



# STATE OF NORTH CAROLINA

## INVESTIGATIVE REPORT

**NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION**

**DRIVING WHILE IMPAIRED VEHICLE SEIZURE PROGRAM**

**RALEIGH, NORTH CAROLINA**

**JUNE 2012**

**OFFICE OF THE STATE AUDITOR**

**BETH A. WOOD, CPA**

**STATE AUDITOR**

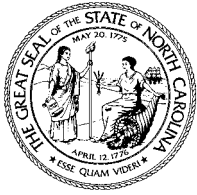
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**Beth A. Wood, CPA**  
State Auditor

STATE OF NORTH CAROLINA  
**Office of the State Auditor**

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**AUDITOR'S TRANSMITTAL**

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The Honorable Beverly Perdue, Governor  
Dr. June St. Claire Atkinson, State Superintendent,  
North Carolina Department of Public Instruction  
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to North Carolina General Statute § 147-64.6(c)(16), we have completed our investigation of allegations concerning the administration of the statewide contract for the towing, storage, and sale of vehicles seized under North Carolina General Statutes § 20-28.1 through § 20-28.9. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with North Carolina General Statute § 147-64.6 (c) (12). We appreciate the cooperation received from the management and employees of the North Carolina Department of Public Instruction during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA  
State Auditor

June 27, 2012

## TABLE OF CONTENTS

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	PAGE
INTRODUCTION .....	1
ORGANIZATION AND PROGRAM OVERVIEW.....	3
FINDINGS AND RECOMMENDATIONS.....	5
APPENDIX.....	9
RESPONSE FROM THE NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION.....	13
ORDERING INFORMATION .....	15

## INTRODUCTION

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The Office of the State Auditor received a complaint through the *State Auditor's Hotline* concerning North Carolina's driving while impaired (DWI) vehicle seizure operations. The allegations concerned distribution of proceeds from the sale of seized vehicles, inadequate protection of the public from habitual DWI offenders, and unintended harm to innocent owners<sup>1</sup> of DWI seized vehicles. The North Carolina Department of Public Instruction is authorized to administer the statewide or regional towing, storage, and sales contract for vehicles seized from individuals that were habitually driving while impaired.

The scope of this investigation was limited to the contracts and operations for the eastern regional contractor (contractor) in effect from June 2010 through May 2011, with emphasis on DWI seized vehicle sales.

Our investigation included the following procedures:

- Review of applicable North Carolina General Statutes
- Examination of the Department of Public Instruction's reports to the North Carolina General Assembly Joint Legislative Education Oversight Committee
- Review of the North Carolina Department of Transportation, Division of Motor Vehicles (DMV) State Title and Registration System as it applies to DWI vehicle seizures
- Examination of towing, storage and sales reports and related documentation provided by the Department of Public Instruction and the contractor
- Examination of reports from the Department of Public Instruction
- Interviews with personnel from the Department of Public Instruction, DMV, and the Department of Administration as well as the contractor

This report presents the results of our investigation. The investigation was conducted pursuant to North Carolina General Statute § 147-64.6 (c) (16).

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<sup>1</sup> Vehicle owner who did not know and had no reason to know their vehicle was being driven by someone whose driver's license was revoked.

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## **ORGANIZATION AND PROGRAM OVERVIEW**

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Effective December 1, 1997, the North Carolina General Assembly amended the motor vehicle statutes for driving while impaired (DWI) to implement the recommendations of the Governor's DWI Task Force. This revision increased the penalties for habitual offenders repeatedly arrested for DWI. The current DWI seizure statutes (North Carolina General Statutes § 20-28.1 through § 20-28.9) authorize the seizure of the vehicle that a habitual offender is driving without a valid driver's license and prohibits this person from regaining possession of the vehicle except by court order.

After the arrest of a habitual DWI offender, the vehicle that the person was operating must be towed and stored. General Statute § 20-28.9 directs the North Carolina Department of Public Instruction (Department) to enter into and administer contracts for towing, storing, processing, maintaining, and selling seized vehicles with no obligation by the State to pay any costs arising from the payment of towing and storage expenses. After the sale of a seized vehicle, any balance remaining after payment of towing and storage expenses and obligations to lienholders shall benefit local schools. From June 2010 through May 2011, the Department contracted with two companies to tow, store, and sell DWI seized vehicles.

In addition to the Department's use of contractors, local school systems may choose to administer and operate their own DWI vehicle seizure programs and may charge and retain the same statutory expenses as the regional contractor. Currently, Cleveland County Schools tows, stores, and sells its own DWI seized vehicles. During the period June 1, 2010 through May 31, 2011, Cleveland County Schools realized a net benefit of \$15,313 from its DWI vehicle seizure program. Department officials informed us that three or four other local school systems intended to choose this option.

According to General Statute § 115C-276, the Department is required to make an annual report to the Joint Legislative Education Oversight Committee about the DWI vehicle seizure program. Originally, the General Assembly funded an additional administrative position to administer the contract; however, Department management said this position was eliminated due to a reduction in allocated funds.

Details of the DWI vehicle seizure program and the contract for its operation are included in the appendix.

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## **FINDINGS AND RECOMMENDATIONS**

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### **1. PROCEEDS FROM CERTAIN VEHICLE SALES WERE NOT DISTRIBUTED TO LOCAL SCHOOL SYSTEMS.**

The State's towing and storage contractor for the eastern region<sup>2</sup> sold vehicles that did not have holds placed on their titles after they were seized. As a result, local school systems did not receive funds to which they were entitled, the risk of harm to the general public was increased, and innocent owners of these seized vehicles may have incurred financial losses.

According to the contractor's sales documentation from June 2010 through May 2011, the contractor sold 1,265 seized vehicles with a title hold for \$1,821,800 and distributed \$336,165 to local school systems during the period reviewed. However, additional data from the contractor stated that another 586 seized vehicles, without title holds, were sold for \$603,475 from June 2010 through May 2011. Further, the contractor's data indicates that local schools should have received an additional \$37,708 from the \$603,475 in sales revenue. These vehicles were sold with mechanic liens and a share of the sales revenue should have been provided to local school systems.

The Department of Public Instruction's (Department) Project Coordinator (Coordinator) said the contractor was not required to provide a share of the mechanic lien sale proceeds to local school systems because the Department did not interpret the General Statutes in that manner. As such, the contract<sup>3</sup> did not include mechanic lien sales nor require the distribution of those proceeds to the local school systems. However, the General Statutes require proceeds from mechanic lien sales to be distributed using the same method as seized vehicles sold without mechanic liens. The Coordinator said future contractors will be required to distribute proceeds from the sale of mechanic lien vehicles in the same manner as other vehicle sales.

#### **Motor Vehicle Seizure and Sale Process**

A motor vehicle is subject to seizure if the owner is arrested for a driving while impaired (DWI) offense while having (1) a revoked license for a previous DWI or (2) while not having a valid driver's license and automobile liability policy. The arresting law enforcement officer shall seize the vehicle, have it impounded, and notify the Department of Transportation, Division of Motor Vehicles (DMV) of each vehicle seizure. Upon receipt of law enforcement's notice, DMV is required to place a hold on the seized vehicle's title preventing it from being transferred or licensed by anyone unless authorized by a court order or a Department official.<sup>4</sup> This notification, performed within

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<sup>2</sup> All counties in North Carolina east of and including Anson, Montgomery, Randolph, Alamance, and Caswell.

<sup>3</sup> From 1999 through 2011, the Department contracted with different vendors to tow, store, and sell DWI seized vehicles. None of the vendors were required to share revenue received from mechanic lien sales of DWI seized vehicles with the local school systems. This is contrary to North Carolina General Statute § 44A-2(d) which states that the proceeds from mechanic lien sales of DWI seized vehicles are to be applied in the same manner as vehicles seized and processed according to the DWI vehicle statutes (North Carolina General Statutes § 20-28.1 through § 20-28.9).

<sup>4</sup> Authorization by the Department official is only performed at the public sale.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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32 to 72 hours of seizure, also sends notices to lienholders and innocent owners with the conditions for recovering the vehicles. Innocent owners of vehicles properly processed under the DWI seizure laws may limit their expense to local towing and storage of one to three days before notification.

In the absence of a title hold, the storage and towing contractor petitions DMV to place a mechanic lien<sup>5</sup> on the vehicle for the storage and towing costs incurred during the seizure process. Upon approval from DMV, the contractor will petition the court for approval to sell the vehicle to recover costs. After obtaining approvals, the contractor sells the vehicles. The proceeds from these sales should be distributed in accordance with the DWI vehicle seizure laws. Accordingly, the local school systems are entitled to share the proceeds from mechanic lien sales no differently than other seized vehicles. The absence of a title hold does not change the basis on which the vehicle was seized and impounded.

### **Potential Harm to General Public**

The drivers of vehicles seized under the DWI seizure laws have been arrested for repeat DWI offenses after their license has been revoked. These actions demonstrate their willingness to continue driving while impaired and without a valid license, thereby, continuing to place the public at risk. The procedures designed to protect the public from these offenders require strict adherence and are dependent upon receipt and implementation of the title hold by DMV.

North Carolina General Statute § 20-28.5 states in part, *“The county board, or its agent shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant’s or motor vehicle owner’s behalf.”* Therefore, the defendant (habitual offender) should not be allowed to recover the seized vehicle. According to Department management, preventing the habitual offender from having easy access to the seized vehicle is the primary reason the law was created.

Title holds serve as a roadblock for a habitual offender to easily re-acquire the seized vehicle. If law enforcement fails to notify DMV of a seizure or if DMV fails to process law enforcement’s notification, the title hold does not occur. In the absence of a title hold, there is no mechanism in place to prevent the defendant from re-acquiring the vehicle at a public auction and potentially harming innocent members of the general public. Also, without a title hold, the warning notices are not sent to lienholders stating that the vehicle may not be returned to the individual from whom it was seized. In absence of the hold, the risk of danger to the public is increased because the repeat offender may recover the seized vehicle and again drive while impaired. As previously stated, 586 seized vehicles were sold by the contractor from June 2010 through May 2011

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<sup>5</sup> A person or company that has repaired, furnished supplies or materials, towed or stored a vehicle and has not been paid for the services rendered has a lien against the vehicle. The Department’s contractor also subcontracted with local companies to provide towing and storage services for seized vehicles.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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that did not have holds on their titles, and, as such, could have been released to the habitual offender at the public auction.

### **Innocent Owners**

Innocent owners of seized vehicles may be financially harmed by not receiving a hold on the title of their seized vehicles. If the title hold does not occur, DMV does not notify the innocent owner until the contractor notifies DMV and petitions the courts for a mechanic's lien sale of the vehicle. This notification could happen weeks or months later as opposed to 32 to 72 hours after seizure when the hold is properly executed. During this period, the storage fees continue to accrue and may make it financially impractical for the innocent owner to recover the vehicle. From June 2010 to May 2011, the contractor sold 586 of 1,851 seized vehicles with mechanic liens. This indicates a significant number of innocent owners received delayed notifications. As a result, innocent owners incurred more storage costs than if title holds had been properly executed.

## **RECOMMENDATIONS**

The Department should develop and implement processes to assure **all** seized vehicle sales benefit local school systems in accordance with the General Statutes.

The Department should consider written communications to law enforcement agencies as reminders of the importance of notifying DMV of all vehicle seizures per General Statute §20-28.3 and §20-114. Similarly, it should monitor DMV's placing of title holds requested by law enforcement.

### **2. THE CONTRACTOR DID NOT COMPLY WITH CERTAIN CONTRACT TERMS.**

The contractor failed to comply with certain terms and conditions of the DWI vehicle seizure program contract. Specifically, the contractor did not maintain a separate account for sales proceeds from seized vehicles, display photographs on the contractor's website of all vehicles to be sold at the next auction, remove and label personal property remaining in each vehicle after seizure, and allow vehicles to remain with the local towing subcontractor for at least two business days.

#### **Separate Account**

The contractor did not deposit the proceeds from the sale of seized vehicles in an account used solely for that purpose as outlined in the contract. Instead, sales proceeds were deposited in the same account with funds the contractor obtained from other sources. The contract requires "all sales proceeds shall be deposited in an account used solely for that purpose." By co-mingling funds, the contractor could prevent the accurate determination of sales proceeds. The contractor said he believed providing the Department with a check register for expenses was sufficient and that he was unaware the contract required a separate account for sales proceeds.

## **FINDINGS AND RECOMMENDATIONS (CONCLUDED)**

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### **Website Information**

The contractor did not include photographs of all seized vehicles for sale at auction on its website. As of December 2, 2011, the contractor's website listed 73 vehicles for sale at auction. Only 25 vehicles listed included photographs. The contract states, "the contractor shall maintain a website including the following information: A listing and pictures of vehicles for sale at each auction." Additionally, the terms of the contract specifically require the contractor to advertise each sale sufficiently to sell vehicles at a reasonable price. By not providing the photographs on the website, the contractor may be limiting the prospective buyers. The contractor said he did not include the photographs because he had not been given that directive by the Department.

### **Personal Property**

The contractor did not store personal property found in seized vehicles as required by the contract's terms and conditions. The contract stated that, "prior to the sale of any vehicle, personal property shall be boxed, labeled and disposed of as instructed by the [Department]." Prior to the seized vehicle auction, the contractor removed items from the vehicle but did not box and label them. Instead, the contractor placed the personal property in an open area with other items that had been previously removed from other vehicles.

### **Vehicle Remains with Local Towing Contractor**

The contractor said he sometimes did not follow the contract requirement that vehicles remain with the local<sup>6</sup> towing subcontractor for at least two business days. The two-day period allows the vehicle to remain at the local lot for an owner to remove any personal property or for an innocent owner to obtain the pre-trial release of the vehicle.

## **RECOMMENDATION**

The contractor should comply with all contract terms and conditions and the Department should develop procedures to ensure compliance. If the terms and conditions are not met, the Department should hold the contractor accountable and enforce the termination clause for breach of contract.

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<sup>6</sup> The North Carolina county where the vehicle was seized.

## **APPENDIX**

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### **Vehicle Seizure Process**

The vehicle seizure process begins with law enforcement's arrest of a driver for driving while impaired (DWI) when the driver's license is revoked for previous DWI offenses. Unless the officer is aware the vehicle belongs to an innocent owner,<sup>7</sup> the officer seizes the vehicle, notifies a local towing company of the seizure, and takes the habitual offender to the magistrate for arraignment in compliance with North Carolina General Statute § 20-28.3.

At the offender's arraignment, the magistrate reviews the officer's vehicle seizure documentation and provides the arresting officer with a copy of the magistrate's order of impoundment. Then, the officer is required to notify the North Carolina Department of Transportation's Division of Motor Vehicles (DMV) of the vehicle seizure within 24 hours of the offender's arraignment and receipt of the magistrate's order of impoundment.

### **Contractor Custody of Seized Vehicles**

The contract<sup>8</sup> between the North Carolina Department of Public Instruction (Department) and the contractor in the eastern region with the responsibility for the towing, storage and sales of seized vehicles, specifically states that vehicles scheduled for transport from the local towing subcontractor to the contractor's storage lot should occur no sooner than two days after seizure. These two days allow owners to recover certain personal property and innocent owners to recover their vehicles locally. The contract requires that the seized vehicle shall be transported to the contractor's storage lot within five business days of seizure unless there is a court petition in process for pre-trial release of the vehicle. The contractor pays the local towing and storage subcontractor when taking custody of the vehicle and will be reimbursed from the proceeds of the sale of the vehicle or by payment from an innocent owner to whom the vehicle is released.

### **DMV Responsibilities**

DMV places a hold<sup>9</sup> on the seized vehicle's title upon notification from law enforcement to prevent the habitual offender from recovering the vehicle and transferring its title. The title hold prevents the vehicle from being licensed without a court order. In addition, DMV must communicate to innocent owners and lienholders that their vehicles have been seized and the process and conditions they must follow to recover their vehicle. This written notification provides notice that the vehicle has been seized, the reason for the seizure, and the procedure for requesting release of the vehicle. The contractor and the Department are notified online of the vehicle's seizure via DMV's title and registration program.

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<sup>7</sup> See supra note 1.

<sup>8</sup> In effect from June 2010 through May 2011.

<sup>9</sup> Vehicles with a hold on their title cannot be registered or licensed by anyone except by court order or by the Department at public sale.

**Mechanic's Lien**

If law enforcement failed to notify DMV of the vehicle seizure or if DMV failed to process the officer's notification, title holds and other processing procedures would not occur. Although processing through DMV would not occur, law enforcement or the local towing subcontractor will contact the contractor to obtain the vehicle. When contact is made, the contractor retrieves the vehicle and incurs transportation expenses. Due to expenditures incurred by the contractor for local transporting and storing along with those incurred for transporting and storing the vehicle at the contractor's regional impoundment lot, the contractor attempts to obtain a mechanic's lien on the vehicle to recover these expenditures. If the mechanic's lien is granted, the contractor is allowed to sell these vehicles at auction. North Carolina General Statute § 44A-2(d) states that the proceeds from mechanic lien sales of DWI seized vehicles are to be applied in the same manner as vehicles seized and processed according to the DWI vehicle statutes. North Carolina General Statute §20-28.5 mandates that local schools receive any remaining balance less the cost of the sale, towing, storage, and perfected liens.<sup>10</sup>

**Contract Requirements**

**a. Statistical Records**

The contractor must provide a computer file on all vehicles under its control twice each month. The file shall contain the year, make, and model of the vehicle; the vehicle's identification number (VIN); its' registered owner; the vehicle's lienholder(s); defendant's name and criminal court file number; the name of the seizing law enforcement agency; the license plate number and state; the date seized; the county of seizure; the value of the vehicle as determined by DMV for tax purposes (to be used in calculating expedited sales dates); the status of the vehicle; towing charges; and all accrued storage charges. Additionally, the contractor shall photograph each impounded vehicle within two business days of receipt and shall send copies to the Department when requested. The photograph shall include the VIN and other means of identifying the vehicle.

**b. Personal Property**

Prior to the sale of the vehicle, the contractor shall remove, box, and label all personal property from the vehicle. Personal property shall be disposed of as instructed by the Department. The local school district shall first be contacted in the event it wants to take possession of the personal property.

**c. Vehicle Sale Requirements of Contractor**

The contractor shall advertise the sale sufficiently to attract a suitable audience to sell at a reasonable price; provide all notices to owners, lienholders, and DMV as required by North Carolina Senate Bill 1336; provide a bill of sale to the Department as well as an accounting of expenses; deposit all proceeds in an account used solely for that purpose; and distribute proceeds to pay the costs of the sale in the following order: (1) \$10 administrative fee per

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<sup>10</sup> Liens which a creditor has established a priority claim.

## APPENDIX

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vehicle sold to the State, (2) local towing/storage fees, (3) towing/storage paid to contractor. Storage costs of \$10 per day should be divided equally between the contractor and the school system in the county where the vehicle was seized.

### **d. Website Requirement**

The contractor must maintain a website that includes a listing of sale dates for the next six months and a listing and pictures of vehicles for sale at each auction.

### **e. Storage Cost**

According to the contract in effect from June 1, 2010 through May 31, 2011, vehicle storage cost per day shall be \$10 to be divided equally between the contractor and the local school authority. The contractor will receive \$300 to tow the vehicle from the local commercial towing subcontractor to the contractor's storage facility and \$80 per vehicle for selling costs. Additionally, the contractor will be reimbursed for payments to the local towing and storage subcontractor.

### **Sales Auction Monitoring**

A Department employee attends monthly auction sales. The Department's employee receives a listing of DWI vehicles to be sold. The Department employee follows the auctioneer and enters the winning bid amount for each vehicle on the list provided. Also, a contractor employee enters the sale amount of every vehicle sold. At the end of the auction, the Department's employee receives a copy of the contractor's list to confirm the accuracy of the sales prices recorded.

Successful bidders go to the contractor's cashier and pay for their purchases. The contractor advises the Department employee of payment as the buyers pay for each vehicle. Contractor staff and the Department employee resolve any discrepancies that may exist and then the Department employee removes the title hold on the vehicles sold.

The contractor sends the Department documentation that includes all DWI vehicles sold. There is a summary accounting of all expenses against each vehicle and any residual balances that may benefit the local schools.

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# RESPONSE FROM THE DEPARTMENT OF PUBLIC INSTRUCTION

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## PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

June 26, 2012

The Honorable Beth A. Wood, CPA  
State Auditor  
Office of the State Auditor  
2 South Salisbury Street  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Dear Ms. Wood:

We have received the June 11 confidential draft of the investigation by your office into the DWI vehicle seizure contract administered by the Department of Public Instruction. Since that time, we have asked your staff questions to clarify the recommendations which are listed below. Our responses to each recommendation follow.

### **Recommendation**

1. (a) The Department should develop and implement processes to assure **all** seized vehicle sales benefit local school systems in accordance with the General Statutes.

### **AGENCY'S RESPONSE**

We understand this to mean that proceeds of vehicles sold by our contractors through the Mechanics Lien Provisions of the General Statutes should be distributed to local education agencies (LEAs) in the same manner as the proceeds from other DWI-seized vehicles. (Note: When a vehicle does not have a DWI "hold" from DMV, the contractor's recourse to recoup his expenses is to sell this vehicle as abandoned via the Mechanics Lien. Our experience shows that nearly always a vehicle falls into this category because (1) law enforcement never notified DMV of the seizure and a hold was never applied or, (2) the vehicle was released to an innocent owner or a non-guilty defendant owner, the hold was removed by DMV, and the owner refused to pay towing and storage charges owed.)

While our staff interpreted the statutes differently in prior years, we recognize that the interpretation of your staff has validity and has the potential to generate additional revenue for the LEAs. As a result, processes have been changed. In the most recent contracts for the towing, storage and sale of seized vehicles, it is stipulated that contractor proceeds for mechanics lien sales shall be split with local school systems in the same manner as proceeds from the sale of other seized vehicles (forfeited vehicles and expedited sales).

### **OFFICE OF THE STATE SUPERINTENDENT**

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**Recommendation**

1.(b) The Department should consider written communications to law enforcement agencies as reminders of the importance of notifying DMV of all vehicle seizures per General Statutes 20-28.3 and 20-114.

**AGENCY'S RESPONSE**

Historically, our initiatives to remind law enforcement agencies of the importance of notifying DMV about DWI vehicle seizures have not been as successful as we would like. We will continue our efforts to educate law enforcement and bring to their attention the recommendation of this report to bring more attention to these reminders.

**Recommendation**

1.(c) Similarly, it should monitor DMV's placing of title holds requested by law enforcement.

**AGENCY'S RESPONSE**

We understand this to mean that a cross-referencing of the DMV daily seizure reports and the reports from the contractor should be done. We will implement a more thorough comparative review. In the most recent contracts for the towing, storage and sale of seized DWI vehicles, specific data reporting requirements have been put in place to facilitate this kind of analysis.

**Recommendation**


2. The contractor should comply with all contract terms and conditions and the Department should develop procedures to ensure compliance. If the terms and conditions are not met, the Department should hold the contractor accountable and enforce the termination clause for breach of contract.

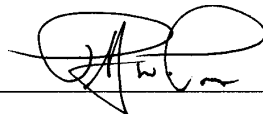
**AGENCY'S RESPONSE**

We agree that the contract requirements should be followed. In the most recent contracts for the towing, storage, and sale of seized DWI vehicles; contractor requirements were modified to eliminate some that were out-dated or unnecessary and to strengthen requirements critical to the success of this project.

Thank you for the opportunity to respond to this draft report.

Sincerely:

  
June St. Clair Atkinson, State Superintendent

  
Philip W. Price, Chief Financial Officer

## ORDERING INFORMATION

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Copies of this report may be obtained by contacting the:

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