, which leads to small numbers of re-arrests in both groups. A study with a longer follow-up time will be necessary to draw definitive conclusions about the effect of the program.
- There was some reduction in the re-arrest rate of the study population compared to the comparison group. This is a group with a relatively high number of prior arrests, and is highly likely to be rearrested. In the follow-up period, about 17% of the comparison group was re-arrested, compared to about 13% of the seizure group.

Recommendation: The publicity of the program may not be sufficient to produce a general deterrence effect. The number of alcohol-involved fatal and injury crashes in Albuquerque has been rising slowly since 1999. Although the purpose of the program is not general deterrence, there could be some benefit in terms of crash reduction in heavily publicizing the existence of the forfeiture program.

Effect of Albuquerque's Vehicle Sanctions One Year after Arrest



History and Description of Albuquerque's Forfeiture Program

1. Albuquerque's Seizure/Forfeiture Ordinance

Repeat impaired drivers are by definition people with serious substance abuse problems who need some form of treatment. New Mexicans are beginning to realize that some habitual offenders will not stop drinking and driving until the legal system separates them from their cars.

In Albuquerque, repeat drunk drivers and revoked drivers can lose their car permanently for continuing to commit DWI crimes.¹ Unlike the jail sentence that has been associated with DWI in New Mexico since the first legislature convened in 1913², forfeiture is relatively new and shocking to some. Albuquerque passed the state's first forfeiture ordinance in 1992.³ The current ordinance allows the city to seize the car of someone who has been convicted of a first offense and who is thereafter arrested again for DWI, or for driving while revoked for DWI. "Driving while revoked" includes driving a car without an interlock when the driver is supposed to have one installed, either as a condition of probation or under a conditional interlock license.⁴

Informal surveys suggest the general public finds the idea of DWI vehicle forfeiture to be unfair, possibly more so than the prospect of going to jail. The first response to a vehicle seizure is often, "what will happen to the family?" This is a serious concern. A person who cannot stop driving while impaired even under threat of vehicle forfeiture or going to jail has already put his/her family in a precarious position which will not be improved by the loss of the family car. But there is also the serious concern about the future of the person himself who repeatedly drives under the influence. In New Mexico, nearly 70% of the people who are killed in DWI crashes are either the drunk drivers themselves, or passengers who are riding with a drunk driver.⁵ More than one DWI killer has wished aloud that someone had stopped his drinking driving before he killed someone. To assist the truly innocent family, the city of Albuquerque has developed a policy to allow an innocent spouse or family member to have an immobilization device installed on the vehicle (for 30 days) in lieu of forfeiture, if the family member agrees to keep the vehicle out of the hands of the offender. (See *Legal Procedures*, below.) Innocent owners such as lenders, or owners who can prove they did not know the driver was revoked can get their car back without having to install the boot.

To get a sense of the type of offender this ordinance is designed to affect, consider Joe

¹Albuquerque ordinance section 7-6-1, ROA 1994.

²1913 Laws of New Mexico, First State Legislature, Section 13; the sentence was 30-90 days in jail.

³ Although the ordinance was originally enacted October 5, 1992, it was not enforced in earnest until 1999. The current ordinance was amended several times since then, the most current amendments having passed on January 22, 2003.

⁴In New Mexico, everyone convicted either as a subsequent offender or convicted of aggravated DWI is required to have an ignition interlock installed in every vehicle they drive as a condition of probation. See 66-8-102 I and K, NMSA 1978. Because the legislature is now requiring interlocks in the vehicles of almost every convicted DWI offender, it also provided a legitimate way for revoked DWI offenders to drive their cars: the interlock license. Most convicted DWI offenders may apply for a license conditioned on their installing an interlock in all cars they drive.

⁵New Mexico Crash Data, 2000-2002, Division of Government Research, University of New Mexico.

Leonard Rael, 21-time DWI offender. In 1999 he was convicted of his 21st DWI offense and sentenced to the maximum felony time of 18 months in prison, plus 364 days for driving while revoked and 364 days for using a fictitious license. The prosecutor reported that Rael requested in open court that he be allowed to spend his parole time at the penitentiary. His reason? Rael preferred prison to the treatment he would be required to attend in order to get out on parole. At that time, he had been in seven treatment programs, some more than once, according to the prosecutor.

Driving without a license is easy, cheap and convenient for someone like Rael. According to the AAA Foundation for Traffic Safety, improperly licensed drivers are involved in 24% of New Mexico's fatal crashes – the highest rate in the nation.⁶ Add to this the fact that revoked drivers can neither obtain auto insurance (because binding insurance requires a valid driver's license) nor, therefore, register their cars, and the case for getting these drivers off the street becomes very compelling indeed.

The New Mexico Supreme Court has determined that Albuquerque's forfeiture ordinance was enacted for the purpose of removing repeat impaired drivers from the public roads:

“The City found that allowing access to motor vehicles to these types of drivers increased the likelihood that they will repeat the offense.... **The motor vehicles used by those drivers were found to constitute a nuisance to the general public and to be dangerous to the health and safety of the general public.** *Id.* Under the Ordinance, a motor vehicle that has been declared a nuisance is subject to forfeiture.” (Emphasis added.)⁷

The Court said that the state may remove the *instrument* of the crime that the offender repeatedly commits. Thus, forfeiture, a civil action, is not punishment – rather it is one of society's remedies to the problem of impaired driving, and there is no double jeopardy in having a criminal trial which is completely separate from the civil forfeiture proceeding. That said, given that the purpose of this sanction is remedial rather than to punish does not preclude the possibility that the offender will feel punished by it.

The state of New Mexico has a Forfeiture Act⁸ to handle the seizure of property that is related to crime. The government can seize the fruits of criminal activity to preclude the possibility that criminals will benefit from their crimes. Seizures that are subject to this state law must be combined with and will be affected by the criminal proceedings. The purposes of the Forfeiture Act are to develop uniform standards and procedures for the seizure and forfeiture of property subject to forfeiture; and to protect the constitutional rights of persons accused of a crime and of innocent persons holding interests in property subject to forfeiture. Often such forfeiture actions are pled away in exchange for a guilty plea to the underlying charge. Albuquerque's ordinance is not related to nor governed by this law.

⁶*Unlicensed to Kill*, AAA Foundation for Traffic Safety, p. 11, June 2000.

⁷ *City of Albuquerque v. One 1984 White Chevy*, at ¶{6}, 2002-NMSC-014, 132 N.M. 187, 41 N.M. St. B. Bull. 22, 46 P.3d 94, 2002 N.M. LEXIS 188, April 24, 2002.

⁸See the Forfeiture Act, [31-27-1 to 31-27-8 NMSA 1978] Forfeiture actions are filed when crimes are committed related to controlled substances, racketeering, liquor control, cultural properties, computers, handguns and unauthorized recording. Forfeiture actions under the Forfeiture Act can be taken against money, guns, houses and other items of value involved in the criminal activity.

2. Albuquerque's Current Numbers Summary (2003):

125	Average number of vehicles seized each month.
40-50	Average number of forfeited cars sold at auction each month.
40	Average number of boot agreements signed with innocent owners or second offenders each month.
40	Average number of vehicles given back to lenders/lienholders or other innocent owners each month.
\$500,000	Approximate total amount of revenue generated by the program in 2003 from: <ul style="list-style-type: none">• storage lot fees• towing fees• boot agreement fees• cars sold at auction

Proceeds collected that are above and beyond what it costs to administer the program are to be used for DWI enforcement, prevention and education, as required by the ordinance.

3. Law Enforcement Procedures

Officers may seize the cars of persons who are driving while their license is revoked for a DWI offense or who have been convicted of at least one DWI and arrested for a second or subsequent DWI.

At the time the driver is stopped, the officer reviews three databases:

- the driver's APD police record (if any);
- the driver's MVD driving history and
- the history of that car in the MVD system by Vehicle Identification Number.

Notice of Seizure. If the record shows at least one conviction or that the driver is currently revoked for DWI, the driver will be arrested and issued a Notice of Seizure. This notice is also mailed to any owner or lienholder listed on the registration and to the Motor Vehicle Division. Owners have four days from receipt of the Notice of Forfeiture to file a written request for an administrative hearing on the seizure. As a practical matter, the owners have some latitude in when and how they answer the notice.

- The car is towed to the Albuquerque Police Department's secure lot until it is disposed of.
- Towing is a flat fee of \$95.
- Storage fees of \$8 per day accrue while car is in APD's lot.

4. Legal Procedures⁹

There are several legal courses of action once a vehicle has been seized:

- A. The owner can ask for an administrative hearing (required within four days of receipt of the notice of seizure)– during which, the hearing officer will determine if the officer had probable cause to seize the car;
- B. The city attorney can negotiate a “boot agreement”¹⁰ (see below) if circumstances warrant;
- C. The truly innocent owner (who didn’t know the driver was revoked or didn’t know the driver was driving while impaired and can prove it), can reclaim her car by signing an agreement not to lend that car to that person again unless they are properly licensed and not driving drunk. This innocent owner can include a lienholder who requests that the car be returned to the lending institution that holds the title;
- D. If the seizure is upheld at the administrative hearing, the city will proceed to district court with a forfeiture complaint. The owner can contest the seizure at that hearing or forfeit the vehicle. The district court judge will decide either to uphold the seizure or to return the car to the offender.
- E. The owner can take no action and the car will be forfeited to the city in a default judgment.

A. Administrative Hearing on Probable Cause:

This hearing determines if the officer had probable cause to seize the vehicle. That is, did the officer have reasonable grounds from the evidence available to believe that the car was subject to seizure? The officer reviews his incident report and describes the evidence he relied on when he seized the vehicle. This shifts the burden of proof to the defendant to explain why the car should not be seized and forfeited. For instance, if the driver claims that the MVD records are incorrect, she must provide some proof. Or, if the car is owned by parents of a revoked driver, they must show why they did not know that the child who was driving it was revoked. If parents say that their child took the car without their permission, they must provide some proof of this statement. Did they file a police theft report? Was the child listed on the insurance even though she didn’t have a valid driver’s license?

A large number of the cars seized in this program are not legally titled or registered. When a car changes hands, the owner signs the back of the title and gives it to the new owner. Because repeat drunk drivers cannot get affordable insurance, they cannot legally register their car, so they continue to drive using the old plates, or forge temporary plates. Because the ordinance only permits administrative challenges by legally registered and titled owners, this group doesn’t have standing to request the administrative hearing, and their requests for a hearing can be dismissed by the hearing officer.

- The hearing costs \$50 which is nonrefundable; the owner may apply for indigent status.
- If the hearing officer finds in favor of the owner, storage fees are waived.

⁹These procedures and forms have been developed by Albuquerque Assistant City Attorney Stan Harada since 1999 when he took over the program. The policies that have developed over time have resulted from evolving needs; most can be modified to suit the requirements of municipalities, depending on the way the ordinance is written.

¹⁰A boot is a device that immobilizes a parked vehicle.

- The hearing is informal and not bound by the technical rules of evidence.

B. Boot Agreement for second offenders or families of second offenders:

The city offers a 30-day boot on a true second offense¹¹ if the person signs a vehicle immobilization and release agreement. This agreement says if the offender is caught driving that particular vehicle either in an impaired state or driving it when his/her privilege to do so is revoked for DWI, the owner of the vehicle agrees to voluntarily surrender the vehicle to the city.

The agreement is made with the owner of the vehicle, who might be the offender himself, a family member, a friend or a combination of these. It offers the offender and/or his family one last chance to abide by the law. It also conserves city resources if the offender is caught again, since the offender agrees to give up the vehicle voluntarily if the she is picked up again for DWI or driving while revoked in that vehicle. The owner gets only one chance at being an innocent owner.

- The 30-day boot agreement costs \$650. The vehicle is booted at the owner's property.
- Owners must pay the fee up front, certified check or money order.
- An individual who picks up the vehicle from APD's lot must have a current license. If the license requires an ignition interlock (under the 2003 interlock license law) the owner must make arrangements to have it installed before driving the car and before the boot will come off.
- To get the boot off after 30 days, offender must show proof of insurance.'

C. Innocent Owner/ Lienholder release agreement:

Sometimes a truly innocent owner has lent their car to a revoked or drinking driver. Or a bank or other lending institution wants to regain possession of a vehicle for which it is entitled to collect a balance on a loan. Each may do so by signing an affidavit, agreeing that they will waive any innocent owner or lienholder defenses in the future with respect to that vehicle and that owner. Either type of release is available only once to that party for that particular car.¹² Owners who sign these release agreements cannot later claim ignorance of the offender's history; if the offender is again caught driving that car while impaired or on a revoked license, the city will file a forfeiture action in District Court against the car.

D. District Court Proceedings:

Once the administrative hearing is complete, if it is decided against the owner, or if there is no answer to the Notice of Seizure, the city commences the legal proceeding in District

¹¹That is, a person who has only one prior conviction, as opposed to someone who has plea bargained several priors down to first offenses.

¹²For a lienholder, this is called an Affidavit of Repossession. It contains an agreement waiving an innocent lienholder defense. The lending institution is reminded that negligent entrustment of the vehicle to uninsured, unlicensed or repeat drunk drivers could lead to negative consequences. For an innocent owner, the document is a Vehicle Release Agreement.

Court with a Complaint for Forfeiture and a Summons, which is sent to all parties to the lawsuit, including all MVD listed lienholders.

If no answer is filed in district court by any of the parties to the forfeiture complaint, the city may seek a default judgment. The city attorney signs an affidavit that he has made a reasonable search for the owner of the defendant car and sends the file to the judge. Some judges will request a hearing on a default judgment, some will sign the default judgment without a hearing.

A number of individual owner/offenders try to put the seized vehicle into a relative's name after the seizure/forfeiture. The ordinance allows the city attorney to reject such claims if the transfer is made after the police have seized the vehicle. Occasionally the City Forfeiture Unit will receive a title made over to the city by the owner who do not wish to challenge the forfeiture. The City Forfeiture Unit also obtains disclaimers from owners who do not wish to reclaim the vehicle, usually for the reason that it is a person who sold the vehicle years ago (to someone who never re-titled it) or a lienholder who has already been paid off.

The district court hearing is a formal court proceeding where owners are allowed to contest the seizure before a judge, either by themselves or with a lawyer.¹³ The Notice of Forfeiture is sent to anyone who has a financial interest in the vehicle. If the owner or owners answer the complaint, a hearing date is set.

At the hearing, each side presents their case before the judge. Often the issues involve third parties claiming to have no knowledge of the offender's actions. At the end of the case, the judge rules either for or against the seizure.

Once the judge signs the judgment against the vehicle, the city applies for and receives transfer of title from the Motor Vehicle Division to APD, and the car may be sold. The owners have 30 days to appeal the district court decision, but such appeals are very expensive and rare.

5. Auction Procedures

Once the seized car title has been transferred to APD, the car is driven or towed to Bentley's Auction House. Those who are interested in purchasing a vehicle register for a bidder's card, give the auction house a copy of their driver's license and pay a \$200 cash-only deposit. Bentley's provides a vehicle viewing on the day before the auction – usually on the Friday before a Saturday auction. Interested bidders may view, but not drive the cars. In the afternoon of the viewing, each car engine is started. High bidders must pay for their cars on the day of the auction in cash – no credit cards are accepted. If a high bidder changes his or her mind, s/he will lose the \$200 deposit and will no longer be able to bid at Bentley's auctions. All sales are final and “as is.” Once the bidder has paid for the vehicle, the title is signed over to the new owner, who will complete the title transfer at MVD.

Bentley's Auction, 1915 Commercial St. NE, Albuquerque, NM 87109
(505) 344-1812

6. Media Publicity:

This program needs to be the subject of an ongoing, very visible publicity campaign in order for it to have a generally deterrent effect. Although the purpose of the ordinance is to remove the offender from the instrument of his or her crime, it is also expected that when word gets around about the

¹³Legal fees for defending a seizure can be substantial.

program, that some offenders might be deterred by the idea of losing a car. The city and the state should collaborate in a statewide publicity campaign to inform people not only that large numbers of cars are taken each month in Albuquerque, but that such programs are being enacted in other jurisdictions as well.

7. Other New Mexico Ordinances Currently in Place

- Doña Ana County's ordinance went into effect in January of 2003. Policies and procedures are being developed and refined. It contains the same provisions as the Albuquerque ordinance. Seizures are being enforced by the Sheriff's Department.
- Las Cruces' ordinance, modeled after Albuquerque's, became effective in January, 2004.
- Torrance County's ordinance, modeled after Albuquerque's was passed May 12, 2004 , effective June 12, 2004.

8. Localities Considering Local Ordinances:

- Roswell City Council has the ordinance under consideration.
- Chavez County is waiting to see how the Roswell ordinance works before considering a separate county ordinance.
- The Santa Fe City Council introduced the ordinance in mid-2003 where it died in committee.
- The Taos DA's office (8th District) plans to present the ordinance to the City Council.

9. State Law Summary:

There are currently 29 states that have state forfeiture laws for multiple offenders: Alaska, Arizona, Arkansas, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin. New Mexico is not included in this list because it has the forfeiture ordinances described above but no statewide DWI forfeiture law.¹⁴

10. Proposed Statewide Forfeiture Law:

In 2003, the New Mexico Legislature introduced a bill (HB139) to allow the state to bring vehicle forfeiture actions for repeated DWIs, enforced under the state's Forfeiture Act (see footnote 10). Such vehicle forfeitures would be brought in the state's district courts and would have to be combined with criminal charges, as required by the Forfeiture Act. According to the Legislative Finance Committee Fiscal Impact Report on the bill, the Department of Public Safety no longer pursues *any* forfeitures that are subject to the Forfeiture Act, describing it as "unworkable and procedurally burdensome."

A forfeiture bill introduced into the 2004 New Mexico Legislature (HB 488) proposed a statewide forfeiture law, also under the Forfeiture Act, that provided for seizure for driving while revoked or for violations of the Implied Consent Act¹⁵. It allowed seized vehicles to be returned if

¹⁴Insurance Institute for Highway Safety, *DUI/DWI Laws as of October, 2003*

¹⁵Implied Consent Act violations include driving with a BAC of .08 or higher (.02 if under 21) and any refusal to
2004 Review of Albuquerque's Forfeiture Ordinance – Page 11 of 55

the owners installed ignition interlocks for a period of three years. This bill did not make it out of any committee.

11. Recommendations:

It is NOT recommended that a statewide DWI forfeiture law be tied to the Forfeiture Act for the following reasons:

1. Under the Forfeiture Act, forfeitures would have to be combined with the criminal case. But criminal DWI cases in New Mexico are dismissed at high rates for reasons other than acquittal of innocent defendants, often due to technical factors such as the six-month rule running out. Additionally, conviction rates for driving while revoked are extremely low – judges give the reason as prosecutors who bargain away driving while revoked charges and prosecutors say it's the judges who dismiss them. Whatever the reasons, the result is that often nothing happens to offenders, either for DWI or for driving while revoked for DWI. Adding forfeiture to the criminal case adds an additional burden to already overburdened prosecutors. It also gives the prosecutors something else to plead away in a plea bargain.

2. Having a separate civil procedure carried out by the city attorney allows the city to negotiate agreements independent of the criminal case. For instance, the Albuquerque City Attorney's Office negotiates boot agreements and other civil remedies independent of the criminal case, as described in Section 4, *Legal Procedures*. Boot agreements work to the benefit of both the families and the city.

3. It has been suggested that the state develop a system to handle the administrative forfeiture (probable cause) hearings. Although this might sound like a good idea on its face because it would centralize the procedures, a similar system to administratively revoke licenses for DWI has been described as a "legal nightmare" by Santa Fe Police Chief John Denko,¹⁶ a sentiment that at one time or other has been echoed by most of the law enforcement agencies in the state.

4. It is recommended that the state set up an office of assistance to communities that want to pass local ordinances. This office would not require local governments to bring forfeiture actions under the Forfeiture Act, but rather would assist them in passing local ordinances and implementing procedures, offering legal advice and practical guidance on setting up a process to handle seized vehicles. The value of local ordinances rather than a state law is that localities can tailor the ordinance to local needs– deciding which DWI offense will trigger a seizure and what sanctions the local government will take against an

take a chemical test.

¹⁶Santa Fe Reporter, November 6, 2002. Chief Denko is currently the Secretary of the New Mexico Department of Public Safety.

offender (boot, interlock, forfeiture.)

Seizure and Forfeiture Forms

1. Albuquerque Ordinance, as amended 1/22/03
2. Notice of Vehicle Seizure
3. DWI Forfeiture Evaluation Sheet
4. City of Albuquerque Administrative Hearing Action Sheet
5. Owner Vehicle Release Agreement (for innocent owner)
6. Vehicle Immobilization (Boot) and Release Agreement (made with multiple owners including owner/offender)
7. Vehicle Immobilization (Boot) and Release Agreement (2nd offense, made with owner/offender)
8. Forfeiture Complaint
9. Disclaimer of Interest in Seized Vehicle
10. Disclaimer of Interest in Seized Vehicle, Addendum
11. Letter to MVD Requesting Driver History

Attachments

Full report from the Division of Government Research: Description and Methodology

1. Albuquerque Ordinance, as amended 1/22/03

CITY of ALBUQUERQUE
FIFTEENTH COUNCIL
[FORFEITURE ORDINANCE
as amended 1/22/03]

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

ORDINANCE

1 AMENDING CHAPTER 7, ARTICLE 6 OF THE REVISED ORDINANCES OF
2 ALBUQUERQUE, NEW MEXICO 1994, THE MOTOR VEHICLE SEIZURE AND
3 FORFEITURE ORDINANCE, BY PROVIDING FOR THE TEMPORARY SEIZURE AND
4 IMMOBILIZATION OF A VEHICLE FOLLOWING THE SECOND OFFENSE OF DRIVING
5 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

6 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
7 ALBUQUERQUE:

8 Section 1. Chapter 7, Article 6 ROA 1994 is amended to read:

9 § 7-6-1 FINDINGS.

10 The Council finds that the problems caused by those in the community who
11 drive while under the influence of liquor or drugs are substantial. Among the problems
12 caused by this type of unlawful activity are the potential for serious bodily injury and loss of
13 life to innocent citizens who are present upon public roads in the city. The Council also
14 finds that those who drive under the influence of intoxicating liquor are likely to cause
15 considerable property damage while driving. The Council further finds that to allow those
16 who are arrested for a [~~third~~] [second] or subsequent offense of driving under the
17 influence of intoxicating liquor or drugs, or have had their licenses suspended or revoked
18 for driving under the influence of intoxicating liquor or drugs access to motor vehicles
19 increases the likelihood that such persons will repeat the offense. The Council finds that
20 motor vehicles which are used by drivers who are arrested for a [~~third~~] [second] or
21 subsequent offense of driving under the influence of intoxicating liquor or drugs or whose
22 driving privileges have been suspended or revoked constitute a nuisance to the general
23 public and are dangerous to the health and safety of the general public. It is the purpose of
24 this article to protect the health and safety of the citizens of this city by abating such motor
25 vehicle nuisances.

26 § 7-6-2 VEHICLE NUISANCE.

27 A motor vehicle is hereby declared to be a nuisance and subject to forfeiture
28 pursuant to the provisions of this article if it is:

29 (A) Operated by a person who has been convicted of [~~two~~] [one]
30 prior driving while intoxicated offenses and is arrested for a [~~third~~] [second] or
31 subsequent offense of driving under the influence of intoxicating liquor or drugs, or

1 (B) Operated by a person whose license is suspended or revoked as a
2 result of conviction for driving while intoxicated [-in violation of § 8-2-1-8 ROA 1994 or
3 Section 66-8-102 NMSA 1978 and who has been either convicted of driving on a revoked
4 license or has received notice of an administrative revocation of his or her license or who
5 has by his own admission acknowledged that he is driving on a suspended or revoked
6 license-] [+or suspended or revoked as a result of a driving while intoxicated arrest+.]

7 § 7-6-3 ADMINISTRATION.

8 The Police Department shall be responsible for administration of this article.
9 Reasonable rules and regulations may be prescribed by the Mayor or his designee to carry
10 out the intent and purpose of this article pursuant to the standards created by this article.

11 § 7-6-4 VEHICLES SUBJECT TO FORFEITURE.

12 Except as otherwise provided herein, any motor vehicle which has been
13 declared a vehicle nuisance as defined by § 7-6-2 shall be subject to [+temporary seizure
14 or permanent+] forfeiture.

15 § 7-6-5 SEIZURE; FORFEITURE PROCEEDING.

16 (A) Motor vehicles subject to forfeiture under this article may be seized by
17 any police officer of the city upon an order issued by the district court.

18 (B) Seizure without such an order may be made if seizure is incident to an
19 arrest by the driver of the vehicle for either driving while intoxicated (~~[-third-]~~ [+second+]
20 offense, [~~-two-~~] [+one+] prior conviction) or driving while his or her license is suspended or
21 revoked as a result of [+a+] driving while intoxicated [+arrest+.]

22 (C) A vehicle seized under this article shall not be subject to replevin, but
23 is deemed to be in the custody of the Police Department seizing it subject only to the
24 orders and decrees of the district court. The police officer may take custody of the vehicle
25 and remove it to an appropriate and official location within the district court's jurisdiction
26 for disposition in accordance with this article.

27 (D) Immediately after a vehicle is towed for forfeiture under § 7-6-2, the
28 arresting officer will serve a copy of the Notice of Forfeiture to the individual whom the
29 vehicle was seized from at the time of arrest. A copy of the Notice of Forfeiture will be
30 mailed postage pre-paid to the lawfully registered owner as verified by the New Mexico
31 Motor Vehicle Division by the municipal employee who is retaining the vehicle in order to
32 notify the owner of the pending forfeiture. The notice shall contain information to be
33 designated by the City Attorney's Office, Legal Department, which shall include the
34 following:

35 (1) The license plate number, make, type and color of the vehicle;
36 (2) The location the vehicle was seized from;
37 (3) A statement that the vehicle has been taken into custody and
38 stored;

39 (4) The reason for [-impoundment-] [+seizure+]; ~~[-(violation of~~
40 Sections 7-6-1, et. seq., as amended, driving while intoxicated with two prior convictions for

1 Driving While Intoxicated or Driving on a Suspended or Revoked License due to a DWI
2 conviction);-]

3 (5) A name and phone number or title of municipal employee from
4 whom the owner can obtain further information;

5 (6) A statement that daily storage charges will be assessed in
6 addition to a towing charge;

7 (7) A statement that the owner has the right to contest the validity
8 of the impoundment by requesting a hearing in writing within four days of the date of
9 mailing of the Notice of Forfeiture;

10 (8) Copy of Section 7-6-1, et. seq., ROA 1994.

11 The owner may~~[-upon timely receipt of a request for a hearing as defined in division~~
12 ~~(D)(7) of this section,-]~~ request a hearing be scheduled by the city hearing officer. The
13 hearing, if requested within the ~~[-96 hour-]~~ period set forth above, shall be conducted by a
14 city hearing officer appointed by the Mayor. The hearing shall be held and the hearing
15 officer shall prepare a written decision within ~~[-five (5)-]~~ [+ten (10)+] working days
16 (excluding weekends and holidays) of receipt of the request unless the hearing is continued
17 with the agreement of the ~~[-owner-]~~ [+parties+]. The hearing shall be informal and not
18 bound by the technical rules of evidence. The city hearing officer shall only determine
19 whether the law enforcement officer had probable cause to seize the vehicle. The city
20 hearing officer shall mail written notice of his decision to the owner within two working days
21 of the hearing. If the city hearing officer finds that the law enforcement officer did not have
22 probable cause to seize the vehicle in question or that the vehicle should otherwise be
23 released, he shall issue and date a Certificate of Release, a copy of which shall be given to
24 the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the City shall
25 release the vehicle to its owner or the owner's agent, and storage fees shall be waived. If the
26 owner fails to present such certificate to the municipal employee having custody of the
27 vehicle within 24 hours of its receipt, excluding days when the DWI Forfeiture Office is not
28 open for business, the owner shall assume liability for all subsequent storage charges. The
29 certificate shall advise the owner of such requirement. If the city hearing officer determines
30 that the vehicle was properly seized, proceedings for an order for forfeiture shall be
31 instituted promptly.

32 In the event of seizure pursuant to division (B) of this section, proceedings for
33 an order for forfeiture shall be instituted promptly. Any person who, pursuant to the
34 records of the Motor Vehicle Division of the State Taxation and Revenue Department, has
35 an ownership or security interest in the subject matter vehicle shall be served with notice of
36 the forfeiture proceedings.

37 (E) When property is forfeited pursuant to this article, the Police
38 Department shall sell the motor vehicle, and the proceeds shall be used to carry out the
39 purpose and intent of this ordinance. Any proceeds that exceed the costs of administering
40 this ordinance shall be used for DWI [+enforcement,+] prevention and education. Any
41 vehicle not recovered by the owner within ~~[-90-]~~ [+30+] days after being notified by the
42 City that such vehicle has been released by the City shall be deemed abandoned and

1 disposed of in accordance with the notice provisions of Section 29-1-14, NMSA 1978. Any
2 proceeds from the sale of abandoned vehicles seized pursuant to this ordinance shall be
3 used to carry out the purpose and intent of this ordinance.

4 (F) A hearing fee of \$50.00 shall accompany each request for hearing
5 with the city hearing officer made pursuant to this section.

6 [+§ 7-6-6 TEMPORARY SEIZURE/IMMOBILIZATION

7 Notwithstanding any other provision of this Ordinance, in the interest of public
8 safety and health, the Police Department may seize a vehicle at the time of an arrest of a
9 person for driving while intoxicated or impaired, if that person only has one (1) previous
10 conviction of record and may offer the owner an opportunity to voluntarily request the
11 alternative of immobilization of the vehicle for a period of thirty (30) days. Such
12 immobilization may be accomplished by an Immobilization Device (Boot) at the owner's
13 designated location within the City of Albuquerque, or by impoundment at a secure facility,
14 in accordance with procedures established by the Police Department. The owner shall pay
15 the Police Department a fee for this voluntary, temporary seizure/immobilization and sign
16 an Immobilization Agreement with the City of Albuquerque. Such temporary
17 seizure/immobilization shall be imposed after opportunity for a probable cause hearing
18 hearing as provided for in this ordinance. +]

19 [~~§ 7-6-6~~] [+§7-6-7+] PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.

20 Notwithstanding § 7-6-4 any forfeiture shall be subject to the interest of:

21 (A) Any owner or co-owner of the vehicle who did not have knowledge of,
22 nor consented to, the use of the vehicle by the driver who caused the vehicle to become a
23 nuisance, provided that upon establishment of a prima facie case of lack of knowledge or
24 consent by the owner or co-owner, the burden of proving knowledge and consent shall be
25 upon the city; or

26 (B) Any secured party, to the extent of the security interest, if the secured
27 party proves that the security interest was acquired in good faith with no knowledge or
28 reason to believe that the vehicle would be used by the driver whose license has been
29 suspended or revoked. If the security interest is greater than the value of the vehicle, title
30 shall be transferred to the secured party upon motion to the district court. Any secured
31 party acquiring an interest after the vehicle is in the custody of the police department shall
32 have the burden of intervening in the forfeiture proceeding to protect such interest. Any
33 interest in the vehicle must be properly filed with the New Mexico Motor Vehicle Department
34 in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of
35 incident leading to the seizure.

36 Section 2. Severability Clause. If any section, paragraph, word or phrase
37 of this ordinance is for any reason held to be invalid or unenforceable by any court of
38 competent jurisdiction, such decision shall not affect the validity of the remaining
39 provisions of this ordinance. The Council hereby declares that it would have passed this
40 ordinance and each section, paragraph, sentence, clause, word or phrase thereof
41 irrespective of any provision being declared unconstitutional or otherwise invalid.

42 Section 3. Compilation. Section one of this ordinance shall be

1 incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico,
2 1994.

3 Section 4. Effective Date: This ordinance shall take effect five days after
4 publication in full.

5
6
7
8
9

2. Notice of Vehicle Seizure

3. DWI Forfeiture Evaluation Sheet

DWI Forfeiture Evaluation Sheet

Offender: _____

DOB: _____ SSN: _____

DOI: _____ Time: _____

DWI _____ Revoked DI1 DI3 BA3 BA7

BATs: _____ - _____ Eligible Date? _____

Refused # of Prior DWIs? _____ (_____)

Subject Vehicle: Year: _____ Make: _____ Model: _____ Color: _____

Sole Owner/Offender "OR" Co-Owner with: _____

Owner: _____ Relationship to Δ: _____

Officer: _____ # _____ Officer: _____ # _____

Prior Seizures of same vehicle?

Date	Offense:	Notes:
_____	_____	_____
_____	_____	_____

Prior Seizures with same owner?

_____	_____	_____
_____	_____	_____

Prior Forfeitures with same driver? CV #: _____

Notes: _____

DWI 2nd Revoked but Eligible

BOOT? OK w/APD? _____

RELEASE AGREEMENT Fees: \$ _____

4. City of Albuquerque Administrative Hearing Sheet

**CITY OF ALBUQUERQUE ADMINSTRATIVE HEARING
ACTION SHEET**

Claimant FTA

Officer(s) FTA

Officer _____ # _____

Officer _____ # _____

PC Established? No Yes

Innocent Owner? No Yes

Vehicle Released? No Yes

Tow? No Yes

Storage? \$ _____

Release Agreement

Boot Agreement

File Forfeiture

Notes: _____

5. Owner Vehicle Release Agreement
(innocent owner)

CITY OF ALBUQUERQUE, EX REL.,
ALBUQUERQUE POLICE DEPARTMENT,
Plaintiff,

vs.

ONE (1) _____,

VIN: _____

LICENSE PLATE NO. _____

Defendant,

VEHICLE RELEASE AGREEMENT

THIS AGREEMENT is approved and entered into this ____ day of February, 2004 by and between the **CITY OF ALBUQUERQUE, EX REL., ALBUQUERQUE POLICE DEPARTMENT** (hereinafter "APD"), and _____ ("Owner").

1. APD seized the above-referenced vehicle (subject vehicle") from _____ ("Offender") on or about _____ for [] DWI and/or [] Revoked Driver's License.
2. Owner acknowledges the following facts: (**Owner Must initial all**)
 - A. Offender was operating the subject vehicle with the knowledge and consent of the Owner. _____
 - B. Offender was arrested for operating the subject vehicle [] while intoxicated or impaired and/or [] while on a revoked driver's license from prior DWI offenses. _____
 - C. Offender has at least one prior DWI conviction/plea. _____
 - D. Offender is revoked and [] was eligible for reinstatement [] will be eligible for reinstatement on _____.
3. APD agrees to return subject vehicle to Owner under the following terms and conditions:
 - A. APD will release the subject vehicle upon execution of this Agreement and payment of \$_____ for tow and storage fees.
 - B. Owner agrees to show proof of insurance and a current registration for the

STIPULATED AND AGREED TO:

CITY OF ALBUQUERQUE
Robert M. White
City Attorney

Stanley D. Harada
Assistant City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4500

APPROVED:

Attorney for _____
Albuquerque, NM _____
(505) _____

Albert V. Chavez
City Administrative Hearing Officer

6. Vehicle Immobilization and Release Agreement

CITY OF ALBUQUERQUE, EX REL.,
ALBUQUERQUE POLICE DEPARTMENT,
Plaintiff,

vs.

ONE (1) _____,

VIN: _____

LICENSE PLATE NO. _____

Defendant,

VEHICLE IMMOBILIZATION AND RELEASE AGREEMENT

THIS AGREEMENT is approved and entered into this ____ day of February, 2004

by and between the **CITY OF ALBUQUERQUE, EX REL., ALBUQUERQUE POLICE**

DEPARTMENT (hereinafter "APD"), and _____

("Owner/Offender").

1. APD seized the above-referenced vehicle (subject vehicle") from Owner/Offender on or about _____, for [] DWI and/or [] Revoked Driver's License.
2. Owner/Offender acknowledges the following facts: **(Must Initial all)**
 - A. Owner/Offender was operating the subject vehicle at the time of the subject arrest. _____
 - B. Owner/Offender was arrested for operating the subject vehicle [] while intoxicated or impaired and/or [] while on a revoked driver's license from prior DWI offenses. _____
 - C. Owner/Offender has at least one prior DWI convictions/pleas. _____
 - D. Offender is revoked and [] was eligible for reinstatement [] will be eligible for reinstatement on _____.
3. APD agrees to return subject vehicle to Owner/Offender under the following terms and conditions:
 - A. APD will place the subject vehicle at Owner/Offender's residence and

Owner/Offender agrees to allow APD to place an immobilization device (“Boot”) on the subject vehicle for a period not less than thirty (30) days. The 30-day time period will commence on the day required fees are paid to APD.

B. Owner/Offender agrees to pay a flat \$650.00 immobilization fee. This fee must be paid in full directly to APD before APD will Boot the vehicle.

C. APD will remove the Boot within a reasonable time period following the 30 days of immobilization of the subject vehicle.

D. Owner/Offender agrees to show proof of insurance for the subject vehicle when APD removes the Boot. If Owner/Offender fails or refuses to show proof of insurance for the subject vehicle at that time, Owner/Offender agrees that the Boot will remain on the vehicle and additional charges will begin to accrue at the rate of \$8.00 per day until proof of insurance is produced by Owner/Offender.

E. Owner/Offender understands and agrees that if Owner/Offender’s driver’s license is revoked as a result of this incident, APD cannot release the vehicle to Owner/Offender upon removal of the Boot. If Owner/Offender cannot produce a valid driver’s license at the end of the 30-day boot period, Owner/Offender will designate a third party to take actual possession of the vehicle.

F. Owner/Offender agrees to take reasonable steps to protect the Boot and further agrees not to paint, cover, block, deface, or in any way change or obscure the Boot.

4. Owner/Offender acknowledges the subject vehicle was seized because Owner/Offender was driving while intoxicated or impaired and/or on a revoked driver’s license from prior DWI offenses. Owner/Offender agrees to not operate the subject vehicle while DWI or on a revoked license after APD removes the Boot from the vehicle. Because Owner/Offender is now aware of the basis of the seizure of the subject vehicle, Owner/Offender agrees to voluntarily surrender ownership of the subject vehicle if Owner/Offender is again arrested for DWI or driving on a revoked driver’s license while

operating the subject vehicle.

5. Owner/Offender further agrees to waive any future innocent owner defense if Owner/Offender is again arrested for DWI or driving on a revoked driver's license in any vehicle Owner/Offender owns.

6. Owner/Offender agrees to accept the subject vehicle "as is".

7. Owner/Offender further agrees to expressly waive and relinquish any and all claims, whether known or unknown, Owner/Offender has or may have against the State of New Mexico, City of Albuquerque, and APD, their agents and employees which result from or might result from the seizure of the subject vehicle.

_____ Telephone No. _____

Address: _____
(property location where vehicle will be immobilized)
(must be within City of Albuquerque)

STATE OF NEW MEXICO)
) **ss.**
COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me by _____ this ____ day
of February, 2004.

Notary Public
My Commission Expires:

STIPULATED AND AGREED TO:

CITY OF ALBUQUERQUE
Robert M. White
City Attorney

Stanley D. Harada
Assistant City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4500

APPROVED:

Attorney for _____

Albuquerque, New Mexico _____
(505) _____

Albert V. Chavez
City Administrative Hearing Officer

This page left intentionally blank

7. Vehicle Immobilization and Release Agreement from Owner/Offender

CITY OF ALBUQUERQUE, EX REL.,
ALBUQUERQUE POLICE DEPARTMENT,
Plaintiff,

vs.

ONE (1) _____,

VIN: _____

LICENSE PLATE NO. _____

Defendant,

VEHICLE RELEASE AGREEMENT

THIS AGREEMENT is approved and entered into this ____ day of February, 2004, by and between the **CITY OF ALBUQUERQUE, EX REL., ALBUQUERQUE POLICE DEPARTMENT** (hereinafter "APD"), and _____ ("Owner/Offender").

1. APD seized the above "subject vehicle" from Owner/Offender on _____ for [] DWI and/or [] Revoked Driver's License.

2. Owner/Offender acknowledges the following facts: **(Please initial all)**

A. Owner/Offender was operating the subject vehicle. _____

B. Owner/Offender was arrested for allegedly operating the subject vehicle [] while intoxicated or impaired and/or [] while on a revoked driver's license from prior DWI arrests or convictions/pleas. _____

C. Owner/Offender has at least one prior DWI conviction/plea. _____

D. Offender is revoked and [] was eligible for reinstatement [] will be eligible for reinstatement on _____.

3. APD agrees to return subject vehicle to Owner/Offender under the following terms and conditions:

APD will release the subject vehicle upon execution of this Agreement and payment of \$_____ in tow and storage fees.

B. Owner/Offender agrees to show proof of insurance and a current registration for the subject vehicle upon release of the vehicle by APD.

4. Owner/Offender acknowledges the subject vehicle was seized because Owner/Offender was driving DWI and/or on a revoked driver's license. Owner/Offender agrees that she will not operate any vehicle illegally after the vehicle is released by APD. Because Owner/Offender is now aware of the basis of the seizure of vehicles, Owner/Offender agrees to voluntarily surrender ownership of any vehicle if she is arrested for DWI or driving on a revoked driver's license while operating the vehicle.

5. Owner/Offender further agrees to waive any future innocent owner defense if she is arrested for DWI or driving on a revoked driver's license while operating any vehicle she owns.

6. Owner/Offender agrees to accept the subject vehicle "as is".

7. Owner/Offender further agrees to expressly waive and relinquish any and all claims, whether known or unknown, she has or may have against the State of New Mexico, City of Albuquerque, and APD, their agents and employees which result from or might result from the seizure of the subject vehicle.

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me by _____ this _____
day of February, 2004.

Notary Public

My Commission Expires:

STIPULATED AND AGREED TO:

CITY OF ALBUQUERQUE
Robert M. White
City Attorney

Stanley D. Harada
Assistant City Attorney
P.O. Box 2248
Albuquerque, NM 87103
(505) 768-4500

APPROVED:

Attorney for _____

Albuquerque, NM
(505) _____

Albert V. Chavez
City Administrative Hearing Officer

8. Forfeiture Complaint

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. _____

CITY OF ALBUQUERQUE, EX REL.,
ALBUQUERQUE POLICE DEPARTMENT,

Plaintiff,

v.

ONE (1) _____
V.I.N. _____
NEW MEXICO LICENSE NO. _____

Defendant.

FORFEITURE COMPLAINT

COMES NOW the City of Albuquerque, ex rel., Albuquerque Police Department, pursuant to City Ordinance 7-6-1 et seq., ROA 1994, as amended, and alleges the following:

1. Plaintiff, the City of Albuquerque, is a Municipal Corporation, duly organized under the laws of the State of New Mexico.

2. _____ was at all times material hereto, a resident of the State of New Mexico.

3. FINANCIAL INSTITUTION, is a company in the business of loaning money in the State of New Mexico.

4. On _____, 2004, _____ was stopped for traffic violations at _____, in Albuquerque, New Mexico (APD Report No. 99-_____).

5. _____ was driving ONE (1) 19 _____, V.I.N. _____, NEW MEXICO LICENSE NO. _____ - _____, which was registered to Claimant _____ with a [current/expired _____] New Mexico registration.

6. Through investigation, Albuquerque Police Department officers found _____ to be driving on a revoked or suspended license as a result of a conviction for Driving While Intoxicated in violation of Section 8-2-1-8 R.O.A. 1994 or Section 66-8-102 N.M.S.A. 1978 and driving while intoxicated or impaired in violation of Section 8-2-1-8 R.O.A. 1994 or Section 66-8-102 N.M.S.A. 1978.

7. The Albuquerque Police Department has conducted an investigation and

determines that the parties who may claim an interest in the aforementioned vehicle are:

_____, Albuquerque, New Mexico

_____, Albuquerque, New Mexico

_____, Albuquerque, New Mexico

8. _____ operated the aforementioned motor vehicle driving while intoxicated or impaired in violation of Section 8-2-1-8 R.O.A. 1994 or Section 66-8-102 N.M.S.A. 1978 and/OR while his driver's license was suspended or revoked as a result of an arrest for Driving While Intoxicated in violation of Section 66-8-102, N.M.S.A. 1978, as amended. Pursuant to the provisions of City Ordinance 7-6-1 et seq., ROA 1994, as amended, the operation of the aforementioned vehicle by _____ constitutes a public nuisance.

9. In accordance with City Ordinance 7-6-1 et seq., ROA 1994, as amended, the aforementioned vehicle is in the custody of the _____ Police Department, subject only to the orders and decrees of the District Court of the _____ Judicial District, Bernalillo County, New Mexico.

WHEREFORE, the Albuquerque Police Department prays for a judgment in its favor, that any right, title or interest in the aforementioned ONE (1) 19 _____, _____ in Color, V.I.N. _____, NEW MEXICO LICENSE NO. _____ - _____, be forfeited to the City of _____ Police Department and that the City receive the costs of this action and any such other and further relief as the Court may deem just and reasonable.

Respectfully Submitted,

CITY OF _____

City Attorney

Assistant City Attorney

Address

City, State, Zip

(505) _____

9. Disclaimer 1

DISCLAIMER

Claimant, _____, disclaims any interest in the property which is the subject matter of the above captioned case. This action may proceed without further notice to him/her provided no costs or fees are assessed against him/her.

Claimant

Address

City, State, Zip

(505) _____

I hereby certify that a true and correct copy of the foregoing was mailed delivered this ____ day of _____, 2004 to:

Assistant City Attorney

10. Disclaimer 2

CITY OF ALBUQUERQUE, EX REL.,
ALBUQUERQUE POLICE DEPARTMENT,
Plaintiff,

vs.

ONE (1) _____ (make of car) ,

VIN: _____

LICENSE PLATE NO. _____

Defendant,

DISCLAIMER

Claimant, _____, disclaims any interest in the property which is the subject matter of the above captioned case. This action may proceed without further notice to him/her provided no costs or fees are assessed against him/her.

Claimant

Address

City, State, Zip

(505) _____

STATE OF NEW MEXICO)

) ss.

COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me by _____ this ____ day
of _____, 2004.

Notary Public

My Commission Expires:

11. Request to MVD for Driver History



Legal Department
P.O. Box 2248, Albuquerque, NM 87103
(505) 768-4500 Fax (505) 768-4440

Martin J. Chavez, Mayor

Robert M. White, City Attorney

December _____, 2004

FIRST CLASS MAIL

Max Sanchez, Clerk Specialist
Motor Vehicle Division
Post Office Box 1028
Santa Fe, New Mexico 87504-1028

RE: CABQ, ex rel., APD v. ONE (1) 19 ___ BROWN ___ FORD ___ PU
V.I.N.: _____ NEW MEXICO LICENSE #: _____ -
_____;
Bernalillo County District Court No. CV-2001-00 _____

Dear Mr. Sanchez:

I am requesting a certified copy of the entire Motor Vehicle Division driving history on the following person:

<u>NAME</u>	<u>DATE OF BIRTH</u>	<u>SOCIAL SECURITY #</u>
_____	____/____/____	_____

I also need a certified copy of the MVD printout for this individual. My office has filed a Forfeiture Complaint against a vehicle Mr. _____ was driving. I will use these records as exhibits at trial. I need these records as soon as possible in order to complete my investigation.

Thank you for your assistance in this request. Please call me if you have any questions.

Sincerely,

Assistant City Attorney

Division of Government Research, UNM

APD Vehicle Forfeiture Study

March, 2004

James W. Davis

Annaliese M. Mayette

Overview

This study combined data on drivers of vehicles seized under Albuquerque's vehicle forfeiture ordinance with data on DWI arrests of those drivers. Data on 700 seizures between April 2001 and July 2002 was combined with DWI arrest records for July 1984 through July 2003.

This provided a DWI arrest history for each driver involved, and the ability to monitor re-arrests after the seizure for an average of 1.5 years. This is a relatively short period to monitor repeat offences, as the expected number of re-arrests would be fairly small. The time frame was dictated by data availability, and it was not possible to use a longer follow up period.

A comparison group of people arrested for DWI between April 2001 and July 2002 was selected from adjacent counties (Sandoval, Santa Fe and Valencia) and re-sampled to match the seizure group in terms of gender and number of prior arrests. The re-arrest rates were compared between the drivers of seized vehicles and the comparison group.

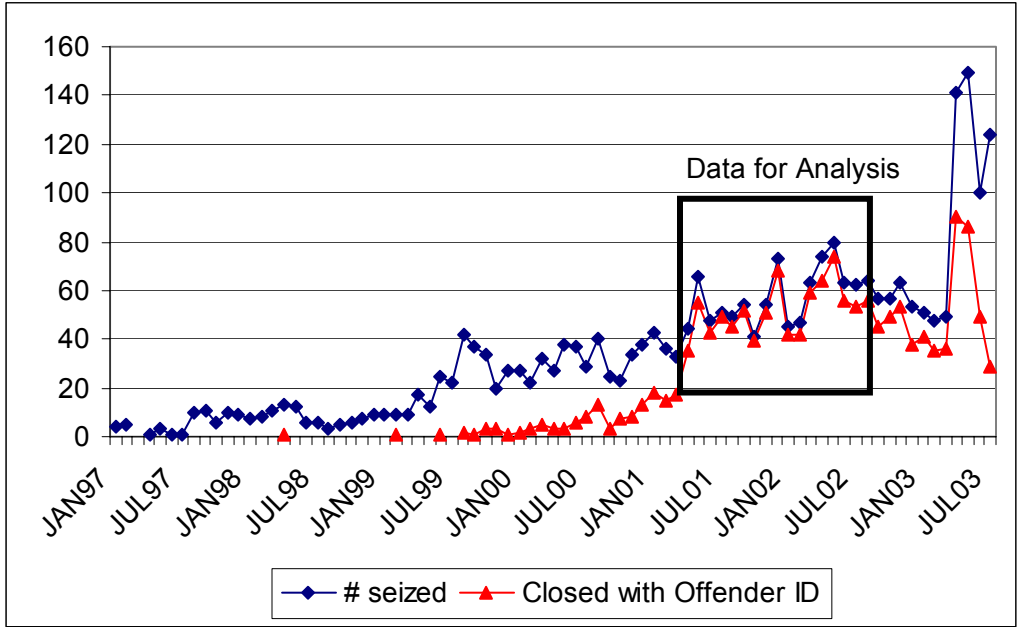
In addition, the trends in the number of alcohol-involved crashes in Albuquerque were examined for a general deterrence effect. If the publicity surrounding the forfeiture program produced a perception of swift and sure punishment in the driving population, we would expect the number of alcohol-involved crashes to decrease as the number of seizures stepped up.

Data Sources

Data on seizures was derived from the database used by Albuquerque PD to manage and track the seizure process. This database contains information on the vehicle, driver and owner, and information about the seizure process. Detailed driver identifiers were collected on most records after April 2001. Data before that time is not usable for matching.

There were very few seizures prior to January of 1997, and from then until June of 1999, there were generally fewer than 10 seizures per month. In June 1999, seizures jumped to an average of 32 per month, and then to about 57 per month in April of 2001.

Individual records were selected from the seizure database based on date of seizure, inclusion of identifying variables and final disposition of the case. Seizures between April 2001 and July 2002 were included if the driver's identification information was complete, and the case was closed. Driver's identification fields were considered complete if first and last name, social security number and date of birth were not missing. For the few drivers with multiple seizures in this period, the first incident was used. In this time period, more than 80% of the seizures in each month were eligible for inclusion.



DWI arrest data were derived from the DWI Citation Tracking System maintained by the Motor Vehicle Division. These data contain all DWI arrests (under state law) made in New Mexico from July 1984 through July 2003. DWI arrest histories for drivers whose vehicles were seized were extracted through a multi-pass matching process based on name, date of birth and social security number.

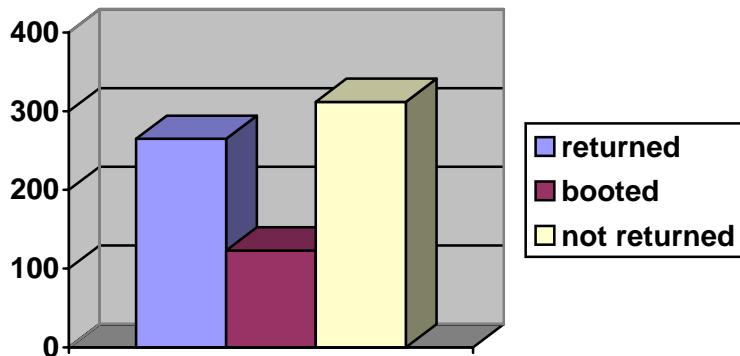
Drivers who did not have at least two DWI arrests prior to the seizure were excluded. This resulted in 700 seizure cases with matched DWI histories for analysis.

Characteristics of study population

Individuals with at least two DWI arrests on or before the seizure date were included in this analysis. There were 700 individuals who met these criteria. Females accounted for 14% and males accounted for 86%. Individuals between 30 and 49 years of age accounted for 67% of the total (36% from 30 to 39 and 31% were between 40 and 49 years old). Overall females were younger, with 62% under 40 years of age compared to 58% for males.

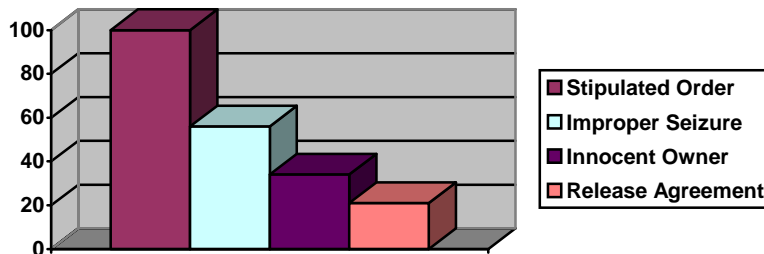
Vehicles could be seized for one of four reasons: Driving While Intoxicated with three priors, Driving on a Revoked License, both DWI and driving revoked, and other. Almost half of these individuals had their vehicle seized for DWI and driving revoked (49%). Of the vehicles in this analysis almost half were not returned (45%), 18% were booted and the remaining 38% were returned to the owner.

Distribution of Outcome of Seizure



There were several reasons APD might release a vehicle in addition to those released on boot agreements. These reasons other than boot agreements are: agreement, deadline, embezzled vehicle, improper seizure, innocent owner, obtained all paperwork, officer failure to appear, release agreement, released w/o boot, stipulated order, innocent owner, insurance company, return to lien company, missed deadline, and MVD mistake. All of these except for return to lien company ultimately result in the owner getting the car back. Stipulated orders and improper seizures accounted for 70% of the vehicles that were returned.

Returns by Reason



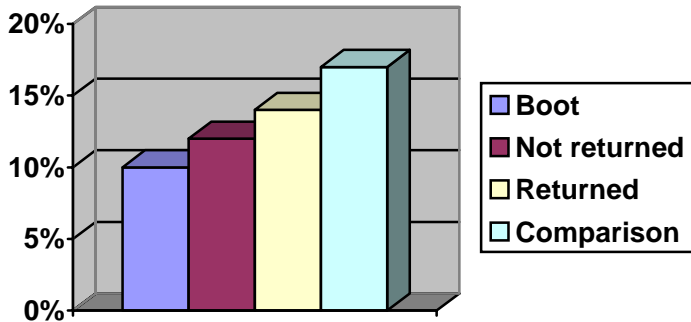
More than a third (35%) of the individuals had five or more prior arrests. People with fewer prior arrests were more likely to get their cars back. People with two prior arrests accounted for 29% of the returns, but only 18% of the total. Younger people were more likely to get their cars returned (49% return for drivers 20 to 29 years old, and 35% for drivers 40 to 49 years old). Age and number of priors is related.

Comparison group

A comparison group of 788 individuals who were arrested in Sandoval, Santa Fe or Valencia counties between April 2001 and July 2002 for their second or subsequent DWI was selected from the DWI CTS data. The records that met these criteria were sampled to match the seizure data by

gender and number of prior arrests. Compared to the seizure group, this group had the same percentage by gender (14 % females 86% males) and pattern for priors (5 or more was the modal number of DWI arrests, followed by 3, 4 and 2.) and very close age pattern (68% of the match group was between 30 and 49 years old, with 36% between 30 and 39, and 32% between 40 and 49).

Percent Rearrested by Group

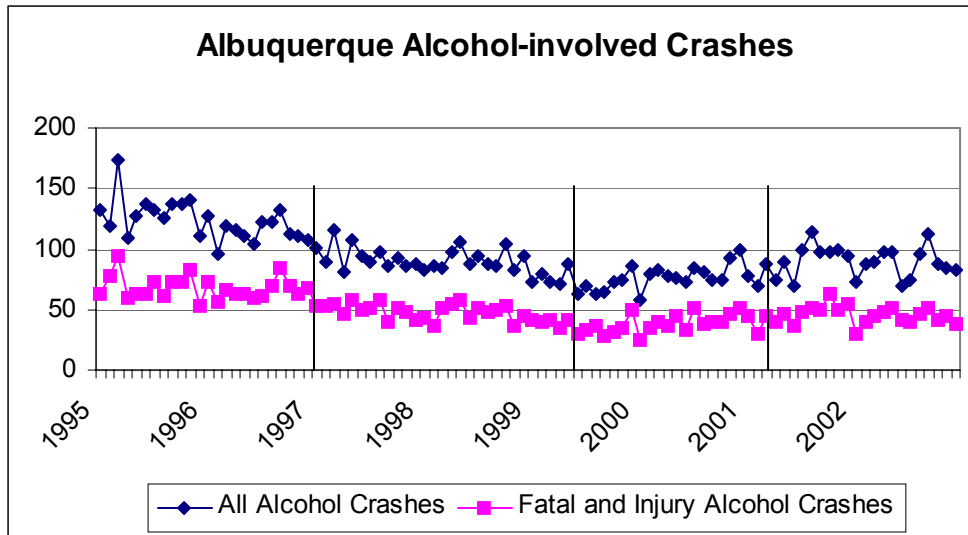


Overall, thirteen percent of the seizure group was rearrested by July 2003 compared to 17 percent of the comparison group. Those whose vehicles were booted had the lowest re-arrest rate, followed by those whose vehicles were not returned. This difference may be due to a selection effect, as not every seized vehicle is eligible for the boot program.

General deterrence

General deterrence theory states that people are less likely to engage in actions for which there are negative consequences. Consequences that are swift, sure and severe are more likely to deter. General deterrence depends on wide-spread knowledge of the consequences and their association with actions.

Vehicle forfeiture can be seen as a swift, sure and severe consequence for driving impaired or driving revoked, as so could have a general deterrence effect. However, alcohol-involved crashes in Albuquerque have been rising slowly since mid 1999, even though the main thrust of the forfeiture program has been during this period. The increase is probably driven by increasing population, particularly under age 30. It does not appear that the forfeiture program is receiving sufficient publicity to have a general deterrence effect.



Conclusions

- This study is limited by the relatively short follow up time, which leads to small numbers of re-arrests in both groups. A study with a longer follow up time will be necessary to draw definitive conclusions about the effect of the program.
- There was some reduction in the re-arrest rate of the study population compared to the comparison group. This is a group with a relatively high number of prior arrests, and highly likely to be rearrested. In the follow-up period, about 17% of the comparison group was re-arrested, compared to about 13% of the seizure group.

Recommendation: The publicity of the program is probably not sufficient to produce a general deterrence effect. The number of alcohol-involved fatal and injury crashes in Albuquerque has been rising slowly since 1999. Although the purpose of the program is not general deterrence, there could be some benefit in terms of crash reduction in heavily publicizing the existence of the forfeiture program.