ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

22 SCOMM 6: SENATE SPECIAL COMM. ON ALCOHOLISM 1977-78

agency referred to in section 522(a) (relating to allotments to States for any child welfare services under part 3 of title V) or any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For the purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Community Work and Training Programs

Sec. 409. (a) For the purpose of assisting the States in encouraging, through community work and training programs of a constructive nature, the conservation of work skills and the development of new skills for individuals who have attained the age of 18 and are receiving aid to families with dependent children, under conditions which are designed to assure protection of the health and welfare of such individuals and the dependent children involved, expenditures (other than for medical or any other type of remedial care) for any month with respect to a dependent child (including payments to meet the needs of any relative or relatives, specified in section 406(a), with whom he is living) under a State plan approved under section 402 shall not be excluded from aid to families with dependent children because such expenditures are made in the form of payments for work performed in such month by any one or more of the relatives with whom such child is living if such work is performed for the State agency or any other public agency under a program (which need not be in effect in all political subdivisions of the State) administered by or under the supervision of such State agency, if there is State financial participation in such expenditures, and if such State plan includes—

(1) provisions which, in the judgment of the Secretary, provide reasonable assurance that—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of such work by such relatives are established and maintained;

(B) payments for such work are at rates not less than the minimum rate (if any) provided by or under State law

for the same type of work and not less than the rates prevailing on similar work in the community;

(C) such work is performed on projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance by such relatives of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the State or community, as the case may be;

(D) in determining the needs of any such relative, any additional expenses reasonably attributable to such work will be considered;

(E) any such relative shall have reasonable opportunities to seek regular employment and to secure any appropriate training or retraining which may be available;

(F) any such relative will, with respect to the work so performed, be covered under the State workmen's compensation law or be provided comparable protection; and

(G) aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal;

(2) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment or occupational training of any such relatives performing work under such program, including appropriate provision for registration and periodic reregistration of such relatives and for maximum utilization of the job placement services and other services and facilities of such offices;

(3) provision for entering into cooperative arrangements with the State agency or agencies responsible for administering or supervising the administration of vocational education and adult education in the State, looking toward maximum utilization of available public vocational or adult education services and facilities in the State in order to encourage the training or retraining of any such relatives performing work under such program and otherwise assist them in preparing for regular employment;

(4) provision for assuring appropriate arrangements for the care and protection of the child during the absence from the home of any such relative performing work under such program in

order to assure that such absence and work will not be inimical to the welfare of the child;

(5) provision that there be no adjustment or recovery by the State or any political subdivision thereof on account of any payments which are correctly made for such work; and

(6) such other provisions as the Secretary finds necessary to assure that the operation of such program will not interfere with achievement of the objectives set forth in section 401.

(b) In the case of any State which makes expenditures in the form described in subsection (a) under its State plan approved under section 402, the proper and efficient administration of the State plan, for purposes of section 403(a) (3) and (4) may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.[1]

FOOD STAMP DISTRIBUTION

Sec. 410. (a) Any State plan for aid and services to needy families with children may (but is not required under this title or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1964, as amended, will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

(b) Any deduction made pursuant to an option provided in accordance with subsection (a) shall not be considered to be a payment described in section 406(b)(2).

(c) Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1964, as amended, shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this

[1] P.L. 90-248, sec. 204(c)(2) provides:

"The provisions of section 409 of the Social Security Act shall not apply to any State with respect to any quarter beginning after June 30, 1968."

part[1] of such State, to institute or carry out a procedure, described in subsection (a).[1 2]

Part B—Child-Welfare Services

Appropriation

Sec. 420. For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child-welfare services, the following sums are hereby authorized to be appropriated: $196,000,000 for the fiscal year ending June 30, 1973, $211,000,000 for the fiscal year ending June 30, 1974, $226,000,000 for the fiscal year ending June 30, 1975, $246,000,000 for the fiscal year ending June 30, 1976, and $266,000,000 for each fiscal year thereafter.

Allotments to States

Sec. 421. The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary, as follows: He shall allot $70,000 to each State, and shall allot to each State an amount which bears the same ratio to the remainder of the sum so appropriated for such year as the product of (1) the population of such State under the age of 21 and (2) the allotment percentage of such State (as determined under section 423) bears to the sum of the corresponding products of all the States.

Payment to States

Sec. 422. (a) From the sums appropriated therefor and the allotment available under this part, the Secretary shall from time to time pay to each State—

(1) that has a plan for child-welfare services which has been developed as provided in this part and which—

(A) provides that (i) the individual or agency designated pursuant to section 2003 (d)(1)(C) to administer or supervise the administration of the State's services program will administer or supervise the administration of such plan for child-welfare services and (ii) to the extent that child-welfare services are furnished by the staff of the State agency or local agency administering such plan for child-welfare services, a single organizational unit in such State or local agency, as the

[1] Section 410 was added by section 1(a) of P.L. 94-585.

[2] See also section 1(b) of P.L. 94-585 which is printed on page 794 of this document.

case may be, will be responsible for furnishing such child-welfare services,[1]

(B) provides for coordination between the services provided under such plan and the services provided for dependent children under the State plan approved under part A of this title, with a view to provision of welfare and related services which will best promote the welfare of such children and their families, and

(C) provides, with respect to day care services (including the provision of such care) provided under this title—

(i) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the provision of necessary health services and education for children receiving day care,

(ii) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care services under the plan, which shall include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care,

(iii) for such safeguards as may be necessary to assure provision of day care under the plan only in cases in which it is in the best interest of the child and the mother and only in cases in which it is determined, under criteria established by the State, that a need for such care exists; and, in cases in which the family is able to pay part or all of the costs of such care, for payment of such fees as may be reasonable in the light of such ability,

(iv) for giving priority, in determining the existence of need for such day care, to members of low-income or other groups in the population, and to geographical

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[1] In the case of Guam, Puerto Rico, and the Virgin Islands, section 422(a)(1)(A) reads as follows:

"(A) provides that (i) the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child-welfare services and (ii) to the extent that child-welfare services are furnished by the staff of the State agency or local agency administering such plan for child-welfare services, the organizational unit in such State or local agency established pursuant to section 402(a)(15) will be responsible for furnishing such child-welfare services,".

areas, which have the greatest relative need for extension of such day care, and

(v) that day care provided under the plan will be provided only in facilities (including private homes) which are licensed by the State, or approved (as meeting the standards established for such licensing) by the State agency responsible for licensing facilities of this type, and

(vi) for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of the health and development of the child, and

(2) that makes a satisfactory showing that the State is extending the provision of child-welfare services in the State, with priority being given to communities with the greatest need for such services after giving consideration to their relative financial need, and with a view to making available by July 1, 1975, in all political subdivisions of the State, for all children in need thereof, child-welfare services provided by the staff (which shall to the extent feasible be composed of trained child-welfare personnel) of the State public welfare agency or of the local agency participating in the administration of the plan in the political subdivision,

except that (effective July 1, 1969, or, if earlier, on the date as of which the modification of the State plan to comply with this requirement with respect to subprofessional staff is approved) such plan shall provide for the training and effective use of paid subprofessional staff with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency, an amount equal to the Federal share (as determined under section 423) of the total sum expended under such plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child-welfare services, in developing State services for the encouragement and assistance of adequate methods of community child-welfare organization, in paying the costs of returning any runaway child who has not attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met

by the parents of such child or by any person, agency, or institution legally responsible for the support of such child. In developing such services for children, the facilities and experience of voluntary agencies shall be utilized in accordance with child-care programs and arrangements in the State and local communities as may be authorized by the State.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of subsection (a).

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c) If on December 1, 1974, the agency of a State administering its plan under this part was not the agency designated pursuant to section 402(a)(3), subsection (a)(1)(A) of this section shall not apply with respect to such agency but only so long as such agency is not the agency designated under section 2003(d)(1)(C), and if on December 1, 1974, the local agency administering the plan of a State under this part in a subdivision of the State is not the local agency in such subdivision administering the plan of such State under part A of this title, subsection (a)(1)(A) of this section shall not apply with respect to such local agency but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX.

Allotment Percentage and Federal Share

Sec. 423. (a) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the alloment percentage shall be 70 per centun in the case of Puerto Rico, the Virgin Islands, and Guam.

(b) The "Federal share" for any State for any fiscal year shall be 100 per centum less that percentage which bears the same ratio to

50 per centum as the per capita income of such States bears to the per capita income of the United States, except that (1) in no case shall the Federal share be less than 33⅓ per centum or more than 66⅔ per centum, and (2) the Federal share shall be 66⅔ per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(c) The Federal share and allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Federal shares and allotment percentages promulgated under section 524(c) of the Social Security Act in 1966 shall be effective for purposes of this section for the fiscal years ending June 30, 1968, and June 30, 1969.[1]

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

Reallotment

Sec. 424. The amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in such section shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under that section and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 421.

Definition

Sec. 425. For purposes of this title, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or

[1] Subsection (c) was amended by section 22 of Public Law 94–273.

remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

Research, Training, or Demonstration Projects

Sec. 426. (a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds neces-

sary to carry out the purposes of the grants, contracts, or other arrangements.

Part C—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A

Purpose

Sec. 430. The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in public service employment, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.

Appropriation

Sec. 431. (a) There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

(b) Of the amounts expended from funds appropriated pursuant to subsection (a) for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 33⅓ per centum thereof shall be expended for carrying out the program of on-the-job training referred to in section 432(b)(1)(B) and for carrying out the program of public service employment referred to in section 432(b)(3).

(c) Of the sums appropriated pursuant to subsection (a) to carry out the provisions of this part for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 50 percent shall be allotted among the States in accordance with a formula under which

each State receives (from the total available for such allotment) an amount which bears the same ratio to such total as—

(1) in the case of the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

(2) in the case of the fiscal year ending June 30, 1975, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) bears to the average number of individuals in all States who, during such month, are so registered.

Establishment of Programs

Sec. 432. (a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) of this section) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

(b) Such programs shall include, but shall not be limited to, (1) (A) a program placing as many individuals as is possible in employment, and (B) a program utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of public service employment for individuals for whom a job in the regular economy cannot be found.

(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private nonprofit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b).

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Title 16

XVI—GRANTS TO STATES FOR AID TO THE AGED, D, OR DISABLED, OR FOR SUCH AID AND MEDI- ASSISTANCE FOR THE AGED [1]

	Page [2]
Appropriation	361
State Plans for Aid to Aged, Blind, or Disabled, or for Such Aid and Medical Assistance for the Aged	361
Payments to States	367
04. Operation of State Plans	373
Definitions	373

Appropriation

ection 1601. For the purpose (a) of enabling each State, as far as cticable under the conditions in such State, to furnish financial ance to needy individuals who are 65 years of age or over, are , or are 18 years of age or over and permanently and totally bled, (b) of enabling each State, as far as practicable under the ons in such State, to furnish medical assistance on behalf of duals who are 65 years of age or over and who are not recipients to the aged, blind, or disabled but whose income and resources nsufficient to meet the costs of necessary medical services, and (c) couraging each State, as far as practicable under the conditions ch State, to furnish rehabilitation and other services to help viduals referred to in clause (a) or (b) to attain or retain capa- y for self-support or self-care, there is hereby authorized to be propriated for each fiscal year a sum sufficient to carry out the pur- of this title. The sums made available under this section shall sed for making payments to States which have submitted, and approved by the Secretary of Health, Education, and Welfare, plans for aid to the aged, blind, or disabled, or for aid to the , blind, or disabled and medical assistance for the aged.

e Plans for Aid to the Aged, Blind, or Disabled, or for Such Aid and Medical Assistance for the Aged

ec. 1602. (a) A State plan for aid to the aged, blind, or dis- , or for aid to the aged, blind, or disabled and medical assistance e aged, must—

L. 92-603, section 301, amended title XVI in its entirety under the title "Supple- l Security Income for the Aged, Blind, and Disabled," effective January 1, 1974, but nt to P.L. 92-603, sec. 303(b), such amendment does not apply to Puerto Rico, , and the Virigin Islands. The amended title starts on page 377, this volume.

This table of contents does not appear in the law.

(1) except to the extent permitted by the Secretary with re-
spect to services, provide that it shall be in effect in all politi-
subdivisions of the State, and if administered by them, be manda-
tory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a
single State agency to administer the plan, or provide for the
establishment or designation of a single State agency to supervise
the administration of the plan;

(4) (A) provide for granting an opportunity for a fair hear-
ing before the State agency to any individual whose claim for aid
or assistance under the plan is denied or is not acted upon with
reasonable promptness, and (B) that if the State plan is admin-
istered in each of the political subdivisions of the State by a local
agency and such local agency provides a hearing at which evi-
dence may be presented prior to a hearing before the State agency,
such local agency may put into effect immediately upon issuance
its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including
methods relating to the establishment and maintenance of per-
sonnel standards on a merit basis, except that the Secretary shall
exercise no authority with respect to the selection, tenure of office,
and compensation of any individual employed in accordance with
such methods) as are found by the Secretary to be necessary for
the proper and efficient operation of the plan, and (B) for the
training and effective use of paid subprofessional staff, with par-
ticular emphasis on the full-time or part-time employment of
recipients and other persons of low income, as community serv-
ice aides, in the administration of the plan and for the use of
nonpaid or partially paid volunteers in a social service volunteer
program in providing services to applicants and recipients and in
assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in
such form and containing such information, as the Secretary may
from time to time require, and comply with such provisions as
the Secretary may from time to time find necessary to assure the
correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of
information concerning applicants or recipients only (A) to pub-
lic officials who require such information in connection with their
official duties, or (B) to other persons for purposes directly con-
nected with the administration of the State plan;

(8) provide that all individuals wishing to make application
for aid or assistance under the plan shall have opportunity to

do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under title I or aid under the State plan approved under part A of title IV or under title X or XIV;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned

income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and sources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $[illegible] per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income;

(15) if the State plan includes medical assistance for the aged—

(A) provide for inclusion of some institutional and some noninstitutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom; and

(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(16) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental

diseases, and where appropriate, [illegible]
may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 1603(a)(4)(A) (i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients; and

(17) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases;

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X was different from the State agency which administered or supervised the administration of the plan of such State approved under title I and the State agency which administered or supervised the administration of the plan

of such State approved under title XIV, the State agency which administered or supervised the administration of such plan approved under title X may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1002(b) following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) was submitted for approval under this title, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) for purposes of this title, even though it does not meet the requirements of paragraph (14) of subsection (a) if it meets all other requirements of this title for an approved plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged); but payments under section 1603 shall

be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1603 under a plan approved under this section without regard to the provisions of this sentence.

(c) Subject to the last sentence of subsection (a), nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

Payments to States

Sec. 1603. (a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarters to the aged, blind, or disabled under the State plan (including expenditures for premiums under Part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $^{31}/_{37}$ of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of $37 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, plus (II) 15 per centum of the total expended during such month as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month

as exceeds the product of $15 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, or

(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to such month as exceeds (a) the product of $52 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (b) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37 multiplied by such total number of such recipients plus (II) the Federal percentage of the amount by which the total expended during such month as aid to the aged, blind, or disabled under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus

the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 61(c)) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 1602 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid or assistance under the plan if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by

the local agency administering the plan in the politi
subdivision; plus

(B) one-half of so much of such expenditures (not in-
cluded under subparagraph (A)) as are for services pro-
vided (in accordance with the next sentence) to applic
for or recipients of aid or assistance under the plan, and
individuals requesting such services who (within such pe-
riod or periods as the Secretary may prescribe) have been
are likely to become applicants for or recipients of such
or assistance;

(C) one-half of the remainder of such expenditures. T
services referred to in subparagraphs (A) and (B) sha
except to the extent specified by the Secretary, include only

(D) services provided by the staff of the State agency,
of the local agency administering the State plan in the pol
ical subdivision: *Provided*, That no funds authorized unde
this title shall be available for services defined as vocation
rehabilitation services under the Vocational Rehabilitatio
Act (i) which are available to individuals in need of the
under programs for their rehabilitation carried on under
State plan approved under such Act, or (ii) which the St
agency or agencies administering or supervising the admin
tration of the State plan approved under such Act are ab
and willing to provide if reimbursed for the cost thereof pu
suant to agreement under subparagraph (E), if provided by
such staff, and

(E) under conditions which shall be prescribed by t
Secretary, services which in the judgment of the State agen
cannot be as economically or as effectively provided by t
staff of such State or local agency and are not otherwis
reasonably available to individuals in need of them, and
which are provided, pursuant to agreement with the Stat
agency, by the State health authority or the State agency or
agencies administering or supervising the administration of
the State plan for vocational rehabilitation services approved
under the Vocational Rehabilitation Act or by any other State
agency which the Secretary may determine to be appropriate
(whether provided by its staff or by contract with public
(local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D)
hereof may be provided only pursuant to agreement with such
State agency or agencies administering or supervising the admin-
istration of the State plan for vocational rehabilitation services
so approved. The portion of the amount expended for administra-

tion of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 1602 does not meet the requirements of subsection (c)(1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c)(1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 1602 must provide that the State agency shall make available to applicants for or recipients of aid to the aged, blind, or disabled under

such State plan at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency, administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (5) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

Operation of State Plans

Sec. 1604. If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1602; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

Definitions

Sec. 1605. (a) For purposes of this title, the term "aid to the aged, blind, or disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1602 includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justify such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual; and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals who are sixty-five years of age or older and who are not recipients of aid to the aged, blind, or disabled (except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services;

(2) skilled nursing-home services;

(3) physicians' services;

(4) outpatient hospital or clinic services;

(5) home health care services;

(6) private duty nursing services;

(7) physical therapy and related services;

(8) dental services;

(9) laboratory and X-ray services;

(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;

(11) diagnostic, screening, and preventive services; and

(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).

SCOMM

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Alcohol and the Alaskan Offender

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August, 1975

This report has been prepared for use by the Standards and Goals Task Forces of the Division of Corrections and the Alaska Court System. It is an attempt to integrate material from several reports, and to isolate information concerning the impact of alcohol abuse on the correctional system.

Our data spans the five-year period from 1969 through 1974, permitting observations concerning the effects of the Uniform Alcoholism and Intoxication Act, which was passed in October, 1972. It also addresses the relationships between race, alcohol use and crime, and the relationship between alcohol use and violent crime.

The reports which have been reviewed are: Survey of Public Offenders: A Comparison of Ethnic Groups, published by the Office of Alcoholism in 1970; Misdemeanant Probation Project: Evaluation of First Year (1974); Sentencing Data, 1974; Recidivism, 1971-1974; and data from the population of the Eagle River Correctional Center (1975). Unfortunately, each of the reports employs a different data base, because they were prepared for specific administrative purposes. Taken together, however, they permit some inferences concerning the impact of alcohol abuse on the criminal justice system.

OVR/Office of Alcoholism Study (1969)

Data Base: In 1969, OVR conducted an interview survey of Alaskan offenders. Their sample included one-half of the total inmate population in 12 Alaskan state and city jails, and 3 federal prisons (Alaskan inmates only).

In 1970, the OVR data was re-analyzed by the Office of Alcoholism, with emphasis on questions regarding alcohol use. The Office of Alcoholism study included only sentenced Caucasian and Native adult males. In the sample of 173 who met these criteria, 99 (57%) were Native. Distribution of the various Native racial subgroups was similar to their distribution in the population of the state.

Results: Drunk in Public was the most frequent charge (36% of the total), accounting for 30% of Native and 16% of Caucasian charges. Natives accounted for 76% of Drunk in Public charges. Violent crimes accounted for 20% of Native and 36% of Caucasian sentences. The study did not investigate the relationship between drinking and violence. However, all respondents were asked whether they had been drinking at the time of their offense. Responses are shown in Table 1.

Table 1
Use of Alcohol at Time of Offense

	Caucasian	Native	Total
Drinking	64%	92%	80%
Not Drinking	36%	8%	20%

The difference between the two groups was statistically significant, with Natives highly more likely to have been drinking at time of offense ($\chi^2 = 19.34$, $p < .001$).

DOC Misdemeanant Probation Project (1975)

Data Base: As part of the evaluation of the LEAA funded Misdemeanant Probation Project, the DOC compared 152 Anchorage misdemeanants assigned by judges to probation, with 148 cases not assigned to the project. The comparison group consisted of the docket following each case assigned to the project; the comparison group was drawn to determine whether those assigned to probation were representative of the population of misdemeanants appearing in District Court.

Results: Table 2 shows type of offense for the Probation referrals and the Comparison group.

Table 2
Misdemeanant Offenses

	Probation Referrals		Comparison Group	
	N	%	N	%
Harm to Person	7	5	12	8
Property Theft/Damage	79	52	22	15
OMVI	14	9	33	22
Other Alcohol	11	7	30	20
Drugs (Sales, Posses.)	14	9	15	10
Traffic	7	5	16	11
Firearms	18	12	7	5
Other	2	1	13	9
	152	100	148	100

Table 2 shows that there are distinct differences in types of offense between those who are, and are not, referred to Probation. Most striking is the fact that 52% of Probation referrals are for offenses involving property theft or damage, while this category makes up only 15% of the Comparison group. Conversely, 42% of the Comparison group have charges of OMVI or other alcohol offenses, as compared to 16% of those assigned to Probation. This finding suggests efficient use of referral resources by District Court judges. The Borough Health Department DWI Program is designed to accept referrals from District Court. In fact, 34 clients (23%) of the Comparison group were referred to the Borough program.

The Comparison group is, in effect, a random sample of cases appearing in District Court; 42% of the offenses are alcohol-related. The dockets do not provide information concerning race of offenders, and there was no way to determine race. Those cases referred to Probation were, however, 74% Caucasian, 20% Native, and 6% Black.[(1)] If they are representative of the Comparison group, it appears that, as an offender population approaches the racial distribution of the state population, drunken driving assumes an important picture in contribution to total offenses. Data from a sentencing study (see below) support this finding.

[(1)] A study of sentencing in Alaska published by the Alaska Judicial Council (Cutler, 1975) shows that among 567 felony defendants appearing in Anchorage courts, 66% were Caucasian, 15% Native, 6% Black, and 13% Other or Unknown. Comparable information is not available for District Court, which is served by the Misdemeanant Probation project.

Statewide, 1973 felony defendants were 60% Caucasian, 17% Native, 6% Black, and 16% Other or Unknown.

DOC Sentencing Study (1974)

Data Base: In Fairbanks, Juneau and Ketchikan, data was recorded for all offenders sentenced to time in jail during the final six months of 1974. Information included race, age, sex, type of charge, and time to be served.

In Anchorage, the same information was obtained from Commitment and Release cards, for calendar year 1974.

Number of cases were: Fairbanks, 270; Juneau, 41; Ketchikan, 38; Anchorage (six months), 497, (full year) 1038.

Results: Table 3 shows selected characteristics of offenders included in this survey. The statewide population includes Anchorage sentences; the same group is included in the Anchorage one-year survey. Thus, the two groups overlap and cannot be compared; both populations are shown simply to demonstrate the similarity between sentencing for Anchorage and for Alaska (a similarity caused by the fact that Anchorage accounts for 59% of the statewide sample).

Table 3
Characteristics of Statewide and Anchorage
Sentenced Offenders

	Statewide* 6 mo. Sample (N= 846)	Anchorage 12 Months (N=1031)
Race		
% Caucasian	44%	48%
% Native	50%	46%
% Black	5%	6%
Offense		
% Alcohol-Related Charges	41%	37%
% Part I Offenses	20%	23%
Length of Sentence		
% 1-10 days	65%	60%
% 1 day to 1 yr.	95%	93%
More than 1 yr.	5%	7%

(*Includes 497 in Anchorage 6-month sample.)

In the statewide six-month sample, Natives received 50% of all sentences; Caucasians received 44%, and Blacks, 5%.

Alcohol-related charges (D.W.I., Drunk on a Roadway and Disorderly Conduct) accounted for 41% of all sentences. Within the alcohol-related group, Natives received 58% of the sentences, and 57% of the sentences for Part I crimes (those which the FBI describes as most serious, including all violent crime).

The cut-off point of one year sentences provides a rough approximation of the distinction between misdemeanors and felonies (although some plea-bargained felonies are included as misdemeanors when this classification is employed).

In the statewide sample, 6% of the Caucasians, 2% of the Natives and 9% of the Blacks received sentences of more than one year. The total number was 39, or 5% of the population.

In Anchorage, during the calendar year 1974, DWI was the most frequent offense (17% of all charges), followed by Drunk on a Roadway (10%) and Disorderly Conduct (10%). Twenty-three percent of all sentences were for Part I offenses.

For the purposes of this report, we looked more closely at three offense categories within the Anchorage data--OMVI, Drunk on a Roadway, and Disorderly Conduct. Table 4 shows incidence of each type of offense by race.

Table 4
Racial Distribution of Alcohol-Related Offenses

	Caucasian		Native		Total*	
	N	%	N	%	N	%
OMVI, DWI	137	67	66	20	203	38
Drunk on Roadway, Disorderly Conduct	67	33	265	80	332	62
	204	100	331	100	535	100

*11 Blacks have been omitted.

Natives account for 62% of alcohol-related[1] offenses; however, 80% of the alcohol charges against Natives were nuisance offenses (Disorderly Conduct, Drunk on a Roadway). Coincidentally, Natives committed 80% of the nuisance offenses. Two-thirds of the alcohol charges against Caucasians were for OMVI, and Caucasians committed two-thirds of the OMVI offenses[2].

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[1] The term "alcohol-related" refers to charges directly involving alcohol use, but does not include other offenses committed while drinking.

[2] Perhaps it will help in understanding this statement if the reader notes that the number of Caucasians and the number of OMVIs is the same, and that the number of Natives and the number of nuisance charges is the same. Pure coincidence, but very confusing.

An Alaska Supreme Court ruling in early 1975 indicates that the charge of Drunk on a Roadway may no longer be used to subvert the intention of the Uniform Alcoholism Act. We may therefore expect that, in the future, either fewer Natives will be sentenced, or there will be an increase in Disorderly Conduct charges.

DOC Recidivism Study (1975)

Data Base: In 1975, the Division of Corrections published its first recidivism study meeting standards set by the National Advisory Commission on Criminal Justice Standards and Goals.[1]

Recidivism statistics are up-dated annually, and consist of a follow-up on all offenders who are released after serving 10 days or longer in custody of the Division of Corrections.[2] Data is reported as cases; thus each release from correctional custody is counted as a "case", and a single individual may account for a number of cases.

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[1] "Recidivism is measured by (1) criminal acts that resulted in conviction by a court, when committed by individuals who are under correctional supervision or who have been released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or paroling authority took action that resulted in an adverse change in the offender's legal status."

Our data differs from these standards in that we can provide only corrections-to-corrections data. Thus, recidivism is measured from time of release to time of sentencing to Corrections custody. Suspended sentences, fines and court probation are not included.

The data does not include recidivism taking place outside Alaska.

[2] Data from the 1974 Sentencing Study, cited previously, indicates that those serving more than 10 days compose from 35-40% of total sentenced intake.

The base year for the recidivism study is 1971. In the process of conducting the study, data has been collected on a total of 4,314 adults released (after serving ten days or more) during the period 1971-1974.

Results:

a. Recidivism: The three year follow-up of adults released in 1971 showed a recidivism rate of 36%. Despite the decriminalization of Drunk in Public (in October 1972), 50% of recidivism was accounted for by those with alcohol-related charges. Within this group, 78% committed another alcohol-related offense.

Fifty-two percent of offenders released in 1971 were Natives; however, when compared with other racial groups, Natives accounted for 72% of recidivism.

Eighty percent of cases released from Corrections custody during 1971 had served short jail sentences only, without probation/parole services after release. This 80% of the population accounted for 98% of recidivism among 1971 releases.

b. Description of population: A side-product of the recidivism study was the collection of information on cases released from custody during the years 1971 through 1974. These data clearly demonstrate the impact of the Uniform Alcoholism Act (October 1972) on characteristics of those receiving sentences of ten days or longer.

Table 5 shows percentage of all cases which were alcohol-related over the four year period.

Table 5
Proportion of Offenses
Which Were Alcohol-Related

Year	Alcohol Related
1971	34%
1972	25%
1973	13%
1974	7%

There was a 38% decrease in number of alcohol-related offenses between 1971 and '72, a 49% decrease between '72 and '73, and a 1% decrease from 1973 to '74. (This suggests that the impact of the Uniform Alcoholism Act may have stabilized, and that we may expect to see around 120 cases annually sentenced to ten days or more for alcohol-related crimes.)

At the time of passage of the Uniform Alcoholism Act, it was widely observed that the charge of Drunk in Public was, de facto, discriminatory against the Native population. With passage of the Act, in 1972, it was anticipated that both numbers and proportion of Natives in correctional custody would decrease.

Table 6 addresses alcohol-related offenses only, showing distribution by race.

Table 6
Alcohol-Related Offenses by Race

	1971		1972		1973		1974	
	N	%	N	%	N	%	N	%
Native	310	81	190	79	100	81	84	69
Caucasian	73	19	49	21	22	18	37	30
Black	1	0	0	0	1	1	1	1
	384	100	239	100	123	100	122	100

In numbers, there has been a 68% decrease in alcohol-related offenses over the four year period. (A 73% decrease for Natives, and a 49% decrease for Caucasians.) The contribution of each racial group to total alcohol offenses remained steady until 1974, when there was a decrease in the proportion committed by Natives, and a corresponding increase for Caucasians.

Table 7 shows racial characteristics of all cases released from 1971 through 1974, in percentages.

Table 7
Race

	1971 %	1972 %	1973 %	1974 %
Native	52	53	48	37
Caucasian	43	43	45	56
Black	4	3	6	5
Other, Unknown	1	1	1	2
	100	100	100	100

Since passage of the Uniform Alcoholism Act, the proportion of Natives has decreased, with a corresponding increase in proportion of Caucasians. It would be in error, however, to attribute this change entirely to the Uniform Act. As Table 8 makes clear, there has been an even more dramatic impact from the population influx which the state is experiencing.

Table 8
Race by Year for Sentenced Releases

	1971		1972		1973		1974	
	N	%	N	%	N	%	N	%
Native	584	52	506	53	468	48	462	37
Caucasian	483	43	408	43	444	45	704	56
Black	41	4	33	3	55	6	64	5
Other, Unknown	15	1	8	1	14	1	25	2
	1123	100	955	100	981	100	1255	100

Clearly, the change in racial proportions which took place in 1974 is due largely to an increase in number of Caucasians in corrections custody.

Figure 1 portrays the percentage change in numbers of Caucasians and Natives released, using 1971 as a baseline year (zero on the scale).

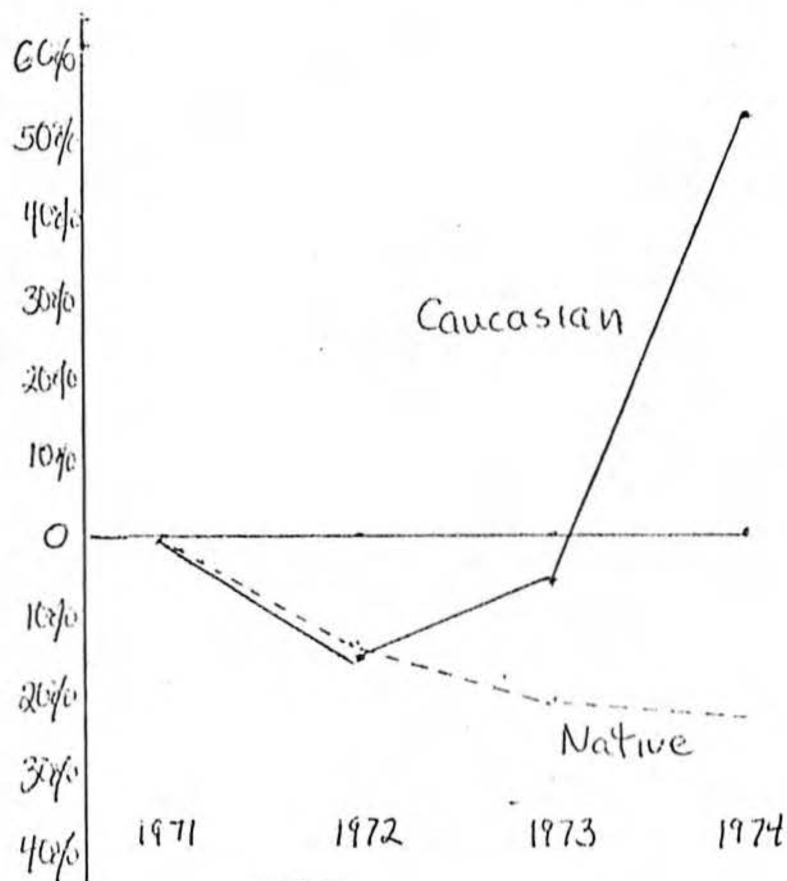

Figure 1: Annual percentage change in number of releases.

Table 9 shows the percentage change figures on which Figure 1 is based.

Table 9
Annual Percentage Change

Time Period	Native	Caucasian	Total
1971 to 1972	13% decrease	16% decrease	15% decrease
1972 to 1973	8% decrease	9% increase	3% increase
1973 to 1974	1% decrease	59% increase	28% increase

Figure 1 and Table 9 show that changes in racial composition of releases are the product of an interaction between the Uniform Alcoholism Act, and the pipeline-generated population increase.

DOC Base Expectancy Data (1975)

Data Base: Anchorage area offenders are presently housed in the Annex prior to sentencing. Those receiving sentences of six months or less are sent to either the Third Avenue facility or to the Palmer Correctional Center. Those with longer sentences are held in the Special Treatment unit (maximum security) at Eagle River, pending classification to another institution or into the Eagle River Correctional Center program.

The Self Administered Base Expectancy is a modified version of an instrument found to predict parole outcome in California. It consists of a number of questions concerning the offender's criminal and social history, as well as questions involving drug and alcohol use. The questionnaires are anonymous; we have no way of verifying

information provided by inmates. The results, however, seem reasonable in the light of other data regarding alcohol use.

During the first year of operation of the Eagle River Correctional Center, 103[1] inmates in Special Treatment have completed the Base Expectancy. These offenders were grouped in terms of whether or not their crimes had involved violence.

Results: Of the 103 who completed the Base Expectancy, 56% were Caucasian, 27% Native and 17% Black.

Fifty-two percent had committed violent crimes; 84% reported that they had been drinking at the time of their most recent offense.

Tables 10 and 11 show the relationship of alcohol use and violent crime, according to racial distribution of offenders.

Table 10
Numbers Committing Violent and
Nonviolent Crimes, and Number Drinking

	Caucasian		Native		Black		Total	
	V. -	Nonv.	V. -	Nonv.	V. -	Nonv.	V. -	Nonv.
	N	N	N	N	N	N	N	N
Drinking	25	22	13	12	8	7	46	41
Not Drinking	3	5	0	1	0	2	3	8
Unknown	2	0	2	0	1	0	5	0
	30	27	15	13	9	9	54	49

[1] Most of this group were Anchorage-area offenders. Eighteen, or 14% had been classified for the Eagle River program by institutions in other parts of the state, and were in Special Treatment awaiting acceptance by the Eagle River Classification Committee.

Table 11
Relationship of Alcohol Use and Violence (Percent)

	Caucasian	Native	Black	Total
Violence, Alcohol	44%	46%	44%	44%
Violence, No Alcohol	5%	0%	0%	3%
Alcohol, No Violence	39%	43%	39%	40%
No Alcohol, No Violence	9%	4%	11%	8%
Unknown	3%	7%	6%	5%
	100%	100%	100%	100%

Tables 10 and 11 show that approximately half the crimes committed by Caucasians were violent; of the violent crimes, 89% were accompanied by alcohol use. Among Natives and Blacks, violence accounts for 46% and 44%, respectively, of crimes committed by each group. In these groups, 100% of violent crime took place when the offender had been drinking.

Table 12 summarizes the above data by showing the proportion of total offenses involving either violence or alcohol.

Table 12
Percentage of Offenses Involving Violence or Alcohol Use

	Caucasian	Native	Black	Total
Violence	53%	54%	50%	52%
Alcohol Use	82%	89%	83%	84%

Tables 10, 11 and 12 show a clear relationship between alcohol use and crime -- both violent and nonviolent. They also show that the relationship is virtually independent of race.

The 103 Eagle River inmates were asked whether or not they had ever had a "serious" drinking problem. Responses are shown in Table 13.

Table 13
"Have you ever had a serious drinking problem?"

	Caucasian		Native		Black		Total	
	N	%	N	%	N	%	N	%
Yes	27	47	21	75	3	17	51	50
No	30	53	7	25	15	83	52	50
	57	100	28	100	18	100	103	100

In the total population, there is a 50-50 split between those reporting a "serious" drinking problem and no problem. There are marked racial differences, however: 75% of Natives, 47% of Caucasians and 17% of Blacks report having had an alcohol problem.

When the Base Expectancy had been in use for some time, we added a question concerning drug use; responses are available from 64 offenders. Table 14 shows violent and nonviolent crimes, distributed according to both alcohol and drug use.

Table 14
Alcohol and Drug Use on Day of Offense
by Type of Crime

	Violent		Nonviolent		Total	
	N	%	N	%	N	%
Alcohol only	19	58	8	26	27	42
Drugs only	1	3	13	42	14	22
Alcohol and Drugs	5	15	4	13	9	14
Neither	8	24	6	19	14	22
	33	100	31	100	64	100

Drug use figured in 36% of the offenses, and alcohol in 56%. (It has been suggested that there may be a tendency to under-report drug use, or to substitute alcohol use for drug use in reporting. There is no way to verify this suspicion.)

If our responses are accurate, there is a striking difference between alcohol and drug use in relation to violent crime. Alcohol use had occurred on the day of 73% of all violent crime, and 39% of nonviolent crime. Drug use had taken place in only 18% of violent crime, and in 55% of nonviolent crime. The use of both alcohol and drugs was equally associated with violent and nonviolent crime.

Twenty (31%) reported that they have, at some time, had a serious problem with drugs. Table 15 shows responses to this question, by race.

Table 15
"Have you ever had a serious problem with drugs?"

	Caucasian		Native		Black		Total	
	N	%	N	%	N	%	N	%
Yes	13	35	2	13	5	42	20	31
No	24	65	13	87	7	58	44	69
	37	100	15	100	12	100	64	100

The tendency for each group to report drug problems reverses the findings for alcohol problems: 42% of Blacks, 35% of Caucasians and 13% of the Natives had experienced serious problems with drugs.

Finally, Table 16 shows number and percent of individuals reporting problems with both drugs and alcohol.

Table 16
Serious Drug and/or Alcohol Problem
(Self Report)

	Caucasian		Native		Black		Total	
	N	%	N	%	N	%	N	%
Alcohol only	7	19	10	67	3	25	20	31
Drugs only	9	24	0	0	4	33	13	20
Alcohol and Drugs	4	11	2	13	1	8	7	11
Neither	17	46	3	20	4	33	24	38
	37	100	15	100	12	99	64	100

When reported alcohol and drug problems were combined, 11% of the group reported having had a problem with both alcohol and drugs; 31% with alcohol only, 20% with drugs only, and 38% reported that they had never had a problem with either. Two-thirds of the Natives, but a quarter or less of Caucasians and Blacks reported an alcohol problem: one-third of the Blacks, a quarter of the Caucasians and none of the Natives reported a drug problem. The three groups did not differ in terms of having had a problem with both alcohol and drugs. Almost half the Caucasians, one-third of the Blacks and one-fifth of the Natives reported no problems with either.

Summary and Conclusions:

In this paper, we have attempted to tie together a series of reports, all based on different population groups, but all dealing to some extent with the relationship between alcohol use and crime in Alaska.

I. Relationship between alcohol use and crime:

1. In a 1969 study of one-half the Alaskan residents in 15 state, city and federal jails, 80% reported that they had been drinking at the time of their offense; 36% had been charged with Drunk in Public.

2. In a 1974 random sample of District Court cases (misdemeanors), 42% of the charges were alcohol related (OMVI, Drunk on a Roadway, Disorderly Conduct).

3. In a 1974 study of all sentences received during a six-month period in major population centers, 41% of the sentences were for alcohol-related offenses. Thirty-seven percent of all sentences in Anchorage during 1974 were alcohol-related.

4. In a study completed in 1975, which traced recidivism in 1,123 individuals released from corrections custody in 1971, an overall recidivism rate of 36% was reported for the three-year period; 50% of recidivism was accounted for by those with alcohol-related offenses.

5. In a 1974-75 sample of 103 offenders with sentences of six months or more, 84% reported that they had been drinking on the day of the offense for which they were incarcerated. In a sub-sample of this group (the 64 who were tested after questions on drug use

had been added to the questionnaire), 42% reported that they had used alcohol on the day of the offense; 22% had used drugs, and 14% reported that they had used both alcohol and drugs.

II. Distribution of racial groups:

Table 17 shows racial distribution of five selected populations. The 1973 Alaska Workforce shows numbers of adults (age 16 and over) in the state population; 1973 statewide Felony Defendants represent the only data on race available from the Court System. The three remaining groups are from DOC data: the Sentencing, Recidivism and Base Expectancy Studies.

Table 17
Racial Distribution
of Selected Populations

	1. 1973 Alaska* Workforce (N=123,400)	2. Statewide** 1973 Felony Defendants (N=749)	3. July - Dec. 1974 Statewide Sentences (N=846)	4. 1974 Releases 10 days plus (N=1255)	5. 1974-1975 6 mo. plus (N=103)
Caucasian	84%	60%	44%	56%	55%
Native	11%	17%	50%	37%	27%
Black	2%	6%	5%	5%	17%
Other, Unknown	3%	16%	1%	2%	0
	100%	99%	100%	100%	99%

*1973 Alaska Workforce: Department of Labor, June, 1973.

**Alaska Judicial Council, Sentencing in Alaska (1975).

Although it includes both 1973 and 1974 data and several data bases, Table 17 permits some speculation regarding proportion of Natives within the system. Column 1 is an approximation of the adult population of the state, classified by race. Column 2 shows the percentage of each racial group represented among felony defendants, statewide, in 1973. (The relatively high rate of "unknowns" in this sample is unfortunate; however, the data indicates that Natives are over-represented in the felony defendant population. It is also unfortunate that similar data is not available from District Court, where most alcohol-related cases are processed.) Column 3 includes statewide sentences for 1974 (including all sentences, no matter how short), and the Native percentage increases markedly. Column 4, from the Recidivism study, includes only those with sentences of ten days or longer, and shows a reduction in proportion of Natives to total population. Column 5 is based on a group of offenders (mostly from the Anchorage area), with sentences of six months or more. Natives make up a still smaller proportion of this group, although the percentage of Natives is still more than twice the percentage in the adult population of the state.

This is very rough data; the groups are not strictly comparable, and our own data (see Table 8, this paper), indicates that 1973 Workforce figures may drastically underestimate the Caucasian population present in the state by 1974.

The data does suggest, however, that as sentence length increases (theoretically suggesting more serious offenses), the

proportion of Natives in the correctional population more closely approaches the proportion in the statewide population.

III. Impact of the Uniform Alcoholism Act (passed in October 1972):

The time span covered by this series of reports permits us to look at very similar populations before and after passage of the Uniform Act. In 1969, the decriminalization of Drunk-in-Public was only starting to be contemplated, but no changes had been made in the system. The OVR study conducted in that year consisted of a sample of one-half the sentenced adult male Alaskan offenders, including those serving only a day or two. At that time, 36% of all offenses were alcohol-related, and 57% of the offenders were Native.

In 1974, a DOC statewide survey of all sentences (one day or over) during a six month period showed that 41% of charges were alcohol-related, and 50% of offenders were Native.

Thus, when all sentences are considered, there is very little change in proportion of alcohol-related arrests, or of Natives in custody. This confirms the observations of booking officers in the jails, who have consistently claimed that, "Nothing has changed except that the people who used to be charged with Drunk in Public now come in for Disorderly Conduct or Drunk on a Roadway."

The Uniform Act has had an impact, however, and its effect is evident in data from the DOC Recidivism study, which includes only those sentenced for ten days or longer, thus eliminating approximately 60% of those booked into the jails. Within the longer-term group included in the Recidivism study, the percentage of offenses

which were alcohol-related was reduced from 34% of total 1971 offenses, to 25% of 1972, 13% of 1973, and 7% of 1974 offenses.

Among those with sentences of 10 days or more, the number of alcohol-related offenses decreased by 38% between 1971 and '72, 49% between 1972 and '73, and there was a 1% decrease between 1973 and '74, indicating that the number of alcohol-related charges may be stabilizing.

This data suggests that the major impact of the Uniform Alcoholism Act has been in reducing the number of offenders who receive sentences of more than ten days; there has been virtually no change in terms of alcohol-abusers serving very short sentences. Correctional centers are still serving as a primary resource for detoxification.

IV. Alcohol/Drug Use and Violent/Nonviolent Crime:

Data gathered as part of the program evaluation of the Eagle River Correctional Center provides further information concerning the relationship between alcohol use and crime. This is self-report data from a group of 103 inmates with sentences of six months or longer, awaiting classification in the maximum security unit of the Eagle River Correctional Center. These offenders completed a self-administered version of the California Base Expectancy, which includes items on alcohol and drug use. (Items concerning drug use were added after 39 individuals had already completed the Base Expectancy; drug use information is therefore available on 64 offenders.)

Of the sample of 103, 52% had committed violent crimes, and 84% reported that they had been drinking at the time of their offense. Among the 54 individuals who had committed violent offenses, 85% report that they had been drinking; among the 49 who had committed nonviolent offenses, 84% had been drinking. The data indicates that alcohol use is equally associated with violent and nonviolent crime; there was virtually no difference between racial groups in terms of either violence or alcohol use. Although the numbers are very small, there is a slight relationship between race and alcohol use on the day violent crimes are committed: 89% of violent crimes committed by Caucasians were accompanied by alcohol use, while 100% of violent crime by Natives and Blacks took place on a day when the offender had been drinking.

In the subgroup of 64 inmates who had answered questions concerning both alcohol and drug use, alcohol had figured in 56% of all offenses, and drug use in 36%. Alcohol use had occurred on the day of 73% of all violent crime, and 39% of nonviolent offenses. Drug use had taken place in only 18% of violent offenses, and in 55% of nonviolent crime. The use of both alcohol and drugs on the day of the offense was equally associated with violent and nonviolent crime. In this group, alcohol tended to be associated with violent crime, and drug use with crimes involving property theft.

The total group of 103 offenders were asked whether or not they had ever had a "serious" drinking problem. Answers were evenly divided, with 50% of the group reporting an alcohol problem. There

were striking racial differences, with 75% of the Natives, 47% of the Caucasians, and 17% of the Blacks reporting that they had had a serious problem.

Of the 64 who answered questions about drug use, 31% reported having experienced a serious problem with drugs. By race, 37% of the Caucasians, 42% of the Blacks and 13% (two individuals) among the Natives reported drug problems.

It is easy to question the veracity of responses to these questions, since the inmates' replies are not validated by other data. The racial differences, however, seem to confirm that the answers are truthful. Alcohol is much more available than drugs within the Native population of the state, and drinking is more socially acceptable than drug use. Further, alcoholism programming, education and interest has tended to focus on the highly visible Native alcoholic, with less impact on Caucasians and Blacks. On the other hand, drug use is more socially acceptable in the Black culture; as a Black inmate says, "It's considered cool to be on drugs."

In summary, our data supports the following conclusions concerning Alaskan offenders:

1. As expected, there is a strong relationship between alcohol use and crime.

2. The proportion of Native offenders in the correctional system far exceeds their presence in the general population of the state. The proportion decreases, however, in groups composed of those with progressively longer sentences. Natives are, thus, more involved in minor offenses than in more serious crime.

3. The major impact of the Uniform Alcoholism Act has been in reducing numbers of those with alcohol-related offenses serving sentences of ten days or longer. Corrections still plays a major role in detoxification, and in housing nuisance offenders.

4. When releases (of those with sentences of ten days or longer) are compared for the years 1971 through 1974, there is a striking decrease in proportion of Natives to Caucasians. Although this is partly due to the effects of the Uniform Act, the major cause can be attributed to a sharp rise in number of Caucasians.

5. In a sample of offenders with sentences of six months or longer, alcohol use was associated with 84% of all offenses, 85% of violent crime, and 84% of nonviolent crime. The relationship between drinking and violence did not differ among racial groups.

6. There are striking differences among racial groups in response to the question, "Have you ever had a serious alcohol problem?" Seventy-five percent of the Natives, 47% of Caucasians, and 17% of the Blacks reported a problem. In contrast, 42% of the Blacks, 37% of Caucasians and 13% of Natives reported having had a drug problem.

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#6:8

FINAL REPORT OF THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE ON ALCOHOL SAFETY ADJUDICATION

U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

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FOREWORD

Since 1970, with the inception of the National Alcohol Safety Action Projects (ASAPs), increased emphasis has been placed on the processing and disposition of drinking driving offenders to achieve highway safety benefits. The 35 ASAPs, a number of ASAP progeny, and systems evolving independently of the ASAP concept developed adjudicative disposition systems which applied a "health-legal" approach to drinking driver control. This concept is based on the premise that punitive remedies alone will not achieve meaningful change in the behavior of drivers who are problem drinkers. Consequently, the health-legal approach seeks to couple the deterrent aspects of punitive sanctions (jail, fine, license action) with the therapeutic aspects of a forced referral to an appropriate educational or treatment program, depending on the status of the driver's drinking problem.

Although the ASAP or health-legal approach seemed appealing in concept and, apparently, in practice, little has been done to evaluate the various systems using it to determine its short- or long-term impact. Whether and how it achieves fairness, efficiency, and effectiveness and which type of system is most conducive to achievement of these objectives are not known conclusively.

Preliminary studies of the role of the legislative-judicial system in drinking driver control have been conducted. Each of the ASAPs carried out an extensive evaluation, pointing primarily to the ultimate impact of the project on recidivism and crash experience. The ASAP evaluations were an opportunity missed. The chance to document and evaluate the dynamics of social-program change was not exploited. Tentative conclusions as to the attributes of successful ASAP-type programs, however, have been reached. These are expressed in the annual reports on the total ASAP program and most recently in a "Summary of ASAP Results for Application to State and Local Programs" prepared by Southwest Research Institute. Even in this state-of-the-art publication, the author, Gary Scrimgeour, notes:

> Because ASAPs' work with the courts was innovative and experimental, many of their experiences with the courts have not been thoroughly analyzed and most were not carefully evaluated. The findings in the following pages are, therefore, tentative and sometimes unquantifiable, but they are backed by the experience of enough ASAPs to merit consideration (p. 30).

Another research study, published by Indiana University, focused on particular characteristics of five ASAP adjudicative disposition systems to identify the impact of innovative laws and practices (e.g., mandatory pre-sentence investigation in Puerto Rico: Unified State Court System in Idaho; diversity of pre-sentence investigation practices in Los Angeles; a proliferation of innovative laws in Minnesota; and an efficient, routinized plea-bargaining program in Phoenix). This study is essentially descriptive, providing insights into ASAP-type programs through instructive case studies. Further work remains to be done to determine: 1) what is necessary to achieve permanence in a system using the health-legal approach and how it can be done on a selfsufficient bases; 2) which systems were effective and efficient, while assuring fairness; and 3) which programs combined the best features of both — that is, they were enduring and self-sustaining while continuing to be fair, effective, and efficient.

In September of 1975 the Secretary of Transportation raised a series of key issues related to these concerns and affecting the long-term success of the State and local government highway safety programs with the National Highway Safety Advisory Committee (NHSAC). Secretary Coleman asked the National Highway Traffic Safety Administration (NHTSA) to consider the following three issues in an effort to make traffic adjudication a truly effective component of the highway safety system:

- How can alternative sentencing of problem drinker-drivers be more effectively coupled with innovative case processing methods to reduce recidivism and ultimately lower court workload?

- Can cost-effective systems of problem drinker-driver screening, referral, sanctioning, and followup techniques be developed for use by the lower courts?

- What innovative training approaches offer the greatest potential for inculcating highway safety values in traffic adjudication?

In the spring of 1976, the NHSAC's Adjudication Task Force submitted an *Interim Alcohol Safety Adjudication Report* dealing with these issues; this report was adopted by the full Committee. The NHSAC recommendations contained in this final report were based on the following general Task Force findings:

• The ASAP's combination of criminal and rehabilitative sanctions (the health-legal approach to sentencing) represents a major new contribution to concepts of misdemeanor justice.

• The enhanced cooperation in ASAP among the diverse elements of the criminal justice system (particularly the courts and the alcohol treatment system) has had a major impact on the overall community response to alcohol abuse.

On July 16, 1976, the Deputy Secretary of DOT, after conferring with NHSAC members and NHTSA staff, requested NHTSA staff to prepare an Alcohol Safety Adjudication/Referral plan (ASAR) based on the NHSAC Final Report. This requested ASAR plan will identify alternative approaches which could result in the integration of the criminal justice and health care delivery systems with the highway safety system. It will also offer DOT and the nation the best opportunity for achieving the vital social utilities of justice, protection of society, and treatment of the problem drinker-driver. The resolutions adopted by the Adjudication Task Force (changed to Adjudication and Alcohol Subcommittee;) are prerequisites for ASAR plan development.

PREFACE

Traffic safety professionals learn quickly that education, engineering, and enforcement are only part of the traffic safety matrix. We must cooidinate with the emergency medical system, rehabilitation centers, researchers, the media, pedestrians, data processing systems, alcohol specialists, and adjudication systems. Generally speaking, our least successful efforts have lain with the courts (i.e., adjucication and sentencing). Whether our frustrations in this area are based in idealism, are the results of inertia, tradition, or our poor salesmanship remains to be seen.

Our current major concern is the revolving-door approach to drinking driving offenses which characterizes and strangles most lower courts. In talking with my counterparts in other parts of the country, I find that I am not alone in this feeling. Research on a national scale also bears this out. I doubt seriously that the judicial system as a whole — prosecution, defense, judiciary — recognizes the vastly increased collision risk presented by the alcohol-impaired driver.

Adjudicatory failures cause serious reverberations in other subsystems. They undermine the intent of the laws and reduce the inclination of enforcement personnel to apprehend, arrest, and charge people for alcohol-related offenses. They alter the nature, rate, and severity of the intended sanctions, dilute licensing integrity, and make the proper subjects for treatment unidentifiable or inaccessible to treatment agencies.

I recognize that identification of the problem drinker is not the primary function of the adjudication process. However, this does not preclude the courts from making a secondary use of this factfinding activity. Members of the bench are in a singular position with regard to the problem drinker — a position of control enjoyed by no one else in the community.

We must see that prosecutors and bar associations acquire an increased appreciation for the havoc precipitated by intoxicated drivers and pedestrians. We must demand that the prosecution, the defense, and the courts have access to all relevant information on each case. We must insist that counsel present cases in the best interests of the whole client rather than dealing only with the current charge. Looking only at the local prior record, if it is available, is like reading just one chapter of an unfinished book, so we must insist on the necessity of developing improved regional and national records systems and accessibility to them. The best single predictor of future crash involvement is still the total number of traffic convictions, including equipment violations.

Having a sophisticated pre-sentencing identification procedure is not nearly as important as having a workable method for identification which is both reasonable and apparently reliable. We must insist on meaningful sentences based on a fuller picture of the offender.

We must insist that all communities share the concern for problem drinking drivers and that local health, mental health, education, and other helping agencies provide diagnostic and rehabilitative services.

I am part of the judicial process; therefore, I suppose I cannot be criticized for not appreciating the safeguards and constraints of our traditional system for handling the alcohol-related traffic offender. Nevertheless, a system failure is apparent. I see the principal agent of behavior modification of problem drinking drivers — by and large — being ineffective. They are still on the road, and in increasing numbers. Through apparent apathy and perfunctory procedures, the courts are forfeiting the respect of those whom they judge and the confidence of those they serve.

We must work to implement our Task Force mandate and to answer the knock on our door. We must help develop the vast resources immediately available to help in this most important human problem and develop programs to use them.

The Committee worked hard to find, develop, and recommend innovative sanctions in the area of driving under the influence and other major traffic offenses with the view of achieving real and meaningful rehabilitation so as to reduce recidivism. This consideration remains urgent, of major importance, and we must continue to consult, research, study, and observe all information sources in this area.

While most projects and programs thus far developed nationally and internationally have been failures, the most promising procedures seem to lie in ASAP-type programs, alternative community service sanctions, PACT, and other diversionary programs. We must continue to study the use of mandatory sanctions; work-release programs; weekend sanctions; traffic school and education sentencing; formal supervised probation; volunteers in probation; detoxification programs and centers; A.A.; psychiatric staffs and

clinics; all community-based agencies and resources generally available; alcoholism clinics; and all facets of the ASAP programs (particularly identification of problem drinkers); and regional-national traffic record systems.

We have a special, immediate commitment to upgrading judicial or quasi-judicial personnel and developing and training parajudicial personnel to become specialists in handling traffic offenders. In this area we have diverse opinions as to the overthrow of the traditional judicial handling of these cases in the criminal arena. (The American Judges Association is on record in opposition.) While we might wish to change recommendations of the 1973 Task Force Report, it would seem that we should go forward on their recommendations to implement and develop national standards and programs for the use of parajudicial traffic specialists in handling of traffic offenses.

Our Task Force work has been very challenging and arduous. We will continue to work hard. As one who works with these problems as a professional, I fervently hope that we will also achieve.

I would suggest that appointment by the President to the National Highway Safety Advisory Committee is an honor — not an honorarium. I have been extremely impressed with the commitment, desire, and dedication of all of the members I have met thus far on the National Highway Safety Advisory Committee. There has been much disagreement and difference of opinion regarding many facets of our particular work. If this were not so, I would be greatly concerned about the product of our work. I continue to expect, and indeed welcome, spirited and enthusiastic contribution by all members of the Task Force to the hard work that lies ahead.

Rupert A. Doan,
Judge, Municipal Court
Cincinnati, Ohio

CONTENTS

Adjudication Task Force ii

Foreword iii

Preface v

The Health-Legal Sentencing Approach 1

- ASAP Adjudication 1
- Elements of Adjudication 2
  - Legislation 2
  - Enforcement 2
  - Prosecution 2
  - Defense Services 3
  - Trial 3
- Sanctioning Approaches and Effectiveness 3
  - Diagnostic Evaluation 3
  - Driver Records 3
  - Sanction Effectiveness 4
  - Traditional Sanctions 4
  - Alcohol Safety Schools 4
  - Rehabilitation 4
  - Probation 5
- Court Structures and Resources 5
  - Professional Stndards 5
  - Judicial Qualifications 5
  - Data Systems 5
- Judicial Education 6
- Interagency Liaison 6
  - Alcoholism Agencies 6
  - Criminal Justice Agencies 7
  - Professional Associations 7

Additional Conclusions 7

Summary of Recommendations 8

- Adjudication 8
- Judicial Education 9
- Interagency Liaison 9

Appendix A
Special Subcommittee Reports 11

- The Use of Mandatory Sanctions by the Courts 11
- Judicial Education in Alcohol Safety 17

Appendix B
Alcohol Safety Action Projects Site Visits 23

- Phoenix and Cincinnati 23
- Los Angeles 25

Appendix C
Committee Liaison Activities 31

- Proceedings of the Adjudication Task Force .. 31
- Frontiers of Traffic Adjudication or Visions of the Future 33
- Synopsis of NHSAC Adjudication and Alcohol Subcommittee Seminar, American Judges Conference 37

Appendix D
Committee Resolutions 39

Appendix E
Bibliography 41

References 44

THE HEALTH-LEGAL SENTENCING APPROACH FOR THE REFERRAL TO TREATMENT OF DRINKING DRIVER OFFENDERS

On May 21, 1975, the National Highway Safety Advisory Committee requested the Task Force on Adjudication to concentrate on three aspects of the adjudication and sentencing of drinking driver cases:

- Sentencing systems designed since 1971 by the jurisdictions cooperating with the Alcohol Safety Action Program (ASAP).[1]
- Judicial education in alcohol and highway safety.[2]
- Related activities of the U.S. Department of Justice (Law Enforcement Assistance Administration, LEAA); the U.S. Department of Health, Education, and Welfare (National Institute on Alcohol Abuse and Alcoholism, NIAAA); the American Bar Association; and the American Judges Association.[3]

The Task Force received extensive briefings from personnel at three ASAP sites (Cincinnati, Phoenix, Los Angeles), met with representatives of Federal and professional organizations, and examined materials prepared by NHTSA staff and consultants.[4] The following report presents the current findings and recommendations of the Task Force. These will be refined during the coming year, and new areas will be investigated.

ASAP Adjudication

The Alcohol Safety Action Program was a demonstration project which field-tested various new adjudication and sentencing concepts in 35 jurisdictions. The Task Force found broad, strong support for ASAP adjudication systems at the local level from all cooperating personnel, whether or not they received Federal highway safety funds. The Task Force concluded as follows:

The *system management* concepts used by ASAP have had a major impact on local court systems in terms of practices, resources, and attitudes, and they have materially improved the operation of those courts. Regardless of ASAP's impact on highway accidents, all persons and agencies concerned with the adjudicative process at the local level reported that the program had had more favorable impact on their own functions than any previous Federal effort. The Task Force believes that the system management concept provides major benefits to the adjudication of drinking driving cases and represents a highly significant undertaking by NHTSA to assist the whole process by which society responds to drinking driving.

Local personnel strongly endorsed the typical ASAP *combination of criminal and rehabilitative sanctions* known as the health-legal approach to sentencing. The Task Force believes that this combination represents a major new contribution to concepts of misdemeanor justice. Both criminal justice agencies and treatment agencies agree that a mixture of traditional and rehabilitative penalties is better than either set of penalties alone. However, some jurisdictions tend to substitute education or rehabilitation for traditional DWI penalties. The Task Force regards such complete substitution as undesirable, especially if attendance at alcohol safety school guarantees reduction of the original DWI charges to an offense not related to alcohol.

The Task Force concludes that, from a systemwide viewpoint, a standard mixture of both types of sanctions is desirable. Varying the amounts of different kinds of sanctions (e.g., reducing the fine in return for completion of alcohol safety school) seems to provide courts with enough effective authority. While recognizing the great variety of local practices, the Task Force believes that the remaining problems in implementing the health-legal approach nationwide are technical rather than theoretical.

In most States the Task Force found deep conflict between the apparent *intentions of legislation and the practices of the courts*. Such conflict is undesirable, costly, and avoidable, and it has proven a major impediment to the design of effective adjudication systems. (For example, mandatory jail sentences often result in widespread informal plea bargaining.)

The Task Force made the following observations:

1. As a result of ASAP, many courts for the first time recognize their potential for increasing public safety through purposeful action in drinking driving cases.

2. The courts have emerged as the pivotal agents in determining a community's response to drinking driving, and only the system management concept sponsored by ASAP involves them effectively in cooperative actions.

3. The operations, philosophy, and resources of misdemeanant courts cooperating with ASAP changed significantly during the period of project operation, with major innovations in the case-handling procedures of misdemeanor courts, including cases other then DWI.

4. Most adjudicators report major benefits from ASAP and regret the withdrawal of Federal funds just as their systems

became fully operational. Many court systems have continued portions of the ASAP approach with State and local funds.

5. By enhancing cooperation among the diverse elements of the criminal justice system and by establishing liaison between the courts and the alcoholism treatment system, ASAP has had a major impact on the overall community response to alcohol abuse, extending beyond DWI cases.

6. The ASAP concept represents a major constructive recognition by highway safety agencies that they have a responsibility to support the handling of DWI cases by the courts.[5]

In this area the Task Force recommends:

A. Continued implementation of basic ASAP system management concepts, fostered by highway safety agencies.

B. Further NHTSA support for existing ASAP adjudication structures and expansion to other jurisdictions, backed by specific allocations of Department of Transportation funds. While it is well aware that present ASAP concepts require improvement, the Task Force believes that successful existing efforts should not be allowed to decay as they reach maturity. Though many jurisdictions are continuing ASAP with State and local funds, operational and evaluation needs lead the Task Force to recommend increased funding from the Department of Transportation and other agencies to support, develop, and evaluate ASAP-type adjudication activities on a long-term basis.[6]

The Task Force also made some observations about a) specific elements of the adjudicative process, b) sanctioning approaches and effectiveness, and c) lower court structure and resources.

Elements of Adjudication

Legislation

The Task Force recommends that all legislation regarding DWI cases be scrutinized from the viewpoint of its implementation by the courts; for its effects on the actions of police, prosecutors, judges, and other system personnel; and for the probable responses of licensing agencies, insurance companies, and habitual drinking drivers. All legislation should be such as court systems can feasibly implement.

Special legislation should seek to ease the processing of drinking driver cases through the traditional court system, routine reversals on appeal, and sentencing alternatives. Particularly in the case of legislation dealing with mandatory alternative sanctions, costs to the court system should be studied in advance of enactment. The Task Force recommends that both Federal and State highway safety authorities should increase the degree of assistance given to State legislators in matters dealing with drinking driver adjudication. NHTSA should conduct a series of legislators' seminars in alcohol and highway safety around the country based on the materials already developed.[7]

Enforcement

The Task Force found that those courts which paid close technical attention to adjudicative relationships with the police had earned important dividends. Many courts were handling greatly increased caseloads with less expenditure of court and police time than before ASAP. Adjudicative practices affect arrest levels favorably or adversely. By paying attention to enforcement needs in such matters as scheduling, charge reduction, and testimony, the courts can benefit both themselves and defendants.

The Task Force recommends that NHTSA disseminate information concerning procedures by judges, prosecutors, and court administrators which lower the cost and increase the level of enforcement without infringing the rights of defendants. (For example, scheduling the officer's day in court; taking judicial notice of the accuracy of breath-test equipment; establishing standard criteria for charge reduction; providing information on recidivism; creating pretrial disposition courts.)

Prosecution

The Task Force found that in many jurisdictions prosecutors control the processing of DWI cases as much as do the judges, and several systems of referral are based on prosecutorial decisions rather than judicial actions (though none were diversionary). Prosecutors seem less aware than judges of highway safety. There is a widespread practice of reducing charges to an offense not related to alcohol, which undermines driver records, court records, and recognition of the degree of alcohol-involvement. However, the Task Force found that many ASAP jurisdictions had removed major inequities from plea bargaining, both by following standard procedures and by associating the prosecutors with the pre-sentence and probation functions. Such association is a major development in court procedures.[8]

The Task Force therefore recommends that NHTSA increase the study of DWI prosecution, examine the effects

of prosecutor-based referral systems on other agencies, and devise methods of preserving the integrity and equity of the prosecution process. The Task Force believes that greater cooperation with professional prosecution and legal organizations at the national level would be desirable. It encourages previous NHTSA attempts to provide alcohol safety education to prosecutors.[9]

Defense Services

The Task Force believes that the public defender system is removing inequities which research had demonstrated to exist in the court handling of DWI cases. The Task Force found several jurisdictions so skillfully designed that few defendants feel the need for a defense attorney throughout the case. Although these developments have improved the system from the viewpoint of cost, efficiency, and equity and should therefore be encouraged, the Task Force recommends that any referral system based on court coercion should request monitoring of its procedure by the defense bar to insure preservation of the defendant's rights throughout the process of charging, adjudication, sentencing, and referral. NHTSA should give special attention to the development of seminar briefing packages for State and local bar associations in alcohol, highway safety, and the role of the DWI defense attorney.[10]

Trial

Few jurisdictions reported substantial problems with the trial process, since only a small proportion of cases goes to trial. The Task Force, however, found four trial issues which drastically affect adjudication: the threat of inordinate numbers of defendants' requesting jury trials; the existence of routine reversals on appeal, especially where the lower courts are not courts of record; the granting of automatic continuances; and the availability of adjudicatory personnel.

The Task Force recommends that both NHTSA and LEAA give greater attention to legislation and court rules which discourage routine manipulation of court calendars and procedures and that they disseminate information to misdemeanor courts. While recognizing the legal rights of defendants, the Task Force believes that meaningless manipulation of those rights should be discouraged in order to reduce costs and confusion and to speed up the process of referral to alternative sanctions. Special attention should be given to the use of parajudicials, pretrial hearings, and the selection of adjudicators by lot.

Sanctioning Approaches And Effectiveness[11]

Diagnostic Evaluation

The Task Force found almost universal enthusiasm for the ASAP-developed process for screening drinking drivers into three broad categories for the purpose of referral, and it believes this countermeasure has been one of the most successful in winning local support. There is great diversity among jurisdictions as to when the screening process takes place (pretrial, pre-sentence, post-sentence). Some jurisdictions have developed systems of record checks and group intakes which make possible the processing of larger numbers than had been contemplated at reasonable cost, with major implications for the pre-sentence investigation of all misdemeanant cases.

The Task Force did not attempt to evaluate the technical accuracy or the rehabilitative effectiveness of the diagnostic and screening process, but it found the process so popular operationally that it is likely to spread. The Task Force therefore endorses NHTSA's current efforts to develop further and evaluate the accuracy and effectiveness of screening instruments, criteria, and diagnostic procedures.[12]

There was also clear local endorsement of NHTSA's objective criteria for determining whether an offender is a problem drinking driver. The Task Force therefore believes that wider use of these criteria should be encouraged. However, the usefulness of these criteria is undermined where record systems are inadequate, where public drunkenness has been decriminalized, and where charge reduction to an offense not related to alcohol is widespread.

The Task Force recommends that NHTSA continue development of the screening process and diagnostic criteria; that it seek the help of alcoholism and judicial agencies in disseminating ASAP-developed knowledge;[13] and that it carefully examine the factors affecting the continued operational validity of the screening criteria.

Driver Records

The Task Force was perturbed to find that ASAP has not solved problems which allow charge bargaining to undermine the integrity of driver license records by resulting in conviction for an offense not related to alcohol.[14] The Task Force believes that lack of cooperation with licensing regulations and authorities, no matter how well-intentioned,

does not serve the courts' long-term interests. This practice undermines driver records, statutory authority, and NHTSA diagnostic criteria, and it creates many problems for other jurisdictions and eventually for the ability of the local courts themselves to impose appropriate sanctions.

While recognizing the complexity of the problem, the Task Force recommends that NHTSA devote special efforts to determining effective statutory, procedural, and theoretical responses to this major problem area. It particularly recommends that a survey of State driver licensing authorities be undertaken to determine whether solutions currently exist.

Sanction Effectiveness

There was widespread and startling disagreement at the local level about the effectiveness or ineffectiveness of all types of sanctions, though many people are convinced that the addition of education and rehabilitation does reduce recidivism more than previous sanctions. The Task Force found no research evidence to prove the superiority of any claim about sanction effectiveness. However, ASAP has advanced the state of knowledge concerning court procedures and evaluation to the point where effectiveness may be measurable in future years. The Task Force regards it as unfortunate that the original ASAPs were discontinued too soon for evaluation systems to become fully effective.[15]

The Task Force recommends that NHTSA singly and jointly with LEAA investigate the appropriateness of various kinds of sanctions with different types of drinking drivers. This should be a major area for future operational research.

Traditional Sanctions

The Task Force found continuing confusion about the use and effectiveness of traditional statutory sanctions against drinking drivers. Jail sentences, particularly if they are mandatory, are systematically avoided by the courts in a majority of cases. Avoidance of action against the license is widespread is some jurisdictions, although others are untroubled. Amounts of fines vary randomly from jurisdiction to jurisdiction. Judicial and prosecutorial discretion intervene to mitigate statutory sanctions. Some systems are designed specifically to avoid their imposition, especially against first offenders. Further, adjudicators routinely respond to their knowledge of traditional extralegal sanctions (notably, increased insurance rates) throughout the entire adjudicative process. In addition, beliefs about the effectiveness or ineffectiveness of such sanctions as deterrents are confused and contradictory.[16]

The Task Force as yet has no recommendations in this area, except that it clearly deserves increased attention from NHTSA, Law Enforcement Assistance Administration (LEAA), American Bar Association (ABA), American Judges Association (AJA), American Judicature Society (AJS), and the National Committee on Uniform Traffic Laws and Ordinances. Greater uniformity of sanctions applied by various jurisdictions should be encouraged.

Alcohol Safety Schools

Referral to alcohol safety schools is by far the most frequent alternative sanction in jurisdictions associated with ASAP. The schools are spreading rapidly to other jurisdictions. There is a lack of research evidence to demonstrate the schools' effectiveness with the populations they usually receive. There is a clear danger that the effectiveness of the schools will be lessened by poor quality curricula or by inappropriate referrals. ASAP jurisdictions have enormously advanced our knowledge of this area, but that knowledge has not been widely disseminated.

The Task Force therefore recommends that NHTSA pay greater attention to the development of subject matter and standards for alcohol safety schools, using ASAP experience. Because the schools are so popular, NHTSA may now usefully provide cautious advice as to the appropriate defendant population and referral methods. Closer cooperation with the National Institute on Alcoholism and Alcohol Abuse (NIAAA) and other alcoholism education agencies would be productive.

Rehabilitation

There was striking enthusiasm among local court and treatment personnel for ASAP-supported rehabilitation modalities. The Task Force believes that the funding period of the original ASAPs was far too brief to allow for the development of adequately tested rehabilitation but that the successes in this area are more than enough to encourage further national-level efforts. Rehabilitation seems to have been underused in comparison with alcohol safety schools.[17]

While realizing that NHTSA does not fund rehabilitation of extensive duration, the Task Force recommends that

NHTSA and NIAAA cooperate to develop and evaluate short-term rehabilitation modalities specifically for drinking drivers referred under court authority and that they improve management and information relationships between the criminal justice system and the alcoholism treatment system. This area offers great scope for future action.[18]

Probation

The Task Force found that ASAP has dramatically increased the use of probationary authority in drinking driving cases and substantially changed concepts of its purpose. This seems to have been one of ASAP's major contributions to the adjudicative process. Further, jurisdictions associated with ASAP have developed economical and innovative methods for using probation and evaluating its effectiveness. Whether or not probation is associated with a referral to rehabilitation or eduation, the concept of probationary control over drinking drivers has aroused much interest in the lower courts.

The Task Force therefore recommends that NHTSA continue to support the use of probation for drinking drivers; that different types of probation control be tested thoroughly in terms of effectiveness and cost-effectiveness, in conjunction with LEAA and NIAAA; and that further development of probationary power and resources be encouraged by local legislative and funding agents.[19] This sould be a major area for future NHTSA work. (DWI Probation Followup demonstration projects are currently in the first year of operation in Tennessee and Mississippi.)

Court Structures and Resources

The Task Force encountered much variety in court structure, authority, and resources and an equally complex set of national-level recommendations for court reform. Since drinking driving cases occupy a large proportion of the caseload of most misdemeanant courts, the general issues of court structure and resources are closely interrelated with the highway safety objectives of NHTSA. The Task Force noted two areas of special concern: the difficulty of designing model systems and criteria which will work in both rural and metropolitan jurisdictions; and the growing importance of NHTSA coordination with the American Bar Association, the American Judges Association, and the American Judicature Society concerning their efforts to improve the lower courts.[20]

Professional Standards

The Task Force recommends that NHTSA correlate the real-world experience of the ASAPs with existing professional standards concerning the courts (especially those of the American Bar Association) to identify where there is clear agreement, where cooperation would be of mutual benefit, and where existing disagreements may be adjusted. The Task Force recommends that NHTSA assist the ABA and the judicial organizations to disseminate and implement their standards, especially those which lead to increased resources for the courts.

Judicial Qualifications

The Task Force found that the handling of drinking driving cases is adversely affected by unqualified or uninformed adjudicators and that the issues of appropriate judicial qualifications, selection, and tenure are currently a matter of major contention in most States. The Task Force believes that drinking driving cases require particular qualifications of adjudicators and that ASAP has given NHTSA considerable new information about these qualifications.[21]

The Task Force therefore recommends that NHTSA begin to work on a permanent basis with judicial authorities at both the State and national levels to insure that the special interests of highway safety receive attention. The Task Force recommends that NHTSA systematically determine the qualifications needed by an adjudicator operating in an ASAP-type environment and also those issues of selection and tenure which affect an adjudicator's handling of DWI cases. The Task Force also recommends specific attention to the very different needs and potentials of rural and metropolitan jurisdictions.

Data Systems

All jurisdictions reported that major improvements in their records and data systems resulted from ASAP activities. The Task Force believes that this may be a major and underestimated achievement of the local ASAP management units, helping to overcome previous substantial data weaknesses in both criminal justice and alcoholism treatment systems.

The Task Force therefore recommends that NHTSA devote further attention to the individual ASAP developments in this area and that it cooperate with LEAA, NIAAA, and the

National Center for State Courts in devising model information and data systems for the court processing of drinking driver cases.

Judicial Education[22]

The Task Force found large differences between adjudicators connected with an ASAP and those not so connected. Most adjudicators do not understand how to handle drinking driving cases purposefully, do not give special attention to sentencing systems and resources, and are unaware of ASAP-developed principles, procedures, and objectives. (In each State, however, there are individual judges who are well informed and highly motivated in these areas; they operate programs without outside support.)

The judges exposed to ASAP differ significantly from the norm. Their attitudes toward ASAP principles and procedures are positive and enthusiastic. They are well informed and cooperative, with a tendency toward the experimental. Most ASAP-related courts have adopted new procedures and handle increased caseloads more efficiently and effectively than before. In several jurisdictions, judges have taken the lead in developing the ASAP concept, and there is a trend toward regarding ASAP systems as models for handling other alcohol-related misdemeanors.

The Task Force therefore concludes the ASAP has significantly changed the attitudes, knowledge, and behavior of cooperating judges. Such changes would not have occurred without ASAP. The ASAP concept has had a major impact on the lower court system.

The Task Force found that NHTSA sponsored a unique and highly influential effort to educate judges in court procedures for handling drinking driver cases, with both individual ASAP training sessions and nationally funded programs offered through the ASAPs.[23] Such training was well received by the judges and was reported by many ASAPs to be crucial to the design of new local adjudication systems. No other Federal or professional agency offers similar education to judges, with the exception of small programs such as those at the National College of the State Judiciary and the American Academy of Judicial Education which deal tangentially with drinking drivers.

The Task Force also found that the structure for increasing education in this area already exists. The organizations for judicial education at the national level are favorably disposed toward such education. At the State and local levels there is an extensive network of both alcoholism training programs and judicial education agencies which could be exploited for highway safety purposes. The Task Force therefore concluded that expansion of NHTSA's efforts in judicial education is both essential and feasible.

The Task Force's preliminary recommendations are as follows:

1. Clear acceptance by highway safety authorities of resonsibility for educating judges in the design and operation of court systems for handling drinking drivers.

2. Increased cooperation between NHTSA and NIAAA, LEAA, ABA, AJS, and AJA, with the objective of defining common benefits from jointly funded or sponsored efforts to educate misdemeanor court judges in handling alcohol-related cases.[24]

3. Efforts by NHTSA to cooperate with the National College of the State Judiciary, the American Academy of Judicial Education, the National Center for the State Courts, the National Center for Alcohol Education, and the Area Alcoholism Education and Training Programs.

4. At the State and local levels, efforts by highway safety authorities to cooperate in education efforts with alcoholism authorities, judicial agencies, and State criminal justice planning agencies.[25]

5. Renewed efforts by NHTSA to update existing materials in this area, to disseminate existing curricula to new jurisdictions, and to continue new and existing education efforts with other court-associated personnel.

Judges and other personnel associated with the judges are logical targets for specialized education. Increased efforts in this area are essential, feasible, and highly cost-effective.

Interagency Liaison

The Task Force found that the system management concept used by ASAP has very successfully established liaison among agencies at the local level, that cooperation has begun at the State level, and that relationships at the Federal level need strengthening.[26]

Alcoholism Agencies

Among alcoholism agencies, there was enthusiasm at the local level for ASAP's ability to find cases and keep persons

in treatment. In some communities a majority of persons receiving education or rehabilitation about problem drinking come from ASAP intervention, and the concept of courtbased referral has widespread support among rehabilitation personnel. At the State level, some alcoholism authorities actively cooperate with the ASAP concept, although their involvement depends on local initiative. While recognizing that ASAP began as a community-based program, the Task Force observed that the program's statewide implications deserve much greater attention than they have yet received.

At the Federal level, liaison with Government and private agencies has been successful. NHTSA has formal agreements with NIAAA and the National Council on Alcoholism.[27] Alcoholics Anonymous has issued guidelines for cooperation with ASAP. Both NHTSA and NIAAA report favorably on the treatment programs funded by NIAAA to support ASAP, and NIAAA's evaluation approach adds a broader dimension to NHTSA's efforts. The Task Force observes that cooperation between these two agencies may weaken without special attention, welcomes the activation of the NIAAA-sponsored Interagency Committee required by the Hughes Act, and endorses active Department of Transportation membership on that Committee.

Criminal Justice Agencies

Among criminal justice agencies, liaison at the local level has been dramatically effective, and all criminal justice agencies report benefits from association with ASAP. However, cooperation seems not to have spread generally to the State level, and active cooperation at the Federal level requires greater attention. The State criminal justice planning agencies and State judicial authorities have not become sufficiently involved (with notable exceptions). Liaison with LEAA has not been developed, and the Task Force believes that the lack of interagency agreements between LEAA and NHTSA in this area has resulted in a regrettable failure to share programs, knowledge of common benefits, research results, and funds in the area of courts and corrections.[28]

Professional Associations

Areas of mutual interest with the professional associations should be developed. To build on existing interest and goodwill, NHTSA needs to specify areas in which it can cooperate with the American Bar Association, the American Judges Association, and the American Judicature Society. The Task Force strongly encourages recent NHTSA efforts to strengthen relationships with LEAA, ABA, and AJA.

The Task Force is not yet prepared to make specific project recommendations about interagency liaison, which it intends to investigate further during the coming year. It believes that:

- Existing cooperation with NIAAA at the program level should be increased and expanded.
- Efforts to establish active cooperation and jointly funded programs with LEAA and the State criminal justice planning agencies should commence.
- Formal cooperation with the ABA and State or local bar associations should be established.
- Exploration of mutual interests with major professional organizations and institutions in the judicial profession should occur, particularly with ABA, AJA, AJS, and the National Center for State Courts.[29]
- Services and information should be offered to such interested organizations as the U.S. Conference of Mayors, the National Association of Counties, and the Council of State Governments.
- At the State level, the interests of highway safety agencies, alcoholism authorities, criminal justice planning agencies, and driver licensing authorities should be deliberately coordinated by NHTSA.

Additional Conclusions

The Task Force found much evidence at the local level to show that the coordinated system management approach advocated by ASAP offers one popular and economical method for enabling a community to respond to the problems of alcohol abuse. ASAP has therefore furthered the long-term interests of highway safety and has also created a very important model for helping society confront the whole problem of alcohol abuse through use of the adjudication system and the lower courts.

The Task Force believes that the ASAP concept is beneficial to communities and States in terms of both governmental management and cost-effectiveness and that it should

therefore receive further development from the Federal Government.[30]

The Task Force also believes that increased funding for all types of programs related to alcohol abuse is desirable and that the necessary funds may suitably be raised through taxation.[31]

Summary of Recommendations

Adjudication

• Continued implementation of basic ASAP system management concepts, fostered by highway safety agencies.

• Further NHTSA support for existing ASAP adjudication structures and expansion to other jurisdictions, backed by specific allocations of Department of Transportation funds.

• Increased funding from Department of Transportation and other agencies to support, develop, and evaluate ASAP-type adjudication activities on a long-term basis.

• Examination of legislation regarding DWI for its effects on the actions of police, prosecutors, judges, licensing agencies, insurance companies, defense attorneys, and habitual drinking drivers prior to enactment.

• Increased assistance to State legislators from Federal and State highway safety authorities, including use of the existing educational package for legislators.

• Dissemination by NHTSA of information concerning court procedures which lower costs and increase the level of enforcement without infringing the rights of defendants.

• Increased study of DWI prosecution to determine the effects of prosecutor-based referral systems on other agencies and to devise methods for preserving the integrity and equity of the prosecution process.

• Cooperation with professional prosecution organizations, including further use of the existing educational package for prosecutors.

• Monitoring by the local defense bar of any referral system based on court coercion.

• Development of educational packages for State and local bar associations.

• Greater attention by NHTSA and LEAA to legislation and court rules which discourage routine manipulation of court calendars and procedures and to the use of para-judicials, pretrial hearings, and selection of adjudicators by lot.

• Continued development of the NHTSA screening process and diagnostic criteria for identification and referral of problem drinking drivers, to include both further research and dissemination.

• Efforts to find effective statutory, procedural, and theoretical responses to the problems which allow charge bargaining to undermine the integrity of driver records by resulting in conviction for an offense not related to alcohol, to include a canvass of driver licensing authorities.

• Investigation by NHTSA and LEAA of the effectiveness of various kinds of sanctions with different types of drinking drivers.

• Further study by NHTSA, LEAA, ABA, AJA, AJS, and the National Commissioners on Uniform Traffic Laws and Ordinances of the use and effectiveness of traditional criminal sanctions.

• Attention by NHTSA to the subject matter and standards of alcohol safety schools, including cooperation with other alcoholism education agencies.

• Joint NHTSA and NIAAA development and evaluation of short-term rehabilitation modalities specifically for drinking drivers referred under court authority.

• Joint NHTSA and NIAAA attention to management and information relationships between the criminal justice system and the alcoholism treatment system.

• Continued support for the use of probation for drinking drivers; expanded testing by NHTSA, LEAA, and NIAAA of the effectiveness and cost-effectiveness of different types of probationary control.

• Development of probation resources and power by local legislative and funding agents.

• Correlation of the ASAP experience with existing professional standards affecting the lower courts, including NHTSA cooperation with ABA and judicial organizations to assist in dissemination.

• Cooperation by NHTSA with State and national judicial authorities to insure that the special interests of highway safety receive attention when judicial qualifications, selections, and tenure are at issue.

• Specific attention to the very different needs and potentials of rural and metropolitan jurisdictions.

• NHTSA analysis and dissemination of individual ASAP developments in data systems, including cooperation with LEAA, NIAAA, and the National Center for State Courts to devise model information and data systems.

Judicial Education

• Clear acceptance by highway safety authorities of responsibility for educating judges in the design and operation of court systems for handling drinking drivers.

• Increased cooperation between NHTSA, NIAAA, LEAA, ABA, AJS, and AJA, with the objective of determining common benefits from jointly funded or sponsored efforts to educate misdemeanor court judges in handling alcohol-related cases.

• Efforts by NHTSA to cooperate with the National College of the State Judiciary, the American Academy of Judicial Education, the National Center for the State Courts, the National Center for Alcohol Education, and the Area Alcoholism Education and Training Programs.

• At the State and local levels, efforts by highway safety authorities to cooperate in education efforts with alcoholism authorities, judicial agencies, and State criminal justice planning agencies.

• Renewed efforts by NHTSA to update existing materials in this area, to disseminate existing curricula to new jurisdictions, and to continue education efforts with other court-associated personnel.

Interagency Liaison

• Expansion of existing cooperation at the program level between NHTSA and NIAAA.

• Efforts to establish active cooperation and jointly funded programs with LEAA and the State criminal justice planning agencies.

• Formal cooperation with ABA and State or local bar associations.

• Exploration of mutual interests with major professional organizations and institutions in the judicial profession, particularly ABA, AJA, AJS, and the National Center for State Courts.

• Provision of services and information to such interested organizations as the U.S. Conference of Mayors, the National Association of Counties, and the Council of State Governments.

• At the State level, coordination by NHTSA of the interests of highway safety agencies, alcoholism authorities, criminal justice planning agencies, and driver licensing authorities.

APPENDIX A
SPECIAL SUBCOMMITTEE REPORTS

THE USE OF MANDATORY SANCTIONS BY THE COURTS

Gary J. Scrimgeour, Ph.D.

I. NHTSA and Mandatory Sanctions

In a previous "Background Paper" (undated), NHTSA has indicated for the Ad Hoc Task Force the issues concerning mandatory/alternative sanctions which it presently has under study:

1. Effectiveness, efficiency, and fairness of driver licensing restrictions, revocations, and/or suspension actions.

2. Effectiveness of imprisonment for serious traffic law violations (especially first-offense DUI).

3. Probation sanctioning with highway-safety-related terms and conditions.

4. Followup research to determine whether there is clear evidence that mandatory sanctions and/or alternative sanctions are effective as deterrents to the driving public.

In a 1974 document, the Office of Driver and Pedestrian Programs (then Office of Alcohol Countermeasures) presented a thoughtful and thorough *Review of the Case For and Against Mandatory Jail Sentences for a First Conviction for DWI.* The document studies the experience of seven real examples where the application of mandatory sanctions was attempted and failed, and it analyzes the various ways in which the police and courts informally nullify mandatory sanctions. The author then makes the following recommendations:

1. Enforcement and judicial discretion concerning charging and trial should be minimized through "illegal per se" and prearrest breath-test statutes.

2. Penalties for first-offense DWI should be relatively light but significant; i.e., sufficient to deter social drinkers and motivate problem drinkers to accept rehabilitation.

3. Penalties for first-offense DWI should be flexible rather than mandatory, with judicial discretion in using traditional penalties to motivate problem drinkers to participate in rehabilitation programs.

4. Penalties for repeat-offense DWI should be relatively severe (e.g., 30-day jail sentences), providing judicial discretion may operate to place problem drinkers in rehabilitation programs.

The proposed revised High Safety Program Standard No. 8 calls for a pattern of mandatory sanctions, always with an alternative for referral into rehabilitation, such sanctions and alternatives to be imposed by either courts or licensing authorities. The new standard reflects clearly the ASAP health-legal approach in which a mixture of criminal and rehabilitation sanctions is to be used.

NHTSA internally is well aware of and anxious about the fact that the practices of the criminal justice system depart widely from the intentions of DWI statutes, that as long as the formal system and the informal system for DWI operate simultaneously no one can measure the nature or effectiveness of either, and that there is considerable inequity from jurisdiction to jurisdiction in the way DWI cases are handled. The ODPP is also well aware that they cannot make any claim that rehabilitation sanctions are more or less effective than criminal penalties or administrative penalties, as is shown in current evaluations of the national ASAP.

There is considerable interest within NHTSA in various concepts of administrative adjudication for first-offense DWI; in decriminalization (i.e., reduction to the status of infraction) of first-offense DWI; in the screening and identifying function of "traffic violations aggravated by alcohol" at lower BACs; and in the possible ineffectiveness of the lower court system in dealing with a highway safety objective in DWI cases. A certain distrust of the courts is apparent within NHTSA, but ASAP continues to work actively (and uniquely among Federal programs) with the lower courts. NHTSA is also evaluating the potential of probationary powers and conditions for controlling drinking driver behavior, though the quality of the research project in this area is in doubt. NHTSA is also putting considerable innovative effort into evaluating court referral systems and rehabilitation under court coercion, an extremely difficult task. The results of this experimentation will not be available during the life of the present Task Force.

II. The Task Force and Mandatory Sanctions

In the June 1973 *Report* of the Task Force, mandatory/alternative sanctions were not specifically studied. The *Report*, however, recorded the main fact about these sanctions: "Penalties which are mandatory or overly harsh tend to be subverted by police or prosecutors, judges or juries, and such penalties not only encourage more litigation but have proved to be counterproductive in the promotion of highway safety."

The mandate to the present Task Force from the National Highway Safety Advisory Committee includes three instructions, two of which deal with mandatory/alternative

sanctions. In the first, the Committee is instructed to study "sentencing alternatives for adjudicators" and to establish liaison for this purpose with HEW, Department of Justice, and AGA in the areas of "traffic law analysis and preparation, enforcement, and driver rehabilitation as they relate to adjudication." In the second, the Task Force is charged to continue "to collect information and recommend technical projects on sentencing alternatives with special consideration given to their implementation through legislation and court rules." There is no restriction visible in this mandate to deal with DWI cases only, but the present schedule of the Task Force implies concentration on this area and on the ASAP experience.

III. ASAP and Mandatory Sanctions

When ASAP started, the statutes in all States called for the imposition of traditional criminal sanctions only, with no statutory referral to rehabilitation. All referrals were originally made under inherent court powers. During ASAP, several States have passed legislation authorizing the alternative sanction of referral to rehabilitation, but the laws are not alike in any two States. (NHTSA also commissioned a study, now completed, on the constitutional questions surrounding the pre-sentence/referral process. This study found no inherent problems, but there is now some NHTSA analysis concerning the impact of the Privacy Act and the Freedom of Information Act.) In a majority of ASAP States the DWI legislation still calls for mandatory sanctions only, and the belief of most legislators seems to be that those sanctions are actually applied by the courts. A minority of States (e.g., Arizona) explicity forbid judges to interpose judicial discretion to soften the mandatory penlties, and in some States either court rulings or Supreme Court rules have decided the limits of judicial discretion (e.g., Ohio). However, in a majority of States judicial discretion is not explicitly discouraged by legislation or higher court decisions.

ASAP has shown its ability to function in all types of jurisdictions. Where legislation calls for alternative sanctions, ASAP obviously finds it easiest to maneuver. Where legislation allows judicial discretion, ASAP has to persuade individual court systems to cooperate, which is more difficult, since it lacks the support of legislative mandate. Where legislation forbids judicial discretion and does not allow for alternative sanctions, ASAP is in the most difficult situation, since it must convince courts and then cooperate with them in efforts which are counter to legislative intent. ASAPs are operating successful referral programs under all three circumstances (e.g., California, Ohio, Arizona).

The ASAP systems concept calls for the use of both punitive and rehabilitation sanctions. ASAP theory uses mandatory sanctions to coerce an alternative referral into rehabilitation. There are the two basic elements of the health-legal approach. ASAP is not a true diversionary progrm in any State. ASAPs also operate in at least two States (Wisconsin and Oregon) where first-offense DWI has been decriminalized.

IV. The Courts and Mandatory Sanctions

The previously mentioned NHTSA paper on mandatory sanctions contains a thorough review of the main dilemmas caused when the daily operations of a court system conflict with mandatory legislation, and it is not necessary to repeat that information here. Rather, this section summarizes the uses to which various court systems put mandatory sanctions, stemming from their attitudes toward mandatory and punitive sanctions. The purpose of this discussion is to illustrate the diversity of purposes for which mandatory sanctions can be used by the courts, in an attempt to avoid making the choice between support for or rejection of the concept if mandatory sanctions seem too simple.

1. Punishment

Some few judges regard legislated sanctions as properly retributive: If a person commits the crime of DWI, then he should be suitably punished. Some judges rarely use a rehabilitation alternative except in extreme cases where punitive sanctions have been tried and have failed. Many other judges regard punishment as a valuable element in the use of punitive sanctions, but they tend to mitigate the severity of the mandated sanctions by, for instance, reducing the amount of the fine or suspending all or some jail time. A few judges regard punishment as irrelevant in DWI cases and do not accept it as a proper motive in the sentencing process. The idea of punishment is, on the whole, not a major motivation in the adjudicative process for DWI.

2. Deterrence

The *general deterrence* theory is a much more popular concept with judges and prosecutors. They believe that the existence of a prohibitive law affects behavior and that

mandatory penalties enhance the public's perception of the risk involved in such behavior. Laws are seen as having a societal value, and few judges support complete decriminalization of DWI or a notable softening of legislated penalties. Judges also tend to accept the penalties set out by statute as being the right kinds of penalties. That is, they believe jail time, fines, and action against the license do deter DWI. Some few judges lobby actively for alternative sanctions (including rehabilitation), and few resent their introduction into legislation, but by far the majority regard legislative change as not their concern.

However, when it comes to *specific deterrence*, judges respond with very different attitudes. Few, if any, judges routinely apply the mandated penalties to all cases. Instead, they exercise judicial discretion. The full extent of the law will be applied only to extreme cases, usually to scofflaws. Very light penalties will go to a few favored offenders. The majority of cases will receive a routine and predictable set of sanctions which lies between the extremes. Judges always feel the need to soften sanctions for hardship cases, for deserving cases, and for respectable citizens, and they are irritated when such discretionary powers are removed. Most judges also know that traditional penalties fail to work with chronic offenders. In sum, when it comes to the individual case, judges do not see mandatory penalties as having the power to deter a repeat offense, or at least as having as great a power as the wise exercise of judicial discretion.

Thus as far as deterrence is concerned, courts use the theory of general deterrence and the statutes as an umbrella for their role in the handling of DWI cases, and they tend to justify attention to DWI cases by reference to the seriousness with this statutory sanctions treat the offense. There is some indication that if the severe mandatory sanctions were removed, then a majority of judges would treat DWI cases no more seriusly than they do reckless driving or speeding cases. The courts use the theory of specific deterrence to justify their use of judicial discretion to mediate between offenders and the law, regarding these two entities as extremes between which judges must create a balance. Judicial action, in their minds, is better able to achieve deterrence in specific cases than is the general application of mandatory legislation.

3. *The Judicial Experience*

A pointed aplication of deterrence theories occurs when judges assert the value of "a judicial experience" to an offender. Many judges see an appearance before a judge as having an inherent deterrent value, regardless of the sanctions imposed or not imposed. This concept has two important consequences. When coupled with the belief in the judiciary's role as an impartial overseer of all criminal justice system operations, it leads judges to insist that all violators should appear before them at some time (which is in line with current professional recommendations from both NHTSA and the ABA). Systems which eliminate appearances before a judge are therefore unpopular with them for reasons other then simple job preservation.

The second consequence is the popularity of the "one free bite of the apple" concept of DWI adjudication. First offenders should not be punished too heavily, because they have not yet undergone the judicial experience. Second offenders, however, have done so, and in repeating the offense they have disobeyed a judge as well as the law, with the result that they should be more severely punished. This attitude can lead to the design of systems which are overly lenient toward first offenders and overly harsh or punitive toward second offenders.

In this area, judges use mandatory statutes as a means to enable them to withhold or assert judicial power. In a sense, the statutes merely back up the judge, ready for his use only when necessary to enhance the credibility of his authority. They are used to make the judicial experience more meaningful, and the law is a servant of the judge rather than vice versa, to be put to work selectively.

4. *Highway Safety*

Most judges see DWI as a criminal offense rather than as primarily a public safety offense, and they do not regard themselves as having a function in enhancing highway safety. A highway safety objective is normally mentioned only when the judge needs to justify a harsh sanction, such as the imposition of a mandatory 1-year jail sentence: When all else (i.e., the lesser sanctions) has failed, then at least "we've kept him off the road for a year." Jail sentences are unpopular with misdemeanor judges, and their imposition represents to the judges a failure of their prior responses. Thus, highway safety is used as the justification for imposing a severe punishment.

Concerning license suspension, the attitude is somewhat different. Judges for the most part believe that most persons whose licenses are suspended or revoked do not continue to

drive. Action against the license is usually seen as an effection sanction — so effective, in fact, that it is thought harsh and therefore properly subject to judicial discretion. Again, highway safety objectives justify a sanction perceived as severe, and where a judge does not think the cause of highway safety is more important than individual convenience, he will soften the severity of that sanction.

Judges see the legislated sanctions for DWI as having a highway safety objective, and they see them as generally effective. However, they tend to see judicial discretion as more important and to dislike the assumption that mandated sanctions are more effective than judicial sanctions in achieving highway safety.

There is some evidence that alternative sanctions raise a different attitude. Judges as a whole are slow but not overly reluctant to accept referral to rehabilitation as an alternative sanction. This is partly because they believe that problem drinkers are better off in treatment and that everyone can become a better driver through education; that is, alternative sanctions are more clearly related to the public safety nature of the offense and therefore more popular with many judges. Indeed, isolated judges around the country have been responsible for the design of referral systems prior to ASAP, using both inpatient treatment and education, and other judges have tailored innovative sanctions (such as work in an emergency ward) to the highway safety objectives of probation. These judges are normally operating individual programs; it is very rare to find a whole bench agreed on such directions without intensive work from an ASAP. It should be emphasized that the main reason for judicial acceptance of alternative sanctions is that they see them as "softer" than the criminal sanctions, a neat solution to their dilemma about the imposition of mandatory punitive sanctions in which they can still be seen as interposing judicial discretion between offender and law.

5. *Coercion*

The coercive use of mandatory penalties is the basis of almost all ASAP systems and is the theory behind mandatory alternative sanctions legislation. Under this theory, action by the courts coerces someone under court control into behaving or not behaving in certain ways for a stated period of time, under *threat* of imposition of punitive sanctions. If the behavior is satisfactory, then the earned reward is a reduction in the seriousness of the sanctions. In the case of ASAP, the coerced behavior is almost always attendance at education or rehabilitation programs for drinking drivers. Legislation about mandatory/alternative sanctions simply embodies in a statute a pattern with which the courts are already familiar: either severe punitive sanctions, or education and rehabilitation coupled with lesser punitive sanctions. It is a "carrot and stick" approach to controlling driver behavior.

There are many *methods* for bringing about the coercive situation. The most traditional method is the use of suspended sentence and probation; i.e., part of the punitive sanction imposed after a finding of guilt is suspended on certain conditions affecting the driver's behavior, and if he does not obey these conditions for a stated period, the original sanctions can be imposed in full after a formal revocation of probation. This is the method most normal in felony cases, and a majority of misdemeanor courts also have the power to place persons on probation. The period of probation lasts anywhere from a few weeks to 2 years (usually co-extensive with the length of the statutory jail sentence), with 6 months as an informal norm. Formal probation requires a judicial determination of guilt. The person is convicted, and notice of that conviction is posted throughout the record system. In drinking driving cases, conviction starts a train of events (such as action against the license or, more often, against the insurance) over which the court has no control but which are regarded as severe penalties.

Because of these other penalties, many court systems prefer to avoid convictions, and for that reason (plus the desire to avoid trials) many systems use a variety of techniques to exert coercive control over driver behavior which result in the eventual avoidance of a conviction for DWI. For instance, a judge can avoid making a final determination of guilt or innocence by taking a case under advisement or by withholding judgment for a certain period, during which the offender must behave in certain ways. If he complies with these behavioral conditions, then the judge will eventually dismiss the DWI charge and convict the person of a lesser offense (e.g., reckless driving) with lesser penalties. Most judges, however, prefer not to take the initiative in reducing charges, and it is at this point that the prosecutor begins to emerge as a major force.

Plea bargaining is under the control of the prosecutor and in DWI cases may be better regarded as charge bargaining. The prosecutor agrees to charge the offender with a lesser

offense if the defendant will plead guilty to that lesser offense. This system is used almost everywhere. The prosecutor wins convictions (though not for DWI) and saves trial time, and the defendant avoids conviction for DWI and the harsher sanctions associated with it. Most prosecutors place no conditions other than a guilty plea on a charge reduction, and plea bargaining is not inherently a device aimed at controlling driver behavior. However, under ASAP it easily becomes such when the prosecutor makes the defendant earn the charge reduction by behaving in certain ways for a period of time. (In ASAP, again, this is normally attendance at education or rehabilitation programs.) In these circumstances, all the elements of presentence investigation and probation come to be associated with the prosecutor rather than the judge. Although by professional standards judges are supposed to monitor the plea-bargaining process (as in Phoenix), in fact they often have nothing to do with the process, since the prosecutor files the charge and the defendant pleads guilty.

Whether a coercive system is judge-based or prosecutor-based, whether it uses probation or plea bargaining or any other method, the objective is the same, and so is the manner in which mandatory sanctions are used. The objective is to control driver behavior for a certain period of time, and the process can therefore be closely related to highway safety goals. The mandatory sanctions are always used as a threat. Further, none of the coercive methods could work if the mandatory sanctions did not exist. There would be no carrot or stick with which to induce behavior if the threatened sanctions were not punitive; and if they were not mandatory, there would always be the possibility of avoiding them. This is the reason that many jurisdictions like to see the mandatory punitive sanctions in legislation, even though they prefer never to impose them in individual cases.

The ASAP experience has produced no recommendation as to the needed degree of severity in the sanctions used in a coercive system. While some jurisdictions use the threat of a 60-day jail sentence, some jurisdictions have as little to offer as an extra 60 days of license suspension. Action against the license seems as powerful as jail, though reductions in the amount of fine seem to have less impact. (No research has been conducted to demonstrate the differences.) The charge to which the offender eventually pleads guilty is usually reckless driving or careless driving, but this varies widely in different jurisdictions, some of which will go so far as to discriminate between pleas to different charges bringing different point penalties under the licensing system. A few jurisdictions have a second alcohol-related offense which is used as the substitute charge (e.g., Colorado uses Driving with Ability Impaired by Alcohol).

6. Administrative Action

Many courts prefer a portion of the penalties for DWI to be outside their control, notably action against the license. They may prefer that the mandatory/alternative sanction pattern not be available. They try to restrict themselves to a determination of guilt or innocence and to sentencing by traditional sanctions such as fine or jail, disregarding entirely the highway safety function of bringing DWI cases to court. A referral to rehabilitation or education may well take place in such a system, but any actions taken by an administrative authority are as far outside the court's purview as are insurance penalties.

However, an equal number of courts seem to dislike any control over sanctions by any administrative agency and engage in frequent combat with driver licensing authorities. Some courts, for instance, refuse to forward a suspended license to the driver licensing authority or fail to file a notice of conviction as required by statute. Others engage in charge bargaining, working with the defendant against the driver licensing authority. Others take some action against the license which forestalls other action. Others send routine letters requesting the driver licensing authority to act in certain ways. There is widespread (but not serious) irritation among some court systems with the operation of the implied-consent laws, which are outside court control and are often seen as "unfair" to "cooperative" offenders.

Almost no predictions can be made as to the use to which judges may put administrative sanctions. Some will ignore them, some will use them *for* the defendant, other will use them *against* the defendant. The one generalization which can be made is that all judges and prosecutors are well aware of administrative action that will or will not be taken as a result of their decisions. The consequence seems to be that careful study should precede the creation of any mixture of court action and administrative action.

V. Conclusion

With the decline during recent years in our belief in the effectiveness of mandatory punitive sanctions, there has arisen a great deal of interest in legislated sanctions which

allow better processing *through* the courts, almost as though the statutes and courts had themselves become as big a problem as the drinking drivers. Reduction of first-offense DWI to the status of an infraction, or the substitution of administrative adjudication for court action, or the offering of alternative sanctions in legislation all create techniques which avoid the attrition and delay associated with present court action by offering a) popular alternatives to punitive sanctions and b) swift referral to an administrative agency for either disposition or rehabilitation. All these new ideas presently seem superior as processing techniques to the traditional system, though there is considerable dispute as to how they work out in practice.

However, the basic fact remains that society uses criminal sanctions eventually to back up any social action against a deviant. In all the above techniques, action by the criminal justice system is a potential — if final — consequence. There is always, in other words, a basic and crucial relationship between legislation and the courts. There is therefore considerable debate as to whether mandatory punitive sanctions may need to be retained, no matter which other processing technique or objective is assigned to DWI legislation. It may be that, even if the punitive sanctions are not effective in preventing DWI directly, they are the essential backup for other sanctions which may do a better job.

Finally, it should be noted that mandatory punitive sanctions have not been fully evaluated as far as their real effects in deterring DWI, with the possible exception of various kinds of action against the license. They are, in fact, used against such a small proportion of the DWI population, and they are used so reluctantly and capriciously by the courts, that it seems almost impossible to evaluate them. It could be that they are presently effective and that we do not know it. It could be that they would be effective if rigorously applied. It is certainly true that no other pattern of sanctions has yet been conclusively demonstrated to be superior. One of the foremost needs in the field of highway safety (which has only recently begun to work with the courts) is knowledge of what sanctions are applied, what disposition methods are used, and whether or not they are effective with what kinds of offenders.

The ASAP experience has generated a great deal of information on how the courts use mandatory punitive sanctions. We presently lack knowledge of the comparative benefits of the various alternative uses, methods, and results. Also lacking is dissemination of existing knowledge from one jurisdiction to the next, since each jurisdiction tends to think its way the only possible way. Certainly it seems clear that the reasons the judges and prosecutors nullify mandatory legislative sanctions are more complex than has been thought and that the very act of nullification can be given a highway safety objective.

December 1, 1975

JUDICIAL EDUCATION IN ALCOHOL SAFETY

Gary J. Scrimgeour, Ph.D.

The intent of this document is to describe the framework within which attempts by the U.S. Department of Transportation to educate judges would operate and to suggest that such attempts are necessary, feasible, and cost-effective.

Until 1975 basic information about American judicial education was lacking, but three recent documents reasonably summarize current facts and concepts: the *State Judicial Training Profile*, edited by Barbara Franklin for the National Center for the State Courts; "Structuring and Financing a Justice System Program," a paper delivered by B.J. George at the 1974 National Judicial Educators' Conference; and *Sentencing Alcohol-related Cases: Option via Judicial Education*, by Gary J. Scrimgeour, for the National Center for Alcohol Education. These publications are the basis for the present document and should be consulted for details.

The Judges

The judiciary is a logical target group for education. While most judges preside over small courts, the most important judges in terms of caseload are in metropolitan jurisdictions, and increasing numbers operate within a reasonably integrated State system. Though statutes and resources differ enormously from State to State and jurisdiction to jurisdiction, there are two integrative forces: the homogeneity of a single State's laws, and the sharing by several judges of jurisdiction within a community. Therefore, although no judge can be ordered to attend an educational program, the most important judges can be identified and contacted through State, local, and professional organizations, and the majority of a State's judges can be reached through the traditional annual statewide conference.

As of July 1, 1971, the 50 States and D.C. contained 17,057 courts with a total of 23,073 judgeships, plus between 10,000 and 20,000 magistrates and JPs. Most judges (between 20,000 and 30,000) hear traffic cases. Most lower court judges (more than 75 percent of the total judges) hear DWI cases. Since anywhere between 20 percent and 100 percent of the defendants within any given category of cases are abusers of alcohol, judges see almost as many alcohol-abusers as they do "criminals." They see more people with drinking problems than does any person in the treatment system. They see at least 10 percent of the nation's problem drinkers every year, most of whom are not skid-row drinkers. They handle more than 1 million DWI cases per year (possibly as high as 2 million). In many courts DWI cases constitute as much as 80 percent of the caseload. Thus, education in highway safety and alcohol is highly relevant to their professional concerns.

The level of judicial interest is a strong limiting force. Neither highway safety nor alcoholism is a major concern to most judges, and they tend to react negatively at first to education in either subject. They have been put off by previous overly evangelistic attempts to turn them, as they see it, into social workers.

Counteracting this initial lack of interest are two important factors. First, a corps of highly educated and motivated judges exists in every State, including increasing numbers dissatisfied with present court handling of problem drinking defendants. Second, judges are increasingly interested in anything to do with improved court systems and sentencing procedures — areas with which highway safety is now very familiar. Cooperation between court managers and highway safety managers at the State and local levels is comparatively simple and mutually beneficial, given the right timing and subject matter.

Judicial Education

Until very recent years, judicial education has been almost toally neglected, and it is still in poor shape. To educate 30,000 judges, the Government presently spends about $6 million per year. (For comparison, a single campus of one university with 31,000 students receives a direct appropriation from the State legislature of $114 million per year.) There are about 50 full-time judicial educators in the country. (The above-mentioned campus has 33 full-time faculty members in a law school with 540 students.)

Before this decade, no agency trained anyone in how to be a judge. There are still no law school courses in the subject, and by no means all judges have been to law school. Very few States impose educational requirements (other than a law degree) on entering judges or on those seeking promotion, and very few States mandate educational programs for sitting judges. On-the-job training is the norm. Many judges come from the defense bar or prosecution departments, and others are elected from the community. They learn in the courts, on the bench, from books and colleagues. All formal judicial education is "continuing education," carried out in short, annual periods (too often in a single large conference). Professional educators rarely work with the judiciary. Only seven States have ongoing