

HB

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(File 5)

HOUSE JUDICIARY COMMITTEE

HOUSE BILL 4
MARCH 14, 2001

AGGRAVATORS



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: AUG 7 2000

In reply refer to: H-00-26

Honorable Brian Porter
Speaker of the House
Alaska House of Representatives
State Capitol
120 4th Street
Anchorage, Alaska 99801-2133

The National Transportation Safety Board is an independent Federal agency charged by Congress with investigating transportation accidents, determining their probable cause, and making recommendations to prevent similar accidents from occurring. We are providing the following information to urge you to take action on the safety recommendation in this letter. The Safety Board is vitally interested in this recommendation because it is designed to prevent accidents and save lives.

This recommendation addresses ways to reduce fatalities, injuries, and crashes involving hard core drinking drivers, a term that, as defined by the Safety Board, includes repeat offender drinking drivers (that is, offenders who have prior convictions or arrests for a Driving While Impaired [DWI] by alcohol offense) and high-BAC offenders (that is, all offenders with a blood alcohol concentration [BAC] of 0.15 percent or greater). The recommendations are derived from the Safety Board's safety report *Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver* and are consistent with the analysis we performed and literature we reviewed in this report.¹ As a result of this review, the Safety Board has issued two safety recommendations, one of which is addressed to the Governors and Legislative Leaders of the 50 States and the Mayor and Council of the District of Columbia. Information supporting the recommendation is discussed below. The Safety Board would appreciate a response from you within 90 days addressing the actions you have taken or intend to take to implement our recommendation.

In 1984, the National Transportation Safety Board published a safety study titled *Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers (NTSB/SS-84/04)*. That study identified repeat offender drinking drivers (included under the Safety Board's category of "hard core drinking drivers") as a serious traffic safety problem.

¹ For additional information, read *Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver*, Safety Report NTSB/SR-00/01 (Washington: National Transportation Safety Board, 2000).

In the more than 15 years that have passed since that investigation was concluded, efforts have been made by all the States to address this major safety problem. However, despite significant progress, the measures taken and the degree of implementation have not been uniform, and 15,794 people died in 1999 from alcohol-related crashes. This number is far above the target set by the Secretary of Transportation in 1995 to reduce the number of alcohol-related fatalities to no more than 11,000 by 2005, a goal that cannot be reached with a "business as usual" approach.

From 1983 through 1998, at least 137,338 people died in crashes involving hard core drinking drivers.² The National Highway Traffic Safety Administration's (NHTSA) data also indicate that at least 99,812 people were injured in fatal crashes involving hard core drinking drivers (as defined by the Safety Board) during that same time period. In 1998 alone, hard core drinking drivers were involved in a minimum of 6,370 highway fatalities. The estimated cost of these fatalities was at least \$5.3 billion nationwide.

The Safety Board's review identified a number of measures that appear to be effective in reducing alcohol-related crashes by hard core drinking drivers. The societal cost of crashes involving these drivers, both in human and economic terms, demands that additional action be taken by the States. Although all States have some components of a program to reduce hard core drinking driving, the variations in countermeasures used among the States are numerous, and no State uses all of the countermeasures that can reduce hard core drinking driver crashes.

For example, 40 States and the District of Columbia have administrative license revocation (ALR) laws for DWI test refusal or failure. The Safety Board recommended this countermeasure in 1984 and 1989 because ALR is an effective measure to reduce alcohol-related crashes and fatalities, and studies by NHTSA and others support this view. ALR laws have resulted in a 13- to 19-percent reduction in adult driver fatal crashes.³ However, the States of Kentucky, Michigan, Montana, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Tennessee currently do not have laws authorizing ALR for BAC test failure or refusal.

Sobriety checkpoints are conducted in 39 States. Publicized DWI enforcement including sobriety checkpoints can be very effective in identifying the hard core drinking driver and in reducing alcohol-involved driving and alcohol-related crashes. The Tennessee experience with weekly checkpoints indicates that this strategy is effective when conducted frequently, regularly, and statewide; in that State, sobriety checkpoints reduced alcohol-related fatal crashes by 20.4 percent.⁴ North Carolina's multi-year checkpoint program reduced the percentage of drivers having illegal BAC levels who were stopped at checkpoints by more than half (from 1.9 percent

² Nineteen ninety-eight is the most recent year for which complete data are available from the National Highway Traffic Safety Administration.

³ Robert B. Voas and A. Scott Tippetts, *The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes* DOT HS 308 980 (Washington: National Highway Traffic Safety Administration, 1999) 11-13.

⁴ John H. Lacey, Ralph K. Jones and Randolph G. Smith, *An Evaluation of Checkpoint Tennessee: Tennessee's Statewide Sobriety Checkpoint Program* (Washington: National Highway Traffic Safety Administration, 1998) 20 <http://www.nhtsa.dot.gov/search97/cgi/s97_cgi.exe>.

of those tested to 0.90 percent).⁵ In addition to deterring drinking and driving, checkpoints can be used to promote several other highway safety measures at the same time, including checking for valid driver's licenses, and safety belt use.⁶ Sobriety checkpoints provide an opportunity to apprehend not only alcohol-impaired drivers but also unlicensed drivers and those who are driving on licenses suspended or revoked for DWI. Often, when licenses are checked at sobriety checkpoints, more unlicensed than impaired drivers are found.⁷

Measures that separate hard core drinking drivers from their vehicles are used in 38 States and the District of Columbia. These measures include license plate action (impoundment, confiscation, or other actions) (8 States), vehicle immobilization (6 States), vehicle impoundment (12 States and the District of Columbia), and vehicle forfeiture (28 States). License plate action was found in Minnesota to reduce recidivism by 50 percent in a 2-year study.⁸ The use of vehicle immobilization in Ohio reduced recidivism by 36 percent in a 1-year period.⁹ In the same State, vehicle impoundment was found to reduce repeat offenses for driving while suspended or impaired by 40 percent in a 1-year period. Preliminary data from the New York City vehicle forfeiture program showed a 32.2 percent decrease in alcohol-related fatalities over an 11-month period.¹⁰ To the extent permitted by the U.S. Constitution and applicable State laws, vehicle-based sanctions can be administratively ordered at the time of arrest. When taken, this action ensures swift and certain punishment for the DWI offense and prevents offenders from avoiding such sanctions by transferring possession of their vehicles to family members or friends. Another vehicle sanction is the use of ignition interlocks, which are devices that can prevent an impaired driver from operating a vehicle. Thirty-eight States permit the use of these devices in some manner, and at least five States have statewide ignition interlock programs; statewide programs are being developed in other States. In Maryland, ignition interlocks reduced recidivism by 65 percent in the first year of the assignment of these devices.¹¹ Overall, vehicle sanctions to separate the hard core drinking driver from his or her vehicle or to prevent him/her from drinking while impaired appear to be effective tools in reducing hard core drinking driver recidivism.

⁵ Insurance Institute for Highway Safety, "North Carolina Belt Use Peaks at 84 Percent; Future Gains Sought," *Status Report* 33:2 (7 Mar. 1998) 5 <<http://www.highwaysafety.org/srpdfs/sr3302.pdf>>.

⁶ The Tennessee and North Carolina checkpoint programs also reported thousands of arrests for other offenses including stolen vehicles, illegal gun possession, drug offenses, and escaped felons. North Carolina reported 6,173 drug violators, 788 firearms violations, 403 stolen vehicles, and 273 fugitive arrests from 1993 through 1997. Lacey, Jones, and Smith, 20; Insurance Institute for Highway Safety, 5.

⁷ Susan E. Martin and David F. Preusser, "Enforcement Strategies for the Persistent Drinking Driver," *Strategies for Dealing with the Persistent Drinking Driver*, ed. Barry Sweedler, Transportation Research Board Circular 437 (1995) 41.

⁸ Alan Rodgers, "Effect of Minnesota's License Plate Impoundment Law on Recidivism of Multiple DWI Violators," *Alcohol, Drugs and Driving* 10: 2 (1994) 128.

⁹ Robert B. Voas, A. Scott Tippetts, and Eileen Taylor, "Temporary Vehicle Immobilization: Evaluation of a Program in Ohio," *Accident Analysis and Prevention* 29: 5 (1997) 635-36.

¹⁰ Howard Safir, George A. Grasso, and Robert F. Messner, "The New York City Police Department DWI Forfeiture Initiative," presented May 2000 at T2000 Conference of the International Council on Alcohol, Drugs, and Traffic Safety, Stockholm, Sweden.

¹¹ Kenneth H. Beck et. al., "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland," *American Journal of Public Health* 89: 11 (Nov. 1999) 1698.

Sixteen States have laws prohibiting plea-bargaining DWI cases, but eight of those States limit the ban to specific conditions, such as when the DWI has caused an injury or fatality. The Safety Board continues to support its 1984 recommendation to eliminate the option of plea bargaining a DWI offense to a lesser, non-alcohol-related offense. This type of plea bargaining reduces the State's ability to track prior alcohol-related offenses when no record is kept of the original charges brought. Laws restricting plea bargaining have been found to reduce the number of DWI repeat offenses as well as the number of alcohol-related crashes. Plea-bargaining limits reduced subsequent DWI offenses by 36 percent in Ft. Smith, Arkansas, by 17 percent in Louisville, Kentucky, and by 58 percent in Lexington, Kentucky over a 3-year period.¹²

Diversion programs that may include assessment and treatment in exchange for judicial consideration of a lesser charge or less severe sanctions are used in many States.¹³ Diversion, like plea bargaining, interferes with the retention of accurate records for the hard core drinking driver. Diversion programs that allow license retention or erasure of offenses from the driver's record may prevent the State from prosecuting hard core drinking drivers as repeat offenders in the future, and should be eliminated.

As of January 1, 2000, 15 States had a high-BAC "aggravated" or "extreme" DWI offense, but the BAC that defines the offense varies from 0.15 percent to 0.20 percent. The elevated crash risk and potential for recidivism of high-BAC (0.15 percent or greater) drivers constitute a safety problem that warrants State legislation creating a high-BAC "aggravated" alcohol offense. A lowered-BAC law for repeat DWI offenders is also effective in reducing fatal crashes. Maine and North Carolina have lowered their BAC limit for drivers who have been convicted or similarly administratively adjudicated on a first DWI offense. An evaluation of the original Maine low-BAC law found a 25- to 35-percent reduction in the proportion of repeat offender drivers in fatal crashes.¹⁴ Maine has since changed its law to zero BAC for repeat offenders.

The problem of hard core drinking drivers is complex, and no single countermeasure appears to be sufficient to address it. The Safety Board does not believe that every State must have identical countermeasures in place; however, the Board believes that a model program to reduce hard core drinking driving would incorporate the following elements:

- ◆ Frequent and well-publicized statewide sobriety checkpoints that include checking for valid driver's licenses. Checkpoints should not be limited to holiday periods.
- ◆ Vehicle sanctions to restrict or separate hard core drinking drivers from their vehicles, including license plate actions (impoundment, confiscation, or other actions); vehicle immobilization, impoundment, and forfeiture; and ignition interlocks for high-BAC first offenders and repeat offenders.

¹² National Highway Traffic Safety Administration, *An Evaluation of the Elimination of Plea Bargaining for DWI Offenders* (Washington: National Highway Traffic Safety Administration, 1989) 1, 9-10.

¹³ The total number of States in which diversion programs are used was unavailable. As stated earlier, 16 States and the District of Columbia specifically provide for diversion by State law or statewide practice. Some local courts and judges in other States also offer diversion programs.

¹⁴ Ralph Hingsou, Timothy Heeren, and Michael Winter, "Effects of Maine's 0.05% Legal Blood Alcohol Level for Drivers with DWI Convictions," *Public Health Reports* 113 (Sep.-Oct. 1998) 443.

- ◆ State and community cooperative programs involving driver licensing agencies, law enforcement officers, judges, and probation officers to enforce DWI suspension and revocation.
- ◆ Legislation to require that DWI offenders who have been convicted or administratively adjudicated maintain a zero blood alcohol concentration while operating a motor vehicle.
- ◆ Legislation that defines a high blood alcohol concentration (0.15 percent or greater) as an "aggravated" DWI offense that requires strong intervention similar to that ordinarily prescribed for repeat DWI offenders.
- ◆ As alternatives to confinement, programs to reduce hard core drinking driver recidivism that include home detention with electronic monitoring, special DWI facilities, and/or intensive supervision probation programs.
- ◆ Legislation that restricts the plea bargaining of a DWI offense to a lesser, non-alcohol-related offense, and that requires the reasons for DWI charge reductions be entered into the public record.
- ◆ Elimination of diversion programs that permit erasing, deferring, or otherwise purging the DWI offense record or that allow the offender to avoid license suspension.
- ◆ Administrative license revocation for BAC test failure and refusal.
- ◆ A DWI record retention and DWI offense enhancement look-back period of at least 10 years.
- ◆ Individualized sanction programs for hard core DWI offenders that rely on effective countermeasures for use by courts that hear DWI cases.

Therefore, the National Transportation Safety Board makes the following safety recommendation to the Governors and Legislatures of the 50 States and the Mayor and Council of the District of Columbia:

Establish a comprehensive program that is designed to reduce the incidence of alcohol-related crashes and fatalities caused by hard core drinking drivers and that includes elements such as those suggested in the National Transportation Safety Board's Model Program.

Chairman HALL and Members HAMMERSCHMIDT, BLACK, GOGLIA, and CARMODY concurred in this recommendation. In the report that presented this recommendation, Member Hammerschmidt filed a dissent.

The Safety Board also issued one safety recommendation to the Department of Transportation.

In your response to the recommendation in this letter, please refer to Safety Recommendation H-00-26. If you need additional information, you may call (202) 314-6175.



By: Jim Hall
Chairman