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LETTER REPORT

PRELIMINARY ASSESSMENT OF THE LEGAL FEASIBILITY OF PROPOSED PROGRAMS INVOLVING CITIZEN REPORTING OF TRAFFIC-LAW VIOLATIONS

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U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

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INTRODUCTION

This is a letter report prepared under Contract DOT-HS-7-01536 that addresses the legal feasibility of proposed programs involving citizen reporting of traffic-law violations. These programs are intended to reduce the incidence of risk-taking driving behavior by assisting police and other authorities in detecting and identifying traffic-law violators.

The research and analysis leading to the preparation of this letter report was conducted by staff of the Policy Analysis Division of The University of Michigan Highway Safety Research Institute (HSRI) for the National Highway Traffic Safety Administration (NHTSA).

The importance of citizen participation in promoting highway safety has been recognized by public and private safety organizations alike (United States Department of Transportation 1974; Dudley-Anderson-Yutzy 1969, pp. 1-11). Past and existing citizen-participation efforts have included road hazard detection campaigns (United States Department of Transportation 1974, pp. 18-21), and emergency-aid programs such as REACT (Reese 1977; Moore 1976), as well as programs in which citizens have aided law-enforcement efforts.

Three programs in which citizens have aided in traffic law enforcement have been identified by the U.S. Department of Transportation. They are: the Puerto Rico Special Agent Program; Dallas' "T-Men" program; and the Wisconsin Drunk Driving Program (United States Department of Transportation 1974, pp. 15-17). In the Puerto Rico program, citizens recruited to serve as special traffic agents observed for violations and reported them to the police; the police, in turn, notified the owner of the offending vehicle of the violation and requested his cooperation in the program. The Dallas program also employed trained citizen volunteers who reported violations to a city-sponsored facility, which notified the vehicle owner and requested cooperation in the program. The Wisconsin campaign involved the distribution of cards asking citizens to report suspected drunk drivers to the police, but involved no organized citizen-observation program.

The proposed citizen-reporting program combines and expands the approaches used in the three programs described above. Underlying the proposed program are two beliefs: first, that police departments and driver licensing authorities, owing to funding and personnel limitations, are able only to deal with a small proportion of those drivers who pose the risk of causing traffic crashes; and second, that strategies other than adjudication and sanctioning can reduce the incidence of dangerous driving behavior. Thus, three possible means of implementing citizen-reporting programs have been suggested:

- citizens would report traffic-law violations to the police, who would use the information as the basis for prosecuting the driver;
- citizens would report violations to the driver licensing authority, which would either summon the driver or vehicle owner to appear for a driver-improvement interview, or send a warning letter to the driver or owner; and
- citizens would report violations to a private facility, which would notify the driver or owner of the reported violation.

The following section provides a brief discussion of the law-based constraints that could affect the implementation of citizen-reporting programs.

DISCUSSION OF LEGAL CONSTRAINTS

- Constitutional/Statutory Authority to Establish Citizen-Reporting Programs

There are no constitutional restrictions that would prevent the establishment of citizen-reporting programs similar to those described in the previous section. Moreover, there appear to be no statutory prohibitions against the establishment of such programs by state or local governments, by private organizations--such as automobile clubs, safety councils, and civic or fraternal groups, or by both (1).

- Using Citizen Reports As The Basis for Prosecution of Violators

As used here, "prosecution" includes criminal (2), quasi-criminal (3), and administrative (4) proceedings in which the driver's guilt of a traffic-law violation is determined and in which sanctions are imposed upon the guilty offender. Irrespective of the mode of adjudication in a particular state, prosecution of a suspected violator cannot commence unless the court (or administrative agency) has jurisdiction over him (5). In traffic-law enforcement, this normally occurs when a police officer observes a suspected violation, pursues the offending vehicle, and stops its driver. In the case of serious offenses, such as reckless driving or driving while intoxicated (DWI), the driver is arrested--that is, brought into custody (Fisher 1967, pp. 180-187); in the case of less serious violations, the driver is normally issued a citation in lieu of arrest. While arrest brings the driver under the jurisdiction of the court, a citation does not; it is only when a driver fails to answer the citation—that is, pay the fine or appear in court--that an arrest warrant is issued (Fisher 1967, pp. 84-86).

Citizen reporting, by its very nature, involves violations that occur outside the view of police officers. In most states, an officer may not arrest an alleged traffic offender identified by a citizen report unless he first obtains either an arrest warrant (6) or a summons in lieu of a warrant (Fisher 1967, pp. 120-23) beforehand. In the remaining states (7), an officer must have "probable cause," or "reasonable grounds to believe" (8) that the driver identified in the citizen report had committed an offense before he may make a warrantless arrest. The probable-cause determination must be an impartial one, made by a neutral judicial officer (9).

It is questionable whether a citizen report, especially an anonymous one, would supply the requisite probable cause for arrest. Even if the police officer could convince the judicial officer of the reporter's reliability (10), serious difficulties could be encountered with respect to identifying the offending driver. In all probability, a citizen reporter who observes a violation would be able to identify only the offending vehicle (by make, model, color, and registration plate number) and the time and

place of the violation. However, in the United States, vehicles commonly are driven by persons other than the vehicle owner, such as employees or family members (11); for that reason courts are reluctant to presume that the vehicle owner was its driver at the time of the violation (12). However, there is enough of a relationship between owning a vehicle and driving it that some courts have permitted an inference of driving from the fact of ownership (13). This indicates that an arrest warrant might be issued against the vehicle owner on the basis of a report, from a reliable citizen reporter, identifying the offending vehicle.

Even assuming a warrant or summons charging an offense could be issued against a vehicle owner, on the basis of a description of his vehicle, the owner still must be proven guilty. In states that still classify traffic offenses as crimes or "quasi-crimes" every element of the offense--including the driver's identity--must be proved beyond a reasonable doubt (14); in a small minority of states, guilt may be established by "clear and convincing" evidence (15), or even by a "preponderance" (majority) of the evidence (16). In those states that require proof beyond a reasonable doubt, and probably in the remaining states as well, establishing the driver's guilt by means of an owner-driver relationship would be difficult in the event the owner chooses to contest the charge (17).

Finally, the citizen-observer will be required to testify at a proceeding to determine the driver's guilt. This is because the Sixth Amendment to the U.S. Constitution (18) requires that, in a criminal case, the defendant be permitted to confront and cross-examine witnesses, and also because due process of law would likely require confrontation even in those states that have made traffic offenses "civil infractions" (19). The possibility of being called to testify could affect the willingness of some citizens to participate in reporting programs.

Thus, the effectiveness of programs employing citizen-observers, who report violations to the police for the purpose of adjudication and sanctioning, is likely to be severely limited. While the legal barriers identified here would not prohibit the operation of such reporting programs, they would entail significant time and expense to obtain

convictions.

- Using Citizen Reports As the Basis for Administrative Sanctions Against Violators

One possible function of citizen-reporting programs would be for citizens to report violations to the state driver licensing authority, which then could either summon the vehicle owner or the driver to appear for a driver-improvement interview, or simply notify the vehicle owner that a violation had been committed with his vehicle.

FOOTNOTES

1. This letter report will not discuss practical constraints that citizen-reporting programs could encounter. However, it should be noted that any programs that contemplate surreptitious monitoring of other person's activities, or which encourage persons to initiate official actions against one another, are likely to encounter fierce resentment from some members of the driving public.

2. Typical of the statutes that continue to classify moving traffic-law violations as misdemeanors include the following: GA. CODE ANN. § 68A-102 (1975); IND. CODE ANN. § 9-4-1-127 (Burns Supp. 1978); and TEX. REV. CIV. STAT. ANN. art. 6701d, § 143 (Vernon 1977)).

3. A number of states have eliminated imprisonment as a possible sanction for certain moving traffic-law violations. Typical of these provisions are the following: CAL. VEH. CODE §§ 40000.1—40000.28 (West Supp. 1978) [eliminating imprisonment except for convictions of serious offenses, and third and subsequent convictions of minor offenses]; OHIO REV. CODE ANN. §§ 2929.21(D) (Page 1975), 4511.99(D) (Page Supp. 1979) [eliminating imprisonment for first conviction of minor offenses]; and PA. STAT. ANN. tit. 75, § 6502 (Purdon 1977) [eliminating imprisonment for convictions of most offenses other than vehicular homicide and DWI].

4. See, e.g., N.Y. VEH. & TRAF. LAW, as amended, §§ 155, 225-228 (McKinney Supp. 1978-79); and R.I. GEN. LAWS §§ 31-41-1--31-41-5, 31-43-1—31-43-7 (Supp. 1977).

5. State v. Clayton, 584 P.2d 1111, 1114 (Alaska 1978); State v. Miller, 115 N.H. 662, 348 A.2d 345, 346-47 (1975); see also, People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 378 (1955).

6. Beck v. Ohio, 379 U.S. 89 (1964) [preference for warrant, generally]; 5 AM. JUR. 2d Arrest § 26 (1962) [arrest for misdemeanor].

7. Typical statutes eliminating the "in-presence" requirement for certain nonfelony arrests include the following: ILL. ANN. STAT. ch. 38, § 107-2 (Smith-Hurd 1970); KAN. STAT. ANN. § 22-2401(c)(2) (1974); N.Y. CRIM. PRO. LAW § 140.10 (McKinney 1971); TEX. CODE CRIM. PRO. ANN. art. 14.03 (Vernon 1977); and WIS. STAT. ANN. § 968.07 (West 1971). Some of these provisions, such as Texas' and Wisconsin's, apply only to warrantless arrests for "crimes" or "breaches of the peace"; thus it is questionable whether they would authorize warrantless arrests for minor traffic-law violations

committed outside the officer's presence.

8. See, BLACK'S LAW DICTIONARY 1365 (4th ed. rev. 1968), indicating that "probable cause," "probable cause to believe," and "reasonable cause to believe" all have equivalent legal meanings.

9. Aguilar v. Texas, 378 U.S. 108 (1964); Giordenello v. United States, 357 U.S. 480 (1958).

10. Giordenello v. United States, 357 U.S. 480 (1958); see also, Aguilar v. Texas, 378 U.S. 108 (1964) [issuance of search warrant].

11. People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 379 (1955).

12. Commonwealth v. Pauley, 368 Mass. 286, 331 N.E.2d 901 (1975) [evasion of toll payment]; State v. Kay, 151 N.J. Super. 255, 376 A.2d 978 (Law Div. 1977) [leaving the scene of a traffic crash]; People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377 (1955) [speeding]; Commonwealth v. Slaybaugh, 468 Pa. 618, 364 A.2d 687 (1976) [leaving the scene of a traffic crash].

13. State v. DeBiaso, 6 Conn. Cir. Ct. 297, 271 A.2d 857 (App. Div. 1970) [reckless driving]; State v. Jordan, 5 Conn. Cir. Ct. 561, 258 A.2d 252 (App. Div. 1969) [leaving the scene of a traffic crash]; City of Chicago v. Hertz Commercial Leasing Corp., 71 Ill.2d 333, 375 N.E.2d 1285, cert. denied, --- U.S. ---, 99 S. Ct. 915 (1978) [parking]; Commonwealth v. Pauley, 368 Mass. 286, 331 N.E.2d 901 (1975) [evasion of toll payment]; State v. Kay, 151 N.J. Super. 255, 376 A.2d 978 (Law Div. 1977) [leaving the scene of a traffic crash].

14. In re Winship, 397 U.S. 358, 364 (1964).

15. N.Y. VEH. & TRAF. LAW § 227(1) (McKinney Supp. 1978-79); R.I. GEN. LAWS § 31-43-3(1) (Supp. 1977); WIS. STAT. ANN. § 345.45 (West Supp. 1978-79).

16. N.D. CENT. CODE § 39-06.1-03(4) (Supp. 1977); OR. REV. STAT. § 484.375(2) (1977).

17. Compare, State v. Kay, 151 N.J. Super. 255, 376 A.2d 978 (Law Div. 1977) [owner-driver inference sufficient to prove guilt beyond reasonable doubt], with People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 379 (1955) [refusing to apply owner-driver inference], and Commonwealth v. Slaybaugh, 468 Pa. 618, 364 A.2d 687, 690 (1976) [questioning whether vehicle ownership by itself proves, beyond a reasonable doubt, that the vehicle owner was the driver].

18. U.S. CONST. amend. VI. The confrontation provision was made applicable to the states in Pointer v. Texas, 385 U.S. 400 (1965).

19. U.S. CONST. amend. XIV; Annot., 60 A.L.R. 3d 427 (1974). Confrontation and cross-examination are more likely to be required where the licensing authority uses affadavits, written testimony, or hearsay as the basis of a sanctioning decision, even though the witness is available to testify. In this regard see, In re Sweeney, 257 A.2d 764, 765 (Del. Super. Ct. 1969); English v. Tofany, 32 A.D.2d 878, 302 N.Y.S.2d 221, 222 (1969); and Flory v. Department of Motor Vehicles, 84 Wash.2d 568, 527 P.2d 1318, 1320-21 (1974). See also, August v. Department of Motor Vehicles, 264 Cal. App. 2d 52, 70 Cal. Rptr. 172, 178-79 (1968). One should see generally, Willner v. Committee on Character and Fitness, 373 U.S. 96, 103-04 (1963).

20. See, e.g., MICH. COMP. LAWS ANN. § 257.320(a) (1977).

21. See, e.g., CAL. VEH. CODE § 13800(c) (West Supp. 1978); and ME. REV. STAT. ANN. tit. 29, § 2241-A (1978).

22. Because citizen reports eventually will be reduced to writing, and communicated to persons other than the citizen-reporter and the driver or vehicle owner, this report will discuss defamation actions arising out of reports as libels.

23. The essential question is one of control or right of control; see, RESTATEMENT (SECOND) OF AGENCY § 220 (1958).

24. State of Oregon v. Tug Go - Getter, 299 F. Supp. 269, 276 (D. Or. 1969) [applying Oregon law]; Scottsdale Jaycees v. Superior Court of Maricopa County, 17 Ariz. App. 571, 499 P.2d 185, 188 (1972); Chavez v. Sprague, 209 Cal. App. 2d 101, 25 Cal. Rptr. 603, 609-10 (1962); Bollman v. Kark Rendering Plant, 418 S.W.2d 39, 44-45 (Mo. 1967); Baxter v. Morningside, Inc., 10 Wash. App. 893, 521 P.2d 946, 948-49 (1974). See also, RESTATEMENT (SECOND) OF AGENCY § 225 (1958).

25. The rationale for holding the government immune from suit are set out in Kawananakoa v. Polyblank, 205 U.S. 349 (1907). The best known example of a government waiving some aspects of its immunity from suit is the Federal Tort Claims Act, the substantive provisions of which may be found at 28 U.S.C.A. §§ 2671-2680 (West Supp. 1978).

26. RESTATEMENT (SECOND) OF AGENCY §§ 217B, 359C (1958); 53 AM. JUR. 2d Master and Servant § 453 (1970).

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