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Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

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Editorial Page

Lawrence Fanning, Editor and Publisher 1907 to 1971
Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Drunken driving: a reckoning looms

18/83
A community reckoning is building on the issue of drunken driving — and none too soon. The trick now is to channel Alaska's energies appropriately.

Last week District Court Judge Elaine Andrews issued an appeal from the bench concerning the lack of treatment programs for repeat drunken driving offenders. Later she ordered the first confiscation of an offender's vehicle under Anchorage's new drunken driving ordinance.

The very next day, a local businessman with a history of drunken driving offenses was involved in an accident that killed the other driver. And this week more facts — painful facts — began to emerge about the incident:

- the man faced a pending charge for driving while drunk and an arrest warrant for failing to appear;
- hospital tests after the accident showed that he had a blood alcohol count more than three times higher than the legal standard for drunken driving — a count that would render most individuals unconscious;
- the man's wife, aware of the warrant and believing him to be drunk behind the wheel, had phoned police that day to ask that he be picked up;
- even after being involved in a serious accident and receiving hospital treatment the man went free until his wife once more called police to ask why he had not been apprehended on the outstanding warrant; and
- for more than a year — during which the man was involved in a minor accident, told police he was "totally smashed" at the time, and received a 30-day suspended sentence and \$200 fine — the man's wife had sought help for his drinking problem. "He's an alcoholic," she said Wednesday. "He needs the kind of help you can't get at home or from friends."

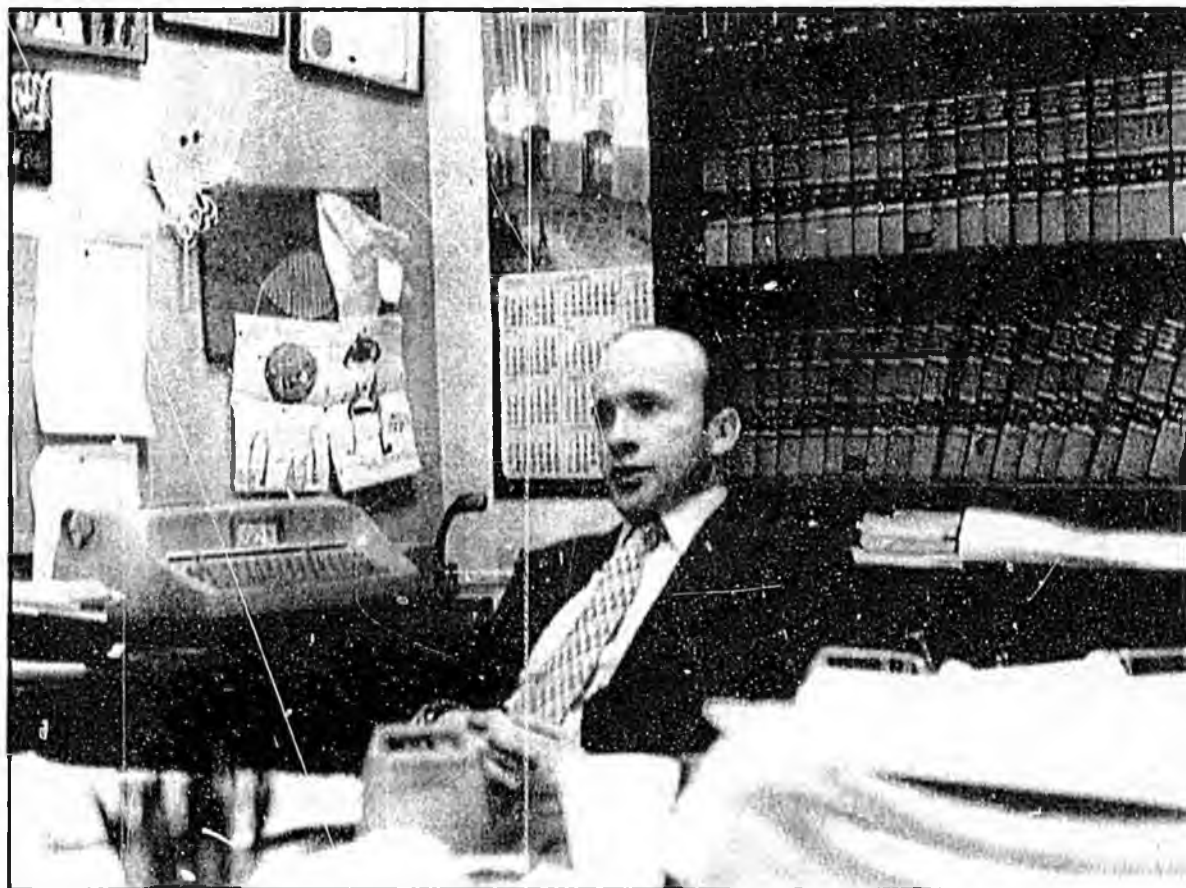
What is pertinent about this tragedy is the contradictions it reveals: the awful need for community action against drunken driving, yet the crying lack of appropriate treatment options; the public demand — and it is swelling — for effective protection, yet the official difficulties in making sanctions stick; the realization that mayhem is at risk every time a drunken driver takes the wheel, yet an ingrown tendency — in society as well as its institutions — to treat the matter lightly until that mayhem occurs.

In the aftermath of a growing consensus on the seriousness of drunken driving there is no room for scapegoating or blindness. The test of appropriate policy now must be to overcome those contradictions; to provide mandatory treatment options that can — not always, but often — keep the offender from repeating the crime; to remove dangerous implements — moving vehicles — from known dangerous hands; to take the offense itself — not just violent outcomes — as seriously as the community demands.

Judge Andrews struck an important blow in ordering confiscation of the vehicle of a multiple repeat offender. The sentence is a demonstration both that the law can work and that society is not powerless to protect itself. Confiscating a vehicle deprives the offender of the means of destruction even as it imposes a real penalty against unacceptable behavior. Yet that is not society's only possible response.

The Senate State Affairs Committee, chaired by Sen. Vic Fischer, D-Anchorage, will hold public hearings Saturday on three major bills related to issues of drunken driving and alcohol abuse. One bill would raise the drinking age from 19 to 21; another would stiffen penalties — including making provision for vehicle confiscation statewide; a third would deal with possible curfews for drivers under age 18.

The hearings begin at 9 a.m. in Anchorage Assembly chambers, 3500 East Tudor Road. A community concerned with the proposed legislation, other potential remedies, and the gathering storm over atrocities on its roads and highways, should be there to speak its piece.



Associated Press

District Judge James Hornaday of Homer says the state needs to enact tougher laws against drunken drivers

Judge urges tougher drunken driving laws

by Ralph Nichols
Times Writer

A District Court judge under fire for the tough sentences he gives drunken drivers told the Senate State Affairs Committee the legislature must increase the minimum penalties for that crime.

Judge James Hornaday of Homer told the committee Monday during a statewide teleconference hearing chaired by Sen. Vic Fischer, D-Anchorage, that the sentencing of drunken drivers can't be left to judges alone.

"Drunk driver cases are the most serious problem facing the Alaska court system today," Hornaday said.

"You must take discretion away from the judges because experience has shown the judges will generally only impose the statutory minimums," he said.

Hornaday has been transferred to Anchorage effective June 1 by presiding Superior Court Judge Mark Rowland because he is frequently disqualified by defense attorneys from hearing cases.

Many of those cases involve drunken drivers. Hornaday is known for sentencing first-time offenders to more than the mandatory 72 hours in jail.

The minimum sentence doesn't have to be the average sentence, he told the lawmakers. "In Maine, we are told, judges are giving on the average four times the minimum jail time."

Speaking in support of bills to toughen drunken driving laws, Hornaday called for an increase in the mandatory jail sentences faced by persons convicted of driving while intoxicated and driving with a suspended license.

Hornaday said the legislature should consider adopting:

- Forfeiture of the driver's vehicle upon his second drunk driving conviction, or his first con-

viction if a person is injured.

- Longer mandatory driver's license revocations.
- Required mandatory community work by convicted drunken drivers.
- Raising the drinking age and earlier bar-closing hours.
- Mandatory alcohol abuse programs in jails for all second-time offenders.

The judge also advocated creation of a state task force on drunken driving to address the problem.

"Over half of all the jury trials in the (state) are drunk driving cases. More are arrested for drunk driving than any other offense. Over two-thirds of the traffic fatalities involve drinking," he said.

Noting the Alaska Supreme Court has affirmed a 90-day jail sentence for a first-time deer poaching conviction, Hornaday asked the committee, "Why is it that hardly anyone bats an eye over these sentences, and yet there is such an uproar about sentencing above the bare minimum for drunk driving?"

He added that people argue "you shouldn't put drunk drivers in jail because you are just overcrowding the jails with non-criminals.

"Well, maybe we ought to be concerned about the overcrowded hospitals, and overcrowded wheelchairs and overcrowded cemeteries caused by drunk drivers."

Hornaday last week filed suit in U.S. District Court and state Superior Court, charging Rowland lacked the authority to transfer him and charging the action violated his civil rights.

Hornaday also challenged the constitutionality of pre-emptory challenges with no reason stated, saying they violate a judge's right to the due process of law.

McCarthy murder trial postponed

The trial of Louis Hastings, accused of murdering six McCarthy residents, has been postponed until July and will likely be postponed again. Defense attorney John Salemi told Superior Court Judge Ralph Moody Wednesday that he will need until late August to prepare Hasting's defense.

From Daily News staff reports

police report

Bullet hits assemblyman's home

Police pulled a .22-caliber bullet from the outside of Assemblyman Fred Chiel's South Anchorage home Monday after random shots were apparently fired by teen-agers from the Oceanview beach late that morning. The slug was embedded backwards in an outside corner of the Chiel home, indicating it probably ricocheted from another spot and was not fired directly at the assemblyman's home. A neighbor told police she saw two teens earlier that morning on the beach with a small caliber rifle, but they were too far away for her to identify. No injuries were reported.

Man charged with assault

An Anchorage man who allegedly threatened his ex-girlfriend's new boyfriend with a gun was arrested by Anchorage police. Chapaula Ayers, 25, of Anchorage was charged with third-degree assault and held in lieu of \$1,000. According to police reports, Ayers was talking with his ex-girlfriend in a parked car when another man ordered him out of the vehicle. Ayers then allegedly chased the man with a handgun and fired one shot into the ground.

Drunken driving charged in accident

A man who allegedly struck a woman with his car as she walked down the road has been charged with drunken driving by Alaska State Troopers. The woman, who suffered minor injuries, told troopers she was hit Saturday night while walking along the Alyeska Highway. At Mile 112 of the Seward Highway, troopers stopped and arrested Timothy R. Mountfort, 23, of Fort Richardson. Mountfort was charged with driving while intoxicated and released.

From Daily News staff reports

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4/19/83 Times

Courtroom drama

DR

A DRUNK DRIVER who was responsible for the death of a child last June in Eagle River was sentenced to prison here this week, despite testimony from numerous witnesses as to her good character and upstanding citizenship.

The judge gave her five years in prison and an additional five years of probation.

HE ALSO told the woman he wished he could put a photo of the mangled child she killed on the wall of her cell as a daily reminder of why she is sitting in prison.

At one point in the sentenc-

ing, the judge clapped his hands together to demonstrate how the drunk woman's car smashed into the victim.

THE COURTROOM scene, witnessed by the family of the dead child and many members of the Mothers Against Drunk Driving (MADD) organization, was filled with emotion and drama.

It wouldn't be a bad idea for attendance at these sentencing to be part of the rehabilitation process for those convicted drunk drivers who were fortunate enough not to have killed someone.

Lawmakers disregard MADD

I am very mad and so are the members of MADD.

When we were in Juneau the end of January, we received very warm welcomes and we were told to keep up the good work. We really felt we were doing some good on the laws about drunk drivers. Now, we know we are not very experienced in the field of lobbying, but all our hard work is coming from our honest-to-goodness hearts.

We really want to save people from the drunk drivers. I am now beginning to believe that in order to really get anything done, you have to have lots of money to pass around.

Unfortunately, I do feel that if some of our lawmakers lost a loved one or had been involved themselves as a victim, we would get a lot more done. I hope nothing like this does happen, but it does strike one out of two families.

The accident on March 17th really got to us. If this person would have been taken care of on his first offense, two people would not be dead today. Since our first visit to Juneau, there has been one 20-year-old boy killed; one 17-year-old badly hurt; one 9-year-old with two broken legs; two separate accidents with no injuries, but demolished cars. These are to just mention a few. This is senseless.

We need help to get through to these lawmakers.

I wonder how many people realize that if the excise tax is raised the money would go for rehabilitation, education and awareness. MADD is 100 percent for this program. We still maintain that if people know they will get a stiff sentence on their first offense, there would be many people who would be afraid to drive drunk and take the chance. They wouldn't take a second chance which unlike the victims in many cases, do not get a second chance.

It has been said that we in MADD want to put everyone in jail. This is not true; we want to make people aware that if they do drink and drive then they deserve to be put in jail and fined.

We want to stop this slaughter on the highways!

— June Gerrish, president

THEODORE HUGO GOODMAN

Memorial services for Theodore "Ted" H. Goodman, 40, will be at 1 p.m. today at the Witzleben Funeral Home and Crematory, Sixth Avenue Chapel with the Rev. Bob Thwing of St. Mary's Episcopal Church officiating. A private graveside service was conducted yesterday at the Anchorage Municipal Cemetery. His body was found April 15 and his death is under investigation by the Alaska State Troopers. Born Jan. 28, 1943, in Bonn, West Germany, he had lived in Alaska for 10 years and was working with a privately owned jewelry business. He was a veteran of the U.S. Army. He is survived by his mother, Benita Gutmann of Bonn, West Germany; one brother and one sister; and his companion, Dorothy Kabaker of Anchorage.

JOHN ROBERT VOSGIEN

Private services for John R. Vosgien, 37, will be later this week in Kodiak. He died May 5 in Kodiak. Born Nov. 22, 1945, in Seattle, Wash., he had lived in Alaska 34 years and was a laborer on Kodiak Island. He is survived by his father, Arthur L. Vosgien of Snohomish, Wash.; two sisters, Cathy Magnusen of Kodiak and Patricia Wilson of Redding, Calif.; and his brother, David Vosgien of Kodiak. Local arrangements by Witzleben Funeral Home and Crematory, Sixth Avenue Chapel.

ROBBIE JANE CHISM

Funeral arrangements for Robbie J. Chism, 31, are pending at Witzleben Funeral Home and Crematory, Sixth Avenue Chapel. She died May 11 at Providence Hospital. Born June 22, 1951, in Corpus Christi, Texas, she had lived in Anchorage for the last 17 years. She is survived by her husband, Clifton Chism of

DEBORAH L. SCARDINA

Funeral services will be held next week in Blaine, Wash., for Deborah L. Scardina, 29. She died May 12 at her Anchorage residence. Born April 28, 1954, in Long Beach, Calif., she had lived in Alaska for 2½ years. She leaves her mother and step-father, Mr. and Mrs. Robert Hansen of Blaine, Wash.; her brother, Michael Lebecki of Texas; her father, Thomas Lebecki of San Francisco, Calif.; and her maternal grandmother, Florence King of Bellingham, Wash. Burial will be at the Enterprise Cemetery in Ferndale, Wash. Arrangements by Evergreen Memorial Chapel.

THOMAS SIDNEY BENTLEY

Services for Thomas S. Bentley, 83, who died Wednesday at his residence, will be held Saturday, 2 p.m., at Evergreen Memorial Chapel. Officiating will be Bishop William Parks of the Church of Jesus Christ of Latter-day Saints, Anchorage Third Ward. A visitation will be held at 1 p.m. He has been an Anchorage resident for 1½ years. Born July 30, 1899, in Providence, R.I., he lived most of his life in Dracut, Mass., where he attended school. He worked in the knitting industry in Lowell, Mass., prior to moving to Ossining, N.Y., where he was foreman of the knit shop at Sing Sing prison, from which he retired. He leaves his sister, Irene Stuart of Norwich, Conn.; four children, Barbara Kemp of Aiken, S.C., Rosemary Poussard of Anchorage, Thomas Bentley of Wappingers Falls, N.Y. and Rita Rice of Wichita, Kans.; eight grandchildren and three great-grandchildren. Burial will be at Angelus Memorial Park on Klatt Road following the funeral. Funeral arrangements by Evergreen Memorial Chapel.

BERNARD W. GOGIEN

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

2/28/83

Date: 4-29-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 6

An Act relating to driving a motor vehicle.

under consideration and reports it back as follows:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 6 (JUD) same title
 new title
and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note
 reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Ramon Barnes
Kim R. Lister
James H. ...
...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

H. Malone No Rec

R. H. ...
CHAIRMAN

POUCH V
JUNEAU, ALASKA 99811
465-4990
P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



JR
CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

March 24, 1983

Robert J. Sinnett
2001 Salem Court
Anchorage, Alaska 99504

Dear Mr. Sinnett:

Thank you for taking the time to inform me of your support of HB 6 regarding driving a motor vehicle.

Representative Abood, HB 6's sponsor, is preparing some amendments to the bill. As soon as this has been completed, the House Judiciary Committee will be hearing the bill.

Again, thank you for your time and for becoming a part of the legislative process.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Bussell", enclosed in a circular scribble.

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn



JR

3-19-83

Charlie Russell, Representative
Pouch V
Juneau, Alaska, 99811

Dear Mr. Russell,

This letter is to let you know that HB6 has my full support and I would demand that this bill be passed immediately.

I have lost one son to a wanton killer, a drinking driver and I want to prevent the same thing happening to my other two children and or to your wife, your children, if any, or to yourself.

You are in Juneau where the job has to be done prevention of future deaths of this nature rests with you.

Sincerely
Robert J. Sennitt
2001 Salem Court
Anchorage, Alaska 99504

Judiciary Referral

2526 Arlington Drive
Anchorage, AK 99503
April 14, 1983



Mr. Charles Bussell, Chairman
House Judiciary Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Mr. Bussell:

My son died on April 4, 1983, as a result of an auto accident caused by a drunken driver. I urge you to support the proposed new laws raising the drinking age from 19 to 21, and providing stiff penalties for persons convicted of drunken driving.

A drunk behind the wheel of a vehicle is a disaster waiting to happen and stiff penalties are needed to stop this. Drunk driving laws and penalties should be set up to follow laws related to carrying and/or using dangerous weapons. Penalties for causing injuries should be stricter than the laws governing illegal hunting and fishing; right now they are not.

Drunk drivers should be required to --

- (a) Permanently forfeit their vehicle upon the second conviction, or first conviction if another person is injured,
- (b) Pay fines big enough to cover the cost of alcohol treatment,
- (c) Have licenses revoked for a year or more.

Additionally, the laws should --

- (a) Provide minimum penalties to take some discretion away from judges, and
- (b) in the event of a death, jail terms should equal those which apply to murder.

At hearings conducted by Senator Fisher on April 9, 1983, impressive statistical evidence of the reduction in auto accidents associated with raising the legal drinking age to 21 was presented by Dr. Kelso. These data cannot be ignored and should be sufficient justification for raising the legal drinking age.

Concurrent with a stricter drunk driving law should be the provision of resources to the court system for judges and clerical staff, and for additional jail facilities. Better enforcement of the laws must be provided as a deterrent. One method for improving enforcement is use of roadblocks. This approach may require added State Troopers; if so, funds should be appropriated.

I am circulating this letter among a substantial number of friends and co-workers; some are residents of your election district. I plan to circulate your reply to them also.

Sincerely,

Stuart G. Bigler
Stuart G. Bigler

HB 6
JUDICIARY
Referral

April 11, 1983

Representative Charlie Russell
Alaska State Legislature
Panel V (H.S. 3100)
Juneau, AK 99811



Dear Representative Russell,

I work with Helma Seintz. Her letter (copy enclosed) amply states the love she has for her son Sean. If there was ever a young Alaskan with a future, Sean was he. But he's gone.

Please, now is the time to stop such senseless waste. Drunk driving is against the law. Why can't we enforce it? Why can't we commit enough to cause this to cease?

Would you please do what you can to support whatever bill you feel will prevent another tragedy as Helma's?

Sincerely,

Russell R. Cunningham, Jr.

2448 Sprucewood St
Anchorage, AK 99508

Drag racers and drunk drivers

Dear Editor:

My son is gone. Never again will he come through the front door and say "Hi Mom," nor will he even call me on the phone to see how I am.

He was run down by a car on one of Anchorage's busiest streets. He was hit with enough force to demolish his car which was impelled 300 feet from the initial point of impact. His near lifeless body had to be removed from the passenger side of the wreck because access from the driver's side was impossible.

Fourteen hours after the accident my husband and I were taken into the operating room to see our child whose condition was so critical he could not be moved. I truly hope none of you will ever have to know the agony of holding your child's hand while being told there is no brain activity and literally no hope for him

to survive.

Night after night our streets are used as drag strips and raceways with little if anything being done to prevent it. If you drive in Anchorage after 9 p.m., you are taking your life in your own hands!

Until, and only until, the public outcry against this carnage perpetrated by drunk drivers reaches monolithic proportions and our legislators in Juneau react responsibly to enact adequate legislation, deaths like my son's will continue to happen.

Help me save the children I have left. Help save your children, your spouse — it can happen to you! Write your legislators and tell them you want tougher laws and most of all tell them you want them enforced. Join M.A.D.D. and get involved before you lose a loved one.

We are a close family. We

loved this child so deeply. The loss of our son, our brother, has left such an emptiness that we will never, ever be whole again.

I can only say the words aloud that my child is gone but my mind won't believe it. Every night I sit and wait for him to come home again. I love him so much.

Thelma Sinnett
Anchorage
Mother of Robert Sean Sinnett

'Stop the mayhem,' says Sen. Fischer

A public hearing on three drunk driving bills now awaiting action in the legislature is scheduled for Saturday morning at the Anchorage Assembly chambers at 3500 Tudor Road.

The meeting is scheduled to run from 9 a.m. to 4 p.m.

The hearings are being hosted by the State Senate Affairs Committee, which is chaired by Sen. Vic Fischer, D-Anchorage.

"We have got to act now to stop the mayhem being caused by drunk drivers in Alaska," Fischer said. "We must stop drunks from driving and drivers from drinking."

The three bills now pending before the senate committee are:

- Senate Bill 61 which would increase the penalties for those convicted of drunk driving and authorize confiscation of vehicles driven by drunks.

- House Bill 17 which would raise the legal drinking age in Alaska from 19 years to 21 years. This has already been approved by the House and is awaiting Senate action.

- Senate Bill 226 which would limit the driving hours for persons under 18 years old on weekends. This bill was introduced last week by Fischer, who said he did so because other states that have established such driving curfews have seen "dramatic decreases in the number of auto accidents involv-



VIC FISCHER

Says act now to end mayhem
ing young people."

"In tackling drunk driving problems, the Senate State Affairs Committee will take a look at every possible measure that could be applied in Alaska," Fischer said. "No single, simplistic solution will eliminate the problem. We must carefully examine all potentially effective measures."

Fischer praised District Court Judge Elaine Andrews for her recent order to confiscate the car driven by a man who had five earlier drunken driving convictions and two license revocations.

"It's about time we took such drastic action," he said.

People who want to testify at Saturday's hearing should call the Anchorage Legislative Information Office at 278-2668.

A-8 The Anchorage Times, Friday, April 8, 1983

W A / E A T I M E S

Mrs. Dianne Cunningham
7217 Foxridge Circle
Anchorage, Alaska 99502

April 8, 1983

An Open Letter To: Senator Patrick Rodey
Senator Arliss Sturgulewski
Representative Charlie Bussell
Representative John Lindauer



I'm a wife, mother and I'm M.A.D.D.!

In my 37 years I've lived all over the world and I can honestly say I have never lived anywhere where I've feared more for my life and the lives of my loved ones than I do in Anchorage.

Anchorage has few major arteries and many of the existing roadways are in extremely poor condition. Driving, even in good weather, is for the most part hazardous. Add to this the drunken driver and you've got a lethal situation.

Our first week in Anchorage my daughter and I were witness to the death of a woman at the hands of an inebriated lady driving a large van. She ran a red light at a high rate of speed and broadsided the victim who was driving a small foreign car. I understand the deceased woman had a young daughter who was orphaned by this incident.

Since that first week there seems to be at least one, often more, fatal accident every week. Most of them are alcohol related. I've noticed that many of the drunk drivers involved are awaiting trial on previous alcohol related charges.

On a daily basis the News lists the judgments meted out by our courts against the drunken driver. I am sickened by their light fines and even lighter jail sentences. Why aren't the penalties for this type of crime more prohibitive???

Were I to get drunk, shoot and kill a perfect stranger I would have committed a serious crime and would be punished accordingly (I trust). However, if I get drunk and run someone down with my car it's not a crime, it's an accident and I'll probably get no more than a "hand slapping". I can't see the difference. An innocent victim is dead because of my inability to control my own actions. A car is every bit as much a lethal weapon as a handgun!

My little girl is 11 years old, in 7th grade, a cheerleader, a member of the National Junior Honor Society and, in general, an outstanding little person with lots of potential. If current penalties are not toughened and drunk drivers made painfully aware that they will not be tolerated by society, I'm afraid my daughter will never get the chance to grow into the fine young woman she appears destined to become. I find that thought unbearable.

I feel certain that if our elected legislators don't soon do something to rectify this intolerable situation the people will get angry enough to elect others who will. The hazard is real and getting more serious daily. It demands prompt attention.)

Why do so many people have to die before our elected officials take this seriously? Drunk drivers commit violent crimes and kill many completely innocent people. Wake up, it may be your spouse or children next.

Thanks for listening.

Sincerely,

Dianne Cunningham

Mrs. Dianne Cunningham

CC: Governor Bill Sheffield
M.A.D.D

JR

3/30/83, SHIRLEE ANC LIO, 4598

TO: REPRESENTATIVES RUSSELL, LISKA, HAYES, BARNES, MALONE,
CLOCK SIN AND WENDTE

FROM: WILLIAM CASLER, 268 GRAND LARRY, ANCHORAGE 99504
H 333-0272 W 274-2662

REQUEST YOU SUPPORT HOUSE BILL 6.

JR



3/31/83, SHIRLEE ANC LIO, 4856

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: TOM FITZKE, 3840 PATRICIA LANE, ANCHORAGE 99504
337-7335

I WAS HOPING THE HOUSE WOULD HAVE PASSED BY NOW SOME
MEANINGFUL LEGISLATION DEALING WITH DRUNK DRIVING. AS
PER THE LETTER TO THE EDITOR OF JUNE GERRISH, IT IS
APPALLING THAT YOU HAVE PASSED NONE. HOW MANY MORE
PEOPLE HAVE TO DIE ON OUR STREETS AND HIGHWAYS BECAUSE
OF DRUNK DRIVING BEFORE SOMETHING IS DONE.

Quo. Ref

MSG 83-00005045 PRTY 1 04/01/83 14:20:38 ORIG: LF20 IN= 0005 OUT= 0056
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POMS

TO: REP. RUSSELL

FR: GLENN HACKNEY, 1136 SUNSET DR., FBX 99701 PH: 456-4610 (H & W)

RE: HB 6

MSG: HAS A DATE BEEN SET FOR HEARING ON THIS BILL OR ARE YOU WAITING FOR THE SENATE HEARINGS ON ITS SEMILAR BILL TENTATIVELY SET FOR APRIL 9TH?

PLEASE ADVISE.

EDM



MSG 93-00013391 PRY 1 03/07/83 16:26:27 ORIG: LR00 IN= 0010 OUT= 0092
FROM: FLORENCE IN BARROW TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: P.O.M.

TO: REPRESENTATIVES BUSSELL, LISKA, WENDTE, HAYES, BARNES, MALONE, CLOCKSIN

FROM: STEPHEN KRAJCIR
BOX 689
BARROW, ALASKA 99723
852-3985 (HOME)



RE: HB 6

I SUPPORT PASSAGE OF THIS LEGISLATION.

3/7/83 FLORENCE, BARROW LIO 13391

03/23/83 12:55:44 ORIG. LF20 IN= 0001 OUT= 0050
FROM LYNDIA/FRX TO JRU INFO
TARGET LURL SUBJ: FOM

TO: REP ~~BOSSAULT~~, CH., WFE JUD

JR

FROM INGEBORG WILSON, 285 "C" ST., FBX. 09701 #456-7032

RE: HB 6, DRIVING A MOTOR VEHICLE

MSG: UNABLE TO UNDERSTAND WHY HEARING OF HOUSE BILL 6 WAS PUT OFF. PLEASE ADVISE WHEN YOU PLAN TO RESCHEDULE.

EQM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: THOMAS PITZKE, 3940 PATRICIA LANE, ANCHORAGE 99504 337-7335

I AM STRONGLY SUPPORTIVE OF TOUGHER DRUNK DRIVING LAWS. HOW MANY MORE HERMAN ANDREWS AND AGNES PASSANIMAS HAVE TO DIE BEFORE WE GET MUCH TOUGHER? ESPECIALLY BECAUSE THIS MAN HAD ALREADY HAD TWO PREVIOUS DWI'S IN LESS THAN A YEAR. HE WAS LAST ARRESTED FEBRUARY 11 THIS YEAR. IT'S SICKENING THAT A PERSON LIKE THAT IS ALLOWED OUT ON THE STREETS.

HB6
JR

WARMEST REGARDS.

MSG 83-00007126 PRTY 1 02/09/83 09:30 45 ORIG: LJ04 IN= 0005 OUT= 0005
FROM: SUE TO: JUNEAU
TARGET: LJHL SUBJ: POH

TO: ALL LEGISLATORS .

FROM: HANCY FAWTHROP
119 SEWARD ST. RM. 9
JUNEAU, ALASKA 99801
586-6234

I SUPPORT HB 6.

COMM *****

REP. RUSSELL, GUY, HOUSE AND SENATE

GUY HACKNEY, M.A.D.D., FILE SUBJECT DP, FR 22701 RA. 458 4610

OF HR 6 (88)

WHEN ARE HEARINGS SLATED ON THIS BILL? WILL THEY BE TELECONFERENCED.
PLEASE LET ME KNOW IN TIME FOR A REPORT TO M.A.D.D. TUESDAY EVENING.

-----EOM

Adana to Teleconfer.

X



Judiciary
Referral



District Court

State of Alaska

THIRD JUDICIAL DISTRICT

941 FOURTH AVENUE

ANCHORAGE, ALASKA

99501

March 31, 1983

CHAMBERS OF
ELAINE ANDREWS, JUDGE

(907) 264-0663

Representative Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing to express some court related concerns over House Bill No. 6, a bill pertaining to criminal penalties for driving while intoxicated and driving while license suspended.

At the outset it is important to understand not only the intended impact of legislation that raises or establishes a mandatory minimum penalty, but also the predictable, but unintended, consequences. Certainly deterrence of the illegal conduct is a paramount goal. However, there are obstacles toward reaching that goal. Substantial mandatory minimum penalties can cause prosecutors to review cases more severely than they might otherwise, leading to reduced charging. Jurors, who quickly become educated in such matters, are reluctant to convict in cases where they know significant mandatory penalties will be imposed. Further, defendants who face loss of freedom, and financial security through loss of employment, will litigate these cases to the fullest, taxing the already understaffed prosecutorial and defense agencies, not to mention the court which is struggling to process the skyrocketing caseload.

Larger considerations aside, I discern several critical problems with the proposed legislation.

1. **AS 28.15.181(c) - Driving While License Suspended Penalty Prerequisite**

It will require significant time on behalf of the prosecutor and the court to obtain information about "essentially similar" past convictions. Hearings will have to be held to determine what is a "substantially similar" offense. I would

estimate that at least 10-20% of the cases which involve Alaska's highly transient population would require such hearings.

2. AS 28.15.291 - Driving While License Suspended Mandatory Penalties

(a) There are essentially two ways that a driver's license can be revoked. The first is a court ordered revocation or suspension. This occurs usually at sentencing after the defendant is convicted of reckless driving or driving while intoxicated. The judge personally advises the defendant that his license is revoked and that mandatory penalties will be imposed if he drives.

The second method of revocation is an administrative revocation which occurs if the defendant has accumulated too many points on his license or if he is the registered owner of a car involved in a property damage accident of at least \$500. These "administrative" suspensions are determined by hearing officers. Usually the driver is notified through the mail that his license will be suspended. The vast majority of administrative suspension charges coming before the court are due to the defendant's failure to comply with the SR-22 financial responsibility requirements.

Under the proposed legislation the type of suspension, whether court ordered or administrative is irrelevant. The defendants are treated as equally culpable. One defendant is likely a DWI offender who has been ordered not to drive. The other defendant may have a blameless record but be fiscally irresponsible as to a single accident. Mandatory minimum penalties may be wise as to the first offender but not as to the fiscally irresponsible offender. Financial responsibility should be approached through compulsory insurance or some more realistic and less costly avenue.

(b) Any kind of mandatory fine legislation is not a cost effective approach to punishment. Oftentimes the court and related enforcement agencies spend five or ten times the amount of the fine trying to collect it. If a person is arrested for failure to pay a fine and he agrees to pay the fine then the court must release the offender from custody. The "bench-warrant-release-for-payment" merry-go-round is a losing proposition. Fines should be left to the discretion of the court which can fashion other means, such as community service, to equally penalize indigent defendants.

(c) I assume that throughout the legislation language referring to "minimum sentence served" properly credits goodtime as required by statute.

3. AS 28.35.030(a)(2) - Chemical Tests

The language should be amended to reflect that the chemical test may be within four hours of the defendant's operation of the vehicle but that the test must show .10 or more at the time of operation. There have been a surprising number of cases in which the defendant claimed to be driving sober, slid off the road, walked to the bar, drank to intoxication and was arrested for DWI hours after the car was abandoned. The Municipality of Anchorage proposed a similar ordinance in the past and much litigation was generated over simiarly vague language.

4. AS 28.35.031 - Immediate Operator License Revocation

This proposed legislation creates absolutely nightmarish consequences for the court, prosecution and police. A court review to be scheduled within seven days of arrest would require the establishment of a sub-bureaucracy to coordinate court scheduling, witness subpoenas, proper notice to necessary parties, etc. The current court calendar could not accommodate such hearings. A new judicial officer, an in-court clerk to record proceedings, and clerical staff, not to mention hearing room, which we do not have, would be required.

5. AS 28.35.032(a)(b)(d)(g)

Does a person who refuses a breathalyzer test but agrees to a blood test, which would accomplish the same result, suffer the same consequences as the person who refuses all chemical tests?

6. AS 28.05.045 - Impoundment of Vehicles

A cursory review of the entire scheme of impound legislation suggest some problems in the proposed legislation.

What does impoundment of a vehicle accomplish that confiscation of license plates would not? An offender intent on driving will beg, borrow or otherwise obtain a car to drive. A borrowed car driven by a license-suspended driver is much more difficult to detect than a car driven down the road without license plates.

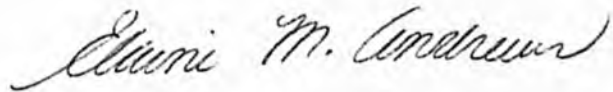
Although not directly a court concern, the problems of storage, insurance and potential civil liability for both proper and improper impoundment are enormous.

Court involvement in the proposed forfeiture legislation is significant. At minimum, in Anchorage, a judge and support staff would be required. Further the court is not the moving party in the forfeiture and therefore has no responsibility to ascertain parties who may have ownership or security interests in the vehicle in order to notify them of the forfeiture action. That burden is upon the prosecution.

My review of the legislation has been at best, brief. I urge you to carefully consider the total impact of the proposed legislation. The impact on the Anchorage district court, which is struggling to meet an increasing caseload, will be severe if this legislation is passed without adequate attention to the needs of the court which must faithfully and fully carry out the legislature's dictates.

I will be pleased to respond to any questions you may have and assist you in any manner you deem appropriate.

Sincerely,



Elaine Andrews
Assistant Presiding Judge
Anchorage District Court

EA:smh

cc: Chief Justice Edmond Burke
Arthur H. Snowden, II
Presiding Judge Mark Rowland

Alaska Native Health Board

1689 C STREET, SUITE 230, ANCHORAGE ALASKA 99501

PHONE (907) 276 8989

Reference #A83-0335

March 29, 1983

Representative Charles Bussell
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811



Dear Representative Bussell:

The Alaska Native Health Board wishes to go on record as endorsing the following pieces of legislation proposed this session:

H.B. 6 "An Act Relating to Driving a Motor Vehicle"

The ANHB favors the inclusion of a section in the examination given to applicants for a driver's license to test the applicant's knowledge of the effects of alcohol and drugs on drivers, the dangers of driving under the influence of alcohol or drugs, and the applicant's knowledge of the laws relating to driving while intoxicated. The ANHB also favors stricter penalties for intoxicated while driving offenses and refusals to submit to chemical tests of breath.

H.B. 10 "An Act Relating to Imitation Controlled Substances"

The ANHB favors legislation which would make it unlawful for a person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance, except as provided in AS 17.14.040.

H.B. 17 "An Act Relating to Age Limit Under Title 4, Alcoholic Beverages"

The ANHB endorses restoration of the legal minimum age for drinking alcoholic beverages in Alaska to age 21.

Your consideration in supporting and insuring passage of the above legislation will be very much appreciated. Thank you in advance.

Sincerely,

Bonnie Gabaldon

Bonnie Gabaldon
(Interim) Executive Director

BG:be

WHILE YOU WERE AWAY

FOR WYNDY DATE 9/14 TIME 1:45 A.M. P.M.

M Rebecca Birch
OF _____

PHONE _____ TELEPHONED
AREA CODE NUMBER EXTENSION

MESSAGE 2200 RETURNED YOUR CALL

notify when HB 6 PLEASE CALL

is scheduled again WILL CALL AGAIN

[Signature] CAME TO SEE YOU
WANTS TO SEE YOU

SIGNED

TO: ALL LEGISLATORS

FR: ARNOLD PERRY
GEN DEL
WASILLA 99687

HB 6

FOR YOUR INFORMATION, THERE ARE THREE PEOPLE IN AN ANCHORAGE HOSPITAL THAT MAY NOT LIVE ALL BECAUSE OF ANOTHER DRUNK DRIVER. EACH AND EVERY ONE OF THESE INCIDENTS THAT INVOLVE A DRUNK DRIVER TAKES AWAY SOMEONE'S LOVED ONE. IT IS MY OPINION AND, I AM SURE THE OPINION OF EVERY OTHER ALASKAN RESIDENT, THAT IT IS WAY PAST TIME SOMETHING SHOULD BE DONE.

MSG 83-00010620 PRTY 1 04/20/83 19:10:33 ORIG: LM00 IN= 0012 OUT= 0199
FROM: MARY/MATSU TO: JNU INFO
TARGET: LJHL SUBJ: P.O.M.

TO: ALL LEGISLATORS

FR: ALEX CONNORS
P O BOX 3404
PALMER 99645

PH: 376-4141

HB6

I STRONGLY SUPPORT THE LOBBYING EFFORTS AND THE EFFORTS IN GENERAL OF
M.A.D.D. I STRONGLY ENCOURAGE YOU TO WORK ON LEGISLATION TO ELIMINATE
DRUNK DRIVERS.

I. REQUEST

Bill/Resolution No.: CSHB 6 (Judiciary)
 Title: "...driving a motor vehicle."
 Sponsor: Judiciary Committee (Aboud-Orig.)
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		164.2	208.9	221.4	234.7	248.8
200 TRAVEL		10.0	10.6	11.2	11.9	12.6
300 CONTRACTUAL		20.4	23.8	25.2	26.7	28.3
400 COMMODITIES		12.4	7.6	8.1	8.6	9.1
500 EQUIPMENT		32.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	239.0	250.9	265.9	281.7	298.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	239.0	250.9	265.9	281.7	298.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	4	4	4	4	4
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director Phone: 465-3672
 Division: Administrative Services Division Date: May 5, 1983
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: May 5, 1983
 Department: Department of Law

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

CSHB 6 (Judiciary)
Fiscal Note
Analysis

The committee substitute has eliminated impoundment of vehicles and retained modified and less restrictive provisions for forfeiture of vehicles. Likewise, the requirement to notify every person who has an ownership or security interest in vehicle within five days has been changed to simply notice prior to any hearing that would determine the disposition of any forfeited vehicle. Because of these changes, the fiscal impact on the department will be reduced. The requirement for court forfeiture hearings, however, still remains and the state must provide motions and answer intervenors' motions in order to invoke forfeiture. Consequently, the department's original estimate of four attorneys, and two clerical staff is being reduced to two attorneys and two clerical staff.

Fiscal Analysis - CSHB 6

The impact of CSHB 6 is expected to result in the addition of one Attorney IV position (SR 24) and one Attorney III position (SR 22). In addition to these attorney positions, two secretarial positions will provide support for the Anchorage and Fairbanks attorneys.

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these four positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	ANCHORAGE		FAIRBANKS		TOTAL
	AIV	LSI	AIII	LSI	
Personal Services	56.2	24.5	56.2	27.3	164.2
Travel	5.0	-0-	5.0	-0-	10.0
Contractual	8.0	2.2	8.0	2.2	20.4
Commod. - ongoing	1.5	1.5	1.5	1.5	6.0
Commod. - single time	2.0	1.2	2.0	1.2	6.4
Equip. - single time	1.5	14.5	1.5	14.5	32.0
					<hr/>
					239.0

2nd Year (12 months + 6% annual inflation)

Personal Services	71.5	31.2	71.5	34.7	208.9
Travel	5.3	-0-	5.3	-0-	10.6
Contractual	9.1	2.8	9.1	2.8	23.8
Commodities	1.9	1.9	1.9	1.9	7.6
					<hr/>
					250.9

POSITION TITLE Attorney IV				RANGE/STEP 24A	DARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL	ADDITION		
TYPE OF EXPENDITURE		AMOUNT	
1	2	3	
PERSONAL SERVICES			
Salary	4,469/month	44,690	
Benefits		6,890	
Supplemental Benefits		2,240	
Fixed Benefits		2,400	
TOTAL PERSONAL SERVICES		01	56,220
Travel		02	5,000
Contractual		03	8,000
Commodities		04	3,500
Equipment		05	1,500
Other			
TOTAL COST			74,220

JUSTIFICATION

This is one of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	C.F. Match 100?	
	General Funds 100	74,220
	I-A Receipts 100	
	Program Receipts 102B	
	Other	

FOR B&M USE ONLY

4A KEY NUMBER _____

3 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page _____ of _____

Revised Date _____

POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL	ADDITION	
TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
Salary	1,817/month	18,170
Benefits		2,800
Supplemental Benefits		1,110
Fixed Benefits		2,400
TOTAL PERSONAL SERVICES	01	24,480
Travel	02	-0-
Contractual	03	2,200
Commodities	04	2,700
Equipment	05	14,500
Other		
TOTAL COST		43,880

JUSTIFICATION

This is the second of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when a forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	43,880
	I-A Receipts 1005	
	Program Receipts 1028	
	Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

3 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM GENERAL GOVERNMENT

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page _____ of _____

Revised Date _____

POSITION TITLE
Attorney III

RANGE/STEP
22A

BARG. UNIT
X

FORM 12 PAGE/LINE

GOV. APPRVD. DISAPP.

TYPE OF POSITION PFT
STAFF MONTHS 10
RP NUMBER
PCN NUMBER

BRU PRIORITY

LOCATION
Fairbanks

ELECTION DISTRICT

LEG.

CONTINUATION LEVEL
ADDITION

JUSTIFICATION

TYPE OF EXPENDITURE

AMOUNT

1

2

3

PERSONAL SERVICES

Salary 4,469/month 44,690

Benefits 6,890

Supplemental Benefits 2,240

Fixed Benefits 2,400

TOTAL PERSONAL SERVICES 01 56,220

Travel 02 5,000

Contractual 03 8,000

Commodities 04 3,500

Equipment 05 1,500

Other

TOTAL COST 74,220

This is one of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Anchorage. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

RECEIPT CODE

FUNDING SOURCE

6. Federal Receipts 1002

7. G.F. Match 1003

8. General Funds 1004 74,220

9. I-A Receipts 1005

0. Program Receipts 1028

1. Other

FOR B&M USE ONLY

4A KEY NUMBER

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page of

Revised Date

3 REQUEST FOR
NEW POSITION

POSITION TITLE Legal Secretary I				RANGE/STEP 10B	DARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEC.		

CONTINUATION LEVEL.		ADDITION	
TYPE OF EXPENDITURE			AMOUNT
1	2	3	
PERSONAL SERVICES			
Salary	2,048/month	20,480	
Benefits		3,160	
Supplemental Benefits		1,260	
Fixed Benefits		2,400	
TOTAL PERSONAL SERVICES		01	27,300
Travel		02	-0-
Contractual		03	2,200
Commodities		04	2,700
Equipment		05	14,500
Other			
TOTAL COST			46,700

JUSTIFICATION

This is the second of two secretary positions required to provide secretarial support for the two new attorney positions assigned to Anchorage and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Fairbanks. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.

RECEIPT CODE	FUNDING SOURCE	
5.	Federal Receipts 1002	
7.	G.F. Match 1003	
8.	General Funds 1004	46,700
9.	I-A Receipts 1005	
0.	Program Receipts 1028	
1.	Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

COMPONENT LEGAL SERVICES OPERATIONS

FY 84

Page _____ of _____

Revised Date _____

**3 REQUEST FOR
NEW POSITION**

MSG 83-00012292 PRTY 1 04/26/83 14:02:26 ORIG: LA05 IN= 0001 OUT= 0786
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SURJ: P O H

TO: SENATORS V. FISCHER, JOSEPHSON, AND KELLY
REPRESENTATIVES CLOCKSIN, UENLING, AND **BUSSELL**

JK

FROM: DUANE HENSON, 901 WEST 1ST AVENUE, ANC 99501
279-4025 W 272-7344 H

THE STATE OF ALASKA GLEANS THE PROFITS FROM THE SALE OF ALCOHOL. THE STATE SHOULD ASSUME THE RESPONSIBILITY TO PROVIDE COMPENSATION TO THE SURVIVORS OF THE 'VICTIMS OF 'DRUNK DRIVERS'. LEGISLATION SHOULD BE INTRODUCED TO MANDATE AUTOMATIC PAYMENT OF \$ 500,000.00 TO THE HEIR/S OF THE VICTIM FROM THE STATE AS COMPENSATION.

64

Liquor store held liable for crash injuries

Associated Press

11/15/83 3-5-83

A liquor store that sells alcohol to a minor may be liable for injuries suffered by the minor even though the buyer broke the law by making the purchase, the Alaska Supreme Court has ruled.

The ruling came in a lawsuit filed by the estates of Randy

Hanson and Elizabeth Morris. The two minors were killed in an automobile crash on Dec. 31, 1977.

Hanson had bought a fifth of tequila at the Pines Liquor Store in Anchorage earlier that night. He shared the bottle with the four other minors in a car includ-

ing driver David Anderson.

Hanson and Morris were killed when Anderson made an illegal left turn and collided with another car, the Supreme Court noted.

The court said that under an Alaska statute in effect at the time but repealed in 1980, the liq-

uor store was responsible for injuries to customers served in violation of the law.

That Hanson broke the law by making the purchase and by later serving Anderson does not relieve the liquor store of liability, the court held.

HB
6
JR



The constitutional breath test

By G. Kent Edwards

OUR COURTS are at it again! Creating more constitutional rights out of thin air. This time the air is the alcoholic breath of accused drunk drivers.

Judge Beverly Cutler and our appellate court have decided that the state should buy new breath-testing equipment capable of saving a sample of defendant's breath for possible future testing by the defendant. It seems that our current Breathalyzers don't have all the features that modern technology makes possible.

She thinks that the benefits of those additional features justify their acquisition. Judges Bryner, Singleton and Coats agreed. Of course, everyone is entitled to his opinion.

UNFORTUNATELY, the judges have characterized their opinion as being everyone's constitutional right, thereby depriving the other branches of our government from reaching their own opinions on the subject.

The decision has caused evidence in several hundred criminal cases to be suppressed. Not because the evidence was gathered illegally. Not because the evidence was unreliable. Not because the defendants were unable to cross-examine those who gathered the evidence. No, in the words of Judge Cutler, the evidence was suppressed "to remedy the careless disregard shown by prosecution to promptly fulfill the duties of investigating, developing, purchasing and implementing a breath sample saving system. The state and city should have done this immediately upon learning of the technology."

HER COMPLAINT is that the police did not take rapid enough steps to acquire necessary materials to enable the saving of defendant's breath for later testing by the defendant in the event the defendant wanted to have it tested. Alaska's Breathalyzer used up the entire sample in the course of the test.

The system Judge Cutler seemingly prefers isn't even foolproof. In fact, in the words of the court, it is a "proposed system" for which Alaska "lacks expertise" to use at this time. "It needs retesting with live subjects to assure its viability".

What so-called constitutional rights are being violated? The defendant's right to cross-examine "tests." Cross-examining the operator of the test apparently is not good enough! How could we have been so shortsighted for so many years? Machines don't talk, you say? Shows what little you know about the law and what can be done with a little extra "breath" in the hands of an aggressive, imaginative defense attorneys and judges.

AS ONE MIGHT expect in a decision this controversial, Judge Cutler had a difficult time determining whether she had in fact discovered a new constitutional right. First she said she did, but a few months later she decided that she had not, only to change her mind a second time. During this period she was receiving evidence as to such things as whether saving breath samples was technologically possible, the extent of its cost and the amount of effort being taken by government officials to improve the new system. Conflict-

ing evidence kept causing the scale to tip differently each time. Surely the existence or non-existence of our constitutional rights are not so precariously balanced.

Not too surprising, the courts' opinions were completely devoid of any finding that the taking and saving of a separate breath sample for use by a defendant has ever, even once, helped show that a defendant was not drunk or that it is probable that a second test would result in such a conclusion. But then, such things are not supposedly relevant when dealing with constitution rights.

It is one thing to save evidence favorable to the defendant; it is another to require that evidence be created for the defendant with equipment that doesn't exist in the state.

Where is the line to be drawn? Must all tests leave a part of the evidence unspoiled for subsequent viewing by defendant's experts? Cut a fiber in half before testing and give one to the defendants; otherwise, a mass murderer such as Atlanta's Wayne Williams goes free? Do not use chemicals on a crucial blood stain? Do not deplete all of the confiscated narcotic in a test to determine its identity?

Must police chemists be constantly on top of the latest advances in the state of the art of a particular testing apparatus? Are they now placed in a situation where, unless they have the most advanced systems for making tests without destroying all of the evidence being tested, they could be jeopardizing the prosecution of a criminal case?

If it doesn't make sense to you, don't worry; you are in good company.

G. Kent Edwards was attorney general for the state of Alaska from 1968 to 1970. From 1971 to 1977 he was U.S. attorney for Alaska. Edwards, a Republican, is now in private practice.

Tough drunk driving bill clears House, 33-4

By The Associated Press

JUNEAU—The House on Thursday approved on a 33-4 vote a measure to substantially toughen the drunken driving laws in Alaska.

Rep. Mitch Abood, R-Anchorage, opened defense of his bill (HB6) by saying, "Politics has no place or home in this bill."

But it was politics as the proposed amendments—ranging from mandating alcohol rehabilitation to reducing the time a drunken driving conviction affects later convictions—were pressed by Assistant Minority Leader Don Clocksin, D-Anchorage.

Abood said he didn't want the issues addressed by the amendments in the bill because they would defeat the bill's purpose: to get the drunk drivers off the street.

While Clocksin's eight amendments were defeated, a fellow minority Democrat, Rep. Peter Goll of Haines, raised a question that may bring the issue back to the House floor today.

Goll and others pointed out the bill says that after one or more convictions a person could forfeit his vehicle. Goll said he was unsure if that was what was intended. Abood said the possibility of vehicle forfeiture would deter repeat offenders.

Other provisions of the bill would mandate more jail time and large monetary penalties for second and third drunk driving offenses.

A first-time offender also would lose license privileges for 30 days, and could have limited driving rights for 60 days. Current law allows a judge to give a limited license for 60 days, if the license isn't revoked for 30 days.

A second offense would mandate a one-year license revocation, while a third conviction would result in a 10-year license loss.

The first-time offender would have a minimum fine of at least \$



REP. MITCH ABOOD
Off the street

second offense means a \$500 fine, and a third offense \$1,000. Current law mandates a maximum fine of \$1,000.

The measure follows current statutes of 72 hours jail time for a first offense, but increases from 10 to 29 days the time a person convicted for a second offense would have to spend in jail. A third offense mandates at least 30 days in jail.

But the recommendation must first be accepted by House Finance Chairman Al Adams, D-Kotzebue, and agreed to by the full Finance Committee.

Meanwhile, a letter of intent to be placed in the House-proposed operating budget mandates that the division look at cheaper alternatives to provide service.

The finance committee, at the urging of Rep. John Lindauer, R-Anchorage, earlier had deleted \$1.45 million from the telecommunications budget. Deputy Commissioner of Administration Julianna Guy told Rep. Jim Duncan, D-Juneau, that the action could have cut service to rural communities and possibly meant the end of the Alaska Television Project.

Duncan contended the cuts would have possibly sliced live programming, such as "Monday Night Football." Guy said the Legislature would have to decide which villages wouldn't have programming.

She said the state would have to seek lower tariffs charged by Alascom to plug the deficit and provide Alaska with television service. Duncan said that proposal would be com-

pleted if the act's tariffs are set by the Federal Communications Commission.



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

Ms. June Gerrish
MADD - Mothers Against Drunk Drivers
5800 Glenn Highway
Anchorage, Alaska 99504

Dear Ms. Gerrish:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

I sincerely hope that this bill will not be substantially altered or amended in a way that weakens or destroys it.

The bill provides for seizure of a driver's license upon arrest as well as increased penalties upon conviction. While the minimum of 72 hours in jail is mandated for a first offense in keeping with the existing law, a second offense requires a minimum of no less than 20 days in jail and the third offense would result in at least 30 days in jail and a 10-year license revocation.

Charlie - see page 457 "EMERITUS" Webster's New World dictionary - "retired from active service, USUALLY FOR AGE, But retaining one's rank or title"

I guess this is appropriate

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. BOB WENDTE

Rep. Mitch Abood, ONI NIDOTENT

Ms. June Gerrish
May 2, 1983
Page No. ?

Fines based on the number of absence of prior convictions, carry mandatory minimums of \$250 for a first offense, \$500 for the second offense and not less than \$1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is known that HB 6, the so-called "drunk driving bill," was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, after all, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

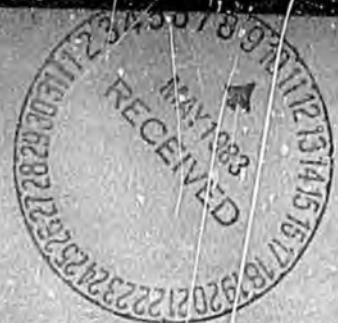
IDEE, SOLDOTNA P.O.M. 5/9/83 #15824

TO: ALL SENATORS

ALL REPRESENTATIVES

FROM: RAINBOE BOVEE
BOX 4498
SOLDOTNA, AK. 99669

I URGE YOU AS AN ELECTED OFFICIAL, TO INTRODUCE AND PASS LEGISLATION THAT WILL IMPOSE STIFFER PENALTIES FOR THOSE CONVICTED OF DRUNK DRIVING. JUST SINCE JANUARY 27 TH. THE LAST COUNT WAS 21 PEOPLE IN ANCHORAGE ALONE, THAT WERE DEATH OR INJURY VICTIMS OF INTOXICATED DRIVERS. THIS PROBLEM MUST BE ADDRESSED.



E.O.M.

Journal
Referral



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

APR 1983
RECEIVED
ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
907) 465-3704

Drunken driving laws fail, judge says

by Ralph Nichols
Times Writer

The legislature is to blame for repeat drunken driving offenders on Alaska highways, an angry District Court judge charged Tuesday.

Judge Elaine Andrews said lawmakers have failed to provide adequate alcohol abuse treatment programs for jailed drunken drivers.

"If they want drunk drivers off the road, they should do something," the judge said from the bench.

The judge became upset when she learned that Bernard Johnson, who is serving an 18-month sentence, is not receiving court-ordered treatment for alcohol abuse because no programs are available.

Johnson, 51, is in jail on three drunken driving convictions. He has 10 prior convictions for the same offense.

State dollars "obviously (are) not being spent at the preventive or treatment ends of the problem," Andrews said. "There is no place for treatment for people convicted of driving while intoxicated."

The current system does little more than steer repeat offenders through a "revolving door," Andrews continued.

They are sentenced, "warehoused in jail without treatment, and then released," she said. Because they haven't been cured, they will probably drive drunk again.

"Maybe," Andrews added, "someone ought to let the legislature know the burden is on them" to do more than just punish drunken drivers by funding alcohol treatment programs for repeat offenders serving extended sentences.

"My hands are tied," she said.

Andrews noted that Johnson -- and others like him -- can receive alcohol abuse treatment for only 30 days while incarcerated. "And I'm not going to let him out of jail" just because there is no treatment available, she said.

Assistant District Attorney Jim Wolf told the court this problem "is on the conscience of the legislature."

Andrews said later her main concern is that there has to be some responsible program to address the serious issue of repeat offenders.

While increased penalties for drunken drivers, which the legislature has approved, "are reasonable ... there also has to be prevention and treatment, she said.

"If the legislature wants people warehoused for the maximum time, then it should just do what is being done now, but if it wants to address the problem, then it has to spend the money" for treatment programs, Andrews said.

Andrews added that "the court system has done all it can do. Johnson will have been in custody without treatment for one and a half years when he is released from jail."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 25, 1983

SUBJECT: Driving a motor vehicle while intoxicated
(CSHB 6 (Judiciary))

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the sectional analysis of the draft of CSHB 6 (Judiciary) that you requested. It only highlights the major changes to existing law.

Section 1 adds new requirements for a driver's license application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 2 authorizes, on refusal to submit to a chemical test of breath or if a test indicates an alcohol concentration of .08 or more, the seizure of the driver's license by the law enforcement officer and revocation of the license by the Department of Public Safety. The officer reads the driver a notice and gives him a copy of the notice. The notice explains the revocation procedure and the right of court review. The notice itself is a temporary driver's license that expires in seven days unless the driver initiates court proceedings to rescind the revocation of license. The revocation periods are the same as those imposed by a court after conviction of the same offenses under Sec. 5 of this draft. A revocation or suspension action is stayed if the person initiates a court action to rescind the Department of Public Safety's action. Procedures for court review of an administrative revocation are set out.

April 25, 1983

Section 3 adds a new basis for the immediate revocation of a driver's license by a court: the refusal to submit to a chemical test of breath.

Section 4 extends the period limited license privileges from 30 to 60 days for offenses that are grounds for immediate revocation of a license. This does not apply to driving while intoxicated or refusal to submit to a chemical test of breath. Adds a requirement that a prior offense must occur within 15 years before longer periods of license revocation will be imposed.

Section 5 requires a court convicting a person of driving while intoxicated or refusal to submit to a chemical test of breath to revoke the person's driver's license. The period of revocation depends upon whether the person has been previously convicted in this or another jurisdiction of either offense within the preceding 15 years. If the person has not been previously convicted, the period of revocation is 90 days. If the person has been convicted once, the period is one year. If the person has been convicted more than once, the period of revocation is 10 years. Under existing law the court shall revoke the license of a person for not less than 30 days for the first conviction and may grant the person limited license privileges. The court shall revoke the license for not less than one year for a second conviction and may not grant limited license privileges. The court shall revoke the license for not less than three years for a third or subsequent conviction and may not grant limited license privileges.

Section 6 allows a court to grant limited license privileges for the final 60 days a license is revoked for driving while intoxicated or refusal to submit to a chemical test if the person has not been previously convicted.

Section 7 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges, since periods of revocation are established under Sec. 5 of this bill.

Section 8 removes the references to the issuance of a new driver's licenses for persons convicted of driving a motor vehicle while intoxicated after a limited license period has expired.

April 25, 1983

Section 9 limits the penalties imposed under existing law for driving while a license is canceled, suspended, revoked or in violation of limitation to situations involving loss of driving privileges for reasons other than driving while intoxicated or refusal to submit to a chemical test.

Section 10 provides a minimum penalty of 30 days imprisonment and a fine of \$500 for driving when driving privileges have been revoked for driving while intoxicated or refusal to submit to a chemical test if the person has been convicted only once. If the person has been convicted more than once of driving while intoxicated or refusal to submit to a chemical test and drives while driving privileges have been revoked, the minimum penalty is 90 days imprisonment and a fine of \$1,000.

Section 11 decreases the level of alcohol in a person's blood from 0.10 to 0.08 percent or more by weight and from 100 to 80 milligrams per 100 milliliters for the purpose of determining whether the person is under the influence of intoxicating liquors. Decreases the level of alcohol in a person's breath from 0.10 to 0.08 per 210 liters for the same purpose.

Section 12 changes the penalties for conviction of driving while intoxicated. If a person has not been previously convicted within the preceding 15 years of driving while intoxicated or refusal to submit to a chemical test, the minimum sentence of imprisonment is 72 hours, and a fine of not less than \$250 imposed. If a person has been previously convicted once, the minimum sentence of imprisonment is not less than 20 consecutive days and a fine of not less than \$500 is imposed. If a person has been previously convicted more than once, the minimum sentence of imprisonment is 30 days and a fine of not less than \$1,000 is imposed. The five-year period used for calculating the number of convictions required to increase the penalty has been eliminated, so that all previous convictions occurring within the preceding 15 years are considered. A conviction in this or another jurisdiction, if the elements are substantially similar, is counted for purposes of determining enhanced penalties. The provision for suspension of sentence after the minimum sentence is served has been eliminated. The vehicle used in commission of the offense may be forfeited.

Section 13 requires a person involved in an accident or who commits a traffic offense while driving to submit to a

preliminary breath test that may be used by an officer in determining whether to arrest the person for driving while intoxicated. Refusal to submit to the test is a violation punishable by a fine.

Section 14 makes it clear that refusing to submit to a chemical test after being arrested constitutes the crime of refusing to submit to a chemical test. Refusing to submit to the preliminary breath test provided for in Sec. 13 of this bill is a separate offense.

Section 15 provides new penalties for refusal to submit to a chemical test which are similar to the fines and terms of imprisonment imposed for driving while intoxicated under this bill.

Section 16 provides that the levels of alcohol concentration in a person's blood or breath are decreased to conform to Sec. 11 of this bill.

Section 17 provides that the levels of alcohol concentration in a person's blood or breath are decreased to conform to Secs. 11 and 15 of this bill.

Section 18 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 19 adds new sections providing for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.-35.032 (Refusal to Submit to a chemical Test of Breath). In addition, provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings. A municipality is granted authority to provide for impoundment and forfeiture of a motor vehicle in similar circumstances.

Section 20 repeals provisions that have been replaced by other provisions throughout this bill.

REPRESENTATIVE ABOOD'S COMMENTS

ON HOUSE BILL #6

(before the Judiciary Committee,
March 15, 1983)

House Bill # 6, under the title "An Act relating to driving a motor vehicle," has a rather innocuous sound as to meaning. But I want to point out some of the meaning of that.

I would like to quote Mr. Leo Walsh, President of the West Anchorage High School student body, from a statement he made to me by phone March 14, 1983. Mr. Walsh says:

"Individually, as a senior in high school, if the drinking age were raised to 21 from the present age of 19, it wouldn't make that much of a difference in my attitude towards alcoholic beverages. I have been taught to deal with it in a responsible manner."

That is a profound statement when dealing with responsible drinkers and irresponsible drinkers, regardless of age.

That is the whole point of House Bill # 6; the tough sentences, fines, impoundments, and confiscations of vehicles are all tools to eliminate the drunk driver from our highways.

I won't quote statistics, because I am sure you are all aware of them. But one fact in particular that I will bring you back to is the reason for the formation of M.A.D.D. (Mothers Against Drunkers) in Alaska, which is the deaths of the Gersish children

This individual tragedy was enough to prompt the people of this State, (as well as similar tragedies in other states) to finally say "THAT IS ENOUGH!! WE NO LONGER CAN TOLERATE THE TAKING OF LIVES AND PROPERTY BY THE

IRRESPONSIBLE, DRUNKEN DRIVER!!

That is why House Bill # 6 has such rigid and tough clauses against drunken driving. To the responsible driver and drinker, it will really not make any difference; because of the sense of responsibility that he has toward his family, friends, and associates.

To the irresponsible driver and drinker, it will mean longer jail sentences, heavier fines, impoundment of his vehicle (or the friend's vehicle that he was driving), confiscation of the vehicle, possible loss of employment, and embarrassment to his loved ones.

But more than that, this legislation will take him off the streets if he considers the penalties and punishment of driving while intoxicated. This is the sole thrust and effort of House Bill #6.

Mr. Chairman, in conclusion I believe it is the duty of this Committee, the Court system, and especially those people who think nothing of driving while intoxicated, to take this law seriously; to realize that not just the legislature, or the Court system, but all citizens of our State cannot and will not tolerate any more deaths, injuries, property damage, and pain.

Mr. Chairman, thank you for the opportunity to present the people's case against drunk driving to this Committee. I urge you to act promptly, for each day we delay may mean another life.

Drunk Driving Penalties In Other Countries

For those who think that the new DUI laws recently passed in many states are far too harsh, we advise those people to take a look at how other nations around the world are dealing with the problem of the drinking driver. In some of the following cases you'll find that a few of these countries don't have near the drunk driving problem that now exists here in the United States. The apparent reason for this lack of a high number of DUI cases in these other countries would seem to be directly attributable to the no nonsense, routinely dealt, strict punishments handed out by the courts in these foreign countries. This information has been drawn from newspaper accounts and statistics supplied to MADD by members. Any incorrect statements are attributable to the sources, not the writers.

West Germany • If a suspected drunk driver tests out at 0.8 mills of alcohol in the bloodstream, his license is automatically suspended for a minimum of three months, with a maximum of one year in prison or a fine. The police also use roadblock checkpoints to randomly test drivers for alcohol consumption.

Norway • In Norway, it's a mandatory, minimum sentence of three weeks in jail for any driver caught with a blood-alcohol level of .5 per mil or more. That means that five drops of alcohol per 1000 drops of blood. A fine may be added scaled to income. Suspended sentences are extraordinary. On the first offense you lose your license for at least one year. On the second offense within five years, you lose your license for life.

Israel • The problem of the drinking driver on the roadways in Israel is virtually non-existent, due largely to the two-year

prison term that awaits convicted drunken drivers. In 1980, an Israeli Embassy spokesman was quoted as saying that there is about one drunk driving case in Israel a year.

Soviet Union • First offenders are banned from the roadways for six months. In one instance, the drunk driver who killed six and injured five more during a drive through northern Moscow was sentenced to death.

Great Britain • Those convicted face automatic license suspension for one year. In addition, if the case is aggravated, lifetime banishment from the roadways is possible. Other sentencing possibilities include six months in jail, up to an \$1800 fine, and assignment to gardening, garbage collection, and other community service.

Egypt • Like most Moslem countries, alcohol usage is prohibited, drunken driving cases are rare.

India • Arrests are rare, but penalties are severe. Those convicted face six months in prison, \$112 fine, or both.

South Korea • Just an arrest results in an automatic two month license suspension, with a conviction meaning a jail sentence of up to one year and a fine of \$700.

Japan • First offenders can face up to four months in jail and a \$200 fine. Licenses are also revoked and can be returned only upon successful completion of a driving test one year later.

Chile • Those convicted face from 61 to 541 days in jail. If someone has been injured the minimum prison sentence is 18 months.

Community Support

(continued from page 2)

- Federated Fire Fighters of California
- Gannett Outdoor Advertising
- Joan Blake Austin of Joan Blake Austin Health Studios
- Jerry Burns of NBI
- Sacramento County Deputy Sheriffs Association
- Sacramento Police Officers Association
- Wine Institute

Federal Legislative Victory

The U.S. Congress has joined the fight to rid our roadways of the drunken driving menace. On September 29, the House of Representatives unanimously passed the legislation which contained the provisions of H.R. 6170, also known as the Howard-Barnes bill. On October 21, the Senate also unanimously passed the legislation. On October 25, President Reagan signed this welcome provision into law.

Essentially, this new law will provide important federal aid in the form of incentive grants to those states setting up comprehensive, community-based drunk driver control programs. Another attractive feature of the Howard-Barnes legislation is that it will provide the incentive grants out of funds which are already budgeted, thus the federal debt will not be increased because of this program.

A special thanks is in order to the President, Congressmen Howard and Barnes, and the individuals and groups responsible for the passage of this essential new measure.

STATE OF ALASKA
THE LEGISLATURE

FOUCH V. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1983

SUBJECT: Driving while intoxicated
(HB 6) (CSHB 6)

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked me to indicate the changes contained in the draft CSHB 6 as compared to HB 6. I have done this in the form of a sectional analysis of CSHB 6 and the section numbers contained in the headings refer to CSHB 6.

Section 1. This is the same as sec. 1 of HB 6.

Section 2. This is the same as sec. 2 of HB 6.

Section 3. The language "arising out of the operation of a type of motor vehicle for which a driver's license is required" is inserted into subsection (c). The change limits the application of provisions dealing with revocation of a driver's license to situations involving the use of a vehicle, such as an automobile, for which a driver's license is required. The crime of driving while intoxicated under AS 28.35.030 can be committed by a person driving any type of motor vehicle, defined under AS 28.35.260(7) to mean any self-propelled vehicle, or an aircraft or watercraft. Without the added language a person convicted of driving while intoxicated in a case involving an airplane or boat would, under the strict terms of the provision, lose his license to drive an automobile, a somewhat puzzling result. This, however, is the situation under existing AS 28.15.-181(c) which requires revocation of a driver's license, for an automobile, for the crime of driving while intoxicated despite the fact that the crime may have involved a vehicle of a type for which no driver's license is required, such as an airplane or boat.

Section 4. This is the same as sec. 4 of HB 6.

Section 5. This is the same as sec. 5 of HB 6.

Section 6. This prohibits driving while a driver's license is canceled, suspended, revoked or in violation of a limitation placed on the license whether the curtailment of the privilege to drive occurred in this state or another jurisdiction. The change was adopted by the House Community and Regional Affairs Committee as Amendment No. 2. The minimum term of imprisonment for driving without a license has been increased from 14 to 90 days in subsection (a) pursuant to Amendment No. 5 adopted by the House Community and Regional Affairs Committee. In subsection (b) the notice given by the department to a person whose license is curtailed of the consequences of driving without a license is altered to reflect the new 90-day imprisonment provision.

Section 7. This is the same as sec. 7 of HB 6.

Section 8. At the bottom of page 5 and the top of page 6, the language "if the offense arises out of driving a type of motor vehicle for which a driver's license is required" is inserted, since this provision has to do with revocation of a driver's license and impoundment and forfeiture of a motor vehicle. The reason for the change is the same as that indicated under sec. 3. In addition, this makes it clear that the impoundment and forfeiture provisions are to be applied to vehicles for which a driver's license is required such as automobiles, but not to other vehicles such as boats or planes.

Section 9. This contains the material from sec. 13 of HB 6. It was moved to a new section number at the request of the revisor of statutes, who has authority in any case to renumber sections. The language "to a person driving a motor vehicle of a type for which a driver's license is required" has been inserted in subsection (b) and (c)(1), so that the provisions dealing with administrative revocation of a driver's license apply only if a person is driving a vehicle such as an automobile. A chemical test under the implied consent statute can be given to a person driving any type of motor vehicle, including an aircraft or watercraft. Without this change, a driver's license, for an automobile, could be revoked on the basis of a test given in conjunction with the operation of a plane or boat. Under paragraphs (1), (2) and (4), the provision for suspension and for refusal to issue an original license have been included as possible department actions along with the provision for

revocation now contained in HB 6. In subsection (3) the word "suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. The word "revocation" is used to refer only to permanent denial of the privilege to drive. Under existing statutes these terms are used interchangeably. The first sentence in (e) is inserted pursuant to Amendment No. 1 adopted by the House Community and Regional Affairs Committee.

Section 10. This contains material found in sec. 9 of HB 6. As in the previous section, limiting language is inserted so that provisions dealing with curtailment of a driver's license apply only if a person is arrested while driving a vehicle such as an automobile, for which a driver's license is required. Under paragraphs (1), (2), and (4), the provision for suspension and for refusal to issue an original license have been included as possible department actions along with the provision for revocation now contained in HB 6.

Section 11. This contains material found in sec. 10 of HB 6. Limiting language is inserted so that provisions dealing with curtailment of a driver's license apply only if a person refusing to submit to a chemical test was arrested while driving a vehicle, such as an automobile, for which a driver's license is required.

Section 12. This contains material found in sec. 11 of HB 6. The word "suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. The word "revocation" is used to refer only to permanent denial of the privilege to drive.

Section 13. This contains material found in sec. 12 of HB 6.

Section 14. This contains material found in sec. 14 of HB 6. "Suspension" is used in connection with curtailment of the privilege to drive for a limited period of time. "Revocation" refers to permanent denial of the privilege to drive.

Section 15. The language "of a type for which a driver's license is required" is inserted in (a) to limit this section to impoundment of vehicles, such as automobiles for which a driver's license is required. An offense under AS 28.35.030 may involve other types of motor vehicles, such

February 24, 1983

as airplanes. Without this change these might also be impounded.

Section 16. The language "arising out of driving a motor vehicle of a type for which a driver's license is required" is added to Sec. 28.35.037(a) to limit forfeiture to vehicles such as automobiles or motorcycles. An offense under AS 28.35.030 or AS 28.35.032 may involve other types of motor vehicles, such as airplanes or boats for which no driver's license is issued. Without this change these might also be forfeited. Paragraph (3) is added to Sec. 28.35.038(b) and in (c) "may" is changed to "shall" pursuant to Amendment No. 4 adopted by the House Community and Regional Affairs Committee.

Section 17. This is the same as sec. 17 of HB 6.

TBC:ljb

STATE OF ALASKA
THE LEGISLATURE

RECEIVED

FEB 21 1983

STATE CAPITOL
ALASKA 99514
707-465-1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 21, 1983

SUBJECT: Revocation of driver's license
(Work Order No. 13-0480)

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

ABC

You have asked whether the state may permanently revoke a person's driver's license after more than two convictions for driving while intoxicated or refusal to submit to a chemical sobriety test. It is my conclusion that the state may permanently revoke a person's license under those circumstances.

The state legislature under its police power has full authority to control and regulate the licensing of drivers, since driving involves danger to the public and requires a degree of knowledge on which others must rely. The state may prescribe the qualifications of persons who are eligible to be licensed and may establish the terms on which the right to a license depends. Since a license to drive is not deemed to be a vested right, the license is subject to suspension or revocation as may be provided by statute. The legislature has full authority to prescribe the conditions under which a license will be revoked when the public interest requires. Corpus Juris Secundum, Motor Vehicles, secs. 146, 154, 164; Breeze v. Goldberg, 595 S.W.2d 318 (Mo. 1980).

It is generally held that revocation of a license is not a penalty and that its purpose is not to punish but to protect the public from a dangerous driver. Consequently, it is not an unconstitutional infringement of the right to travel to deny a person the privilege to drive, since there is no right to travel by a specific method. State v. Scheffel, 514 P.2d 1052 (Wash. 1973), appeal dismissed, 94 S.Ct. 1984, 416 U.S. 964 (1974).

The legislature has full authority to designate the agency through which a license will be revoked. The discretionary power vested in administrative officers in suspending or revoking a license has been held to be in the nature of an administrative or executive function. Statutes authorizing administrative revocation of licenses have been held not to be invalid as a delegation of legislative power or judicial authority to the executive branch. Daneault v. Clark, 309 A.2d 884 (N.H. 1973). Violations of traffic laws, including driving while intoxicated, have been held to constitute grounds for administrative revocation of a license whether or not there has been a conviction for the offense. Severson v. Saepfel, 152 N.W.2d 281 (Iowa 1967); State v. Scheffel, supra. A prior valid conviction is essential for revocation only if the statute expressly requires. Corpus Juris Secundum, Motor Vehicles, sec. 164.5.

The fact that no accident or tragedy resulted from the misconduct of a driver does not mitigate the offense or bar revocation of a license. Commonwealth ex rel Lamb v. Hill, 82 S.E.2d 473 (Va. 1954). A license may be revoked for refusal to take a chemical sobriety test. (See 88 A.L.R.2d 1064.) A license may also be revoked for convictions in other states, and the period of denial of the privilege to drive may be increased depending on the number of times a person is convicted. Carter v. State, 625 P.2d 313 (Alaska 1981); Danks v. State, 619 P.2d 720 (Alaska 1980); (see 87 A.L.R.2d 1019).

It is recognized that a driver's license may be revoked permanently and that an agency may refuse to ever grant a license to an unfit driver. Carmichael v. Scheidt, 106 S.E.2d 685 (North Carolina 1959) (involving permanent revocation upon third conviction of driving while intoxicated where one conviction occurred out-of-state); State v. Crotinger, 62 N.E.2d 494 (Ohio 1945) (involving permanent revocation for failure to stop even though the offense was a misdemeanor); MacKinnon v. Ferber, 84 A.2d 647 (New Jersey 1951) (upholding denial of a new license by the agency after a second conviction of driving while intoxicated where the second conviction occurred ten years after the first conviction and the court failed to order permanent revocation); Gullard v. State, 497 P.2d 93 (Alaska 1972) (upholding revocation for driving while intoxicated for one year and noting that the person must reapply for a license and that the Department of Public Safety must

Representative Mitchell E. Abood, Jr.

Page 3

February 21, 1983

independently evaluate the acceptability of relicensing
him).

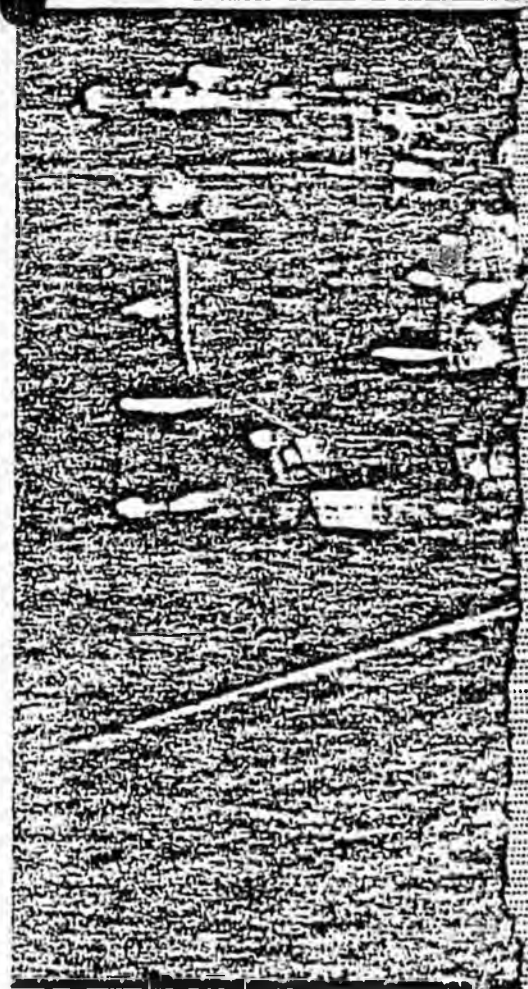
If I can be of further assistance in this matter, please let
me know.

TBC:ljb



© Alan Ulmer

Cindy Ferguson with twins Tony and Tommy, D.C. crash: 'Socially accepted murder'



The War Against Drunk Drivers

The horror of those seconds will forever haunt Cindy Ferguson. She was driving her three sons—the identical twins Tommy and Tony and her baby, Lee—to a party, when suddenly her Vega was smashed from behind. A tremendous explosion hurled her, Tony and Lee onto the street. Cindy raced back to the car and pulled Tommy's burning body from the wreck, throwing herself on him to smother the flames. A friend, Steve Willoughby, remained trapped inside, screaming, a halo of fire encircling his face. As Cindy lay there on top of her son, the other driver approached her. But when she pleaded for help, he staggered away.

Willoughby, 20, and Lee Ferguson, two, died on that Memphis street. Tommy, five, was in critical condition for six months with burns over 65 percent of his body. He has lost almost all use of his kidneys and most of his

hearing. He has had 100 operations already and faces 14 years of reconstructive surgery.

The other driver suffered a broken nose. Despite at least seven drunk-driving arrests in four years, he had never spent a day in jail. His 5- to 10-year sentence for second-degree murder provided little solace for Mrs. Ferguson. But her nightmare was primarily responsible for Tennessee passing one of the toughest drunk-driving laws in the nation—despite concerns that it would overcrowd the courts and prisons. "I was more concerned," said state Sen. Curtis Person, its sponsor, "about the overcrowding of hospitals, morgues and cemeteries."

Drunk driving is a national epidemic, what one reformer calls America's "socially accepted form of murder" (chart, page 37). More Americans have died at the hands of

drunk drivers during the past two years than were killed in Vietnam; on average, about three Americans are killed and 80 are injured by drunk drivers every hour of every day. The drunken slaughter over the past decade is a staggering one-quarter of a million Americans—the entire population of Rochester, N.Y. Safety experts say that one out of two Americans will be victimized by a drunk driver in his lifetime, hardly surprising when the National Highway Traffic Safety Administration (NHTSA) contends that up to 10 percent of all drivers on weekend nights are legally intoxicated.

But finally, outraged Americans are trying to put an end to the carnage. In a major break with past public policy, which concentrated on highway-safety conditions and protective devices such as air bags, a coast-to-coast crusade aims at getting drunk driv-

Thomas Sexton III, 15:
Killed instantly when a drunk driver broadsided the car in which he was a passenger. His killer was sentenced to two years' probation, fined \$200 and lost his license for 16 months.



Paul Lawler, 15:
Crushed against a wall when a drunk drove off the highway. His killer was on probation after three prior drunk-driving convictions and is eligible for parole in July after serving two years.





© Mark Reinstein—Photoreporters

ers themselves off the roads. A recent Gallup poll indicated that fully 77 percent of all Americans support mandatory prison sentences even for first-time offenders. President Reagan has declared the campaign a national priority, and Congress is considering bills that would award money to states that crack down.

Failed Experiment: Already 27 state legislatures this year have passed their own versions of the toughest drunk-driving bill in the nation, and more legislation is pending in others. Twenty states have boosted the legal drinking age, reversing a Vietnam-era trend toward lower drinking ages that made alcohol-related crashes by far the single biggest killer of Americans between the ages of 16 and 24. In New Jersey the average number of persons killed annually by 18- to 20-year-old drivers climbed by 176 percent after the state

lowered its drinking age to 18. "Statistics have shown us that kids can't handle alcohol," says New Jersey state Sen. C. Louis Bassano, sponsor of a bill to raise the drinking age to 21. "It's an experiment that has failed."

Liquor is so integrated into the nation's social and economic fabric that until recently, drinking and driving was an almost untouchable political issue. But the drunk driver who kills isn't usually the social drinker who has had one beer too many (box, page 30). The NHTSA reports that the average blood alcohol concentration of a drinking driver killed in a crash is .20—twice the rate for legal intoxication in most states. Still, judges, juries, prosecutors and legislators, most of whom drink socially, have tended to view the drunk driver with "there but for the grace of God, go I" sym-

pathy (page 38). The result: loopholed laws that have been cumbersome to enforce, wholesale plea bargaining (California charged only 5,000 people with reckless driving in 1978, but permitted 80,000 drivers to plead guilty to it) and judgments of the lecture-and-slap-on-the-wrist variety (Idaho arrested 1,800 persons for drunk driving last year, convicted one-third of them and jailed just two). Explains NHTSA administrator Raymond Peck, "The well-scrubbed father of four standing before the judge doesn't look anything like the falling-down drunk that was pulled out of the wreck."

Time Bombs: America's tacit acceptance of drinking and driving has the effect of losing time bombs on the nation's highways. An example was a Georgia man who, after his 13th conviction for driving while drunk, was sentenced to just one year in

Cari Lightner, 13:

Killed when a drunk driver struck her as she walked to a church carnival. Her killer, on bail after a drunk-driving arrest and with two prior convictions, was paroled after serving 19 months.



David Gunderman, 4:

Run over as he stood on the sidewalk waiting for an ice cream. His killer, who had eight prior convictions ranging from hit and run to drunk driving, was sentenced to five years in prison.



prison. Thus, he was drunk and on the road again 20 months later when he crashed and killed himself. Or consider the case of William Rowan. Rowan was once sentenced to 45 days in jail, a mild penance for a California driving record that carried six convictions for drunk or reckless driving, two for hit and run. Last March, after leaving a downtown Santa Ana bar, Rowan drove onto a sidewalk, killing four-year-old David Gunderman, who was waiting for the ice-cream man. After hitting the child, Rowan slumped in his seat and lit a cigar. Police measured his blood alcohol content at .27.

Campaigns against drunk driving have always had sobering truths on their side; what they lacked was a real constituency. All that may have changed one spring afternoon in 1980, when 13-year-old Cari Lightner of Fair Oaks, Calif., was struck from behind and killed by a hit-and-run driver as she walked to a church carnival. Cari's mother was stunned to learn that the driver, a 47-year-old man who had two previous drunk-driving convictions and was out on bail on a third arrest, had spent only two days in jail previously and was

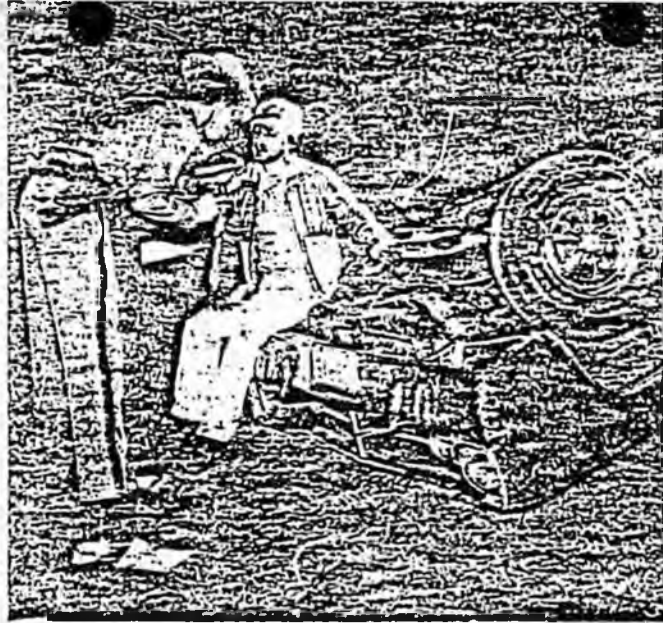


Photo © P. F. Barry

Victim in New York: One out of every two Americans

unlikely to wind up there for killing Cari. Candy Lightner quit her real-estate job and launched Mothers Against Drunk Drivers (MADD), giving the public outcry against drunk driving the constituency it has always needed—the victims.

In the past, says Edward Kunec, a NASA official who joined MADD in Virginia after

supply of victims." drunk driver last summer. "people who had these tragedies closeted themselves and said it was fate or the will of the Lord. Now people are coming out of the closet—and they are angry." In just two years, MADD has grown to 83 chapters in 29 states. Remove Intoxicated Drivers-USA (RID), founded in New York under similarly tragic circumstances, went national last year and now boasts 55 chapters in 29 states. The anger that is the movement's glue has made these organizations aggressively self-righteous and militant. "You can't be too strident," explains RID national coordinator Doris Aiken. "I don't know how you can tell someone nicely that they are incompetent to drive." Aiken warns those who view this campaign as a fad that will soon fade: "The pendulum will not swing back. There is an endless

The legal system often transforms the victims' grief into outrage. Paul Lawler, 15, died five days after a van barreled off a Massachusetts highway and into a restaurant entrance, pinning him against the restaurant wall. The drunk at the wheel was on probation for his third drunk-driving con-

Driving While Intoxicated

Many social drinkers think their driving remains unimpaired after a couple of cocktails. NEWSWEEK'S Ron Givens tested that thesis under the supervision of New York state police. His report:

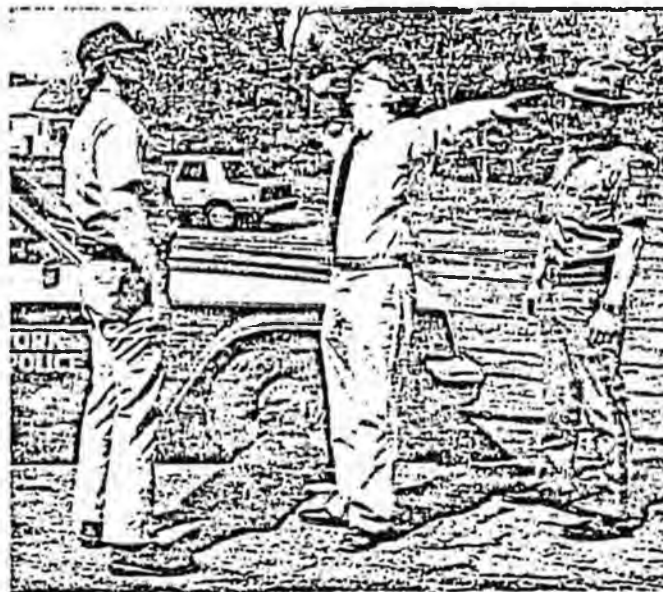
There was something absurd about drinking on an abandoned Schenectady airport runway while surrounded by police, but I wanted to find out how alcohol affected my driving skills. So I drank my gin and tonic next to an unmarked trooper car. As my bartender, Sgt. Henry Michelin, put it: "Just like the neighborhood bar—someplace to lean and drink."

An average male guinea pig—5 feet 10, 170 pounds—I had arranged to take on a difficult state-police driving course both sober and drunk. I supplied the gin and tonic, the state police provided a car. The course requires precise maneuvering around hard rubber cones—forward and backward. Scoring combines the time taken to complete the course with a five-second penalty for each mistake—such as

flattening a cone. And a passing tally for troopers is 2 minutes 17 seconds. My blood alcohol level was measured by a preliminary-breath-test (PBT) device the size of a cigarette pack.

After eight practice runs through the course, I had whittled my time down from 3 minutes 10 seconds to a passing score, and it was time to begin drinking. My first gin and tonic—containing three ounces of 80-proof booze—placed my blood alcohol level 45 minutes later at .07 (70 milligrams

Givens flunks the touch-your-nose test: Only time helps



of alcohol per decaliter of blood), high enough in New York to be charged with driving while impaired by alcohol. At this point I was slightly lightheaded, but I didn't feel uncoordinated. My driving score told a different story. Not only did I add 1 minute 12 seconds to my previous, sober record, but my score was 19 seconds over my very first attempt.

Wretched: During my first post-drink attempt, I unconsciously tried to compensate for my condition through caution—a tactic that experts say is common among drunk drivers. In my case it didn't work: it took me longer and I made many more mistakes. This drop-off in performance was intensified by two more drinks, each containing one ounce of gin, which put my blood alcohol level at .11, or enough to be charged with driving while intoxicated or driving with a blood alcohol level of .10 or more. Now I could easily tell that I was uncoordinated. I stumbled slightly when I walked and I flunked the touch-your-nose-with-your-finger test. My driving ability plummeted from poor to wretched. My score—4 minutes 26 seconds—was almost double my final sober result. "You have no business being in an automobile out

viction: He was sentenced to four and a half years in prison—including the then maximum of two and a half years for vehicular homicide—and is eligible for parole next July, just two years after the accident. "I was under the impression anyone arrested for this kind of thing would have the book thrown at him," says Paul's mother, Carol Lawler, who now heads the Greater Boston chapter of MADD. "I didn't know vehicular homicide was a misdemeanor."

Mark and Bonnie Schuett turned the

death of their four-year-old daughter, Kelli, who was killed as she walked near her home in quiet Ixonia, Wis., into a statewide *cause célèbre*. The driver, a 29-year-old man with a prior drunk-driving arrest, pleaded no contest to driving while intoxicated and was given a suspended five-day jail sentence and fined \$284. His license was revoked for a year—but was actually restored after 90 days because he took treatment at an alcohol-abuse center. "This man got away with hitting and killing my child," says Mrs. Schuett. "Her life means more than a \$284 fine." As a result of the Schuett's lobbying effort, a new Wis-

consin law went into effect last May that permits the state to suspend the license of anyone arrested for an alcohol-related driving offense—even before a trial. "Maybe we've saved somebody else's life," says Mrs. Schuett. "But I'm still angry."

Success may be due to more than tough laws. Oregon has coupled its legal effort with a media campaign that urges Oregonians to report drunk drivers to a special telephone hot line. One hot-line spokesman is Donny Durrant, a former logger who had lost his license four times for drunk driving before he drove off the road at 85 mph and broke his neck. Durrant, now a quadriplegic, says in a TV message: "I wish someone had gotten me off the road before I had the acci-

DEATH BY ACCIDENT

Drunk driving accounts for fully half of all auto fatalities—and kills far more Americans each year than other accidents.

Drunk driving—26,700

Falls—12,300

Drowning—7,000

Fire, burns—5,500

Poisons—4,200

Suffocation by
Ingested objects—3,100

Firearms—1,800

Airplane crashes—1,200

Source: National Safety Council (1980 figures)

Chris Toon Blumrich—Newsweek



dent which drastically changed my life." Other states are backing their legislation with a variety of programs. South Dakota places highway signs reading, "X marks the spot... THINK!" at the almost 600 locations where drivers have lost their lives since 1979. Some states have considered efforts to stigmatize the drunk driver publicly. One Pennsylvania legislator proposed a special red license plate for all drivers convicted of driving while intoxicated—a modern-day scarlet letter. Local police in both Maryland and Massachusetts have gone so far as to use roadblocks, called "sobriety checkpoints," to deter and detect drunk drivers, though the Massachusetts effort has been ruled unconstitutional by a state court. Many states, however, complain that the new laws overtax their increasingly limited resources. Maine was the only state to include in its crackdown legislative package a new tax on liquor, which is expected to produce \$2 million to \$3 million annually that will be earmarked for treatment and prevention of alcohol problems.

Guilt if anger fuels the movement, guilt is its motor oil. Thomas and Dorothy Sexton recall going to court to witness the trial of the man whose blood alcohol content was .26 when he killed the Sextons' 15-year-old son, Tom. They saw a car thief sentenced to two years in jail, while their son's killer—who pleaded guilty to homicide by a motor vehicle—was sentenced to two years' probation and fined \$200. "We painfully relate our experience and say, 'If you don't want that to happen to you, let's do something,'" says Sexton, a U.S. Department of Agriculture scientist who is now active in Maryland's MADD chapter. "I'm convinced if I had been involved in something like this five years ago, Tom would be alive today."

The movement's approach to the drunk-driving problem is essentially punitive. While legislation varies from state to state, it usually makes driving with .10 blood alcohol content (three beers or glasses of wine or shots of whisky consumed by a 150-pound man in two hours) a crime. In addition, many of the new laws make prison mandatory, if not for the first offense, certainly for the second. They often increase penalties for drivers who refuse the blood alcohol test and require that all convictions—regardless of the court disposition—be listed on a driver's record.

Many states are delighted by the preliminary results of the new laws. In Maryland, drunk-driving arrests by state police have gone up 45 percent and highway fatalities down almost 20 percent since its law went into effect. Maine, which last year began mandatory jail sentences for first-time offenders, has experienced a 47 percent reduction in alcohol-related fatalities. Oregon has had the most experience—its crackdown began in 1971—and the most success. During the '70s, highway fatalities dropped 6

percent and Oregon's fatality rate declined 35 percent despite the presence of 46 percent more drivers and 62 percent more vehicles on the road.

Court Watch: The anti-drunk-driving campaigners are pressuring the courts as well as the legislators. One such group keeps constant watch in North Carolina's Forsyth County District Traffic Court. "People walk up to us and tell us things have changed," says Sandra Nicastro, one of the group's court fixtures. "Lawyers have told their clients, 'I don't think I can get you off this time because that lady's sitting there listening.'" Some judges need little encouragement to get tough: Maine judges have meted out an average jail sentence of eight days to drunk drivers under the state's new laws—four times the permitted minimum. And a Mecklenburg County, N.C., judge may have set a new standard when he sentenced a drunk driver, who had eight prior arrests but had caused no injuries, to three years in jail.

Many safety experts insist crusaders should be focusing on automobiles and highways, not on drivers. H. Laurence Ross, a sociology professor at State Univer-

on the road," said Sergeant Michelin. While impairment due to alcohol varies from person to person and even, depending on circumstances, for the same individual, experts say that driving skills are significantly diminished at a blood alcohol level of .10. That's why many states have adopted .10 as the limit for determining when someone has been driving while intoxicated. However, Robert Pandina, acting director of the Center of Alcohol Studies at New Jersey's Rutgers University, argues that there is impairment at lower levels as well. Pandina explains that the .10 standard is "a kind of compromise that recognizes that this is a drinking society."

Wide Awake: Contrary to old wives and drinking buddies, nothing will temper the effects of alcohol except the passage of time—about two hours for every ounce consumed. Food slows the release of alcohol into the bloodstream without blunting its effect, and exercise and coffee will only produce a "wide-awake drunk"—someone alert enough to spot trouble but unable to do anything about it. That was clear enough to me as I rode with Sergeant Michelin back to town; my slow-motion brain couldn't keep up with the rush-hour traffic on the highway. I couldn't help remembering the times when I had been this drunk and driven, and the thought scared the hell out of me.

sity of New York at Buffalo, who has studied crackdowns on drunk driving, says deterrence only works for the short term when the problem is treated as a moral one rather than a safety question. In a new book, he writes: "A vehicle and highway that are safe for an alcohol-influenced driver are also safe for a driver who has a heart attack, who dozes off, who drops a lighted cigarette on his lap, who fails to see a stop sign. . . ."

Others are convinced that the lock-'em-up approach is meaningless unless it's combined with therapy. "I don't think the tougher laws will stop the hard-core alcoholics," says Col. Tom Anderson, director of the state police in Alaska, which has had a mandatory prison law since 1978. "It's a mess," agrees Arthur Snowden II, director of the state's court system. "We're just putting people in high-priced jails . . . just taking them off the street is not going to solve the problem." But Maryland district court

Judge David Bates thinks he knows the solution. Bates gives drunk drivers the maximum permissible sentence, then waives it if they are willing to enter an appropriate education or treatment program. While it is hard to measure the success of Bates's approach because probationary sentences weren't included on drivers' records until last year, Bates says only 149 of the 5,697 drivers referred to the program dropped out or had their probation revoked.

But putting drunks behind bars does take

How Drunks Get Off

Defense attorney Randy Taylor parades around the courtroom, his arms pinned behind him by handcuffs. After several minutes of histrionic discomfort he compels the cop on the witness stand to remove the cuffs and place them on the defendant, a man charged with driving while intoxicated (DWI). Then Taylor seizes his client and bullies him about. Wasn't that how the police acted when they arrested him? he asks the witness. Finally, the Dallas lawyer shoves his client into a chair and barrels up to the cop: "Isn't it true you said, 'Shut up, you s.o.b.' and kicked him in the leg?" And Taylor wins an acquittal.

"That's the way you get your client off," Taylor says. "The single most important factor in the typical DWI case is trying to make the jury put themselves in the place of the defendant." Taylor knows few restraints. On one occasion, after pleading his woman client guilty of DWI, he implored the jury, "The government wolves are really howling for blood tonight, waiting to put this poor little girl in jail for 30 days, taking her away from her husband." Then he put the cuffs on her, and she broke down and wept, atesting to the humiliation she had suffered. Despite a prior DWI conviction just 30 days before this arrest, she was sentenced to only three days in jail. Another time Taylor concluded his summation by stage-whispering to his client's four children, "Kids, I've done everything I can for your daddy." Pointing to the jury, he said, "Now it's up to these folks here." The defendant, who Taylor admits was probably guilty, was acquitted in 15 minutes.

The concept of "there but for the grace of God go I" has been the cornerstone of DWI legal defense ever since drunks started stepping on the gas. While the appeal is emotional, its foundation is solidly statistical: a recent Gallup poll reveals that four out of 10 Americans admit to having driven after drinking. But the extraordinary public campaign against drunk driving is having its impact even on jurors who may understand—from personal experience—the drunk driver's plight. The Texas Criminal Defense Lawyers Project recently has sponsored two special programs on DWI defense. Its program notes read: "The public has come to view DWI as a pernicious force in their communities and are demanding stiffer penalties . . . this insti-

tute is designed to teach you how to effectively represent your client . . ." Among the tactics garnered from the program and talks with top defense attorneys:

■ **Challenge the evidence.** Breath-analysis tests should not be accepted as gospel. Force the prosecution to prove that the testing machine was in good working order, that its chemicals had been tested and that its operator had proper qualifications. The tests aren't foolproof. Some people such as diabetics, who have certain chemicals in their breath, or denture wearers, who trap alcohol fumes along their gums, trigger false positive readings. If a blood sample was taken, make sure to request it; if it no longer exists, claim that it was purposely destroyed.

■ **Track down witnesses.** Find people who were with the defendant before he got behind the wheel and get them to testify about how sober he was. Attorney F. Lee Bailey's acquittal on DWI charges in California stemmed partly from testimony about his sober behavior on the evening of his arrest by people who were at the restaurant where Bailey dined.

■ **Get the insurance company involved.** Insurers tend to see cases as business problems, not moral issues, and are often anxious to settle damage matters expeditiously. Don't assume that the victim's families want vengeance; often they just want the case to go away too.

■ **Visit the scene of the arrest.** Since it can take up to six months between the arrest and the trial, the arresting officers can often be tripped up on details about the location. "If they [make mistakes]," says Taylor, "I can argue, 'Well, if you can't remember this, why can you remember anything else better?'"

■ **Try to talk with the police—and hope you fail.** When the police won't cooperate, argue that the witness is hostile, biased and has an ax to grind.

■ **Carefully consider the choice between judge and jury.** Taylor opts for a jury 95 percent of the time. He says, "I can manipulate the jury's minds more than I can a trial judge who's been on the bench 15 years and seen all my tricks." But cases that revolve around complex points of law may best be left to a judge.

The courtrooms are the ultimate battleground in the war on drunk driving. And to win the war, reformers must find ways to force jurors and judges to sympathize with the victims of drunk drivers, instead of the defendants.

MARK STARR with DAN SHAPIRO in Houston



'Hitting that child with your car must have really jolted you. Keep your driver's license and get yourself a couple more drinks'

FACTS ON ALCOHOL AND HIGHWAY SAFETY

The Problem

Overview:

Drunk driving continues to be one of our nation's most serious public health and safety problems. Some 50 percent of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10 percent. In single vehicle fatal crashes, where it is more certain who is at fault, upwards of 65 percent of those drivers who die were legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 per year. Thus, a staggering one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

The cost of drunk driving has a high economic cost to this country as well. A conservative estimate of the total economic cost of drunk driving is put at 24 billion.

Alcohol and Crashes:

Alcohol is a major contributing factor to fatal (and serious injury) automobile crashes. According to a 1978 review of the literature, approximately 60 percent of fatal crashes involved a driver who had been drinking. Between 40 and 55 percent of such crashes involved a driver who had a blood alcohol concentration (BAC) greater than .10 percent (w/v).

With regard to alcohol and responsibility for fatal crashes, the drinking driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BAC's greater than .10 percent (w/v) alcohol in their blood than drivers judged not at fault for their crashes (60 percent vs. 10 percent).

This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where responsibility is apparent, and where between 60 and 75 percent (60-75%) of dead drivers have BACs greater than .10 percent (w/v).

The Driver Population:

What the high BAC figures in crashes suggest is that the majority of alcohol related fatal crashes are caused by heavy (problem) drinkers. Some portion of the approximately 15 percent of fatal crashes which involve drivers who have been drinking, but who do not have BACs greater than .10 percent, may be caused by less heavy, less chronic, "social" drinkers.

The majority of drivers are either abstainers or light to moderate (social) drinkers. Even quite liberal estimates suggest that only about 10 to 15 percent of the nation's drivers would be classified as being heavy (problem) drinkers.

Arrested Drunk Drivers:

The average proportion of licenses drivers arrested for drunk driving over a one-year period is estimated to be one percent (1%). This translates to approximately 1.3 million of approximately 130 million licensed drivers.

On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 percent (w/v) are arrested for drunk driving. These estimates come from a number of roadside surveys conducted in conjunction with the Alcohol Safety Action Projects (ASAPs) funded by the NHTSA in the 1970's and from the Grand Rapids data reported by Borkenstein and others.

The average BAC of these drinking drivers is approximately .20 percent, double the level for presumed intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash.

Blood Alcohol and Body Weight

KNOW YOUR LIMITS

CHART FOR RESPONSIBLE PEOPLE WHO MAY SOMETIMES DRIVE AFTER DRINKING!

Drinks	APPROXIMATE BLOOD ALCOHOL PERCENTAGE								
	Body Weight in Pounds								
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Rarely
2					.04	.04	.03	.03	
3	.11								
4	.15	.12	.11						
5	.19	.16	.13	.12	.11				
6	.23	.19	.16	.14	.13	.11	.10		
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	Definitely
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .01% for each 40 ounces of drinking
One drink is 1 oz. of 100 proof liquor, 12 oz. of beer, or 4 oz. of table wine.

SUREST POLICY IS . . . DON'T DRIVE AFTER DRINKING!

Past Approaches and Current Activities

Federal Action:

Over the last 12 years, the National Highway Traffic Safety Administration (NHTSA), an Agency within the U.S. Department of Transportation, has worked with the States to reduce alcohol related deaths on the highway. NHTSA initiated 35 Alcohol Safety Action Projects (ASAPs) throughout the country from 1971-1976 which resulted in the development of a coordinated systematic approach to deal with drunk driving.

In 12 of the 35 ASAPs, a statistically significant reduction in fatal crashes at night was achieved. Individual projects were able to double, and even triple driving while intoxicated arrests, using such new technology as roadside breath testing. Court procedures were streamlined to handle large caseloads. Roughly a quarter-of-a-million drinking drivers were referred for treatment.

Before the passage of the Highway Safety Act of 1966, few States specified a presumptive level of driving while intoxicated. The Federal standard for alcohol safety prescribed the 0.10 percent blood level that legally defines the legal intoxication limit. Now all the States have laws defining driving under the influence at the 0.10 percent level. The majority of the States now have made some improvements in their law enforcement, court, rehabilitation, and educational efforts.

State Action

Under the Section 402 grant program established by the Highway Safety Act the States are increasing the proportion of funds allocated to alcohol programs. In FY 1982 approximately 35 percent of 402 funds (\$27.8 of 78.6 million) were allocated to drunk driving programs (with an added 30 percent spent on alcohol enforcement activities under Police Traffic Services).

Responding to citizen interest, 21 States and a number of local jurisdictions have established special drunk driving task forces to revitalize State/local programs.

Fifteen States have raised the minimum legal drinking age to reduce alcohol related crashes among youth. Other States such as Maryland have introduced legislation to raise the drinking age during 1982.

Sixteen States have adopted statutes allowing preliminary roadside breath testing to assist officers in establishing probable cause for drunk driving arrests.

Twenty-one States have established illegal per se statutes designed to simplify and streamline the prosecution of drunk drivers by making it illegal simply to operate a motor vehicle with an illegal blood alcohol concentration (above 0.10%).

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

Joint Resolution

To provide for the designation of the week of December 12, 1982, through December 18, 1982, as "National Drunk and Drugged Driving Awareness Week".

Whereas traffic accidents cause more violent deaths in the United States than any other cause, over fifty thousand in 1980;

Whereas traffic accidents also play a substantial role in serious injuries in this country;

Whereas between 40 and 55 per centum of drivers who are fatally injured have alcohol concentrations in their blood above the legal limit and this figure rises to 55 to 65 per centum in single vehicle crashes;

Whereas the total societal cost of drunk driving has been estimated anywhere from \$5,000,000,000 to \$25,000,000,000 a year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas more research is needed on the effects of drugs on driving ability and their impact on the incidence of traffic accidents, either alone or in combination with alcohol;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increased research on the effects of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID), is demanding a solution to the problem of drunk driving;

Whereas the President has appointed a Commission on Drunk Driving to heighten public awareness and stimulate the pursuit of solutions;

Whereas many States have appointed task forces to examine the existing drunk driving program and make recommendations for a renewed, comprehensive approach;

Whereas an increase in the national awareness of the problem of drunk and drugged driving may help to sustain current efforts to develop comprehensive solutions at the State and local levels; and

Whereas the Christmas and New Year's holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 12, 1982, through December 18, 1982, is designated as "National Drunk and Drugged Driving Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

Speaker of the House of Representatives

*Vice President of the United States and
President of the Senate*

DRUNK DRIVING FACTS

- o A blood alcohol concentration (BAC) of .10 percent or greater is the level at which a driver is considered legally intoxicated in most states.
- o Approximately 55 percent of fatal crashes involve a driver who has been drinking.
- o In single vehicle crashes, where responsibility is apparent, between 60 and 75 percent of dead drivers have BACs greater than .10 percent.
- o The average BAC of drivers arrested for drunk driving is approximately .20 percent, double the level for presumed intoxication.
- o Over the past 10 years, the proportion of highway deaths involving alcohol has averaged 25,000 per year; one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.
- o A conservative estimate of the total economic cost of drunk driving is put at between five and six billion dollars a year.

ACCIDENTS IN ALASKA

In 1975, alcohol-related highway accidents cost \$19.5 million.

In 1977, 62 Alaskans died in alcohol-related highway accidents. About 80% of highway fatalities in Anchorage are alcohol-related.

OMVI ARRESTS IN ALASKA

The drivers being arrested are very heavy drinkers - had to have had ten drinks in an hour to reach the blood alcohol levels recorded. Most have so much alcohol in their system that they are still drunk when they go to work the next day.

Most people never drink enough to reach the illegal BAC level. Most people arrested for OMVI regularly drink large amounts.

At most one out of four arrested for OMVI are "normal" drinkers who have had too much just this night. The rest are used to drinking and driving - in fact one out of three people arrested for OMVI has previously been convicted.

Few of the arrests for OMVI are borderline cases - the average blood alcohol concentration is twice the level proscribed by law.

REASONS FOR RECOMMENDED STATUTORY CHANGES SB 608, 609, 610

PARTLY DONE

a. Clean up statutes so that courts can spend time on real evidence instead of legal technicalities.

PRESENT

b. OMVI arrests are expected to increase by as much as 50% in the near future.

PARTLY DONE

c. Either help the courts by changing the statutes or by providing money for more courtrooms, judges, prosecutors.

d. OMVI arrests - largest single category of arrests and court caseload - 22% of all adult arrests; 28% of caseload of the misdemeanor courts; 50% of the trial time spent by the courts.

e. Changes will not stop drinking-driving but will help us handle the problem through the courts.

BEING WORKED ON

f. We have definite evidence that the people who refuse breath-tests tend to be the most drunken and the most dangerous drivers - really experienced drinkers (average BAC: 0.27%). We are not helping them by keeping it easy to avoid the evidence of their dangerousness.

g. Using the traditional psychomotor tests, even experienced police are right only one out of two times about how drunk a person is - blood alcohol concentration (BAC) is objective and fair evidence, rather than just an opinion.

SB 551, 552

REASON FOR ALCOHOL SCREENING .

- a. Trying to separate the people out so that we can do what's right by the person who just has an attitude probelm, by the bad drivers, and by the alcoholics.
- b. Trying to get an early identification of problem drinkers so that they can be encouraged to get help before they are far gone.
- c. Trying to standardize court practices throughout the state.

*KELSO'S JOB
SW A STATEWIDE
BASIS*

PROBLEM DRINKING DRIVERS

1. The Problem Drinking Driver is someone who *regularly* drives while seriously impaired.
2. In the typical jurisdiction, about two-thirds of persons arrested for DWI are identifiable as Problem Drinkers, either clearly or marginally.
3. Problem Drinking Drivers usually have a high BAC (0.15 percent or above) when arrested. Of course, the BAC on any occasion may be lower.
4. Drivers with a high BAC (0.10 percent or above) are likely to be involved in at least
 - Twice as many crashes
 - Twice as many property damage crashes
 - Five times as many personal injury crashes
 - Twelve times as many fatal crashes
 - Twice as many traffic violations
 - Three times as many license suspensions

as the average driver.

5. Social Drinkers rarely achieve the high BAC (0.10 percent or above) which problem drinkers achieve very often.
6. A person can learn to "drive while drunk" i.e., to compensate partially for the impairment caused by alcohol up to a point. The learning takes a lot of practice.

Social Drinkers don't get that much practice. They are likely to judge themselves "too drunk to drive," or to drive very badly at lower BACs.

Therefore, a person who drives reasonably well at a high BAC, or who can drive at all at a very high BAC (0.20 percent or above), is likely to be a Problem Drinker.

7. Problem Drinking Drivers tend to lead troubled lives, as is shown in:
 - The probability of their having previous and subsequent DWI arrests.
 - The frequency of their contacts with social agencies.
 - Their emotional profiles.
 - The frequency of their family and economic problems.

This makes it possible to identify them by record checks and personality tests.

REALISTIC EXPECTATIONS

Problem Drinkers:

Regardless of what we do with problem drinkers, approximately 1 of 5 will be re-arrested for a drinking-driving offense within one year, 2 of 5 in three years.

Social Drinkers:

Without rehabilitation, 3 of 10 social drinkers will be re-arrested within three years. However, only 2 of 10 entering rehabilitation of some type will be re-arrested.

Source: University of South Dakota,
Program Level Evaluation of ASAP
Diagnosis Referral and Rehabilitation
Efforts. Sept. 1975.

OVERALL STATEWIDE PROBLEM ANALYSIS

TRAFFIC RECORDS

Because of the problems described in the following paragraphs and the fact that current data is unavailable, there were no attempts made to perform a statistical analysis of the old data. This analysis has been performed on available data in past years and would only be redundant. Therefore, with the exception of the narrative in the traffic records section, the Overall Statewide Problem Analysis remains unchanged from the FY1982 highway safety plan. No further attempt to perform problem identification through statistical analysis will be done until current and accurate data becomes available.

The Alaska traffic records system continues to be plagued with many of the same problems that have prevented timely and accurate retrieval of accident data for the past few years. Excessive delays are still experienced in all aspects of the collection, entry, editing and retrieval of the accident and driver license data. Even though the driver license system is an automated on-line system, accurate statistical data for calendar year 1981 are not available at this time. Errors in data collection, as well as in the data entry, continue to contribute to the excessive delays in obtaining accident data.

Because of the changing philosophical views within the department, all attempts to utilize the "DART" traffic records software package have been abandoned. There is presently no individual within the department available that can utilize this system and at this time no efforts to revitalize the system are planned.

Even though a project was implemented in the department to alleviate many of the problems of the traffic records system, no progress of any consequence can be expected. The fact that the system spans two departments, neither of which has total responsibility, only complicates all efforts to upgrade the system. As the accident system remains a low priority within the department, we do not anticipate any improvement to the system during FY1983.

Because of these problems and the lack of reliable traffic data, emphasis will be placed on working with the Department of Public Safety to develop a more responsive outlook towards the traffic records system. This will include suggestions to move the responsibility of data entry from DOT/PF to the Department of Public Safety and to assign the system responsibilities to an individual in the department capable of overseeing and maintaining the system needs. With a commitment from the Department, traffic data and problem identification could be eliminated as a major obstacle in the preparation of the annual highway safety plan.

STATE ACCIDENT ANALYSIS

<u>YEAR</u>	<u>INJURY ACCIDENTS</u>	<u>FATALITIES</u>	<u>TOTAL ACCIDENTS</u>	<u>M.D.R. (1)</u>	<u>PROPERTY DAMAGE (\$)</u>
1976	5,765	124	18,154	4.1	20,220,195
1977	5,085	136	15,086	4.5	20,348,441
1978	4,822	127	12,962	4.5	18,775,536
1979	4,560	90	13,521	3.2	19,365,424
1980	4,993	88	13,165	3.3	20,793,029

(1) Mileage Death Rate

1981 DATA NOT AVAILABLE AT THIS TIME

As shown by the preceding table, the total accident picture for Alaska in 1980 was one of increased risk to the motorist when compared to 1979. Accidents increased from 45 per 1,000 licensed drivers in 1979 to 48 per 1,000 licensed drivers in 1980. The mileage death rate increased from 3.2 per hundred million miles traveled in 1979 to 3.3 in 1980. The death rate per 1,000 motor vehicle accidents increased from 6.66 in 1979 to 6.68 in 1980.

Overall, there were more accidents per driver and per miles traveled than in 1979, with greater accident severity causing a higher injury and fatality rate. As a public health concern, the motor vehicle death rate per 100,000 population increased from 21.78 in 1979 to 21.97 in 1980 while the motor vehicle injury rate increased from 1,103.6 per 100,000 population in 1979 to 1,246.8 per 100,000 population in 1980.

STATE TRAFFIC ANALYSIS

<u>YEAR</u>	<u>POPULATION</u>	<u>LICENSED DRIVERS</u>	<u>VEHICLES (1) REGISTERED</u>	<u>MILES (2) TRAVELED</u>
1976	413,289	216,079	259,615	30.67
1977	411,211	294,926	283,973	30.34
1978	416,500	283,733	276,918	28.22
1979	413,200	299,818	262,549	27.90
1980	400,481	272,472	257,491	26.58

(1) Excludes trailers, commercial trailers and snowmachines.

(2) Represented as 100 million vehicle miles traveled.

As shown by the above table, Alaska's population remained stable through 1976-1979, with the exception of 1978 when it reached its highest level. The state experienced a 4% decline in population between 1978 and 1980.

The number of licensed drivers increased significantly in 1977, 36%, followed by another increase in 1979, but declined in 1980.

The number of vehicles registered shows a steady decrease since 1977, with a similar trend occurring in miles traveled since 1976.

LICENSED DRIVERS BY AGE AND SEX (1980)

The following table displays licensed drivers by age and sex. As is obvious, the majority of drivers licensed in Alaska (56.3%) are under 35 years of age. Thirty-one percent of all licensed drivers are young (under 35) males: the group most at risk in highway traffic accidents.

<u>AGE</u>	<u>MALE</u>	<u>% (1)</u>	<u>FEMALE</u>	<u>% (1)</u>	<u>TOTAL</u>	<u>% (2)</u>
14-18	8,367	60.6	5,431	39.4	13,798	5.1
19-24	25,822	55.0	21,111	45.0	46,933	17.2
25-29	25,395	53.3	22,282	46.7	47,677	17.5
30-34	24,950	55.4	20,121	44.6	45,071	16.5
35-39	18,681	55.9	14,753	44.1	33,434	12.3
40-44	13,721	57.4	10,164	42.6	23,885	8.8
45-49	10,588	58.2	7,610	41.8	18,198	6.7
50-54	9,114	59.3	6,252	40.7	15,366	5.6
55-59	7,211	59.3	4,943	40.7	12,154	4.5
60-64	4,922	60.2	3,254	39.8	8,176	3.0
65-69	2,772	61.5	1,738	38.5	4,510	1.7
70 +	2,093	65.1	1,120	34.9	3,213	1.2
Unknown	34	59.6	23	40.4	57	
TOTAL	153,670	56.4	118,802	43.6	272,472	100.0

(1) Percentage of that age group.

(2) Percentage of total licensed drivers.

MOTOR VEHICLE TRAFFIC FATALITY ACCIDENTS

During the years 1976-1978 the rate of alcohol-related fatal accidents occurring in the state appears to have remained fairly constant: approximately one-half of all fatal accidents were alcohol-related. A departure from this trend was reported in 1979 when the rate of alcohol involvement increased to 70% in fatal accidents.

There is some indication that improved reporting of alcohol involvement contributed to this apparent increase. However, alcohol involvement in highway crashes is the state's most serious and enduring problem and has been assigned the highest priority for treatment in the FY1983 highway safety program.

ALCOHOL

The following table reflects the distribution of alcohol/driver by age group. Accidents in which alcohol involvement was not stated or was unknown have been removed from the calculations.

<u>AGE</u>	<u>NUMBER OF ALCOHOL ACCIDENTS</u>	<u>PERCENT INVOLVEMENT</u>	<u>PERCENTAGE OF LICENSED DRIVERS</u>
15-18	220	11.3	3.4
19-29	922	47.2	36.5
30-39	407	20.9	27.8
40-49	238	12.2	15.2
50-59	134	6.9	10.3
60 +	31	1.6	2.5

During 1979, alcohol was indicated in 1,952 traffic accidents. Drivers aged 19-29 were the most frequent offenders: 47.2% of the alcohol-related accidents involved drivers in this age group who had beer drinking or who were suspected of drinking.

Drivers between the ages of 15 to 18, inclusive, who make up only 3.4% of the licensed driver population, accounted for 11.3% of the alcohol-related accidents, or more than 3 times their distribution in the general driver population.

Alcohol was a factor in 70% of the fatal accidents that occurred during 1979. Further analysis is not possible because of contradictory bivariate data, although there is some indication that young drivers are, again, over-represented. Inexperienced both in driving and in drinking, the young driver also has a predilection for high speeds, and the combination is lethal.

Alcohol enforcement and diversion to treatment and/or education of the drinking driver will remain the highest priority for Alaska's highway safety program.

SPEED RELATED

The number of speed-related fatalities declined from 80 in 1978 to 61 in 1979. Although the number of fatalities that were speed-related declined, the rate of speed involvement has remained constant at 27%. Speed as a contributing factor in injury accidents declined from 21% in 1978 to 16% in 1979.

<u>DRIVER ONLY</u>	<u>FATAL ACCIDENT</u>	<u>FATALITIES</u>	<u>ALCOHOL ACCIDENTS</u>	<u>ALCOHOL FATALITIES</u>
<u>1979</u>	<u>81</u>	<u>91</u>	<u>57</u>	<u>66</u>
0-18	17	20	11	13
19	2	2	2	2
20	9	11	6	8
<u>1980</u>	<u>86</u>	<u>95</u>	<u>58</u>	<u>64</u>
0-18	10	11	5	6
19	2	4	1	1
20	3	3	1	1
<u>1981</u>	<u>90</u>	<u>100</u>	<u>66</u>	<u>76</u>
0-18	13	18	11	16
19	4	4	4	4
20	2	3	2	3
REPORTED TO DATE - 09/17/82				
<u>1982</u>	<u>38</u>	<u>43</u>	<u>22</u>	<u>24</u>
0-18	4	6	1	2
19	3	4	2	2
20	1	1	1	1

1st offense: Ineligible for a driver's license or permit for a three months' period unless the court finds hardship and nullifies or modifies the suspension or revocation. If has prior DWI conviction, period of revocation or suspension is one year. First offense also carries minimum 72 consecutive hours' imprisonment. (AS 28.35.032)

REFUSAL
TO
SUBMIT
TO
CHEMICAL
TEST
OF
BREATH

2nd offense: If has prior conviction for either DWI or refusal to submit to a chemical test of breath, suspension or revocation of license is for one year. A conviction for DWI or for refusal to submit to a chemical test of breath within previous five years yields a sentence of ten consecutive days' imprisonment. However, if the prior convictions for DWI or for refusal to submit to a chemical test of breath were within one year of this second conviction for refusal to submit to a chemical test of breath, imprisonment is for 20 days. The ten-day and 20-day sentences are both minimums. (AS 28.35.032)

Conviction under AS 28.35.032 also requires participation in a program of alcohol education or rehabilitation for term the court finds appropriate.

1st offense: Driver's license seized if driving a motor vehicle. License is revoked or suspended for 90 days, unless has a prior DWI conviction. In that case, suspension or revocation is for one year. Vehicle impounded for 15 days. 72 consecutive hours imprisonment plus fine: \$250 minimum; \$500 maximum. (AS 28.35.032, secs. 9 - 12)

2nd offense: If has either a prior DWI conviction or conviction for refusal to submit to a chemical test of breath, suspension or revocation is for one year. Second conviction for refusal to submit to a chemical test of breath or first such conviction of a person with a prior DWI conviction: minimum of 20 consecutive days imprisonment and a fine of \$500 minimum; \$1000 maximum. Driver's license seized if driving a motor vehicle. Vehicle impounded for 90 days and may be forfeited. (AS 28.35.032, secs. 9 - 12)

3rd or Subsequent offense: If for refusal to submit to a chemical test of breath or DWI in any combination, suspension or revocation of the driver's license is permanent. 30 consecutive days' imprisonment plus a fine of \$1000 minimum and \$2000 maximum. Same license seizure as for first offense. Vehicle impoundment and forfeiture provisions the same as for the second offense. (AS 28.35.032, secs. 9 - 12)

Alcohol program participation requirements are unchanged.

The five-year period for calculation of the number of offenses a person has committed, for the purposes of determining a penalty, has been eliminated for this offense.

Note provisions for seizure of driver's license in sec. 13 in addition to provisions for refusal to submit to a chemical test of breath as trigger for seizure (above).

DWI

1st conviction for DWI: 72 consecutive hours imprisonment (AS 28.35.030). Driver's license revoked for 30 days minimum, or limited license and revocation for 60 days minimum. (AS 28.15.181)

2nd conviction for DWI or for refusal to submit to a chemical test of breath: Driver's license revoked and limited license may not be granted for one year minimum (AS 28.15.181). If within five years of a conviction for DWI or for refusal to submit to a chemical test of breath, ten consecutive days minimum imprisonment, unless within one year of a previous conviction, then 20 days. Court may order participation in alcohol education or rehabilitation program (AS 28.35.030). Subsequent convictions treated by the same provisions except that limited driver's license privileges may not be granted for at three years upon a third or subsequent conviction. Sentence may be suspended after the minimum sentence has been served.

1st conviction for DWI or refusal to submit to a chemical test of breath: revocation of driver's license for 90 days minimum (sec. 3). Fine: \$250 minimum, \$500 maximum (sec. 8) in addition to jail time.

2nd conviction, DWI or refusal to submit to a chemical test of breath (or equivalent elsewhere): One year minimum driver's license revocation (sec. 3); 20 consecutive days minimum 20 consecutive days minimum imprisonment and a fine of \$500 minimum and \$1000 maximum (sec. 8).

3rd or subsequent conviction for DWI or refusal to submit to a chemical test of breath (or equivalent elsewhere) in any combination of three or more: permanent revocation of driver's license (sec. 3). 30 consecutive days minimum imprisonment and a fine of \$1000 minimum and \$2500 maximum (sec. 8). No change in provision on alcohol education and rehabilitation assignments by court.

Limited license privileges are removed for all DWI offenders.

DRIVING
WITH
LICENSE
CANCELED,
SUSPENDED,
REVOKED,
VIOLATION
LIMITATION

Ten days' imprisonment minimum.
Suspension of sentence after minimum sentence served
is possible.

14 consecutive days, plus fines: \$500 minimum and
\$1000 maximum. No suspension of sentence.

IMPOUNDMENT No present provision.

Upon probable cause of peace officer that vehicle used in DWI offense. Unless released, impoundment is for 15 days if no prior convictions for DWI or for refusal to submit to a chemical test of breath. If a prior conviction in Alaska or elsewhere for either, impoundment is for 90 days.

FORFEITURE No present provision.

If a prior conviction in Alaska or elsewhere for DWI or for refusal to submit to a chemical test of breath (or equivalent elsewhere), vehicle may be forfeited.

STATE OF ALASKA
THE LEGISLATURE

RECEIVED
FEB 1 1983

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1983

SUBJECT: Drunk Driving -- HB 6
(Work Order No. 13-0676)

TO: Representative Mitchell E. Abood, Jr.

FROM:  Russ Josephson
Legislative Counsel

Following is the sectional analysis of HB 6 which you requested:

Section 1 amends AS 28.15.081(a) by adding the new requirements for the driver's license and application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 2 amends AS 28.15.181(a) by adding a new basis for the immediate suspension or revocation of a driver's license: the refusal to submit to a chemical test of breath under AS 28.35.032, Refusal to Submit to Chemical Test.

Section 3 amends AS 28.15.181(c) by repealing and reenacting it. Please refer to the accompanying penalties chart for comparison between the current law and HB 6.

Section 4 amends AS 28.15.201(b)(1) by removing the reference to the revocation of the license of a person convicted of operating or driving a motor vehicle while intoxicated. The revocation of the license of such a person is handled in Sec. 3 of this bill.

Section 5 amends AS 28.15.201(c) by removing the references to the issuance of a new driver's licenses for persons convicted of operating or driving a motor vehicle while intoxicated, after a limited license period has expired because, under Sec. 3 of this bill no limited license privileges may be granted.

Section 6 amends AS 28.15.291 by changing the penalty for violation of the prohibition against driving while a license is canceled, suspended, or revoked, or in violation of a limitation on the license. The penalty is increased from 10 days to 14 consecutive days and a fine of \$500 - \$1000 is added. In addition, the provision allowing the sentence to be suspended after the defendant has been imprisoned for no less than the minimum period has been removed.

Section 7 amends AS 28.35.030(a)(2), the "DWI" section by inserting the language to indicate that the alcohol levels referred to in the existing statute are to be determined by a chemical test given within four hours after the alleged offense was committed. Note that the broader term "a chemical test" is used here, not "a chemical test of breath".

Section 8 amends the "DWI" section further by changing the penalties for conviction. In addition, the five-year period used for calculating the numbers of convictions on a person's record has been eliminated, thus making all convictions count. The section also has been amended by the use of new language that indicates that a conviction under another law or ordinance, in this or another jurisdiction, is counted as a conviction in Alaska for purposes of determining how many convictions a person has and thus for determining what the penalty should be, if the elements of the law or ordinance are substantially similar. The effect of this amendment is to close a "loophole" if there were minor differences between the law under which a prior conviction had been obtained and the law under which a subsequent conviction was obtained. Also, the provision for suspension of sentence after the minimum sentence is served has been eliminated, as it was in Sec. 6. A person with multiple convictions for driving while intoxicated or for refusal to submit to a chemical test of breath, or for a combination of those two offenses (or another law or ordinance with substantially similar elements), may have the vehicle used in the commission of the latest offense impounded and forfeited.

Section 9 amends AS 28.35.032(a) by adding to the existing language on the refusal to submit to a chemical test of breath a new provision for the seizure of the driver's license by the law enforcement officer after reading the driver a notice and delivering the driver a copy of the notice. The notice explains the revocation procedure and

the right of court review. The notice is a temporary driver's license, as well.

Section 10 amends AS 28.35.032(b) to provide that the notice of revocation or suspension of a driver's license, as now required, indicate that the action will be effective after the temporary driver's license provided for in Sec. 9 has expired. Also, the section is amended to stay the revocation or suspension action if the person initiates a court action to rescind the Department of Public Safety's action. The three months' suspension or revocation period is eliminated from this section. Some additional technical changes were also made in this section.

Section 11 amends AS 28.35.032(d) to provide new penalties for the refusal to submit to a chemical test of breath under the implied consent statute. The penalties parallel those for conviction for "DWI" in several ways, including the calculation of the number of offenses. Provision is made for permanent suspension or revocation of the driver's license or the nonresident privilege to drive, and for the denial of an original license -- if multiple offenses are involved.

Section 12 amends AS 28.35.032(g) adding fines to the penalties for refusal to submit to a chemical test of breath, eliminates the five-year period used in calculating numbers of convictions, and increases the penalties for convictions. The sentence for multiple conviction cases may not be suspended under the amendments of this section.

Section 13 adds new subsections to AS 28.35.033, Chemical Analysis of Blood. This section provides for driver's license seizure if a chemical test produces results specified in subsection (a)(2). The procedure is the same as that in Sec. 9. In addition, the new language limits the court proceeding in which the driver's action to rescind the suspension or revocation of the driver's license is heard to two issues: (1) whether or not the arrest for driving while intoxicated was valid; and (2) whether the chemical test produced the results specified in subsection (a)(2). The penalties for administrative suspension or revocation for "DWI" or refusal to submit to a chemical test of breath are also set forth.

Section 14 amends AS 28.35.034. The section, formerly named "Period of Revocation", is renamed "Surrender of License or

January 31, 1983

Permit". The section is amended by the removal of the provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath. Additional minor technical changes also were made.

Section 15 adds new sections to AS 28.35 for the impoundment and forfeiture of automobiles used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for an offense under AS 28.35.032(f) (Refusal to Submit to a chemical Test of Breath) in the case of the forfeiture. In addition, provision is made for the remission of forfeitures, a procedure to allow persons with ownership or security interests in a forfeited motor vehicle to claim the vehicle through court proceedings.

Section 16 repeals AS 28.35.211(a)(4), a provision concerning suspension, revocation, or limitation of licenses for three months. The repealed provision has been replaced by other provisions throughout this bill.

RJ:ljb



Daily News file photo / Paul Brown

State Rep. Mitch Abood is shown here participating in a demonstration in the effects of alcohol on drivers held in Anchorage in January. Abood backs a bill that would stiffen penalties for drunk drivers.

Drunk drivers may lose their cars, licenses

By GREG GADBERRY
Daily News reporter

NEWS
2-3-83

106
2

If Rep. Mitch Abood has his way, drunken drivers in Alaska will face not only jail time and fines but the permanent loss of their driver's licenses and their automobiles.

Those provisions are part of a comprehensive drunken driving bill written by Abood that drew strong support on Wednesday during a teleconference of the House State Affairs Committee.

"We have lived with this threat to our lives and our property for too long," the Anchorage Republican said.

The proposal mandates that police immediately seize the driver's licenses of anyone shown by breath tests to be driving legally drunk. Drivers who refuse to take breath-alcohol tests after arrest also would have their license taken under the bill.

The proposal would have police issue suspects a temporary seven-day license after their normal driver's license was taken away.

See Back Page, DRUNK

① of ②

NEWS 2-3-83 2082

Drunk drivers may forfeit vehicles and licenses, serve longer jail terms if bill approved

Continued from Page A-1

Drunk drivers could appeal the license seizures to District Court judges. But unless the judge ruled the confiscation was unfair, the temporary license would expire after a week and the suspect would be unable to drive pending the outcome of the case.

Under present law, the state can suspend a driver's license if a person refuses a breathalyzer test, but that suspension is not immediate. Drivers who do take the test and are found to be drunk may have their licenses suspended at the discretion of the judge.

The Abood bill also requires longer license revocations for convicted drunken drivers.

Following a first conviction, drivers would lose their licenses for 90 days, three times the term now imposed on first-time offenders.

Current laws allow first-time offenders to get special licenses with which to drive to work. The Abood bill would prohibit such licenses.

Under the Abood proposal, second offenders would have their licenses pulled for a year, the same time provided now.

However, those with three or more convictions would lose their licenses for good. Current law allows judges to pull a license for three years on a third conviction.

According to Anchorage Municipal Prosecutor Allen Bailey, no other state has the power to permanently revoke a driver's license.

Advocates admit the license suspension issue will draw plenty of legal fire, but they contend the most controversial part of the Abood bill is the section requiring confiscation of the vehicles of drunken drivers.

People facing first convictions under the Abood bill would lose their cars for 15 days. Drunken drivers with two or more convictions would have their cars impounded for 90 days.

The bill also gives to judges the power to permanently confiscate vehicles if the driver has two or more convictions.

Current state statutes allow police to impound drunken drivers' vehicles if they are left in roadways and are a danger to traffic. But those laws do not impose specific time limits for impounding drunken drivers' vehicles.

There also is no provision under current law allowing for permanent confiscation of vehicles for drunken driving charges.

"That's really a giant step," Bailey said. "I don't think any state has that."

Abood's bill requires that those who re-

fuse breathalyzer tests after arrest face fines and jail terms identical to those given drivers who refused drunk by breath testers.

Under the bill, jail time for a first conviction is 72 hours in jail, identical to current law. The fine would range from \$250 to \$500.

Second offenders, however, would pay \$500 to \$1,000 and would remain behind bars for 20 consecutive days. That jail term is double what most second drunken driving convictions now receive.

A person convicted of a three or more offenses would serve at least 30 days.

"We are extremely enthusiastic," said Charles Landers, vice president of Mothers against Drunk Drivers. "This bill addresses many of the issues we think should be changed."

2082



June Gerrish: Deaths 'aren't fair.'

Photo by Mark Kelley

Getting MADD about drunken driving

Group asks Legislature for stiffer DWI penalties

By CHRIS JARVIS
Empire Staff Reporter

She's MADD about drunken drivers, and she wants the Alaska Legislature to do something about it.

June Gerrish knows all too well the pain that goes with drunken driving-caused accidents. In December 1981, two of her grandchildren, 13-year-old Scott Gerrish and his 10-year-old brother Wesley, were run down and killed by a car driven by a drunken driver as they walked along a road in Girdwood, a quiet ski-resort town south of Anchorage.

The driver, Patrick Clemans, was last week sentenced to two concurrent eight-year terms and two years of probation by Anchorage Superior Judge Seaborn Buckalew.

Gerrish said today she was pleased with the sentence, noting it might serve as a warning to others of what can happen when driving while drunken and how serious the courts treat the crime.

And though last week's sentencing "took a lot weight off our minds," she said she is not done with her fight against drunken driving.

It is a fight that goes far beyond the boundary of the state's largest city. This week a Juneau man who recently pleaded no contest to a negligent homicide charge in the drunken-driving death of another 25-year-old man last June was again arrested, this time accused of drunken driving.

Some people withdraw from their anger and outrage, but Gerrish is doing something about hers. She founded the Alaska chapter of Mothers Against Drunk Drivers, a national group of citizens waging an all-out war against drunken driving.

The Alaska Chapter of MADD, started in September, now has about 300 members and will soon have chapters in Juneau, Valdez, Seward, Palmer and Fairbanks.

Now she has brought her fight to the Legislature and the House State Affairs Committee, which on Wednesday will hear her side of the growing drunken-driving tragedy in Alaska.

"We're not against drinking, but when they get in their cars, that's our business," Gerrish said.

Of her own experience, Gerrish said she never will forget the deaths of her grandchildren and the pain it created.

"It's not fair," she said. "There are two kinds of death."

"The first, like the death of an old or very sick person, you can understand You're still hurt, but you know why," she said.

"But this was senseless; this was stupid," she said. "That's what makes me mad; I don't know why."

"We can never have another Christmas, we can never have birthdays," she said of her tight-knit family.

Her son, an Anchorage paramedic, had trouble returning to work following the death of his sons, Gerrish said. One of the first calls he received when he returned to work was to treat a 13-year-old boy who had been hit by a car, she said.

"He had trouble being in the same emergency room" under the same circumstances, she said.

While it supports raising the drinking age to 21, MADD is even more vocal about two other bills now under consideration in the House.

The first, introduced by House Speaker Joe Hayes, R-Anchorage, would require proof of liability insurance before a car can be registered in the state "so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them."

The other bill supported by MADD was introduced by Rep. Mitch Abood, R-Anchorage. It would increase penalties for repeated convictions for driving while intoxicated, refusal to take a breathalyzer test and driving while a license is suspended or revoked.

For example, the minimum sentence for someone convicted of driving while his driver's license is revoked following a conviction for driving while intoxicated would be 14 days in jail and a \$500 fine.

In Alaska, Gerrish said, people don't have much trouble coming up with the money to pay fines, so she wants the fines increased to make more of an impression on drunken drivers.

Other changes the bill makes are a minimum jail term for those who refuse, a second time, to undergo a breathalyzer test. A second conviction would increase the sentence to no less than 30 days in jail and a fine of at least \$500.

A second conviction for driving while intoxicated would result in a sentence of at least 20 days in jail and a fine of at least \$500.

A third conviction would result in a sentence of no less than 30 days in jail and a fine of at least \$1,000.

The bill also would allow a police officer to notify the driver at the time of arrest that he faces license revocation.

The revocation, could be appealed to the court within seven days. If not appealed, the revocation stands.

POSITION PAPER

CS for House Bill No. 6 (Judiciary)



"An Act relating to driving a motor vehicle."

House Bill No. 6 amended would increase the penalties for alcohol related driving offenses. Specifically:

Section 11 AS 28.15.291 sets the penalty for first offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated at 30 days. The penalty for second or third offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated would be 90 days.

Section 13 AS 28.35.030 (c) raises the penalty for second offense operating a motor vehicle while intoxicated to 20 consecutive days. The penalty for a third conviction would be raised to 30 consecutive days.

Section 16 AS 28.35.032 (g) sets the penalty for second offense of refusing to submit to chemical test at 20 days; third offense 30 days.

If CS for House Bill No. 6 is enacted, the increases in penalties set out in Sections 11, 13, and 16 would result in the need for 22 additional minimum security beds.

Recommended by:

Roger V. Endell

Roger V. Endell, Director
Division of Adult Corrections

Date:

May 6, 1983

Approved by:

Robert L. Smith
Robert London Smith, Ph.D.
Commissioner

Date:

May 6, 1983

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CS for HB 6 (Jud.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,860.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Adult Corrections *webb* Date: May 5, 1983

Approved by Commissioner: *Jan A. Fry* Date: May 6, 1983
Department: Health & Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 13

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 16

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

- d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.
2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.
3. Inflation of 6% per year was used for the entire period of the fiscal note.
4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.
5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 1986.

B. Program Summary:

1. Positions

- 1 - Correctional Officer III
- 8 - Correctional Officers II

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 1984. Position costs and costs related to building operations are not included until FY 1986.

- a. Travel - \$2000. Inmate transportation to point of arrest when released from custody.
- b. Contractual - \$39,600. Medical expenses for 22 full-time equivalent inmates at \$1800 per inmate per year.
- c. Commodities - \$68,600. Food, clothing, bedding, etc. for 8,085 inmate days at \$8.48 per day.
- d. Grants - \$6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

e. Capital Expenditures

.22 beds @ \$130,000 per bed = \$2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

1.	POSITION TITLE Correctional Officer II (8)			RANGE/STEP 13/B	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.										
2.	TYPE OF POSITION PFT	STAFF MONTHS 96	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.											
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION														
4.	TYPE OF EXPENDITURE			AMOUNT															
	1	2	3																
	PERSONAL SERVICES																		
5.	Salary	223,608	OT 26,968	<p>These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).</p> <p>Single position costs:</p> <table> <tr><td>Salary</td><td>\$27,951</td></tr> <tr><td>Overtime</td><td>3,371</td></tr> <tr><td>Shift Diff.</td><td>1,011</td></tr> <tr><td>Benefits</td><td>13,864</td></tr> <tr><td></td><td>\$46,197</td></tr> </table>						Salary	\$27,951	Overtime	3,371	Shift Diff.	1,011	Benefits	13,864		\$46,197
Salary	\$27,951																		
Overtime	3,371																		
Shift Diff.	1,011																		
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	\$46,197																		
6.	Benefits	69,167	Shift Diff.																
7.	Supplemental Benefits	15,857	8,008																
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9.	TOTAL PERSONAL SERVICES	01	369,576																
10.	Travel	02																	
11.	Contractual	03																	
12.	Commodities	04	1,600																
13.	Equipment	05	4,000																
14.	Other																		
15.	TOTAL COST		375,176																
	RECEIPT CODE	FUNDING SOURCE																	
16.		Federal Receipts 1002																	
17.		G.F. Match 1003																	
18.		General Funds 1004		375,176															
19.		I-A Receipts 1005																	
20.		Program Receipts 1028																	
21.		Other																	
FOR B&M USE ONLY 4A KEY NUMBER _____																			

13 REQUEST FOR
NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
& Supervision

PROGRAM _____

BRU Adult Confinement

COMPONENT _____

FY 84

Page _____ of _____

Revised Date _____

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL <input checked="" type="checkbox"/> ADDITION				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES			OT \$ 3371						
5.	Salary	30,944	Shift Diff. \$ 1011							
6.	Benefits	9,446								
7.	Supplemental Benefits	2,165								
8.	Fixed Benefits	5,236								
9.	TOTAL PERSONAL SERVICES		01	50,173						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04	200							
13.	Equipment	05	500							
14.	Other									
15.	TOTAL COST			50,873						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	50,873						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&M USE ONLY 4A KEY NUMBER _____										

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	\$ 50,173

13 REQUEST FOR
NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
& Supervision

PROGRAM _____

BRU Adult Confinement

COMPONENT _____

FY 84

Page _____ of _____
Revised Date _____

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (S.A.)
 Title: Act relating to driving a m.v.
 Sponsor: Judiciary Committee
 Requestor: Finance Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,860.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: May 17, 1983
 Approved by Commissioner: Richard J. ... Date: 18 May 83
 Department: Health & Social Services

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3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 13

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 16

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

- d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.
2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.
3. Inflation of 6% per year was used for the entire period of the fiscal note.
4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.
5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 86.

B. Program Summary:

1. Positions

- 1 - Correctional Officer III
- 8 - Correctional Officer II's

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 84. Position costs and costs related to building operations are not included until FY 86.

- a. Travel - \$2000. Inmate transportation to point of arrest when released from custody.
- b. Contractual - \$39,600. Medical expenses for 22 full-time equivalent inmates at \$1800 per inmate per year.
- c. Commodities - \$68,600. Food, clothing, bedding, etc. for 8,085 inmate days at \$8.48 per day.
- d. Grants - \$6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

FISCAL NOTE

SCSCS House Bill No. 6 (State Affairs)

Page 4

e. Capital Expenditures

22 beds @ \$130,000 per bed = \$2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

- There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

POSITION TITLE Correctional Officer II (8)				RANGE/STEP 13/B	BARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPRD.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 96	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

CONTINUATION LEVEL		ADDITION	
TYPE OF EXPENDITURE		AMOUNT	
1	2	3	
PERSONAL SERVICES			
Salary	223,608	OT 26,968	
Benefits	69,167	Shift Diff. 8,088	
Supplemental Benefits	15,857		
Fixed Benefits	25,888		
TOTAL PERSONAL SERVICES	01	369,576	
Travel	02		
Contractual	03		
Commodities	04	1,600	
Equipment	05	4,000	
Other			
TOTAL COST		375,176	

JUSTIFICATION

These positions will provide security coverage for the minimum security beds resulting from enactment of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$27,951
Overtime	3,371
Shift Diff.	1,011
Benefits	13,864
	\$46,197

RECEIPT CODE	FUNDING SOURCE	
16.	Federal Receipts 1002	
17.	C.F. Hatch 1003	
18.	General Funds 1004	375,176
19.	I-A Receipts 1005	
20.	Program Receipts 1028	
21.	Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
PROGRAM & Supervision
BRU Adult Confinement
COMPONENT _____

FY 84

Page _____ of _____
Revised Date _____

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	BARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPROV.	DIS/P.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	X	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	30,944	OT \$ 3371	
6.	Benefits	9,446	Shift Diff. \$ 1011	
7.	Supplemental Benefits	2,165		
8.	Fixed Benefits	3,236		
9.	TOTAL PERSONAL SERVICES	01	50,173	
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04	200	
13.	Equipment	05	500	
14.	Other			
15.	TOTAL COST		50,873	

JUSTIFICATION

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	\$ 50,173

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	50,873
19.		1-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
& Supervision
PROGRAM _____
BRU Adult Confinement
COMPONENT _____

Page _____ of _____
Revised Date _____

FY 84

FROM: SHIRLEE AND LIO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JUNE GERRISH, 5800 GLENN HIGHWAY, ANCHORAGE 99504
H 338-0383 W 333-MADD

REPRESENTATIVE CLOCKSIN WAS WRONG WHEN HE SPOKE TO THE HOUSE,
SAYING I WAS IN SUPPORT OF HIS AMENDMENTS TO HOUSE BILL 6. I
AM NOT IN SUPPORT OF THEM! NO PERSON HAS A RIGHT TO USE MY NAME
WITHOUT WRITTEN CONSENT. IN FACT, I PLEADED WITH HIS AIDE
TO HAVE REPRESENTATIVE CLOCKSIN PASS HOUSE BILL 6 WITHOUT
AMENDMENTS.

I REEMPHASIZE THAT I AM NOT IN FAVOR OF ANY AMENDMENT TO HB 6.

/S/ JUNE GERRISH, PRESIDENT

MSG 83-00017343 PRY 1 05/12/83 18:42:15 ORIG: LA03 IN= 0003 OUT= 0180
FROM: JUNE, AND LIO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: POM

5/12/83, SHIRLEE AND LIOM 17281

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: CRISS TETRAULT, 1711 OXFORD, NO. 2, ANCHORAGE 99503
H 561-4345 W 278-4145

I URGE YOU TO PASS HOUSE BILL 6

SG 83-00014881 PRTY 1 05/11/83 15:45:28 ORIG: LA01 IN= 0018 OUT= 0110
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: LANI GERRISH, P.O. BOX 324, GIRDWOOD 99587
MSG: 272-3607

S PARENTS OF TWO SONS KILLED BY A DRUNK DRIVER, DON'T LET
HIS HAPPEN TO OTHER FAMILIES. PASS HOUSE BILL 6.



11/83, JUNE, ANCH LIO, MSG 16706



ALL MEMBERS OF THE LEGISLATURE

FROM: PHYLLIS JONES, 5800 GLENN HIGHWAY APT 5, ANCHORAGE AK 99504
H- 333-6233

URGE YOU TO PASS HB 6 (DRIVING A MOTOR VEHICLE) BECAUSE IT IS MUCH
NEEDED FOR THE CITIZENS OF ALASKA.

11/83, JUNE, ANCH LIO, MSG 16706



ALL MEMBERS OF THE LEGISLATURE

FROM: LANCE KEY, SRA 28 MONTE ROAD, EAGLE RIVER, AK 99577
HW- 265 -4372 H- 694-4441

HB 6 (DRIVING A MOTOR VEHICLE) WILL BE VOTED ON SHORTLY. I FIND IT HARD
TO COMPREHEND ANY ELECTED OFFICIAL THAT WOULD VOTE AGAINST PASSAGE OF
THIS BILL. YOU MUST STOP THE ALCOHOL RELATED SLAUGHTER ON OUR STREETS
AND HIGHWAYS. YOU CAN HELP STOP THIS RUTHLESS KILLING. DO SO NOW.

11/83, JUNE, ANCH LIO, MSG 16706



ALL MEMBERS OF THE LEGISLATURE

FROM: JUNE GERRISH, 5800 GLENN HIGHWAY, ANCHORAGE, AK 99504
H- 333-MADD OR 338-0383

AS PRESIDENT OF MADD, I AM SPEAKING FOR 350 MEMBERS PLUS APPROXIMATELY
TENS OF THOUSANDS OF CONCERNED CITIZENS THAT CALL ME FOR THE SAFETY OF OUR HIGHWAY.
PLEASE PASS HB 6 (DRIVING A MOTOR VEHICLE).

11/83, JUNE, ANC LIO, MSG 16706

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: JANE DIAL, 6700 PICKWICH PLACE, ANCHORAGE, AK 99504
H- 337-6579

SUPPORT HB 6 (DRIVING A MOTOR VEHICLE) AND I WOULD LIKE TO HAVE IT PASSED.



11/83, JUNE, ANC LIO, MSG 16706

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: WADDEN SCHARDER, 3315 FAIRBANKS STREET, ANCHORAGE, AK 99503
H- 688-9869 AND 274-5637

AS A CONCERNED CITIZEN INTERESTED IN STOPPING THE DEATHS OF LOVED ONES BECAUSE OF DRUNK DRIVERS, I URGE YOU TO PLEASE PASS HB 6 (DRIVING A MOTOR VEHICLE).



11/83, JUNE, ANC LIO, MSG 16706

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: THELMA SINNETT, 2001 SALEM COURT, ANCHORAGE, AK 99504
W- 265-4370 H- 562-4367

REQUEST YOUR SUPPORT OF HB 6 (DRIVING A MOTOR VEHICLE) IN THE UP-COMING ELECTION. AS THE MOTHER OF A YOUNG SON RECENTLY KILLED BY A DRINKING DRIVER, I PLEAD FOR YOUR YES VOTE.



11/83, JUNE, ANC LIO, MSG 16706

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: BOB BRINK, P. O. BOX 91, ANCHORAGE, AK 99510
2211 SUNBURST CIRCLE, ANCHORAGE, AK
H- 274-1460 W- 274-3576

YOUR LACK OF LEGISLATIVE ACTION ON JUDO CUP 84 FUNDING REQUEST WILL LIKELY RESULT IN CANCELATION OF THE PRE-OLYMPIC EVENT AND 14 COMMUNITY CULTURE EXCHANGE, IN ADDITION TO LOSS OF PRESTIGE AND MEDIA ATTENTION, ALASKA WILL NOT BE A SERIOUS CANDIDATE TO HOST FUTURE WORLD CLASS EVENTS. WILL YOU HELP?



MSG 83-00016742 PRTY 1 05/11/83 13:01:10 ORIG: LA01 IN= 0007 OUT= 0056
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM



TO: ALL MEMBERS, ALASKA LEGISLATURE
FROM: WANDA WHEELER, 1610 PATTERSON, ANCHORAGE 99504
H 333-4382

I URGE PASSAGE OF HOUSE BILL 6, RELATING TO DRUNK DRIVING.



TO: ALL MEMBERS, ALASKA LEGISLATURE
FROM: ELAINE DAW, 3845 BAXTER ROAD, ANCHORAGE 99504
H 338-5962

FIRMLY SUPPORT HOUSE BILL 6 (RELATING TO DRIVING A MOTOR VEHICLE) AND HOPE YOU WILL, TOO.

5/11/83, SHIRLEE ANC LIO, 16721

TO: ALL MEMBERS, ALASKA LEGISLATURE
FROM: RUBEN WANG, SRA BOX 21110-B ANCHORAGE 99507.
(RES: HILLSIDE) H 344-2136 W 344-2561



PLEASE URGE ALASKA STUDENT LOAN PROGRAM TO GRANT FINANCIAL AID TO THOSE WHO ARE ENROLLED IN USC DOCTORAL PROGRAM. HIS COMMITTED ALASKAN EDUCATORS WILL SERVE THE STATE TO THEIR EXCELLENCE.

/S/ RUBEN WANG

5/11/83, SHIRLEE ANC LIO, 16721

TO: ALL MEMBERS, ALASKA LEGISLATURE
FROM: MARK RAUCH, SRA BOX 62-E, ANCHORAGE 99507
(5950 CHISANA) H 349-2827 W 274-2662



URGE FULL FUNDING OF WICHE STUDENT EXCHANGE PROGRAM. I AM A NINE-YEAR RESIDENT OF ALASKA. I PLAN TO ATTEND LAW SCHOOL IN OREGON BEGINNING AUGUST, 1983. IT WILL BE FINANCIALLY IMPOSSIBLE IF WICHE IS CUT AS PROPOSED BY SENATE FINANCE. I HAVE A FAMILY OF FOUR TO SUPPORT. THANKS.

CG 83-00016760 PRTY 1 05/11/83 13:28:45 ORIG: LA03 IN= 0002 OUT= 0071
FROM: JUNE, ANC LIO TO: POM, JUN INFO
TARGET: LJHL SUBJ: POM



5/11/83, JUNE, ANC LIO, MSG 16760

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: DENNIS DAVIDSON, 9090 PRINCE OF PEACE, EAGLE RIVER, AK H- 694-4646

99577

I AM OPPOSED TO ANY ALTERATION OR MODIFICATION TO THE LITTLE DAVIS-BACON LAW.

5/11/83, JUNE, ANC LIO, MSG 16760

TO: ALL MEMBERS OF THE LEGISLATURE

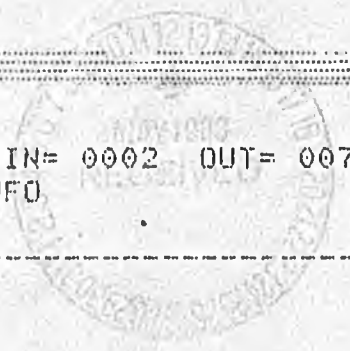
FROM: JULIANA REED, 101 DUNNELL APT 1-B, ANCHORAGE, AK H- 333-7110 W- 265-9268

99508



I AM IN FAVOR IN HB 7 (MOTOR VEHICLES) BECAUSE I WAS A VICTIM OF AN ACCIDENT WHERE THE DRIVER DID NOT HAVE CAR INSURANCE AND LIABILITY. NOW I DON'T HAVE A CAR TO GO TO WORK AND INCONVENIENT TO THE COMMUNITY AS I AM A MEMBER OF CIVIL AIR PATROL AND ALL THE RED TAPE I HAVE TO GO THROUGH TO GET A CAR.

CG 83-00016785 PRTY 1 05/11/83 13:36:08 ORIG: LA05 IN= 0002 OUT= 0072
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M



TO: ALL MEMBERS OF THE LEGISLATURE

FROM: ROBIN HARTLIEB, 11041 LIPSCOMB, ANC H 344-5478
MAIL: 1331 WEST 7TH AVE, ANC 99501

I URGE THE PASSAGE OF HB 6, RELATING TO DRUNK DRIVING LAWS.

MAY 1983
RECEIVED
094429007-0088

MSG 83-00016816 PRTY 1 05/11/83 14:11:57 ORIG: LA01 IN= 004429007-0088
FROM: SHIRLEE ANC LIO
TO: FOMS JUNEAU INFO
SUBJ: LJHL

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JANICE POKORNY, 5800 GLENN HIGHWAY, APT. 50, ANCH 99504
MSG: 338-0383

MY TWO NEPHEWS WERE KILLED BY A DRUNK DRIVER. KEEP MY TWO CHILDREN ALIVE AND PASS HOUSE BILL NO. 6.

MAY 1983
RECEIVED
094429007-0093

MSG 83-00016743 PRTY 1 05/11/83 14:34:51 ORIG: LA02 IN= 000429007-0093
FROM: JUNE, ANC LIO
TO: FOM, JNU INFO
SUBJ: LJHL

05/11/83, JUNE, ANC LIO, MSG 16743

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: BRENT JONES, 8240 HARTZELL ROAD, ANCHORAGE, AK 99507
H- 345-0399 W-349-2724

PLEASE EXPEDITE THE PASSAGE OF HB 117 AND SB 74 (SEXUAL ABUSE OF CHILDREN).

OK

CG 83-00016802. PRTY 1 05/11/83 13:53:19 ORIG: LA01 IN= 0012 OUT= 0081
FROM: SHIRLEE ANC LIO TO: FOMS JUNEAU INFO
TARGET: LJHL SUBJ: FOM



TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ROY DAW, 3845 BAXTER ROAD, ANCHORAGE 99504
H 338-5962 W 243-3404

I AM VERY MUCH IN FAVOR OF HB 6 WHICH CALLS FOR MUCH STRONGER
PENALTIES AGAINST DRUNK DRIVERS. I HOPE YOU WILL VOTE IN
FAVOR OF IT.

CG 83-00016795 PRTY 1 05/11/83 13:45:38 ORIG: LA01 IN= 0010 OUT= 0077
FROM: SHIRLEE ANC LIO TO: FOMS JUNEAU INFO
TARGET: LJHL SUBJ: FOM



TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ROSEMARIE SPENCER, 7210 KISKA, ANCHORAGE 99504
H 333-4520

I STRONGLY SUPPORT HOUSE BILL 6 (DRUNK DRIVING) AND URGE
STRICT MEASURES AGAINST DRUNK DRIVERS.

MSG 83-00016951 PRTY 1 05/11/83 17:18:31 ORIG: LA01 IN= 0023 OUT= 0139
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM



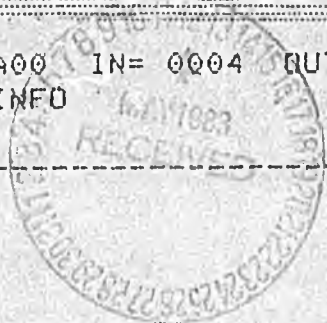
Jr

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: BOB SINNETT, 2001 SALEM COURT, ANCHORAGE 99504
H 562-4367 W 276-4334

I AM IN TOTAL SUPPORT OF HOUSE BILL 6. ACT NOW, SAVE A LIFE.

MSG 83-00016954 PRTY 1 05/11/83 17:23:41 ORIG: LA00 IN= 0004 OUT= 0142
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM



05/11/83, JUNE, ANC LIO, MSG 16954

TO: ALL REPRESENTATIVES

FROM: GERALD L. HOOD, 8500 PIONEER DRIVE, ANCHORAGE, AK 99504
H- 333-6589 W- 276-4334

IF THE STATE OF ALASKA IS TO STOP THE CARNAGE ON ROADS AND HIGHWAYS
PERPETRATED BY DRUNKEN DRIVERS, HB 6 MUST BE ENACTED NOW. CANNOT
PERSUADE YOU STRONGLY ENOUGH TO PASS THIS IMPORTANT LEGISLATION.

*****8

MSG 83-00016980 PRTY 1 05/11/83 17:50:06 ORIG: LA05 IN= 0007 OUT= 0154
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M



TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

FROM: JOSEPH L. CARTER, 2614 WEST 33RD, ANC 99503 H 248-0846 W 272-0453

PLEASE VOTE FOR HB 6 (DRUNK DRIVING) TO PROVIDE HARSHER PENALTIES FOR
DRUNK DRIVING. LET US AT LEAST CONSIDER THIS A CRIME AS SERIOUS AS TAKING
MOOSE OR BEAR ILLEGALLY. THANK YOU FOR VOTING RESPONSIBLY.

MSG 83-00016958 PRTY 1 05/11/83 17:24:09 ORIG: LA05 IN= 0005 OUT= 0143
FROM: SHIRLEE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M



TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES
FROM: DIANA ADLEY, 8020 WOODGREEN CIRCLE, ANC 99502 H 349-3617 W 263-5484

I SUPPORT HB 6. FOR SOME, THIS LEGISLATION COMES TO LATE. WE NEED TO
HELP SAVE OTHERS FROM BECOMING VICITIMS OF THIS INCREASING CRIME. I LOST
A FRIEND TO A DRUNK DRIVER LAST FEBRUARY. GET THE DRUNKS OFF THE STREETS!

FROM: SHIRLEE, ANC INFO
FROM: LJHL SUBJ: F O H

TO: POM, JUNEAU INFO

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: RUTH MITCHELL, 1703 ROOSEVELT APT 2, ANC 99503 H 562-4374 W 563-3815



I SINCERELY URGE YOU TO PASS HB 6 (DRUNK DRIVING).

CG 83-00017020 PRTY 1 05/11/83 18:35:14 ORIG: LA01 IN= 0029 OUT= 0182
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: ADA SANNIN, 5800 RADCLIFF, ANCHORAGE 99504
H 333-0245



SUPPORT HOUSE BILL 6 (TOUGHER LAWS AGAINST DRUNK DRIVING).
VERY MUCH ENCOURAGE YOU ALL TO VOTE IN FAVOR OF ITS PASSAGE.

FROM: JEAN, ANCHORAGE TO: JUNEAU INFO, POMS
ORIG: LA02 IN= 0012 OUT= 0166
TARGET: LJHL SUBJ: POMS



05/11/83 JEAN, ANCH LIO #1700

TO: ALL THE MEMBERS OF THE ALASKA STATE LEGISLATURE

FROM: MRS. SELMA SCHMIDT
2072 ARLINGTON DRIVE
ANCHORAGE, AK 99503 (H) 279-0066

PLEASE PASS HB 6 IN REGARD TO DRUNK DRIVING.

MSG 83-00016989 PRY 1 05/11/83 18:12:48 ORIG: LA02 IN= 0011 OUT= 0160
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM



05/11/83, JUNE ANC LIO, MSG 16989

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: DEBORAH THOMPSON, BROWN JUG INCORPORATED
4140 OLD SEWARD HIGHWAY, ANCHORAGE, AK 99503
W- 563-3815 H -562-4374

WE BELIEVE IN STIFFER PENALTIES, HIGHER FINES AND OTHER PENALTIES
ON DRUNK DRIVERS. WE DEFINITELY URGE YOU TO PASS HB 6.

MSG 83-00016982 PRY 1 05/11/83 17:54:10 ORIG: LA00 IN= 0006 OUT= 0156
FROM: JUNE, ANC LIO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: POM



05/11/83, JUNE, ANC LIO, MSG 16982

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: BRUCE STAFFORD, 5059 VANCE DRIVE, ANCHORAGE, AK 99504
H- 333-2151 W- 265-4315

WE WOULD APPRECIATE YOUR SUPPORT OF PASSAGE OF CSHB 7 REGARDING PROOF OF
INSURANCE PRIOR TO VEHICLE REGISTRATION, AND HB 6 PERTAINING TO DRUNK
DRIVING.

DR



MSG 83-00016929 PRTY 1 05/11/83 16:44:44 ORIG: LA01 IN= 0021 OUT= 0130
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES
FROM: MARIANN CARIGLIO, 3543 MOUNTAIN VIEW DRIVE, ANCHORAGE 99504
H 272-1382 W 264-4545

I WOULD LIKE TO SEE HOUSE BILL 6 PASSED; GET THE DRUNK DRIVERS
OFF THE ROAD. THANK YOU.

SG 83-00016931 PRTY 1 05/11/83 16:49:11 ORIG: LA01 IN= 0022 OUT= 0132
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES
FROM: FRANK BAKER, 6301 HABICHT CT., ANCHORAGE 99504
H 333-9071 W 263-5489



AM A PARENT AND A 38 YEAR RESIDENT OF ALASKA. I AM
VERY APPALLED BY DANGEROUS SITUATIONS ON OUR STREETS.
STRONGLY URGE YOU TO PASS HB 6 FOR THE SAKE OF ALL OUR
CHILDREN.

*****8

FROM: PHYLLIS JONES, 5800 GLENN HIGHWAY, ANCHORAGE, AK 99504
H- 333-6233

IN FE: HB 6 - DRIVING A MOTOR VEHICLE

I DO NOT LIKE REPRESENTATIVE CLOCKSIN'S ATTITUDE ON THIS BILL. PLEASE
PASS AS ORIGINALLY PROPOSED.

Did Ref

FROM: JUNE GERRISH
PRESIDENT OF MADD
5800 GLEN HIGHWAY
ANCHORAGE, AK 99504 (H) 338-0383 (W) 331-MADD

2R

AS PRESIDENT OF MADD, SPEAKING FOR 350 MEMBERS TO APPROXIMATELY 1000
CALLS I HAVE RECEIVED WE DO NOT LIKE YOUR ATTITUDE ON HB 6. PLEASE
PASS BILL AS PRESENTED.

[The following section contains extremely faint and illegible text, likely a scan artifact or a very low-quality reproduction of a document. It appears to be a list or a series of lines of text, but the characters are too small and blurry to be transcribed accurately.]

5/12/83, JUNE, AND LIO, MSG 17176

TO: ALL REPRESENTATIVES

FROM: GERALD HOOD, 8500 PIONEER DRIVE, ANCHORAGE, AK 99504
H- 333-6589 W- 276-4334



REPRESENTATIVE CLOCKSIN'S AMENDMENT TO HB 6 (DRIVING A MOTOR VEHICLE) IS AN OUTRIGHT ATTEMPT TO DEBILITATE THIS LEGISLATION, AND RENDER IT MEANINGLESS. HIS THINKING ON THIS ISSUE IS MYOPIC. HB 6 SHOULD BE ENACTED AS PROPOSED WITHOUT ALTERATION.

OR

MSG 83-00017259 PRTY 1 05/12/83 15:42:59 ORIG: LA05 IN= 0004 OUT= 0123
FROM: SHIRLEE ANC LIG TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: ALL MEMBERS, ALASKA HOUSE OF REPRESENTATIVES

FROM: SANDRA RICARDO, 4807 KENT, ANCHORAGE 99503
H 563-6548

I URGE YOU TO PASS HOUSE BILL 6 IN ITS ENTIRETY IN ITS ORIGINAL FORM. EVEN THOUGH IT IS LATE AND YOU MAY NOT GET MANY MESSAGES ON IT, I KNOW THE PUBLIC SENTIMENT IS IN FAVOR THIS BILL.

FROM: BERTHA MIDYETT, 1011 WEST 12TH #1, ANCHORAGE, AK 99501
H- 272-3707

LEGISLATIVE COMMITTEE OF OPAG APPROVE THE FOLLOWING:
HB 109-CRIMINAL PROSECUTION OF MINORS
HJR 7-ELECTION OF ATTORNEY GENERAL
HB 17-RAISING THE DRINKING AGE
HB 28-UNIVERSITY LAND
HB 128-CHILD PROSTITUTION
HB 294-ALASKA TOLL BRIDGE AND CAUSEWAY AUTHORITY
HB 202-LIQUOR TAX

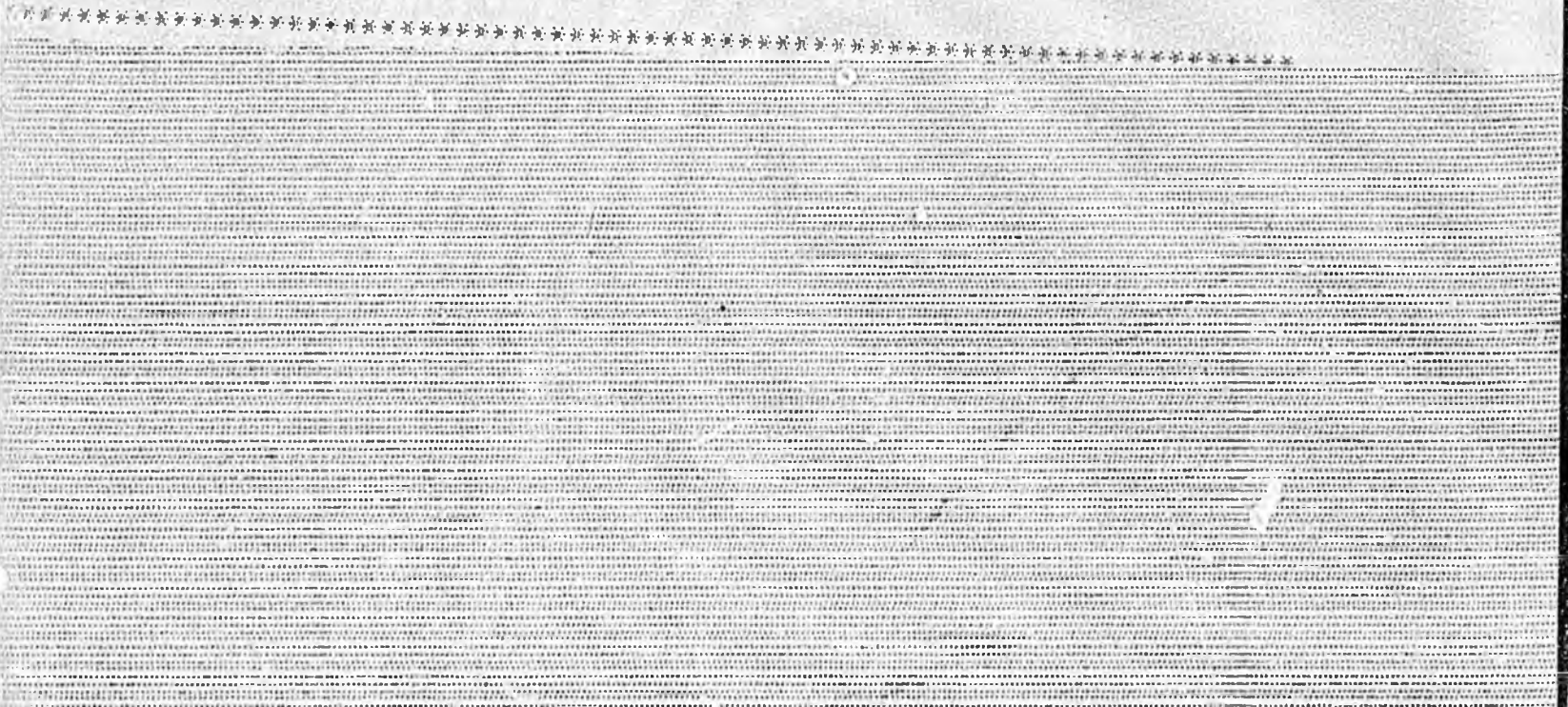
5/16/83, SHIRLEE ANC LIO, 17878

TO: ALL MEMBERS, ALASKA LEGISLATURE
(ATTENTION: REPRESENTATIVE MITCH ABOOD)

FROM: BOB NESTEL, BOX 1753, EAGLE RIVER 99957 H 694-4372

SUBJ: CSHB 6 - RELATING TO DRIVING A MOTOR VEHICLE

THE ANCHORAGE DAILY NEWS 5/14 EDITION CARRIED THE STORY ON PAGE A-9
ABOUT OHIO'S NEW DRUNK DRIVING LAW INSTITUTED IN MARCH. ALCOHOL
RELATED DEATHS DECREASED 32 PERCENT UP TO 5/13. PASSAGE OF CSHB 6
WILL HOPEFULLY HAVE THE SAME EFFECT IN ALASKA.



SR



MSG 83-00016833 PRTY 1 05/11/83 14:44:39 ORIG: LA03 IN= 0003 OUT= 0099
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

5/11/83, JUNE, ANC LIO, MS: 16833

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SANDRA QUIMBY, 2308 SUCCESS DRIVE, ANCHORAGE, AK 99504
H- 337-1094

I SUPPORT HB 6 (DRIVING A MOTOR VEHICLE) AND STRONGLY ENCOURAGE YOU TO VOTE IN FAVOR OF ITS PASSAGE.

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SANDRA RICARDO, 4807 KENT ST., ANC 99503 H 563-6540

RE: HB 6 DRUNK DRIVING

LET'S STOP THE CRASHES NOW PLEASE. PASS HOUSE BILL 6.

MSG 83-00008970 PRY 1 04/15/83 08:02 47 ORIG: LS00 IN= 0001

FROM: SITKA

TO: JUNEAU

TARGET: LJ04 SUBJ: POMS

to: *Reps Bussell, Liska, Hayes, Barnes,
Malone, Clocksin, Orendt* PAGE 0002

FROM NANCY ELIASON

FOX 959

SITKA, AK. 99835 747-3632 (H) OR 747-3255

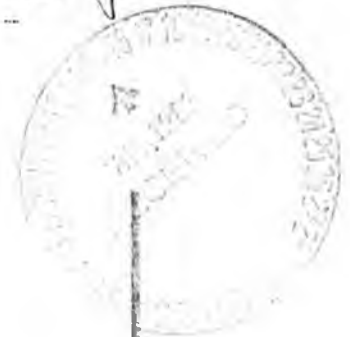
DRUNK DRIVING IS A MAJOR PROBLEM WHICH MUST BE ADDRESSED. THE MAJORITY OF ACCIDENTS ON OUR HIGHWAYS RESULT FROM DRUNK DRIVING. THE FOCUS ON REQUIRED SEAT BELTS, AIR BAGS, ETC. IS NOT GETTING AT THE ROOT OF THE PROBLEM.

4-15-83 ELAINE/SITKA 8870

TO: REP. AL ADAMS

*D.O.
P.O.*

MORE _ BACK _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _



MSG-83-00016926 PRTY 1 05/11/83 16:53:01 ORIG: LA02 IN= 0007 OUT= 0134
FROM: JUNE, ANC LIO TO: POM, JNU INFO
TARGET: LJHL SUBJ: POM

5/11/83, JUNE, ANC LIO, MSG 16926

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: LAURIE OLMSTEAD, 1344 K STREET, ANCHORAGE, AK 99501
W- 264-4545

IN RE: HB 6-DRIVING A MOTOR VEHICLE

I AM NOT IN FAVOR OF THIS BILL AS IT STANDS. I AM IN FAVOR OF A BILL THAT IS MORE STRINGENT FOR PUNISHMENT AND HAVING FEWER PRIVILEGES FOR PEOPLE WHO DRINK AND DRIVE. HOWEVER, I AM NOT IN FAVOR OF THE PORTION OF THE BILL THAT WOULD MAKE IT LEGAL TO FORFEIT HIS VEHICLE.



OR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 11, 1983

The Honorable Elaine Andrews
District Court Judge
Third Judicial District
941 Fourth Avenue
Anchorage, Alaska 99501

Dear Judge Andrews:

I have been in receipt of your letter for three weeks now, relative to HB 6, or more properly, for the Committee Substitute (Judiciary) for HB 6. I have held up answering your letter until today in order to report to you any possible alterations by other committees.

Yesterday, the measure was considered by and passed out of the Finance Committee. In the normal course of scheduling, it will soon go to the House floor (from the Rules Committee) where it may well be subject to amendments prior to final passage.

You, of course, are aware that Committee Counsel, Judge Brewer, Retired, has had considerable experience with Driving While Intoxicated cases and related matters as to licensing. (Indeed, he may at one time have heard more DWI cases than any other judicial officer in the State, with more years on the bench). He exerted a great deal of effort and had considerable input into the Judiciary Committee's version, working with the staff of Representative Mitch Abood, the bill's sponsor; with the Department of Law and the Legislative Affairs Agency, which drafted the several versions of the bill.

Your concerns were most carefully considered by him and generally, I think, he agrees with your points of view. I cannot, of course, comment on what you "assume" the legislation means as to credit for jailed offenders' good time. That matter is up to the administration of the Department of Health, Education and Social Services, or, as it may become in the future, the Department of Corrections, to calculate.

Of course, your letter was written based on the original version. It underwent substantial changes in the fine-tuning of it. Please note, however, the final version

MEMBERS:

REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

The Honorable Elaine Andrews
May 11, 1983
Page No. 2

deletes the impoundment of vehicles provision, no doubt much to the relief of you and your colleagues. Forfeiture of vehicles and remission of them are retained, though. I would be nearly impossible to set up two differing methods of punishment for those ordered by a court not to drive compared with those whose licenses have been administratively suspended because of financial responsibility. It would appear anomalous to tell motorists that court orders mean what they say, but that administrative regulations do not. A ban on driving, after all, remains a ban on driving whether decreed by a court or by the Division of Motor Vehicles.

I am aware that courts generally do not look with favor upon legislatively mandated minimum sentences or fines. Constituents tell me, however, that the tendency is to impose only the mandatory minimum sentences, seldom going above or beyond them. Members of the public take a dim view of what they refer to as "leniency" of the courts. Since they believe penalties meted out are not severe enough, the aim of the legislation is to elevate the floor of the penalties by legislative action. Discretion by courts is essential, but the public seems to be saying, "Let's establish a bottom line, and court discretion can come into play after reaching that point."

There is little point in further analysis for as earlier indicated the measure is subject to amendments on the floor of the House. Further, the Court system will have its own analysis and interpretation of the final version, should it be enacted.

Another attempt for protection of citizens on the highway is manifested by the mandatory insurance for motorists bill, HB 7, but I will refrain from commenting further on that measure just now.

Thank you for involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

May 7, 1983

VaV

Dear Vsv:

The House Judiciary Committee passed HB 6, the "drunk driving" bill, out of Committee on Friday, April 29, 1983. I think it is an excellent and comprehensive item of legislation.

The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

I sincerely hope that this bill will not be substantially altered or amended in a way that weakens or destroys it.

The bill provides for seizure of a driver's license upon arrest as well as increased penalties upon conviction. While the minimum of 72 hours in jail is mandated for a first offense in keeping with the existing law, a second offense requires a minimum of no less than 20 days in jail and the third offense would result in at least 30 days in jail and a 10-year license revocation.

Fines based on the number of absence of prior convictions, carry mandatory minimums of \$250 for a first offense, \$500 for the second offense and not less than \$1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

VsV

May 7, 1983

Page No. 2

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is know that HB 6, the so-called "drunk driving bill", was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, after all, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz



HB6

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

Ms. June Gerrish
MADD - Mothers Against Drunk Drivers
5800 Glenn Highway
Anchorage, Alaska 99504

Dear Ms. Gerrish:

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The Committee put considerable thought and effort into its creation and fine-tuning. Representative Mitch Abood's staff, the Committee staff, and the bill drafters for the Legislative Affairs Agency and the Department of Law worked very hard and diligently expending many long hours on this bill.

The Committee really appreciates the way the original sponsor, Rep. Abood of Anchorage, spent so much time working with the bill and with us. Rep. Abood testified before the Committee each time the bill was scheduled for hearing. He "rode herd" on the bill from its inception to the final product that passed out of the Committee.

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MEMBERS:

REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Ms. June Gerrish
May 2, 1983
Page No. 2

Fines based on the number of absence of prior convictions, carry mandatory minimums of \$250 for a first offense, \$500 for the second offense and not less than \$1,000 for a third offense. Courts will be required, under the proposed bill, to consider prior offenses over the preceding 15 years in this or another jurisdiction, rather than going back only five years under the existing law to find prior convictions.

The bill also maintains as a crime the refusal to submit to a chemical test following arrest, as does existing law, except penalties are more stringent under the new bill.

In addition, law enforcement officers are authorized to require a breath test on the spot when the driver is first stopped. Refusal to submit to a preliminary breath test, prior to arrest, is classed as an infraction in the measure.

The House Judiciary Committee moved HB 17, the bill to raise the drinking age to 21, on the House Finance Committee back in February. The Chief Prosecutor of the State, Dan Hickey, testified before that group and the Finance Committee Substitute substantially weakened the bill. One wonders if Mr. Hickey initiated the amendments to that bill.

It is known that HB 6, the so-called "drunk driving bill," was not classed as one of the Chief Prosecutor's priorities when we were waiting for suggestions from the Department of Law. It is to be hoped that HB 6 will receive swift action in the House Finance Committee and not be weakened in the same manner HB 17 was. In fact, one wonders who is running the apparently leaderless Department of Law during this part of the Sheffield administration.

The Governor, after all, during his campaign told folks he was in favor of raising the drinking age to 21. Recently, he said he was not in favor of this. A crystal ball would be helpful, maybe, to see what his views are on driving while intoxicated.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouder Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mitch Hood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff *Christine Johnson*

SUBJECT: Research Request No. 82-5
Drunk Driving Statistics

Carol Horos of your staff has asked for the following information regarding drunk driving:

- (1) statewide data on the number of arrests and convictions for drunk driving for a sufficient number of years to show the current trend;
- (2) statewide data on the number of arrests and convictions for other traffic violations where the driver was also intoxicated;
- (3) a comparison between the incidence of drunk driving in Alaska and the national rate.

As we have explained to Ms. Horos, the second category of data required a special computer run by the Alaska Court System, and we have not yet received the information. We will forward it to you as soon as it arrives.

Arrests

Table I on the following page shows the number of arrests for drunk driving during 1978, 1979, and 1980. This data indicates that arrests for drunk driving are declining. Data for 1980 shows a 21% decrease in the number of arrests for this offense over the arrests reported in 1978. This decline may be related to the stiffer penalties for drunk driving which went into effect in the fall of 1978.

TABLE I
Statewide Arrests for Drunk Driving
1978 - 1980

	<u>1978</u>	<u>1979</u>	<u>1980</u>
Number of Arrests	3,265	3,006	2,575
Rate of Arrest per 100,000 people	815.3	750.6	643.0

Source: House Research Agency, January 1982, from data provided by the Criminal Justice Planning Agency, Alaska Department of Law, Crime in Alaska - 1980.

Table II below compares Alaska's 1980 arrest rate for drunk driving with the national rate for that year. The data indicates that the state's arrest rate for drunk driving is only slightly higher than the national rate.

TABLE II
State and National Arrest Rates for Drunk Driving - 1980
(Rate per 100,000 people)

<u>Alaska</u> Arrest Rate	<u>National</u> Arrest Rate
643.0	626.3

Source: House Research Agency, January 1982, from data provided in Crime in Alaska - 1980, and Federal Bureau of Investigation, U.S. Department of Justice, Crime in the United State, September 1981.

Convictions

Table III on the following pages shows both the number of cases involving drunk driving which were filed with the Alaska Court System during the three year period and the number of convictions which resulted. This information provides the best indication of the conviction rate for drunk drivers, as the data regarding arrests comes from another source and is not comparable to the Court's statistics on convictions.

Between 1978 and 1980, approximately 75% of the individuals charged with drunk driving were convicted. The conviction rate declined slightly in 1980, but no downward trend can logically be inferred from this information.

TABLE III
Drunk Driving Cases Filed with the Alaska Court System
and Rate of Conviction
1978 - 1980

	<u>1978</u>	<u>1979</u>	<u>1980</u>
No. of Cases Filed	3,581	3,545	3,095
No. of Convictions	2,765	2,691	2,224
Conviction Rate	75%	76%	72%

Source: Alaska Court System.

*
We were unable to locate any information on the national conviction rate for drunk drivers. We did learn from the State Highway Safety Planning Commission that nationwide 50% of all fatal accidents in 1979 involved a drunk driver. This figure was closer to 75% for Alaska.

We hope this information is of use to you. Again, we will deliver the other material you requested as soon as it arrives. If we can provide any further assistance, please don't hesitate to contact us.

CJ/cj



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

9

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 4, 1982

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff *Christine Johnson*

SUBJECT: Research Request No. 82-5
Arrests and Convictions for Drunk Driving: Additional Information

This memorandum should fulfill your request for data regarding arrests and convictions for driving while intoxicated (DWI). We have been waiting for a computer run from the Court System in order to respond to your question regarding the number of other traffic violations committed by drunk drivers.

Unfortunately, we have found that the Court System's data will only partially answer your question. On the Court's computer system, cases involving multiple offenses are listed by the primary, or the most serious, offense; the number of other lesser offenses is noted, but these offenses are not specifically named. Consequently, while the data indicates the number of cases where an individual was charged with DWI and other lesser offenses, it does not show the number of people charged with drunk driving and other more serious violations.

The Court System's data for 1980 is summarized on the table on the following page. This information indicates that drunk drivers were responsible for a minimum of 236 other traffic offenses in 1980. Ninety percent of these drivers were ultimately convicted of drunk driving. Eighty-nine percent of those convicted served time in jail, 77% were fined, and 69% were both fined and jailed.

We hope this information is of use to you. We sincerely apologize for the delay in delivering it, but tabulating the data from the Court System took significantly longer than we anticipated. If we can provide any further information, please don't hesitate to contact us.

CJ

Attachment

1980 Court Cases Involving a DWI Offense and Other Lesser Offenses
By Disposition of Case

	NO. OF CASES WHICH INVOLVE A DWI OFFENSE AND ANOTHER OFFENSE	CONVICTIONS		PENALTIES											
		No.	%	Jail No.	% ¹	Fine No.	%	Both No.	%	License Revoked No.	%	Restitution Required No.	%	Probation No.	
ONE OTHER OFFENSE	164	146	89%	131	90%	111	76%	100	60%						
TWO OTHER OFFENSES	22	22	100%	20	91%	17	77%	16	73%						
THREE OR MORE OTHER OFFENSES	9 ²	8	89%	6	75%	7	86%	5	63%						
TOTAL	195	176	90%	157	89%	135	77%	121	69%	70	40%	23	13%	63	36%

¹Percentage of convictions.

²Eight cases involve three other offenses and one case involves four other offenses.

Source: House Research Agency from data provided by the Alaska Court System, February, 1982.

RANGE OF JAIL SENTENCES

	No.	%
1- 5 days	82	52%
6- 10 days	32	20
11- 25 days	24	15
26- 50 days	8	5
51-100 days	7	5
101-200 days	3	2
over 200 days	1	1

TOTAL 157 100%

RANGE OF FINES

	No.	%
less than \$100	2	2%
\$100-199	24	18
\$200-299	56	41
\$300-399	27	20
\$400-499	10	7
\$500-750	14	10
over \$750	2	2

TOTAL 135 100%



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Room Y, State Capitol
Juneau, Alaska 99801
(907) 465-3991

March 16, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff *Christine Johnson*

RE: Research Request No. 82-63
Drunk Driving Statistics

Attached please find several charts which should at least partially address your questions regarding (1) the recidivism rate for drunk drivers; and (2) the number of other offenses which drunk drivers commit. Major findings from the data are summarized below:

- In the last five fiscal years, approximately 16,700 individuals were booked into Alaska correctional facilities on charges of drunk driving. Of these, 7,100 or 42% had been booked for drunk driving on at least one other occasion since 1972.
- Between FY 77 and FY 80, the percentage of drunk drivers who were repeat offenders increased steadily from 33% to 48%. The percentage of repeat offenders declined slightly in FY 81 to 44%; however, it is impossible to say whether this represents a one-time fluctuation or the beginnings of a downward trend.
- Over the five-year period, drunk drivers were charged with a total of 2,500 other offenses, including 1,500 other traffic violations. Forty-nine percent of these other offenses were attributed to drivers who had been picked up for drunk driving on at least one other occasion.

We can provide a more detailed breakdown of this data by geographic location, and by age, sex, or race of the offender, if you desire. Please call if you have any questions.

CJ/bf

TABLE I
 Number of Persons Booked in Alaska Correctional Facilities for OIVI Offenses
 Who Had Been Booked Previously on the Same Charge
 FY 77 - FY 81

Year	Total No. of Persons Booked for OIVI	No. of These Who Were OIVI Repeaters	No. of Other OIVI Offenses Since 1972												
			1	2	3	4	5	6	7	8	9	10	11	12	
FY 77	3,340	1,096 33%	709	190	74	24	12	3	2	2					
FY 78	3,297	1,385 42%	949	266	95	46	16	8	4	1					
FY 79	3,775	1,693 45%	1018	356	160	82	44	16	9	7	1				
FY 80	3,004	1,455 48%	803	324	161	77	37	27	13	7	5	2			
FY 81	3,350	1,484 44%	863	295	148	77	35	23	14	10	8	5	4	2	
5-Year Total	16,766	7,114 42%	4422	1431	638	306	144	77	42	27	14	7	4	2	

SOURCE: House Research Agency, March 1982, from Alaska Dept. of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE II
 Number of Other Offenses For Which Drunk Drivers Were Charged
 FY 77 - FY 81

Other Offense	No. of Bookings for OWI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Murder & Negl. Mansl.					1
Non-Negl. Manslaughter				1	1
Robbery	1	1	1	2	1
Aggravated Assault	25	21	20	11	5
Burglary		2			2
Larceny/Theft	4	3	8	4	4
Joyriding	20	21	20	7	6
Assault, Other	3			1	5
Fraud	1			4	1
Embezzlement			1		
Stolen Property			2	1	
Vandalism	6	8	9	1	5
Weapons	12	13	22	7	10
Sex Offenses				1	
Sale/Distribution of Controlled Substances	6		2		2
Liquor Laws	22	7	7	5	5
Drunkenness	15	7	14	1	6
Disorderly Conduct	11	11	3	9	12
Disord. Conduct, Other	17	13	15	17	52
Suspicion	1	3		1	6

(CONTINUED)

TABLE II (CONTINUED)

Other Offense	No. of Bookings for OMVI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Traffic-M.V.	233	250	334	332	375
Offense Against Court	11	25	37	92	108
Probation Violation	1	1	6	5	3
Parole Violation					2
Bench Warrant	19	15	5	35	42
Bail Violation	1				
Escape	1	2	4	2	
AWOL-Fugitive	1		1	1	3
Contributing to Delinquency			1	2	1
Possession/Use of Controlled Substance	33	25	17	11	11
Juvenile Status Offense	1	1			
Other or Unknown		10	6	2	
TOTAL	446	440	535	556	671

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE III
 Number of Other Offenses For Which Drunk Drivers Were Charged
 Cumulative Total for FY 77 - FY 81

Other Offense	No. of Bookings for OVI and this Offense	No. of These Which Involved OVI Repeater		No. of Other OVI Bookings Since 1972				
				1	2	3	4	5+
Murder & Negl. Mansl.	1							
Non-Negl. Mansl.	2							
Robbery	6	1	17%	1				
Aggravated Assault	74	27	32%	17	9			1
Burglary	4	2	50%	2				
Larceny-Theft	23	9	39%	5	2	1	1	
Joyriding	74	30	41%	15	7	1	3	4
Assault, Other	9	2	22%	1	1			
Fraud	6	2	33%		2			
Embezzlement	1							
Stolen Property	3	1	33%	1				
Vandalism	29	12	41%	7	4	1		
Weapons	64	11	17%	10	1			
Sex Offenses	1							
Sale/Distribution of Controlled Substances	10	3	30%	1	1	1		

(CONTINUED)

Other Offenses	No. of Bookings for OVI and this Offense	No. of These Involving OVI Repeater		No. of Other OVI Bookings Since 1972				
				1	2	3	4	5+
Liquor Laws	47	7	15%	4	3			
Drunkenness	43	14	33%	9	2	1	1	1
Disorderly Conduct	46	23	50%	13	3	6	1	
Disord. Conduct, Other	114	47	41%	22	11	9	4	1
Suspicion	11	6	55%	2	3		1	
Traffic-M.V.	1,524	825	54%	318	200	112	73	122
Offense Against Court	273	167	61%	70	48	24	10	15
Probation Violation	16	10	63%	3	1	2	2	2
Parole Violation	2	2	100%	1	1			
Bench Warrant	117	66	56%	27	18	6	6	9
Bail Violation	1	1	100%	1				
Escape	9	4	44%	1	2	1		
AWOL-Fugitive	6	1	17%	1				
Contributing to Delinq.	4	1	25%	1				
Possession/Use of Controlled Substance	98	29	30%	23	3	2		1
Juvenile Status Offense	2							
Other or Unknown	18	7	39%	6	1			
TOTAL	2,648	1,310	49%	562	323	167	102	156

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.



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President
William F. Passannante.
Speaker Pro Tempore,
New York Assembly

Executive Director
Earl S. Mackey

M E M O R A N D U M

TO: Legislators and legislative staff interested in drunk driving legislation
FROM: Ralph Craft, Staff Director Transportation and Communications Committee **RC**
RE: Drunk Driving Incentive Grants Regulations; Presidential Drunk Driving
Commission Recommendations
DATE: February 9, 1983

Enclosed is a summary of the Final Rule for the Incentive Grant Criteria for Alcohol Traffic Safety programs that were published in the Federal Register February 7, 1983 page 5545.

Also enclosed are some of the recommendations made by the Presidential Commission on Drunk Driving in its interim report. The recommendations included are those that would require state legislative action.

RECOMMENDATIONS THAT WOULD REQUIRE STATE
LEGISLATION FROM THE INTERIM REPORT TO THE NATION
FROM THE PRESIDENTIAL COMMISSION ON DRUNK DRIVING

1.1 Program Financing

Legislation should be enacted at State and local levels which creates a dedicated funding source which includes offender fines and fees for increased efforts in the enforcement, prosecution, adjudication, sanctioning, and education and treatment of driving under the influence (DUI) offenders.

1.2 Task Forces

State and local governments should create Task Forces of governmental and non-governmental leaders to increase public awareness of the problem, to more effectively apply driving under the influence laws, and to involve governmental and non-governmental leaders in action programs.

1.8 Improved Roadway Delineation and Signing

States should give increased attention to improvements in roadway markings, signing, and roadside hazard visibility as important countermeasures to alcohol-related highway crashes.

2.2 Implied Consent

Each state should establish an implied consent statute providing that all drivers are deemed to have given their consent to tests of blood, breath or urine to determine their alcohol or drug concentration. The statute should provide:

- (1) License suspensions sufficiently severe to discourage drivers from refusing the test.
- (2) Introduction of evidence of the test refusal into driving under the influence prosecutions.
- (3) That offenders not be required to be taken to a police facility and placed under formal arrest prior to test administration.
- (4) That offenders who are unconscious or otherwise incapable of refusal are deemed to have given their consent to a test, the results of which are admissible in any trial or proceeding.
- (5) That an individual's right to consult his attorney not be permitted to unreasonably delay administration of the test.
- (6) That results of preliminary breath test devices are admissible in DUI trial proceedings.
- (7) That refusals in sister States result in license suspensions in the State of driver residence.

2.3 Preliminary Breath Testing

States should enact a statute allowing the use of Preliminary Breath Test (PBT) devices by police officers.

2.5 Mandatory BAC Test

States should require mandatory alcohol and other drug testing of all drivers involved in a fatal or serious personal injury crash.

2.6 Booking Procedures

Laws, policies, and procedures should be adopted to expedite arrest, booking and charging procedures.

2.7 Uniform Traffic Ticket

State and local governments should adopt a statewide uniform traffic ticket system.

3.2 Definition of BAC

States should enact a definition of "Breath Alcohol Concentration" and make it illegal to drive or be in control of a motor vehicle with a Breath Alcohol Concentration above that defined level.

3.3 0.08 Presumptive Level of Under the Influence

Legislation should be enacted which provides that a person with an alcohol concentration of 0.08 is presumed to be driving under the influence.

3.4 0.10 Illegal Per Se

Legislation should be enacted making it illegal per se for a person with an alcohol concentration of 0.10 or higher within three hours of arrest to drive or be in actual physical control of a motor vehicle.

4.1 Mandatory Sentencing

The sentences recommended herein upon conviction of a driving under the influence offense should be mandatory and not subject to suspension or probation. Specifically the recommendations are that:

- (1) All states establish mandatory substantial minimum fines for driving under the influence offenders, with correspondingly higher mandatory minimum fines for repeat offenders.
- (2) Any person convicted of a first violation of driving under the influence should receive a mandatory minimum jail sentence of 48 consecutive hours, or license suspension for a mandatory period of not less than 90 days plus a mandatory assignment of 100 hours of community service.
- (3) Any person convicted of a second violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 10 days, and license revocation for not less than 1 year.
- (4) Any person convicted of a third or subsequent violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 120 days and license revocation for not less than three years.

4.5 Felony

Causing death or serious bodily injury to others while driving under the influence should be classified a felony.

4.6 License Violation

States should enact a statute requiring mandatory jail sentence of at least 30 days for any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a driving under the influence conviction.

4.8 Victim Restitution

Any person convicted for driving under the influence should pay restitution.

4.9 Victim Assistance

State and local governments should provide assistance to victims of driving under the influence offenders.

4.10 Victim Impact Statements

State and local governments or courts by rule should require victim impact statements (including oral or written statements by victims or survivors) prior to sentencing in all cases where death or serious injury results from a DUI offense.

5.1 Administrative Per Se License Suspension

States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

5.2 Driver License Compact

Each State should adopt the Driver License Compact and the one license/one record policy while also utilizing the National Driver Register.

5.4 Provisional License for Young Drivers

States should adopt laws providing a provisional license for young novice drivers which would be withdrawn for a driving under the influence conviction or an implied consent refusal.

6.1 Minimum Legal Drinking Age

States should immediately adopt 21 years as the minimum legal drinking age for all alcoholic beverages.

6.2 Dram Shop Laws

States should enact dram shop laws establishing liability against any person who sells or serves alcoholic beverages to an individual who is visibly intoxicated.

6.3 Alcohol Beverage Consumption in Motor Vehicles

State and local governments should prohibit consumption of alcoholic beverages in a motor vehicle and prohibit the possession of open alcoholic beverage containers in the passenger compartment of motor vehicles.

10.4 Administrative

- (1) State standards, criteria and review procedures should be established for alcohol education schools, treatment and rehabilitation services, and community service programs. A State agency should be assigned responsibility to certify to the courts the alcohol education and treatment and rehabilitation programs that meet established criteria and standards. This same agency should make efforts to draw upon and involve appropriate existing programs, e.g., employee assistance programs.

- (2) States should develop and implement an on-going statewide evaluation system to assure program quality and effectiveness.
- (3) Defendants should be assessed fees for education or treatment and rehabilitation services at a level sufficient to cover the costs.

HIGHLIGHTS
FINAL RULE: INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
23 CFR Part 1209
pursuant to
P.L. 97-364

FOUR BASIC GRANT CRITERIA (for 30% of 402 apportionment)

No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

- "prompt"
 - license suspension within an average of 45 days from time of arrest;
 - but, States reaching average of 90 days from time of arrest may qualify if they submit a plan showing how they will reduce the average to 45 days;
 - in order to be eligible for each of the supplemental criteria, a State must have a license suspension system in which average time to suspend a license does not exceed 45 days.
- "suspension" for 90 days on first offense
 - full suspension for 30 days and use of a restricted provisional or conditional license for the remaining 60 days;
 - no restricted or limited licenses for second offenders or persons refusing to take BAC test;

No. 2: Mandatory Sentence

The second criterion established by Congress for basic grant eligibility requires:

A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period.

- "imprisonment" includes confinement not only in jails or prisons, but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers.
- copies of existing legislation/regulations on mandatory sentences adequate to demonstrate compliance. Statistically valid samples can suffice for data on average sentence imposed on repeat offenders. Only data on general types of confinement (jail, treatment centers) to be required, not confinement used for each individual.

No. 3: Illegal Per Se Laws

The third criterion established by Congress for basic grant eligibility requires States to have a law that:

Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

- .10% as presumptive level, rather than illegal per se, does not comply

No. 4: Increased Enforcement/Public Information Efforts

The fourth and final criterion established by Congress for basic grant eligibility requires:

Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

- States will determine which indicators are most appropriate to demonstrate increased efforts
- Demonstration of increased levels of effort made through comparison of F.Y. 1982 (or later years) with prior preceding year or average of State efforts over 3 years preceding year in which State first applies for a grant.

SUPPLEMENTAL GRANT CRITERIA (for up to 20% of 402 apportionment)

- States required to adopt minimum of eight (8) criteria of their choosing out of 21 possible criteria, for full 20% grant
- Adoption of minimum of four (4) criteria of a State's choosing, will qualify a State for 10% grant
- To be eligible for supplemental grant for second and third year, States must adopt two (2) more criteria each year and demonstrate increased performance in criteria adopted in prior year or years
- States not required to adopt more than fifteen (15) of supplemental criteria, but will have to show increased performance in previously adopted criteria
- Prior adoption of criteria will be recognized, no matter when adopted, as long as States can demonstrate active implementation of the criteria during past four years.

List of 21 Possible Criteria:

1. Raise drinking age to 21 for all alcoholic beverages, immediately, or over three year period.
2. Explanation of program coordination among different State agencies involved in alcohol traffic safety programs (no requirement for single State Coordinator)
3. Setting of minimum standards for rehabilitation and treatment programs.
4. Establishment of a State task force; (county, city or regional task forces encouraged, but not required -- if local task forces not used, must show that local community interests are represented on the State task force.)
5. A statewide driver record system operated so conviction information is recorded within 30 days of conviction, license sanction or completion of appeals process.
6. Locally coordinated programs in cities, counties, or regions; communities decide themselves on specific geographic area to be involved in program.
7. Prevention and education program aimed at changing the societal norm relative to drunk driving (to include kindergarten through twelfth grade education program, and involvement of private sector and parents)

8. Pre- or post-screening (based, at a minimum, on BAC level at time of arrest, prior alcohol-related convictions, and a self-administered questionnaire)
9. An evaluation system that determines the effectiveness of individual program countermeasures and overall program effectiveness
10. Self sufficient programs; compliance demonstrated by providing a plan showing how program will become self sufficient.
11. Use of roadside sobriety checks
12. A citizen reporting program; compliance demonstrated by providing information on the degree of participation, e.g., number of citizen reports and resulting arrests based on statistically valid samples.
13. Enactment of a BAC of 0.08 percent as presumptive evidence
14. Uniform licensing procedures; full participation in the National Driver Register and the Driver's License Compact, and use of a one-license, one-record policy
15. Use of preliminary breath tests (PET's)
16. Adoption of the requirement that no alcohol-related charge be reduced to a non-alcohol-related offense or probation without judgment being entered and without written declaration of why the action is in the interest of justice. The law must also provide that if charge is reduced, driver's record must say reduced charge is alcohol-related
17. Establishment of a victim assistance program and use of victim impact statements and victim restitution.
18. Impoundment of the vehicle or confiscation of the vehicle's tags
19. Allowing the arresting officer to choose the specific type of chemical test to use
20. Enactment of dram shop liability laws (or upholding of common law dram shop liability in State's highest court)
21. Adoption of new, unique and innovative alcohol traffic safety programs

Public Law 97-364
97th Congress

An Act

To amend title 23, United States Code, to encourage the establishment by States of effective alcohol traffic safety programs and to require the Secretary of Transportation to administer a national driver register to assist State driver licensing officials in electronically exchanging information regarding the motor vehicle driving records of certain individuals.

1982
6170]

traffic
programs
national
register.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ALCOHOL TRAFFIC SAFETY PROGRAMS

SEC. 101. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following new section:

“§ 408. Alcohol traffic safety programs

408

“(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol. Such grants may only be used by recipient States to implement and enforce such programs.

“(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

“(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

share
the.

“(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol traffic safety program adopted by the State pursuant to subsection (a);

“(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

“(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

“(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) shall equal 30 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title.

402.

“(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) shall not exceed 20

per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

23 USC 402.

“(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

State eligibility.

“(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

“(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

“(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

“(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

“(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

“(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

Effective
program
criteria.

“(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

“(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

“(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

“(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

“(5) for the grant of presentence screening authority to the courts;

“(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

"(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section.

Appropriation authorization.

"(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, \$25,000,000 for the fiscal year ending September 30, 1983, and \$50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs."

29 USC 101 et seq.

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"408. Alcohol traffic safety programs."

Regulations, publication in Federal Register. 23 USC 408 note.

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act.

Ante, p. 1738. Disapproval by Congress.

National Driver Register Act of 1982.

TITLE II—NATIONAL DRIVER REGISTER

SHORT TITLE

SEC. 201. This title may be cited as the "National Driver Register Act of 1982".

23 USC 401 note.

DEFINITIONS

SEC. 202. For purposes of this title, the term—

23 USC 401 note.

(1) "alcohol" has the meaning given such term by the Secretary of Transportation under regulations prescribed by the Secretary;

(2) "chief driver licensing official" means the official in each State who is authorized to (A) maintain any record regarding any motor vehicle operator's license issued by such State; and (B) grant, deny, revoke, suspend, or cancel any motor vehicle operator's license issued by such State;

(3) "controlled substance" has the meaning given such term in section 102(G) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(G));

(4) "highway" means any road or street;

(5) "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway, except that such term does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail or rails;

(6) "motor vehicle operator's license" means any license issued by a State which authorizes an individual to operate a motor vehicle on a highway;

(7) "participating State" means any State which has notified the Secretary of its participation in the Register system, pursuant to section 204 of this title;

(8) "Register" and "Register system" mean the National Driver Register established under section 203 of this title;

(9) "Secretary" means the Secretary of Transportation;

(10) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(11) "State of record" means any State which has transmitted to the Secretary, pursuant to section 205 of this title, any report regarding any individual who is the subject of a request for information made under section 206 of this title.

ESTABLISHMENT OF REGISTER

SEC. 203. (a) The Secretary shall, as soon as practicable after the date of enactment of this title, establish and thereafter maintain a Register, to be known as the National Driver Register, to assist chief driver licensing officials of participating States in exchanging information regarding the motor vehicle driving records of individuals. The Register shall contain an index of the information that is reported to the Secretary under section 205 of this title, and shall be designed to enable the Secretary, either electronically or, until such time as all States are capable of participating electronically, through the United States mails, to—

23 USC 40

Informati
index.

(1) receive information submitted under section 205(a) of this title by the chief driver licensing official of any State of record;

(2) receive any request for information made by the chief driver licensing official of any participating State under section 206 of this title;

(3) refer such request to the chief driver licensing official of any State of record; and

(4) relay without interception of the actual information to the chief driver licensing official of a participating State any information provided by any chief driver licensing official of a State of record in response to such request.

(b) The Secretary shall not be responsible for the accuracy of any information relayed to the chief driver licensing official of any participating State, except that the Secretary shall maintain the Register in a manner that ensures against any inadvertent alteration of information during any relay.

(c)(1) The Secretary shall, within eighteen months after the date of enactment of this title, promulgate a final rule which provides for procedures for the orderly transition from the system regarding the motor vehicle driving records of individuals provided in Public Law 86-660 (74 Stat. 526) to the Register established under subsection (a) of this section.

(2) The Secretary shall not maintain in the Register any report or information which was compiled under the provisions of Public Law 86-660 (74 Stat. 526) and was transferred to the Register after (A) the date the State of record removes it from the State's file; (B) seven years after the date such report or information is entered into the Register; or (C) the date of establishment of a fully electronic Register system, whichever is earlier. Such report or information shall be disposed of in accordance with the provisions of chapter 33 of title 44, United States Code.

(3) If the chief driver licensing official of any participating State finds that information which has been transmitted for inclusion in the Register under this section is erroneous or relates to a conviction of a traffic offense which is subsequently reversed, such official shall immediately notify the Secretary of the error. The Secretary shall provide for the immediate deletion from the Register of such material.

(d) The Secretary shall assign to the administration of this title such personnel as may be necessary to ensure the effective functioning of the Register system.

(e) The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this title.

STATE PARTICIPATION

SEC. 204. (a) Any State may become a participating State under this title by notifying the Secretary of its intention to be bound by the provisions of section 205 of this title.

(b) Any participating State may terminate its status as a participating State under this title by notifying the Secretary of its withdrawal from participation in the Register system.

(c) Any notification made by a State under subsection (a) or (b) of this section shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

REPORTS BY CHIEF DRIVER LICENSING OFFICIALS

SEC. 205. (a) The chief driver licensing official in each participating State shall, as soon as practicable after the date of enactment of this title, transmit to the Secretary a report containing the information required in subsection (b) of this section regarding any individual—

(1) who is denied a motor vehicle operator's license by such State for cause;

(2) whose motor vehicle operator's license is canceled, revoked, or suspended by such State, for cause; or

(3) who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses—

(A) operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

(b) Any report regarding an individual which is transmitted by a chief driver licensing official pursuant to subsection (a) of this section shall contain—

(1) the legal name, date of birth (including day, month, and year), sex, and (at the Secretary's discretion) the height, weight, eye and hair color of such individual;

(2) the name of the State transmitting such information; and

(3) the social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number);

except that any report concerning an occurrence specified in subsection (a) (1), (2), or (3) of this section which occurs during the two-year period preceding the date on which such State becomes a participating State shall be sufficient if it contains all such information as is available to the chief driver licensing official on such date.

(c) Any report required to be transmitted by a chief driver licensing official of a State under subsection (a) of this section shall be transmitted to the Secretary—

(1) not later than thirty-one days after receipt by a State motor vehicle department of any information specified in subsection (b) (1), (2), or (3) of this section which is the subject of such report, if the date of such occurrence is after the date on which such State becomes a participating State; or

(2) not later than the expiration of the six-month period following the date on which such State becomes a participating State, if such report concerns an occurrence specified in subsection (a) (1), (2), or (3) of this section that occurs during the two-year period preceding such date.

(d) Nothing in this section shall be construed to require any State to report any information concerning any occurrence which occurs before the two-year period preceding the date on which the State becomes a participating State.

ACCESSIBILITY OF REGISTER INFORMATION

SEC. 206. (a)(1) For purposes of fulfilling his duties with respect to driver licensing, driver improvement, or highway safety, the chief driver licensing official of any participating State may, on and after the date of enactment of this title, request the Secretary to refer electronically or through the United States mails any request for

Required information.

23 USC 401

Final rule.

23 USC 313 note.

44 USC 3301 et seq.
Erroneous information.

23 USC 401 note.

Status termination.

23 USC 401 note.

Information regarding the motor vehicle driving record of any individual to the chief driver licensing official of any State of record.

(2) The Secretary shall electronically or through the United States mails relay to any chief driver licensing official of a participating State who requests information under paragraph (1) of this subsection any information received from the chief driver licensing official of any State of record regarding an individual in accordance with paragraph (1) of this subsection, except that the Secretary may refuse to relay any information to any such official who is the chief driver licensing official of a participating State which is not in compliance with the provisions of section 205 of this title.

(b)(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the Board or Bureau of Motor Carrier Safety, may request the chief driver licensing official of a State to obtain information under subsection (a) of this section regarding such individual. The Chairman and Administrator may receive any such information.

(2) Any individual who is employed as a driver of a motor vehicle or who seeks employment as a driver of a motor vehicle may request the chief driver licensing official of the State in which such individual is employed or seeks employment to transmit information under subsection (a) of this section to his employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request.

(3) Any individual, in order (A) to determine whether the Register is providing any data regarding him or the accuracy of any such data; or (B) to obtain a certified copy of data provided through the Register regarding him, may request the chief driver licensing official of a State to obtain information regarding him under subsection (a) of this section.

(4) Any request made under this subsection shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

(c) Any request for, or receipt of, information by means of the Register shall be subject to the provisions of sections 552 and 552a of title 5, United States Code, and any other applicable Federal and State law, except that—

(1) the Secretary shall not relay, or otherwise transmit, information specified in section 205(b) (1) or (3) of this title to any person not authorized by this section to receive such information;

(2) any request for, or receipt of, information by any chief driver licensing official, or by any person authorized by subsection (b) of this section to request and receive information, shall be considered to be a routine use for purposes of section 552a(b) of title 5, United States Code; and

(3) any receipt of information by any person authorized by this section to receive information shall be considered to be a disclosure for purposes of section 552a(c) of title 5, United States Code, except that the Secretary shall not be required to retain

the accounting made under paragraph (1) of such section for more than a seven-year period after the date of such disclosure.

PILOT TEST PROGRAM

SEC. 207. (a) The Secretary shall design, within eighteen months after the date of enactment of this title, and implement, within two years after the date of enactment of this title, a pilot test program for the purpose of demonstrating the potential effectiveness of a system for electronic referral and relay of information regarding the motor vehicle driving records of individuals.

(b) The Secretary shall solicit the participation of States which are interested in participating in such program and shall, within thirty months after the date of enactment of this title, select four States to participate in the program.

(c)(1) The Secretary shall select States in accordance with the provisions of subsection (b) of this section from among States which have in effect, on the date of selection, an intrastate online driver licensing system capable of electronically transmitting information regarding the motor vehicle driving records of individuals.

(2) The Secretary shall select only those States which indicate a willingness to participate in a comprehensive mechanical and programmatic evaluation of systems for the electronic transfer of information.

(3) The Secretary shall ensure that the selection made pursuant to subsection (b) of this section is representative of varying geographical and population characteristics of the Nation.

(4) No State shall participate in the program unless it agrees to assist in providing information to other States regarding the electronic transfer of the motor vehicle driving records of individuals.

(d) Within two years after the date of enactment of this title, the Secretary shall begin the pilot program authorized by subsection (a) of this section. Such program shall continue for a period of one year. In carrying out the program, the Secretary shall utilize different computer technologies and equipment in order to determine which technology and equipment is most effective for the electronic transfer of the motor vehicle driving records of individuals. The Secretary shall determine which systems and devices will best interconnect with systems and devices used in the States which are participating in the pilot program, as well as those used in other States.

(e) Any equipment or device which is provided to a State for use in the pilot program conducted under this section may, in the discretion of the Secretary, remain with the State following the conclusion of the pilot program.

(f) Not later than one year after the conclusion of the pilot program, the Secretary shall submit to the Congress a report on the program. Such report shall include an evaluation of the technology utilized during the program, together with an explanation of the nature and degree of State participation in the program. The report shall also contain an evaluation of achievements of the pilot program, as well as a projection of accomplishments which might result from the acquisition of electronic transfer equipment and methods by States other than those which participated in the pilot program.

23 USC 401 note.

Computer
technologies
and
equipment.

Report to
Congress.

23 USC 407 note.

Sec. 208. (a) Any person, other than an individual described in section 206(b)(4) of this title, who receives under section 206 of this title information specified in section 205(b) (1) or (3) of this title (the disclosure of which is not authorized by section 206 of this title), and who, knowing that disclosure of such information is not authorized, willfully discloses such information, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(b) Any person who knowingly and willfully requests or under false pretenses obtains information specified in section 205(b) (1) or (3) of this title from any person who receives such information under section 206 of this title shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

ADVISORY COMMITTEE

23 USC 401 note.

Sec. 209. (a) There hereby is established a National Driver Register Advisory Committee, which shall advise the Secretary concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records.

Membership.

(b) The Advisory Committee shall consist of fifteen members, appointed by the Secretary, as follows:

(1) three members from among individuals who are specially qualified to serve on the Advisory Committee by virtue of their education, training, or experience, and who are not employees of the Federal Government or of any State; and

(2) three members from among groups outside the Government which represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations; and

(3) nine members, geographically representative of the participating States, from among individuals who are chief driver licensing officials of participating States.

Office terms.

(c)(1) Except as provided in paragraph (2) and paragraph (3), each member of the Advisory Committee shall be appointed for a term of three years.

(2) Of the members first appointed—

(A) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of one year;

(B) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of two years; and

(C) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of three years;

as designated by the Secretary at the time of appointment.

Vacancies.

(3) Any vacancy in the Advisory Committee shall be filled in the same manner as original appointments. Any member appointed to fill any vacancy shall serve for the remainder of the term for which his predecessor was appointed. Any member may serve after the expiration of his term until his successor has taken office.

(d) The members of the Advisory Committee shall serve without compensation, but the Secretary is authorized to reimburse such members for all reasonable travel expenses incurred by them in attending the meetings of the Advisory Committee.

(e)(1) The Advisory Committee shall meet not less than once each year.

(2) The Advisory Committee shall elect a Chairman and a Vice Chairman from among the members of the Advisory Committee.

(3) Eight members of the Advisory Committee shall constitute a quorum.

(4) The Advisory Committee shall meet at the call of the Chairman or a majority of the members of the Advisory Committee.

(f) The Advisory Committee may receive from the Secretary such personnel, penalty mail privileges, and similar services, as the Secretary considers necessary to assist it in performing its duties and functions under this section.

(g) Not less than once each year, the Advisory Committee shall prepare and submit to the Secretary a report concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records. Such report shall include any recommendations of the Advisory Committee for changes in the Register system.

(h) The Advisory Committee shall be exempt from the requirements of section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act (5 U.S.C. Appendix).

REPORT BY SECRETARY

Sec. 210. Not later than the expiration of the four-year period following the date of enactment of this title, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the extent and level of participation in the Register system, and the effectiveness of such system in the identification of unsafe drivers. Such report shall include any recommendations of the Secretary concerning the desirability of extending the authorization of appropriations for this title beyond the period of authorization provided in section 211 of this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 211. (a) There are authorized to be appropriated for fiscal years beginning after September 30, 1982, for expenses incurred in the establishment of the Register system under this title not to exceed \$2,000,000.

(b) There are authorized to be appropriated to carry out the provisions of this title and the provisions of Public Law 86-660 (74

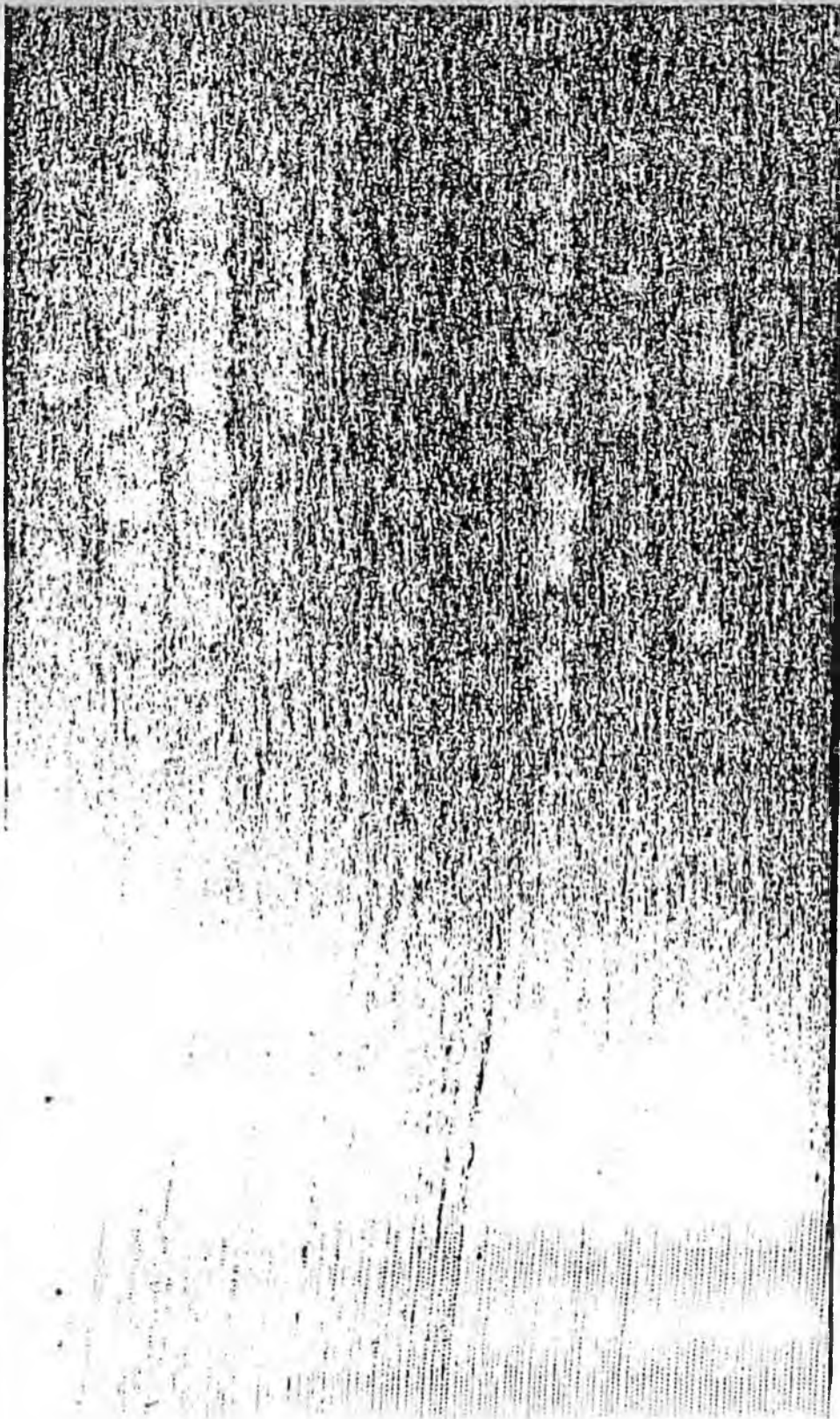
Compensa

Quorum.

Report.

Submit to Congress 23 USC 4

23 USC 4



23 USC 313 note.

Stat. 526) not to exceed \$1,000,000 for fiscal year 1983, not to exceed \$1,300,000 for fiscal year 1984, not to exceed \$1,600,000 for fiscal year 1985, not to exceed \$1,600,000 for fiscal year 1986, and not to exceed \$1,600,000 for fiscal year 1987.

(c) Funds authorized under this section shall remain available until expended.

Approved October 25, 1982.

LEGISLATIVE HISTORY—H.R. 6170 (S. 2168)

HOUSE REPORT No. 97-867 (Comm. on Public Works and Transportation).
SENATE REPORT No. 97-360 accompanying S. 2168 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 128 (1982):
 May 11, S. 2168 considered and passed Senate.
 Sept. 29, considered and passed House.
 Oct. 1, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 18, No. 43 (1982):
 Oct. 25, Presidential statement.

**Excerpts from
A REPORT ON A NATIONAL STUDY OF
PRELIMINARY BREATH TEST (PBT)
AND ILLEGAL PER SE LAWS**

Donald Macdonald, J.D.
Marvin Wagner, LLM

With Contributions from:

William Devlin, J.D.
Gary Gable, J.D.
James Manak, J.D.
Frank Montecalvo, J.D.
James Reilly, J.D.

*Gregory J. Clark
3-16*

Prepared by



Science Applications, Inc., La Jolla, CA

In Association with:

The Traffic Safety Institute of Northwestern Univ., Evanston, ILL
The National District Attorneys Association, Alexandria, VA

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**AUGUST 1981
FINAL REPORT**

Prepared for:

**U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Washington, D.C. 20590**

FOREWORD

The objectives of this project are to provide the National Highway Traffic Safety Administration (NHTSA) with: (1) an in-depth national state-of-the-art review and evaluation of two major driving while under the influence (DWI) countermeasure laws, "Illegal Per Se" (IPS) and "Preliminary Breath Test" (PBT), and (2) provide recommendations on model legislation, model jury instructions, and improvements in application by enforcement, prosecution and judicial bodies. The project will enable the NHTSA to assist the states in improving highway safety through the use of these laws for DWI enforcement and adjudication.

This document contains an executive summary and nine sections, plus an appendix.

Section 1 describes the rationale for implementation of Illegal Per Se and Preliminary Breath Test statutes, and the methodology utilized in conducting this study.

Section 2 presents the results of a survey of all states which have enacted a Preliminary Breath Test law.

Section 3 presents the results of a survey of all states that have enacted an Illegal Per Se law.

Section 4 describes the efforts to date of those states that have attempted but failed to pass either IPS or PBT laws.

Section 5 contains a series of in-depth studies of six states which have either a PBT or IPS law or both, and one state which has neither type of law.

Section 6 presents a summary of the statistical data collected during the study that demonstrates the effect IPS-PBT laws have on DWI arrests and prosecutions.

Section 7 contains proposed IPS and PBT statutes which were developed from examples of the most successful IPS-PBT laws now in use, with modifications suggested by legal and traffic safety authorities.

Section 8 contains proposed jury instructions to accompany the IPS and PBT statutes in Section 7. The jury instructions were derived from samples of jury instructions used by courts in seven different states with IPS or PBT laws.

Section 9 is a report of a NHTSA sponsored workshop on IPS/PBT and describes the findings and conclusions of sixteen national authorities on the utilization of PBT-IPS laws.

This study was designed by Donald Macdonald, J.D., and Marvin Wagner, L.L.M., who served as co-principal investigators for this study and contributed to all sections of the report. Mr. Macdonald is a senior project manager with

Science Applications, Inc. and has directed many projects dealing with the enforcement and adjudication of traffic safety laws. Marvin Wagner is a legal analyst and writer on a wide range of legal issues related to alcohol and highway safety and the adjudication of traffic offenses. The sections containing interviews with prosecutors and the suggested IPS-PBT statutes and jury instructions were provided by James P. Manak, J.D., director of the legal publications section of the Northwestern Traffic Institute, and James T. Reilly, J.D., a staff attorney with the National District Attorneys Association. Legal research, analysis, and interviews with state and local highway safety law enforcement officials, legislators, judges, prosecutors, and defense attorneys were provided by William Devlin, J.D.; Gary Gable, J.D.; and Frank Montecalvo, J.D., all of whom are members of the SAI legal system analysis staff, with extensive experience in conducting traffic safety related legal research and legislative analysis.

Special thanks are offered to Professor Robert Borkenstein, nationally known forensic expert on medico-legal problems and inventor of the Breathalyzer; to Professor Robert Force of Tulane University School of Law, a nationally recognized authority on constitutional law; to Professor James Starrs of the George Washington University National Law Center, an expert on the law and forensic science; and to Professor Andre Moenssens of the University of Richmond, T. C. Williams School of Law, an expert on constitutional law, each of whom provided a critique of this study.

Special recognition is also extended to those highway traffic safety and legal experts who attended the special workshop conducted to review the results of this study. The authors are pleased to express their appreciation for the assistance provided by the Contract Technical Manager, Mr. Phillip Dozier, and to the Chief of the Adjudication Branch of the Driver Licensing and Adjudication Division of NHTSA, Mr. George Brandt.

EXECUTIVE SUMMARY

Testimony of law enforcement personnel, prosecutors, the defense bar, and the judiciary that has been collated in the course of this research project indicates that prosecution of driving while intoxicated offenses (DWI) can be improved by modification of present statutes, especially by the adoption and utilization of Illegal Per Se (IPS) and Preliminary Breath Test (PBT) laws. Fifteen states now have an IPS statute in effect, and Illinois passed an IPS bill in July 1981. California legislators expect to see one enacted in 1981. Seven other states have introduced IPS legislation, but the chances of passage in the near future are uncertain. Fourteen states now have a PBT statute. Eleven states are using some form of PBT without a statute. One additional state expects to pass a new PBT law in 1981.

Sections 7 and 8 of this report contain a model IPS and PBT statute, a supporting rationale for each, and sample jury instructions for use with each statute. Both statutes and the jury instructions were drawn up with careful consideration of the existing statutory forms that have proven most successful, and IPS conforms closely to the latest recommendations from the National Commission on Uniform Traffic Laws and Ordinances. There is currently no UVC section dealing with PBT.

IPS LAWS

An Illegal Per Se statute (IPS) is a law which creates an absolute or strict liability upon a motorist who drives a vehicle on any public highway with a BAC of .10 percent or higher. This type of statute, which is widely used throughout most of the industrialized world, removes the "presumption of intoxication" found in most statutes, and places an "absolute" or "strict liability" upon the motorist when he/she drives after reaching the illegal blood alcohol concentration.

With respect to IPS statutes, surveys of prosecutors and judges in states using these types of statutes attribute to them an increase in guilty pleas. Some of the jurisdictions surveyed have enacted anti-plea bargaining statutes in DWI cases, but even without such statutes guilty pleas are higher because IPS is a difficult charge to defend against at trial. Other prosecutors report speedier settlement of cases under IPS resulting from a stronger plea negotiation posture. Some initial increase in the number of cases being tried was noted after the adoption of IPS statutes, but after the laws were tested in trials, the number of guilty pleas and convictions at trial sharply increased.

Despite the fact that a trial where only IPS was charged would be less costly, prosecutors surveyed preferred to charge both IPS and the traditional DWI offense. This is done in part to protect the case in the event the chemical test is challenged successfully, and in part to provide the opportunity to introduce testimony regarding defendant's demeanor at the time of arrest. In some jurisdictions, prosecutors are reluctant to try a case based strictly on an IPS violation. This was due to the belief that at least some juries will not convict without evidence of physiological impairment, other than that provided by the chemical tests.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;
2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;
3. Has increased the number of convictions for DWI by an estimated average of 9 percent, and this does not include convictions through pleas of guilty to a lesser offense, that probably would not have been obtained without the IPS statute. Alabama reported a 51 percent increase in DWI convictions for the first six month period after its IPS law became effective;
4. Has reduced overall cost of prosecuting DWI defendants by reducing the number of trials in many jurisdictions;
5. By reducing the number of elements of the offense to be proven, IPS facilitates prosecution of the impaired driver;
6. Has assisted law enforcement in making more impaired driver arrests. In those jurisdictions where external evidence in the form of outward signs of impairment was required before prosecutors would press the DWI charge, law enforcement officers were hesitant to arrest, even though a .10 percent BAC was suspected. Under IPS, evidence of gross psychomotor impairment is less important in making the decision to arrest;
7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;
8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;
9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

Penalties

Penalty provisions in IPS and DUI statutes varied greatly among the jurisdictions, as did actual charging and sentencing policies of prosecutors and judges. Mandatory jail penalties were often suggested by prosecutors as an effective deterrent to recidivism, but this view was not shared by the majority of the judges or law enforcement persons that were interviewed.

Administrative Adjudication of First Offense DWI

A number of the judges and prosecutors who were interviewed suggested that first offense DWI should be removed from the courts and placed in an administrative forum, which would emphasize treatment rather than punishment.

Training of Prosecutors

Typically, DWI cases are assigned to entry level staff members or are prosecuted by the least experienced of the assistant prosecutors. Formal training is non-existent or unstructured, with "on-the-job experience" the most common method. Statewide training through a prosecutor association is available in some jurisdictions. Often there is no syllabus or manual of effective techniques that should be employed. All agreed that training modules consisting of courses, manuals, and audio-visual materials would be helpful.

Training of Law Enforcement Officers

It was noted by prosecutors that the use of IPS provisions under DWI statutes can lead to over-reliance by the police on alcohol testing. Cases are weakened if the police officers fail to systematically note the steps leading up to testing and the general indicia of impairment. When the broadest possible investigatory approaches are used by the police, they result in stronger cases and more guilty pleas. Police personnel reported that some juries can be convinced by impersonal chemical test results, but other juries seem to require assurance that the defendant exhibited some outward signs of impairment, particularly in the BAC range of .10 percent to .15 percent.

Recommendations

Traffic safety officials in every state should organize like-minded persons in the legislature, the press, law enforcement, and the general public, to obtain passage of an Illegal Per Se law. DWI prosecutions should probably continue to be based on charges of both IPS and DWI, in order to encourage guilty pleas and to permit the introduction of all the available evidence at trial; however, IPS gives the prosecutor a more cost-effective opportunity to prove DWI, and with a lesser burden, by solely charging IPS when defendant has a BAC reading of .10%. Additional work must be done in some states to reinforce, in the minds of the judiciary, who in turn must convey to the jury, via the jury instructions, the fact that motorists with BACs in the range of .10% to .13% are in fact illegal and dangerous to themselves and others, irrespective of the presence or absence of other indicia of impairment.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;
2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;
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7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;
8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;
9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

The problems noted with PBT include:

- The "false positives" and "false negatives" occur with some frequency when the PBT is the older "baggie" type test. New sophisticated PBT devices have been developed which are highly reliable and cost-effective when purchased and used in volume, and several of these devices meet NHTSA's standards for evidential alcohol testing equipment.
- Over-reliance by police on test results, to the detriment of careful observation of other indicia of DWI.
- Equipment maintenance problems (particularly with earlier models of the PBT devices).
- The possibility that a medium (but legal) BAC will mask drug use that is responsible for erratic driving.
- High cost to equip a complete state with modern, direct readout devices.
- Possible constitutional constraints on their use to establish probable cause.

The foregoing issues are addressed in Sections 1, 2, 4, and 5.

The emphasis of future PBT research should be in improving the accuracy and dependability of the equipment so as to permit admissibility of PBT results in court. The United States Supreme Court has not as yet ruled on whether a PBT can be taken with less than probable cause. The recent case law implies that such a test would be valid under the balancing theory that is an important part of the "Terry" test. Here, a balancing of the considerable public interest in improved traffic safety, against the minimal intrusion upon the motorist imposed by the modern pocket-sized portable PBT instrument, will likely be held constitutional. All of the cases brought before the state's highest courts dealing with the use of a PBT have upheld its use. The admissibility of either the PBT results or the refusal of a PBT would be of substantial assistance in DWI enforcement.

The future of PBT as a deterrent to drunk driving, particularly in those states with an IPS law, is promising. With or without a passive testing device, an expansion of the Prouse and Prichard decisions regarding random non-discretionary) roadblocks, at which PBTs are administered on the basis of a reasonable and articulable suspicion of an illegally high BAC, has the potential for significantly increasing the public's perception of the probability of being apprehended for DWI. Authorities generally agree that the fear of apprehension is presently very low among persons who drink and drive.

2. SURVEY OF ALL STATES THAT HAVE PRELIMINARY BREATH TEST (PBT) LAWS

Introduction

As used in this report, the term "preliminary breath test" is defined to mean a pre-arrest breath test. Usually, but not always, the purpose of a preliminary breath test is to assist in establishing probable cause upon which a police officer may base his arrest.

A preliminary breath test is regarded as a valuable law enforcement tool in that:

- a) It enables the officer in the field to make a quick and simple determination of whether a person is impaired or intoxicated in those marginal BAC cases, and those stops of impaired persons that have learned the appropriate responses to psychomotor tests;
- b) It may indicate that an impaired person, with low BAC, is under the influence of drugs;
- c) It can indicate that a person who appears to be intoxicated may be suffering from an illness, such as a diabetic reaction;
- d) It can prove that a motorist is not impaired, and can thus be released at the scene and not suffer the indignities and inconvenience of an arrest; and
- e) It engenders an awareness by the general public of higher probability of apprehension on the highway of impaired or intoxicated drivers.

A preliminary breath test is a valuable and reasonable use of police authority to determine the fact (or lack) of driver impairment. Considering the government's interest in highway safety (50 percent of all highway fatalities are alcohol-related) and the relatively low (possibly de minimus) intrusion occasioned by a PBT, the laws allowing a PBT have been consistently upheld by the state courts.

An effective law enforcement campaign, which includes the systematic use of a PBT in traffic stops, can substantially raise the public's awareness of the probability of apprehension on the highways and, therefore, reduce significantly the annual number of drinking-driving accidents.

The typical PBT statute enables police officers to use this new investigative technique, prescribes conditions under which it may be used, determines the methodology to be employed, imposes a duty upon motorists to cooperate with the police in its use, provides sanctions for breach of this duty, and prescribes if and how the results obtained will be used in court. The statute, both on its face and as it is actually used, must meet all requirements imposed by the U.S. and State Constitutions. If there are ambiguities in the statute, the courts will interpret these ambiguities in favor of the defendant whenever possible. If this is not possible, the courts will render the statute unconstitutional. See U.S. v. Simms 508 F. Supp 1179 (1979).

Constitutional Issues Involved in Use of PBT

When a law enforcement officer makes a stop and requests the vehicle operator to submit to a PBT, a constitutional issue may arise in that the Fourth Amendment of the U. S. Constitution (applied to the states via the Fourteenth Amendment) guarantees to individuals the right to be free from unreasonable searches and seizures. The stopping of the individual would be a seizure of the person, and the administration of an active (as opposed to passive) type of preliminary breath test may be a search within the context of the Fourth Amendment. There is a school of thought that this test is not a "search" to which the Fourth Amendment constraints would be applicable. It has been stated that the sampling of "deep lung air" which is the subject of the search, is not sufficiently "intrusive" using the modern PBT devices, to constitute a search. Some analogies of this activity include voice exemplars, handwriting samples, removal of cordite from under fingernails, swabs of grease from hands, etc., which have been held as not being constitutionally protected searches. Should the test be accepted as a search, in order for the search and/or seizure to be valid, it must either be consented to by the individual searched, or be pursuant to a warrant, incident to an arrest, or involve exigent circumstances (immediate loss of evanescent evidence). Probable cause must be present in the last three situations.

In the case of Terry v. Ohio, 392 U.S. 1 (1968), however, the Supreme Court upheld the seizure and search of a person based on something less than probable cause (i.e., a "reasonable suspicion"). The court weighed the government's need for the search to protect the life of the officer, against the intrusiveness of the search itself (here, a "pat-down" for weapons), and concluded that the search and seizure was not unreasonable in light of the Fourth Amendment. While it is apparent that a request for a PBT is not the same as a "pat down" to protect the life of the officer, the Terry balancing test has been subsequently applied to a variety of situations totally unrelated to the safety of the officer, and these include airport and international border searches.

Three recent State Supreme Court cases have substantial bearing on the issue of the requirements of "probable cause" for the arrest of a suspected DWI prior to a request to submit to a PBT. In the first case, Asbridge v. N. Dakota State Highway Commissioner, 291 N.W. 2d 739 (N.D. Sup Ct), reported on June 10, 1980, the court indicated that the defendant's failure of an on-site chemical screening test (PBT) was one of the elements in establishing "reasonable grounds" or probable cause for DWI arrest. It stated: "Similar in purpose to the various field sobriety tests, the purpose of an on-site chemical screening test is to insure that sufficient probable cause exists to warrant an arrest." (emphasis supplied)

In Marben v. State, 294 N.W. 2d 697 (Minn. Sup. Ct.), reported on August 20, 1980, Marben claimed that because he was not offered a PBT by the arresting officer prior to placing him under arrest, the arrest was invalid and the Implied Consent Law could not be invoked against him. The Court disagreed with this contention, and said the following:

"Contrary to Marben's assertion, we believe that the Implied Consent Law does not require the administration of a preliminary screening test where the officer ascertains from his own observations that the driver is under the influence of alcohol. Rather, the preliminary screening test appears to be intended to be utilized in situations where the officer, after observing the driver, is unsure whether the driver is under the influence of alcohol. See State v. Grovum, 297 Minn. 66. (emphasis supplied)

In State v. Gerber, 206 Neb. 75, 291 N.W. 2d 403 (1980), in regard to the use of a PBT test, the court said, "It should be kept in mind that the testimony with regard to the preliminary test was offered not for the purpose of establishing the charge against Gerber, but rather to establish justification for placing Gerber under arrest." In Nebraska, it would appear that the Fourth Amendment issue is settled until the U.S. Supreme Court speaks.

Several other state high court decisions have been made which specify that the major purpose of a PBT is to assist the police officer in determining whether probable cause exists to warrant an arrest.

In State v. Grovum, 209 N.W. 2d 788, (Sup. Ct. of Minn., 1973) on page 791, the court held:

"The use of a preliminary screening test for determining possible violations of the driving-while-under-the-influence statute is delineated by the statute and is solely for the purpose of guiding the officer as to whether an arrest should be made." (emphasis supplied)

In State v. Bellino, 390 A 2d 1014 (Sup. Ct., Maine, July 1978) the court, in dealing with a pre-arrest breath test, stated:

"We take notice that subsection 10-c does not expressly require an arrest as a condition precedent to its application. Rather, it subjects the operator initially to a compulsory investigative process to determine whether the operator has consumed alcohol, this through what may be termed a preliminary unofficial breath test to be used only to establish probable cause for the requirement of an official second chemical test of blood or breath, if the preliminary breath test results are positive." (emphasis supplied)

The state courts have consistently interpreted the PBT laws as authority for field officers to conduct preliminary investigations to determine whether the motorists are in violation of the state's drinking-driving laws.

No direct challenge on constitutional grounds has been made in New York against the use of PBT's as yet. Some New York lower court decisions have examined these issues.

In People v. Delaney, 83 Misc. 2d 576, 373 N.Y.S. 2d 477 (September 5), in referring to a PBT, this lower court rules, on page 480:

"In the breath test situation, the only reason for asking the motorist to take a breath test is to assist the officer in making a determination as to whether he is going to place the defendant under arrest, and consequently the sole and only function is to incriminate the motorist." (emphasis supplied)

In another lower court New York case, the court specifically applied the Terry doctrine to a PBT. It stated:

"However, if the police officer has no probable cause to make the arrest for driving while intoxicated, he may 'in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest,' Terry v. Ohio, supra. There, however, has to be "reasonable suspicion."

"On the other hand, while investigating an accident, the police officer may obtain 'probable cause,' or at least the 'necessary suspicion' to bring the fact situation within the purview of Terry v. Ohio, supra. In that event, the search and seizure of the breath would not be an illegal search and seizure."

"This court believes that a demand for a breath screening test under appropriate circumstances, bears the same relationship to a full scale chemical test as a pat down, to determine if a suspect has a weapon, under the circumstances authorized by Terry v. Ohio, supra, bears to a full scale body search."

Another aspect to be considered is that, with the exception of the State of Nebraska whose penalty for refusal treats the offense as a "misdemeanor," the penalties for refusal of a PBT are generally administrative in nature. Therefore, the constitutional requirements in these instances may be somewhat less stringent than in criminal prosecutions. In Camera v. Municipal Court, 387 U.S. 523, 18 L. EA. 2d 930, 87 S. Ct. 1727, the court stated:

"...this is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken."

"The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought."

"The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search

warrant ... Such an approach neither endangers time-honored doctrines applicable to criminal investigations, nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the compelling public and private interests here at stake, and in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy."

The United States Supreme Court has, in many instances, utilized the balancing concept, which is a separate element of the Terry doctrine in other situations where the public interests out-weighed the importance of protecting the individual from minimal search-type intrusions. In Davis v. Mississippi, 394 U.S. 721 L-Ed. 2d 676, 89 S. Ct. 1394, the court held that:

"Detention for fingerprinting may constitute a much less serious intrusion upon personal security than other types of police searches and detentions. Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search."

In Pennsylvania v. Mimms, 4321 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330, in a police-stop case, the court stated:

"Reasonableness, of course, depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."

"Against this important interest, we are asked to weigh the intrusion into the driver's personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the owner to get out of the car. We think this additional intrusion can only be described as de minimus."

In a very recent case, U.S. v. Mendenhall, 64 L. Ed. 2d 497, the court held that:

"Terry v. Ohio ... establishes that a reasonable investigative stop does not offend the Fourth Amendment. The reasonableness of a stop turns on the facts and circumstances of each case. In particular, the Court has emphasized (i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied, in light of his knowledge and expertise."

Applying the same balancing test to the use of PBTs, the government's need for the stop and search (to remove a potentially dangerous drunk driver, armed in a sense with a motor vehicle) balanced against the intrusiveness of the search (short delay of a "reasonably suspicious" motorist and having him blow into a pocket-sized device) may well result in the search being held to be reasonable and thus constitutional, when this issue does reach the high court.

Statutes authorizing the use of PBTs usually deal with this issue by prescribing the grounds upon which an officer must base his request. Although two states require probable cause (which constitutionally would be sufficient to make an arrest), most request something less stringent, but probably stringent enough to meet the Terry test. Recently the court has settled certain implied consent disputes in Mackey v. Montrym 99 S. Ct. 2612 (1979), and in doing so used an analysis that seems favorable to the validity of PBT laws. Thus, while the constitutionality of PBT laws remains unsettled, the case for validity seems to be strengthened by recent decisions.

Another Supreme Court case, Delaware v. Prouse, 440 U.S. 648 (1979) and a recent Tenth Circuit Court of Appeals decision in U.S. v. Prichard, issued April 1, 1981, are also helpful. In Prichard the court held that a roadblock on an interstate highway with which police attempted, albeit unsuccessfully, to check the license and registration of every motorist that passed by did not run afoul of Delaware v. Prouse. The police began the roadblock by stopping every car, but as soon as 10 cars were backed up, the officer would wave all of them through. Once the area was clear, the officer would reinstate the roadblock and begin this process again. The police later "candidly conceded" that they had planned "to enforce the law" if they observed evidence of other crimes while checking licenses and registration. During the stop of the vehicle at issue in this case, the officer discovered and seized a large quantity of cocaine.

In Prouse the Supreme Court held that random, totally discretionary license checks violated the Fourth Amendment, but at the same time indicated that a roadblock of "all incoming traffic" might withstand constitutional scrutiny. Prichard does not involve the "100% roadblock" referred to in Prouse, the court says, but it was no less reasonable. The police attempted to stop all traffic "insofar as was humanly possible," and their decision to let cars pass through when the traffic backed up was "reasonable and ... non-violative of the rule of Prouse."

The Prouse-Prichard roadblock scenario could be used to stop motor vehicles in a non-discretionary manner, and the observations made by the police officer while collecting information about license and registration could provide the articulable and reasonable suspicion that a DWI-related violation exists, which would then support an involuntary application of a non-passive PBT. This sort of "boot-strapping" would apparently be permissible under Prichard since the police candidly admitted that they planned to charge on any law violations that appeared during the process of the administrative type registration inspection.

In a recent New Jersey Supreme Court case, State v. Coccamo, N.J. Sup. Ct., Morris County, 9/26/80, in approving a roadblock practice to deter drunk drivers, the court cited the Prouse case, and stated:

"After balancing the State's strong interest in protecting the public from the substantial risk posed by drunk drivers, with the minor inconvenience which may be caused to every fifth motorist and the fleeting, minimal intrusion upon his privacy, the State's action must be considered as a reasonable infringement upon the motorist's expectation of privacy. Nor did the stop become overly intrusive when the defendant was asked to produce his license and registration. When

the initial detention is lawful, as it was here, the police may require the driver to produce his driving credentials."

If a PBT is to be administered with the motorist's consent, such consent must be informed and voluntary. There are occasions on which this may be difficult to prove in court. Some states have attempted to remedy this situation with a statute stating that as a condition to the privilege of driving on the state's highways, the motorist is deemed to have given his consent to such testing. Usually such a statute involves a formal "evidentiary" test rather than a preliminary screening test, but occasionally preliminary tests are also included. Some PBT statutes require that an officer notify the motorist of his right to refuse the test and the consequences of such refusal. Other states require that the motorist be advised that there is no adverse consequence of such refusal, while many states will require license suspension. This is usually connected with the implied consent statute.

Other statutory provisions relate to the admissibility of the evidence in court. If the search is valid (after a legal arrest), there should be no problem, constitutionally speaking, with allowing PBT test results into evidence. Since the "search" issue associated with the PBT situation is unsettled, many states have opted for the safe route by stating that such test results are inadmissible as evidence, but only serve to indicate to the officer whether additional testing is required (i.e., after arrest). It is presumed that should there be an issue of whether the arrest itself was valid, the test results would be admissible for the purpose of establishing probable cause. Most statutes are silent on this, however.

Likewise, most statutes are silent on the issue of admissibility of refusal to take the preliminary breath test. This issue raises a possible problem with the Fifth Amendment right against self-incrimination. It would be constitutional to allow such refusal to be admissible for the purposes of license revocation under an implied consent statute (a non-criminal procedure), but it is questionable as evidence that the driver knew he was guilty of the crime and thus did not submit to the test. Some states do permit into evidence the fact of refusal to take the more formal implied consent test, and the inference to be drawn from this refusal is that the driver knew he was guilty. In Gerber, infra, the court held that the receipt of the PBT in evidence was not prejudicial error and not grounds for reversal.

PBT Test Devices

For those readers who are not familiar with the equipment used to administer pre-arrest (or preliminary) breath tests, the following short descriptions are provided for the two most commonly used PBT devices:

- The "baggy" test is composed of a tube containing a yellow chemical, potassium dichromate, in sulfuric acid, on silica gel crystals and a limiting bag. The subject blows through the tube until the bag on the other end is filled. The yellow color turns to green at the entrance end, and the length of the green change is a rough indicator of the BAC. It is used widely in Europe and in some places in this country. It is disposable, and is used one time only. The length of the green

can be set for any BAC desired as a standard. There is usually nothing to be sent to a laboratory for analysis.

- o Electronic pocket-sized portable devices: These hand-held devices use either a fuel cell or an infra-red sensor, and do not require wet chemicals. They give readouts either as pass-fail or in digital BACs. Examples are the Alco-Sensor II and ALERT J3AD.
- o Evidentiary instruments in mobile units: These can be used either as PBT devices or as evidentiary test units. These units are large in size. The test procedure takes at least 15 minutes, and requires the suspect to leave his vehicle. Examples include the Breathalyzer and the P.E. Intoximeter.

Each of the above devices are described as "active" as opposed to passive systems in that the subject being tested must cooperate by blowing into the device. A passive system (not available) would detect alcohol in the ambient air in the vicinity of subject's mouth, and would not require the active cooperation of the subject.

These devices are also categorized as screening devices, evidentiary devices, or remote collection devices. Remote collection devices are intended to collect whole breath specimens or the alcohol from a fixed volume of breath for later analysis. Their chief purpose is to provide a specimen to confirm an evidentiary test. Colorado requires this, as do some parts of Arizona. They form no part of preliminary breath testing. Examples are the Intoximeter indium encapsulating units, the Lucky silica gel tubes, and the Breathalyzer calcium sulfate tubes. All these methods require a special breath collection device. They are ancillary to evidential testing.

Several of the newest PBT devices that have undergone extensive testing by the National Highway Traffic Safety Administration have demonstrated the degree of accuracy and reliability that is presently required of instruments in a forensic laboratory, used to produce BACs for evidentiary purposes. In the event that future trial courts demand that an evidential breath test be taken within 30 minutes of the DWI arrest, as is now being suggested by some defense attorneys*, the new generation of PBT devices may suddenly enjoy a much wider market than at present. In states with a PBT law, the officer at the scene can use the first test to make a decision to arrest, and follow this up with a second, post-arrest breath test, under the implied consent statute, which should be admissible at trial.

Currently, fourteen states have statutes which provide for pre-arrest breath testing. These states are listed, and the character of their statutes summarized in Table 2-1. The sections which follow discuss the status of PBT laws in each of these states, and the operational aspects of the law in the

*See Time Magazine, Vol. 118 No. 5, page 64, 3 August 1981.

STATE	PBT	PBT legally permissible - no PBT stat.	Grounds for request	Consequences of refusal	Admissibility of results	Admissibility of refusal	is testing methodology prescribed?	Test is required	Notification of rights	STAT. CITATION(S)	COMMENTS
Ala.											
Alaska											
Ariz.											
Ark.											
Calif.											
Colo.											
Conn.											
Del.											
Fla.	■		1	3	2	-	1	1,2	1*	322.26(1)(b)	* written consent required
Ga.											
Hawaii											
Idaho											
Ill.											
Ind.	■		1	3 ^c , 4	1*	1*, 4 ^{cc}	1	1	-	9-4-43-3 [1-2001]	* implied not limited to a "breath" test; "not in presence" restriction
Iowa											
Kans.											
Ky.											
La.											
Maine	■ cc		3, 4	-	-	-	2	1		19 § 1112.13C	
Md.											
Mass.											
Mich.	■		1	1*, 3, 3 ^c	3*	3	1	2		169.121 subd. 4; 169.124 provision	if chemical test is also refused for implied consent test
Miss.	■									63-11-3	authorizes rules & regs. for PBT. 4 implied by "unofficial"
Mo.	■		1, 2, 4	1*, 3, 4	-	-	-	2	2	17.669.08(3) and (5)	statutes
Neb.											
NeV.											
N.H.											
N.J.											
N.Hex.											
N.Y.	■ ■ ■ ■		3*, 4*	-	-	-	-	2		1193-a	* if required at least "reasonable suspicion" (M)
N.C.										10-16-3	
N.Dak.	■ ■ ■ ■		1, 3, 3, 4	3	2	-	1	2		15-20-16	
Ohio											
Okla.											
Oreg.											
Pa.											
R.I.											
S.C.											
S.Dak.	■		3, 4	-	-	-	-	2		11-21-1-2	* not clearly pre-cess
Tenn.											
Tex.											
Utah											
Vt.	■ ■ ■ ■		1	-	-	-	-	2		1101	* not clearly PBT
Va.	■ ■ ■ ■		1	3	1	2	1	2	1	18-2-26	* suspected of violation of § 18-2-26
Wash.											
W.Va.											
Wis.	■		1	1*	1	1*	1	2	2	341.103 subds. 1(1)(a) and 1(1)	* unless implied consent test given for revocation of license only
Wyo.											
D.C.											
P.R.	■										
V.I.											

LEGEND

- cited statute to effect an issue
- * references to STAT. column
- cc) ambiguity clarified by case law

Statutory Characteristics

- A Grounds for request:**
1. Probable cause (violation involving alcohol)
 2. Reason to believe (violation involving alcohol)
 3. Reasonable grounds (violation involving alcohol)
 4. Suspicion (violation involving alcohol)
 5. Any accident
 6. Any traffic violation
- B Consequences of refusal:**
1. Criminal penalty
 2. Civil penalty
 3. Suspension/revocation of license
 4. Fine
 5. No penalty
 6. Charged with DWI offense
 7. Required to take chemical test
- C Admissibility of PBT results:**
1. Yes - all cases
 2. No - all cases
 3. Only to justify arrest/implied consent test
- D Admissibility of refusal:**
1. Yes - all cases
 2. No - all cases
 3. To justify arrest/implied consent test
 4. In license revocation procedure
- E Testing methodology:**
1. Prescribed
 2. None
- F Test is required:**
1. By motorist's demand
 2. At officer's discretion
 3. Prior to arrest (at least a request to test)
- G Notification of Rights:**
1. Refusal and no penalty
 2. Refusal with penalty
 3. None

states in which interviews of police, prosecutors, defense attorneys, and judges were conducted.

2.1 FLORIDA

2.1.1 Statutory Provisions

Sec. 322.251. Suspension of license; chemical test for intoxication.

1.(b)1. Notwithstanding the provisions of this section, a law enforcement officer, who has reason to believe that a person's ability to operate a motor vehicle is impaired by alcohol and that the person has been operating a motor vehicle during the period of such impairment, may, with the person's consent, give, or the person may demand, a prearrest breath test for the purpose of determining if said person is in violation of Sec. 316.028(1), but the taking of such prearrest breath test shall not be deemed a compliance with the provisions of paragraph (a). The results of any test administered under this section shall not be admissible into evidence in any civil or criminal proceeding. An analysis of a person's breath in order to be considered valid under the provisions of this section, must have been performed according to methods approved by the Division of Health of the Department of Health and Rehabilitative Services. For this purpose, the Division of Health is authorized to approve satisfactory techniques or methods.

2. Prior to administering any prearrest breath test, a law enforcement officer shall advise the motor vehicle operator that he has the right to refuse to take such test, and, prior to administering such test, a law enforcement officer shall obtain the written consent of the motor vehicle operator.

2.1.2 Case Law

The pre-arrest test is to be used when the officer does not have probable cause but does have a reasonable belief that the individual was driving under the influence of alcoholic beverages. Op. Atty. Gen., 075-46, Feb. 20, 1975.

While the above opinion seems to assert a substantive distinction between "probable cause" and "reasonable belief," these terms are most frequently used on an interchangeable basis. It seems clear that the Attorney General endorses a lesser standard than probable cause, and the authors here believe it means simply a reasonable and articulable suspicion.

It is unnecessary under Federal or Florida constitutions or statutes to place driver under arrest prior to administering a blood test to determine if he is intoxicated. State v. Mitchell, 245 So. 76 2d (1971). The court based its decision on Schmerber v. California, 384 U.S. 757 (1966) stating that the relevant act was not arrest of the subject, but whether there was a clear indication of relevance and likely success of a test of the subject's blood for alcohol.

See Section 5.3 for in-depth study of this state's PBT laws.

2.2 INDIANA

2.2.1 Statutory Provisions

Sec. 9-4-4.5-3 (47-2003e). Opportunity to submit to chemical test prior to arrest. -- (a) Any law enforcement officer authorized to enforce the laws of this state regulating the use and operation of vehicles on public highways who has probable cause to believe that any person has committed the offense of operating a vehicle while intoxicated, under IC 9-4-1-54, though not in his presence or view, shall not place such person under arrest for such offense until he has first offered to such person the opportunity to submit to a chemical test; however, it is not necessary to offer such an opportunity to a person who is unconscious. Any such person who agrees to submit to such chemical test shall not be arrested, but shall accompany the officer to the nearest available chemical test device for the purpose of taking such test as a condition of the driving privilege:

(1) If such chemical test results in prima facie evidence that such person is not intoxicated, he shall not be arrested and charged with such offense and he shall be released immediately.

(2) If such chemical test results in relevant evidence, coupled with other evidence, that such person is intoxicated, he may be arrested and charged with such offense.

(3) If such chemical test results in prima facie evidence that such person is intoxicated, he shall be arrested and charged with such offense.

(b) (Redesignated as subdivision (a)(2) by 1978 amendment.)

(c) (Redesignated as subdivision (a)(3) by 1978 amendment.)

(d) If any person shall refuse to submit to such chemical test, pursuant to this chapter, he may be arrested and charged with such offense, and his current driving license shall be delivered to the judge of the court in which such charge is filed, along with a certification of "refusal to submit," to motor vehicles.

See also Sec. 9-4-4.5-3 for definition of "chemical test."

This statute is not restricted to a breath test, but authorizes a pre-arrest test of breath, blood, urine, or other bodily substance for the presence of alcohol.

2.2.2 Case Law

The state must establish a foundation before Breathalyzer results are admissible into evidence. Klebs v. State, 305 N.E. 2d 781 (1974).

The Indiana Court of Appeals, First District, would not construe the language "nearest available test device" so narrowly as to require a law enforcement officer to forego an accurate and approved chemical test (blood test at hospital with analysis at State Police Laboratory) for another, which would have required moving the subject elsewhere or transporting the device to him. The court also held that exigent circumstances (dissipation of alcohol from blood) allow for a sample to be taken without a warrant, consent or arrest. Clark v. State, 372 N.E. 2d 185 (1978).

In Dunham v. State, 375 N.E. 2d 245 (1978), the court held that a certificate of "breath test refused," is admissible in license revocation proceedings.

2.2.3 Problems with Statutory Interpretation

The first sentence of the statute appears to limit pre-arrest testing to those situations where the offense of driving while intoxicated occurred outside the officer's presence or view. This wording is at variance with previous versions of the provision.

Also, it is not clear from the statute that the purpose of delivering the driver's license to the court, along with a certificate of refusal to take a chemical test, is to effectively withdraw the driving privilege, even before the court has acted to suspend the license. Failure to deliver the defendant's license to the court, with the certification, does not preclude the court from suspending the license. Bowlin v. State, 330 N.E. 2d 353 (1975).

2.2.4 Problems with Statutory Application

The Indiana statute, when viewed as another layer of protection of the civil rights of the motorist, works very well. Viewed as a device for simplifying the problem of establishing probable cause, it involves some problems. Since the statute requires probable cause before a pre-arrest test is given, the statute imposes an additional requirement with which the police must comply (in certain circumstances) before placing a person under arrest. Such additional requirement is not necessary to meet constitutional standards.

It is reported that the state police are using PBTs to a limited extent. There has been no objection in court to the use of PBTs in the field to date. The police support the pre-arrest tests and feel that they save time and are especially useful in separating out marginal cases, which probably would not be prosecuted even if an arrest were made.

2.3 MAINE

2.3.1 Statutory Provisions

Chapter 29 Sec. 1312.11C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.

2.3.2 Case Law

In State v. Bellino, 390 A.2d 1014 (1978), the Supreme Judicial Court of Maine clarified an ambiguity in Section 29-1312, Subsection 10-C (now the current 11C) by stating that since the statute does not expressly require an arrest as a condition precedent to the administration of a preliminary breath test, no arrest is required; and that the purpose of the test is to establish probable cause for requiring an official second chemical test, blood or breath, if the preliminary breath test results are positive.

2.3.3 Problems with Statutory Interpretation

The statute does not specifically state that the test is to be given prior to arrest. This is apparently clarified by the Bellino case, supra, although a preliminary breath test was not an issue in that case.

The statute is silent on the issues of consequences for refusal, admissibility of PBT results, and admissibility of the fact of refusal to take the test.

2.3.4 Problems with Statutory Application

No problems were noted.

2.4 MINNESOTA

2.4.1 Statutory Provisions

Sec. 169.121, Subd 5. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test, additional tests

may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless in compliance with 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

See also 169.123 subd 2; PBT test refusal is grounds for requiring a chemical test.

2.4.2 Case Law

In State v. Grovum, 209 N.W. 2d 788 (1973), the Supreme Court of Minnesota held that refusal to take preliminary screening test for drugs or alcoholic beverages could not be grounds for revocation of license, but that refusal to take the chemical test provided by the implied consent statute would be grounds for a license suspension, and that such chemical test could be requested prior to an actual arrest if the police already had probable cause.

See Section 5.2 for in-depth study of this state's PBT laws.

2.5 MISSISSIPPI

2.5.1 Statutory Provisions

Sec. 63-11-5. Implied consent to chemical test; warnings; preliminary test.

* * *

The commissioner of public safety and the state board of health are authorized to adopt procedures, rules, and regulations to allow the arresting officer to give a preliminary, unofficial "on-the-spot" test to establish whether or not the breath of the driver is free from any alcoholic content before the official chemical analysis test of his breath is made. However, the failure to give the preliminary test shall in no way affect prosecution under this chapter.

2.5.2 Case Law

None. Law is not used.

2.5.3 Problems with Statutory Interpretation

It is unclear whether this statute was intended to provide for the "unofficial 'on-the-spot'" breath test to be given prior to arrest. The term "arresting officer" is used, implying that an arrest must first be made. This test is planned to be used in instances where the driver is a great distance from a Breathalyzer, and this would let the officer know whether it would be worthwhile to take the driver to the Breathalyzer site or not.

2.5.4 Problem with Statutory Application

This statute has not been used to date because no procedures, rules or regulations have been adopted by the commissioner of public safety or the state board of health allowing for such testing.

2.6 NEBRASKA

2.6.1 Statutory Provisions

Sec. 39.669.08. Drunken driving; implied consent of operator of motor vehicle to submit to chemical test to determine alcoholic content of blood, urine, or breath; when test administered; refusal; penalty.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his body, or has committed a moving traffic violation or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one percent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

See also 39.669.11 regarding admissibility of results.

2.6.2 Case Law

In State v. Gerber, 206 Neb. 75 (1980), the Supreme Court of Nebraska held that before the results of a PBT may be received in evidence, it must be shown that the requirements of Neb. Rev. Stat. Sec. 39-669.11 (Reissue 1978) have been met, including evidence that the method of performing the preliminary test has been approved by the Nebraska Department of Health (N.D.H) and that the person administering and interpreting the test possesses a valid permit issued by the N.D.H. for that purpose.

In State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977), the court held that the offering of a PBT is not a condition precedent to an arrest for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol. In effect, the court ruled that a driver can be arrested

for DUI without being offered a PBT if the arresting officer already had enough evidence to establish probable cause for arrest.

See Section 5.1 for in-depth study of this state's IPS and PBT laws.

2.7 NEW YORK

2.7.1 Statutory Provisions

Sec. 1193-a. Breath tests for operators of certain motor vehicles. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in section eleven hundred ninety-four of this chapter.

2.7.2 Case Law

In People v. Grasser, 393 N.Y.S. 2d 1009 (1977), the Amherst Town Court held that use of PBT under the statute is constitutional, but could be unconstitutional in certain circumstances. This court would require that there would have to be at least a "reasonable suspicion" of the crime of driving while intoxicated. ("Reasonable suspicion" being language from Terry v. Ohio, 392 U.S.1.) The statute on its face is much broader, allowing PBT in cases of any traffic accident or violation.

2.7.3 Problems with Statutory Interpretation

The statute is silent on the issues of admissibility of test results, consequences of refusal, admissibility of refusal, and testing methodology to be used.

2.8 NORTH CAROLINA

2.8.1 Statutory Provisions

Sec. 20-16.3. Preliminary breath test. Any law enforcement officer having reasonable grounds to believe that a person has been driving or operating a vehicle on a highway or public vehicular area while under the influence of intoxicating liquor may, without making an arrest, request that such person submit to a preliminary chemical breath test to be administered by the officer. The results of this test shall not be admissible in evidence and failure to submit to the test shall not constitute a violation of this Chapter. Nothing contained in this section shall be construed to prevent or require a subsequent chemical test pursuant to G.S. 20-16.2. The law-enforcement officer requesting the test shall advise orally and in writing the person to be tested that his failure to take the subsequent chemical test pursuant to G.S. 20-16.2 will not result in a penalty and that such refusal will not require the taking of a chemical test. No device may be used to give a

chemical test under the provisions of this section unless it has been approved as to type and make by the Department of Human Resources.

2.8.2 Case Law

No case law on PBT noted.

2.8.3 Problems with Statutory Interpretation

While the statute does not specifically state that the fact of a refusal to take the PBT is inadmissible in court for any reason, it is clear from reading the statute that this is the case, since the motorist must be advised that no penalty results from his refusal, and that such refusal will not require the taking of a chemical test.

2.3.4 Problems with Statutory Application

It is reported that the state patrol is not using the PBT for two reasons: (1) it is not admissible in court, and (2) twenty minutes are required to administer the test. North Carolina expects to use PBT more in the future, primarily as a device to screen out those persons with low enough SAC readings that they should not be arrested.

2.9 NORTH DAKOTA

2.9.1 Statutory Provisions

Sec. 39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to submit to an onsite screening test or tests of his breath for the purpose of estimating the alcohol content of his blood upon the request of a law enforcement officer who has reason to believe that such person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through his observations, formulated an opinion that such person's body contains alcohol. A person shall not be required to submit to a screening test or tests of his breath while at a hospital as a patient if the medical practitioner in immediate charge of this case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests shall be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test shall be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. If such person refuses to submit to such screening test or tests, none shall be given, but such refusal shall be sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-30-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 shall be available. No provisions of this section

shall supersede any provisions of chapter 39-20, nor shall any provision of chapter 39-20 be construed to supersede this section except as provided herein.

2.9.2 Case Law

No case law located.

2.9.3 Problems with Statutory Interpretation

The statute is silent on the issue of admissibility or refusal to take the test.

2.9.4 Problems with Statutory Application

No problems noted.

2.10 SOUTH DAKOTA

2.10.1 Statutory Provisions

Sec. 32-23-1.2. Submission to breath test required by officer -- Chemical test after positive breath test. -- Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

2.10.2 Case Law

No case law noted.

2.10.3 Problems with Statutory Interpretation

The statute is silent on the issue of whether the breath test may be given before arrest. The breath test discussed in the statute appears to be merely for the purpose of determining whether further testing is needed, and is not clearly for the purpose of establishing probable cause.

The statute is also silent on the issues of consequences for refusal of the test, admissibility of such refusal, admissibility of test results and testing methodology.

2.10.4 Problems with Statutory Application

This statute is not viewed by the state patrol as providing for a pre-arrest breath test. If the arrested driver "passes" the breath test, then he/she is charged with something other than driving with a 0.10% blood alcohol level.

2.11 VERMONT (Reported upon because it is described in other literature as having a PBT law)

2.11.1 Statutory Provisions

Sec. 1202. Consent to chemical test -- (a) Any person who operates, attempts to operate or is in actual physical control of any vehicle on a highway in this state is deemed to have given his consent to the taking of a sample of his breath for the purpose of determining the alcoholic content of his blood. If breath testing equipment is not reasonably available or if the person is unable to give a sufficient sample of his breath for testing or if a state police officer or law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, has reasonable grounds to believe that the person is under the influence of a drug other than or in addition to alcohol, he is deemed to have given his consent to the taking of a sample of his blood for those purposes. If in the officer's opinion a person is incapable of decision or unconscious or dead, it is deemed that his consent is given and a sample of his blood shall be taken. A sample of breath shall be taken only by a law enforcement officer who has been certified by the department of public safety to operate a field sample gathering device for the gas chromatograph intoximeter whenever a state police officer or a law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, had reasonable grounds to believe that the person was operating, attempting to operate or was in actual physical control of any vehicle while under the influence of intoxicating liquor.

(b) A person who is requested by a law enforcement officer to submit to a chemical test under this section shall have the right to consult an attorney prior to deciding whether or not to submit to the chemical test. The person must decide within a reasonable time, but no later than thirty minutes from the time of the initial attempt to contact the attorney, whether or not to submit to the chemical test. If a person submits to a breath test, he shall have also the right to have a blood test administered at his expense. Arrangements for the blood test shall be made by the person submitting to the breath test, or by his attorney or some other person acting on his behalf except where the person is detained in custody after administration of the breath test, in which case the law enforcement officers having custody of the person shall make arrangements for administration of the blood test upon demand.

Note: This statute is actually Vermont's implied consent law, and the state does not have a separate PBT law.

2.11.2 Case Law

Arrest is not a statutory prerequisite to the admissibility of a chemical breath test analysis under this statute if such a test is administered with the driver's consent. State v. Brown, 125 Vt. 58, 209A 2d 324 (1965).

2.11.3 Problems with Statutory Interpretation

The statute cited does not clearly provide for a preliminary breath test. It is not clear whether such a test is authorized prior to arrest. While the Brown case, supra, indicates that arrest is not necessary when the driver consents to the test, the statute indicates that a total of one test ("a test") may be administered. Therefore, if a test is given pre-arrest, another one may not be required later. This effectively rules out the use of any devices whose reliability is adequate only for screening purposes.

2.11.4 Problems with Statutory Applications

Because the statute does not allow for administration of more than one test, this statute is not used as authority for preliminary breath testing. PBTs, therefore, are generally not used in Vermont.

2.12 VIRGINIA

2.12.1 Statutory Provisions

Sec. 18.2-267. Analysis of breath to determine alcoholic content of blood. -- (a) Any person who is suspected of a violation of Sec. 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The State Board of Health shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section.

(c) Any person who has been stopped by a police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of Sec. 18.2-266, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under Sec. 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of Sec. 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of Sec. 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of Sec. 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under Sec. 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of Sec. 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of Sec. 18.2-266, advise such person of his rights under the provisions of this section.

2.12.2 Case Law

None noted. See Section 5.4 for in-depth study of this state's PBT law.

2.13 WISCONSIN

2.13.1 Statutory Provisions

Sec. 343.305. Revocation of license on refusal to submit to tests.

* * *

(2)(a) If a law enforcement officer has probable cause to believe that a person has violated Sec. 346.63(1) or a local ordinance in conformity therewith, the officer may request the person, prior to arrest and issuance of a citation, to take a preliminary breath test for the purpose specified under sub. (1), using a device approved by the department for the purpose. A person may refuse to take a preliminary breath test without being subject to revocation under sub. (9) if he or she consents, after arrest, to take a test under par. (b). Neither the results of the preliminary breath test nor the fact that it was administered shall be admissible in any action or proceeding in which it is material to prove that the person was under the influence of an intoxicant or a controlled substance.

2.13.2 Case Law

None noted.

2.13.3 Problems with Statutory Interpretation

No problems noted.

2.13.4 Problems with Statutory Application

Wisconsin's PBT statute clearly requires that the police officer have probable cause before administering a PBT to arrest; thus the PBT statute would not be useful in those situations where the officer has only reasonable suspicion that a person has violated the driving-under-the-influence statute. Since the PBT results are inadmissible, and since post-arrest testing does not require a prior PBT, the only purpose a PBT could serve is to determine whether additional testing for blood alcohol level should be pursued.

7.1 A PROPOSED STATUTE FOR ILLEGAL PER SE

Section 1000.00

Driving While Under Influence of Alcohol or Any Other Drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis;

2. Under the influence of alcohol;

3. Under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving;

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or any other drug shall not constitute a defense against any charge of violating this section.

5. Driving while under the influence of alcohol or any other drugs is a classification of the offense.

Commentary on IPS Statute

The chemical analysis includes wet and physical chemistry.

The rationale for charging under a statute combining IPS with traditional DUI: A majority of prosecutors surveyed by this project preferred to charge both IPS and traditional DUI offenses in order to give the jury the maximum proof of intoxication. Some were reluctant to try a violation of IPS if no other indicia of impairment were present. This was due to previous experience with some juries that will not convict without broader evidence of impairment.

Even in states with IPS statutes, defenses to the illegal BAC, as though it were a presumption, have remained. Despite language in some statutes establishing a strict liability, some courts have held the non-expert testimony can be used in defense of an IPS charge. This judicial gloss obviously acts as a partial bar to the effectiveness of IPS statutes.

IPS is uniformly complimented by prosecutors as an improvement in effective prosecution. It was felt that in time all the courts will accept the concept of IPS without the judicial gloss that gives defendants the opportunity to rebut the statutory prohibition, as though it were a mere presumption.

Therefore, based on the experience of prosecutors and other law enforcement officers, the project has chosen a model law which combines IPS with the standard features of a DUI statute. Our conclusion is that the combination model is the best approach. It gives the prosecutor multiple ways to convict a defendant while charging only one (basic) offense. The jury does not have to be unanimous in finding that a defendant has violated any one of the subdivisions of the statute; they only have to be unanimous that the defendant violated the statute in one of the several ways possible. The jury can actually be split on the individual bases for finding a violation of the statute. In effect, this statute gives the prosecutor multiple opportunities in one charging instrument to convict, and effectively deprives the defendant of the opportunity to focus his defenses on the one issue that might appeal to the sympathy of one or more jurors. Under this type of statute, those jurors who have unarticulated reservations concerning the reliability of evidentiary test results are given ample opportunity to base their conviction upon traditional DUI indicia, while those who favor the use of a per se regulatory format and are impressed by the scientific accuracy and reliability of the testing technology are likewise satisfied with application of the statute. This type of statute spreads the largest net permissible.

7.2 A PROPOSED STATUTE AUTHORIZING PRELIMINARY OR PRE-ARREST BREATH TEST
Section 1001.00

Refusal to Take a Preliminary or Pre-Arrest Breath Test; Authorization and Procedure

Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city, town, or village may require any person who drives or has in his actual physical control a vehicle within this state to submit to a preliminary test of his breath for alcohol content if the officer has an articulable and reasonable suspicion that such person has committed the offense of driving while under the influence of alcohol or any other drugs pursuant to Section 1000.00. Refusal to take the preliminary test of breath shall constitute an infraction punishable by a fine of not more than \$50. Such breath analysis must be administered at the scene of the stop. Any breath analysis required under this section must be administered with an instrument and in such a manner approved by the Commissioner of Toxicology or Public Health for that purpose. The results of a preliminary breath analysis may be used for determining whether an arrest should be made. When a driver is actually arrested, provisions of the state's Implied Consent Statute will apply. The preliminary breath test authorized here is in addition to any tests authorized in the Implied Consent Statute.

Commentary on PBT Statute

An articulable and reasonable suspicion may be based upon erratic driving behavior or, upon a stop for any violation, it may be based upon a number of behavioral patterns or other factors, which based upon the officer's experience may indicate impairment, such as the detection of slurred speech or alcoholic breath of the driver.

Because of the high incidence of alcohol involvement in injury and property damage type automobile accidents, it is also reasonable to believe that one or more of the drivers in such accidents are so impaired. The occurrence of an accident may provide sufficient basis for the officer to request a PBT of each involved driver, if only to rule out alcohol as a contributing factor.

The legislature has taken note of the fact that approximately 50 percent of all fatal highway accidents involve drinking drivers, and has resolved that this threat to public safety warrants closer scrutiny of potentially hazardous drivers where there is evidence of drinking sufficient to create an articulable and reasonable suspicion that one or more of the drivers is impaired by alcohol or other drugs.



5

**An interim Report to
the Nation From the
Presidential Commission
on Drunk Driving**

5.0 LICENSING ADMINISTRATION

Suspension or revocation of driver licenses can be an effective deterrent to driving while under the influence. Studies in California and Washington show that license suspension was more effective than assignment of violators to alcohol education and/or treatment programs. If suspensions are imposed consistently and are highly publicized, this sanction can play an important role in reducing driving under the influence.

Cooperation between the States in sharing information on driver licensing and violations in order to stop those with revoked or suspended licenses from becoming licensed in another State is a necessity. The following recommendations are intended to improve the administration of the licensing process:

RECOMMENDATION

5.1 Administrative Per Se License Suspension

States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon a finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

COMMISSION NOTE

Some States have begun to use innovative methods to establish swift and certain penalties for drunk driving. In Minnesota, West Virginia, Iowa, and Delaware, any driver registering above 0.10 AC has his or her license automatically suspended for 90 days (or more) regardless of the subsequent disposition of his case. If he or she refuses the test, his or her license is suspended for 180 days. This is a swift and certain sanction which significantly adds to the general deterrent effect of the control system. The individual is afforded the opportunity of a hearing within a specified period of time; the facts to be pursued at this hearing relate to whether the individual tested over the legal limit or whether the individual refused the test.

A different approach, used in New York for repeat offenders, provides for an immediate temporary suspension pending disposition of the charges. This system is carried out by the court where there is a finding of probable cause for the arrest and where there is a drunk driving conviction within the past five years. These two approaches also differ in their administration; the New York system is administered by the local criminal courts for the Motor Vehicle Department, while the other States' systems are administered by the State driver licensing agency.

REFERENCE

1. Analytical Study of Minnesota Law, Robert H. Reeder, Northwestern Traffic Institute, December 1981.
2. Uniform Vehicle Code, Section 6-205 and 6-208.

Drunk Driving Penalties In Other Countries

For those who think that the new DUI laws recently passed in many states are far too harsh, we advise those people to take a look at how other nations around the world are dealing with the problem of the drinking driver. In some of the following cases you'll find that a few of these countries don't have near the drunk driving problem that now exists here in the United States. The apparent reason for this lack of a high number of DUI cases in these other countries would seem to be directly attributable to the no nonsense, routinely dealt, strict punishments handed out by the courts in these foreign countries. This information has been drawn from newspaper accounts and statistics supplied to MADD by members. Any incorrect statements are attributable to the sources, not the writers.

West Germany • If a suspected drunk driver tests out at 0.8 mills of alcohol in the bloodstream, his license is automatically suspended for a minimum of three months, with a maximum of one year in prison or a fine. The police also use roadblock checkpoints to randomly test drivers for alcohol consumption.

Norway • In Norway, it's a mandatory, minimum sentence of three weeks in jail for any driver caught with a blood-alcohol level of .5 per mil or more. That means that five drops of alcohol per 1000 drops of blood. A fine may be added scaled to income. Suspended sentences are extraordinary. On the first offense you lose your license for at least one year. On the second offense within five years, you lose your license for life.

Israel • The problem of the drinking driver on the roadways in Israel is virtually non-existent, due largely to the two-year

prison term that awaits convicted drunken drivers. In 1980, an Israeli Embassy spokesman was quoted as saying that there is about one drunk driving case in Israel a year.

Soviet Union • First offenders are banned from the roadways for six months. In one instance, the drunk driver who killed six and injured five more during a drive through northern Moscow was sentenced to death.

Great Britain • Those convicted face automatic license suspension for one year. In addition, if the case is aggravated, lifetime banishment from the roadways is possible. Other sentencing possibilities include six months in jail, up to an \$1800 fine, and assignment to gardening, garbage collection, and other community service.

Egypt • Like most Moslem countries, alcohol usage is prohibited, drunken driving cases are rare.

India • Arrests are rare, but penalties are severe. Those convicted face six months in prison, \$112 fine, or both.

South Korea • Just an arrest results in an automatic two month license suspension, with a conviction meaning a jail sentence of up to one year and a fine of \$700.

Japan • First offenders can face up to four months in jail and a \$200 fine. Licenses are also revoked and can be returned only upon successful completion of a driving test one year later.

Chile • Those convicted face from 61 to 541 days in jail. If someone has been injured the minimum prison sentence is 18 months.

Community Support

(continued from page 2)

- Federated Fire Fighters of California
- Gannett Outdoor Advertising
- Joan Blake Austin of Joan Blake Austin Health Studios
- Jerry Burns of NBI
- Sacramento County Deputy Sheriffs Association
- Sacramento Police Officers Association
- Wine Institute

Federal Legislative Victory

The U.S. Congress has joined the fight to rid our roadways of the drunken driving menace. On September 29, the House of Representatives unanimously passed the legislation which contained the provisions of H.R. 6170, also known as the Howard-Barnes bill. On October 21, the Senate also unanimously passed the legislation. On October 25, President Reagan signed this welcome provision into law.

Essentially, this new law will provide important federal aid in the form of incentive grants to those states setting up comprehensive, community-based drunk driver control programs. Another attractive feature of the Howard-Barnes legislation is that it will provide the incentive grants out of funds which are already budgeted, thus the federal debt will not be increased because of this program.

A special thanks is in order to the President, Congressmen Howard and Barnes, and the individuals and groups responsible for the passage of this essential new measure.



MONDAY MORNING REPORT

Volume 6 No. 16 August 30, 1982

DRUNK DRIVING... legislation has been approved by lawmakers in 32 states and Washington, D.C. during 1982, according to a national survey by the Christian Science Monitor.

Although the new laws aimed at reducing the incidence of drunk driving differ from state to state, most of the current legislation has incorporated one or more of the following provisions:

- 1) Minimum mandatory jail sentences
- 2) Referral of drunk drivers to education or alcoholism treatment programs
- 3) Criminal penalties for drunk drivers whose auto crash has resulted in death of another person
- 4) Suspension or revocation of driving privileges
- 5) Raising the minimum legal drinking age for all alcoholic beverages (including beer) to 21
- 6) Making it illegal to operate a motor vehicle with a blood alcohol level of 0.10 percent

The current wave of concern about drunk driving has taken place over the past two years, spurred on by several groups representing the victims of drunk drivers.

MADD (Mothers Against Drunk Drivers) has received national attention and has been particularly effective in California, where a tough new drunk driving law went into effect in January, 1982.

Organization of the new groups and their activists' pressure in state legislatures across the U.S. has helped to focus attention on the victims of drunk drivers. In the past, lawmakers, judges, juries and even many law enforcement officials often sympathized with the drunk driver rather than the victims.

Part of the problem was the common belief that people had about drunk drivers... "But for the grace of God, there go I."

The mistaken notion is that most drunk drivers were common, ordinary citizens who perhaps for the first time in their lives had "one drink too many" at a party and then became involved in an auto crash while trying to make it home.

The realization that most drunk drivers are not "first-timers" as far as driving while under the influence of alcohol and most have had far more than "a couple of beers" has helped the general public to realize that tough drunk driving laws pose no threat to most of the driving population.

In a study of 839 drivers involved in fatal auto crashes in Michigan during 1981, the Michigan State Police reported that 289 drivers had not been drinking prior to the crash.

Of the 553 drivers who had been drinking prior to the fatal crash, only 19 percent registered a blood alcohol level of under 0.10 percent.

81 percent of the drunk drivers registered 0.10





ALCOHOL ABUSE AND VIOLENCE IN ALASKA

The mental health of a community or state is measured by many indicators.

Some of these are: *violent crimes, family violence, child abuse/neglect, and alcohol-related mortality.*

violent crimes

- 64% of criminal homicides in 1980 were alcohol-related
- 41% of aggravated assaults were alcohol-related
- 48% of all violent offenders were using alcohol at the time of arrest
- 56% of all violent offenses were alcohol-related
- 72% of rapes - alcohol was used by either offender or victim

family violence

- 45% of all spouse abusers are heavy drinkers
- 90% of women seeking help at AWAIC, a battered women's shelter, were effected by alcohol
- 90% of the clients in Anchorage's Domestic Violence Program for Men report some level of substance abuse
- 90% of abusive parents have been abused or neglected by an alcoholic or drug dependent parent

child abuse/neglect

- estimates suggest that alcohol is a primary factor in as many as one-third of all reported cases of child abuse
- Alaska experiences 4 times as many cases of child abuse/neglect as the national average
- in an informal survey of youth outpatient units of the Behavioral Health Treatment system in Anchorage it was found:
 - 77.8% of the youth had one or more parents with substance abuse problems
 - 40% of the clients had been abused or neglected



ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

Washington Area's War on Drunk Driving Pays Off in a Big Way

Area Traffic Deaths Drop; Arrests Are on Increase

By Blaine Harden
Washington Post Staff Writer

The highly publicized war against drunk driving—waged this past year by mothers, lawmakers, judges, juries and the police—has racked up impressive victories in the Washington area.

Highway deaths in 1982 declined in Virginia, Maryland and the District of Columbia, where laws against driving under the influence of alcohol were toughened. At the same time, arrests of drunk drivers have increased sharply.

In the District this year, 36 people—the lowest figure in at least a decade—had died in traffic accidents as of Tuesday. Alcohol-related deaths in Maryland fell 30 percent while arrests of drunk drivers were up 50 percent. Highway deaths in Virginia declined 14 percent.

During Christmas weekend, as police in all three jurisdictions beefed up patrols, there was one alcohol-related death in the Washington area, compared to seven over the 1981 Christmas weekend.

"The word is out. We are out there to get people and as a result we have reduced fatalities," says Robert M. Goldstein, director of the D.C. police alcohol countermeasures and traffic services.

See ALCOHOL, A7, Col. 1

ALCOHOL, From A1

Throughout the Washington area, there may never have been such a bad year to be drunk at the wheel.

In Northern Virginia, a drunk driver involved in a head-on collision that killed three persons was convicted in September of second-degree murder. The conviction was the first in the state on that serious charge in an alcohol-related traffic case.

In Maryland, a drunk driver involved in a crash that killed five members of a Montgomery County family was sentenced to 15 years in prison.

In the District, police began a first-in-the-nation mandatory breath test for all drivers stopped for moving violations. Any driver who refuses the test can be arrested.

Despite tough new laws and aggressive enforcement, some drivers continue to drink and drive. John T. Hanna, director of the Virginia Department of Transportation Safety, says only one in 2,000 drunk drivers is ever caught. One such driver slipped through the enforcement net last weekend in the Washington area.

Donald W. Jewell, 33, who ran an insect exterminating business, threw a party at his Manassas house on the night before Christmas Eve. Friends who saw him at the party described him as drunk and "having a hard time talking."

In the middle of the party, Jewell stormed outside and drove off in his black 1979 Chevrolet pickup truck. He headed south at 70 miles an hour on a 55-mile-an-hour, two-lane road, police said.

Jewell had a record of drinking and bad driving. In California in 1969 he was convicted of driving under the influence of alcohol. Near Hodges, S.C., in 1975 he ran a stop light and crashed into a car, killing three persons. A blood-alcohol test showed that Jewell was under the influence of alcohol at the time. He was convicted of involuntary manslaughter and sentenced to six years in prison.

Four years later, after he'd moved north to Mathews, Va., Jewell was convicted of breaking and entering and sentenced to five years in prison. From prison, Jewell wrote Circuit

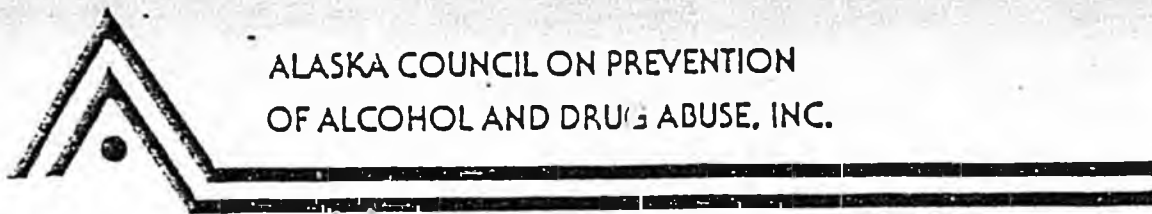
Court Judge John DeHardit: "I am an alcoholic and I need and want help with this so I can be a man. I also know that if I don't get help with my drinking I will be back in prison."

About 10:30 p.m. a week ago today, Jewell lost control of his pickup rounding a curve. Police said Jewell tried to pull his truck back on the road but it went into a roll, taking up both lanes of Rte. 234 near Manassas. It stopped rolling when it smashed into a pickup coming from the opposite direction.

"He had the whole highway covered. It looked like a wall coming at me. It scared the daylights out of me. I'm still scared," William E. Parker Jr., 39, the driver of the other pickup, said yesterday.

Parker, who escaped with a strained back from the crash that totaled his pickup said he was lucky.

"When I knew anything, he was rolling at me. If I hadn't got in the ditch, he'd a killed me too," Parker said.



ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

7521 OLD SEWARD HWY., SUITE A • ANCHORAGE, ALASKA 99507 (907)349-6602

FACTS ABOUT ALCOHOL CONSUMPTION IN ALASKA

--FOR ALL AGE GROUPS

The average yearly intake of alcoholic beverages for all Alaskans (every man, woman, and child) is 33½ gallons, a combination of distilled liquor, wine, and beer. This is the equivalent of 4.6 gallons of absolute ethyl alcohol.

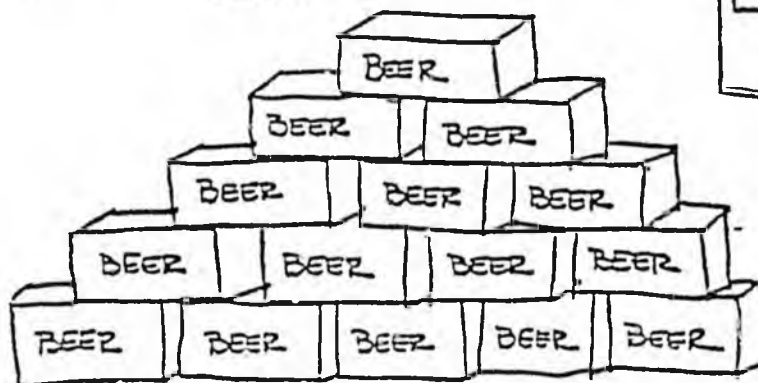
In order to consume 4.6 gallons of absolute ethyl alcohol per year, you would have to drink...



153.2 quarts of 12% wine*
OR...



53.5 fifths of 86 proof liquor
OR...



40.9 cases of 5% beer

*Most naturally fermented wines contain 12 to 14% ethyl alcohol. So called "fortified" wines have alcohol added to increase the percentage.

ACOPADA JANUARY 1982
KJB:st

Based on 1980 census

Please feel free to
reproduce this fact sheet

December 1981
Final Report

DOT/HS-806-170



U.S. Department
of Transportation
National Highway
Traffic Safety
Administration

Analytical Study of the Legal and Operational Aspects of the Minnesota Law Entitled "Chemical Test for Intoxication" M.S.A. Sec. 169,123

Robert H. Reeder, A.B., J.D.

The Traffic Institute
Northwestern University
555 Clark Street—P.O. Box 1409
Evanston, Illinois 60204

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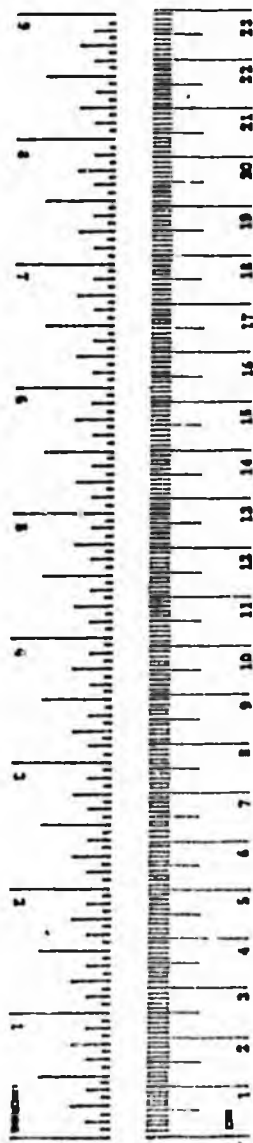
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15. Supplementary Notes This report was reviewed and critiqued by Mr. Joel A. Watne, Special Assistant Attorney General, State of Minnesota; Mr. Forst Lowery, Alcohol Program Coordinator, Department of Public Safety, State of Minnesota					
16. Abstract This report provides information for use by state legislatures, state governmental agencies, traffic safety organizations and other persons in enacting laws to control driving and drinking on the highways and specifically the type of "administrative per se" law in the State of Minnesota. The report outlines the legal framework of the "administrative per se" law in the State of Minnesota. It explores the possible legal challenges which defendants might raise against the law. It studies the operational impact the "administrative per se" law has had in Minnesota on other alcohol countermeasures to control the drinking driver. The report concludes the Minnesota "administrative per se" law would withstand the possible legal challenges. It concludes that the enactment of this law has had a positive effect on the attitudes of law enforcement officers and has increased the effort of controlling DWI offenses. The report recommends that other states enact such a law.					
17. Key Words Implied Consent Law; Administrative Per Se Law; Illegal Per Se Law; DWI Law; Minnesota Law on Implied Consent; Minnesota Administrative Per Se Law; Minnesota DWI Law.			18. Distribution Statement This document is available to the U.S. public through the National Technical Information Service, Springfield, Virginia 22161		
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METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

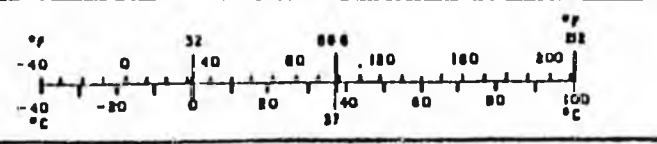
Symbol	When You Know	Multiply by	To find	Symbol
LENGTH				
in	inches	2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
AREA				
in ²	square inches	6.5	square centimeters	cm ²
ft ²	square feet	0.93	square meters	m ²
yd ²	square yards	0.8	square meters	m ²
mi ²	square miles	2.6	square kilometers	km ²
acre	acres	0.4	hectares	ha
MASS (weight)				
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
VOLUME				
sp	teaspoons	5	milliliters	ml
tblsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.96	liters	l
gal	gallons	3.8	liters	l
ft ³	cubic feet	0.03	cubic meters	m ³
yd ³	cubic yards	0.76	cubic meters	m ³
TEMPERATURE (exact)				
°F	Fahrenheit temperature	5/9 (first subtracting 32)	Celsius temperature	°C

* 1 in = 2.54 (exactly). For other exact conversions, see more detailed tables, see NBS Misc. Publ. 224, (Bureau of Weights and Measures, Price \$2.25, SO Catalog No. C13.1U 20).



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To find	Symbol
LENGTH				
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
AREA				
cm ²	square centimeters	0.16	square inches	in ²
m ²	square meters	1.2	square yards	yd ²
km ²	square kilometers	0.4	square miles	mi ²
ha	hectares (10,000 m ²)	2.6	acres	acre
MASS (weight)				
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	short ton
VOLUME				
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	1.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m ³	cubic meters	36	cubic feet	ft ³
m ³	cubic meters	1.3	cubic yards	yd ³
TEMPERATURE (exact)				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



ACKNOWLEDGMENTS

A number of persons in Minnesota were very helpful in providing information during this study. I thank everyone whom I contacted for their generous assistance.

In particular, I want to thank Mr. Joel A. Watne, Special Assistant Attorney General; Mr. Forst Lowery, Alcohol Program Coordinator, Department of Public Safety; Mr. Harold L. "Pete" Peterson, Department of Public Safety; Sgt. Samuel J. Boe, Minnesota State Patrol; and Mr. Lowell C. Van Berkom, Director, Forensic Toxicology, State Crime Laboratory.

TABLE OF CONTENTS

Acknowledgments

Part I	Statement of Problem	1
Part II	Legal Aspects	4
	Legal Framework	4
	Legal Challenges	12
	Arbitrary and Capricious	12
	Vague and Indefinite	13
	Equal Protection	14
	Procedural Due Process	15
	Collateral Impact - Administrative versus Criminal	16
	Double Punishment	22
	Guilty Plea	25
Part III	Study of Operational Impact	36
Part IV	Executive Summary and Conclusions	37
Appendix I	Text of Relevant Minnesota Statutes	43
Appendix II	Tables of Data.	53
Appendix III	Forms Used in Processing of Driver	67
Appendix IV	Memorandum by Mr. Forst Lowery	75

PART I

STATEMENT OF PROBLEM

The State of Minnesota has a rather unique law.¹ It has been described as an "administrative per se" drinking-driving statute. In essence it provides as a part of the implied consent law that when a law enforcement officer obtains a chemical test for intoxication from a driver, and the result is 0.10 BAC or more,² the officer serves notice to the driver on behalf of the motor vehicle department (Department of Public Safety) of intention to revoke his driver's license for having a BAC of 0.10 or more. The driver is given 30 days in which to request a hearing and if none is requested, then the department revokes for 90 days. If a hearing is held, and the issues are determined against the driver, then his license is revoked for 90 days.³

This procedure is additional to the criminal drinking-driving charges of "driving under the influence of alcohol" and "driving with 0.10 BAC or more" which are tried in the court system.⁴ Also, Minnesota has an implied consent law similar to other states which provides that upon refusal of a chemical test for intoxication action is taken against the license.⁵

The task of this study was to report on the legal and operational aspects of the "administrative per se" law. They are:

- "1. Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered.
- "2. Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6).
- "3. Determine, if possible, to what extent law enforcement officers

are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more.

- "4. Determine what use is being made by the Motor Vehicle Department (Department of Public Safety) of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems—how well is it working.
- "5. Determine to what extent driver license revocation actions are taken pursuant to Subd. 4 (BAC test results of 0.10 percent or higher) under the following situations:
 - 1) The DUI charge is nolle prossed
 - 2) The DUI case is continued
 - 3) The DUI charge is plea bargained down to a lesser offense
 - 4) The DUI case results in an acquittal.
- "6. Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals.
- "7. Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6).
- "8. Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved).
- "9. Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

FOOTNOTES - Part I.

1. Minnesota Statutes Annotated, Sec. 169.123. It is interesting to note that West Virginia enacted a similar provision in 1981. See West Virginia Regular Session 1981, New Laws page 849. It is Sec. 17C-5A-1, effective September 1, 1981.
2. "BAC" is a commonly used term which is defined in Minnesota as "Alcohol Concentration" in Sec. 169.01 as follows:

"Subd. 61. Alcohol concentration. "Alcohol Concentration" means (a) the number of grams of alcohol per 100 milliliters of blood, or (b) the number of grams of alcohol per 210 liters of breath, or (c) the number of grams of alcohol per 67 milliliters of urine."
3. The term "revocation" is not defined in the Minnesota statutes. However, the Department of Public Safety interprets the action required in the commonly accepted meaning of the term. A revocation means that the driver's license is terminated by formal action of the department and the driver can make application for a new license after the expiration of the time period.
4. The criminal charges are contained in Minnesota Statutes Annotated, Sec. 169.121.
5. The implied consent procedures are contained in Minnesota Statutes Annotated, Sec. 169.123.

PART II

LEGAL ASPECTS

One of the tasks of this study was to: "Analyze the constitutional, legal and operational ramifications and potential impediments relative to the application of Minnesota Section 169.123 (special emphasis to be given to Subd. 4, 5 and 6)."

Consequently, the first step will be to outline the legal framework.

LEGAL FRAMEWORK

The Minnesota "administrative per se" drinking-driving law became effective on July 1, 1976.¹ It is a parallel track to the traditional criminal charges normally placed against a drinking driver, and in many respects the two tracks are independent.

The legal steps in this system are summarized as follows:

1. Contact with Driver: A law enforcement officer comes into contact with a drinking driver in various ways. He may observe the conduct; he may respond to a motor vehicle collision; he may stop a driver for another violation; he may receive information from other citizens who have observed the drinking driver. Whatever the means, the information the officer has must meet the requirements of the U.S. Supreme Court decision in Delaware v. Prouse² in which the Court held that the officer must have at least "articulable suspicion" as a basis for the stop, or that a non-discretionary systematic roadblock is being operated.
2. After Stopping the Driver: The officer has several options after stopping the driver. He can:

- a. Issue a citation and release the driver if the circumstances warrant.
- b. Request a preliminary breath screening test for alcoholic influence provided the officer has "reason to believe" from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated the "under the influence" of alcohol or controlled substance or combination thereof, or the "illegal per se" law. (Sec. 169.121(6).)
- c. Request a chemical test of blood, breath, or urine to determine the presence of alcohol or a controlled substance provided the officer has "reasonable and probable grounds to believe" the person was driving, operating, or in physical control of a motor vehicle in violation of Sec. 169.121 (criminal charges - see App. I) and one of the following conditions exist:
 - 1) the person has been lawfully placed under arrest for a violation of Sec. 169.121, or similar municipal ordinance, or
 - 2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death, or
 - 3) the person has refused to take the preliminary breath screening test, or
 - 4) the person took the preliminary breath screening test and the results recorded an alcohol concentration of 0.10 or more.
(Sec. 169.123(2).)
- d. Release the driver when the preliminary breath screening test indicates the driver is not under the influence and when circumstances

do not warrant other action.

- e. Make an arrest for driving under the influence of alcohol or controlled substance. (Sec. 169.121.)
- f. Release the driver without arresting or without issuing citation if circumstances warrant.

3. Implied Consent Law - Warning: As noted above in "2.c." the officer may request a chemical test of blood, breath, or urine to determine alcohol concentration or a controlled substance provided the officer has "reasonable and probable cause" and one of four conditions is present. The next step for the officer is to request a chemical test and warn the driver:

- a. That if testing is refused, the person's right to drive will be revoked for a period of six months; and
- b. That if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and
- c. That the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and
- d. That after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.³

(Sec. 169.123(2).)

4. Implied Consent law - Driver's Choice: After the officer has requested the test and has given the driver the warning, the next step is with the

driver. He can:

- a. Refuse to permit chemical testing, and if so, then none shall be given.
- b. Submit to a chemical test.

5. Implied Consent Law - Notice of Revocation: If the driver refuses the chemical test or if he submits and the test results are 0.10 or more alcohol concentration—in either event—the officer may serve immediate notice of intention to revoke on behalf of the Commissioner of Public Safety. When he does so, the officer shall take the license or permit of the driver, if any, and issue a temporary license effective for 30 days. If the license or permit is picked up by the officer, it is sent to the Commissioner of Public Safety along with the certification. (Sec. 169.123(5a).) See the form used for this step under Appendix III entitled "Notice of Revocation."

In the event a blood or urine test is given and the results are not immediately available, or for some reason the officer does not serve immediate notice, then the department serves the notice by certified mail.

6. Implied Consent Law - Certification: If the driver refuses the test or if he submits and the results are 0.10 or more alcohol concentration, the officer shall certify to the Commissioner of Public Safety that:

- a. The officer had reasonable and probable grounds to believe that the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance; and that:
- b. The driver refused the test; or
- c. That the driver submitted to the test and the results were 0.10 or more alcohol concentration.

7. Implied Consent Law - Action by Commissioner of Public Safety: Under the notice of revocation the driver has 30 days within which to request a hearing. If he does not, the order of revocation becomes effective. If the driver requests a hearing it is conducted as follows. (Sec. 169.123(5) and (6).)

8. Implied Consent Law - Hearing: If the driver requests a hearing within 30 days:

- a. The hearing shall be before a municipal or county judge in the county where the alleged offense occurred unless there is an agreement that the hearing be in some other county.
- b. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings on pre-trial motions for criminal prosecution under Sec. 169.121 (criminal charges see Appendix I).
- c. The hearing shall be recorded.
- d. The Commissioner of Public Safety may appear through his own attorney or by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction. (Note: Current practice is for an Assistant Attorney General to represent the Commissioner in all such hearings.)
- e. The request for the hearing delays the effective date of the revocation until a final judicial determination which results in a decision adverse to the person.
- f. If a hearing is requested within the 30 days, the Commissioner shall issue additional temporary licenses until the final determination of whether or not there shall be a revocation. The

additional temporary license is good for 180 days and may be renewed by the Commissioner as necessary.

- g. The scope of the hearing shall cover the issues of:
- 1) whether the officer had reasonable and probable grounds to believe the person was . . . (see 2.c. above for the grounds under which the test can be requested—or Sec. 169.123 (Subd. 2) in Appendix I).
 - 2) whether at the time of the request for a test, the officer warned the person of his rights and consequences of taking or refusing the test (see Sec. 169.123 (Subd. 2) for text of warning in Appendix I).
 - 3) whether the person refused the test or whether the test was taken and the results indicated an alcohol concentration of 0.10 or more and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.
- h. The burden of proof at the hearing is on the state and it must prove the issues by a "fair preponderance of the evidence."
(See State v. Halvorson, 181 N.W.2d 473, 477 (Minn.-1970).)
- i. The court shall order either that the revocation be rescinded or sustained and forward the order to the Commissioner of Public Safety.
- j. If the order of revocation is sustained the court shall also forward the driver's license to the Commissioner if it is not already in the Commissioner's possession. (Sec. 169.123(6).)
- k. The driver has the right to be represented by counsel at the hearing.

9. Implied Consent Law - Appeal: If the hearing under the implied consent law goes adversely to the driver, he has the right to appeal to the District Court in the county where the hearing was held. The hearing is on the record and is governed by the same procedure as appeals from misdemeanor convictions. (Sec. 169.123(7).) If the hearing goes adversely to the Commissioner he may also appeal. (See State v. Normandin, 169 N.W.2d 222 (Minn.-1969), holding state can appeal an implied consent hearing decision; and State v. Ogg, 246 N.W.2d 560 (Minn.-1976), outlining procedure for appeal of implied consent hearing by the state.)

10. Implied Consent Law - Other Provisions: In addition to the aspects outlined above, the Minnesota implied consent law also provides that:

- a. Police officers who can implement the implied consent provisions are limited to state highway patrol officers, University of Minnesota peace officers, a constable defined in Sec. 367.40, and a police officer of any municipality, including towns defined in Sec. 368.01, or a county law enforcement officer. (Sec. 169.123(1).)
- b. A person may decline a blood test and elect to take either a breath or urine test, whichever is available and offered. However, no action can be taken for refusing a blood test unless either a breath or urine test was available and offered. (Sec. 169.123(2).)
- c. Notwithstanding the requirement in "b" if there is reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by blood or breath, a urine test may be required even after the blood or breath test has been administered. (Sec. 169.123(2a).)
- d. Only a physician, medical technician, physician's trained mobile

intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer may withdraw blood. This requirement does not apply to breath or urine. (Sec. 169.123(3).)

- e. The person tested has a right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the officer, provided that the additional test specimen is obtained at the place where the person is in custody, that it is after the test administered by the officer, and that it is at no expense to the state. The failure or inability to obtain the additional test shall not preclude the admissibility of the test by the officer unless the additional test was prevented or denied by the officer. (Sec. 169.123(3).)
- f. Upon the request of the person tested, full information concerning the test or tests shall be made available to him. (Sec. 169.123(3).)
- g. The physician or other qualified persons named in Sec. 169.123(3) who are authorized to withdraw blood at the request of the officer shall in no manner be liable in any civil or criminal action except for negligence in withdrawing the blood. (Sec. 169.123(3).)

11. Probable Cause and Exigent Circumstances for the Test. While not a part of the implied consent statute in Minnesota, it should be noted that the Minnesota Supreme Court has approved another method of obtaining a chemical test for intoxication. This method is based on constitutional law and since the court found there was no conflict with the statutes, officers can obtain a chemical test for intoxication where there is (1) an exigent circumstance that the evidence will be lost (now or never), (2) that the officer had

probable cause to support a formal arrest, (3) and it is a highly unobtrusive search. Further, that a formal arrest should be made whenever the suspect appears capable of understanding and communicating with the arresting officer. If not, then the arrest is not necessary.⁴

This method has been approved by the court where the driver is in the hospital and unable to understand and communicate with the officer and there was probable cause to believe that the driver had killed another person while driving under the influence.

LEGAL CHALLENGES

At least 20 states, including Minnesota have enacted criminal "illegal per se" drinking-driving laws.⁵ Since these laws are parallel to the "administrative per se" statute in Minnesota, an examination of appellate court decisions may shed light on possible legal challenges which might be raised against the administrative per se law. Also, other possible legal challenges will be discussed.

Arbitrary and Capricious. In North Carolina and Delaware appellate court decisions have ruled on the question of whether or not the 0.10 BAC was an arbitrary and capricious number. In rejecting this argument the North Carolina Court of Appeals held:

"First, defendant argues that the new offense of driving when the alcohol in one's blood is 0.10 percent or more by weight is an arbitrary and unconstitutional exercise of the police power of the State because there is no evidence that a driver with 0.10 percent or more of alcohol in his blood is a threat to the health, safety, or welfare of the citizens. We will not discuss the numerous scientific studies which have shown the state of intoxication of persons with various degrees of alcohol in their blood. See, for example, Little, Control of the Drinking Driver: Science Challenges Legal Creativity, 54 A.B.A.J. 555 (June 1968). Suffice to say, from 1963 to 1975 there was a statutory presumption in this State that a person with 0.10 percent or more by weight of alcohol in his blood was under the influence of intoxicating liquor. G.S. 20-130.1(a)

(repealed by the 1973 amendment effective 1 January 1975). Our Supreme Court has held that the results of a breathalyzer test are admissible in evidence, and a test showing 0.10 percent or more by weight of alcohol in a defendant's blood is sufficient to carry the State's case to the jury on the question of whether defendant was under the influence of intoxicating liquor. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967). We hold that the prohibition against driving upon the public highways when the amount of alcohol in one's blood is 0.10 percent or more by weight contributes in a real and substantial way to the safety of other travelers. The challenged statute is a constitutional exercise of police power by the General Assembly."⁶

Similarly the Supreme Court of Delaware said:

"We are unable to agree with appellant's contention that the new statute is unconstitutional. Its effect is to forbid any person to operate a motor vehicle if his blood contains .1 of one per cent alcohol. It represents a legislative determination that such quantity of alcohol has sufficient adverse effect upon any person to make his driving a definite hazard to himself and others. We cannot say that this determination is unfounded or contrary to the facts; a number of studies and many statistics have recently been published by experts in this field which support that conclusion."

In summary, based on these two decisions, it is not likely the courts would strike down a "per se" provision since the 0.10 BAC is based on a number of scientific studies and is not, consequently, arbitrary or capricious.

Vague and Indefinite. This argument was made in decisions in Utah and Florida. It was contended that because the driver had no way to determine when he was approaching 0.10 BAC without a chemical test the statute violated due process of law. In rejecting this argument the Supreme Court of Florida held:

"Appellant alleges that the statute is vague and indefinite and so violative of due process in two ways. First, Appellant claims that consumers of alcoholic beverages are unable to determine how much alcohol they may consume before their alcohol blood level will make it unlawful for them to drive. An identical argument was made against a Utah statute, substantially similar to the challenged statute, in Greaves v. State, 528 P.2d 805 (Utah 1974). The Utah Supreme Court stated: 'We can see no reason why a person of ordinary intelligence would have any difficulty in understanding that if he has drunk anything containing alcohol, and particularly any substantial amount thereof, he should not attempt to drive or take control of a motor vehicle.' (Id. at 808.)

The above language is the view of this Court and accordingly we reject Appellant's first argument of 'vagueness.'

"Appellant's second 'vagueness' argument is meritorious but the statute's defect is easily cured. Appellant correctly points out that the statute fails to state whether the prohibited percentage of alcohol in the driver's bloodstream is by weight or by volume. We recognize the scientific difference. To determine the legislative intent we turn our attention to Section 322.262(2)(c), Florida Statutes Annotated, which provides as follows:

'If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired. Moreover, such person who has a blood alcohol level of 0.10 percent or above shall be guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood alcohol level.' (Emphasis supplied.)

"Because the above statute and the challenged statute are in pari materia we construe them together and hold that the legislative intent is that the standard of weight be applied in the enforcement of the challenged statute.

"Section 316.028(3), Florida Statutes Annotated, withstands each of Appellant's constitutional attacks." ⁸

In summary, based on these two decisions, "per se" provisions are not vague and indefinite.

Equal Protection. In the Watts⁹ case the defendant contended that the substantial disparity in punishment between the offense of "under the influence" and the offense of "per se" drinking-driving laws was arbitrary and unreasonable and thus it violated equal protection. The Supreme Court of Missouri concluded:

"Although appellant states his point in constitutional terms, he offers no authority based upon constitutional principles and his ultimate conclusion, not stated in his point, is that the enactment of Section 564.439 repealed, by implication, Section 564.440. He contends that both sections prohibit the same conduct and that the punishment and consequences of conviction under Section 564.440 are so unreasonably different from those under Section 564.439 that the sections are 'irreconcilably repugnant,' and that the later enactment (Sec. 564.439) had the effect of repealing the earlier (Sec. 564.440).

"As appellant acknowledges, a conviction under Sec. 564.440 could occur although a blood alcohol test showed the defendant to have had between 0.05% and 0.09% blood alcohol (Sec. 564.442, subd. 1 (2)) or even in the absence of a blood alcohol test result. Thus,

the basic premise of appellant's argument on this score fails because Section 564.439 and Section 564.440 do not necessarily deal with the same conduct."¹⁰

Based on the Watts case the later enactment of a "per se" provision does not repeal the "under the influence" provision since they have different elements. No other decisions on equal protection were found but that constitutional clause has been interpreted to prohibit unequal treatment of persons within the same group or class. However, the legislature has the power to group or classify drivers as long as the classification is based on reasonable grounds. It is not likely that the administrative per se law could be successfully challenged on equal protection grounds.

Procedural Due Process. In Bell v. Burson¹¹ the U.S. Supreme Court held that deprivation of the continued possession of a driver's license was subject to the due process clause of the 14th Amendment of the U.S. Constitution. The Court said:

"While '(m)any controversies have raged about . . . the Due Process Clause,' . . . it is fundamental that except in emergency situations (and this is not one) (financial responsibility law) due process requires that when a State seeks to terminate an interest such as that here involved (driver's license) it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." (Italics by the Court.)

Thus it is clear that due process requires notice and opportunity for a hearing appropriate to the nature of the case before the termination of the driver's license becomes effective. It appears there are instances in which the hearing may come after the action against the license, but that issue is not present under the Minnesota implied consent law. The Minnesota law provides for:

1. A hearing on the issues in a municipal or county court and a finding adverse to the driver is required before the Commissioner of Public Safety can revoke the license. (Sec. 169.123(5) and (6).)

2. The notice of opportunity for a hearing is served personally on the driver at the time he refuses or the test results are 0.10 or more. Sec. 169.123(5a). See form used in Appendix III, "Notice of Revocation."
3. There is a right of appeal to the District Court from the hearing before the municipal or county court. (Sec. 169.123(7).)

It appears quite clear that the Minnesota implied consent law procedures fully comply with the requirements of the U.S. Supreme Court in Bell v. Burson.¹²

In 1979, which is after the present implied law was enacted, the Supreme Court of Minnesota concluded in the Wishle¹³ decision that: "The present implied consent law satisfies all constitutional requirements."

Collateral Impact - Administrative Versus Criminal. Under the Minnesota statutes it is a criminal offense to drive, etc., with an alcohol concentration of 0.10 or more. In a parallel track the implied consent law provides for a revocation of the driver's license if the driver submits to a chemical test for intoxication and the results are an alcohol concentration of 0.10 or more. The question arises: if this "issue" of 0.10 or more has been litigated in the criminal trial, what impact does this have under the administrative proceeding and vice versa?

This issue could be raised by double jeopardy, res judicata, collateral estoppel, or collateral attack.

"Double jeopardy" is a constitutional right which prohibits a person from being tried twice for the same crime. The great weight of authority holds this doctrine is not applicable between a criminal conviction and a suspension or revocation of a driver's license growing out of the same event.¹⁴

"Res judicata" is a rule that a final judgment or decree on the merits is

conclusive of the rights of the parties in later suits on the points and matters determined in the former suit. It is normally applied to civil proceedings but has been applied in criminal cases. Here again the great weight of authority is that res judicata does not prevent the suspension or revocation of a driver's license growing out of the same event.¹⁵

"Collateral attack" is an attempt to avoid, defeat, or evade another judicial proceeding in an incidental proceeding. An exception is the right to appeal to a higher court in the same case. Here again the great weight of judicial authority is against collateral attack.¹⁶

"Collateral estoppel" is defined as once a court has litigated and decided an "issue" involving a party the same issue cannot be relitigated in a different case. The U.S. Supreme Court incorporated this doctrine into criminal cases in Ashe v. Swenson.¹⁷ More recently the Court applied collateral estoppel to a case where the defendant was charged with possession of heroin and intent to kill. At his pretrial suppression hearing he attempted to suppress the evidence seized in a search of his house. The trial court ruled the search was legal and allowed the evidence to be admitted at the trial. He was convicted. Later he filed a civil rights action in Federal court against the officers who made the search alleging his 4th Amendment rights had been violated. The trial court held that collateral estoppel prevented him from relitigating the search and seizure question because that issue had already been decided against him in the prior criminal case. In upholding the trial court's ruling the U.S. Supreme Court said:

"The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Cromwell v. County of Sac., 94 U.S. 351, 352, 24 L.Ed 195. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may

preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. . . . As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.

"In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law. Thus, the Court has eliminated the requirement of mutuality in applying collateral estoppel to bar relitigation of issues decided earlier in federal court suits, Blonder-Tongue Laboratories, Inc. v. University of Illinois, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788, and has allowed a litigant who was not a party to a federal case to use collateral estoppel 'offensively' in a new federal suit against the party who lost on the decided issue in the first case, Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552. But one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case."¹⁸

A Texas U.S. District Court has stated:

"It is well-settled in federal law that the doctrine of collateral estoppel is 'as applicable to decisions of criminal courts as to those of civil jurisdiction.' . . . Thus, a criminal conviction can work an offensive estoppel in a subsequent civil proceeding if the issues for which estoppel is sought were put in issue and directly determined in the prior criminal proceeding."¹⁹

In regards to collateral estoppel there are three requirements:

"The doctrine of collateral estoppel requires (1) that the issue in question be identical to an issue actually litigated in the prior litigation; (2) that the prior litigation have resulted in a final judgment on the merits; and (3) that the party against whom the estoppel is asserted was a party or in privity with a party to the prior adjudication."²⁰

Nonetheless there is no judicial requirement that res judicata and collateral estoppel must apply in all situations. As regards an administrative determination, the U.S. Supreme Court has held that:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose."²¹

This holding was cited in a U.S. Court of Appeals case that ultimately disallowed a claim of res judicata as argued by a corporation charged with OSHA violations:

"Finally, we note that even where the technical requirements of res judicata have been established, a court may nonetheless refuse to apply the doctrine. This court does not adhere to a rigid view of the doctrine in the administrative context:

'The sound view is therefore to use the doctrine of res judicata when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in its favor.'

Bowen v. United States, 570 F.2d 1311, 1321 (7th Cir. 1978) quoting 2 K. Davis, Administrative Law Treatise 548 (1958). Res judicata must yield on occasion to competing public policies." 22

A case from the Washington Supreme Court discusses the issues as applied either way—Criminal trial determination's impact on administrative hearing and Administrative hearing determination applied to a criminal trial. The case involved a parolee who was successful in defending against his parole revocation for a narcotics violation at an administrative hearing immediately prior to his criminal trial on the narcotic charge. He attempted to use the "not guilty" finding of the administrative hearing to preclude relitigation of the issue at his criminal trial. The pertinent language from the court is as follows:

"If a Washington state parolee is acquitted in a criminal trial, that acquittal does not bar the state from conducting a parole revocation hearing based upon the same incident. Standlee v. Smith, 83 Wash.2d 405, 518 P.2d 721 (1974). See also Standlee v. Rhay, 403 F.Supp. 1247 (E.D.Wash.-1975), rev'd 557 F.2d 1303 (9th Cir.-1977).

"The Standlee court relied upon 'the rule that a difference in the degree of the burden of proof in the two proceedings precludes application of collateral estoppel.' Standlee v. Smith, supra, 833 Wash.2d at 407, 518 P.2d at 722. The 'beyond a reasonable doubt' standard applies in a criminal case, while a parole revocation hearing is governed by the less exacting 'preponderance of the evidence' standard. Thus, a parolee defendant might be acquitted in a criminal prosecution because the state was unable to meet the burden of proof 'beyond a reasonable doubt', yet the same evidence could, under the lesser standard of proof, support parole revocation. (This is the general rule and it is certainly applicable to DWI/Implied Consent statutes, see Asbridge v. North Dakota State Highway Commission, 291 N.W.2d 739 (N.D.-1980); Marquardt v. Webb, 545 P.2d 769 (Okla.-1976).) . . .

"Collateral estoppel, perhaps more descriptively denoted as issue preclusion, and res judicata are doctrines having a common goal of judicial finality. The principles underlying both doctrines are to prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy.

"Of the two doctrines, res judicata is the more comprehensive because it relates to a prior judgment arising out of the same cause of action between the parties. Collateral estoppel is less encompassing, barring relitigation of a particular issue or determinate fact. Both doctrines require a large measure of identity as to parties.

"As to identity of parties, mutuality of parties is not a limiting ingredient of the collateral estoppel rule imposed by the Fifth and Fourteenth Amendments. It is sufficient that the party against whom the plea of collateral estoppel is asserted was a party or in privity with a party in the prior litigation.

"Here, the prosecutor asserts that the State was not a party at the parole revocation hearing because 'the state' for purposes of parole revocation is not 'the state' for purposes of criminal prosecutions. We find this contention to be without merit. Although the prosecutor was not a participant in the revocation proceeding, an assistant attorney general was. The same sovereign is involved in both instances."

The court then went on to consider whether an administrative determination could be applied to preclude a criminal trial. The court stated:

"Decisions of administrative agencies may be accorded preclusive effect in subsequent litigation. . . . The applicability of collateral estoppel in each case is dependent upon a number of factors, including (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations. . . .

"Policy arguments have been often the deciding factor when collateral estoppel is based upon prior administrative determination. 2 K. Davis, Administrative Law Treatise, Sec. 18.04 (1958 and Supp. 1970). The doctrine may be qualified or rejected when its application would contravene public policy. . . .

"We believe public policy dictates rejection of collateral estoppel in this instance. Parole revocation is not part of a new criminal prosecution. . . .

"Practical public policy requires that new criminal matters, when charged in the criminal justice system, must be permitted to be there decided, unhampered by any parallel proceedings of the Board of Prison Terms and Paroles. Consequently we hold that the board's parole revocation hearing decision regarding Dupard may not be interposed as a basis for collateral estoppel in his prosecution on new criminal charges. 13

Since public policy considerations are an exception to the application of collateral estoppel, it is important to note that the U.S. Supreme Court has held in a number of cases that highway safety is a compelling public interest. For example in the Mackey case the Court said:

"We have traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety. States surely have at least as much interest in removing drunken drivers from their highways as in summarily seizing mislabeled drugs or destroying spoiled foodstuffs."²⁴

In Minnesota, the Supreme Court has held that acquittal of the criminal charge of DWI does not, as a matter of law, dispose of corollary charges under the implied consent law. Furthermore, administrative and criminal proceedings growing out of a DWI case are related only insofar as they generally grow out of the same set of facts. Even though the state is the "party" in both instances, at a criminal trial, the "state" is represented by the county attorney, who is not free to plea bargain away state civil penalties. The civil penalties, i.e., via administrative process, is solely within the jurisdiction of the state's Attorney General and therefore the state could not be estopped from applying a civil sanction even though the county attorney included a "no loss of license" in his plea bargain.²⁵

Other issues concerning res judicata, collateral estoppel and collateral attack are:

1. Res judicata is applicable in successive administrative proceedings.²⁶
2. A collateral attack on the underlying criminal conviction is generally not permitted at an administrative hearing.²⁷
3. As applied to Minnesota, res judicata does apply in administrative hearing and the Supreme Court has admonished state agencies to comply with pertinent statutes and regulations.

"Nevertheless, it should be noted that the practice of the commission in this case is not one to be commended. It appears that, in essence, the commission attempted largely to avoid the difficult legal question here encountered by simply substituting a different set of factual findings for those made in 1963 and 1965. We are in sympathy with relator's assertions that such action was prima facie violative of principles of res judicata--principles which, in spirit at least, apply to adjudications by administrative agencies as well as to those made by the courts. . . . Because of

the breadth of power which has been delegated to administrative agencies such as the one here involved, it is necessary in the interests of consistency and fairness that such power be exercised only in the manner prescribed by statute and published regulation. Our legislature has set forth specific procedures to be followed relative to providing for notice and hearing for the reopening of compensation awards by the commission."²⁸

In conclusion, the great weight of judicial authority continues to hold that a suspension or revocation of a driver's license is not barred by collateral estoppel or res judicata. This was summarized by the annotator in 96 ALR2d 612, 614 as follows:

"It is generally recognized that state legislatures may, in the exercise of their police powers, enact reasonable regulations for the obtaining of drivers' or operators' licenses and for the revocation or suspension thereof under stated circumstances. However, where those circumstances which were the basis of the revocation or suspension were also the basis of charges in a previous criminal case, it might seem to the layman driver that the state has been allowed to try him twice for the same offense, and his notions of fair play might be injured all the more where the previous criminal prosecution resulted in a determination that he was 'not guilty.' Notwithstanding the notions of fair play entertained by laymen, however, what little authority there is on the subject holds that the later proceeding to revoke or suspend his license, since not intended as a punishment of the driver but designed solely for the protection of the public in the use of the highways, does not in the legal sense subject him to double jeopardy or punishment, nor is a judgment of acquittal in the previous criminal case res judicata on the issue of guilt or innocence in the later proceeding, for, as stated by one court, such judgment does not have any probative value in the subsequent proceeding beyond the mere fact of its rendition, the reason for this being found in the nature of the criminal proceedings and the type of proof required therein, for in a criminal proceeding the guilt of the accused must be established beyond a reasonable doubt, whereas in a civil proceeding to revoke a license it is sufficient if the offense is established by a preponderance of the evidence.

"It should be noted that the result reached in the case of a revocation or suspension of a driver's license is fully in accord with the general rule relating to the effect on administrative proceedings of an acquittal or conviction in criminal proceedings."²⁹

Double Punishment. Under the Minnesota law there is a dual track. Under Sec. 169.121 it is a criminal offense for a person to drive, etc., with an alcohol concentration of 0.10 or more. Under the implied consent law a

person can have his driver's license revoked for driving, etc., with an alcohol concentration of 0.10 or more. This second track has been referred to as "administrative per se."

What if a driver is punished with criminal penalties under the first statute and also suffers a revocation of his driver's license under the second law? Does this violate the constitutional prohibitions of double jeopardy and double punishment?

The U.S. Supreme Court has made it clear that the double jeopardy clause of the U.S. Constitution bars double punishment. The Court held in the Pearce³⁰ case that: "The Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it."

However, a review of the appellate court decisions indicates there would not be double punishment where one sanction is criminal and the other civil or administrative in nature.³¹ For example, in Barnes v. Tofany³² the defendant was convicted for driving while ability impaired for which he received a mandatory suspension of his driver's license. In addition, acting under a separate statute, the Commissioner of Motor Vehicles, then suspended his driver's license, following an administrative determination that the defendant was grossly negligent. Both suspensions arose out of the same event. The defendant appealed his second suspension on the grounds that this violated his constitutional rights of not being placed in double jeopardy and of double punishment. In upholding both suspensions the New York Court of Appeals said:

"The constitutional prohibitions against double jeopardy and double punishment do not prevent the Legislature from enacting and the executive from enforcing, civil as well as criminal sanctions for the same conduct. . . . Therefore, the question before us is really whether the sanction imposed (suspension of an operator's license) is essentially criminal or civil in nature.

"As the Supreme Court noted in *Helvering v. Mitchell* (303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917), 'Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted.' It is apparent that suspension or revocation of the privilege of operating a motor vehicle is essentially civil in nature, having as its aims chastening of the errant motorist, and, more importantly, the protection of the public from such a dangerous individual." * * *

"Each of these proceedings—one, a civil administrative proceeding, and the other, a criminal action—are separate and independent of each other. The outcome of one proceeding is of no consequence in the other. There is no constitutional or statutory prohibition to make the Commissioner's implementation of the statute illegal or unlawful. Since the statute imposed upon the Commissioner a mandatory duty to suspend petitioner's license after conviction, there was no exercise of discretion to be reviewed by the courts below as to the second suspension."³³

The Supreme Court of Minnesota in the Mulvihill case in 1975 also emphasized this distinction between criminal and civil nature of the two tracks. The court said:

"We feel it important to again emphasize the essential differences between license revocation under Sec. 169.121, subd. 3, and license revocation under Sec. 169.123, subd. 4. The former is automatically imposed as a criminal penalty upon conviction of a Sec. 169.121 violation. It is triggered by the outcome of the criminal proceeding and is imposed through the judicial system. Revocation under this section is for not less than 30 days. On the other hand, revocation under the implied-consent law is essentially civil in nature. *State, Department of Public Safety v. House*, 291 Minn. 424, 425, 192 N.W.2d 93, 94 (1971). It is imposed administratively by the commissioner of public safety regardless of the outcome of the criminal proceeding arising out of the same incident and is triggered by the refusal to submit to chemical testing."³⁴

A related issue is where the criminal charges are dismissed or the defendant is acquitted: Can the motor vehicle department revoke under the implied consent law? This issue was addressed by the Supreme Court of Minnesota in the Styrbicki³⁵ and Olsen³⁶ decisions.

In Styrbicki the defendant was found not guilty by a jury on the charge of driving under the influence of alcohol. However, the defendant had refused the chemical test when arrested and on this ground the motor vehicle department moved

to revoke his license. He argued on appeal to the Minnesota Supreme Court that because he was acquitted of the criminal charge, it followed that the arrest was therefore unlawful and thus the officer did not have the required "reasonable and probable grounds" for the implied consent law to revoke his license.

The court rejected this argument and held that the acquittal did not invalidate the arrest. In doing so the court concluded:

"Other courts have also held that the fact that a person may have been acquitted of the offense of driving while intoxicated does not preclude an administrative hearing to determine if his driving privileges should be withdrawn for his refusal to submit to a chemical test to determine the alcoholic content of his blood."³⁷

In the Olsen³⁸ case the Supreme Court of Minnesota held that where the driving under the influence charge was dismissed when the defendant pled guilty to the reduction of the charge to careless driving it was not a bar to a revocation of his driver's license for a refusal of the chemical test.

Guilty Plea. There is no provision in the Minnesota implied consent statute which ties a conviction of a drinking-driving offense to the refusal. However, the Supreme Court of Minnesota in the Schlieff³⁹ case held that a driver who pleads guilty to the criminal DWI charge cannot be subjected to a revocation of his driver's license for refusing the chemical test. The court stated that it would serve no useful purpose and would be unreasonable.

In a later decision in the Mulvihill⁴⁰ case the court laid down the guidelines for the Schlieff doctrine. The court held:

"In order for a defendant to establish reasonable grounds for refusing to submit to chemical testing as otherwise required by statute and avail himself of the doctrine in the Schlieff decision, he must do the following: (1) At the time of the refusal, he must intend to plead guilty to a charge of violating Minn.St. 169.121, subd. 1; (2) he must enter a plea of guilty to a charge which subjects him to automatic revocation under Sec. 169.121, subd. 3; and (3) he must plead guilty at the first available opportunity."

The effect of this approach is to put a lever on the defendant who has refused the test. It encourages him to plead guilty because if he does, there is no revocation for refusing the chemical test. Of course, he receives a revocation on the conviction but if he pleads "not" guilty and is convicted he could receive two revocations—one for the conviction and one for the implied consent refusal.⁴¹

Thus the Schlieff-Mulvihill doctrine has a tendency to chill "not" guilty pleas. Such a practice has been held unconstitutional by the U.S. Supreme Court in United States v. Jackson⁴² where the court held that due process forbids convicting a defendant on the basis of a coerced guilty plea.

Arizona had a statutory provision which was similar in effect to the Schlieff-Mulvihill doctrine. In holding the statute unconstitutional the U.S. District Court said:

"The effect of subparagraph H. is to needlessly chill the exercise of basic constitutional rights. See United States v. Jackson, supra. The operation of subparagraph H. obviously places the individual charged in a dilemma as to whether to stand on his rights, and thereby lose his driving privileges, or to enter a plea of guilty, without appeal, and thus retain his driving privileges. Thus, subparagraph H. of the statute imposes an impermissible burden upon the exercise of the accused's Fifth Amendment right not to plead guilty, and his Sixth Amendment right to demand a jury trial, and is, therefore, unconstitutional. See United States v. Jackson, supra, and Pope v. United States, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317. Moreover, the obvious difference in treatment of the accused under the Arizona statute, which subparagraph H. includes therein, constitutes a violation of the equal protection clause of the Fourteenth Amendment."⁴³

Since the Schlieff-Mulvihill approach is not the rule around the country, it would not normally pose a problem in other states which adopted the Minnesota implied consent law since this doctrine is in the case law and not the statute.

FOOTNOTES - Part II.

1. Minnesota Laws 1976, Chapter 341, effective July 1, 1976, and codified as Sec. 169.127. However in 1978 this law was repealed and re-enacted as Sec. 169.123 by Minnesota Laws 1978, Chapter 727, effective September 1, 1978, retaining its substantive aspects.
2. Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).
3. The Supreme Court of Minnesota held that where a driver was under arrest for DWI while being transported went into convulsions and was rushed to the hospital unconscious, a blood test could be taken and if the results were 0.10 or over, his license could be revoked under the "administrative per se" law even though no warnings had been given and the driver did not consent. This conclusion was reached on the grounds that the taking of the blood sample was constitutional because there was "an exigency to preserve evidence, probable cause to support formal arrest, and a highly unobtrusive search," citing State v. Oevering, 268 N.W.2d 68 (Minn.-1978). Also, the court concluded that there was no prohibition in the Minnesota implied consent law which precluded the taking of the blood sample. Since the driver's condition precluded him from refusing the test, his consent remained continuous. This continuing consent permitted use of the results of the test in an implied consent proceeding. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979). See also: State v. Hauge, 286 N.W.2d 727 (Minn.-1979), holding to same effect.
4. State v. Oevering, 268 N.W.2d 68 (Minn.-1978); State v. Dewey, 272 N.W.2d 355 (Minn.-1978); State v. Hauge, 286 N.W.2d 727 (Minn.-1979); State v. Wiehle, 287 N.W.2d 416 (Minn.-1979); State v. Hart, 289 N.W.2d 478 (Minn.-1979); State v. Aguirre, 295 N.W.2d 79 (Minn.-1980).
5. Alabama, Alaska, California, Delaware, Florida, Illinois, Iowa, Maine, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, South Dakota, Utah, Vermont, New Hampshire, Washington, and Wisconsin.
6. State v. Basinger, 30 N.C.App. 45, 226 S.E.2d 216, 218 (1976).
7. Cox v. State, 281 A.2d 606, 607 (Del.-1971).
8. Roberts v. State, 329 So.2d 296, 297 (Fla.-1976); Greaves v. State, 528 P.2d 805 (Utah-1974).
9. State v. Watts, 601 S.W.2d 617 (Mo.-1980).
10. 601 S.W.2d at 619.
11. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 1591 (1971).
12. See n. 11.
13. State v. Wiehle, 287 N.W.2d 416 (Minn.-1979).

14. 96 ALR2d 612, "Conviction or Acquittal in Previous Criminal Case as Bar to Revocation or Suspension of Driver's License on Same Factual Charges." See also Later Case Service with more decisions to same effect.
15. 96 ALR2d, supra, n. 14.
16. 96 ALR2d 612, supra, n. 14.
17. Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970).
18. Allen v. McCurry, U.S. , 101 S.Ct. 411, 414-415 (1980).
19. Vela v. Alvarez, 507 F.Supp. 887, 889 (D.C.-Tex.-1981).
20. Lomax v. Smith, 501 F.Supp. 119, 122 (D.C.-Pa.-1980).
21. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422, 86 S.Ct. 1545, 1560, 16 L.Ed.2d 642 (1966).
22. International Harvester Co. v. Occupational Safety and Health Review Commission, 628 F.2d 982, 986 (C.A.7th-Ill.-1980).
23. State v. Dupard, 609 P.2d 961, 962-65 (Wash.-1980).
24. Mackey v. Montrym, 443 U.S. 1, 99 S.Ct. 2612, 2621 (1979). See also statements to same effect in Dixon v. Love, 431 U.S. 105 97 S.Ct. 1723, 52 L.Ed.2d 172 (1977).
25. State, Department of Public Safety v. House, 192 N.W.2d 93 (Minn.-1971).
26. Doherty v. Cuomo, 430 N.Y.S.2d 168 (N.Y.App.-1980).
27. Commonwealth, Dept. of Transportation, 419 A.2d 233 (Pa.Cmwlth.-1980); Kuhn v. State ex rel. Van Natta, 404 N.E.2d 1360 (Ind.App.-1980).
28. Souden v. Hopkins Motor Sales, Inc., 182 N.W.2d 668, 672-73 (Minn.-1971).
29. 96 ALR2d 612, 614, supra, n. 14.
30. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 2077 (1969).
31. In Wells v. Roberts, 280 S.E.2d 266 (W.Va.-1981), the court noted: "Most courts that have considered similar claims, have consistently held that administrative revocation or suspension of an operator's license is not subject to a double jeopardy challenge. See, e.g., Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971); Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980); Williams v. State, 138 Ga.App. 662, 226 S.E.2d 816 (1976); Hardin v. Van Natta, 376 N.E.2d 518 (Ind.App.-1978); State v. Edwards, 353 So.2d 476 (La.App.-1977); State v. Sinner, 207 N.W.2d 495 (N.D.-1973); Commonwealth v. Levy, 194 Pa. Super. 390, 169 A.2d 596 (1961); Robinson v. Texas Dept. of Public Safety, 586 S.W.2d 604 (Tex.Civ.App. 1979); State v. Scheffel, 82 Wash.2d 872, 514 P.2d 1052 (1973).
See also: 88 ALR2d 1064, 1076, "Suspension or Revocation of Driver's License for Refusal to Take Sobriety Test," citing cases holding

that acquittal of the charge does not bar suspension or revocation of driver's license for refusal of the chemical test.

32. Barnes v. Tofany, 27 N.Y.2d 74, 261 N.E.2d 617 (1970).
33. 261 N.E.2d at 619.
34. State v. Mulvihill, 227 N.W.2d 813, 817 (Minn.-1975).
35. State v. Styrbicki, 169 N.W.2d 225 (Minn.-1969).
36. State v. Olsen, 169 N.W.2d 227 (Minn.-1969).
37. 169 N.W.2d at 227.
38. See n. 36, supra.
39. State v. Schlieff, 185 N.W.2d 274 (Minn.-1971).
40. State v. Mulvihill, 227 N.W.2d 813, 817 (Minn.-1975).
41. Sec. 169.121(3) prohibits a revocation under the implied consent law if the driver has been revoked for a conviction under the criminal statute for DWI. The provision reads as follows: Any person whose license has been revoked pursuant to Section 169.123 (implied consent) is not subject to the mandatory revocation provision of this section." However, officials in Minnesota report if the timing is such that the defendant receives a revocation for a conviction and some time later because of delays, etc., there can be a later revocation under the implied consent law.
42. United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 1216 (1968).
43. Voyles v. Thorneycroft, 398 F.Supp. 706, 707 (D.C.-Ariz.-1975).

PART III

STUDY OF OPERATIONAL IMPACT

In addition to studying the legal and constitutional questions relating to the Minnesota "administrative per se" implied consent law, the questions of—is the law working and how well—are addressed.

There were two principal sources for the responses to the following questions: (1) interviews with a number of state officials in Minnesota who are involved in running the programs under the implied consent law; and (2) statistics from their offices.

The questions to be answered were:

1. "Ascertain to what extent offenders charged with DUI are cited under Minnesota Section 169.123, as opposed to Minnesota Section 169.121, wherein an implied consent BAC test has been administered."

The total number of "arrests" for DWI reported to the Minnesota Criminal Justice Information System in 1980 was 22,788. Also, in 1980 the number of "certificates" from law enforcement officers to the Department of Public Safety that a driver had either refused a chemical test or had submitted and the results were 0.10 alcohol concentration or more totaled 28,429. From the data available it is not possible to determine the number of chemical tests administered in the 22,788 arrests. Under Minnesota law the officer can arrest for DWI without administering any chemical tests.

It is possible for the officer to file a "certificate" of refusal for 0.10 or more with the Department of Public Safety without filing any criminal charges for DWI. Also, there are cases where the driver submitted to the chemical test and the results were less than 0.10 alcohol concentration and thus no

certificate would be sent to the Department of Public Safety yet criminal charges could have been filed. Hence there are several reasons for the number of arrests and number of revocations to differ.

In some of the interviews with Minnesota officials it was reported that the "administrative per se" or implied consent law was popular with law enforcement officers. The number of revocations over arrests appears to support this view.

For further comparison of arrests and certificates see Tables I and IV in Appendix II. Also see Memorandum of Mr. Forst Lowery in Appendix IV explaining differences in the data.

2. "Determine, if possible, to what extent law enforcement officers are using the Subd. 4 provision by submitting to the Commissioner of Public Safety BAC test results of 0.10 percent or more."

The laboratory of the Bureau of Criminal Apprehension in Minnesota performs most of the blood and urine tests in DWI cases, except for St. Paul, Minneapolis, and a few other cities, and receives reports on all the breath tests performed in the state. In 1979 these tests totaled 15,254 where the results were 0.10 or more. In the same year the number of revocations under the implied consent "administrative per se" law was reported as 6,742. On the face of this it would appear that officers were using the law (Subd. 4 of Sec. 169.123) only about half the time.

However, there are some factors which should be noted. The Supreme Court of Minnesota has held that if a driver pleads guilty at the first opportunity to the DWI charge, then his license cannot be revoked under the implied consent law. See the discussion in Part II above of the Schlieff-Mulvihill cases under the heading of "Guilty Plea." There is no data available to indicate how much this decreases the number of implied consent revocations.

Another factor impacting on the number of revocations under the implied consent law is that a number of drivers request a hearing. (See Table IX in Appendix II.) As will be noted this number has substantially increased in recent years. Needless to say, when it goes to a hearing the Attorney General does not win them all and this reduces somewhat the number of revocations.

Interviews with Minnesota officials indicate that in their view officers are using this law most of the time. When the factors just discussed are taken into consideration, it would appear that the views of the officials interviewed are supported by the data.

3. "Determine what use is being made by the Motor Vehicle Department of the BAC test results as authorized under Subd. 4. What, if any, are the constitutional, legal and practical problems - how well is it working."

The "certificate" from the officer, that a driver has either refused a chemical test or the results of the test were 0.10 or more, to the Department of Public Safety triggers the action under the implied consent law. The officials interviewed, both in and out of the division in DPS which handles these certificates, reported that the system was working well.

One factor which makes the system work more effectively is that at the time of the refusal or when a breath test is taken and the results are known at the time, the officer serves a "Notice of Revocation" on the driver and picks up the driver's license which is attached to the certificate forwarded to DPS. (See Form in Appendix III.) If it goes to a hearing and the license is not already in the possession of DPS, and the hearing is adverse to the driver, the court picks up the license and sends it to the DPS along with the court's decision. This greatly reduces the administrative problem of notifying the driver of his opportunity for a hearing (which formerly was done by certified mail in all cases) and obtaining possession of the license from the driver.

For the drivers who do not request a hearing, it was reported that there was no significant backlog. However, as will be noted in Table IX in Appendix II, the number of pending cases under the implied consent law is steadily growing. This is due in part to the lack of adequate staff in the Attorney General's Office to handle these cases and at the same time the increase in the number of DWI arrests being made on the street.

4. "Determine to what extent driver license revocation actions are taken pursuant to Subd. 1 (BAC test results of 0.10 percent or higher) under the following situations:
 - 1) the DUI charge is nolle prossed
 - 2) the DUI case is continued
 - 3) the DUI charge is plea bargained down to a lesser offense
 - 4) the DUI case results in an acquittal."

From the data available in Minnesota, it is very difficult to determine the precise impact the "administrative per se" implied consent law has had on the four areas listed above. In fact, no data was found to determine exactly how many DWI cases were nolle prossed, continued, plea bargained or acquitted on a state wide basis.

However, a general answer can be given by looking at the number of total alcohol-related revocations in Table I (Appendix II). The "administrative per se" law became effective on July 1, 1976. If a comparison is made for 1975 (17,628 revocations) which would be DWI convictions and refusals and 1979 DWI convictions and refusals (18,224 revocations) the impact of revoking under the "administrative per se" law was not negative. It appears the DWI case load has continued to increase since the convictions resulting in revocations has increased. In 1980 there was a significant increase—from 14,797 in 1979 to 17,406 in 1980. It can be concluded that the enactment of the "administrative per se" implied consent law did not decrease the DWI cases in court.

5. "Based on available data, determine the impact the enactment of Minnesota Section 169.123 (Subd. 4) has had on the number of implied consent refusals."

Prior to 1978 the Department of Public Safety did not keep data on the number of revocations for refusal separate from revocations for convictions or for having an alcohol concentration of 0.10 or more. However, the number of revocations for refusals in 1978 was 3,344, in 1979 it was 3,427, and in 1980 it was 3,863. Since this shows a steady increase, it can be concluded that the enactment of the "administrative per se" implied consent law which added revocations for having an alcohol concentration of 0.10 or more had no negative impact. Nor does it appear that this new law greatly increased refusals. (See Table I in Appendix II.)

6. "Determine the extent to which the Commissioner of Public Safety appears through prosecuting attorneys at driver license revocation hearings as provided for in Minnesota Section 169.123 (Subd. 6)."

In the Minnesota law it provides that: "The commissioner of public safety may appear (at the implied consent hearing) through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction." According to the Minnesota Attorney General's Office no agreements have been entered into with any local jurisdiction to represent the Department of Public Safety at any implied consent hearings.

As will be noted in Table IX in Appendix II the number of pending cases has been steadily growing and to deal with this backlog either the staff in the Attorney General's Office who handles these cases will have to be increased or agreements will have to be made with local prosecutors. The importance of keeping the function in the Attorney General's Office is that it removes any pressure on the local prosecutor concerning the disposition of both the criminal charges and the implied consent revocation proceedings. Also, keeping it

at the state level provides for uniform policies in handling the implied consent cases.

7. "Determine, to the extent practical, the impact of the administrative licensing action on the adjudication process (e.g., conviction rates, sanction involved)."

It is very difficult to determine conviction rates, types of sanctions imposed, and related aspects in DWI cases in the court system. However, one measure that is available is the number of revocations for DWI convictions. These have increased — 15,512 in 1978; 14,797 in 1979; 17,406 in 1980; and 7,861 in the first five months of 1981 (which if the level continues would be about 18,864 in 1981).

Based on the number of revocations for convictions the enactment of the "administrative per se" implied consent law had no negative impact on criminal charges under the DWI statute.

Since the two tracks are separate and the timing is not parallel, the officials interviewed in Minnesota reported they had not observed any impact on conviction rates, sanctions imposed, etc. If anything, tightening the net on drinking drivers has led to increased enforcement activity by law enforcement officers. See especially the 1980 and 1981 revocations in Table I, Appendix II.

8. "Determine, to the extent practical, the impact of the administrative licensing process on the rate of enforcement and support of police officers."

The number of sworn police officers in Minnesota has remained relatively stable in the past few years—going from 5,922 in 1977 to 6,107 in 1980—an increase of only 185 officers. (See Table V in Appendix II.) Such a small increase cannot account for the increase in total number of revocations for alcohol related offenses which went from 17,741 to 30,481 in the same period of time. (See Table I in Appendix II.)

Among the officials interviewed it was reported that the "administrative per se" implied consent law was popular among law enforcement officers. As is true in many jurisdictions the officers express frustration at the courts and their handling of DWI cases. It appears they view the administrative track as providing a method of doing something about the drinking driver regardless of what happens to the criminal charges in court.

PART IV

EXECUTIVE SUMMARY AND CONCLUSIONS

In 1976 the State of Minnesota adopted a rather unique implied consent law. That state already had the traditional implied consent law which provided for revocation of the driver's license if the driver refused to submit to a chemical test for intoxication. What was added was a provision that when the officer requested a chemical test for intoxication under the implied consent law, and the driver submitted, and the results were an alcohol concentration of 0.10 or more, the officer sent a report to the motor vehicle department (Department of Public Safety). Based on the report the DPS could revoke the driver's license for having 0.10 or more. Of course, there is a notice and opportunity for a hearing. However, if the results of the hearing are adverse to the driver, or if he waives his right to a hearing, then the DPS can revoke on the basis of either the refusal to submit or having 0.10 or more. It has been described as an "administrative per se" law.

At the same time, Minnesota has a criminal statute making it a crime to drive, etc., while under the influence of alcohol which is the traditional DWI charge. Also in recent years at least 20 states, including Minnesota, have enacted criminal statutes making it a crime to drive, etc., with an alcohol concentration of 0.10 or more. This charge has been described as an absolute or "illegal per se" law.

The uniqueness of the Minnesota law is the two tracks—one a criminal "per se" law and the other an administrative "per se" law. They are separate tracks with almost no connection between the two. About the only connection are some restrictions on revoking the driver's license for both but that

connection applies in only some circumstances. In the situation where the driver refuses the test and pleads guilty to the criminal charge at the first opportunity, the Minnesota Supreme Court has held his license cannot be revoked for the refusal.

Another situation is where the timing is such that a revocation takes place for the implied consent law and the driver is later convicted of the criminal charge, then the statute prohibits another revocation unless the driver has had a prior revocation within three years. Then the prohibition does not apply.

If the timing is the opposite—the driver is convicted of the criminal charge first and the implied consent revocation happens later, then the Minnesota statute does not bar two revocations.

This study has two principal objectives. First, to study the legal and constitutional aspects and second, to look at the operation of the law and determine whether or not it is working and its impact on other aspects of the system of control on drinking-drivers.

Legal Conclusions. Since a number of states, including Minnesota, have had appellate court challenges to the "illegal per se" law, this was one method of determining possible court challenges to the "administrative per se" law. One possible challenge is that the legislature was arbitrary and capricious when it chose the alcohol concentration of 0.10 or more as an element of the statute. This argument has been rejected by the appellate courts because of the numerous scientific studies which have shown that every person with an alcohol concentration of 0.10 or more is an unsafe driver. Consequently, the legislative determination is based on scientific research.

Another possible legal challenge is that the law is vague and indefinite because the driver cannot tell when he is approaching the 0.10 concentration without a chemical test for intoxication. At least two appellate courts have rejected this argument because any person of ordinary intelligence who has consumed an alcoholic beverage, and particularly a substantial amount, knows that he should not attempt to drive or take control of a vehicle.

A third possible legal challenge is based on due process of law. In the Bell v. Buson case the U.S. Supreme Court held that a driver's license was an "important interest" to which the due process clause of the 14th Amendment attached. Thus a driver is entitled to notice and opportunity to a hearing in most circumstances before any action can be taken against his license. The Minnesota implied consent law complies with these requirements and the Minnesota Supreme Court has upheld its constitutionality.

A fourth possible challenge is "double jeopardy" or "collateral estoppel." Since there is both a criminal charge of driving, etc., with an alcohol concentration of 0.10 or more as well as administrative action for 0.10 or more, do corrective sanctions against the driver under both laws constitute double jeopardy? The appellate court decisions almost unanimously hold there is no double jeopardy between criminal and administrative sanctions. Collateral estoppel means that once an "issue" has been litigated, that "issue" (in this case the issue of 0.10 or more) cannot be litigated again. Normally, collateral estoppel has not been applied by the courts between criminal and administrative proceedings.

In some cases a driver can receive a revocation for being convicted of the criminal charge and also receive a separate revocation (not running concurrently) under the implied consent law. Since double jeopardy also prohibits double punishment does this constitute a violation of double jeopardy? The

answer is no since the appellate courts have regularly held that double jeopardy does not bar both civil or administrative sanctions on one hand and criminal sanctions on the other arising out of the same event.

If another state should enact the Minnesota implied consent law, care should be taken not to add a provision which bars a revocation for refusal if the driver pleads guilty to the criminal charge. While this ruling is not in the Minnesota statute it was imposed by the Minnesota Supreme Court. It has been held unconstitutional in Arizona by the U.S. District Court because it has a tendency to "chill" the defendant's constitutional right to plead not guilty.

Many observers feel that the law should not impose two revocations—one for a conviction and one for the implied consent law. If any state adopts the Minnesota "administrative per se" law, this point should be addressed.

In summary it appears clear that the Minnesota implied consent law with its provisions on "administrative per se" as a parallel track to the criminal drinking-driving charges is legally sound and constitutional.

Operational Conclusions. Based on data from Minnesota, interviews with a number of state officials, and review of the appellate court decisions in Minnesota, it appears the "administrative per se" law is working quite well.

On the national level, Professor Robert F. Borkestein has estimated that police arrest only about 1 in 2,000 cases of drinking and driving. In Minnesota the Office of Traffic Safety estimates the figure is 1 in 300.

Because of the difficulty in collecting data on every aspect of the system, it is not possible to have precise figures. However, a reduction from about 1 in 2,000 to 1 in 300 is impressive even if only approximately correct.

A review of the number of revocations for alcohol related offenses, both criminal and implied consent in Table I (Appendix II), indicates the system is catching more drinking drivers each year and would tend to support, in part, the estimate of 1 in 300.

The addition of the "administrative per se" law appears to have had no negative impact on the operation of the criminal track for handling drinking drivers. In fact, the increase in the number of revocations for convictions in recent years appears to indicate it has had a "shot in the arm" effect upon the criminal system.

The officials interviewed reported that the "administrative per se" provisions are popular with law enforcement officers. Because of the typical frustration many officers have with the criminal handling of drinking drivers, the "administrative per se" law gives them an out for that frustration.

A factor which has helped make the system work is the notice of revocation and pick up of the driver's license at the time of refusal, or a breath test of 0.10 or more, along with the pick up at the time of the hearing if the decision is against the defendant and the license is not already in the hands of the Department of Public Safety. This greatly reduces the cost and gives personal service of the notice of an opportunity for a hearing which expedites the entire system.

It must be remembered that the so-called political and safety climate in Minnesota has been favorable to the enactment of new legislation in the area of drinking and driving. While the consumption of alcoholic beverages has steadily increased in Minnesota in recent years (see Table VIII in Appendix II) the efforts of the traffic safety community have been fairly well received. This is in contrast to other states where efforts to control the drunk driver have very rough sledding in the state legislatures and any new

legislation is strongly resisted. This factor needs to be kept in mind by any "transplant" of this type of law to another state.

As with any such system, the dedication, experience, and expertise of the officials and public employees operating the system are extremely important. In Minnesota the officials and employees appear to be well motivated and really make the system work.

However, the increasing case load is starting to cause problems and this is particularly a problem in the Office of the Attorney General. The file of pending cases waiting for a hearing under the implied consent law has grown significantly in recent years. It is clear a larger staff is needed for this function.

Overall the conclusion is that Minnesota does a good job in making the "administrative per se" system work and other states should be encouraged to consider adopting similar provisions.

APPENDIX I

TEXT OF RELEVANT MINNESOTA STATUTES

Source: Minnesota Statutes 1980, Embracing laws of a general and permanent nature and certain other laws in force or to be in force after the 1980 Session of the Legislature, Official Publication of the State of Minnesota.

169.121 MOTOR VEHICLE DRIVERS UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE.

Subdivision 1. It is a misdemeanor for any person to drive, operate or be in physical control of any motor vehicle within this state:

- (a) When the person is under the influence of alcohol;
- (b) When the person is under the influence of a controlled substance;
- (c) When the person is under the influence of a combination of any two or more of the elements named in clauses (a) and (b); or
- (d) When the person's alcohol concentration is 0.10 or more.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or is in physical control of any motor vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Subd. 2. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by a medical or chemical analysis thereof, if the test is taken voluntarily or pursuant to section 169.123.

For the purposes of this subdivision:

- (a) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;
- (b) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance.

Subd. 3. Every person convicted of a violation of this section or an ordinance in conformity therewith is punishable by imprisonment of not more than 90 days, or by a fine of not more than \$500, or both, and his driver's license shall be revoked for not less than 30 days, except that every person who is convicted of a violation of this section or an ordinance in conformity therewith, when the violation is found to be the proximate cause of great bodily harm as defined in section 609.02, subdivision 8, or death to another person, shall be punished by imprisonment for not more than 90 days, or by fine of not more

than \$500, or both, and his driver's license shall be revoked for not less than 90 days.

Any person whose license has been revoked pursuant to section 169.123 is not subject to the mandatory revocation provision of this subdivision.

Subd. 4. Every person who is convicted of a violation of this section or an ordinance in conformity therewith within three years of any previous such conviction shall be punished by imprisonment for not more than 90 days, or a fine of not more than \$500, or both, and his driver's license shall be revoked for not less than 90 days.

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4 on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Subd. 6. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless, in compliance with section 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

Subd. 7. On behalf of the commissioner of public safety a court shall serve notice of revocation on a person convicted of a violation of this section. The court shall take the license or permit of the driver, if any, or obtain a sworn affidavit stating that the license or permit cannot be produced, and send it to the commissioner with a record of the conviction and issue a temporary license effective only for the period during which an appeal from the conviction may be taken. No person who is without driving privileges at the time shall be issued a temporary license and any temporary license issued shall bear the same restrictions and limitations as the driver's license or permit for which it is exchanged.

The commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

History: 1957 c 297 s 1; 1961 c 454 s 9; 1967 c 283 s 1; 1967 c 569 s 1; 1969 c 744 s 1; 1971 c 244 s 1; 1971 c 893 s 1,2; Ex1971 c 27 s 6; 1973 c 421 s 1; 1973 c 494 s 8; 1975 c 370 s 1; 1976 c 298 s 2; 1976 c 341 s 1; 1978 c 727 s 2

169.122 OPEN BOTTLE LAW, PENALTY.

Subdivision 1. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subd. 2. No person shall have in his possession on his person while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 3. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or nonintoxicating malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subd. 4. Whoever violates the provisions of subdivisions 1 to 3 is guilty of a misdemeanor.

History: 1959 c 255 s 1-4

169.123 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. Peace officer defined. For purposes of this section and section 169.121, the term peace officer means a state highway patrol officer, university of Minnesota peace officer, a constable as defined in section 367.40, subdivision 3, or police officer of any municipality, including towns having powers under section 368.01, or county.

Subd. 2. Implied consent; conditions; election as to type of test. (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a chemical test of his blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity therewith; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision 6; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more. Any person may decline to take a direct blood test and elect to take either a breath or urine test, whichever is available and offered. No action may be taken against the person for declining to take a direct blood test unless either a breath or urine test was available and offered.

(b) At the time a chemical test specimen is requested, the person shall be informed:

(1) that if testing is refused, the person's right to drive will be revoked for a period of six months; and

(2) that if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a period of 90 days; and

(3) that the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test; and

(4) that after submitting to testing, the person has the right to have additional tests made by a person of his own choosing.

Subd. 2a. **Requirement of urine test.** Notwithstanding subdivision 2, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered.

Subd. 3. **Manner of making test; additional tests.** Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine specimen. The person tested has the right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test specimen on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the peace officer shall be made available to him. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a test at the request and direction of a peace officer shall be fully trained in the administration of the tests pursuant to standards promulgated by rule by the commissioner of public safety.

Subd. 4. **Refusal, consent to permit test; revocation of license.** If a person refuses to permit chemical testing, none shall be given, but the peace officer shall report the refusal to the commissioner of public safety and the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred. If a person submits to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the results of the test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred.

Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person refused to submit to chemical testing, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of six months. Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person submitted to chemical testing and the test results indicate an alcohol concentration of 0.10 or more, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of 90 days.

If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for the same period after the date of the alleged violation as provided herein for revocation, subject to review as hereinafter provided.

Subd. 5. **Notice of revocation or determination to deny; request for hearing.** No revocation under subdivision 4 is effective until the commissioner of public safety or a peace officer acting on his behalf notifies the person of the intention to revoke and of revocation and allows the person a 30 day period to request of the commissioner of public safety, in writing, a hearing as herein provided. If no request is filed within the 30 day period the order of revocation becomes effective. If a request for hearing is filed, a revocation is not effective until a final judicial determination resulting in a decision adverse to the person.

Subd. 5a. **Peace officer agent for notice of revocation.** On behalf of the commissioner of public safety a peace officer offering a chemical test or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration of 0.10 or more. The officer shall take the license or permit of the driver, if any, and issue a temporary license effective only for 30 days. The peace officer shall send the person's driver's license to the commissioner of public safety along with the certificate required by subdivision 4.

If the person requests a hearing within the 30 day period, the commissioner shall issue additional temporary licenses until the final determination of whether there shall be a revocation under this section.

Subd. 6. **Hearing.** A hearing under this section shall be before a municipal or county judge, in the county where the alleged offense occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings upon pre-trial motions in the criminal prosecution under section 169.121, if any. The hearing shall be recorded. The commissioner of public safety may appear through his own attorney or, by agreement with the jurisdiction involved, through the prosecuting authority for that jurisdiction.

The scope of the hearing shall cover the issues of: (1) whether the peace officer had reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance, and whether the person was lawfully placed under arrest for violation of section 169.121, or the person was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or the person refused to take a screening test provided for by section 169.121, subdivision 6, or the screening test was administered and recorded an alcohol concentration of 0.10 or more; and (2) whether at the time of the request for the test the peace officer informed the person of his rights and the consequences of taking or refusing the test as required by subdivision 2; and (3) either (a) whether the person refused to permit the test, or (b) whether a test was taken and the test results indicated an alcohol concentration of 0.10 or more, and whether the testing method used was valid and reliable, and whether the test results were accurately evaluated.

It shall be an affirmative defense for the person to prove that his refusal to permit the test was based upon reasonable grounds.

The court shall order either that the revocation be rescinded or sustained and forward the order to the commissioner of public safety. If the revocation is sustained, the court shall also forward the person's driver's license to the commissioner of public safety for his further action if the license is not already in the commissioner's possession.

Subd. 7. **Review by district court.** If the revocation or denial is sustained, the person whose license or permit to drive, or nonresident operating privilege has been revoked or denied, may within 20 days after notice of the determination by the commissioner of public safety file a petition for a hearing of the

matter in the district court in the county where the hearing pursuant to subdivision 5 was held unless there is agreement that the hearing may be held in some other county. The petition shall be filed with the clerk of the court together with proof of service of a copy thereof on the commissioner of public safety. It is the duty of the court to set the matter for hearing on a day certain with reasonable notice thereof to the parties. The hearing shall be on the record and shall be conducted in the same manner provided in sections 487.39 and 484.63 for appeal of misdemeanor convictions.

Subd. 8. Notice of action to other states. When it has been finally determined that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner of public safety shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license.

Subd. 9. Limited license. In any case in which a license has been revoked under this section, the commissioner may issue a limited license to the driver. The commissioner in issuing a limited license may impose the conditions and limitations which in his judgment are necessary to the interests of the public safety and welfare, including re-examination of the driver's qualifications, attendance at a driver improvement clinic, or attendance at counseling sessions. The license may be limited to the operation of particular vehicles and to particular classes and time of operation. The limited license issued by the commissioner shall clearly indicate the limitations imposed and the driver operating under a limited license shall have the license in his possession at all times when operating as a driver. In determining whether to issue a limited license, the commissioner shall consider the number and the seriousness of prior convictions and the entire driving record of the driver.

Subd. 10. Termination of revocation period. If the commissioner receives notice of the driver's attendance at a driver improvement clinic, attendance at counseling sessions, or participation in treatment for an alcohol problem the commissioner may, 30 days prior to the time the revocation period would otherwise expire, terminate the revocation period. The commissioner shall not terminate the revocation period under this subdivision for a driver who has had a license revoked under section 169.121 or this section for another incident during the preceding three year period.

History: 1961 c 454 s 1-8; 1967 c 284 s 1-6; 1969 c 620 s 1; 1969 c 742 s 1; 1969 c 1129 art 1 s 18; 1971 c 893 s 3; Ex1971 c 36 s 1; 1973 c 35 s 36; 1973 c 423 art 5 s 7; 1973 c 555 s 1; 1974 c 406 s 35-38; 1977 c 82 s 2; 1978 c 727 s 3; 1980 c 395 s 1; 1980 c 483 s 1

169.124 ALCOHOL SAFETY PROGRAM.

Subdivision 1. The county board of every county having a population of more than 10,000 shall and the county board of every county having a population of less than 10,000 may establish an alcohol safety program designed to provide alcohol problem assessment and evaluation of persons convicted of one of the offenses enumerated in section 169.126, subdivision 1.

Subd. 2. The alcohol problem assessment shall be conducted under the direction of the court and by such persons or agencies as the court deems qualified to provide the alcohol problem assessment and assessment report as described in section 169.126. The alcohol problem assessment may be conducted by court services probation officers having the required knowledge and skills in the assessment of alcohol problems, by alcoholism counselors, by persons conducting court sponsored driver improvement clinics if in the judgment of the court such persons have the required knowledge and skills in the assessment of

alcohol problems, by appropriate staff members of public or private alcohol treatment programs and agencies or mental health clinics, by court approved volunteer workers such as members of Alcoholics Anonymous, or by such other qualified persons as the court may direct. The commissioner of public safety shall provide the courts with information and assistance in establishing alcohol problem assessment programs suited to the needs of the area served by each court. The commissioner shall consult with the alcohol and other drug abuse section in the department of public welfare and with local community mental health boards in providing such information and assistance to the courts. The commissioner of public safety shall promulgate rules and standards, consistent with this subdivision, for reimbursement under the provisions of subdivision 3. The promulgation of such rules and standards shall not be subject to chapter 15.

Subd. 3. The cost of alcohol problem assessment outlined in this section shall be borne by the county. Upon application by the county to the commissioner of public safety, the commissioner shall reimburse the county up to 50 percent of the cost of each alcohol problem assessment not to exceed \$25 in each case. Payments shall be made annually and prorated if insufficient funds are appropriated.

History: 1976 c 298 s 1; 1978 c 727 s 4

169.125 COUNTY COOPERATION.

County boards may enter into an agreement to establish a regional alcohol problem assessment alcohol safety program. County boards may contract with other counties and agencies for alcohol problem assessment services.

History: 1976 c 298 s 3; 1978 c 727 s 5

169.126 ALCOHOL PROBLEM ASSESSMENT

Subdivision 1. An alcohol problem assessment shall be conducted in counties of more than 10,000 population and an assessment report submitted to the court by the county agency administering the alcohol safety counseling program when:

(a) The defendant is convicted of an offense described in section 169.121; or

(b) The defendant is arrested for committing an offense described in section 169.121, is not convicted therefor, but is convicted of another offense arising out of the circumstances surrounding such arrest.

Subd. 2. The assessment report shall contain an evaluation of the convicted defendant concerning his prior traffic record, characteristics and history of alcohol problems, and amenability to rehabilitation through the alcohol safety program. The assessment report shall include a recommendation as to a treatment or rehabilitation program for the defendant. The assessment report shall be classified as private data on individuals as defined in section 15.162, subdivision 5a.

Subd. 3. The assessment report required by this section shall be prepared by a person knowledgeable in diagnosis of chemical dependency.

Subd. 4. The court shall give due consideration to the agency's assessment report.

Subd. 5. Whenever a person is convicted of a second or subsequent offense described in subdivision 1 and the court is either provided with an appropriate treatment or rehabilitation recommendation from sources other than the alcohol problem assessment provided for in this section, or has sufficient knowledge both of the person's need for treatment and an appropriate treatment or rehabilitation plan, and the court finds that requiring an alcohol problem assessment would not substantially aid the court in sentencing, such an alcohol problem assessment need not be conducted.

Subd. 6 This section shall not apply to persons who are not residents of the state of Minnesota at the time of the offense and at the time of the alcohol problem assessment.

History: 1976 c 298 s 4; 1978 c 727 s 6

169.1261 REINSTATEMENT OF DRIVING PRIVILEGES; NOTICE.

Upon expiration of any period of revocation under section 169.121 or 169.123, the commissioner of public safety shall notify the person of the terms upon which his driving privileges can be reinstated, which terms are: (1) successful completion of a driving test and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving privileges, the person will be subject to criminal penalties.

History: 1978 c 727 s 7

169.127 [Repealed, 1978 c 727 s 11]

169.128 RULES OF THE COMMISSIONER OF PUBLIC SAFETY.

The commissioner of public safety may promulgate rules to carry out the provisions of sections 169.121 and 169.123. The rules may include forms for notice of intention to revoke, which shall describe clearly the right to a hearing, the procedure for requesting a hearing, and the consequences of failure to request a hearing; forms for revocation and notice of reinstatement of driving privileges as provided in section 169.1261; and forms for temporary licenses.

Rules promulgated pursuant to this section are exempt from the procedure required by sections 15.0411 to 15.052.

History: 1978 c 727 s 8

169.129 AGGRAVATED VIOLATIONS; PENALTY.

Any person who drives, operates, or is in physical control of a motor vehicle, the operation of which requires a driver's license, within this state in violation of section 169.121 or an ordinance in conformity therewith before his driver's license or driver's privilege has been reinstated following its cancellation, suspension or revocation (1) because he drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol or a controlled substance or while he had an alcohol concentration of 0.10 or more or (2) because he refused to take a test which determines the presence of alcohol or a controlled substance when requested to do so by a proper authority, is guilty of a gross misdemeanor. Jurisdiction over prosecutions under this section is in the district court.

History: 1978 c 727 s 9

169.13 RECKLESS OR CARELESS DRIVING.

Subdivision 1. Any person who drives any vehicle in such a manner as to indicate either a wilful or a wanton disregard for the safety of persons or property is guilty of reckless driving and such reckless driving is a misdemeanor.

Subd. 2. Any person who shall operate or halt any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights or the safety of others, is guilty of a misdemeanor.

Subd. 3. **Application.** The provisions of this section apply, but are not limited in application, to any person who drives any vehicle in the manner prohibited by this section upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

1981 Legislative Session

Note: The only change in the text of the Minnesota statutes relating to drinking and driving was to prohibit the court from staying the revocation of the driver's license. The text of the change is found in Laws 1981, Chapter 9 as follows:

Ch. 9

72nd LEGISLATURE

DRIVER'S LICENSE--REVOICATION--STAY BY COURT

CHAPTER 9

S.F.No. 13

An Act relating to crimes; eliminating the power of a sentencing court to stay the revocation of the driver's license of a person convicted of driving, operating or being in physical control of a motor vehicle while under the influence of alcohol or controlled substances or a combination thereof; amending Minnesota Statutes 1980, Sections 169.121, Subdivision 5; and 609.135, Subdivision 1.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1980, Section 169.121, Subdivision 5, is amended to read:

Subd. 5. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4, except the revocation of the driver's license, on the condition that the convicted person submit to treatment by a public or private institution or a facility providing rehabilitation for chemical dependency licensed by the department of public welfare. A stay of imposition or execution shall be in the manner provided in section 609.135. The court shall report to the commissioner of public safety any stay of imposition or execution of sentence granted under the provisions of this section.

Sec. 2. Minnesota Statutes 1980, Section 609.135, Subdivision 1, is amended to read:

Subdivision 1. Except when a sentence of life imprisonment is required by law, or when a person is convicted of one of the crimes specified under section 609.11, subdivision 1, and had in his possession a firearm or used another dangerous weapon, any court, including a justice of the peace to the extent otherwise authorized by law, may stay imposition or execution of sentence and place the defendant on probation with or without supervision and on such terms as the court may prescribe, including restitution when practicable. The court may order the supervision to be under the probation officer of the court, or, if there is none and the conviction is for a felony, by the commissioner of corrections, or in any case by some other suitable and consenting person.

A court may not stay the revocation of the driver's license of a person convicted of violating the provisions of section 169.121.

Sec. 3. Effective date.

This act is effective the day following its final enactment and applies to offenses committed after that date.

Approved March 25, 1981.

Underlining and strikeouts are as shown in enrolled act.

APPENDIX II

TABLES OF DATA

Table I	Revocation of Driver's Licenses for Alcohol Related Offenses in Minnesota	54
Table II	Number of Chemical Tests for Intoxication in Minnesota With BAC of 0.10 or More	55
Table III	Total DWI Arrests by Minnesota State Patrol	56
Table IV	Total DWI Arrests Reported to Minnesota Criminal Justice Information System by All Officers . . .	57
Table V	Total Number of Sworn Police Officers in Minnesota . . .	58
Table VI	Total Motor Vehicle Registrations in Minnesota	59
Table VII	Total Licensed Drivers in Minnesota	60
Table VIII	Beverage Alcohol Consumption 1967-1980	61
Table IX	Implied Consent Hearing Caseload 1974-1980	62

TABLE I

Revocation of Driver's Licenses
for Alcohol Related Offenses in Minnesota

	DWI (\$ 169.121)	Test Refusal (\$ 169.123)	Over 0.10 BAC (\$ 169.123)	<u>Total</u>
1974	*	*	-	15,396
1975	*	*	*	17,628
1976	*	*	*	14,251***
1977	*	*	*	17,741
1978	15,512	3,344	5,501	24,357
1979	14,797	3,427	6,742	24,966
1980	17,406	3,863	9,212	30,481
1981	7,861**	1,827**	3,598**	13,286**

* Data not broken down and not available

** Through May of 1981 (five months).

*** The lower number in 1976 is attributable to the decision of the Minnesota Supreme Court in Prideaux v. Department of Public Safety, 247 N.W.2d 385 (1976), which held that a driver had a right to counsel when submitting to a chemical test for intoxication. It caused the dismissal of a number of pending cases. Also, there was a loss of ASAP money to pay officers for overtime work.

Source: Motor Vehicle Department and Office of Traffic Safety of Minnesota Department of Public Safety.

TABLE II

Number of Chemical Tests for Intoxication in Minnesota with BAC of 0.10 or More

		<u>0.10</u>	<u>0.15</u>	<u>0.20</u>	<u>0.25</u>	<u>0.30</u>	<u>0.35 & over</u>	<u>Total</u>	<u>Total of All Tests by Year</u>
1973	Blood & Urine Breath	780 2,725	1,830 4,048	1,660 2,548	630 826	161 181	81 39	5,142 10,367	15,509
1974	Blood & Urine Breath	1,019 3,642	2,021 4,715	1,847 2,746	718 864	182 181	40 35	5,827 12,183	18,010
1975	Blood & Urine Breath	1,146 3,087	2,175 4,299	1,861 2,595	678 755	169 172	34 19	6,063 10,927	16,990
1976	Blood & Urine Breath	1,190 3,416	2,391 4,442	1,947 2,675	723 731	171 150	42 35	6,464 11,449	17,913
55 1977	Blood & Urine Breath	1,119 2,646	2,111 3,757	1,820 2,179	714 610	161 121	54 28	5,979 9,341	15,320
1978	Blood & Urine Breath	1,171 2,913	2,405 4,218	1,995 2,410	719 629	184 159	43 33	6,517 10,362	16,879
1979	Blood & Urine Breath	1,025 2,788	1,999 3,984	1,701 2,314	598 558	120 125	22 20	5,465 9,789	15,254
1980	Blood & Urine Breath	* 3,598	* 5,011	* 2,883	* 750	* 149	* 32	8,735 ^{***} 12,423	21,158
1981	Blood & Urine Breath	** **							

* Not broken down and not available.

** Data not yet available for 1981

*** Includes all blood and urine tests for 1980, as well as tests below 0.10 BAC and negative tests. Based on previous years, tests below 0.10 BAC and negative tests constitute about 10%.

Source: Laboratory, Bureau of Criminal Apprehension, Minnesota Department of Public Safety.

TABLE III

Total DWI Arrests by Minnesota State Patrol

1974	4,832
1975	5,137
1976	4,689
1977	3,593
1978	4,082
1979	3,879
1980	5,255
1981	3,179*

* Through June 1981. In comparison the number of DWI arrests in 1980 for same period was 2,307.

Source: Minnesota State Patrol,
Department of Public Safety.

TABLE IV

TOTAL DWI ARRESTS REPORTED TO MINNESOTA CRIMINAL
JUSTICE INFORMATION SYSTEM BY ALL OFFICERS

1974	19,422
1975	18,715
1976	19,419
1977	16,976
1978	18,078
1979	18,092
1980	22,788

Source: Minnesota Crime Information, Annual Reports,
Minnesota Department of Public Safety,
Bureau of Criminal Apprehension,
Criminal Justice Information Systems Section.

TABLE V

NUMBER OF SWORN POLICE OFFICERS IN MINNESOTA

1974	5,553
1975	5,688
1976	5,804
1977	5,922
1978	5,997
1979	6,037
1980	6,107

Source: Minnesota Crime Information, Annual Reports
Minnesota Department of Public Safety,
Bureau of Criminal Apprehension,
Criminal Justice Information Systems Section.

TABLE VI

TOTAL MOTOR VEHICLE REGISTRATIONS
IN MINNESOTA

1974	2,532,219
1975	2,662,517
1976	2,919,700
1977	2,962,335
1978	3,103,406
1979	3,576,041
1980	3,941,296

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C. for years 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VII

TOTAL LICENSED DRIVERS IN MINNESOTA

1974	2,402,550
1975	2,416,869
1976	2,571,540
1977	2,598,123
1978	2,234,646
1979	2,286,218
1980	2,766,032

Source: Highway Statistics, U.S. Department of Transportation, Washington, D.C., for years 1974, 1975, 1976, 1977, 1978 and 1979; Minnesota Motor Vehicle Crash Facts, Office of Traffic Safety, Minnesota Department of Public Safety, for 1980.

TABLE VIII

STATE OF MINNESOTA
BEVERAGE ALCOHOL CONSUMPTION 1967-1980
 (In Gallons)

Calendar Year	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Population*	2,490,260	2,541,888	2,601,071	2,655,544	2,716,086	2,793,046	2,837,071	2,891,104	2,935,351	2,994,059	3,034,718	3,088,303	3,116,100	3,179,261
3.2 Beer (per capita)	22,682,359 9.12	21,928,966 8.63	21,381,847 8.22	21,539,420 8.11	20,630,438 7.60	19,575,353 7.01	20,335,256 7.17	19,655,470 6.80	18,494,197 6.30	16,973,058 5.67	15,964,194 5.26	15,026,289 4.87	14,534,412 4.66	13,997,325 4.47
Over 3.2 Beer (per capita)	37,517,099 15.07	40,188,369 15.81	43,346,094 16.66	47,686,339 17.96	51,148,109 18.83	51,891,055 18.58	58,165,858 19.80	64,475,133 22.30	67,994,749 23.16	71,532,562 23.89	73,894,421 24.34	76,867,879 24.89	81,734,445 26.23	85,570,495 27.35
Liquor (per capita)	6,468,781 2.60	6,958,610 2.74	7,550,832 2.90	7,483,893 2.82	8,053,868 2.97	7,735,466 2.77	8,149,172 2.87	8,636,851 2.99	8,425,563 2.87	8,528,288 2.85	8,719,793 2.87	8,659,862 2.80	9,024,449 2.90	9,240,406 2.95
Sparkling Wines (per capita)	75,859 .03	89,740 .04	119,033 .05	158,970 .06	224,504 .08	212,654 .08	204,608 .07	220,931 .08	232,423 .08	209,571 .10	335,127 .11	367,984 .12	430,736 .14	523,469 .17
Wine 14-21% (per capita)	1,273,118 .51	1,270,673 .50	1,268,749 .49	1,174,318 .44	1,202,639 .44	1,135,721 .44	1,057,291 .37	1,032,029 .36	962,413 .33	890,753 .30	835,091 .28	759,578 .25	701,753 .23	657,139 .21
Wine Under 14% (per capita)	749,668 .30	850,046 .33	1,004,338 .39	1,358,772 .51	2,136,958 .79	2,563,043 .92	2,657,476 .94	2,729,253 .94	2,906,392 1.02	3,266,007 1.09	3,776,194 1.24	4,241,496 1.37	4,693,746 1.51	4,987,758 1.59
TOTAL (per capita)	68,766,884 27.61	71,286,404 28.04	74,671,269 28.71	77,401,712 29.90	83,396,516 30.70	83,113,292 29.76	90,569,661 31.92	96,759,667 33.47	99,095,737 33.76	101,481,039 33.89	101,524,020 34.11	105,925,038 34.30	111,119,591 35.66	114,976,622 36.74

*Age 15 and Older

Source: Alcohol, Tobacco and Special Taxes Division, Minnesota Department of Revenue

Note: Population figures are derived from vital statistics published by the Minnesota Department of Health
 (Change, per capita consumption, 1967-1980, increase 33%)

TABLE IX
IMPLIED CONSENT HEARING CASELOAD
1974 - 1981

IMPLIED CONSENT CASELOAD			
MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1974			
JANUARY	91		634
FEBRUARY	121		656
MARCH	93		645
APRIL	96		610
MAY	110		603
JUNE	79		610
JULY	109		633
AUGUST	103		677
SEPTEMBER	79		689
OCTOBER	100		682
NOVEMBER	104		688
DECEMBER	84		637
1975			
JANUARY	146		593
FEBRUARY	152		630
MARCH	55		692
APRIL	108		609
MAY	94		593
JUNE	91		535
JULY	109		502
AUGUST	65		547
SEPTEMBER	62		550
OCTOBER	63		504
NOVEMBER	94		463
DECEMBER	86		466

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1976			
JANUARY	97		462
FEBRUARY	78		459
MARCH	114		446
APRIL	104		471
MAY	118		471
JUNE	87		488
JULY	89		456
AUGUST	227		439
SEPTEMBER	321		568
OCTOBER	297		738
NOVEMBER	242		930
DECEMBER	249		1011
1977			
JANUARY	451		1050
FEBRUARY	420		1322
MARCH	395		1478
APRIL	317		1589
MAY	320		1632
JUNE	411		1628
JULY	270		1780
AUGUST	151		1782
SEPTEMBER	258		1849
OCTOBER	357		1834
NOVEMBER	348		1812
DECEMBER	321		1819

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES CLOSED	CASES PENDING
1978			
JANUARY	316		1817
FEBRUARY	377		1817
MARCH	370		1815
APRIL	329		1869
MAY	413		1728
JUNE	415		1722
JULY	363		1739
AUGUST	301		1805
SEPTEMBER	623		1700
OCTOBER	500		2010
NOVEMBER	539		2366
DECEMBER	426		2282
1979			
JANUARY	603		2247
FEBRUARY	384		2327
MARCH	613		2247
APRIL	509		2341
MAY	567		2378
JUNE	517		2363
JULY	591		2451
AUGUST	457		2511
SEPTEMBER	474		2478
OCTOBER	533		2553
NOVEMBER	440		2362
DECEMBER	535	446	2451

IMPLIED CONSENT CASELOAD

MONTH	NEW CASES	CASES . CLOSED	CASES PENDING
1980			
JANUARY	680	456	2675
FEBRUARY	381	667	2389
MARCH	492	508	2373
APRIL	790	461	2702
MAY	467	534	2635
JUNE	934	492	3077
JULY	292	581	2788
AUGUST	846	498	3136
SEPTEMBER	652	632	3156
OCTOBER	577	819	2914
NOVEMBER	676	562	3028
DECEMBER	1158	530	3656
1981			
JANUARY	809	760	3705
FEBRUARY	506	679	3532
MARCH	977	809	3700
APRIL	1034	840	3894
MAY	335	738	3491
JUNE	1049	793	3747
JULY			
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			

Source: Office of Attorney General, State of Minnesota.

APPENDIX III

FORMS USED IN PROCESSING OF DRIVER

1. Notice of Revocation 69

Note: White copy to driver
Green copy with license and implied consent
certificate to Department of Public Safety
Yellow copy to county attorney or court
Pink copy to be retained by officer

2. Implied Consent Advisory 71
3. Alcoholic Influence Report 73

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
SAINT PAUL 55155

085451

Name _____
First Middle Last
 Address _____ D/L# _____
 City _____ State _____ Zip _____

*Date Issued _____
 Enf. Agency _____
 Ticket or Case# _____
 DOB _____
 Court _____

NOTICE OF REVOCATION

You are hereby notified that on the date shown above (*date issued) you were asked to submit to a chemical test to determine the alcohol concentration of your blood pursuant to M.S. 169.123, the Implied Consent Law.

- Because you refused to submit to testing, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for six months, unless you request a hearing as indicated on the other side of this notice.
- Because you submitted to a breath test which disclosed an alcohol concentration of 0.10 or more, the Commissioner of Public Safety will revoke your driver license and/or driving privileges for 90 days unless you request a hearing as indicated on the other side of this notice. Results of breath test indicated _____ blood alcohol concentration.

This revocation will take effect 30 days after the (*date issued) shown above.

ORDER OF REVOCATION

- If the Commissioner of Public Safety does not receive a request for hearing within 30 days or a certificate of conviction reporting plea of guilty to the related charges of violating M.S. 169.121 (DWI), your driver license and/or privilege to drive in this state is hereby REVOKED. THIS IS YOUR OFFICIAL NOTICE OF THE REVOCATION. If a hearing request is received within 30 days, the revocation will be postponed until a final judicial determination resulting in a decision adverse to you.

SURRENDER OF DRIVER LICENSE

By law, the officer is required to take all license certificates in your possession, and if you have a valid license, issue a temporary license effective only for 30 days.

TEMPORARY LICENSE

This entire notice is valid as a temporary license from (*date issued) shown above for 30 days. NOT VALID IF DETACHED. If hearing requested, additional temporary license can only be obtained from Driver Evaluation Section, Driver & Vehicle Services Division. SEE REVERSE SIDE FOR ADDRESS. Temporary license valid only if record so indicates.

Licensee Height: _____ Weight: _____ Class: _____

Restriction: _____

- No temporary license issued because _____

AFFIDAVIT OF LOST DRIVER LICENSE

I have lost or destroyed my license. I promise that if it is found I will immediately forward it to the Driver License Office, 108 Transportation Building, St. Paul, Mn. 55155. I fully realize that in making this affidavit, the license certificate is rendered null and void and may not be used for operating a motor vehicle.

Signed: _____
Signature of Peace Officer

Telephone Number

Date

Signature of Licensee

REQUEST FOR HEARING – PROCEDURES AND INFORMATION

You have the right to request a hearing. Hearing requests must be received within 30 days. Request must be in writing, and directed to the Commissioner of Public Safety, Driver & Vehicle Services Division, 108 Transportation Building, St. Paul, Minnesota 55155. The Hearing would cover the issues of:

- a. Whether the peace officer had reasonable and probable grounds to believe that you were driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance.
- b. Whether you were lawfully placed under arrest for violation of Section 169.121, or were involved in a motor vehicle accident or collision resulting in property damage, personal injury or death, or refused to take screening test provided in Section 169.121, or took screening test and failed.
- c. Whether you were advised of your rights and responsibilities under the law.
- d. Whether you refused the test, or whether you submitted to testing which was properly conducted and showed an alcohol concentration of 0.10 or more.

GENERAL INFORMATION

If your license is revoked, you may not drive again in Minnesota under any condition including using a driver license from another jurisdiction until you have complied with Minnesota's requirements and received a notice of reinstatement. ANY ADDITIONAL TEMPORARY LICENSES CAN ONLY BE ISSUED BY DRIVER EVALUATION SECTION, DEPARTMENT OF PUBLIC SAFETY.

REINSTATEMENT INFORMATION

You may not drive in Minnesota until:

- a. The expiration of the period of time designated on the front side of this notice or expiration of additional period of time as indicated in correspondence from Driver & Vehicle Services Division, and
- b. You have successfully completed a re-examination, and paid \$2.50 fee if required and
- c. Prior to reinstatement of your privilege to drive in the State of Minnesota, you must submit proof of an alcohol problem assessment. This is an assessment interview relative to your use of alcohol. If this assessment was done by the court (termed a presentence investigation) you can submit a copy of that assessment to this office. If no assessment was done by the court, you must schedule an assessment interview with our office.

Assessment Scheduling (612) 296-2040
Assessment Information (612) 296-8599

- d. You have made application for and have received new license, and
- e. Received a notice of reinstatement.
- f. If you are not a resident of Minnesota, you will receive a notice of reinstatement only.

LIMITED LICENSE INFORMATION

If this is the first time your license has been withdrawn, you may be eligible for a limited license.

- Any additional information may be obtained by writing Driver Evaluation Section, Driver & Vehicle Services Division, Room 108 Transportation Building, St. Paul, Minnesota 55155 or by telephone at (612) 296-2025.



State of Minnesota
 Department of Public Safety
 Driver and Vehicle Services Division
 Implied Consent Section
 108 Transportation Building
 St. Paul, MN 55155

IMPLIED CONSENT ADVISORY

► **INSTRUCTIONS:** To be used to request the test and to record the individual's responses. Complete both sides of this form.

Printed Name of Officer Requesting Test		Badge Number		ICR Number
Date	Time Reading Started	Time Reading Completed	Location Where Advisory Read	

I believe that you have been driving, operating or controlling a motor vehicle while under the influence of alcohol or a controlled substance.

Printed Name of Individual Being Advised

In addition: (X all applicable grounds)

- You have been placed under arrest for this offense.
- You have been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.
- You have refused to take the preliminary screening test authorized by law and requested of you.
- A preliminary screening test has been administered to you, and has shown your alcohol concentration to be .10 or more.

I request that you give a sample of your blood for testing to determine the presence of alcohol or controlled substance. This sample would be taken by a qualified person at:

Hospital or Other Location (PRINT)

If you do not wish to give a blood sample, I request you give a sample of your:

- Breath Urine

The sample would be taken at:

Name of Facility (PRINT)

The sample would be taken by:

Name of Person Obtaining Sample (PRINT)

If you refuse to provide the test sample, your right to drive will be revoked for six months. If you refuse to answer or make a decision, it will be considered a refusal to take the test.

If you provide the test sample, and if the results indicate that you are under the influence of alcohol or a controlled substance, you will be subject to criminal penalties, and your right to drive may be revoked for 90 days.

If you provide the test sample, you have the right to have additional tests made by a person of your choice. Any additional test must be at your own expense. It must be taken while still in custody. You will be permitted to contact any person you choose to arrange for any additional test.

You have the right to consult with an attorney. If you wish to do so, a telephone will be made available to you. If you are unable to contact an attorney, you must make the decision on your own. You must make your decision within a reasonable time.

Yes	No		Comments
		The information you have been given is based upon the Minnesota Implied Consent Law. Do you understand what I have just explained?	
		Do you wish to consult with an attorney?	Phone Call to Attorney
			Time Started Time Completed
		Will you give a sample of your blood?	
		Will you give a sample of your (breath) (urine)?	
		Are you refusing with the understanding that you may lose your driving privileges for six months?	

What is your reason for refusing? _____

**IMPLIED CONSENT LAW
PEACE OFFICER'S CERTIFICATE**

▶(PLEASE TYPE OR PRINT LEGIBLY, CROSS OUT REFERENCES TO INAPPLICABLE ITEMS)

Name of Peace Officer	Name of Police Agency
-----------------------	-----------------------

I certify to the Commissioner of Public Safety, State of Minnesota, that I am a member of the above police agency and:

1. I am a "peace officer" within the meaning of Minnesota Statutes, Section 169.123, Subdivision 1.
2. On (Date) _____, I had reasonable and probable grounds to believe that the person named below had been driving, operating or in physical control of a motor vehicle within the State of Minnesota at _____ in the City or Township of _____ in _____ County, while under the influence of alcohol or a controlled substance, contrary to law.

Full Name		Date of Birth
Address		City, State, Zip
Driver License Number	Date of Issue	

3. The person was requested to submit to a chemical test to determine (alcohol concentration) (or) (presence of a controlled substance), pursuant to the provisions of Minnesota Statutes, Section 169.123, and was advised as indicated on the other side of this form.

4. The person: (X APPLICABLE BOX)
 - Refused to provide a test sample to determine the presence of (alcohol) (or) (controlled substance).
 - Provided a sample of (blood) (breath) (urine) for analysis. The sample was obtained at my request by:

Name	Job Title	
Police Station, Hospital, or Other Location		
Date Obtained	Time Obtained	A.M. P.M.

The sample was submitted for analysis to:

Name of Agency, Analyst or Breathalyzer Operator
Address of Agency or Analyst
City, State, Zip
Sample Identification Number (Blood or Urine Tests Only)

The sample was analyzed and interpreted, and the test result indicated (an alcohol concentration of _____) (the presence of a controlled substance, _____).

(ATTACH COPY OF BREATHALYZER CHECK LIST AND TEST SCORE SHEET OR LABORATORY TEST REPORT.)

SEND WITH COPY OF ALCOHOL INFLUENCE REPORT, ARREST OR ACCIDENT REPORT, OR MEMORANDUM OF CIRCUMSTANCES TO:

Department of Public Safety
Driver and Vehicle Services Division
Implied Consent Section
108 Transportation Building
St. Paul, MN 55155

(Attach Form

Signature of Peace Officer
Printed Name of Peace Officer
Badge Number
Business Telephone Number
Date

- X one or more
 Driver Accident
 Pedestrian Violation
 Passenger Other

MINNESOTA
 DEPARTMENT OF PUBLIC SAFETY
 STATE PATROL DIVISION
ALCOHOLIC INFLUENCE REPORT

ICR Number
1821 Number
Date

NAME LAST			FIRST	MIDDLE	TIME
Date of Birth			Actions of the driver prior to stop (X) one or more (A) <input type="checkbox"/> Weave from lane to lane. (B) <input type="checkbox"/> Proceed in lanes provided for oncoming traffic. (C) <input type="checkbox"/> Proceed off the road from his lane or lanes of traffic. (D) <input type="checkbox"/> Make an improper turn. (E) <input type="checkbox"/> Proceed at excessive - reduced speed. (F) <input type="checkbox"/> Strike any gutter or other obstacles on a near road. (G) <input type="checkbox"/> Hit or narrowly miss hitting any person or property. (H) <input type="checkbox"/> Proceed contrary to any traffic control sign or signal. (I) <input type="checkbox"/> Involved in any accident. (J) <input type="checkbox"/> Other (explain on reverse side.) (K) <input type="checkbox"/> Type of road <input type="checkbox"/> Two Way <input type="checkbox"/> Divided <input type="checkbox"/> Interstate		
Month	Day	Year			
Arresting Officer:		Badge No.			
Location of Arrest:					
Drivers License No State					

PBT - Pass Fail Refused Not Offered

Field Sobriety Tests

Pass Fail Straight line walking Pass Fail One legged stand and count to ten
 Pass Fail Finger to nose Pass Fail Pick up coins

YOUR CONSTITUTIONAL RIGHTS (TIME _____)

- You have the right to remain silent.
- Anything you say can and will be used against you in court.
- You have the right to a lawyer and to have the lawyer present while you are being questioned.
- If you cannot financially afford to hire a lawyer, the State, after investigation as to your finances, will appoint a lawyer to represent you prior to any questioning if you wish one.

DO YOU UNDERSTAND THESE RIGHTS? YES NO

1. Having these rights in mind, do you wish to answer my questions at this time? Yes No			
2. Were you driving or operating a motor vehicle?		3. What type vehicle were you operating?	
4. Are you under a doctor or dentist's care?		5. If so, what is your doctor or dentist's name?	
6. Are you taking any medication?	7. What Kind?	8. Date/Time last taken	9. How much did you take?
10. Do you have diabetes?	11. What medication do you take?	12. Date/Time last taken	
13. Do you have any physical disability?		14. Describe your disability?	
15. Do you have any speech difficulty?		16. Describe your difficulty?	
17. Have you been in an accident?		18. Did you get a bump on the head or any other injury?	
19. What time is it?		20. Where are you now?	
21. Have you been drinking?	22. What did you drink?	23. Where were you drinking?	
24. When did you have your first drink?	25. When did you have your last drink?	26. How many drinks?	
27. Have you had anything to drink since the accident or arrest?			28. What did you have?
29. Do you feel the effects of what you have had to drink?			
30. Do you feel that what you have had to drink has effected your ability to drive?			

Examination: (Place an "x" in squares describing observed conditions)

Indication of Alcoholic Beverage on Breath <input type="checkbox"/> None <input type="checkbox"/> Moderate <input type="checkbox"/> Faint <input type="checkbox"/> Strong		Observed Reactions: <input type="checkbox"/> Average <input type="checkbox"/> Reserved <input type="checkbox"/> Fighting <input type="checkbox"/> Indignant <input type="checkbox"/> Talkative <input type="checkbox"/> Slow <input type="checkbox"/> Excited <input type="checkbox"/> Belligerent <input type="checkbox"/> Other			Color of Face: <input type="checkbox"/> Normal <input type="checkbox"/> Flushed <input type="checkbox"/> Pale <input type="checkbox"/> Dark		Eyes: <input type="checkbox"/> Normal <input type="checkbox"/> Watery <input type="checkbox"/> Bloodshot <input type="checkbox"/> Staring <input type="checkbox"/> Glassy	
Pupils: <input type="checkbox"/> Normal <input type="checkbox"/> Dilated <input type="checkbox"/> Contracted	Reaction to Light: <input type="checkbox"/> None <input type="checkbox"/> Poor <input type="checkbox"/> Fair		Balance: <input type="checkbox"/> Good <input type="checkbox"/> Wobbling <input type="checkbox"/> Fair <input type="checkbox"/> Falling <input type="checkbox"/> Swaying <input type="checkbox"/> Cannot Stand			Walk: <input type="checkbox"/> Sure <input type="checkbox"/> Uncertain <input type="checkbox"/> Fair <input type="checkbox"/> Staggering <input type="checkbox"/> Swaying <input type="checkbox"/> Falling		
Turning: <input type="checkbox"/> Sure <input type="checkbox"/> Uncertain <input type="checkbox"/> Fair <input type="checkbox"/> Staggering <input type="checkbox"/> Swaying <input type="checkbox"/> Falling		Speech: <input type="checkbox"/> Good <input type="checkbox"/> Confused <input type="checkbox"/> Fair <input type="checkbox"/> Incoherent <input type="checkbox"/> Slurred <input type="checkbox"/> Other <input type="checkbox"/> Stuttering			Conclusion: Effect's of Alcohol <input type="checkbox"/> None <input type="checkbox"/> Extreme <input type="checkbox"/> Slight <input type="checkbox"/> Other <input type="checkbox"/> Obvious		Ability To Understand Instructions <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good	

REMARKS:

SIGNATURE (Officer Completing Report)

Date

APPENDIX IV

Minnesota Drunken Driving Apprehensions, Arrests,
Criminal Charges, Convictions and Driver License
Revocations - and the differences between them.

by Mr. Forst Lowery, Alcohol Program Coordinator, Office of
Traffic Safety, Minnesota Department of Public Safety,
July 31, 1981

Minnesota has a two-track system of acting against drunken drivers. One is the conventional criminal justice procedure in which a driver is arrested, charged with a violation of M.S. 169.121 (drunken driving), and if convicted is penalized by a fine or jail. The other track involves the unique-to-Minnesota law within M.S. 169.123 (implied consent) which provides for administrative revocation of the driver license when a test shows .10 alcohol concentration or higher. Most accused drivers go down both tracks. This results in an extremely high ratio of penalties imposed on apprehended drunken drivers. Indeed, this ratio is the highest in the country.

In discussing this subject, however, some caveats should be noted. The high rate of drunken driving cases resulting in a penalty should not be called a "conviction rate" even though in many ways it is the equivalent.

Likewise, an "apprehension" is not necessarily the same thing as an "arrest". All arrests result from apprehensions, but not all apprehensions result in an arrest. In a similar way, not all arrests result in a criminal charge of drunken driving (169.121) even though the arrested person may be subject to, and receive, penalties under 169.123 for either refusing a test or failing a test.

The statistical information on the following pages describes the driver license revocations resulting from drinking and driving offenses. Notes are to clarify precisely what is conveyed and to warn against misinterpretation.

A. APPREHENSIONS (Minimum number; plus cases described below) 28,429

The figure shown here (28,429) is actually the number of "Peace Officer's Certificates" received by the Department of Public Safety (DPS). These report that a person either (a.) refused to take a test, or (b.) took a test and the result showed .10 alcohol concentration or more. This report is required by M.S. 169.123, often called the Implied Consent Law. In addition to the apprehensions included in the above figure there are some additional drinking driver apprehensions which should be included in order to provide a total, but their actual numbers are unknown. These are made up of those cases in which (a.) a test was not requested but an arrest was made on other evidence, or (b.) a test showed less than .10 but an arrest was made. Both situations are perfectly proper under Minnesota law, but the number of such cases is unknown. They are included, however, within (D.) below, "Drunken Driving Criminal Charges". Items (B.) and (C.) below break out the two variations of the "Peace Officer's Certificate" which make up the 28,429 total figure shown above, (See Figure 1.)

B. REPORTS TO DPS OF REFUSALS TO TAKE TEST 6,649

C. REPORTS TO DPS OF TEST RESULTS SHOWING .10 21,780

D.

DRUNKEN DRIVING CRIMINAL CHARGES (M.S. 169.121)

22,788

This figure is the number of "arrests" reported to Minnesota Criminal Justice Information System when a 169.121 charge is placed. All of these cases would be included within the number of "Apprehensions" (item A. above) except those in which a test was not requested or in which a lower than .10 alcohol concentration was shown, as described above. "Apprehensions" includes, however, those cases in which a "Peace Officer's Certificate" was filed but a criminal charge was not, and therefore these cases are not included in the 22,788 figure for item D., Criminal Charges (169.121). (See Figure 1.)

DRIVER LICENSE REVOCATIONS (ALCOHOL)

The three principal kinds of driver license revocations associated with drunken driving are shown below, together with some notes on how they mesh and how they do not overlap except in rare circumstances. They are shown in descending order of their numbers, beginning with conventional revocations resulting from a court conviction. This is not necessarily the chronological order in which action against the driver license is taken, and as we note below, the chronological order of such actions is important.

It should be emphasized that this figure does not represent the total number of convictions for drunken driving. It is the number of revocations resulting from a 169.121 conviction. Those persons convicted under 169.121 whose driver license has already been revoked under one of the provisions of 169.123 do not get another revocation and are not included in the 17,406 figure. Further discussion below.

F.	REVOCATION FOR TEST RESULT SHOWING .10 (Ninety days)	9,212
G.	REVOCATION FOR REFUSING TO TAKE TEST (Six months)	3,863

Note that a person may purge himself or herself of eligibility for this revocation by pleading guilty to the criminal charge under 169.121 at the first opportunity. Many do. This does not apply if there is first a not-guilty plea, even if there is a subsequent conviction.

H.	TOTAL REVOCATIONS FOR CONVICTION <u>OR</u> TEST FAIL (E + F)	26,618
I.	TOTAL ALL THREE KINDS ALCOHOL-RELATED REVOCATIONS (E + F + G)	30,481

This figure included an unknown number of revocations for test refusal (G.) where the person was not convicted of 169.121 (E.) Note also that the unknown number of persons charged for 169.121 but not offered a test would increase total number of "Apprehensions" above the minimum figure (28,429) shown in (A.)

RATIOS OF REVOCATIONS TO NUMBER OF CASES

J. APPROX. PERCENT OF APPREHENDED DRIVERS RECEIVING REVOCATION 93.6%

Number of revocations for conviction plus number of revocations for failing test (.10) divided by the minimum number of apprehensions. $(\frac{H}{A})$

K. PERCENT OF KNOWN APPREHENSIONS RESULTING IN A REVOCATION 107.2%

Total of all three kinds of alcohol-related driver license revocations divided by minimum number of apprehensions. $(\frac{I}{A})$

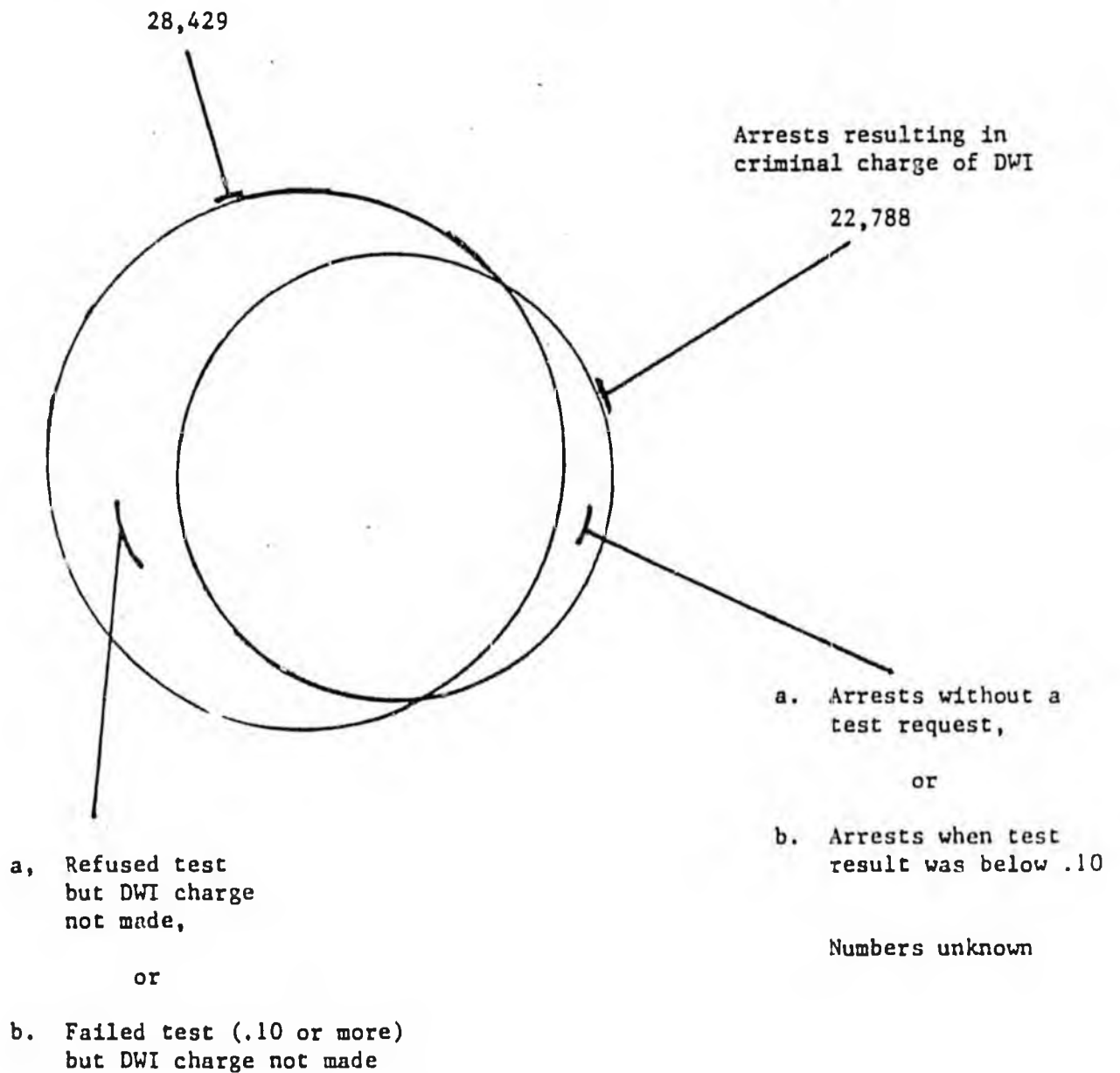
The apparent anomaly of a greater-than-100% figure is the result, again, of there being a somewhat higher number of actual apprehensions than will be shown by "Peace Officer's Certificate" reports. See note under (1.) above. In addition, there may be some cases in which a license may be revoked for conviction under 169.121 while proceedings under 169.123 are still under way. In this kind of case, while Minnesota law says there shall be no mandatory revocation under 169.121 if the license has been revoked under 169.123, the opposite is not true. It is possible to revoke for test refusal if that proceeding should happen to come after revocation for conviction, or even after the conviction revocation period of 30 days, for example, has been completed. This is not likely. Neither is it likely that a person would receive an administrative revocation for failing the test if that person has already

received a revocation for a conviction. These possibilities are described to show that in a two-track system like Minnesota's, with drinking drivers going down both tracks, the problems are with statistical meshing, rather than with actual clashing of the gears. (See Figure 2.)

In point of fact, Minnesota draws a pretty tight net around the drunken drivers who are apprehended and there are not very many holes in that net.

Figure 1.

APPREHENSIONS (Not necessarily with arrest)
("Peace Officer's Certificates" filed
with DPS)



(Most of both "a" and "b" above are probably accident scene cases, where officer did not witness and probable cause for an arrest was less than the best.)

Some of "b" may result from individual prosecutor policy on charging DWI.)

Numbers unknown

The three principal kinds of alcohol-related
driver license revocations
1980

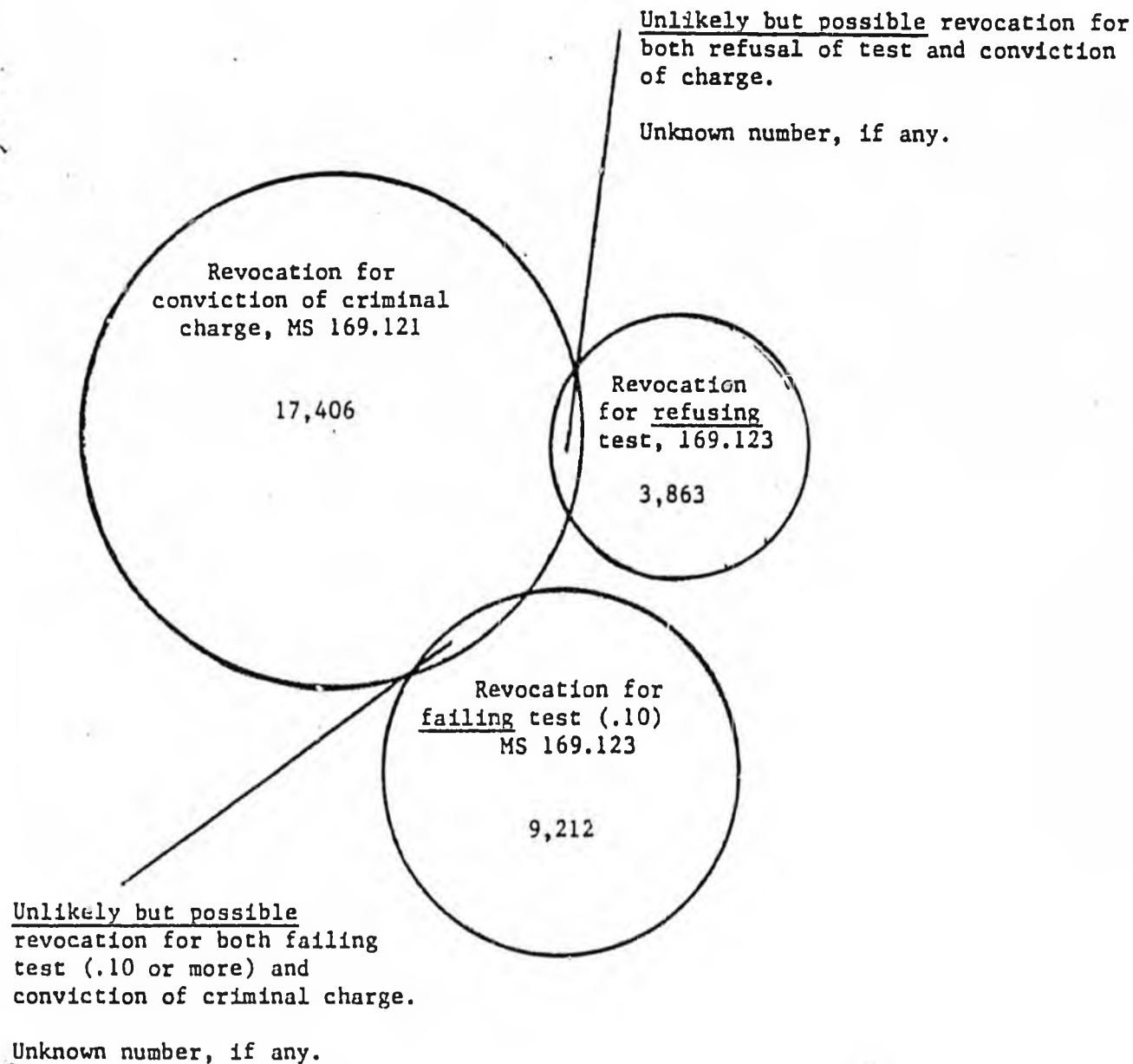


Figure 2.

ACCIDENTS IN ALASKA

In 1975, alcohol-related highway accidents cost \$19.5 million.

In 1977, 62 Alaskans died in alcohol-related highway accidents. About 80% of highway fatalities in Anchorage are alcohol-related.

OMVI ARRESTS IN ALASKA

The drivers being arrested are very heavy drinkers - had to have had ten drinks in an hour to reach the blood alcohol levels recorded. Most have so much alcohol in their system that they are still drunk when they go to work the next day.

Most people never drink enough to reach the illegal BAC level. Most people arrested for OMVI regularly drink large amounts.

At most one out of four arrested for OMVI are "normal" drinkers who have had too much just this night. The rest are used to drinking and driving - in fact one out of three people arrested for OMVI has previously been convicted.

Few of the arrests for OMVI are borderline cases - the average blood alcohol concentration is twice the level proscribed by law.

REASONS FOR RECOMMENDED STATUTORY CHANGES SB 608, 609, 610

PARTLY DONE

a. Clean up statutes so that courts can spend time on real evidence instead of legal technicalities.

PRESENT

b. OMVI arrests are expected to increase by as much as 50% in the near future.

PARTLY DONE

c. Either help the courts by changing the statutes or by providing money for more courtrooms, judges, prosecutors.

d. OMVI arrests - largest single category of arrests and court caseload - 22% of all adult arrests; 28% of caseload of the misdemeanor courts; 50% of the trial time spent by the courts.

e. Changes will not stop drinking-driving but will help us handle the problem through the courts.

BEING WORKED ON

f. We have definite evidence that the people who refuse breath-tests tend to be the most drunken and the most dangerous drivers - really experienced drinkers (average BAC: 0.27%). We are not helping them by keeping it easy to avoid the evidence of their dangerousness.

g. Using the traditional psychomotor tests, even experienced police are right only one out of two times about how drunk a person is - blood alcohol concentration (BAC) is objective and fair evidence, rather than just an opinion.

SB 551, 552

REASON FOR ALCOHOL SCREENING

- a. Trying to separate the people out so that we can do what's right by the person who just has an attitude probelm, by the bad drivers, and by the alcoholics.
- b. Trying to get an early identification of problem drinkers so that they can be encouraged to get help before they are far gone.
- c. Trying to standardize court practices throughout the state.

*KELSO'S JOB
ON A STATEWIDE
BASIS*

PROBLEM DRINKING DRIVERS

1. The Problem Drinking Driver is someone who *regularly* drives while seriously impaired.
2. In the typical jurisdiction, about two-thirds of persons arrested for DWI are identifiable as Problem Drinkers, either clearly or marginally.
3. Problem Drinking Drivers usually have a high BAC (0.15 percent or above) when arrested. Of course, the BAC on any occasion may be lower.
4. Drivers with a high BAC (0.10 percent or above) are likely to be involved in at least
 - Twice as many crashes
 - Twice as many property damage crashes
 - Five times as many personal injury crashes
 - Twelve times as many fatal crashes
 - Twice as many traffic violations
 - Three times as many license suspensions

as the average driver.

5. Social Drinkers rarely achieve the high BAC (0.10 percent or above) which problem drinkers achieve very often.
6. A person can learn to "drive while drunk" i.e., to compensate partially for the impairment caused by alcohol up to a point. The learning takes a lot of practice.

Social Drinkers don't get that much practice. They are likely to judge themselves "too drunk to drive," or to drive very badly at lower BACs.

Therefore, a person who drives reasonably well at a high BAC, or who can drive at all at a very high BAC (0.20 percent or above), is likely to be a Problem Drinker.

7. Problem Drinking Drivers tend to lead troubled lives, as is shown in:
 - The probability of their having previous and subsequent DWI arrests.
 - The frequency of their contacts with social agencies.
 - Their emotional profiles.
 - The frequency of their family and economic problems.

This makes it possible to identify them by record checks and personality tests.

REALISTIC EXPECTATIONS

Problem Drinkers:

Regardless of what we do with problem drinkers, approximately 1 of 5 will be re-arrested for a drinking-driving offense within one year, 2 of 5 in three years.

Social Drinkers:

Without rehabilitation, 3 of 10 social drinkers will be re-arrested within three years. However, only 2 of 10 entering rehabilitation of some type will be re-arrested.

Source: University of South Dakota,
Program Level Evaluation of MSAP
Diagnosis Referral and Rehabilitation
Efforts, Sept. 1975.

FACTS ON ALCOHOL AND HIGHWAY SAFETY

The Problem

Overview:

Drunk driving continues to be one of our nation's most serious public health and safety problems. Some 50 percent of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10 percent. In single vehicle fatal crashes, where it is more certain who is at fault, upwards of 65 percent of those drivers who die were legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 per year. Thus, a staggering one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.

The cost of drunk driving has a high economic cost to this country as well. A conservative estimate of the total economic cost of drunk driving is put at 24 billion.

Alcohol and Crashes:

Alcohol is a major contributing factor to fatal (and serious injury) automobile crashes. According to a 1978 review of the literature, approximately 60 percent of fatal crashes involved a driver who had been drinking. Between 40 and 55 percent of such crashes involved a driver who had a blood alcohol concentration (BAC) greater than .10 percent (w/v).

With regard to alcohol and responsibility for fatal crashes, the drinking driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BAC's greater than .10 percent (w/v) alcohol in their blood than drivers judged not at fault for their crashes (60 percent vs. 10 percent).

This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where responsibility is apparent, and where between 60 and 75 percent (60-75%) of dead drivers have BACs greater than .10 percent (w/v).

The Driver Population:

What the high BAC figures in crashes suggest is that the majority of alcohol related fatal crashes are caused by heavy (problem) drinkers. Some portion of the approximately 15 percent of fatal crashes which involve drivers who have been drinking, but who do not have BACs greater than .10 percent, may be caused by less heavy, less chronic, "social" drinkers.

The majority of drivers are either abstainers or light to moderate (social) drinkers. Even quite liberal estimates suggest that only about 10 to 15 percent of the nation's drivers would be classified as being heavy (problem) drinkers.

Arrested Drunk Drivers:

The average proportion of licenses drivers arrested for drunk driving over a one-year period is estimated to be one percent (1%). This translates to approximately 1.3 million of approximately 130 million licensed drivers.

On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 percent (w/v) are arrested for drunk driving. These estimates come from a number of roadside surveys conducted in conjunction with the Alcohol Safety Action Projects (ASAPs) funded by the NHTSA in the 1970's and from the Grand Rapids data reported by Borkenstein and others.

The average BAC of these drinking drivers is approximately .20 percent, double the level for presumed intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash.

Blood Alcohol and Body Weight

KNOW YOUR LIMITS

CHART FOR RESPONSIBLE PEOPLE WHO MAY SOMETIMES DRIVE AFTER DRINKING!

APPROXIMATE BLOOD ALCOHOL PERCENTAGE

Drinks	Body Weight in Pounds								
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Influenced Rarely
2	.08	.06	.06	.04	.04	.04	.03	.03	
3	.11	.08	.08	.06	.05	.05	.04	.04	
4	.15	.12	.11	.08	.07	.07	.06	.05	
5	.19	.16	.15	.12	.11	.10	.09	.08	
6	.23	.19	.18	.14	.13	.11	.10	.09	
7	.28	.22	.21	.16	.15	.13	.12	.11	
8	.30	.25	.24	.19	.17	.15	.14	.13	Definitely
9	.34	.28	.27	.21	.19	.17	.15	.14	
10	.38	.31	.29	.23	.21	.19	.17	.16	

Subtract .01% for each 40 minutes of drinking
One drink is 1 oz. of 100 proof liquor, 12 oz. of beer, or 4 oz. of table wine.

SUREST POLICY IS ... DON'T DRIVE AFTER DRINKING!

Past Approaches and Current Activities

Federal Action:

Over the last 12 years, the National Highway Traffic Safety Administration (NHTSA), an Agency within the U.S. Department of Transportation, has worked with the States to reduce alcohol related deaths on the highway. NHTSA initiated 35 Alcohol Safety Action Projects (ASAPs) throughout the country from 1971-1976 which resulted in the development of a coordinated systematic approach to deal with drunk driving.

In 12 of the 35 ASAPs, a statistically significant reduction in fatal crashes at night was achieved. Individual projects were able to double, and even triple driving while intoxicated arrests, using such new technology as roadside breath testing. Court procedures were streamlined to handle large caseloads. Roughly a quarter-of-a-million drinking drivers were referred for treatment.

Before the passage of the Highway Safety Act of 1966, few States specified a presumptive level of driving while intoxicated. The Federal standard for alcohol safety prescribed the 0.10 percent blood level that legally defines the legal intoxication limit. Now all the States have laws defining driving under the influence at the 0.10 percent level. The majority of the States now have made some improvements in their law enforcement, court, rehabilitation, and educational efforts.

State Action

Under the Section 402 grant program established by the Highway Safety Act the States are increasing the proportion of funds allocated to alcohol programs. In FY 1982 approximately 35 percent of 402 funds (\$27.8 of 78.6 million) were allocated to drunk driving programs (with an added 30 percent spent on alcohol enforcement activities under Police Traffic Services).

Responding to citizen interest, 21 States and a number of local jurisdictions have established special drunk driving task forces to revitalize State/local programs.

Fifteen States have raised the minimum legal drinking age to reduce alcohol related crashes among youth. Other States such as Maryland have introduced legislation to raise the drinking age during 1982.

Sixteen States have adopted statutes allowing preliminary roadside breath testing to assist officers in establishing probable cause for drunk driving arrests.

Twenty-one States have established illegal per se statutes designed to simplify and streamline the prosecution of drunk drivers by making it illegal simply to operate a motor vehicle with an illegal blood alcohol concentration (above 0.10%).

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

Joint Resolution

To provide for the designation of the week of December 12, 1982, through December 18, 1982, as "National Drunk and Drugged Driving Awareness Week".

Whereas traffic accidents cause more violent deaths in the United States than any other cause, over fifty thousand in 1980;

Whereas traffic accidents also play a substantial role in serious injuries in this country;

Whereas between 40 and 55 per centum of drivers who are fatally injured have alcohol concentrations in their blood above the legal limit and this figure rises to 55 to 65 per centum in single vehicle crashes;

Whereas the total societal cost of drunk driving has been estimated anywhere from \$5,000,000,000 to \$25,000,000,000 a year, which does not include the human suffering that cannot be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas more research is needed on the effects of drugs on driving ability and their impact on the incidence of traffic accidents, either alone or in combination with alcohol;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increased research on the effects of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID), is demanding a solution to the problem of drunk driving;

Whereas the President has appointed a Commission on Drunk Driving to heighten public awareness and stimulate the pursuit of solutions;

Whereas many States have appointed task forces to examine the existing drunk driving program and make recommendations for a renewed, comprehensive approach;

Whereas an increase in the national awareness of the problem of drunk and drugged driving may help to sustain current efforts to develop comprehensive solutions at the State and local levels; and

Whereas the Christmas and New Year's holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 12, 1982, through December 18, 1982, is designated as "National Drunk and Drugged Driving Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.

Speaker of the House of Representatives

*Vice President of the United States and
President of the Senate*

DRUNK DRIVING FACTS

- o A blood alcohol concentration (BAC) of .10 percent or greater is the level at which a driver is considered legally intoxicated in most states.
- o Approximately 55 percent of fatal crashes involve a driver who has been drinking.
- o In single vehicle crashes, where responsibility is apparent, between 60 and 75 percent of dead drivers have BACs greater than .10 percent.
- o The average BAC of drivers arrested for drunk driving is approximately .20 percent, double the level for presumed intoxication.
- o Over the past 10 years, the proportion of highway deaths involving alcohol has averaged 25,000 per year; one quarter of a million Americans have lost their lives in alcohol-related crashes in the last decade.
- o A conservative estimate of the total economic cost of drunk driving is put at between five and six billion dollars a year.

Post 12/30/82

Nation's War on Drunk Driving

Is Paying Off in a Big Way

States Pass Tougher Laws, Step Up Their Enforcement

By Howard Kurtz
Washington Post Staff Writer

From Maine, where tougher penalties have cut the number of car accidents by 41 percent, to Florida, where 30 fewer people are dying each month on the highways, a nationwide campaign is making unprecedented progress against drunken driving.

For the first time in many holiday seasons, the dominant news is not the usual increase in highway deaths, but increasingly successful new laws and enforcement efforts to keep drunk

drivers off the road. In the most aggressive jurisdictions, including the Washington area, fewer people are dying in auto accidents.

Legislatures in 18 states, including Maryland and Virginia, passed tougher drunk driving laws this year, and similar bills are pending in 14 states. Maryland and New Jersey joined 23 other states in raising their drinking age to 21 for most alcoholic beverages, reversing the trend of the early 1970s toward a lower drinking age.

A growing number of states are resorting to mandatory jail terms, stiffer fines, more frequent arrests and highway checkpoints. Congress recently voted to provide \$125 million in grants to states that act aggressively against drunken drivers.

See DRIVING, A6, Col. 3

Anti-Drunk-Driving Effort Gains

DRIVING, From A1

The crackdown has not been as successful in some places. Minnesota officials, for example, say most offenders know the police do not have enough manpower to arrest more than one drunken driver in 300. Fatalities in California, which initially dropped by 42 percent after stricter penalties were adopted last January, have rebounded almost to 1981 levels.

There were 49,125 traffic deaths in the United States last year, about half related to alcohol. The effort to reduce these casualties has been spurred by the friends and relatives of accident victims and citizens' groups such as Mothers Against Drunk Driving.

Arizona legislators needed no such prodding. They voted overwhelmingly for stricter penalties after one of their colleagues, Sister Clare Dunn, 46, and another nun were killed by a drunken driver. Around the same time, a drunken man in Arizona crashed into a car full of boy scouts, killing several.

Since July, a first conviction for drunken driving in Arizona has cost a minimum of 24 hours in jail, a \$250 fine and a 90-day license suspension. A second offense carries at least a 60-day jail term, and a third conviction can bring as much as 2½ years in prison.

In Maine, half of last year's traffic deaths were rural, single-car crashes, which state police spokesman Kirk Moore described as "a person driving down the road and banging into a tree." Four-fifths of the victims had been drinking, and half were men in their twenties.

The state legislature responded in September 1981 by setting a minimum \$250 fine and a 45-day license suspension for a first drunken driving offense. If criminal charges are filed, it is at least 48 hours in jail. Refusal to take an alcohol test is punished by a six-month license suspension.

The result: 150 people have been killed in highway crashes this year, compared with 199 in the same period last year.

"It's a very tight law," Moore said. "People have to be prosecuted. You can't plea bargain down to reckless driving. There haven't been more arrests, so it's really the deterrence of the law. People are now thinking twice about having that extra drink."

Maine police have compiled a profile of the typical driver involved in a fatal accident: a single or divorced man in his 20s, a heavy beer drinker, driving an older-model car sometime after 10 p.m. on weekends.

Florida now requires first offenders to perform 50 hours of community service, sometimes in hospital emergency rooms where many accident victims are taken. Along with a 50-percent increase in arrests, these penalties have helped reduce this year's traffic deaths by 12 percent to 2,659, or 371 fewer than in 1981.

Maryland, which recently stopped 1,500 drivers during the first weekend of "sobriety checkpoints," has been the most aggressive enforcer of drunken driving laws. Its police expect to make 32,000 arrests this year for driving while intoxicated, compared with 15,575 in 1980.

While traffic deaths not related to drinking have decreased by only 3 to 4 percent from last year in Maryland, alcohol-related deaths have dropped 29 percent to bring the state's highway death toll down to its lowest level in 19 years. "We know in our hearts and in our statistical books that the crackdown in Maryland is really working," said state police spokesman Bill Clark.

The problem in Minnesota was that a driver whose license was revoked was allowed to stay on the road for a month or more as his case dragged on through appeals. Under a law passed this year, the offender's license is now revoked within seven days.

But public safety official Forst Lowery says the odds are still against the police. "Say a dog brings 300 of his friends into a room, they all dirty the carpet and we only punish one," Lowery said. "We have to make many more arrests before a deterrent is established."

Some officials say the key element is the certainty of punishment. New York, for example, has no mandatory jail term for drunken driving, but a new law requires judges to impose a \$350 fine and revoke the offender's license for six months. Fatal night crashes in New York are down 17 percent.

"You can't plead to speeding or bald tires or something anymore," said Marcus Salm, New York's assistant director of highway safety. "We had a lot of guys who would say, 'Look, if you charge me with drunken driving, my wife will leave me and I'll lose my job, and besides, I've got a good lawyer.'"

Still, Salm acknowledged, "There are ways of getting around the mandatory penalties. Judges don't like being told what to do, and they sometimes react by telling the state what to do. They can throw the case out."

Under congressional legislation sponsored by Rep. Michael D. Barnes (D-Md.), each state that makes drunken driving controls a priority is now eligible for an additional 50 percent of its federal highway safety grant. To qualify, a state must take such steps as raising the drinking age to 21, eliminating plea bargaining, setting up highway checkpoints and using preliminary breath tests.

A presidential commission recently urged the states to adopt similar measures. One recommendation, already in effect in many places, is to use a blood alcohol content of .10 as the legal standard of intoxication. For a 160-pound person, this would mean drinking either five beers, five glasses of wine or three shots of whiskey in an hour.

The commission also suggested that money collected in fines be given back to local authorities to finance enforcement and education programs. This is already being done in New York, where Salm said it provides a powerful incentive for county police to join the crackdown.

Staff researcher Carin Pratt contributed to this report.

Washington Area's War on Drunk Driving Pays Off in a Big Way

Area Traffic Deaths Drop; Arrests Are on Increase

By Blaine Harden
Washington Post Staff Writer

The highly publicized war against drunk driving—waged this past year by mothers, lawmakers, judges, juries and the police—has racked up impressive victories in the Washington area.

Highway deaths in 1982 declined in Virginia, Maryland and the District of Columbia, where laws against driving under the influence of alcohol were toughened. At the same time, arrests of drunk drivers have increased sharply.

In the District this year, 36 people—the lowest figure in at least a decade—had died in traffic accidents as of Tuesday. Alcohol-related deaths in Maryland fell 30 percent while arrests of drunk drivers were up 50 percent. Highway deaths in Virginia declined 14 percent.

During Christmas weekend, as police in all three jurisdictions beefed up patrols, there was one alcohol-related death in the Washington area, compared to seven over the 1981 Christmas weekend.

"The word is out. We are out there to get people and as a result we have reduced fatalities," says Robert M. Goldstein, director of the D.C. police alcohol countermeasures and traffic services.

See ALCOHOL, A7, Col. 1

ALCOHOL, From A1

Throughout the Washington area, there may never have been such a bad year to be drunk at the wheel.

In Northern Virginia, a drunk driver involved in a head-on collision that killed three persons was convicted in September of second-degree murder. The conviction was the first in the state on that serious charge in an alcohol-related traffic case.

In Maryland, a drunk driver involved in a crash that killed five members of a Montgomery County family was sentenced to 15 years in prison.

In the District, police began a first-in-the-nation mandatory breath test for all drivers stopped for moving violations. Any driver who refuses the test can be arrested.

Despite tough new laws and aggressive enforcement, some drivers continue to drink and drive. John T. Hanna, director of the Virginia Department of Transportation Safety, says only one in 2,000 drunk drivers is ever caught. One such driver slipped through the enforcement net last weekend in the Washington area.

Donald W. Jewell, 33, who ran an insect exterminating business, threw a party at his Manassas house on the night before Christmas Eve. Friends who saw him at the party described him as drunk and "having a hard time talking."

In the middle of the party, Jewell stormed outside and drove off in his black 1979 Chevrolet pickup truck. He headed south at 70 miles an hour on a 55-mile-an-hour, two-lane road, police said.

Jewell had a record of drinking and bad driving. In California in 1969 he was convicted of driving under the influence of alcohol. Near Hodges, S.C., in 1975 he ran a stop light and crashed into a car, killing three persons. A blood-alcohol test showed that Jewell was under the influence of alcohol at the time. He was convicted of involuntary manslaughter and sentenced to six years in prison.

Four years later, after he'd moved north to Mathews, Va., Jewell was convicted of breaking and entering and sentenced to five years in prison. From prison, Jewell wrote Circuit

Court Judge John DeHardit: "I am an alcoholic and I need and want help with this so I can be a man. I also know that if I don't get help with my drinking I will be back in prison."

About 10:30 p.m. a week ago today, Jewell lost control of his pickup rounding a curve. Police said Jewell tried to pull his truck back on the road but it went into a roll, taking up both lanes of Rte. 234 near Manassas. It stopped rolling when it smashed into a pickup coming from the opposite direction.

"He had the whole highway covered. It looked like a wall coming at me. It scared the daylights out of me. I'm still scared," William E. Parker Jr., 39, the driver of the other pickup, said yesterday.

Parker, who escaped with a strained back from the crash that totaled his pickup said he was lucky.

"When I knew anything, he was rolling at me. If I hadn't got in the ditch, he'd a killed me too," Parker said.

GENERAL VIEW OF WHAT A MEDICAL EXAMINER called "multiple severe injuries."

To head off this kind of driver before an accident can occur, police in Maryland set up "sobriety roadblocks" over the Christmas weekend, and plan to do so again this weekend.

Under a three-month program authorized earlier this month by Maryland Gov. Harry Hughes, the roadblocks are set up to catch drunk drivers who "absolutely don't think they can be caught," said Sgt. Ray Cotton.

"State Police stopped 2,000 cars over the weekend and we arrested four drivers," Cotton said. "We don't consider this a defeat, however. We are making believers out of people. The fact that we aren't arresting that many people is a sign that awareness of drunk driving is working."

In Montgomery County, along a flare-brightened stretch of Montgomery Village Avenue, county police on one recent holiday night checked an estimated 350 drivers between 11 p.m. and 1 a.m. They arrested no one.

"I don't think anybody had visions of locking up hordes of people," said Sgt. Owen J. Lennon, surveying the line of backed-up holiday travelers. "This is primarily a deterrent."

The mood on both sides of the spot check remained friendly. Police officers asked drivers if they had had anything to drink, then told those who said "no" or "just one" to "get home safely and thank you for cooperating."

As the night grew later and colder, some officers became impatient.

One policeman asked a glamorously dressed young woman to pull off the road for a test. "Recite the alphabet," she was told.

"Are you serious? That's what I get for being honest with you guys and telling you I had two drinks," she said, shivering in her strapless, sequined top, and then passed the test.

Maryland police say they can do little about those drivers who choose to avoid roadblocks by turning around and driving away from them.

"As a general rule," says Sgt. Cotton, "we would not approach an individual who turns around from a checkpoint, unless he does it illegally."

When area police do arrest someone for drunk driving, new laws require stiffer penalties.

In the District, persons arrested with blood alcohol levels at 0.1 percent or higher can now be convicted of driving while intoxicated even without evidence of impaired driving ability. The law doubles penalties for those who refuse to take breath or blood tests and sharply increases fines for repeat drunk-driving offenders.

In Maryland, where the drinking age this year was raised from 18 to 21, second offenders no longer can avoid conviction by receiving probation. Blood tests are mandatory in fatal accidents, and police can confiscate for 120 days the license plates of any repeat drunk driver.

In Virginia, first offenders can no longer erase their convictions by entering a rehabilitation program. Second offenders face an automatic 48 hours in jail, and a third conviction requires a minimum of one month in jail and possibly lifetime revocation of a driver's license.

The target of this crackdown is drunk driving, not drunks. Accordingly, two local governments, one hospital and one volunteer group have come up with programs that permit tipplers to ride home—in a cab—for free.

Montgomery County's Dial-a-Ride program fielded 50 calls and sent out 45 cabs on Christmas Day. The big night, however, will be New Year's Eve when 400 calls and 300 pick-ups are expected, according to Jerry Freed at Dial-a-Ride.

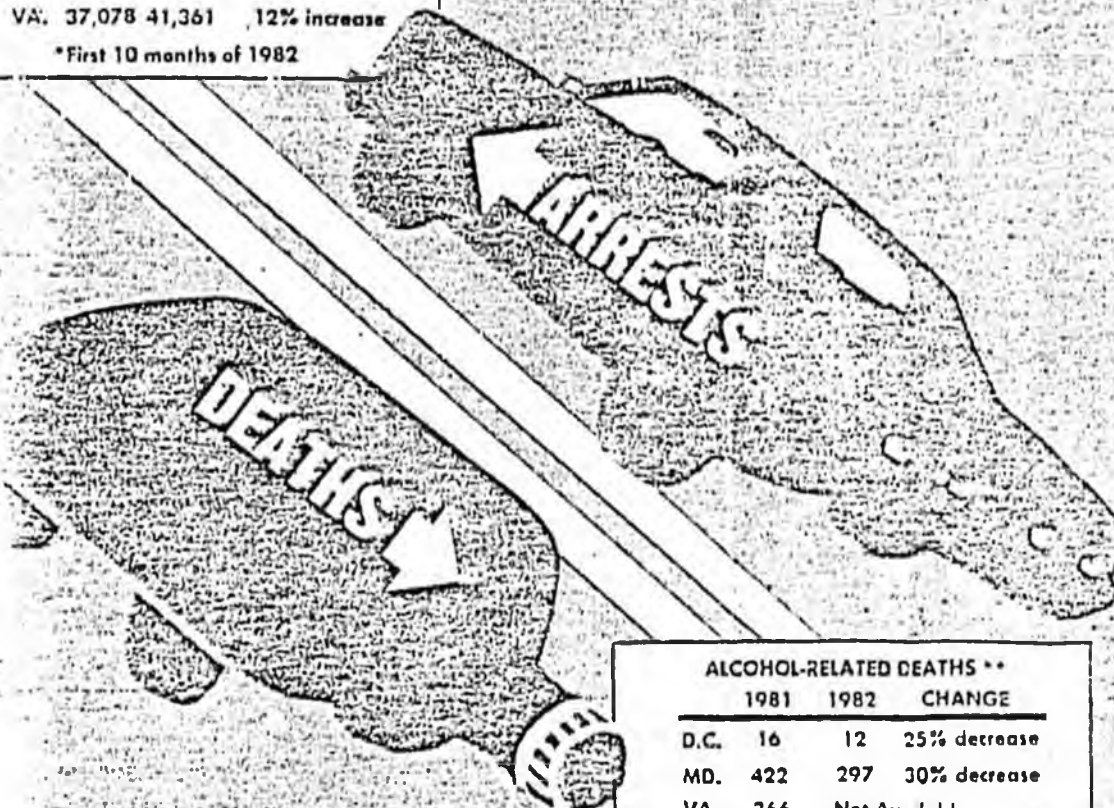
"We get people trying to make reservations before they go out and drink too much," Freed said. "We make them aware it's for people already in trouble."

Staff writers—Alma Guillermoprieto, Rosa Michnya and Joanne Ostrow contributed to this report.

CRACKDOWN ON DRUNK DRIVING

ARRESTS *			
	1981	1982	CHANGE
D.C.	2,690	3,061	14% increase
MD.	18,253	27,351	50% increase
VA.	37,078	41,361	12% increase

* First 10 months of 1982



ALCOHOL-RELATED DEATHS **			
	1981	1982	CHANGE
D.C.	16	12	25% decrease
MD.	422	297	30% decrease
VA.	366	Not Available	

** Through 12/28/82



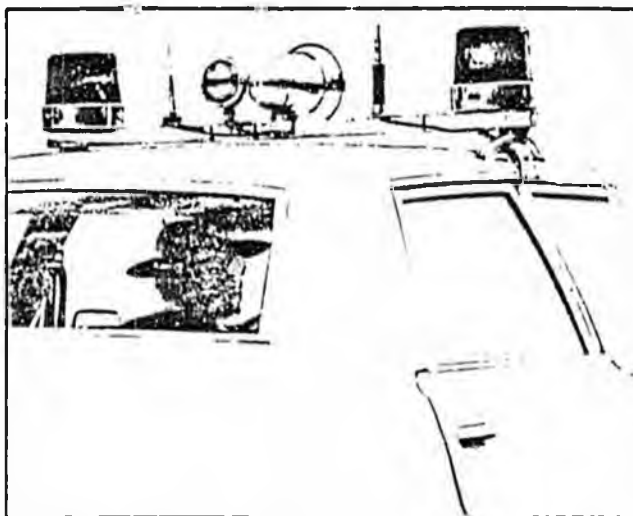
In order for a tougher drunk driving law to accomplish its purpose, it must not merely punish those arrested, it must deter those who might otherwise drive after drinking. Therefore public service advertising and news media coverage of new laws is extremely important. In Iowa, the Governor's Highway Safety Office hired an advertising agency to create a TV spot on the new law. That 30-second message, which is included in the ACAP video documentary, shows a young man in a small room. He begins talking to the camera:

"When they stopped me for drunk driving I thought 'No Big Deal.' It was my first time. Well, I lost my driver's license right then and there — gone for at least 120 days. And my insurance company says my rates are going to go up a thousand dollars a year. That's gonna hurt, bad. And now I'm here . . .

The camera pulls back to reveal that the man talking is actually behind bars.

" . . . for 48 hours. Iowa's new drunk driving law is for real, and it's tough, even if it's your first time."

The exposure given this spot by Iowa's TV stations has insured that virtually every motorist is aware of the new law.



Administrative License Revocation for Drunk Driving

Recommendation for legislative action

by the American Council on Alcohol Problems

Administrative Revocation for Drunk Driving

Public indignation continues to grow. Citizens have made it clear to lawmakers and public officials that they are no longer willing to tolerate the highway carnage caused by drunk drivers.

In 1982 this grass roots sentiment, widely expressed across the country, resulted in the appointment of the Presidential Commission on Drunk Driving. The Commission's interim report was issued in December 1982 so that states could act on its recommendations during 1983 legislative sessions.

Those recommendations cover a wide range of topics, including changes in state drunk driving laws. The Commission recommends enactment of a "per se offense" at .10% BAC, and a presumption of guilt at .08% BAC. It also supports raising the drinking age to 21 and adopting a system for administrative revocation of drivers' licenses.

Other recommendations pertain to minimum jail sentences and legal sanctions against drunk driving. Legal penalties, however, require county attorneys willing to prosecute and judges willing to hand down the sentences mandated by the legislatures. Unfortunately, some county attorneys grant deferred prosecution, allowing those apprehended by police to continue driving. Those who are tried and convicted, or who plead guilty, are often given deferred sentences by the judge.

In all but a handful of states, drivers' licenses are only suspended or revoked after court conviction, so those charged with drunk driving may keep their licenses for months after being apprehended. One of the Presidential Commission's recommendations addresses that problem.

Administrative Revocation, pioneered in Minnesota in 1976 and adopted by Iowa in 1982, means that the driver's license is confiscated by the arresting officer on behalf of the Department of Transportation. Hearing officers are empowered to grant work permits in some cases. Under the "implied consent" portion of the law, licenses are revoked for refusal to take the chemical test, as well as for test failure.

Under this "two-track" system the loss of driving privilege extends to all those apprehended with a blood alcohol level of .10%, regardless of court action or lack of it. Administrative Revocation accomplishes the most important task in the fight against drunk driving. It takes drunk drivers off the road immediately, and serves as a strong deterrent to others.

Because, in almost every state, prosecution and sentencing vary considerably from one county to another, Administrative Revocation is the only predictable penalty for drunk driving. The American Council on Alcohol Problems has produced an 18-minute video tape documentary on Administrative Revocation in Iowa. Below are quotations from the video presentation:

"By the time that bill reached the floor of the House it was pretty clear from sentiment in the Capitol that they had to vote out something. They had to do something in the way of legislation on drunk driving that year because of the clear public sentiment favoring that, and the national trend in that direction. . . . There was massive bipartisan sentiment. The first vote in the House was 97-0, and the first vote in the Senate was 45-0."

Don Mason, Attorney
Prosecuting Attorney's Counsel

"I think that the administrative revocation of a drivers' license for all persons above .10 BAC is extremely important. . . . I think it puts the responsibility for putting people back out on the road back where it belongs — that's back with the state agencies. Since they do the issuing of driver's licenses, they should be responsible for who's out on the road. That's not really a judicial responsibility."

Sven Sterner
Governor's Highway Safety Office

"This is the first time in the history of this ASAP program that people have actually, realistically lost their drivers' licenses when they were arrested for OMVI. . . . We're the ones that initiate the revocation. We take the license right on the spot."

Roger Sanders, Patrolman
Alcohol Safety Action Program
Des Moines Police Department

"In the four and a half months since the law took effect there have been 5,685 drivers' licenses revoked in Iowa."

Bill Kendall, Director
Driver Licensing, DOT

"In the first four months that this law has been on the books there have been 59 fewer alcohol-related fatalities. . . . In that period there were 189 total highway fatalities — 29% of that 189 were alcohol-related. Over the same period a year ago, that percentage was 46%. . . . The sanctions that are applied generally — the fine, community service, some hours in jail — do not carry the deterrent effect on the drinking driver that the sure, immediate loss of their license has."

Gordon Sweitzer, Director
Motor Vehicle Division, DOT

"The one advantage we do have in the acronym game in Iowa with MADD and SALD is that we have GLADD. Now we have Good Laws Against the Drunken Driver."

Col. Frank Metzger, Director
Iowa Highway Patrol

To order a copy of the video tape documentary on Administrative Revocation, complete the order form below and mail to the American Council on Alcohol Problems.

Please send me a copy of the ACAP video documentary on Administrative Revocation.

Check video format:

- 3/4-inch "U-Matic" cassette
 1/2-inch "Beta" cassette
 1/2-inch "VHS" cassette

I've enclosed remittance for:

- two-week rental (\$10.00)
 Purchase of cassette (\$50.00)

Mail to:

American Council on Alcohol Problems
2908 Patricia Drive
Des Moines, IA 50322

name

address

city

state

zip

States take tougher, quicker action to stop drunken drivers

On-the-spot suspension of licenses, more uniform laws bolster efforts across US

By George B. Merry

Staff writer of The Christian Science Monitor

Boston

Thousands of drunken drivers are now being pulled off the nation's highways — and with fewer questions asked.

• Lawmakers in at least 35 states passed tough new penalty or enforcement measures in 1982.

• Similar or even stricter statutes are pending, or expected to be filed, within the next few weeks in all but three states — Kansas, Kentucky, and Maine.

Particular attention is being focused on recommendations by the President's Commission on Drunk Driving, calling for speedier action. These include provisions that can be administered uniformly around the nation. Penalties currently vary widely from region to region, thus leading many judges and juries to refrain from punishing drunken drivers.

One especially appealing approach involves on-the-spot suspension of drivers' licenses by police. Four states — three in the past year and a half — have moved with considerable success in on-the-spot license revocation of those stopped for driving under the influence of liquor.

Similar instant tough drunk driver measures begin April 1 in a fifth state, and lawmakers in at least four others are considering following suit with the administrative revocation approach, one of the major recommendations of the presidential commission.

buoyed by the sharp reduction of liquor-related traffic deaths in his home state of Iowa, William N. Plymat, a member of the presidential

With administrative revocation, the driver retains the right to appeal, but during that often lengthy process the suspension holds.

panel, which was appointed last spring, is dedicating substantial energies to selling the idea elsewhere.

The retired insurance executive and former Republican state senator views the threat of immediate, lengthy suspension of a motorist's right to operate a vehicle as an effective curb on drunk driving.

Under the tough Iowa statute, first implemented last July 1, an arresting officer can seize a license if the driver refuses to take a breath test on the scene, or flunks it by having a blood alcohol content of 0.10 percent or more.

Revocation is 120 days for first offenders, 240 days for a second arrest, and one year for the third. Also provided are tougher penalties for drunk driving — \$100 fines and the possibility of 30 days in jail now become up to \$1,000 and one year behind bars.

With administrative revocation, the driver retains the right to appeal the loss of his license, but during that often lengthy judicial process the suspension holds. In hardship cases, temporary permits to operate a vehicle to and from work can be granted, but even stiffer penalties are imposed should the motorist be picked up for drunk driving during the period of revocation.

The new law, during its first six months, cost 7,887 drivers their licenses — 6,383 for four months, 1,077 for eight months, and 427 for a full year, according to James Fellers, the driving improvements manager for Iowa's department of transportation.

During the same period, Iowa's liquor-related road death total was 97, or 59 fewer than during the corresponding period in 1981.

While a number of factors, including faster treatment and improved care of traffic accident victims, contributed to the improvement, state transportation safety officials attribute the better record substantially to the tougher curbs on drunk driving.

Of the 7,887 license-revoked drivers, 6,693 took the breath test and failed, with an average blood alcohol count of 0.19 percent. The level of intoxication of the remaining 1,194 is unknown, since they refused to submit to the test.

Similar on-site administrative revocations of licenses also appear to be working effectively in Minnesota, Delaware, and West Virginia. Oklahoma drunk drivers, beginning in April, will be the next to face on-the-spot license suspensions for not less than 90 days.

Mr. Plymat, who pledges to continue his crusade in behalf of such measures, is enthusiastic about the prospects for early passage in Utah, where Gov. Scott M. Matheson solidly backs the effort.

Within the past few days a proposed administrative revocation law has been introduced into the California Assembly. Legislative committees in at least two other states — Alaska and North Carolina — also are expected to take up such measures during the next few weeks.

Several papers in Iowa, including the Cedar Rapids Gazette, regularly print the names and addresses of those whose licenses are revoked for drunk driving. Arrests for operating a motor vehicle under the influence of liquor similarly are publicized in a number of other dailies around the US, including the St. Louis Globe Democrat, Plymat notes.

of time. In the great majority of cases, blood alcohol readings were found to be especially high, indicating that law-enforcement authorities were not abusing their right to stop a motorist for a sobriety check. It might also be noted that the alcohol-related accident rate fell sharply during the same period.

The President's Commission on Drunk Driving endorsed such a proposal in its interim report. The issue is not one of severely penalizing the drinking driver. Indeed, what is good about the revocation concept is that it is uniform, applying equally to all motorists. Under such a law, no motorist apprehended for drinking in one locality would face a punishment more — or less — severe than a motorist in another jurisdiction. The law also puts the responsibility back where it belongs — in the hands of each motorist.

State legislatures meeting this year might well consider Iowa's experience.

How does it work? Take Iowa, where such a law was enacted after unanimous passage in both houses of the legislature last year. Persons stopped for suspected drunken driving are asked to take a sobriety test on the spot. If they refuse, they face a substantial penalty. If they take the test, and fail, their license is suspended right then and there. Revocation for first offenders is 120 days; for second offenders, 240 days; for subsequent offenders, one year. The driver has the right to appeal the loss of the license or contest the administering of the sobriety test. But during the period of appeal the suspension remains in effect. Exceptions are made for revocation in cases of extreme hardship.

In the six months since the law has been in place in Iowa, close to 8,000 persons have had their licenses suspended for varying periods

For years, states and municipalities have tried just about every legal stratagem to help curb the drunken driving problem in the United States. Yet in many communities judges and juries are loath to impose severe penalties, in part because of a recognition that the drinking driver is often as not in need of special counseling. Now, thanks to the experience of a few states, it is clear that there is one step that could be taken at the state level to quickly reduce liquor-related traffic accidents: swift administrative license revocation — right at the scene of the arrest.

Minnesota pioneered administrative revocation in 1976. Today similar laws are on the books in Iowa, West Virginia, and Delaware. Oklahoma will join the list later this spring. Utah is now considering such a measure. Alaska, California, and North Carolina are also expected to take up the issue this year.

Learning from Iowa

The Monitor's view

Thursday, January 27, 1983

POSITION PAPER

SCSCS for House Bill No. 6 (Judiciary)

"An Act relating to driving a motor vehicle."

House Bill No. 6 amended would increase the penalties for alcohol related driving offenses. Specifically:

Section 11 AS 28.15.291 sets the penalty for first offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated at 30 days. The penalty for second or third offense driving with a suspended license as the result of a conviction of driving a motor vehicle while intoxicated would be 90 days.

Section 14 AS 28.35.030 (c) raises the penalty for second offense operating a motor vehicle while intoxicated to 20 consecutive days. The penalty for a third conviction would be raised to 30 consecutive days.

Section 20 AS 28.35.032 (g) sets the penalty for second offense of refusing to submit to chemical test at 20 days; third offense 30 days.

If CS for House Bill No. 6 is enacted, the increases in penalties set out in Sections 11, 14, and 20 would result in the need for 22 additional minimum security beds.

Recommended by:

Walter B. Enderl for
Roger V. Enderl, Director
Division of Adult Corrections

Date:

June 7, 1983

Approved by:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date:

6/9/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (Jud.)
Title: Act relating to driving a m.v.
Sponsor: Judiciary Committee
Requestor: Finance Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				419.7	444.9	471.6
200 TRAVEL		2.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		39.6	42.0	76.7	81.3	86.2
400 COMMODITIES		68.6	72.7	80.7	85.6	90.7
500 EQUIPMENT		-	-	4.5	-	-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		6.9	7.3	7.7	8.2	8.7
TOTAL OPERATING	-0-	117.1	124.1	591.5	622.4	659.7
CAPITAL	-0-	2,850.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2,977.1	124.1	591.5	622.4	659.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	9	9	9
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange
Division: Adult Corrections

Phone: 465-3376
Date: June 7, 1983

Approved by Commissioner: Robert London Smith, M.D.
Department: Health & Social Services

Date: 6/9/83

Distribution:

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3/8/83

IV. ANALYSIS:

A. Assumptions

1. Bed Impact

The passage of this bill will result in the need for 22 additional minimum security beds within the Alaska correctional system. The sections of the bill which affect increased inmate population projections are:

a. Section 11

Statistics furnished by the Department of Public Safety show 181 persons were convicted in 1982 for driving with a suspended or revoked license where the original offense resulting in the loss of license was driving while intoxicated (DWI) or implied consent (refusal to take a breathalyzer test). For purposes of this fiscal note, that number was used for calculating the increased person days of incarceration resulting from increased sentences to 30 or 90 days. It was assumed that 80% of the offenders would have been convicted only once in the previous 15 years and 20% convicted more than once in the previous 15 years.

The following calculations also consider that the offender would have been given a minimum sentence of 10 days previously, and it is assumed that every offender will earn all good time for which they are eligible. Therefore, 145 offenders would serve an additional 15 days and 36 offenders would serve an additional 60 days. This results in the need for an additional 11.88 beds.

b. Section 14

This section of the bill increases the minimum sentence for second time drunk drivers from 10 days to 20 days and third and subsequent time drunk drivers from 10 days to 30 days. It is estimated that would be 450 repeat offenders affected by this legislation, 425 second offenders and 25 third offenders. The additional sentence length to be served, assuming all good time will be earned is 12 days for second time offenders and 20 days for third offenders. This increased sentence length results in the need for 9 additional minimum security beds.

c. Section 20

This section provides new penalties for refusal to take a chemical test similar to the sentences to be imposed for driving while intoxicated. Statistical data for this offense was not available. Therefore, it was assumed that 20 individuals would be convicted with one

prior and 7 individuals would be convicted with 2 or more prior offenses. This would result in the need for 1.1 additional beds.

- d. The summary of a, b, and c above is 21.98 beds, which were rounded to 22 beds.
2. All persons convicted would receive the minimum sentence and all persons would earn all good time for which they would be eligible.
3. Inflation of 6% per year was used for the entire period of the fiscal note.
4. The new beds would not be available for occupancy until July 1, 1985. This will result in further overcrowding of the existing facilities for two years.
5. One additional position is needed for every 2.5 prison beds. Therefore, 9 correctional officers are needed to provide the security and supervision of the inmates. These positions would be requested for FY 86.

B. Program Summary:

1. Positions

- 1 - Correctional Officer III
- 8 - Correctional Officer II's

These positions are needed to provide for the security of the institution where the beds will be constructed and for the supervision of the additional 22 persons (full-time equivalents) within the Alaska corrections system.

2. Other Expenditures

The fiscal impact will be experienced as soon as the bill becomes law. Therefore, the incremental costs directly related to inmate care are identified in FY 84. Position costs and costs related to building operations are not included until FY 86.

- a. Travel - \$2000. Inmate transportation to point of arrest when released from custody.
- b. Contractual - \$39,600. Medical expenses for 22 full-time equivalent inmates at \$1800 per inmate per year.
- c. Commodities - \$69,600. Food, clothing, bedding, etc. for 8,085 inmate days at \$8.48 per day.

Grants - \$6,900. Inmate gratuities paid for persons working in the kitchen, or janitorial/maintenance crews, etc.

e. Capital Expenditures

22 beds @ \$130,000 per bed = \$2,860,000

D. Economic Impact:

Passage of this bill should not significantly impact the State's economy.

E. Impact on Local Governments:

There would be no fiscal impact on local governments unless they changed local ordinances related to DWI to include the same penalties contained in this bill. The fiscal impact would occur for local government units who contract with the State for the care of prisoners for local offenses.

1.	POSITION TITLE Correctional Officer III			RANGE/STEP 15/A	BARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPROV.	DISC.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.	

3.	CONTINUATION LEVEL	X	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	30,944	OT \$ 3371	
6.	Benefits	9,446	Shift Diff. \$ 1011	
7.	Supplemental Benefits	2,165		
8.	Fixed Benefits	3,236		
9.	TOTAL PERSONAL SERVICES	01	50,173	
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04	200	
13.	Equipment	05	500	
14.	Other			
15.	TOTAL COST		50,873	

JUSTIFICATION

These positions will provide supervision of security staff for the new minimum security beds resulting from the passage of CS for House Bill No. 6 (Judiciary).

Single position costs:

Salary	\$ 30,944
Overtime	3,371
Shift Diff.	1,011
Benefits	14,847
	\$ 50,173

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	50,873
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BSM USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Corrections
Offender Confinement, Reformation,
PROGRAM & Supervision

BRU Adult Confinement

COMPONENT _____

Page _____ of _____
Revised Date _____

FY 84

REQUEST

Bill/Resolution No.: CSHB6
 Title: "An Act...Driving a Motor Vehicle"
 Sponsor: Abood, Furnace, Lindauer
 Requestor:

II. FISCAL DETAIL

Agency Affected: Dept. of Administration
 Program Category Affected: Public Defender
 BRU, Program of Subprogram(s) Affected: Third District, Fourth District

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		177.2	187.8	199.1	211.0	223.7
200 TRAVEL						
300 CONTRACTUAL		15.0	15.9	16.9	17.9	19.0
400 COMMODITIES		4.5	4.8	5.1	5.4	5.7
500 EQUIPMENT		6.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		202.7	208.5	222.4	234.3	248.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		202.7	208.5	222.4	234.3	248.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

IV. ANALYSIS: Attach a separate page for any analysis

Prepared By: Bob Stokes, Admin. Officer Phone: 279-7541
 Division: for Dana Fabe, Public Defender *E. Allen Oberheim* Date: April 13, 1983
 Approved by Commissioner: Lisa Rudd *L.R.* Date: April 14, 1983
 Department: Administration

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ANALYSIS OF C.S.H.B. 6

There are several provisions within this bill which will require a substantial increase in the attorney time necessary to handle DWI and refusal of breathalyzer cases.

First, the increase in mandatory minimum penalties for second and subsequent offenders to 20 and 30 days respectively, as well as the increase in fines, will mean that a much higher number of defendants will exercise their right to a jury trial. Preparation for jury trial requires extensive interviews with the client and prospective witnesses, and the court time for the case is greatly increased, since a DWI change of plea in court may take 15 minutes while a jury trial in such a case usually lasts 1 - 2 days. We handle a high volume of not only State prosecuted DWI's but Municipally prosecuted DWI's as well. This increase in attorney time necessary for handling each drunk-driving case, given our already staggering misdemeanor caseloads, will require two additional attorneys for the Anchorage office, and one for the Fairbanks office.

Second, a drastic increase to a 90-day mandatory penalty for a first offender charged with driving with a suspended license will increase the number of jury trials which this office is required to handle.

Third, provisions in the statute which allow a police officer upon probable cause to seize the defendant's driver's license or impound his vehicle for a substantial period of time at the time of arrest will also require increased attorney time, due to the defendant's right to schedule a court hearing within 7 days to obtain return of his license or vehicle. Although the defendant may not have a right to an attorney to handle the hearing which he initiates to have his car or license returned, he will need an attorney's assistance at that hearing to the extent that it impacts his criminal case. Because anything that the defendant might say at that hearing regarding the facts of his case could be used against him at the subsequent criminal trial, he would need the assistance of counsel at that hearing. The attorney would have to obtain the immunity which would be due the client under the Alaska Supreme Court decision of McCracken v. Corey, as well as limit the scope of cross-examination at the hearing.

Because of the volume of DWI cases handled by this agency and the substantially increased attorney time necessary to comply with the provisions of the Statute, two additional attorneys for Anchorage and one for Fairbanks are requested.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB6/SB61
 Title: Drunk Driving
 Sponsor: _____
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: Admin. of Justice
 BRU, Program of Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		482.8	614.2	651.1	690.2	731.6
200 TRAVEL						
300 CONTRACTUAL		12.5	15.9	16.9	17.9	19.0
400 COMMODITIES		12.5	15.9	16.9	17.9	19.0
500 EQUIPMENT		31.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		539.0	646.0	684.9	726.0	769.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		539.0	646.0	684.9	726.0	769.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		12	12	12	12	12
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for an Analysis

Prepared By: Richard Barrier *[Signature]* Phone: 264-0545
 Division: Alaska Court System/Administration Date: 4/13/83
 Approved by Commissioner: _____ Date: _____
 Department: _____

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ANALYSIS OF FISCAL IMPACT OF SB 61/HB 6:

The Court System currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. This legislation will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the Court System would experience an increase of approximately 250 trials per year.

This legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI ask the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year.

Once a motor vehicle has been forfeited to the state, the court must notice any interested party regarding this forfeiture and permit interested parties to submit a petition for remission of interest in the motor vehicle. Each petition filed will require a court hearing. It is estimated that this would lead to approximately 500 hearings per year.

Statewide, the major impact of this legislation would be an increase of approximately 250 DWI trials and 2,000 hearings per year. Along with the judicial manpower required to conduct the trials and hearings, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants in hearings, and perform other new clerical functions under this legislation related to impoundment of vehicles and forfeiture of vehicles.

The impact of this legislation will be felt in each court location in the state, though the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resources to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement this legislation would be one district court judge, with a support staff of a secretary and in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of

the state's caseload. While these courts may be able to get by without additional judicial resources, each would need at a minimum one additional court clerk II position.

A detailed breakdown of the cost associated with this legislation is provided below.

FY 84 COST OF IMPLEMENTING HB 6/SB 61

PERSONAL SERVICES:

SALARIES:

ANCHORAGE

District Court Judge	\$ 60,600
Secretary (Range 12B)	23,352
In-Court Clerk (Range 12B)	23,352
Court Clerk II (2 @ Range 10B)	41,424

FAIRBANKS

District Court Judge	69,084
Secretary (Range 12B)	26,616
In-Court Clerk (Range 12B)	26,616
Court Clerk II (2 @ Range 10B)	46,706

PALMER

Court Clerk II (Range 10B)	21,384
----------------------------	--------

KENAI

Court Clerk II (Range 10B)	<u>21,984</u>
----------------------------	---------------

\$361,118

BENEFITS:

Judges	139,659
Classified	<u>78,582</u>

Total Personal Services 579,359

CONTRACTUAL 15,000

COMMODITIES 15,000

EQUIPMENT (one time costs) 31,200

TOTAL COST \$640,559

FIRST YEAR ADJUSTMENT:

Less two months recruitment time (101,560)

TOTAL COST FIRST YEAR \$538,999

(Subsequent years' costs include inflation at 6%.)

AMENDED TITLE & SPONSOR SUMMARY
AMENDED TITLE:
AN ACT RELATING TO DRIVING A MOTOR VEHICLE

08:21 3/02/83 PAGE 1 OF 2

PRIME SPONSOR: ABOOD.
CO-SPONSORS: FURNACE, LINDAUER, COWDERY, SZYMANSKI, PESTINGER, BETTISWORTH,
CATO, UEHLING.
CURRENT STATUS: 2/28/83 IN (H) JUDICIARY

HE 6 HOUSE ACTION
DATE SEQ PAGE

08:21 3/02/83 PAGE 2 OF 2

LEGISLATIVE ACTION

01/17/83	01	0018	FIRST READING -- COMMITTEE REPORTS
02/28/83	02	0361	S.A. -- CS04, NR02, OTHER01
02/28/83	03	0361	S.A. F/NOTE HSE SUPPL #17 JUDICIARY RULES

**

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*** ** *

SPONSOR: House Judiciary
 (leg) non-leg pub hear work sess inv hear
 SUBJECT: HB 6 Alaska
 MAILING ADDRESS: _____

DATE TON/BY Wh - 3/18
 T/C DATE/DAY Wed. March 23
 TIME: 7-9 PACIFIC
 _____ YUKON
5-7 ALASKA
 _____ BERING

PHONE 4990 CONTACT Athena

SITES PARTICIPATING:

- | | | | | |
|--|--|--|--|--|
| <u>North Slope</u>
Anaktuvuk Pass
* Barrow
Kaktovik
Point Hope
Wainwright | <u>NANA</u>
Ambler
* Kotzebue
Noorvik
Selawik

<u>Norton Sound</u>
Gambell
Hooper Bay
* Nome
Savoonga
Shishmaref
** Unalakleet | <u>Bristol Bay</u>
<u>Aleutians</u>
* Bethel
* Dillingham
St. Paul
Sand Point
** Unalaska

<u>Interior</u>
* Delta Junction
* Fairbanks
** Fort Yukon
Galena | <u>South Central</u>
* <u>Anchorage</u>
Homer
* Kenai (Sol)
* Kodiak
* Mat-Su
Seward
* Valdez | <u>Southeast</u>
Cordova
Haines
Hoonah
* Juneau
* Ketchikan
* Petersburg
* Sitka
Wrangell
Yakutat |
|--|--|--|--|--|

Chairing Site/Person Pen Bussell Special Offnet _____
 Location/Phone# _____

 Signature of Sponsor/Contact Person Pen Bussell Date 3/18/83

-----TELECONFERENCE OFFICE USE ONLY-----

2-Wire 4-Wire
 Bridges: #1 (206)447-0620
 #2 (206)447-1534
 #3 (206)447-5027
 #4 (206)447-9479
 Bridge operator (800)426-3232
 JNU trouble #'s 580-062
 460-3836
 Publicity:
 _____ Local calls/list attached
 _____ Media/P.S./.. attached
 Can expect:
 _____ Longday back-up
 _____ Bill summary
 _____ Participants list

POST TELECONFERENCE NOTES

Site/Date: _____
 Local Moderator _____
 T/C Started: _____ T/C Ended _____
 T/C Recorded: _____
 Testified/Participated: _____
 Unable to Testify: _____
 Observers: _____
 Total Number: _____

POSITION PAPER

CS for House Bill No. 6 (State Affairs)

"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 90 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalties for the specified offenses would increase the prison population by 80 beds.

Enactment of this bill would have significant impact upon prison population.

Recommended by:

Roger V. Endell

Roger V. Endell, Director
Division of Adult Corrections

Date:

3/11/83

Approved by:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date:

3/14/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Page 1 of 2

Bill No: Committee Substitute HB 6 (SA) Date on Bill: Not available
 Title: "An Act relating to driving a motor vehicle."
 Sponsor: Rep. Abood
 Requestor: Rep. Abood

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital		11,570.0	-0-	-0-		
Operating		549.2	2,006.4	2116.1		
Total	-0-	12,119.2	2,006.4	2116.1		

b. Revenues:

Revenue	-0-	-0-	-0-	-0-		
---------	-----	-----	-----	-----	--	--

2. Source of funds to offset fiscal impact of bill:

The funding source has not been identified by the bill sponsor.

3. Assumptions:

The Committee Substitute for House Bill No. 6 increases the mandating jail time for individuals who drive while the operator's license is cancelled, suspended, or revoked. The amendment increases the sentence for that offense from 14 consecutive days to 90 consecutive days.

It is estimated based on statistical data available, that there would be approximately 650 convictions annually for the offenses specified in the amendment. Because of the significant increase in sentence length, it is assumed that 25% of the current offenders would be deterred from driving while their license was cancelled,

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: Feb. 24, 1983

Approved by Commissioner: Robert Landon Smith Date: 2/24/83
 Department: _____

5. Distribution:
 Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

page 2 of 2

3. Assumptions: (continued)

suspended or revoked. Therefore, it would be anticipated that there 487 persons would be convicted of this offense annually.

The current sentence for these offenses results in 8 days served in jail (14 days less good time). Under the new penalty 68 days would be served (90 days less good time). Time served would increase 60 days; therefore, the increased number of beds required to implement this amendment would be:

$$487 \text{ persons} \times 60 \text{ days} \div 365 \text{ days per year}$$

$$487 \times 60 \div 365 = 80 \text{ new beds}$$

Cost of minimum security beds are estimated to be \$130,000 per bed.

$$\text{Capital costs} = 80 \times \$130,000 = \$10,400,000$$

Additional costs for commodities, contractual services, and inmate gratuities only are included for FY 1984, as the construction could not be reasonably completed until July 1984. At that time, personnel services costs would start for 36 positions.

Costs previously identified for the original bill have been combined with the new costs identified, and are reflected in the total estimated costs.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

(7)

COMMITTEE REPORT

2/28

HOUSE

1/17/83

FURTHER JUDICIARY

Date: 2/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 6

Relating to driving a motor vehicle.

under consideration and reports it back as follows:

[] do pass [] do not pass

[] do pass with attached amendments(s)

replace with CS for ~~State Affairs~~ HB6(SA) same title
and recommend: do pass new title

[] AND attaches a "Letter of Intent" ~~Zero~~ Fiscal Note Sup 17
 Zero Fiscal Note Attached

[] reports it back without recommendation

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Steve Wood
Mr. M. Wille
John A. Cavallari
Walt Furnace

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Anthony Koska No Rec
Ronald J. Farnsworth - Do Pass if
Dick Smith Amended!
No Rec.

Steve Wood
CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CS HB 6 (SA)
 Title: _____
 Sponsor: Abood
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Justice/PIIB PROT
 BRU, Program of Subprogram(s) Affected: AST-Det. & CIB/DMV-Driver Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		53.2	56.4	59.8	63.4	67.2
200 TRAVEL		3.0	3.2	3.4	3.6	3.8
300 CONTRACTUAL		87.1	87.8	93.0	98.6	104.5
400 COMMODITIES		.2	.2	.2	.2	.2
500 EQUIPMENT		3.8	-			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		147.3	147.6	156.4	165.8	175.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		147.3	147.6	156.4	165.8	175.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The funding source has not been identified by the bill sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael Orelove Phone: 465-4349
 Division: Administrative Services Date: 3/14/83
 Approved by Commissioner: [Signature] Date: 3/15/83
 Department: Public Safety

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

CS HB 6 (State Affairs)

Assumptions:

Division of Motor Vehicles:

1) Arresting agencies, not DMV, will handle costs of impound & storage if vehicle is released under AS 28.35.036(c) or (d); 2) Alaska Court System will handle "Revenue" fiscal note covering fines and vehicle forfeitures; 3) Hearing officer will cover areas outside Anchorage and Fairbanks quarterly; 4) 96% of defendants who take breath test will have .10% or higher; 5) For 26% of impounds an individual will ask for hearing; and 6) Effective date is July, 1983.

Fiscal Impact:

Division of Alaska State Troopers:

Expenditures	FY 84	FY 85	FY 86
300 Contractual Services	77.5	82.2	87.1

Analysis:

The only impact that is anticipated from this Bill relates to the costs that will be incurred when vehicles are impounded under Section 28.35.036. We have estimated that one thousand vehicles will be impounded, of which five hundred will require towing and storage fees to be paid by the Department due to the person operating the vehicle not being the owner and operating the vehicle without the owner's consent, driver not being charged within the prescribed period, dismissed charge or where the driver is acquitted of the charge. Wrecker fees are estimated at \$80.00 per occurrence and a \$5.00 per pay storage fee for fifteen days required. Inflation is estimated at 6% for each year after FY 84. No increase in personnel is anticipated.

Division of Motor Vehicles:

EXPENDITURES

	FY 84	FY 85	FY 86
100 Personal Services	53.2	56.4	59.8
200 Travel	3.0	3.2	3.4
300 Contractual	9.6	5.6	5.9
400 Commodities	.2	.2	.2
500 Equipment	3.8	-0-	-0-
TOTAL	69.8	65.4	69.3

ANALYSIS

One Documents Processing Clerk II will be required in Juneau to handle administrative license actions, and related work for individual defendants whose breath results are .10% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 2,700 to 3,000 annually, based on 1981 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - \$1,245; File Cabinet - \$291; and Chair - \$188.

One Clerk Typist III in Anchorage is proposed to handle data relating to hearings requested by individuals whose vehicle was impounded. Will send hearings notices to those requesting a hearing, maintain current computer records concerning hearings, and maintain tape file for all hearings. Will type hearing transcripts from tape as required for appeals, and other court action. Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk - \$426; File Cabinet - \$235; and Chair - \$163.

Travel is for hearing officer when hearings are outside the Anchorage or Fairbanks areas.

\$4,300 of first year contractual is for new testing material and forms, and \$5,300 is for postage (all license actions and hearing notices must be sent via certified mail). Remaining years contractual is for postage only.

We basically know what the increased workload will be as a result of increased license actions, and that one clerical position in Juneau will be necessary if we are to process this increase. However, at this point it is only an estimate as to how many defendants and/or vehicle owners will ask for a hearing after impoundment of a motor vehicle. Figures released by the Court System in 1981 reflect a 75% conviction rate between 1978 and 1980 for DWI cases. It is estimated 75% of those not convicted will ask for a hearing in an effort to determine who will pay impound and storage costs; plus 10% of the remaining for other various reasons. If there is this large of an increase in hearings one clerical position will be needed in Anchorage to handle the workload.

5. Amendments Proposed:

A. Sec. 5, Page 3 (AS 28.15.201(c)), change to read as follows:

(c) After the termination of the limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed will become suspended unless the person has complied with AS 28.20.240. [IS NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE LICENSE UNDER AS 28.15.141.....]

The reason for this recommended change is because at the present time, and in the proposed new law, it states a person may apply for a duplicate license at the end of the limitation period, which is in conflict with AS 28.20.240. That section reflects the limitation will continue until the individual files proof of insurance. Also under AS 28.20.240, the limitation may continue for the three year period a person is otherwise required to file proof of insurance, thus circumventing the insurance requirement. This amendment would prevent that.

B. Sec. 9, Page 8 (AS 28.35.031(e)), and Sec. 12, Page 11 (AS 28.35.032(d)), change "90 days" to "3 months".

Only reason for this request is that it would be easier for the department to administer.

C. Sec. 14, Page 13 (AS 28.35.034), replace first sentence with language similar to the following. "A person whose license or permit to operate or drive a motor vehicle has been revoked under the provisions of AS 28.35.031 or AS 28.35.032 shall surrender the license or permit to the law enforcement officer who delivers to him a copy of the suspension or revocation notice. The law enforcement officer shall forward the license, and a copy of the revocation notice, to the department."

Reason for this recommendation is so it doesn't conflict with Sec. 9 and 10, which reflect the law enforcement officer shall seize the person's driver's license. It also specifies what the officer is to do with the license.

D. Sec. 9, Page 7, lines 6 thru 10 (AS 28.35.031(c)), and Sec. 11, Page 10, line 1 thru 5 (AS 28.35.032(b)): "the Department of Public Safety shall revoke or suspend [NOTIFY THE PERSON THAT] the person's license or nonresident privilege to drive or operate a motor vehicle in the state. [IS REVOKED OR SUSPENDED, OR THAT NO ORIGINAL LICENSE OR PERMIT WILL BE ISSUED] The revocation is effective upon expiration of the temporary....."

Reason: Allow the notice given by the law enforcement officer as mentioned in Sec. 9 and 10 suffice for notice, and not require additional notice via mail. This would save mailing costs on approximately 4,000 notices annually at current price of \$1.55 each, plus clerical time to process.

Amendments Proposed (cont')

- E. A section of Title 28 not addressed in this bill, however, is related in some ways, is AS 28.15.221(a). May want to look at amending that section by adding "or another law or ordinance with substantially similar elements if committed in another jurisdiction."

Reason: As presently written an out-of-state violation cannot be included as a violation against an Alaska driver's license, and be counted in the point total. Appears from this bill the intent is to count a DWI conviction in another jurisdiction the same as if it occurred in Alaska. The above change would allow entry of out-of-state DWI, or any other traffic violation, for people who possess an Alaska driver's license, and thus equal treatment for all violations, regardless of where the offense occurred.

1.	POSITION TITLE DOCUMENTS PROCESSING CLERK				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION JUNEAU	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1		2		3					
	PERSONAL SERVICES									
5.	Salary									
6.	Benefits									
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES		01	26.6						
10.	Travel				02					
11.	Contractual				03					
12.	Commodities				04					
13.	Equipment				05					
14.	Other				1.5					
15.	TOTAL COST		28.3							
RECEIPT CODE FUNDING SOURCE										
16.			Federal Receipts		1002					
17.			G.F. Match		1003					
18.			General Funds		1004					
19.			I-A Receipts		1005					
20.			Program Receipts		1028					
21.			Other							
FOR B&M USE ONLY										
4A KEY NUMBER _____										

One Documents Processing Clerk II will be required in Juneau to handle administrative license actions, and related work for individual defendants whose breath results are .10% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 2,700 to 3,000 annually, based on 1981 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - \$1,245; File Cabinet - \$291; and chair - \$188.

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety

PROGRAM Life & Property Protection

BRU Driver/Vehicle Services

COMPONENT Driver Services

FY 84

Page	of
Revised Date	

1.	POSITION TITLE CLERK TYPIST III				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION ANCHORAGE	ELECTION DISTRICT	LEC.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>One Clerk Typist III in Anchorage is proposed to handle data relating to hearings requested by individuals whose vehicle was impounded. Will send hearings notices to those requesting a hearing, maintain current computer records concerning hearings, and maintain tape file for all hearings. Will type hearing transcripts from tape as required for appeals, and other court action. Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk - \$426; File Cabinet - \$235; and Chair - \$163.</p>					
	1		2	3						
	PERSONAL SERVICES									
5.	Salary									
6.	Benefits									
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES			01 26.6						
10.	Travel			02						
11.	Contractual			03						
12.	Commodities			04						
13.	Equipment			05 2.1						
14.	Other									
15.	TOTAL COST			28.7						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		28.7						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety

PROGRAM Life & Property Protection

BRU Driver/Vehicle Services

COMPONENT Driver Services

FY 84

Page _____ of _____

Revised Date _____

POSITION PAPER
House Bill No. 6



"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 14 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalties for the specified offenses would increase the prison population by nine beds.

This bill would not significantly affect program objectives of the Division of Adult Corrections; however, it would have fiscal impact.

Recommended by: *for* Roger V. Endell
Roger V. Endell, Director
Division of Adult Corrections

Date: 2/8/83

Approved by: *Robert London Smith*
Robert London Smith, Ph.D.
Commissioner

Date: 2/9/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 6 Date on Bill: January 17, 1983
 Title: "An Act relating to driving a motor vehicle."
 Sponsor: Abood, Furnace, Lindauer, Cowdery, and Szymanski
 Requestor: State Officers

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital		1170.0				
Operating		56.7	59.9	63.4		
Total		1226.7	59.9	63.4		

b. Revenues:

Revenue	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
		-0-	-0-	-0-		

2. Source of funds to offset fiscal impact of bill:

The funding source to implement this bill, if enacted, has not been identified by the author of the bill.

3. Assumptions:

The impact of HB 6 upon the Division of Adult Corrections would be additional bed space for 9 full time equivalent inmates in minimum custody status. These beds would cost \$130,000 per bed to construct for a total of \$1,170,000.

Costs for inmates food, clothing, etc., for the 3,285 person days were computed by taking current costs with a 6% per year inflation factor. Present costs are \$8/day for food and clothing and \$7.69/day for medical and counseling. As these inmates would have minimum custody classification, they would be utilized in institutional jobs such as clearing, food service, etc., for which they would be reimbursed.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Division of Adult Corrections Date: Jan. 31, 1983

Approved by Commissioner: Robert Gordon Smith, Ph.D. *Robert Gordon Smith* Date: 2/15/83
 Department: Health & Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

Judiciary
Referral



District Court
State of Alaska
THIRD JUDICIAL DISTRICT
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

March 31

CHAMBERS OF
ELAINE ANDREWS, JUDGE

(907) 264-0663

Representative Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

I am writing to express some court related concerns over House Bill No. 6, a bill pertaining to criminal penalties for driving while intoxicated and driving while license suspended.

At the outset it is important to understand not only the intended impact of legislation that raises or establishes a mandatory minimum penalty, but also the predictable, but unintended, consequences. Certainly deterrence of the illegal conduct is a paramount goal. However, there are obstacles toward reaching that goal. Substantial mandatory minimum penalties can cause prosecutors to review cases more severely than they might otherwise, leading to reduced charging. Jurors, who quickly become educated in such matters, are reluctant to convict in cases where they know significant mandatory penalties will be imposed. Further, defendants who face loss of freedom, and financial security through loss of employment, will litigate these cases to the fullest, taxing the already understaffed prosecutorial and defense agencies, not to mention the court which is struggling to process the skyrocketing caseload.

Larger considerations aside, I discern several critical problems with the proposed legislation.

1. AS 28.15.181(c) - Driving While License Suspended Penalty Prerequisite

It will require significant time on behalf of the prosecutor and the court to obtain information about "essentially similar" past convictions. Hearings will have to be held to determine what is a "substantially similar" offense. I would

estimate that at least 10-20% of the cases which involve Alaska's highly transient population would require such hearings.

2. AS 28.15.291 - Driving While License Suspended Mandatory Penalties

(a) There are essentially two ways that a driver's license can be revoked. The first is a court ordered revocation or suspension. This occurs usually at sentencing after the defendant is convicted of reckless driving or driving while intoxicated. The judge personally advises the defendant that his license is revoked and that mandatory penalties will be imposed if he drives.

The second method of revocation is an administrative revocation which occurs if the defendant has accumulated too many points on his license or if he is the registered owner of a car involved in a property damage accident of at least \$500. These "administrative" suspensions are determined by hearing officers. Usually the driver is notified through the mail that his license will be suspended. The vast majority of administrative suspension charges coming before the court are due to the defendant's failure to comply with the SR-22 financial responsibility requirements.

Under the proposed legislation the type of suspension, whether court ordered or administrative is irrelevant. The defendants are treated as equally culpable. One defendant is likely a DWI offender who has been ordered not to drive. The other defendant may have a blameless record but be fiscally irresponsible as to a single accident. Mandatory minimum penalties may be wise as to the first offender but not as to the fiscally irresponsible offender. Financial responsibility should be approached through compulsory insurance or some more realistic and less costly avenue.

(b) Any kind of mandatory fine legislation is not a cost effective approach to punishment. Oftentimes the court and related enforcement agencies spend five or ten times the amount of the fine trying to collect it. If a person is arrested for failure to pay a fine and he agrees to pay the fine then the court must release the offender from custody. The "bench-warrant-release-for-payment" merry-go-round is a losing proposition. Fines should be left to the discretion of the court which can fashion other means, such as community service, to equally penalize indigent defendants.

(c) I assume that throughout the legislation language referring to "minimum sentence served" properly credits goodtime as required by statute.

3. AS 28.35.030(a)(2) - Chemical Tests

The language should be amended to reflect that the chemical test may be within four hours of the defendant's operation of the vehicle but that the test must show .10 or more at the time of operation. There have been a surprising number of cases in which the defendant claimed to be driving sober, slid off the road, walked to the bar, drank to intoxication and was arrested for DWI hours after the car was abandoned. The Municipality of Anchorage proposed a similar ordinance in the past and much litigation was generated over simiarly vague language.

4. AS 28.35.031 - Immediate Operator License Revocation

This proposed legislation creates absolutely nightmarish consequences for the court, prosecution and police. A court review to be scheduled within seven days of arrest would require the establishment of a sub-bureaucracy to coordinate court scheduling, witness subpoenas, proper notice to necessary parties, etc. The current court calendar could not accommodate such hearings. A new judicial officer, an in-court clerk to record proceedings, and clerical staff, not to mention hearing room, which we do not have, would be required.

5. AS 28.35.032(a)(b)(d)(g)

Does a person who refuses a breathalyzer test but agrees to a blood test, which would accomplish the same result, suffer the same consequences as the person who refuses all chemical tests?

6. AS 28.05.045 - Impoundment of Vehicles

A cursory review of the entire scheme of impound legislation suggest some problems in the proposed legislation.

What does impoundment of a vehicle accomplish that confiscation of license plates would not? An offender intent on driving will beg, borrow or otherwise obtain a car to drive. A borrowed car driven by a license-suspended driver is much more difficult to detect than a car driven down the road without license plates.

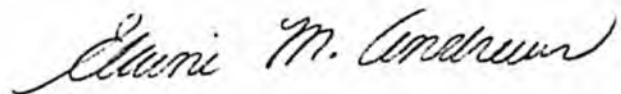
Although not directly a court concern, the problems of storage, insurance and potential civil liability for both proper and improper impoundment are enormous.

Court involvement in the proposed forfeiture legislation is significant. At minimum, in Anchorage, a judge and support staff would be required. Further the court is not the moving party in the forfeiture and therefore has no responsibility to ascertain parties who may have ownership or security interests in the vehicle in order to notify them of the forfeiture action. That burden is upon the prosecution.

My review of the legislation has been at best, brief. I urge you to carefully consider the total impact of the proposed legislation. The impact on the Anchorage district court, which is struggling to meet an increasing caseload, will be severe if this legislation is passed without adequate attention to the needs of the court which must faithfully and fully carry out the legislature's dictates.

I will be pleased to respond to any questions you may have and assist you in any manner you deem appropriate.

Sincerely,



Elaine Andrews
Assistant Presiding Judge
Anchorage District Court

EA:smh

cc: Chief Justice Edmond Burke
Arthur H. Snowden, II
Presiding Judge Mark Rowland

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

*Return to
Bussell's office*

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM

April 28, 1983

SUBJECT: Driving a motor vehicle while intoxicated
(CSHB 6 (Judiciary))

TO: Representative Mitchell E. Abood, Jr.

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the sectional analysis of the draft of CSHB 6 (Judiciary) that you requested. It only highlights the major changes to existing law.

Section 1 makes it clear that a judge or employee of the court, in addition to other named persons, may take possession of a title, registration, or license that is revoked, canceled, limited or suspended. This is not a substantive change to existing law.

Section 2 adds new requirements for a driver's license application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 3 authorizes, on refusal to submit to a chemical test of breath or if a test indicates an alcohol concentration of 0.10 or more, the seizure of the driver's license by the law enforcement officer and revocation of the license by the Department of Public Safety. The officer reads the driver a notice and gives him a copy of the notice. The notice explains the revocation procedure and the right of court review. The notice itself is a temporary driver's license that expires in seven days unless the driver initiates court proceedings to rescind the revocation of license. The revocation periods are the same as those imposed by a court after conviction of the same offenses under Sec. 6 of this draft. A revocation is stayed if the person initiates a court action to rescind the Department of

Public Safety's action. Procedures for court review of an administrative revocation are set out.

Section 4 adds a new basis for the immediate revocation of a driver's license by a court: the refusal to submit to a chemical test of breath.

Section 5 extends the period limited license privileges from 30 to 60 days for offenses that are grounds for immediate revocation of a license. This does not apply to driving while intoxicated or refusal to submit to a chemical test of breath. Adds a requirement that a prior offense must occur within 15 years before longer periods of license revocation will be imposed.

Section 6 requires a court convicting a person of driving while intoxicated or refusal to submit to a chemical test of breath to revoke the person's driver's license. The period of revocation depends upon whether the person has been previously convicted in this or another jurisdiction of either offense within the preceding 15 years. If the person has not been previously convicted, the period of revocation is 90 days. If the person has been convicted once, the period is one year. If the person has been convicted more than once, the period of revocation is 10 years. Under existing law the court shall revoke the license of a person for not less than 30 days for the first conviction. The court shall revoke the license for not less than one year for a second conviction. The court shall revoke the license for not less than three years for a third or subsequent conviction.

Section 7 allows a court to grant limited license privileges for the final 60 days a license is revoked for driving while intoxicated or refusal to submit to a chemical test if the person has not been previously convicted. Existing law also provides for limited license privileges only for first offenders.

Section 8 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges, since periods of revocation are established under Sec. 6 of this bill.

Section 9 provides that the license of a person on whom a limitation was placed is revoked after the period of limitation until the person provides proof of financial responsibility and receives a new license.

Section 10 limits the penalties imposed under existing law for driving while a license is canceled, suspended, revoked or in violation of limitation to situations involving loss of driving privileges for reasons other than driving while intoxicated or refusal to submit to a chemical test. Those situations are dealt with under Sec. 11 of this bill.

Section 11 provides a minimum penalty of 30 days imprisonment and a fine of \$500 for driving when driving privileges have been revoked for driving while intoxicated or refusal to submit to a chemical test if the person has been convicted only once within the previous 15 years. If the person has been convicted more than once of driving while intoxicated or refusal to submit to a chemical test and drives while driving privileges have been revoked, the minimum penalty is 90 days imprisonment and a fine of \$1,000.

Section 12 provides that upon expiration of a period of limitation the driver's license remains revoked until the person furnishes proof of financial responsibility. Under existing law the period of limitation continues and the person may continue to drive, subject to the limitation, until proof of financial responsibility is furnished.

Section 13 changes the penalties for conviction of driving while intoxicated. If a person has not been previously convicted within the preceding 15 years of driving while intoxicated or refusal to submit to a chemical test, the minimum sentence of imprisonment is 72 hours, and a fine of not less than \$250 imposed. If a person has been previously convicted once, the minimum sentence of imprisonment is not less than 20 consecutive days and a fine of not less than \$500 is imposed. If a person has been previously convicted more than once, the minimum sentence of imprisonment is 30 days and a fine of not less than \$1,000 is imposed. The five-year period used for calculating the number of convictions required to increase the penalty has been eliminated, so that all previous convictions occurring within the preceding 15 years are considered. A conviction in this or another jurisdiction, if the elements are substantially similar, is counted for purposes of determining enhanced penalties. The provision for suspension of sentence after the minimum sentence is served has been eliminated. The vehicle used in commission of the offense may be forfeited.

Representative Mitchell E. Abood, Jr.

Page 4

April 28, 1983

Section 14 requires a person involved in an accident or who commits certain serious traffic offenses, or drives in a manner that creates risk to a person or property to submit to a preliminary breath test that may be used by an officer in determining whether to arrest the person. Refusal to submit to the test is a violation punishable by a fine.

Section 15 makes it clear that refusing to submit to a chemical test after being arrested constitutes the crime of refusing to submit to a chemical test. Refusing to submit to the preliminary breath test provided for in Sec. 13 of this bill is a separate offense.

Section 16 provides new penalties for refusal to submit to a chemical test which are similar to the fines and terms of imprisonment imposed for driving while intoxicated under this bill.

Section 17 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 18 adds new sections providing for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.-35.032 (Refusal to Submit to a chemical Test of Breath). In addition, provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings. A municipality is granted authority to provide for impoundment and forfeiture of a motor vehicle in similar circumstances.

Section 19 repeals provisions that have been replaced by other provisions throughout this bill.

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