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Three DUIs -- and Lincoln County confiscates your vehicle -- for keeps

Drunken driving - The county's major cities sign on to the practice, but a related court challenge is pending

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NEWPORT -- Counties around the state gave up years ago on trying to confiscate the cars of drunken drivers, but the practice is alive and growing in Lincoln County.

The central coast county ups the ante for anyone convicted of driving under the influence of intoxicants.

Drivers with a first offense, like elsewhere in the state, have their cars impounded and must pay for towing and storage. For a second offense, the car is impounded and drivers must pay an additional \$250 fee to reclaim it. On a third conviction, the car belongs to the county.

When the county adopted the ordinance in 1994, it covered only unincorporated areas. Depoe Bay, Siletz, Waldport and Yachats soon signed on, but the three largest communities -- Lincoln City, Newport and Toledo -- declined to participate. In recent months, each of the three cities has adopted companion ordinances. Toledo was the last, joining up last week.

That means any driver convicted of a third DUI in Lincoln County will be looking for a new ride. The county counts any previous DUI conviction in the United States toward the total.

"This is one of the most effective tools I've ever heard of for getting drunk drivers off the road," Lincoln County Commissioner Bill Hall said.

Other counties -- including Multnomah, Lane and Deschutes -- also had forfeiture ordinances to discourage drunken driving, but the passage of Measure 3 in 2000 led them to abandon the programs. The constitutional amendment forbids law enforcement agencies from keeping someone's property unless the person is convicted of a crime.

It also requires the agencies to show "clear and convincing" evidence that the property was directly linked to the crime. To prevent agencies from profiting, it says money gained from selling confiscated property may go only to alcohol and drug treatment programs.

"Measure 3 made it so it was no longer a program we could afford financially," said Sue Brewster, Deschutes County sheriff's legal counsel. "The cars you get on DUIs are generally not worth that much, and it cost us more to run the program. We broke even prior to Measure 3. After Measure 3, we couldn't make a penny on it."

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Wanted as deterrent

Lincoln County directed forfeiture money to the seizure program before Measure 3 but never expected it to be self-supporting, said Rob Bovett, the assistant Lincoln County counsel who challenged Measure 3 on behalf of the Lincoln Interagency Narcotics Team.

"Our commissioners adopted it simply for the deterrent value, and so because our program wasn't dependent on revenues, when Measure 3 passed, our program didn't go away," he said.

The Oregon Supreme Court has made no decision on the challenge. Bovett said if the court strikes the measure down, he expects to see other counties restore forfeiture programs under regulations passed by the Legislature at the end of the 2005 session.

House Bill 3457 restored criminal forfeitures and reformed civil forfeitures. It will allow police agencies to direct forfeiture proceeds to prevention and enforcement, and requires 30 percent to go to treatment programs. It also requires a criminal conviction before forfeiture, Bovett said. The new regulations are pending the court decision.

Meanwhile, Lincoln County, which administers the forfeiture program for its cities and unincorporated areas, will continue fighting drunken driving the way it has for 11 years. To date, the county has seized 138 vehicles, with 57 forfeited and sold at public auction or awaiting auction. It's given about \$200 to the Lincoln County Health and Human Services Department for alcohol and drug treatment programs, but is holding back about \$4,300 awaiting the Supreme Court ruling.

The program has never been a moneymaker, Bovett said. Most of the cars and trucks are junkers, he said. He remembers discovering a 5-pound rotting beef roast in a '64 Ford pickup. The driver didn't try to claim the truck, but he did inquire about the meat, Bovett said.

Brand-new pickup

Another time, he drove a '66 Barracuda from the impound lot only to discover it had no brakes. "The police report indicates that the deputy thought the driver was attempting to elude arrest," Bovett said. "It's clear to me that he just couldn't stop."

Most drivers convicted of a second drunken-driving offense forfeit their cars "because it would cost more to pay the tow bill than they are worth," he said. "We view it as basically we're getting a weapon off the street."

But the county does encounter the occasional bonanza, such as the driver that Commissioner Hall calls the program poster child. The man moved to the county from out of state in 1999.

"He had seven previous DUIs under his belt," Hall said. "Apparently, he had money, though, because he had just bought a brand-new Dodge pickup and paid \$32,000 cash. Six months later, he was arrested for DUI number eight. He forfeited the vehicle, and we sold it for \$27,000."