2411 HJ HB 6

2411

5/16/83, SHIRLEE ANC LIO, 17878

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

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

SUBJ: CSHB 6 - RELATING TO DRIVING A MOTOR VEHICLE

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

OR

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

5/11/83, JUNE, ANC LIO, MSG 16833

TO: ALL MEMBERS OF THE LEGISLATURE

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

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

****

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: SANDRA RICARDO, 4807 KENT ST., ANC 99503 H 563-6548

RE: HB 6 DRUNK DRIVING

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

MSG 83-00000870 PRTY 1 04/15/83 08:42:47 ORIG: LS00 IN= 0001
FROM: SITKA TO: JUNEAU
TARGET: LJ04 SUBJ: POMS to: Reps. Russell, Liska, Hayes, Barnes, Malone, Clocksin, Meredith PAGE 0002

FROM NANCY ELIASON
BOX 959
SITKA, AK. 99835 747-3632 (H) OR 747-3255

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

4-15-83 ELAINE/SITKA 0870
TO: REP. AL ADAMS

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

****

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

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

TO: ALL MEMBERS OF THE LEGISLATURE

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

IN RE: HB 6-DRIVING A MOTOR VEHICLE
I AM NOT IN FAVOR OF THIS BILL AS IT STANDS. I AM IN FAVOR OF A BILL THAT IS MORE STRINGENT FOR PUNISHMENT AND HAVING FEWER PRIVILEGES FOR PEOPLE WHO DRINK AND DRIVE. HOWEVER, I AM NOT IN FAVOR OF THE PORTION OF THEBILL THAT WOULD MAKE IT LEGAL TO FORFEIT HIS VEHICLE.

OR

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

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 11, 1983

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

Dear Judge Andrews:

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

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

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

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

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

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

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

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

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

Thank you for involving yourself in the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

May 7, 1983

¥a¥

Dear ¥s¥:

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:cmz

HB6

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

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

May 2, 1983

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

Dear Ms. Gerrish:

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

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

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Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

SUBJECT: Research Request No. 82-5
Drunk Driving Statistics

Carol Horos of your staff has asked for the following information regarding drunk driving:

(1) statewide data on the number of arrests and convictions for drunk driving for a sufficient number of years to show the current trend;

(2) statewide data on the number of arrests and convictions for other traffic violations where the driver was also intoxicated;

(3) a comparison between the incidence of drunk driving in Alaska and the national rate.

As we have explained to Ms. Horos, the second category of data required a special computer run by the Alaska Court System, and we have not yet received the information. We will forward it to you as soon as it arrives.

Arrests

Table I on the following page shows the number of arrests for drunk driving during 1978, 1979, and 1980. This data indicates that arrests for drunk driving are declining. Data for 1980 shows a 21% decrease in the number of arrests for this offense over the arrests reported in 1978. This decline may be related to the stiffer penalties for drunk driving which went into effect in the Fall of 1978.

Between 1978 and 1980, approximately 75% of the individuals charged with drunk driving were convicted. The conviction rate declined slightly in 1980, but no downward trend can logically be inferred from this information.

TABLE III
Drunk Driving Cases Filed with the Alaska Court System and Rate of Conviction
1978 - 1980

	1978	1979	1980
No. of Cases Filed	3,681	3,545	3,095
No. of Convictions	2,765	2,691	2,224
Conviction Rate	75%	76%	72%

Source: Alaska Court System.

We were unable to locate any information on the national conviction rate for drunk drivers. We did learn from the State Highway Safety Planning Commission that nationwide 50% of all fatal accidents in 1979 involved a drunk driver. This figure was closer to 75% for Alaska.

We hope this information is of use to you. Again, we will deliver the other material you requested as soon as it arrives. If we can provide any further assistance, please don't hesitate to contact us.

CJ/cj

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 29, 1981

MEMORANDUM

TO: Representative Mitch Hood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

SUBJECT: Research Request No. 82-5
Drunk Driving Statistics

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TABLE I
Statewide Arrests for Drunk Driving
1978 - 1980

	1978	1979	1980
Number of Arrests	3,765	3,006	2,575
Rate of Arrest per 100,000 people	815.3	750.5	643.0

Source: House Research Agency, January 1982, from data provided by the Criminal Justice Planning Agency, Alaska Department of Law, Crime in Alaska - 1980.

Table II below compares Alaska's 1980 arrest rate for drunk driving with the national rate for that year. The data indicates that the state's arrest rate for drunk driving is only slightly higher than the national rate.

TABLE II
State and National Arrest Rates for Drunk Driving - 1980
(Rate per 100,000 people)

Alaska Arrest Rate	National Arrest Rate
643.0	626.3

Source: House Research Agency, January 1982, from data provided in Crime in Alaska - 1980, and Federal Bureau of Investigation, U.S. Department of Justice, Crime in the United State, September 1981.

Convictions

Table III on the following pages shows both the number of cases involving drunk driving which were filed with the Alaska Court System during the three year period and the number of convictions which resulted. This information provides the best indication of the conviction rate for drunk drivers, as the data regarding arrests comes from another source and is not comparable to the Court's statistics on convictions.

Between 1978 and 1980, approximately 75% of the individuals charged with drunk driving were convicted. The conviction rate declined slightly in 1980, but no downward trend can logically be inferred from this information.

TABLE III
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We hope this information is of use to you. Again, we will deliver the other material you requested as soon as it arrives. If we can provide any further assistance, please don't hesitate to contact us.

CJ/cj

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

9

February 4, 1982

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

SUBJECT: Research Request No. 82-5
Arrests and Convictions for Drunk Driving: Additional Information

This memorandum should fulfill your request for data regarding arrests and convictions for driving while intoxicated (DWI). We have been waiting for a computer run from the Court System in order to respond to your question regarding the number of other traffic violations committed by drunk drivers.

Unfortunately, we have found that the Court System's data will only partially answer your question. On the Court's computer system, cases involving multiple offenses are listed by the primary, or the most serious, offense; the number of other lesser offenses is noted, but these offenses are not specifically named. Consequently ,while the data indicates the number of cases where an individual was charged with DWI and other lesser offenses, it does not show the number of people charged with drunk driving and other more serious violations.

The Court System's data for 1980 is summarized on the table on the following page. This information indicates that drunk drivers were responsible for a minimum of 236 other traffic offenses in 1980. Ninety percent of these drivers were ultimately convicted of drunk driving. Eighty-nine percent of those convicted served time in jail, 77% were fined, and 69% were both fined and jailed.

We hope this information is of use to you. We sincerely apologize for the delay in delivering it, but tabulating the data from the Court System took significantly longer than we anticipated. If we can provide any further information, please don't hesitate to contact us.

CJ

Attachment

1980 Court Cases Involving a DWI Offense and Other Lesser Offenses
By Disposition of Case

	NO. OF CASES WHICH INVOLVE A DWI OFFENSE AND ANOTHER OFFENSE	CONVICTIONS		PENALTIES									
				Jail		Fine		Both		License Revoked		Restitution Required		Probation
		No.	%	No.	%[1]	No.	%	No.	%	No.	%	No.	%	No.
ONE OTHER OFFENSE	164	146	89%	131	90%	111	76%	100	68%					
TWO OTHER OFFENSES	22	22	100%	20	91%	17	77%	16	73%					
THREE OR MORE OTHER OFFENSES	9[2]	8	89%	6	75%	7	86%	5	63%					
TOTAL	195	176	90%	157	89%	135	77%	121	69%	70	40%	23	13%	63	36%

[1]Percentage of convictions.

[2]Eight cases involve three other offenses and one case involves four other offenses.

Source: House Research Agency from data provided by the Alaska Court System, February, 1982.

RANGE OF JAIL SENTENCES

	No.	%
1- 5 days	82	52%
6- 10 days	32	20
11- 25 days	24	15
26- 50 days	8	5
51-100 days	7	5
101-200 days	3	2
over 200 days	1	1
TOTAL	157	100%

RANGE OF FINES

	No.	%
less than $100	2	2%
$100-199	24	18
$200-299	56	41
$300-399	27	20
$400-499	10	7
$500-750	14	10
over $750	2	2
TOTAL	135	100%

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Room Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 16, 1982

MEMORANDUM

TO: Representative Mitch Abood
Attention: Carol Horos

FROM: Christine Johnson, Research Staff

RE: Research Request No. 82-63
Drunk Driving Statistics

Attached please find several charts which should at least partially address your questions regarding (1) the recidivism rate for drunk drivers; and (2) the number of other offenses which drunk drivers commit. Major findings from the data are summarized below:

- In the last five fiscal years, approximately 16,700 individuals were booked into Alaska correctional facilities on charges of drunk driving. Of these, 7,100 or 42% had been booked for drunk driving on at least one other occasion since 1972.

- Between FY 77 and FY 80, the percentage of drunk drivers who were repeat offenders increased steadily from 33% to 48%. The percentage of repeat offenders declined slightly in FY 81 to 44%; however, it is impossible to say whether this represents a one-time fluctuation or the beginnings of a downward trend.

- Over the five-year period, drunk drivers were charged with a total of 2,500 other offenses, including 1,500 other traffic violations. Forty-nine percent of these other offenses were attributed to drivers who had been picked up for drunk driving on at least one other occasion.

We can provide a more detailed breakdown of this data by geographic location, and by age, sex, or race of the offender, if you desire. Please call if you have any questions.

CJ/bf

TABLE I

Number of Persons Booked in Alaska Correctional Facilities for OMVI Offenses Who Had Been Booked Previously on the Same Charge FY 77 - FY 81

Year	Total No. of Persons Booked for OMVI	No. of These Who Were OMVI Repeaters		No. of Other OMVI Offenses Since 1972											
				1	2	3	4	5	6	7	8	9	10	11	12
FY 77	3,340	1,096	33%	709	190	74	24	12	3	2	2				
FY 78	3,297	1,385	42%	949	266	95	46	16	8	4	1				
FY 79	3,777	1,693	45%	1018	356	160	82	44	16	9	7	1			
FY 80	3,004	1,455	48%	803	324	161	77	37	27	13	7	5	2		
FY 81	3,350	1,484	44%	863	295	148	77	35	23	14	10	8	5	4	2
5-Year Total	16,766	7,114	42%	4422	1431	638	306	144	77	42	27	14	7	4	2

SOURCE: House Research Agency, March 1982, from Alaska Dept. of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE II
Number of Other Offenses For Which Drunk Drivers Were Charged
FY 77 - FY 81

Other Offense	No. of Bookings for OMVI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Murder & Negl. Mansl.					1
Non-Negl. Manslaughter				1	1
Robbery	1	1	1	2	1
Aggravated Assault	25	21	20	11	5
Burglary		2			2
Larceny/Theft	4	3	8	4	4
Joyriding	20	21	20	7	6
Assault, Other	3			1	5
Fraud	1			4	1
Embezzlement			1		
Stolen Property			2	1	
Vandalism	6	8	9	1	5
Weapons	12	13	22	7	10
Sex Offenses				1	
Sale/Distribution of Controlled Substances	6		2		2
Liquor Laws	22	7	7	5	5
Drunkenness	15	7	14	1	6
Disorderly Conduct	11	11	3	9	12
Disord. Conduct, Other	17	13	15	17	52
Suspicion	1	3		1	6

(CONTINUED)

TABLE II (CONTINUED)

Other Offense	No. of Bookings for OMVI and Other Offense				
	FY 77	FY 78	FY 79	FY 80	FY 81
Traffic-M.V.	233	250	334	332	375
Offense Against Court	11	25	37	92	108
Probation Violation	1	1	6	5	3
Parole Violation					2
Bench Warrant	19	15	5	36	42
Bail Violation	1				
Escape	1	2	4	2	
AWOL-Fugitive	1		1	1	3
Contributing to Delinquency			1	2	1
Possession/Use of Controlled Substance	33	25	17	11	11
Juvenile Status Offense	1	1			
Other or Unknown		10	6	2	
TOTAL	446	440	535	556	671

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.

TABLE III
Number of Other Offenses For Which Drunk Drivers Were Charged
Cumulative Total for FY 77 - FY 81

Other Offense	No. of Bookings for OMVI and this Offense	No. of These Which Involved OMVI Repeater		No. of Other OMVI Bookings Since 1972				
				1	2	3	4	5+
Murder & Negil. Mansl.	1							
Non-Negl. Mansl.	2							
Robbery	6	1	17%	1				
Aggravated Assault	34	27	32%	17	9			1
Burglary	4	2	50%	2				
Larceny-Theft	23	9	39%	5	2	1	1	
Joyriding	74	30	41%	15	7	1	3	4
Assault, Other	9	2	22%	1	1			
Fraud	6	2	33%		2			
Embezzlement	1							
Stolen Property	3	1	33%	1				
Vandalism	29	12	41%	7	4	1		
Weapons	64	11	17%	10	1			
Sex Offenses	1							
Sale/Distribution of Controlled Substances	10	3	30%	1	1	1		

(CONTINUED)

Other Offenses	No. of Bookings for OMVI and this Offense	No. of These Involving OMVI Repeater		No. of Other OMVI Bookings Since 1972				
				1	2	3	4	5+
Liquor Laws	47	7	15%	4	3			
Drunkenness	43	14	33%	9	2	1	1	1
Disorderly Conduct	46	23	50%	13	3	6	1	
Disord. Conduct, Other	114	47	41%	22	11	9	4	1
Suspicion	11	6	55%	2	3		1	
Traffic-M.V.	1,524	825	54%	318	200	112	73	122
Offense Against Court	273	167	61%	70	48	24	10	15
Probation Violation	16	10	63%	3	1	2	2	2
Parole Violation	2	2	100%	1	1			
Bench Warrant	117	66	56%	27	18	6	6	9
Bail Violation	1	1	100%	1				
Escape	9	4	44%	1	2	1		
AWOL-Fugitive	6	1	17%	1				
Contributing to Delinq.	4	1	25%	1				
Possession/Use of Controlled Substance	98	29	30%	23	3	2		1
Juvenile Status Offense	2							
Other or Unknown	18	7	39%	6	1			
TOTAL	2,640	1,310	49%	562	323	167	102	156

Source: House Research Agency, March 1982, from Alaska Department of Health and Social Services, Division of Corrections, Corrections Master Plan.

National Conference of State Legislatures

Office of State Federal Relations
444 North Capitol Street, N.W. Suite 203 Washington, D.C. 20001 202/737-7004

President
William F. Passannante.
Speaker Pro Tempore,
New York Assembly

Executive Director
Earl S. Mackey

M E M O R A N D U M

TO: Legislators and legislative staff interested in drunk driving legislation

FROM: Ralph Craft, Staff Director Transportation and Communications Committee RC

RE: Drunk Driving Incentive Grants Regulations; Presidential Drunk Driving Commission Recommendations

DATE: February 9, 1983

Enclosed is a summary of the Final Rule for the Incentive Grant Criteria for Alcohol Traffic Safety programs that were published in the Federal Register February 7, 1983 page 5545.

Also enclosed are some of the recommendations made by the Presidential Commission on Drunk Driving in its interim report. The recommendations included are those that would require state legislative action.

RECOMMENDATIONS THAT WOULD REQUIRE STATE
LEGISLATION FROM THE INTERIM REPORT TO THE NATION
FROM THE PRESIDENTIAL COMMISSION ON DRUNK DRIVING

1.1 Program Financing

Legislation should be enacted at State and local levels which creates a dedicated funding source which includes offender fines and fees for increased efforts in the enforcement, prosecution, adjudication, sanctioning, and education and treatment of driving under the influence (DUI) offenders.

1.2 Task Forces

State and local governments should create Task Forces of governmental and non-governmental leaders to increase public awareness of the problem, to more effectively apply driving under the influence laws, and to involve governmental and non-governmental leaders in action programs.

1.8 Improved Roadway Delineation and Signing

States should give increased attention to improvements in roadway markings, signing, and roadside hazard visibility as important countermeasures to alcohol-related highway crashes.

2.2 Implied Consent

Each state should establish an implied consent statute providing that all drivers are deemed to have given their consent to tests of blood, breath or urine to determine their alcohol or drug concentration. The statute should provide:

(1) License suspensions sufficiently severe to discourage drivers from refusing the test.
(2) Introduction of evidence of the test refusal into driving under the influence prosecutions.
(3) That offenders not be required to be taken to a police facility and placed under formal arrest prior to test administration.
(4) That offenders who are unconscious or otherwise incapable of refusal are deemed to have given their consent to a test, the results of which are admissible in any trial or proceeding.
(5) That an individual's right to consult his attorney not be permitted to unreasonably delay administration of the test.
(6) That results of preliminary breath test devices are admissible in DUI trial proceedings.
(7) That refusals in sister States result in license suspensions in the State of driver residence.

2.3 Preliminary Breath Testing

States should enact a statute allowing the use of Preliminary Breath Test (PBT) devices by police officers.

2.5 Mandatory BAC Test

States should require mandatory alcohol and other drug testing of all drivers involved in a fatal or serious personal injury crash.

2.6 Booking Procedures

Laws, policies, and procedures should be adopted to expedite arrest, booking and charging procedures.

2.7 Uniform Traffic Ticket
State and local governments should adopt a statewide uniform traffic ticket system.

3.2 Definition of BAC
States should enact a definition of "Breath Alcohol Concentration" and make it illegal to drive or be in control of a motor vehicle with a Breath Alcohol Concentration above that defined level.

3.3 0.08 Presumptive Level of Under the Influence
Legislation should be enacted which provides that a person with an alcohol concentration of 0.08 is presumed to be driving under the influence.

3.4 0.10 Illegal Per Se
Legislation should be enacted making it illegal per se for a person with an alcohol concentration of 0.10 or higher within three hours of arrest to drive or be in actual physical control of a motor vehicle.

4.1 Mandatory Sentencing
The sentences recommended herein upon conviction of a driving under the influence offense should be mandatory and not subject to suspension or probation. Specifically the recommendations are that:

(1) All states establish mandatory substantial minimum fines for driving under the influence offenders, with correspondingly higher mandatory minimum fines for repeat offenders.
(2) Any person convicted of a first violation of driving under the influence should receive a mandatory minimum jail sentence of 48 consecutive hours, or license suspension for a mandatory period of not less than 90 days plus a mandatory assignment of 100 hours of community service.
(3) Any person convicted of a second violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 10 days, and license revocation for not less than 1 year.
(4) Any person convicted of a third or subsequent violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 120 days and license revocation for not less than three years.

4.5 Felony
Causing death or serious bodily injury to others while driving under the influence should be classified a felony.

4.6 License Violation
States should enact a statute requiring mandatory jail sentence of at least 30 days for any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a driving under the influence conviction.

4.8 Victim Restitution
Any person convicted for driving under the influence should pay restitution.

4.9 Victim Assistance
State and local governments should provide assistance to victims of driving under the influence offenders.

4.10 Victim Impact Statements
State and local governments or courts by rule should require victim impact statements (including oral or written statements by victims or survivors) prior to sentencing in all cases where death or serious injury results from a DUI offense.

5.1 Administrative Per Se License Suspension
States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

5.2 Driver License Compact
Each State should adopt the Driver License Compact and the one license/one record policy while also utilizing the National Driver Register.

5.4 Provisional License for Young Drivers
States should adopt laws providing a provisional license for young novice drivers which would be withdrawn for a driving under the influence conviction or an implied consent refusal.

6.1 Minimum Legal Drinking Age
States should immediately adopt 21 years as the minimum legal drinking age for all alcoholic beverages.

6.2 Dram Shop Laws
States should enact dram shop laws establishing liability against any person who sells or serves alcoholic beverages to an individual who is visibly intoxicated.

6.3 Alcohol Beverage Consumption in Motor Vehicles
State and local governments should prohibit consumption of alcoholic beverages in a motor vehicle and prohibit the possession of open alcoholic beverage containers in the passenger compartment of motor vehicles.

10.4 Administrative
(1) State standards, criteria and review procedures should be established for alcohol education schools, treatment and rehabilitation services, and community service programs. A State agency should be assigned responsibility to certify to the courts the alcohol education and treatment and rehabilitation programs that meet established criteria and standards. This same agency should make efforts to draw upon and involve appropriate existing programs, e.g., employee assistance programs.

(2) States should develop and implement an on-going statewide evaluation system to assure program quality and effectiveness.

(3) Defendants should be assessed fees for education or treatment and rehabilitation services at a level sufficient to cover the costs.

HIGHLIGHTS
FINAL RULE: INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
23 CFR Part 1209
pursuant to
P.L. 97-364

FOUR BASIC GRANT CRITERIA (for 30% of 402 apportionment)

No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

> The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

- "prompt"
  - -- license suspension within an average of 45 days from time of arrest;
  - -- but, States reaching average of 90 days from time of arrest may qualify if they submit a plan showing how they will reduce the average to 45 days;
  - -- in order to be eligible for each of the supplemental criteria, a State must have a license suspension system in which average time to suspend a license does not exceed 45 days.
- "suspension" for 90 days on first offense
  - -- full suspension for 30 days and use of a restricted provisional or conditional license for the remaining 60 days;
  - -- no restricted or limited licenses for second offenders or persons refusing to take BAC test;

No. 2: Mandatory Sentence

The second criterion established by Congress for basic grant eligibility requires:

A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period.

- "imprisonment" includes confinement not only in jails or prisons, but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers.

- copies of existing legislation/regulations on mandatory sentences adequate to demonstrate compliance. Statistically valid samples can suffice for data on average sentence imposed on repeat offenders. Only data on general types of confinement (jail, treatment centers) to be required, not confinement used for each individual.

No. 3: Illegal Per Se Laws

The third criterion established by Congress for basic grant eligibility requires States to have a law that:

Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

- .10% as presumptive level, rather than illegal per se, does not comply

No. 4: Increased Enforcement/Public Information Efforts

The fourth and final criterion established by Congress for basic grant eligibility requires:

Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

- States will determine which indicators are most appropriate to demonstrate increased efforts

- Demonstration of increased levels of effort made through comparison of F.Y. 1982 (or later years) with prior preceding year or average of State efforts over 3 years preceding year in which State first applies for a grant.

SUPPLEMENTAL GRANT CRITERIA (for up to 20% of 402 apportionment)

- States required to adopt minimum of eight (8) criteria of their choosing out of 21 possible criteria, for full 20% grant
- Adoption of minimum of four (4) criteria of a State's choosing, will qualify a State for 10% grant
- To be eligible for supplemental grant for second and third year, States must adopt two (2) more criteria each year and demonstrate increased performance in criteria adopted in prior year or years
- States not required to adopt more than fifteen (15) of supplemental criteria, but will have to show increased performance in previously adopted criteria
- Prior adoption of criteria will be recognized, no matter when adopted, as long as States can demonstrate active implementation of the criteria during past four years.

List of 21 Possible Criteria:

1. Raise drinking age to 21 for all alcoholic beverages, immediately, or over three year period.
2. Explanation of program coordination among different State agencies involved in alcohol traffic safety programs (no requirement for single State Coordinator)
3. Setting of minimum standards for rehabilitation and treatment programs.
4. Establishment of a State task force; (county, city or regional task forces encouraged, but not required -- if local task forces not used, must show that local community interests are represented on the State task force.)
5. A statewide driver record system operated so conviction information is recorded within 30 days of conviction, license sanction or completion of appeals process.
6. Locally coordinated programs in cities, counties, or regions; communities decide themselves on specific geographic area to be involved in program.
7. Prevention and education program aimed at changing the societal norm relative to drunk driving (to include kindergarten through twelfth grade education program, and involvement of private sector and parents)

8. Pre- or post-screening (based, at a minimum, on BAC level at time of arrest, prior alcohol-related convictions, and a self-administered questionnaire)

9. An evaluation system that determines the effectiveness of individual program countermeasures and overall program effectiveness

10. Self sufficient programs; compliance demonstrated by providing a plan showing how program will become self sufficient.

11. Use of roadside sobriety checks

12. A citizen reporting program; compliance demonstrated by providing information on the degree of participation, e.g., number of citizen reports and resulting arrests based on statistically valid samples.

13. Enactment of a BAC of 0.08 percent as presumptive evidence

14. Uniform licensing procedures; full participation in the National Driver Register and the Driver's License Compact, and use of a one-license, one-record policy

15. Use of preliminary breath tests (PET's)

16. Adoption of the requirement that no alcohol-related charge be reduced to a non-alcohol-related offense or probation without judgment being entered and without written declaration of why the action is in the interest of justice. The law must also provide that if charge is reduced, driver's record must say reduced charge is alcohol-related

17. Establishment of a victim assistance program and use of victim impact statements and victim restitution.

18. Impoundment of the vehicle or confiscation of the vehicle's tags

19. Allowing the arresting officer to choose the specific type of chemical test to use

20. Enactment of dram shop liability laws (or upholding of common law dram shop liability in State's highest court)

21. Adoption of new, unique and innovative alcohol traffic safety programs

Public Law 97-364
97th Congress

An Act

To amend title 23, United States Code, to encourage the establishment by States of effective alcohol traffic safety programs and to require the Secretary of Transportation to administer a national driver register to assist State driver licensing officials in electronically exchanging information regarding the motor vehicle driving records of certain individuals.

, 1982
6170]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—ALCOHOL TRAFFIC SAFETY PROGRAMS

SEC. 101. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 408. Alcohol traffic safety programs

408.

"(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol. Such grants may only be used by recipient States to implement and enforce such programs.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

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"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol traffic safety program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) shall equal 30 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title.

402.

"(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

23 USC 402.

State eligibility.

"(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

"(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

"(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

"(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

"(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

"(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

Effective
program
criteria.

"(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

"(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

"(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

"(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

"(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

"(5) for the grant of presentence screening authority to the courts;

"(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

"(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section.

Appropriation authorization.

"(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1983, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

23 USC 101 *et seq.*

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"408. Alcohol traffic safety programs.".

Regulations, publication in Federal Register.
23 USC 408 note.

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act.

Ante, p. 1738.
Disapproval by Congress.

TITLE II—NATIONAL DRIVER REGISTER

National Driver Register Act of 1982.

SHORT TITLE

23 USC 401 note.

SEC. 201. This title may be cited as the "National Driver Register Act of 1982".

DEFINITIONS

23 USC 401 note.

SEC. 202. For purposes of this title, the term—

(1) "alcohol" has the meaning given such term by the Secretary of Transportation under regulations prescribed by the Secretary;

(2) "chief driver licensing official" means the official in each State who is authorized to (A) maintain any record regarding any motor vehicle operator's license issued by such State; and (B) grant, deny, revoke, suspend, or cancel any motor vehicle operator's license issued by such State;

(3) "controlled substance" has the meaning given such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "highway" means any road or street;

(5) "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway, except that such term does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail or rails;

(6) "motor vehicle operator's license" means any license issued by a State which authorizes an individual to operate a motor vehicle on a highway;

(7) "participating State" means any State which has notified the Secretary of its participation in the Register system, pursuant to section 204 of this title;

(8) "Register" and "Register system" mean the National Driver Register established under section 203 of this title;

(9) "Secretary" means the Secretary of Transportation;

(10) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(11) "State of record" means any State which has transmitted to the Secretary, pursuant to section 205 of this title, any report regarding any individual who is the subject of a request for information made under section 206 of this title.

ESTABLISHMENT OF REGISTER

SEC. 203. (a) The Secretary shall, as soon as practicable after the date of enactment of this title, establish and thereafter maintain a Register, to be known as the National Driver Register, to assist chief driver licensing officials of participating States in exchanging information regarding the motor vehicle driving records of individuals. The Register shall contain an index of the information that is reported to the Secretary under section 205 of this title, and shall be designed to enable the Secretary, either electronically or, until such time as all States are capable of participating electronically, through the United States mails, to—

23 USC 40

Informati index.

(1) receive information submitted under section 205(a) of this title by the chief driver licensing official of any State of record;

(2) receive any request for information made by the chief driver licensing official of any participating State under section 206 of this title;

(3) refer such request to the chief driver licensing official of any State of record; and

(4) relay without interception of the actual information to the chief driver licensing official of a participating State any information provided by any chief driver licensing official of a State of record in response to such request.

(b) The Secretary shall not be responsible for the accuracy of any information relayed to the chief driver licensing official of any participating State, except that the Secretary shall maintain the Register in a manner that ensures against any inadvertent alteration of information during any relay.

Final rule.

(c)(1) The Secretary shall, within eighteen months after the date of enactment of this title, promulgate a final rule which provides for procedures for the orderly transition from the system regarding the motor vehicle driving records of individuals provided in Public Law 86-660 (74 Stat. 526) to the Register established under subsection (a) of this section.

23 USC 313 note.

(2) The Secretary shall not maintain in the Register any report or information which was compiled under the provisions of Public Law 86-660 (74 Stat. 526) and was transferred to the Register after (A) the date the State of record removes it from the State's file; (B) seven years after the date such report or information is entered into the Register; or (C) the date of establishment of a fully electronic Register system, whichever is earlier. Such report or information shall be disposed of in accordance with the provisions of chapter 33 of title 44, United States Code.

44 USC 3301 *et seq.*

Erroneous information.

(3) If the chief driver licensing official of any participating State finds that information which has been transmitted for inclusion in the Register under this section is erroneous or relates to a conviction of a traffic offense which is subsequently reversed, such official shall immediately notify the Secretary of the error. The Secretary shall provide for the immediate deletion from the Register of such material.

(d) The Secretary shall assign to the administration of this title such personnel as may be necessary to ensure the effective functioning of the Register system.

(e) The Secretary may prescribe such regulations as may be necessary to carry out the provisions of this title.

STATE PARTICIPATION

23 USC 401 note.

SEC. 204. (a) Any State may become a participating State under this title by notifying the Secretary of its intention to be bound by the provisions of section 205 of this title.

Status termination.

(b) Any participating State may terminate its status as a participating State under this title by notifying the Secretary of its withdrawal from participation in the Register system.

(c) Any notification made by a State under subsection (a) or (b) of this section shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

REPORTS BY CHIEF DRIVER LICENSING OFFICIALS

23 USC 401 note.

SEC. 205. (a) The chief driver licensing official in each participating State shall, as soon as practicable after the date of enactment of this title, transmit to the Secretary a report containing the information required in subsection (b) of this section regarding any individual—

(1) who is denied a motor vehicle operator's license by such State for cause;

(2) whose motor vehicle operator's license is canceled, revoked, or suspended by such State, for cause; or

(3) who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses—

(A) operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

Required information.

(b) Any report regarding an individual which is transmitted by a chief driver licensing official pursuant to subsection (a) of this section shall contain—

(1) the legal name, date of birth (including day, month, and year), sex, and (at the Secretary's discretion) the height, weight, eye and hair color of such individual;

(2) the name of the State transmitting such information; and

(3) the social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number);

except that any report concerning an occurrence specified in subsection (a) (1), (2), or (3) of this section which occurs during the two-year period preceding the date on which such State becomes a participating State shall be sufficient if it contains all such information as is available to the chief driver licensing official on such date.

(c) Any report required to be transmitted by a chief driver licensing official of a State under subsection (a) of this section shall be transmitted to the Secretary—

(1) not later than thirty-one days after receipt by a State motor vehicle department of any information specified in subsection (b) (1), (2), or (3) of this section which is the subject of such report, if the date of such occurrence is after the date on which such State becomes a participating State; or

(2) not later than the expiration of the six-month period following the date on which such State becomes a participating State, if such report concerns an occurrence specified in subsection (a) (1), (2), or (3) of this section that occurs during the two-year period preceding such date.

(d) Nothing in this section shall be construed to require any State to report any information concerning any occurrence which occurs before the two-year period preceding the date on which the State becomes a participating State.

ACCESSIBILITY OF REGISTER INFORMATION

23 USC 401 n

SEC. 206. (a)(1) For purposes of fulfilling his duties with respect to driver licensing, driver improvement, or highway safety, the chief driver licensing official of any participating State may, on and after the date of enactment of this title, request the Secretary to refer electronically or through the United States mails any request for

information regarding the motor vehicle driving record of any individual to the chief driver licensing official of any State of record.

(2) The Secretary shall electronically or through the United States mails relay to any chief driver licensing official of a participating State who requests information under paragraph (1) of this subsection any information received from the chief driver licensing official of any State of record regarding an individual in accordance with paragraph (1) of this subsection, except that the Secretary may refuse to relay any information to any such official who is the chief driver licensing official of a participating State which is not in compliance with the provisions of section 205 of this title.

(b)(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the Board or Bureau of Motor Carrier Safety, may request the chief driver licensing official of a State to obtain information under subsection (a) of this section regarding such individual. The Chairman and Administrator may receive any such information.

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(2) Any individual who is employed as a driver of [illegible] vehicle or who seeks employment as a driver of a motor v[illegible], request the chief driver licensing official of the State in w[illegible] individual is employed or seeks employment to transmit information under subsection (a) of this section to his employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request.

(3) Any individual, in order (A) to determine whether the Register is providing any data regarding him or the accuracy of any such data; or (B) to obtain a certified copy of data provided through the Register regarding him, may request the chief driver licensing official of a State to obtain information regarding him under subsection (a) of this section.

(4) Any request made under this subsection shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

(c) Any request for, or receipt of, information by means of the Register shall be subject to the provisions of sections 552 and 552a of title 5, United States Code, and any other applicable Federal and State law, except that—

(1) the Secretary shall not relay, or otherwise transmit, information specified in section 205(b) (1) or (3) of this title to any person not authorized by this section to receive such information;

(2) any request for, or receipt of, information by any chief driver licensing official, or by any person authorized by subsection (b) of this section to request and receive information, shall be considered to be a routine use for purposes of section 552a(b) of title 5, United States Code; and

(3) any receipt of information by any person authorized by this section to receive information shall be considered to be a disclosure for purposes of section 552a(c) of title 5, United States Code, except that the Secretary shall not be required to retain the accounting made under paragraph (1) of such section for more than a seven-year period after the date of such disclosure.

PILOT TEST PROGRAM

SEC. 207. (a) The Secretary shall design, within eighteen months after the date of enactment of this title, and implement, within two years after the date of enactment of this title, a pilot test program for the purpose of demonstrating the potential effectiveness of a system for electronic referral and relay of information regarding the motor vehicle driving records of individuals. 23 USC 401 note.

(b) The Secretary shall solicit the participation of States which are interested in participating in such program and shall, within thirty months after the date of enactment of this title, select four States to participate in the program.

(c)(1) The Secretary shall select States in accordance with the provisions of subsection (b) of this section from among States which have in effect, on the date of selection, an intrastate online driver licensing system capable of electronically transmitting information regarding the motor vehicle driving records of individuals.

(2) The Secretary shall select only those States which indicate a willingness to participate in a comprehensive mechanical and programmatic evaluation of systems for the electronic transfer of information.

(3) The Secretary shall ensure that the selection made pursuant to subsection (b) of this section is representative of varying geographical and population characteristics of the Nation.

(4) No State shall participate in the program unless it agrees to assist in providing information to other States regarding the electronic transfer of the motor vehicle driving records of individuals.

(d) Within two years after the date of enactment of this title, the Secretary shall begin the pilot program authorized by subsection (a) of this section. Such program shall continue for a period of one year. In carrying out the program, the Secretary shall utilize different computer technologies and equipment in order to determine which technology and equipment is most effective for the electronic transfer of the motor vehicle driving records of individuals. The Secretary shall determine which systems and devices will best interconnect with systems and devices used in the States which are participating in the pilot program, as well as those used in other States. Computer technologies and equipment.

(e) Any equipment or device which is provided to a State for use in the pilot program conducted under this section may, in the discretion of the Secretary, remain with the State following the conclusion of the pilot program.

(f) Not later than one year after the conclusion of the pilot program, the Secretary shall submit to the Congress a report on the program. Such report shall include an evaluation of the technology utilized during the program, together with an explanation of the nature and degree of State participation in the program. The report shall also contain an evaluation of achievements of the pilot program, as well as a projection of accomplishments which might result from the acquisition of electronic transfer equipment and methods by States other than those which participated in the pilot program. Report to Congress.

CRIMINAL PENALTIES

23 USC 401 note.

SEC. 208. (a) Any person, other than an individual described in section 206(b)(4) of this title, who receives under section 206 of this title information specified in section 205(b) (1) or (3) of this title (the disclosure of which is not authorized by section 206 of this title), and who, knowing that disclosure of such information is not authorized, willfully discloses such information, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Any person who knowingly and willfully requests or under false pretenses obtains information specified in section 205(b) (1) or (3) of this title from any person who receives such information under section 206 of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ADVISORY COMMITTEE

23 USC 401 note.

SEC. 209. (a) There hereby is established a National Driver Register Advisory Committee, which shall advise the Secretary concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records.

Membership.

(b) The Advisory Committee shall consist of fifteen members, appointed by the Secretary, as follows:

(1) three members from among individuals who are specially qualified to serve on the Advisory Committee by virtue of their education, training, or experience, and who are not employees of the Federal Government or of any State; and

(2) three members from among groups outside the Government which represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations; and

(3) nine members, geographically representative of the participating States, from among individuals who are chief driver licensing officials of participating States.

Office terms.

(c)(1) Except as provided in paragraph (2) and paragraph (3), each member of the Advisory Committee shall be appointed for a term of three years.

(2) Of the members first appointed—

(A) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of one year;

(B) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of two years; and

(C) one of the members described in subsection (b)(1) and one of the members described in subsection (b)(2) and three of the members described in subsection (b)(3) shall be appointed for a term of three years;

as designated by the Secretary at the time of appointment.

Vacancies.

(3) Any vacancy in the Advisory Committee shall be filled in the same manner as original appointments. Any member appointed to fill any vacancy shall serve for the remainder of the term for which his predecessor was appointed. Any member may serve after the expiration of his term until his successor has taken office.

Compensation.

(d) The members of the Advisory Committee shall serve without compensation, but the Secretary is authorized to reimburse such members for all reasonable travel expenses incurred by them in attending the meetings of the Advisory Committee.

(e)(1) The Advisory Committee shall meet not less than once each year.

(2) The Advisory Committee shall elect a Chairman and a Vice Chairman from among the members of the Advisory Committee.

Quorum.

(3) Eight members of the Advisory Committee shall constitute a quorum.

(4) The Advisory Committee shall meet at the call of the Chairman or a majority of the members of the Advisory Committee.

(f) The Advisory Committee may receive from the Secretary such personnel, penalty mail privileges, and similar services, as the Secretary considers necessary to assist it in performing its duties and functions under this section.

Report.

(g) Not less than once each year, the Advisory Committee shall prepare and submit to the Secretary a report concerning the efficiency of the maintenance and operation of the Register, and the effectiveness of the Register in assisting States in exchanging information regarding motor vehicle driving records. Such report shall include any recommendations of the Advisory Committee for changes in the Register system.

(h) The Advisory Committee shall be exempt from the requirements of section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act (5 U.S.C. Appendix).

REPORT BY SECRETARY

Submitta Congress 23 USC 4

SEC. 210. Not later than the expiration of the four-year period following the date of enactment of this title, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the extent and level of participation in the Register system, and the effectiveness of such system in the identification of unsafe drivers. Such report shall include any recommendations of the Secretary concerning the desirability of extending the authorization of appropriations for this title beyond the period of authorization provided in section 211 of this title.

AUTHORIZATION OF APPROPRIATIONS

23 USC 4

SEC. 211. (a) There are authorized to be appropriated for fiscal years beginning after September 30, 1982, for expenses incurred in the establishment of the Register system under this title not to exceed $2,000,000.

(b) There are authorized to be appropriated to carry out the provisions of this title and the provisions of Public Law 86-660 (74

23 USC 313 note.

Stat. 526) not to exceed $1,000,000 for fiscal year 1983, not to exceed $1,300,000 for fiscal year 1984, not to exceed $1,600,000 for fiscal year 1985, not to exceed $1,600,000 for fiscal year 1986, and not to exceed $1,600,000 for fiscal year 1987.

(c) Funds authorized under this section shall remain available until expended.

Approved October 25, 1982.

LEGISLATIVE HISTORY—H.R. 6170 (S. 2158):

HOUSE REPORT No. 97-867 (Comm. on Public Works and Transportation).
SENATE REPORT No. 97-360 accompanying S. 2158 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 128 (1982):
May 11, S. 2158 considered and passed Senate.
Sept. 29, considered and passed House.
Oct. 1, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 18, No. 43 (1982):
Oct. 25, Presidential statement.

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Excerpts from
A REPORT ON A NATIONAL STUDY OF PRELIMINARY BREATH TEST (PBT) AND ILLEGAL PER SE LAWS

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3-16

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AUGUST 1981
FINAL REPORT

Prepared for:

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Washington, D.C. 20590

FOREWORD

The objectives of this project are to provide the National Highway Traffic Safety Administration (NHTSA) with: (1) an in-depth national state-of-the-art review and evaluation of two major driving while under the influence (DWI) countermeasure laws, "Illegal Per Se" (IPS) and "Preliminary Breath Test" (PBT), and (2) provide recommendations on model legislation, model jury instructions, and improvements in application by enforcement, prosecution and judicial bodies. The project will enable the NHTSA to assist the states in improving highway safety through the use of these laws for DWI enforcement and adjudication.

This document contains an executive summary and nine sections, plus an appendix.

Section 1 describes the rationale for implementation of Illegal Per Se and Preliminary Breath Test statutes, and the methodology utilized in conducting this study.

Section 2 presents the results of a survey of all states which have enacted a Preliminary Breath Test law.

Section 3 presents the results of a survey of all states that have enacted an Illegal Per Se law.

Section 4 describes the efforts to date of those states that have attempted but failed to pass either IPS or PBT laws.

Section 5 contains a series of in-depth studies of six states which have either a PBT or IPS law or both, and one state which has neither type of law.

Section 6 presents a summary of the statistical data collected during the study that demonstrates the effect IPS-PBT laws have on DWI arrests and prosecutions.

Section 7 contains proposed IPS and PBT statutes which were developed from examples of the most successful IPS-PBT laws now in use, with modifications suggested by legal and traffic safety authorities.

Section 8 contains proposed jury instructions to accompany the IPS and PBT statutes in Section 7. The jury instructions were derived from samples of jury instructions used by courts in seven different states with IPS or PBT laws.

Section 9 is a report of a NHTSA sponsored workshop on IPS/PBT and describes the findings and conclusions of sixteen national authorities on the utilization of PBT-IPS laws.

This study was designed by Donald Macdonald, J.D., and Marvin Wagner, L.L.M., who served as co-principal investigators for this study and contributed to all sections of the report. Mr. Macdonald is a senior project manager with

Science Applications, Inc. and has directed many projects dealing with the enforcement and adjudication of traffic safety laws. Marvin Wagner is a legal analyst and writer on a wide range of legal issues related to alcohol and highway safety and the adjudication of traffic offenses. The sections containing interviews with prosecutors and the suggested IPS-PBT statutes and jury instructions were provided by James P. Manak, J.D., director of the legal publications section of the Northwestern Traffic Institute, and James T. Reilly, J.D., a staff attorney with the National District Attorneys Association. Legal research, analysis, and interviews with state and local highway safety law enforcement officials, legislators, judges, prosecutors, and defense attorneys were provided by William Devlin, J.D.; Gary Gable, J.D.; and Frank Montecalvo, J.D., all of whom are members of the SAI legal system analysis staff, with extensive experience in conducting traffic safety related legal research and legislative analysis.

Special thanks are offered to Professor Robert Borkenstein, nationally known forensic expert on medico-legal problems and inventor of the Breathalyzer; to Professor Robert Force of Tulane University School of Law, a nationally recognized authority on constitutional law; to Professor James Starrs of the George Washington University National Law Center, an expert on the law and forensic science; and to Professor Andre Moenssens of the University of Richmond, T. C. Williams School of Law, an expert on constitutional law, each of whom provided a critique of this study.

Special recognition is also extended to those highway traffic safety and legal experts who attended the special workshop conducted to review the results of this study. The authors are pleased to express their appreciation for the assistance provided by the Contract Technical Manager, Mr. Phillip Dozier, and to the Chief of the Adjudication Branch of the Driver Licensing and Adjudication Division of NHTSA, Mr. George Brandt.

EXECUTIVE SUMMARY

Testimony of law enforcement personnel, prosecutors, the defense bar, and the judiciary that has been collated in the course of this research project indicates that prosecution of driving while intoxicated offenses (DWI) can be improved by modification of present statutes, especially by the adoption and utilization of Illegal Per Se (IPS) and Preliminary Breath Test (PBT) laws. Fifteen states now have an IPS statute in effect, and Illinois passed an IPS bill in July 1981. California legislators expect to see one enacted in 1981. Seven other states have introduced IPS legislation, but the chances of passage in the near future are uncertain. Fourteen states now have a PBT statute. Eleven states are using some form of PBT without a statute. One additional state expects to pass a new PBT law in 1981.

Sections 7 and 8 of this report contain a model IPS and PBT statute, a supporting rationale for each, and sample jury instructions for use with each statute. Both statutes and the jury instructions were drawn up with careful consideration of the existing statutory forms that have proven most successful, and IPS conforms closely to the latest recommendations from the National Commission on Uniform Traffic Laws and Ordinances. There is currently no UVC section dealing with PBT.

IPS LAWS

An Illegal Per Se statute (IPS) is a law which creates an absolute or strict liability upon a motorist who drives a vehicle on any public highway with a BAC of .10 percent or higher. This type of statute, which is widely used throughout most of the industrialized world, removes the "presumption of intoxication" found in most statutes, and places an "absolute" or "strict liability" upon the motorist when he/she drives after reaching the illegal blood alcohol concentration.

With respect to IPS statutes, surveys of prosecutors and judges in states using these types of statutes attribute to them an increase in guilty pleas. Some of the jurisdictions surveyed have enacted anti-plea bargaining statutes in DWI cases, but even without such statutes guilty pleas are higher because IPS is a difficult charge to defend against at trial. Other prosecutors report speedier settlement of cases under IPS resulting from a stronger plea negotiation posture. Some initial increase in the number of cases being tried was noted after the adoption of IPS statutes, but after the laws were tested in trials, the number of guilty pleas and convictions at trial sharply increased.

Despite the fact that a trial where only IPS was charged would be less costly, prosecutors surveyed preferred to charge both IPS and the traditional DWI offense. This is done in part to protect the case in the event the chemical test is challenged successfully, and in part to provide the opportunity to introduce testimony regarding defendant's demeanor at the time of arrest. In some jurisdictions, prosecutors are reluctant to try a case based strictly on an IPS violation. This was due to the belief that at least some juries will not convict without evidence of physiological impairment, other than that provided by the chemical tests.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;

2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;

3. Has increased the number of convictions for DWI by an estimated average of 9 percent, and this does not include convictions through pleas of guilty to a lesser offense, that probably would not have been obtained without the IPS statute. Alabama reported a 51 percent increase in DWI convictions for the first six month period after its IPS law became effective;

4. Has reduced overall cost of prosecuting DWI defendants by reducing the number of trials in many jurisdictions;

5. By reducing the number of elements of the offense to be proven, IPS facilitates prosecution of the impaired driver;

6. Has assisted law enforcement in making more impaired driver arrests. In those jurisdictions where external evidence in the form of outward signs of impairment was required before prosecutors would press the DWI charge, law enforcement officers were hesitant to arrest, even though a .10 percent BAC was suspected. Under IPS, evidence of gross psychomotor impairment is less important in making the decision to arrest;

7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;

8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;

9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

Penalties

Penalty provisions in IPS and DUI statutes varied greatly among the jurisdictions, as did actual charging and sentencing policies of prosecutors and judges. Mandatory jail penalties were often suggested by prosecutors as an effective deterrent to recidivism, but this view was not shared by the majority of the judges or law enforcement persons that were interviewed.

Administrative Adjudication of First Offense DWI

A number of the judges and prosecutors who were interviewed suggested that first offense DWI should be removed from the courts and placed in an administrative forum, which would emphasize treatment rather than punishment.

Training of Prosecutors

Typically, DWI cases are assigned to entry level staff members or are prosecuted by the least experienced of the assistant prosecutors. Formal training is non-existent or unstructured, with "on-the-job experience" the most common method. Statewide training through a prosecutor association is available in some jurisdictions. Often there is no syllabus or manual of effective techniques that should be employed. All agreed that training modules consisting of courses, manuals, and audio-visual materials would be helpful.

Training of Law Enforcement Officers

It was noted by prosecutors that the use of IPS provisions under DWI statutes can lead to over-reliance by the police on alcohol testing. Cases are weakened if the police officers fail to systematically note the steps leading up to testing and the general indicia of impairment. When the broadest possible investigatory approaches are used by the police, they result in stronger cases and more guilty pleas. Police personnel reported that some juries can be convinced by impersonal chemical test results, but other juries seem to require assurance that the defendant exhibited some outward signs of impairment, particularly in the BAC range of .10 percent to .15 percent.

Recommendations

Traffic safety officials in every state should organize like-minded persons in the legislature, the press, law enforcement, and the general public, to obtain passage of an Illegal Per Se law. DWI prosecutions should probably continue to be based on charges of both IPS and DWI, in order to encourage guilty pleas and to permit the introduction of all the available evidence at trial; however, IPS gives the prosecutor a more cost-effective opportunity to prove DWI, and with a lesser burden, by solely charging IPS when defendant has a BAC reading of .10%. Additional work must be done in some states to reinforce, in the minds of the judiciary, who in turn must convey to the jury, via the jury instructions, the fact that motorists with BACs in the range of .10% to .13% are in fact illegal and dangerous to themselves and others, irrespective of the presence or absence of other indicia of impairment.

The information gathered during this project supports the conclusion that an IPS provision is an effective tool in the enforcement of drunk driving laws.

The research reported upon here indicates that IPS:

1. Has increased the number of guilty pleas by an estimated average, for all jurisdictions, of 12 percent. Alabama reported a 40 percent reduction for the first six month period after its IPS law became effective, which was August 1980;

2. Has reduced the number of DWI charges that are negotiated down to a lesser charge by an estimated average of 16 percent;

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4. Has reduced overall cost of prosecuting DWI defendants by reducing the number of trials in many jurisdictions;

5. By reducing the number of elements of the offense to be proven, IPS facilitates prosecution of the impaired driver;

6. Has assisted law enforcement in making more impaired driver arrests. In those jurisdictions where external evidence in the form of outward signs of impairment was required before prosecutors would press the DWI charge, law enforcement officers were hesitant to arrest, even though a .10 percent BAC was suspected. Under IPS, evidence of gross psychomotor impairment is less important in making the decision to arrest;

7. Has facilitated the prosecution of those drinking drivers that show few indicia of physical impairment, even with high BACs. Outward signs of impairment need not be discussed in an IPS trial;

8. Has contributed to lowering the average BAC of those convicted of DWI-IPS;

9. The purely objective .10 percent BAC, as a basis for an arrest is more easily understood by the defendant than is the law enforcement officer's judgement, based upon demeanor, that the driver is impaired.

There are no offsetting disadvantages of IPS to report. The foregoing issues are addressed in Sections 1, 3, 5, and 6 of this report.

The problems noted with PBT include:

- The "false positives" and "false negatives" occur with some frequency when the PBT is the older "baggie" type test. New sophisticated PBT devices have been developed which are highly reliable and cost-effective when purchased and used in volume, and several of these devices meet NHTSA's standards for evidential alcohol testing equipment.

- Over-reliance by police on test results, to the detriment of careful observation of other indicia of DWI.

- Equipment maintenance problems (particularly with earlier models of the PBT devices).

- The possibility that a medium (but legal) BAC will mask drug use that is responsible for erratic driving.

- High cost to equip a complete state with modern, direct readout devices.

- Possible constitutional constraints on their use to establish probable cause.

The foregoing issues are addressed in Sections 1, 2, 4, and 5.

The emphasis of future PBT research should be in improving the accuracy and dependability of the equipment so as to permit admissibility of PBT results in court. The United States Supreme Court has not as yet ruled on whether a PBT can be taken with less than probable cause. The recent case law implies that such a test would be valid under the balancing theory that is an important part of the "Terry" test. Here, a balancing of the considerable public interest in improved traffic safety, against the minimal intrusion upon the motorist imposed by the modern pocket-sized portable PBT instrument, will likely be held constitutional. All of the cases brought before the state's highest courts dealing with the use of a PBT have upheld its use. The admissibility of either the PBT results or the refusal of a PBT would be of substantial assistance in DWI enforcement.

The future of PBT as a deterrent to drunk driving, particularly in those states with an IPS law, is promising. With or without a passive testing device, an expansion of the Prouse and Prichard decisions regarding random (non-discretionary) roadblocks, at which PBTs are administered on the basis of a reasonable and articulable suspicion of an illegally high BAC, has the potential for significantly increasing the public's perception of the probability of being apprehended for DWI. Authorities generally agree that the fear of apprehension is presently very low among persons who drink and drive.

2. SURVEY OF ALL STATES THAT HAVE PRELIMINARY BREATH TEST (PBT) LAWS

Introduction

As used in this report, the term "preliminary breath test" is defined to mean a pre-arrest breath test. Usually, but not always, the purpose of a preliminary breath test is to assist in establishing probable cause upon which a police officer may base his arrest.

A preliminary breath test is regarded as a valuable law enforcement tool in that:

a) It enables the officer in the field to make a quick and simple determination of whether a person is impaired or intoxicated in those marginal BAC cases, and those stops of impaired persons that have learned the appropriate responses to psychomotor tests;

b) It may indicate that an impaired person, with low BAC, is under the influence of drugs;

c) It can indicate that a person who appears to be intoxicated may be suffering from an illness, such as a diabetic reaction;

d) It can prove that a motorist is not impaired, and can thus be released at the scene and not suffer the indignities and inconvenience of an arrest; and

e) It engenders an awareness by the general public of higher probability of apprehension on the highway of impaired or intoxicated drivers.

A preliminary breath test is a valuable and reasonable use of police authority to determine the fact (or lack) of driver impairment. Considering the government's interest in highway safety (50 percent of all highway fatalities are alcohol-related) and the relatively low (possibly de minimus) intrusion occasioned by a PBT, the laws allowing a PBT have been consistenly upheld by the state courts.

An effective law enforcement campaign, which includes the systematic use of a PBT in traffic stops, can substantially raise the public's awareness of the probability of apprehension on the highways and, therefore, reduce significantly the annual number of drinking-driving accidents.

The typical PBT statute enables police officers to use this new investigative technique, prescribes conditions under which it may be used, determines the methodology to be employed, imposes a duty upon motorists to cooperate with the police in its use, provides sanctions for breach of this duty, and prescribes if and how the results obtained will be used in court. The statute, both on its face and as it is actually used, must meet all requirements imposed by the U.S. and State Constitutions. If there are ambiguities in the statute, the courts will interpret these ambiguities in favor of the defendant whenever possible. If this is not possible, the courts will render the statute unconstitutional. See U.S. v. Simms 508 F. Supp 1179 (1979).

Constitutional Issues Involved in Use of PBT

When a law enforcement officer makes a stop and requests the vehicle operator to submit to a PBT, a constitutional issue may arise in that the Fourth Amendment of the U. S. Constitution (applied to the states via the Fourteenth Amendment) guarantees to individuals the right to be free from unreasonable searches and seizures. The stopping of the individual would be a seizure of the person, and the administration of an active (as opposed to passive) type of preliminary breath test may be a search within the context of the Fourth Amendment. There is a school of thought that this test is not a "search" to which the Fourth Amendment constraints would be applicable. It has been stated that the sampling of "deep lung air" which is the subject of the search, is not sufficiently "intrusive" using the modern PBT devices, to constitute a search. Some analogies of this activity include voice exemplars, handwriting samples, removal of cordite from under fingernails, swabs of grease from hands, etc., which have been held as not being constitutionally protected searches. Should the test be accepted as a search, in order for the search and/or seizure to be valid, it must either be consented to by the individual searched, or be pursuant to a warrant, incident to an arrest, or involve exigent circumstances (immediate loss of evanescent evidence). Probable cause must be present in the last three situations.

In the case of Terry v. Ohio, 392 U.S. 1 (1968), however, the Supreme Court upheld the seizure and search of a person based on something less than probable cause (i.e., a "reasonable suspicion"). The court weighed the government's need for the search to protect the life of the officer, against the intrusiveness of the search iteself (here, a "pat-down" for weapons), and concluded that the search and seizure was not unreasonable in light of the Fourth Amendment. While it is apparent that a request for a PBT is not the same as a "pat down" to protect the life of the officer, the Terry balancing test has been subsequently applied to a variety of situations totally unrelated to the safety of the officer, and these include airport and international border searches.

Three recent State Supreme Court cases have substantial bearing on the issue of the requirements of "probable cause" for the arrest of a suspected DWI prior to a request to submit to a PBT. In the first case, Asbridge v. N. Dakota State Highway Commissioner, 291 N.W. 2d 739 (N.D. Sup Ct), reported on June 10, 1980, the court indicated that the defendant's failure of an on-site chemical screening test (PBT) was one of the elements in establishing "reasonable grounds" or probable cause for DWI arrest. It stated: "Similar in purpose to the various field sobriety tests, the purpose of an on-site chemical screening test is to insure that sufficient probable cause exists to warrant an arrest." (emphasis supplied)

In Marben v. State, 294 N.W. 2d 697 (Minn. Sup. Ct.), reported on August 20, 1980, Marben claimed that because he was not offered a PBT by the arresting officer prior to placing him under arrest, the arrest was invalid and the Implied Consent Law could not be invoked against him. The Court disagreed with this contention, and said the following:

"Contrary to Marben's assertion, we believe that the Implied Consent Law does not require the administration of a preliminary screening test where the officer ascertains from his own observations that the driver is under the influence of alcohol. Rather, the preliminary screening test appears to be intended to be utilized in situations where the officer, after observing the driver, is unsure whether the driver is under the influence of alcohol. See State v. Grovum, 297 Minn. 66. (emphasis supplied)

In State v. Gerber, 206 Neb. 75, 291 N.W. 2d 403 (1980), in regard to e use of a PBT test, the court said, "It should be kept in mind that the stimony with regard to the preliminary test was offered not for the purpose of tablishing the charge against Gerber, but rather to establish justification for acing Gerber under arrest." In Nebraska, it would appear that the Fourth endment issue is settled until the U.S. Supreme Court speaks.

Several other state high court decisions have been made which specify at the major purpose of a PBT is to assist the police officer in determining ether probable cause exists to warrant an arrest.

In State v. Grovum, 209 N.W. 2d 788, (Sup. Ct. of Minn., 1973) on ge 791, the court held:

"The use of a preliminary screening test for determining possible violations of the driving-while-under-the-influence statute is delineated by the statute and is solely for the purpose of guiding the officer as to whether an arrest should be made." (emphasis supplied)

In State v. Bellino, 390 A 2d 1014 (Sup. Ct., Maine, July 1978) the urt, in dealing with a pre-arrest breath test, stated:

"We take notice that subsection 10-c does not expressly require an arrest as a condition precedent to its application. Rather, it subjects the operator initially to a compulsory investigative process to determine whether the operator has consumed alcohol, this through what may be termed a preliminary unofficial breath test to be used only to establish probable cause for the requirement of an official second chemical test of blood or breath, if the preliminary breath test results are positive." (emphasis supplied)

The state courts have consistently interpreted the PBT laws as thority for field officers to conduct preliminary investigations to determine ther the motorists are in violation of the state's drinking-driving laws.

No direct challenge on constitutional grounds has been made in New York inst the use of PBT's as yet. Some New York lower court decisions have mined these issues.

In People v. Delaney, 83 Misc. 2d 576, 373 N.Y.S. 2d 477 (September 5), in referring to a PBT, this lower court rules, on page 480:

"In the breath test situation, the only reason for asking the motorist to take a breath test is to assist the officer in making a determination as to whether he is going to place the defendant under arrest, and consequently the sole and only function is to incriminate the motorist." (emphasis supplied)

In another lower court New York case, the court specifically applied the Terry doctrine to a PBT. It stated:

"However, if the police officer has no probable cause to make the arrest for driving while intoxicated, he may 'in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest,' Terry v. Ohio, supra. There, however, has to be "reasonable suspicion."

"On the other hand, while investigating an accident, the police officer may obtain 'probable cause,' or at least the 'necessary suspicion' to bring the fact situation within the purview of Terry v. Ohio, supra. In that event, the search and seizure of the breath would not be an illegal search and seizure."

"This court believes that a demand for a breath screening test under appropriate circumstances, bears the same relationship to a full scale chemical test as a pat down, to determine if a suspect has a weapon, under the circumstances authorized by Terry v. Ohio, supra, bears to a full scale body search."

Another aspect to be considered is that, with the exception of the State of Nebraska whose penalty for refusal treats the offense as a "misdemeanor," the penalties for refusal of a PBT are generally administrative in nature. Therefore, the constitutional requirements in these instances may be somewhat less stringent than in criminal prosecutions. In Camera v. Municipal Court, 387 U.S. 523, 18 L. EA. 2d 930, 87 S. Ct. 1727, the court stated:

"...this is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken."

"The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought."

"The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search

warrant ... Such an approach neither endangers time-honored doctrines applicable to criminal investigations, nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the compelling public and private interests here at stake, and in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy."

The United States Supreme Court has, in many instances, utilized the balancing concept, which is a separate element of the Terry doctrine in other situations where the public interests out-weighed the importance of protecting the individual from minimal search-type instrusions. In Davis v. Mississippi, 394 U.S. 721 L-Ed. 2d 676, 89 S. Ct. 1394, the court held that:

"Detention for fingerprinting may constitute a much less serious intrusion upon personal security than other types of police searches and detentions. Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search."

In Pennsylvania v. Mimms, 4321 U.S. 106, 54 L. Ed. 2d 331, 98 S. Ct. 330, in a police-stop case, the court stated:

"Reasonableness, of course, depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."

"Against this important interest, we are asked to weigh the intrusion into the driver's personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the owner to get out of the car. We think this additional intrusion can only be described as de minimus."

In a very recent case, U.S. v. Mendenhall, 64 L. Ed. 2d 497, the court held that:

"Terry v. Ohio ... establishes that a reasonable investigative stop does not offend the Fourth Amendment. The reasonableness of a stop turns on the facts and circumstances of each case. In particular, the Court has emphasized (i) the public interest served by the seizure, (ii) the nature and scope of the intrusion, and (iii) the objective facts upon which the law enforcement officer relied, in light of his knowledge and expertise."

Applying the same balancing test to the use of PBTs, the government's need for the stop and search (to remove a potentially dangerous drunk driver, armed in a sense with a motor vehicle) balanced against the intrusiveness of the search (short delay of a "reasonably suspicious" motorist and having him blow into a pocket-sized device) may well result in the search being held to be reasonable and thus constitutional, when this issue does reach the high court.

Statutes authorizing the use of PBTs usually deal with this issue by prescribing the grounds upon which an officer must base his request. Although two states require probable cause (which constitutionally would be sufficient to make an arrest), most request something less stringent, but probably stringent enough to meet the Terry test. Recently the court has settled certain implied consent disputes in Mackey v. Montrym 99 S. Ct. 2612 (1979), and in doing so used an analysis that seems favorable to the validity of PBT laws. Thus, while the constitutionality of PBT laws remains unsettled, the case for validity seems to be strengthened by recent decisions.

Another Supreme Court case, Delaware v. Prouse, 440 U.S. 648 (1979) and a recent Tenth Circuit Court of Appeals decision in U.S. v. Prichard, issued April 1, 1981, are also helpful. In Prichard the court held that a roadblock on an interstate highway with which police attempted, albeit unsuccessfully, to check the license and registration of every motorist that passed by did not run afoul of Delaware v. Prouse. The police began the roadblock by stopping every car, but as soon as 10 cars were backed up, the officer would wave all of them through. Once the area was clear, the officer would reinstate the roadblock and begin this process again. The police later "candidly conceded" that they had planned "to enforce the law" if they observed evidence of other crimes while checking licenses and registration. During the stop of the vehicle at issue in this case, the officer discovered and seized a large quantity of cocaine.

In Prouse the Supreme Court held that random, totally discretionary license checks violated the Fourth Amendment, but at the same time indicated that a roadblock of "all incoming traffic" might withstand constitutional scrutiny. Prichard does not involve the "100% roadblock" referred to in Prouse, the court says, but it was no less reasonable. The police attempted to stop all traffic "insofar as was humanly possible," and their decision to let cars pass through when the traffic backed up was "reasonable and ... non-violative of the rule of Prouse."

The Prouse-Prichard roadblock scenario could be used to stop motor vehicles in a non-discretionary manner, and the observations made by the police officer while collecting information about license and registration could provide the articulable and reasonable suspicion that a DWI-related violation exists, which would then support an involuntary application of a non-passive PBT. This sort of "boot-strapping" would apparently be permissible under Prichard since the police candidly admitted that they planned to charge on any law violations that appeared during the process of the administrative type registration inspection.

In a recent New Jersey Supreme Court case, State v. Coccamo, N.J. Sup. Ct., Morris County, 9/26/80, in approving a roadblock practice to deter drunk drivers, the court cited the Prouse case, and stated:

> "After balancing the State's strong interest in protecting the public from the substantial risk posed by drunk drivers, with the minor inconvenience which may be caused to every fifth motorist and the fleeting, minimal intrusion upon his privacy, the State's action must be considered as a reasonable infringement upon the motorist's expectation of privacy. Nor did the stop become overly intrusive when the defendant was asked to produce his license and registration. When

the initial detention is lawful, as it was here, the police may require the driver to produce his driving credentials."

If a PBT is to be administered with the motorist's consent, such consent must be informed and voluntary. There are occasions on which this may be difficult to prove in court. Some states have attempted to remedy this situation with a statute stating that as a condition to the privilege of driving on the state's highways, the motorist is deemed to have given his consent to such testing. Usually such a statute involves a formal "evidentiary" test rather than a preliminary screening test, but occasionally preliminary tests are also included. Some PBT statutes require that an officer notify the motorist of his right to refuse the test and the consequences of such refusal. Other states require that the motorist be advised that there is no adverse consequence of such refusal, while many states will require license suspension. This is usually connected with the implied consent statute.

Other statutory provisions relate to the admissibility of the evidence in court. If the search is valid (after a legal arrest), there should be no problem, constitutionally speaking, with allowing PBT test results into evidence. Since the "search" issue associated with the PBT situation is unsettled, many states have opted for the safe route by stating that such test results are inadmissible as evidence, but only serve to indicate to the officer whether additional testing is required (i.e., after arrest). It is presumed that should there be an issue of whether the arrest itself was valid, the test results would be admissible for the purpose of establishing probable cause. Most statutes are silent on this, however.

Likewise, most statutes are silent on the issue of admissibility of refusal to take the preliminary breath test. This issue raises a possible problem with the Fifth Amendment right against self-incrimination. It would be constitutional to allow such refusal to be admissible for the purposes of license revocation under an implied consent statute (a non-criminal procedure), but it is questionable as evidence that the driver knew he was guilty of the crime and thus did not submit to the test. Some states do permit into evidence the fact of refusal to take the more formal implied consent test, and the inference to be drawn from this refusal is that the driver knew he was guilty. In Gerber, infra, the court held that the receipt of the PBT in evidence was not prejudicial error and not grounds for reversal.

PBT Test Devices

For those readers who are not familiar with the equipment used to administer pre-arrest (or preliminary) breath tests, the following short descriptions are provided for the two most commonly used PBT devices:

- The "baggy" test is composed of a tube containing a yellow chemical, potassium dichromate, in sulfuric acid, on silica gel crystals and a limiting bag. The subject blows through the tube until the bag on the other end is filled. The yellow color turns to green at the entrance end, and the length of the green change is a rough indicator of the BAC. It is used widely in Europe and in some places in this country. It is disposable, and is used one time only. The length of the green

can be set for any BAC desired as a standard. There is usually nothing to be sent to a laboratory for analysis.

- Electronic pocket-sized portable devices: These hand-held devices use either a fuel cell or an infra-red sensor, and do not require wet chemicals. They give readouts either as pass-fail or in digital BACs. Examples are the Alco-Sensor II and ALERT J3AD.

- Evidentiary instruments in mobile units: These can be used either as PBT devices or as evidentiary test units. These units are large in size. The test procedure takes at least 15 minutes, and requires the suspect to leave his vehicle. Examples include the Breathalyzer and the P.E. Intoximeter.

Each of the above devices are described as "active" as opposed to passive systems in that the subject being tested must cooperate by blowing into the device. A passive system (not available) would detect alcohol in the ambient air in the vicinity of subject's mouth, and would not require the active cooperation of the subject.

These devices are also categorized as screening devices, evidentiary devices, or remote collection devices. Remote collection devices are intended to collect whole breath specimens or the alcohol from a fixed volume of breath for later analysis. Their chief purpose is to provide a specimen to confirm an evidentiary test. Colorado requires this, as do some parts of Arizona. They form no part of preliminary breath testing. Examples are the Intoximeter indium encapsulating units, the Lucky silica gel tubes, and the Breathalyzer calcium sulfate tubes. All these methods require a special breath collection device. They are ancillary to evidential testing.

Several of the newest PBT devices that have undergone extensive testing by the National Highway Traffic Safety Administration have demonstrated the degree of accuracy and reliability that is presently required of instruments in a forensic laboratory, used to produce BACs for evidentiary purposes. In the event that future trial courts demand that an evidential breath test be taken within 30 minutes of the DWI arrest, as is now being suggested by some defense attorneys*, the new generation of PBT devices may suddenly enjoy a much wider market than at present. In states with a PBT law, the officer at the scene can use the first test to make a decision to arrest, and follow this up with a second, post-arrest breath test, under the implied consent statute, which should be admissible at trial.

Currently, fourteen states have statutes which provide for pre-arrest breath testing. These states are listed, and the character of their statutes summarized in Table 2-1. The sections which follow discuss the status of PBT laws in each of these states, and the operational aspects of the law in the

*See Time Magazine, Vol. 118 No. 5, page 64, 3 August 1981.

STATE	PBT	PBT legally permissible - no PBT stat.	A Grounds for request	B Consequences of refusal	C Admissibility of results	D Admissibility of refusal	E Is testing methodology prescribed?	F Test is required	G Notification of rights	STAT. CITATION(S)	COMMENTS
Ala.											
Alaska											
Ariz.											
Ark.											
Calif.											
Colo.											
Conn.		[]									
Del.											
Fla.	■		2	5	2	-	1	1,2	1*	322.261(1)(b)	*written consent required
Ga.											
Hawaii		[]									
Idaho		[]									
Ill.											
Ind.	■		1	3[c],6	1*	1*,6[c]	1	1	-	9-4-4-3-1 [61-2001c]	*implied
Iowa		[]									*not limited to a "breath" test; "not in presence" restriction
Kans.											
Ky.											
La.											
Maine	■[c]		5,6	-	-	-	2	2		29 § 1312.11C	
Md.											
Mass.											
Mich.											
Minn.	■■		2	1*,3,7[c]	1*	3	1	2	-	169.121 subd.6; 169.123 provision	*if chemical test is also refused for implied consent test
Miss.	■■		-	-	2*	-	2	2	-	63-11-5*	*authorizes rules & regs. for PBT, + implied by "unofficial"
Mo.											
Neb.	■		1,*,6	1*,4,6	-	-	-	2	2	37.669.08(3) and (5)	*misdemeanor
Nev.											
N.H.											
N.J.		[]									
N.Mex.											
N.Y.	■■		5*,6*	-	-	-	-	2	-	1192-a	*cl required at least "reasonable suspicion" (W)
N.C.	■■		3	5	2	-	1	2	3	20-16.3	
N.Dak.	■■		2,3,6	3	2	-	2	2	3	39-20-14	
Ohio											
Okla.		[]									
Oreg.											
Pa.		[]									
R.I.		[]									
S.C.											
S.Dak.	■		5,6	-	-	-	-	2	3	32-23-1.2	*must closely pre assess
Tenn		[]									
Tex.											
Utah		[]									
Vt.	■■		3	-	-	-	-	2	-	1201	*must closely PBT
Va.	■■		4*	5	2	2	2	1,2	1	18.2-267	*suspected of violation of § 18.2-266
Wash.											
W.Va.											
Wisc.	■		1	1*	2	1*	1	2	2	343.303 subds. (2)(a) and (3)	*unless implied consent test given for revocation of license only
Wyo.											
D.C.		[]									
P.R.	■										
V.I.											

LEGEND

- = cited statute is silent on issue
- *,c = references to COMMENTS column
- cl = ambiguity clarified by case law

Statutory Characteristics

A Grounds for requests:

1. Probable cause (violation involving alcohol)
2. Reason to believe (violation involving alcohol)
3. Reasonable grounds (violation involving alcohol)
4. Suspicion (violation involving alcohol)
5. Any accident
6. Any traffic violation

B Consequences of refusal:

1. Criminal penalty
2. Civil penalty
3. Suspension/revocation of license
4. Fine
5. No penalty
6. Charged with DWI offense
7. Required to take chemical test

C Admissibility of PBT results:

1. Yes - all cases
2. No - all cases
3. Only to justify arrest/implied consent test

D Admissibility of refusal:

1. Yes - all cases
2. No - all cases
3. To justify arrest/implied consent test
4. In license revocation procedures

E Testing methodology:

1. Prescribed
2. None

F Test is required:

1. By motorist's demand
2. At officer's discretion
3. Prior to arrest (at least a request to test)

G Notification of Rights:

1. Refusal and no penalty
2. Refusal with penalty
3. None

states in which interviews of police, prosecutors, defense attorneys, and judges were conducted.

2.1 FLORIDA

2.1.1 Statutory Provisions

Sec. 322.251. Suspension of license; chemical test for intoxication.

1.(b)1. Notwithstanding the provisions of this section, a law enforcement officer, who has reason to believe that a person's ability to operate a motor vehicle is impaired by alcohol and that the person has been operating a motor vehicle during the period of such impai[illegible] may, with the person's consent, give, or the person may demand, a prearrest breath test for the purpose of determining if said person is in violation of Sec. 316.028(1), but the taking of such prearrest breath test shall not be deemed a compliance with the provisions of paragraph (a). The results of any test administered under this section shall not be admissible into evidence in any civil or criminal proceeding. An analysis of a person's breath in order to be considered valid under the provisions of this section, must have been performed according to methods approved by the Division of Health of the Department of Health and Rehabilitative Services. For this purpose, the Division of Health is authorized to approve satisfactory techniques or methods.

2. Prior to administering any prearrest breath test, a law enforcement officer shall advise the motor vehicle operator that he has the right to refuse to take such test, and, prior to administering such test, a law enforcement officer shall obtain the written consent of the motor vehicle operator.

2.1.2 Case Law

The pre-arrest test is to be used when the officer does not have probable cause but does have a reasonable belief that the individual was driving under the influence of alcoholic beverages. Op. Atty. Gen., 075-46, Feb. 20, 1975.

While the above opinion seems to assert a substantive distinction between "probable cause" and "reasonable belief," these terms are most frequently used on an interchangeable basis. It seems clear that the Attorney General endorses a lesser standard than probable cause, and the authors here believe it means simply a reasonable and articulable suspicion.

It is unnecessary under Federal or Florida constitutions or statutes to place driver under arrest prior to administering a blood test to determine if he is intoxicated. State v. Mitchell, 245 So. 76 2d (1971). The court based its decision on Schmerber v. California, 384 U.S. 757 (1966) stating that the relevant act was not arrest of the subject, but whether there was a clear indication of relevance and likely success of a test of the subject's blood for alcohol.

See Section 5.3 for in-depth study of this state's PBT laws.

2.2 INDIANA

2.2.1 Statutory Provisions

Sec. 9-4-4.5-3 (47-2003e). Opportunity to submit to chemical test prior to arrest. -- (a) Any law enforcement officer authorized to enforce the laws of this state regulating the use and operation of vehicles on public highways who has probable cause to believe that any person has committed the offense of operating a vehicle while intoxicated, under IC 9-4-1-54, though not in his presence or view, shall not place such person under arrest for such offense until he has first offered to such person the opportunity to submit to a chemical test; however, it is not necessary to offer such an opportunity to a person who is unconscious. Any such person who agrees to submit to such chemical test shall not be arrested, but shall accompany the officer to the nearest available chemical test device for the purpose of taking such test as a condition of the driving privilege:

(1) If such chemical test results in prima facie evidence that such person is not intoxicated, he shall not be arrested and charged with such offense and he shall be released immediately.

(2) If such chemical test results in relevant evidence, coupled with other evidence, that such person is intoxicated, he may be arrested and charged with such offense.

(3) If such chemical test results in prima facie evidence that such person is intoxicated, he shall be arrested and charged with such offense.

(b) (Redesignated as subdivision (a)(2) by 1978 amendment.)

(c) (Redesignated as subdivision (a)(3) by 1978 amendment.)

(d) If any person shall refuse to submit to such chemical test, pursuant to this chapter, he may be arrested and charged with such offense, and his current driving license shall be delivered to the judge of the court in which such charge is filed, along with a certification of "refusal to submit," to motor vehicles.

See also Sec. 9-4-4.5-3 for definition of "chemical test."

This statute is not restricted to a breath test, but authorizes a pre-arrest test of breath, blood, urine, or other bodily substance for the presence of alcohol.

2.2.2 Case Law

The state must establish a foundation before Breathalyzer results are admissible into evidence. Klebs v. State, 305 N.E. 2d 781 (1974).

The Indiana Court of Appeals, First District, would not construe the language "nearest available test device" so narrowly as to require a law enforcement officer to forego an accurate and approved chemical test (blood test at hospital with analysis at State Police Laboratory) for another, which would have required moving the subject elsewhere or transporting the device to him. The court also held that exigent circumstances (dissipation of alcohol from blood) allow for a sample to be taken without a warrant, consent or arrest. Clark v. State, 372 N.E. 2d 185 (1978).

In Dunham v. State, 375 N.E. 2d 245 (1978), the court held that a certificate of "breath test refused," is admissible in license revocation proceedings.

2.2.3 Problems with Statutory Interpretation

The first sentence of the statute appears to limit pre-arrest testing to those situations where the offense of driving while intoxicated occurred outside the officer's presence or view. This wording is at variance with previous versions of the provision.

Also, it is not clear from the statute that the purpose of delivering the driver's license to the court, along with a certificate of refusal to take a chemical test, is to effectively withdraw the driving privilege, even before the court has acted to suspend the license. Failure to deliver the defendant's license to the court, with the certification, does not preclude the court from suspending the license. Bowlin v. State, 330 N.E. 2d 353 (1975).

2.2.4 Problems with Statutory Application

The Indiana statute, when viewed as another layer of protection of the civil rights of the motorist, works very well. Viewed as a device for simplifying the problem of establishing probable cause, it involves some problems. Since the statute requires probable cause before a pre-arrest test is given, the statute imposes an additional requirement with which the police must comply (in certain circumstances) before placing a person under arrest. Such additional requirement is not necessary to meet constitutional standards.

It is reported that the state police are using PBTs to a limited extent. There has been no objection in court to the use of PBTs in the field to date. The police support the pre-arrest tests and feel that they save time and are especially useful in separating out marginal cases, which probably would not be prosecuted even if an arrest were made.

2.3 MAINE

2.3.1 Statutory Provisions

Chapter 29 Sec. 1312.11C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require the operator to submit to a chemical test in the manner set forth in this section.

2.3.2 Case Law

In State v. Bellino, 390 A.2d 1014 (1978), the Supreme Judicial Court of Maine clarified an ambiguity in Section 29-1312, Subsection 10-C (now the current 11C) by stating that since the statute does not expressly require an arrest as a condition precedent to the administration of a preliminary breath test, no arrest is required; and that the purpose of the test is to establish probable cause for requiring an official second chemical test, blood or breath, if the preliminary breath test results are positive.

2.3.3 Problems with Statutory Interpretation

The statute does not specifically state that the test is to be given prior to arrest. This is apparently clarified by the Bellino case, supra, although a preliminary breath test was not an issue in that case.

The statute is silent on the issues of consequences for refusal, admissibility of PBT results, and admissibility of the fact of refusal to take the test.

2.3.4 Problems with Statutory Application

No problems were noted.

2.4 MINNESOTA

2.4.1 Statutory Provisions

Sec. 169.121, Subd 6. When a peace officer has reason to believe from the manner in which a person is driving, operating, or controlling a motor vehicle or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the chemical tests authorized in section 169.123, but shall not be used in any court action except to prove that a chemical test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test, additional tests

may be required of the driver pursuant to the provisions of section 169.123.

The driver of a motor vehicle who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless in compliance with 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

See also 169.123 subd 2; PBT test refusal is grounds for requiring a chemical test.

2.4.2 Case Law

In State v. Grovum, 209 N.W. 2d 788 (1973), the Supreme Court of Minnesota held that refusal to take preliminary screening test for drugs or alcoholic beverages could not be grounds for revocation of license, but that refusal to take the chemical test provided by the implied consent statute would be grounds for a license suspension, and that such chemical test could be requested prior to an actual arrest if the police already had probable cause.

See Section 5.2 for in-depth study of this state's PBT laws.

2.5 MISSISSIPPI

2.5.1 Statutory Provisions

Sec. 63-11-5. Implied consent to chemical test; warnings; preliminary test.

* * *

The commissioner of public safety and the state board of health are authorized to adopt procedures, rules, and regulations to allow the arresting officer to give a preliminary, unofficial "on-the-spot" test to establish whether or not the breath of the driver is free from any alcoholic content before the official chemical analysis test of his breath is made. However, the failure to give the preliminary test shall in no way affect prosecution under this chapter.

2.5.2 Case Law

None. Law is not used.

2.5.3 Problems with Statutory Interpretation

It is unclear whether this statute was intended to provide for the "unofficial 'on-the-spot'" breath test to be given prior to arrest. The term "arresting officer" is used, implying that an arrest must first be made. This test is planned to be used in instances where the driver is a great distance from a Breathalyzer, and this would let the officer know whether it would be worthwhile to take the driver to the Breathalyzer site or not.

2.5.4 Problem with Statutory Application

This statute has not been used to date because no procedures, rules or regulations have been adopted by the commissioner of public safety or the state board of health allowing for such testing.

2.6 NEBRASKA

2.6.1 Statutory Provisions

Sec. 39.669.08. Drunken driving; implied consent of operator of motor vehicle to submit to chemical test to determine alcoholic content of blood, urine, or breath; when test administered; refusal; penalty.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his body, or has committed a moving traffic violation or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one percent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

See also 39.669.11 regarding admissibility of results.

2.6.2 Case Law

In State v. Gerber, 206 Neb. 75 (1980), the Supreme Court of Nebraska held that before the results of a PBT may be received in evidence, it must be shown that the requirements of Neb. Rev. Stat. Sec. 39-669.11 (Reissue 1978) have been met, including evidence that the method of performing the preliminary test has been approved by the Nebraska Department of Health (N.D.H) and that the person administering and interpreting the test possesses a valid permit issued by the N.D.H. for that purpose.

In State v. Orosco, 199 Neb. 532, 260 N.W.2d 303 (1977), the court held that the offering of a PBT is not a condition precedent to an arrest for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol. In effect, the court ruled that a driver can be arrested

for DUI without being offered a PBT if the arresting officer already had enough evidence to establish probable cause for arrest.

See Section 5.1 for in-depth study of this state's IPS and PBT laws.

2.7 NEW YORK

2.7.1 Statutory Provisions

Sec. 1193-a. Breath tests for operators of certain motor vehicles. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in section eleven hundred ninety-four of this chapter.

2.7.2 Case Law

In People v. Grasser, 393 N.Y.S. 2d 1009 (1977), the Amherst Town Court held that use of PBT under the statute is constitutional, but could be unconstitutional in certain circumstances. This court would require that there would have to be at least a "reasonable suspicion" of the crime of driving while intoxicated. ("Reasonable suspicion" being language from Terry v. Ohio, 392 U.S.1.) The statute on its face is much broader, allowing PBT in cases of any traffic accident or violation.

2.7.3 Problems with Statutory Interpretation

The statute is silent on the issues of admissibility of test results, consequences of refusal, admissibility of refusal, and testing methodology to be used.

2.8 NORTH CAROLINA

2.8.1 Statutory Provisions

Sec. 20-16.3. Preliminary breath test. Any law enforcement officer having reasonable grounds to believe that a person has been driving or operating a vehicle on a highway or public vehicular area while under the influence of intoxicating liquor may, without making an arrest, request that such person submit to a preliminary chemical breath test to be administered by the officer. The results of this test shall not be admissible in evidence and failure to submit to the test shall not constitute a violation of this Chapter. Nothing contained in this section shall be construed to prevent or require a subsequent chemical test pursuant to G.S. 20-16.2. The law-enforcement officer requesting the test shall advise orally and in writing the person to be tested that his failure to take the subsequent chemical test pursuant to G.S. 20-16.2 will not result in a penalty and that such refusal will not require the taking of a chemical test. No device may be used to give a

chemical test under the provisions of this section unless it has been approved as to type and make by the Department of Human Resources.

2.8.2 Case Law

No case law on PBT noted.

2.8.3 Problems with Statutory Interpretation

While the statute does not specifically state that the fact of a refusal to take the PBT is inadmissible in court for any reason, it is clear from reading the statute that this is the case, since the motorist must be advised that no penalty results from his refusal, and that such refusal will not require the taking of a chemical test.

2.8.4 Problems with Statutory Application

It is reported that the state patrol is not using the PBT for two reasons: (1) it is not admissible in court, and (2) twenty minutes are required to administer the test. North Carolina expects to use PBT more in the future, primarily as a device to screen out those persons with low enough BAC readings that they should not be arrested.

2.9 NORTH DAKOTA

2.9.1 Statutory Provisions

Sec. 39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to submit to an onsite screening test or tests of his breath for the purpose of estimating the alcohol content of his blood upon the request of a law enforcement officer who has reason to believe that such person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through his observations, formulated an opinion that such person's body contains alcohol. A person shall not be required to submit to a screening test or tests of his breath while at a hospital as a patient if the medical practitioner in immediate charge of this case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests shall be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test shall be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. If such person refuses to submit to such screening test or tests, none shall be given, but such refusal shall be sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-30-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 shall be available. No provisions of this section

shall supersede any provisions of chapter 39-20, nor shall any provision of chapter 39-20 be construed to supersede this section except as provided herein.

2.9.2 Case Law

No case law located.

2.9.3 Problems with Statutory Interpretation

The statute is silent on the issue of admissibility or refusal to take the test.

2.9.4 Problems with Statutory Application

No problems noted.

2.10 SOUTH DAKOTA

2.10.1 Statutory Provisions

Sec. 32-23-1.2. Submission to breath test required by officer -- Chemical test after positive breath test. -- Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

2.10.2 Case Law

No case law noted.

2.10.3 Problems with Statutory Interpretation

The statute is silent on the issue of whether the breath test may be given before arrest. The breath test discussed in the statute appears to be merely for the purpose of determining whether further testing is needed, and is not clearly for the purpose of establishing probable cause.

The statute is also silent on the issues of consequences for refusal of the test, admissibility of such refusal, admissibility of test results and testing methodology.

2.10.4 Problems with Statutory Application

This statute is not viewed by the state patrol as providing for a pre-arrest breath test. If the arrested driver "passes" the breath test, then he/she is charged with something other than driving with a 0.10% blood alcohol level.

2.11 VERMONT (Reported upon because it is described in other literature as having a PBT law)

2.11.1 Statutory Provisions

Sec. 1202. Consent to chemical test -- (a) Any person who operates, attempts to operate or is in actual physical control of any vehicle on a highway in this state is deemed to have given his consent to the taking of a sample of his breath for the purpose of determining the alcoholic content of his blood. If breath testing equipment is not reasonably available or if the person is unable to give a sufficient sample of his breath for testing or if a state police officer or law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, has reasonable grounds to believe that the person is under the influence of a drug other than or in addition to alcohol, he is deemed to have given his consent to the taking of a sample of his blood for those purposes. If in the officer's opinion a person is incapable of decision or unconscious or dead, it is deemed that his consent is given and a sample of his blood shall be taken. A sample of breath shall be taken only by a law enforcement officer who has been certified by the department of public safety to operate a field sample gathering device for the gas chromatograph intoximeter whenever a state police officer or a law enforcement officer who has been certified by the Vermont criminal justice training council pursuant to Title 20, section 2358, had reasonable grounds to believe that the person was operating, attempting to operate or was in actual physical control of any vehicle while under the influence of intoxicating liquor.

(b) A person who is requested by a law enforcement officer to submit to a chemical test under this section shall have the right to consult an attorney prior to deciding whether or not to submit to the chemical test. The person must decide within a reasonable time, but no later than thirty minutes from the time of the initial attempt to contact the attorney, whether or not to submit to the chemical test. If a person submits to a breath test, he shall have also the right to have a blood test administered at his expense. Arrangements for the blood test shall be made by the person submitting to the breath test, or by his attorney or some other person acting on his behalf except where the person is detained in custody after administration of the breath test, in which case the law enforcement officers having custody of the person shall make arrangements for administration of the blood test upon demand.

Note: This statute is actually Vermont's implied consent law, and the state does not have a separate PBT law.

2.11.2 Case Law

Arrest is not a statutory prerequisite to the admissibility of a chemical breath test analysis under this statute if such a test is administered with the driver's consent. State v. Brown, 125 Vt. 58, 209A 2d 324 (1965).

2.11.3 Problems with Statutory Interpretation

The statute cited does not clearly provide for a preliminary breath test. It is not clear whether such a test is authorized prior to arrest. While the Brown case, supra, indicates that arrest is not necessary when the driver consents to the test, the statute indicates that a total of one test ("a test") may be administered. Therefore, if a test is given pre-arrest, another one may not be required later. This effectively rules out the use of any devices whose reliability is adequate only for screening purposes.

2.11.4 Problems with Statutory Applications

Because the statute does not allow for administration of more than one test, this statute is not used as authority for preliminary breath testing. PBTs, therefore, are generally not used in Vermont.

2.12 VIRGINIA

2.12.1 Statutory Provisions

Sec. 18.2-267. Analysis of breath to determine alcoholic content of blood. -- (a) Any person who is suspected of a violation of Sec. 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The State Board of Health shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section.

(c) Any person who has been stopped by a police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of Sec. 18.2-266, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under Sec. 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of Sec. 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of Sec. 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of Sec. 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under Sec. 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of Sec. 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of Sec. 18.2-266, advise such person of his rights under the provisions of this section.

2.12.2 Case Law

None noted. See Section 5.4 for in-depth study of this state's PBT law.

2.13 WISCONSIN

2.13.1 Statutory Provisions

Sec. 343.305. Revocation of license on refusal to submit to tests.

* * *

(2)(a) If a law enforcement officer has probable cause to believe that a person has violated Sec. 346.63(1) or a local ordinance in conformity therewith, the officer may request the person, prior to arrest and issuance of a citation, to take a preliminary breath test for the purpose specified under sub. (1), using a device approved by the department for the purpose. A person may refuse to take a preliminary breath test without being subject to revocation under sub. (9) if he or she consents, after arrest, to take a test under par. (b). Neither the results of the preliminary breath test nor the fact that it was administered shall be admissible in any action or proceeding in which it is material to prove that the person was under the influence of an intoxicant or a controlled substance.

2.13.2 Case Law

None noted.

2.13.3 Problems with Statutory Interpretation

No problems noted.

2.13.4 Problems with Statutory Application

Wisconsin's PBT statute clearly requires that the police officer have probable cause before administering a PBT to arrest; thus the PBT statute would not be useful in those situations where the officer has only reasonable suspicion that a person has violated the driving-under-the-influence statute. Since the PBT results are inadmissible, and since post-arrest testing does not require a prior PBT, the only purpose a PBT could serve is to determine whether additional testing for blood alcohol level should be pursued.

7.1 A PROPOSED STATUTE FOR ILLEGAL PER SE

Section 1000.00

Driving While Under Influence of Alcohol or Any Other Drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.10 grams of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis;

2. Under the influence of alcohol;

3. Under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving;

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or any other drug shall not constitute a defense against any charge of violating this section.

5. Driving while under the influence of alcohol or any other drugs is a classification of the offense.

Commentary on IPS Statute

The chemical analysis includes wet and physical chemistry.

The rationale for charging under a statute combining IPS with traditional DUI: A majority of prosecutors surveyed by this project preferred to charge both IPS and traditional DUI offenses in order to give the jury the maximum proof of intoxication. Some were reluctant to try a violation of IPS if no other indicia of impairment were present. This was due to previous experience with some juries that will not convict without broader evidence of impairment.

Even in states with IPS statutes, defenses to the illegal BAC, as though it were a presumption, have remained. Despite language in some statutes establishing a strict liability, some courts have held the non-expert testimony can be used in defense of an IPS charge. This judicial gloss obviously acts as a partial bar to the effectiveness of IPS statutes.

IPS is uniformly complimented by prosecutors as an improvement in effective prosecution. It was felt that in time all the courts will accept the concept of IPS without the judicial gloss that gives defendants the opportunity to rebut the statutory prohibition, as though it were a mere presumption.

Therefore, based on the experience of prosecutors and other law enforcement officers, the project has chosen a model law which combines IPS with the standard features of a DUI statute. Our conclusion is that the combination model is the best approach. It gives the prosecutor multiple ways to convict a defendant while charging only one (basic) offense. The jury does not have to be unanimous in finding that a defendant has violated any one of the subdivisions of the statute; they only have to be unanimous that the defendant violated the statute in one of the several ways possible. The jury can actually be split on the individual bases for finding a violation of the statute. In effect, this statute gives the prosecutor multiple opportunities in one charging instrument to convict, and effectively deprives the defendant of the opportunity to focus his defenses on the one issue that might appeal to the sympathy of one or more jurors. Under this type of statute, those jurors who have unarticulated reservations concerning the reliability of evidentiary test results are given ample opportunity to base their conviction upon traditional DUI indicia, while those who favor the use of a per se regulatory format and are impressed by the scientific accuracy and reliability of the testing technology are likewise satisfied with application of the statute. This type of statute spreads the largest net permissible.

7.2 A PROPOSED STATUTE AUTHORIZING PRELIMINARY OR PRE-ARREST BREATH TEST

Section 1001.00

Refusal to Take a Preliminary or Pre-Arrest Breath Test: Authorization and Procedure

Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city, town, or village may require any person who drives or has in his actual physical control a vehicle within this state to submit to a preliminary test of his breath for alcohol content if the officer has an articulable and reasonable suspicion that such person has committed the offense of driving while under the influence of alcohol or any other drugs pursuant to Section 1000.00. Refusal to take the preliminary test of breath shall constitute an infraction punishable by a fine of not more than $50. Such breath analysis must be administered at the scene of the stop. Any breath analysis required under this section must be administered with an instrument and in such a manner approved by the Commissioner of Toxicology or Public Health for that purpose. The results of a preliminary breath analysis may be used for determining whether an arrest should be made. When a driver is actually arrested, provisions of the state's Implied Consent Statute will apply. The preliminary breath test authorized here is in addition to any tests authorized in the Implied Consent Statute.

Commentary on PBT Statute

An articulable and reasonable suspicion may be based upon erratic driving behavior or, upon a stop for any violation, it may be based upon a number of behavioral patterns or other factors, which based upon the officer's experience may indicate impairment, such as the detection of slurred speech or alcoholic breath of the driver.

Because of the high incidence of alcohol involvement in injury and property damage type automobile accidents, it is also reasonable to believe that one or more of the drivers in such accidents are so impaired. The occurrence of an accident may provide sufficient basis for the officer to request a PBT of each involved driver, if only to rule out alcohol as a contributing factor.

The legislature has taken note of the fact that approximately 50 percent of all fatal highway accidents involve drinking drivers, and has resolved that this threat to public safety warrants closer scrutiny of potentially hazardous drivers where there is evidence of drinking sufficient to create an articulable and reasonable suspicion that one or more of the drivers is impaired by alcohol or other drugs.

5

An interim Report to the Nation From the Presidential Commission on Drunk Driving

5.0 LICENSING ADMINISTRATION

Suspension or revocation of driver licenses can be an effective deterrent to driving while under the influence. Studies in California and Washington show that license suspension was more effective than assignment of violators to alcohol education and/or treatment programs. If suspensions are imposed consistently and are highly publicized, this sanction can play an important role in reducing driving under the influence.

Cooperation between the States in sharing information on driver licensing and violations in order to stop those with revoked or suspended licenses from becoming licensed in another State is a necessity. The following recommendations are intended to improve the administration of the licensing process:

RECOMMENDATION

5.1 Administrative Per Se License Suspension

States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon a finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving on a restricted license. Such suspension may be carried out by the court upon arraignment, or by the administrative agency charged with license administration. There should be reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

COMMISSION NOTE

Some States have begun to use innovative methods to establish swift and certain penalties for drunk driving. In Minnesota, West Virginia, Iowa, and Delaware, any driver registering above 0.10 AC has his or her license automatically suspended for 90 days (or more) regardless of the subsequent disposition of his case. If he or she refuses the test, his or her license is suspended for 180 days. This is a swift and certain sanction which significantly adds to the general deterrent effect of the control system. The individual is afforded the opportunity of a hearing within a specified period of time; the facts to be pursued at this hearing relate to whether the individual tested over the legal limit or whether the individual refused the test.

A different approach, used in New York for repeat offenders, provides for an immediate temporary suspension pending disposition of the charges. This system is carried out by the court where there is a finding of probable cause for the arrest and where there is a drunk driving conviction within the past five years. These two approaches also differ in their administration; the New York system is administered by the local criminal courts for the Motor Vehicle Department, while the other States' systems are administered by the State driver licensing agency.

REFERENCE

1. Analytical Study of Minnesota Law, Robert H. Reeder, Northwestern Traffic Institute, December 1981.
2. Uniform Vehicle Code, Section 6-205 and 6-208.

Drunk Driving Penalties In Other Countries

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

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

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

Israel • The problem of the drinking driver on the roadways in Israel is virtually non-existant, due largely to the two-year prison term that awaits convicted drunken drivers. In 1980, an Israeli Embassy spokesman was quoted as saying that there is about one drunk driving case in Israel a year.

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

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

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

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

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

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

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

Community Support

(continued from page 2)

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

Federal Legislative Victory

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

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

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

MONDAY MORNING REPORT

Volume 6 No. 16 August 30, 1982

DRUNK DRIVING...legislation has been approved by lawmakers in 32 states and Washington, D.C. during 1982, according to a national survey by the Christian Science Monitor.

Although the new laws aimed at reducing the incidence of drunk driving differ from state to state, most of the current legislation has incorporated one or more of the following provisions:

1) Minimum mandatory jail sentences
2) Referral of drunk drivers to education or alcoholism treatment programs
3) Criminal penalties for drunk drivers whose auto crash has resulted in death of another person
4) Suspension or revocation of driving privileges
5) Raising the minimum legal drinking age for all alcoholic beverages (including beer) to 21
6) Making it illegal to operate a motor vehicle with a blood alcohol level of 0.10 percent

The current wave of concern about drunk driving has taken place over the past two years, spurred on by several groups representing the victims of drunk drivers.

MADD (Mothers Against Drunk Drivers) has received national attention and has been particularly effective in California, where a tough new drunk driving law went into effect in January, 1982.

Organization of the new groups and their activist pressure in state legislatures across the U.S. has helped to focus attention on the victims of drunk drivers. In the past, lawmakers, judges, juries and even many law enforcement officials often sympathized with the drunk driver rather than the victims.

Part of the problem was the common belief that people had about drunk drivers..."But for the grace of God, there go I."

The mistaken notion is that most drunk drivers were common, ordinary citizens who perhaps for the first time in their lives had "one drink too many" at a party and then became involved in an auto crash while trying to make it home.

The realization that most drunk drivers are not "first-timers" as far as driving while under the influence of alcohol and most have had far more than "a couple of beers" has helped the general public to realize that tough drunk driving laws pose no threat to most of the driving population.

In a study of 839 drivers involved in fatal auto crashes in Michigan during 1981, the Michigan State Police reported that 289 drivers had not been drinking prior to the crash.

Of the 553 drivers who had been drinking prior to the fatal crash, only 19 percent registered a blood alcohol level of under 0.10 percent.

81 percent of the drunk drivers registered 0.10

ALCOHOL ABUSE AND VIOLENCE IN ALASKA

The mental health of a community or state is measured by many indicators. Some of these are: violent crimes, family violence, child abuse/neglect, and alcohol-related mortality.

violent crimes

- 64% of criminal homicides in 1980 were alcohol-related
- 41% of aggravated assaults were alcohol-related
- 48% of all violent offenders were using alcohol at the time of arrest
- 56% of all violent offenses were alcohol-related
- 72% of rapes - alcohol was used by either offender or victim

family violence

- 45% of all spouse abusers are heavy drinkers
- 90% of women seeking help at AWAIC, a battered women's shelter, were effected by alcohol
- 90% of the clients in Anchorage's Domestic Violence Program for Men report some level of substance abuse
- 90% of abusive parents have been abused or neglected by an alcoholic or drug dependent parent

child abuse/neglect

- estimates suggest that alcohol is a primary factor in as many as one-third of all reported cases of child abuse
- Alaska experiences 4 times as many cases of child abuse/neglect as the national average
- in an informal survey of youth outpatient units of the Behavioral Health Treatment system in Anchorage it was found:
  - -77.8% of the youth had one or more parents with substance abuse problems
  - -40% of the clients had been abused or neglected

ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.

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HB6

Washington Area's War on Drunk Driving Pays Off in a Big Way

Area Traffic Deaths Drop; Arrests Are on Increase

By Blaine Harden
Washington Post Staff Writer

The highly publicized war against drunk driving—waged this past year by mothers, lawmakers, judges, juries and the police—has racked up impressive victories in the Washington area.

Highway deaths in 1982 declined in Virginia, Maryland and the District of Columbia, where laws against driving under the influence of alcohol were toughened. At the same time, arrests of drunk drivers have increased sharply.

In the District this year, 36 people—the lowest figure in at least a decade—had died in traffic accidents as of Tuesday. Alcohol-related deaths in Maryland fell 30 percent while arrests of drunk drivers were up 50 percent. Highway deaths in Virginia declined 14 percent.

During Christmas weekend, as police in all three jurisdictions beefed up patrols, there was one alcohol-related death in the Washington area, compared to seven over the 1981 Christmas weekend.

"The word is out. We are out there to get people and as a result we have reduced fatalities," says Robert M. Goldstein, director of the D.C. police alcohol countermeasures and traffic services.

See ALCOHOL, A7, Col. 1

ALCOHOL, From A1

Throughout the Washington area, there may never have been such a bad year to be drunk at the wheel.

In Northern Virginia, a drunk driver involved in a head-on collision that killed three persons was convicted in September of second-degree murder. The conviction was the first in the state on that serious charge in an alcohol-related traffic case.

In Maryland, a drunk driver involved in a crash that killed five members of a Montgomery County family was sentenced to 15 years in prison.

In the District, police began a first-in-the-nation mandatory breath test for all drivers stopped for moving violations. Any driver who refuses the test can be arrested.

Despite tough new laws and aggressive enforcement, some drivers continue to drink and drive. John T. Hanna, director of the Virginia Department of Transportation Safety, says only one in 2,000 drunk drivers is ever caught. One such driver slipped through the enforcement net last weekend in the Washington area.

Donald W. Jewell, 33, who ran an insect exterminating business, threw a party at his Manassas house on the night before Christmas Eve. Friends who saw him at the party described him as drunk and "having a hard time talking."

In the middle of the party, Jewell stormed outside and drove off in his black 1979 Chevrolet pickup truck. He headed south at 70 miles an hour on a 55-mile-an-hour, two-lane road, police said.

Jewell had a record of drinking and bad driving. In California in 1969 he was convicted of driving under the influence of alcohol. Near Hodges, S.C., in 1975 he ran a stop light and crashed into a car, killing three persons. A blood-alcohol test showed that Jewell was under the influence of alcohol at the time. He was convicted of involuntary manslaughter and sentenced to six years in prison.

Four years later, after he'd moved north to Mathews, Va., Jewell was convicted of breaking and entering and sentenced to five years in prison. From prison, Jewell wrote Circuit Court Judge John DeHardit: "I am an alcoholic and I need and want help with this so I can be a man. I also know that if I don't get help with my drinking I will be back in prison."

About 10:30 p.m. a week ago today, Jewell lost control of his pickup rounding a curve. Police said Jewell tried to pull his truck back on the road but it went into a roll, taking up both lanes of Rte. 234 near Manassas. It stopped rolling when it smashed into a pickup coming from the opposite direction.

"He had the whole highway covered. It looked like a wall coming at me. It scared the daylights out of me. I'm still scared," William E. Parker Jr., 39, the driver of the other pickup, said yesterday.

Parker, who escaped with a strained back from the crash that totaled his pickup said he was lucky.

"When I knew anything, he was rolling at me. If I hadn't got in the ditch, he'd a killed me too," Parker said.

ALASKA COUNCIL ON PREVENTION
OF ALCOHOL AND DRUGS ABUSE, INC.

7521 OLD SEWARD HWY., SUITE A • ANCHORAGE, ALASKA 99502 (907)349-6602

FACTS ABOUT ALCOHOL CONSUMPTION IN ALASKA

--FOR ALL AGE GROUPS

The average yearly intake of alcoholic beverages for all Alaskans (every man, woman, and child) is 33⅓ gallons, a combination of distilled liquor, wine, and beer. This is the equivalent of 4.6 gallons of absolute ethyl alcohol.

In order to consume 4.6 gallons of absolute ethyl alcohol per year, you would have to drink...

53.5 fifths of 86 proof liquor

OR...

153.2 quarts of 12%wine*

OR...

40.9 cases of 5% beer

*Most naturally fermented wines contain 12 to 14% ethyl alcohol. So called "fortified" wines have alcohol added to increase the percentage.

ACOPADA JANUARY 1982
KJB:st

Based on 1980 census

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No. 1

December 1981
Final Report

DOT/HS-806-170

US Department
of Transportation
National Highway
Traffic Safety
Administration

Analytical Study of the Legal and Operational Aspects of the Minnesota Law Entitled "Chemical Test for Intoxication" M.S.A. Sec. 169,123

Robert H. Reeder, A.B., J.D.

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Contract No. DTNH22-81-P-05176
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15. Supplementary Notes

This report was reviewed and critiqued by Mr. Joel A. Watne, Special Assistant Attorney General, State of Minnesota; Mr. Forst Lowery, Alcohol Program Coordinator, Department of Public Safety, State of Minnesota

16. Abstract

This report provides information for use by state legislatures, state governmental agencies, traffic safety organizations and other persons in enacting laws to control driving and drinking on the highways and specifically the type of "administrative per se" law in the State of Minnesota.

The report outlines the legal framework of the "administrative per se" law in the State of Minnesota. It explores the possible legal challenges which defendants might raise against the law. It studies the operational impact the "administrative per se" law has had in Minnesota on other alcohol countermeasures to control the drinking driver. The report concludes the Minnesota "administrative per se" law would withstand the possible legal challenges. It concludes that the enactment of this law has had a positive effect on the attitudes of law enforcement officers and has increased the effort of controlling DWI offenses. The report recommends that other states enact such a law.

17. Key Words	18. Distribution Statement
Implied Consent Law; Administrative Per Se Law; Illegal Per Se Law; DWI Law; Minnesota Law on Implied Consent; Minnesota Administrative Per Se Law; Minnesota DWI Law.	This document is available to the U.S. public through the National Technical Information Service, Springfield, Virginia 22161

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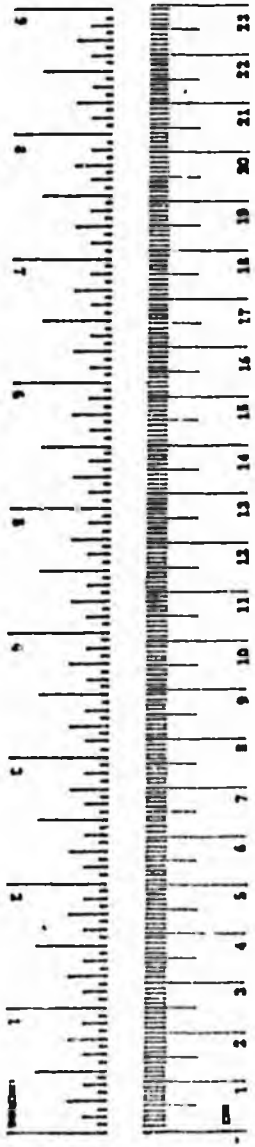
Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price $2.25, SD Catalog No. C13.10:286.



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F