

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5776 HOUSE JUDICIARY

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

January 19, 1990

TO: Rep. Johnny Ellis, Chair
House Health Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: HB 236, relating to driving while intoxicated

During the interim, as a result of public outreach I conducted on HB 53 relating to drunk driving penalties, I was asked to consider either amending my bill or introducing a new bill which would lower the legal blood alcohol level from the current .10% to .08%. The primary reason for lowering the acceptable BAC level is that all breathalyzer machines have a 15% error rate. Thus, the courts are reluctant to prosecute anyone whose test results show less than .12%.

This issue was introduced at the statewide meeting of law enforcement officers which took place in Juneau last fall. Several cities have responded positively and I have included those letters for you.

As a result of the responses which I received, I asked Legal Affairs to conduct research on the subject for me. I have included a copy of the executive summary of that report as well. There is scientific data indicating impairment at .05% or lower which has prompted a number of states to lower their legal BAC 's to .08%

I thought you might be interested in amending HB 236 to lower the current BAC level for drivers over the age of 21 to .08%. Such an amendment would help the state to act more vigorously to ensure drunk drivers are not on Alaska's roads.

FU/dl

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

City of Fairbanks
Police Department
656 7th Avenue Fairbanks, Alaska 99701
(907) 459-6500

November 17, 1989

Representative Fran Ulmer
Alaska State Legislature
1700 Angus Way
Juneau, Ak 99801

Re: Lowering of acceptable blood alcohol level

Dear Representative Ulmer:

Police agencies in Alaska are currently utilizing the Intoximeter 3000 instrument to obtain blood alcohol levels. I have been informed that the error rate for this instrument is +10% and for that reason the District Attorney has declined to prosecute cases when the intoximeter results are between .110 and .120.

The average blood alcohol level for the last sixty DWI arrests by officers of this Department is .195, almost twice the current legal limit. As I recall, our total DWI arrests for calendar year 1988 averaged .210.

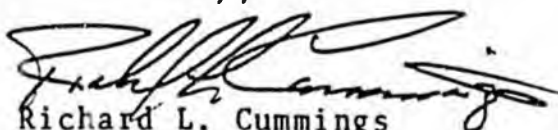
I doubt that lowering the acceptable blood alcohol level from .10 to .08 will, by itself, have the desired effect of reducing the average blood level of those convicted of DWI. DWI arrests by this Department, for persons having a blood alcohol level ranging from .100 to .120, equal only about 2% of all DWI arrests. Today, Officers are so busy responding to calls of violence; i.e., domestic violence, burglaries, robberies, fights, and drug abuse they have very little work time directed toward DWI enforcement. As a result, Officers are limited to enforcing flagrant violations of our DWI statute.

I would suggest that legislation should be directed at reducing the "demand" for alcoholic beverages to reduce violent crimes resulting from alcohol abuse, including Driving While Intoxicated offenses. The State should encourage moderation in the consumption of alcoholic beverages by reducing the availability of alcohol through restricted hours of sale, licensed premises, etc. The beverage industry should be held accountable for funding of prevention and treatment programs, designed to assist individuals in making responsible decisions about the use of alcohol. These difficult issues need to be addressed in order to reduce Alaska's high level per capita alcohol consumption and contributing crime rate.

Page -2-
Representative Ulmer
November 17, 1989

Thank you for your continued support on public safety issues and your concerns regarding Alaska's Drunk Driving problem. I appreciate you taking time out from your demanding schedule to meet with us at the Chief's meeting earlier this week. Please feel free to contact me on this or other law enforcement matters.

Yours Truly,



Richard L. Cummings
Chief of Police



VALDEZ POLICE DEPARTMENT
December 12, 1989

Representative Fran Ulmer
P.O. Box V
Juneau, AK 99811

Dear Representative Ulmer:

I have finally had time to review your proposed legislation regarding lowering the acceptable blood alcohol level from .10 to .08. This letter is to express support in your effort to accomplish this feat. Maybe with the lowering of the acceptable level to .08 the District Attorney's office would then prosecute D.W.I. cases of .10.

We, as residents of Alaska, have stated in years past that we have had enough of intoxicated drivers and that we want them off our streets. We, as police officers, have increased our enforcement of the drunk driver laws. Maybe what we really need is the acceptable blood alcohol limit lowered further to .05. A blood alcohol standard of .08 or above is beyond that limit. I have reviewed test studies on the effects of drinking and driving and all blood alcohol levels above a .05 impairs one's driving ability.

If I can be of further assistance, please feel free to contact me.

Sincerely,

BERT COTTLE
CHIEF OF POLICE

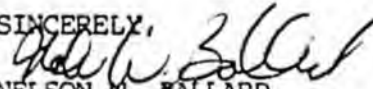
BLC/lab

TO: REPRESENTATIVE FRAN ULMER

FROM: NELSON W. BALLARD

I HAVE BEEN REVIEWING YOUR PROPOSAL TO REDUCE THE LEVEL OF INTOXICATION TO .08 WHICH IS DOWN FROM THE CURRENT LEVEL OF .10 REQUIRED TO CONVICT PEOPLE OF DWI. BASED ON MY NEARLY TEN YEARS OF LAW ENFORCEMENT EXPERIENCE IN ALASKA YOU SEEM TO BE DEFINATELY HEADED IN THE RIGHT DIRECTION. YOU ARE CERTAINLY CORRECT IN YOUR FACTS THAT THE AVERAGE PERSON ARRESTED FOR DWI IS WAY OVER THE LIMITS ESTABLISHED BY THE LAW AND THAT A LARGE AMOUNT OF PEOPLE ARE CERTAINLY DRIVING UNDER THE INFLUENCE OF ALCOHOL AND ENDANGERING LIVES AS THEY HEAD HOME FROM DRINKING. ANOTHER SUGGESTION THAT I HAVE IS TO ARREST PEOPLE FOR DWI AND PEOPLE THAT BLOW BETWEEN .05 AND YOUR LEVEL OF .08 BE ISSUED A CITATION FOR DRIVING WHILE IMPAIRED WHICH COULD BE ASSESSED A SIX POINT DEMERIT ON THEIR DRIVERS RECORD. IN LIGHT OF THE FACT THAT ANY NEW LEGISLATION IN THIS AREA WILL BE DIFFICULT TO PASS IN JUNEAU YOUR EFFORTS ARE APPLAUDED AND IF YOU THINK MY IDEA HAS MERIT, THANK YOU FOR YOUR TIME AND GOOD LUCK WITH YOUR NEW BILL. I FULLY SUPPORT ANY LEGISLATION OF THIS TYPE.

SINCERELY,


NELSON W. BALLARD

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

January 3, 1990

MEMORANDUM

TO: Representative Fran Ulmer

ATTN: Diane Lindbach

FROM: Leola Weimer *LWW*
Legislative Analyst

RE: Blood Alcohol Levels - States with a standard of 0.08 percent
Research Request 90.133

You asked which states have lowered their blood alcohol concentration (BAC) levels to 0.08 percent or lower, and what their motivation was in doing so. You also asked what the average blood alcohol level was for people convicted of driving while intoxicated in Alaska.

Background

Blood alcohol concentration levels are regulated by two different standards: presumptive and per se BAC. Presumptive BAC levels assume that the accused is under the influence of alcohol but an individual has the opportunity to demonstrate that he or she is acting responsibly. Sobriety road tests and other evidence may be used to prove that although an individual is under the influence of alcohol, he or she is not in fact intoxicated. The burden of proof rests with the arresting officer. Per se BAC levels, on the other hand, establish a definitive limit above which an individual is considered intoxicated and therefore driving illegally.

A list of the illegal per se and presumptive BAC levels for each of the fifty states, District of Columbia and Puerto Rico is enclosed (see Attachment A).

Presumptive BACs

Six states and the District of Columbia have presumptive BAC levels below 0.10 percent: Colorado (>0.05 - 0.10), District of Columbia (>0.05), Idaho (>0.08),

Representative Ulmer
January 3, 1990
Page 2

Maryland (0.07 - 0.10), Michigan (0.07 - 0.10), New York (0.07 - 0.10) and Oregon (0.08).

Twenty-three states and Puerto Rico have presumptive BAC levels set at 0.10 percent. Twenty-one states (including Alaska) have no presumptive BAC levels.

Per se BACs

The vast majority, 39 states and the District of Columbia, have an illegal per se BAC level of 0.10 percent. Georgia is the only state to have a higher BAC level of 0.12 percent. Six states and Puerto Rico have no illegal per se BAC level. Four states (California, Maine, Oregon and Utah) have lowered their illegal per se BAC to 0.08 percent. Vermont has kept its illegal per se BAC level at 0.10 percent but added a separate civil traffic violation for people registering 0.08 percent or more BAC. No states have a noncommercial driver standard below 0.08 percent per se BAC. The legal limit for all of Canada is 0.08 percent per se BAC. In addition, all European nations have an illegal per se BAC level of 0.08 percent or lower. Four drinks in an hour's time for the average-size adult results in a BAC level of 0.08 percent.¹

Rationale for Lowering Illegal Per Se BAC to 0.08 Percent

California

California was the most recent state to reduce its illegal per se blood alcohol level to 0.08 percent. On April 13, 1989 with a vote of 24 to 3, the California State Assembly passed Senate Bill 408 by Senator Leonard. Attached is a copy of supporting data from Senator Leonard's office, California Mothers Against Drunk Driving (MADD) and the Department of California Highway Patrol (see Attachment B).

Support for this legislation came from the California Medical Association, Peace Officers Research Association of California, Mothers Against Drunk Drivers, American Medical Association, California Organization of Police and Sheriffs, Committee on Moral Concerns, California Council on Alcohol Problems, California Association of Drinking Driver Treatment Programs, Starting Point, and many others.

Opposition came from the California Attorneys for Criminal Justice and the American Civil Liberties Union.

¹California Council On Alcohol Problems, February 10, 1989.

Representative Ulmer
January 3, 1990
Page 3

The stated purpose of this legislation was "to respond to the situation in which hundreds of people are killed every year by drunk drivers at blood-alcohol levels below 0.10 percent." Of the 23,630 people who died in the United States in 1987 from alcohol-related traffic accidents, approximately 11 percent (2,599 people) involved a blood-alcohol concentration lower than 0.10 percent.²

Data supporting impairment at lower levels was provided by the U.S. Department of Transportation and the American Medical Association. The U.S. Department of Transportation reviewed 177 studies on the effects of low doses of alcohol on driving-related skills. The department concluded that, "BACs of 0.03 percent or less are sufficient to affect skills relevant to driving, and...there is ample scientific evidence to justify the reduction of legal BAC limits to 0.05 percent or lower."³ The American Medical Association (AMA) has likewise encouraged the adoption of a nationwide BAC level of 0.05 percent.⁴

In opposing this reduction of California's illegal per se BAC level from 0.10 percent to 0.08 percent, the California Attorneys for Criminal Justice argued that lowering the presumptive level of intoxication would increase the risk of convicting innocent persons. The California Probation, Parole and Correctional Association also raised concerns over their ability to handle additional drunk drivers in an already overburdened and overcrowded corrections system.

Maine

In August of 1988, Maine reduced its illegal per se BAC level from 0.10 percent to 0.08 percent. According to Sergeant Schaad of the Maine Department of Public Safety, 29 MRSA § 1312-B(1)(b) was amended because scientific research demonstrated impairment at or below 0.05 percent BAC. The legislature chose 0.08 percent as a compromise level between the existing 0.10 percent and the ideal 0.05 percent. The fact that Maine borders Canada, which has a national per se BAC level of 0.08 percent, also helped support this reduction. Attached are copies of testimony and letters of endorsement which helped secure passage of this measure (see Attachment C).

²Senate Committee on Judiciary 1989-90, hearing March 14, 1989, SB 408, p. 2.

³Ibid., p. 3.

⁴Assembly Committee on Public Safety, hearing June 6, 1989, SB 408, p. 2.

Oregon

Since July of 1984, Oregon has had an illegal per se BAC level of 0.08 percent. According to Captain Stevenson of the Oregon Department of Public Safety, SB 710 was enacted by the Oregon Legislature in an effort to revise Oregon's drinking driver laws. A major feature of this measure was to lower the illegal per se level from 0.10 percent to 0.08 percent. A study on the impact of this law was published in March 1989. This report by the Oregon Motor Vehicles Division concluded that the proportion of both day and night-time fatalities that were alcohol-related declined after the implementation of SB 710 (see Attachment D).⁵

Utah

Utah was the first state to implement an illegal per se BAC level of 0.08 percent. According to Chris Coring of the Utah Department of Public Safety, Utah first lowered its presumptive BAC level to 0.08 percent in 1967. In 1983, Utah lowered the illegal per se BAC level to 0.08 percent and eliminated its presumptive level entirely. Mr. Coring explained that the reduction in illegal per se BAC to 0.08 percent was not difficult to enforce because 0.08 percent had been the presumptive level for so long. Mr. Coring attributed recent reductions in Utah's alcohol related driving accidents to expanded education and drunken driving prevention programs. He also noted that there was a drop in the total number of arrests after the lowering of the illegal per se BAC level to 0.08 percent because of improved testing and arrest procedures (see Attachment E).

Vermont

Vermont has taken a different approach. While keeping their illegal per se BAC level at 0.10 percent, they have added a civil traffic violation with a maximum penalty of \$175.00 for persons whose BAC level registers 0.08 or above. According to Captain Vallie of the Vermont Department of Public Safety, scientific evidence convinced the Vermont legislature that Vermont's driving while intoxicated statutes needed to be strengthened. A measure to reduce the illegal per se BAC level from 0.10 percent to 0.08 percent was defeated. In its place, a compromise measure was passed thereby establishing 0.08 percent BAC as a traffic violation. This new measure went into effect December 1, 1989 (see Attachment F).

⁵Senate Bill 710 and Traffic Safety, The Effectiveness of Oregon's New Drinking Driver Law, Final Report, March 1989, p. 1.

National Standard

The Uniform Vehicle Code (UVC) as revised by the National Committee on Uniform Traffic Laws and Ordinances recommends a nationwide BAC presumptive and per se level of 0.08 percent (see Attachment G).⁶

The National Transportation Safety Board also supports lowering illegal per se BAC levels to 0.08 percent (see Attachment H).

In addition, the Association for the Advancement of Automotive Medicine (AAAM) has supported a reduction in illegal per se BAC levels. According to a recent background paper, the AAAM reports that "epidemiologic data show[s] an increase in crash risk at BACs above 0.05 g/dl.⁷ At 0.08 g/dl there is about a 3-fold increase in crash risk over that with no alcohol, which rises about 6-fold at 0.10 g/dl and 25-fold or more at 0.15 g/dl" (see figure 1).

Alaska's Average BAC Level for Drunken Drivers

Alaska currently has an illegal per se BAC level of 0.10 percent (see attachment I). According to Mike Lewis, program director of the highway safety planning agency for the Alaska Department of Public Safety, the number of DWI arrests has steadily declined in Alaska, but the average blood alcohol level has remained high.

<u>Year</u>	<u>Number of DWI Arrests</u>	<u>Average BAC Level (%)</u>
1984	7,234	0.186
1985	6,084	0.189
1986	5,018	0.190
1987	4,388	0.192
1988	3,588	0.189

⁶It is also important to note that the Commercial Motor Vehicle Safety Act of 1986 as incorporated into the omnibus Drug Enforcement, Education, and Control Act of 1986, Public Law 99-57, requires that all states establish 0.04% BAC as the standard for commercial operators. States have until October 1, 1993, to comply with this standard. Failure to comply will result in a five percent decrease in federal highway aid during the first year and a ten percent decrease during subsequent non-compliance years (see Research Request 89.386 for more information).

⁷g/dl = gram of alcohol/deciliter of blood.

Representative Ulmer
January 3, 1990
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Summary

Four states (California, Maine, Oregon and Utah) have lowered their illegal per se BAC levels to 0.08 percent. Vermont has made 0.08 percent BAC a civil traffic violation.

Support for lower BAC levels has come from the U.S. Department of Transportation, the American Medical Association, the Uniform Vehicle Code, Mothers Against Drunk Driving and several other organizations.

Opposition to lower BAC levels has come from the American Civil Liberties Union and local organizations.

The purpose of lowering the illegal per se BAC levels from 0.10 percent to 0.08 percent is to reduce the number of alcohol-related traffic accidents. Studies show that 11 percent of the 23,630 traffic fatalities nationwide involved blood alcohol levels of less than 0.10 percent BAC. Oregon Motor Vehicles Division reports a decrease in the number of alcohol-related traffic fatalities since lowering their BAC level to 0.08 percent.

Alaska currently has no presumptive BAC level and an illegal per se BAC level of 0.10 percent. Of the 3,588 people who were arrested for DWI in 1988, the average BAC level was 0.189 percent.

Please contact this office if you have questions or need further information.

Attachments

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

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ANCHORAGE, ALASKA 99503
(907) 561-7629



CHAIRMAN
LABOR AND COMMERCE COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
HOUSING AND BANKING SUBCOMMITTEE
FINANCE BUDGET SUBCOMMITTEE
DEPT. OF COMMERCE AND
ECONOMIC DEVELOPMENT

April 7, 1989

M E M O R A N D U M

TO: Members of the House Health, Education
and Social Services Committee

FROM: Representative Dave Donlev *DB*

RE: Driving While Intoxicated: More Restrictive Blood Alcohol
Content Standards for Youth

This legislation would lower the blood alcohol content (BAC) for DWI conviction for minors. The law presently treats minors the same as adults regarding the level of their BAC to determine if they are presumed intoxicated. This legislation would drop the present level from .10 to .05 for drivers under 21 years old.

Drunk driving is a serious problem in our society. The fact that many of our young people are victim to this problem is tragic. Research has shown that "although the physiological impact of alcohol on young and adult drivers is probably the same, young drivers are less experienced and, therefore, less adept at masking impairment." The results of this being; young people are less able to cope with the effects of the alcohol, are less experienced drivers than individuals over 21 years old, tend to take more risks and ultimately more likely to be involved in traffic accident.

Data that was collected by the National Commission Against Drunk Driving (NCADD) indicate that "a person under the legal drinking age (is nearly) twice as likely to die in an alcohol-related crash as an adult over the age of 21." As legislators, these are facts that we cannot ignore. There are already six states that have recognized this problem and have passed legislation with more restrictive BAC standards on drivers under th age of 21.

I feel this is an important issue which needs to be addressed and I would welcome your support.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 3, 1989

MEMORANDUM

TO: Representative Dave Donley

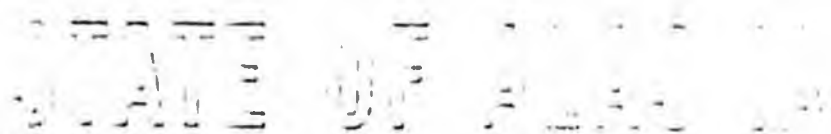
ATTN: Michael Ward

FROM: Patricia Young *py*
Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content
Standards for Youth
Research Request 89.290 (Supplemental Information)

Upon consideration of the information previously presented on more restrictive blood alcohol content (BAC) standards for youth, you wished to know how long such laws have been in effect and if their constitutionality has been challenged. According to assistant attorneys general in each state, the laws went into effect as follows: Maine--1982, Maryland--1988, New Mexico--1984, North Carolina--1983, Rhode Island 1986, and Wisconsin--1987. Although constitutional challenges were expected in some states, none have been raised. In each case, preponderance of data reflecting the over representation of youth in alcohol-related driving accidents was noted as being sufficient evidence to uphold the constitutionality of such laws should they be challenged.

Both the prohibition against drinking under the age of 21 and the prohibition against driving on public highways with a BAC of over 0.01 percent are arbitrarily designated limits. However, because both prohibitions contribute to the general welfare and public safety, both meet the rational relationship standard of proof required in such cases. Likewise, it is rational to suppose that a more restrictive BAC standard for youth could reduce the number of alcohol-related accidents and fatalities.



STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE:

OFFICE OF THE COMMISSIONER

May 4, 1989

The Honorable Dave Donley
P.O. Box V
Juneau, Alaska 99811

Attn: Michael

Dear Representative Donley:

In response to your telephone request regarding youth (age 20 and under) involvement with alcohol, following is the requested information.

ARRESTS

Year	DWI Arrests	Liquor Laws Offenses	Total
1986	451	2,351	2,802
1987	336	2,415	2,751
1988	Data Not Available At This Time		

YOUTH INVOLVEMENT IN ALCOHOL FATAL CRASHES

Year	Number of Youth Alc. Fatalities	% of Youth Involvement of Total Alc. Fatals	% of Licensed Drivers
1984	14	20.0%	6.9%
1985	14	20.3%	7.1%
1986	6	13.0%	6.7%
1987	7	15.9%	6.8%
1988	12	25.0%	6.9%

Please note that the decrease in DWI arrests does not represent a decrease in alcohol involvement by this age group, but rather is attributed to a decrease in enforcement effort due to manpower cuts and a decrease in public pressure. Total DWI arrests have decreased tremendously each year since 1984.

Feel free to contact this office at any time if we can be of further assistance.

Sincerely

T. Michael Lewis
Alaska Highway Safety
Planning Agency

- 4571

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P. O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 3, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Patricia Young ^{py}
Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content
Standards for Youth
Research Request 89.290 (Supplemental Information)

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Representative Donley
April 3, 1989
Page 2

Given the legal drinking age of 21, any tolerance for alcohol in a driver under that age is a curious anomaly within the law. Statutes requiring absolute sobriety in young drivers would complement and reinforce the legal drinking age and would make obvious the direct connection between sobriety and public safety.¹

I hope that this information is useful to you. If you have any questions or need further information, please call.

¹In 1983, Oregon passed a law which requires the denial of driving privileges to youth under 17 who are convicted of possession, use, or abuse of alcohol or a controlled substance. Last year Oklahoma followed suit with a law which requires license suspension of 3 months to one year for first offenses, up to two years for second offenses, and a minimum one-year delay in getting a license for those who have none to suspend.

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE:

May 4, 1989

The Honorable Dave Donley
P.O. Box V
Juneau, Alaska 99811

Attn: Michael

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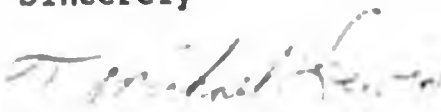
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Sincerely


T. Michael Lewis
Alaska Highway Safety
Planning Agency

- 4571



ALASKA STATE LEGISLATURE
 HOUSE OF REPRESENTATIVES
 RESEARCH AGENCY

P. O. Box 7, State Capitol
 Juneau, Alaska 99811-3100
 Mail Stop 3100
 (907) 465-3991

March 16, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Patricia Young *PM*
 Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content
 Standards for Youth
 Research Request 89.290

You asked which states, in tests to determine whether motor vehicle operators are impaired by alcohol, apply a more restrictive standard for blood alcohol content (BAC) to drivers under the age of 21. You also wished to know 1) if a given amount of alcohol has a greater effect on a young drinker than on an experienced drinker and 2) whether alcohol-related traffic statistics show that youth are at greater risk than adults.

Six states impose more restrictive BAC standards on drivers under the age of 21. The following chart shows the state, the illegal per se BAC level, and the BAC standard applied to young drivers. (For more detailed information, see Attachment A, selected pages from the National Highway Traffic Safety Administration, Digest of State Alcohol-Highway Safety Related Legislation, seventh edition, January 1989.)

<u>State</u>	<u>Illegal Per Se BAC Level</u>	<u>Youth BAC Level</u>
Maine	0.08	0.02 (under 21)
Maryland	0.07	0.02 (under 21)
New Mexico	0.10	0.05 (under 18)
North Carolina	0.10	0.00 (under 18)
Rhode Island	0.10	0.04 (under 18)
Wisconsin	0.10	0.00 (under 19)

Although the purchase and possession of alcohol by persons under the age of 21 is illegal in every state, only two states--North Carolina and Wisconsin--presently subject youth to a zero BAC standard. Defining impairment in persons under the legal drinking age as any blood alcohol level above 0.0 BAC is the first legislative measure recommended by the National Commission Against Drunk Driving (NCADD).

ATTACHMENT A
Selected Pages from the National Highway Traffic
Safety Administration, Digest of State Alcohol-Highway
Safety Related Legislation, 7th Edition

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P. O. Box 7, State Capitol
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March 16, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Patricia Young ^{PM}
Legislative Analyst

RE: Driving While Intoxicated: More Restrictive Blood Alcohol Content Standards for Youth
Research Request 89.290

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Maine	0.08	0.02 (under 21)
Maryland	0.07	0.02 (under 21)
New Mexico	0.10	0.05 (under 18)
North Carolina	0.10	0.00 (under 18)
Rhode Island	0.10	0.04 (under 18)
Wisconsin	0.10	0.00 (under 19)

Although the purchase and possession of alcohol by persons under the age of 21 is illegal in every state, only two states--North Carolina and Wisconsin--presently subject youth to a zero BAC standard. Defining impairment in persons under the legal drinking age as any blood alcohol level above 0.0 BAC is the first legislative measure recommended by the National Commission Against Drunk Driving (NCADD).

Representative Donley
March 16, 1989
Page 2

Jim Wright, head of youth programs, Office of Alcohol Countermeasures, National Highway Traffic Safety Administration, also supports lower BAC standards for youth. According to Mr. Wright, although the physiological impact of alcohol on young and adult drinkers is probably the same, young drinkers are less experienced and, therefore, less adept at masking impairment. Because youth are less able to cope with the effects of alcohol, because they are less experienced drivers, and because they tend to take more risks, there is a distinct correlation between age and alcohol-related accidents.

Data collected by NCADD in Youth Driving Without Impairment: Report on the Youth Impaired Driving Public Hearings, 1988, indicate that "a person under the legal drinking age [is nearly] twice as likely to die in an alcohol-related crash as an adult over the age of 21" (p. vii). Attachment B contains portions of this report. Attachment C is data on youth impaired driving from the Fatal Accident Reporting System, the National Center for Statistics and Analysis, the National Highway Traffic Safety Administration, and the Bureau of Census. Data from all sources show youth disproportionately represented in all kinds of driving fatalities, both alcohol and non-alcohol-related.

I hope that this information is useful to you. Please call me if you have questions or need further information.

Attachments

ATTACHMENT A
Selected Pages from the National Highway Traffic
Safety Administration, Digest of State Alcohol-Highway
Safety Related Legislation, 7th Edition

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:
 Amount (\$ Range): Not more than \$1,000
 Mandatory Min. Fine (\$): 1st off-\$300; 2nd off (w/n 6 yrs)-\$500; 3rd off (w/n 6 yrs)-\$750 29 MRSA §1312-B

Other Penalties:
 Community Service: None
 Restitution (eg Victim's Fund) Yes, 17-A MRSA §§1204(2-A)(B) & 1321 et seq. Direct compensation by the defendant to a victim usually as a condition of probation.

Other: None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:
 Administrative Per Se Law: Yes-A.08 BAC level^{1&2} The periods of license susp for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below).³
 Other: Under 29 §2241(1), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" (but have not necessarily been convicted of) an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this rev/susp is not specified.

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): For all offs - Susp (See Special Note on p. 3-172 concerning serious bodily injury DWI offenses.)

Term of License Withdrawal (Days, Months, Years, etc.): 1st off-90 dys; 2nd off (w/n 6 yrs.)-1 yr; Subsequent offs (w/n 6 yrs)-2 yrs.; 29 MRSA §§1312-B & 1312-D(1) Note: The licensing agency may increase the above susp. periods up to 275 dys; see 29 MRSA §1312-D(1-A).

Mandatory Minimum Term of Withdrawal: 1st off-60 dys; 2nd off-1 yr; sub. off-2 yrs These are not mandatory in all situations; see the Special Note on p. 3-174.

Maine has a special statute concerning the administrative susp of licenses for 1 yr of persons under 21 yrs of age who operate a veh while having a BAC level of 0.02; hardship and provisional licenses are available; this statute is not reported in detail here; see 29 MRSA §2241-G(B).

²The licensing agency may administratively suspend a driver's license for 3 yrs if they negligently caused a death while operating a motor vehicle either while DWI or with a BAC level of 0.08 or more; see 29 MRSA §1313-B.

³A work restricted license may be issued provided that person has not w/n 6 yrs (1) been convicted of a DWI off, (2) had a previous admin. per se susp. or (3) refused to submit to a chemical test; see 29 MRSA §1311-A.

STATE:

General Comments:

MARYLAND

See Annotated Code of Maryland.

Basis for a Dlt. Charge:

Standard DWI Offense:

(1) While intoxicated¹ (Tran. §21-902(a)) and
(2) under the influence of Alcohol (Tran.
§21-902(b))

Illegal Per Se Law (BAC Level):

No²

Presumption (BAC Level):

No

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) Any
Combination of Drugs, (3) a Combination of One
or More Drugs and Alcohol and (4) Any Controlled
Dangerous Substance¹ See §21-902(c)(1) & (d).

Other:

A BAC of 0.07 is prima facie evidence of driving
while under the influence. A BAC of 0.10 is
prima facie evidence of intoxication. C&JP
§10-307 and Trans. §21-902

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes Tran. §16-205.2

Implied Consent Law:

Arrest Required (Yes/No):

Yes³ Tran. §16-205.1

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) C&JP §10-309(a)

Other Information:

Special Note: If a driver is involved in a DWI
related accident which resulted in the death of
another person, the driver shall be required to
submit to a chemical test of their blood or
breath Tran. §16-205.1(c)

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes (Trans §16-205.1)

Urine:

No

Other:

None

¹The law states that it is an offense to drive a motor vehicle while "intoxicated". The law does not specify any particular substance to be associated with such intoxication.

²Under Tran. §16-113(b)(1), a person under 21 must have a BAC restriction placed on their license. This restriction prohibits the licensee from operating a motor vehicle with a BAC level of 0.02 or more. Note: See Footnote No. 2 on p. 3-184. Under C&JP §10-307(f) it is prima facie evidence of a violation of Tran. §16-113(b) if a person under 21 operates a motor vehicle with a BAC level of 0.02.

³The law uses the term "detained" instead of arrest.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:
Restitution
(eg Victim's Fund)

None

Yes, §31-17-1 (Restitution is to be paid by the defendant.¹)

Other:

A fee of \$35 is assessed against each defendant to defray the costs of BAC and other chemical tests for DWI; see §31-12-7.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administ Per Se Law:

1. For persons 18 yrs old and above who have a BAC level of 0.10 or more - 90 dys mandatory license rev (§66-8-111(C)(1)); for an admin. per se off where a person (1) has failed to complete a rehabilitation program for a 1st DWI off or (2) has been convicted of a second or subsequent DWI off - 1 yr mandatory license rev (§66-5-29(C)); 2. For persons under 18 yrs of age who have a BAC level of 0.05 or more: 1st Admin. Per Se off - 6 mos mandatory license rev §66-8-111(C)(2); 2nd Admin Per Se off - 1 yr mandatory license rev §66-8-111(C)(3)

Other:

Under §66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and all sub. one, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off-Rev §66-5-29 & 66-5-32(B); 3rd off-Rev §66-5-5(D)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st off-1 yr; 2nd off-1 yr; 3rd off-5 yrs

Mandatory Minimum Term of
Withdrawal:

1st off-(See Special Note); 2nd off-1 yr; 3rd off-5 yrs

Special Note: If a person has been convicted of a 1st DWI off but not subject to the mandatory license provisions of the admin per se law, they may obtain a restricted license. Such a license, however, is not available where there has been a consent decree based on a filing of any DWI charge. §66-5-35A.

¹Restitution appears to be required if a sentence is either suspended or deferred; see §§31-17-1B & 31-20-6.

STATE:

~~NORTH CAROLINA~~

General Comments:

See Gen. Stat. of North Carolina.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an impairing substance §20-138.1(a)(1) & 20-138.2(a)³, for commercial motor vehicle operators)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §§20-4.01(0.2) & 20-138.1(a)(2); 0.04 if operating a commercial motor vehicle §20.138.2(a)²

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Any Impairing Substance §20-138.1(a)(1)

Other:

See Footnote No. 3.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §20-16.3

Implied Consent Law:

Arrest Required (Yes/No):

Yes (Implied) §20-16.2(a)

Implied Consent Law Applies to
Drugs (Yes/No):

Yes §§20-16.2 & 20-139.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §20-16.2(a)(3)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge; see §20-138.4.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes §§20-179(m) & 20-179.1

¹ This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

² A commercial motor vehicle operator is a person who is licensed to drive either (1) a vehicle weighing more than 26,000 lbs. or (2) one carrying hazardous materials. See §20-7(a). Unless amended by the legislature in 1989, all provisions concerning the operation of commercial motor vehicles while DWI are effective only from June 1, to June 30, 1989; see §17 of Ch. 1112 of the laws of 1988.

³ Special Note: It is illegal for a provisional licensee, a person between the ages of 16 and 18, to operate a motor vehicle with any alcohol in their body; see §20-138.3.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation:

Alcohol Education:	<u>1st off</u> - Alcohol (DWI)/drug education course and/or treatment program (Required)
Alcohol Treatment:	<u>2nd off</u> -Yes (Required); <u>3rd off</u> -Yes (Required)
Alcohol Education/ Treatment as an Altern- ative to Criminal Licensing Actions (Describe):	

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:	No
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Terms Upon Which Vehicle Will Be Released:	
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Other:	None
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Miscellaneous Sanctions
Not Included Elsewhere:

For persons under 18 years old who have been found to have been driving while impaired (BAC level between 0.04 and 0.10), an assessment fee of \$150 or community service (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 mos susp; 2nd violation-susp until the person is 21 years old; 3rd and subsequent violations-suspension until the person is 21 years old plus an additional 2 yr susp (§31-27-2.5(d)(2), (3) & (4). These license suspensions are mandatory. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st off.-a highway assessment fine of not more than \$250, 10-60 hrs. of community service & a 6 mon. lic. susp. (mandatory); 2nd and sub. off.-confinement in a training school for not more than one (1) yr., a fine of not more than \$500 & a one (1) yr lic. susp. (mandatory). See §31-27-1(d)(a) & (b).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:	
State Has Such Law/Type of off:	Yes

Criminal Sanction:

Imprisonment (Term):	1) Death related DWI offs-felony- <u>1st off</u> - 6 mos-10 yrs; <u>2nd and subsequent</u> (w/n 5 yrs) - 5-20 yrs §§31-27-2.2 & 11-1-2; 2) Non-DWI related driving causing death-felony-Not more than 10 yrs §§31-27-1 & 11-1-2
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Mandatory Minimum Term:	None
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Fine (\$ Range):	Death related DWI offs, <u>1st off</u> - \$500-5,000; <u>2nd and subsequent</u> (w/n 5 yrs) - \$800-5,000 Non-DWI related deaths - None
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Mandatory Minimum Fine:	None
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STATE - Wisconsin

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): None
Other: None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev):

1st refusal - 1 yr rev, after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 5 yrs) - 2 yr rev, after 90 dys of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal (w/n 5 yrs) - 3 yr rev, after 120 dys of rev period, the driver is eligible for an occupational license¹; Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §343.305(9)

Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years, Etc.):

Non-injury related DWI off: 1st off-None; 2nd off (w/n 5 yrs)-5 dys to 6 mos; 3rd and sub off (w/n 5 yrs)-30 dys to 1 yr; Injury related DWI offs. Without great bodily harm - 30 dys to 1 yr; With great bodily harm (C) E felony) - Not more than 2 yrs §346.63(1), 346.65(2), 346.65(3), 939.50 and 940.25

Mandatory Minimum Term: None

1 If a person, under 19 years old has been arrested for a violation of §346.63(2m), driving with a BAC level of more than 0.00 but less than 0.10, refuses to submit to a chemical test, their license is revoked for six (6) months. After the first 15 days of this revocation period have passed, an occupational license can be issued. A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. See §343.305(9)(em) & 346.63(2m).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

Non-injury related DWI offs, 1st off- \$150 to 300; 2nd DWI off (w/n 5 yrs) - \$300 to 1,000; 3rd & sub. off (w/n 5 yrs)-\$600 to 2,000; Injury related DWI offs, Without great bodily harm - \$300 to 2,000; With great bodily harm (Cl E felony) - Not more than \$10,000 See Footnote No. 1 below.

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Yes §346.65(2g)²

Restitution

(eg Victim's Fund):

Yes Direct compensation by the defendant to a victim for some types of "pecuniary losses;" see §346.65(2r)(a). In addition, the State has a victims' compensation fund; see §949.01 et seq. Awards are limited to \$40,000 for any one injury or death; see §949.06(2).

Special Note: An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had a BAC level of 0.10 or more; see §949.08(2)(e).

Other:

Persons convicted of a DWI offense must pay a driver improvement surcharge of \$200 in addition to any other fine or forfeiture that may be imposed; see §346.655(1). In addition, under §§814.60 & 973.045, a defendant must pay a crime victim and witness assistance surcharge of \$30 for a misdemeanor conviction and \$50 for a felony conviction.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 BAC §343.305(7) & (8) (Action is taken via the licensing agency; see §343.305(8)-Susp 6 mos (15 dys mandatory)³

Other:

A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)

¹Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. There is a forfeiture of \$10 for a violation of this provision; see §346.65(2q).

²Community may be imposed (1) in lieu of certain fines/forfeitures or (2) in addition to other penalties; see §346.65(2g) for details.

³A restricted occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days. However, 15 days must have elapsed since the date of the suspension before this license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off - Susp; 2nd and 3rd offs - Rev; DWI injury related offs, with or without great bodily harm - Rev §§343.10, 343.30 & 343.31
See Footnote Nos. 1 & 2 below.

Term of License Withdrawal
(Days, Months, Years, etc.):

Non-injury related DWI offs: 1st off - Susp 6-9 mos; 2nd off - Rev 1 yr-18 mos; sub off - Rev 2-3 yrs; Injury related DWI offs Without great bodily harm - Rev 1 to 2 yrs; With great bodily harm - Rev 2 yrs Note: A previous conviction includes refusals.

Mandatory Minimum Term of
Withdrawal:

Non-injury related DWI offs: 1st off - 15 dys³; 2nd off - 60 dys⁴; sub off - 90 dys⁴; Injury related DWI offs Without great bodily harm - 60 dys; With great bodily harm - 120 dys

¹Sec. 346.63(2m) prohibits any person under 19 year old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. A violation of §346.63(2m) results in a 3 mo license susp; however, an occupational license is available; see §343.30(1q).

²Under §343.30(1q)(g), if a person has a chauffeur's license and they are convicted of a DWI offense while not operating a

motor vehicle as a chauffeur, the chauffeur's license is not suspended or revoked.

³An occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days until the court is able to hear and decide the petition for the regular occupational license. However, 15 days must have elapsed since the date of the suspension before this temporary license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

⁴A restricted occupational license may be issued after this period of time.

ATTACHMENT B
Selected pages from the National Commission Against
Drunk Driving, Youth Driving Without Impairment; Report on the
Youth Impaired Driving Public Hearings, 1988

Youth Driving Without Impairment

**Report on the Youth Impaired Driving
Public Hearings**

Atlanta, Boston, Chicago, Fort Worth, Seattle

“A Community Challenge”

Prepared by the National Commission Against Drunk Driving --- Washington, D.C.

Executive Summary

The National Commission Against Drunk Driving, working with a grant from the National Highway Traffic Safety Administration, conducted five public hearings in 1987-88 on the problem of youth impaired driving. From the wealth of testimony gathered in Chicago, Boston, Seattle, Atlanta and Fort Worth, many recommendations were adopted for this report.

A review of the proceedings reveals one paramount conclusion: the time has not arrived yet when we can rest content with what has been done to address the problem of youth impaired driving. Despite the spread of activist groups, the proliferation of programs, and the passage of much-needed legislation, young people continue to drink and drive with alarming frequency. Over the course of the past five years, it has become illegal for youth under age 21 to purchase and possess alcohol in every state. Nevertheless, young people continue to be involved in alcohol-related crashes at disproportionately high rates. A young person under the legal drinking age remains nearly twice as likely to die in an alcohol-related crash as an adult over 21.

Youth impaired driving cannot be solved without addressing the problem of underage drinking. Testifiers at the hearings summarized the situation:

- Drinking is endemic among American youth.
- Alcoholic beverages remain easily accessible to youth under 21.
- Peer pressure encourages young people to drink and leads many adolescents to consider alcohol a necessary accompaniment to social events.
- Advertising normalizes alcohol consumption and makes it more difficult to raise concerns about alcohol abuse.
- Drinking decreases inhibitions in young people who all too frequently possess a propensity for taking risks and naively believe that they will not be harmed.

The combination of these factors leads to a tragically predictable result: alcohol-related motor vehicle crashes constitute the leading cause of death for youth of driving age.

The NCADD-sponsored hearings confirmed that youth impaired driving is a societal problem which will not be resolved in the short term or by a single approach. Changing the attitude of youth toward impaired driving and, more fundamentally, toward underage drinking requires a sustained coordinated effort. Youth must be presented with the single message from all elements of the community that under-age drinking and impaired driving are socially intolerable.

Testimony repeatedly emphasized the pivotal role parents play in preventing youth impaired driving. According to a University of Washington survey, parents are the most important influence on a youth's decision not to use alcohol or other drugs. Similarly, when a Michigan State University survey asked high school students what factors would reduce the amount of alcohol they consumed, 70%-90% responded that parental actions such as supervising parties, keeping a closer control over home alcohol supplies, and making a greater effort to discuss their weekend activities would reduce their drinking habits.

Unfortunately, all too many parents have abdicated their responsibilities. Testifiers described encounters with parents who criticized police officers for arresting juvenile DWI

offenders, parents who fought protracted legal battles to prevent the revocation of their child's driving license, and parents who, in the face of overwhelming evidence, steadfastly denied the existence of their child's drinking problem. These actions, one testifier noted, not only undermine the efforts of those who work to reduce youth impaired driving but fuel the young person's sense of being victimized by the system.

The reaction of these parents to the enforcement of drinking and driving laws emphasizes the need for education to inform parents about the scope of the impaired driving problem. Findings by Michigan State University researchers confirmed this need: while 60%-70% of parents are convinced that underage drinking occurs, only 20% believe that their own children are involved in such behavior. This statistic dramatically illustrates the unwillingness of parents to acknowledge the involvement of their children in underage drinking.

The hearings made it clear that every systemwide approach must combine prevention, deterrence and treatment/intervention. Preventive education for youth must start at an early age, before young people are first confronted with the decision to use alcohol or other drugs. With young people beginning, on a national average, to first use alcohol at 12.8 years of age, education clearly must start in elementary school. It must be designed to provide children with information on alcohol and drug use, but it must also teach them the skills they need to act on that information and resist pressure from friends and family to use alcohol and other drugs.

In providing youth with alcohol education and skills, considerable care should be given to selecting appropriately qualified teachers, for the teacher is the most important variable in the success of the program. These teachers should be good role models, trusted by students, and want to teach the subject.

In addition to maximizing the value of formal classroom instruction, educators should take full advantage of the possibilities of peer education. Testifiers cited numerous examples of programs involving high school youth who volunteer to work with junior high or elementary school children on highway safety and alcohol and drug issues. Like peer education, positive peer pressure has a tremendous potential for altering attitudes about drinking and driving. By banding together to form safety clubs and support groups, youth can encourage their peers to value a health lifestyle and socially-responsible behavior.

The single most controversial topic of the hearings was the safe rides programs. Supporters of safe rides programs contend that intervention is needed in the less-than-perfect world where young people drink illegally and subsequently drive. Advocates of more prevention-oriented approaches emphasized that efforts to counter youth impaired driving must address the underlying problem of underage drinking by emphasizing a no-use approach. In its recommendations, the NCADD recognizes the value of both arguments, acknowledging the need to take positive steps to discourage underage drinking while recognizing the importance of intervention measures that make our highways safer for everyone.

While preventive education is important, it alone is not sufficient to deter youths from drinking and driving. Enforcement is also necessary. Testifiers complained of a lack of enforcement. Both youth and police agreed that young people are not subject to the same level of rigorous enforcement as the older adult population. To increase the effectiveness of enforcement, testifiers suggested that police target youthful impaired driving by focusing their shift schedules and patrols on the hours when most impaired driving offenses by youth occur. Police should also patrol parks, schools, and other neighborhood locations where youth tend to gather. When youth are arrested for drinking and driving violations, they should be subject to the full penalty of the law. Releasing youth to their parents, like downgrading their offenses or diverting them into pre-adjudication programs, conveys the impression to the young offenders as well as to their parents that youthful impaired driving is not a serious offense.

The evidence suggests that communities with the best record of reducing youthful drinking and driving have succeeded by formulating an integrated, systemwide approach. If the hearings revealed one thing, it was that many good programs and successful countermeasures exist. The key is for communities to put all of these elements in place, so that the efforts of students, parents, schools, courts, businesses and police support one another. Only when all nine components that came under so much discussion during the youthful impaired hearings are put in place can we look forward to significant reductions in the serious injuries and fatalities involving thousands of young Americans. Each community must confront this serious social issue if we are to ensure that this campaign to counter youthful impaired driving is a truly national campaign. No one will admit that this is an easy challenge—but who would deny it is a challenge that every community must accept!

Introduction

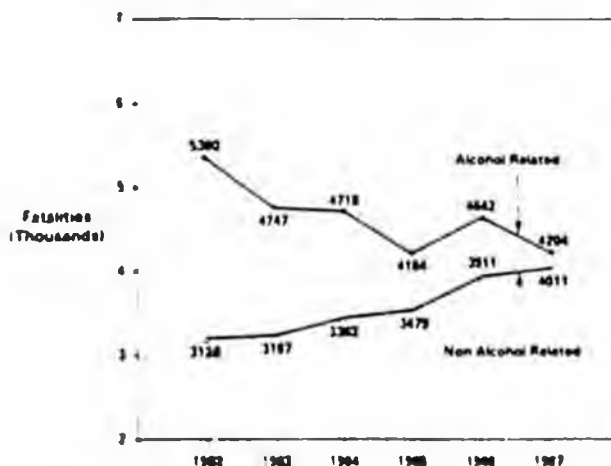
In the past five years progress has been made in reducing the number of alcohol-related motor vehicle deaths involving young drivers. Between 1982 and 1987, the alcohol-related fatalities of youth under 21 declined by 21.9%. While this figure is tempered by the fact that the youth population declined by 8.4% during that time, it nonetheless represents a significant achievement.

The impressive reduction in alcohol-related youth fatalities typifies a general decline since 1982 in alcohol involvement in youth crashes. This reduction is all the more impressive given the steady increase in non-alcohol related youth fatalities over that same period. As a variety of statistics indicate, alcohol is a factor in fewer and fewer crashes involving young people. In fact, the largest decrease among all age groups in alcohol-related motor vehicle crashes has occurred within the 15-20 year old age group.

- 19 young people compared to 11 adults over 21 died in alcohol-related crashes per 100,000 of their respective populations.
- 25 young drivers compared to 11 adult drivers over 21 were involved in alcohol-related crashes per 100,000 licensed drivers in each population.
- Youths under 21 comprise only 8% of the total driving population but accounted for 17% of the drivers involved in alcohol-related fatal crashes.
- 25% of all passengers killed in motor vehicle crashes were youth aged 15 to 20.

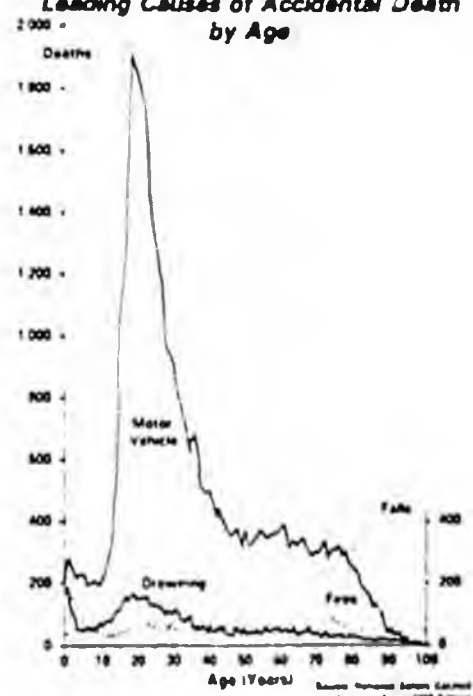
Drinking and driving continues to be the number one killer of teenagers. More than 40% of all deaths for people age 15-20 result from motor vehicle crashes; and approximately half of these fatalities involve alcohol. One in five American youths who dies between the ages of 15 and 20 will die in an alcohol-related crash. As it has often been remarked, the alcohol-related crash is the American way to die for teenagers of driving age.

Figure 1
Youth Fatalities - Ages 15 to 20
Motor Vehicle Deaths, 1982 to 1987



Despite encouraging indications that alcohol involvement is declining, young people continue to be involved in alcohol-related crashes in disproportionately high numbers. Last year youth under the age of 21 remained significantly over-represented when compared to the over 21-population:

Figure 10
Leading Causes of Accidental Death
by Age



The problem of youth impaired driving is intimately associated with the problem of illegal

underage drinking. Self-reported surveys reveal that nine out of ten high school seniors have used alcohol by the time they graduate and that a significant number drink heavily. As testifiers repeatedly declared, regular alcohol use is seen as the norm by many American youth.

Sharing unpublished statistics from the 1987 National High School Senior Survey, Patrick O'Malley of the University of Michigan's Institute for Social Research offered in his testimony a disturbing view of the problem of youth impaired driving. According to the 1987 survey of 17,000 high school seniors nationwide, 27% of the respondents reported that they had driven a car after drinking in the two weeks prior to the survey. Even more alarming, 15% reported driving after having five or more drinks in a row. Still more students are placing themselves at risk by riding as passengers in a car with a driver who has been drinking. More than one-third reported riding with a drinking driver in the prior two weeks. And the drivers with whom they risked riding more often than not were drinking heavily, with 22% of the seniors stating that they had been a passenger in a car in the prior two weeks with a driver who had consumed five or more drinks.

The danger that young people court when they drink and drive is exacerbated by three factors. First, young people are inexperienced drivers. Not only are a greater percentage of youth involved in alcohol-related crashes, but a greater percentage are involved in car crashes in general. Second, youth exhibit a propensity to risk-taking and a common feeling of invincibility that often contributes to reckless driving. Third, youth have a tendency not to use safety belts. According to the University of Michigan survey, only one third of the seniors said that they always wear a safety belt when they are driving, and even fewer always wear them when they are passengers in the front seat of a car. Given this pattern of behavior, the dispropr-

tionate number of alcohol-related crashes that claim the lives of young people becomes sadly predictable.

Our best hope of countering the pervasiveness of youth impaired driving lies in formulating an integrated systemwide approach that will present young people with a consistent message that underage drinking and impaired driving are intolerable. Testifiers clearly emphasized that this approach must involve the entire community and cited examples of the type of coordination that is necessary: parents must support student extracurricular activities and participate in community programs; judges must expand their role beyond the courts and become community catalysts for change; college administrators and retail liquor establishments must work together to stop alcohol purchases by underage college students; and business leaders must support the efforts of citizen action groups in their communities.

Within the framework of a systemwide approach, testifiers placed the single greatest emphasis upon the role and responsibility of parents. Both youth and adult testifiers stressed this point. Parents need to concern themselves with the well-being of their children and provide emotional support, moral guidance and disciplinary action. Youth are much less likely to get involved in illegal activities if they feel a sense of attachment to their family and other pro-social institutions. As a study submitted by a Vermont testifier concluded, youth impaired driving often is only one element in a larger pattern of antisocial behavior. Since parents play a pivotal role in shaping the behavior of their children, support for an integrated systemwide program must begin in the family with efforts by parents to provide their children with the information and direction that encourages socially-responsible behavior in a substance-abusing society.



IX. Legislation

A pressing need exists for legislative leadership. Youth, as Rod Monroe declared, are crying out for proper rules with certainty of consequences. Inadequate laws, combined with lax enforcement and irregular sentencing, have contributed to a situation in which adolescent youths routinely drink and often drink and drive. The effects of this situation are manifold. Not only do young people form bad habits and fail to get help for their substance abuse problems, but they learn that the law means nothing and that they can violate it with impunity. The challenge exists for legislators to enact laws that combat the problem of alcohol abuse, that reflect the concerns of the community, and that gain the respect of youth.

Testifiers were united in affirming that a need exists for additional legislation. In discussing areas for legislative activity, testifiers offered both specific recommendations and general guidelines. The specific recommendations have been discussed in earlier chapters of this report. They included such measures as a 0.0 BAC for youths under age 21; administrative per se license revocations; prohibitions on the manufacture and possession of fraudulent driving licenses; increased penalties for persons convicted of selling alcohol to minors; and mandatory classroom instruction in grades K-12 on the effects and use of alcohol and other drugs.

In addition to specific legislative recommendations, testifiers offered four general guidelines for the formulation of more effective impaired driving laws:

- 1) laws must be perceived as fair and the penalty proportionate to the offense;
- 2) laws must not confound or frustrate law enforcement officers in the pursuit of their responsibilities;
- 3) laws must complement and reinforce one another;
- 4) laws must discriminate between adults and youths and provide separate provisions and punishments for each.

The Perception of Fairness

The first of the guidelines concerned fairness. In order for impaired driving legislation to be effective, it must be perceived as fair. Penalties must be seen as proportional to the offense; sen-

tences must be consistent. Though an apparently simple guideline, testifiers cited numerous examples of laws designed to reduce youth impaired driving which failed because of the perception that they were unfair. The issue of fairness poses a problem to lawmakers because judging the fairness of a penalty involves one's assessment of the seriousness of the problem. In a community where drinking and driving by youth is not perceived as a serious offense, penalties that might be considered entirely reasonable in another location may be viewed as excessively harsh. This problem highlights the fact that no single measure can solve the problem of youth impaired driving. Legislation is important but, by itself, insufficient; it often must be combined with community education to make people aware of the seriousness of impaired driving violations.

When laws are perceived as unfair and the penalties excessively harsh, three problems may arise: 1) police may not enforce the law; 2) judges may not sentence offenders; and 3) youths may be alienated and rebel against the law. Testifiers related examples of each problem.

The failure of police to enforce the law was cited commonly as a problem. In Iowa, for instance, legislation has increased the punishments for DWI offenses in recent years, and this has resulted in an enforcement problem. According to Kay Chopard, "Officers are hesitant to take in a juvenile whom they fear will be treated harshly." Viewing adolescent drinking as a part of growing up and not sufficient reason to saddle youths with a criminal record, Iowa police reportedly are reluctant to arrest youths for drinking and driving violations.

A similar problem may arise with judges who resist sentencing offenders to what they consider unfair punishments. Sergeant Ken Taylor, a Tennessee sheriff, described how the unwillingness of judges to sentence offenders hampered his county's efforts to stop convenience stores from selling alcohol to underage youth. Despite an undercover operation that was successful in catching clerks selling beer to youth, the sheriff's office encountered trouble obtaining convictions. As Taylor explained, "the reason we were having trouble getting the convictions was be-

cause of the severity of Tennessee's law. If a person is convicted of selling alcohol to a minor, then he is prohibited from working in a place that sells alcohol for 10 years. The judges looked at that as a little strong. So they would pass a case for six months and render judgment at the end of six months. And most of the time they dismissed the cases if the person had not been involved in another offense of this nature."

Judges and law enforcement officials are not the only ones whose actions are compromised by the enactment of laws perceived as unfair. Youth may also react negatively to the perception of unfairness. Dr. Hawkins of the Center for Social Research at the University of Washington expressed concern at the effect that disproportionate penalties may have on the behavior of youth. "We have to be careful," he said, "that our efforts to develop sanctions and punishment-oriented strategies do not create another generation of outsiders. It does not require a driver's license to drink and drive. Withholding a driver's license alone will not prevent drinking and driving." Concluding his comments with a warning that harsh penalties may only produce a youth subculture that defies the law, Hawkins urged legislators to consider strategies that emphasize rewards for responsible behavior rather than punishments for violations.

When punishments are necessary, William Hayes of the New Jersey Office of Highway Safety offered a word of advice: "The advice that New Jersey would offer would be to keep your laws simple, keep them at a level where you really intend to assess the penalty. Don't have penalties in there that say you go to jail for two years if nobody really goes to jail for two years." Such penalties have a two-fold negative effect: first, they may undermine the enforcement of a legitimately needed law; and second, they may give the appearance that progress is occurring when in fact nothing is really been done to reduce the frequency of youth-impaired driving.

While laws undermine their own effectiveness when the penalties appear too harsh, they achieve equally little when the penalties are too weak. For example, when the Iowa legislature raised the minimum drinking age to 21, it made the sale of alcohol to 19 and 20 year olds a misdemeanor, punishable only by a fine. Since Iowa establishments know that they cannot be punished by a jail sentence or by the revocation of their liquor license, they continue to serve 19 and 20 year olds with impunity, according to testifiers, and have merely raised their cover charges to pay for the fines they might incur.

Examples such as this led a number of testifiers to call for increased severity of sanctions for establishments that engage in a regular practice of selling alcohol to underage youth. These sanctions, they asserted, must include the threat of losing their liquor license for repeated violations.

Eliminating Encumbrances to Law Enforcement

The second guideline testifiers offered expressed the conviction that laws should not confound or frustrate law enforcement officers in the pursuit of their duty. In framing legislation, lawmakers must make it as simple as possible for police to arrest and detain youths, while still protecting the rights of young people. The impetus for this recommendation arose from complaints about legislation that has complicated enforcement. Several states, for instance, require that juveniles and adults be detained in separate facilities and not merely in segregated areas at the same facility. This provision, testifiers noted, has deterred the arrest of youth for "minor" offenses like impaired driving, particularly in rural areas that may be a long distance from the nearest juvenile detention center. Similarly, laws such as the Texas "Open Container" Law requiring officers to witness the consumption of alcohol by a driver in order to make an arrest increase the difficulty of the officer's task and reduce the likelihood of an arrest. Finally, the complexity of juvenile court proceedings and the demand that such proceedings often make upon an arresting officer's time were said to deter police from arresting youth for impaired driving violations.

Consistent Law

The third guideline that testifiers emphasized was the need for laws to complement and reinforce one another. In several states, older laws need to be amended to reflect more recent legislation. Wisconsin's "Not a Drop" Law, for example, establishes a zero BAC level for drivers under age 19. With a minimum drinking age of 21, however, the "Not A Drop" Law appears inconsistent. If drinking is illegal for 19 and 20 year olds, why shouldn't a 19 or 20 year old who is caught driving impaired be subject to the same penalties as an 18 year old? Similar inconsistencies plague drinking and driving laws in other states. In Iowa, when the drinking age was 18, the license of an underage DWI offender could be revoked until the offender reached the

legal drinking age. When the minimum drinking age was raised to 19, licenses of underage DWI offenders were revoked until the offender reached his or her 19th birthday. With the enactment of legislation raising the drinking age to 21, however, the age of revocation was lowered rather than raised, so that the license of an underage offender could be reinstated at age 18 rather than 21. Inconsistencies such as this, intentional or otherwise, obviously weaken the effect of the law and send a conflicting message to youth about the seriousness of the offense.

The Unique Nature of Youth Impaired Driving

The fourth and final guideline that testifiers offered concerned the need for legislation that deals specifically with the problem of youth impaired driving. Throughout the hearings, testifiers declared that impaired driving legislation must discriminate between youth and adults. All too often, legislation is framed with the adult driver in mind and is consequently inapplicable for youths. For example, in Iowa, drivers arrested with a BAC level in excess of .20 are required to obtain substance abuse evalua-

tion. By the time youths reach a .20 BAC level, however, they are often incapacitated. Due to their lower alcohol tolerance, juveniles may have a serious dependency problem and require treatment even though they never exhibit a .20 BAC level. Therefore, the BAC level at which youth are sent for evaluation ought to be lower than the level established for adults.

The need for legislation to distinguish between youth and adults raises a theme that emerged as the hearings progressed. In many ways, youth impaired driving is a separate issue from adult drunk driving. The difference lies in both the problem and the solution. The problem is different in that the circumstances in which youth drink and drive differ from the circumstances of adult violators. As testifiers noted, youth exhibit a decided proclivity to risk-taking behavior; they are less experienced drivers; and they are highly sensitive to peer pressure. Differences in circumstances demand different solutions. Provisional licenses for youth under 21, lower BAC levels, and differing license sanctions are among the areas where legislation is needed to reduce the incidence of drinking and driving by youth.

COMMISSION RECOMMENDATIONS

Legislation

The following legislative measures should be enacted to deter impaired driving by youth:

- For youth under the legal drinking age, impairment should be defined as any blood alcohol level above 0.0 BAC.
 - Administrative per se license suspensions should be statutorily permitted.
 - Open container laws should be promulgated.
 - Strict sanctions should exist for the sale or transfer of alcoholic beverages to youths under the legal drinking age.
 - The manufacture of fraudulent driving licenses should be prohibited and punished severely.
 - In the absence of administrative action by the appropriate state agencies, state legislatures should consider legislation in the following areas:
 - 1) mandatory classroom instruction on alcohol use, other drug use, and impaired driving for grades K-12 together with curriculum guidelines for each grade level
 - 2) insurance rebates for drivers who take an approved driving risk reduction course and have a clean driving record
 - 3) mandatory component on alcohol use and impaired driving in driver education courses.
-

1988 Survey

Drinking and Driving Among American High School Seniors

Institute for Social Research
The University of Michigan
Ann Arbor, Michigan

	1982	1983	1984	1985	1986	1987
Percent Having Used Alcohol in Past 30 days:	69.7	69.4	67.2	65.9	65.3	66.4
Percent Drinking Five or More Drinks in a Row in Past Two Weeks:	40.5	40.8	38.7	36.7	36.8	37.5
Percent Driving After Drinking Alcohol:	—	—	31.2	29.0	26.8	26.6
Percent Driving After Having Five or More Drinks:	—	—	18.3	16.6	15.8	15.0
Percent Riding as Passenger After Driver Had Been Drinking Alcohol:	—	—	44.2	39.1	38.2	38.2
Percent Riding as Passenger After Driver Had Five or More Drinks:	—	25.4	21.5	21.2	21.9	
Percent of Seniors Using Seatbeltes When Driving:						
Never, Seldom	—	—	—	—	43.2	36.7
Always	—	—	—	—	25.0	33.0
Percent Reporting One or More Accidents in Past 12 Months:	22.2	22.2	22.8	24.4	25.1	25.6
Percent Having One or More Accidents After Alcohol Use in Past 12 Months:	3.3	3.0	2.8	2.7	2.2	2.5
Percent Reporting One or More Moving Violations in Past 12 Months:	24.8	27.1	26.5	27.6	30.4	31.7
Percent Cited for Moving Violation After Alcohol Use in Past 12 Months:	5.0	5.1	4.5	4.4	4.3	4.6

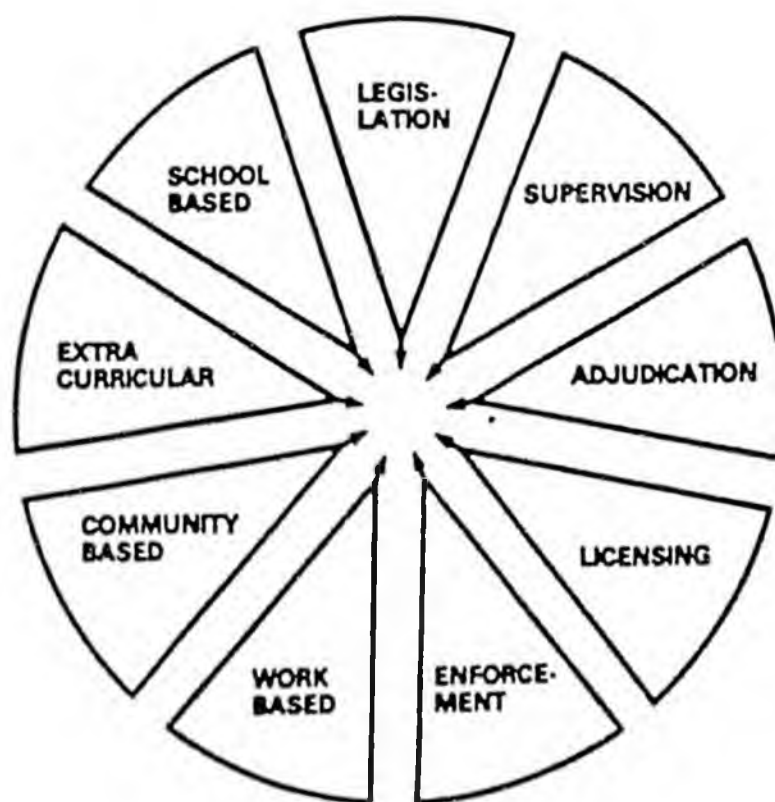
Youth Fatalities and Alcohol-Related Fatalities 1982-1987

	1982	1983	1984	1985	1986	1987	Percent Change From	
							1982-1987	1986-1987
<i>I. Youth (15-20) Fatalities</i>								
Total Fatalities	8508	7914	8101	7663	8553	8215	-3.4	-4.0
Alcohol-Related Fatalities	5380	4747	4718	4184	4642	4204	-21.9	-9.4
Percent	63.2	60.0	58.2	54.6	54.3	51.2	-19.1	-5.7
Fatalities with .10% BAC or Greater	4123	3617	3487	3048	3271	2888	-30.0	-11.7
Percent	48.5	45.7	43.0	39.8	38.2	35.2	-27.5	-8.1
<i>II. Young Drivers Involved in Fatal Crashes</i>								
Total Drivers	10080	9547	10046	9659	10470	10194	1.1	-2.6
Alcohol-Related Fatalities	4379	3966	3927	3387	3761	3356	-23.4	-10.8
Percent	43.4	41.5	39.1	35.1	35.9	32.9	-24.2	-8.4
Driver BAC .10% or Greater	3092	2789	2636	2276	2434	2109	-31.8	-13.4
Percent	30.7	29.2	26.2	23.6	23.2	20.7	-32.6	-11.0
<i>III. Young Drivers Killed</i>								
Total Drivers	4526	4252	4525	4281	4658	4583	1.3	-1.6
Alcohol Related Drivers	2501	2270	2294	2000	2210	1939	-22.5	-12.3
Percent	55.3	53.4	50.7	46.7	47.4	42.3	-23.4	-10.8
Driver BAC .10% or Greater	1953	1742	1712	1440	1571	1357	-30.5	-13.6
Percent	43.2	41.0	37.8	33.6	33.7	29.6	-31.4	-12.2
<i>IV. Youth Fatalities Involving Young Drivers</i>								
Total Fatalities	723	6296	6614	6175	6966	6737	0.2	-3.3
Alcohol-Related Fatalities	3753	3372	3416	2938	3338	2968	-20.9	-11.1
Percent	55.8	53.6	51.6	47.6	47.9	44.1	-21.1	-8.1
Driver BAC .10% or Greater	2763	2483	2403	2041	2248	1931	-30.1	-14.1
Percent	41.1	39.4	36.3	33.1	32.3	28.7	-30.3	-11.2

ATTACHMENT C
Youth Alcohol-Related Motor Vehicle Fatalities
1982 through 1987

YOUTH ALCOHOL-RELATED MOTOR VEHICLE FATALITIES

1982 - 1987



The figures and data contained in this package focus on impaired driving fatal crashes by young people, ages 15 through 20, from 1982 to 1987. The data chosen to illustrate this problem fall into four categories:

- o Youth Fatalities -- Those who died in motor vehicle crashes (drivers, passengers, or pedestrians) who were 15 to 20 years old. An "alcohol-related" fatality occurs if any driver or pedestrian involved in the crash had been drinking. The young person killed, therefore, may or may not have been drinking.
- o Young Drivers Involved in Fatal Crashes -- 15-to-20-year-old drivers involved in a crash that resulted in a fatality. These drivers may have survived the crash and the fatality may have been a youth or adult.
- o Young Drivers Killed -- 15-to-20-year-old drivers who were killed in a motor vehicle crash.
- o Youth Fatalities by Alcohol-Involvement of Young Drivers -- Youth who were killed in a motor vehicle accident in which a young person was driving. The fatality could have been the driver, a passenger, or a pedestrian 15 to 20 years old. The young driver involved in the crash may or may not have been "at fault."

The totals in these four categories are broken down by alcohol-related (A/R) involvement. If a fatality is alcohol-related, a driver or pedestrian had a measurable blood alcohol content (BAC). The alcohol involvement is further broken down to indicate if the BAC was between .01 and .09 percent (which is within the "legal limit" in most States) or if it was greater than or equal to .10 percent, which is over the legal limit in most States. (It should be noted that some States, such as Maine, Wisconsin, Rhode Island and New Mexico, have set lower BAC limits for young drivers.)

Some of this data have been graphed to highlight interesting trends or problem areas.

Generally, alcohol involvement in youth crashes has decreased since 1982. In fact, the largest decrease among all age groups has occurred within this population. Although adults (ages 21 and above for the purposes of this report) also experienced declines during this time period, it can be seen (Figures 9, 10 and 11) that the proportion of youth fatal crashes that were alcohol-involved declined at a greater rate. For instance, the percent of alcohol-related fatalities decreased for adults (21 and above) from 58.4 percent in 1982 to 53.2 percent in 1987 - an 8.9 percent reduction. During this same period, youth alcohol-related fatalities declined from 63.2 percent to 51.2 percent - a 19.1 percent reduction.

Unless otherwise noted, the sources of all data contained in this report are from the Fatal Accident Reporting System, National Center For Statistics And Analysis, National Highway Traffic Safety Administration and the current population surveys, Bureau of Census..

Prior to the availability of 1987 data, there was some concern that fatalities, crash involvement, and alcohol-related involvement in these crashes were on the rise once again. However, with the 1987 data included, it now appears that 1985 may have been a particularly good year (as was 1987) and that all three years ('85, '86 and '87) can be viewed as part of a general downward trend since 1982.

Since 1982 the population in the United States from ages 15 through 20 has decreased as has the driver-licensed population (Figure 12). Therefore, if the rate, per capita, at which young people are dying in crashes remained the same we would expect to see fewer deaths. In fact, based on their population, the rate at which young people are dying in alcohol-related crashes is declining (from 22 deaths per 100,000 in 1982 to 19 deaths per 100,000 in 1987, Figure 13). Although there has been a decline in the youth population since 1982 (down 8.4%), we have seen a greater decline in young alcohol-related fatalities during this same time (down 21.9%). This, in spite of the fact that total youth fatalities declined only 3.4%.

The rate at which young people are dying in non-alcohol related crashes should be highlighted. The numbers of young people dying, young drivers dying and young drivers involved in fatal non-alcohol crashes have all increased significantly since 1982 (Figures 1, 3, 5 and 7). The rate at which young people have been dying in these crashes has subsequently risen (Figure 13). Although the reason for this increase is not known, there may have been an increase in the number of vehicle miles traveled by this age group which would account for some of this increase. Since the rate of non-alcohol fatalities has risen and the rate of alcohol-related fatalities has declined slightly, we see a dramatic decline in the alcohol-related proportion of deaths and drivers involved compared to non-alcohol (Figures 2, 4, 6 and 8). Therefore, this decline in the proportion of alcohol-related deaths and crash involvement can be viewed as much a function of the increase in the rate of non-alcohol-related deaths as it can to the steady decline in the alcohol-related figures.

The overall rate that young people are dying in crashes has increased from 1982 to 1987 from 35 to 37 deaths per 100,000 population (Figure 15). The fact that the alcohol-related death rate has not also risen, in fact has declined from 22 to 19 deaths per 100,000 population, is a good indicator that we are making progress in this area of driving behavior.

Young people continue to be overrepresented in fatalities and as drivers in fatal crashes compared to the older population. This is true based on total population, driver licensed population and vehicle miles traveled (Figures 15, 16 and 17). This overrepresentation is in the form of both alcohol and non-alcohol involvement and in both cases is substantial. For instance, 77 young drivers per 100,000 young licensed drivers were involved in fatal crashes in 1987 (Figure 16). 25 of these drivers were alcohol-involved. In this same year, 34 adult drivers (over 20) were involved in fatal crashes per 100,000 adult licensed drivers. 11 of these adult drivers were alcohol-involved. Well over twice as many young drivers per licensed driving population were involved in alcohol and non-alcohol-involved crashes as were older drivers.

In summary, alcohol-involvement in fatalities and fatal crashes has decreased substantially since 1982 for young people. It should be recognized that the downward trend in alcohol-related crashes is magnified by the decrease in the youth population and the increase in non-alcohol-involved crashes by youth -- factors which moderate the impressive gains of the past six years. Compared to the older population, alcohol-involvement in fatal crashes has declined at a greater rate for youth, although youth are still overrepresented in these crashes.

IMPAIRED DRIVING BY THE YOUNG -- FACTS

- o Drinking and driving continues to be the number one killer of teenagers. More than 40 percent of all deaths for people ages 15 to 20, result from motor vehicle crashes. About half of these motor vehicle fatalities involve alcohol. Thus, drinking and driving accounts for about 20 percent of all fatalities in this age group.
- o 2,910 young (15 to 20) passengers were killed in motor vehicle crashes in 1987 - 25 percent of all passenger deaths for that year.
- o Although 15 to 20 year old drivers represented only 8% of the total driving population in 1987, they represented 17% of the drivers involved in alcohol-related fatal crashes.
- o The proportion of drivers, age 15 to 20, involved in fatal crashes who were intoxicated decreased from 31 percent in 1982 to 21 percent in 1987. The reduction in the proportion intoxicated from 1982 to 1987 is 32 percent - the largest of any age group.
- o The proportion of fatally injured drivers, aged 15 to 20, that were intoxicated decreased from 43 percent in 1982 to 30 percent in 1987. The reduction in the proportion intoxicated from 1982 to 1987 was 31 percent -- the largest of any age group.
- o Young people, aged 15 to 20, are overrepresented in involvement and deaths in fatal crashes compared to the older population. The rate of involvement is significantly greater for young people for both alcohol and non-alcohol-related crashes based on the total population, licensed driver population or amount of vehicle miles traveled.
- o The population of the United States, ages 15 through 20, has decreased from 24.2 million in 1982 to 22.2 million in 1987 -- a decrease of 8.4 percent. During this same time period, motor vehicle fatalities for this age group decreased only 3.4 percent, while alcohol-related fatalities decreased 21.9 percent.

Figure 1
Youth Fatalities – Ages 15 to 20
Motor Vehicle Deaths, 1982 to 1987

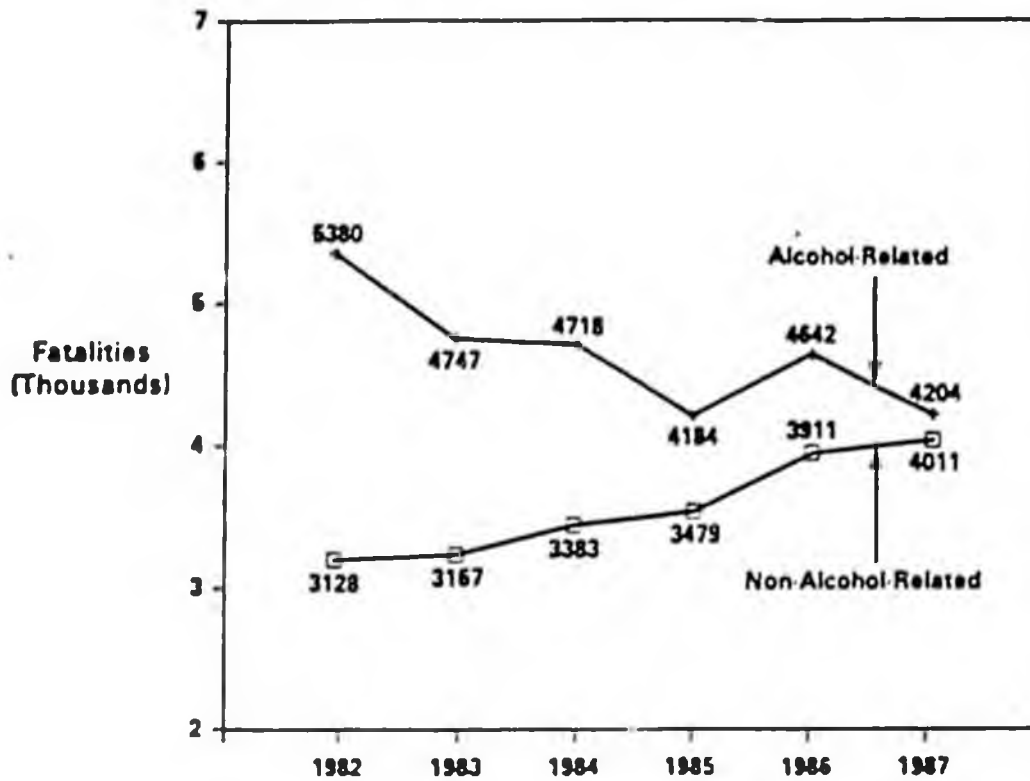


Figure 2
Youth Fatalities – Ages 15 to 20
Alcohol-Related Percent of Deaths

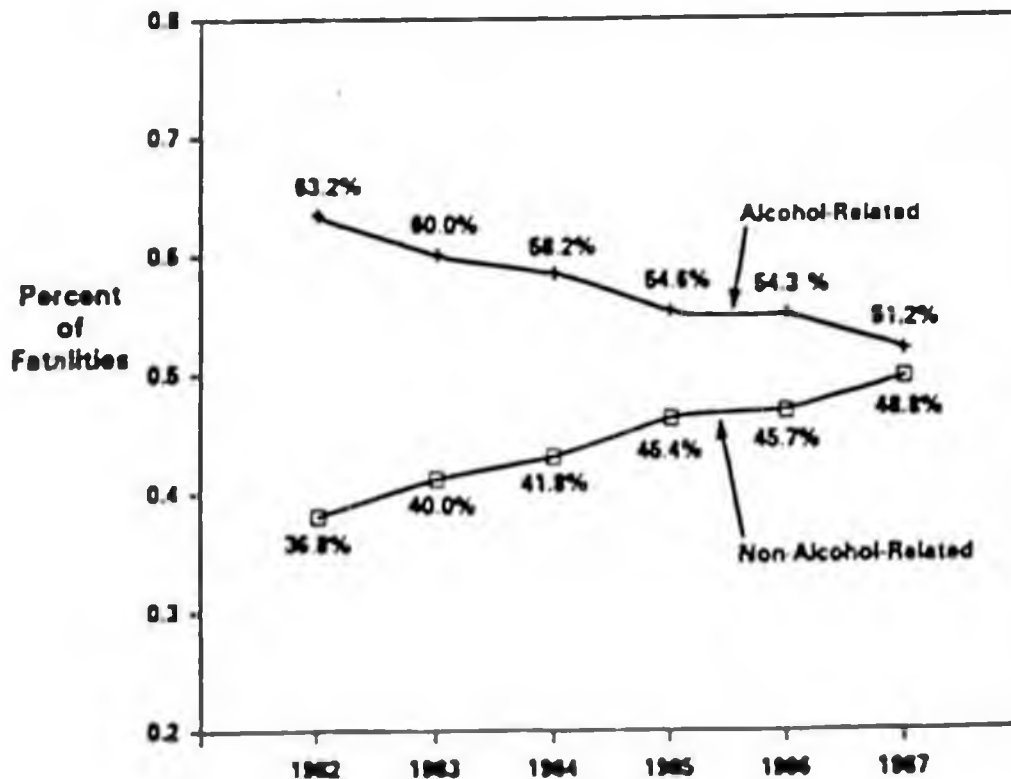


Figure 3
Youth Fatalities Involving a Young Driver
Ages 15 to 20

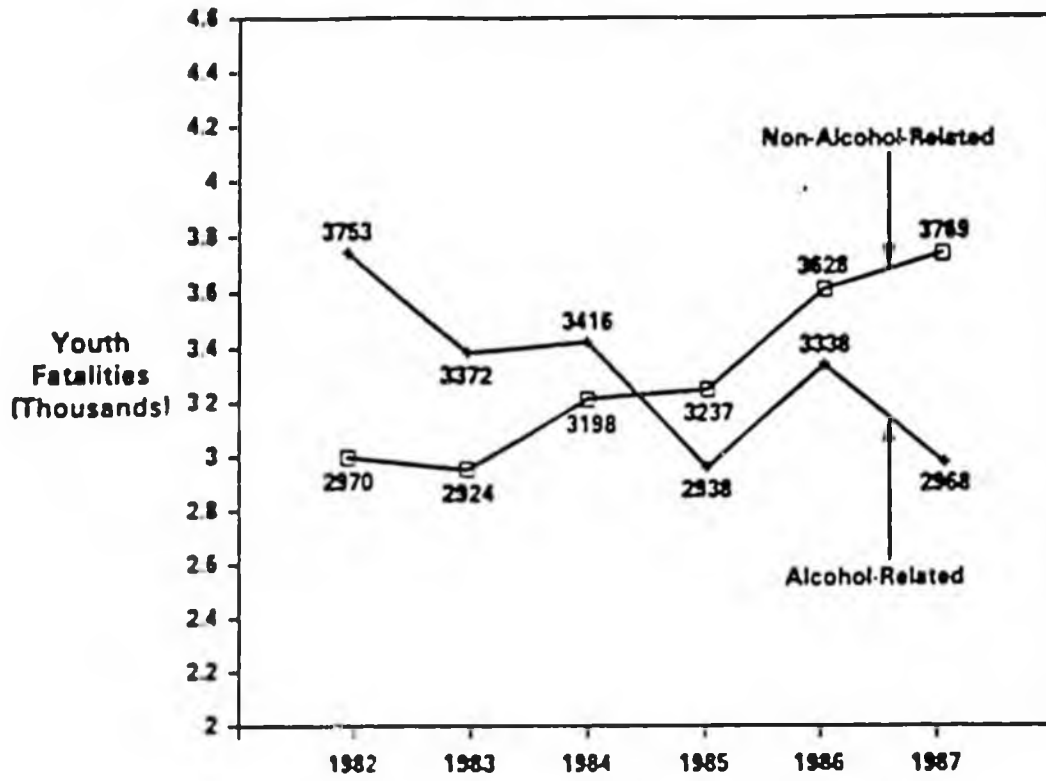


Figure 4
Youth Fatalities Involving a Young Driver
Percent of Total by Alcohol Involvement

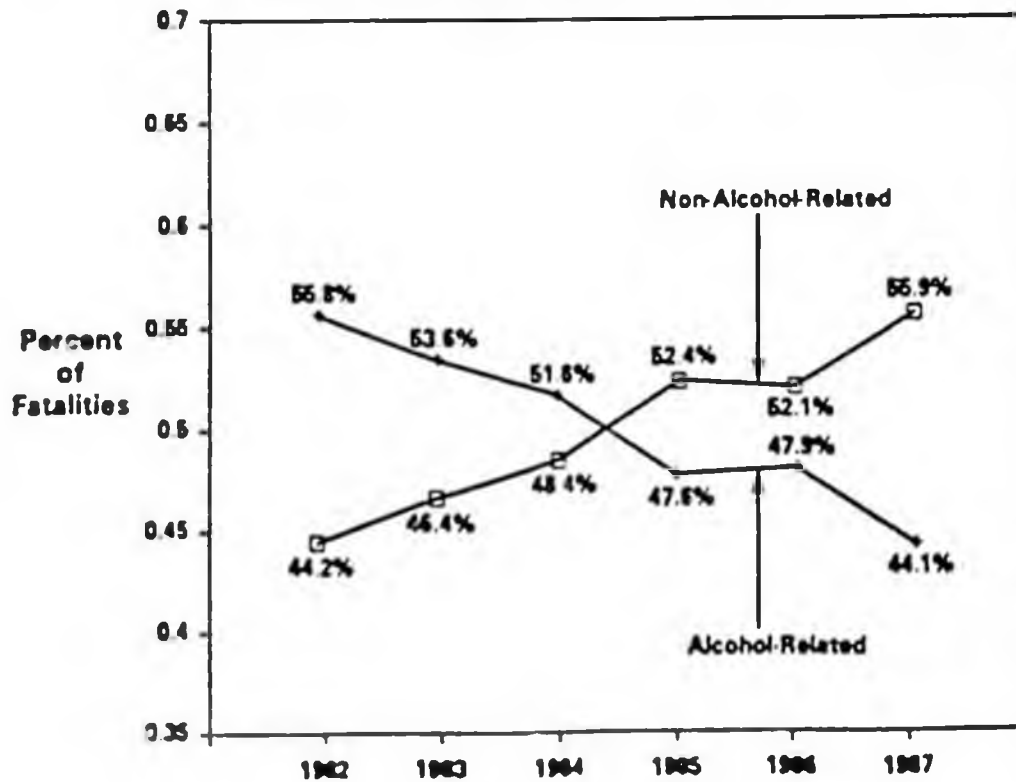


Figure 5
Young Drivers – Ages 15 to 20
Number Involved in Fatal Crashes: 1982-1987

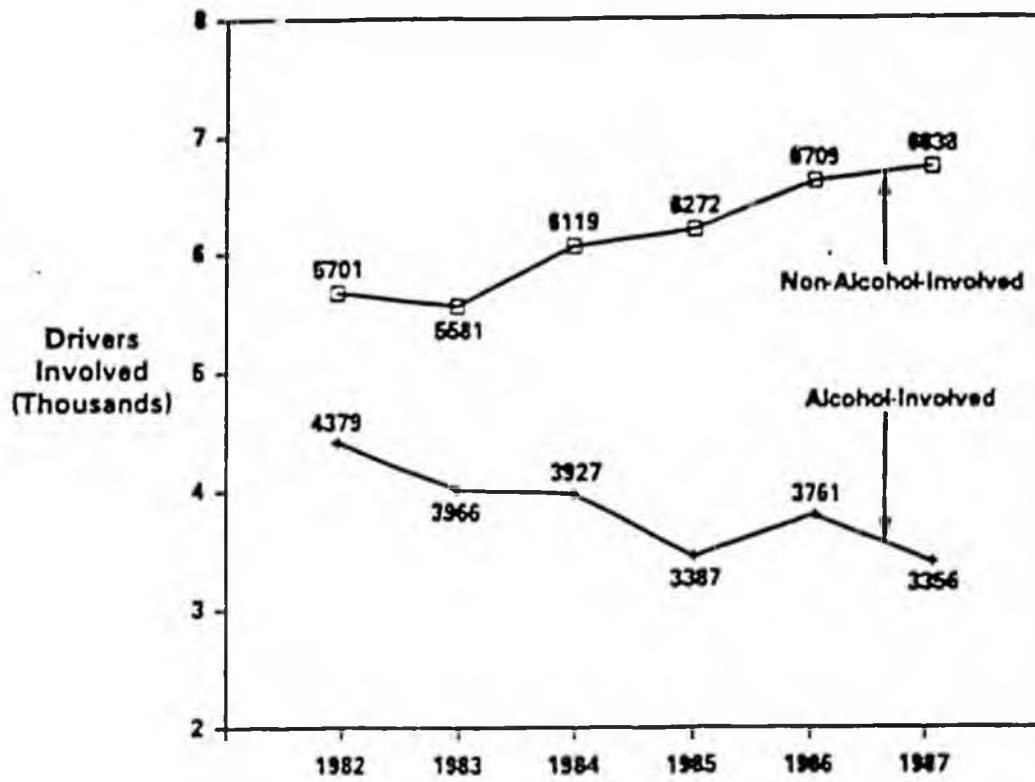


Figure 6
Young Drivers – Ages 15 to 20
Percent Involved in Fatal Crashes by Alcohol Involvement: 1982-1987

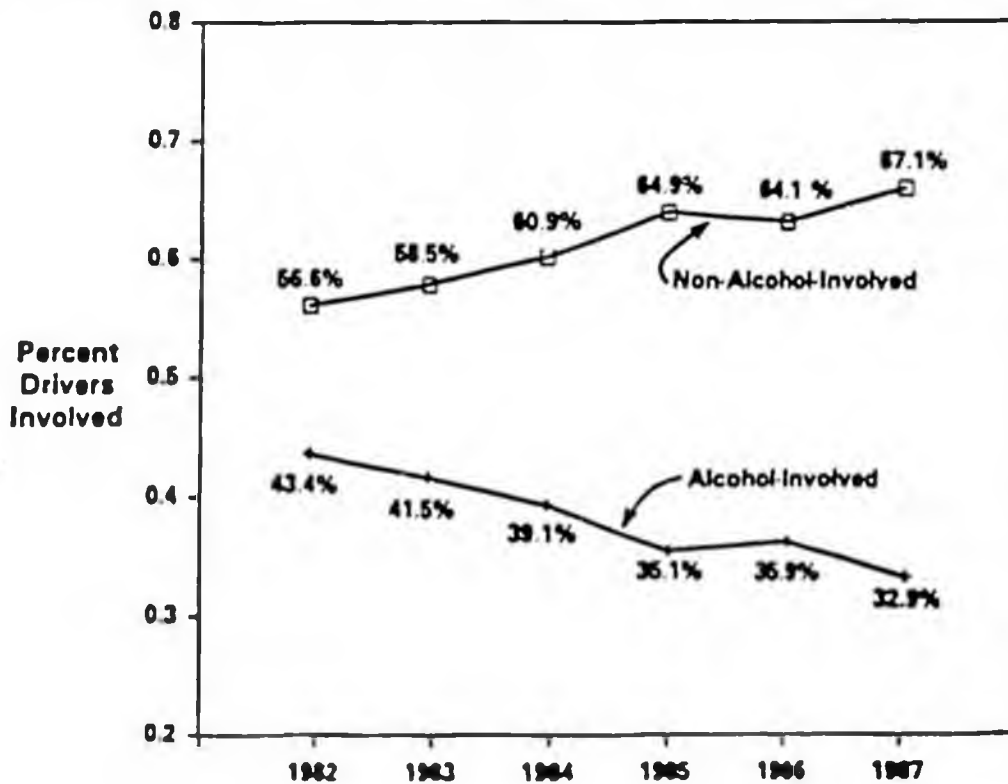


Figure 7
Young Drivers Killed
Ages 15 to 20

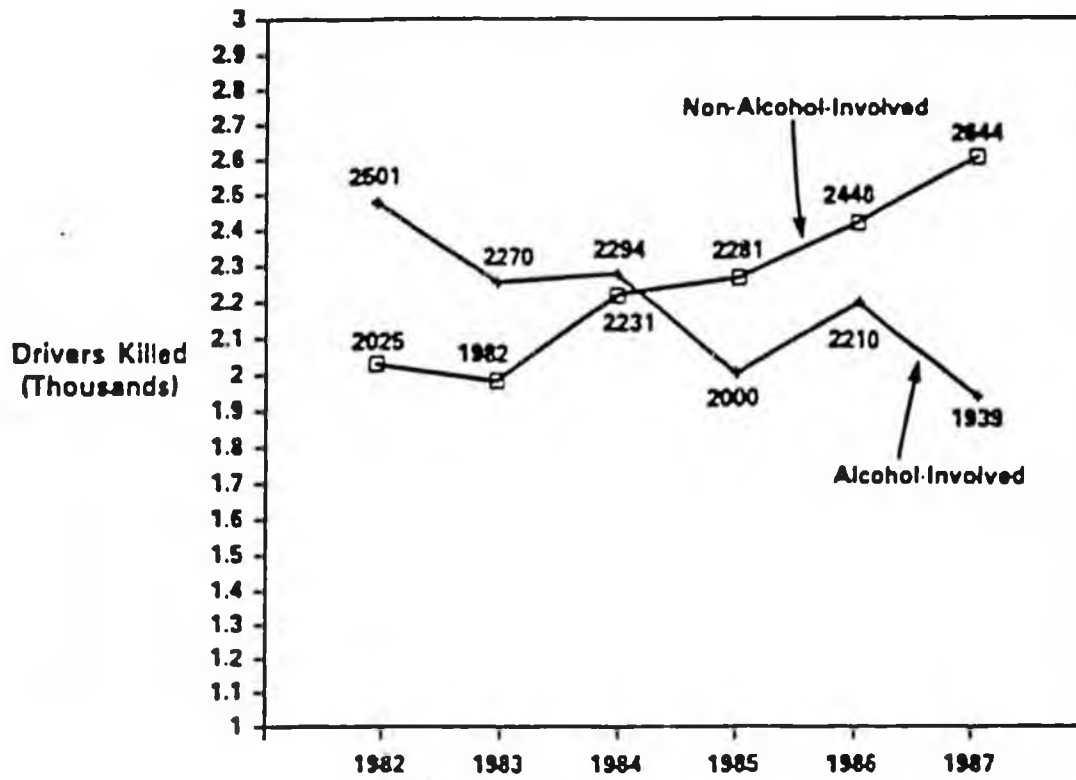


Figure 8
Young Drivers Killed
Percent Killed in Fatal Crashes by Alcohol Involvement

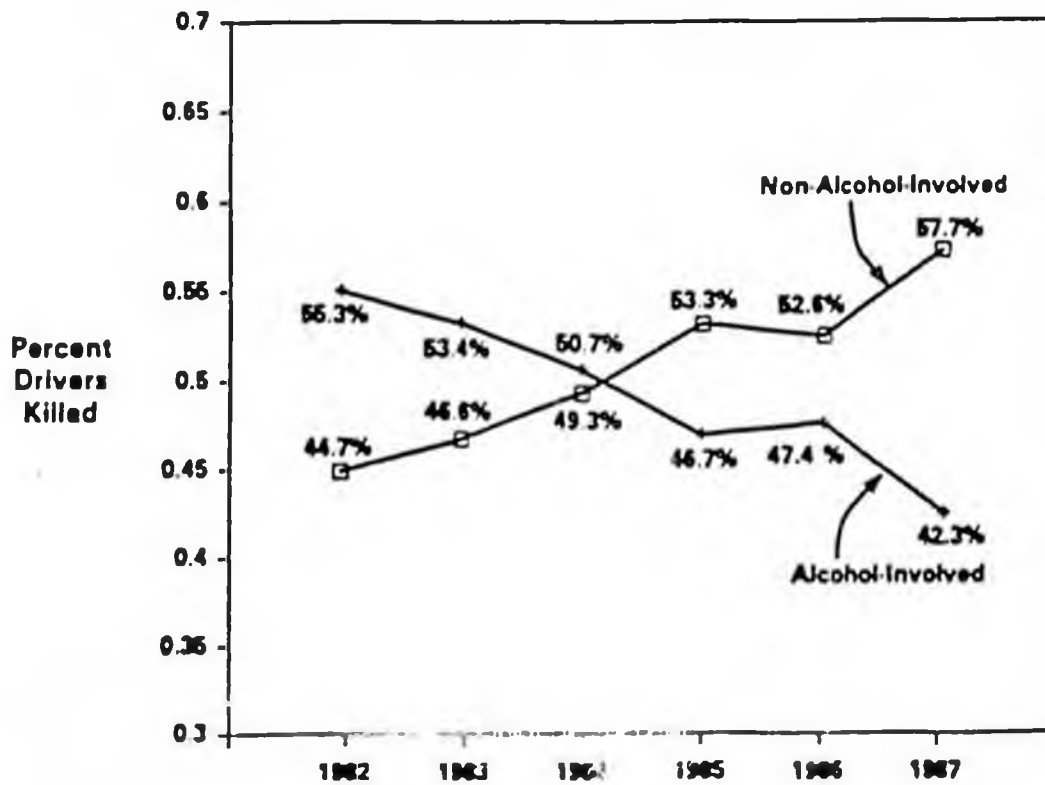


Figure 9
Youth vs Adult Motor Vehicle Fatalities
Alcohol-Related Percent of Each Total

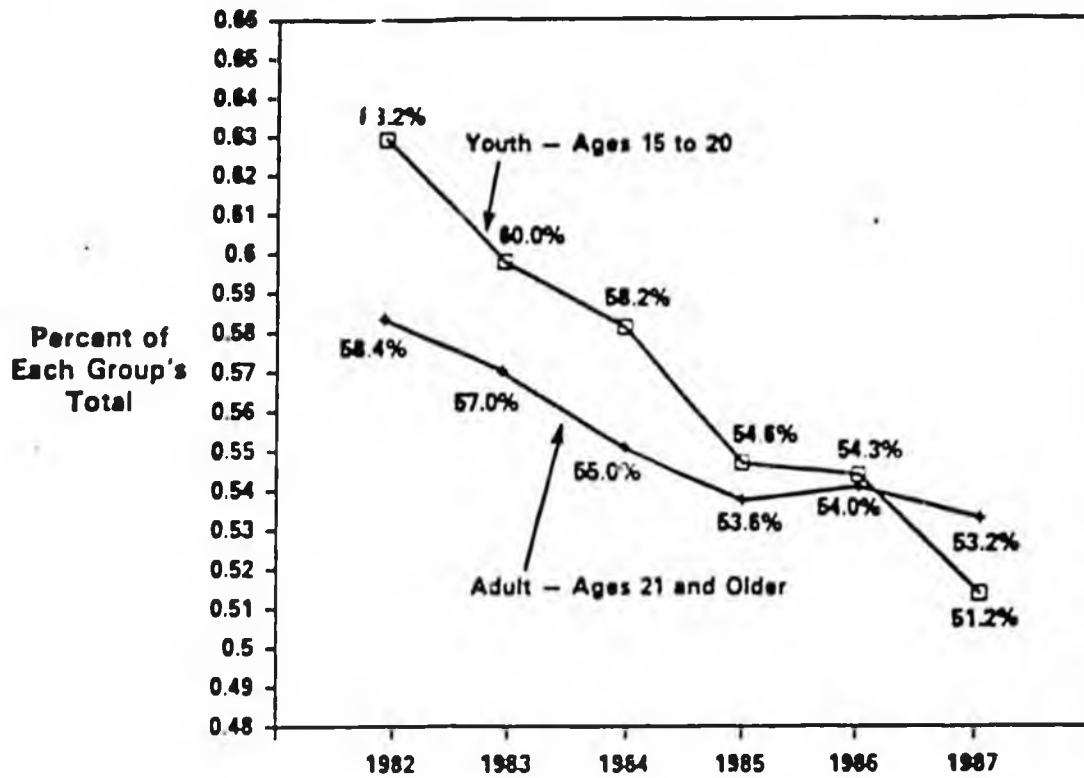


Figure 10
Youth vs Adult Drivers in Fatal Crashes
Alcohol-Related Percent of Each Total

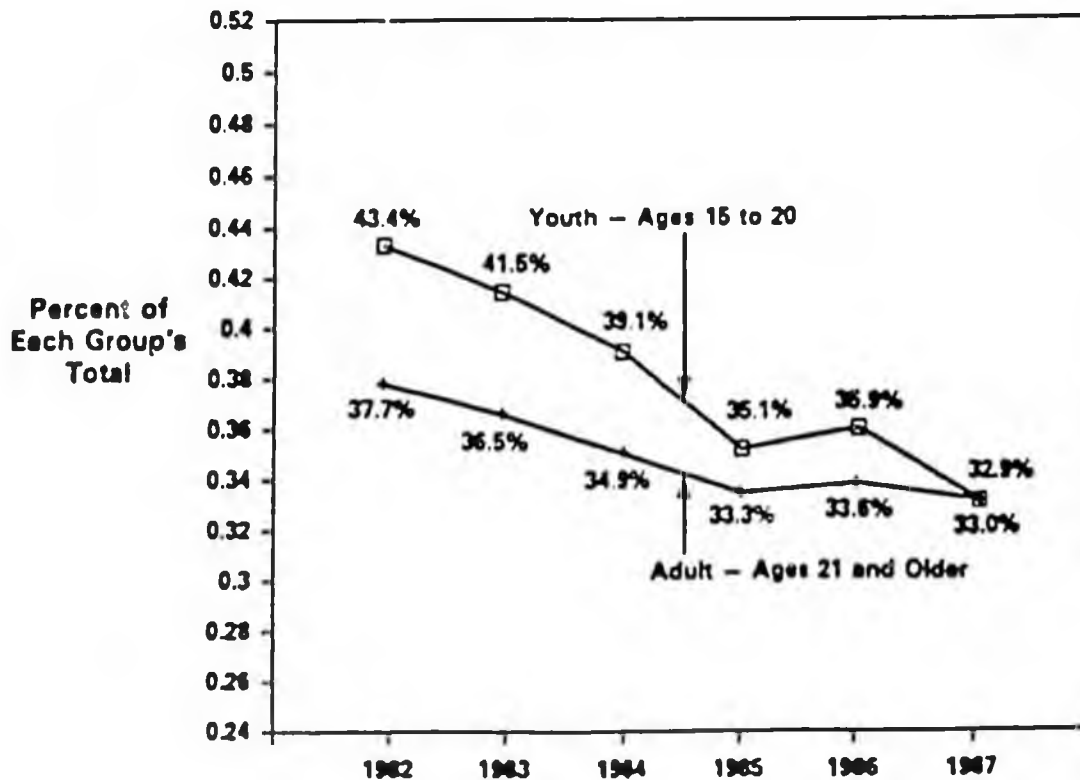


Figure 11
Youth vs Adult Drivers Killed
Alcohol-Related Percent of Each Total

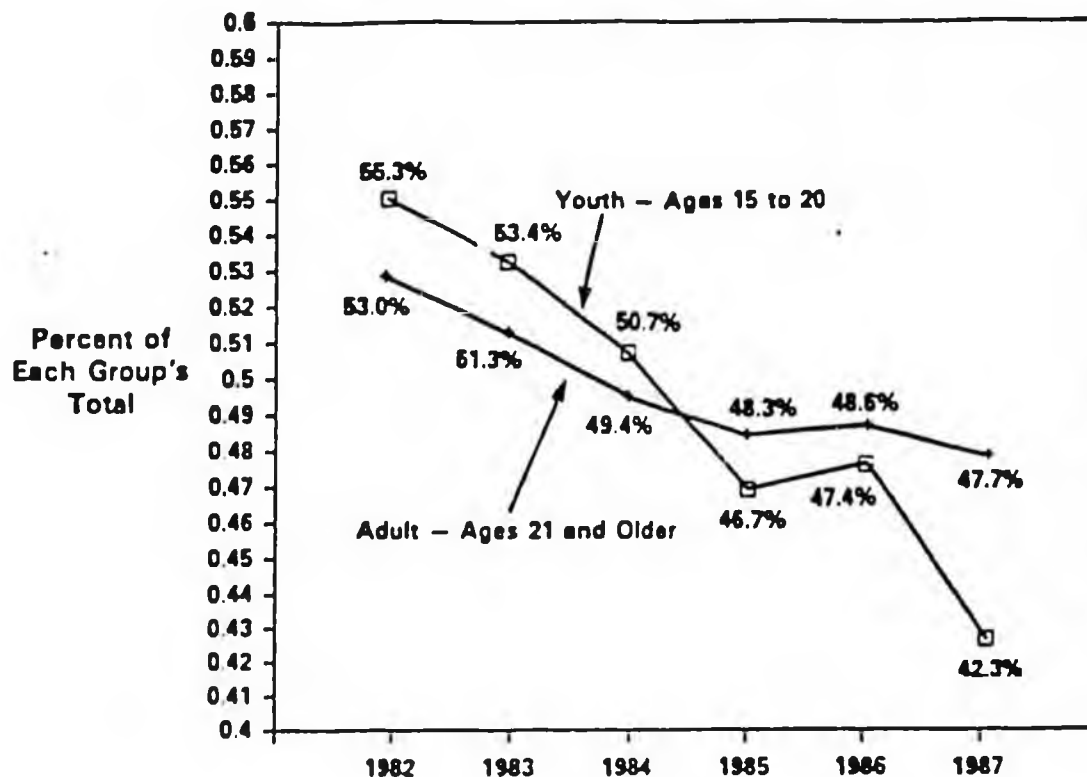


Figure 12
Youth Population — Ages 15 to 20
Total Population and Number of Licensed Drivers

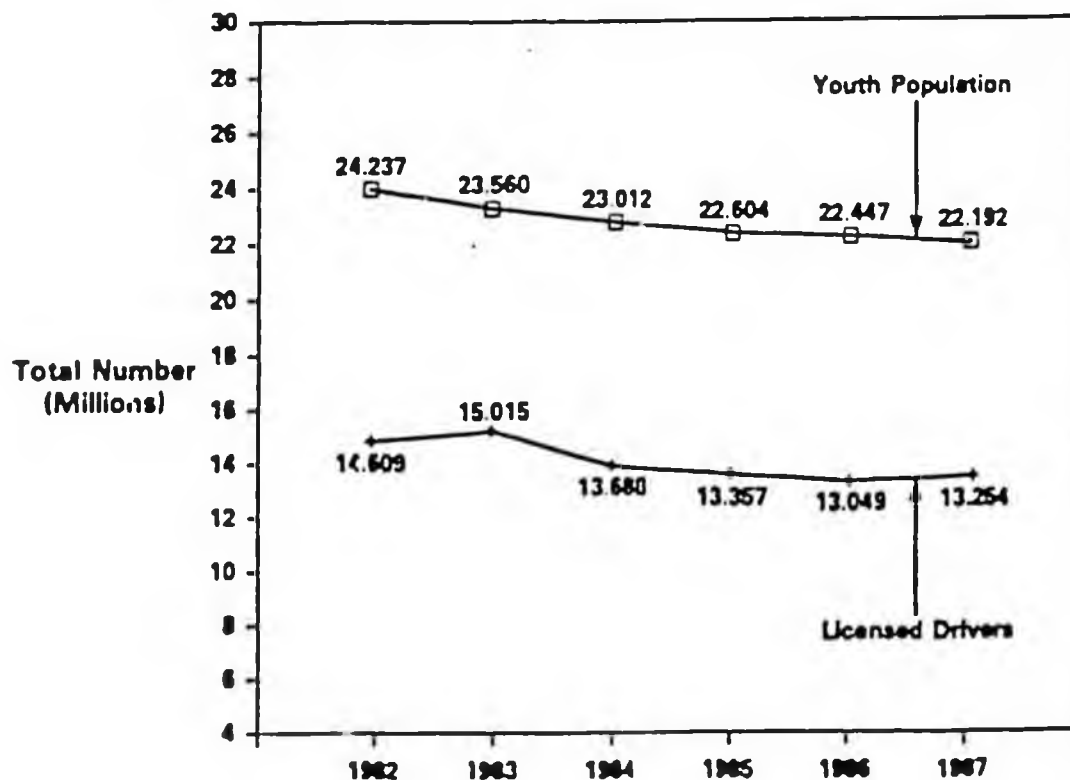


Figure 13
Youth Crash Fatality Rate — Ages 15 to 20
Number of Young People Killed Per 100,000 Population

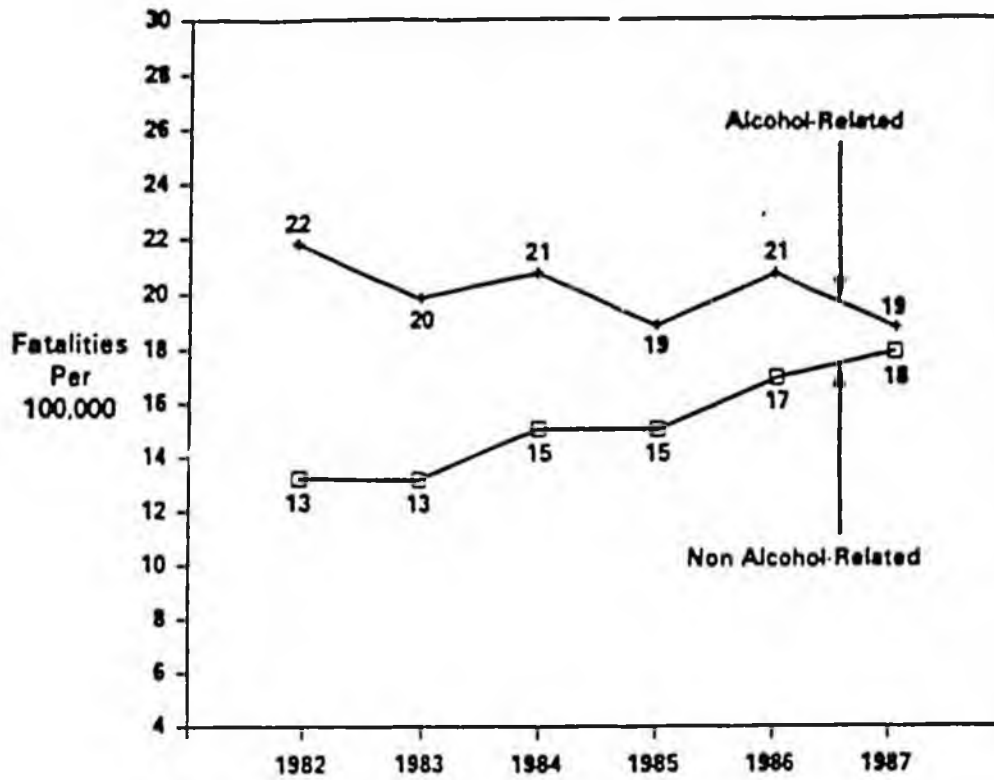


Figure 14
Young Drivers Involved in Fatal Crashes — Ages 15 to 20
Per 100,000 Young Licensed Drivers

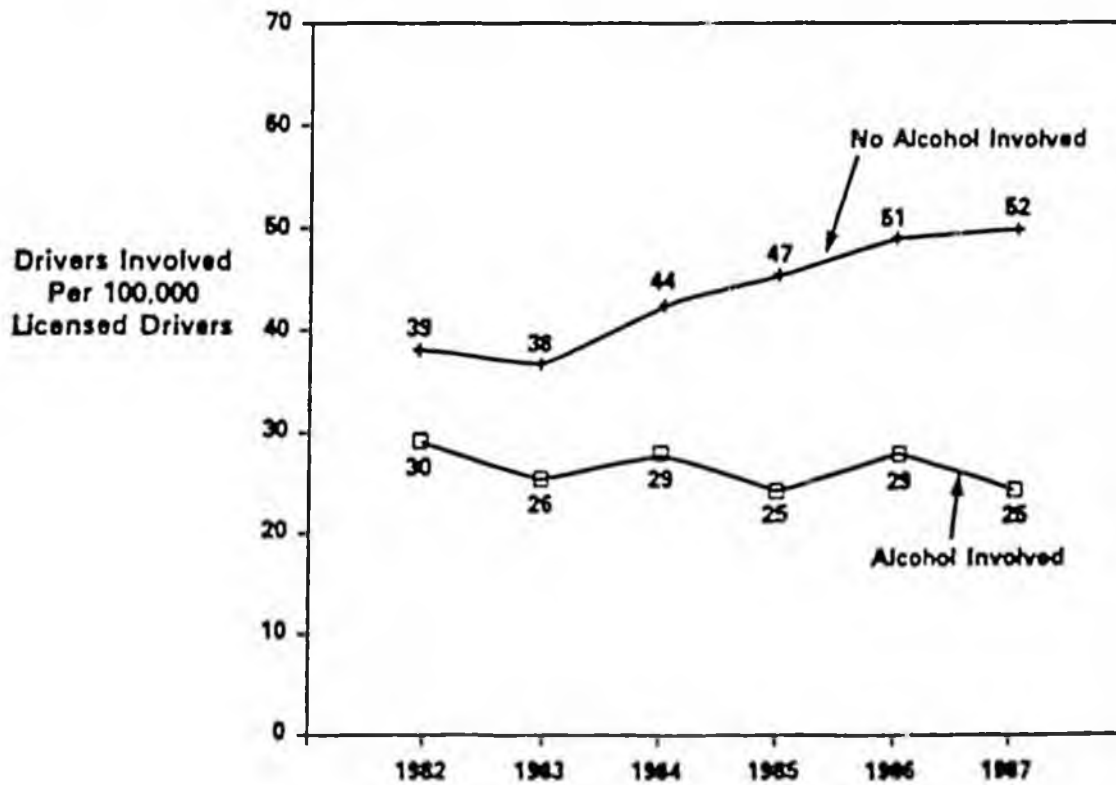


Figure 15

Crash Fatality Rate: Adult vs Youth

Numbers Killed Per 100,000 Population

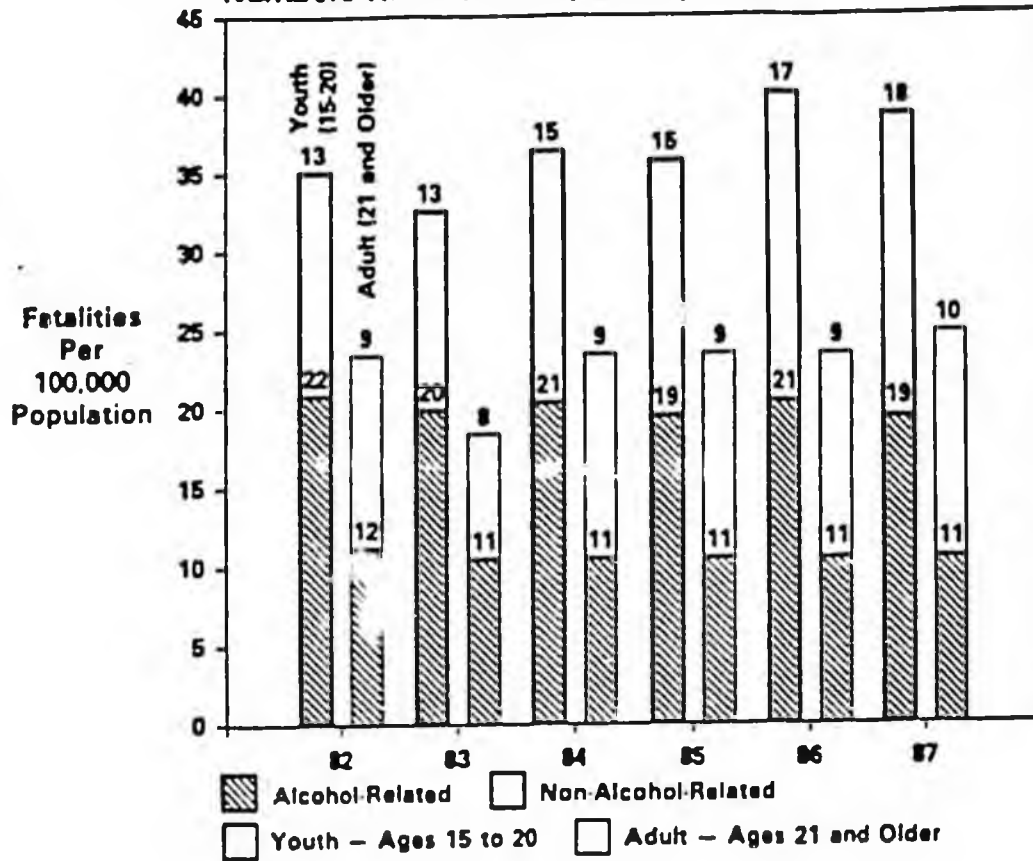


Figure 16

Drivers Involved in Fatal Crashes

Number Involved Per 100,000 Driver License Population

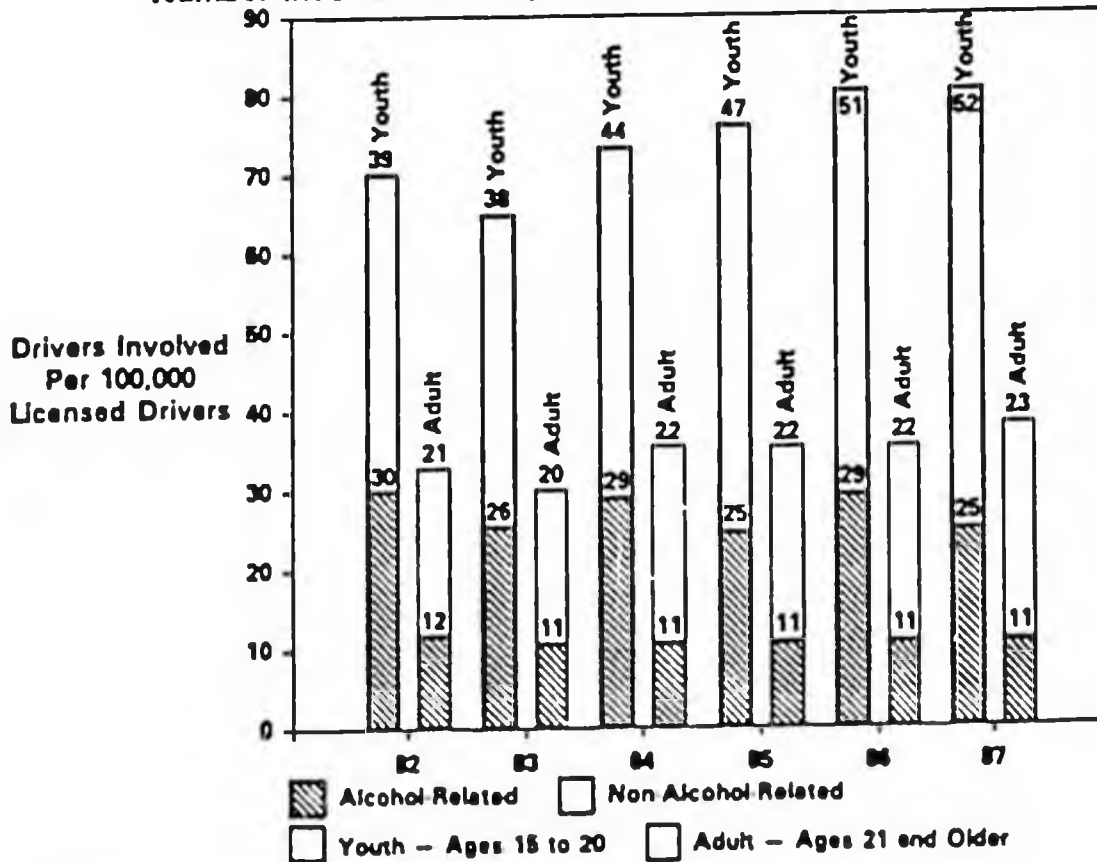


Figure
Drivers Involved in Fatal Crashes — 1985
 Number Per 100 Million Vehicle Miles Traveled

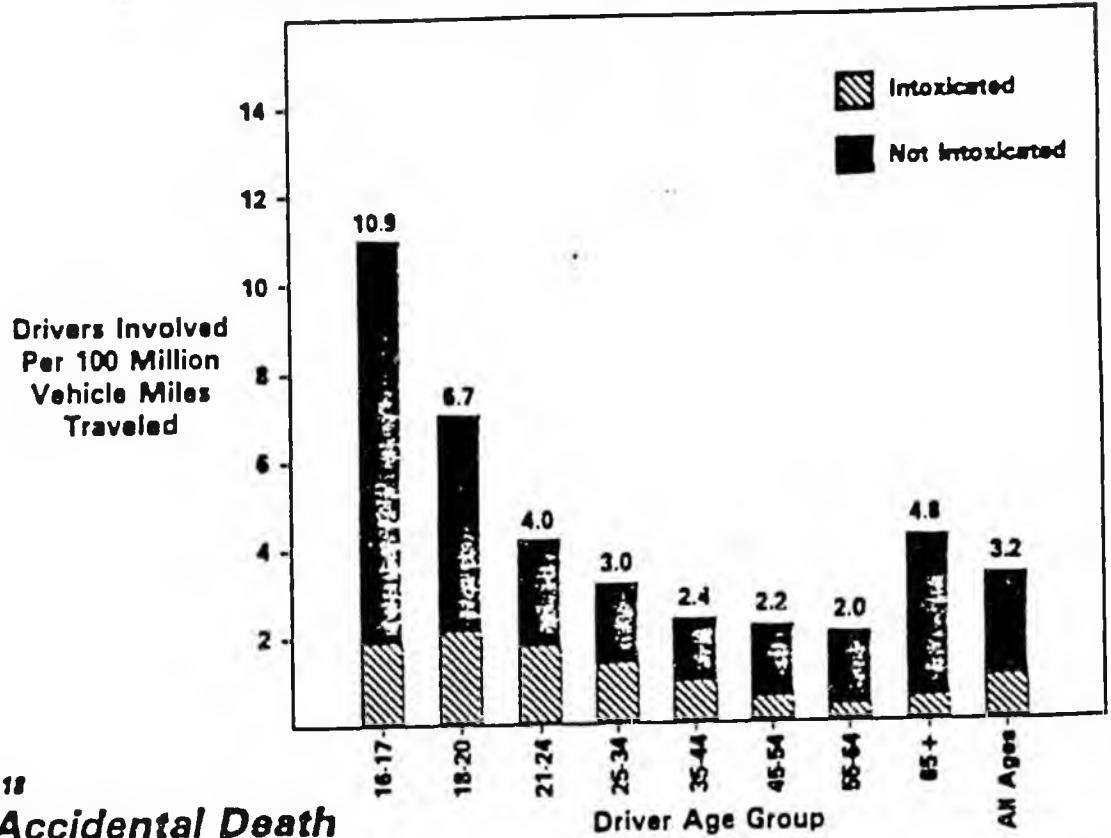
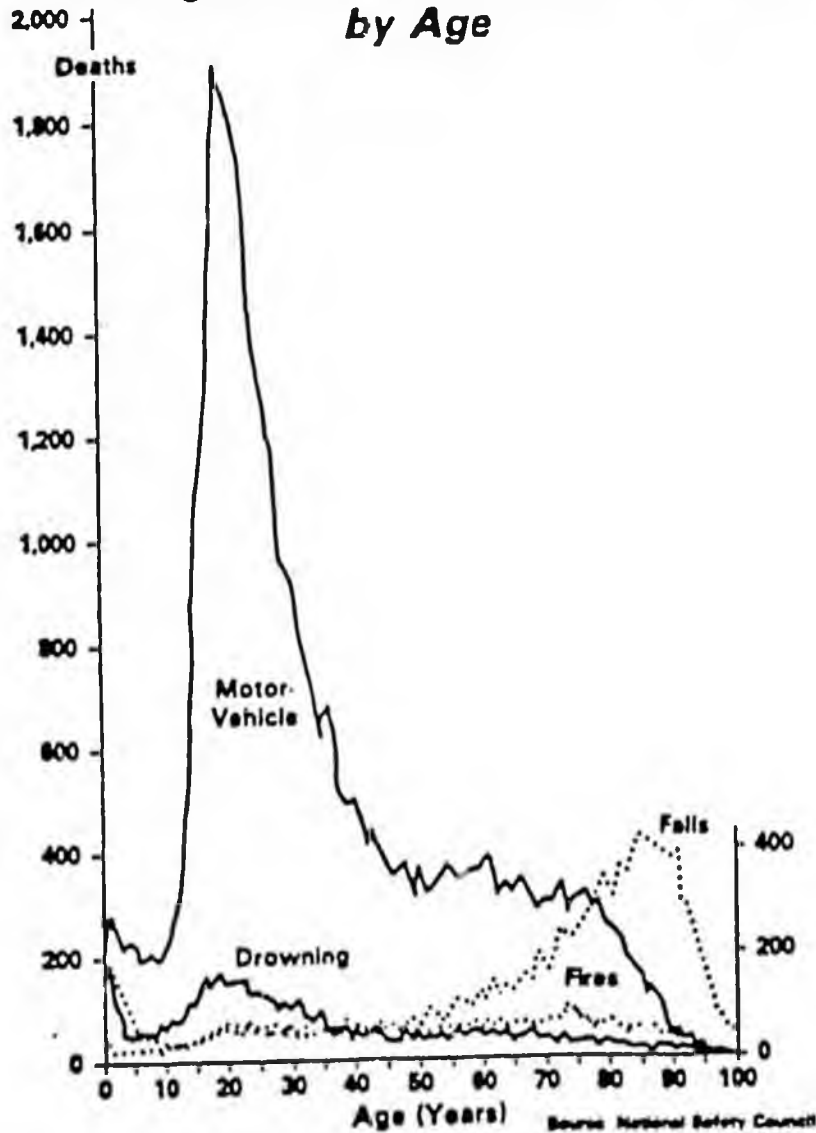


Figure 18

Leading Causes of Accidental Death by Age



Youth Fatalities and A/R Fatalities 1982-1987
Ages 15 Through 20

	1982	1983	1984	1985	1986	1987	Pct. Change Fr:	
	-----	-----	-----	-----	-----	-----	1982	1986

I. Youth (15-20) Fatalities								

Total Fatalities	8508	7914	8101	7663	8553	8215	-3.4%	-4.0%
A/R Fatalities	5380	4747	4718	4184	4642	4204	-21.9%	-9.4%
	63.2%	60.0%	58.2%	54.6%	54.3%	51.2%	-19.1%	-5.7%
.01-.09 BAC Fatalis	1257	1130	1231	1136	1371	1316	4.7%	-4.0%
	14.8%	14.3%	15.2%	14.8%	16.0%	16.0%	8.4%	-0.1%
>=.10 BAC Fatalis	4123	3617	3487	3048	3271	2888	-30.0%	-11.7%
	48.5%	45.7%	43.0%	39.8%	38.2%	35.2%	-27.5%	-8.1%
II. Young Drivers Involved in Fatal Crashes								

Total Drivers	10080	9547	10046	9659	10470	10194	1.1%	-2.6%
A/R Drivers	4379	2966	3927	3387	3761	3356	-23.4%	-10.8%
	43.4%	41.5%	39.1%	35.1%	35.9%	32.9%	-24.2%	-8.4%
.01-.09 Drivers	1287	1177	1291	1111	1327	1247	-3.1%	-6.0%
	12.8%	12.3%	12.9%	11.5%	12.7%	12.2%	-4.2%	-3.5%
>=.10 Drivers	3092	2789	2636	2276	2434	2109	-31.8%	-13.4%
	30.7%	29.2%	26.2%	23.6%	23.2%	20.7%	-32.6%	-11.0%
III. Young Drivers Killed								

Total Drivers	4526	4252	4525	4281	4658	4583	1.3%	-1.6%
A/R Drivers	2501	2270	2294	2000	2210	1939	-22.5%	-12.3%
	55.3%	53.4%	50.7%	46.7%	47.4%	42.3%	-23.4%	-10.8%
.01-.09 Drivers	548	528	582	560	639	582	6.2%	-8.9%
	12.1%	12.4%	12.9%	13.1%	13.7%	12.7%	4.9%	-7.4%
>=.10 Drivers	1953	1742	1712	1440	1571	1357	-30.5%	-13.6%
	43.2%	41.0%	37.8%	33.6%	33.7%	29.6%	-31.4%	-12.2%
IV. Youth Fatalities by Alcohol Involvement of Young Drivers								

Total Fatalities	6723	6296	6614	6175	6966	6737	0.2%	-3.3%
A/R Fatalities	3753	3372	3416	2938	3338	2968	-20.9%	-11.1%
	55.8%	53.6%	51.6%	47.6%	47.9%	44.1%	-21.1%	-8.1%
.01-.09 Fatalities	990	889	1013	897	1090	1037	4.7%	-4.9%
	14.7%	14.1%	15.3%	14.5%	15.6%	15.4%	4.5%	-1.6%
>=.10 Fatalities	2763	2483	2403	2041	2248	1931	-30.1%	-14.1%
	41.1%	39.4%	36.3%	33.1%	32.3%	28.7%	-30.3%	-11.2%

Youth Fatalities and A/R Fatalities 1982-1987
Ages 15 Through 20

	1982	1983	1984	1985	1986	1987	Pct. Change Fr:	
	-----	-----	-----	-----	-----	-----	1982	1986
	-----	-----	-----	-----	-----	-----	-----	-----
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>=.10 Fatalities	2763	2483	2403	2041	2248	1931	-30.1%	-14.1%
	41.1%	39.4%	36.3%	33.1%	32.3%	28.7%	-30.3%	-11.2%

TEEN BLOOD ALCOHOL LEVELS

NOT A DROP ALLOWED. OREGON TELLS TEEN DRIVERS

Teens caught driving after drinking in Oregon after October 3 will be held to a tough new standard: a 0.00 percent blood alcohol level. Teens who register any blood alcohol have their licenses automatically suspended for 90 days. The potential punishment escalates steeply if the teen refuses the test, is prosecuted or is a repeat offender.

With the change, Oregon becomes only the fourth state to adopt the strictest possible rule for blood alcohol levels in teen drivers, according to Mothers Against Drunk Driving. Known as "not-a-drop" laws, they also have been adopted by Maine, North Carolina and Wisconsin. The average standard for

adults nationwide is 0.10. In 1988, there were 23,352 alcohol-related driving fatalities in this country, says Anne Russell, assistant director of public affairs for MADD. Nearly 1,500 of those involved teen drivers.

Oregon's law was spurred by a spate of fatal accidents involving teens and drinking at the end of 1988, says Joan Plank of the Oregon Department of Motor Vehicles.

The crackdown is a welcome trend, says Russell.

"If anything, states have tended to treat teen drunk drivers more lightly than someone older," she says.

Not that states are completely complacent. A number have recently passed laws calling for suspending the licenses of minors caught trying to buy alcohol with false identification. Several have also set lower blood alcohol levels for teens than adults in judging them drunk, but not zero.

North Carolina's not-a-

drop law, in effect since 1983, has had dramatic results, leading to a 60 percent decrease in the incidence of teen drivers involved in alcohol-related crashes, says John Lacey, program manager for alcohol studies at the University of North Carolina Highway Safety Research Center. Not only has it had an effect among those 18 and under, but statistics for those aged 19 and above have shown hefty decreases as well. —JW

GOVERNING MAGAZINE
OCT. 19
P. 12-13

H B

238

HOUSE COMMITTEE REPORT

f/20
Rules

(7)

Date Referred: March 23, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/19/89

The JUDICIARY Committee considered:

HB 238

HOUSE BILL NO. 238 [SEXUAL ABUSE OF MINORS/CIVIL ACTIONS]
"An Act extending to three years the statute of limitations for civil actions brought by victims of sexual abuse, and relating to causes of action brought by adult victims based on injury suffered as a result of sexual abuse during childhood and the statute of limitations applicable to those causes of action; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 238 (JUD) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis Law zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

Signature	Name	Do Not Pass	No Rec	Amend
<i>[Signature]</i>	MARTIN		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	ELLIS		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	M. DAVIS		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	GOLL		<input checked="" type="checkbox"/>	

[Signature]
CO Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: An act eliminating age limits ... in crimes of sexual assault ...	BRU:	Trial Courts
Sponsor: Ulmer, Goll & Collins	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING						

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds						
Federal Funds						
Other						
TOTAL						

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 10/02/89

Date: 10/02/89

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Original sponsors: Ulmer, Goll,
and Collins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 238 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act eliminating the age limitations in the defi-
7 nitions of crimes of sexual assault and the dis-
8 tinctions between types of first degree sexual as-
9 sult in certain criminal statutes; relating to
10 causes of action brought by adult victims based on
11 injury suffered as a result of sexual abuse during
12 childhood and to the statute of limitations applica-
13 ble to those causes of action; extending the period
14 in which civil actions are tolled for persons with
15 mental disabilities, and extending to three years the
16 statute of limitations for civil actions brought by
17 victims of sexual abuse; and providing for an effec-
18 tive date."

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

20 * Section 1. AS 09.10.060 is amended by adding a new subsection to
21 read:

22 (c) A person who was the victim of sexual abuse may not maintain
23 an action for recovery of damages against the perpetrator of the act
24 or acts of sexual abuse based on the perpetrator's intentional conduct
25 for an injury or condition suffered as a result of the sexual abuse
26 unless commenced within three years. In this subsection, "sexual
27 abuse" means an act committed by the defendant against the plaintiff
28 maintaining the cause of action if the defendant's conduct would have
29 violated the provisions of AS 11.41.410 - 11.41.440 or 11.41.450 -

1 11.41.455 at the time it was committed.

2 * Sec. 2. AS 09.10.140 is amended to read:

3 Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a
4 person entitled to bring an action mentioned in this chapter is at the
5 time the cause of action accrues either (1) under the age of majority,
6 or (2) incompetent by reason of mental illness or mental disability,
7 the time of a [THE] disability identified in (1) or (2) of this sec-
8 tion is not a part of the time limit [LIMITED] for the commencement of
9 the action. Except as provided in (b) of this section, the [THE]
10 period within which the action may be brought is not extended in any
11 case longer than two years after the disability ceases.

12 * Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

13 (b) An action based on a claim of sexual abuse under AS 09.55.-
14 650 may be brought more than three years after the plaintiff reaches
15 the age of majority if it is brought under the following circumstan-
16 ces:

17 (1) if the claim asserts that the defendant committed one
18 act of sexual abuse on the plaintiff, the plaintiff shall commence the
19 action within three years after the plaintiff discovered or through
20 use of reasonable diligence should have discovered that the act caused
21 the injury or condition;

22 (2) if the claim asserts that the defendant committed more
23 than one act of sexual abuse on the plaintiff, the plaintiff shall
24 commence the action within three years after the plaintiff discovered
25 or through use of reasonable diligence should have discovered the
26 effect of the injury or condition attributable to the series of acts;
27 a claim based on an assertion of more than one act of sexual abuse is
28 not limited to plaintiff's first discovery of the relationship between
29 any one of those acts and the injury or condition, but may be based on

1 plaintiff's discovery or constructive knowledge of the effect of the
2 series of acts.

3 * Sec. 4. AS 09.55 is amended by adding a new section to read:

4 ARTICLE 8. ACTIONS BY A VICTIM BASED ON
5 SEXUAL ABUSE AS A MINOR.

6 Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A MINOR. (a) A
7 person who, as a minor, was the victim of sexual abuse may maintain an
8 action for recovery of damages against the perpetrator of the act or
9 acts of sexual abuse based on the perpetrator's intentional conduct
10 for an injury or condition suffered as a result of the sexual abuse.

11 (b) If the defendant committed more than one act of sexual abuse
12 on the plaintiff, the plaintiff is not required to prove which specif-
13 ic act caused the injury.

14 (c) In this section,

15 (1) "minor" means a person under 16 years of age;

16 (2) "sexual abuse" means an act committed by the defendant
17 against the plaintiff maintaining the cause of action if the defen-
18 dant's conduct would have violated the provisions of AS 11.41.410 -
19 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120, 11.15.134, or
20 11.15.160, or former AS 11.40.110 at the time it was committed.

21 * Sec. 5. AS 11.41.110(a) is amended to read:

22 (a) A person commits the crime of murder in the second degree if

23 (1) with intent to cause serious physical injury to another
24 person or knowing that the conduct is substantially certain to cause
25 death or serious physical injury to another person, the person causes
26 the death of any person;

27 (2) the person knowingly engages in conduct that results in
28 the death of another person under circumstances manifesting an extreme
29 indifference to the value of human life; or

1 (3) acting either alone or with one or more persons, the
2 person commits or attempts to commit arson in the first degree, kid-
3 napping, sexual assault in the first degree [UNDER AS 11.41.410(a)(1)
4 OR (2)], sexual assault in the second degree, burglary in the first
5 degree, escape in the first or second degree, or robbery in any degree
6 and, in the course of or in furtherance of that crime, or in immediate
7 flight from that crime, any person causes the death of a person other
8 than one of the participants.

9 * Sec. 6. AS 11.41.300(d) is amended to read:

10 (d) In a prosecution for kidnapping, it is an affirmative de-
11 fense which reduces the crime to a class A felony that the defendant
12 voluntarily caused the release of the victim alive in a safe place
13 before arrest, or within 24 hours after arrest, without having caused
14 serious physical injury to the victim and without having engaged in
15 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
16 11.41.420.

17 * Sec. 7. AS 11.41.410(a) is amended to read:

18 (a) A person commits the crime of sexual assault in the first
19 degree if [,]

20 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
21 tration with another person without consent of that person;

22 (2) [BEING ANY AGE,] the defendant attempts to engage in
23 sexual penetration with another person without consent of that person
24 and causes serious physical injury to that person; or

25 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
26 sexual penetration with another person

27 (A) who the defendant knows is mentally incapable; and

28 (B) who is entrusted to the defendant's care

29 (i) by authority of law; or

1 (ii) in a facility or program that is required by
2 law to be licensed by the Department of Health and Social
3 Services.

4 * Sec. 3. AS 11.41.420(a) is amended to read:

5 (a) An offender commits the crime of sexual assault in the
6 second degree if

7 (1) the offender engages in sexual contact with another
8 person without consent of that person;

9 (2) [BEING OVER THE AGE OF 18,] the offender engages in
10 sexual contact with a person

11 (A) who the offender knows is mentally incapable; and

12 (B) who is entrusted to the offender's care

13 (i) by authority of law; or

14 (ii) in a facility or program that is required by
15 law to be licensed by the Department of Health and Social
16 Services; or

17 (3) [BEING OVER THE AGE OF 18,] the offender engages in
18 sexual penetration with a person who the offender knows is

19 (A) mentally incapable; or

20 (B) incapacitated.

21 * Sec. 9. AS 11.41.425(a) is amended to read:

22 (a) An offender commits the crime of sexual assault in the third
23 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
24 contact with a person who the offender knows is

25 (1) mentally incapable; or

26 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
27 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
28 UNWILLINGNESS TO ACT].

29 * Sec. 10. AS 11.81.335(a) is amended to read:

1 (a) Except as provided in (b) of this section, a person may use
2 deadly force upon another person when and to the extent

3 (1) the use of nondeadly force is justified under AS 11.81.-
4 330; and

5 (2) the person reasonably believes the use of deadly force
6 is necessary for self defense against death, serious physical injury,
7 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
8 410(a)(1) or (2)], sexual assault in the second degree, or robbery in
9 any degree.

10 * Sec. 11. APPLICABILITY. Sections 2 - 4 of this Act apply to all
11 actions commenced on or after the effective date of this Act, regardless of
12 when the cause of action may have arisen.

13 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 121 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes of sexual assault on
7 mentally incapable or incapacitated persons; amending
8 references to the crime of sexual assault in the
9 first degree as it relates to the crimes of second
10 degree murder and kidnapping, and to the use of force
11 in self-defense; and providing for an effective
12 date."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 11.41.110(a) is amended to read:

15 (a) A person commits the crime of murder in the second degree if

16 (1) with intent to cause serious physical injury to another
17 person or knowing that the conduct is substantially certain to cause
18 death or serious physical injury to another person, the person causes
19 the death of any person;

20 (2) the person knowingly engages in conduct that results in
21 the death of another person under circumstances manifesting an extreme
22 indifference to the value of human life; or

23 (3) acting either alone or with one or more persons, the
24 person commits or attempts to commit arson in the first degree, kid-
25 napping, sexual assault in the first degree [UNDER AS 11.41.410(a)(1)
26 OR (2)], sexual assault in the second degree, burglary in the first
27 degree, escape in the first or second degree, or robbery in any degree
28 and, in the course of or in furtherance of that crime, or in immediate
29 flight from that crime, any person causes the death of a person other

1 than one of the participants.

2 * Sec. 2. AS 11.41.300(d) is amended to read:

3 (d) In a prosecution for kidnapping, it is an affirmative de-
4 fense which reduces the crime to a class A felony that the defendant
5 voluntarily caused the release of the victim alive in a safe place
6 before arrest, or within 24 hours after arrest, without having caused
7 serious physical injury to the victim and without having engaged in
8 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
9 11.41.420.

10 * Sec. 3. AS 11.41.410(a) is amended to read:

11 (a) A person commits the crime of sexual assault in the first
12 degree if, being any age,

13 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
14 tration with another person without consent of that person;

15 (2) [BEING ANY AGE,] the defendant attempts to engage in
16 sexual penetration with another person without consent of that person
17 and causes serious physical injury to that person;

18 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
19 sexual penetration with another person

20 (A) who the defendant knows is mentally incapable; and

21 (B) who is entrusted to the defendant's care

22 (i) by authority of law; or

23 (ii) in a facility or program that is required by
24 law to be licensed by the Department of Health and Social
25 Services.

26 * Sec. 4. AS 11.41.420(a) is amended to read:

27 (a) An offender commits the crime of sexual assault in the
28 second degree if

29 (1) the offender engages in sexual contact with another

1 person without consent of that person;

2 (2) [BEING OVER THE AGE OF 18,] the offender engages in
3 sexual contact with a person

4 (A) who the offender knows is mentally incapable; and

5 (B) who is entrusted to the offender's care

6 (i) by authority of law; or

7 (ii) in a facility or program that is required by
8 law to be licensed by the Department of Health and Social
9 Services; or

10 (3) [BEING OVER THE AGE OF 18,] the offender engages in
11 sexual penetration with a person who the offender knows is

12 (A) mentally incapable; or

13 (B) incapacitated.

14 * Sec. 5. AS 11.41.425(a) is amended to read:

15 (a) An offender commits the crime of sexual assault in the third
16 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
17 contact with a person who the offender knows is

18 (1) mentally incapable; or

19 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
20 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
21 UNWILLINGNESS TO ACT].

22 * Sec. 6. AS 11.81.335(a) is amended to read:

23 (a) Except as provided in (b) of this section, a person may use
24 deadly force upon another person when and to the extent

25 (1) the use of nondeadly force is justified under AS 11.81.-
26 330; and

27 (2) the person reasonably believes the use of deadly force
28 is necessary for self defense against death, serious physical injury,
29 kidnapping, sexual assault in the first degree (UNDER

1 AS 11.41.410(a)(1) or (2)], sexual assault in the second degree, or
2 robbery in any degree.

3 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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BILL NO: HB 238

DATE: April 4, 1989


TITLE: An Act extending the
statute of limitations for
civil actions brought by
victims of sexual abuse

CONTACT: Barbara Miklos
Executive Director
Council on Domestic
Violence & Sexual
Assault

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports HB 238, which extends the statute of limitations for civil actions brought by victims of sexual abuse. Victims of sexual abuse undergo such trauma, shame and feelings of helplessness as a result of the abuse, that it is common for them to be unable to deal with the reality of the assault and its effects on them until some time has passed. Thus, extending the statute of limitations for these crimes is very appropriate.

For victims of child sexual abuse, the trauma is compounded by the fact that children are so powerless and helpless. For children, there is usually fear and secrecy associated with the abuse; and, psychologically, the only way a child can deal with the enormity of the violation is to deny to themselves that it happened. For many victims of child sexual abuse, it is not until years later that they are able to come to terms with the fact that the abuse occurred. It is often only after having difficulties in other aspects of their lives and entering into counseling, that they are able to confront the underlying problem, which is the abuse that was inflicted on them as children. We believe that extending the statute of limitations for these crimes is important.


Arthur English
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act extending the statute of limitations for civil actions ..."
Sponsor: Ulmer, Goll, Collins
Requestor: _____

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PART-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TEMPORARY	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

ANALYSIS: (Attach a separate page if necessary)

The bill would apply to civil actions between two private parties. It would have no effect on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director *BKM*
Division: Council on Domestic Violence and Sexual Assault

Phone: 465-4356

Date: 4/6/89

Approved by Commissioner: Arthur English *AE*
Agency: Department of Public Safety

Date: 4/6/89

Alaska State Legislature

Representative Fran Ulmer



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

March 27, 1989

TO: Rep. Peter Goll, Co-Chair
Rep. Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: Rep. Fran *Ulmer*

RE: HB 238, extending the statute of limitations for civil actions brought by victims of sexual abuse and relating to causes of action brought by adult victims of childhood sexual abuse

I would like to request a hearing for House Bill 238 which extends the statute of limitations for civil actions brought by victims of sexual abuse and relates to causes of action brought by adult victims based on injury suffered as a result of childhood sexual abuse. I believe this is an innovative bill which will effectively serve the interests of the victims of childhood sexual abuse. I would appreciate your scheduling a hearing at your earliest convenience.

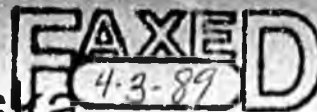
Thank you for your attention to this bill.

FU/dl

Q w/ HB 238 in Jul 1989.

MEMORANDUM

State of Alaska



TO: Co-chairs Gruenberg & Goll
and Members of the House
Judiciary Committee

DATE: March 31, 1989

FILE NO:

TELEPHONE NO: 274-1684

THRU: Hayden Kayden

SUBJECT:

FROM:

Erant McGee *ESM*
Public Advocate
Office of Public Advocacy

The Office of Public Advocacy supports the clarification of current law and the extension of the statute of limitations contained in "HB 238." As guardians ad litem for thousands of abused children every year, we are pleased at this legislative effort to expand these victims' right to seek redress.

Unfortunately, the OPA staff does not have sufficient technical expertise in tort law to comment on most provisions of the bill. However, we would suggest that the committee consider the addition of the words "or disability" at line 29, page 1, in order to broaden the class of victims to include the developmentally disabled.

If the bill passes we hope that the Committee and the bill's sponsors will make a strong effort to assure the widest possible public dissemination of its provisions in order to inform former victims of this enhanced legal remedy.

mw

ALASKA NETWORK
ON

DOMESTIC VIOLENCE

AND

SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Maniilaq Regional Women's Crisis Program; MEN, Inc.;
Safe & Fear-Free Environment (SAFE); Sitkas Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWAC/PCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

H' 238

THE ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT SUPPORTS HOUSE BILL 238, WHICH ALLOWS SURVIVORS OF CHILD SEXUAL ABUSE TO BRING CIVIL SUIT AGAINST THE PERPETRATOR.

IT IS NOT UNCOMMON FOR VICTIMS OF CHILD SEXUAL ABUSE TO REPRESS MEMORIES OF THE ABUSE. IN A CLINICAL STUDY CONDUCTED RECENTLY IN MASSACHUSETTS, 64% OF THE PATIENTS DID NOT HAVE FULL RECALL OF THEIR SEXUAL ABUSE AND 28% REPORTED SEVERE MEMORY REPRESSION. IT IS IMPORTANT TO NOTE, HOWEVER, THAT IN THE SAME STUDY MOST PATIENTS WHO RECOVERED MEMORIES WERE ABLE TO VERIFY THOSE MEMORIES THROUGH THE RECOLLECTIONS OF FAMILY MEMBERS, DIARIES, OR OTHER MEANS OF VERIFICATION.

BY CHANGING THE STATUTE OF LIMITATIONS THE LEGISLATURE WILL BE HELPING TO INCREASE THE CHANCES THAT ABUSERS WILL HAVE TO PAY FOR THE DAMAGE CAUSED TO THEIR FORMER VICTIM. THIS DAMAGE IS USUALLY EXTENSIVE. A CANADIAN RESEARCH TEAM FOUND THAT 92.9% OF CHILDREN IN THEIR STUDY WHO ATTEMPTED SUICIDE BEFORE THE AGE OF THIRTEEN WERE VICTIMS OF CHILD SEXUAL ABUSE. PROBLEMS FOR VICTIMS CAN CONTINUE THROUGHOUT THEIR LIVES AND REQUIRE MEDICAL AND PSYCHOLOGICAL TREATMENT. THAT COST SHOULD BE PAID BY THE ABUSER, NOT THE VICTIM.

Testimony re HB 238, relating to legal rights for survivors of childhood sexual abuse.

Submitted by: Elaine Schroeder, Ph.D.
1706 Willow
Juneau, Alaska
586-6879

I am here to support House Bill 238 which would allow survivors of childhood sexual abuse a more appropriate amount of time to seek legal redress. The very nature of the impact of child sexual abuse means that most victims have neither full recall of the abusive events nor fully understand that the painful symptoms they experience are caused by the earlier abuse.

I am particularly interested in this issue because I have worked as a psychotherapist and as a researcher with hundreds of adult and child survivors of childhood sexual abuse.

Let me introduce myself. I am a psychotherapist in private practice; my specialty is working with the victims of sexual abuse, and their families. I have performed substantial research on the subject of high-risk adolescent girls, 80% of whom have a history of sexual abuse.

My testimony will address three issues: (1) how total or partial repression (or amnesia) of painful memories of childhood sexual abuse occurs; (2) how survivors usually do not fully understand until later the relationship between the sexual abuse they experienced as a child and the psychological problems they experience as adults; (3) support for the one year extension of the statute of limitations.

REPRESSION: It has long been understood that people repress painful and traumatic memories. When we cannot cope with events or experiences which are exceedingly painful or unacceptable, we may "forget" them as a way to cope with an unbearable experience. Children and adult victims of war atrocities and natural disasters are known to experience amnesia about these events. The standard mental health diagnosis, as defined by the DSM III (the diagnostic system for all mental health clinicians) for people who have suffered childhood sexual abuse is called "Post Traumatic Stress Disorder." The definition of this diagnosis includes the following:

"the development of characteristic symptoms following a psychologically distressing event that is outside the range of usual human experience. . . The stressor producing this syndrome would be markedly distressing to almost anyone and is usually experienced with intense fear, terror and helplessness. . . The person commonly

Testimony of Elaine Schroeder, Ph.D.

makes deliberate efforts to avoid thoughts or feelings about the traumatic event and about activities or situations that arouse recollections of it. This avoidance of reminders of the trauma may include psychogenic amnesia of an important aspect of the traumatic event."

Many of my clients, while they may remember some of the abusive events, have avoided talking or consciously thinking about them for years. When in therapy, they often begin to recall more memories of the abuse as they look back on their childhood. In fact, I have had clients enter therapy because they say a TV program about incest had triggered a flood of memories. The DSM III I quoted earlier states:

"symptoms characteristic of post-traumatic stress syndrome . . . are often intensified or precipitated when the person is exposed to activities that resemble or symbolize the original trauma. . ."

UNDERSTANDING: My second point concerns survivors' ability to connect the childhood trauma with the adult symptoms. Survivors often try to minimize the impact of the abuse so that they do not upset the family system. If a survivor fully acknowledges the impact of the abuse on her life, she will be flooded with feelings of anger towards the abuser, often her father or a relative. Frequently, survivors enter therapy stating that their problem is depression or anxiety, or an eating disorder, or suicidal thoughts. If they do remember the abuse, they may be reluctant to bring it up in therapy because they do not want to stir up painful memories, or because they are ashamed, or because they blame themselves. Two of the therapeutic tasks in working with incest survivors is to help them recall the memories and to understand the impact the sexual abuse has had on their lives. So, only after an adult survivor has entered therapy (which is usually past the age of 30) can she or he have any meaningful understanding of their injuries.

Some of the abuse-related injuries are visible only during adulthood. Again quoting the DMS III: "symptoms may develop after a latency period of months or years following the trauma." So the survivor may not experience some of the harm until years after the trauma. "Discovery" or recall of childhood sexual abuse may occur well into adulthood. And understanding of harm or injury may occur even later. A victim cannot bring a suit until this time.

STATUTE OF LIMITATIONS: My final point relates to extending the statute of limitations one additional year to allow more time for the survivor to heal or to recover from the abuse before he/she seeks legal remedy. Several years in therapy may be necessary before a survivor has the necessary stamina and emotional stability to withstand the stress which a civil suit will create. Though the legal process is stressful, it can also be therapeutic in that it redresses a wrong, is socially supportive of the survivor and, hopefully, will curtail the incidence of this crime.

STATE OF ALASKA
THE LEGISLATURE

HOUSE STATE CAPITE
JUNIAL ALASKA 99511
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1989

SUBJECT: Draft CSHB 238 (Judiciary)

TO: Representative Peter Goll, Co-Chair
House Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel 

The changes you requested are incorporated in the draft that accompanies this memo.

As it has combined House Bills 121 and 238, the committee substitute makes amendments and additions to the civil and criminal law that generally relate to the theme of sexual assault and sexual abuse. It is, I think, arguable that the committee's addition of "mental disability" to the list of disabilities that toll operation of the statute of limitations--the initial amendment made to AS 09.10.140 by bill section 2--falls outside the "single-subject rule" of article II, section 13. The change is perhaps defensible insofar as the bill makes other changes in current limitations statutes, although those changes affect the filing of civil actions based on sexual assault. I note, also, the comment of Assistant Attorney General Bill Mellow to the effect that the addition is probably more technical than substantive insofar as it "[serves] to harmonize legislative intent and judicial construction of the statute." Letter of Assistant Attorney General Bill Mellow of April 18, 1989, to Representative Fran Ulmer, principal sponsor of the legislation.

On page 3, in what is to become AS 09.55.650 proposed by bill section 4, all the places where this version now uses the term "minor" should be revised to read "child." "Minor" should not be used to accomplish different ends. A minor is one who, by general definition, is under 18. The committee now proposes to make that term do something else (i.e. distinguish based on age 16), when what it should do is use a different term, "child," altogether in order to

Representative Peter Goll

Page 2

April 19, 1989

distinguish based on the reference to age 16. In the final, I propose to make the change(s) unless you indicate otherwise.

JBC:kb
wkk4/028

Enclosure

Alaska State Legislature

Representative Fran Ulmer



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(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

April 3, 1989

TO: Rep. Peter Goll, Co-Chair
Rep. Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 238, relating to adult victims of childhood sexual abuse

The purpose of this bill is to extend the period of time that a victim of child sexual abuse can recover damages for injuries sustained as a result of that abuse. The proposed bill extends the statute of limitations from 2 years to 3 years in cases relating to recovery of damages against the perpetrator of an act(s) of sexual abuse. In addition, this legislation will apply the discovery rule to civil actions based on intentional torts brought by adult survivors of childhood sexual abuse seeking recovery of damages for injuries suffered as a result of that abuse. The discovery rule is a judicially fashioned response to situations in which the traditional statute of limitations, which begins to run as of the date of the wrongful act or omission that is the basis for the plaintiff's claim, is unworkable because injured plaintiffs do not know, or cannot be expected to know, of their injuries until after the limitations period has expired. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers both the injury and its cause.

A survivor of childhood sexual abuse often lacks the means or ability to ascertain his or her injuries and their cause within the traditional limitations period. Many victims of childhood sexual abuse have repressed all memory of the abuse for years or, if they do remember the abuse, they minimize or deny its effects to the extent that they do not connect the abuse with later injuries. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. This legislation will provide childhood sexual abuse survivors with an opportunity to bring civil actions to recover damages for injuries resulting from the abuse.