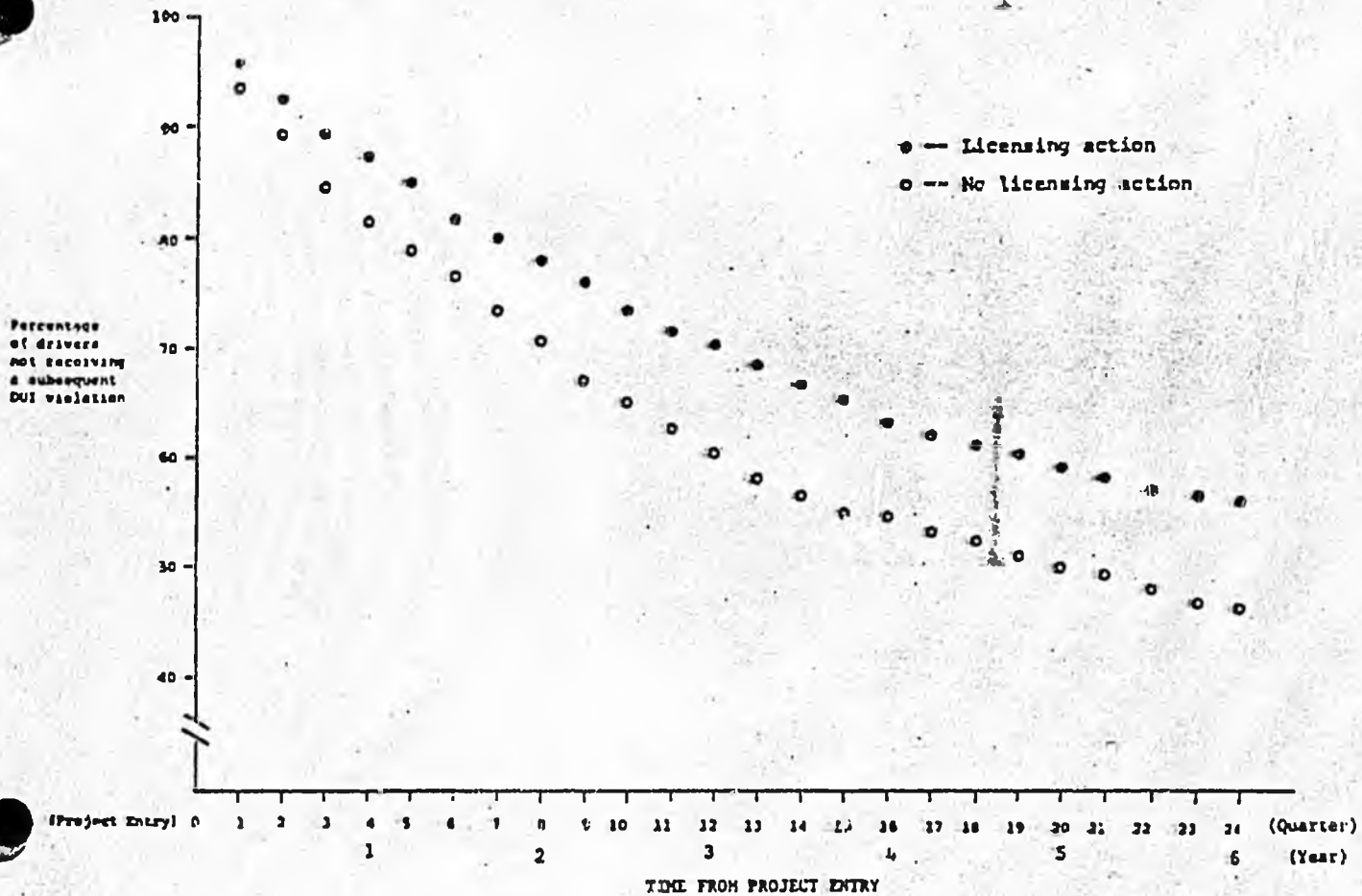


ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3011 SSA SB 61 (FILE 3) - SB 68-71 (FILE 1) 8672

FIGURE I

Survival Curve for Multiple DUI Offenders Not Receiving A Subsequent DUI Violation after Project Entry



Note: Quarterly survival rates are not adjusted for between-group differences in prior driving history.

The suspension/revocation treatment effect on accidents appeared to diminish about 48 months after project entry.

The 42 and 48-month treatment effects of suspension/revocation on subsequent DUI and accident involvement approximate the 36-month revocation period. Although it was not possible to determine the exact proportion of study drivers who received a 36-month revocation as opposed to a 12-month suspension, we would not expect it to exceed 30%. Since the treatment effects actually exceeded the 36-month revocation period, these effects could not have been simply due to no driving or reduced driving during the suspension/revocation period. The many drivers who drove with suspended/revoked licenses probably did so more carefully and less often to avoid detection. These patterns may have generalized beyond the suspension/revocation period and accounted for the positive effects of licensing action.

2. Suspension/revocation vs. alcohol treatment.

The second study used analysis of covariance to assess the traffic safety impact of licensing action versus alcohol abuse treatment on 12-month post-conviction driving records. The subsequent driving record variables analyzed were: (1) all reported accidents, (2) law-enforcement-reported accidents, (3) had-been-drinking accidents, (4) personal injury and fatal accidents, (5) accidents (2100-0300 hours), (6) accidents (1800-0600 hours), (7) DUI convictions, (8) reckless driving convictions, (9) one-count convictions, (10) two-count convictions, (11) total countable convictions, and (12) implied consent actions. When these variables met the equality of slopes criterion and F values were significant, pair-wise comparisons were conducted to determine the nature of the difference.

The first sequence of analyses compared (1) demonstration county treatment program participants, (2) demonstration county suspended/revoked drivers, and (3) comparison county suspended/revoked drivers, with the 388 treatment program dropouts excluded. Significant ($p < .05$) differences were found among the three groups for the following:

1. Demonstration county program participants had significantly more law-enforcement-reported accidents than did comparison county drivers. Demonstration county suspended/revoked drivers were not significantly different from either of the other two groups.
2. Both demonstration county driver groups had significantly more personal injury and fatal accidents than did the comparison county group.
3. Demonstration county suspended/revoked drivers had significantly more 2100-0300 hours accidents than did comparison county drivers. Demonstration county program participants did not differ significantly from either of the other groups.
4. Both demonstration county driver groups had significantly more 1800-0600 hours accidents than did the comparison group.

The second sequence of analyses compared all demonstration county multiple DUI drivers with comparison county suspended/revoked drivers. The demonstration county drivers had significantly ($p < .05$) higher involvement in all six accident variables than did the comparison county drivers.

The preceding two sequences of analyses were repeated separately from Santa Clara/San Bernardino Counties and for the remaining three pairs of counties. When program participants, demonstration county suspended/revoked drivers, and comparison county drivers were compared, the following significant ($p < .05$) differences were found:

1. Program participants in Santa Clara County had significantly more law-enforcement-reported

accidents and personal and fatal injury accidents than did the San Bernardino suspended/revoked drivers.

2. Both Santa Clara County driver groups had significantly more 2100-0300 hours accidents than did the San Bernardino group.
3. Suspended/revoked drivers in the other three demonstration counties had significantly more implied consent actions than either demonstration county program participants or comparison county drivers.

When all multiple DUI drivers in Santa Clara County were compared with suspended/revoked drivers in San Bernardino, the results virtually duplicated those of the previous all-county comparison. The only exceptions were had-been-drinking accidents, which were not significant in the two-county comparison, and implied consent actions, which were significantly greater for San Bernardino but had no significant difference in the overall comparison. For the remaining three pairs of counties, there was only one significant difference-- drivers in the demonstration counties had more total countable convictions than those in the comparison counties.

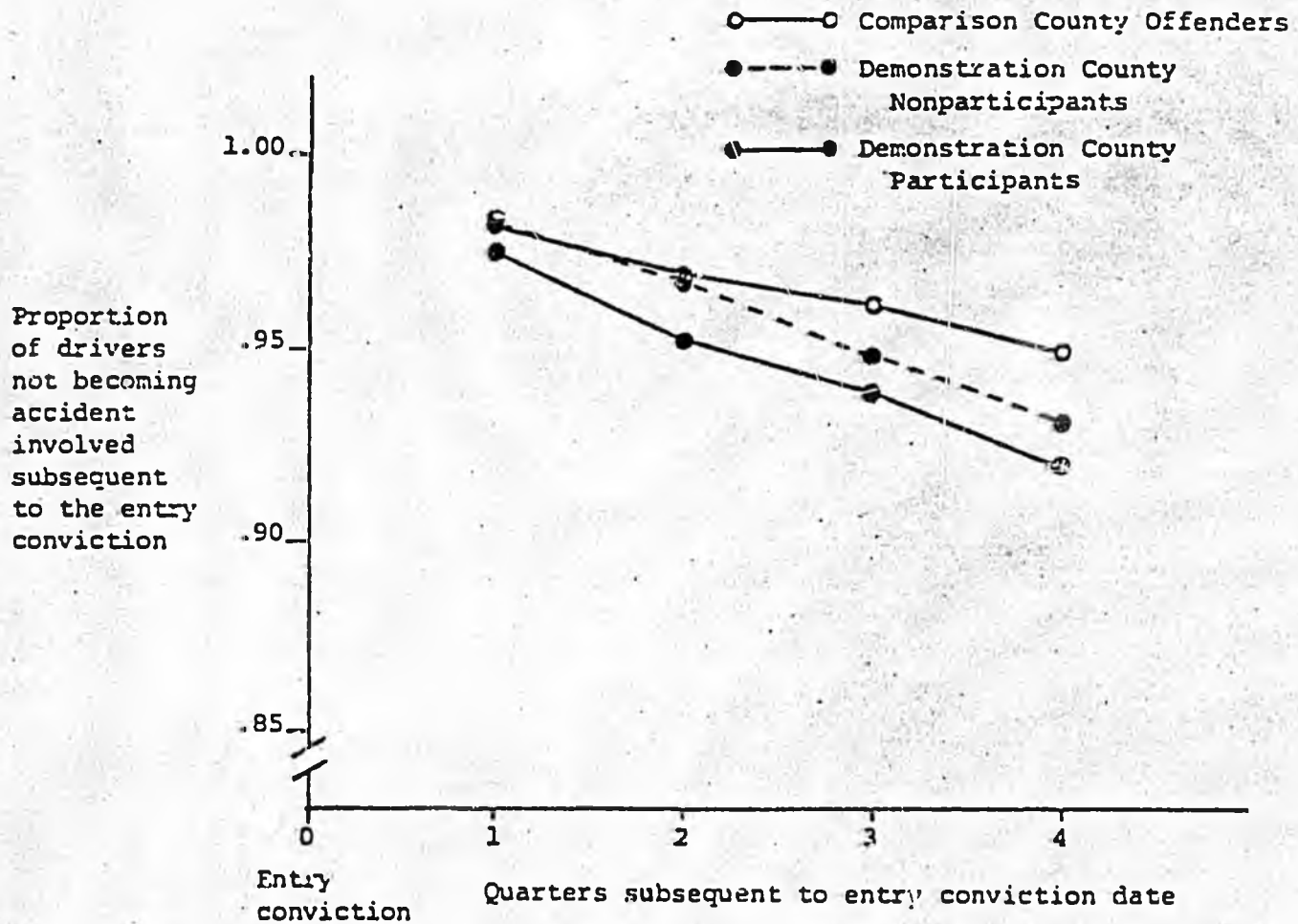
These results indicate that, as a traffic safety countermeasure, the sentencing strategy employed in the demonstration counties is not as effective as license suspension/revocation alone. This does not mean that the alcohol abuse treatment approach is totally ineffective; it is simply less effective in its current format than traditionally imposed licensing controls.

It has been suggested that avoiding licensing action is the principal motive for program participation and that this lack of personal commitment by the driver thus renders the treatment program ineffective. An alternative might be to impose stringent licensing controls at the beginning of the treatment program and to relax them as treatment progressed successfully, thus providing an incentive to complete the program.

The data from the demonstration and comparison counties were also assessed in a survival curve analysis. Figure 2 shows the

FIGURE 2

Accident Survival Curves For Multiple DUI Offenders
 In Demonstration (Participant and Nonparticipant)
 And Comparison Counties



proportions of drivers in each group not becoming accident-involved during the 12-month follow-up period. As can be seen, comparison county drivers had the fewest post-conviction accidents and demonstration county program participants the most. Analysis of the quarterly survival rates showed the differences between the comparison county drivers and the demonstration county program participants to be significant ($p < .05$) throughout the follow-up period. Significant differences were also found between the demonstration county treatment program participants and the demonstration county suspended/revoked drivers, but only for the first 6 months of follow-up.

A similar analysis was conducted for post-conviction DUI involvement. The results again favored the comparison county drivers as opposed to drivers participating in the treatment program.

3. Effects of suspension/revocation.

In the third study, a survival analysis was conducted of the subsequent 4-year driving records of first, second, and third-plus DUI offenders convicted in 1974. Of the 4488 drivers in the sample, 1769 were first offenders who received no licensing action, 1808 were second offenders who received a 12-month license suspension, and 911 were third offenders who received a 3-year revocation.

TABLE 1

Percentage of Drivers Not Being Involved in a Subsequent DUI, by Year and Offender Group, and Z-Scores on Tests of Differences in Survival Rates Between Groups

Offender group	Year			
	1	2	3	4
First offender	81.9	76.2	70.8	67.9
Second offender	88.3	78.3	70.7	66.0
Third or subsequent offender	84.2	73.1	66.0	60.7
	Z-Scores			
First vs. second	-5.40*	1.43	0.02	1.21
Second vs. third	3.02*	3.00*	2.54*	2.71*
First vs. third	-1.48	1.79	2.55*	3.71*

* $p < .05$.

TABLE 2

Annual Percentage of Drivers in Original Group Being Involved in a Subsequent DUI by Offender Group

Offender group	Year			
	1	2	3	4
First offender	18.1	5.7	5.4	2.9
Second offender	11.7	10.0	7.6	4.7
Third or subsequent offender	15.8	11.1	7.1	5.3

TABLE 3

Driving Admission Percentages for Each Driver Group

Group	Total Driving Admissions	Percentage of Driving Admissions
Suspension with update	219	75.5
Revocation with update	134	84.3
Suspension no update	253	55.5
Revocation no update	120	58.3
Total	726	65.3

As Table 1 shows, the first offenders had the lowest DUI survival rate during the first year, while the survival rate for the second offenders was significantly higher than that of the other two groups. By the third year, however, rates for the first and second offenders were virtually identical, with the third offenders having a significantly lower survival rate despite the fact that their licenses were revoked. This trend continued through the end of the 4-year period.

The better record for second offenders during the first year suggests that they either did not drive, drove less, or drove more carefully during the 12-month suspension. After the suspension, their survival rate was similar to that of first offenders.

Table 2 shows that the trend over the 4-year period was for fewer drivers to become recidivists in each successive year. This suggests that there may be a high-risk subgroup of DUI drivers who quickly repeat their offense. These drivers may be a potential target group for countermeasures.

The survival rate analysis was repeated for accidents. First offenders had significantly lower survival rates than second or third offenders throughout the 4-year period. Most of this difference occurred in the first year, however, when both other driver groups were under licensing action. The annual percentages of drivers becoming accident-involved were virtually constant after the first year.

The third study also analyzed the incidence of driving while under licensing action. The time from conviction to first driver record update was calculated for drivers in the 1974 sample. The results showed that nearly 32% of second offenders had at least one record update during their 12-month suspension and 61 percent of third offenders had an update during their 3-year revocation. Since this represents only drivers who were caught, clearly large numbers of drivers are on the road while their licenses are suspended or revoked.

The questionnaire responses were also used to determine the incidence of driving with a suspended/revoked license. Table 3 shows the rates of admission to such driving by the various driver groups.

Finally, the questionnaire responses provided some information about the kinds of

driving done, the transportation alternatives used under licensing action, and the drivers' perceptions concerning suspension/revocation.

There are few differences in terms of alternative transportation or types of driving among the four subgroups responding to the questionnaire. Most relied on public transportation, friends or family members to go to work and on family members for shopping. Drivers who admitted driving did so frequently, although over 65% reported some decrease in their amount of driving. Most of the driving was done to and from work on city streets during the day, and most drivers reported driving more carefully under licensing action than they had previously.

Generally, the majority of suspended/revoked drivers in all categories perceived their licensing action as fair. In terms of penalties for driving with a suspended/revoked license, most respondents perceived the jail sentence to be more severe than it actually is. It appeared that drivers who reported not driving during their suspension/revocation perceived the penalties as being more severe than did drivers who admitted driving.

Conclusions

The results of these studies demonstrate that license suspension/revocation for multiple DUI offenders has a more positive effect on traffic safety than either no licensing action or treatment for alcohol abuse. Both the magnitude and the duration of the treatment effect associated with licensing action are documented. Analyses of the effects of licensing action indicate that drivers who drive under suspension/revocation generally do so less frequently and more carefully.

References

Epperson, W.V., Harano, R.M., & Peck, R.C. Final report to the legislature of the State of California in accord with resolution chapter 152, 1972 legislative session (Senate Concurrent Resolution 44 --Harmer). Sacramento: California Department of Motor Vehicles, 1975.

McDonald, W.R., & McIntire, J. Senate Bill 330--Demonstration project evaluation match-county correlativity report. Sacramento: Mott-McDonald Associates, Inc. 1977.

Administrative Revocation for Drunk Driving

Public indignation continues to grow. Citizens have made it clear to lawmakers and public officials that they are no longer willing to tolerate the highway carnage caused by drunk drivers.

In 1982 this grass roots sentiment, widely expressed across the country, resulted in the appointment of the Presidential Commission on Drunk Driving. The Commission's interim report was issued in December 1982 so that states could act on its recommendations during 1983 legislative sessions.

Those recommendations cover a wide range of topics, including changes in state drunk driving laws. The Commission recommends enactment of a "per se offense" at .10% BAC, and a presumption of guilt at .08% BAC. It also supports raising the drinking age to 21 and adopting a system for administrative revocation of drivers' licenses.

Other recommendations pertain to minimum jail sentences and legal sanctions against drunk driving. Legal penalties, however, require county attorneys willing to prosecute and judges willing to hand down the sentences mandated by the legislatures. Unfortunately, some county attorneys grant deferred prosecution, allowing those apprehended by police to continue driving. Those who are tried and convicted, or who plead guilty, are often given deferred sentences by the judge.

In all but a handful of states, drivers' licenses are only suspended or revoked after court conviction, so those charged with drunk driving may keep their licenses for months after being apprehended. One of the Presidential Commission's recommendations addresses that problem.

Administrative Revocation, pioneered in Minnesota in 1976 and adopted by Iowa in 1982, means that the driver's license is confiscated by the arresting officer on behalf of the Department of Transportation. Hearing officers are empowered to grant work permits in some cases. Under the "implied consent" portion of the law, licenses are revoked for refusal to take the chemical test, as well as for test failure.

Under this "two-track" system the loss of driving privilege extends to all those apprehended with a blood alcohol level of .10%, regardless of court action or lack of it. Administrative Revocation accomplishes the most important task in the fight against drunk driving. It takes drunk drivers off the road immediately, and serves as a strong deterrent to others.

Because, in almost every state, prosecution and sentencing vary considerably from one county to another, Administrative Revocation is the only predictable penalty for drunk driving. The American Council on Alcohol Problems has produced an 18-minute video tape documentary on Administrative Revocation in Iowa. Below are quotations from the video presentation:

"By the time that bill reached the floor of the House it was pretty clear from sentiment in the Capitol that they had to vote out something. They had to do something in the way of legislation on drunk driving that year because of the clear public sentiment favoring that, and the national trend in that direction. . . . There was massive bipartisan sentiment. The first vote in the House was 97-0, and the first vote in the Senate was 45-0."

Don Mason, Attorney
Prosecuting Attorney's Counsel

"I think that the administrative revocation of a drivers' license for all persons above .10 BAC is extremely important. . . . I think it puts the responsibility for putting people back out on the road back where it belongs — that's back with the state agencies. Since they do the issuing of driver's licenses, they should be responsible for who's out on the road. That's not really a judicial responsibility."

Sven Stemer
Governor's Highway Safety Office

"This is the first time in the history of this ASAP program that people have actually, realistically lost their drivers' licenses when they were arrested for OMVI. . . . We're the ones that initiate the revocation. We take the license right on the spot."

Roger Sanders, Patrolman
Alcohol Safety Action Program
Des Moines Police Department

"In the four and a half months since the law took effect there have been 5,685 drivers' licenses revoked in Iowa."

Bill Kendall, Director
Driver Licensing, DOT

"In the first four months that this law has been on the books there have been 59 fewer alcohol-related fatalities. . . . In that period there were 189 total highway fatalities — 29% of that 189 were alcohol-related. Over the same period a year ago, that percentage was 46%. . . . The sanctions that are applied generally — the fine, community service, some hours in jail — do not carry the deterrent effect on the drinking driver that the sure, immediate loss of their license has."

Gordon Sweltzer, Director
Motor Vehicle Division, DOT

"The one advantage we do have in the acronym game in Iowa with MADD and SADD is that we have GLADD. Now we have Good Laws Against the Drunken Driver."

Col. Frank Metzger, Director
Iowa Highway Patrol

To order a copy of the video tape documentary on Administrative Revocation, complete the order form below and mail to the American Council on Alcohol Problems.

Please send me a copy of the ACAP video documentary on Administrative Revocation.

Check video format:

- 3/4-inch "U-Matic" cassette
 1/2-inch "Beta" cassette
 1/2-inch "VHS" cassette

I've enclosed remittance for:

- two-week rental (\$10.00)
 Purchase of cassette (\$50.00)

Mail to:
American Council on Alcohol Problems
2908 Patricia Drive
Des Moines, IA 50322

name

address

city

state

zip

COMMUNITY SERVICE

April 5, 1983

This section contains:

1. testimony to the Presidential Commission on Drunk Driving on community service
2. a letter outlining the costs of Community service programs for counties in California

Testimony to the Presidential Commission on Drunk Driving
Public Hearing August 11, 1982
Denver, Colorado
By Crestienne Van Keulen, Coordinator
CLASP Resource Center & Research Project

Good afternoon, my name is Crestienne Van Keulen, and I am here today to bring your attention to the use of community service sentences for drunk drivers. I represent the California League of Alternative Service Programs, more commonly known as CLASP. CLASP is a grassroots non-profit consortium of community service sentencing programs throughout California. Our job is to interview, place, monitor and report on offenders who have arranged with the courts to perform uncompensated service to the community, most often in lieu of a fine or jail sentence. Drunk drivers compose an enormous segment of our case-loads - when preparing our 1980 Annual Report we found over 75,000 offenders including 35,000 traffic offenders were ordered to perform 4 million hours of work that year. Currently there are 77 community service programs in 56 of California's 57 counties.

Many states like California have or will soon adopt new drunk driving laws designed to impact this horrendous problem. As you all know, drunk driving is a problem of incredible scope and depth that touches every segment of our society without warning and without mercy. Forty to fifty percent of all fatal accidents are alcohol related and some 25,000 alcohol related traffic deaths occur yearly. Like no other single offense it is a crime against society because of the enormous danger the drunk driver puts the community into. Selection of victims is random and tragic and nobody is spared. We are all susceptible and we are all responsible for change because drunk driving is first and foremost a social offense.

Presidential Commission on Drunk Driving
Public Hearing August 11, 1982
Denver, CO.
CLASP - C. Van Keulen

of those ordered to community service do more hours than are required. There is something going on here we need to pay attention to.

Community Service is fair. Many of these new drunk driving laws, such as California's, unequally penalize those with lower incomes thus violating a very basic premise of American justice. In California, under the new law which became effective January 1st, judges theoretically have three sentencing choices encompassing four sanctions in various combinations: Fine, Drinking Driver School, Driver's License suspension or restriction, and Jail.

Fines may very well be effective punishment for some drunk drivers - those without sufficient income to pay easily, but with enough income to pay at all. Drinking Driver School may also be a very effective sanction - if the offender is fortunate enough to have the \$600 tuition handy. But seeing how scholarships aren't offered, the lower income citizen is unable to participate and thus goes to jail. Jail is great punishment for some drunk drivers - those with a fear of authority, a distaste for confinement, and the opportunity to serve their sentence in a safe jail. But those of us who have spent time in and around jails can tell you that this is rarely the case - jail is not often a safe deterrant, it is a very risky deterrant because jails are not nice places. People get hurt in jails, every day, by each other and by their keepers. People who are in for just an hour or two, people who are in for just a day or two. Jails are often overcrowded, jailers are overworked, jails are often uncontrollable environments and I cannot believe that to be assaulted and humiliated is fair punishment for drunk driving. Besides which jails are counterproductive - they do nothing to instill the positive or to integrate those on the fringes of society back into society and the community. And only when people feel a part of their community will they obey the laws of their community. Driver's license suspension

- * CS is suitable for all socio-economic groups and levels of society as social consciousness remains undeveloped on all levels.
- * CS is most suitable for those lacking self-esteem and a social conscious as it can provide them with an opportunity for personal growth and community integration.
- * CS is not suitable for those not acknowledging guilt or wrongdoing because this attitude is too frequently reflected in the quality of their community work.
- * The alcoholic, the addicted, the physically and emotionally disabled are generally not suitable for community service. Although we frequently are able to work with many of these people, community service programs must not be dumping grounds for the courts. Assignments for those with special problems should occur only after consultation with the program as placement opportunities vary widely from community to community.

The offender's skills, interests, available time, transportation and family circumstances are always taken into consideration by the interviewer before placement. Pre-sentence investigation reports including psycho-social histories and prior criminal record are invaluable tools that must be routinely available to programs for the protection of both the community and the integrity of the program.

I am here today not only to bring this valuable sentencing option to your attention, but to call upon you to help. Comprehensive legislation is needed authorizing and institutionalizing this sanction to limit abuses and mis-uses. We need guideline defining judge's authority, offender's rights and local government's responsibility to develop these programs. We are concerned that community service assignments are too often contingent upon whim and not reason, and we are concerned that these workers receive proper accident insurance coverage. Community service is not for all drunk drivers, and neither is any other sanction. But it deserves your further consideration and support so that as part of an effective drunk driving combatment plan, drunk drivers can be as rare in this country as a budget surplus in a Federal agency. Thank you.

February 4, 1983

Jane Beatty, Executive Director
Volunteer Bureau of Contra Costa County
2116 North Main Street, Suite E
Walnut Creek, CA 94596

RE: Court Referral Program

Dear Ms. Beatty;

In response to your request for information on local program's cost-per-client, I contacted six community service sentencing programs in the Bay Area counties. (Napa program unable to provide figures).

Their cost-per-client (CPC) is as follows. Unless otherwise indicated, the figure was calculated by dividing the total program cost for one year by the number of referrals served.

- (1) Alameda, Community Service Alternatives Program, Volunteer Bureau of Alameda County CPC = \$37. Based on 1982-83 program cost of \$203,000, with 5,500 total anticipated referrals.
- (2) Marin, Alternative Sentence Program, Marin County Probation Department. CPC = \$27. Based on 1981-82 budget. Does not include the following costs: Office rent, photocopying, printing, and some Unit Supervisor's and clerical support time.
- (3) Santa Clara, Court Referral Program, Voluntary Action Center of North Santa Clara County. CPC = \$73. Based on program cost of \$51,000 and 700 referrals.
- (4) Santa Clara, Sentencing Alternatives Program, Volunteer Center of Santa Clara County. CPC = \$39. Program cost minimally estimated to be \$178,000 for 1982-83, with 4,600 referrals anticipated.
- (5) Santa Cruz, Community Options Inc. CPC = \$47. Based on \$75,000 program cost and 1,600 referrals annually.
- (6) Sonoma, Court Referral Program, Volunteer Center of Sonoma County. CPC = \$27, program cost is \$43,000 with 1,600 referrals.

ROADBLOCKS, OR SOBRIETY CHECKPOINTS

April 5, 1983

This section contains:

1. a Maryland Special Order on the implementation of Sobriety checkpoints
2. a Maryland "Advise of Council" on Sobriety Checkpoints
3. an implementation approval from Maryland's AG's office on the implementation of Sobriety Checkpoints
4. selection criteria for checkpoint site
5. letter from the Governor of Maryland on Sobriety checkpoints



STATE OF MARYLAND

DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

MARYLAND STATE POLICE
PIKESVILLE, MARYLAND 21208-3899
AREA CODE 301 486-3101
TTY FOR DEAF AREA CODE 301 486-0677

HARRY HUGHES
GOVERNOR

THOMAS W. SCHMIDT
SECRETARY
PUBLIC SAFETY AND
CORRECTIONAL SERVICES

WILLIAM M. LINTON
DEPUTY SECRETARY

COLONEL W. T. TRAVELER, JR.
SUPERINTENDENT
MARYLAND STATE POLICE

December 6, 1980

SPECIAL ORDER NO. 01-82-399

TO: Troop, Installation and Unit Commanders
SUBJECT: D.W.I. Enforcement - Sobriety Checkpoints

In an effort to reduce the number of motor vehicle accidents on Maryland highways in which alcohol has been identified as a contributing factor, a pilot project has been authorized to use sobriety checkpoints to aid in the detection and apprehension of drivers who are intoxicated or under the influence of alcohol. It is anticipated that a beneficial result of this enforcement strategy will be that it will serve as a deterrent to potential drunk drivers. During the term of the pilot project only the Chief of the Field Operations Bureau will have the authority to authorize specific highway sobriety checkpoints at specific locations for a specific time period. The use of this enforcement strategy shall be in conformance with the procedures set forth in this Special Order.

Sobriety checkpoints may be conducted at selected highway locations to monitor traffic for driver sobriety. The selection of highway locations will be based on standard selective enforcement criteria considering the time of day, day of week, location, and the number of fatal and other alcohol related accidents. The relative safety of a particular location for citizens as well as Agency personnel will be a primary consideration when selecting the location. Sites selected shall have a safe area for stopping of motorists and must afford oncoming traffic sufficient sight distance for the driver to safely stop upon sighting the stopping team. The location selected must be approved by the Chief of the Field Operations Bureau.

A Commissioned Officer will be assigned to each sobriety checkpoint operation and shall be on-the-scene to supervise and direct the enforcement activities. Each site will be manned by a sufficient number of uniformed troopers to maintain a safe and effective operation. Troopers will wear Agency issued reflectorized safety vests while engaged in the checkpoint assignment and will be responsible for

STATE OF MARYLAND
MARYLAND STATE POLICE

SPECIAL ORDER NO. 01-82-399 (Continued)

Letter
intent SB6/5

traffic direction and observing traffic conditions. Traffic direction will be conducted by troopers utilizing traffic wands attached to their flashlights. Flares and/or reflectors shall be used to illuminate the site and as an aid to traffic direction. Barricades will not be used to block oncoming traffic. Warning signs designed to give advance notice of the impending stop will be conspicuously displayed. A record will be maintained at each checkpoint of traffic volume passing through the checkpoint.

All traffic approaching the checkpoint will be stopped as long as traffic congestion does not occur. The trooper will approach each motorist and state, "I am Trooper (John Doe) of the Maryland State Police. You have been stopped at a sobriety checkpoint set up to identify drunk drivers." If there is no immediate evidence of intoxication, a traffic safety brochure developed specifically for this enforcement strategy will be given to the motorist. The trooper will suggest to the motorist that he read the brochure at a later time for a more complete explanation of the stop. The motorist will then be assisted to safely proceed.

During the brief stop the trooper will look for articulable facts such as an odor of alcoholic beverage about the driver, slurred speech, the general appearance, and/or other behavior normally associated with D.W.I. violators. A combination of these factors may give sufficient probable cause to believe the person is driving under the influence or intoxicated. In these cases the driver will be detained and required to present his motor vehicle operator's license and vehicle registration. The driver may then be requested to perform certain psycho-motor coordination tests and/or if he consents submit to a preliminary breath test. If sufficient evidence of intoxication is then developed, the driver will be arrested.

As a rule, no action should be taken if a motorist approaching the checkpoint turns around or turns off the highway before approaching the checkpoint.

Generally, sobriety checkpoints will be maintained for a one hour period unless the checkpoint causes significant traffic congestion at the site or circumstances arise that would warrant cancellation of the assignment as determined by the on-scene Commissioned Officer. The location of scheduled checkpoints will be kept confidential but the date, and use of this enforcement strategy should be widely publicized to serve as a deterrent to potential drunk drivers.

STATE OF MARYLAND
MARYLAND STATE POLICE

SPECIAL ORDER NO. 08-82-399 (Continued)

Prior to the use of this enforcement strategy, the Chief of the Field Operations Bureau will consult with the local State's Attorney regarding this procedure. Information used as the basis for the selection of specific checkpoint sites shall be recorded and filed for use should the enforcement strategy be challenged in court. A record of all checkpoint assignments will be maintained by initiating a Complaint Control Card under the A.I.R.S. coding for Traffic Detail #81. If a D.W.I. arrest is effected as a result of this initiative, an additional CC Card will be initiated under A.I.R.S. Code #85 D.W.I. arrest.

During the term of the pilot project all available traffic safety information will be collected and used to evaluate the effectiveness of sobriety checkpoints as an enforcement countermeasure against drunk driving. An Incident Report will be completed for each sobriety checkpoint operation and will include the number of man hours, number of D.W.I. arrests, the number and type of other violations, and all other information relevant to the assignment. The brochure designed for use in this project also will include a citizen survey that will be used to measure public reaction to the use of sobriety checkpoints. The evaluation will also include an analysis of all relevant motor vehicle accident data prior to, during, and after the use of sobriety checkpoints.

By Order Of,

W. J. Travers, Jr.
Superintendent

WTT:dmb

STATE LAW DEPARTMENT

MARYLAND STATE POLICE
MARYLAND STATE POLICE HEADQUARTERS
PIKEVILLE, MARYLAND 21208
(301) 486-3171

DATED 2-22-82

MEMORANDUM:

FILE NO.: 03-82-008-IOP

TO: Lt. Col. J. G. Lough
Field Operations Bureau

FROM: James J. Doyle, III

SUBJECT: Checkpoints for Intoxicated Drivers

You have asked for my opinion of a proposal that the Maryland State Police adopt highway roadblocks/checkpoints as an enforcement technique to aid in the arrest and detection of drunk drivers.

You have provided me with an informal legal opinion prepared by Bruce Sherman, Assistant County Attorney for Montgomery County. I agree with his conclusion that such roadblocks or checkpoints may be used.

In Delaware v. House, 440 U.S. 648 (1979), the Court considered a situation where a police officer stopped an automobile, smelled marijuana, and then seized that substance which was in plain view on the car's floor. The officer had testified at trial that prior to stopping the vehicle, he had observed neither traffic or equipment violation, nor any suspicious activity, and that he made the stop only in order to check the driver's license and registration.

The Court concluded that there was a violation of the Fourth Amendment, holding that:

Except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violations of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

The Court, however, continued:

This holding does not preclude the State of Delaware or other states from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock type stops is one possible alternative.

One Federal Court has relied on Prouse to uphold a search and seizure of eighty-six pounds of cocaine from a Ford Bronco as the result of a New Mexico State Police roadblock on an interstate highway. United States v. Pritchard, 645 F.2d 854 (10th Cir. 1981). The purpose of the roadblock in Pritchard, was to conduct routine license and registration checks. The Court quoted the language from Prouse which suggested roadblock type stops as a permissible police practice. The Court then stated:

In our view, the roadblock stop of the Ford Bronco does not run afoul of the rule of Prouse. While this may not have been a '100 per cent roadblock' of the type referred to in Prouse, it is

nonetheless a long way from the selective, single car stop denounced in Prouse. In the instant case, the New Mexico state police were attempting to stop all west bound traffic on a interstate highway, insofar as was humanly possible. The decision not to stop trucks was reasonable under the circumstances, because, presumably, they had all been stopped at a port of entry. The purpose of the roadblock, i.e., to check driver's licenses and car registration, was a legitimate one. If, in the process of so doing, the officers saw evidence of other crimes, they had the right to take reasonable investigative steps and were not required to close their eyes. Furthermore, allowing all these stopped cars through when traffic became congested was also reasonable and, in our view, non-violative of the rule of Prouse. In sum, the roadblock stop of the Ford Bronco was, under the described circumstances, constitutional.

A Maryland Court of Special Appeals' decision announced shortly before Prouse, Good v. State, 398 A.2d 801 (1979), held that the random stopping a single vehicle by police for a routine check without reasonable suspicion that some violation of law had occurred would be violative of the motorist's constitutional right. However, in a footnote, the Court of Special Appeals stated:

In holding that the selective stopping of a single motor vehicle is unconstitutional, we do not imply that the non-discriminatory stopping of vehicles at a roadblock is prohibited. Where every motorist who passes a given location is stopped, that detention has been sanctioned.

In Prouse, the Court explained that the essential purpose of proscription in the Fourth Amendment is to impose

a standard of reasonableness upon the exercise of discretion by government officials. The Court focused on the degree of intrusion created by the particular law enforcement practice, as well as the amount of discretion vested in the law enforcement officers in the field.

A checkpoint stop, the Court reasoned, intrudes far less upon a motorist's Fourth Amendment interests than roving patrol stops of single cars. At traffic checkpoints, the motorist can see that all other vehicles are being stopped, he can see visible signs of the officer's authority and he is, therefore, much less likely to be frightened or annoyed by the intrusion. For this reason, I feel that it is important that any roadblock/checkpoints be set up in such a manner that a motorist will realize that he is not being singled out, but is being stopped briefly along with all other vehicles.

Thus, in State v. Hilleshiem, 291 N.W.2d 814 (Iowa 1980), the Court disapproved of the actions of two police officers who decided to stop cars at night entering a city park where vandalism had been a problem. The Court suggested minimal standards for setting up a roadblock, including (1) a checkpoint location selected for its safety and visibility to oncoming traffic, (2) adequate advance warning signs, illuminated at night, timely informing the approaching motorist of the nature of the impending intrusion, and (3) uniformed officers and official vehicles in sufficient quantity and visibility to show the police power of the community. Of course, the intrusion should also be brief and courteous. A brief statement

should be made to each motorist explaining the reason for the checkpoint. The motorist should then be allowed to proceed unless the trooper observes evidence that the motorist is intoxicated or has committed some other violation of law. I note that the draft Special Order on Maryland State Police checkpoints incorporates most of these elements. I would, however, suggest that some sort of warning signs be displayed so that a motorist realizes in advance that he is being stopped at a safety checkpoint, and is not being stopped for a traffic violation. The site should also be well illuminated by flares at night, again to dispel any fears of oncoming motorists. Incorporating these features would, I believe, further minimize the intrusion.

In addition to considering the nature of the intrusion, the Prouse court also considered the amount of discretion vested in the law enforcement officer in the field. The Court was concerned with "standardless" and "unconstrained" discretion. See State v. Hilleshiem, supra, where the Court recommended a pre-determination by policy-making administrative officers of the roadblocks location, time, and procedures to be employed.

What we certainly want to avoid is authorizing our field personnel to set up roadblocks whenever and wherever they wish. I believe that the Special Order should be amended to provide for selection of the checkpoint and its time of operation and other procedures, to be made by a policy making administrative officer, e.g., the barrack commander. The criteria

to be considered by him in authorizing a checkpoint should also be spelled out in the Special Order. His decision should be clear as to the location and time of the checkpoint. No unauthorized checkpoints should be permitted. All vehicles passing the checkpoint should be stopped.

If these suggested changes are incorporated, I feel that the checkpoint procedure would be legal. Of course, there are also policy concerns, such as success rates, man-hours used in making a DWI arrest, public reaction, etc., that also need to be considered. Before any decision is made, I think that it would be wise to look into the success, or lack of it, of the Montgomery County road/blockcheckpoint program.

James J. Doyle, III
Assistant Attorney General
Counsel, Maryland State Police

ADVICE OF COUNSEL, NOT AN OPINION OF THE ATTORNEY GENERAL

STATE LAW DEPARTMENT

MARYLAND STATE POLICE
PIKESVILLE, MD. 21208

DATED 4-28-82

MEMORANDUM:

FILE NO.: 03-82-008-IOP

TO: Lt. Col. J. G. Lough

FROM: James J. Doyle, III JJD

SUBJECT: Second Draft of MSP Procedure
Regarding Sobriety Checkpoints

There are still a couple of problem areas in the second draft concerning sobriety checkpoints.

First, the draft correctly states that installation commanders are authorized to use highway checkpoints. However, I believe that the Special Order should make it clear that only the installation commander may authorize a specific highway checkpoint at a specific location for a specific time. No other personnel would be authorized to set up a checkpoint. It is very important to the legal success of this program that our individual troopers in the field not make the decision to set up or maintain any highway checkpoint. The discretion for authorizing the specific place and time of the checkpoint should rest with the installation commander.

Secondly, I believe that the Special Order should clarify what the trooper is authorized to do at the checkpoint. There should be a clear statement that unless the trooper has a basis for believing that the driver is intoxicated, from either talking to him or from his physical appearance or movements during the brief stop, etc., the trooper may not request the driver to perform any coordination tests or to submit to a preliminary breath test. Unless the trooper has probable cause to believe that the person is driving under the influence, or while intoxicated, the person may not be asked to submit to a PBT or coordination tests.

I think the Special Order should also address the situation where a motorist, approaching a checkpoint, turns around before reaching it. In that situation, no action should be taken by MSP personnel. There is nothing that requires a motorist to proceed along a road through a checkpoint.

03-82-008-IOP

4-28-82

Page Two

Finally, I believe that the use of these checkpoints was initially designed to be a pilot program conducted in one county rather than statewide. I believe that this pilot program approach is the correct one. Unanticipated problems may develop that should be studied and corrected before this program is applied on a statewide basis.

Please let me take a look at the third, and hopefully the final, draft of the Special Order before it is approved and incorporated into the pilot program.

JJD

STEPHEN J. BARTON
DEPUTY ATTORNEY GENERAL
GEORGE A. NELSON
DEPUTY ATTORNEY GENERAL

THE ATTORNEY GENERAL
MARYLAND STATE POLICE
MARYLAND STATE POLICE HEADQUARTERS
PILESVILLE MARYLAND 21208-3899
13011 486-3101
TTY FOR DEAF 486-0677
1-800-492-5062

MEMORANDUM

DATED 12-9-82

FILE NO: 03-82-008-IOP

TO: Colonel W. T. Travers, Jr.
Lt. Col. N. G. Lough

FROM: James J. Doyle, III

SUBJECT: Sobriety Checkpoints Special Order
No. 01-82-399

I have reviewed this and believe that it conforms with all the guidelines previously given and, therefore, approve its implementation.

JJD

MARYLAND STATE POLICE

SOBRIETY CHECKPOINT SITE SELECTION CRITERIA CONSIDERATION

ACCIDENT DATA/ANALYSIS ISSUES

Statewide Administration Summary - MAARS Data trends for 2 years

County Administration Summary - MAARS Data trends for 2 years

Population death rate per county

Registered vehicle death rate per county

Mileage death rate per county

Current fatal accident experience (as evidenced by ledger at CARD)

State Highway high DWI roadway locations

Day and time for implementation

SAFETY ISSUES

Roadway conditions

Site safety concerns for public and agency personnel

Traffic volumes on site road

Weather

LOGISTICAL ISSUES

Conventional enforcement strategies effectiveness in dealing with problem

Manpower/mileage

Local installation concerns and MBO plans regarding, 1) DWI arrests, and 2) alcohol related accident experience

POLITICAL ISSUES

Jurisdictional overlap concerns (county agreements)

Acceptability of Sobriety Checkpoints by local governmental agencies (courts, S/A, etc.)

MOTORIST SURVEY - SOBRIETY CHECKPOINTS

DATE OF REPORT 1/27/83

QUESTION #1 - DID THE SOBRIETY CHECKPOINT CAUSE A SIGNIFICANT DELAY TO YOUR JOURNEY?

ANSWER YES..... 18 NO..... 839
 PERCENT... 2 PERCENT... 90

QUESTION #2 - DO YOU BELIEVE SOBRIETY CHECKPOINTS WILL DETER SOME PEOPLE FROM DRIVING WHILE INTOXICATED?

ANSWER YES..... 798 NO..... 58
 PERCENT... 93 PERCENT... 7

QUESTION #3 - DO YOU BELIEVE THAT SOBRIETY CHECKPOINTS WILL INCREASE A DRUNK DRIVERS RISK OF BEING DETECTED AND ARRESTED?

ANSWER YES..... 784 NO..... 69
 PERCENT... 91 PERCENT... 8

QUESTION #4 - DO YOU APPROVE OF SOBRIETY CHECKPOINTS AS A MARYLAND STATE POLICE ENFORCEMENT MEASURE TO DETECT AND REMOVE DRUNK DRIVERS FROM THE HIGHWAY?

ANSWER YES..... 748 NO..... 112
 PERCENT... 86 PERCENT... 13

QUESTION #5 - DO YOU HAVE ANY COMMENTS ABOUT SOBRIETY CHECKPOINTS?

ANSWER SEE ATTACHMENT.

NO. OF RESPONDENTS	MALE 588	NO. OF BROCHURES
	FEMALE.... 281	DISTRIBUTED.... 4858
	TOTAL..... 861	PERCENT RETURNED
	 21

DATE DISTRIBUTED	NUMBER DISTRIBUTED	NUMBER RETURNED	PERCENTY RETURNED
12/17/82	769	138	17
12/18/82	726	178	23
12/26/82	478	186	23
1/8/83	781	216	31
1/8/83	464	93	20
1/8/83	354	85	24
1/21/83	566	61	11
TOTAL	4858	861	21

REPORT PREPARED BY THE MARYLAND STATE POLICE TRAFFIC PROGRAM PLANNING UNIT.

QUESTION 83
COMMENTS

YOU GUYS ARE DOING A GREAT JOB.
DONE IN A VERY PLEASANT MANNER
DON'T BROADCAST CHECKPOINTS IN ORDER TO STOP DRUNK DRIVING

VERY GOOD IDEA
PERSONNEL WERE COURTEOUS AND EFFICIENT. A WELL RUN OPERATION.
IT WILL PROTECT THE INNOCENT.
GREAT IDEA SHOULD USE THEM OFTEN.

I AGREE WITH MADD.
IF CONTINUED IT MAY CAUSE A SIGNIFICANT LOSS TO THE EVENING BUSINESS CAPITAL OF NIGHTCLUBS AND RESTAURANTS.
MORE OF THEM.

TOO VISIBLE.
GOOD CAUSE BUT A WASTE OF TIME AND MONEY.
I DIDN'T COUNT BUT THERE MUST HAVE BEEN AT LEAST 20 TROOPERS THERE. BIG WASTE OF MONEY. TWO OR THREE WOULD HAVE BEEN PLENTY.
NEED MORE PROBABLE CAUSE. TIME STOPPED 12 SECONDS.

EXCELLENT. SHOULD BE MADE A REGULAR THING.
KEEP UP THE GOOD WORK. OFFICERS VERY COURTEOUS.

POLITELY. PROFESSIONALLY DONE.

IF ONLY THE FACT THAT PEOPLE KNOW YOU'RE OUT THERE WILL STOP THEIR DRINKING.

EVEN THOUGH I AGREE WITH THIS ACTION IT SEEMS TO BE UNCONSTITUTIONAL.
I THINK IT IS A WASTE OF TAXPAYERS' MONEY AND POLICEMEN' TIME THAT COULD BE SPENT ON THE ROAD.
I THINK THERE'S A BIG CHANCE OF AN ACCIDENT OCCURRING AND THAT THE DELAY COULD PROVE EXTRA HEADACHES.
SOMETHING HAD TO BE DONE TO GET THE DRUNK DRIVERS OFF THE ROAD. THE NON-DRINKER HAS MORE OF A RIGHT TO SAFETY.

I THINK IT'S A GREAT IDEA.

DO MORE OFTEN.

THIS IS THE BEST THING THAT HAS HAPPENED IN HARTFORD COUNTY.

VALIANT EFFORT AT A TOUGH PROBLEM.

THIS IS A GREAT IDEA.
TROOPERS VERY COURTEOUS MADE PEOPLE AWARE OF PROBLEM.
KEEP UP THE GOOD WORK.
DON'T STOP TRYING. GET RID OF COURIOUS BYSTANDERS. THEY ARE A HAZARD.

THREAT OF THE CHECKPOINT ALONE CAUSED ME TO STOP HOLIDAY DRINKING AT PARTY ONE AND ONE-HALF HOUR EARLY.
THEY SHOULD BE USED MORE FREQUENTLY.

CHECKPOINTS LOOK LIKE AN ACCIDENT. NEEDS MORE LIGHTS AND ADVANCE NOTICE.
TRY USING THE ROAD PLEASE WHEN MOVING CARS UP.
IT VIOLATES THE FOURTH AMENDMENT.

COURTS SHOULD BE MORE STRINGENT. COULD WE BE WITNESSING THE ESTABLISHMENT OF A POLICE STATE UNCONSTITUTIONAL. INVASION OF PRIVACY. WOULD NOT STAND UP IN COURT. REMINDS ME OF SECURITY CHECKPOINTS IN NAZI GERMANY. WE NEED STRONGER PENALTIES. I AM CONCERNED I COULD FAIL THE BREATH TEST EVEN THOUGH MY DRIVING IS NOT IMPAIRED. IT'S AGAINST MY CIVIL RIGHTS. I'M NOT SURE THIS IS THE ANSWER. THIS PRACTICE IS QUESTIONABLE IN A FREE SOCIETY. UNCONSTITUTIONAL AND A WASTE OF TAXPAYERS MONEY.

QUESTION #5

COMMENTS

I STRONGLY FAVOR THESE CHECKPOINTS.
THE SYSTEM SEEMS EFFICIENT AND WELL PLANNED.
THE CHECKPOINTS ARE AN INCONVENIENCE TO THE DRUNK DRIVER ONLY.
CHECK WAR BRIEF AND OFFICERS COURTEOUS.
I THINK IT'S WORTH TRYING EVEN IF IT ONLY SAVED ONE PERSON'S LIFE
AT THE PARTY WE WERE AT EVERYONE WAS TALKING ABOUT IT AND WAS VERY CAREFUL ABOUT THEIR DRINKING.
DO PEOPLE TRY TO AVOID THE CHECKPOINT?
IT IS INCONVENIENT FOR THOSE WHO DO NOT DRINK.
I HOPE THE LAW WILL SUPPORT YOU.
PLACE A STOP SIGN AT THE POINT YOU DESIRE THE MOTORIST TO STOP.

WE'RE ALL FOR IT.

GOOD IDEA.
ALSO CHECK FOR DRUGS. PICK UP TRASH ON SIDE OF ROAD FROM FLAMES.
IT'S A GREAT DETERRENT.

GREAT IDEA. LONG TIME OVERDUE.
IT MADE ME THINK OF HOW MUCH I WAS DRINKING.
A DEFINITE DETERRENT.
VERY GOOD. COURTEOUS

TO HELL WITH A.C.L.U.
THEY SHOULD BE DONE ALL YEAR ROUND.
DRUG OR ALCOHOL IMPAIRMENT ONLY.
/ GOOD IDEA.
I ALL FOR IT.
WOULD LIKE TO SEE YOU CHECK FOR DRUG USERS AS WELL.
CERTAIN LIMITATIONS SHOULD BE EXERCISED

GOOD IDEA.

EXCELLENT IDEA. HOPE THEY CONTINUE WITH IT.
SOBRIETY CHECKPOINTS SHOULD CONTINUE.
KEEP UP THE GOOD WORK. YEAR ROUND.
I AGREE WHOLEHEARTEDLY.
NURSES WHO WORK NIGHTS ARE WORRIED ABOUT BEING STOPPED.
I HOPE THEY PROVE EFFECTIVE, BUT I HAVE DOUBTS.
VERY NICELY HANDLED. GOOD IDEA
GREAT IDEA. CONTINUE YEAR ROUND.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNE ARBOR, MARYLAND 21404

November 30, 1982

Col. Wilbert T. Travers, Jr.
Superintendent
Maryland State Police
1200 Reisterstown Road
Pikesville, Maryland 21208

Dear Colonel Travers:

I have reviewed the proposal submitted to me by the State Police on sobriety checkpoints. Although we are presently experiencing the greatest decline in traffic deaths in our history, I believe that all lawful and productive means should be employed to identify and remove drunken drivers from our highways.

I realize that the use of sobriety checkpoints has been the cause of some concern, but I believe we need to test this technique to determine if it can help to further improve our traffic safety record.

Accordingly, I authorize you to initiate a pilot sobriety checkpoint program on a limited and selective basis, making sure that the public's convenience and safety are guaranteed. You are to immediately discontinue on-road enforcement activities if operational problems are encountered and until such time as the problems can be resolved.

The pilot program should become operational the week of December 12, to coincide with "National Drunk and Drugged Driving Awareness Week," and should continue for approximately three months. Based on a program evaluation, a decision should then be made on whether to authorize the use of sobriety checkpoints on a continuing basis.

Sincerely,

W. W. Bennett
Governor

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SUPERINTENDENT'S C

2/1/82

HABITUAL OFFENDERS

April 5, 1983

This section contains:

1. an article on license revocation and alcohol treatment for habitual offenders

License Revocation and Alcoholism Treatment Programs
for Habitual Traffic Offenders

Philip M. Salzberg, Ph.D., Richard Hauser, & Carl L. Klingberg, Ph.D.

Research and Technology Division, Department of Licensing, Olympia, Washington

Abstract

The Washington Habitual Traffic Offender Act was evaluated to determine its effectiveness in reducing traffic violations and accidents. The law requires a 5-year license revocation for drivers who have accumulated three or more major traffic convictions or 20 or more total convictions. The law also permits a stay of the revocation for alcoholic drivers who have undertaken an approved alcoholism treatment program. The study was designed to assess the subsequent driving performance of revoked drivers and stayed drivers compared to control groups of drivers who were eligible for but did not receive these sanctions. It was found that revoked drivers had significant reductions in moving violation convictions and accidents compared to control group drivers. Stay of revocation, however, had no impact on subsequent driving performance. The data were consistent with the possibility that revoked drivers continue to drive during the license denial period but may drive more cautiously in an attempt to avoid detection. The stayed drivers, in contrast, apparently did not modify their driving behavior compared to control group drivers.

Introduction

The Washington Habitual Traffic Offenders Act affirms that it is the policy of the State of Washington to "provide maximum safety for all persons who travel or otherwise use the public highways of this State" by denying the "privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others..." (RCW 46.65.010). The Act defines an habitual offender as a driver who has accumulated in a 5-year period three or more convictions for driving while intoxicated (DWI), driving while suspended or revoked, negligent homicide, or a hit and run accident resulting in injury or death. (Reck-

less driving, eluding a police officer, and being in physical control of a motor vehicle while under the influence of intoxicants were added in the 1979 and 1981 revisions of the law.) In addition, drivers who accumulate 20 or more moving traffic convictions in a 5-year period are also subject to habitual offender action.

When a driver's record classifies him or her as an habitual offender, the Department of Licensing (DOL), following a hearing, may revoke the person's driving privilege for 5 years. Some drivers, however, may qualify for a "stay of revocation." If the hearing officer determines that alcoholism is a major contributing factor to the driver's record, and if the driver has undertaken an approved alcoholism treatment program, then the hearing officer may stay (for up to 5 years) the effective date of the revocation, unless the driver is subsequently convicted of one of the major offenses listed above.

At the end of 2 years an habitual traffic offender may petition for early reinstatement. If it is determined through a hearing that the driver has taken positive steps to correct his or her driving behavior, the DOL may authorize reinstatement, imposing such conditions and restrictions as are appropriate.

Prior to the 1979 revision of the law (which transferred administrative responsibility to the DOL), and during the time of the present study, the law was administered by the courts. When a driver met the habitual offender criteria, the DOL sent a copy of his or her driving record to the prosecuting attorney of the person's county of residence. The determination of habitual offender status was made by the court, and the judge then either directed the DOL to revoke the person's license, stayed the revocation in the case of alcoholism, or dismissed the proceedings if there were errors in the driver's record or if the record was that of another person.

The intent of the Habitual Traffic Offenders Act is to discourage the repetition of traffic violations and accidents by individuals who have shown gross disregard for the safety of others using the highways. The law specifies two mechanisms to accomplish this objective. The primary mechanism is revocation of the driving privilege. The second is participation in an alcoholism treatment program. It is presumed that successful participation in treatment will lead to a reduction in subsequent violations and accidents.

The extent to which the objective of the Habitual Traffic Offenders Act has been accomplished has not been quantitatively evaluated. Since the law has a clearly defined intent, it would seem desirable to assess whether its implementation has reduced violations and accidents among habitual offenders. A study of the North Carolina Habitual Offender Law (Li & Waller, 1976) did not find improvements in the subsequent driving records of revoked drivers. In the absence of empirical support demonstrating its effectiveness, questions regarding revision or elimination of the law can be legitimately raised.

The purpose of this study is to provide an empirical evaluation of the Washington Habitual Offender Law. The two major components of the law (revocation and stay of revocation) are assessed for their impact on subsequent driving performance. The driving records of subjects who received these sanctions are compared to control groups of other subjects who met the habitual offender criteria but, for various reasons, did not receive the mandated sanctions. These control groups consisted of: (1) subjects who had been selected for habitual offender prosecution, but for whom apparently no further judicial action was taken; (2) subjects the courts could not locate; and (3) subjects who had the court proceedings dismissed.

Specifically, the study sought to determine whether habitual offenders who received one of the sanctions mandated by law were significantly different from the control group drivers in numbers of: (1) alcohol-related traffic violations, (2) accidents, (3) moving violations, (4) nonmoving violations and (5) major violations.

Method

Subjects. The subjects in this study were drivers who met the habitual traffic offender selection criteria during 1974. These criteria were three or more convictions for DWI, driving while suspended/revoked, hit and run, or negligent homicide, or 20 or more total convictions. All driver records in the State of Washington as of January 1975 were searched, and all records that had an entry of "pending habitual offender" during 1974 were selected. Abstracts of these records were printed. The driver license numbers of these individuals were then compared with all driver records on file as of October 1979. When a match occurred, a second driver record abstract was printed.

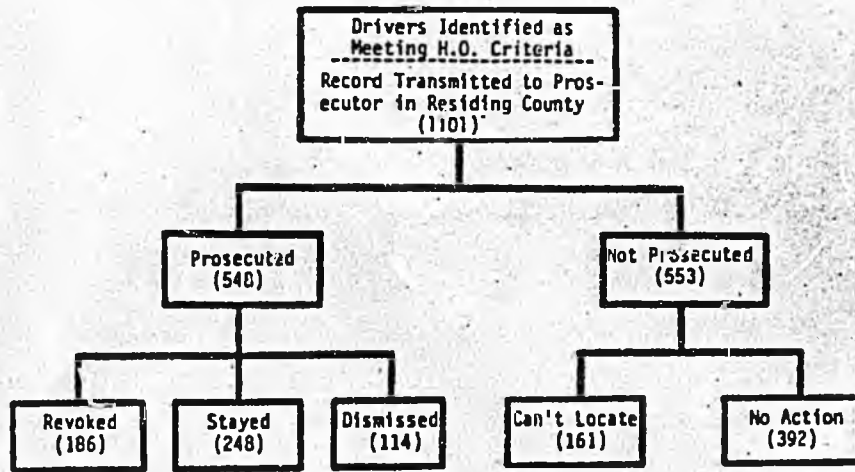
A total of 1140 subjects were thus identified. Of these, 39 (3.4%) were female drivers. Because of this small percentage, it was decided to exclude females from further study. The resulting sample thus comprised 1101 male drivers that the DOL had classified as habitual offenders during 1974. An average 10.8-year driving history was available for each subject covering a time period from January 1969 through October 1979.

Procedure. The action taken by the courts, reported to the DOL, and entered on the driver record determined the group assignment for each subject. There were five groups in the study: (1) subjects who had their licenses Revoked; (2) subjects who received a Stay of revocation and treatment for alcoholism; (3) those who had the action Dismissed; (4) subjects for whom the courts reported "Cannot Locate"; and (5) subjects for whom No Court Action was indicated on the record. Figure 1 graphically represents the system process that determined these five groups.

The data elements coded for each subject included group, county, sex, birth date, habitual offender pending date, action date, and frequency counts of violations and accidents. The violation frequency counts were made separately for DWI, driving while suspended or revoked, moving violations, non-moving violations, physical control, hit and run, and negligent homicide. Each of the frequency counts were broken down into three time periods: (1) prior to the pending date; (2) between the pending and action

FIGURE 1

Habitual Offender System Flow Resulting In Five Comparison Groups (Sample Sizes in Parentheses)



dates; and (3) subsequent to the action date. The "action date" for the No Action group was arbitrarily chosen as 7 months after the pending date, based on an inspection of abstracts from the other four groups.

Some violation and accident dates on the driving record abstracts were partially missing (e.g., the month and day fields contained zeros). Unless these incidents could be unambiguously assigned to either the prior, pending, or post time period, they were not counted. The missing date incidents that were excluded accounted for less than 3 % of all violations and accidents, however.

Results

Sample characteristics. The majority of subjects in the sample (94%) were classified as habitual offenders because they accumulated three or more major violations during the 5 years prior to the pending date. The sample had a mean of 3.47 major violations. Six percent of the sample had 20 or more total violations, and 6% of the subjects met both selection criteria.

Most subjects (87%) had at least one DWI conviction on their records; 22% had only one; 28% had two; 33% had three; and 4% had four or more. The mean number of DWI

convictions was 1.89 for the sample as a whole. Subjects typically had either three DWI convictions, or one or two DWI convictions plus driving while suspended/revoked convictions (mean of 1.54).

Negligent homicide and hit and run convictions were rare (mean of 0.03). Subjects averaged 3.34 moving violations, 2.21 non-moving violations, and 0.73 accidents prior to habitual offender selection. Convictions for being in physical control of a motor vehicle while intoxicated averaged 0.12. The mean age of the sample was 35.4 years.

The duration of the tracking interval varied among subjects due to differences in the pending and action dates. The mean tracking period prior to the pending date was 5.37 years ($SD = 0.43$); the mean duration of the pending-action time period was 0.53 years ($SD = 0.49$); and the mean post-action tracking interval was 4.82 years ($SD = 0.53$). This substantial variability in tracking interval precluded the use of simple frequency counts (of violations and accidents) in the data analysis. Thus, the individual violation and accident counts were conditionalized on tracking interval duration. The resulting dependent measures are expressed as mean number of events per 100 drivers per year.

TABLE I

Mean Age and Pre-habitual Offender Driving Performance
for the Five Study Groups

Measure	GROUP					p
	Revoked (N=186)	Stayed (N=248)	Dismissed (N=114)	Cannot Locate (N=161)	No Action (N=392)	
Age	33.0	39.3	34.6	35.1	34.4	<.05
DWI	35	44	31	33	32	<.05
Driving while suspended/revoked	29	19	29	36	32	<.05
Moving violations	73	51	66	61	63	<.05
Nonmoving violations	48	24	45	50	44	<.05
Accidents	14	14	12	13	13	NS
Hit & run & Negligent homicide	0.7	0.6	0.3	0.1	0.8	NS

Note: Driving performance is expressed as the mean number of events per 100 drivers per year.

TABLE 2

Mean Age and Pre-habitual Offender Driving Performance
for the Five Study Groups

Measure	GROUP					p
	Revoked (N=186)	Stayed (N=248)	Dismissed (N=114)	Cannot Locate (N=161)	No Action (N=392)	
DWI	9	9	11	7	9	NS
Driving while suspended/revoked	17	12	8	9	9	<.05
Moving violations	14	33	41	33	37	<.05
Nonmoving violations	15	18	20	17	16	NS
Accidents	5	10	10	12	9	<.05
Hit & run & Negligent homicide	0.4	0.4	0.5	0.3	0.6	NS

Note: Driving performance is expressed as the mean number of events per 100 drivers per year.
The data have been adjusted to remove covariate effects.

Study group characteristics. In order to determine the comparability of the five study groups prior to habitual offender selection, an analysis of group composition was conducted. The analysis indicated that numerous between-group differences existed. These data are summarized in Table 1.

The mean age of the subjects differed significantly among groups ($F(4,1096) = 9.10$). The Revoked group was significantly younger and the Stayed group significantly older than the Dismissed, Cannot Locate, and No Action groups, which did not differ from one another.

The mean number of DWI convictions prior to the habitual offender action exhibited an overall significant difference ($F(4,1096) = 16.35$). The three control groups did not differ, while both the Revoked and Stayed groups had significantly more DWI convictions than the combined control groups. In addition, the Stayed group had significantly more DWI convictions than the Revoked group. The inclusion of convictions for physical control exhibited the same pattern.

Convictions for driving while suspended or revoked differed significantly among the study groups ($F(4,1096) = 11.47$). This difference was attributable to significantly fewer convictions in the Stayed group; none of the other four groups differed.

Convictions for moving violations showed significant between-group variability ($F(4,1096) = 4.42$). The Revoked group had significantly more and the Stayed group significantly fewer such convictions than the control groups which did not differ. Nonmoving violation convictions exhibited a significant overall difference ($F(4,1096) = 10.77$), which was attributable to significantly fewer convictions in the Stayed group; the other four groups did not differ. There were no overall differences in either accident involvement ($F < 1$) or hit and run and negligent homicide convictions ($F(4,1096) = 1.40$).

Given these between-groups differences in age and pre-habitual offender driving performance, the analysis of post-habitual offender performance was adjusted to correct for these effects. The statistical tech-

nique used was Analysis of Covariance. In the analysis, post-treatment study group differences were tested only after controlling for the covariate effects of age and prior driving performance.

Post-habitual offender driving performance. Violation and accident measures for the 4.8-year post-habitual offender period are summarized in Table 2. These data have been adjusted to remove the covariate effects of age and prior driving performance. The unadjusted data are shown in Appendix A.

There were no group differences in DWI convictions ($F < 1$). All groups averaged about nine DWI convictions per 100 drivers per year. The same result was obtained when physical control convictions were added to DWI convictions ($F(4,1094) = 1.08$). Each group had a mean of two physical control convictions per 100 drivers per year.

Convictions for driving while suspended or revoked were significantly different among groups ($F(4,1094) = 5.54$). The Dismissed, Cannot Locate, and No Action groups did not differ, while both the Revoked and Stayed groups had significantly more convictions than the combined control groups. In addition, the Revoked group had significantly more convictions than did the Stayed group.

Moving violation convictions were significant ($F(4,1094) = 13.91$), with the Revoked group having the fewest such convictions. The Stayed group did not differ from the combined control groups, nor did the control groups differ from one another. The Revoked group had less than half as many moving violations as the Stayed and Control groups. Nonmoving violation convictions showed no differences among groups ($F < 1$). The pattern of group differences in accidents was the same as moving violations. There was an overall significant difference ($F(4,1094) = 4.47$), which was attributable to significantly fewer accidents in the Revoked group than the other four groups. The control groups did not differ, nor did the Stayed group differ from the controls. Again, the Revoked group was involved in half as many accidents as the other groups. Finally, hit and run and negligent homicide convictions did not differ ($F < 1$).

Additional analyses were conducted on a subgroup of 55 subjects in the Revoked

group who received an early reinstatement of their licenses. These subjects were revoked for an average of 3.16 years and had been reinstated for an average of 1.70 years. During the period of reinstatement, driving performance did not change significantly compared to the period of revocation, with the exception that moving violation convictions increased from 8 to 38 per 100 drivers per year ($F(1,54) = 6.21$). DWI convictions were 4 and 13, nonmoving violations 14 and 27, accidents 4 and 18, and driving while suspended/revoked 18 and 11 for the revocation and reinstatement periods, respectively. None of these differences was statistically greater than might be expected based on chance alone, but the consistent absolute differences for all offenses except driving while suspended/revoked suggest that driving performance deteriorated upon reinstatement.

There were 65 subjects in the Stayed group who received a subsequent revocation for violating the conditions of the stay. These subjects received a revocation an average of 1.45 years after their stay and were under revoked status for 3.42 years of the tracking period. During the period the stay was in effect these subjects had exceptionally poor driving records: 83 DWI convictions, 76 driving while suspended/revoked, 80 moving violations, 39 nonmoving violations, and 26 accidents per 100 drivers per year. This extremely poor driving performance may be causally related to the subsequent license revocation. In contrast, during the revocation period these subjects' records improved significantly and were similar to the Revoked group: 9 DWI convictions, 25 driving while suspended/revoked, 14 moving violations, 19 nonmoving violations, and 6 accidents per 100 drivers per year.

Discussion

The results of this study provide support for license revocation as an effective traffic safety countermeasure. Revocation was associated with significant improvements in particular measures of driving performance. In contrast, the data have failed to provide support for a stay of revocation and concomitant treatment for alcoholism as effective countermeasures.

The driving performance results for the Stayed group replicate a previous finding

(Salzberg & Klingberg, 1981) that diversion of DWI offenders to treatment (deferred prosecution) did not produce a positive effect on DWI recidivism and, in fact, may have had a negative effect. In addition, a California study (Hagen, Williams, McConnell, & Fleming, 1978) found long-term (12-month) alcohol abuse treatment to be inferior to license suspension or revocation in reducing subsequent accidents and DWI recidivism.

The present results along with the findings of Salzberg and Klingberg (1981) and Hagen et al. (1978) suggest that the potential benefits from diversion of DWI offenders to alcoholism treatment programs are not being realized. There are at least three plausible interpretations of this result.

First, it is possible that current alcoholism treatment may not be providing the kinds of services required to change drinking and driving behavior. It is, of course, likely that some treatment approaches are successful while others fail to accomplish their goals. Nevertheless, when considered in the aggregate, the overall net effect of these programs seems inadequate.

Second, the type of individual who petitions for diversion to treatment and/or the type of individual who is selected for participation may be simply "going through the motions." Diversion to treatment may be perceived by such individuals as a means of avoiding legal sanctions.

Finally, it is possible that the "coerciveness" of legal sanctions may detract from a potentially positive impact of treatment. Monitoring of treatment by the courts and/or government agencies may be antithetical to voluntary participation in treatment that would facilitate a positive outcome. Although a definite interpretation cannot be made, the data do suggest that a stay of revocation, while the driver undergoes alcohol abuse treatment, does not produce the desired traffic safety impact.

The other major finding of the study was that license revocation was effective in reducing accidents and moving violation convictions compared to both the Stayed and control groups. An additional supportive finding was that subjects in the Stayed group whose licenses were subsequently

revoked exhibited driving records similar to the Revoked group during the revocation period.

Other research studies have reported similar effects of license revocation. Hagen (1977) found that multiple DWI offenders who received license suspensions or revocations (of 1 or 3 years' duration), in addition to jail and/or fines, had better subsequent accident and DWI recidivism records than subjects who received only the jail and/or fine sanctions. Hagen et al. (1978) reported that drivers who received 1-year suspensions or 3-year revocations had better subsequent accident and DWI records than drivers who participated in long-term alcohol abuse treatment program in lieu of suspension/revocation. Hagen, McConnell, and Williams (1980) compared the subsequent driving records of first and second DWI offenders. Second offenders who received a 1-year license suspension had fewer accidents and DWI reconvictions than did first offenders who were not suspended. Finally, Homel (1977) found a positive effect for license denial.

There are two possible reasons for the positive effect of license revocation. During the period of revocation, there may be reduced driving exposure or individuals may continue to drive but may be more cautious. Hagen et al. (1980) reported that 65 percent of the suspended drivers admitted to driving during the period that their licenses were denied. Most of the drivers reported that they decreased the amount of their driving, however. Additional evidence consistent with reduced exposure was reported by Hagen et al. (1978). They found a stronger relationship between prior and subsequent driving records for nonsuspended/non-revoked drivers than for drivers who received these license actions. It was argued that reduced exposure during the license denial period would tend to decrease the relationship between prior and subsequent records. Thus, Hagen et al. (1978) attributed the positive effect of suspension/revocation to a general decrease in the amount of driving. In contrast, other studies (Finkelstein and McGuire, 1971; Li and Waller, 1976; Paulsruide and Klingberg, 1976) reported high levels of traffic convictions during the period of suspension or revocation as evidence for continued driving.

Although previous data tend to favor a reduced driving exposure hypothesis rather than a cautious driving hypothesis, the present results are more consistent with the latter. If there was a generalized reduction in the amount of driving, then reductions should be observed in all measures of driving performance. In the present study, the Revoked group should have exhibited a decreased probability of conviction for DWI violations and nonmoving violations, as well as for moving violations. This result was not obtained; the Revoked group did not differ from the other groups in either DWI or nonmoving violation convictions. In addition, the significantly greater number of convictions for driving while suspended/revoked does not suggest a decrease in driving. This effect, however, is probably related to the fact that subjects in the Revoked group were denied their licenses to a much greater extent than the other groups.

The present data are consistent with the possibility that the revoked subjects continued to drive during the revocation, but may have driven more cautiously. If these subjects moderated their driving behavior to avoid attracting the attention of law enforcement, a reduction in moving violations would be expected. In addition, such driving behavior could also produce a decreased probability of accident occurrence. This increased caution in driving seems not to have influenced the likelihood of driving after drinking, however.

License revocation appears to be associated with improvements in driving performance. An important question is whether this effect occurs only during the revocation period or continues after the driver's license has been reinstated. The evidence pertinent to this issue is equivocal. Hagen (1977) found that the effect lasted at least two and one half years beyond a 1-year license suspension. In contrast, Finkelstein and McGuire's (1971) data show increases in conviction and accident rates following the period of suspension or revocation for second and third DWI offenders. The present data for the Revoked-Reinstated subjects show similar (but nonsignificant) trends for most of the driving performance measures, although moving violations did increase significantly, suggesting the absence of a carry-over effect. The small sample size ($N = 55$) precludes a definite interpretation of these

data, however. Additional research is required to resolve this issue.

The Habitual Traffic Offender Act was intended to improve the safety of persons using the highways by denying the driving privilege to drivers who have shown gross disregard for traffic laws. The present study was designed to assess the effectiveness of the law. The data lead to

conclusion that the law is, in part, effective. Diversion of habitual offenders to alcoholism treatment programs has not produced improvements in driving behavior compared to dismissal or no action. In contrast, revocation of the driving privilege was associated with significant improvements in driving. These improvements, however, may be related to continued but more cautious driving rather than a general reduction in the amount of driving.

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APPENDIX A

Unadjusted Post-habitual Offender Driving Performance
for the Five Study Groups

<u>Measure</u>	GROUP					p
	<u>Revoked (N=186)</u>	<u>Stayed (N=248)</u>	<u>Dismissed (N=114)</u>	<u>Cannot Locate (N=161)</u>	<u>No Action (N=392)</u>	
DWI	9	10	10	7	9	NS
Driving While Suspended/Revoked	18	11	9	10	10	< .05
Moving Violations	19	28	43	33	38	< .05
Nonmoving Violations	17	14	21	19	17	NS
Accidents	6	10	10	12	9	.05
Hit & run & Negligent homicide	0.4	0.4	0.5	0.3	0.6	ns

Note: Driving performance is expressed as the mean number of events per 100 drivers per year.

IMPOUNDMENTS AND FORFEITURES

April 5, 1983

This section contains:

1. a memo on the constitutionality of impoundments and forfeitures
2. a newspaper article on impoundments

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

SUBJECT: Impoundment and forfeiture
(CSEB 6 (State Affairs))

TO: Representative Mitchell E. Abood, Jr.
Chairman, House State Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

You have asked whether sec. 28.35.036 providing for the impoundment of motor vehicles under certain circumstances is constitutional. Since there is no provision similar to this in the statutes and the court has not considered the question, it is impossible to say with certainty that the section will be upheld. It is clear that a person may not be deprived of property by the state unless due process requirements are met. I believe that the provisions in subsection (c) for a hearing after impoundment and in subsection (d) for the release of certain vehicles that are impounded satisfies minimum due process requirements and that the section is probably constitutional.

In general it is recognized that impoundment of a motor vehicle is proper and may be necessary when a driver is arrested. South Dakota v. Operman, 428 U.S. 364, 40 L.Ed.2d 1000 (1976); 96 S.Ct. 3092, on remand 247 N.W.2d 673 (South Dakota 1976); Brantley v. State, Cr.; 548 P.2d 675 (Oklahoma 1976); People v. Roddy, 532 P.2d 958 (Colorado 1975); Harper v. State, 296 S.E.2d 782 (Georgia 1982). Statutes that provide for the impoundment of motor vehicles are intended as a means of enforcing the motor vehicle act and may be used in that way. Graham v. State, 184 P.2d 984 (Oklahoma 1947); Serenko v. Bright, 70 Cal. Rptr. 1 (California 1968); People v. Ortiz, 305 P.2d 145 (California 1956). In California, for example, vehicles driven by certain persons convicted of driving while intoxicated may be impounded for 30 days under section 23102(a) of the Vehicle Code.

You have also asked whether sec. 28.35.037 providing for the forfeiture of motor vehicles under some circumstances is constitutional. It appears to be constitutional to provide for the forfeiture of vehicles that have been used in the commission of the offense of driving while intoxicated or refusal to submit to a chemical test for sobriety.

The law of forfeiture is basically statutory in nature. Some statutes provide for the forfeiture of property which is itself unlawful to possess and other provide for the forfeiture of property that is used in connection with an unlawful act. 40 U.S.C. 781 - 789 provide for the forfeiture of vessels, vehicles or aircraft used to transport or conceal certain contraband articles including narcotics. With some exceptions, a motor vehicle is subject to forfeiture regardless of the innocence of the owner, who may apply to the Secretary of Transportation for remission or mitigation. Motor vehicles used in violation of federal liquor laws are subject to forfeiture, with provision for remission or mitigation made under 18 U.S.C. 3617. (For an analysis of cases dealing with this provision, see 14 ALR3d 128.)

There is no constitutional objection to enforcement of a penalty by forfeiture of an offending article. Calero-Toleo v. Pearson Yacht Leasing Co., 416 U.S. 663, 40 L.Ed.2d 452, 94 S.Ct. 2080, rehearing denied 417 U.S. 977, 41 L.Ed.2d 1148, 94 S.Ct. 3187 (1974); United States v. Marathon Pipe Line Co., 589 F.2d 1305 (CA7 Illinois 1978); 36 Am. Jur.2d Forfeitures and Penalties, sec. 15 et seq. The doctrine that property used in the commission of an offense may be forfeited applies to actions of states and other local governments, as well as the federal government. Van Osler v. Kansas, 272 U.S. 465, 71 L.Ed. 354, 47 S.Ct. 133 (1926); Lindsay v. Cincinnati, 174 N.E.2d 96 (Ohio 1961) (see 14 A.L.R.3d 221 on state forfeiture of motor vehicles used in the violation of liquor laws and 50 A.L.R.3d 172 on state forfeiture of motor vehicles used in violation of narcotics laws). On the other hand, forfeitures are not favored in the law and statutes providing for forfeiture are strictly construed. 36 Am Jur.2d Forfeitures and Penalties, sec. 8. Even this limitation may not apply if the statute relates to public safety, as that contained in CSHB 6 (State Affairs) arguably does. If the statute providing for forfeiture is considered remedial as well as penal, it will be construed to promote the legislative policy behind the enactment of the statute. Arthur v. Tindel, 96 N.W.2d 208 (Nebraska 1959).

While the Alaska Supreme Court has not approved a specific statutory scheme providing for forfeiture, it has considered the general question. The standards of due process under the state and federal constitution require that deprivation of property be accompanied by notice and opportunity for a hearing at a meaningful time. No notice or hearing is necessary prior to seizure of property used illegally. However, when seized property is used by the owner in earning a livelihood, notice and opportunity to contest the reasons for the seizure most follow seizure ". . . within days, if not hours . . ." F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). Under CSHB 6 (State Affairs) a motor vehicle may be forfeited only after conviction of an offense. This would appear to provide adequate notice and hearing procedures. It should be noted that F/V American Eagle, supra, upheld forfeiture of the catch and a bond posted on a fishing vessel where the owners were, in fact, afforded due process despite possible constitutional inadequacies in the statute involved. The Court refused to consider the constitutionality of that statute.

In State v. Rice, 626 P.2d 104 (Alaska 1981), the Court considered the forfeiture of an airplane used in the violation of a wildlife statute. In that case the Court determined that a remission procedure is mandated under the Alaska Constitution to protect innocent owners and security holders. An opportunity for remission is provided under sec. 29.35.038 contained in CSHB 6 (State Affairs). Under (b) of that section the court is required to order remission upon a showing of innocence on the part of the petitioner. The power of the court to grant relief in those cases may be left discretionary and still satisfy due process requirements. Commonwealth of Pennsylvania v. One 1962 Chrysler Hardtop Sedan, 193 A.2d 636 (Pennsylvania 1968).

It has been recognized that specific notice, hearing, or seizure procedures may vary as a function of the nature of the ownership interest and governmental interest involved and the risk that the property may be removed beyond the reach of the government. Alyeska Pipeline v. The Bay Ridge, 509 F. Supp. 1115 (D. Alaska 1981). Since the Supreme Court in Alaska has not specifically approved any procedure involving impoundment or forfeiture, it cannot be determined with certainty that the procedures established in CSHB 6 (State Affairs) satisfy due process requirements, although they appear to satisfy those requirements articulated by the Court to date.

City seizes 1st vehicle under DWI law

By LARRY CAMPBELL
Daily News reporter

An Anchorage man with a history of drunken driving convictions lost his car Friday in the first application of Anchorage's new drunk driving ordinance that allows the city to confiscate offenders' vehicles.

At the city's request, District Court Judge Elaine Andrews ordered Victor Jackson, 52, to permanently relinquish his 1969 Dodge van to the city after Jackson pleaded no contest to charges of driving while intoxicated and driving with a revoked license.

Andrews also ordered Jackson, who had five drunken driving convictions in 1981 and twice had

his driver's license revoked, to serve a total of one year and three months in jail.

His license also was revoked for another five years.

Andrews further ordered that Jackson undergo alcohol treatment while incarcerated, and she ordered a review of his treatment plan in August.

The decision marks the first time a driver has been forced to give up his vehicle to the city under the new ordinance passed in November.

Because Jackson pleaded no contest to the charges, he is limited to appealing the sentence only on grounds that it is excessive, said Municipal Prosecutor Jim Wolf.

Neither Jackson nor his attorney, Susan Orland

sky, could be reached Friday to comment on a possible appeal.

The city had asked the court to impose the confiscation ordinance at a hearing March 11. Andrews delayed action, however, until questions of the vehicle's ownership were cleared up.

Department of Motor Vehicle records did not show Jackson as the registered owner, although Jackson had previously admitted to buying the van.

"We never really did get that cleared up," Wolf said. "We contacted one owner who gave it to his son, then he sold it to an employee of his whose last address was in Quebec. Then, Jackson turned up

See Back Page, MUNICIPALITY

Continued from Page A-1

with it in Anchorage."

Jackson's acknowledgment that he owned the van was finally considered sufficient for Andrews to bring down her ruling.

"It will be a civil problem for the city if someone else comes along saying the van belongs to them," Andrews said.

What the city will do with the van is uncertain now, Wolf said.

"I suppose the police department could use it, if they wanted it. Or any other mu-

nicipal office that laid claim to it," Wolf said. "I don't know what we could do with a '69 Dodge van, though."

The municipal ordinance allows judges to impound for not less than 30 days the automobile of a person twice convicted of drunken driving. Upon the third conviction, a judge could order the car impounded for not less than 60 days.

A fourth conviction allows judges to order an offender to turn over his car for not less than 90 days. The forfeiture can be permanent at the judge's discretion.

S B

68-71

(FILE 1)

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

December 1, 1983

Commissioner Dick Lyon, Chairman
Alaska Power Authority
Pouch D
Juneau, Ak. 99811

Dear Dick:

I am pleased that the Alaska Power Authority is taking steps to correct management and accounting deficiencies that were identified in the recent legislative audit. The management review now underway is a good step in the right direction.

Recommendation No. 5 of the legislative audit reads: "The Legislature, in conjunction with APA, should review the status of various projects to determine if unexpended project funds should be lapsed into the General Fund." Twenty-eight projects with unobligated balances totalling \$14,148,445 were identified; over \$10,000,000 of that represents the balance for the Solomon Gulch project, a project that I understand is in litigation.

I would like to request that the APA board review the identified projects and recommend to the Legislature what to do with the balances. The board, with the assistance of APA staff, is certainly in a better position than members of the Legislature to determine whether and when money should be lapsed or reappropriated. If this effort is not done systematically and with your assistance, I fear that individual legislators will attempt to repeal and reappropriate project balances on their own.

Please let me know whether the board intends to review project balances and to make recommendations to the Legislature and, if so, when that might be completed. I'd like to help make sure both that projects are adequately funded and that freed-up funds are used appropriately.

Best regards,

Senator Vic Fischer

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
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Official Business

December 1, 1983

Senator Arliss Sturgulewski
1024 W. 6th Ave., Suite 204 D
Anchorage, AK 99501

Dear Arliss:

Thanks for your memo of Oct. 31 regarding the Alaska Power Authority audit.

I have talked to Gerry Wilkerson, and the Audit Division will indeed be following up on the APA's progress in meeting the recommendations of the audit. Because a management review and additional performance and accounting audits of the APA are currently underway, Gerry said that his division would not attempt their own follow-up until next June or July. They will, meanwhile, be monitoring the other reviews. My staff, as well, will be keeping an eye on the various reviews and changes at the APA.

I have also written to Commissioner Lyon about the audit recommendation concerning project balances, and asked him to work with the Legislature. I'll enclose a copy of that letter.

Very early in the approaching session, I intend to hold State Affairs Committee hearings concerning the feasibility and economic status of the proposed Susitna project. Perhaps at that time we could also receive an overview of the APA's various programs. I agree with you that there are numerous questions of statewide import that need to be addressed and have asked Nancy Lord to follow through on your points.

Best regards,

Senator Vic Fischer

Enclosure

Alaska State Legislature

Senate Committee on State Affairs

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Official Business

November 15, 1983

Commissioner Dick Lyon
Chairman, Alaska Power Authority
Department of Commerce
Pouch D
Juneau, AK 99811

Dear Dick:

As you know, I remain very interested in the progress of the proposed Susitna Hydroelectric Project under study by the Alaska Power Authority. I have a serious concern about one aspect of that progress, the development of a workable plan of finance.

I have reviewed the executive summary of the economic and financial update completed for the authority in September by Harza-Ebasco. I understand that that report was subsequently withdrawn because of various inadequacies and is still being rewritten and updated.

The September report concludes that the project remains "economically attractive under the conservative oil price forecasts used." (I note here that the "conservative" forecasts used in the report are nowhere near as conservative as those the state uses for its revenue forecasts.) In any case, if we accept the conclusion that the project is economically feasible, it would seem to be time for the APA to move on to developing a finance plan for the projects.

It has been apparent for some time that the ultimate key to Susitna, aside from its economic viability, lies in its financing. Only if it can be financed in a manner that breaks neither the state's treasury nor the pocketbooks of consumers should we proceed with it.

The financing question is, of course, extremely complex. The APA is, however, statutorily required to prepare such a plan for the Administration and Legislature. Little visible progress has thus far been made, and this concerns me greatly. With \$100 million of state funds already spent on the study of the project and another \$32 million being requested for FY 85, we have made a tremendous financial commitment without yet reaching the all-important financing step.

Frankly, I had expected the long-overdue Harza-Ebasco update to include a finance plan, or at least a clear listing of options. Instead, what I found

was a simple statement that a state equity contribution of \$1.6 - \$1.8 billion (1983 dollars) would be required.

On page 29, the report states, "Several important and interrelated issues must be resolved before a suitable financing plan can be recommended for the Susitna Project." It then lists them: size of project, size of state equity contribution, financing terms, and target cost of on-line power. Well, what else is new? We've known that since the beginning. It's true of any power project. Is that as far as we've come with Susitna after all these years? It makes me wonder where so much money has been going -- and why -- if the most basic question has not been addressed.

The report on the next page makes a vague statement that both requires additional explanation and further confirms my impression that no progress has been made on the financing issue. The statement is ". . . Other financing options could also influence project viability. Some interests have suggested alternative financing schemes that would improve the financial market ability of the power from Susitna. This subject is currently under study and should be explored further; it has not been treated in this update." What options and schemes? Who's doing the studying? Why doesn't the update discuss financing?

As you know, the Susitna Finance Committee, an outgrowth of the Anchorage Chamber of Commerce, has contracted with a firm, Kentco, to evaluate Susitna economics and develop a financing plan. The results of this study are due in January. While it is highly laudable for the private sector to take such initiative, I am concerned that the committee is trying to do something that is the responsibility of the APA. In a sense, they have stepped in to fill a void, to take some action where they have seen only inaction. My concern is that, whatever the credentials of Kentco, the committee does not have the same interests as the State of Alaska and I do not believe that it is wise to grant them, by default, the responsibility to put together a finance plan.

What we need is an objective analysis and no private organization can be expected to accomplish that. The Kentco proposal, although it is being billed as objective, reflects advance assumptions that Susitna is both feasible and desirable.

I would very much appreciate it if you would inform me as to the APA's progress in developing a Susitna finance plan. What steps are being taken, in what order and within what time frame? When can the Legislature expect to see an APA-recommended plan? Until there is a plan, financial viability cannot be determined, involved utilities cannot be expected to begin negotiating power sales contracts, and the Legislature cannot act to pass necessary legislation. I fear that lack of action at this point by the APA could result in insurmountable impediments to progress on Susitna.

The Senate State Affairs Committee, as you know, is still considering pending Susitna legislation -- SB 68, 69, 70 and 71. I plan to hold hearings that will include an update on the project during the early part of the

1984 legislative session. I hope that the APA will, at that time, be prepared to address the financing issue.

Best regards,

Senator Vic Fischer

cc: • Governor Bill Sheffield
• Commissioner Esther Wunnicke
• Commissioner Dan Casey
• OMB Director Peter McDowell
• Robert Huiman
• Lee Nunn
• David Allison
• Senator Jay Kerttula
• Rep. Joe Hayes
• Ray Benish, APA

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
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Official Business

November 21, 1983

Governor Bill Sheffield
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

Last March, following a series of Senate State Affairs Committee meetings on the proposed Susitna Hydroelectric Project, I sent you a letter summarizing conclusions of those hearings and requesting your help in addressing key issues and questions. While this letter was acknowledged, I never did receive the promised response to the questions raised in my letter.

I bring this to your attention only because in reviewing both my March 10 letter and the recent Harz-Ebasco Susitna update, I find that the questions raised in the letter remain extremely pertinent a full eight months later. I am enclosing a copy of the letter for your own review.

I am very much concerned that, as another legislative session rapidly approaches, we have made so little progress on the Susitna issue. In March, we were waiting for an update that was then expected in May. We're still waiting, as the September update was consequently withdrawn for further work.

The update, before it was withdrawn, found that the project still appeared to be economically feasible. The update did not address project financing, except to say that a commitment of \$1.6 - \$1.8 billion (1983 dollars) in state funding would be required.

Your Administration's position, as demonstrated by the actions of the APA board, seems to be to continue with the actions and funding needed to pursue FERC licensing of the project, but to forego making any decisions about the desirability of the project or how it might ultimately be financed until some unknown time in the future, possibly only after a license is granted. Is this an accurate summary of the Administration's position? It would be very helpful to both the Legislature and the general public if an Administration position were clearly articulated.

I remain extremely concerned about the lack of progress in the development of a finance plan for the project. I am sending you, under separate cover, a copy of a letter to Commissioner Lyon concerning this issue. I still look to you to take the lead regarding state participation in the financing of the project as the question of whether Alaska can afford Susitna remains key. A financing decision needs the benefit of all the expertise and advice

you can garner from your cabinet and advisors. It should not be left to the APA alone, to the Legislature, or to members of the private sector. In terms of the financial health of the state, it may be the most important responsibility you bear as governor.

In preparing for the up-coming session, I still seek answers to the questions raised in the letter. In particular, we must know:

- * When will an authoritative reassessment of the project be available?
- * What is the Administration's current position on this project?
- * What are Administration plans with respect to Susitna financing?
- * What, if any, legislation will be required?

The Senate State Affairs Committee is still considering pending Susitna Legislation SB 68, 69, 70, and 71. I plan to hold committee hearings early in the upcoming legislative session.

I look forward to your response and to continue to work with you on this important issue.

Best regards,

Senator Vic Fischer

Enclosure

cc: APA members
• Ray Benish
• Sen. Jay Kerttula
• Rep. Joe Hayes



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

November 21, 1983

Bob Penney, President
Susitna Finance Committee, Inc.
2819 Dawson St.
Anchorage, AK 99503

Dear Bob:

Thank you for the packet of information about the Kentco study of Susitna economics and financing. I found it most interesting.

The Senate State Affairs Committee is planning to hold some hearings early in the 1984 legislative session on Susitna. These will be a follow-up to those we held last spring and will include an update on the proposed project, particularly relating to its financing.

I hope that we can arrange, as a part of our hearings, for a presentation of the Kentco analysis and conclusions. My staff will be in touch as we begin to set up the schedule.

Best regards,

Senator Vic Fischer

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF GOVERNMENTAL COORDINATION

POUCH AW
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

~~DE~~
LAL
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November 14, 1983

To: ACMP Participants

SUBJECT: CHANGES IN DISTRICT PROGRAM REGULATIONS

On September 29, 1983, the Coastal Policy Council (CPC) adopted some changes to the district program guidelines (6 AAC 85).

A brief outline of the amended regulations follows:

1. Identification of who does consistency reviews--
A new section is added that requires district plans to clearly identify who will conduct consistency reviews.
2. One chapter for enforceable rules--A new section 85.090(b) requires that all enforceable rules of the program be included within a single chapter or section of the document.
3. Deadlines for annual reports--Annual reports to the CPC from districts with approved programs will be required by December 31 of each year.
4. Public hearing draft regulations--Procedures for public hearing drafts are now included within the regulations. The 60-day notice of conceptual approval and requirement that districts prepare findings and conclusions are abolished.

Key elements are as follows:

- a. Public hearing drafts must include all elements required in a district program.
- b. The Office of Coastal Management (OCM) shall review the mailing list for the public hearing draft.

November 14, 1983

- c. A 60-day review period will be required on public hearing drafts. Public notice of distribution of the draft is also required.
- d. The public hearing shall be held no sooner than 30 days after draft distribution. Notice shall be widely distributed at least 30 days before the public hearing.

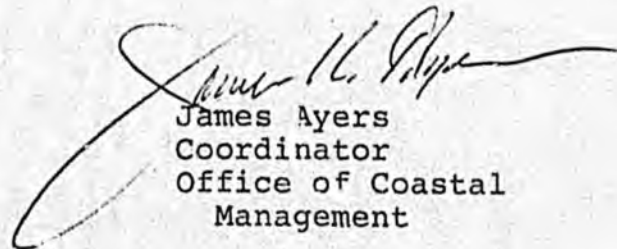
The Office of Coastal Management (OCM) has requested that the Federal Office of Ocean and Coastal Resource Management (OCRM), incorporate these changes into the Alaska Coastal Management Program as a routine program implementation. A copy of the required public notice is enclosed.

Federal approval is anticipated by December 20, 1983. Following this approval, the amendment will be filed by the Lieutenant Governor about December 20, 1983. You will receive a copy of the final notice and a complete set of all Alaska Coastal Management Program regulations in late December.

Copies of the draft regulation amendments were distributed previously. Additional copies may be obtained from our office.

Please call Amy Kyle, District Programs Coordinator, if you have any questions about this notice or the subject amendment.

Sincerely



James Ayers
Coordinator
Office of Coastal
Management

cfc/1033

Enclosure: Public Notice

PUBLIC NOTICE
Alaska Coastal Policy Council

On September 29, 1983, the Alaska Coastal Policy Council adopted changes to the District Program Guidelines (6 AAC 85).

The State of Alaska, Office of the Governor, Office of Coastal Management (OCM), Pouch AW, Juneau, Alaska 99811, considers the incorporation of this change to the Alaska Coastal Management Program to be a matter of routine program implementation. Pursuant to 15 CFR 923.84(b)(2), OCM has asked for the concurrence of the U.S. Department of Commerce, National Oceanographic and Atmospheric Administration, Office of Ocean and Coastal Resource Management with this determination.

Comments regarding whether the incorporation of the above change to the Alaska Coastal Management Program constitutes routine program implementation may be submitted to:

Office of Ocean and Coastal Resource Management
One Page Building
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Attention: Bill Brah

Comments will be accepted thru December 5, 1983.

A SPECIAL REPORT
ON THE
ALASKA POWER AUTHORITY

September 28, 1976 - June 30, 1983

Board Members
Alaska Power Authority

Chairman
Vice Chairman
Ex-Officio Member
Ex-Officio Member
Ex-Officio Member
Member
Member

Richard A. Lyon
Robert F. Hufman
Peter McDowell
Daniel A. Casey
Esther Wunnicke
Lee Nunn
David L. Allison

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

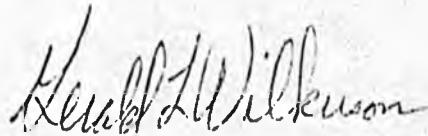
August 5, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska
Statutes, the attached report is submitted for your review.

A SPECIAL REPORT
ON THE
ALASKA POWER AUTHORITY

September 28, 1976 - June 30, 1983



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REPORT

In accordance with two Legislative Budget and Audit Committee requests and Title 24 of the Alaska Statutes, this special report has been prepared to determine:

1. If contracting policies and procedures of the Alaska Power Authority are in compliance with applicable statutes and administrative procedures.
2. The current status of Alaska Power Authority projects and current authorization balances for those projects.

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ORGANIZATION AND FUNCTION

The Alaska Power Authority (APA) was established by the 1976 Legislature to develop Alaska's hydroelectric and fossil fuel power resources. A 1978 amendment expanded the power sources to include wind and tidal power, geothermal and solar energy, and waste heat conservation. The purpose of developing these resources is to strengthen and diversify the economy by providing energy and power at the lowest reasonable economic, social and environmental costs.

AS 44.56.020 provides that APA is a public corporation of the State within the Department of Commerce and Economic Development but with separate and independent legal existence. Consequently, APA is governed by a seven-member Board of Directors, including the Commissioners of the Departments of Commerce and Economic Development, Natural Resources, and Transportation and Public Facilities, the Director of the Office of Management and Budget and three members at large appointed by the Governor. A Schedule of all appointments to the Board since inception may be found in Appendix A.

APA staff consists of an executive director; directors of finance, engineering, construction, and operations; engineers, economists, and various support staff. In total, APA employs 35 people with an operating budget during Fiscal Year 1983 of \$10,428,000 which includes \$8,300,000 in grants.

APA's activities can be divided into three functions: Energy Program for Alaska, Power Production Cost Assistance, and Rural Electrification Revolving Loan Fund.

Energy Program for Alaska

APA receives appropriations to develop power production projects by acquisition or construction to address both immediate power supply problems and long-range anticipated problems.

To develop a power production project, APA follows basically a five-step process (reconnaissance, feasibility, design and licensing, construction, and operation).

The first step of the project development process is a reconnaissance study to assess the electrical energy and space-heating needs of a community or region and to evaluate possible alternatives. The result of a reconnaissance study is the identification of those energy alternatives that merit a more thorough evaluation. The second step of project development is the feasibility study. This study obtains detailed information and analyzes the technical, economical, and environmental aspects of a particular project or program.

If the results of the study appear to be feasible, the Legislature then reviews the findings. If approved, step three, design and licensing, can begin. During this time all necessary permits are obtained, including a Federal Energy Regulatory Commission (FERC) license for hydroelectric projects, and engineering plans are designed. Once the plans are designed and the license, if needed, is approved by the FERC, step four, actual construction, can begin. Finally, once constructed, APA either operates the facility itself or enters into an operations agreement with a local utility.

Power Production Cost Assistance

The Legislature created this program in Fiscal Year 1981 to reduce the high cost of electric energy to certain customers of qualifying utilities: residential customers, local community facilities, and charitable organizations. Payments are made to the utilities by APA to be passed on to these groups in the form of lower electricity rates. The primary beneficiaries of this program are rural areas, since high energy costs are a prerequisite for participation.

Rural Production Cost Assistance

Elect. Revolving Loan Fund

APA may make loans to electric utilities certified by the Alaska Public Utilities Commission for the purpose of extending new electric service into rural areas. Loans can only be made to certified utilities to provide service to at least three new customers. Loans are made at 2 percent interest for a maximum of 20 years.

AUDITOR'S COMMENTS

During the course of our review we observed, or were given, several explanations for the existence of the problems described in the Findings and Recommendations section of this report. These reasons surfaced with sufficient frequency throughout the audit to warrant special mention. Following is a listing of the explanations given and our opinion as to their impact on the operation of the Alaska Power Authority.

Workload Explosion

Since the Authority's establishment by the 1976 Legislature, workload has grown at an astronomical rate. Appropriations for capital expenditures have grown at an average of approximately 500 percent per year. The Authority has elected to keep the staffing level small and to handle the workload explosion through the increased use of contractors. In fact, the Legislature has approved more positions between Fiscal Years 1979 and 1983 than were requested by the Governor's budgets. While this procedure has allowed them to monitor project development, administrative support services have suffered resulting in numerous financial management and contract management problems.

The increase in workload resulted in a proportionate increase in the number of contracts let by the Authority annually. However, a separate contract administration section was not established until August, 1981. Prior to that time, responsibility for contracting procedures was delegated to numerous employees. Even though a contract administration section now exists, all contracting responsibilities have not been centralized under this section (see Recommendation No. 3).

Legal Status of the Authority

APA's enabling legislation provides that it is a public corporation of the State within the Department of Commerce and Economic Development but with separate and independent legal existence. For APA, as well as other agencies in this category, there have been many questions regarding their legal status which have needed to be resolved. Contracting problems resulting from this at the Authority have been in the areas of ~~confusion over the need for review and approval of APA contracts by the Departments of Commerce and Economic Development and Administration.~~ Some early contracts were not submitted for review and approval to either Department.

There have also been two periods of time more recently when ~~confusion existed over the need for external review and approval.~~ During August, 1981, blanket authorization for approval and obligation of funds for major equipment and

civil construction contracts was granted to APA. However, because of a confusing verbal interpretation of this authorization by the Department of Administration, there was a period of approximately five months when no professional service contracts were submitted for approval either.

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During 1982, APA was granted "agency status" for all matters pertaining to professional service contracting. This action was taken at the request of the Deputy Commissioner of Commerce and Economic Development who felt that because the Authority is within the Department for administrative purposes only, the Department does not exercise any policy or decision-making control over it.

As a result of this change, contracts went directly from APA to the Department of Administration's Contracts Review Committee. With the advent of the new administration in January of this year, however, the Department of Commerce and Economic Development is once again reviewing and approving APA professional service contracts.

Internal Priorities/Attitudes

During our review, we observed several attitudes displayed by APA personnel which we feel contributed to the problems noted in contracting procedures. The most prevalent attitude observed was one of project development being of a higher priority than following the required procedures for the processing of contracts. This attitude was especially notable if the contract involved field work which had to be completed during the limited construction season. In these instances, it was felt that contracting procedures could be relaxed to expedite the completion of the work. Examples of the problems created by this attitude include allowing contract work to begin prior to execution of a formal contract (see Recommendation No. 1); and improperly executing contract amendments which substantially change the scope and amount of the original contract (see Recommendation No. 2).

Another attitude we observed was the assumption that all contracts submitted through approval channels will be approved. This attitude is engendered by several factors. The first is the historical perspective which shows that all contracts which are technically complete have been approved. The second is what APA regards as a total absence in approval channels of individuals with sufficient expertise in the types of contracts APA is entering to perform a substantive review. The third factor is the confusion over requirements for approval discussed in the previous section. This attitude has also manifested itself in a relaxation of contracting procedures such as the release of advertising for RFPs prior to having an approved ATN (see Recommendation No. 1).

Unexpended Project Funds

Several explanations were tendered by APA personnel as to why appropriation balances for completed projects are not lapsed. The most frequent explanation is that funds are retained to cover unexpected contingencies, which might occur. We were also told that funds are retained for the eventuality that a subsequent phase of the project will be funded. This may continue to occur even though appropriations sought for subsequent phases have been denied by the Governor or the Legislature. Because of these procedures, unexpended project funds may be appearing on APA's books several years after completion of the phase of the project the appropriation was received for. (For additional detail on project status and appropriation balances see Recommendation No. 5.)

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alaska Power Authority should comply with all applicable statutes and procedures governing contracting.

Our review of APA's contracting procedures included an examination of all contracts let by the Authority from its inception in 1976 through March 31, 1983. ~~We were unable to determine whether our contract universe was complete because of contract administration deficiencies~~ (see Recommendation No. 3). The universe we reviewed was comprised as follows:

<u>Type</u>	<u>No.</u>	<u>%</u>	<u>Dollar Amount</u>	<u>%</u>
Professional Services	146	83.0	\$106,818,446	29.6
Construction	6	3.4	184,567,625	51.0
Procurement	<u>24</u>	<u>13.6</u>	<u>70,265,446</u>	<u>19.4</u>
<u>Total</u>	<u>176</u>	<u>100.0</u>	<u>\$361,651,517</u>	<u>100.0</u>

Our review of these contracts revealed numerous violations of contracting procedures set out in the State Administrative Manual (SAM) and Title 36 of the Alaska Statutes. Contracting procedures set out in Title 36 became effective in July, 1982, therefore, only contracts entered into after that time were tested for compliance to those statutes. Violations are categorized and described below.

A. SAM 8134: The State is not obligated for services provided prior to the effective date of the contract.

~~Twenty-one contracts (12%) had work performed on the contract prior to Department of Administration (DOA) approval.~~ A review of contract billings indicated that work began in accordance with the projected contract start-up date rather than the date of DOA approval which establishes the actual effective date of all professional services contracts. The amount of time that work was performed prior to contracts being signed, ranged from 6 days to 244 days, with the average being 51 days. There were three contracts included in this category for which DOA approval was never received.

APA personnel stated no directive is given to contractors to begin work prior to the effective dates, and that contractors are informed that if work begins prior to the effective date, it is at their own risk. However, in an October 27, 1982 letter from an APA project manager to a prospective contractor, we found the following words of encouragement: "Let me once again express my appreciation for your willingness to proceed

on our work at your risk pending execution of the formal contract. Please keep track of your time and we will honor appropriate expenditures for this period when you submit your first formal billing." In our review, we noted billings amounting to \$884,343 for work performed on contracts prior to their approval.

B. SAM 8108 and AS 36.98.040(c). Contracts for professional services shall be approved by the Department of Administration.

Twenty-three professional services contracts did not have proper approval from the Department of Administration. These contracts totalled \$12,559,604. Included in this total are:

1. Four feasibility study contracts totalling \$4,625,154 which were processed during a period of time when there was some confusion whether blanket authority granted APA for major equipment manufacturing and civil construction contracts extended to feasibility study contracts. This confusion ensued from a telephone conversation with the coordinator of DOA's Contract Review Committee who interpreted the authorization to be thus extended.
2. Four professional services contracts totalling \$6,697,090 for services other than feasibility studies which were processed during the same time period as described in (1) above. Per APA staff these errors occurred as a result of their interpretation of the blanket authority as extending to all professional services contracts. No justification for this interpretation exists, however.
3. Fifteen additional contracts totalling \$1,237,360 which are predominantly unexplained.

C. SAM 8132 and AS 36.98.030(d). Sole source contracts shall be supported by an explanatory memorandum.

Forty-four of the seventy-seven sole source contracts entered into by the Authority (57%) did not tender adequate written justification for negotiating with only one source. These contracts totalled \$3,042,957. Although written justification was submitted on the majority of these contracts, we did not feel it adequately justified not soliciting competitive bids. For example, a sole source contract for a reconnaissance analysis was supported by the following justification. "Information to be provided by the engineer has been requested by the Legislature to be available as rapidly as possible. A qualified and experienced engineer in both conventional diesel generation and small hydroelectric development is not available on staff to perform this work in the desired time."

Included in this total are twenty-two United States Geological Survey (USGS) contracts totalling \$544,620 which were entered into prior to the exempting of federal contracts from DOA review. Also included are nine contracts totalling \$203,729 for the experts chosen for the Susitna Technical Review Panel. Although a selection process was carried out by the APA staff and Board, Authority to Enter Contract Negotiations documents (ATN) submitted to DOA did not reflect that process had occurred, and implied sole source contracts were being issued to each individual. The largest contract on our exception list was for \$1,231,090 and was entered into during the period of confusion over the Authority's blanket authority described in section A of this recommendation.

Per APA, past practice and current procedures permit, at the discretion of the Authority, the continued use of an engineering firm for successive phases of project development. We were able to determine that at least two contracts we reviewed totalling \$1,399,147 fall into this category. Thirty-six of the questioned contracts were approved by the Department of Administration without adequate written justification (see Recommendation No. 4). The remaining eight contracts did not receive required approval from DOA.

- D. SAM 8140. An ATN must be submitted to and approved by DOA before Requests for Proposals (RFP) are released, before newspaper advertising, and before negotiations commence with any prospective contractor.

Seventeen contracts reviewed did not have properly executed ATNs. For the majority of questioned contracts, eleven of the seventeen (65%) advertising for the RFP was released prior to approval of the ATNs. Other exceptions included three contracts for which no ATN could be located, two contracts which were approved prior to ATN approval, and one contract for which the RFP was released prior to approval of the ATN.

Per APA, the Authority has allowed the advertising to begin before receiving an approved ATN if they feel the ATN will be processed without question in order to minimize the paper processing delays prior to beginning actual contract work. Contracts questioned under this section totalled \$4,803,849.

- E. SAM 8146. Contracts for \$20,000 or more require solicitation of proposals by newspaper advertising in a major newspaper in each of Alaska's three major cities a minimum of three times.

Six professional services contracts were not advertised in accordance with SAM 8146. These contracts totalled \$9,587,052. Four of the questioned contracts were advertised, but not for the required three days. For the other two contracts, we could find no evidence that they were advertised. These two contracts were let in FY'80 and account for \$68,800 of the questioned total.

F. SAM 8144 and AS 36.98.040. Proposals must be evaluated by a committee consisting of at least three members.

Six contracts were entered into based on RFP evaluations which were not performed in conformance with this section. Three of the questioned contracts were evaluated by committees consisting of only two members. These contracts totalled \$364,300. For two contracts totaling \$8,016,628, evidence did not exist demonstrating an evaluation process had occurred. The six questioned contracts did not have evidence an evaluation by point values as recommended at SAM 8144 and required at AS 36.98-.040(a). The total value of contracts questioned under this section is \$8,847,727.

For three contracts for which evidence was not available to demonstrate an evaluation process had occurred or that point values were used, APA personnel stated that each was properly evaluated, but documentation has been misplaced.

Summary of Violations

In summarizing the impact of these violations on the total population reviewed we find that 75 of APA's 176 contracts (43%) were not properly executed under one or more of the above-listed requirements. These contracts totalled \$30,545,161.

In recognition of the fact the Alaska Power Authority has only been operational for a relatively short time, we analyzed the error rate by fiscal year to determine whether the high error rate could in part be attributed to growing pains. The result of this analysis follows and demonstrates that although the error rate has declined during the agency's development, the larger dollar value of contracts executed annually has resulted in a substantially larger total dollar impact in recent years.

<u>Fiscal Year</u>	<u>Total Contracts</u>		<u>Contracts Improperly Executed</u>			
	<u>No.</u>	<u>Amount</u>	<u>No.</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
1977	1	\$ 40,000	1	100	\$ 40,000	100
1978	2	unknown	1	50	unknown	-
1979	5	192,712	4	80	152,712	79
1980	22	9,558,996	15	68	8,447,628	88
1981	42	9,411,202	26	62	2,366,223	25
1982	63	288,221,006	19	30	13,160,630	5
1983*	41	54,227,601	9	22	6,377,968	8
<u>Total</u>	<u>176</u>	<u>\$361,651,517</u>	<u>75</u>	<u>43</u>	<u>\$30,545,161</u>	<u>8</u>

*Through March 31, 1983.

Violation of the statutes and procedures governing contracting could invite legal challenges to APA's contract awards, which in turn could escalate project costs and cause substantial project delays.

Recommendation No. 2

APA should review their procedure of amending professional service contracts and comply with applicable State statutory and administrative requirements.

General Information

Our review of APA contracting procedures from inception to March 31, 1983, included the determination of the extent and use of change orders and contract amendments. We found that APA frequently amends contracts as to scope, amount, and period of performance.

As of March 31, 1983, APA had awarded 176 professional service, procurement, and construction contracts totalling \$361,651,517. Included in this total were 194 change orders and contract amendments issued in excess of \$40,875,000. Upon review of the revisions, we found the following:

1. The dollar amount of procurement and construction contracts accounted for 70 percent of the total awarded contracts but only 1 percent of the dollar amount of the revisions. While it appears APA has adequately controlled the amount of change orders for procurement and construction contracts, APA has issued an extensive number of contract amendments for professional services (reconnaissance, feasibility, and design). Of the total dollar amount of revisions, \$40,309,595 (99%) were for professional services.
2. Since inception, APA has awarded \$106,818,446 in professional service contracts of which contract amendments accounted for \$40,309,595 (38%). Contract amendments have increased professional service contract costs sixty-three percent.
3. The number of revisions issued per project ranged from one to seventy-two with the Tyee Hydroelectric project receiving the most.
4. The average contract amendment issued on professional service contracts was \$298,590 while the range varied from reducing the contract \$1.6 million to increasing the contract \$7.8 million.

5. While the majority of revisions affected Fiscal Year 1982, other years were also affected.

<u>Fiscal Year</u>	<u>Number</u>	<u>Dollar Amount</u>
1979	4	\$ 22,850
1980	22	5,452,871
1981	49	4,190,110
1982	106	25,746,499
<u>1983*</u>	<u>13</u>	<u>5,462,790</u>
<u>Total</u>	<u>194</u>	<u>\$ 40,875,120</u>

*Through March 31, 1983.

Violations

We also found violations of procedures set out in the State Administrative Manual governing the amending of contracts. Those violations are categorized and described below.

- A. SAM 8148. The State is not liable for any sum in excess of the contract amount unless an amendment is negotiated and approved by the Department of Administration.

During our review, we found that fifteen contract amendments issued for \$6,437,898 lacked required approval by the Department of Administration. Included in this total are five amendments totalling \$214,500 which were processed during a period of time when there was some confusion whether blanket authority granted APA for major equipment manufacturing and construction contracts extended to feasibility contracts.

Five of the fifteen amendments described previously, plus an additional twenty-eight amendments totalling \$3,872,631, were issued after the contract completion date. By doing this, both the Authority and DOA were granting retroactive approval of amendments.

- B. SAM 8114. If a proposed amendment changes substantially the terms of the existing contract as to scope, amount or period of performance, a new ATN must be transmitted for approval.

There were ~~fourteen contract amendments we noted which substantially changed the scope of the original contract for which no new ATNs were processed.~~ For example, during Fiscal Year 1981, a professional service contract was awarded that provided for independent cost estimating. Originally, the contract scope stated the contractor would provide cost estimates for the Tyee Lake project. The contract was issued for \$33,840. The ATN for the project stated several cost

estimates would be solicited with an estimated project cost of \$100,000. The contract cost, however, ballooned to \$438,593 as contract amendments were issued for cost estimates to be provided on eight additional projects.

There were twenty-three contracts for which amendments increased original contract cost by more than twenty percent. Of these twenty-three, two did not have revised ATNs processed, and three did not have original ATNs. Also included in these contracts are two which had revised ATNs processed, however, amendments exceed the revised ATN amount by an average of 38%.

It is APA's opinion that due to the nature of their professional service needs, the use of contract amendments is the best way to manage and control contract costs. However, it is incumbent upon APA to exercise due care and diligence in the use of contract amendments so that the State may be assured the best product at the lowest possible price. If due care and diligence over amendments is not exercised, a certain loss of control over project cost is likely to occur which must ultimately be absorbed by the consumers of power generated by APA projects.

Recommendation No. 3

APA should strengthen their internal control over contract administration

During our review, we found several weaknesses in the administration of contracts:

1. A complete listing of contracts let since inception is not maintained.
2. The function of controlling contract documents is not centrally located.

Currently, APA relies on the Outstanding Encumbrance Analysis as documentation of awarded contracts. The Outstanding Encumbrance Analysis only reflects currently outstanding contracts. Since inception, APA has awarded \$361,651,517 professional service, construction, and procurement contracts. As of March 31, 1983, the Outstanding Encumbrance Analysis reflected only \$134,881,900 or 37% of the total contracts. Furthermore, for certain professional service contracts, it is the current policy of APA to write contracts to state that the project will progress in phases and that the contract will be continuing.

Accordingly, the phases may receive additional appropriations yearly. Thus, these contracts require an additional encumbrance. This encumbrance is assigned a new number and is reflected on the Outstanding Encumbrance Analysis as a new contract when in fact the additional encumbrance is an amendment to the original contract. ~~The use of the Outstanding Encumbrance Analysis results in the loss of accurate recording of awarded contracts and weakens the audit trail for reporting total contract value.~~

In addition, we found that contract files were incomplete. The Contract Administration Section maintains the contracts, authority to negotiate documents and change orders while project engineers control requests for proposals, invitations to bid, contractor response and the evaluation of the proposals. This method has resulted in the loss of the following documents:

	<u>Number</u>	<u>Dollar</u>
Complete contract documents	5	\$ 41,928
Authority to negotiate and/ or contract	9	2,558,050
Proposal evaluation	<u>3</u>	<u>8,116,298</u>
<u>Total documents</u>	<u>17</u>	<u>\$10,716,276</u>

It should be the function of the Contract Administration Section to control and maintain all contract documents. To strengthen control over contracts, the Contract Administrator should maintain a record of all awarded contracts including amendments to the original contracts. In addition, contract files should contain all original contract documents as well as the support for awarding the contract.

Recommendation No. 4

The Department of Administration (DOA) should adequately review and approve sole source contracts in compliance with applicable State statutes and administrative requirements.

Article 4, Uniform Purchasing, of the Fiscal Procedures Act gave DOA, in part, the responsibility for establishing contracting procedures and for monitoring compliance with those established requirements.

As part of those requirements, Section 8106 of the State Administrative Manual provides that, "... it is the State policy to solicit proposals from at least three potential vendors unless justified otherwise"

In addition, the 1982 Legislature enacted AS 36.98.030 which allows State agencies to contract by sole source if:

1. The contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; and
2. the head of the State agency has submitted a written request to the commissioner that details the reasons for the exemption; and
3. the commissioner or deputy commissioner has authorized in writing the State agency to enter contract negotiations with the single source.

During our review of APA's contracting procedures from inception in 1976 to March 31, 1983, we noted that there were ~~seventy-seven sole source contracts of which forty-four (57%) we did not feel adequately justified not soliciting competitive bids. We found that even though there was inadequate written justification, DOA approved thirty-six of these contracts.~~ These contracts totalled \$1,711,211. Three out of four contracts let during Fiscal Year 1983 were approved after AS 36.98.030 became effective.

This problem was also found in our previous audit dated August 23, 1982, which addressed statewide contracting procedures during the first seven months of Fiscal Year 1982. The audit tested eighty-two professional service contracts of which forty-eight contracts (58.5%) were either not advertised, did not obtain three proposals, or did not adequately justify negotiating with only one contractor.

The intent of requiring that sole source contracts be adequately justified is to ensure that the State is receiving the best product or service at the lowest reasonable cost.

Therefore, although it is incumbent that APA comply with applicable statutes and regulations, it is the responsibility of DOA to review the proposed contracts to ensure compliance with those statutes and regulations.

Recommendation No. 5

The Legislature, in conjunction with APA, should review the status of various projects to determine if unexpended project funds should be lapsed into the General Fund.

Since its inception in 1976, APA has received a total of \$590,180,059 in appropriations for projects throughout the State. As of June 30, 1983, APA has expended \$371,450,233 and has additional outstanding encumbrances totalling \$80,590,930. The total appropriation amount includes new funding from the Fiscal Year 1984 Appropriation Act and also

reflects funding repealed or reduced by Chapter 106, SLA 1983 (see Appendix B for a complete status listing of APA projects).

We reviewed 100 percent of APA's projects to determine their current status and to identify projects for legislative review of unexpended project balances. As a result, we have identified 28 projects with unobligated balances totalling \$14,148,445 for review.

Of that total, \$10,491,133 represents the June 30, 1983 balance of a \$53 million appropriation for the Solomon Gulch hydroelectric project. This facility has been in operation since September, 1982.

We recommend the Legislature, in conjunction with APA, review the following list of projects to determine whether the balances should remain with APA or be lapsed into the General Fund.

Alaska Power Authority
Projects For Review
as of June 30, 1983

<u>Projects</u>	<u>Authorizations</u>	<u>Expenditures</u>	<u>Encumbrances</u>	<u>Balance</u>	<u>Project Status</u>
<u>Chapter 49, SLA 1979</u>					
Cordova Power Creek	\$ 250,000	\$ -0-	\$ -0-	\$ 250,000	Legislation specifies that loan monies intended for hydro, however, community wants diesel generators.
<u>Chapter 80, SLA 1979</u>					
Anchorage Energy Pooling	120,000	99,670	-0-	20,330	Completed study on the reliability of the Anchorage area electrical transmission system.
Gartina Creek Hydro Project	270,000	32,142	1,417	236,441	Feasibility study completed. No additional funds have been requested.
Thayer Creek Hydro Project	100,000	61,547	-0-	38,453	Feasibility study completed. Report available.
<u>Total Chapter 80, SLA 1979</u>	<u>490,000</u>	<u>193,359</u>	<u>1,417</u>	<u>295,224</u>	
<u>Chapter 50, SLA 1980</u>					
Scammon Bay Electricity	100,000	38,779	524	60,697	Feasibility studies completed. Results showed that hydro potential is marginal.
<u>Chapter 120, SLA 1980</u>					
Dillingham-Lake Elva	550,000	546,218	-0-	3,782	Part of Bristol Bay regional study. Project put on hold pending legislative action.
Larsen Bay	200,000	14,449	9,875	175,676	Reconnaissance study completed.
Togalak Village	40,000	29,000	-0-	11,000	Reconnaissance study completed. Additional funds to be requested for Fiscal Year 1985.
Goodnews Bay	45,000	29,016	-0-	15,984	Reconnaissance study completed. Based on the results no further work is expected.
Various Villages	200,000	197,016	-0-	2,984	Reconnaissance study completed. Report available.
Tuzimna	50,000	36,674	-0-	13,326	Part of Bristol Bay regional study. Funding denied for Fiscal Year 1983. Project on hold.

Alaska Power Authority
Projects For Review
as of June 30, 1983

<u>Projects</u>	<u>Authorizations</u>	<u>Expenditures</u>	<u>Encumbrances</u>	<u>Balance</u>	<u>Project Status</u>
<u>Chapter 120, SLA 1980 (Cont.)</u>					
Northwest Coal Resources	\$ 250,000	\$ 249,025	\$ -0-	\$ 975	Feasibility study completed. Report available.
Kotzebue Geothermal	60,000	54,440	3,085	2,475	Feasibility study completed. Report available.
Old Harbor	990,000	31,829	-0-	958,171	Reconnaissance study completed. Additional funds to be requested for Fiscal Year 1985.
Central	200,000	-0-	-0-	200,000	Loan. Community wants 0% interest. APA not authorized to loan monies at 0%.
<u>Total Chapter 120, SLA 1980</u>	<u>2,585,000</u>	<u>1,187,667</u>	<u>12,960</u>	<u>1,384,373</u>	
<u>Chapter 90, SLA 1981</u>					
Craig-Klawock Transmission	750,000	666	-0-	749,334	Local utilities unsuccessful in negotiating power sales agreement. Per APA no agreement in sight.
Chester Lake	1,000,000	338,673	51,250	610,077	Feasibility study completed. Findings and recommendations to be presented to the Board of Directors.
Chakachamna Lake	1,000,000	995,061	-0-	4,939	Feasibility studies on-going. Susitna funding Chapter 101, SLA 1982 being utilized.
Tazimina Lake	2,000,000	1,700,298	242,981	56,721	Part of Bristol Bay regional study. Funding denied for Fiscal Year 1983. Project on hold.
Rural Community Reconnaissance	560,000	545,410	100	14,490	Reconnaissance study at thirty-six villages complete. Report available.
Delta Agricultural Project	2,155,000	1,921,847	179,737	53,416	Design and construction of 3-phase distribution line. Construction completed.
Kodiak Island Borough	100,000	81,232	9,100	9,668	Project complete and the report is available.

Alaska Power Authority
Project For Review
as of June 30, 1983

<u>Projects</u>	<u>Authorizations</u>	<u>Expenditures</u>	<u>Encumbrances</u>	<u>Balance</u>	<u>Project Status</u>
<u>Chapter 90, SLA 1981 (Cont.)</u>					
Kotzebue District Heating	\$ 170,000	\$ 119,121	\$ -0-	\$ 879	Feasibility study completed. Report available.
Kotzebue Coal Utilization	100,000	97,341	100	2,559	Feasibility study completed. Report available.
<u>Total Chapter 90, SLA 1981</u>	<u>7,785,000</u>	<u>5,799,649</u>	<u>483,268</u>	<u>1,502,083</u>	
<u>Chapter 92, SLA 1981</u>					
Green Lake	85,000	45,041	-0-	39,959	Originally appropriated \$45 million for the acquisition. Reduced by Chapter 141, SLA 1982.
Solomon Gulch	53,000,000	42,451,600	57,267	10,491,133	Construction completed. Project in operation since September, 1982.
<u>Total Chapter 92, SLA 1981</u>	<u>53,085,000</u>	<u>42,496,641</u>	<u>57,267</u>	<u>10,531,092</u>	
<u>Chapter 101, SLA 1982</u>					
Cantwell-Electric Transmission	75,000	24	-0-	74,976	Community cannot decide if construction of transmission lines is warranted.
Anderson-Coal Conversion	50,000	-0-	-0-	50,000	Community does not want the funds.
<u>Total Chapter 101, SLA 1982</u>	<u>125,000</u>	<u>24</u>	<u>-0-</u>	<u>124,976</u>	
<u>Total Projects</u>	<u>\$64,420,000</u>	<u>\$49,716,119</u>	<u>\$555,436</u>	<u>\$14,148,445</u>	

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FINANCIAL MANAGEMENT SYSTEM

During April, 1983, at the request of the Board of Directors of the Alaska Power Authority, a cursory review of the status of Price Waterhouses' recommendations on APA's financial management system was performed. This review was a joint effort of the Division of Legislative Audit and the Office of Management and Budget. Its purpose was to determine the current status of twenty recommendations made to APA management in Price Waterhouses' three management letters dated October 26, 1981, November 19, 1982 and December 10, 1982.

In addition to the status of the recommendations and an APA general ledger system review, which are presented as Appendix C to this report, several issues for consideration were presented. Those issues are discussed below.

Planned Automated Financial System: APA has contracted with a software company to design and install a basic automated accounting system. However, the planned system cannot be considered a financial management system. It is, rather, a limited accounting system that tracks historical costs of APA financial transactions, predominantly on the cash basis. Unless APA changes to an accrual-based accounting system, data retrieved from the automated system will not be a representative picture of the status of a project.

Need for and Internal Auditor's Presence: Significant expansion of contracting for projects has placed the APA in a position of "delegating" their control of expending significant sums of monies to contractors. It is, therefore, critical that thorough on-site reviews of contractors' expenditures be conducted on a formal basis and in a timely manner by qualified auditors knowledgeable in the construction fields.

Standardization of Financial Reporting by Contractors: Specified reporting formats for expenditures reported to APA by contractors have not been standardized. Additionally, contractor charges are coded and charged to broad classifications during the construction phase of a project and distributed to the appropriate accounts once the project is completed. Considering that large hydroelectric projects take many years to complete, this practice will only increase the chances for errors and inaccuracies in the accounting records.

Current Events: Price Waterhouse is currently conducting a financial audit of APA's Fiscal Year 1983 activities. When available, we will review the auditor's report and accompanying management letters.

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PRIOR AUDIT RECOMMENDATIONS

Five of the seven recommendations presented to the Commissioner of Commerce and Economic Development in a previous audit report dated December 12, 1980 for the period September 28, 1976 to December 12, 1980 have been implemented. The following is the status of the remaining recommendations:

Prior Audit Recommendation No. 4

Employees' salaries should be properly allocated to reflect actual work assignments.

The previous audit found that three APA employees whose salaries were funded by capital projects were performing duties which were not related to those projects. Through discussions with APA staff it was found that employees funded by capital projects continue to work on other projects.

Legislative Audit's Current Position

Improper matching of work performed with projects charged results in distorted reporting of project costs and the use of capital project funds to supplement the operating budget. APA should develop a time reporting system in order to correctly allocate employees' time and to ensure that capital project appropriations are expended in accordance with legislative intent and the provisions of Title 37.

Prior Audit Recommendation No. 6

Internal accounting control over loan proceeds should be strengthened.

APA collects and transmits the proceeds of power project loans to the Department of Commerce and Economic Development. Due to the low volume of loans, APA has not developed a system of control for loan receipts.

Legislative Audit's Current Position

As of March 31, 1983, APA had not developed a system of control over loan receipts. However, APA has received approval by the Department of Revenue to institute a lock box system. We concur that the lock box system would strengthen internal accounting control over loan receipts.