

HB

236

STATE OF ALASKA THE LEGISLATURE

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS.	4-17-89
H. HESS	4-19-89
H. HESS	1-26-90
H. HESS	2-6-91
H. HESS	2-28-90
H. HESS	3-5-90

HOUSE COMMITTEE REPORT

3/12

(7)

Date Referred: March 22, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-8-90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 236

HOUSE BILL NO. 236 [LEVEL OF BLOOD ALCOHOL FOR DWI OFFENDERS]
"An Act relating to the offense of driving while intoxicated and establishing presumptions of intoxication arising against persons 21 years of age or older and persons under 21 years of age in civil and criminal actions; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 236 (HESS) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- 2 zero fiscal note fp.s/court zero fiscal note(s) _____
- 1 zero with analysis Law zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>John Ellis</u>			
<u>Chen Davis</u>	X		
<u>Mark Boyer</u>	X		
<u>Boyer Kelly</u>	X		
<u>J. H. Ellis</u>	X		

John Ellis
Chairman's Signature

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

January 19, 1990

TO: Rep. Johnny Ellis, Chair
House Health Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: HB 236, relating to driving while intoxicated

During the interim, as a result of public outreach I conducted on HB 53 relating to drunk driving penalties, I was asked to consider either amending my bill or introducing a new bill which would lower the legal blood alcohol level from the current .10% to .08%. The primary reason for lowering the acceptable BAC level is that all breathalyzer machines have a 15% error rate. Thus, the courts are reluctant to prosecute anyone whose test results show less than .12%.

This issue was introduced at the statewide meeting of law enforcement officers which took place in Juneau last fall. Several cities have responded positively and I have included those letters for you.

As a result of the responses which I received, I asked Legal Affairs to conduct research on the subject for me. I have included a copy of the executive summary of that report as well. There is scientific data indicating impairment at .05% or lower which has prompted a number of states to lower their legal BAC 's to .08%

I thought you might be interested in amending HB 236 to lower the current BAC level for drivers over the age of 21 to .08%. Such an amendment would help the state to act more vigorously to ensure drunk drivers are not on Alaska's roads.

FU/dl

District 4B — Juneau

PO. Box V • Juneau, Alaska 99801-3100 • (907) 465-4947

City of Fairbanks
Police Department
656 7th Avenue Fairbanks, Alaska 99701
(907) 459-6500

November 17, 1989

Representative Fran Ulmer
Alaska State Legislature
1700 Angus Way
Juneau, Ak 99801

Re: Lowering of acceptable blood alcohol level

Dear Representative Ulmer:

Police agencies in Alaska are currently utilizing the Intoximeter 3000 instrument to obtain blood alcohol levels. I have been informed that the error rate for this instrument is +10% and for that reason the District Attorney has declined to prosecute cases when the intoximeter results are between .110 and .120.

The average blood alcohol level for the last sixty DWI arrests by officers of this Department is .195, almost twice the current legal limit. As I recall, our total DWI arrests for calendar year 1988 averaged .210.

I doubt that lowering the acceptable blood alcohol level from .10 to .08 will, by itself, have the desired effect of reducing the average blood level of those convicted of DWI. DWI arrests by this Department, for persons having a blood alcohol level ranging from .100 to .120, equal only about 2% of all DWI arrests. Today, Officers are so busy responding to calls of violence; i.e., domestic violence, burglaries, robberies, fights, and drug abuse they have very little work time directed toward DWI enforcement. As a result, Officers are limited to enforcing flagrant violations of our DWI statute.

I would suggest that legislation should be directed at reducing the "demand" for alcoholic beverages to reduce violent crimes resulting from alcohol abuse, including Driving While Intoxicated offenses. The State should encourage moderation in the consumption of alcoholic beverages by reducing the availability of alcohol through restricted hours of sale, licensed premises, etc. The beverage industry should be held accountable for funding of prevention and treatment programs, designed to assist individuals in making responsible decisions about the use of alcohol. These difficult issues need to be addressed in order to reduce Alaska's high level per capita alcohol consumption and contributing crime rate.

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Representative Ulmer
November 17, 1989

Thank you for your continued support on public safety issues and your concerns regarding Alaska's Drunk Driving problem. I appreciate you taking time out from your demanding schedule to meet with us at the Chief's meeting earlier this week. Please feel free to contact me on this or other law enforcement matters.

Yours Truly,

A handwritten signature in black ink, appearing to read "Richard L. Cummings". The signature is fluid and cursive, with a large initial "R" and "C".

Richard L. Cummings
Chief of Police



VALDEZ POLICE DEPARTMENT
December 12, 1989

Representative Fran Ulmer
P.O. Box V
Juneau, AK 99811

Dear Representative Ulmer:

I have finally had time to review your proposed legislation regarding lowering the acceptable blood alcohol level from .10 to .08. This letter is to express support in your effort to accomplish this feat. Maybe with the lowering of the acceptable level to .08 the District Attorney's office would then prosecute D.W.I. cases of .10.

We, as residents of Alaska, have stated in years past that we have had enough of intoxicated drivers and that we want them off our streets. We, as police officers, have increased our enforcement of the drunk driver laws. Maybe what we really need is the acceptable blood alcohol limit lowered further to .05. A blood alcohol standard of .08 or above is beyond that limit. I have reviewed test studies on the effects of drinking and driving and all blood alcohol levels above a .05 impairs one's driving ability.

If I can be of further assistance, please feel free to contact me.

Sincerely,

BERT COTTLE
CHIEF OF POLICE


BLC/lab

TO: REPRESENTATIVE FRAN ULMER

FROM: NELSON W. BALLARD

I HAVE BEEN REVIEWING YOUR PROPOSAL TO REDUCE THE LEVEL OF INTOXICATION TO .08 WHICH IS DOWN FROM THE CURRENT LEVEL OF .10 REQUIRED TO CONVICT PEOPLE OF DWI. BASED ON MY NEARLY TEN YEARS OF LAW ENFORCEMENT EXPERIENCE IN ALASKA YOU SEEM TO BE DEFINATELY HEADED IN THE RIGHT DIRECTION. YOUR ARE CERTAINLY CORRECT IN YOUR FACTS THAT THE AVERAGE PERSON ARRESTED FOR DWI IS WAY OVER THE LIMITS ESTABLISHED BY THE LAW AND THAT A LARGE AMOUNT OF PEOPLE ARE CERTAINLY DRIVING UNDER THE INFLUENCE OF ALCOHOL AND ENDANGERING LIVES AS THEY HEAD HOME FROM DRINKING. ANOTHER SUGGESTION THAT I HAVE IS TO ARREST PEOPLE FOR DWI AND PEOPLE THAT BLOW BETWEEN .05 AND YOUR LEVEL OF .08 BE ISSUED A CITATION FOR DRIVING WHILE IMPAIRED WHICH COULD BE ASSESSED A SIX POINT DEMERIT ON THEIR DRIVERS RECORD. IN LIGHT OF THE FACT THAT ANY NEW LEGISLATION IN THIS AREA WILL BE DIFFICULT TO PASS IN JUNEAU YOUR EFFORTS ARE APPLAUDED AND IF YOU THINK MY IDEA HAS MERIT, THANK YOU FOR YOUR TIME AND GOOD LUCK WITH YOUR NEW BILL. I FULLY SUPPORT ANY LEGISLATION OF THIS TYPE.

SINCERELY,


NELSON W. BALLARD

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3891
Fax: (907) 463-3351

January 3, 1990

MEMORANDUM

TO: Representative Fran Ulmer

ATTN: Diane Lindbach

FROM: Leola Weimer *LWW*
Legislative Analyst

RE: Blood Alcohol Levels - States with a standard of 0.08 percent
Research Request 90.133

You asked which states have lowered their blood alcohol concentration (BAC) levels to 0.08 percent or lower, and what their motivation was in doing so. You also asked what the average blood alcohol level was for people convicted of driving while intoxicated in Alaska.

Background

Blood alcohol concentration levels are regulated by two different standards: presumptive and per se BAC. Presumptive BAC levels assume that the accused is under the influence of alcohol but an individual has the opportunity to demonstrate that he or she is acting responsibly. Sobriety road tests and other evidence may be used to prove that although an individual is under the influence of alcohol, he or she is not in fact intoxicated. The burden of proof rests with the arresting officer. Per se BAC levels, on the other hand, establish a definitive limit above which an individual is considered intoxicated and therefore driving illegally.

A list of the illegal per se and presumptive BAC levels for each of the fifty states, District of Columbia and Puerto Rico is enclosed (see Attachment A).

Presumptive BACs

Six states and the District of Columbia have presumptive BAC levels below 0.10 percent: Colorado (>0.05 - 0.10), District of Columbia (>0.05), Idaho (>0.08),

Representative Ulmer
January 3, 1990
Page 2

Maryland (0.07 - 0.10), Michigan (0.07 - 0.10), New York (0.07 - 0.10) and Oregon (0.08).

Twenty-three states and Puerto Rico have presumptive BAC levels set at 0.10 percent. Twenty-one states (including Alaska) have no presumptive BAC levels.

Per se BACs

The vast majority, 39 states and the District of Columbia, have an illegal per se BAC level of 0.10 percent. Georgia is the only state to have a higher BAC level of 0.12 percent. Six states and Puerto Rico have no illegal per se BAC level. Four states (California, Maine, Oregon and Utah) have lowered their illegal per se BAC to 0.08 percent. Vermont has kept its illegal per se BAC level at 0.10 percent but added a separate civil traffic violation for people registering 0.08 percent or more BAC. No states have a noncommercial driver standard below 0.08 percent per se BAC. The legal limit for all of Canada is 0.08 percent per se BAC. In addition, all European nations have an illegal per se BAC level of 0.08 percent or lower. Four drinks in an hour's time for the average-size adult results in a BAC level of 0.08 percent.¹

Rationale for Lowering Illegal Per Se BAC to 0.08 Percent

California

California was the most recent state to reduce its illegal per se blood alcohol level to 0.08 percent. On April 13, 1989 with a vote of 24 to 3, the California State Assembly passed Senate Bill 408 by Senator Leonard. Attached is a copy of supporting data from Senator Leonard's office, California Mothers Against Drunk Driving (MADD) and the Department of California Highway Patrol (see Attachment B).

Support for this legislation came from the California Medical Association, Peace Officers Research Association of California, Mothers Against Drunk Drivers, American Medical Association, California Organization of Police and Sheriffs, Committee on Moral Concerns, California Council on Alcohol Problems, California Association of Drinking Driver Treatment Programs, Starting Point, and many others.

Opposition came from the California Attorneys for Criminal Justice and the American Civil Liberties Union.

¹California Council On Alcohol Problems, February 10, 1989.

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The stated purpose of this legislation was "to respond to the situation in which hundreds of people are killed every year by drunk drivers at blood-alcohol levels below 0.10 percent." Of the 23,630 people who died in the United States in 1987 from alcohol-related traffic accidents, approximately 11 percent (2,599 people) involved a blood-alcohol concentration lower than 0.10 percent.²

Data supporting impairment at lower levels was provided by the U.S. Department of Transportation and the American Medical Association. The U.S. Department of Transportation reviewed 177 studies on the effects of low doses of alcohol on driving-related skills. The department concluded that, "BACs of 0.03 percent or less are sufficient to affect skills relevant to driving, and...there is ample scientific evidence to justify the reduction of legal BAC limits to 0.05 percent or lower."³ The American Medical Association (AMA) has likewise encouraged the adoption of a nationwide BAC level of 0.05 percent.⁴

In opposing this reduction of California's illegal per se BAC level from 0.10 percent to 0.08 percent, the California Attorneys for Criminal Justice argued that lowering the presumptive level of intoxication would increase the risk of convicting innocent persons. The California Probation, Parole and Correctional Association also raised concerns over their ability to handle additional drunk drivers in an already overburdened and overcrowded corrections system.

Maine

In August of 1988, Maine reduced its illegal per se BAC level from 0.10 percent to 0.08 percent. According to Sergeant Schaad of the Maine Department of Public Safety, 29 MRSA § 1312-B(1)(b) was amended because scientific research demonstrated impairment at or below 0.05 percent BAC. The legislature chose 0.08 percent as a compromise level between the existing 0.10 percent and the ideal 0.05 percent. The fact that Maine borders Canada, which has a national per se BAC level of 0.08 percent, also helped support this reduction. Attached are copies of testimony and letters of endorsement which helped secure passage of this measure (see Attachment C).

²Senate Committee on Judiciary 1989-90, hearing March 14, 1989, SB 408, p. 2.

³Ibid., p. 3.

⁴Assembly Committee on Public Safety, hearing June 6, 1989, SB 408, p. 2.

Representative Ulmer
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Oregon

Since July of 1984, Oregon has had an illegal per se BAC level of 0.08 percent. According to Captain Stevenson of the Oregon Department of Public Safety, SB 710 was enacted by the Oregon Legislature in an effort to revise Oregon's drinking driver laws. A major feature of this measure was to lower the illegal per se level from 0.10 percent to 0.08 percent. A study on the impact of this law was published in March 1989. This report by the Oregon Motor Vehicles Division concluded that the proportion of both day and night-time fatalities that were alcohol-related declined after the implementation of SB 710 (see Attachment D).⁵

Utah

Utah was the first state to implement an illegal per se BAC level of 0.08 percent. According to Chris Coring of the Utah Department of Public Safety, Utah first lowered its presumptive BAC level to 0.08 percent in 1967. In 1983, Utah lowered the illegal per se BAC level to 0.08 percent and eliminated its presumptive level entirely. Mr. Coring explained that the reduction in illegal per se BAC to 0.08 percent was not difficult to enforce because 0.08 percent had been the presumptive level for so long. Mr. Coring attributed recent reductions in Utah's alcohol related driving accidents to expanded education and drunken driving prevention programs. He also noted that there was a drop in the total number of arrests after the lowering of the illegal per se BAC level to 0.08 percent because of improved testing and arrest procedures (see Attachment E).

Vermont

Vermont has taken a different approach. While keeping their illegal per se BAC level at 0.10 percent, they have added a civil traffic violation with a maximum penalty of \$175.00 for persons whose BAC level registers 0.08 or above. According to Captain Vallie of the Vermont Department of Public Safety, scientific evidence convinced the Vermont legislature that Vermont's driving while intoxicated statutes needed to be strengthened. A measure to reduce the illegal per se BAC level from 0.10 percent to 0.08 percent was defeated. In its place, a compromise measure was passed thereby establishing 0.08 percent BAC as a traffic violation. This new measure went into effect December 1, 1989 (see Attachment F).

⁵Senate Bill 710 and Traffic Safety, The Effectiveness of Oregon's New Drinking Driver Law, Final Report, March 1989, p. 1.

National Standard

The Uniform Vehicle Code (UVC) as revised by the National Committee on Uniform Traffic Laws and Ordinances recommends a nationwide BAC presumptive and per se level of 0.08 percent (see Attachment G).⁶

The National Transportation Safety Board also supports lowering illegal per se BAC levels to 0.08 percent (see Attachment H).

In addition, the Association for the Advancement of Automotive Medicine (AAAM) has supported a reduction in illegal per se BAC levels. According to a recent background paper, the AAAM reports that "epidemiologic data show[s] an increase in crash risk at BACs above 0.05 g/dl.⁷ At 0.08 g/dl there is about a 3-fold increase in crash risk over that with no alcohol, which rises about 6-fold at 0.10 g/dl and 25-fold or more at 0.15 g/dl" (see figure 1).

Alaska's Average BAC Level for Drunken Drivers

Alaska currently has an illegal per se BAC level of 0.10 percent (see attachment I). According to Mike Lewis, program director of the highway safety planning agency for the Alaska Department of Public Safety, the number of DWI arrests has steadily declined in Alaska, but the average blood alcohol level has remained high.

<u>Year</u>	<u>Number of DWI Arrests</u>	<u>Average BAC Level (%)</u>
1984	7,234	0.186
1985	6,084	0.189
1986	5,018	0.190
1987	4,388	0.192
1988	3,588	0.189

⁶It is also important to note that the Commercial Motor Vehicle Safety Act of 1986 as incorporated into the omnibus Drug Enforcement, Education, and Control Act of 1986, Public Law 99-57, requires that all states establish 0.04% BAC as the standard for commercial operators. States have until October 1, 1993, to comply with this standard. Failure to comply will result in a five percent decrease in federal highway aid during the first year and a ten percent decrease during subsequent non-compliance years (see Research Request 89.386 for more information).

⁷g/dl = gram of alcohol/deciliter of blood.

Representative Ulmer
January 3, 1990
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Summary

Four states (California, Maine, Oregon and Utah) have lowered their illegal per se BAC levels to 0.08 percent. Vermont has made 0.08 percent BAC a civil traffic violation.

Support for lower BAC levels has come from the U.S. Department of Transportation, the American Medical Association, the Uniform Vehicle Code, Mothers Against Drunk Driving and several other organizations.

Opposition to lower BAC levels has come from the American Civil Liberties Union and local organizations.

The purpose of lowering the illegal per se BAC levels from 0.10 percent to 0.08 percent is to reduce the number of alcohol-related traffic accidents. Studies show that 11 percent of the 23,630 traffic fatalities nationwide involved blood alcohol levels of less than 0.10 percent BAC. Oregon Motor Vehicles Division reports a decrease in the number of alcohol-related traffic fatalities since lowering their BAC level to 0.08 percent.

Alaska currently has no presumptive BAC level and an illegal per se BAC level of 0.10 percent. Of the 3,588 people who were arrested for DWI in 1988, the average BAC level was 0.189 percent.

Please contact this office if you have questions or need further information.

Attachments

FISCAL NOTE

REQUEST:

Revision Date: January 25, 1990
Title: "An Act relating to the offense
of driving while intoxicated..."
Sponsor: Repr. Donley
Requestor: Repr. Donley

Agency Affected: Department of Law
BRU: Prosecution
Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: January 25, 1990

Approved by Commissioner: Richard I. Pegues / FOR I
Agency: Department of Law

Date: January 25, 1990

Distribution (by preparer):

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- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 236

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated, if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers under the age of 21 years who would be presumed to be intoxicated under the bill, those with a blood alcohol recording of between 0.05 and 0.09 percent, is expected to be relatively small. Because of the small number of anticipated cases, probably fewer than 100 cases statewide, the bill is not expected to have a fiscal impact of the Department of Law.

TEEN BLOOD ALCOHOL LEVELS

NOT A DROP ALLOWED. OREGON TELLS TEEN DRIVERS

Teens caught driving after drinking in Oregon after October 3 will be held to a tough new standard: a 0.00 percent blood alcohol level. Teens who register any blood alcohol have their licenses automatically suspended for 90 days. The potential punishment escalates steeply if the teen refuses the test, is prosecuted or is a repeat offender.

With the change, Oregon becomes only the fourth state to adopt the strictest possible rule for blood alcohol levels in teen drivers, according to Mothers Against Drunk Driving. Known as "not-a-drop" laws, they also have been adopted by Maine, North Carolina and Wisconsin. The average standard for

adults nationwide is 0.10. In 1988, there were 23,352 alcohol-related driving fatalities in this country, says Anne Russell, assistant director of public affairs for MADD. Nearly 1,500 of those involved teen drivers.

Oregon's law was spurred by a spate of fatal accidents involving teens and drinking at the end of 1988, says Joan Plank of the Oregon Department of Motor Vehicles.

The crackdown is a welcome trend, says Russell.

"If anything, states have tended to treat teen drunk drivers more lightly than someone older," she says.

Not that states are completely complacent. A number have recently passed laws calling for suspending the licenses of minors caught trying to buy alcohol with false identification. Several have also set lower blood alcohol levels for teens than adults in nudging them drunk, but not zero.

North Carolina's not-a-

drop law, in effect since 1983, has had dramatic results, leading to a 60 percent decrease in the incidence of teen drivers involved in alcohol-related crashes, says John Lacey, program manager for alcohol studies at the University of North Carolina Highway Safety Research Center. Not only has it had an effect among those 15 and under, but statistics for those aged 19 and above have shown hefty decreases as well.

—JW

GOVERNING MAGAZINE
OCT. 29
P. 12-13



STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE:

OFFICE OF THE COMMISSIONER

May 4, 1989

The Honorable Dave Donley
P.O. Box V
Juneau, Alaska 99811

Attn: Michael

Dear Representative Donley:

In response to your telephone request regarding youth (age 20 and under) involvement with alcohol, following is the requested information.

ARRESTS

Year	DWI Arrests	Liquor Laws Offenses	Total
1986	451	2,351	2,802
1987	336	2,415	2,751
1988	Data Not Available At This Time		

YOUTH INVOLVEMENT IN ALCOHOL FATAL CRASHES

Year	Number of Youth Alc. Fatalities	% of Youth Involvement of Total Alc. Fatals	% of Licensed Drivers
1984	14	20.0%	6.9%
1985	14	20.3%	7.1%
1986	6	13.0%	6.7%
1987	7	15.9%	6.8%
1988	12	25.0%	6.9%

Please note that the decrease in DWI arrests does not represent a decrease in alcohol involvement by this age group, but rather is attributed to a decrease in enforcement effort due to manpower cuts and a decrease in public pressure. Total DWI arrests have decreased tremendously each year since 1984.

Feel free to contact this office at any time if we can be of further assistance.

Sincerely

T. Michael Lewis
Alaska Highway Safety
Planning Agency

- 4571

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

January 19, 1990

MEMORANDUM

TO: Representative Dave Donley
ATTN: Michael Ward
FROM: Leola Weimer *LW*
Legislative Analyst
RE: Blood Alcohol Levels for Minors
Research Request 90.172

You asked which states have imposed more restrictive blood alcohol concentration (BAC) levels on drivers under the age of 21 than over the age of 21. Specifically, you wanted to know if there has been 1) any litigation challenging the constitutionality, or 2) any studies demonstrating the impact of such laws.

Summary

Seven states impose more restrictive BAC levels on drivers under the age of 21: Maine, Maryland, New Mexico, North Carolina, Oregon, Rhode Island and Wisconsin.

The only constitutional challenge to a more restrictive BAC level for drivers under the age of 21 has occurred in Maine. In both 1984 and 1989 Maine's statute was upheld.

Studies of the effect of lower BAC levels for drivers under the age of 21 suggest that the stricter treatment of minors significantly reduces the frequency of drunk driving convictions of minors.

More Restrictive BAC Levels

Seven states impose more restrictive blood alcohol concentration (BAC) levels on drivers under the age of 21. Oregon was the most recent state to adopt such a standard. Regulations regarding age restrictions, BAC levels and penalties are different for each state.

<u>State</u>	<u>Adult BAC Level</u> ¹	<u>Youth BAC Level</u>
Maine	0.08	0.02 (under 21)
Maryland	0.07 to 0.10 ²	0.02 (under 21)
New Mexico	0.10	0.05 (under 18)
North Carolina	0.10	0.00 (under 18)
Oregon	0.08	0.00 (under 18)
Rhode Island	0.10	0.04 (under 18)
Wisconsin	0.10	0.00 (under 19)

In each case, the penalty for violating the youth BAC level is suspension of driving privileges. In Maine, an automatic one-year suspension is imposed. Maryland allows for up to a one-year suspension. New Mexico revokes a driver's licence for six months for first offenders and one year for second offenders. North Carolina revokes the driver's licence for forty-five days or until their eighteenth birthday, whichever is greater. Oregon suspends driving privileges for ninety days for first offenders and for one year for repeat offenders. Rhode Island revokes first offender's licenses for six months, and second offender's license until their twenty-first birthday. Each subsequent offense causes an additional two years suspension of driving privileges after the driver's twenty-first birthday. Wisconsin suspends driving privileges for three months but allows for an occupational hardship license.

Other states allow for the suspension or revocation of a person's privilege to operate a motor vehicle based upon conviction of possessing a controlled substance. These laws apply both to the illegal possession of a controlled drug

¹ Measured in terms of grams of alcohol per deciliter of blood.

² Maryland has no illegal per se BAC level. It does, however, have a presumptive BAC of 0.07 to 0.10. The difference between illegal per se and presumptive BAC levels is the burden of proof required. Presumptive BAC assumes that the accused is under the influence of alcohol but an individual has the opportunity to demonstrate that he or she is acting responsibly. Sobriety road tests and other evidence may be used to prove that although an individual is under the influence of alcohol, he or she is not in fact intoxicated. The burden of proof rests with the arresting officer. Per se BAC levels, on the other hand, establish a definitive limit above which an individual is considered intoxicated and therefore driving illegally.

A list of the illegal per se and presumptive BAC levels for each of the fifty states, District of Columbia and Puerto Rico is attached (see attachment A).

and to persons under twenty-one in possession of alcohol. For an explanation of these types of restrictions, see attachment B.

Constitutional Challenges

Only one state, Maine, has had to defend the constitutionality of a stricter drunk driving standard based on lower BAC levels for minors. Maine's statute was first challenged soon after its implementation in 1984 and again in 1989.

In the first case, *William R. Maines, et al. v. Secretary of State*, the Supreme Judicial Court of Maine dismissed the case on procedural grounds and the issue of constitutionality was not addressed.³ However, in the 1989 case of the *State of Maine v. Nathaniel W. Hunt*, the Supreme Judicial Court of Maine upheld a superior court decision that this statute did not violate the Fourth Amendment.⁴ Copies of each case are found in attachment C.

Impact Studies

There have been several studies on driving while intoxicated that have identified youth drunk driving as a problem area that needs special attention. The Surgeon General's Workshop on Drunk Driving, December 14-16, 1988, endorsed the proposal to enforce additional penalties over and above standard liquor law violations for those under age twenty-one with a 0.02 BAC or above.⁵

The National Commission Against Drunk Driving's Progress Report on Recommendations Proposed by the Presidential Commission on Drunk Driving, December 1987, also emphasized the need to develop special programs for youth and drunk driving. The 0.02 BAC policy of Maine was applauded as an example of an effective program. It was determined that increases in license suspensions

³ 493 *Atlantic Reporter*, 2d Series, p. 326.

⁴ 556 *Atlantic Reporter*, 2d Series, pp. 653-4.

⁵ Surgeon General's Workshop on Drunk Driving, Proceedings, Washington, DC, December 14-16, 1988, p. 70.

since the implementation of this program has significantly reduced the number of drunk driving convictions of minors.⁶

The Maine example was also the subject of an independent study by Hingson et al. in 1986. This study revealed that "self-reported DWI and self-reported nonfatal crash involvement among drivers 19 and under declined significantly when compared to Massachusetts teens and Maine adults. Declines were most dramatic for teens who were aware of the law."⁷ Follow-up studies have confirmed the declines in youth drunk driving. The difference between Massachusetts and Maine teens, however, has declined to a nonsignificant level. Hingson researchers attribute this lack of difference to high level anti-drug and anti-DWI activity in both states. They also noted that "the enforcement of Maine's 0.02 BAC law has become sporadic, and police appear to arrest juveniles with less regularity than adult offenders."⁸

The zero tolerance law in Wisconsin has also been the focus of a study on youth and drunk driving. Initial studies produced dramatic results showing a "sixty percent decrease in the incidence of teen drivers involved in alcohol-related crashes."⁹ Subsequent studies have shown that there have been similar decreases for drivers nineteen and older.¹⁰ According to Judge Foley of Milwaukee's testimony before the National Commission Against Drunk Driving in October 1987, however, "lack of comparison data render interpretation of these reductions

⁶ National Commission Against Drunk Driving. *Progress Report on Recommendations Proposed by the Presidential Commission on Drunk Driving*, December 1987, p.7-8.

⁷ Surgeon General's Workshop on Drunk Driving, *Background Papers*. Washington, D.C., December 14-16, 1988, pp.198-9.

⁸ Ibid.

⁹ *Governing Magazine*, "Teen Blood Alcohol Levels," October 1989, pp. 12-13.

¹⁰ Schroeder, Ron. "Not-A-Drop Laws," *Trends & Issues*, vol. 1, no. 3, November 1989, p. 3.

Representative Donley
January 19, 1990
Page 5

difficult."¹¹ There is little question that the existence of a zero BAC law in Wisconsin has increased public awareness of youth and drunk driving. Whether Wisconsin's "not-a-drop" law is the main factor or simply a contributing factor for this decrease has yet to be determined.

Please contact this office if you have questions or need further information.

Attachments

¹¹ Surgeon General's Workshop on Drunk Driving, *Background Papers*, Washington, D.C., December 14-16, 1988, p.199.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 22, 1990

The Honorable Dave Donley
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Re: HB 236 - Blood Alcohol Level for
Drivers Under 21

Dear Representative Donley:

Last year you introduced HB 236, a bill that would lower the permissible blood alcohol level for drivers under 21 to 0.05 percent. You have asked whether this legislation is constitutional. The short answer to your question is that the law is likely to be challenged on constitutional equal protection grounds, and we are unable, at this time, to reach an opinion as to the likely outcome of the challenge.

As we discussed last year, the court's analysis will focus on the factual basis for distinguishing between the permissible blood alcohol level for persons under 21 and persons over 21. Therefore, we continue to recommend (1) that the legislation contain a section setting out, as findings, those facts that provide a basis for making the distinction; and (2) that factual support for the findings be presented during the legislative hearing process. In the absence of factual support for such findings, we believe it is unlikely that the statute would be upheld.

As a general principle, when analyzing claims that statutes deny equal protection, the Alaska court requires legislation to pass a more rigorous test than is required under federal law. 1/ In Herrick's Aero-Auto-Aqua Repair v. DOT, 754 P.2d 1111 (1988), the court explained its expansive equal protection analysis as follows:

In reviewing equal protection claims under the Alaska constitution ... the minimum burden that the state must meet when defending legislation

1/ See, e.g. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

The Honorable Dave Donley

January 22, 1990

Page 2

challenged on equal protection grounds under the Alaska constitution is greater than that required under the United States Constitution. The burden on the state increases in proportion to the primacy of the interest involved. 2/

Because HB 236 does not contain findings, and because a factual basis for setting different blood alcohol levels for minors and adults has not yet been presented during the hearing process, we are unable at this time to reach an opinion as to whether HB 236 would pass constitutional muster in Alaska. 3/

If you have any questions about the matters addressed in this letter, please let us know.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

2/ 754 P.2d at 1114. The court in Herrick also pointed to an additional burden placed on the state in defending against an equal protection challenge. "[T]he rational basis test articulated by the Supreme Court allows a court to 'hypothesize' facts. Under that test, a party challenging legislation on equal protection grounds, cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). In Alaska, the court will not hypothesize facts.

3/ You provided us with two opinions by the Maine Supreme Court that discuss a law similar to HB 236. (The Maine law, however, imposes civil rather than criminal liability.) Neither case addresses whether the law violates equal protection. In one case, Maines v. Secretary of State, 493 A.2d 326 (Maine 1985), the court refused to consider an equal protection challenge to the statute because an appeal was not filed in a timely manner. In the second case, State v. Hunt, 556 A.2d 653 (Maine 1989), the court rejected a claim that the fourth amendment protection against unreasonable searches and seizures was violated by a statute requiring a person to submit to a breath test when probable cause exists to believe that the person operated a vehicle while having a blood alcohol level of 0.02 percent or more.

FISCAL NOTE

REQUEST:

Revision Date: January 25, 1990
 Title: "An Act relating to the offense
 of driving while intoxicated..."
 Sponsor: Rep. Donley
 Requestor: Rep. Donley

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegus, Director Phone: 465-3672
 Division: Administrative Services Date: January 25, 1990
 Approved by Commissioner: Richard I. Pegus / FOR Date: January 25, 1990
 Agency: Douglas B. Bailly, Attorney General
Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 236

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated, if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers under the age of 21 years who would be presumed to be intoxicated under the bill, those with a blood alcohol recording of between 0.05 and 0.09 percent, is expected to be relatively small. Because of the small number of anticipated cases, probably fewer than 100 cases statewide, the bill is not expected to have a fiscal impact of the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Corrections
 Title: "An Act relating to the offense of driving while intoxicated." BRU: _____
 Sponsor: Representative Donley Components: _____
 Requestor: Representative Donley

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	6.3	6.3	6.3	6.3	6.3	6.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.3	6.3	6.3	6.3	6.3	6.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	6.3	6.3	6.3	6.3	6.3	6.3
FEDERAL FUNDS						
OTHER						
TOTAL	6.3	6.3	6.3	6.3	6.3	6.3

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 01/25/90

Approved by Commissioner: *D. Humphrey Barnett* Date: 01/25/90
 Agency: Department of Corrections

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE
House Bill 236
Page 2

ANALYSIS

Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .05 to .09. Consequently, the number of drivers between the age of 18 and 21 years who would be presumed to be intoxicated under the bill is estimated to be around 50 youths.

This would result in approximately 50 additional persons being held in a soft bed for 3 days at a cost of \$42 per day. Total cost will be \$6,300.

A M E N D M E N T #2

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 236

Page 1, after line 12:

Insert a new bill section to read:

"* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the number of persons under 21 who are drinking and driving in an impaired condition is a matter of serious concern;

(2) a given amount of alcohol generally has a greater effect on a driver who is under the age of 21 than on a person who is 21 years of age or older;

(3) for purposes of establishing an effective legal limit of alcohol consumption above which a person under age 21 is considered to have committed the crime of driving while intoxicated, it is necessary to distinguish between those people who are under age 21, and those who are 21 years of age or older;

(4) establishing a lower limit of alcohol consumption for persons under age 21 is consistent with existing law that prohibits a person under age 21 from legally consuming an alcoholic beverage;

(5) there is a rational relationship between establishing a lower limit of alcohol consumption for persons under age 21, and reducing the number of alcohol-related accidents and fatalities.

(b) It is the purpose of this Act to promote the general welfare and public safety by imposing a more restrictive legal limit on

alcohol consumption for persons who are under age 21, above which the person has committed the crime of driving while intoxicated."

Page 1, line 13:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill sections accordingly.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Level of blood alcohol for BRU: Alaska State Troopers
DWI offenders
 Sponsor: Representative Donley Component: Detachments
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Some additional arrests are expected as a result of this bill, but there is no way to accurately predict how many. If the numbers are small, the impact could be absorbed within existing staffing levels.

Prepared by: Lt. Pat Kasnick Phone: 269-5691
 Division: Alaska State Troopers Date: 12/19/89

Approved by Commissioner: Arthur English Date: 1-21-90
 Agency: Department of Public Safety Page 1 of 1

CPA
12/24/89

A M E N D M E N T #1

OFFERED IN THE HOUSE

BY DONLEY

TO: HB 236

Page 3, lines 7 - 8:

Delete "one milligram"

Insert "10 milligrams"

Page 3, line 9:

Delete "one milligram"

Insert "0.01 grams"

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629



CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
HOUSING AND BANKING SUBCOMMITTEE
FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

April 7, 1989

M E M O R A N D U M

TO: Members of the House Health, Education
and Social Services Committee

FROM: Representative Dave Donley *LD*

RE: Driving While Intoxicated: More Restrictive Blood Alcohol
Content Standards for Youth

This legislation would lower the blood alcohol content (BAC) for DWI conviction for minors. The law presently treats minors the same as adults regarding the level of their BAC to determine if they are presumed intoxicated. This legislation would drop the present level from .10 to .05 for drivers under 21 years old.

Drunk driving is a serious problem in our society. The fact that many of our young people are victim to this problem is tragic. Research has shown that "although the physiological impact of alcohol on young and adult drivers is probably the same, young drivers are less experienced and, therefore, less adept at masking impairment." The results of this being; young people are less able to cope with the effects of the alcohol, are less experienced drivers than individuals over 21 years old, tend to take more risks and ultimately more likely to be involved in traffic accident.

Data that was collected by the National Commission Against Drunk Driving (NCADD) indicate that "a person under the legal drinking age (is nearly) twice as likely to die in an alcohol-related crash as an adult over the age of 21." As legislators, these are facts that we cannot ignore. There are already six states that have recognized this problem and have passed legislation with more restrictive BAC standards on drivers under the age of 21.

I feel this is an important issue which needs to be addressed and I would welcome your support.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Level of blood alcohol for BRU: Alaska State Troopers
DWI offenders
 Sponsor: Representative Donley Component: Detachments
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Some additional arrests are expected as a result of this bill, but there is no way to accurately predict how many. If the numbers are small, the impact could be absorbed within existing staffing levels.

Prepared by: Lt. Pat Kasnick
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 04/14/89

Approved by Commissioner: DA H. English
 Agency: Department of Public Safety

Date: 04/14/89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to the offense of driving while intoxicated..."
 Sponsor: Repr. Donlev
 Requestor: Repr. Donlev

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: April 6, 1989

Approved by Commissioner: Michael A. Depina / FOR
Douglas B. Eally, Attorney General Date: April 6, 1989

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 236

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated, if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers under the age of 21 years who would be presumed to be intoxicated under the bill, those with a blood alcohol recording of between 0.05 and 0.09 percent, is expected to be relatively small. Because of the small number of anticipated cases, probably fewer than 100 cases statewide, the bill is not expected to have a fiscal impact on the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act relating to the offense of driving while intoxicated</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Donley, Koponen, Brown, Leman...</u>	Components:	
Requestor: <u>Donley</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by:

Jan Strandberg
Jan Strandberg, General Counsel

Phone:

264-8228

Division:

Alaska Court System

Date:

04/03/89

Approved by:

Arthur H. Snowden, II
Arthur H. Snowden, II, Administrative Director

Date:

04/03/89

Agency:

Alaska Court System

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management & Budget

Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the offense of driving while intoxicated..."
Sponsor: Rep. Donley
Requestor: Rep. Donley

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-	10.5	10.5	10.5	10.5	10.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	10.5	10.5	10.5	10.5	10.5
FEDERAL FUNDS						
OTHER						
TOTAL	-	10.5	10.5	10.5	10.5	10.5

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services

Phone: 465-3376
Date: 4-16-89

Approved by Commissioner: *Susan Humphrey-Barnett*
Agency: Department of Corrections

Date: 4-16-89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE
HB 236
Page 2

ANALYSIS

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the percentage of alcohol in a person's breath or blood from 0.10 percent to 0.05 percent, for commission of the offense of driving while intoxicated if the person is under 21 years of age. Data collected by the Municipality of Anchorage reveals that about four percent of the persons stopped under the suspicion of driving while intoxicated, including adults, had a blood alcohol recording of from .00 to .09. Consequently, the number of drivers between the age of 18 and 21 years who would be presumed to be intoxicated under the bill is estimated to be around 100 youths.

This would result in approximately 100 additional persons being held in a soft bed for 3 days at a cost of \$35 per day. Total cost will be \$10,500.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 3, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Patricia Young *py*
Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content
Standards for Youth
Research Request 89.290 (Supplemental Information)

Upon consideration of the information previously presented on more restrictive blood alcohol content (BAC) standards for youth, you wished to know how long such laws have been in effect and if their constitutionality has been challenged. According to assistant attorneys general in each state, the laws went into effect as follows: Maine--1982, Maryland--1988, New Mexico--1984, North Carolina--1983, Rhode Island 1986, and Wisconsin--1987. Although constitutional challenges were expected in some states, none have been raised. In each case, preponderance of data reflecting the over representation of youth in alcohol-related driving accidents was noted as being sufficient evidence to uphold the constitutionality of such laws should they be challenged.

Both the prohibition against drinking under the age of 21 and the prohibition against driving on public highways with a BAC of over 0.01 percent are arbitrarily designated limits. However, because both prohibitions contribute to the general welfare and public safety, both meet the rational relationship standard of proof required in such cases. Likewise, it is rational to suppose that a more restrictive BAC standard for youth could reduce the number of alcohol-related accidents and fatalities.

Representative Donley
April 3, 1989
Page 2

Given the legal drinking age of 21, any tolerance for alcohol in a driver under that age is a curious anomaly within the law. Statutes requiring absolute sobriety in young drivers would complement and reinforce the legal drinking age and would make obvious the direct connection between sobriety and public safety.¹

I hope that this information is useful to you. If you have any questions or need further information, please call.

¹In 1983, Oregon passed a law which requires the denial of driving privileges to youth under 17 who are convicted of possession, use, or abuse of alcohol or a controlled substance. Last year Oklahoma followed suit with a law which requires license suspension of 3 months to one year for first offenses, up to two years for second offenses, and a minimum one-year delay in getting a license for those who have none to suspend.



ALASKA STATE LEGISLATURE
 HOUSE OF REPRESENTATIVES
 RESEARCH AGENCY

P. O. Box Y, State Capitol
 Juneau, Alaska 99811-3100
 Mail Stop 3100
 (907) 465-3991

March 16, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Patricia Young *PM*
 Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content Standards for Youth
 Research Request 89.290

You asked which states, in tests to determine whether motor vehicle operators are impaired by alcohol, apply a more restrictive standard for blood alcohol content (BAC) to drivers under the age of 21. You also wanted to know 1) if a given amount of alcohol has a greater effect on a young drinker than on an experienced drinker and 2) whether alcohol-related traffic statistics show that youth are at greater risk than adults.

Six states impose more restrictive BAC standards on drivers under the age of 21. The following chart shows the state, the illegal per se BAC level, and the BAC standard applied to young drivers. (For more detailed information, see Attachment A, selected pages from the National Highway Traffic Safety Administration, Digest of State Alcohol-Highway Safety Related Legislation, seventh edition, January 1989.)

State	Illegal Per Se BAC Level	Youth BAC Level
Maine	0.08	0.02 (under 21)
Maryland	0.07	0.02 (under 21)
New Mexico	0.10	0.05 (under 18)
North Carolina	0.10	0.00 (under 18)
Rhode Island	0.10	0.04 (under 18)
Wisconsin	0.10	0.00 (under 19)

Although the purchase and possession of alcohol by persons under the age of 21 is illegal in every state, only two states--North Carolina and Wisconsin--presently subject youth to a zero BAC standard. Defining impairment in persons under the legal drinking age as any blood alcohol level above 0.0 BAC is the first legislative measure recommended by the National Commission Against Drunk Driving (NCADD).

Representative Donley
March 16, 1989
Page 2

Jim Wright, head of youth programs, Office of Alcohol Countermeasures, National Highway Traffic Safety Administration, also supports lower BAC standards for youth. According to Mr. Wright, although the physiological impact of alcohol on young and adult drinkers is probably the same, young drinkers are less experienced and, therefore, less adept at masking impairment. Because youth are less able to cope with the effects of alcohol, because they are less experienced drivers, and because they tend to take more risks, there is a distinct correlation between age and alcohol-related accidents.

Data collected by NCADD in Youth Driving Without Impairment: Report on the Youth Impaired Driving Public Hearings, 1988, indicate that "a person under the legal drinking age [is nearly] twice as likely to die in an alcohol-related crash as an adult over the age of 21" (p. vii). Attachment B contains portions of this report. Attachment C is data on youth impaired driving from the Fatal Accident Reporting System, the National Center for Statistics and Analysis, the National Highway Traffic Safety Administration, and the Bureau of Census. Data from all sources show youth disproportionately represented in all kinds of driving fatalities, both alcohol and non-alcohol-related.

I hope that this information is useful to you. Please call me if you have questions or need further information.

Attachments

ATTACHMENT A
Selected Pages from the National Highway Traffic
Safety Administration, Digest of State Alcohol-Highway
Safety Related Legislation, 7th Edition

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:
 Amount (\$ Range): Not more than \$1,000
 Mandatory Min. Fine (\$): 1st off (-\$300; 2nd off (w/n 6 yrs)-\$500; 3rd off (w/n 6 yrs)-\$750 29 MSA §1312-B

Other Penalties:
 Community Service: None
 Restitution (eg Victim's Fund): Yes, 17-A MSA §61204(2-A)(B) & 1321 et seq. Direct compensation by the defendant to a victim usually as a condition of probation.
 Other: None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: Yes-0.08 BAC level^{1&2} The periods of license susp for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below).³
 Other: Under 29 §2241(1), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" (but have not necessarily been convicted of) an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this rev/susp is not specified.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): For all offs - Susp (See Special Note on p. 3-172 concerning serious bodily injury DWI offenses.)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-90 dys; 2nd off (w/n 6 yrs)-1 yr; Subsequent offs (w/n 6 yrs)-2 yrs; 29 MSA §1312-B & 1312-D(1) Note: The licensing agency may increase the above susp. periods up to 275 dys; see 29 MSA §1312-D(1)-A.

Mandatory Minimum Term of Withdrawal: 1st off-40 dys; 2nd off-1 yr; sub. off-2 yrs These are not mandatory in all situations; see the Special Note on p. 3-174.

¹Maine has a special statute concerning the administrative susp of licenses for 1 yr of persons under 21 yrs of age who operate a veh while having a BAC level of 0.02; hardship and provisional licenses are available; this statute is not reported in detail here; see 29 MSA §2241-6(B).

²The licensing agency may administratively suspend a driver's license for 3 yrs if they negligently caused a death while operating a motor vehicle either while DWI or with a BAC level of 0.08 or more; see 29 MSA §1312-B.

³A work restricted license may be issued provided that person has not ... (1) been convicted of a DWI off, (2) had a previous admin. per se susp. or (3) refused to submit to a chemical test; see 29 MSA §1311-A.

STATE:

MARYLAND

General Comments:

See Annotated Code of Maryland.

Basis for a DWI Charge:

Standard DWI Offense:

(1) While Intoxicated¹ (Tran. §21-902(a)) and
(2) under the influence of Alcohol (Tran.
§21-902(b))

Illegal Per Se Law (BAC Level):

No²

Presumption (BAC Level):

No

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) Any
Combination of Drugs, (3) a Combination of One
or More Drugs and Alcohol and (4) Any Controlled
Dangerous Substance¹ See §21-902(c)(1) & (d).

Other:

A BAC of 0.07 is prima facie evidence of driving
while under the influence. A BAC of 0.10 is
prima facie evidence of intoxication. C&JP
§10-307 and Trans. §21-902

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes Tran. §16-205.2

Implied Consent Law:

Arrest Required (Yes/No):

Yes³ Tran. §16-205.1

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) C&JP §10-309(a)

Other Information:

Special Note: If a driver is involved in a DWI
related accident which resulted in the death of
another person, the driver shall be required to
submit to a chemical test of their blood or
breath Tran. §16-205.1(c)

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes (Trans §16-205.1)

Urine:

No

Other:

None

¹The law states that it is an offense to drive a motor vehicle while "intoxicated". The law does not specify any particular substance to be associated with such intoxication.

²Under Tran. §16-113(b)(1), a person under 21 must have a BAC restriction placed on their license. This restriction prohibits the licensee from operating a motor vehicle with a BAC level of 0.02 or more. Note: See footnote No. 2 on p. 3-184. Under C&JP §10-307(f) it is prima facie evidence of a violation of Tran. §16-113(b) if a person under 21 operates a motor vehicle with a BAC level of 0.02.

³The law uses the term "detained" instead of arrest.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:
Restitution
(eg Victim's Fund)

None

Yes, §31-17-1 (Restitution is to be paid by the defendant.¹)

Other:

A fee of \$35 is assessed against each defendant to defray the costs of BAC and other chemical tests for DWI; see §31-12-7.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

1. For persons 18 yrs old and above who have a BAC level of 0.10 or more - 90 dys mandatory license rev (§66-8-111(C)(1)); for an admin. per se off where a person (1) has failed to complete a rehabilitation program for a 1st DWI off or (2) has been convicted of a second or subsequent DWI off - 1 yr mandatory license rev (§66-5-29(C)); 2. For persons under 18 yrs of age who have a BAC level of 0.05 or more: 1st Admin. Per Se off - 6 mos mandatory license rev §66-8-111(C)(2); 2nd Admin Per Se off - 1 yr mandatory license rev §66-8-111(C)(3)

Other:

Under §§66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and all sub. one, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off-Rev §66-5-29 & 66-5-32(B); 3rd off-Rev §66-5-5(D)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-1 yr; 2nd off-1 yr; 3rd off-5 yrs

Mandatory Minimum Term of
Withdrawal:

1st off-(See Special Note); 2nd off-1 yr; 3rd off-5 yrs

Special Note: If a person has been convicted of a 1st DWI off but not subject to the mandatory license provisions of the admin per se law, they may obtain a restricted license. Such a license, however, is not available where there has been a consent decree based on a filing of any DWI charge. §66-5-35A.

¹Restitution appears to be required if a sentence is either suspended or deferred; see §§31-17-1B & 31-20-6.

STATE:

~~NORTH CAROLINA~~

General Comments:

See Gen. Stat. of North Carolina.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an impairing substance §20-138.1(a)(1) & 20-138.2(a)³ (for commercial motor vehicle operators)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §§20-4.01(0.2) & 20-138.1(a)(2); 0.04 if operating a commercial motor vehicle §20.138.2(a)²

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Any Impairing Substance §20-138.1(a)(1)

Other:

See Footnote No. 3.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §20-16.3

Implied Consent Law:

Arrest Required (Yes/No):

Yes (Implied) §20-16.2(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §§20-16.2 & 20-139.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §20-16.2(a)(3)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No. However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge; see §20-178.4.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes §§20-179(m) & 20-179.1

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²A commercial motor vehicle operator is a person who is licensed to drive either (1) a vehicle weighing more than 26,000 lbs. or (2) one carrying hazardous materials. See §20-7(a). Unless amended by the legislature in 1989, all provisions concerning the operation of commercial motor vehicles while DWI are effective only from June 1, to June 30, 1989; see §17 of Ch. 1112 of the laws of 1988.

³Special Note: It is illegal for a provisional licensee, a person between the ages of 16 and 18, to operate a motor veh with any alcohol in their body; see §20-138.3.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation:

Alcohol Education: 1st off - Alcohol (DWI)/drug education course and/or treatment program (Required)

Alcohol Treatment: 2nd off-Yes (Required); 3rd off-Yes (Required)

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: No

Terms Upon Which Vehicle
Will Be Released

Other: None

Miscellaneous Sanctions
Not Included Elsewhere:

For persons under 18 years old who have been found to have been driving while impaired (BAC level between 0.04 and 0.10), an assessment fee of \$150 or community service (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 mos susp; 2nd violation-susp until the person is 21 years old; 3rd and subsequent violations-suspension until the person is 21 years old plus an additional 2 yr susp (§31-27-2.5(d)(2), (3) & (4)). These license suspensions are mandatory. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st off.-a highway assessment fine of not more than \$250, 10-60 hrs. of community service & a 6 mon. lic. susp. (mandatory); 2nd and sub. off.-confinement in a training school for not more than one (1) yr., a fine of not more than \$500 & a one (1) yr lic. susp. (mandatory). See §31-27-1(d)(a) & (b).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such Law/Type of off: Yes

Criminal Sanction:

Imprisonment (Term): 1) Death related DWI offs-felony-1st off - 0 mos-10 yrs; 2nd and subsequent (w/n 5 yrs) - 5-20 yrs (§31-27-2.2 & 11-1-2; 2) Non-DWI related driving causing death-felony-Not more than 10 yrs §31-27-1 & 11-1-2

Mandatory Minimum Term: None
Fine (\$ Range): Death related DWI offs, 1st off - \$500-5,000;
2nd and subsequent (w/n 5 yrs) - \$800-5,000
Non-DWI related deaths - None

Mandatory Minimum Fine: None

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	

1st refusal - 1 yr rev. after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 5 yrs) - 2 yr rev. after 90 dys of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal (w/n 5 yrs) - 3 yr rev. after 120 dys of rev period, the driver is eligible for an occupational license¹; Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §343.305(9)

Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

Non-injury related DWI off: 1st off-None; 2nd off (w/n 5 yrs)-5 dys to 6 mos; 3rd and sub off (w/n 5 yrs)-30 dys to 1 yr; Injury related DWI offs. Without great bodily harm - 30 dys to 1 yr; With great bodily harm (C1 E felony) - Not more than 2 yrs §§346.631(1), 346.65(2), 346.65(3), 939.50 and 940.25

Mandatory Minimum Term: None

If a person, under 19 years old has been arrested for a violation of §346.63(2m), driving with a BAC level of more than 0.00 but less than 0.10, refuses to submit to a chemical test, their license is revoked for six (6) months. After the first 15 days of this revocation period have passed, an occupational license can be issued. A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. See §§343.305(9)(em) & 346.63(2m).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

Non-injury related DWI offs, 1st off- \$150 to 300; 2nd DWI off (w/n 5 yrs) - \$300 to 1,000; 3rd & sub. off (w/n 5 yrs)-\$600 to 2,000; Injury related DWI offs. Without great bodily harm - \$300 to 2,000; With great bodily harm (C1 E felony) - Not more than \$10,000 See Footnote No. 1 below.

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Yes §346.65(2g)²

Restitution

(eg Victim's Fund):

Yes Direct compensation by the defendant to a victim for some types of "pecuniary losses;" see §346.65(2r)(a). In addition, the State has a victims' compensation fund; see §949.01 et seq. Awards are limited to \$40,000 for any one injury or death; see §949.06(2).

Special Note: An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had a BAC level of 0.10 or more; see §949.08(2)(e).

Other:

Persons convicted of a DWI offense must pay a driver improvement surcharge of \$200 in addition to any other fine or forfeiture that may be imposed; see §346.65(1). In addition, under §§814.60 & 973.045, a defendant must pay a crime victim and witness assistance surcharge of \$30 for a misdemeanor conviction and \$50 for a felony conviction.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 BAC §343.305(7) & (8) (Action is taken via the licensing agency; see §343.305(8)-Susp 6 mos (15 dys mandatory)³

Other:

A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)

¹Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. There is a forfeiture of \$10 for a violation of this provision; see §346.65(2q).

²Community may be imposed (1) in lieu of certain fines/forfeitures or (2) in addition to other penalties; see §346.65(2g) for details.

³A restricted occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days. However, 15 days must have elapsed since the date of the suspension before this license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off - Susp; 2nd and 3rd offs - Rev; DWI injury related offs, with or without great bodily harm - Rev §§343.10, 343.30 & 343.31
See Footnote Nos. 1 & 2 below.

Term of License Withdrawal

(Days, Months, Years, etc.):

Non-injury related DWI offs; 1st off- Susp 6-9 mos; 2nd off-Rev 1 yr-18 mos; sub off - Rev 2-3 yrs; Injury related DWI offs Without great bodily harm - Rev 1 to 2 yrs; With great bodily harm - Rev 2 yrs Note: A previous conviction includes refusals.

Mandatory Minimum Term of

Withdrawal:

Non-injury related DWI offs; 1st off - 15 dys³; 2nd off - 60 dys⁴; sub off - 90 dys⁴; Injury related DWI offs Without great bodily harm - 60 dys; With great bodily harm - 120 dys

¹Sec. 346.63(2m) prohibits any person under 19 year old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. A violation of §346.63(2m) results in a 3 mo license susp; however, an occupational license is available, see §343.30(1q).

²Under §343.30(1q)(g), if a person has a chauffeur's license and they are convicted of a DWI offense while not operating a motor vehicle as a chauffeur, the chauffeur's license is not suspended or revoked.

³An occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days until the court is able to hear and decide the petition for the regular occupational license. However, 15 days must have elapsed since the date of the suspension before this temporary license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

⁴A restricted occupational license may be issued after this period of time.

ATTACHMENT B
Selected pages from the National Commission Against
Drunk Driving, Youth Driving Without Impairment: Report on the
Youth Impaired Driving Public Hearings, 1988

Youth Driving Without Impairment

Report on the Youth Impaired Driving Public Hearings

Atlanta, Boston, Chicago, Fort Worth, Seattle

“A Community Challenge”

Prepared by the National Commission Against Drunk Driving --- Washington, D.C.

Executive Summary

The National Commission Against Drunk Driving, working with a grant from the National Highway Traffic Safety Administration, conducted five public hearings in 1987-88 on the problem of youth impaired driving. From the wealth of testimony gathered in Chicago, Boston, Seattle, Atlanta and Fort Worth, many recommendations were adopted for this report.

A review of the proceedings reveals one paramount conclusion: the time has not arrived yet when we can rest content with what has been done to address the problem of youth impaired driving. Despite the spread of activist groups, the proliferation of programs, and the passage of much-needed legislation, young people continue to drink and drive with alarming frequency. Over the course of the past five years, it has become illegal for youth under age 21 to purchase and possess alcohol in every state. Nevertheless, young people continue to be involved in alcohol-related crashes at disproportionately high rates. A young person under the legal drinking age remains nearly twice as likely to die in an alcohol-related crash as an adult over 21.

Youth impaired driving cannot be solved without addressing the problem of underage drinking. Testifiers at the hearings summarized the situation:

- Drinking is endemic among American youth.
- Alcoholic beverages remain easily accessible to youth under 21.
- Peer pressure encourages young people to drink and leads many adolescents to consider alcohol a necessary accompaniment to social events.
- Advertising normalizes alcohol consumption and makes it more difficult to raise concerns about alcohol abuse.
- Drinking decreases inhibitions in young people who all too frequently possess a propensity for taking risks and naively believe that they will not be harmed.

The combination of these factors leads to a tragically predictable result: alcohol-related motor vehicle crashes constitute the leading cause of death for youth of driving age.

The NCADD-sponsored hearings confirmed that youth impaired driving is a societal problem which will not be resolved in the short term or by a single approach. Changing the attitude of youth toward impaired driving and, more fundamentally, toward underage drinking requires a sustained coordinated effort. Youth must be presented with the single message from all elements of the community that under-age drinking and impaired driving are socially intolerable.

Testimony repeatedly emphasized the pivotal role parents play in preventing youth impaired driving. According to a University of Washington survey, parents are the most important influence on a youth's decision not to use alcohol or other drugs. Similarly, when a Michigan State University survey asked high school students what factors would reduce the amount of alcohol they consumed, 70%-90% responded that parental actions such as supervising parties, keeping a closer control over home alcohol supplies, and making a greater effort to discuss their weekend activities would reduce their drinking habits.

Unfortunately, all too many parents have abdicated their responsibilities. Testifiers described encounters with parents who criticized police officers for arresting juvenile DWI

offenders, parents who fought protracted legal battles to prevent the revocation of their child's driving license, and parents who, in the face of overwhelming evidence, steadfastly denied the existence of their child's drinking problem. These actions, one testifier noted, not only undermine the efforts of those who work to reduce youth impaired driving but fuel the young person's sense of being victimized by the system.

The reaction of these parents to the enforcement of drinking and driving laws emphasizes the need for education to inform parents about the scope of the impaired driving problem. Findings by Michigan State University researchers confirmed this need: while 60%-70% of parents are convinced that underage drinking occurs, only 20% believe that their own children are involved in such behavior. This statistic dramatically illustrates the unwillingness of parents to acknowledge the involvement of their children in underage drinking.

The hearings made it clear that every systemwide approach must combine prevention, deterrence and treatment/intervention. Preventive education for youth must start at an early age, before young people are first confronted with the decision to use alcohol or other drugs. With young people beginning, on a national average, to first use alcohol at 12.8 years of age, education clearly must start in elementary school. It must be designed to provide children with information on alcohol and drug use, but it must also teach them the skills they need to act on that information and resist pressure from friends and family to use alcohol and other drugs.

In providing youth with alcohol education and skills, considerable care should be given to selecting appropriately qualified teachers, for the teacher is the most important variable in the success of the program. These teachers should be good role models, trusted by students, and want to teach the subject.

In addition to maximizing the value of formal classroom instruction, educators should take full advantage of the possibilities of peer education. Testifiers cited numerous examples of programs involving high school youth who volunteer to work with junior high or elementary school children on highway safety and alcohol and drug issues. Like peer education, positive peer pressure has a tremendous potential for altering attitudes about drinking and driving. By banding together to form safety clubs and support groups, youth can encourage their peers to value a health lifestyle and socially-responsible behavior.

The single most controversial topic of the hearings was the safe rides programs. Supporters of safe rides programs contend that intervention is needed in the less-than-perfect world where young people drink illegally and subsequently drive. Advocates of more prevention-oriented approaches emphasized that efforts to counter youth impaired driving must address the underlying problem of underage drinking by emphasizing a no-use approach. In its recommendations, the NCADD recognizes the value of both arguments, acknowledging the need to take positive steps to discourage underage drinking while recognizing the importance of intervention measures that make our highways safer for everyone.

While preventive education is important, it alone is not sufficient to deter youths from drinking and driving. Enforcement is also necessary. Testifiers complained of a lack of enforcement. Both youth and police agreed that young people are not subject to the same level of rigorous enforcement as the older adult population. To increase the effectiveness of enforcement, testifiers suggested that police target youthful impaired driving by focusing their shift schedules and patrols on the hours when most impaired driving offenses by youth occur. Police should also patrol parks, schools, and other neighborhood locations where youth tend to gather. When youth are arrested for drinking and driving violations, they should be subject to the full penalty of the law. Releasing youth to their parents, like downgrading their offenses or diverting them into pre-adjudication programs, conveys the impression to the young offenders as well as to their parents that youthful impaired driving is not a serious offense.

The evidence suggests that communities with the best record of reducing youthful drinking and driving have succeeded by formulating an integrated, systemwide approach. If the hearings revealed one thing, it was that many good programs and successful countermeasures exist. The key is for communities to put all of these elements in place, so that the efforts of students, parents, schools, courts, businesses and police support one another. Only when all nine components that came under so much discussion during the youthful impaired hearings are put in place can we look forward to significant reductions in the serious injuries and fatalities involving thousands of young Americans. Each community must confront this serious social issue if we are to ensure that this campaign to counter youthful impaired driving is a truly national campaign. No one will admit that this is an easy challenge—but who would deny it is a challenge that every community must accept!

Introduction

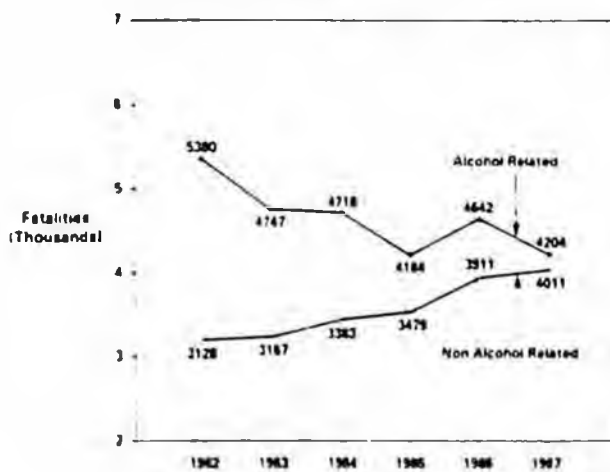
In the past five years progress has been made in reducing the number of alcohol-related motor vehicle deaths involving young drivers. Between 1982 and 1987, the alcohol-related fatalities of youth under 21 declined by 21.9%. While this figure is tempered by the fact that the youth population declined by 8.4% during that time, it nonetheless represents a significant achievement.

The impressive reduction in alcohol-related youth fatalities typifies a general decline since 1982 in alcohol involvement in youth crashes. This reduction is all the more impressive given the steady increase in non-alcohol related youth fatalities over that same period. As a variety of statistics indicate, alcohol is a factor in fewer and fewer crashes involving young people. In fact, the largest decrease among all age groups in alcohol-related motor vehicle crashes has occurred within the 15-20 year old age group.

- 19 young people compared to 11 adults over 21 died in alcohol-related crashes per 100,000 of their respective populations.
- 25 young drivers compared to 11 adult drivers over 21 were involved in alcohol-related crashes per 100,000 licensed drivers in each population.
- Youths under 21 comprise only 8% of the total driving population but accounted for 17% of the drivers involved in alcohol-related fatal crashes.
- 25% of all passengers killed in motor vehicle crashes were youth aged 15 to 20.

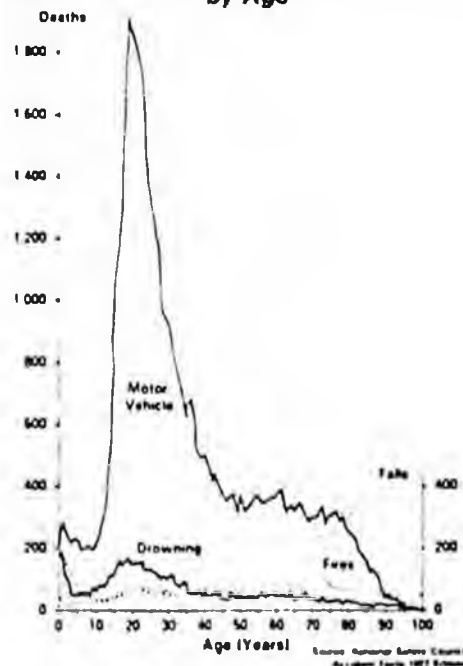
Drinking and driving continues to be the number one killer of teenagers. More than 40% of all deaths for people age 15-20 result from motor vehicle crashes; and approximately half of these fatalities involve alcohol. One in five American youths who dies between the ages of 15 and 20 will die in an alcohol-related crash. As it has often been remarked, the alcohol-related crash is the American way to die for teenagers of driving age.

Figure 1
Youth Fatalities – Ages 15 to 20
Motor Vehicle Deaths, 1982 to 1987



Despite encouraging indications that alcohol involvement is declining, young people continue to be involved in alcohol-related crashes in disproportionately high numbers. Last year youth under the age of 21 remained significantly over-represented when compared to the over 21-population:

Figure 18
Leading Causes of Accidental Death
by Age



The problem of youth impaired driving is intimately associated with the problem of illegal

underage drinking. Self-reported surveys reveal that nine out of ten high school seniors have used alcohol by the time they graduate and that a significant number drink heavily. As testifiers repeatedly declared, regular alcohol use is seen as the norm by many American youth.

Sharing unpublished statistics from the 1987 National High School Senior Survey, Patrick O'Malley of the University of Michigan's Institute for Social Research offered in his testimony a disturbing view of the problem of youth impaired driving. According to the 1987 survey of 17,000 high school seniors nationwide, 27% of the respondents reported that they had driven a car after drinking in the two weeks prior to the survey. Even more alarming, 15% reported driving after having five or more drinks in a row. Still more students are placing themselves at risk by riding as passengers in a car with a driver who has been drinking. More than one-third reported riding with a drinking driver in the prior two weeks. And the drivers with whom they risked riding more often than not were drinking heavily, with 22% of the seniors stating that they had been a passenger in a car in the prior two weeks with a driver who had consumed five or more drinks.

The danger that young people court when they drink and drive is exacerbated by three factors. First, young people are inexperienced drivers. Not only are a greater percentage of youth involved in alcohol-related crashes, but a greater percentage are involved in car crashes in general. Second, youth exhibit a propensity to risk-taking and a common feeling of invincibility that often contributes to reckless driving. Third, youth have a tendency not to use safety belts. According to the University of Michigan survey, only one third of the seniors said that they always wear a safety belt when they are driving, and even fewer always wear them when they are passengers in the front seat of a car. Given this pattern of behavior, the disproport-

tionate number of alcohol-related crashes that claim the lives of young people becomes sadly predictable.

Our best hope of countering the pervasiveness of youth impaired driving lies in formulating an integrated systemwide approach that will present young people with a consistent message that underage drinking and impaired driving are intolerable. Testifiers clearly emphasized that this approach must involve the entire community and cited examples of the type of coordination that is necessary: parents must support student extracurricular activities and participate in community programs; judges must expand their role beyond the courts and become community catalysts for change; college administrators and retail liquor establishments must work together to stop alcohol purchases by underage college students; and business leaders must support the efforts of citizen action groups in their communities.

Within the framework of a systemwide approach, testifiers placed the single greatest emphasis upon the role and responsibility of parents. Both youth and adult testifiers stressed this point. Parents need to concern themselves with the well-being of their children and provide emotional support, moral guidance and disciplinary action. Youth are much less likely to get involved in illegal activities if they feel a sense of attachment to their family and other pro-social institutions. As a study submitted by a Vermont testifier concluded, youth impaired driving often is only one element in a larger pattern of antisocial behavior. Since parents play a pivotal role in shaping the behavior of their children, support for an integrated systemwide program must begin in the family with efforts by parents to provide their children with the information and direction that encourages socially-responsible behavior in a substance-abusing society.



IX. Legislation

A pressing need exists for legislative leadership. Youth, as Rod Monroe declared, are crying out for proper rules with certainty of consequences. Inadequate laws, combined with lax enforcement and irregular sentencing, have contributed to a situation in which adolescent youths routinely drink and often drink and drive. The effects of this situation are manifold. Not only do young people form bad habits and fail to get help for their substance abuse problems, but they learn that the law means nothing and that they can violate it with impunity. The challenge exists for legislators to enact laws that combat the problem of alcohol abuse, that reflect the concerns of the community, and that gain the respect of youth.

Testifiers were united in affirming that a need exists for additional legislation. In discussing areas for legislative activity, testifiers offered both specific recommendations and general guidelines. The specific recommendations have been discussed in earlier chapters of this report. They included such measures as a 0.0 BAC for youths under age 21; administrative per se license revocations; prohibitions on the manufacture and possession of fraudulent driving licenses; increased penalties for persons convicted of selling alcohol to minors; and mandatory classroom instruction in grades K-12 on the effects and use of alcohol and other drugs.

In addition to specific legislative recommendations, testifiers offered four general guidelines for the formulation of more effective impaired driving laws:

- 1) laws must be perceived as fair and the penalty proportionate to the offense;
- 2) laws must not confound or frustrate law enforcement officers in the pursuit of their responsibilities;
- 3) laws must complement and reinforce one another;
- 4) laws must discriminate between adults and youths and provide separate provisions and punishments for each.

The Perception of Fairness

The first of the guidelines concerned fairness. In order for impaired driving legislation to be effective, it must be perceived as fair. Penalties must be seen as proportional to the offense; sen-

tences must be consistent. Though an apparently simple guideline, testifiers cited numerous examples of laws designed to reduce youth impaired driving which failed because of the perception that they were unfair. The issue of fairness poses a problem to lawmakers because judging the fairness of a penalty involves one's assessment of the seriousness of the problem. In a community where drinking and driving by youth is not perceived as a serious offense, penalties that might be considered entirely reasonable in another location may be viewed as excessively harsh. This problem highlights the fact that no single measure can solve the problem of youth impaired driving. Legislation is important but, by itself, insufficient; it often must be combined with community education to make people aware of the seriousness of impaired driving violations.

When laws are perceived as unfair and the penalties excessively harsh, three problems may arise: 1) police may not enforce the law; 2) judges may not sentence offenders; and 3) youths may be alienated and rebel against the law. Testifiers related examples of each problem.

The failure of police to enforce the law was cited commonly as a problem. In Iowa, for instance, legislation has increased the punishments for DWI offenses in recent years, and this has resulted in an enforcement problem. According to Kay Chopard, "Officers are hesitant to take in a juvenile whom they fear will be treated harshly." Viewing adolescent drinking as a part of growing up and not sufficient reason to saddle youths with a criminal record, Iowa police reportedly are reluctant to arrest youths for drinking and driving violations.

A similar problem may arise with judges who resist sentencing offenders to what they consider unfair punishments. Sergeant Ken Taylor, a Tennessee sheriff, described how the unwillingness of judges to sentence offenders hampered his county's efforts to stop convenience stores from selling alcohol to underage youth. Despite an undercover operation that was successful in catching clerks selling beer to youth, the sheriff's office encountered trouble obtaining convictions. As Taylor explained, "the reason we were having trouble getting the convictions was be-

cause of the severity of Tennessee's law. If a person is convicted of selling alcohol to a minor, then he is prohibited from working in a place that sells alcohol for 10 years. The judges looked at that as a little strong. So they would pass a case for six months and render judgment at the end of six months. And most of the time they dismissed the cases if the person had not been involved in another offense of this nature."

Judges and law enforcement officials are not the only ones whose actions are compromised by the enactment of laws perceived as unfair. Youth may also react negatively to the perception of unfairness. Dr. Hawkins of the Center for Social Research at the University of Washington expressed concern at the effect that disproportionate penalties may have on the behavior of youth. "We have to be careful," he said, "that our efforts to develop sanctions and punishment-oriented strategies do not create another generation of outsiders. It does not require a driver's license to drink and drive. Withholding a driver's license alone will not prevent drinking and driving." Concluding his comments with a warning that harsh penalties may only produce a youth subculture that defies the law, Hawkins urged legislators to consider strategies that emphasize rewards for responsible behavior rather than punishments for violations.

When punishments are necessary, William Hayes of the New Jersey Office of Highway Safety offered a word of advice: "The advice that New Jersey would offer would be to keep your laws simple, keep them at a level where you really intend to assess the penalty. Don't have penalties in there that say you go to jail for two years if nobody really goes to jail for two years." Such penalties have a two-fold negative effect: first, they may undermine the enforcement of a legitimately needed law; and second, they may give the appearance that progress is occurring when in fact nothing is really been done to reduce the frequency of youth-impaired driving.

While laws undermine their own effectiveness when the penalties appear too harsh, they achieve equally little when the penalties are too weak. For example, when the Iowa legislature raised the minimum drinking age to 21, it made the sale of alcohol to 19 and 20 year olds a misdemeanor, punishable only by a fine. Since Iowa establishments know that they cannot be punished by a jail sentence or by the revocation of their liquor license, they continue to serve 19 and 20 year olds with impunity, according to testifiers, and have merely raised their cover charges to pay for the fines they might incur.

Examples such as this led a number of testifiers to call for increased severity of sanctions for establishments that engage in a regular practice of selling alcohol to underage youth. These sanctions, they asserted, must include the threat of losing their liquor license for repeated violations.

Eliminating Encumbrances to Law Enforcement

The second guideline testifiers offered expressed the conviction that laws should not confound or frustrate law enforcement officers in the pursuit of their duty. In framing legislation, lawmakers must make it as simple as possible for police to arrest and detain youths, while still protecting the rights of young people. The impetus for this recommendation arose from complaints about legislation that has complicated enforcement. Several states, for instance, require that juveniles and adults be detained in separate facilities and not merely in segregated areas at the same facility. This provision, testifiers noted, has deterred the arrest of youth for "minor" offenses like impaired driving, particularly in rural areas that may be a long distance from the nearest juvenile detention center. Similarly, laws such as the Texas "Open Container" Law requiring officers to witness the consumption of alcohol by a driver in order to make an arrest increase the difficulty of the officer's task and reduce the likelihood of an arrest. Finally, the complexity of juvenile court proceedings and the demand that such proceedings often make upon an arresting officer's time were said to deter police from arresting youth for impaired driving violations.

Consistent Law

The third guideline that testifiers emphasized was the need for laws to complement and reinforce one another. In several states, older laws need to be amended to reflect more recent legislation. Wisconsin's "Not a Drop" Law, for example, establishes a zero BAC level for drivers under age 19. With a minimum drinking age of 21, however, the "Not A Drop" Law appears inconsistent. If drinking is illegal for 19 and 20 year olds, why shouldn't a 19 or 20 year old who is caught driving impaired be subject to the same penalties as an 18 year old? Similar inconsistencies plague drinking and driving laws in other states. In Iowa, when the drinking age was 18, the license of an underage DWI offender could be revoked until the offender reached the

legal drinking age. When the minimum drinking age was raised to 19, licenses of underage DWI offenders were revoked until the offender reached his or her 19th birthday. With the enactment of legislation raising the drinking age to 21, however, the age of revocation was lowered rather than raised, so that the license of an underage offender could be reinstated at age 18 rather than 21. Inconsistencies such as this, intentional or otherwise, obviously weaken the effect of the law and send a conflicting message to youth about the seriousness of the offense.

The Unique Nature of Youth Impaired Driving

The fourth and final guideline that testifiers offered concerned the need for legislation that deals specifically with the problem of youth impaired driving. Throughout the hearings, testifiers declared that impaired driving legislation must discriminate between youth and adults. All too often, legislation is framed with the adult driver in mind and is consequently inapplicable for youths. For example, in Iowa, drivers arrested with a BAC level in excess of .20 are required to obtain substance abuse evalua-

tion. By the time youths reach a .20 BAC level, however, they are often incapacitated. Due to their lower alcohol tolerance, juveniles may have a serious dependency problem and require treatment even though they never exhibit a .20 BAC level. Therefore, the BAC level at which youth are sent for evaluation ought to be lower than the level established for adults.

The need for legislation to distinguish between youth and adults raises a theme that emerged as the hearings progressed. In many ways, youth impaired driving is a separate issue from adult drunk driving. The difference lies in both the problem and the solution. The problem is different in that the circumstances in which youth drink and drive differ from the circumstances of adult violators. As testifiers noted, youth exhibit a decided proclivity to risk-taking behavior; they are less experienced drivers; and they are highly sensitive to peer pressure. Differences in circumstances demand different solutions. Provisional licenses for youth under 21, lower BAC levels, and differing license sanctions are among the areas where legislation is needed to reduce the incidence of drinking and driving by youth.

COMMISSION RECOMMENDATIONS

Legislation

The following legislative measures should be enacted to deter impaired driving by youth:

- For youth under the legal drinking age, impairment should be defined as any blood alcohol level above 0.0 BAC.
 - Administrative per se license suspensions should be statutorily permitted.
 - Open container laws should be promulgated.
 - Strict sanctions should exist for the sale or transfer of alcoholic beverages to youths under the legal drinking age.
 - The manufacture of fraudulent driving licenses should be prohibited and punished severely.
 - In the absence of administrative action by the appropriate state agencies, state legislatures should consider legislation in the following areas:
 - 1) mandatory classroom instruction on alcohol use, other drug use, and impaired driving for grades K-12 together with curriculum guidelines for each grade level
 - 2) insurance rebates for drivers who take an approved driving risk reduction course and have a clean driving record
 - 3) mandatory component on alcohol use and impaired driving in driver education courses.
-

1988 Survey

Drinking and Driving Among American High School Seniors

Institute for Social Research
The University of Michigan
Ann Arbor, Michigan

	1982	1983	1984	1985	1986	1987
Percent Having Used Alcohol in Past 30 days:	69.7	69.4	67.2	65.9	65.3	66.4
Percent Drinking Five or More Drinks in a Row in Past Two Weeks:	40.5	40.8	38.7	36.7	36.8	37.5
Percent Driving After Drinking Alcohol:	—	—	31.2	29.0	26.8	26.6
Percent Driving After Having Five or More Drinks:	—	—	18.3	16.6	15.8	15.0
Percent Riding as Passenger After Driver Had Been Drinking Alcohol:	—	—	44.2	39.1	38.2	38.2
Percent Riding as Passenger After Driver Had Five or More Drinks:	—	25.4	21.5	21.2	21.9	
Percent of Seniors Using Seatbelts When Driving:						
Never, Seldom	—	—	—	—	43.2	36.7
Always	—	—	—	—	25.0	33.0
Percent Reporting One or More Accidents in Past 12 Months:	22.2	22.2	22.8	24.4	25.1	25.6
Percent Having One or More Accidents After Alcohol Use in Past 12 Months:	3.3	3.0	2.8	2.7	2.2	2.5
Percent Reporting One or More Moving Violations in Past 12 Months:	24.8	27.1	26.5	27.6	30.4	31.7
Percent Cited for Moving Violation After Alcohol Use in Past 12 Months:	5.0	5.1	4.5	4.4	4.3	4.6

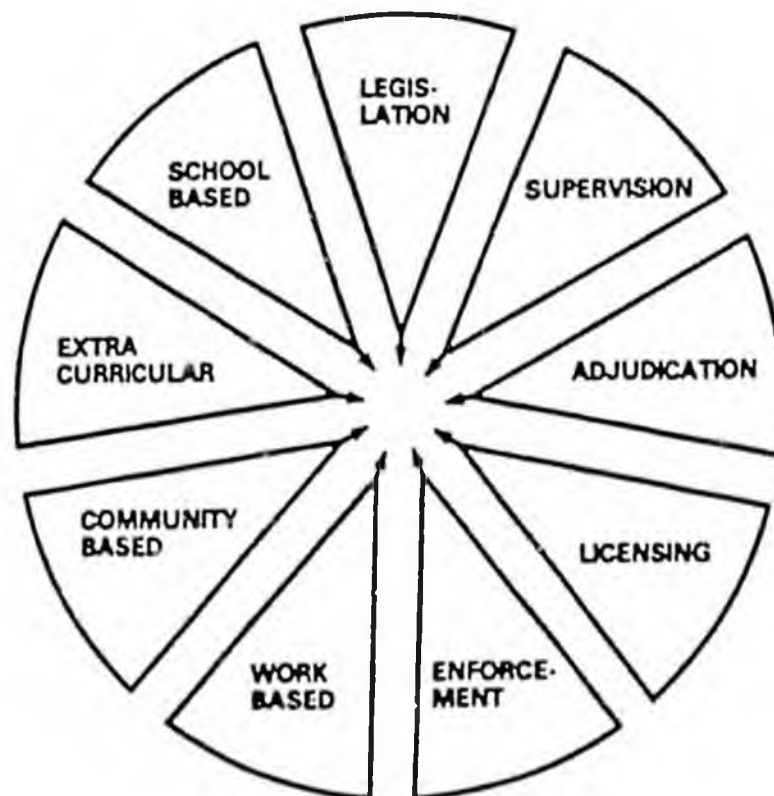
Youth Fatalities and Alcohol-Related Fatalities 1982-1987

	1982	1983	1984	1985	1986	1987	Percent Change From:	
							1982-1987	1986-1987
<i>I. Youth (15-20) Fatalities</i>								
Total Fatalities	8508	7914	8101	7663	8553	8215	-3.4	-4.0
Alcohol-Related Fatalities	5380	4747	4718	4184	4642	4204	-21.9	-9.4
Percent	63.2	60.0	58.2	54.6	54.3	51.2	-19.1	-5.7
Fatalities with .10% BAC or Greater	4123	3617	3487	3048	571	2888	-30.0	-11.7
Percent	48.5	45.7	43.0	39.8	38.2	35.2	-27.5	-8.1
<i>II. Young Drivers Involved in Fatal Crashes</i>								
Total Drivers	10080	9547	10046	9659	10470	10194	1.1	-2.6
Alcohol-Related Fatalities	4379	3966	3927	3387	3761	3356	-23.4	-10.8
Percent	43.4	41.5	39.1	35.1	35.9	32.9	-24.2	-8.4
Driver BAC .10% or Greater	3092	2789	2636	2276	2434	2109	-31.8	-13.4
Percent	30.7	29.2	26.2	23.6	23.2	20.7	-32.6	-11.0
<i>III. Young Drivers Killed</i>								
Total Drivers	4526	4252	4525	4281	4658	4583	1.3	-1.6
Alcohol-Related Drivers	2501	2270	2294	2000	2210	1939	-22.5	-12.3
Percent	55.3	53.4	50.7	46.7	47.4	42.3	-23.4	-10.8
Driver BAC .10% or Greater	1953	1742	1712	1440	1571	1357	-30.5	-13.6
Percent	43.2	41.0	37.8	33.6	33.7	29.6	-31.4	-12.2
<i>IV. Youth Fatalities Involving Young Drivers</i>								
Total Fatalities	723	6296	6614	6175	6966	6737	0.2	-3.3
Alcohol-Related Fatalities	3753	3372	3416	2938	3338	2968	-20.9	-11.1
Percent	55.8	53.6	51.6	47.6	47.9	44.1	-21.1	-8.1
Driver BAC .10% or Greater	2763	2483	2403	2041	2248	1931	-30.1	-14.1
Percent	41.1	39.4	36.3	33.1	32.3	28.7	-30.3	-11.2

ATTACHMENT C
Youth Alcohol-Related Motor Vehicle Fatalities
1982 through 1987

YOUTH ALCOHOL-RELATED MOTOR VEHICLE FATALITIES

1982 - 1987



The figures and data contained in this package focus on impaired driving fatal crashes by young people, ages 15 through 20, from 1982 to 1987. The data chosen to illustrate this problem fall into four categories:

- o Youth Fatalities -- Those who died in motor vehicle crashes (drivers, passengers, or pedestrians) who were 15 to 20 years old. An "alcohol-related" fatality occurs if any driver or pedestrian involved in the crash had been drinking. The young person killed, therefore, may or may not have been drinking.
- o Young Drivers Involved in Fatal Crashes -- 15-to-20-year-old drivers involved in a crash that resulted in a fatality. These drivers may have survived the crash and the fatality may have been a youth or adult.
- o Young Drivers Killed -- 15-to-20-year-old drivers who were killed in a motor vehicle crash.
- o Youth Fatalities by Alcohol-Involvement of Young Drivers -- Youth who were killed in a motor vehicle accident in which a young person was driving. The fatality could have been the driver, a passenger, or a pedestrian 15 to 20 years old. The young driver involved in the crash may or may not have been "at fault."

The totals in these four categories are broken down by alcohol-related (A/R) involvement. If a fatality is alcohol-related, a driver or pedestrian had a measurable blood alcohol content (BAC). The alcohol involvement is further broken down to indicate if the BAC was between .01 and .09 percent (which is within the "legal limit" in most States) or if it was greater than or equal to .10 percent, which is over the legal limit in most States. (It should be noted that some States, such as Maine, Wisconsin, Rhode Island and New Mexico, have set lower BAC limits for young drivers.)

Some of this data have been graphed to highlight interesting trends or problem areas.

Generally, alcohol involvement in youth crashes has decreased since 1982. In fact, the largest decrease among all age groups has occurred within this population. Although adults (ages 21 and above for the purposes of this report) also experienced declines during this time period, it can be seen (Figures 9, 10 and 11) that the proportion of youth fatal crashes that were alcohol-involved declined at a greater rate. For instance, the percent of alcohol-related fatalities decreased for adults (21 and above) from 58.4 percent in 1982 to 53.2 percent in 1987 - an 8.9 percent reduction. During this same period, youth alcohol-related fatalities declined from 63.2 percent to 51.2 percent - a 19.1 percent reduction.

Unless otherwise noted, the sources of all data contained in this report are from the Fatal Accident Reporting System, National Center For Statistics And Analysis, National Highway Traffic Safety Administration and the current population surveys, Bureau of Census..

Prior to the availability of 1987 data, there was some concern that fatalities, crash involvement, and alcohol-related involvement in these crashes were on the rise once again. However, with the 1987 data included, it now appears that 1985 may have been a particularly good year (as was 1987) and that all three years ('85, '86 and '87) can be viewed as part of a general downward trend since 1982.

Since 1982 the population in the United States from ages 15 through 20 has decreased as has the driver-licensed population (Figure 12). Therefore, if the rate, per capita, at which young people are dying in crashes remained the same we would expect to see fewer deaths. In fact, based on their population, the rate at which young people are dying in alcohol-related crashes is declining (from 22 deaths per 100,000 in 1982 to 19 deaths per 100,000 in 1987, Figure 13). Although there has been a decline in the youth population since 1982 (down 8.4%), we have seen a greater decline in young alcohol-related fatalities during this same time (down 21.9%). This, in spite of the fact that total youth fatalities declined only 3.4%.

The rate at which young people are dying in non-alcohol related crashes should be highlighted. The numbers of young people dying, young drivers dying and young drivers involved in fatal non-alcohol crashes have all increased significantly since 1982 (Figures 1, 3, 5 and 7). The rate at which young people have been dying in these crashes has subsequently risen (Figure 13). Although the reason for this increase is not known, there may have been an increase in the number of vehicle miles traveled by this age group which would account for some of this increase. Since the rate of non-alcohol fatalities has risen and the rate of alcohol-related fatalities has declined slightly, we see a dramatic decline in the alcohol-related proportion of deaths and drivers involved compared to non-alcohol (Figures 2, 4, 6 and 8). Therefore, this decline in the proportion of alcohol-related deaths and crash involvement can be viewed as much a function of the increase in the rate of non-alcohol-related deaths as it can to the steady decline in the alcohol-related figures.

The overall rate that young people are dying in crashes has increased from 1982 to 1987 from 35 to 37 deaths per 100,000 population (Figure 15). The fact that the alcohol-related death rate has not also risen, in fact has declined from 22 to 19 deaths per 100,000 population, is a good indicator that we are making progress in this area of driving behavior.

Young people continue to be overrepresented in fatalities and as drivers in fatal crashes compared to the older population. This is true based on total population, driver licensed population and vehicle miles traveled (Figures 15, 16 and 17). This overrepresentation is in the form of both alcohol and non-alcohol involvement and in both cases is substantial. For instance, 77 young drivers per 100,000 young licensed drivers were involved in fatal crashes in 1987 (Figure 16). 25 of these drivers were alcohol-involved. In this same year, 34 adult drivers (over 20) were involved in fatal crashes per 100,000 adult licensed drivers. 11 of these adult drivers were alcohol-involved. Well over twice as many young drivers per licensed driving population were involved in alcohol and non-alcohol-involved crashes as were older drivers.

In summary, alcohol-involvement in fatalities and fatal crashes has decreased substantially since 1982 for young people. It should be recognized that the downward trend in alcohol-related crashes is magnified by the decrease in the youth population and the increase in non-alcohol-involved crashes by youth -- factors which moderate the impressive gains of the past six years. Compared to the older population, alcohol-involvement in fatal crashes has declined at a greater rate for youth, although youth are still overrepresented in these crashes.

IMPAIRED DRIVING BY THE YOUNG -- FACTS

- o Drinking and driving continues to be the number one killer of teenagers. More than 40 percent of all deaths for people ages 15 to 20, result from motor vehicle crashes. About half of these motor vehicle fatalities involve alcohol. Thus, drinking and driving accounts for about 20 percent of all fatalities in this age group.
- o 2,910 young (15 to 20) passengers were killed in motor vehicle crashes in 1987 - 25 percent of all passenger deaths for that year.
- o Although 15 to 20 year old drivers represented only 8% of the total driving population in 1987, they represented 17% of the drivers involved in alcohol-related fatal crashes.
- o The proportion of drivers, age 15 to 20, involved in fatal crashes who were intoxicated decreased from 31 percent in 1982 to 21 percent in 1987. The reduction in the proportion intoxicated from 1982 to 1987 is 32 percent - the largest of any age group.
- o The proportion of fatally injured drivers, aged 15 to 20, that were intoxicated decreased from 43 percent in 1982 to 30 percent in 1987. The reduction in the proportion intoxicated from 1982 to 1987 was 31 percent -- the largest of any age group.
- o Young people, aged 15 to 20, are overrepresented in involvement and deaths in fatal crashes compared to the older population. The rate of involvement is significantly greater for young people for both alcohol and non-alcohol-related crashes based on the total population, licensed driver population or amount of vehicle miles traveled.
- o The population of the United States, ages 15 through 20, has decreased from 24.2 million in 1982 to 22.2 million in 1987 -- a decrease of 8.4 percent. During this same time period, motor vehicle fatalities for this age group decreased only 3.4 percent, while alcohol-related fatalities decreased 21.9 percent.

Figure 1
Youth Fatalities – Ages 15 to 20
Motor Vehicle Deaths, 1982 to 1987

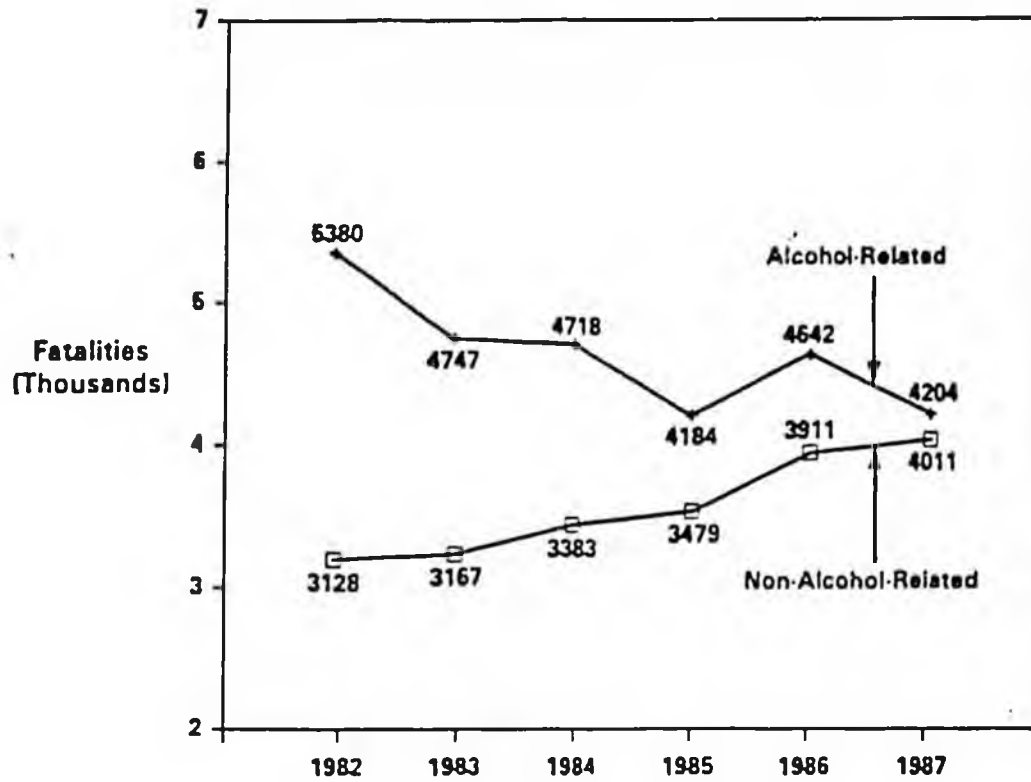


Figure 2
Youth Fatalities – Ages 15 to 20
Alcohol-Related Percent of Deaths

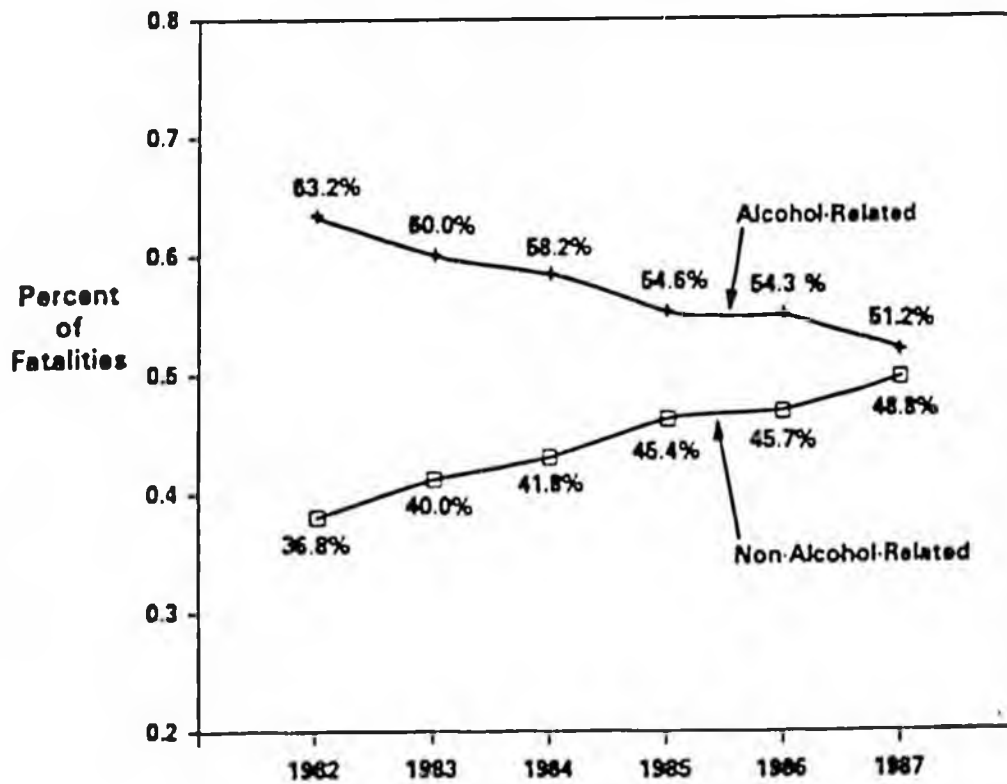


Figure 3
Youth Fatalities Involving a Young Driver
Ages 15 to 20

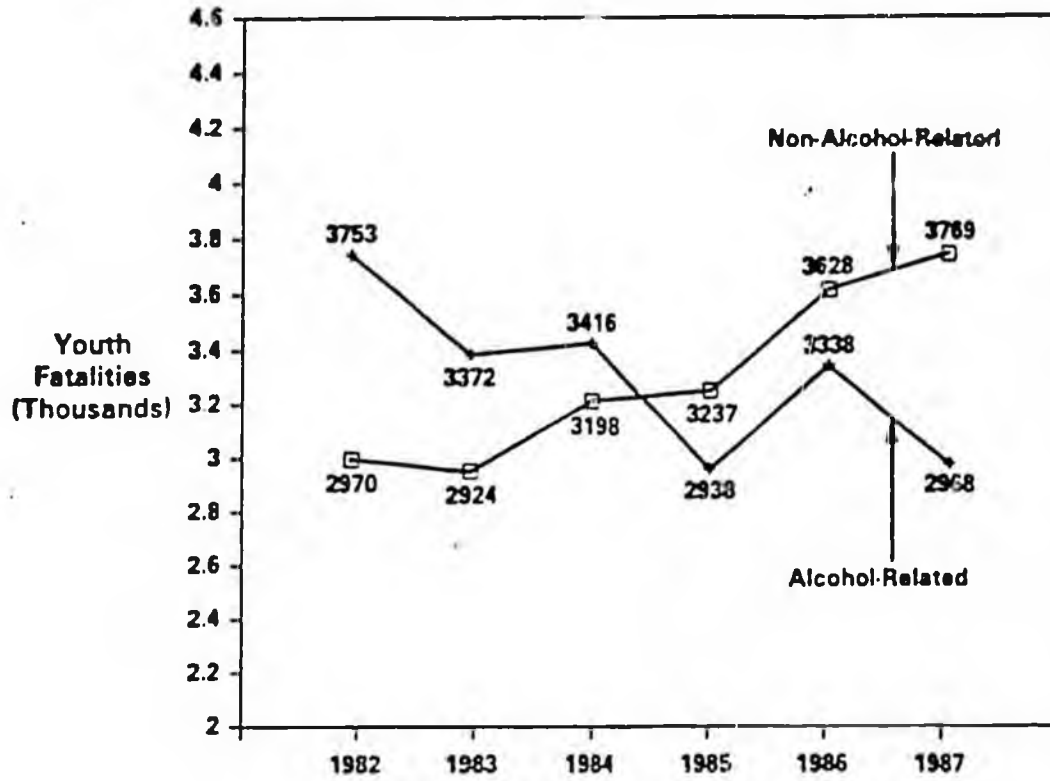


Figure 4
Youth Fatalities Involving a Young Driver
Percent of Total by Alcohol Involvement

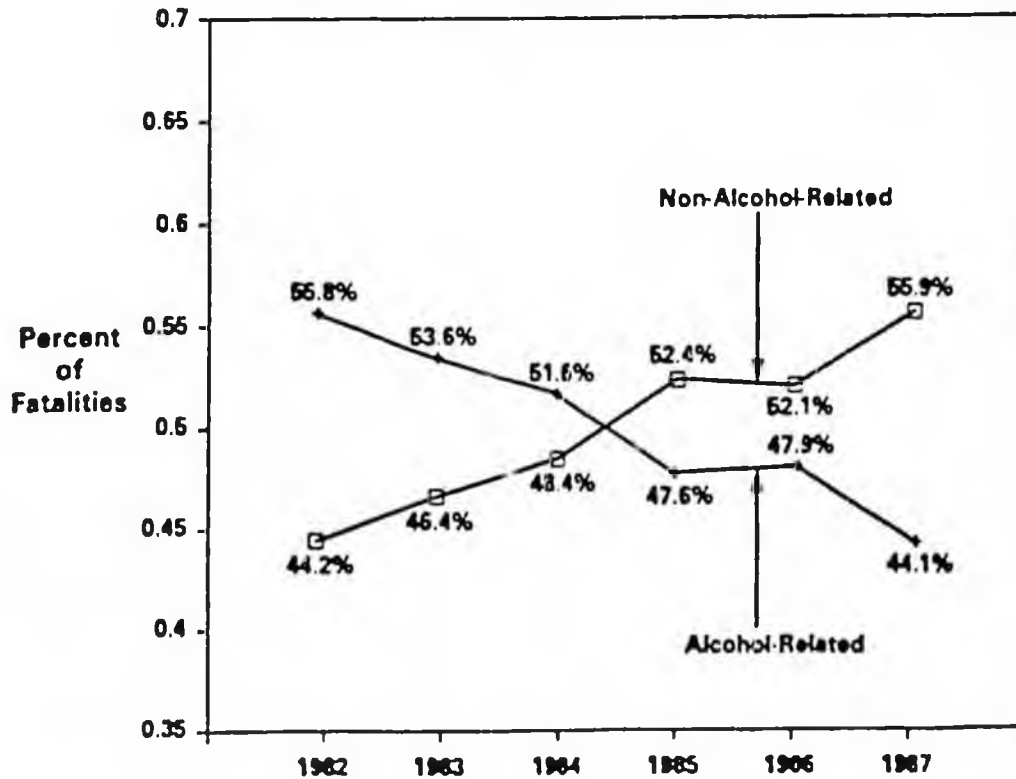


Figure 5
Young Drivers – Ages 15 to 20
Number Involved in Fatal Crashes: 1982-1987

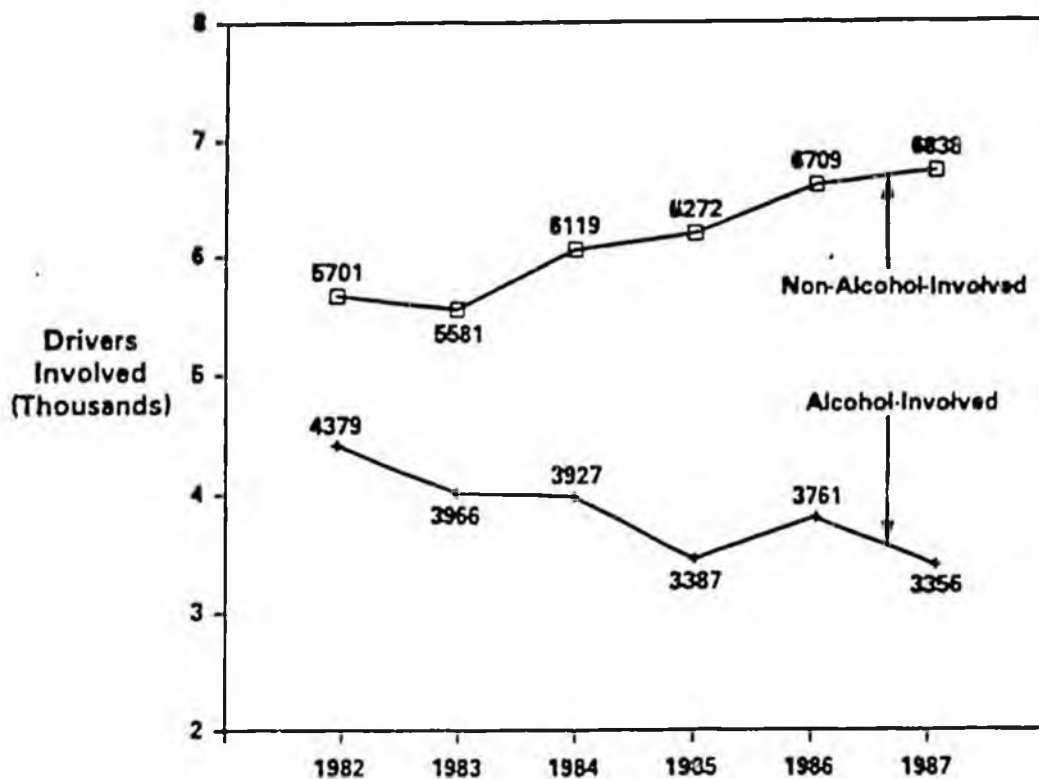


Figure 6
Young Drivers – Ages 15 to 20
Percent Involved in Fatal Crashes by Alcohol Involvement: 1982-1987

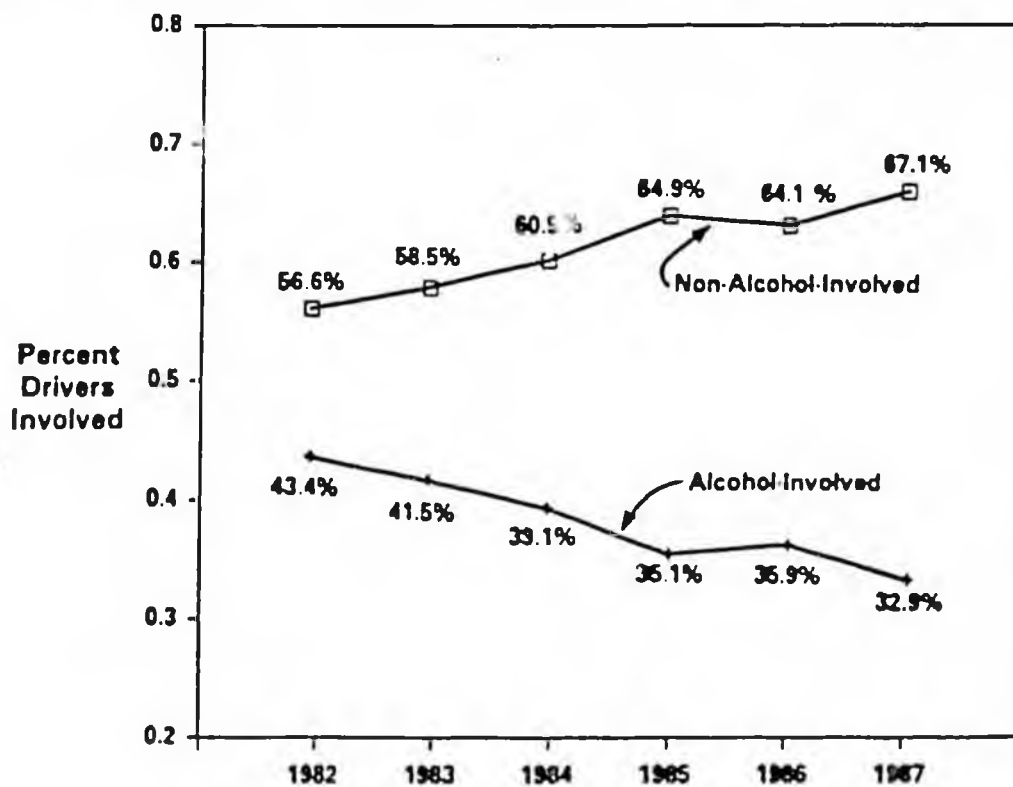


Figure 7
Young Drivers Killed
Ages 15 to 20

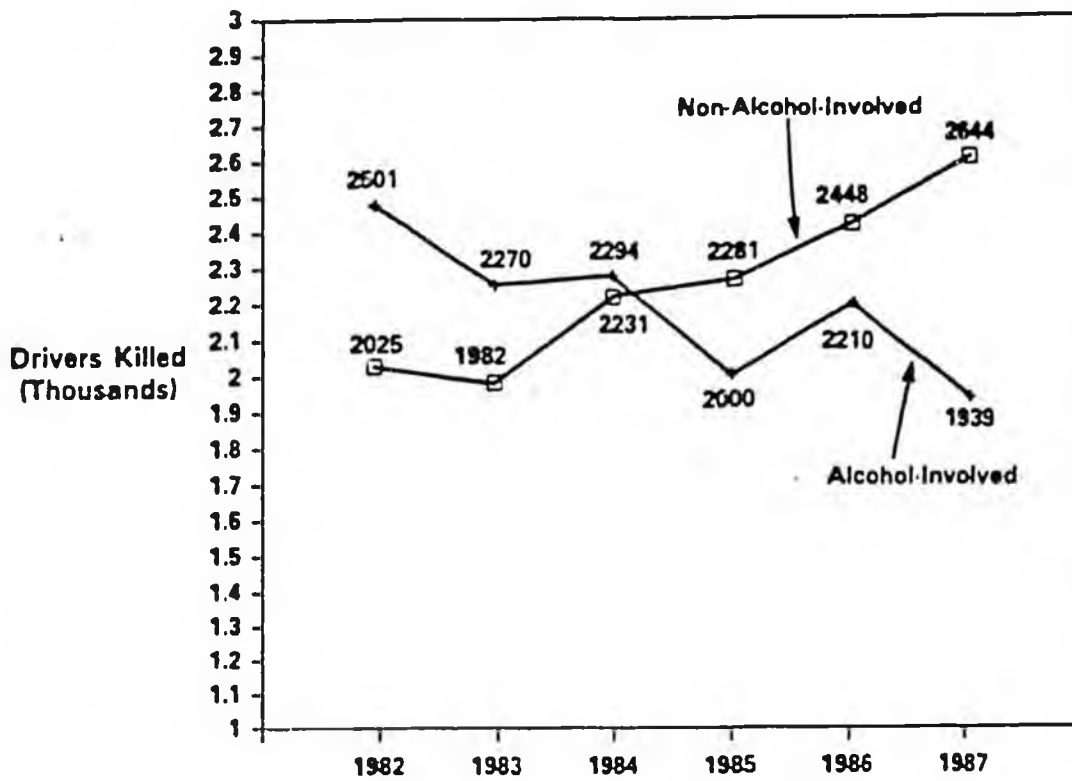


Figure 8
Young Drivers Killed
Percent Killed in Fatal Crashes by Alcohol Involvement

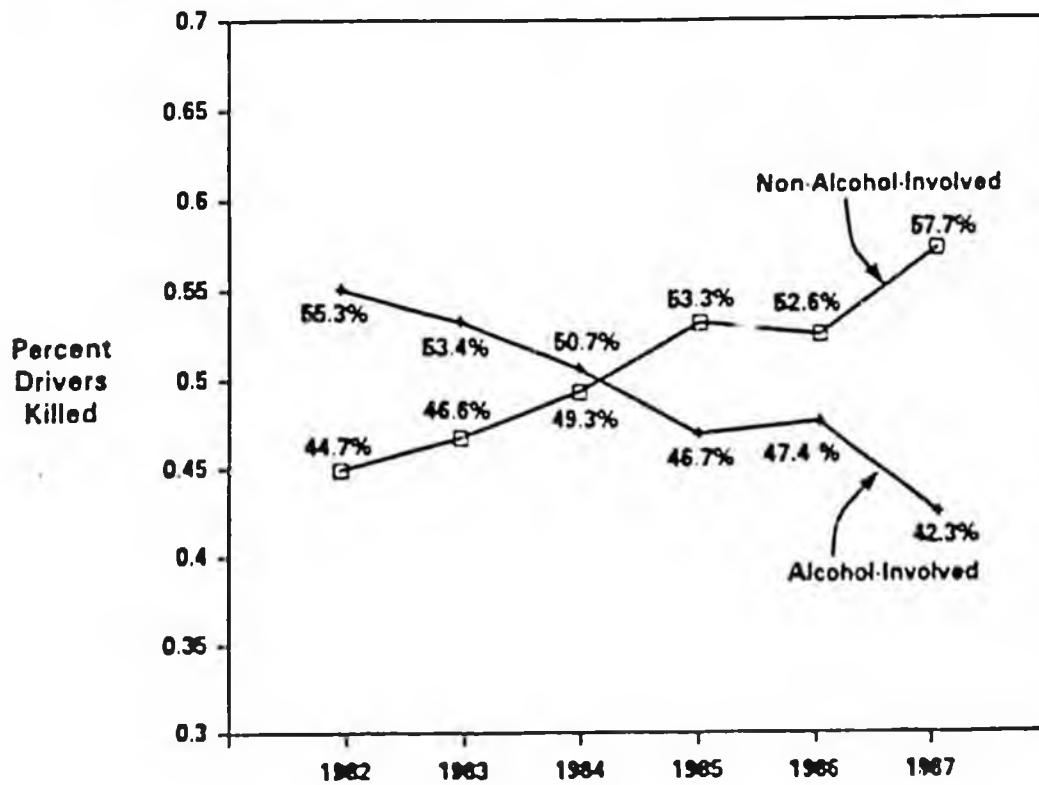


Figure 9
Youth vs Adult Motor Vehicle Fatalities
Alcohol-Related Percent of Each Total

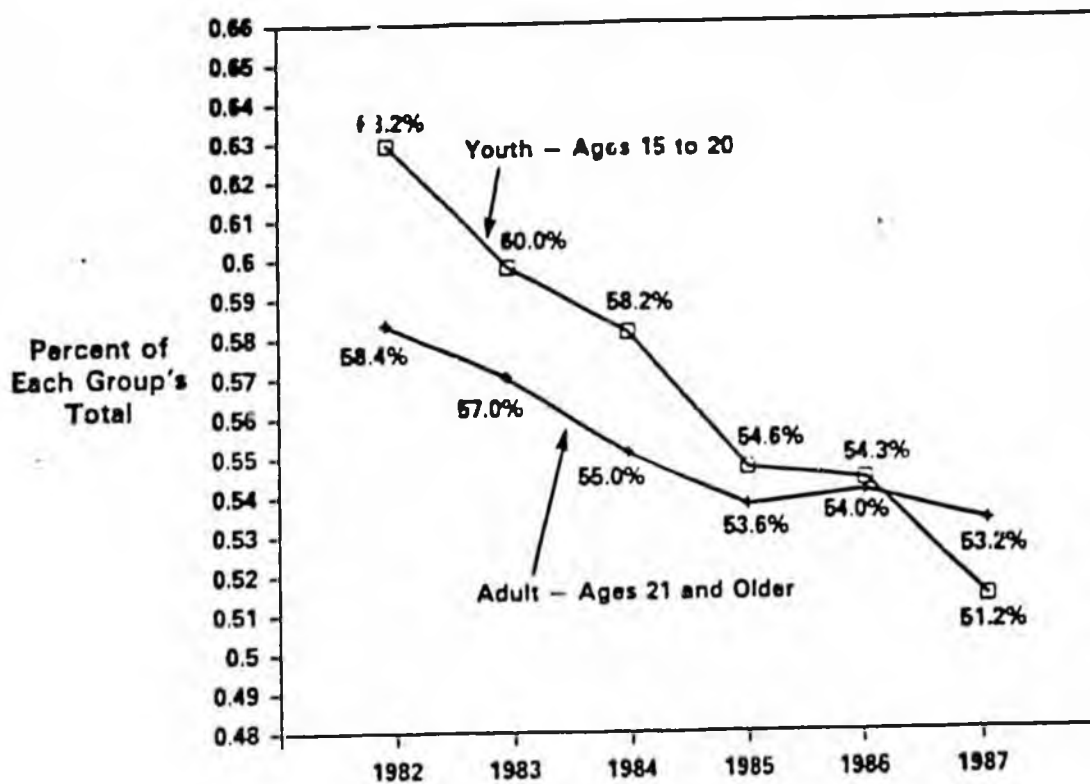


Figure 10
Youth vs Adult Drivers in Fatal Crashes
Alcohol-Related Percent of Each Total

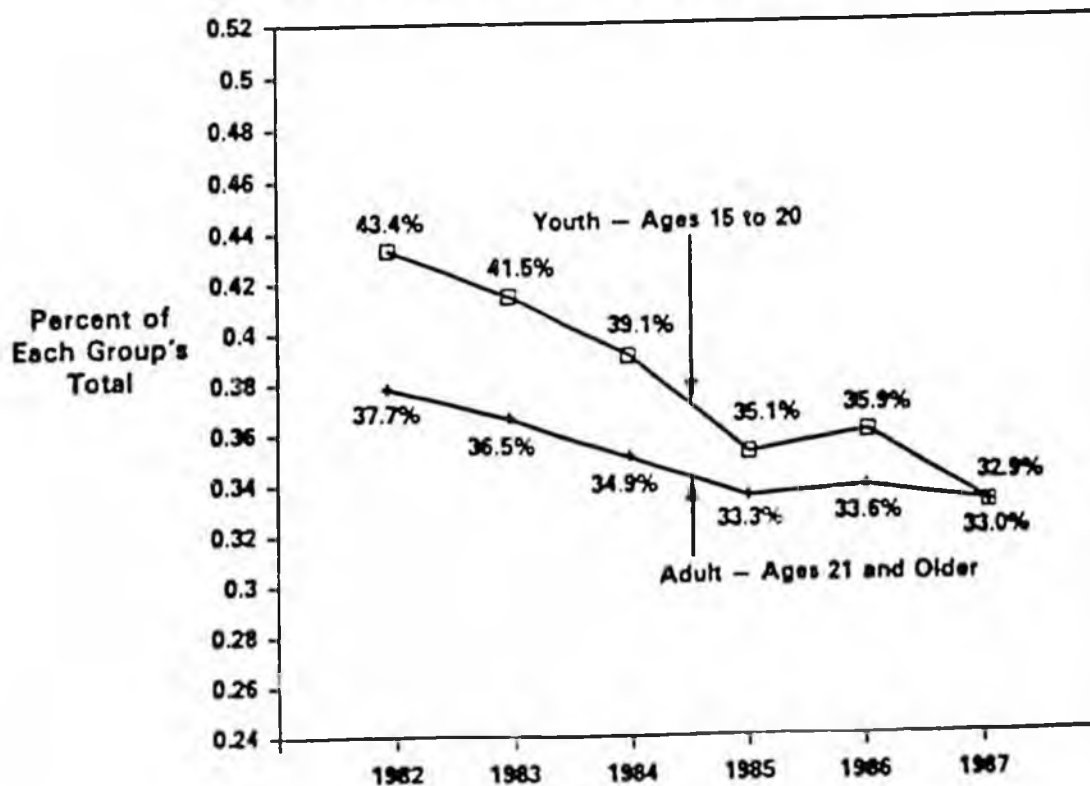


Figure 11
Youth vs Adult Drivers Killed
Alcohol-Related Percent of Each Total

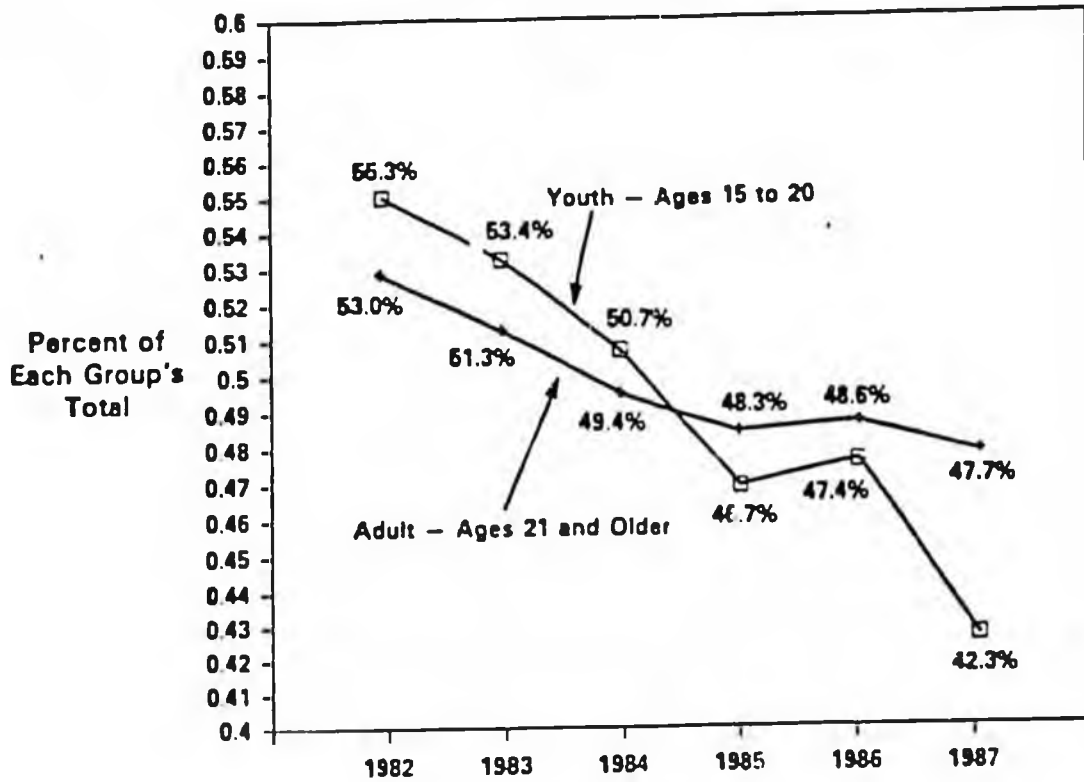


Figure 12
Youth Population - Ages 15 to 20
Total Population and Number of Licensed Drivers

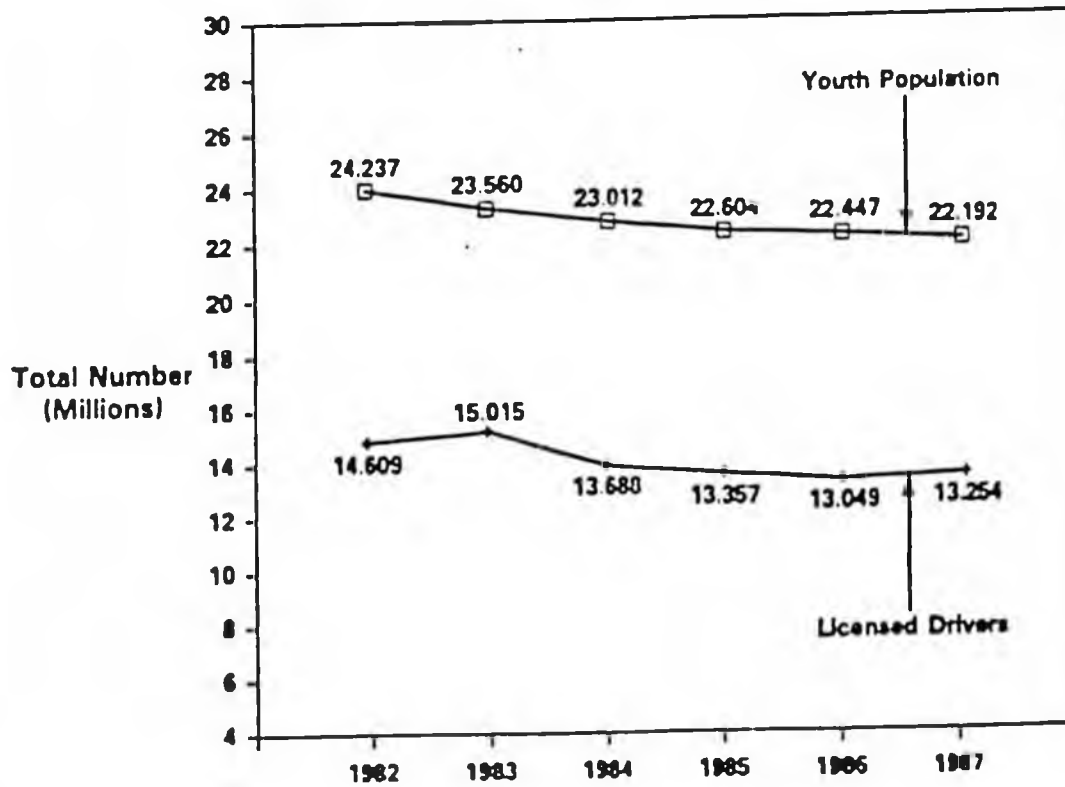


Figure 13
Youth Crash Fatality Rate – Ages 15 to 20
 Number of Young People Killed Per 100,000 Population

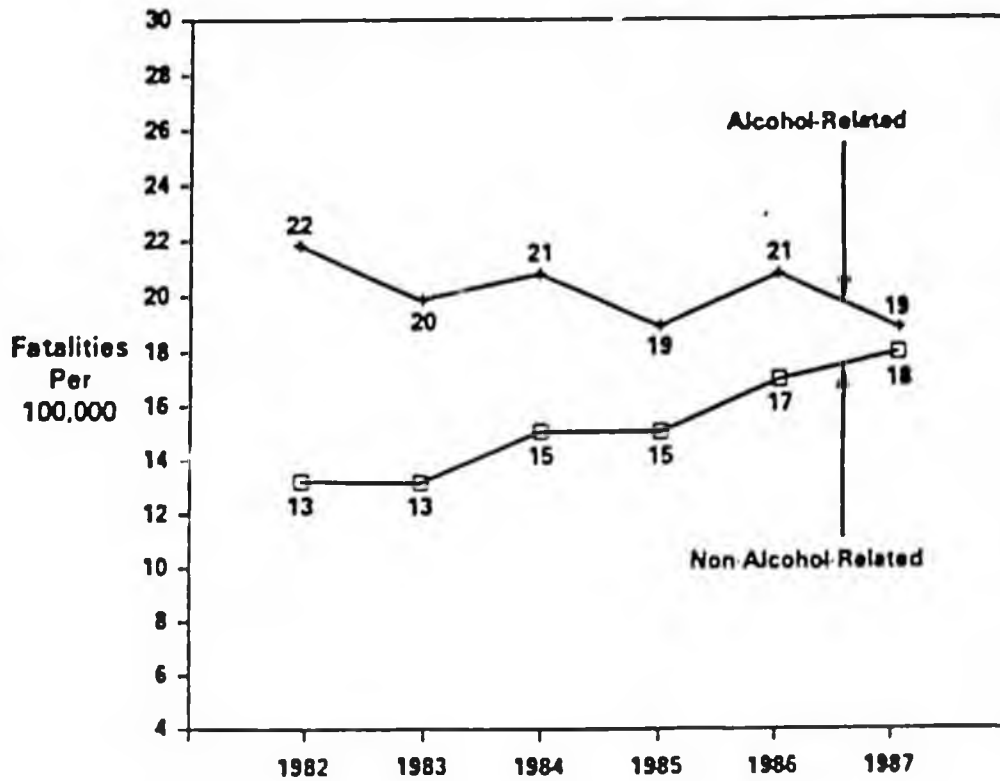


Figure 14
Young Drivers Involved in Fatal Crashes – Ages 15 to 20
 Per 100,000 Young Licensed Drivers

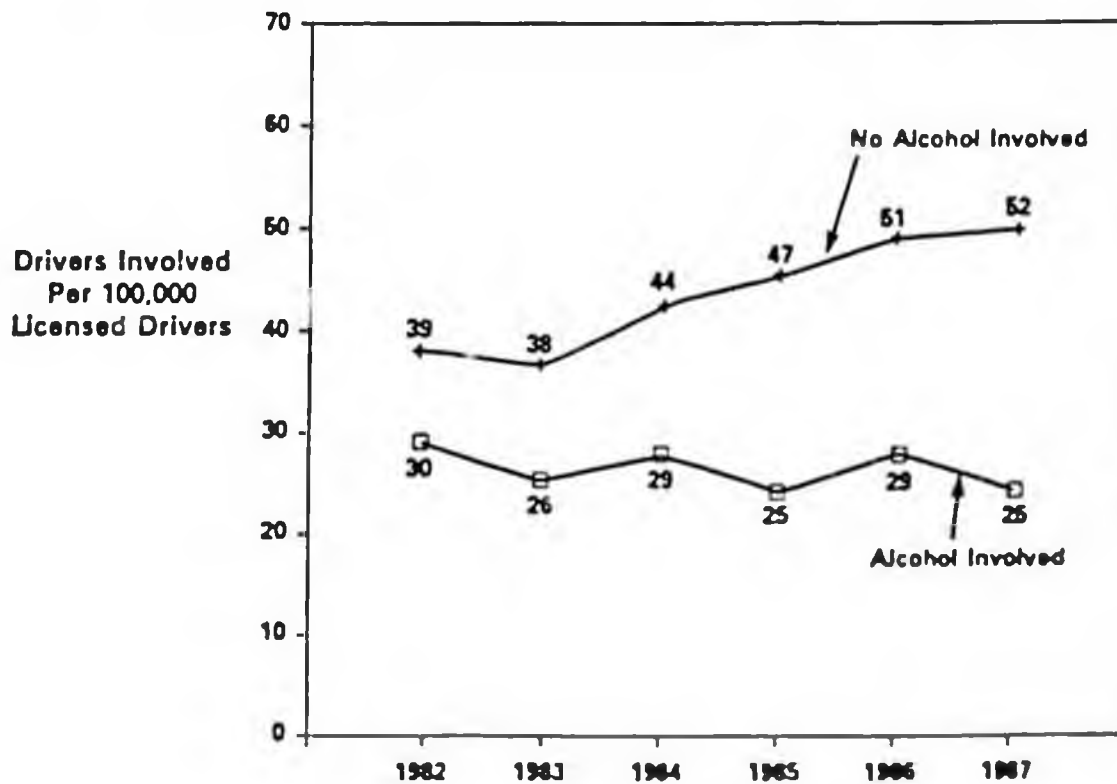


Figure 15
Crash Fatality Rate: Adult vs Youth
Numbers Killed Per 100,000 Population

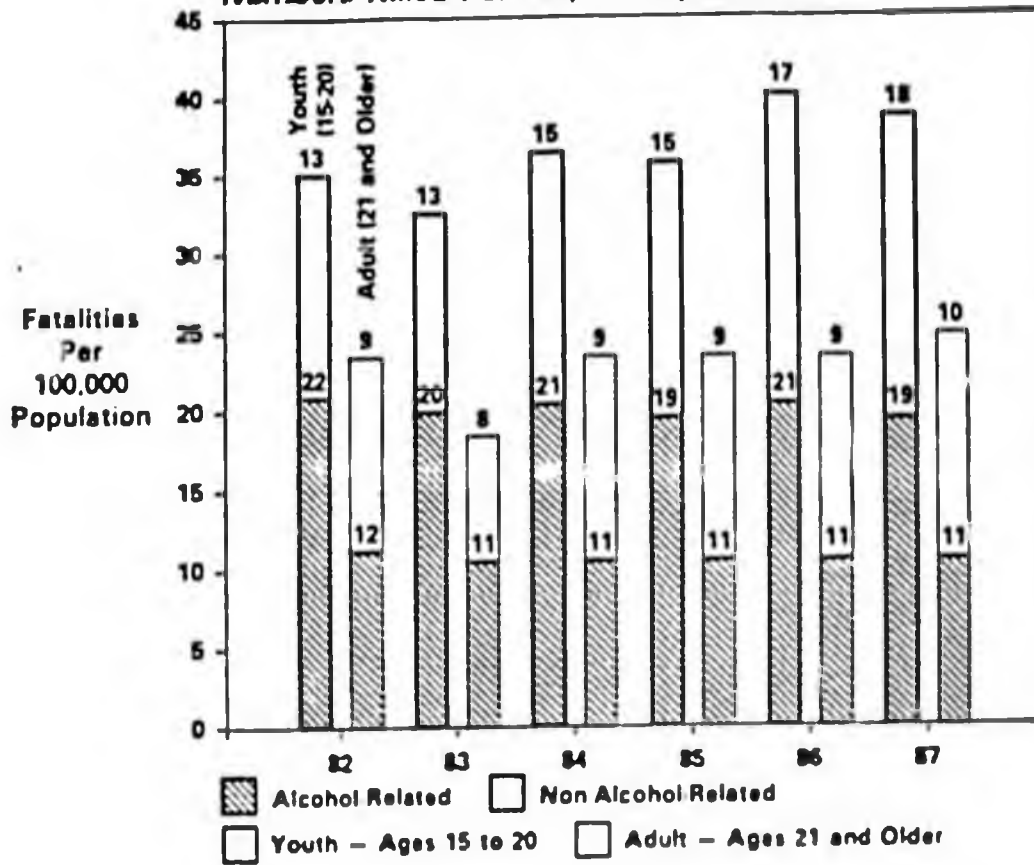


Figure 16
Drivers Involved in Fatal Crashes
Number Involved Per 100,000 Driver License Population

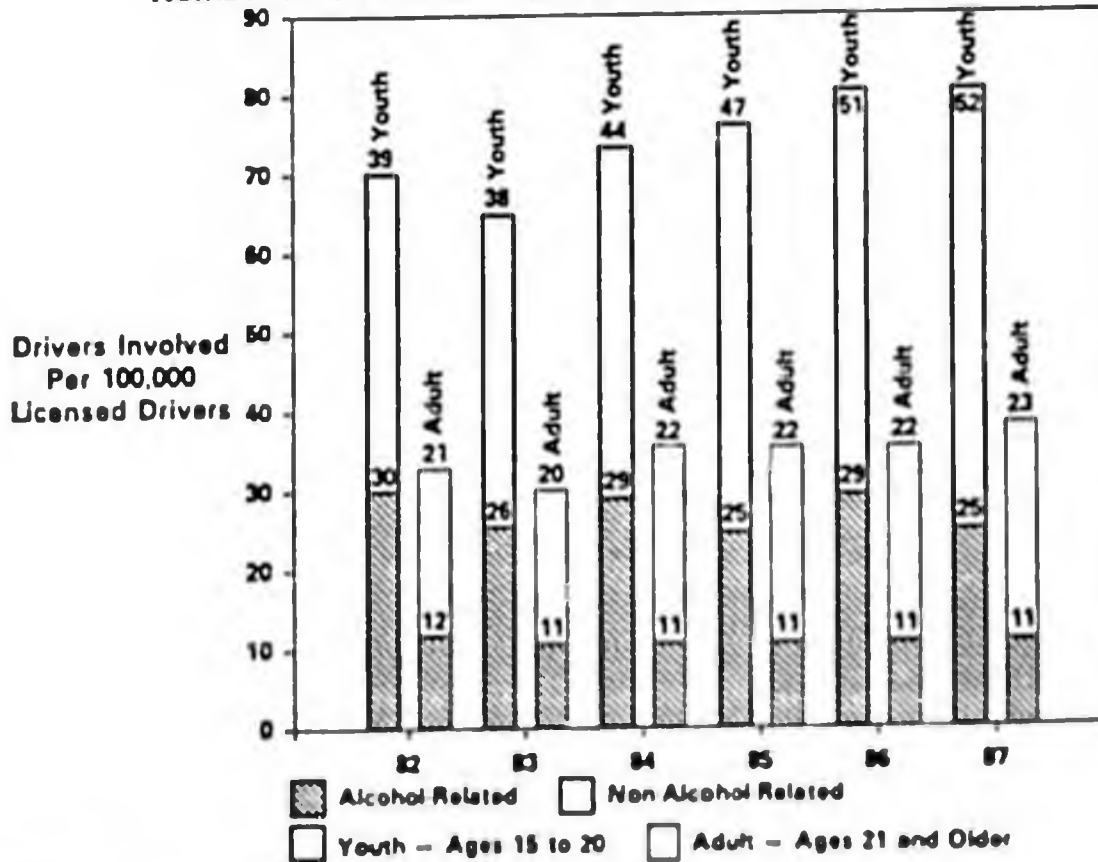


Figure
Drivers Involved in Fatal Crashes — 1985
 Number Per 100 Million Vehicle Miles Traveled

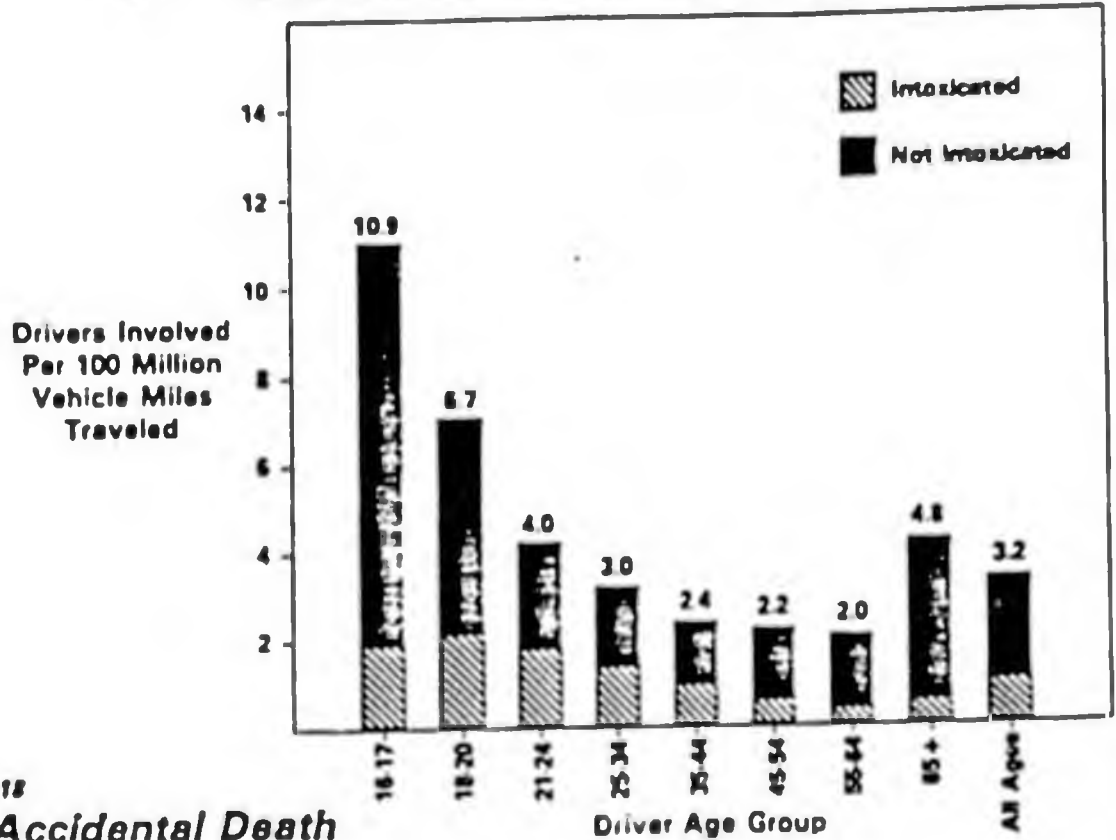
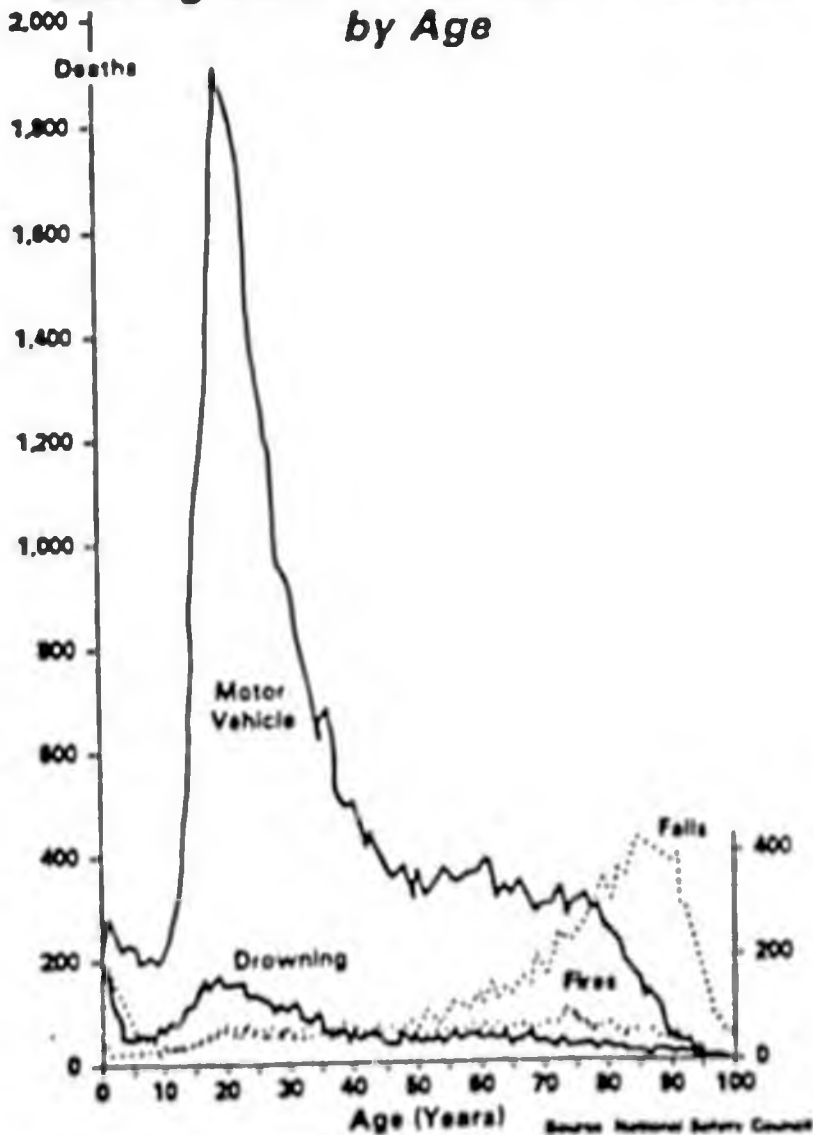


Figure 18
Leading Causes of Accidental Death by Age



Youth Fatalities and A/R Fatalities 1982-1987
Ages 15 Through 20

	1982	1983	1984	1985	1986	1987	Pct. Change Fr:	
	-----	-----	-----	-----	-----	-----	1982	1986
	-----	-----	-----	-----	-----	-----	-----	-----
I. Youth (15-20) Fatalities								

Total Fatalities	8508	7914	8101	7663	8553	8215	-3.4%	-4.0%
A/R Fatalities	5380 63.2%	4747 60.0%	4718 58.2%	4184 54.6%	4642 54.3%	4204 51.2%	-21.9%	-9.4%
.01-.09 BAC Fatal	1257 14.8%	1130 14.3%	1231 15.2%	1136 14.8%	1371 16.0%	1316 16.0%	4.7%	-4.0%
>=.10 BAC Fatal	4123 48.5%	3617 45.7%	3487 43.0%	3048 39.8%	3271 38.2%	2888 35.2%	-30.0%	-11.7%
II. Young Drivers Involved in Fatal Crashes								

Total Drivers	10080	9547	10046	9659	10470	10194	1.1%	-2.6%
A/R Drivers	4379 43.4%	3966 41.5%	3927 39.1%	3387 35.1%	3761 35.9%	3356 32.9%	-23.4%	-10.8%
.01-.09 Drivers	1287 12.8%	1177 12.3%	1291 12.9%	1111 11.5%	1327 12.7%	1247 12.2%	-3.1%	-6.0%
>=.10 Drivers	3092 30.7%	2789 29.2%	2636 26.2%	2276 23.6%	2434 23.2%	2109 20.7%	-31.8%	-13.4%
III. Young Drivers Killed								

Total Drivers	4526	4252	4525	4281	4658	4583	1.3%	-1.6%
A/R Drivers	2501 55.3%	2270 53.4%	2294 50.7%	2000 46.7%	2210 47.4%	1939 42.3%	-22.5%	-12.3%
.01-.09 Drivers	548 12.1%	528 12.4%	582 12.9%	560 13.1%	639 13.7%	582 12.7%	6.2%	-8.9%
>=.10 Drivers	1953 43.2%	1742 41.0%	1712 37.8%	1440 33.6%	1571 33.7%	1357 29.6%	-30.5%	-13.6%
IV. Youth Fatalities by Alcohol Involvement of Young Drivers								

Total Fatalities	6723	6296	6614	6175	6966	6737	0.2%	-3.3%
A/R Fatalities	3753 55.8%	3372 53.6%	3416 51.6%	2938 47.6%	3338 47.9%	2968 44.1%	-20.9%	-11.1%
.01-.09 Fatalities	990 14.7%	889 14.1%	1013 15.3%	897 14.5%	1090 15.6%	1037 15.4%	4.7%	-4.9%
>=.10 Fatalities	2763 41.1%	2483 39.4%	2403 36.3%	2041 33.1%	2248 32.3%	1931 28.7%	-30.1%	-14.1%

Youth Fatalities and A/R Fatalities 1982-1987
Ages 15 Through 20

	1982	1983	1984	1985	1986	1987	Pct. Change Fr:	
	-----	-----	-----	-----	-----	-----	1982	1986
-----	-----	-----	-----	-----	-----	-----	-----	-----
I. Youth (15-20) Fatalities								

Total Fatalities	8508	7914	8101	7663	8553	8215	-3.4%	-4.0%
A/R Fatalities	5380	4747	4718	4184	4642	4204	-21.9%	-9.4%
	63.2%	60.0%	58.2%	54.6%	54.3%	51.2%	-19.1%	-5.7%
.01-.09 BAC Fatals	1257	1130	1231	1136	1371	1316	4.7%	-4.0%
	14.8%	14.3%	15.2%	14.8%	16.0%	16.0%	8.4%	-0.1%
>=.10 BAC Fatals	4123	3617	3487	3048	3271	2888	-30.0%	-11.7%
	48.5%	45.7%	43.0%	39.8%	38.2%	35.2%	-27.5%	-8.1%
II. Young Drivers Involved in Fatal Crashes								

Total Drivers	10080	9547	10046	9659	10470	10194	1.1%	-2.6%
A/R Drivers	4379	3966	3927	3387	3761	3356	-23.4%	-10.8%
	43.4%	41.5%	39.1%	35.1%	35.9%	32.9%	-24.2%	-8.4%
.01-.09 Drivers	1287	1177	1291	1111	1327	1247	-3.1%	-6.0%
	12.8%	12.3%	12.9%	11.5%	12.7%	12.2%	-4.2%	-3.5%
>=.10 Drivers	3092	2789	2636	2276	2434	2109	-31.8%	-13.4%
	30.7%	29.2%	26.2%	23.6%	23.2%	20.7%	-32.6%	-11.0%
III. Young Drivers Killed								

Total Drivers	4526	4252	4525	4281	4658	4583	1.3%	-1.6%
A/R Drivers	2501	2270	2294	2000	2210	1939	-22.5%	-12.3%
	55.3%	53.4%	50.7%	46.7%	47.4%	42.3%	-23.4%	-10.8%
.01-.09 Drivers	548	528	582	560	639	582	6.2%	-8.9%
	12.1%	12.4%	12.9%	13.1%	13.7%	12.7%	4.9%	-7.4%
>=.10 Drivers	1953	1742	1712	1440	1571	1357	-30.5%	-13.6%
	43.2%	41.0%	37.8%	33.6%	33.7%	29.6%	-31.4%	-12.2%
IV. Youth Fatalities by Alcohol Involvement of Young Drivers								

Total Fatalities	6723	6296	6614	6175	6966	6737	0.2%	-3.3%
A/R Fatalities	3753	3372	3416	2938	3338	2968	-20.9%	-11.1%
	55.8%	53.6%	51.6%	47.6%	47.9%	44.1%	-21.1%	-8.1%
.01-.09 Fatalities	990	889	1013	897	1090	1037	4.7%	-4.9%
	14.7%	14.1%	15.3%	14.5%	15.6%	15.4%	4.5%	-1.6%
>=.10 Fatalities	2763	2483	2403	2041	2248	1931	-30.1%	-14.1%
	41.1%	39.4%	36.3%	33.1%	32.3%	28.7%	-30.3%	-11.2%

Original sponsor(s): REP. DONLEY, Koponen, Brown, Leman, Collins, Hudson,
Menard, Ulmer

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 236 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the offenses of driving while
7 intoxicated and refusal to take a chemical test of
8 breath; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

11 (1) the number of persons under 21 who are drinking and driving
12 in an impaired condition is a matter of serious concern;

13 (2) a given amount of alcohol generally has a greater effect on
14 a driver who is under the age of 21 than on a person who is 21 years of age
15 or older;

16 (3) for purposes of establishing an effective legal limit of
17 alcohol consumption above which a person under age 21 will lose their
18 privilege to drive, it is necessary to distinguish between those people who
19 are under age 21, and those who are 21 years of age or older;

20 (4) establishing a lower limit of alcohol consumption for per-
21 sons under age 21 is consistent with existing law that prohibits a person
22 under age 21 from legally consuming an alcoholic beverage;

23 (5) there is a rational relationship between establishing a
24 lower limit of alcohol consumption for persons under age 21, and reducing
25 the number of alcohol-related accidents and fatalities.

26 (b) It is the purpose of this Act to promote the general welfare and
27 public safety by imposing a more restrictive legal limit on alcohol con-
28 sumption for persons who are under age 21, above which the person will lose
29 their privilege to drive.

1 * Sec. 2. AS 12.55.102(a) is amended to read:

2 (a) The court may order as a condition of probation that a
3 defendant convicted of an offense involving the use, consumption, or
4 possession of an alcoholic beverage may not operate a motor vehicle
5 during the period of probation unless the vehicle is equipped with a
6 properly functioning, monitored, and maintained ignition interlock
7 device. A condition of probation imposed under this subsection takes
8 effect after any period of license revocation imposed under AS 28.15.-
9 165(e) [AS 28.15.165(d)] or 28.15.181(c).

10 * Sec. 3. AS 28.15.165 is repealed and reenacted to read:

11 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
12 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) A law en-
13 forcement officer shall read the notice required under (b) of this
14 section, and deliver a copy to a person operating a motor vehicle if
15 the person

16 (1) takes a chemical test administered under AS 28.35.-
17 031(a)(1) and the test produces a result described in AS 28.35.-
18 030(a)(2);

19 (2) takes a chemical test administered under AS 28.35.-
20 031(a)(2) and the test reveals that there is 0.04 percent or more by
21 weight of alcohol in the person's blood or 40 milligrams or more of
22 alcohol per 100 milliliters of blood, or that there is 0.04 grams or
23 more of alcohol per 210 liters of the person's breath; or

24 (3) refuses to submit to a chemical test under AS 28.35.-
25 031(a).

26 (b) The notice required under (a) of this section must advise
27 that

28 (1) the department intends to revoke the person's driver's
29 license, privilege to drive, or privilege to obtain a license, or

1 refuse to issue an original license to the person;

2 (2) the person has the right to administrative review of
3 the revocation or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident
5 privilege to drive, the notice itself is a temporary driver's license
6 that expires seven days after it is delivered to the person;

7 (4) revocation of the person's driver's license, privilege
8 to drive, or privilege to obtain a license, or a determination not to
9 issue an original license takes effect seven days after delivery of
10 the notice required under (a) of this section unless the person,
11 within seven days, requests an administrative review.

12 (c) After reading the notice required under (a) of this section,
13 the law enforcement officer shall seize the person's driver's license
14 if it is in the person's possession and shall deliver it to the de-
15 partment with a sworn report describing the circumstances under which
16 it was seized.

17 (d) The department shall revoke a person's driver's license,
18 privilege to drive, or privilege to obtain a license, or refuse to
19 issue an original license effective seven days after delivery of the
20 notice required under (a) of this section, upon receipt of a sworn
21 report of a law enforcement officer

22 (1) that

23 (A) a chemical test under AS 28.35.031(a)(1) adminis-
24 tered to the person produced a result described in AS 28.35.-
25 030(a)(2);

26 (B) a chemical test under AS 28.35.031(a)(2) adminis-
27 tered to the person produced a result described in (a)(2) of this
28 section; or

29 (C) a person refused to submit to a chemical test

1 under AS 28.35.031(a);

2 (2) that notice under (a) of this section was provided to
3 the person; and

4 (3) describing

5 (A) the circumstances surrounding the arrest and the
6 grounds for the officer's belief that the person was intoxicated
7 while operating a motor vehicle if the chemical test was adminis-
8 tered under AS 28.35.031(a)(1); or

9 (B) the grounds for the officer's belief that the
10 person was operating a motor vehicle with 0.04 percent or more by
11 weight of alcohol in the person's blood or 40 milligrams or more
12 of alcohol per 100 milliliters of blood, or 0.04 grams or more of
13 alcohol per 210 liters of the person's breath if the chemical
14 test was administered under AS 28.35.031(a)(2).

15 (e) Except as provided in (f) of this section, the period of
16 revocation of a driver's license, privilege to drive, or privilege to
17 obtain a license by the department under this section shall be for the
18 appropriate minimum period for court revocations under AS 28.15.-
19 181(c).

20 (f) If the person is less than 21 years of age, the department
21 shall revoke the person's driver's license, privilege to drive, or
22 privilege to obtain a license

23 (1) for one year, if the person's license, privilege to
24 drive, or privilege to obtain a license has not been previously
25 revoked under this section;

26 (2) for two years or until the person is 21 years of age,
27 whichever is longer, if the person's license, privilege to drive, or
28 privilege to obtain a license has been previously revoked once under
29 this section:

1 (3) for the appropriate minimum period for court
2 revocations under AS 28.15.181(c), if the person's license, privilege
3 to drive, or privilege to obtain a license has been previously revoked
4 two or more times under this section.

5 * Sec. 4. AS 28.15.166(a) is amended to read:

6 (a) A person who has received a notice under AS 28.15.165(a) may
7 make a written request for administrative review of the department's
8 action under AS 28.15.165(d) [AS 28.15.165(c)]. If the person's
9 driver's license has not been previously surrendered to the depart-
10 ment, it shall be surrendered to the department at the time the re-
11 quest for review is made.

12 * Sec. 5. AS 28.15.166(b) is amended to read:

13 (b) A request for review shall be made within seven days after
14 receipt of the notice under AS 28.15.165 or the right to review is
15 waived and the action of the department under AS 28.15.165(d) [AS 28.-
16 15.165(c)] is final. If a written request for a review is made after
17 expiration of the seven-day period, and if it is accompanied by the
18 applicant's verified statement explaining the failure to make a timely
19 request for a review, the department shall receive and consider the
20 request. If the department finds that the person was unable to make a
21 timely request because of lack of actual notice of the revocation or
22 because of factors of physical incapacity such as hospitalization or
23 incarceration, the department shall waive the period of limitation,
24 reopen the matter, and grant the review request.

25 * Sec. 6. AS 28.15.166(c) is repealed and reenacted to read:

26 (c) Upon receipt of a request for review, if it appears that the
27 person holds a valid driver's license and that the driver's license
28 has been surrendered, the department shall issue a temporary driver's
29 permit that is valid until the scheduled date for the review. A person

1 who has requested a review under this section may request, and the
2 department may grant for good cause, a delay in the date of the hear-
3 ing. If necessary, the department may issue additional temporary
4 permits to stay the effective date of its action under AS 28.15.165(d)
5 [AS 28.15.165(c)] until the final order after the review is issued.

6 * Sec. 7. AS 28.15.166(g) is repealed and reenacted to read:

7 (g) The hearing under this section shall be limited to the
8 issues of whether the

9 (1) arresting officer had reasonable grounds to believe
10 that the person was operating a motor vehicle while intoxicated if the
11 chemical test was required under AS 28.35.031(a)(1) and whether

12 (A) the person refused to submit to a chemical test
13 after being advised that refusal would result in the suspension,
14 revocation, or denial of the person's license, privilege to
15 drive, or privilege to obtain a license, and that the refusal is
16 a misdemeanor; or

17 (B) the chemical test produced a result described in
18 AS 28.35.030(a)(2); or

19 (2) the law enforcement officer had probable cause to
20 believe that the person was operating a motor vehicle with 0.04 per-
21 cent or more by weight of alcohol in the person's blood or 40 milli-
22 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams
23 or more of alcohol per 210 liters of the person's breath if the chemi-
24 cal test was administered under AS 28.35.031(a)(2) and whether

25 (A) the person refused to submit to a chemical test
26 after being advised that refusal would result in suspension,
27 revocation, or denial of the person's license, privilege to
28 drive, or privilege to obtain a license, and that refusal is a
29 misdemeanor if the person's license, privilege to drive, or

1 privilege to obtain a license has been previously revoked two or
2 more times under AS 28.15.165(f); or

3 (B) the chemical test produced a result described in
4 AS 28.15.165(a)(2).

5 * Sec. 8. AS 28.15.166(1) is amended to read:

6 (1) A hearing officer revoking a driver's license because a
7 chemical test administered to the person produced a result described
8 in AS 28.15.165(a)(2) or AS 28.35.030(a)(2) may grant limited license
9 privileges if the person has not been previously convicted within the
10 preceding 10 years of an offense (A) described in AS 28.15.181(a)(5)
11 or (8); or (B) under a law or ordinance in another jurisdiction with
12 elements substantially similar to an offense described in AS 28.15.-
13 181(a)(5) or (8). The privileges may be granted for for the final 60
14 days during which the license is revoked if the hearing officer deter-
15 mines that the person's ability to earn a livelihood would be severely
16 impaired and a limitation under AS 28.15.201 can be placed on the
17 license that will enable the the person to earn a livelihood without
18 excessive danger to the public. A hearing officer may not grant
19 limited license privileges when revoking a driver's license because
20 the person refused to submit to a chemical test.

21 * Sec. 9. AS 28.15.181(e) is amended to read:

22 (e) A court revoking a driver's license under (c) of this sec-
23 tion, or sustaining the action of the department under AS 28.15.165(d)
24 [AS 28.15.165(c)], may grant limited license privileges for the final
25 60 days during which the license is revoked if the

26 (1) revocation was for driving while intoxicated but not if
27 the revocation was for refusal to submit to a chemical test of breath
28 under AS 28.35.032;

29 (2) person has not been previously convicted within the

1 preceding 10 years of an offense

2 (A) described in (a)(5) or (8) of this section; or

3 (B) under a law or ordinance in another jurisdiction
4 with elements substantially similar to an offense described in
5 (a)(5) or (8) of this section;

6 (3) court determines that the person's ability to earn a
7 livelihood would be severely impaired; and

8 (4) court determines that a limitation under AS 28.15.201
9 can be placed on the license that will enable the person to earn a
10 livelihood without excessive danger to the public.

11 * Sec. 10. AS 28.35.030(a) is amended to read:

12 (a) A person commits the crime of driving while intoxicated if
13 the person operates or drives a motor vehicle or operates an aircraft
14 or a watercraft

15 (1) while under the influence of intoxicating liquor, or
16 any controlled substance listed in AS 11.71.140 - 11.71.190;

17 (2) when, as determined by a chemical test taken within
18 four hours after the alleged offense was committed, there is 0.10
19 percent or more by weight of alcohol in the person's blood or 100
20 milligrams or more of alcohol per 100 milliliters of blood, or when
21 there is 0.10 grams or more of alcohol per 210 liters of the person's
22 breath; [OR]

23 (3) while the person is under the combined influence of
24 intoxicating liquor and another substance; or

25 (4) when, as determined by a chemical test taken within
26 four hours after the alleged offense was committed, there is 0.04
27 percent or more by weight of alcohol in the person's blood or 40
28 milligrams or more of alcohol per 100 milliliters of blood, or when
29 there is 0.04 grams or more of alcohol per 210 liters of the person's

1 breath, the person is less than 21 years of age, and the person's
2 driver's license has previously been revoked two or more times under
3 AS 28.15.165(a)(2).

4 * Sec. 11. AS 28.35.031(a) is amended to read:

5 (a) A person who operates or drives a motor vehicle in this
6 state or who operates an aircraft as defined in AS 28.35.030(h)(1) or
7 who operates a watercraft as defined in AS 28.35.030(h)(2) shall be
8 considered to have given consent to a chemical test or tests of the
9 person's breath for the purpose of determining the alcoholic content
10 of the person's blood or breath if (1) lawfully arrested for an of-
11 fense arising out of acts alleged to have been committed while the
12 person was operating or driving a motor vehicle or operating an air-
13 craft or a watercraft while intoxicated; or (2) the person is under
14 the age of 21 and a law enforcement officer has probable cause to
15 believe that the person was operating a motor vehicle with 0.04 per-
16 cent or more by weight of alcohol in the person's blood or 40 milli-
17 grams or more of alcohol per 100 milliliters of blood, or 0.04 grams
18 or more of alcohol per 210 liters of the person's breath. The test or
19 tests shall be administered at the direction of a law enforcement
20 officer [WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON WAS
21 OPERATING OR DRIVING A MOTOR VEHICLE OR OPERATING AN AIRCRAFT OR A
22 WATERCRAFT IN THIS STATE WHILE INTOXICATED].

23 * Sec. 12. AS 28.35.031(b) is amended to read:

24 (b) A person who operates or drives a motor vehicle in this
25 state or who operates an aircraft or watercraft shall be considered to
26 have given consent to a preliminary breath test for the purpose of
27 determining the alcoholic content of the person's blood or breath. A
28 law enforcement officer may administer a preliminary breath test at
29 the scene of the incident if the officer has reasonable grounds to

1 believe that a person's ability to operate a motor vehicle, aircraft,
2 or watercraft is impaired by the ingestion of alcoholic beverages, or
3 probable cause to believe that a person under age 21 was operating a
4 motor vehicle with 0.04 percent or more by weight of alcohol in the
5 person's blood or 40 milligrams or more of alcohol per 100 milliliters
6 of blood, or 0.04 grams or more of alcohol per 210 liters of the
7 person's breath and that the person

8 (1) was operating or driving a motor vehicle, aircraft, or
9 watercraft that is involved in an accident;

10 (2) committed a moving traffic violation or unlawfully
11 operated an aircraft or watercraft; in this paragraph, "unlawfully"
12 means in violation of any federal, state, or municipal statute, regu-
13 lation, or ordinance [, EXCEPT FOR VIOLATIONS THAT DO NOT PROVIDE
14 REASON TO BELIEVE THAT THE OPERATOR'S ABILITY TO OPERATE THE AIRCRAFT
15 OR WATERCRAFT WAS IMPAIRED BY THE INGESTION OF ALCOHOLIC BEVERAGES];
16 or

17 (3) was operating or driving a motor vehicle in violation
18 of AS 28.35.029(a).

19 * Sec. 13. AS 28.35.031(f) is amended to read:

20 (f) If a driver or operator is arrested, the provisions of
21 (a)(1) [(a)] of this section apply. If the person is not arrested and
22 is under the age of 21 years, the provisions of (a)(2) of this section
23 apply. The preliminary breath test authorized in this section is in
24 addition to any tests authorized under (a) of this section.

25 * Sec. 14. AS 28.35.032(a) is repealed and reenacted to read:

26 (a) A chemical test may not be given, except as provided by
27 AS 28.35.035, if a person refuses the request of a law enforcement
28 officer to submit to a chemical test under

29 (1) AS 28.35.031(a)(1), after being advised by the officer

1 that the refusal

2 (A) will, if that person was arrested while operating
3 or driving a motor vehicle, result in the denial or revocation of
4 the person's driver's license, privilege to drive, or privilege
5 to obtain a license;

6 (B) may be used against the person in a civil or
7 criminal action or proceeding arising out of an act alleged to
8 have been committed by the person while operating or driving a
9 motor vehicle or operating an aircraft or a watercraft while
10 intoxicated; and

11 (C) is a misdemeanor; or

12 (2) AS 28.35.031(a)(2), after being advised by the officer
13 that the refusal

14 (A) will result in the denial or revocation of the
15 person's driver's license, privilege to drive, or privilege to
16 obtain a license;

17 (B) may be used against the person in a civil or
18 criminal action or proceeding arising out of an act alleged to
19 have been committed by the person while the person was operating
20 a motor vehicle with 0.04 percent or more by weight of alcohol in
21 the person's blood or 40 milligrams or more of alcohol per 100
22 milliliters of blood, or 0.04 grams or more of alcohol per 210
23 liters of the person's breath; and

24 (C) is a misdemeanor if the person's license, privi-
25 lege to drive, or privilege to obtain a license has been previ-
26 ously revoked two or more times under AS 28.15.165(f).

27 * Sec. 15. AS 28.35.032(e) is amended to read:

28 (e) The refusal of a person to submit to a chemical test of
29 breath under AS 28.35.031(a) [(a) OF THIS SECTION] is admissible

1 evidence in a civil or criminal action or proceeding arising out of an
2 act alleged to have been committed by the person

3 (1) while operating or driving a motor vehicle or operating
4 an aircraft or watercraft while intoxicated; or

5 (2) while operating a motor vehicle with 0.04 percent or
6 more by weight of alcohol in the person's blood or 40 milligrams or
7 more of alcohol per 100 milliliters of blood, or 0.04 grams or more of
8 alcohol per 210 liters of the person's breath.

9 * Sec. 16. AS 28.35.032(f) is amended to read:

10 (f) Refusal to submit to a chemical test of breath authorized by
11 AS 28.35.031(a)(1) [AS 28.35.031(a)] is a class A misdemeanor. Re-
12 fusal to submit to a chemical test of breath authorized by AS 28.-
13 35.031(a)(2) is a class A misdemeanor if the person's driver's license
14 has been previously revoked two or more times under AS 28.15.-
15 165(a)(2).

16 * Sec. 17. This Act takes effect July 1, 1990.
17
18
19