Act to provide security for payment of tort liabilities and basic reparation benefits and who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan. The plan may be by assignment of applicants among insurers, pooling, other joint insuring or reinsuring arrangement, or any other method that will reasonably accomplish the purposes of this Section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets.

(b) The plan shall make available optional added reparation and tort liability coverages and other contract provisions the [commissioner] of insurance determines are reasonably needed by applicants and are commonly afforded in voluntary markets. The plan shall provide for the availability of financing or installment payments of premiums on reasonable and customary terms and conditions.

(c) All insurers authorized in this State to write motor vehicle liability, basic reparation, or optional added reparation coverages the [commissioner] requires to be offered under subsection (b), shall participate in the plan. The plan shall provide for equitable apportionment, among all participating insurers writing any insurance coverage required under the plan, of the financial burdens of insurance provided to applicants under the plan and costs of operation of the plan.

(d) Subject to supervision and approval of the [commissioner] of insurance, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration, and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or charged for insurance coverages provided under the plan shall be first adopted or approved by the [commissioner] of insurance and be reasonable and not unfairly discriminatory among applicants for insurance under the plan.

(e) To carry out the objectives of this Section the [commissioner] of insurance may adopt rules, make orders, enter into agreements with other governmental and private entities and persons, and form and operate or authorize the formation and operation of bureaus and other legal entities.

COMMENT

This Section requires the formation of an organized plan which will assure the ready availability to all consumers of necessary automobile insurance coverages. It is similar in purpose and concept to existing assigned risk statutes. The objective is that all reasonably needed and customary coverages will be conveniently and expeditiously available to all applicants subject to the security requirements of the Act. It is the responsibility of the insurance [commissioner] of the State to see that a satisfactory plan is adopted and implemented. The [commissioner] is granted broad powers to either approve and regulate a plan developed by insurers or, if necessary, to directly establish and operate one.

To avoid fragmentation of coverage of a particular applicant, the Section requires that not only the basic reparation and tort liability coverages which are compulsory under the Act be provided but also that there be made available such other optional added reparation and liability coverages and other policy provisions as the [commissioner] determines are reasonably needed and are commonly available in the normal markets. Also, to minimize financial barriers to access to insurance through the plan, the Section requires that premium financing of coverages provided through the plan be made available on customary terms.

Although the mechanism employed may be an assigned risk plan such as those now prevalent, the Section permits a range of other devices which may be evolved. It would, for example, authorize the adoption of a system through which insurers are required to make insurance directly available to all applicants who might otherwise be rejected and then allocate the loss burdens and expenses of those risks among the participating insurers through a reinsurance or pooling arrangement. Also, it would permit a system which involved the writing of all risks under the plan by a single insurer rather than distributing them among various insurers, again with an allocation of the loss and expense burden among the participating insurers by assessment or other means. Conceivably, an inter-state plan might be developed serving the need regionally or nationally, and to facilitate that possibility, the [commissioner] is expressly authorized to enter into agreements with other governmental and private entities and persons.

The details of the plan, its governance, and rules of operation are to be prescribed by regulations adopted or approved by the insurance [commissioner].

The Section would require a systematic rate structure (though not a uniform rate) for all persons insured through the plan with rates which are reasonable and not unfairly discriminatory. In this regard, it would not permit plans, such as some which were once common but have gone out of fashion, in which the rate charged an assigned risk applicant is a surcharge rate varying with the company to which he is assigned. As persons who must obtain insurance through plans of this type generally do not constitute a sophisticated group nor a competitive market, the Section requires that the rates under the plan be adopted or approved by the insurance [commissioner].

With respect to accessibility to insurance through plans of this type, it is necessary to achieve a balance between two competing policy goals. On the one hand, the goal of making insurance coverages readily available to all who need them dictates that the provision of insurance through the plan

not be unduly strictured. On the other hand, it is undesirable to have the plan become a primary market available to consumers who can reasonably obtain insurance in ordinary markets. Hence, the question of eligibility for insurance through the plan must be addressed. The insurance [commissioner] of the State is in the best position to prescribe the specific criteria for eligibility. However, the Section does establish a general test and an important corollary to it. The general test is that insurance through the plan is to be made available to all who cannot conveniently obtain it through ordinary market channels. It is possible under some conditions, however, to have an active special market develop in substandard risks with rates which are exorbitant in the sense that they are in excess of what applicants would be reasonably charged through the plan. Hence the corollary is that in order for the applicant to be denied coverage through the plan, the applicant must be not only able to conveniently obtain the needed coverages in the voluntary markets but must be able to do so at rates not in excess of those applicable under the plan.

All insurers authorized under the laws of the State to write any of the coverages provided through the plan are required to participate in it. The financial burden of losses and expenses of the plan, to the extent they exceed premium income, are to be equitably apportioned among all participants. The determination of an equitable basis for appointment, considering all factors as to kinds and volumes of coverages of various types written, is left to the insurance [commissioner] in the exercise of his sound discretion.

In order to secure to the participating insurers the exemption from the federal antitrust laws provided by the McCarran-Ferguson Act, the Section expressly provides that they may consult and agree among themselves and with others concerning the organization and operation of the plan subject to the regulating supervision of the insurance [commissioner] of the State.

SECTION 36. [*Termination or Modification of Insurance by Insurer*]

(a) This Section applies only to contracts of insurance providing security under this Act (Section 7) for a motor vehicle which is registered in this State and is not one of 5 or more motor vehicles under common ownership insured under a single insuring agreement.

(b) Except as permitted in subsection (c), any termination of insurance by an insurer, including any refusal by the insurer to renew the insurance at the expiration of its term and any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, is ineffective, unless

(1) written notice of intention to modify, not to renew, or otherwise to terminate the insurance has been mailed or delivered to the insured at least 20 days before the effective date of the modification, expiration, or other termination of the insurance, and

(2) the insurer has expressly stipulated in the insuring

agreement either that (i) the insurance is for a stated term of at least one year after the inception of coverage and may not be modified or terminated during the term or, (ii) if there is no stated term or the insurance is for a term of less than one year, the insurance may be modified, not renewed, or otherwise terminated by the insurer only at specified dates or intervals which may not be less than one year after the inception of coverage or thereafter less than one year apart.

(c) If otherwise lawfully entitled to do so and written notice of termination is mailed or delivered to the insured at least 15 days before the effective date of the termination, an insurer may terminate insurance as follows:

(1) by cancellation or refusal to renew at any time within 75 days after the inception of coverage, or

(2) for nonpayment of premium when due.

(d) An insurer who has canceled, refused to renew, or otherwise terminated insurance shall mail or deliver to the insured, within 10 days after receipt of a written request, a statement of the reasons for the cancellation, refusal to renew, or other termination of the insurance coverage.

(e) For purposes of this Section only:

(1) "nonpayment of premium when due" includes the nonpayment when due of any installment of premium or of any financial obligation to any person who has financed the payment of the premium under any premium finance plan, agreement, or arrangement; and

(2) a cancellation or refusal to renew by or at the direction of any person acting pursuant to any power or authority under any premium finance plan, agreement, or arrangement, whether or not with power of attorney or assignment from the insured, constitutes a cancellation or refusal to renew by the insurer.

(f) Except as otherwise stated in subsection (e), this Section does not limit or apply to any termination, modification, or cancellation of the insurance, or to any suspension of insurance coverage, by or at the request of the insured.

(g) This Section does not affect any right an insurer has under other law to rescind or otherwise terminate insurance because of fraud or other willful misconduct of the insured at the inception of the insuring transaction or the right of either party to reform the contract on the basis of mutual mistake of fact.

(h) An insurer, his authorized agents and employees, and

any other person furnishing information upon which he has relied, are not liable for any statement made in good faith pursuant to subsection (d).

COMMENT

The objective of this Section is to make the insurance coverages required by the Act stable, at least for consecutive yearly periods, by stringently limiting the power of insurers to cancel or modify insurance. It is critical to the success of the system created by the Act that approved security for the payment of reparation benefits and tort liabilities be continuously in effect covering as many vehicles operated in the State as possible. Except in the limited cases involving government vehicles or where self-insurance is an available alternative, insurance, purchased from private insurers is the only way in which the security can be provided in compliance with the Act. The potential consequences to an owner required to maintain security of an interruption in coverage are serious—criminal penalties, the retention of full tort liability, and reduction of benefits available under the assigned claims plan. Moreover, the public has viewed the practice of cancelling or nonrenewing automobile insurance coverages by insurers as an undesirable practice subject to abuse and over-utilization. The issue has been one of chronic political concern and over two-thirds of the States now have some kind of statutory or regulatory restriction on cancellation and nonrenewal. Whatever may be the advantages to insurers from an underwriting standpoint of a retained power to freely and unilaterally cancel or modify insurance, they are outweighed by the need of consumers to be able to rely upon the stability of their insurance for reasonable periods of time.

Hence, every State which adopts the Act should have some provision which substantially carries out the policy of this Section. Existing laws may be adequate or even preferable in many States and each Legislature should independently determine whether to retain a present law, perhaps with some modification, adopt this Section, or develop some other alternative.

The basic principle which this Section incorporates in striking a balance between the business flexibility needed by insurers and the need of consumers for stable coverage is that the insurance once underwritten should not be terminated or modified by the insurer for at least one year, and annual periods thereafter, except for nonpayment of a premium obligation and except for whatever right the insurer may have under other applicable law to rescind for fraud or other willful misconduct of the insured in the inception of the insurance.

Subsection (a) defines the scope of application of the Section. It applies only to insurance providing security covering a motor vehicle registered in the State pursuant to the requirement of security imposed by the Act. It would not apply to an automobile liability insurance policy written outside the State on a vehicle not registered in the State even though, under Section 9(b), reparation benefits may be recoverable under the policy and the policy is deemed to qualify as security covering the vehicle. Because the cancellation problem in the past largely has been confined to private passenger automobile insurance and application of the Section to commercial coverages might create additional problems, "fleet" ownership situations involving 5 or more vehicles under common ownership and insured under

single insuring arrangements are exempted from the application of the Section. Generally, the exemption will be operative only in commercial ownership situations but, to the extent that a few non-commercial owners of five or more vehicles are exempted, they may be presumed to be sophisticated enough in the administration of their insurance affairs so that the protection of the Section is unnecessary.

Subsection (b) makes clear that except as otherwise expressly permitted by the Section, insurance coverage may not be canceled, or not renewed or otherwise terminated or modified as to its terms and conditions in any way unfavorable to the insured for successive periods of at least one year from the inception of coverage. An insurer could comply with the Section in two ways. The most obvious way is to issue policies having stated terms of at least one year and which foreclose termination or modification by the insurer during the term. If an insurer for some reason desires to issue policies for a term of less than one year or to issue so-called "continuous" policies without a stated term, then it would have to expressly provide that the coverage could be canceled, not renewed, or otherwise terminated or modified only at specified dates or intervals which would have to be not less than one year from inception and one year apart thereafter. The restriction on modification of terms and conditions unfavorable to the insured would prohibit rate increases during these yearly periods.

Subsection (b) also provides that in order for any cancellation or other termination or any modification to be effective at the expiration of the yearly periods, a notice of intention to do so must be mailed or delivered to the insured at least 20 days prior to the effective date of the termination or modification.

Subsection (c) states the only two exceptions permitted by the Section from the requirement that the insurance coverage not be terminated or modified by the insurer during yearly periods. The first of these exceptions permits the insurer to cancel or refuse to renew coverage at any time within 75 days after the original inception of coverage. This is to permit the insurer a reasonable period within which to investigate the applicant as a risk, to decide whether it wishes to write the insurance for the applicant on a "permanent" basis, and to properly classify and rate the applicant. If such an "underwriting period" is not allowed, the common practice, which serves the convenience of consumers and insurers alike, of "binding" risks temporarily while the investigative and underwriting process takes place, might be curtailed. As the insurer is required to give 15 days notice of intention to cancel or refuse to renew, the period effectively allowed the insurer is 60 days.

The only other permitted ground for cancellation or refusal to renew except at yearly intervals is for nonpayment of an obligation to pay when due the premium or any installment of premium or any financial obligation under a premium finance plan whereby some other person has advanced the premium. Again, termination for this cause can be effective only if notice of intention to terminate has been mailed or delivered to the insured at least 15 days previously.

Subsection (d) requires that within 10 days after receipt of a written request, an insurer which has canceled, refused to renew or otherwise terminated insurance coverage shall supply the insured with a statement of the reasons therefor. If the termination is otherwise lawful, this subsection does not purport to impose any substantive restriction on the reasons upon

which the insurer may rely for termination. Moreover, subsection (h) provides that the insurer, its authorized agents and employees, and others furnishing information upon which it relies, are protected from liability for statements made in good faith pursuant to the requirement. The requirement that reasons be given applies to any termination of insurance by the insurer, including those during the underwriting period. There are several reasons the consumer should have an opportunity to find out why coverage was terminated or refused. If factually erroneous information was relied upon, the consumer would have an opportunity to set the record straight and avoid future recurrence of the difficulty. If some particular circumstance or condition rendered the individual unacceptable as a risk, it might be possible to eliminate or ameliorate it. Even if neither of these possibilities were present, knowledge of the underwriting objection would aid the consumer in seeking coverage from some other source, including, where appropriate, the assigned risk plan.

Subsection (e)(2) clarifies the operation of the provision permitting cancellation or refusal to renew for nonpayment of premium in a special situation. Many premium financing arrangements, where the financer is an entity other than the insurer, involve the granting by the insured to the financer of a power of attorney to exercise upon default in the payment of an installment payment the insured's right to refund of the unearned portion of the premium. This, in effect, is the way in which the premium finance obligation is secured. However, the consumer is not likely to be aware of the distinction between financing by the insurer itself and through a third party premium financer and the protective provisions of the Section should be equally applicable to both situations. This is particularly true as to the requirement of notice. Hence, the subsection provides that termination of the coverage by or at the direction of a person acting pursuant to any such power under a premium finance arrangement is to be treated as a termination by the insurer. Therefore, the insurer is responsible for the propriety of the termination and for any consequences of a failure to give the required 15 days prior notice. As the consequence obtains only for the operative purposes of the Section, it would not apply as to collateral matters such as the determination of the basis for computation of the refund of unearned premium which would be determined as otherwise provided by law or the terms of the insurance contract.

Subsection (f) merely emphasizes that the Section expresses limitations only on actions by the insurer and is not intended to prevent termination or modification of the insurance at the voluntary instance of the insured.

Subsection (g) retains whatever rights an insurer may have under other provisions of law to rescind or otherwise terminate the insurance because of fraud or other kinds of willful misconduct by the insured in the inception of the insuring transaction. It retains, also, the rights of either party under existing law, to reform the insurance contract on the ground of mutual mistake of fact. It is not intended to create or to expand in any way the availability of such remedies.

SECTION 37. [*Penalties*]

An owner of a motor vehicle who operates the vehicle or permits it to be operated in this State when he knows or should know that he has failed to comply with the require-

ment that he provide security covering the vehicle (Section 7) is [guilty of a [misdemeanor] and upon conviction may be fined not more than [$300] or imprisoned for not more than [90] days, or both].

COMMENT

The owner of a motor vehicle which is operated with his permission in this State is subject to criminal penalties for failure to provide and continuously maintain security in accordance with Section 7 of this Act. If he suffers loss he is also penalized under the provisions on assigned claims (Section 18(d)), which require a reduction of any benefits that might otherwise be payable through the assigned claims plan. The criminal penalty authorized by this Section, unlike the reduction of benefits for an assigned claim, requires proof that the defendant knew or should have known of his failure to comply with security requirements. Because of the wide variety of state procedural and substantive laws, the actual penalty provisions are bracketed. The offense should be graded, however, in a manner consistent with that for more serious vehicular offenses.

SECTION 38. [*Equitable Allocation of Burdens Among Insurers*]

(a) Reparation obligors paying basic or added reparation benefits and owners of motor vehicles suffering uninsured physical damage to the vehicles are entitled to proportionate reimbursement from other reparation obligors to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons or physical damage to vehicles because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Reparation obligors paying basic or added reparation benefits for loss arising from injury to persons, and self-insurers who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from basic reparation obligors of other involved vehicles. Insurers paying added reparation benefits for physical damage to vehicles and owners of motor vehicles suffering uninsured physical damage to vehicles are entitled to proportionate reimbursement from reparation obligors who provide property damage liability coverage on other involved vehicles.

(b) Reparation obligors shall maintain in accordance with rules of the [commissioner] of insurance statistical records from which can be determined the propensities of

different vehicles to affect probability and severity of injury to persons and physical damage to vehicles.

(c) When the [commissioner] of insurance determines that adequate supporting information is available he may establish by rule and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all reparation obligors or (2) all reparation obligors except those who are parties to an agreement entered into under this subsection and approved by the [commissioner] of insurance. Two or more reparation obligors, with approval of the [commissioner] of insurance, may enter into an agreement for settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by-case reimbursement.

(d) The [commissioner] of insurance may not approve or establish case-by-case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry 10 or fewer passengers.

(e) All claims for case-by-case proportionate reimbursement between insurers, if not settled by agreement, shall be submitted to binding intercompany arbitration in accordance with [the arbitration laws of this State].

COMMENT

The Need For This Section. A system of equitable allocation of burdens among insurers and other reparation obligors is necessary because of the effect this Act would otherwise have on the distribution of the burden of providing compensation for injury to persons and the burden of cost for vehicle damage sustained in car-truck collisions. The great majority of all persons injured in car-truck collisions are occupants of cars, and physical damage to cars and injury to occupants of cars in car-truck collisions is, on the average, far more severe than that sustained by trucks and occupants of trucks.

Under the tort liability insurance system, ordinarily the payment made to an occupant of a car in settlement of his tort claim, or in satisfaction of his judgment, arising from a car-truck collision, is made by the liability insurer carrying coverage on the truck. Though precise data are not published, it has been estimated that over 90% of the total payment by liability insurers and self-insurers on claims for injuries sustained in car-truck collisions is paid by liability insurers for trucks, or by self-insuring truck lines, and less than 10% by liability insurers for cars. Whether or not this estimate is correct, it is clear that the fraction of these costs now borne by

truckers is very great and that borne by car owners is very small.

If this Section were deleted, enactment of this Act would almost exactly reverse the distribution between truckers and car owners of the burden of costs and insurance premiums arising from car-truck collisions. Basic reparation insurers of cars would pay basic reparation benefits for nearly all of the injuries to persons in cars under the provisions on priority of applicability of security (Section 4), while truckers and their insurers would receive protection against both vehicle damage and personal injury tort claims under the provisions on abolition of tort liability (Section 5). Truck insurers would thus save all but a small fraction of what they now pay out under the tort liability system. It is conceivable that all of the savings achieved by elimination of tort actions arising from operation of motor vehicles would be allocated to truckers, with the consequence of massive reduction of premiums for them, while premiums for car owners would be increased over present levels.

This transfer of costs to car owners that would occur is unfair by any standard of judgment. It is unfair when judged by the standards of the tort liability system, as demonstrated by the mirror reversal of costs that would occur. It is likewise unfair when judged by standards concerned with characteristics of vehicles affecting the probability and severity of injury to persons arising from their use. The provisions on priority of applicability of security (Section 4), which would in the absence of this Section lead to that result, were designed to allocate the initial burden of paying benefits for reasons concerned with protection and convenience of injured persons and administrative simplicity. To assure a fair allocation of costs and burdens, there must be some procedure for reallocating accident costs equitably.

This Section is designed to meet this need by declaring a principle of reallocation among insurers, in subsection (a), and providing a flexible framework within which the [commissioner] of insurance on his own initiative or insurers, subject to regulation by the [commissioner], may develop an equitable arrangement, improving it from time to time as experience with the new system grows. This could be accomplished by (1) the development of rating classifications that distinguish trucks of various kinds and classes from cars, (2) the establishment of initial rates based on estimates of the average payout the insurer will have to make for each policy in a given classification, and (3) the development in time of revised rates based on projections from actual payouts during the period of experience under the system.

Existing Forms of Reallocation and Pooling. The tort liability insurance system, from its inception, has provided for a form of reallocation commonly called subrogation. Other forms of reallocation as well have been used in recent decades.

Under subrogation procedure, the liability insurer, after paying a claimant, is entitled to enforce certain kinds of legal rights of its insured (on whose behalf it has paid the claimant) against third persons. For example, if two drivers negligently contributed to injuring a pedestrian who was struck by one of the cars after they collided, the liability insurer of one of the drivers, after making a settlement with the pedestrian and taking a full release, is in many states entitled to proceed as subrogee to the insured's cause of action for contribution from the other driver and his liability insurer. Thus, the insurer first paying shifts to the other insurer a part of

the burden of paying compensation to the pedestrian. This form of reallocation among liability insurers has been used virtually as long as liability insurance itself.

Other forms of reallocation within the tort liability system have come into use more recently. One example was developed in states having unsatisfied judgment funds during the period before uninsured motorist coverage was introduced. The fund paid specified classes of claims for injuries sustained in motoring accidents and in effect reallocated a major portion of the burden of those losses through assessments against insurers writing motor vehicle liability insurance in the state. In turn, the insurers were allowed to add, because of these assessments, to their premium charges to policyholders .

These and other reallocation procedures are instances of a broader principle that might be referred to as pooling. Procedures for reallocation accomplish pooling through redistribution of losses after payment of the claims of injured persons. Another form of pooling that is even more familiar involves allocation of risks before losses occur. The most common pooling arrangement of this type is the assigned risk plan (see Section 35). The pooling system of unsatisfied judgment funds is to some extent a pooling in advance of losses since assessments are made in anticipation of losses and not merely in retrospect to cover losses already paid out by the fund.

The two examples of reallocation given above are based on quite different principles of reallocation. One—the subrogation procedure—is a fault-based, case-by-case procedure. That is, the entitlement of one insurer to transfer part of its initially paid costs to another insurer in the system is determined on the basis of fault and is determined for each case separately, no provision being made for dealing with large numbers of cases simultaneously through actuarial procedures. The second illustration—the financing of unsatisfied judgment funds through assessments—is a system of pooling in which the determination of the entitlement of the fund and the liability of insurers to assessments is made for large numbers of cases simultaneously, on the basis of accumulated data and projections for the future.

The Reallocation Principle Under this Section. A case-by-case procedure is inherently more expensive to administer than a procedure under which a determination is made for large numbers of cases simultaneously. Also, a fault-based procedure is inherently more expensive to administer than a procedure under which entitlements and liabilities relating to reallocation are based on criteria that do not require the investigation and marshalling of evidence of fault. Thus, a fault-based, case-by-case reallocation procedure is the most expensive of all. This Act provides for lifetime no-fault benefits covering losses up to very substantial levels and preserves relatively little of the tort system as a source of compensation for injured persons. In this context, it is appropriate also to dispense with fault as a basis for case-by-case reallocation. Thus, the principle of reallocation adopted in this Section is one *not* based on case-by-case determinations of *fault* in collisions between similar vehicles. This is implicit in subsection (a), and subsection (d) explicitly declares that the [commissioner] of insurance shall not permit insurers to establish a system of fault-based, case-by-case reallocation in cases involving only ordinary passenger automobiles.

A second important feature of the principle of reallocation adopted in

this Section is that the criteria for reallocation are concerned with loss-causing propensities of *vehicles*, not drivers. While it would be possible to develop criteria for reallocation based on characteristics of drivers without going all the way to case-by-case examination of their conduct, the expense of administering the reallocation system would rise in proportion to the degree to which the characteristics of individual drivers became relevant. A system of reallocation limited to vehicle characteristics can be based on relatively objective criteria that will hold the costs of administration to tolerable limits, even if a case-by-case reallocation procedure is used. Moreover, to the extent that driver characteristics are reflected in accidents, they will be, to some considerable extent, reflected in claims paid by the driver's insurer. Differences in the amount of claims paid under different drivers' policies can be reflected in rates without reallocation. It is because the tendency of larger vehicles is to more seriously harm lighter vehicles and their occupants that this tendency will be inversely reflected in claims paid by the insurer of the heavier vehicle. The need for a system of reallocation based on vehicle characteristics rests, then, on a considerably stronger argument of necessity than does the need for reallocation to facilitate further refinement of premium charges to drivers with different characteristics.

Reallocation Procedures Under This Section. Subsection (a) states the principle of reallocation broadly, subject to the two limitations explained above. Subsection (c) authorizes the [commissioner] of insurance to establish any system he may devise within this broad framework and also provides for the development of other systems of reallocation devised by insurers and approved by the [commissioner]. Thus, in order to facilitate gradual development of improved systems, subsection (c) provides for initiation of new systems among a limited number of insurers by agreement among them, approved by the [commissioner] of insurance. If some insurers are able to develop procedures that offer promise of improvement, but not such assurance of success as to justify imposition of their system upon all insurers, the [commissioner] may authorize them to use the new procedure as to claims among themselves, even though the procedure detailed in Section 39, or some other procedure prescribed by the [commissioner], continues to apply as between any one of their group and any insurer outside their group. This flexibility for experimentation enhances the prospects for evolutionary development of more sophisticated and less expensive procedures that continue to serve the objectives of equitable allocation of burdens.

Section 39 also details one kind of reallocation system and declares that this specified system shall be operative unless the [commissioner] of insurance approves or establishes some other reallocation procedure within the broad framework of Section 38. This specific system becomes operative only if the [commissioner] does not authorize or establish some other system.

If the specific system of Section 39 should prove to be ideal, it may be retained. But if better arrangements can be devised, Section 38 as a whole creates a flexible framework within which an improved system can be implemented without a change in this Act.

One reason for anticipating that a better system than the one detailed in Section 39 may be devised in time is that this system, though avoiding the expense of administering fault-based criteria for reallocation, does incur the administrative expense of case-by-case reallocation. After experience with the system, the [commissioner] of insurance may determine that nearly

identical allocations of burdens among insurers can be achieved by periodic accounting or "squaring-up" among groups of insurers having a substantial volume of claims and counterclaims for reallocation among them, or even by a pooling arrangement among all insurers on the basis of their respective volumes of specified classes of policies written, rather than upon the basis of claims experience under individual policies. The statute does not mandate the adoption of a general or actuarial procedure, as distinguished from a case-by-case procedure, but it creates the framework within which that kind of system may evolve.

A second reason for anticipating that a better system than that of Section 39 may be devised in time is that the system there provided does not take account of the respective propensities of different vehicles to affect probability and severity of injury to persons because the different vehicles have different devices for the protection of occupants, nor does it take into account vehicle design characteristics, other than weight, which may affect injury severity of non-occupants of the vehicle. If, for example, it should happen that effective air-bag restraint systems that substantially reduce the risk to occupants are installed in some passenger cars, the [commissioner] of insurance may determine that this difference from other passenger cars has enough effect upon the probability and severity of injuries that it is necessary to take this vehicle characteristic into account in the reallocation system in order that, in the language of Section 38(a), "the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons."

Arbitration. In order to minimize the administrative expense and the burden on the judicial system incident to any controversies that may arise among insurers with respect to claims for reallocation, subsection (e) requires that all disputed claims for case-by-case proportionate reimbursement be submitted to binding arbitration rather than being filed in the courts. In view of doubts about both the validity and the desirability of requiring self-insurers and obligated governments to participate in binding arbitrations, they are not included in this provision for compulsory arbitration.

SECTION 39. [*Allocation of Burdens Until System Established*]

If, in a particular case, there is no applicable system of proportionate reimbursement as authorized by the provisions on equitable allocation of burdens among insurers (Section 38(e)) and the [commissioner] of insurance has not adopted by rule other criteria for proportionate reimbursement consistent with those provisions (Section 38(a)), the following standards for case-by-case proportionate reimbursement apply:

(1) In accidents involving motor vehicles in different weight classes, burdens of losses shall be adjusted among reparation obligors and owners of the vehicles in accordance with this Section. Adjustments apply to burdens

of losses of basic and added reparation benefits and to burdens of losses of physical damage to the vehicles.

(2) The [commissioner] of insurance shall adopt rules classifying motor vehicles into a number of classes according to weight, including cargo capacity. All passenger vehicles weighing less than [5000] pounds and other vehicles weighing less than [4000] pounds apart from cargo capacity shall be included in a single class. For the purposes of this Section, a vehicle in this class is a "low-weight vehicle." The [commissioner] shall assign by rule to each class, except the low-weight class, a number of percentages determined as hereinafter provided. The highest percentage for a class applies to accidents between vehicles in that class and low-weight vehicles. Other percentages apply to accidents between vehicles of each lighter weight class and vehicles of the class to which the percentage is assigned.

(3) In an accident involving a vehicle of a lighter class and a vehicle of a heavier class, a proportion of costs which would otherwise fall on the owner of the lighter vehicle or the reparation obligors paying or obligated to pay added reparation benefits for physical damage to the lighter vehicle or basic or added reparation benefits for injury to the owner, driver, or other occupant of the lighter vehicle is imposed upon the reparation obligor of the heavier vehicle. The proportion of costs to be transferred is the percentage assigned under paragraph (2).

(4) Percentages assigned under paragraph (2) shall be based on evidence of the average increase in severity of occupant injury and vehicle damage sustained by vehicles of the various lighter classes in accidents involving the class of heavier vehicles to which the percentage is assigned. Percentages shall be set to provide that reparation obligors and owners of vehicles shall bear, on the average, the costs which would result from accidents involving other vehicles of the same class and that reparation obligors and owners of vehicles in each heavier class shall have transferred to them the percentages of costs which on the average arise from the greater weight of vehicles of their class.

(5) Until the [commissioner] of insurance, in accordance with paragraph (2), has adopted rules classifying motor vehicles into classes according to weight and assigning percentages to each class, the percentage pre-

sumptively applying between a low-weight vehicle and a vehicle not a low-weight vehicle, or between 2 vehicles not low-weight vehicles, shall be determined by subtracting the weight of the lighter vehicle from the weight of the heavier vehicle, including cargo capacity, dividing the difference by the combined weight of the vehicles, and multiplying by 100 to convert to percentage. However, another percentage applies if a party claiming or defending against a claim for reimbursement under this paragraph proves that the other percentage is more consistent with allocating the financial burden of losses according to the propensities of vehicles of the different classes to affect probability and severity of injury to persons or physical damage to vehicles.

(6) In accidents involving more than 2 vehicles each lighter vehicle shall have transferred from it to reparation obligors of the heavier vehicles involved the percentage of cost designated for transfer to the heaviest of those vehicles. Reparation obligors of the heavier vehicles shall contribute to the transferred cost in proportion to the respective percentages designated for them in accidents with vehicles of the class of the lighter vehicle from which the cost is transferred.

COMMENT

As noted in the Comment to Section 38, the system detailed in this Section is intended not as a final answer to the need for reallocation among basic reparation insurers but as a workable system that will function unless and until a better system is devised within the flexible statutory authorization created by that Section as a whole. Also, as noted above, this system, though avoiding fault-based criteria of reallocation, is a system of case-by-case reallocation.

An example will serve to illustrate its operation. Suppose a collision between a car and a truck in a heavy-vehicle class to which the [commissioner] of insurance, in accordance with subparagraph (2), has assigned a percentage of 80 for application when a vehicle of that class is in collision with a car (a vehicle in the low-weight class). Suppose also that the basic reparation insurer for the car pays out $1,000 of medical and hospitalization expense for treatment of injuries to a passenger in the car and is paying out $200 per week in reimbursement of the passenger's lost wages. This insurer is entitled to reimbursement from the basic reparation insurer of the truck to the extent of 80% of the $1,000 medical and hospitalization, 80% of the $200 per week work loss, and 80% of other costs (for example, costs of processing the passenger's claim) that constitute a part of the financial burden on the insurer arising from the passenger's claim.

Until the [commissioner] of insurance has adopted rules classifying

motor vehicles into weight classes, an interim reallocation system is established by paragraph (5), which turns upon the actual weights of the vehicles. Suppose a collision between a passenger car weighing 4,000 pounds and a truck-trailer unit weighing 76,000 pounds, including cargo capacity. Subtracting 4,000 from 76,000 produces 72,000. Dividing 72,000 by 80,000 (the sum of 4,000 and 76,000) and multiplying by 100 to convert to percentage produces 90%. Thus the reparation obligor of the passenger car, after paying benefits to the driver-owner of the passenger car, is entitled to reimbursement from the reparation obligor of the truck to the extent of 90% of the payment and 90% of the administrative cost of handling the claim.

SECTION 40. [*Rates*]

Rate making and regulation of rates for basic and added reparation insurance are governed by [refer to applicable State law].

COMMENT

This Section adopts for basic and added reparation coverages the procedures for making and regulating rates that are applied in the enacting State to motor vehicle tort liability insurance coverage. This Section might be supplanted by distinctive provisions detailing procedures applicable to the new coverages. In States having a distinctive rating procedure for compulsory tort liability insurance, probably the procedure for that coverage should be applied at least to the compulsory aspects of the new coverage.

SECTION 41. [*Rules*]

The [commissioner] of insurance may adopt rules to provide effective administration of this Act which are consistent with the purposes of this Act and fair and equitable to all persons whose interests may be affected.

SECTION 42. [*Rules of* [*Registrar of Motor Vehicles*]]

The [registrar of motor vehicles] may adopt rules to implement and provide effective administration of the provisions on [evidence of security (Section 7(j) and] termination of security (Section 8).

COMMENT

If optional Section 7(j) is not included in the enacted statute, the bracketed language should also be eliminated.

SECTION 43. [*Uniformity of Application and Construction*]

This Act shall be so applied and construed as to effectuate its general purpose and to make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 44. [*Severability*]

(a) Except as provided in subsection (b), if any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the involved provision or application, and to this end the provisions of this Act are severable.

(b) If any restriction on the retained tort liability in paragraph (6) or paragraph (7) of subsection (a) of Section 5, or application thereof to any person or circumstance, is held invalid, this Act shall be interpreted as if the paragraph containing the invalid restriction had not been enacted.

COMMENT

Subsection (a) states the general policy of severability in interpretation of the Act and its application. An exception is made in subsection (b) for the provisions which retain tort liability for noneconomic detriment and excess work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss. In the event any of the limitations on the retention of these tort actions are declared invalid, it is the policy of the Act to abolish these tort liabilities entirely. This policy is based on the unreasonable premium costs that would result from retention of these tort actions if the stated limitations were not applicable.

SECTION 45. [*Short Title*]

This Act may be cited as the Uniform Motor Vehicle Accident Reparations Act.

SECTION 46. [*Repeal*]

The following acts and parts of acts are repealed:

(1)

(2)

(3)

SECTION 47. [*Time of Taking Effect*]

This Act shall take effect ..... Accidents occurring before this date are not covered by or subject to this Act. The [commissioner] of insurance and the [registrar of motor vehicles] shall exercise, prior to the

effective date of this Act, the authority vested in them under this Act to do all things necessary to implement the Act on the effective date.

NATIONAL
OCEANIC
AND
ATMOSPHERIC
ADMINISTRATION

April 10, 1974

Mr. Robert W. Schoning
Director
National Marine Fisheries Service
National Oceans and Atmospheres Admin.
U.S. Department of Commerce
Washington, D. D. 20235

Dear Bob,

Sorry for the delay in my remarks on House Resolution 4760. As you know, NACOA is in support of the high seas conservation act and the Alaska legislature has passed a resolution which I'll include, also supporting it. I don't really feel a change of title is necessary as proposed, but it wouldn't change my support for the bill.

Items 2,3,4, and 5-don't have any objection to these. I like number 6, the change is basically one I would support. No remarks on 7,8,9,10,11, or 12.& 13 and 14-I somewhat object to 15 being removed. Civil penalties really in many cases scare people more than criminal penalities, and you don't have to prove intent--but again, this wouldn't affect my support. 16 is good. 17, I think the old working is best, but still have no objection.

Sorry this is so late, but I'll get it off right now.

Sincerely,

Clem Tillion

cc-Harry Rietze
Director-Alaska
Nat'l Marine Fisheries Service
Box 1668
Juneau, Ak 99801

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

F31

MAR 11 1974

Honorable Clement Tillion
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Clem:

We have been requested by the House Subcommittee on Fisheries and Wildlife Conservation and the Environment to provide a drafting service consolidating many of the original comments received from the States, the industry and other interested persons on H.R. 4760 (High Seas Fisheries Conservation Act). The Subcommittee has asked us to circulate prospective amendments for additional comment from those persons who responded to our initial request and possibly others.

There are two points which I hope you will bear in mind. First, these proposed amendments do not necessarily represent any official Administration position. In the interest of time, no effort has been made to obtain such approval. Instead, we are responding to a Subcommittee request. These amendments merely reflect our best judgment of the consensus from the 70 or so respondents who provided us with the original comments.

The second point which I would wish to impress upon you is that time is critical. Consequently, if you wish to make further suggestions concerning these proposed amendments and possibly other ways in which you feel that this legislation can be improved, please let us have your comments as soon as possible. We have been asked to report back to the Subcommittee as soon as possible.

I appreciate your splendid cooperation.

Sincerely,

Bob

Robert W. Schoning
Director

Enclosure

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
P. O. BOX 1668 - JUNEAU, ALASKA 99801

March 6, 1974

Hon. Clem Tillion
Halibut Cove, Alaska 99603

Clem

Dear Mr. Tillion:

Enclosed is a summary of the proposed amendments to H.R. 4760, the High Seas Fisheries Conservation Act, and a copy of the act as it would be amended. The amendments do not represent an official position of the Administration, but embody suggestions made to the House of Representatives, Subcommittee on Fish and Wildlife. At the request of the Subcommittee our Service is circulating these proposed amendments for additional comments. If the amendments generally cover the suggestions made to the subcommittee, we believe Congress will respond favorably to the amended bill because this kind of legislation is needed to improve fisheries management.

We would appreciate it if you would review the summary and the bill at your earliest convenience, and let us have your thoughts either by collect call or the enclosed, self-addressed envelope. We wish to emphasize that time is critical, for our Service must report to the Subcommittee as soon as possible.

We are particularly interested in whether you would support the bill as it is amended.

Our office telephone number is 586-7221. We look forward to hearing from you.

Sincerely,

Bob McVey

Harry L. Rietze,
Director, Alaska Region

Attachments

SUMMARY OF PROPOSED AMENDMENTS TO
H.R. 4760 (HIGH SEAS FISHERIES CONSERVATION ACT)

1. Page 1, line 3.

disagree

The title of the bill was said to be misleading since it implied that foreign vessels might be subject to U.S. regulations on the high seas. By deleting the words "High Seas", this objection is eliminated.

2. Page 1, line 4.

Deletes the year 1973, substituting the year 1974 because although the bill was introduced in 1973 it did not become law during that year.

3. Page 2, line 7.

The definition of activities in support of fishing as originally drafted was broad enough to include various shore activities. By inserting the words "at sea" between the words "activity" and "in", this definition was narrowed to exclude any shore activities in support of fishing.

4. Page 2, line 22.

The Act of October 14, 1966 (80 Stat. 908) defines the fisheries zone as extending 9 nautical miles seaward from the outer limits of the territorial sea. The language proposed in the amendment would merely take account of any future extension of the fisheries zone.

5. Page 3, line 20.

It was felt by some respondents that biological consideration had not received sufficient attention in the bill. It was also felt that inclusion of the word "nutritional" might give FDA an opportunity to place overly severe regulations on sea food. By substituting the word "biological" for "nutritional", both problems are removed.

6. Pages 3 and 4, lines 22-5 (paragraph iii).

Good

There were many objections to the subsection dealing with the prohibition of fishing in waters found by the Secretary, in consultation with the Food and Drug Administration, the Environmental Protection Agency and State sanitation authorities, to be unsanitary. Therefore, this amendment proposes deleting the entire subsection.

7. Page 4, line 6.

The reference to paragraphs (ii) and (iii) had to be changed since paragraph (iii) described in the previous paragraph was deleted.

8. Page 4, line 16.

It was proposed that the language "except that such permits shall not be used for revenue purposes" be deleted because it is entirely possible that under some kind of extended fisheries jurisdiction, foreign fishermen might be permitted to fish for certain species. If this were to happen, there should be authority to charge suitable user fees to defray the costs of management.

9. Page 4, line 17.

A major problem, which developed when the States, industry and fishermen reviewed the original draft of H.R. 4760, was the concern that U.S. fishermen might be subjected to "high seas" regulations which foreign fishermen operating in the same fishery would not be required to obey. The language which appears on page 4, beginning on line 17 meets this problem by explicitly prohibiting the Secretary from enforcing any regulations over U.S. fishermen in those fisheries where foreign fishermen are also meaningfully engaged, if the foreigners are <u>not</u> similarly regulated.

10. Page 4, line 25.

There was concern expressed about the language "to the extent practicable" in the subsection describing consultations the Secretary would have with States, industry persons and others before promulgating regulations. Many people felt this language would pave the way for unilateral action by the Secretary. Consequently, the objectionable phrase would be moved by this proposed amendment so that it would only apply with respect to "persons generally interested in the conservation of fish in these waters..." (see item below).

11. Page 4, line 26.

Reflects the same objection mentioned above. By deleting "with persons" and adding "with the commercial and recreational fishing industries, and to the extent practicable, with persons generally", it was believed that greater public participation would be obtained in the rule-making process.

12. Page 5, line 15.

"Thirty days" was the time period in which interested persons could file objections or comments before regulations could be promulgated. Some comments, however, expressed concern that the 30-day period might be too brief a time for appropriate responses to be prepared. Consequently, an alternate of 45-days has been proposed.

13. Page 7, line 6.

There was concern that arbitrary, and perhaps unreasonable, regulations might be promulgated. Therefore, the words "including a statement of the reasons therefore" were added to the language which requires the Secretary to make his determinations public.

14. Page 12, lines 22 and 23.

This amendment increases the possible penalty for second offences by making provision for vessel forfeiture or the value of the vessel as determined by the court.

15. Page 13-14, lines 21-8.

should be left

This subsection, which provided for a civil penalty, was deleted because of the belief that all matters involving possible criminal behavior should be handled by the courts.

16. Page 15, line 20.

This proposed amendment would permit seizure of the vessel as well as fish and fishing gear. This amendment is technical since the court could not forfeit any vessel over which it did not have jurisdiction. This amendment would provide that jurisdiction

17. Page 17, line 20.

old wording best

This amendment is intended to clarify the fact that nothing in this bill is intended to modify any existing or prospective State jurisdiction.

93D CONGRESS
1ST SESSION

H. R. 4760

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1973

Mr. DINGELL (for himself, Mr. GROVER, Mr. LEGGETT, Mr. MAILLIARD, Mr. METCALFE, Mr. RUPPE, Mr. GOODLING, Mr. MCCLOSKEY, Mr. STEELE, Mr. FORSYTHE, Mr. MILLS of Maryland, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for the conservation and management of fisheries and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "~~High Seas~~ Fisheries Conservation Act of 197~~5~~3."

DEFINITIONS

SEC. 2. For the purposes of this Act, the term—

(a) "International Fishery Agreement" means any bilateral or multilateral agreement to which the United States is a party, dealing with fishery management or conservation,

but does not include those provisions of any agreement which deal solely with methods of enforcement at sea.

(b) "Contracting party" means any government party to an international fishery agreement;

(c) "Fishing" means the catching, taking, harvesting, or attempted catching, taking or harvesting of any species of fish for any purpose, and any activity in support of such taking, catching, or harvesting.

(d) "Fish" includes mollusks, crustaceans, marine mammals (except polar bears, walrus, and sea otter) and all other forms of marine animal or plant life, exclusive of birds, including the Continental Shelf fishery resource as defined in the Act of May 20, 1964 (78 Stat. 196);

(e) "Vessel" means every description of watercraft or other contrivance which is used or is capable of use on water for fishing purposes;

(f) "Owner or operator" means any individual, firm, corporation, association, partnership, government or government enterprise which owns, operates, or charters a vessel;

(g) "Fisheries Zone" means the zone contiguous to the territorial sea of the United States which was established by the Act of October 14, 1966 (80 Stat. 908), as the same may be amended;

(h) "Secretary" means the Secretary of Commerce;

(i) "State" means the several States of the United

States; the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(j) "Person" means any individual, corporation, partnership, association, or organization.

REGULATIONS

SEC. 3. (a) The Secretary is authorized to promulgate regulations governing fishing in the fisheries zone and all high seas seaward of such zone by vessels of a party to an international fishery agreement with the United States, pursuant to and for the purposes of such agreement.

(b) The Secretary is also authorized to promulgate regulations governing fishing in the fisheries zone and all high seas seaward of such zone by vessels documented under the laws of the United States, or otherwise registered under the laws of any State, for the purposes of—

(i) fulfilling the international obligations of the United States under any international fishery agreement;

(ii) conserving and managing the fish in such waters in such manner as the Secretary determines will result in the optimum overall ~~nutritional~~ biological, economic, and social benefits; and

~~(iii) controlling or prohibiting the fishing for fish which the Secretary determines, in consultation with the Food and Drug Administration, the Environmental Pro-~~

~~tection Agency, and State sanitation authorities, to be unsanitary for the purpose for which they are intended, on the basis of examination of the fish or the water quality of the marine environment from which such fish were taken.~~

Regulations under paragraphs (ii) ~~and (iii)~~ of the subsection (b) may designate zones where, and establish periods when, no fishing shall be permitted; establish size and catch limits for any species of fish; prohibit the use of certain types of fishing gear, and prescribe such other measures as the Secretary deems appropriate to carry out such purposes. In making any determination as to appropriate conservation and management measures, the Secretary may take into account relevant economic and social factors, and shall consider whether such measures will unreasonably limit competition. The Secretary may provide by regulation for the issuance of permits related to and in furtherance of such measures~~,~~ ~~except that such permits shall not be used for revenue~~ purposes. The Secretary shall not impose or enforce any regulations in areas beyond the fisheries zone if he determines that the species of fish which he desires to manage is being harvested on a meaningful basis by vessels not subject to the jurisdiction of the United States unless such vessels will be subject to the same or similar regulations.

(c) The promulgation of regulations under this section shall be governed by the following rules:

(i) Before any regulations are promulgated under this section, the Secretary shall, ~~to the extent practicable~~, consult with other agencies, with the interested States, ~~with persons~~ with the commercial and recreational fishing industries, and to the extent practicable, with persons generally interested in the conservation of fish in these waters, and in the enhancement of all aspects of

the marine fisheries of the United States, for the purpose of obtaining adequate information to develop reasonable and effective regulations: *Provided, however*, that insofar as such regulations are applicable to foreign vessels beyond the fisheries zone, the Secretary shall consult with the Secretary of State, and *Provided further*, that insofar as such regulations involve methods and procedures for enforcement at sea, the Secretary shall consult with the Secretary of the Department in which the Coast Guard is operating.

(ii) The Secretary shall publish in the Federal Register the regulations which he proposes to promulgate for all of part of the waters of the fisheries zone and all high seas seaward of such zone. Interested persons shall be afforded a period of not less than ~~thirty days~~ forty-five after such publication within which to submit written data, views, or comments. Except as provided in paragraph (iii) of this subsection, the Secretary may, after the expiration of such period and after consideration of all relevant matters presented, promulgate the regulations with such modifications, if any, as he deems appropriate.

(iii) On or before the last day of a period fixed for the submission of written data, views, or comments, any person who, or State which, may be adversely affected by

such proposed regulations may file with the Secretary written objections to the specific provisions of such proposed regulations, stating the grounds therefor, and may request a public hearing on such objections. If the Secretary determines that the person filing objections may be adversely affected, or if a State requests a hearing, the Secretary shall not promulgate regulations with respect to which such objections have been filed until he has taken a final action upon them as provided in paragraph (iv) of this subsection.

(iv) As soon as practicable after the period of filing objections has expired, if the Secretary determines that the person filing objections may be adversely affected, or if a State requests a hearing, the Secretary shall publish in the Federal Register a notice specifying the time and place at which a public hearing shall be held, and the provisions of the regulations to which such objections have been filed and such other provisions as he may designate for consideration and shall hold a public hearing in accordance with title 5, United States Code, section 553 for the purpose of receiving information relevant to the matters identified in the notice of hearing. If two or more persons or States request hearings within the prescribed period and the Secretary deems such hearing appropriate, the Secretary may, as

he deems appropriate, consolidate such hearings in the interests of time and economy. At the hearing any interested person or State may be heard. As soon as practicable after the completion of the hearing, the Secretary shall act upon such objections and make his determinations public, including a statement of the reasons therefor, and shall promulgate the regulations with such modifications, if any, as he deems appropriate.

(v) The Secretary may from time to time revise such regulations in accordance with the procedures prescribed in paragraphs (i) through (iv) of this subsection.

(vi) Notwithstanding the provisions of paragraphs (ii) through (v) of this subsection, the Secretary may waive the requirements for notice and public hearing detailed herein, if he finds (and incorporates the finding and a brief statement of the reasons therefor in the publication of the rule) that, due to an emergency situation, notice and hearing thereon are impracticable, unnecessary, or contrary to the public interest. Written objections may be submitted within thirty days of the effective date of the emergency regulation. If any such written objection is so received, the Secretary shall, not later than forty days after the effective date of the emergency regulation, initiate the procedures in paragraphs (ii) through (iv). The emergency regulation shall remain

in effect for ninety days beyond the date on which the Secretary publishes the notice of proposed rulemaking required in paragraph (ii), unless the Secretary terminates the regulation by notice in the Federal Register at any earlier date.

APPLICATION TO OTHER TREATIES, CONVENTIONS, AND LAWS

SEC. 4. The provisions of this Act shall be deemed to be in addition to and not in contravention of the provisions of any existing international fishery agreement, or any statute implementing the same, which may apply to the subject matter of this Act.

STATE REGULATIONS

SEC. 5. (a) In the exercise of his powers under subsection 3 (b), and subject to subsection (c) of this section, the Secretary may, at any time, adopt as Federal regulations the regulations of any State or group of States regarding fishing adjacent to such State or States in the fisheries zone or in all high seas seaward of such zone, if he finds that such regulations will achieve the objectives of subsection 3 (b), taking into account, as he deems appropriate, uniformity with other regulations.

(b) Any regulations adopted pursuant to this section shall become Federal regulations, and shall be subject to modification, amendment, revision, or revocation in the same

manner as regulations adopted pursuant to subsection 3(c) of this Act.

(c) For the purposes of subsection (a) of this section, any State or group of States may submit regulations to the Secretary for adoption. The Secretary shall within one-hundred and eighty days indicate his approval or disapproval of such regulations with notice thereof to the State or group of States which submitted them. In the event of disapproval, such notice shall specify the reason therefor, and the State or group of States which submitted the regulations shall be entitled, within sixty days of the receipt of notice of disapproval, to request a hearing on the matter. All interested parties may be heard at such hearing, and evidence may be offered. The burden shall be on the State or group of States to show that the regulations should be approved. Unless the Secretary shall have indicated his disapproval of such regulations within the one-hundred-and-eighty-day period specified above, he shall proceed promptly with respect to such regulations in accordance with the procedures set forth in subsection 3(c) of this Act.

(d) The Congress hereby consents to any compact or agreement which is not in conflict with any law or treaty in force of the United States, between any two or more States for the purpose of preparing regulations for submission to the Secretary in accordance with this section. The

right to alter, amend, or repeal this subsection or the consent granted herein is expressly reserved to the Congress.

AGREEMENTS WITH FOREIGN COUNTRIES

SEC. 6. (a) The Secretary of State, in consultation with the Secretary, and when appropriate, with the Secretary of the Department in which the Coast Guard is operating, may engage in negotiations with any contracting party to the Convention on Fishing and Conservation of the Living Resources of the High Seas in regard to measures for the conservation of the living resources of the high seas, when such negotiations are necessary to carry out the purposes of articles 4, 6, 7, 8, and 12 of the aforesaid Convention and with any contracting party to any other international fishery agreement.

(b) The Secretary of State shall notify the Secretary of receipt of the following pursuant to the aforesaid Convention:

(1) Communications from the Director-General of the Food and Agriculture Organization of the United Nations, as provided in article 5 (1) of the Convention;

(2) Notice of the adoption of conservation measures by any contracting party pursuant to article 7 (1) of the Convention;

(3) Notice of findings of a Special Commission provided for by article 9 of the Convention;

(4) Notification of the withdrawal of a conservation measure by the contracting party initially adopting such measures; and

(5) All other communications related to the duties of the Secretary under the Convention.

(c) The Secretary of State shall, upon notification from the Secretary of the promulgation of regulations pursuant to subsection 3 (a) of this Act for waters of the high seas seaward of the fisheries zone, notify the Director-General of the Food and Agriculture Organization of the United Nations and any Contracting party to the aforesaid Convention whose nationals fish in the waters covered by such regulations of their contents. The Secretary of State, in consultation with the Secretary, is authorized to enter into agreements with any contracting party to the aforesaid Convention for the implementation of regulations adopted by the United States or by such contracting party pursuant to the aforesaid Convention in waters beyond the respective jurisdiction of any such contracting party. Such agreements may provide for authorization of designated personnel of a contracting party to act as enforcement officers in implementing such regulations.

(d) The Secretary of State, in consultation with the Secretary, may, with regard to the aforesaid Convention:

(1) Enter into an agreement with any contracting party for the establishment of a Special Commission pur-

suant to article 9 of the Convention, and for the payment of costs and expenses of such Special Commission.

(2) Appoint the United States member to the Special Commission; and

(3) Appoint, upon the request of any contracting party to the Convention or upon the request of the Secretary-General of the United Nations, members to a Special Commission invoked to resolve a dispute between contracting parties to the Convention and to which dispute the United States is not a party.

PROHIBITIONS--PENALTIES

SEC. 7. In the case of vessels not documented under the laws of the United States or otherwise registered under the laws of any State, penalties or prohibitions with respect to fishing in all high seas seaward of the fisheries zone will only be applied if pursuant to and for the purposes of an applicable international fishery agreement.

(a) Any owner or operator of a vessel who knowingly engages in fishing in violation of any regulation pursuant to this Act shall, upon conviction, be fined not more than $25,000, and for each subsequent offense of a similar nature, in addition to a fine, the fish or ~~the~~ fishing gear ~~on board such vessel~~ such vessel, including its, or both, or the monetary value thereof as determined by the court, may also be ordered forfeited

in whole or in part to the United States or otherwise disposed of by the court.

(b) Whoever knowingly ships, transports, purchases, sells, offers for sale, imports, exports, or has in custody, possession or control any fish taken in violation of such regulations shall, upon conviction, be fined not more than $5,000, and for each subsequent offense of a similar nature, not more than $10,000.

(c) Whoever knowingly—

(1) fails to make, keep, submit, or furnish any record or report required by regulation to be made, kept, submitted, or furnished;

(2) refuses to permit anyone authorized pursuant to section 8 to board a vessel for the purposes of inspecting the catch and fishing gear, or resists any lawful arrest;

(3) refuses to permit anyone authorized pursuant to section 8 to inspect any record or report required by regulation to be made, kept, submitted, or furnished,

shall, upon conviction, be fined not more than $10,000.

~~(d) Any vessel used in fishing in violation of any regulation promulgated under this Act shall be liable for a civil penalty of not more than $10,000. Such penalty shall be~~ ~~assessed by the Federal district court in the district having~~

~~jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States may be withheld until such penalty is paid or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the Federal district court of the United States having jurisdiction over the vessel.~~

ENFORCEMENT

SEC. 8. This section applies only under the express terms of Section 3. For vessels other than those documented under the laws of the United States or otherwise registered under the laws of any State, enforcement on all high seas beyond the fisheries zone is authorized only when pursuant to and for the purposes of an applicable international fishery agreement.

(a) The provisions of this Act and the regulations issued thereunder shall be enforced by the Secretary, and the Secretary of the Department in which the Coast Guard is operating. The Secretary and the Secretary of the Department in which the Coast Guard is operating may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or, for the purpose of enforcement with respect to any vessel in the fisheries zone, or, wherever found, with respect to any vessel docu-

mented under the laws of the United States or otherwise registered under the laws of any State, any State agency, in carrying out the provisions of this Act and the regulations issued thereunder, including those relating to enforcement.

(b) Anyone authorized pursuant to subsection (a) of this section to enforce the provisions of this Act and the regulations issued thereunder may—

(1) Board and inspect any vessel documented under the laws of the United States or otherwise registered under the laws of any State or any other vessel subject to the jurisdiction of the United States pursuant to subsection 3(a), and its catch and gear upon the waters of the fisheries zone or upon all high seas seaward of such zone;

(2) Arrest any person, with or without a warrant, when he has reasonable cause to believe that such person has violated this Act or any regulation issued hereunder.

(3) Execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) ~~Seize all fish and fishing gear found on board any vessel~~ Seize the vessel, including all fish and fishing gear which violates the provisions of this Act or any reglations issued thereunder and any fish taken in violation of this Act or the regulations issued thereunder wherever found. Any fish and fishing gear so seized may be disposed of pursuant to an order of a court of com-

petent jurisdiction, or, if perishable in a manner prescribed by regulations.

(c) State officers authorized pursuant to subsection (a) to function as Federal law enforcement agents shall not be considered to be Federal employees of the United States for the purposes of any laws administered by the Civil Service Commission.

(d) The Federal district courts shall have exclusive jurisdiction over all cases arising under this Act, and may issue all warrants or other processes as may be necessary. In the case of Guam, actions arising under this Act may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions.

(e) Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the respondent or claimant of the fish a bond or other surety satisfactory to the court, conditioned to deliver the fish seized, if condemned, without impairment in value or, in

the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or other surety shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

STATE JURISDICTION

~~SEC. 9. Nothing in this Act shall be construed to -~~
~~(a) restrict the authority of any State to regulate its citizens regarding fishery matters where such regulation is not contrary to regulations adopted pursuant to this Act;~~
~~(b) extend the jurisdiction of the States to the natural resources beneath and in the waters beyond the territorial seas of the United States, or to diminish their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.~~

SEC. 9. Nothing in this Act shall be construed to extend or diminish the jurisdiction of any State seaward of the coastline of the United States.

APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEVERABILITY

SEC. 11. The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

TRAFFIC OFFENCES

ADMIN. ADJUD.

U.S. Department
of Transportation
National Highway
Safety Advisory
Committee

FINAL REPORT OF THE AD HOC TASK FORCE ON ADJUDICATION OF THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

JUNE 1973

FINAL REPORT OF THE AD HOC TASK FORCE ON ADJUDICATION OF THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

June 1973

INTRODUCTION

A special ad hoc task force of nine lawyer members within and appointed by the National Highway Safety Advisory Committee, together with administration staff, has reviewed over a three months' period the present traditional judicial adjudication of traffic violations, innovations in New York, Florida, Virginia, and California, available written materials, and similar findings of other commissions studying present United States methods of traffic adjudication.*

EXECUTIVE SUMMARY OF TASK FORCE FINDINGS AND RECOMMENDATIONS

The present traditional lower criminal court processing of traffic violations in the U.S., using sentences of fines and incarceration, evolved for the purpose of determining the guilt or the lack of guilt of an offender charged with a criminal complaint.

Because conviction would involve a jail sentence, adjudication historically has been by the judiciary to accord full protection of constitutional due process. In fact, however, jail sentences are imposed in very few traffic cases and all but the most serious offenses are processed by mail or bail forfeiture. In the present process, self-adjudication and self-sanctioning are the norm.

Findings

- Traffic offense adjudication under the traditional traffic law system is reasonably adequate in the determination of guilt or lack of guilt. However, traffic case processing is beset by many problems and has proved to be less than ideal in contributing to improvements in traffic safety.
- Traffice offense adjudication as presently constituted has made little demonstrable contribution toward newly formed societal goals of the promotion of traffic safety and the improvement of driver behavior. It is not an adequate subsystem or traffic law system component. It has had little measurable effect in deterring initial or subsequent traffic violation by offenders or other drivers. In this, traditional criminal court traffic case processing is inadequate and ineffective.
- Traffice offense adjudication is a key component of the traffic law system. The promotion of traffic safety depends on adjudication's effectiveness within the system. Traditional traffic case processing does not sufficiently emphasize both selective

*Detailed information on task force composition, activities and report documentation is contained in the appendices. Advisory Committee member comments are included in Appendix B.

adjudication and the goals of highway safety and driver improvement through retraining and rehabilitation.

- All traffic offenses do not have the same degree of severity or potential severity; thus, all offenses should not command the same degree of criminal processing and sanction time and resources. Traffic case adjudication inadequately differentiates between the problem driver and the average traffic offender.

Recommendations

To achieve integrated traffic law system components which combine traffic adjudication with traffic safety and improved driver behavior, a new approach to traffic case processing, which contains the following basic features, is recommended:

- Adjudicate a lower-risk category of "Traffic Infractions" by simplified and informal judicial, quasi-judicial or para-judicial procedures.
- Process high-risk offenses criminally.
- Combine "Traffic Infraction" and high-risk criminal traffic offense sentencing with driver improvement and rehabilitation programs.
- Eliminate incarceration as a "Traffic Infraction" sanction.
- Give priority to identifying problem drivers, assigning them to treatment and monitoring the results.
- Create an adequate electronic data processing system to serve police, law enforcement, driver licensing and traffic adjudication; especially for the purpose of identifying the problem driver.

REPORT BACKGROUND

General

The traditional criminal court processing of traffic cases evolved nationally when the only government body available to process these cases was the lower courts and the judges elected and appointed to serve these courts. The punishment for recalcitrant drivers fell within the felony and misdemeanor legislative categories. For many years it was believed that jail confinement or fines or the fear of this punishment coupled with personal appearance before a judge would deter traffic offenders. At that time the volume of traffic cases was not great. As the caseload increased, informal non-criminal case processing methods were adopted. Traffic adjudication was designed to be the key evaluation element in the traffic case disposition process, which consists of law enforcement citation, prosecution of the offense, case adjudication and penalty sanction application on a determination of guilt. Adjudication was intended to provide the legal control and audit of driver behavior in the complex highway safety environment.

With growing motor vehicle registration and numbers of licensed drivers, certain deficiencies and inefficiences became more evident in the present traditional court processing of traffic cases. To further aggravate this situation, America became an auto-mobile society. While a driver's license as a matter of policy and law is generally a "privilege, and not a right," the license to drive an automobile is the keystone of citizen mobility and frequently a mainstay of economic livelihood.

Traffic cases numerically have escalated and eclipsed the caseload of non-traffic offenses. As much as 80 percent of the caseload (exclusive of parking) of many lower courts is traffic.

Constitutional Due Process

The U.S. Supreme Court has recently ruled that a series of constitutional due process requirements are essential to criminal traffic court trials: elimination of the mayors' courts which assess fines as a revenue source for the political unit of governmental involved in the arrest; elimination of incarceration for the non-payment of fines; right of trial by jury for other than petty offenses; and right of an appointment of counsel for an indigent for any traffic offense in which there is likelihood of jail confinement. The effect of these decisions has been to make the present system function more slowly and at greater cost, at a time when traffic caseloads were escalating.

Increasing Traffic Offense Caseloads

Until 1968 this Nation has registered annually an increasing rate of highway accidents and fatalities. This has led to public indignation and outcry to do something to stop the highway slaughter. Legislators have reacted by passing laws defining new traffic offenses, by establishing cumulative point systems for traffic violations which can result in license suspension, and by making sentences mandatory for certain serious offenses. More laws lead to more law enforcement. Greater law enforcement in turn generates more caseload in the court.

To avoid the loss of license and/or jail confinement, offenders threatened with such sanctions increasingly have resorted to litigation to buy time or interim driving privileges. This in turn has increased court caseloads at the appellate level where more traffic cases in competition with non-traffic criminal and civil cases often contribute to case delay.

Penalties which are mandatory or overly harsh tend to be subverted by police or prosecutors, juries or judges and such penalties not only encourage more litigation but have proved to be counter-productive in the promotion of traffic safety. Pending litigation, the offender continues to drive without any correction of failures—and, if dangerous, imperils the driving public.

An unplanned subsystem of traffic justice which is not swift, timely, uniform or professionally managed and frequently is negotiable, is unsatisfactory. Alcohol and drug problems have further pyramided caseloads and have introduced into adjudication medical, as well as behavioral, remedial needs.

The Judges

Only a limited number of traffic case judges have any special training or interest in their work. A serious problem has been the lack of adequate traffic judge training programs. A moratorium on the American Bar Association's Traffic Court Program's regional traffic court judge training has recently occurred. Although many individual courts and communities are dedicated in traffic service, this form of judicial activity has not proven sufficiently popular or rewarding to produce a large number of judicial experts trained in traffic law adjudication and highway safety.

good reason to remove from COURTS (may retain in JUDICIARY)

Lack of Highway Safety Effectiveness

There is no evidence which demonstrates that the traditional criminal court processing of traffic is highway safety cost effective. However, there is evidence that the offender's appearance in court does not have any positive deterrent effect on subsequent poor driver behavior. Court appearance is more often regarded by the public as an embarrassment, economic nuisance and inconvenience. While certain individuals can be categorized by State licensing authorities as problem drivers, insufficient screening, adjudication and sanction

selection time is applied to them. Nationally, traffic offense processing fails to differentiate between the problem driver and the infrequent traffic offender. To be highway safety cost effective, traffic adjudication should expend greater resources on identifying the problem driver. Timely access to complete and accurate driver record information is essential to this effort.

Retraining and Rehabilitation

Traditional criminal court traffic case processing deals in a high volume caseload which minimizes the beneficial latitude of handling cases on a one-to-one basis. The adversary process inherent in court procedures assists in adjudication of guilt or innocence, but it does not assist the individual in resolving his unique driver behavioral, personal or medical problems. The Task Force found that the present traditional criminal court processing of traffic cases emphasizes adjudication to the exclusion of driver improvement oriented programs. It should be stressed, however, that some of this is due to the lack of validated State driver improvement programs.

Traffic Adjudication Communication, Coordination and Integration

Traffic case processing by the judiciary operates independently of the licensing agency. Violation reporting by the courts is sporadic and incomplete. There is a paucity of driver information exchange from licensing authority record files. Judges generally fail or are unable to access the prior driving record of the traffic offender. Retrieval of data from manually maintained driver record files cannot be speedily accomplished by the adjudicator to identify the chronically bad, medically impaired, alcoholic or drug-using drivers.

Courts processing traffic cases generally operate independently and with minimum communication and coordination with the Governor's Highway Safety Representative, traffic law enforcement, driver licensing, driver education or driver improvement programs and medical rehabilitation agencies.

REPORT RECOMMENDATIONS AND ELEMENTS

1. *Expand the traffic adjudication component of the traffic law system to embrace both the goals of adjudication and promotion of highway safety, giving equal weight to both purposes.*

This will require the planning of a totally new traffic adjudication subsystem to the traffic law system, which integrates and combines the need of both adjudication and improvement of driver behavior.

This can be accomplished within the proposed revised National Highway Traffic Safety Administration's Standard N-7 on traffic offense adjudication. Development and promulgation of this proposed standard is specifically commended and endorsed by this Ad Hoc Task Force.*

The adjudication subsystem possible under such a standard will permit maximum State innovation and experimentation within the diversity of the Federal system by utilizing the strengths of the Federal-State partnership.

2. *Reclassify all but the most serious traffic offenses from the categories of criminal felonies and misdemeanors to a newly created third level of offenses to be known as "Traffic Infractions."*

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*See NHTSA proposed revised Traffic Courts and Adjudication Systems Standard, Appendix K.

All traffic violations shall be categorized as "Traffic Infractions," except for offenses which involve serious injuries or fatalities, leaving the scene of an accident, driving on a suspended or revoked license, alcohol or drug, or reckless driving, which remain as criminal offenses.

This new category of "Traffic Infractions" shall not require the revision of police or traffic law enforcement methods. It will allow a variety of improved traffic adjudication procedures to be used without application of burdensome and inappropriate criminal procedure requirements. The imposition of jail sanctions shall be eliminated under this category.

Traffic offense adjudicators shall have available a broader range of penalty and treatment sanctions. In first offense "Traffic Infraction" cases a fine would be imposed. On additional convictions more severe fines would be assessed. When the offender is classified as a potential or an actual problem driver, treatment shall be applied in addition to penalties and license restriction or withdrawal action.

3. *Structure a governmental traffic offense adjudication subsystem, either as part of an administrative agency separate from the judiciary, or within the judiciary, as each State may elect.*

Require, in either alternative, adjudicative processes independent of both law enforcement and licensing agency functions.

Establish a new subsystem by legislative enactment or appropriate court rule and require legislative committee or judicial council review of its operation every six years.

Fund the combined adjudicative-rehabilitative and system support efforts with an adequate level of State legislative appropriations apart from identified traffic generated revenue.

4. *Adopt a more simplified, informal and administrative type of procedural machinery for "Traffic Infraction" adjudication and sanctioning.*

Develop uniform sanctioning policies within each State, including uniform bail and fine schedules, to be used by traffic adjudicators.

All "Traffic Infraction" cases shall be disposed of within 30 days of date of citation.

Permit first offender self-adjudication and sanctioning by mail or violations bureau unless the offense is classified as a mandatory appearance case.

Provide every cited motorist with the right to appear in person for adjudication.

Provide every cited motorist with the right to an immediate hearing on "not guilty" or "guilty with an explanation" pleas. } "before"

Defense attorneys shall not be required, but would be permitted. There shall be no entitlement to court appointment of counsel in case of indigency.

Right of jury trial shall not be afforded.

Rules of civil, rather than criminal procedure, shall be preferred. The burden of proof shall be by preponderance or a predominance of, or clear and convincing evidence, rather than by the criminal standard of proof beyond a reasonable doubt.

Provide every convicted motorist with an immediate, inexpensive right of judicial appeal.

5. *Develop a Statewide traffic case adjudication, coordination and management subsystem which utilizes advanced record keeping, storage, retrieval and dissemination techniques.*

Appoint a traffic adjudication subsystem administrative manager within each State. the manager shall develop and supervise a uniform system and train traffic case adjudicators and administrators. He shall annually collect and evaluate adjudication data and recommend improvements to the appropriate judicial and legislative authorities.

Traffic adjudicators shall be lawyers specially trained in traffic adjudication and highway safety. Continuing re-education programs shall be instituted and required.

Verbatim records shall be maintained in all trials of offenses which could result in license suspension

The licensing authority shall issue a notice of intent to suspend the license of any person cited for a traffic offense who fails to answer a summons.

An ultimate electronic driver record data processing system (EDPS)—with direct input and retrieval terminals at law enforcement, license authority and adjudication facilities—shall be designed. A principal component of such a system shall be the use of a uniform traffic citation within each State.

6. *Improve highway safety implementation by traffic adjudication identification of problem drivers, assignment to appropriate driver improvement screening programs and monitoring of the assignment results.*

Mandatory violator adjudication appearance shall be required in all criminal cases and "Traffic Infractions" arising out of accidents, no operator's license, speeding in excess of 15 miles per hour above the posted limit and violations, the conviction of which might result in licensing agency discretionary action.

In mandatory appearance cases, traffic adjudicators shall be provided with complete offender driving records and all pertinent background information to assist in sanction selection.

Traffic adjudicators shall be given a list of available and qualified driver improvement and medical rehabilitation agencies and programs.

Driver analysts and other rehabilitation and driver improvement specialists shall be used to screen and assign potential problem drivers to treatment programs.

With the possible exception of youthful offenders, the majority of first offenders shall continue to be disposed of by fines. Once a driving behavior problem is identified, adjudication emphasis shall shift from punishment to treatment.

To reduce recidivism, selective and priority attention shall be given to the problem driver.

CONCLUSION

The Task Force believes that adoption by the states of the Report Recommendations and their elements would result in a more ideal traffic law system which will advance highway safety through traffic offense adjudication. Implementation of the recommended traffic adjudication subsystem would offer a higher probability of contributing to the reduction of traffic accidents and fatalities than the traditional court adjudication process presently in operation. However, to achieve this ambitious highway safety goal through a more cost effective adjudication subsystem may require a higher level of public funding.

The recommended traffic offense adjudication subsystem is conceived to protect the constitutional rights of the driving public, improve driver behavior and enhance society's interest in highway safety. Concurrent by-products would be to unclog the lower court dockets, enable judges to devote their valuable time to serious traffic and criminal cases and to enhance the promotion of traffic adjudication justice.

re New York legislation

AS 23.04

MEMORANDUM

TO: BOB BREEZE

FROM: JEFF PREEFER

DATE: NOVEMBER 27, 1974

RE: DECRIMINALIZATION OF TRAFFIC OFFENSES

You asked for a review of the proposals to decriminalize traffic offenses. This memo reviews only Chapter 6, Administrative Adjudication of offenses.

Sec. 28.06.010 Regulations. (a) It seems a court may have jurisdictions over some charges which may be classified as both an infraction and a criminal charge. I believe that the author is referring to driving while intoxicated, reckless driving, and negligent driving charges. This means that the case could end up either in court or before a commissioner, but no procedure exists to determine who shall hear the case.

(b) Seems to indicate that where a charge alleges an offense other than an infraction, the commissioner shall notify the court and request removal of the case to court. However, the court is not required to accept jurisdiction. Second, if the offense is classified as both an infraction and a criminal charge, is it "an offense other than an infraction"? If not, it is possible the commissioner may choose not to notify the court.

Paragraph (b) also allows a transfer of the case to the courts where motorist fails to appear. Why? Is there no better way to enforce rules. By allowing transfer, the courts will have their time taken up by the very cases they don't want to see. Second, this creates the possibility of forum shopping which lawyers are adept at using. Forum shopping wastes the time this plan is trying to save. That time is wasted is clear. Right now cases go to court in 2 weeks. Whenever a transfer from the commissioner to the courts occurs, at least 15 days must be allowed for the transfer.

(c) Hearing officers are appointed. What qualifications are necessary? Do they use the Administrative Procedure Act or other rules? It is not at all stated what kind of people will be chosen or what rules will govern.

Sec. 28.06.020 (d) Notice to the defendant is by mail. Since notice mailed is considered received, it should be by registered or certified mail to protect defendants. Since a valuable license may be suspended for failure to appear, it would seem under Goldberg v. Kelly and its progency, a guarantee that notice has been received would be a minimum.

Sec. 28.06.030 (a) Hearings. Procedures may be determined by the commissioner. Do you want to give the commissioner that much latitude. You don't even know his qualifications for the job.

Most important, the evidence necessary to establish guilt is a clear and convincing standard. This is substantially less than beyond a reasonable doubt. In fact, use of this standard should probably result in a 100% conviction rate. If you want convictions, then it's perfect. But remember, you don't even have any idea of the qualifications of the Hearing Officers. Also, cases can be shifted back to the court at the commissioner's request or perhaps by future regulations.

This allows jockeying where some defendants face a clear and convincing standard of proof in hearings and others a beyond the reasonable doubt standard of proof in court. A defendant, by failing to appear for a hearing can force a higher standard of proof in court. Second, Commissioners can do favors for friends. Third, is a finding of guilty for drunk driving by a commissioner a criminal conviction? It can't be because of the different standard of proof. Therefore, a guilty person would want a hearing by a hearing officer. It would keep his record clean and save him from a prior, particularly important in the case of subsequent drunk driving arrests, which increase penalties. An arbitrary procedure for transferring cases thus affecting penalties and standards of guilt probably would violate the 14th Amendment Due Process Clause.

Just as signigicant are the lack of provisions guaranteeing open hearings, defense counsel or a prosecutor. The hearings may be closed and thus deals could be made without anyone there to inhibit the parties. Defendants probably are entitled to bring defense counsel. How can they be prohibited from being represented when by refusing to appear they can have counsel in court? If defendants have counsel, doesn't the state have an interest in being represented by counsel? Of course, this whole system may be designed to be inquisitional in nature.

Sec. 28.06.040 Administrative Review. An appeals board is fine. Except at this point the costs of all the hearing officers, members of the appeals board, clerks etc. may be more than the cost of one additional judge hearing these cases. And the courts could continue to hear these cases even if they were civil. Changing the cases to civil in nature does not mean that they cannot be heard in courts or by judges.

(f) Transcripts will exist. What kind? Summaries, taped, written verbatum?

Sec. 28.06.050 (b) Judicial Review. If civil practice law and rules are used in review (but not necessarily at the hearing!) does that include discovery, depositions, interrogatories and other motions. Finally, it should be remembered that courts may also review administrative hearings. So one more appeal always exists -- back to the courts.

JP:mgm

CHAPTER 06. ADMINISTRATIVE ADJUDICATION OF OFFENSES

Sec. 28.06.010. JURISDICTION: TRANSFER OF CASES: HEARING OFFICERS: REGULATIONS. (a) Notwithstanding any inconsistent provision of law all violations of this title when a penalty of imprisonment is not prescribed, regulations promulgated ~~by authority of Sec. 05.020 of~~ under this title, or ordinances of ~~political subdivisions~~ municipalities relating to vehicles and traffic, except parking, standing, stopping or pedestrian offenses which occur within an incorporated city or borough and which are classified as traffic infractions, may be heard and determined pursuant to the regulations of the commissioner as provided in this chapter. Whenever a crime and a traffic infraction arise out of the same transaction or occurrence, a charge alleging both offenses may be made returnable before the court having jurisdiction over the crime. Nothing in this chapter may be construed to prevent a court, having jurisdiction over a criminal charge relating to traffic or a traffic infraction, from lawfully entering a judgment of conviction, whether or not based on a plea of guilty, for an offense classified as a traffic infraction.

(b) When the commissioner determines that a charge alleges an offense other than a traffic infraction, he shall, and where a charge cannot be disposed of because of the non-appearance of the motorist, he may notify the court of appropriate jurisdiction and request removal of the case to the court. Prior notice of the request need not be given the motorist involved. Upon receipt of the request, the court may grant an order transferring the case, provided that the date on which the charge or charges must be answered before the court is not earlier than the return date which appears on the complaint alleging the offense. Notice of the transfer shall be mailed to the motorist at the address appearing on the complaint not less than ten days

before the date of appearance indicated on his summons and not less than fifteen days before his scheduled appearance in the court. The mailing shall constitute due notice of the transfer. Thereafter, the case shall be treated in the same manner as if the complaint had initially been filed with the court. under APD?

(c) The commissioner shall appoint hearing officers as necessary to hear and determine cases as provided by this chapter. Regulations promulgated by the commissioner may provide for a schedule of monetary penalties to be used where an answer is made, other than before a hearing officer, admitting a charge, provided that no penalty shall exceed the maximum fine established by law for the traffic infraction involved.

Sec. 28.06.020. SUMMONS: ANSWER. (a) The commissioner is authorized to prescribe by regulation the form for the summons and complaint to be used for all traffic violations specified in sec. 010(a) of this chapter and to establish procedures for proper administrative controls over the disposition of summons. ~~The summons may be the same as the uniform summons provided in sec. 030 of this chapter.~~ The chief executive officer of each local police force which is required to use the summons and complaint prescribed in this section, shall prepare or cause to be prepared records and reports as may be prescribed by the commissioner.

(b) A person who receives a summons for a violation described in sec. 010(a) of this chapter shall answer the summons by personally appearing on the return date at the time and place specified; provided, however, that an answer may be made as provided in (c) and (d) of this section.

(c) If a person charged with the violation admits to the violation as charged in the summons, he may complete an appropriate

form prescribed by the commissioner and forward the form and summons to the office of the department specified on the summons. If a schedule of penalties for violations has been established and the schedule appears on the answer form, a check or money order made payable to the department ~~of Revenue~~ in the amount of the penalty for violation charged, if included in the schedule, must also be submitted with the answer. The plea may not be made by mail for an offense for which suspension or revocation of a driver's license is required by law.

(d) If the person charged with the violation denies part or all of the violation as charged in the summons, he may complete an appropriate form prescribed by the commissioner for that purpose and forward the form and summons, together with security in the amount of ten dollars to the office of the department specified on the summons. The answer shall be entered and a hearing date established and the department shall notify the person by return mail (REGISTERED?) of the date of the hearing. The security posted pursuant to this section shall be returned upon appearance at the scheduled hearing or an adjourned hearing which results in a final disposition of the charge and otherwise shall be forfeited and paid into the general fund of the State.

(e) If a person charged with the violation fails to answer the summons as prescribed in this chapter, the commissioner may suspend his license or driving privilege until the person answers as provided in this section. If a person fails to appear at a hearing provided pursuant to this section, the security posted to secure his appearance shall be forfeited and the person's license may be suspended pending appearance at a subsequent hearing, or the disposition of the charges involved. Suspension as permitted by this section, if already in effect, may be terminated or if not yet in effect, may be withdrawn or withheld, prior to the disposition of the charges involved if the

person appears and posts security in the amount of ten dollars to guarantee his appearance at a required hearing. If a suspension has been imposed pursuant to this section and the case is subsequently transferred as prescribed in 010(b) of this chapter, the suspension shall remain in effect until the person answers the charges in the court to which the case was transferred.

Sec. 28.06.030. HEARINGS: DETERMINATIONS. (a) Every hearing for the adjudication of a traffic infraction, as provided by this chapter shall be held before a hearing officer appointed by the commissioner. The burden of proof shall be upon the state and no charge may be established except by clear and convincing evidence. The commissioner may prescribe, by regulation, the procedures for the conduct of the hearings.

(b) After due consideration of the evidence and arguments offered in a contested case, the hearing officer shall determine whether the charges have been established. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge otherwise has been received an appropriate order shall be entered in the department's records.

(c) An order entered after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purpose of this chapter. The commissioner may include in the order an imposition of a penalty authorized by this chapter for a conviction of the violation, except that no penalty may include imprisonment, nor, if monetary, exceed the amount of the fine which

could have been imposed had the charge been heard by a court. The driver's license or driving privileges may be suspended pending the payment of a penalty so imposed.

(d) All penalties collected pursuant to the provisions of (c) of this section shall be paid to the department. After audit is made by the department, the penalties whall be paid to the political subdivision in which the violation occurred, except that the sum of two dollars and fifty cents for each violation occurring in a political subdivision for which a complaint has been filed with the administrative facility established by this chapter shall be retained by the state. However, if the full costs of administering this chapter shall exceed the amounts received and retained by the state for a period specified by the commissioner, then the additional sums required to offset the costs shall be retained by the state out of the penalties collected pursuant to this seciton.

Point System (e) Unless a hearing officer determines that a substantial traffic safety hazard would result, he shall, pursuant to the regulations of the commissioner, delay for a period of thirty days the effective date of a suspension or revocation of a drivers license or vehicle registration imposed after a hearing conducted pursuant to this chapter, unless the suspension was imposed because of the failure to pay a monetary penalty. However, the commissioner's regulations may provide for the immediate surrender of a drivers license or driving privilege to be suspended or revoked and the issuance of appropriate temporary documentation to be sued during the thirty day period.

Sec. 28.06.040. ADMINISTRATIVE REVIEW. (a) The commissioner shall appoint three or more appeals officers to serve at his pleasure, and shall select a chairman for each appeals board from the members

so appointed. Appeals officers shall be full time employees of the department. The commissioner shall assign at least three appeals officers to serve on each appeals board established to hear appeals pursuant to this section. The commissioner shall also designate other members of the department as may be necessary to assist an appeals board in carrying out its assigned functions.

(b) A person who is aggrieved by a determination of a hearing officer may appeal the determination pursuant to the provisions of this section. Except as otherwise provided in (c) of this section, a transcript of the hearing resulting in the determination appealed, must be submitted on appeal.

(c) If the only issue raised on appeal is the appropriateness of the penalty imposed, the appellant in his discretion may submit the appeal without a transcript of the hearings, in which event, the decision of the appeals board may be based solely on the appeal papers and the records of the department, and such decision is not subject to judicial review. However, when a transcript of the hearing is submitted at the time an appeal is filed, the determination of the appeals board will be subject to judicial review as prescribed in Sec. 050 of this chapter.

(d) Each appeal filed pursuant to this section shall be reviewed by an appeals board, which shall make a determination of the appeal, and shall cause an appropriate order to be entered in the records of the department. However, no appeal may be reviewed if it is filed more than thirty days after notice was given of the determination appealed.

(e) A person desiring to file an appeal from an adverse determination pursuant to this section shall do so in a form and manner provided by the department. The transcript of a hearing which formed

the basis for the determination will be reviewed only if it is submitted by the appellant. An appeal is not deemed to be finally submitted until the appellant has submitted all required forms and documents as prescribed in this section and in regulations promulgated by the commissioner.

(f) Transcripts of the record of a hearing may be obtained at the cost to the department.

(g) The fee for filing an appeal shall be ten dollars. No appeal may be accepted unless the requried fee has been paid.

(h) Whenever a determination has not been made within thirty days after an appeal has been finally submitted, a stay of execution will be deemed granted by operation of law, and the license, certificate, permit or privilege affected will be automatically restored pending final determination.

Sec. 28.06.050. JUDICIAL REVIEW. (a) No determination of a hearing officer which may be appealed under the provisions of sec. 040 of this chapter may be reviewed in a court unless an appeal has been filed and determined in accordance with that section.

(b) A determination of the appeals board in a case where a transcript of the hearing has been submitted shall be subject to review pursuant to the provisions of civil practice law and rules. A statement by the hearing officer at the conclusion of the hearing indicating that the charges have been sustained and announcing the penalty imposed, together with a summary of the reasons the appeal was denied by the appeals board, shall constitute sufficient findings for the purpose of the review.

A-23.06

~ Denver ordinance

MEMORANDUM

TO: BOB BREEZE

FROM: JEFF PREEFER

DATE: NOVEMBER 27, 1974

RE: DECRIMINALIZATION OF TRAFFIC OFFENSES.

You asked me to review the proposals to decriminalize traffic offenses. This memo reviews "an act relating to adjudication of traffic offenses and penalties."

proposed Sec. 28.05.070 This is an informal hearing. Fine. But,

1. What is the standard of proof?

2. Who has the burden of proof?

3. Do criminal or civil rules of law apply?

4. What offenses will be made infractions?

5. If civil, does the defendant lose the 5th Amendment right to refuse to testify against himself?

6. Does this informal hearing require that the clerk make a transcript?

7. Can defendants bring attorneys?

8. Does the state have a right to an attorney?

9. Will the procedure be inquisitional or accusatorial?

10. On appeal what record does the judge review?

11. Who pays for the transcript?

12. Does the State or Borough have the right to appeal?

13. Does the Court hear the case de novo or use a substantial evidence or clear and convincing standard of proof test?

14. The clerk may sustain, reduce, or cancel a fine. Does this mean the clerk must follow a fine schedule? Or is a clerk free to set any fine up to the maximum?

Sec. 28.05.070(e) Anyone who desires a court appearance can have one. In the end will this be more work or less when one considers the time and energy involved in transferring cases and judicial review of clerk decisions in cases involving accidents, personal injuries or property damage. Second, allowing the defendant to choose between this hearing procedure and Court, creates many potential problems if standards of proof and burden of proof are different.

Sec. 28.05.070(c) Where a clerk makes a recommendation, how does the judge evaluate it? Can he look at the transcript? Can he review the sufficiency of evidence? Don't we want some sort of uniform procedure?

Sec. 28.05.070(a) The defendant appears before the clerk of the district court. Is there only one clerk or will each judge's clerk hear his cases? If each judge's clerk hears his cases, friction could develop between judge and clerk and possibly some pressuring by the person with ultimate responsibility, the judge.

JP:msm

M. H. WAGNER & COMPANY

Please address all replies to DENVER OFFICE
Mrs. Annette Finesilver, Project Director
7100 East Exposition Avenue
Denver, Colorado 80222
(303) 322-0330 or (303) 388-1597

WASHINGTON OFFICE
9128 Christopher Street
Fairfax, Virginia 22030
(703) 591-8885

December 10, 1974

Mr. Dennis Robertson
Consultant
State of Alaska
Department of Public Safety
Pouch N - State Capitol
Juneau, Alaska 99801

Dear Mr. Robertson:

On January 5-7, 1975, a workshop on "New Trends In Advanced Traffic Adjudication Techniques" will be held in Seattle, Washington.

The workshop will provide a forum for the exchange of ideas dealing with re-defining goals of effective adjudication of traffic offenses in terms of safety and cost effectiveness; implementation of advanced adjudication procedures; and national trends in effective adjudication. In particular, the workshop will be centered around the interests and activities of the participants who will be invited from Alaska, Oregon and Washington and will cover the above mentioned areas and other areas yet to be determined.

This workshop, to be conducted by M. H. Wagner & Company, has been made possible through a grant from the National Highway Traffic Safety Administration (NHTSA); U.S. Department of Transportation.

Because of your prominence and interest in the area to be discussed, I am extending an invitation to you to attend and participate extensively in the workshop. Also, any suggestions you may have in the areas you personally may wish to have covered will be appreciated.

Due to the nature of our contract with the NHTSA, we cannot pay any expenses incurred by the participants; however, we will make all arrangements for the workshop as well as to provide speakers and materials.

We sincerely hope you will find it possible to be present. We know that your ideas will contribute to the success of the meeting. There is some urgency in our request for an early reply. As soon as we hear from you we shall make the necessary arrangements for your accommodations at the Edgewater Inn in Seattle.

Do not hesitate to phone if I may be of any assistance to you. I can be reached at the above Denver numbers or at (303) 297-3171.

We look forward to an early reply.

Sincerely yours,

Annette Finesilver

Annette Finesilver, Project Director
for the Contractor
M. H. Wagner & Company

AF/sl

ADMIN AD500

M. H. WAGNER & COMPANY

Please address all replies to DENVER OFFICE
Mrs. Annette Finesilver, Project Director
7100 East Exposition Avenue
Denver, Colorado 80222
(303) 322-0330 or (303) 388-1597

WASHINGTON OFFICE
9128 Christopher Street
Fairfax, Virginia 22030
(703) 591-8885

November 26, 1974

Mr. Dennis Robertson
Consultant
State of Alaska
Department of Public Safety
Pouch N - State Capitol
Juneau, Alaska 99801

Dear Dennis:

Thank you so much for your letter of November 20, 1974. It appears that our plans for the workshop are formulating with a definite time and place.

Assuming that we receive full clearance from Washington, the workshop will be held commencing Sunday evening, January 5, 1975, and will continue until late afternoon, January 7th.

We prefer not to begin our meetings on Sunday night; however, the state of Oregon has notified us that they have a legislative orientation conference which is scheduled for January 8-10. Thus, we must begin on Sunday evening. I hope that this will not inconvenience you or members of the Alaska delegation who will undoubtedly have to travel on Sunday.

Of course, I will be sending invitations for this workshop, but because of the necessity of the early requisition of monies, I felt that it was important to inform you that the plans are quite definite.

As soon as our agenda is approved we will mail you a copy. In the meantime, please save those dates. We tentatively plan to hold the workshop at the Edgewater Inn in Seattle.

I am holding a block of rooms tentatively until our list of invitees is firm and reservations can be made.

DEPT. OF PUBLIC SAFETY
Alaska Traffic Safety Bureau
DEC 2 1974
RECEIVED

Thank you, Dennis, for your sincere cooperation.

Sincerely yours,

Annette

Annette Finesilver, Project Director
for the Contractor
M. H. Wagner & Company

P.S. You might wish to alert the other members of the Alaska group and I will send them invitations as soon as everything is cleared.

AF/sl

cc: Mr. Paul Orris

ADMIN. ADJUD.

Dennis Robertson

Denver County Court

CITY AND COUNTY BUILDING
Colfax and Bannock
DENVER, COLORADO 80202

January 3, 1974

Mr. Dennis A. Robertson
State of Alaska, Dept. of Law
Pouch K-State Capitol
Jueno, Alaska 99801

Dear Sir:

In response to your letter we are enclosing a copy of the ordinance which established the referee system. Also enclosed is a copy of the fine schedule for moving violations, which governs the fines that may be paid, by mail or in person, and those violations for which a court appearance is mandatory.

We are not contemplating a transfer of the referee function to the office of the City Attorney. However, academically speaking, it might be feasible.

If we can be of any further assistance please do not hesitate to call on us again.

Sincerely,

Orville M. Holben
Ass't Court Administrative Officer

OMH:cg

156—COUNTY COURT REFEREE SYSTEM

.1. **County Court Referee System Created.** The Presiding Judge in and for the City and County of Denver be and is hereby authorized and empowered to appoint one or more referees to hear certain municipal ordinance violation matters relating to:

.1-1. Parking.

.1-2. Non-moving traffic violations.

.1-3. Non-hazardous moving violations to be designated, from time to time, by the Presiding Judge.

.1-4. Certain matters in the General Violations Division to be designated, from time to time, by the Presiding Judge.

.1-5. In no instance will said referee or referees be empowered to hear violations of a municipal ordinance wherein there has been a motor vehicle accident, personal injury or wherein a victim of said offense has been involved (Ord. 151, Series 1971)

.2. **Election To Appear Before Judge.** Said referee or referees shall conduct hearings in the manner provided for the hearing of cases by the Court. Prior to conducting a hearing, the referee shall inform the parties that they have the right of a hearing before the judge in the first instance; if such request is made, the referee shall terminate the hearing. (Ord. 151, Series 1971)

.3. **Duties.** All orders made and proceedings had by the referee under this rule shall be made as provided for acts of the Court done before the judge.

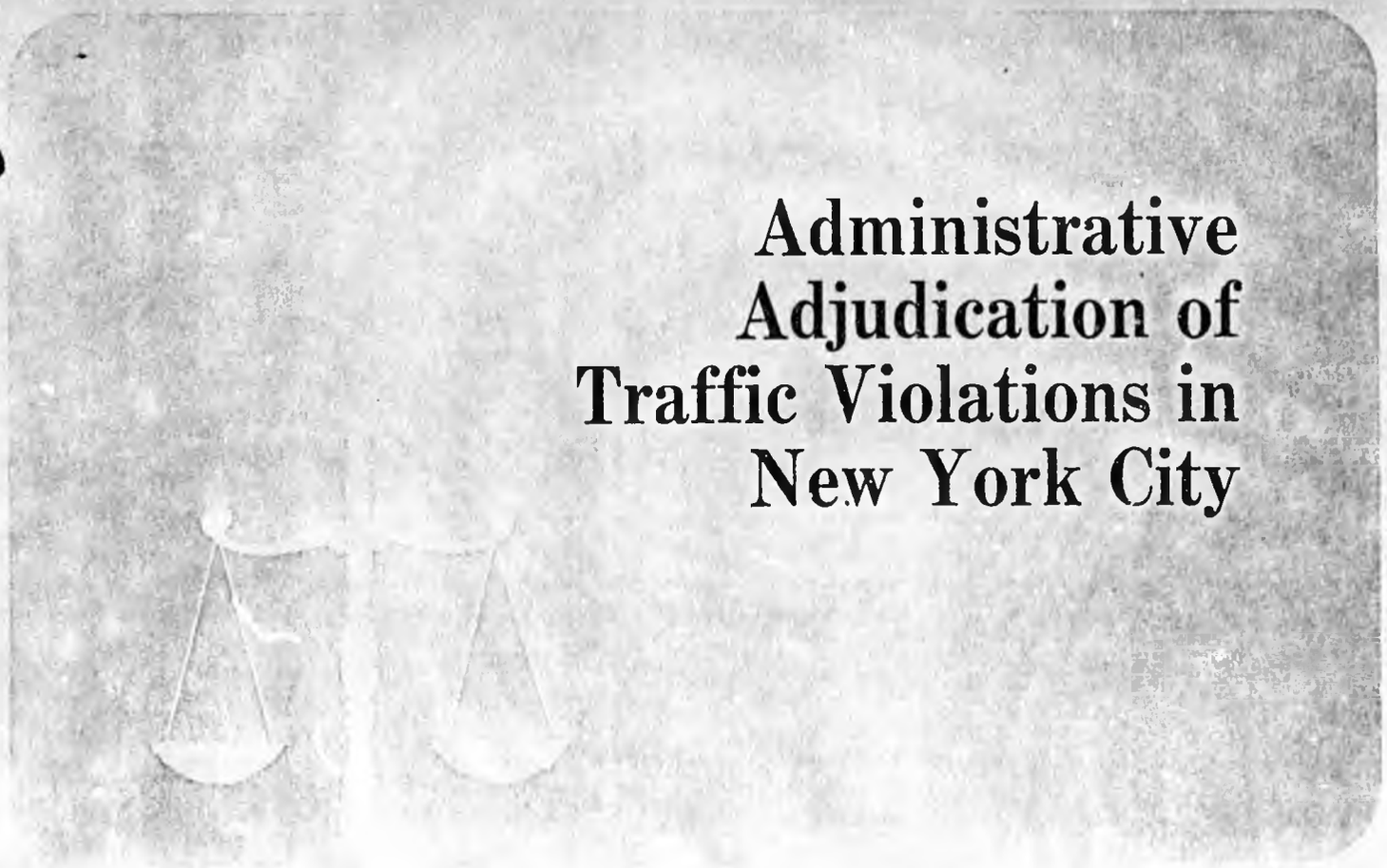
However, that in all matters other than parking violations and non-moving traffic violations said referee or referees shall make written recommendations to a judge of the County Court for disposition of said violation or violations and the Court may enter an order upon the complaint for disposition of the matter as recommended by the referee. The County Court judge may or may not follow the written recommendation of the referee. (Ord. 151, Series 1971)

.4. **Appeal.** Any defendant or respondent affected by an order or action of the referee, under the authority of this rule, may have the matter heard by a county judge by filing a motion for such hearing within ten (10) days after the entry of the order or the taking of the action. Upon the filing of such a motion, the order or action in question shall be vacated, the motion placed on the calendar of the Court for as early a hearing as possible, and the matter shall be heard by one of the county judges. If such a motion is not filed within ten (10) days, of the order or action vacated by the judge on his own motion within such period, the order or action of the referee shall be final. (Ord. 151, Series 1971)

.5. **Oath and Testimony.** That said referee or referees are hereby empowered to administer oaths and take testimony. (Ord. 151, Series 1971)

ADMIN ADJUD

Administrative Adjudication of Traffic Violations in New York City



State of New York — Nelson A. Rockefeller, Governor / Department of Motor Vehicles — Vincent L. Tofany, Commissioner

V. SUMMARY

The key elements of the New York Administrative Adjudication System are the following:

1. Pleas are accepted by mail except where the loss of a license may occur on conviction for the offense or the motorist is a scofflaw; then personal appearance is required.

2. The plea may be guilty or not guilty or guilty with explanation.

3. Every defendant has a right to appear in person, and in all cases, adjudication hearing officers are authorized to impose sanctions as determined by regulation.

4. The hearing officers are lawyers.

5. The state-wide data bank links each adjudication office with the New York Motor Vehicles Department.

6. If the defendant wants to plead not guilty, he is ordered to appear at the Hearing Office in the borough where the alleged offense took place. Appearances are scheduled by date and time to reduce lost time for both the defendant and

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The Need for Traffic Court Reform

Ever since the turn of the century, when traffic violations first became a public concern, they have been handled in our Criminal Courts. This has meant that persons accused of committing a traffic violation have been subject to criminal procedures, criminal punishments including jail sentences, and the time-consuming and costly processes for appealing a criminal conviction. It has also meant incurring the stigma and experiencing the delays and inconveniences associated with our overcrowded Criminal Courts.

To anyone who has ever received a traffic summons the need for a change in this archaic system has long been evident. As of July 1, 1970, such a change has occurred. A unique, new program has been inaugurated — the first of its kind in the Nation — to handle all traffic cases, other than misdemeanors, occurring in New York City. The Administrative Adjudication Bureau of the New York State Department of Motor Vehicles will hear all cases involving moving traffic violations.

The Parking Violations Bureau of the New York City Transportation Administration will hear all cases involving parking, stopping, standing or jaywalking violations.

This booklet describes the program of Administrative Adjudication of traffic violations by the Department of Motor Vehicles.

By emphasizing an educational, rather than a punitive approach to the handling of traffic violations, the new Administrative Adjudication system is designed to improve driver safety by providing efficient administration and convenience to the public. Individual rights will be preserved and effective enforcement of our traffic laws will be maintained.

By removing from the Criminal Court the nearly one million traffic summonses issued for moving violations in New York City each year, this program will aid the administration of criminal justice and will permit the release of 18 judges so that they may spend their full time on serious criminal matters.

Since the program is self-supporting, persons who do not receive traffic summonses will not have to share in the cost of operating this new Administrative Adjudication program.

How the New System Will Benefit You

Professional and Individual Treatment in Each Case. Experienced lawyers, trained by professional highway safety administrators, will serve as hearing officers in cases involving pleas of guilty with explanation or not guilty.

Elimination of Long and Indefinite Delays for Hearings. Every summons issued for a moving traffic violation in New York City specifies the date of appearance for hearings or not guilty pleas. That date will be approximately one month after the summons is issued.

Modern Techniques to Assure Fair Hearings. Testimony in each case is electronically recorded and penalties are determined upon a determination of guilt only after review of the motorist's driving record which appears on a visual display unit on the hearing officer's desk.

Elimination of Appearances in Criminal Court for a Traffic Infraction. Moving traffic violations, other than misdemeanors, will be handled by the Administrative Adjudication Bureau of the Department of Motor Vehicles.

Elimination of Unnecessary Travel and Waiting for Hearings. Most pleas can be made, and most fines can be paid, by mail. All hearings are conducted at a centrally located office in each Borough where only traffic violations are processed.

Time-Saving and Inexpensive Appeals. A motorist can take an administrative appeal from an adverse decision, which may eliminate the need for costly and time-consuming appeals through the court system. However, the right of judicial review is preserved.

How the New System Works

The Summons is divided into three categories of offenses as follows:

Parking. Parking, stopping, standing and jaywalking violations will be heard in the Parking Violations Bureau of the New York City Transportation Administration.

Traffic Infraction. Moving traffic violations will be heard in the Administrative Adjudication Bureau of the New York State Department of Motor Vehicles.

Other Offense (Including Traffic Misdemeanor). Offenses such as reckless driving and certain non-traffic violations will be heard in the Criminal Court of the City of New York.

Answering a Summons Under Instruction

GUILTY PLEAS
Guilty pleas may be made by mail, except in cases of excessive speeding or where conviction may result in suspension or revocation of a motorist's driver's license. In those instances, a notice of required appearance will be mailed to the motorist informing him of when and where to appear for a hearing. Also, guilty pleas, with explanation, may be made at any of the five Hearing Office Locations listed below. All guilty pleas must be made on or before the Date of Appearance indicated on the Summons.

NOT GUILTY PLEAS
Not guilty pleas may be made by mail or in person at any of the Hearing Office Locations indicated below, within ten days after the issuance of a Summons. Hearings will be held on the Date of Appearance and at the time designated on the Summons, at the Hearing Office Location in the Borough in which the Summons was issued.

ADJOURNMENTS
A first adjournment will be granted for reasonable cause and may be arranged by a motorist, prior to the Date of Appearance, in person, by mail or by telephone at the Hearing Office Location at which the hearing was to be held. A second or subsequent adjournment may be granted only at the discretion of a Hearing Officer, and the request must be made in person.

APPEALS
An appeal from an adverse decision of a Hearing Officer may be made, within 30 days, to the Appeals Board of the Bureau. There is a $10 fee required upon filing an appeal. Any suspension or revocation of a driver's license which has been imposed may be stayed during the period of appeal. Where a transcript has been submitted with an administrative appeal, judicial review of the Appeals Board's decision may be sought in the New York State Supreme Court.

SCOFFLAWS
A scofflaw is a person who has failed to enter a plea of guilty or not guilty on or before the Date of Appearance indicated on the Summons. Such persons are subject to having a driver's license suspended until a plea has been entered. Once a person has become a scofflaw, all pleas — both guilty and not guilty — must be made in person at any Hearing Office Location. Where a suspension is in effect, a scofflaw must post a $15 security deposit upon entering a not guilty plea if he wishes to have the suspension terminated prior to final disposition of the charge. A security deposit will be refunded upon appearance on the adjourned hearing date.

Hearing Office Locations

BRONX
2455 Sedgwick Avenue
Bronx, New York 10268
Telephone: a.c. 212 295-1905

BROOKLYN
350 Livingston Street
Brooklyn, New York 11017
Telephone: a.c. 212 834-8578

MANHATTAN
50 East 26th Street
New York, New York 10010
Telephone: a.c. 212 889-8555

QUEENS
1 Lefrak City Plaza
Flushing, New York 11368
Telephone: a.c. 212 592-9100

RICHMOND
60 Bay Street
Staten Island, New York 10301
Telephone: a.c. 212 448-0868

Monday through Friday
8:30 A.M. to 4:00 P.M.
Thursdays 8:30 A.M. to 7:30 P.M.

Fine Schedule for Guilty Pleas

The following fine schedule is applicable for guilty pleas made by mail or in person at a Hearing Office Location. This schedule is NOT applicable upon a plea of guilty with an explanation made before a Hearing Officer, or where a Hearing Officer finds a motorist guilty after a hearing where a plea of not guilty has been entered.

All offenses other than speeding	$15
Speeding	
1-14 MPH over speed limit	$15
15-24 MPH over speed limit	$25
25 MPH or more over speed limit	*

*Motorist must appear before Hearing Officer.

ENABLING LEGISLATION FOR
ADMINISTRATIVE ADJUDICATION PROGRAM

ARTICLE 2-A OF THE VEHICLE AND TRAFFIC LAW

Amended by the 1970 Legislature

ARTICLE 2-A

ADJUDICATION OF TRAFFIC INFRACTIONS

Section 225. Adjudication of violations; hearing officers.
226. Summons; answer.
227. Hearings.
228. Administrative review.

§ 225. *Jurisdiction; transfer of cases; hearing officers; *regulations.* •1. Notwithstanding any inconsistent provision of law, all violations of this chapter or of a local law, ordinance, order, rule or regulation relating to traffic, except parking, standing, stopping *or pedestrian offenses, which occur within a city having a population of one million or more, and which are classified as traffic infractions, may be heard and determined pursuant to the regulations of the commissioner as provided in this article. *Whenever a *crime* and a traffic infraction arise out of the same transaction or occurrence, a charge alleging *both *offenses* may be made returnable before the court having jurisdiction over the *crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a criminal charge relating to traffic or a traffic *infraction, from lawfully entering a judgment of conviction, whether or not based on a plea of guilty, for any *offense classified as a traffic infraction.

**2. *Whenever the commissioner or his deputy determines that a charge alleges an offense other than a traffic infraction, he shall, and where a charge cannot be disposed of because of the non-appearance of the motorist, he may notify the court of appropriate jurisdiction and request removal of the case to such court. Prior notice of such request need not be given the motorist involved. Upon receipt of such request, the court may grant an order transferring such case, provided that the date on which the charge or charges must be answered before the court shall not be earlier than the return date which appears on the complaint alleging the offense. Notice of such transfer shall be mailed to the motorist at the address appearing on such complaint not less than ten days before the date of appearance indicated on his summons and not less than fifteen days before his scheduled appearance in such court. Such mailing shall constitute due notice of such transfer. Thereafter, such case shall be treated in the same manner as if the complaint had initially been filed with such court.*

•3. The Commissioner shall appoint such hearing officers as shall be necessary to hear and determine cases as provided by this article and may promulgate such regulations as shall be necessary or desirable to effect the purposes of this article. Such regulations may provide for a schedule of monetary penalties to be used where an answer is made, *other than before a hearing officer, admitting a charge, provided that no such penalty shall exceed the maximum fine established by law for the traffic infraction involved.

§ 226. **Summons; answer.** • 1. Summons. The commissioner shall be authorized to prescribe by regulation the form for the summons and complaint to be used for all traffic violations specified in subdivision one of section two hundred twenty-five of this chapter, and to establish procedures for proper administrative controls over the disposition thereof. Such summons may be the same as the uniform summons provided for in section two hundred seven of this chapter. The chief executive officer of each local police force which is required to use the summons and complaint provided for herein shall prepare or cause to be prepared such records and reports as may be prescribed by the commissioner.

• 2. Answer. (a) General. Any person who receives a summons for a violation described in subdivision one of section two hundred twenty-five of this chapter shall answer such summons by personally appearing on the return date at the time and place specified therein. Provided, however, that an answer may be made as provided in paragraphs (b) and (c) of this subdivision *and the regulations of the commissioner.

•(b) Answer by mail—admitting charge. If a person charged with the violation admits to the violation as charged in the summons, he may complete an appropriate form prescribed by the commissioner and forward such form and summons, together with the appropriate part of his license, if required by the commissioner's regulations, to the office of the department specified on such summons. If a schedule of penalties for violations has been established, and such schedule appears on the answer form, a check or money order in the amount of the penalty for violation charged if included in such schedule, must also be submitted with such answer. Unless permitted by the regulations of the commissioner, such plea may not be made by mail or *any offense for which suspension or revocation of a driver's license is required by law, or for any other offense if the conviction thereof would result in a hearing pursuant to a highway safety program established under the provisions of subdivision three of section five hundred ten of this chapter.

*Ch. 337 & 682 of the Laws of 1970, eff. July 1, 1970.

*Ch. 337 of the Laws of 1970, eff. July 1, 1970.

•(c) Answer by mail—denial of charges. If the person charged with the violation denies part or all of the violation as charged in the summons, he may complete an appropriate form prescribed by the commissioner for that purpose and forward such form and summons, together with security in the amount of fifteen dollars, to the office of the department specified on such summons. Upon receipt, such answer shall be entered and a hearing date established by the department. The department shall notify such person by return mail of the date of such hearing. The security *posted pursuant to this paragraph or subdivision three of this section* shall be returned upon appearance at *the scheduled* hearing *or an adjourned hearing which results in a final disposition of the charge, and otherwise shall be forfeited and paid into the general fund. Provided, however, the commissioner may, by regulation, suspend in whole or in part the provisions of this section relating to the posting of security.*

•3. Failure to answer or appear. If the person charged with the violation shall fail to answer the summons as provided herein, the commissioner may suspend his license or driving privilege until such person shall answer as provided in subdivision two of this section. If a person shall fail to appear at a hearing, when such is provided for pursuant to this section, the security posted to secure such appearance shall be forfeited and such person's license may be suspended pending appearance at a subsequent hearing, or the disposition of the charges involved. *Any suspension permitted by this subdivision, if already in effect, may be terminated or if not yet in effect, may be withdrawn or withheld, prior to the disposition of the charges involved if such person shall appear and post security in the amount of fifteen dollars to guarantee his appearance at any required hearing. If a suspension has been imposed pursuant to this subdivision and the case is subsequently transferred pursuant to subdivision two of section two hundred twenty-five of this chapter, such suspension shall remain in effect until the motorist answers the charges in the court to which the case was transferred.*

§ 227. Hearings; *determinations.* •1. Every hearing for the adjudication of a traffic infraction, as provided by this article, shall be held before a hearing officer appointed by the commissioner. The burden of proof shall be upon the people, and no charge may be established except by clear and convincing evidence. The commissioner may prescribe, by rule or regulation, the procedures for the conduct of such hearings.

• 2. After due consideration of the evidence and arguments *offered in a contested case,* the hearing officer shall determine whether the charges have been established. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established *, either in a contested case or in an uncontested case where there is an appearance before a hearing officer,* or if an answer admitting the charge *otherwise* has been received an appropriate order shall be entered in the department's records.

• 3. An order entered after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purpose of this chapter. The commissioner or his designee may include in such order an imposition of any penalty authorized by any provision of this chapter for a conviction of such violation, except that no penalty therefor shall include imprisonment, nor, if monetary, exceed the amount of the fine which could have been imposed had the charge been heard by a court. *The driver's license or privileges may be suspended pending the payment of any penalty so imposed.*

• 4. All penalties collected pursuant to the provisions of subdivision three of this section shall be paid to the department of audit and control to the credit of the justice court fund and shall be subject to the applicable provisions of section eighteen hundred three of this chapter. After such audit as shall be required by the comptroller, such penalties shall be paid to the city in which the violation occurred, except that the sum of *four* dollars for each violation occurring in such city for which *a complaint has been filed with the administrative tribunal established pursuant to this article* shall be retained by the state. Provided, however, that if the full costs of administering this article shall exceed the amounts received and retained by the state for any period specified by the commissioner, then such additional sums as shall be required to offset such costs shall be retained by the state out of the penalties collected pursuant to this section.

• 5. Unless a hearing officer shall determine that a substantial traffic safety hazard would result therefrom, he shall, pursuant to the regulations of the commissioner, delay for a period of thirty days the effective date of any suspension or revocation of a drivers license or vehicle registration imposed *after a hearing* pursuant to this article, *unless such suspension was imposed because of the failure to pay a monetary penalty.* Provided, however, the commissioner's regulations may provide for the immediate surrender of any item to be suspended or revoked and the issuance of appropriate temporary documentation to be used during such thirty day period.

§ 228. Administrative review. •1. Appeals board. The commissioner shall appoint three or more appeals officers, to serve at his pleasure, and shall select a chairman for each appeals board from the members so appointed. Appeals officers who are not full time employees of the department shall be selected from names submitted by the state bar association, and by the general county or city bar associations of the city in which the appeal board shall sit. The commissioner shall assign at least three appeals officers to serve on each appeals board established to hear appeals pursuant to this section. Any appeal officer who is not a full time employee of the department shall receive a per diem at a rate to be fixed by the commissioner, with the approval of the director of the budget, for each day he serves on an appeals board, in addition to all necessary expenses. The commissioner shall also designate such other members of the department as may be necessary to assist an appeals board in carrying out its assigned functions.

•2. Right of appeal. *(a)* Any person who is aggrieved by a determination of a hearing officer may appeal such determination pursuant to the provisions of this article.

(b) Except as otherwise provided in this subdivision, a transcript of the hearing resulting in the determination appealed from must be submitted on any such appeal.

(c) If the only issue raised on appeal is the appropriateness of the penalty imposed, the appellant, in his discretion, may submit such appeal without a transcript of the hearings. In such event, the decision of the appeals board may be based solely on the appeal papers and the records of the department, and such decision shall not be subject to judicial review.

(d) Where a transcript of the hearing is submitted at the time an appeal is filed, the determination of the appeals board will be subject to judicial review as prescribed in subdivision nine of this section.

• 3. Appeals boards. Each appeal filed pursuant to this section shall be reviewed by an appeals board, which shall make a determination of such appeal, and shall cause an appropriate order to be entered in the records of the department.

• 4. Time limitations. No appeal shall be reviewed if it is filed more than thirty days after notice was given of the determination appealed from.

• 5. Appeal procedures. Any person desiring to file an appeal from an adverse determination pursuant to this section, shall do so in a form and manner provided by the commission. The transcript of any hearing which formed the basis for such determination will be reviewed only if it is submitted by the appellant An appeal shall not be deemed to be finally submitted until the appellant has submitted all forms or documents required to be submitted by the commissioner or this section.

• 6. Transcript of hearings. Transcripts of the record of any hearing may be obtained at the cost to the department, if prepared by the department, or at the rate specified in the contract between the department and the contractor, if prepared by a private contractor.

•7. Fees. The fee for filing an appeal shall be ten dollars. No appeal shall be accepted unless the required fee has been paid

•8. Stays pending appeal. Whenever a determination has not been made within thirty days after an appeal has been finally submitted, a stay of execution will be deemed granted by operation of law, and the license, certificate, permit or privilege affected will be automatically restored pending final determination.

• 9. Judicial review. *(a)* No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this section.

(b) A determination of the appeals board in any case where a transcript of the hearing has been submitted shall be subject to review pursuant to the provisions of article seventy-eight of the civil practice law and rules. Provided, however, a statement by the hearing officer at the conclusion of the hearing indicating that the charges have been sustained and announcing the penalty imposed, together with a summary of the reasons the appeal was denied by the appeals board, shall constitute sufficient findings for the purpose of such review.

* Ch. 337 of the Laws of 1970, eff. July 1, 1970.

* Ch. 337 of the Laws of 1970, eff. July 1, 1970.

Revised Draft

ADMIN. ADJUD.

AMERICAN BAR ASSOCIATION COMMITTEE ON
THE TRAFFIC COURT PROGRAM

STANDARDS FOR

Traffic Justice

June 1974

Revised Draft

AMERICAN BAR ASSOCIATION COMMITTEE ON
THE TRAFFIC COURT PROGRAM

STANDARDS FOR

Traffic Justice

June 1974

The views and opinions contained in this publication, until approved by the House of Delegates or the Board of Governors of the Association, represent only the views of the Committee on the Traffic Court Program and do not represent the views of the American Bar Association.

AMERICAN BAR ASSOCIATION

JUDICIAL ADMINISTRATION DIVISION

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Preface

Traffic courts are the only courts that most Americans have ever seen in action, and they remain the basis for much of the public's impression of the administration of justice. From recitation of individual court experiences, good or bad, a folklore is developed and renewed, affecting attitudes toward courts and law enforcement beyond jurisdictional limits, terms of office and other niceties of individual responsibility.

In continuing recognition of the legal profession's major responsibility for traffic court reform, the ABA Committee on the Traffic Court Program offers these *Standards for Traffic Justice* to protect both the rights of the individual charged with a traffic violation and our motorized society's need to control behavior which annually costs tens of thousands of lives and untold pain, injury and other damage.

Since New Jersey's late Chief Justice Arthur T. Vanderbilt and others focused nationwide attention on traffic courts prior to World War II and developed and implemented standards for their improvement, dedicated local courts have served as a spawning ground, proving ground and training ground for improvement of all our courts. More importantly, they have shown that the public wants and supports fair, innovative and effective traffic courts.

These *Standards* are intended as a concise but comprehensive program for traffic court reform. They have been developed from over thirty years of ABA effort toward traffic justice. Upon adoption by the organization's House of Delegates, they would replace the present *National Standards for Improving the Administration of Justice in Traffic Courts.*

While experience with the present *Standards* through educational programs for court personnel, court evaluations and participation in citizens' and safety organizations is a major source for these proposals, recent developments in law, social scientific evaluation of traffic safety efforts and experiments in traffic adjudication have also been incorporated.

These Standards draw upon the efforts of the ABA commissions on Standards of Judicial Administration and Standards for Criminal Justice which have produced widely-acclaimed proposals in recent years.

The Committee on the Traffic Court Program, which serves as the ABA's contact with public, safety and other groups interested in traffic court improvement, has concluded that traffic cases can most effectively, efficiently and fairly be handled within the courts, rather

than the executive branch of state government as is cu ntly proposed in some quarters. Accordingly, these Standards oppose administrative branch adjudication, but use the generic term "tribunal," rather than the traditional "traffic court," so that standards which should be applied to administrative agencies which hear traffic cases can be readily identified.

Where the term "court" is used in these Standards, it represents a level of authority which the Committee feels is inappropriate for an administrative traffic tribunal.

This revised draft is based upon comments on the April, 1974 preliminary draft received from ABA members and the interested public around the country. The Committee on the Traffic Court Program welcomes your comments on this substantially revised proposal.