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How Useful Is the New Aggressive Driving Legislation?

Victor E. Flango and Ann L. Keith

“Police chase’ took on a new meaning when a motorist angry about getting a speeding ticket decided to go after the officer who issued the citation, slamming her car into his cruiser several times.”¹

“Someone cut in front of someone else. Drivers exchanged ugly words. One of them hurled a bologna sandwich. Then a shot rang out.”²

Aggressive driving usually refers to a disregard for others on the road and is distinguished from the more extreme “road rage,” which involves violent, criminal acts. Nevertheless, with an 1,800 reported incidents of violent road behavior involving the use of an automobile in the United States in 1996, it is a national problem requiring attention. Aggressive driving is responsible for more than 27,000 fatalities per year as well as over 3,000,000 injuries, costing over \$150 billion dollars.³

A survey of 6,000 drivers by the National Highway Traffic Safety Administration (NHTSA) found that 60% of the drivers interviewed believed that unsafe driving by others is a major personal threat to them and their families.⁴ A December 2, 2003 AAA survey found aggressive driving to be the top threat on Washington, D.C. area roads. Forty-three percent of the respondents said that aggressive driving was more of a danger than traffic congestion and road conditions, and even impaired driving.⁵ Moreover, AAA notes that aggressive driving has been increasing 7% per year since 1990.⁶

The incidents that trigger aggressive driving in the average driver are usually simple matters of discourtesy—hand and facial gestures, loud music, overuse of the horn, tailgating, speeding, and failure to signal when changing lanes. These driving behaviors are just the trigger points, while the actual causes of aggressive driving can be traced back to all forms of stress in an individual’s daily life. “Road warriors” are the result

of a flashpoint of all the accumulated stresses in life.⁷ Like driving under the influence, aggressive driving is not a simple action, but a behavioral choice drivers make.

NHTSA defines aggressive driving as follows: “when individuals commit a combination of many traffic offenses as to endanger persons or property.” A more specific definition is “the operation of a motor vehicle involving *three or more moving violations as part of a single, continuous sequence of driving acts which is likely to endanger any person or property.*”⁸ Driving acts are ones you would expect: running stop signs, disobeying red lights, speeding, tailgating, weaving in and out of traffic, passing on the right, unsafe lane changes, going around railroad gates, flashing lights and blowing horns, facial and hand gestures.

Although some states have enacted laws specifically directed at aggressive driving, many do not distinguish aggressive driving from other traffic offenses. A national study of 2,858 cases showed that exceeding the posted speed limit was the most frequently used indicator of aggressive driving cases (914) and that improper lane changes (512) and driving too closely (233) were other common offenses that indicated aggressive driving.

A SURVEY OF STATES THAT HAVE AGGRESSIVE DRIVING LAWS

What is the experience of states that have aggressive driving laws? This question was posed to place Virginia’s experience in

This article was adapted from a study done for the Virginia Department of Motor Vehicles. The authors are grateful to Vincent Burgess for his help and support, to our colleague Don Cullen for his assistance on the project, to Neal Kauder for his graphics expertise, and to Mary McFarland and Walter Latham for surveying the states. Thanks to all of those who reviewed the drafts of the Virginia survey questionnaires: Judge Thomas Kelly of Arlington; Colonel W. Steve Flaherty, superintendent, Virginia State Police; Susan Williams, director of the Commonwealth’s Attorneys’ Services Council; Dana Schrad, executive director of the Virginia Association of Chiefs of Police, and Russell K. Cox, management analyst, Virginia State Police.

Footnotes

1. *Angry Motorist Slams Car Into Cruiser*, Associated Press, November 7, 2003 (filed at 11:55 a.m. ET).
2. David Chernicky, *A Tale of Road Rage, Bologna and Bullet*, DAILY PRESS (Newport News, Va.), May 2, 2002.
3. American Institute for Public Safety, *Aggressive Driving and the Law*, PowerPoint presentation, Aggressive Driving and the Law Symposium, Miami, December 2000. Data are from 1999.
4. NHTSA, *AGGRESSIVE DRIVING ENFORCEMENT: STRATEGIES FOR IMPLEMENTING BEST PRACTICES*, 4 (2000).
5. AAA, *Aggressive Drivers Remain Top Threat*, Mid-Atlantic news release (December 2, 2003). See www.aaamidatlantic.com.
6. Mark Pepper, *More about Road Rage*, U.S. NEWS WORLD REP. (June 1997).
7. *Id.*
8. NHTSA, *supra*. note 4, at 6 (emphasis added).

FIGURE 1: COMPARISON OF AGGRESSIVE DRIVING STATUTES BY STATE.

| | Year Enacted | Penalty | Is Anger Management or Aggressive Driving Education Specifically Stated in the Statute? | Additional Penalties Specific to Aggressive Driving Conviction | Other Information |
|---------------------|--------------|---|---|---|--|
| Arizona | 1999 | Class 1 Misdemeanor punishable by up to 6 months in jail, a fine up to \$5,000, or both. | Yes. Mandatory traffic school and education sessions may be ordered. | 1st Offense: traffic school and possible suspension of driver's license for 30 days. 2nd Offense: within 24 months results in 1-year license revocation. | Reckless driving is a Class 2 Misdemeanor punishable by up to 4 months in jail, a fine up to \$750, or both. |
| California | 2000 | Punishable by not less than 5 days in a county jail nor more than 90 days or a fine of not less than \$145 nor more than \$1,000. | Yes. Anger management or road rage courses may be ordered. | 1st Offense: 6-month suspension of driver's license and/or anger management or road rage course. 2nd Offense: 12-month suspension of driver's license and/or anger management or road rage course. | Road Rage (or aggressive driving) is part of the reckless driving statute. |
| Delaware | 1999 | Fine \$100-\$300 or jail 10-30 days or both. | Yes. Mandatory anger management course is ordered. | 1st Offense: \$100-\$300 fine or jail 10-30 days or both. 2nd Offense: within 36 months results in \$300-\$1,000 fine or jail 30-60 days or both. Mandatory suspension of driver's license for 30 days. | Suspended sentences are not permitted for aggressive driving violations. |
| Florida | 2001 | None | No | No | The designation of aggressive careless driving does not create a new violation or offense. The purpose of the designation is to provide a method to collect data of such instances that might arise through the inclusion of a checkbox on uniform traffic citations |
| Georgia | 2001 | Points are assessed against driving record. | Yes. Anger management course may be ordered. | If assessed points meet prescribed levels, suspension of driver's license is ordered. | Penalties are based upon cumulative points assessed against driving record. |
| Maryland | 2001 | Fine not exceeding \$500. | No | 5-point penalty on driver's license. | |
| Nevada | 1999 | Misdemeanor | Yes. Traffic safety course is ordered. | 1st Offense: Traffic safety course and possible suspension of driver's license for < 30 days. 2nd Offense: within 24 months, revocation of driver's license for 1 year. | |
| Rhode Island | 2000 | Fine not less than \$20 nor more than \$500. | Yes. Anger management course may be ordered. | Possible suspension of driver's license for 30 days. | |
| Virginia | 2002 | Class 2 Misdemeanor punishable by up to 6 months in jail, a fine up to \$1,000, or both. | Yes. Anger management course may be ordered. | 1st Offense: Anger management course may be ordered. | Aggressive driving with the intent to injure another person is a Class 1 Misdemeanor. Reckless driving is a Class 2 Misdemeanor. |

context. Virginia's law went into effect July 1, 2002, making it the eighth state to enact a law against aggressive driving. Figure 1 summarizes the aggressive driving legislation in each state. (Statutory citations are detailed in Appendix A.)

Aggressive driving laws in Florida, Maryland, Nevada, and Rhode Island are described below.

Florida

Florida has two applicable statutes: reckless driving and aggressive careless driving. The reckless driving statute requires intent be proven. The aggressive careless driving statute requires only that the offender to be guilty of "two or more of the following acts simultaneously or in succession": exceeding the posted speed; unsafely or improperly changing lanes; following another vehicle too closely; failing to yield the right-of-way; improperly passing; or violating traffic control and signal devices. Note the following citation statistics for Florida (note the different time periods):

| <u>RECKLESS DRIVING</u> | <u>AGGRESSIVE DRIVING</u> |
|-------------------------------------|--------------------------------------|
| January 2002 – December 2002 | October 2002 – September 2003 |
| 13,589* | 8,335 |

*NOTE: Includes both reckless and DWI.

The Florida contact indicated that the Florida Highway Patrol's policy is to cite the most serious offense. Reckless driving is the more serious offense because the only ramification of aggressive driving is that the officer checks off a box on the citation indicating that the driver has met the statutory definition of "aggressive driving." Aggressive driving is not a punishable offense under Florida law. In 2001 the Florida legislature passed a new designation "Aggressive Careless Driving," but this offense is a designation of existing offenses as constituting Aggressive Careless Driving and is used only to collect data on the number of such instances that might arise through the inclusion of a checkbox on Uniform Traffic Citations.⁹

9. William P. Cervone, *State Attorney's Office*, LEGAL BULL. 2002-2003 (Eighth Judicial Circuit), 1 (July 2002).

Maryland

Reckless driving citations are clearly more frequent than aggressive driving citations in Maryland. Aggressive driving is much more difficult to prove because three violations must occur consecutively. The fine for reckless driving also is much higher (\$575) than the fine for aggressive driving (\$355). Law enforcement respondents reported that the distinction between the two laws was clear, but that aggressive driving was rarely used because of the difficulty in prosecuting those cases. Law enforcement informants also believed that behavior at the stop did not affect the charge, as the offense was clear before the stop was made. From the court's perspective, aggressive driving citations have rarely been seen, and the differences between reckless and aggressive driving were not clear. Nonetheless, the court contact felt confident that police officers would be clear on the details of the law. He felt, as far as reckless driving citations go, that there were plenty of sentencing options, although fines were the most common. Only in cases involving younger drivers were driver improvement classes and treatment programs used to any extent. None of the contacts had any information on recidivism.

Nevada

As in Maryland, aggressive driving offenses are cited much less frequently in Nevada than reckless driving offenses. In the Reno Municipal Court, from the enactment of the law in 1999 until November 2003, there have been four aggressive driving charges initially filed, but only one has resulted in a final charge of aggressive driving. Prosecutor contacts suggested that because of evidentiary problems and the technical nature in proving aggressive driving beyond a reasonable doubt, aggressive driving charges are often plea-bargained or reduced. In the same court, over the same period of time, there have been 621 initial reckless driving charges and 213 reckless driving final charges. The number of reckless driving charges grew from 19 in 2000, to 211 in 2001, and to 224 in 2002, but dropped to 167 in 2003. Both prosecutors and law enforcement reported that the distinction between aggressive and reckless driving laws was clear, and prosecutors found the Nevada Highway Patrol to be very thorough when it made attempts to cite aggressive driving over reckless driving. Aggressive driving can have a greater penalty than reckless driving, in that the driver's license can be suspended. If the experience of the Reno Municipal Court is representative of other Nevada counties, then aggressive driving is hardly ever used, and the charge is amended down over half the time.

Rhode Island

The aggressive driving law in Rhode Island went into effect in August 2000. The Rhode Island Training Academy is responsible for instructing law enforcement officers. Training academies are held every four years. The aggressive driving statute will be covered at the next session of the training academy, scheduled for August 2004. Since the law was enacted in 2000 until November 6, 2003, there have been 52 aggressive driving

convictions. In the same time period, there have been 222 reckless driving convictions. Law enforcement believed that one citation was not necessarily more difficult to prove than the other. All were clear on the distinction between reckless and aggressive driving, and noted that intent is not needed to convict on aggressive driving. Most contacts replied that the law was effective to the extent it was used, but it is used infrequently.

One law enforcement contact had only written two or three citations since the law was enacted, but believed that citations for aggressive driving were just as easy to write and prove as those for reckless driving. Aggressive driving in Rhode Island requires excessive speeding or two other violations in sequence (e.g., tailgating, rapid lane changes, etc.) and is a summons offense, whereas reckless driving is a misdemeanor. Officers said behavior at a stop could be taken into account, but it was at the officer's discretion. Where it is possible, police would prefer to cite reckless driving because it carries a greater penalty.

SUMMARY OF STATE SURVEY

Four of the seven states with aggressive driving laws (not counting Virginia) were asked about their experience with that legislation. Aggressive driving is not cited frequently in three of the four states. Law enforcement officers prefer to cite reckless driving when it is an option because it carries a greater penalty. Although the remaining state, Florida, has a significant number of aggressive driving violations, the violations do not carry a separate penalty.

AGGRESSIVE DRIVING IN VIRGINIA

On April 7, 2002, the governor of Virginia approved legislation that makes aggressive driving punishable by up to six months in jail, a fine up to \$1,000, or both.¹⁰ Virginia is the first state that empowers judges to order violators to take a course in anger management. The governor also approved legislation to establish a driver improvement clinic program. Section 46.2-490 provides for a curriculum, which includes instruction on alcohol and drug abuse, aggressive driving, distracted driving, and motorcycle awareness. According to the legislation, approved on March 22, 2002,

the driver improvement clinic program shall be established for the purpose of instructing persons identified by the Department and the court system as problem drivers in need of driver improvement education and training and for those drivers interested in improving driving safety.

The National Center for State Courts (NCSC) proposed to evaluate aggressive driving programs in Virginia to determine which are most effective in reducing recidivism. The goal of these programs is to help traffic offenders avoid aggressive driving tactics by managing their own angry behavior behind the wheel.

After more than a year of study, and several site visits dis-

10. *Governor Makes Law "Aggressive Driving" Bill*, DAILY PRESS (Newport News, Va.), April 8, 2002.

cussing the issue with judges, commonwealth's attorneys, and law enforcement, NCSC project staff found aggressive driving was simply not being charged as an offense by law enforcement and commonwealth's attorneys, and consequently, cases were not being filed in courts or referred by courts for services. Under those circumstances, evaluation of anger management and other treatment alternatives was not possible.

Anecdotal evidence from many interviews conducted throughout Virginia led project staff to reach tentative conclusions. First, police officials regard aggressive driving as more egregious than reckless driving (although the statute defines aggressive driving as an intermediate offense—i.e., an offense less severe than reckless driving but more severe than many traffic offenses). Second, because there were comparatively few cases being cited by law enforcement and prosecuted by the commonwealth's attorneys, few aggressive driving cases were filed in court. As a result, there was no incentive to modify existing treatment programs or to create new ones.

THE SURVEY

Draft questionnaires were written for law enforcement, prosecutors, and district judges to solicit their perspectives on the current operation of the aggressive driving statute, as well as any suggestions for changes.

The law enforcement questionnaire was drafted in June 2003 and sent to the Department of Motor Vehicles and several police associations for review. Law enforcement questionnaires were prepared so they could be completed in electronic form. Three hundred ninety usable responses were received.

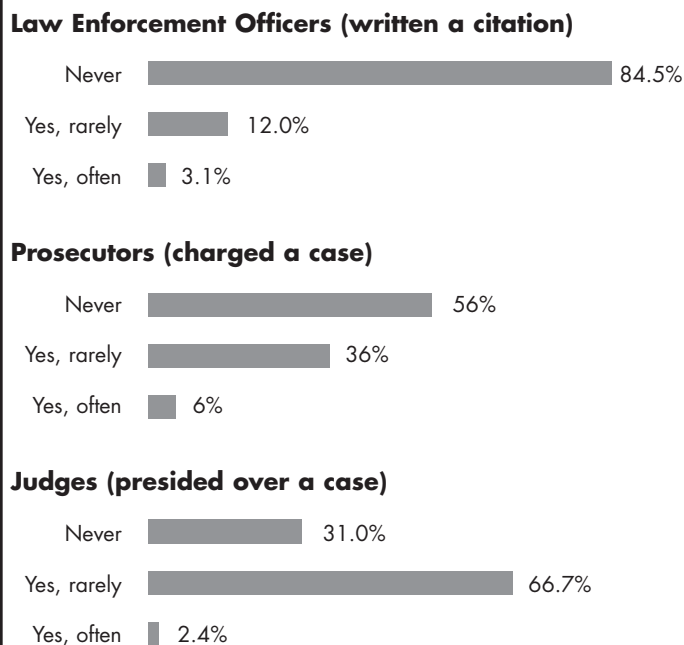
The questionnaire for the commonwealth's attorneys was received by the director of the Commonwealth's Attorneys' Services Council, and 32 commonwealth's attorneys responded. A similar questionnaire for district judges was drafted and revised based on comments from the Virginia Department of Motor Vehicles and a district judge. This questionnaire was distributed to district judges at the 2003 Judicial Transportation Safety Conference held August 13-14, 2003, and 42 judges responded.¹¹

HOW OFTEN ARE AGGRESSIVE DRIVING LAWS USED IN VIRGINIA?

The first question on all three surveys was designed to determine the frequency of use of aggressive driving laws.

Ninety-six percent of the law enforcement officers who completed the questionnaire said they rarely or never wrote a citation for aggressive driving. Only 3% said they "often cite an offender for aggressive driving." Similarly, 56% of the prosecutors said they have never charged a person with an aggressive driving violation, and 36% said they do so only rarely. Thirty-one percent of judges have never heard an aggressive driving case, and another 67% heard them only rarely.

FIGURE 2: HOW OFTEN ARE AGGRESSIVE DRIVING LAWS USED?



1. Law Enforcement

Figure 3 shows the reckless or aggressive driving citation options used by law enforcement officers.

Law enforcement officers were asked, "In approximately what percentage of the traffic violations do you have the option of citing either reckless driving or aggressive driving?" Nearly half (48.5 percent) said that it was rare (less than 5 percent) that an incident afforded them the option to cite *either* reckless driving or aggressive driving. A small percentage of the officers (7 percent), however, believed that they could have written either offense in half of the incidents. Given the choice, where such an option was legitimate, 74 percent of the law enforcement officers who responded to the survey said they would write the ticket for reckless driving, as opposed to 22 percent who would choose the aggressive driving offense. Of the other legitimate options, "improper driving" was the most frequent choice listed.

Most law enforcement officers (70 percent) said that the behavior of the driver at the scene did not affect their decision to cite for either reckless driving or aggressive driving, but a significant proportion (28 percent) said that driver behavior did influence their decision. For the primary reasons police do *not* cite vehicle operators for aggressive driving, see Figure 4.

11. Judges who attended the traffic safety conference may be more interested in traffic cases than other judges.

FIGURE 3: RECKLESS DRIVING LAWS IN VIRGINIA

Source: VCC Codes (reckless.doc)

| | Misdemeanor Offense Class | Statute | Penalty (Y= Years) (M = Months) |
|---|------------------------------|-----------------|---------------------------------------|
| Aggressive Driving | | | |
| Aggressive driving | Class 2 | 46.2-868.1 § | 0-6M |
| Aggressive driving with intent to injure | Class 1 | 46.2-868.1 § | 0-12M |
| Pass | | | |
| Emergency vehicle, overtake or pass | Class 1 | 46.2-829§ | 0-12M |
| Pass at railway crossing or intersection | Class 1 | 46.2-858§ | 0-12M |
| Pass two vehicles abreast | Class 1 | 46.2-856§ | 0-12M |
| Pass without visibility | Class 1 | 46.2-854§ | 0-12M |
| Police Command, Disregard | | | |
| Disregard police command to stop, endangerment | Felony 6 | 46.2-817(B)§ | 1Y-5Y |
| Fail to stop for police, attempt to escape or elude | Class 3 | 46.2-817(A)§ | Fine |
| Racing | | | |
| Racing | Class 1 | 46.2-865§ | 0-12M |
| Racing, aiding or abetting | Class 1 | 46.2-866§ | 0-12M |
| School Bus | | | |
| School bus flashing lights, fail to stop for | Class 1 | 46.2-859§ | 0-12M |
| Speeding | | | |
| 20 MPH or more over speed limit-limit is 30 MPH or less | Class 1 | 46.2-862(i)§ | 0-12M |
| 20 MPH or more over speed limit-limit is 40 MPH or more | Class 1 | 46.2-862(iii) § | 0-12M |
| 60 MPH or more when limit is 35 MPH | Class 1 | 46.2-862(ii)§ | 0-12M |
| Speed, truck-exceed 65 MPH on two-lane highway | Class 1 | 46.2-862§ | 0-12M |
| Speed over 80 MPH | Class 1 | 46.2-862(iv)§ | 0-12M |
| Speed unreasonable for conditions | Class 1 | 46.2-861§ | 0-12M |
| Other | | | |
| Control, load or passengers interfere with | Class 1 | 46.2-855§ | 0-12M |
| Endanger life or limb | Class 1 | 46.2-852§ | 0-12M |
| Enter highway, fail to yield right of way | Class 1 | 46.2-863§ | 0-12M |
| Fail to yield right of way, sign posted | Class 1 | 46.2-863§ | 0-12M |
| Out of control or bad brakes | Class 1 | 46.2-853§ | 0-12M |
| Parking lots, drive in endangering life or limb | Class 1 | 46.2-864§ | 0-12M |
| Riding abreast in one lane | Class 1 | 46.2-857§ | 0-12M |
| Signal turn or stop, fail to | Class 1 | 46.2-860§ | 0-12M |

Note: Misdemeanors also carry a monetary penalty.

FIGURE 4: WHY DO LAW ENFORCEMENT OFFICIALS NOT CITE VEHICLE OPERATORS FOR AGGRESSIVE DRIVING?

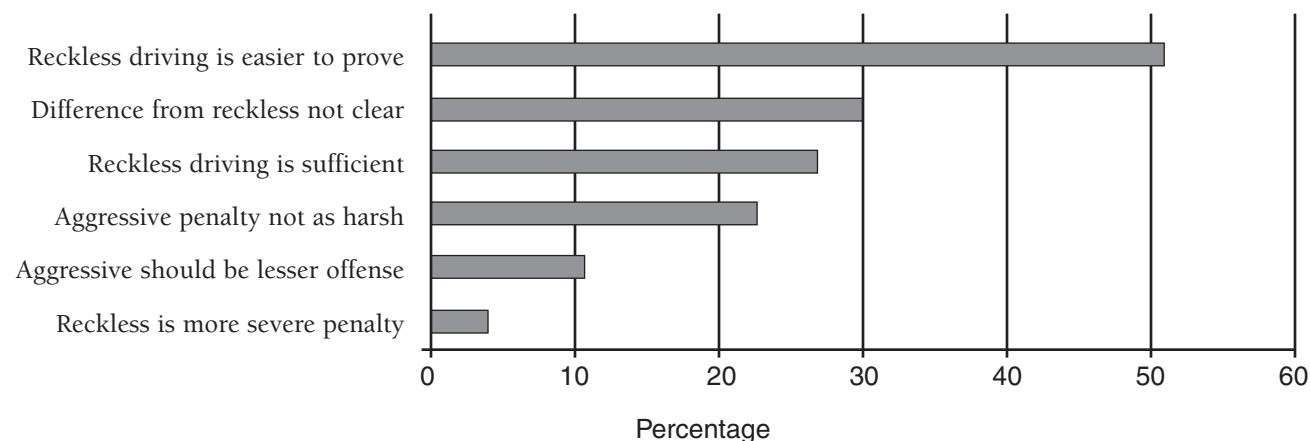


FIGURE 5: WHY DO PROSECUTORS NOT CHARGE VEHICLE OPERATORS FOR AGGRESSIVE DRIVING?

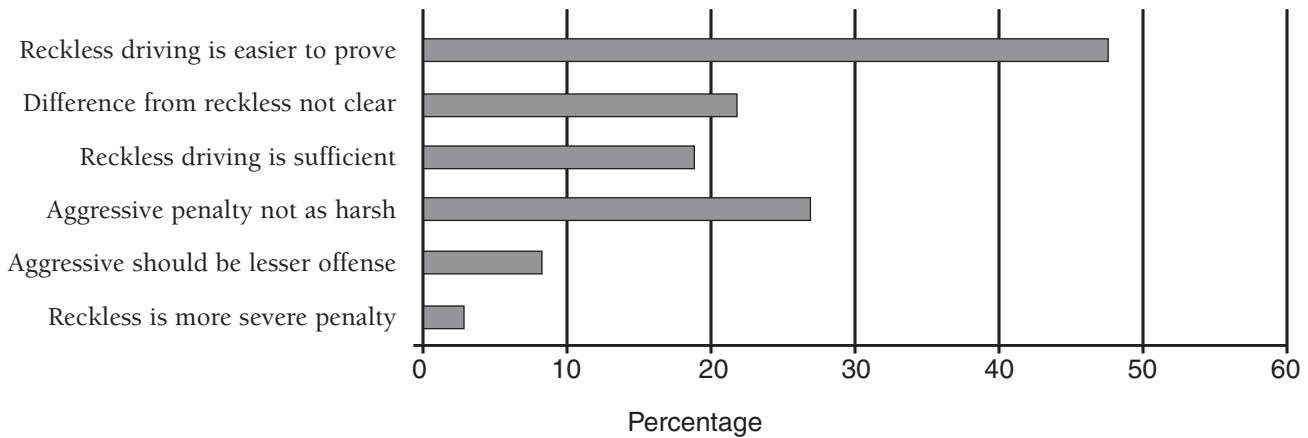
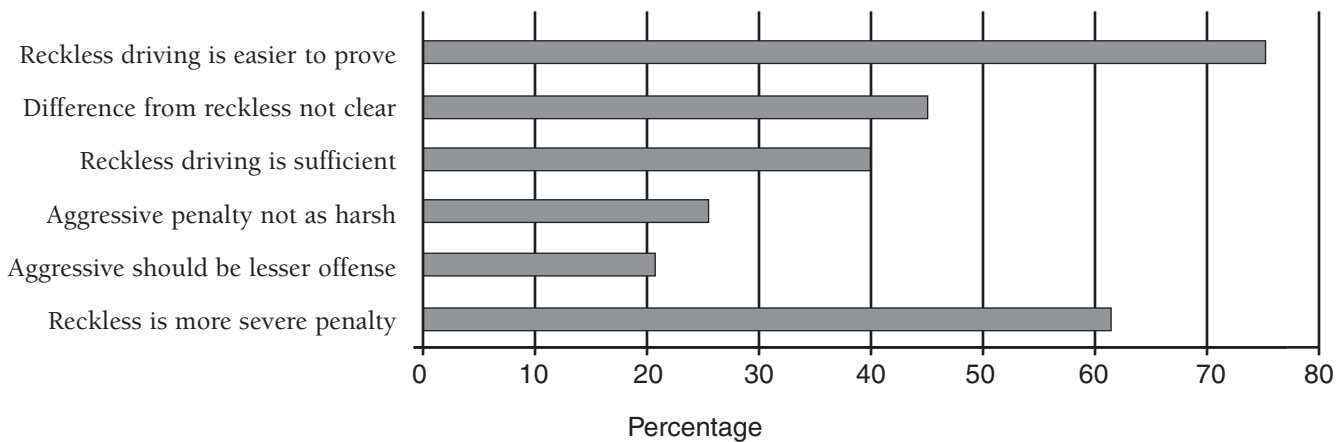


FIGURE 6: WHY DO JUDGES NOT CONVICT VEHICLE OPERATORS FOR AGGRESSIVE DRIVING?



2. Prosecutors

When presented with a similar option for the charging decision, an even stronger majority (65%) of the commonwealth’s attorneys said that rarely (less than 5% of the time) do they choose aggressive driving when reckless driving is an alternative. If they did have a legitimate choice of charges, 56% of the prosecutors would prefer to charge reckless driving, compared to the 32% who would prefer aggressive driving. Driver behavior has more of an influence on the prosecutor’s than on the law enforcement officer’s decision. More than half (55%) of the commonwealth’s attorneys who responded to the survey said that the driver’s behavior does affect their decision on which offense to charge, and 45% said it did not.

For the commonwealth’s attorney’s primary reasons for *not* charging drivers for aggressive driving, see Figure 5.

3. Judges

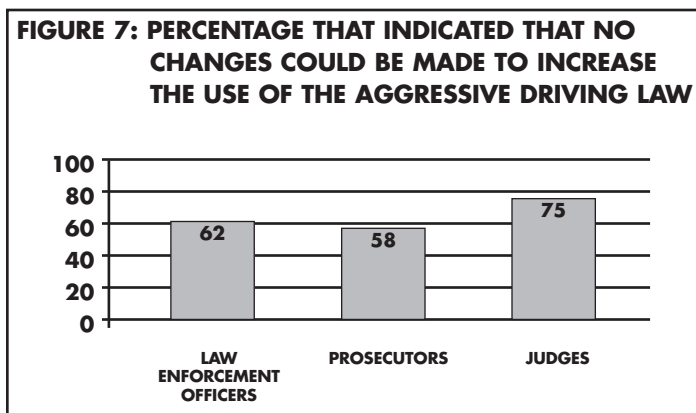
The majority of district court judges (57%) said that aggressive driving was a viable alternative in less than 5% of reckless driving cases that came before them. Many of the judges did not answer the question of how often an aggressive driving conviction is a viable alternative to a reckless driving conviction, and those who did said that such convictions were rare (see figure 6).

In summary, the fact that reckless driving is easier to prove was the major reason law enforcement officers did not cite, prosecutors did not charge, or judges did not convict aggressive drivers. With one exception, a significant proportion (20% to 40% percent) of all three types of groups reported that the difference between reckless driving and aggressive driving was not clear and that the reckless driving offense is sufficient. The exception was district judges, of whom over 60% said a charge of reckless driving was to be preferred to aggressive driving because it carries a more severe penalty.

WHAT CHANGES IN THE LAW OR PENALTY WOULD INCREASE USE OF THE AGGRESSIVE DRIVING LAW?

With regard to law enforcement officers, 62% reported that no changes could be made in the law that would cause them to cite aggressive driving offenses more frequently. Fifteen percent of the respondents said that they would be more likely to write aggressive driving citations if the charge were pre-payable, thus reducing the time law enforcement officers needed to spend in court. Twenty-three percent of the respondents did suggest some changes in the law. Most said “stiffer penalties,” but others said to make the offense easier to prove (remove the intent provision) or the law clearer. Yet, a vast majority of the officers (78%) said that even if the penalty for aggressive driving was

more severe, they would not write more tickets. Several of the officers said “anger management” classes were needed, and some preferred that the classes be mandatory.



Like law enforcement officers, most prosecutors (58%) said that neither changes in the law nor changes in the penalty would cause them to charge aggressive driving more frequently. About a quarter of the judges did not respond to this set of questions, but the 28 judges who did said a change in law was required if the aggressive driving statute was to be used more often. An even higher proportion (79%) responded that changes in penalty would not affect the use of aggressive driving laws. Most judges (71%) are satisfied with the sentencing options available to them now and have not noticed any specific penalties that reduce recidivism rates.

CONCLUSIONS FROM THE VIRGINIA SURVEYS

- The aggressive driving law is rarely used. Law enforcement officers rarely, if ever, write tickets for aggressive driving; prosecutors rarely charge the offense; and judges rarely see these offenses in court.
- About half of the judges believed that reckless driving laws were sufficient and that there was no need for specific aggressive driving legislation. About a quarter of police officers agreed, but commonwealth’s attorneys were much more likely to believe that the legislation was necessary.
- Most often the offense is clear, so the officer will cite either reckless driving or aggressive driving; therefore, the commonwealth’s attorney does not often have to decide between the two offenses. When the option is available, law enforcement and prosecutors both prefer to cite or charge reckless driving. Aggressive driving requires a proof of intent that reckless driving does not. About half of the police and prosecutors and three-quarters of the judges said reckless driving is easier to prove than aggressive driving.
- Most law enforcement officers reported that the behavior of the driver at the scene did not affect which offense was charged, but prosecutors are much more affected in their charging decision by the behavior of the driver at the scene.
- Overall, law enforcement officers did not believe that changes in the law or in the penalty would result in them writing more tickets for aggressive driving. Most commonwealth’s attorneys came to the same conclusion with respect to charging.
- Overall, judges were satisfied with the sentencing alterna-

tives available, but more judges than law enforcement officers or prosecutors said a change in the aggressive driving law, but not in the penalties, was needed. Most judges believe that the reckless driving offense is sufficient and that an aggressive driving law was not needed, although a strong minority (21%) believed that aggressive driving should be a lesser-included offense under reckless driving.

Aggressive driving legislation in Virginia was designed to be an intermediate option for use when standards of proof for reckless driving could not be achieved. In practice, aggressive driving is often more difficult to prove than reckless driving is. There are perhaps three reasons for this. The first is the need to prove “intent” in aggressive driving cases, but not in reckless driving cases. Furthermore, in the current legislation, aggressive driving has both a subjective and an objective component. Reckless driving is easier to prove because the subjective element of “intent” is not part of the burden of proof.

Second, by its very nature, the definition of aggressive driving requires that a series of unsafe acts occur in a sequence, consequently making aggressive driving more difficult to prove than any single traffic violation. Finally, reckless driving carries a more severe penalty. Given the choice among offenses, law enforcement, prosecutors, victims, and the public would prefer using charges of reckless driving to deal with serious traffic violations.

Given this situation, three legislative responses are possible:

1. Remove “intent” as an element of proof for aggressive driving.
2. Propose more severe penalties for aggressive driving.
3. Add an “aggressive driving” tag to other traffic offenses to permit enhancing the existing penalties and to track the incidence of aggressive driving for statistical purposes that may lead to changes in legislation.

We did not recommend additional education and training of law enforcement officers because most understand the difference between aggressive and reckless driving. The question is what is the incentive to cite aggressive driving if reckless driving is an option? Reckless driving does not require proof of intent and the penalties are more severe.

Because aggressive driving laws are a relatively new experiment in Virginia, as in all states, we recommended that the experiment continue to unfold until Virginia and other states obtain sufficient experience to determine with more certainty what, if any, legislative changes are required. Many states are struggling with the issue of aggressive driving, and there is an opportunity for states to learn from each other the relative effectiveness of various aggressive driver programs in reducing the incidence of aggressive driving.

The idea of employing anger management techniques to reduce the incidence of aggressive driving remains promising. However, until Virginia is able to identify a sufficient number of aggressive drivers who may benefit from such treatment, an assessment of the types of treatment that are most effective is simply not possible. This is another reason to wait for the situation to “ripen” in Virginia, at which time the issue of anger management treatment for aggressive driving should be reopened.



Victor Eugene Flango is vice president, Research and Technology Services, at the National Center for State Courts. He leads the approximately 40 research and technology staff members in developing and managing the national-scope, multijurisdictional, revenue-generating projects and programs. His Ph.D. degree is from the University of Hawaii (1970) and he is a Fellow of the Institute for Court Management. He is currently directing a project on the court's role in impaired driving for the National Highway Traffic Safety Administration



Ann L. Keith is currently a consultant for the Research, Knowledge and Information Services, and Development divisions of the National Center for State Courts. While a court research associate at the National Center, her research projects included the Court's Role in Reducing the Incidence of Impaired Driving, Expediting Dependency Appeals, and Improving Judicial Campaign Conduct. Before joining the National Center, she was an elementary school principal in Tucson, Arizona. She received a J.D. at the William and Mary School of Law, an M.Ed. in educational leadership from Northern Arizona University, and a B.A. in elementary education from the University of Arizona.

APPENDIX A: STATES WITH AGGRESSIVE DRIVING LEGISLATION, JULY 10, 2003.

Currently, eight states have enacted aggressive driving laws.*

| | |
|---------------------|---|
| Arizona | A.R.S. § 28-695 (2003) <i>Aggressive Driving; Violation; Classification; Definition</i> |
| Delaware | 21 Del. C. § 4175A <i>Aggressive Driving</i> |
| Florida | Fla. Stat. § 316.1923 (2002) <i>Aggressive Careless Driving;</i> Fla. Stat. § 316.650 (2002) <i>Traffic Citations</i> |
| Georgia | O.C.G.A. § 40-6-397 (2002) <i>Aggressive Driving; Penalty</i> O.C.G.A. § 40-5-57 (2002) <i>Suspension or Revocation of License of Habitually Negligent or Dangerous Driver; Point System</i> |
| Maryland | Md. TRANSPORTATION Code Ann. § 21-901.2 (2002) <i>Aggressive Driving</i> Md. TRANSPORTATION Code Ann. § 16-402 (2002) <i>Assessment of Points</i> |
| Nevada | NRS § 484.3765 (2003) <i>Aggressive Driving</i> |
| Rhode Island | R.I. Gen. Laws § 31-27.1-3 (2002) <i>Aggressive Driving Defined</i> R.I. Gen. Laws § 31-27.1-4 (2002) <i>Penalties</i> |
| Virginia | Va. Code Ann. § 46.2-868.1 (2003) <i>Aggressive Driving; Penalties</i> Va. Code Ann. § 46.2-492 (2003) <i>Uniform Demerit Point System</i> |

An additional 17 states have introduced aggressive driving bills from 1999 to 2003: Connecticut, Hawaii, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Washington.

* New York enacted a "road rage" law in July 2002 that requires that pre-licensing and defensive driving courses to contain a component of road rage awareness education.