



Scarlet Tag Background— Material for Presenter

What is the hypothetical law and the purpose of the law?

State government has required that any person convicted of a DUI more than once must display a red tag on their car to indicate their offense. Police do not need probable cause to stop vehicles with these tags. The purpose of the law is to reduce DUIs and to identify DUI offenders.

Is government involved with this policy?

Yes.

Why?

Government is involved because it is a Florida law adopted by the state Legislature.

What level of government is involved?

State government.

What rights may be violated by this policy?

- Cruel and unusual punishment
- Unreasonable search and seizure
- Privacy
- Expression

Where are these rights located in your Constitution?

- Cruel and unusual punishment is located in the 8th amendment.
- Unreasonable search and seizure is located in the 4th Amendment.
- Expression is a 1st amendment right in the U.S. Constitution.

Privacy

Penumbra of the 1st, 3rd, 4th, and 9th amendments to the U.S. Constitution

Review articles at end of this backgrounder relating to similar issues. They are:

- "Drivers Seeing Red: DUI License Plates" www.alcoholalert.com
- "DUI License Plates -- A Shameful Trend" www.duianswer.com

Controversial requirement

Requiring license plates for DUI offenders is controversial. Critics complain of the potential privacy issues and the possible unconstitutional treatment of people. This also creates issues for family members and friends when they drive the car with the license plate. It will be assumed that they are the drunk driver and they will be labeled for it. Some believe the plates will not even be effective. These license plates have been called the new scarlet letter. The attempt is to use shame to deter people. This creates the possibility that police officers may just pull over someone if the car has the plate. They would consider the plate to be probable cause and past convictions should not be considered probable cause.

Are there any court cases or rulings relating to this policy or a similar policy?

Case: Goldschmitt v. State (2nd District Court of Appeals, 1986)

The 2nd District Court of Appeal ruled on the constitutionality of a DUI offender being required to place a bumper sticker on his vehicle that read "CONVICTED DUI – RESTRICTED

LICENSE." The court rejected the claim that this infringed upon the First Amendment. The court also said that the bumper sticker was not cruel and unusual punishment. The issue of probable cause was not an element in this specific case.

How are these cases similar or different from the case you are reviewing today? How would they apply as precedent? Based on your analysis, do you think the policy is constitutional? Yes or No? Why?

Articles

Drivers Seeing Red: DUI License Plates

www.alcoholalert.com

Like the figurative scarlet letter for adulterers, California drunk drivers will have scarlet license plates if a state lawmaker gets his way. Assemblyman Ray Haynes, R-Murrieta, is proposing a law that would force those convicted of [driving under the influence](#) to replace their regular plates with red ones that would remain on the car for two years at least.

Specifically, the proposal would require persons convicted of two or more [DUI offenses](#) within a ten-year period to surrender the regular plates for all cars registered in his or her name and pay \$250 for a new red license plate for each vehicle. The person must keep the plates on his or her car for two years or the entire period of probation, whichever is longer.

During that time, the person would be prohibited from driving other vehicles, with company vehicles excepted.

The assemblyman believes that the scarlet plate would serve two purposes: it would alert other drivers to watch out for the car, especially if it's around closing time near a bar; and it would shame drivers out of driving drunk again.

He thinks extreme measures are necessary because none of the [DUI laws](#) currently in place seem to have had any effect on [DUI-related fatalities in California](#). Nearly a decade ago, about 30% of automobile fatalities involved alcohol; now that percentage is up by six points.

Not surprisingly, the bill is quite controversial. Critics complain of the potential cost as well as privacy issues and unjust, and possibly unconstitutional, treatment of people who may have made one small mistake or no mistake at all.

In single car households, a car with red license plates may have to be driven by people who were not convicted of [drunk driving](#), causing them to be unfairly labeled as something they are not. Some critics are even concerned that repeat offenders with serious alcohol problems will just find other cars to drive.

Additionally, the plates may not even work. Ohio has had a similar policy in effect for several years, adopting yellow plates for DUI offenders in the 1990s. It is not yet known if the plates have had their intended consequences. Ohio public officials say they have been generating debate, however.

DUI License Plates—A Shameful Trend

www.duianswer.com

Several State legislatures — including those of Ohio, Iowa, Minnesota and Oregon — have added a new, imaginative punishment for those convicted of DUI . . . special, brightly colored license plates. This new “scarlet letter” — as many have called it — is in addition to the already long list of punishments that offenders are subjected to: jail time, steep fines, higher insurance rates, a suspended license, mandatory drug and alcohol counseling, and others.

The apparent rational is that shame is a powerful deterrent. It would also give other motorists the opportunity to steer clear of the vehicle that bears the visually striking plates.

The assumption seems to that those with a DUI in their past are usually, if not always, drunk whenever they get behind the wheel. So, naturally, they should be given the widest possible berth.

If you take a moment to imagine the kinds of occurrences that DUI would yield, we end up with a pretty frightening picture.

Carrying a DUI plate would surely prompt snap judgments and angry, disapproving looks from other motorists. The non-judgmental person might still be irresistibly compelled to stare, if only to see what someone convicted of DUI looks like. These are behaviors, as we all know, that everyone is prone to. However, who's to say that the person driving the car was the same person who was convicted of DUI? Imagine a family, in which the husband was recently convicted of DUI, that shares one car. Imagine, further, that the wife now has to take the kids to school in car with the incriminating, bright yellow plates. A paranoid and overcautious driver, upon seeing the plates on another car, would be inclined to get as far away from the car as possible — effectively assuming, again, that a past offense means a perpetually drunk driver. This kind of response, if anything, would cause accidents and disrupt the flow of traffic. Police officers — who are human, after all — couldn't help but be far more likely to pull someone over if the car bore the florescent plates. Past DUI convictions do not, and should not, constitute probable cause. The point is that, when we actually think about the real, everyday effects that DUI license plates would have, we realize that . . . well, we realize that supporters of the idea didn't really think about the real, everyday effects they would have. They were just thinking that DUI is bad, so harsher penalties must be good.

In principle, the idea is cruel, unfair, excessive and extremely problematic. In practice, it would be far worse.

Surely, MADD — Mother's Against Drunk Driving, the nation's most passionate anti-DUI crusaders — would strongly support the idea of special DUI plates. No so. According to Katherine Kovacich, regional administrator for MADD in the Pacific Northwest, Mothers Against Drunk Driving "is not into shunning" convicted DUI offenders.

It's a strange world we live in when those who are convicted of DUI are forced to endure the type of shame-based punishments that we otherwise reserve for sex offenders.