

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8315 SENATE JUDICIARY

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 276  
(S) Publish Date: 2-4-94

Revision Date: January 7, 1994  
Title: "...relating to criminal justice information...  
obtaining certain criminal justice information..."  
Sponsor: Rules Committee/Request of the Governor  
Requestor: Governor's Office/OMB

Department Affected: Department of Law  
BRU: Prosecution  
Component: Criminal Justice Litigation  
COMPONENT SERIAL NO. 0089

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: January 7, 1994

Approved by Commissioner: Bruce M. Botelho, Acting Attorney General  
Agency: Department of Law

Date: January 7, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION:

This bill would completely revise state law regarding the collection, safekeeping and dissemination of criminal justice information in the state's automated criminal justice data systems. The bill would also establish an oversight committee to be known as the Criminal Justice Information Advisory Board. Among other members, the bill would make the attorney general or the attorney general's designee a member of the advisory board. These new duties would entail two meetings per year. Consequently, the department does not anticipate a fiscal impact.

FISCAL NOTE

NO. 4

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 276

(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to criminal justice information: providing procedural requirements for..." BRU: STATEWIDE  
 Sponsor: Rules Component: Records and Identification  
 Requestor: Governor COMPONENT SERIAL NO. 1190

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
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

Estimate of current year (FY 93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)  
See Attached

Prepared By: Ken Bischoff Phone: 465-4336  
 Division: Administrative Services Date: 01/05/94  
 Approved by Commissioner: Richard L. Burton Date: 01/06/94  
 Agency: Richard L. Burton, Dep. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

The Department of Public Safety submits a zero fiscal note with the following comments:

1. The legislation establishes a statutory framework that should permit a better allocation of existing resources. To a significant degree, this legislation formalizes the procedures that exist currently. To this extent, the bill should help improve the efficiency of criminal record processing. Efficiency improvements cannot reliably be quantified but would assist the department and contributing agencies in reducing criminal record backlogs;
2. Mandatory provisions have been minimized, sections generally do not take effect until regulations are adopted.
3. To the extent this legislation may increase public access, provision for the adoption of fees to provide services has been made. The Department currently charges fees for a number of services that will continue to be provided, we do not see an immediate need to increase fees. If such a need arises, regulations would be developed subject to public notice prior to adoption.
4. This bill will provide a framework to guide discussion on how to improve the collection of fingerprints and related criminal history record information. That discussion will include all agencies represented by the Criminal Justice Working Group. To implement the full scope of this legislation will require a series of discussions in order to reach implementation agreement. This will take time to negotiate. Accordingly, no immediate fiscal impact is anticipated.

DPS's primary goal is to provide a framework necessary to maintain an accurate and complete and timely criminal history file. DPS depends on all criminal justice agencies to contribute to the database. This bill provides such a framework.

DPS cannot autonomously implement this legislation across the board. DPS will use the Criminal Justice Work Group and its subcommittees as a forum to confirm the need for specific data in the criminal history record and proceed only after concurrence is obtained.

#### Summary

This legislation is required to establish this State's statutory framework for criminal history record information, something which exists in virtually every other state. Criminal history records consist of timely, accurate, and complete files used to make decisions related to investigations, release, sentencing and employment. Defendants are not going to volunteer their previous criminal history. If accurate and complete criminal records are not available on line, criminal justice agencies have no choice but to make ongoing decisions without reliable criminal history record information. This will result in lighter sentencing, improper employment decisions, and less efficient police investigations.

The Criminal Justice Work Group has endorsed the need for this type of legislation and has submitted a written recommendation to the Governor's Office.

# FISCAL NOTE

No. 1  
 Bill Version: SB 276  
 (S) Publish Date: 2-4-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: 1/28/94 Dept. Affected: Corrections  
 Title: Criminal Justice Information System BRU: All  
 Sponsor: \_\_\_\_\_ Component: Commissioner, Corrections  
 Requestor: Governor Academy, Institutions, D&W Processing  
 COMPONENT SERIAL NO. 694, 703, 698, 708-73

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	120,674	124,294	128,023	131,864	135,820	139,894
TRAVEL	21,200	21,200	21,200	21,200	21,200	21,200
CONTRACTUAL	40,000	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOT. L OPERATING</b>	<b>181,874</b>	<b>145,494</b>	<b>149,223</b>	<b>153,064</b>	<b>157,020</b>	<b>161,094</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004-GF	181,874	145,494	149,223	153,064	157,020	161,094
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>181,874</b>	<b>145,494</b>	<b>149,223</b>	<b>153,064</b>	<b>157,020</b>	<b>161,094</b>

Estimate of any current year (FY94) cost \$ \_\_\_\_\_

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 786-2147/465-4643  
 Division: Corrections Date: 1/28/94  
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 1/29/94  
 Agency: Corrections

Fiscal Note  
Lawlog 94-0005  
Revised January 28, 1994  
Page 2 of 4

The bill establishes a Criminal Justice Information Advisory Board, one member of which will be the Commissioner of Corrections (or designee.) The Board will advise the Commissioner of Public Safety regarding criminal justice information issues. The Commissioner of Public Safety will adopt regulations concerning the collection, reporting, and analysis of criminal justice information. It is difficult to predict the fiscal impact of this bill since it is not currently known what requirements may be imposed through future regulations. The bill mandates fingerprinting in all criminal cases, "in the manner and on forms approved by the department" [of Public Safety.] The bill requires that criminal justice information be accurate and complete, and sets up auditing requirements. The bill also clarifies which criminal justice information can be released, to whom, and by whom, and authorizes agencies to collect fees, through regulations, for processing records requests.

#### Assumptions

1. It is assumed that the Board will meet at least twice per year, and that the Commissioner or designee will be required to travel to Juneau on two occasions. Travel and per diem is estimated at approximately \$600 per trip at current rates.
2. It is assumed that this department will not be required to perform any additional data management, research, data entry, booking procedures, or other information reporting services than are currently being performed, unless specifically informed of the new requirements during the budget process of the year preceding the effective date of the new requirement, in order to be able to request the necessary resources/ funds. It is further assumed that if, at the end of the legislative session, funds were not appropriated to perform the anticipated new requirements, that the Department of Public Safety will not require the new/additional tasks of the Department of Corrections. Therefore, no fiscal impact is estimated for the implementation of any new tasks beyond those explicitly required in the bill.
3. It is assumed that the Department of Public Safety will not require the Department of Corrections to fingerprint criminal cases in any different manner or on any different forms than currently used. (The Department currently fingerprints all felons and misdemeanants upon booking into a state correctional facility.) If this assumption is incorrect, the fiscal note will be amended to reflect any training, machinery, forms, or other staff resources needed to meet the new requirements. It is assumed that the efforts currently made by the Department of Corrections to obtain more legible sets of fingerprints, when notified of an unsatisfactory identification, are considered "reasonable" and that no additional staff resources will be needed to comply with this requirement.

4. It is assumed that the department's current criminal justice information is not accurate, nor is it complete. It is further assumed that our procedures to protect information are inadequate, that our ability to screen, supervise, and discipline agency personnel in order to avoid security violations is inadequate, that our training resources for employees working with criminal justice information are grossly inadequate, and that we do not have adequate resources to keep records required for audit purposes in this bill. The department has an auditor position which can be assigned to set up a system for auditing. Additional resources will be necessary to bring the department into compliance with this requirement of the bill.

5. It is assumed that additional training will be necessary for all institutional and probation/parole staff, as well as for central records staff, concerning the new rules as to what information can be given to the public and to other criminal justice agencies. It is assumed that the majority of requests for information involving the Department of Corrections will not be likely to be subject to fee collection, since most involve brief questions and answers directed to institutions by phone, around the clock each day and night. Although a review will be done to determine if there are any requests which can be used to generate revenue, at this point no fees are anticipated.

6. The bill will require significant rewriting of regulations and policies governing department operating procedures. Revisions to address information dissemination will be a major need, as will revisions to clarify instructions during the booking process to improve accuracy and completeness of information. The department will contract for these one-time revisions, and anticipates a full-year contract to accomplish the changes.

#### Operating Expenses

##### 1. Travel.

Two trips per year at \$600 = \$1200 for the Office of the Commissioner. In order to train institutional booking personnel in data entry procedures, to insure accuracy and completeness of criminal justice information, a trainer and the auditor will have to travel to each institution and field probation office at least once per year. Each visit will require a minimum of two days to reach all shift rotations. It is roughly estimated that two individuals traveling to 15 sites will cost \$20,000 in airfare and per diem. This travel is assigned to the Office of the Commissioner, where the Training Academy and auditor positions are located. Total travel expenses for the Office of the Commissioner would be \$21,200 in FY95 and each subsequent year. This does not include an inflation factor.

Fiscal Note:  
Lawlog 94-0005  
Revised January 28, 1994  
Page 4 of 4

## 2. Personal Services:

A new position will be required to provide training on new policies and procedures to improve the accuracy and completeness of criminal justice information, and to help institute a plan to improve security of the system. This individual would travel to all institutions and field offices at least once per year to provide intensive training to data entry staff on all shifts in all locations across the state. This individual would be responsible for training on-site personnel to become trainers, and to coordinate statewide training on criminal justice information issues among all sites. The individual would need to be familiar with booking procedures as well as data entry and data management systems, and would have to be skilled in training, including training on-site trainers for follow-up. This will require an Analyst Programmer IV located in Anchorage area. Total position cost in FY95 would be \$63,842. (See attached Position Information Sheet.)

Training line staff in institutions requires overtime coverage for the positions assigned to attend training. To train eight staff per institution for two days requires 128 hours of overtime pay, at approximately \$37 per hour, at each of 12 institutions.

128 hours X \$37 per hour X 12 institutions = \$56,832 in personal services expenses in FY95.

TOTAL: \$63,842 + \$56,832 = \$120,674 personal services expense in FY95.

A 3% inflation factor has been used to calculate personal services increases in succeeding years.

## 3. Contractual:

Contract funds will be necessary to revise and update policies, procedures, and regulations, and to disseminate them in coordination with the field training referenced above. Much of the FY95 contract year will be spent developing clear instructions regarding information dissemination according to the new guidelines. A full-year contract to coordinate policy development related to criminal justice information is estimated at \$40,000, assigned to the Office of the Commissioner, where Policy and Procedure functions rest.

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.

01/28/94

Position Information Inquiry/Update

09:58:19

Position: 20-20#066

Project: 0

Salary Costs: 44,976.00

Component: 20-94-01-01-05-00

Benefits Costs: 18,866.39

Scenario: 3 FY: 95

CCLA % = 0.00

Total Costs: 63,842.39

Actuals not available (Status: UNKNOWN ) |

Retirement Code: A

00/00/00 | Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00 )  
 0 | Merit Date: use merit defaults? N ( 0.0 @ & 0.0 @ )  
 | Class/Sched Prefix: 2 Schedule: 2A (actual: )  
 | Bargaining Unit: GG Range: 19 (actual: )  
 | Location Code: EBA Place: ANCHORAGE  
 | Job Class Code: PL624 Title: ANALYST/PROGRAMMER IV  
 | Seasonal Indic.: F Type: -

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months

Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:  
 1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations  
 7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0\_

February 3, 1994

"An Act Relating to criminal justice information;  
providing procedural requirements for obtaining certain criminal justice information; and  
providing for an effective date."

*Commentary and section-by-section description*

The need for new Alaska laws for criminal justice information systems has been recognized for a number of years. It has been recommended, for example, that state statutes "should be revised to reflect a decision as to oversight and monitoring responsibility and to clearly set policy . . .". *A Special Report on the Oversight of Criminal Justice Information Systems in Alaska and the Alaska Public Safety Information Network*, Division of Legislative Audit, 1986. See also, Trostle, *Alaska Criminal History Record Information Program, A White Paper*, Justice Center, University of Alaska (1991) ("Legislative intervention in this area is warranted and required."). The Ombudsman has also recommended new legislation. *Investigative Report, Complaint J91-0810* (December 10, 1992).

In 1972, the statutes in AS 12.62, the regulations in 6 AAC 60, and the constitutional right of privacy in Art. I, sec. 22, of the state constitution, were adopted as a direct result of fears generated by the 1971 implementation of the Alaska Justice Information System computer (known as "AJIS").<sup>1</sup> With the exception of AS 12.62.035 (access to conviction records for sex offenders), the statutes have not changed in over 20 years. The last decade has seen enormous changes in the use of, and attitude towards, computer systems, and statutory changes are needed to reflect these changes.<sup>2</sup>

---

<sup>1</sup> Newspaper reports at the time contained statements by the sponsors and supporters of the constitutional amendment that the AJIS system was the primary motivation for the right-to-privacy provision. See, articles appearing in Alaska newspapers in 1972: Anchorage Daily News, March 21 at 8; March 22 at 5; March 31 at 1-2; April 1 at 4; April 6 at 2; Anchorage Times, March 20 at 8; March 27 at 2; March 27 at 2; March 31 at 1-2; Fairbanks Daily News-Miner, March 20 at 2; Southeast Alaska Empire, March 17 at 2; March 20 at 1; March 21 at 1 and 8; May 18 at 4.

<sup>2</sup> The regulations in 6 AAC 60 were amended in 1982 during the last meeting of the Governor's Commission on the Administration of Justice, but in reality there has been no systematic oversight of criminal justice information systems since the 1970's. The federal regulations in 28 CFR, Part 20, apply only to information systems funded in whole or in part by the Law Enforcement Assistance Administration, which provided federal grant funds since the 1970s. In 1986 the Department of Law issued an opinion concluding that changes in the funding of the Department of Public Safety criminal records system meant that the statutes and regulations no longer applied to that system. See, *Applicability of AS 12.62 to Alaska Public Safety Information Network*, Inf. Op. Atty. Gen. 663-86-0479, December 10, 1986. Both the division of legislative audit and the division of legislative legal services concur in that conclusion. See, *A Special Report On The Oversight Of Criminal Justice Systems In Alaska And The Alaska Public Safety Information Network*, at 8 (March 19, 1986; Audit Control Number 12-4247-86-5) and *A Report to the Fifteenth State Legislature, Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes*, at 29 (November 1987).

There has also been a growing recognition that national standards for criminal justice data collection should be established, and the Anti-Drug Abuse Act of 1988 required the Department of Justice to develop a system for more immediate and accurate identification of offenders. The Justice Department recommended that states (1) implement mandatory reporting of all criminal justice information, (2) monitor case dispositions and adopt unique case-tracking numbers to improve data accuracy, (3) ensure timely submission of fingerprint records, (4) provide standardized data entry, and (5) provide audits, training, and data security.

In addition, federal handgun control efforts, such as the "Brady bill" in 1993, depend to a large extent on the accuracy, completeness and availability of criminal history records. Alaska has recently received a federal grant to improve its data collection, and this bill is a necessary step toward that goal. This legislation provides a framework under which the state can comply with appropriate national standards, to the extent they are practical in Alaska.

Major portions of this legislation are patterned after the laws in other states, the federal regulations in 28 CFR, Part 20, and the recommendations made by SEARCH, Inc., in *Standards for the Security and Privacy of Criminal History Record Information, Third Edition*, published in July, 1988.<sup>3</sup> This publication resulted from a three-year effort by the SEARCH Law and Policy Project Advisory Committee, with assistance provided by experts within and outside of the criminal justice community. While the SEARCH publication was not intended as a model statute that would fit the particular needs of every state, it does set out a comprehensive approach to criminal justice information policy based upon articulated standards that reflect the knowledge and experience of a large, nationwide group of criminal justice information experts.

This bill is organized as follows:

AS 12.62.100	Criminal justice information advisory board.
AS 12.62.110	Duties of the commissioner regarding information systems.
AS 12.62.120	Mandatory fingerprinting in criminal cases.
AS 12.62.130	Reporting of criminal justice information.
AS 12.62.140	Reporting of uniform crime information.
AS 12.62.150	Reporting of information regarding wanted persons and stolen property.
AS 12.62.160	Completeness, accuracy and security of criminal justice information.
AS 12.62.170	Release and use of criminal justice information; fees.
AS 12.62.180	Correction of criminal justice information.
AS 12.62.190	Sealing of criminal justice information.
AS 12.62.200	Purging of criminal justice information.
AS 12.62.210	Civil action and defense.
AS 12.62.900	Definitions.

---

<sup>3</sup> That SEARCH publication is known across the country as *Technical Report No. 13 (Revised)*.

AS 12.62.100

Subsection (a) establishes the Criminal Justice Information Board, located for administrative and budgetary purposes within the Department of Public Safety. Although the board's role is advisory, provisions requiring twice yearly meetings and annual reports to the Governor and Legislature should encourage it to be active in its advisory role.

There are boards of this type in about half of the states. *Compendium of State Privacy and Security Legislation*, United States Department of Justice, 1989 Overview (hereafter "Dept. of Justice Overview") at page 21. Experience in other states has shown that an advisory board of this type can be effective and can exert a strong influence on the development of policies.

In order to keep the board to a manageable size, the board's membership is limited to commissioners from the five state departments most directly involved in criminal justice matters, the chief justice, a municipal police chief, as well as a member of the public appointed by the Governor to represent broader public interests.

AS 12.62.110

This section sets out the powers and duties of the Commissioner of Public Safety, based on similar provisions in numerous state laws, and requires the commissioner to develop a central state repository for criminal history records and other criminal justice information. At the present time, the Alaska Public Safety Information Network (APSIN) serves as the central repository, and it is anticipated that it will continue in that role. The commissioner must consult with the Criminal Justice Information Board, and cooperate with other state and federal law enforcement agencies.

This section also specifically requires the commissioner to promulgate regulations governing the central repository. Based upon Alaska's past experience with the long-inactive Governor's Commission on the Administration of Justice, it is more efficient and workable to vest rule-making authority in the official, i.e., the commissioner, who is responsible for the day-to-day operation of the system.

There is regulatory authority in this area in nearly every state in the country. Dept. of Justice Overview at page 20. This bill limits the commissioner's rule-making authority to the development and operation of the central repository and enforcement of the statutory requirements concerning the reporting of information to the central repository. The commissioner also is authorized to issue regulations necessary to insure that criminal justice agencies maintain records sufficient to facilitate the audit responsibilities imposed by the statute,

although regulations would not be strictly necessary to prescribe the forms on which information is to be reported. In other respects, criminal justice agencies in the state are free to establish their own agency rules and procedures to comply with the substantive requirements of the chapter. The section specifically authorizes the commissioner to cooperate with NLETS, NCIC, the Interstate Identification Index (III) system and other interstate, national or international identification and record systems.

This section also provides that any regulations adopted by the commissioner will not affect agencies or officials of the judicial branch. This avoids legal questions concerning the separation of powers. It is anticipated that rules affecting operation of the court will be adopted by the supreme court, and it is the intent of this legislation that the court cooperate with executive branch agencies in providing workable criminal justice information systems. As a member of the Criminal Justice Information Board, the chief justice will be familiar with the issues involved in criminal justice data collection, and participation on the board will provide a basis for cooperation with other agencies concerning such issues as court disposition reporting, taking of fingerprints and use of tracking numbers. According to SEARCH, such an approach has worked well in other states.

#### AS 12.62.120 - 150: Applicability

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 - 150 only to persons arrested for felony offenses. It was felt that meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceedings through the courts every year in Alaska would be burdensome to state and municipal agencies. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

#### AS 12.62.120

This section imposes a mandatory fingerprinting requirement for all offenses that will be included in the central criminal history record system. Since fingerprints provide positive identification, thereby ensuring the integrity of the records, it is important that fingerprints be uniformly obtained and forwarded to the central repository. National standards adopted by the Justice Department call for increased collection of fingerprint data.

It has been suggested that routine taking of fingerprints in all criminal cases may violate an offender's right of privacy. Given the minimal intrusiveness of fingerprinting, however, and its common acceptance as a standard police practice, it is doubtful a person under

arrest or charged with a crime would have a subjective expectation of privacy with respect to fingerprints, nor is it likely society would be willing to recognize any such expectation as reasonable. It is therefore unlikely a court would conclude that the right of privacy is implicated.

Subsection (a), requiring arresting officers to take fingerprints, and requiring a court to order a person charged with a crime to submit to fingerprinting if not arrested, is modeled after a provision in New York's law (N.Y. Crim. Proc. Law § 160.10). See, also 18 Pa. Cons. Stat. Ann. § 9112 (Purdon). Subsection (b) ensures that fingerprints are obtained at the time of conviction in cases in which, for whatever reason, fingerprints were not obtained earlier.

Subsection (c) is modeled after provisions in many state laws requiring correctional institutions to obtain fingerprints of persons committed to such institutions. E.g., Ga. Code Ann. § 35-3-36(f) (1981); Del. Code Ann. tit. 11, § 8509-8510. In addition, most other states follow this practice, though it is not expressly required by law.

Subsection (d) sets a time limit for the forwarding of fingerprints to the central repository. Fingerprints are required to be forwarded within five days. The most common time frame in use (by law or practice) in other states is seventy-two hours, although fingerprint reporting requirements vary from twenty-four hours to a week or more. Five days is a reasonable standard that criminal justice agencies in Alaska can meet in practice. This subsection also deals with poor quality fingerprints by requiring the originating agency to attempt to obtain better prints.

Subsection (e) is modeled after a provision in New York's law specifically requiring the central repository to use reasonable efforts to confirm the identity of the person being fingerprinted. N.Y. Crim. Proc. Law, § 160.30. If the central repository discovers that the person has an alias, the original agency must be notified. It is anticipated that in the vast majority of cases the sole effort to confirm identity would be through the department's automated fingerprint system. This will be sufficient to meet the requirement of "reasonable" efforts.

Subsection (f) permits the commissioner to adopt regulations to exempt certain classes of offenders from the fingerprinting requirement. For example, the commissioner may determine that it is not necessary for purposes of prison security or data accuracy to take repeated sets of fingerprints of prisoners transferred between institutions or of persons rearrested for violations of bail conditions, as would be required by subsection (c).

AS 12.62.130

This section establishes a framework for requiring that every significant event in the criminal justice process be reported to the Department of Public Safety. The current record system is ordinarily based only on the first event (usually an arrest) and the last event (usually a court judgment). Because of delays in the court process, records may show no disposition of the charges for long periods of time unless the department is notified of intervening events, such as dismissals of or amendments to criminal charges.

Reporting requirements set out in this section are modeled after the approach followed in Maryland. Md. Ann. Code art. 27, § 747 (1957). This section identifies all decisions or actions that occur in the course of the processing of criminal offenders and anticipates that the agency responsible for each "reportable event" will forward relevant information to the central repository. This section, however, leaves it to the commissioner to specify by regulation which agency is responsible for reporting each event.

At the present time this level of information is not uniformly reported to the department, and the APSIN system currently in operation is not capable of collecting all of this information. It is anticipated that the ability to collect and report this information will be developed over a period of time, and this section requires the commissioner to consult with the Criminal Justice Information Board and with affected agencies such as municipal police departments, prosecutors, courts, probation and parole officers, and others. Although this section will not be implemented immediately, the basic framework should be set forth in statute.

The form, content, and timing of the reports may be specified by the department without regulation. It is anticipated that different events will be required to be reported under different deadlines, depending on the importance of the information. For example, it may be reasonable to require that information about arrests and arrest warrants be reported within 48 hours, whereas information about other events could be reported within 30-60 days. A 30-day requirement is consistent with California's statutes for court disposition reporting (Cal. Penal Code § 13151) and with laws and policies of several other states. The national average, however, is about 60 days. See, e.g., Maryland Ann. Code art. 27, § 747 (1957) (60 days), 18 Pennsylvania Cons. Stat. Ann. § 9113(a) (Purdon) (90 days); Delaware Code Ann. tit. 11, § 8509 (90 days). Given the wide variation in personnel, equipment and telecommunication capabilities in Alaska, the specific requirements are best left to the commissioner, after consultation with local criminal justice agencies.

Subsection (b) is a relatively complete list of reportable events, but a catch-all category is included authorizing the commissioner to specify other events or actions to be reported.

AS 12.62.140 and AS 12.62.150

These two provisions are not strictly necessary to deal with the most immediate issues concerning criminal justice information systems, but they are useful and appropriate recommendations made by the SEARCH group in order to establish a statutory framework for a workable central criminal justice reporting system.

Proposed AS 12.62.140 imposes a legal requirement on criminal justice agencies to submit information to the Department of Public Safety for uniform crime reports and to cooperate with the central repository in efforts to ensure compliance with national and state uniform crime reporting requirements. It is modeled after provisions in Georgia. Ga. Code Ann. of 1981, § 35-3-36 (i), (k) (1981).

Proposed AS 12.62.150 is modeled after provisions in the laws of other states, requiring the reporting of information relating to wanted persons, stolen vehicles and identifiable stolen property.

AS 12.62.160

This section sets out data quality requirements applicable to the central records repository and to other criminal justice information systems in the state.

All criminal justice systems are subject to the general requirement in subsection (a) that procedures be adopted to ensure that criminal history record information is complete, accurate and secure. Such steps may include the use of manual procedures such as standard data collection forms and reporting procedures to detect inaccurate or missing information, or automated procedures to edit and verify required data fields and to perform a wide variety of checks on the accuracy and consistency of information entered into the systems.

The security provisions set out in (a) are taken from the federal regulations but in somewhat abbreviated form. They set out basic requirements for physical, personnel and computer security. Subsection (a) also requires that when a criminal justice agency utilizes a shared automated information system operated by a non-criminal justice agency, such as a municipal or regional data processing center, the criminal justice agency must insure that the system utilizes security procedures that are adequate to comply with the statutory security requirements.

Subsection (b) requires that procedures be developed for linking of charges and dispositions. Such a procedure might include use of a unique tracking number. The few extensive audits of state repositories that have been undertaken (including recent audits in Texas and Maryland) have demonstrated that tracking systems utilizing unique case numbers can solve

most problems encountered in linking reported disposition data to the right rap sheet and to the correct charges. In this way all charges can be accounted for and the criminal history record can accurately and clearly reflect the outcome of the case.

The requirement that the department adopt "reasonable" procedures recognizes that there is a large amount of information already maintained in APSIN, which was not collected using a uniform arrest tracking number or which was received from another jurisdiction, and missing information within this data cannot reasonably be linked to dispositions of the charges. This limitation on existing data is well known within the criminal justice system and this bill does not require modification of that data.

Subsection (c) requires the department to perform audits every two years, and to obtain an independent audit every four years, of the central repository and of a sample of other agencies to verify compliance with legal requirements. It should be noted that the sample need not be a random sample or a representative sample. This will permit the central repository to audit problem agencies or large agencies in a particular year, if appropriate or necessary. The independent audit could be performed by a private contractor or by an agency such as the Division of Legislative Audit. Subsection (a) also requires criminal justice agencies to maintain source documents and other records necessary to facilitate the performance of the audits.

#### AS 12.62.170

Even in criminal justice information systems that are federally-funded, a detailed state law will govern dissemination — rather than federal regulations. "When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State." Commentary to 28 CFR 20.21(b) (7-1-91 Edition).

Unfortunately, current Alaska law does not directly address the confidentiality of criminal history records on state computers.<sup>4</sup> This section makes criminal justice information confidential and prohibits its release, except as provided in this chapter. The rules for dissemination in this section are taken in general form from recommendations by the SEARCH group.

Criminal justice information is made confidential in subsection (a), and may not be disseminated except pursuant to subsection (b) or AS 12.62.190(d). Information may be

---

<sup>4</sup> The United States Supreme Court, however, has held that public disclosure of such information would constitute an "unwarranted invasion of personal privacy" as that term is used in the federal Freedom of Information Act, and dissemination of such information at the federal level is limited. *United States v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989).

released only by the agency than maintains it. The information cannot be provided unless it is up-to-date and accompanied by proper identification, and once provided, the information must be used only for the purpose for which it was released. Subsection (c). The department of public safety is permitted to establish fees for certain services in providing information under this section. Subsection (d).

Subsection (b) specifies several categories of criminal justice information that may be disseminated by criminal justice agencies. Even if the information may be disseminated under subsection (b), it is recognized that some other provision of law or court rule may prohibit its release. The types of information that may be provided by criminal justice agencies under subsection (b) are:

- An assessment or summary of criminal justice information can be provided to anyone if necessary to avoid imminent danger to life or extensive damage to property. Subsection (b)(1).

- Criminal justice information may be provided pursuant to court rule or court order. Subsection (b)(2).

- Agencies would be permitted to publicly release information about recent police activity, such as posters, announcements, notices, press releases, bulletins, police blotters, including data derived from a criminal justice information system. Subsection (b)(3). This is a common and traditional practice, recognized in current 6 AAC 60.070(g) and in most other states and the federal regulations.

- Criminal justice information would be provided to criminal justice agencies for criminal justice purposes. Subsection (b)(4). This includes making full criminal histories available to federal and out-of-state criminal justice agencies, such as the FBI and to central repositories in other states by means of the Interstate Identification Index (III) system. By exchanging information in this way, the state is permitted to participate in the III system.

- Criminal justice information would also be provided to non-criminal justice governmental agencies for official purposes (that is, those related to an agency's statutory duties), to other persons authorized by law to receive the information. Subsections (b)(5) and (b)(6).

Under (b)(5) the Public Defender Agency or the Office of Public Advocacy would be able to directly obtain information necessary for representation of indigent defendants, to the same extent as is available currently. Private defense attorneys would be able to obtain the same

information through the court or court rules under subsection (b)(2), or as a member of the public under (b)(10) or (b)(11).<sup>3</sup>

Government agencies would also be able to obtain information for purposes of licensing, security clearances, and other official purposes, as is available currently through written agreements with the Department of Public Safety. It is not anticipated, however, that employment of non-criminal justice personnel will be "necessary" for the enforcement of a law, and therefore full criminal justice information will not be made available for general government employment purposes unless there is specific statutory authorization in another law. Government employers would, however, be able to obtain more limited records to the same extent as other employers under subsections (b)(10), (b)(11) and (b)(12).

- The governor, lieutenant governor and state legislators would also be entitled to receive criminal justice information under (b)(7) and (b)(8) for security purposes and for purposes of appointment of exempt or partially-exempt state officials.

- Information for research purposes may be disseminated under (b)(9), subject to written conditions to safeguard security and privacy.

- Any person would be permitted to receive "current offender information". Subsection (b)(10). The definition of "current offender information" includes many pieces of information about a person currently charged with a crime or in the custody or under the supervision of the state, including the location of incarceration of inmates, and the conditions under which such inmates are released. Much of this information is presently provided only to victims of crimes under AS 33.16.120(f).

- Anyone would also be permitted to receive "past conviction information", if less than 10 years has elapsed from the date the offender was released from all state supervision. Subsection (b)(11). The 10-year limitation on past records is designed to assure that very old conviction records are not freely disseminated.

Although current law does not explicitly make criminal justice information confidential, the United States Supreme Court has held that such information is exempt from the federal "freedom of information" statutes that formed the basis for current state public records laws in AS 09.25.120(6). *United States Dept. of Justice v. Reporters Committee for Freedom of the Press, et al.*, 489 U.S. 749, 103 L.Ed.2d 774, 109 S.Ct. 1468 (1989) (criminal conviction

---

<sup>3</sup> Current regulations in 6 AAC 60 (which no longer apply to APSIN; see footnote 2) adopt a procedure that would permit private defense attorneys to get criminal justice information directly from the Public Defender Agency. It was felt that this procedure is not workable because if it became a routine practice it would greatly add to the workload of the Public Defender Agency and because the normal safeguards applied to agency access would be missing.

records on computers are not subject to disclosure under federal law). In addition, current AS 12.62.035 could be construed as a legislative expression that conviction records be provided to the public only if the person requesting the information is an employer of persons who work with children, and only for specified crimes. For these, and other reasons, the Department of Public Safety does not currently disseminate criminal justice information to the public.

Taken together, however, subsections (b)(10) and (b)(11) provide the public with a great deal of information that is either not available under current law, or is only available by expending great effort to search manual or microfilm files in the possession of the court system. These provisions reflect a strong public policy interest in permitting criminal justice agencies to respond to press or public inquiries about ongoing criminal cases and about offenders currently or recently under state supervision.

Florida, Oklahoma and Wisconsin currently have "open" record policies and several other states permit criminal history records to be made available for a wide range of non-criminal justice purposes. Based on a study in Florida by SEARCH, the main recipients of this information are businesses and agencies that use the information for employment screening purposes. Only a small percentage of the requests for such information are for "curiosity". "Availability of Criminal History Records: The Effect of an Open Records Policy", SEARCH Group, Inc. 1990.

- The current provisions in AS 12.62.035 are retained in subsection (b)(12). This current statute permits dissemination of certain conviction records, regardless of the passage of time, in order to evaluate someone for a position involving supervision of children or dependent adults.

- Finally, a person can have access to his or her own criminal justice information. Subsection (b)(13).

Subsection (c)(3) provides that criminal justice information may not be released unless the subject's identity is confirmed by fingerprint comparison or some other approved means of identification. There are other instances, however, when the requirement of fingerprint identification or other positive identification is not feasible or necessary, and this subsection permits the commissioner to exempt certain requesters (such as criminal justice agencies, for example) from the strict identification requirements.<sup>6</sup>

---

<sup>6</sup> For the public and the press it is not feasible to obtain fingerprint identification for current offenders. Because most such inquiries will likely be made of local criminal justice agencies by persons within the community where the crime was committed, fingerprints are probably not required to obtain information about the correct person. Moreover, newly developed name search techniques used in Florida are regarded as extremely accurate. "Availability of Criminal History Records: The Effect of  
(continued...)

Subsection (c)(4) requires that criminal justice agencies maintain logs of persons to whom criminal history record information is provided. This facilitates audits of the system, and permits notification in case of errors or corrections. Here, too, there are instances when the requirement of maintaining logs is not warranted, and this subsection permits the commissioner to exempt agencies from maintaining logs for certain classes of recipients, such as criminal justice agencies.

AS 12.62.180

The provisions in the bill authorizing persons to request corrections to their own records are similar to existing law in AS 12.62.030 (c), (e) and (f). Under this bill, however, if a court undertakes a review of an agency's refusal to modify records, the burden is placed on the person to prove that the information is inaccurate or incomplete, rather than on the criminal justice agency. It is appropriate to place the burden on the person challenging the information, because that person is usually in the best position to have access to relevant evidence to support the challenge. Although less than half of the states provide for judicial review (Dept. of Justice Overview at 25), it was felt that this provision in Alaska law should be continued.

AS 12.62.190

This section permits criminal justice agencies to "seal" past or current conviction records if the records resulted, beyond a reasonable doubt, from mistaken identity or false accusation. It is anticipated that, upon request, the central repository or other agency will voluntarily seal records in appropriate circumstances.

Like the provisions for revising information in proposed AS 12.62.180, an administrative appeal of the agency's decision may be made to the court, but the appellant bears the burden on appeal of showing that the agency's decision was clearly mistaken. This heavy burden reflects the intent that proceedings to seal records should be rare. As noted by the court of appeals, "no court has seriously questioned the legitimacy or importance of the government's interest in obtaining and retaining records dealing with individuals who pass through our criminal justice system . . ." *Journey v. State*, 850 P.2d 663, 666 (Alaska App. 1993).

---

<sup>6</sup>(...continued)

an Open Records Policy", SEARCH Group, Inc. 1990. at page 7. It is also not required that the person requesting current offender information present positive identification.

If the state or a municipal prosecutor pursues a criminal case in good faith, it is unlikely a defendant could muster the necessary level of proof beyond a reasonable doubt, much less that the department's decision to retain the records was clearly mistaken. Thus sealing will not become a common practice following dismissal or acquittal of criminal charges. Moreover, a proceeding to seal information should not be used as another avenue of collateral attack on court judgments, or on other actions taken by prison, probation or parole authorities. Unless the person is successful in an appeal or post-conviction relief action, a court judgment or prison administrative decision will be conclusive evidence that the record should not be sealed.

Under current Alaska law, it is not clear that persons have a right to have their records sealed. *Journey v. State*. This section thus establishes a procedure for persons to use to seal their records and, to the extent that subsection (d) permits a person to deny the existence of a sealed record, this statute provides a broader remedy than would be available under a the "inherent" power of the courts.

Subsection (d) authorizes a person whose record has been sealed to deny the existence of the record and any related arrest or other action. This provision reflects the view in half the states (Dept. of Justice Overview at 31) that if a person can be required to reveal the existence of a sealed record, in answer to a question on an employment application, for example, the sealing remedy is ineffective. Records that have been sealed may only be disseminated for specific limited purposes under this section.

#### AS 12.62.200

This section permits criminal justice agencies to "purge" (i.e., destroy) criminal justice information for a variety of administrative reasons, if the information is devoid of any usefulness to a criminal justice agency.

#### AS 12.62.210

Given the many thousands of arrests made each year, and the remoteness of many locations in Alaska, it is likely that in many instances fingerprints will not be taken or will not be submitted to the department, that backlogs in reporting of events or in data entry may cause delays in processing and compiling data in an information system, or that other errors may occur. Therefore, subsection (a) provides immunity from civil liability if the requirements of the chapter or regulations (including requirements for accurate and complete data), are not strictly followed, but such conduct can be used as a basis for employee discipline or administrative action to restrict agency access to the system. Public officials could, however, be subject to criminal sanctions in extreme cases in which confidential information is misused.

This civil immunity provision is generally based on AS 13.50.014(a) and 016(a), providing immunity from liability for failure of hospital or law enforcement personnel to search for information relating to anatomical gifts. It is also based on similar immunity provisions relating to reporting or not reporting cases of abuse of the elderly (AS 47.24.010(f) and (g)) and reporting abuse of children. AS 47.17.050. This provision is, however, also specifically intended to reverse the decision in *Zerbe v. State*, 578 P.2d 597 (Alaska 1978), and to make clear that there is no cause of action for errors made in recordkeeping.

A legal remedy for damages is provided, however, if criminal justice information is released or used in knowing violation of this chapter. The civil remedy and defense set out in this section is based on current AS 12.62.060. This section does not create a separate criminal offense because current AS 11.56.860 already makes misuse of confidential information by a "public servant" a class A misdemeanor. The definition of "public servant" is broad, and includes contractors and consultants to government agencies. Although current law does not provide a criminal penalty for misuse by other persons, such as members of the public and the press, the civil damage remedies are likely to be an adequate deterrent.

#### AS 12.62.900

The definitions are generally consistent with, although more detailed than, those found in the federal regulations (28 CFR Part 20, § 20.3). They are also consistent with recommendations made by the SEARCH Group.

The definition section contains many important provisions that specify the applicability of this legislation. For example, the word "information" is defined to mean, unless the context clearly indicates otherwise, data compiled within a "criminal justice information system". That latter term, in turn, is defined to mean an "automatic data processing" system (i.e., a computer) linked to another computer in another department, branch of government, or in another jurisdiction, in such a way that access to the information in the system can occur directly, without action by the agency maintaining the information. This concept of a direct connection between agency computers is contained in current 6 AAC 60.900(l), and reflects the desire to limit interference with internal agency files that cannot be electronically accessed by another agency.

Because of these definitions, this chapter does not apply to the paper records in the possession of criminal justice agencies (which continue to be covered by the general public records statutes) nor to records contained in computers commonly referred to as "stand-alone" computers that are used solely within one department or agency (in this bill a multi-jurisdictional task force is considered a single "agency"). It was not the intent of this bill to regulate the paper files, notebooks, binders, microfilm or other internal records maintained by dozens of state, municipal or judicial branch agencies, if that information is not susceptible to being directly

accessed from outside of that agency by way of a computer system. This definition is also not intended to regulate the exchange of photographs or original documents, whether by facsimile transmission or otherwise.

The criminal justice process produces many different types of information, and therefore a large number of definitions are required.

The broad definition of "criminal justice information" includes all types of data generally collected by criminal justice and public safety agencies, with the exception of court records, drivers license records and records relating to juveniles within the juvenile justice system. It includes criminal history record information, nonconviction information, correctional treatment information, as well as data about wanted or missing persons and stolen property. These various types of information are defined in terms of "identifiable persons". This limitation means that statistical information that does not identify a person is not "criminal justice information".

This legislation leaves to the supreme court the task of regulating court record systems. This legislation also recognizes that the confidentiality and dissemination of drivers license records are already covered by AS 28.15.181.

Each type of information has different uses, and each may be subject to differing rules, depending on the sensitivity of the information and the need for its easy accessibility by the public, the press, and other agencies.

The most sensitive is correctional treatment information. This includes data from confidential sources such as prison medical and psychological files, and presentence reports. Another type of information subject to limited dissemination is "nonconviction" information, which includes data about old arrests or other old charges without dispositions. Oftentimes criminal history records show arrests or charges, but no dispositions of those charges. If the arrest is recent (less than a year old) or prosecution is ongoing, this data is treated, consistently with federal regulations, as "current offender information", which has greater accessibility to the public. However, once a year has passed with no indication that prosecution is ongoing, an arrest record without a disposition is treated as "nonconviction information". Under this bill, information in these categories is not available to the general public or the press, and is only provided for official agency activities.

The definition of "criminal history record information" is functionally equivalent to the one found in the federal regulations and in general use in the laws in other states. Within that broad term there are three categories: (A) past conviction information; (B) current offender information; and (C) criminal identification information.

"Past conviction information" relates only to old convictions where the sentence has already been served and the person has been unconditionally discharged. Such information can include not only the fact of conviction but any specific data related to that conviction, such as dates of proceedings. Convictions that have been set aside under AS 12.55.085 following a suspended imposition of sentence, or that have been vacated or reversed, are included. Under this bill, "past conviction data" less than 10 years old is available to the public when accompanied by adequate identification of both the subject of the records and the person who is requesting the information.

"Current offender information" includes all data of public interest about current or recent cases, or those in which the offender is still under the custody or supervision of the state. Included are conditions of bail or probation and the location of incarceration or community supervision.

"Criminal justice activity" is defined as broadly inclusive of all official activities of criminal justice agencies, including the traditional law enforcement activities of police agencies and activities involved in the processing of criminal cases from arrest through correctional supervision. Also included is criminal justice employment activities. Criminal defense is not an included activity; however, the Public Defender Agency and the Office of Public Advocate will continue to have access to discoverable information under Alaska Rules of Criminal Procedure 16, as well as proposed AS 12.62.170(b)(5).

#### Section 2 of the bill.

Section 2 of the bill amends AS 44.99.310(f) to exempt criminal justice information from the provisions in that statute governing challenges to accuracy and completeness of "personal information". The provisions of this bill address such issues more comprehensively and directly.

#### Section 3: Repealer.

All of current AS 12.62, much of it over 20 years old, is repealed, as are AS 18.65.060 and AS 44.41.040, which relate to subjects covered comprehensively in the bill.

#### Section 4: Transition.

This transition section permits agencies to adopt regulations under this Act at any time, but the regulations do not become effective until the Act takes effect. This allows agencies to avoid delays in adopting regulations. This section has an immediate effective date.

Section 5: Applicability.

Based on preliminary comments from a number of criminal justice agencies, an applicability section at the end of the bill will apply the fingerprinting and reporting requirements of AS 12.62.120 – 150 only to persons arrested for felony offenses. It was felt that it would be burdensome to state and municipal agencies to immediately begin meeting the fingerprinting and reporting requirements for the many thousands of misdemeanor cases proceeding through the courts every year in Alaska. In order to hold down the initial costs of this legislation, and to enable justice agencies to streamline procedures, these sections will not apply to misdemeanor offenses until July 1, 1996.

Sections 6 and 7: Effective dates.

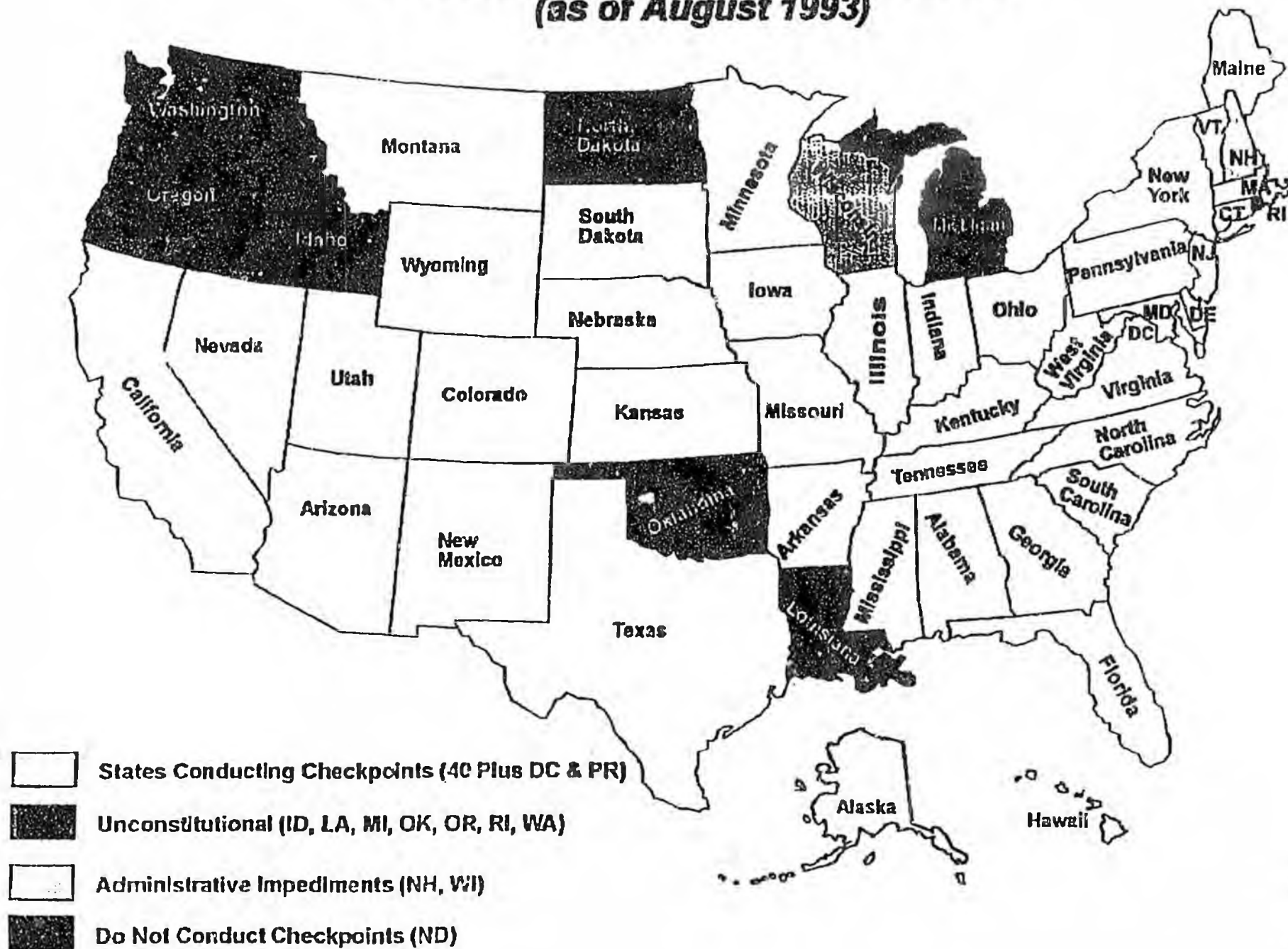
**SB**

**278**

# Sobriety Checkpoints

(as of August 1993)

CHECKPOINT USE  
NATIONWIDE



*Sobriety Checkpoint Use  
in the United States*

June 15, 1992

## SOBRIETY CHECKPOINTS

### Alabama

Conducting sobriety checkpoints: Yes  No

Alabama Department of Public Safety: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 1,091

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Daily

\* The Alabama Department of Public Safety conducts "driver license and safety checkpoints" which target license and alcohol violations.

Other law enforcement agencies in the State conducting sobriety checkpoints: Huntsville P.D.; Mobile P.D.

### Alaska

Conducting sobriety checkpoints: Yes  No

Alaska Department of Public Safety: Yes  No

- Statewide: Yes *N/A* No *N/A*

- Number of sobriety checkpoints conducted within the last year: *N/A*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year *N/A*

- Conducted on a regular basis: Yes *N/A* No *N/A*

Frequency conducted: *N/A*

Other law enforcement agencies in the State conducting sobriety checkpoints:  
None

### Arizona

Conducting sobriety checkpoints: Yes  No

Arizona Department of Public Safety: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 30

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Bi-monthly statewide

Other law enforcement agencies in the State conducting sobriety checkpoints:

Arizona Department of Public Safety advises most of the larger departments in the State conduct sobriety checkpoints.  
Those agencies identified: Phoenix P.D.; Maricopa County S.O.; Peoria P.D.; Glendale P.D.

## Arkansas

Conducting sobriety checkpoints: Yes  No

Arkansas State Police: Yes  No

- Statewide: Yes  No *N/A*

- Number of sobriety checkpoints conducted within the last year: *N/A*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Weekly

Other law enforcement agencies in the State conducting sobriety checkpoints:

Arkansas State Police and Arkansas Highway and Transportation Department advise no sobriety checkpoints are being conducted in the State.

## California

Conducting sobriety checkpoints: Yes  No

California Highway Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 91

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

California Highway Patrol advises many local police agencies conduct sobriety checkpoints jointly with them. Agencies identified as conducting sobriety checkpoints on their own: Los Angeles P.D.; Sacramento P.D.; San Francisco P.D.; Bakersfield P.D.; San Diego P.D.; Redding P.D.; San Bernadino S.O.

## Colorado

Conducting sobriety checkpoints: Yes  No

Colorado State Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 18

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Bi-monthly statewide

Other law enforcement agencies in the State conducting sobriety checkpoints:

Broomfield P.D.; Grand Junction P.D.; Trinidad P.D.; Adams County S.O.; Jefferson County S.O.; U.S. Park Service; U.S. Forest Service; Arvada P.D.; Westminster P.D.; Sheridan P.D.; El Paso PD.; Douglas County S.O.; Denver P.D.; Aurora P.D.; Longmont P.D.; Northglenn P.D.; Thornton P.D.

Note: Region VIII reports 20 sobriety checkpoints conducted statewide in 1990.

Connecticut

Conducting sobriety checkpoints: Yes X No

Connecticut Department of Public Safety: Yes X No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 75 (est.)

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year X

- Conducted on a regular basis: Yes X No

Frequency conducted: Bi-Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Other police agencies in Connecticut are conducting sobriety checkpoints. Those agencies are not identified at this time.

Delaware

Conducting sobriety checkpoints: Yes X No

Delaware State Police: Yes X No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 95

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year X

- Conducted on a regular basis: Yes X No

Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints: Newark P.D.; New Castle County P.D.;

Wilmington P.D.; Dover P.D.

District of Columbia

Conducting sobriety checkpoints: Yes X No

- District-wide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 9

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year X

- Conducted on a regular basis: Yes X No

Frequency conducted: Once a month when possible

Florida

Conducting sobriety checkpoints: Yes X No

Florida Highway Patrol: Yes No X

- Statewide: Yes N/A No N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions N/A Throughout year N/A

- Conducted on a regular basis: Yes N/A No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:

Clearwater P.D.; Miami P.D.; Tampa P.D.; Metro-Dade County P.D.; Broward County S.O.; Sarasota County S.O.; Sarasota P.D.; Manatee County S.O.; Seminole County S.O. Region IV advises at least 10 other police agencies are conducting sobriety checkpoints in addition to the above mentioned.

## Georgia

Conducting sobriety checkpoints: Yes  No

Georgia State Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: Unknown

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Daily statewide

\* The Georgia State Patrol incorporates sobriety checks into a "road check" procedure that checks for licenses and motor vehicle safety equipment.

Other law enforcement agencies in the State conducting sobriety checkpoints: Macon P.D.; Cobb County P.D.; Columbus P.D.; Albany P.D.; Griffin P.D.

## Hawaii

Conducting sobriety checkpoints: Yes  No

Honolulu City and County Police Department: Yes  No

- Department-wide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 672

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Daily

Other law enforcement agencies in the State conducting sobriety checkpoints:

Region IX reports police agencies in Hawaii conduct sobriety checkpoints on a frequent basis. Those agencies identified: Hawaii County P.D.; Maui County P.D.; Kauai County P.D.

## Idaho

Conducting sobriety checkpoints: Yes      No

Idaho State Police: Yes      No

- Statewide: Yes *N/A* No *N/A*

- Number of sobriety checkpoints conducted within the last year: *N/A*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      *N/A*      Throughout year *N/A*

- Conducted on a regular basis: Yes *N/A* No *N/A*

Frequency conducted: *N/A*

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

Court note: The Idaho supreme court has found sobriety checkpoints to be in violation of the State's constitution (State v. Henderson, 756 P.2d 1057).

Illinois

Conducting sobriety checkpoints: Yes  No

Illinois State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 166

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Random (conducted monthly on a statewide average)

\* The Illinois State Police conduct "roadside safety checks" that target DWI and license violations.

Other law enforcement agencies in the State conducting sobriety checkpoints:

Mundelein P.D.; Kendall County S.O.; Silvis P.D.; East Moline P.D.; Faoria County S.O.; South Jacksonville P.D.; Cahokia P.D.; Effingham P.D.; Mt. Vernon P.D.; Jefferson County S.O.; Canton P.D.; Ottawa P.D.; Staunton P.D.; Brighton P.D.; Quincy P.D.; Kankakee County S.O.; Massac County S.O.; Metropolis P.D.; Chicago P.D.; Cook County S.O.

Indiana

Conducting sobriety checkpoints: Yes  No

Indiana State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 44

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Over 35 police agencies are conducting sobriety checkpoints in Indiana. The major agencies: Indianapolis P.D.; Marion County S.O.; Anderson P.D.; Tippecanoe County S.O.; Wayne County S.O.; Columbus P.D.; Johnson County S.O.; Indiana Department of Conservation; Indiana Department of State Excise; Elkhart P.D.; Hendricks County S.O.; Richmond P.D.

Iowa

Conducting sobriety checkpoints: Yes  No

Iowa Department of Public Safety: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 12

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly

Other law enforcement agencies in the State conducting sobriety checkpoints: Davenport P.D.; Clinton P.D.; Sioux City P.D.; Council Bluffs P.D.

Kansas

Conducting sobriety checkpoints: Yes  No

Kansas Highway Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 40

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints: Wichita P.D.; Wichita S.O.; Kansas City P.D.; Kansas City S.O.; Topeka P.D.

Kentucky

Conducting sobriety checkpoints: Yes  No

Kentucky State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 768

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Weekly

- The Kentucky State Police conducts "traffic checkpoints" that target license and DWI violations.

Other law enforcement agencies in the State conducting sobriety checkpoints: Jefferson County P.D.

Louisiana

Conducting sobriety checkpoints: Yes      No

Louisiana State Police: Yes      No

- Statewide: Yes N/A      No N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      N/A      Throughout year      N/A

- Conducted on a regular basis: Yes N/A      No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

Court note: The Louisiana supreme court has ruled sobriety checkpoints are unconstitutional under both the State and U.S. Constitution (Louisiana v. Church, 538 So.2d 993 and State v. Parmis, 523 So.2d 1293)

## Maine

Conducting sobriety checkpoints: Yes  No

Maine State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: Unknown

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly

Other law enforcement agencies in the State conducting sobriety checkpoints:

Auburn P.D.; Lewiston P.D.; Lisbon P.D.; Ft. Kent P.D.; South Portland P.D.; Westbrook P.D.; Bar Harbor P.D.; Waterville P.D.; Bangor P.D.; Brewer P.D.; Hampden P.D.; Lincoln P.D.; Old Town P.D.; Orono P.D.; Penobscot S.O.; Skowhegan P.D.; Baileyville P.D.; Kittery P.D.; Old Orchard P.D.; Saco P.D.; South Berwick P.D.; York P.D.

## Maryland

Conducting sobriety checkpoints: Yes  No

Maryland State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 15

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes      No

Frequency conducted: Monthly

Note: The Maryland State Police is considering increased usage of sobriety checkpoints.

Other law enforcement agencies in the State conducting sobriety checkpoints:

Baltimore County P.D.; Prince George's County Police; Harford County S.D.; Howard County P.D.; Kent County S.O.

## Massachusetts

Conducting sobriety checkpoints: Yes  No

Massachusetts State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 5

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes      No

Frequency conducted: Quarterly

Note: Because of the State's current fiscal condition, the Massachusetts State Police is currently conducting sobriety checkpoints during holiday periods only.

Other law enforcement agencies in the State conducting sobriety checkpoints:

Massachusetts Dept. of Public Safety, Registry Police; Massachusetts Dept. of Environment, Metropolitan District Commission Police

Second Note: Region I reports sobriety checkpoints are not actively used at local level.

## Michigan

Conducting sobriety checkpoints: Yes No  X

Michigan State Police: Yes No  X

- Statewide: Yes  N/A No  N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions  N/A Throughout year  N/A

- Conducted on a regular basis: Yes  N/A No  N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

Court note: (Michigan Department of State Police v. Sitz, 496 U.S. \_\_\_, 110 S.Ct. 2481, 110 L.Ed.2d 412 [1990])  
This case is under review by the Michigan supreme court for the purpose of determining the legality of sobriety checkpoints under the State's constitution. As of 1992 legislation was introduced to allow checkpoints, however, it was defeated and will be reintroduced in 1993.

## Minnesota

Conducting sobriety checkpoints: Yes  X No

Minnesota State Police: Yes  X No

- Statewide: Yes  X No

- Number of sobriety checkpoints conducted within the last year: 17

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions  Throughout year  X

- Conducted on a regular basis: Yes  X No

Frequency conducted: Random

Other law enforcement agencies in the State conducting sobriety checkpoints:

Bloomington P.D.; Blaine P.D.; Coon Rapids P.D.; Fridley P.D.; Duluth P.D.; Moorehead P.D.; Virginia P.D.;  
Willmare P.D.; New Ulm P.D.; Edina P.D.; Maplewood P.D.

## Mississippi

Conducting sobriety checkpoints: Yes  X No

Mississippi Highway Safety Patrol: Yes  X No

- Statewide: Yes  X No

- Number of sobriety checkpoints conducted within the last year: Unknown

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions  Throughout year  X

- Conducted on a regular basis: Yes  No  X

Frequency conducted: Random

Other law enforcement agencies in the State conducting sobriety checkpoints:

Ridgeland P.D.; Jackson P.D.; Sparkville P.D.; Grenada P.D.; Vicksburg P.D.

## Missouri

Conducting sobriety checkpoints: Yes  No

Missouri State Highway Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 40

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Presently every other month at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Springfield P.D.; Rolla P.D.; Platte County S.O.; Kansas City P.D.; St. Charles County P.D.

Note: Central Missouri State University has developed a sobriety checkpoint training program.

## Montana

Conducting sobriety checkpoints: Yes  No

Montana Highway Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 7

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions      Throughout year

- Conducted on a regular basis: Yes      No

Frequency conducted: Random

\* Montana Highway Patrol conducts "safety spot checks" for license, equipment, and DWI violations.

Other law enforcement agencies in the State conducting sobriety checkpoints: Billings P.D.

## Nebraska

Conducting sobriety checkpoints: Yes  No

Nebraska State Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 12

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly

Other law enforcement agencies in the State conducting sobriety checkpoints: Lincoln P.D.; Omaha P.D.; Douglas County P.D.; Sarpy S.O.; Buffalo S.O.; Bellevue P.D.; Harlan S.O.; Lancaster S.O.; Dakota S.O.; South Sioux City S.O.; Offut Air Force Base; Scottsbluff S.O.; Grand Island P.D.

Note: Nebraska has programmed 12 sobriety checkpoints to begin mid-summer 1991. Nebraska Office of Highway Safety estimates 20 to 30 sobriety checkpoints will be conducted in fiscal year 1992.

Court note: The Nebraska high court ruled against the use of sobriety checkpoints. However, the court may allow sobriety checkpoints if the proper procedures are followed (State v. Crom, 383 N.W.2d 461 [1986]).

Nevada

Conducting sobriety checkpoints: Yes  No

Nevada Highway Patrol: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 12

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: The Nevada Highway Patrol requires each of it's three (3) regions to conduct one (1) sobriety checkpoint each quarter.

Other law enforcement agencies in the State conducting sobriety checkpoints: Carson City S.O.; Las Vegas Metropolitan Police, Reno P.D.

New Hampshire

Conducting sobriety checkpoints: Yes No

New Hampshire State Police: Yes No

- Statewide: Yes N/A No N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions N/A Throughout year N/A

- Conducted on a regular basis: Yes N/A No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:  
None

Court note: The New Hampshire supreme court has found sobriety checkpoints to be in violation the New Hampshire constitution (State v. Koppel, 499 A.sd 977 [1985]). Sobriety checkpoints may, however, be conducted if they conform to the guidelines developed by the New Hampshire Attorney General.

New Jersey

Conducting sobriety checkpoints: Yes  No

New Jersey State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 108

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Each troop conducts approximately three (3) sobriety checkpoints per month.

Other law enforcement agencies in the State conducting sobriety checkpoints:  
Municipalities within the counties of Middlesex, Bergen, and Monmouth.

## New Mexico

Conducting sobriety checkpoints: Yes  No

New Mexico State Police: Yes  No

- Statewide: Yes  No
- Number of sobriety checkpoints conducted within the last year: 100
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions      Throughout year
- Conducted on a regular basis: Yes  No
- Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Albuquerque P.D.; Bernalillo County S.O.; Rio Rancho P.D.; Las Cruces P.D.; Santa Fe P.D.

Note: The Albuquerque P.D. has an excellent DWI enforcement program and sobriety checkpoints are an integral part of their overall enforcement effort.

## New York

Conducting sobriety checkpoints: Yes  No

New York State Police: Yes  No

- Statewide: Yes  No
- Number of sobriety checkpoints conducted within the last year: 125
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions      Throughout year
- Conducted on a regular basis: Yes  No
- Frequency conducted: The New York State Police requires each troop to conduct at least one (1) sobriety checkpoint each month.

Other law enforcement agencies in the State conducting sobriety checkpoints:

Binghamton P.D.; Cortland County P.D.; Dutchess County P.D.; Genesee County P.D.; Herkimer County P.D.; Onondagu County P.D.; Albany County P.D. The New York City Police Department conducts sobriety checkpoints on a weekly basis at the local level.

## North Carolina

Conducting sobriety checkpoints: Yes  No

North Carolina State Highway Patrol: Yes  No

- Statewide: Yes  No
- Number of sobriety checkpoints conducted within the last year: 20
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions      Throughout year
- Conducted on a regular basis: Yes  No
- Frequency conducted: Monthly statewide when possible

Other law enforcement agencies in the State conducting sobriety checkpoints:

Region IV advises approximately 40 police agencies are conducting sobriety checkpoints in North Carolina.

North Dakota

Conducting sobriety checkpoints: Yes No X

North Dakota Highway Patrol: Yes No X

- Statewide: Yes N/A No N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions N/A Throughout year N/A

- Conducted on a regular basis: Yes N/A No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:  
None

Ohio

Conducting sobriety checkpoints: Yes X No

Ohio State Highway Patrol: Yes X No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 4

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions Throughout year X

Conducted on a regular basis: Yes X No

Frequency conducted: Quarterly

Other law enforcement agencies in the State conducting sobriety checkpoints:

Dayton P.D.; Sandusky P.D.; Union Township P.D.; Hamilton County S.O.; Port Clinton P.D.; Cleveland P.D.;  
Wood County S.O.

Oklahoma

Conducting sobriety checkpoints: Yes No X

Oklahoma Department of Public Safety: Yes No X

- Statewide: Yes N/A No N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions N/A Throughout year N/A

- Conducted on a regular basis: Yes N/A No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:  
None.

Court note: (State v. Smith, 674 P.2d 562 [1984]) This case was decided prior to Michigan Department of State Police v. Sitz. The State high court held that sobriety checkpoints violated the U.S. Constitution. It is unknown if the court will address this matter with regard to the State constitution.

## Oregon

Conducting sobriety checkpoints: Yes No

Oregon State Police: Yes No

- Statewide: Yes *N/A* No *N/A*

- Number of sobriety checkpoints conducted within the last year: *N/A*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions *N/A* Throughout year *N/A*

- Conducted on a regular basis: Yes *N/A* No *N/A*

Frequency conducted: *N/A*

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

Court note: The Oregon supreme court has held that the use of sobriety checkpoints does not violate the U.S. Constitution (*State v. Shankle*, 647 p.2d 959 [1982] and *Nelson v. Lane County*, 743 P.2d 692 [1987]). The court in the Lane County case indicated that the State could establish "administrative checkpoints" to control the intoxicated driver problem. The sanctions associated with apprehending a person at such a checkpoint must be administrative in nature and not criminal. The court further noted that such "administrative checkpoints" must be authorized by statute.

## Pennsylvania

Conducting sobriety checkpoints: Yes  No

Pennsylvania State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 130

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Allentown P.D.; Pittsburgh P.D. Counties in Pennsylvania in which sobriety checkpoints are being conducted: Chester; York; Dauphin; Delaware; Berks; Schuylkill; Cumberland; Erie; Luzerne; Lackawanna; Lehigh; Lycoming; Allegheny. Region III advises an additional 6 counties will be conducting sobriety checkpoints in fiscal year 1992: Northampton; Bucks; Montgomery; Westmoreland; Fayette; Lancaster.

## Rhode Island

Conducting sobriety checkpoints: Yes No

Rhode Island State Police: Yes No

- Statewide: Yes *N/A* No *N/A*

- Number of sobriety checkpoints conducted within the last year: *N/A*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions *N/A* Throughout year *N/A*

- Conducted on a regular basis: Yes *N/A* No *N/A*

Frequency conducted: *N/A*

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

Court Note: Sobriety checkpoints have been found to be in violation of the Rhode Island constitution (*Primental v. Rhode Island*, 561 A.2d 1348 [1989]).

## South Carolina

Conducting sobriety checkpoints: Yes X No

South Carolina Highway Patrol: Yes X No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 550

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year X

- Conducted on a regular basis: Yes X No

Frequency conducted: Weekly at local level

Other law enforcement agencies in the State conducting sobriety checkpoints:

Columbia P.D.; Anderson P.D.; Anderson S.O.; Charleston P.D.; Charleston S.O.; Florence P.D.;

Aiken P.D.; Spartanburg P.D.; Lexington County S.O.; Richland County S.O.; Spartanburg County S.O.;

Greenville County S.O.; York County S.O.; North Charleston P.D.; Irmo P.D.; Georgetown P.D.

## South Dakota

Conducting sobriety checkpoints: Yes X No

South Dakota Highway Patrol: Yes X No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 20

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions X Throughout year

- Conducted on a regular basis: Yes X No

Frequency conducted: Bi-monthly statewide

Note: The South Dakota Highway Patrol is increasing their involvement with sobriety checkpoints.

Other law enforcement agencies in the State conducting sobriety checkpoints: Sioux Falls P.D.

## Tennessee

Conducting sobriety checkpoints: Yes X\* No

Tennessee Highway Patrol: Yes X\* No

- Statewide: Yes X No

- Number of sobriety checkpoints conducted within the last year: 1,210 (est.)

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year X

- Conducted on a regular basis: Yes X No

Frequency conducted: Weekly at local level

\* The Tennessee Highway Patrol conducts "road blocks" which target equipment and other safety violations.

Note: Sobriety checkpoint legislation has been introduced to the Tennessee legislature (House Bill 582 and Senate Bill 525). If enacted, the title of the legislation will be the "Tennessee Highway Checkpoint Act of 1991". Sobriety checkpoints will be allowed under this legislation with guidelines established as to how they will be conducted. These guidelines resemble those found in "The Use of Sobriety Checkpoints for Impaired Driving Enforcement".

Other law enforcement agencies in the State conducting sobriety checkpoints: Unknown if other agencies are conducting sobriety checkpoints.

## Texas

Conducting sobriety checkpoints: Yes  No

Texas Department of Public Safety: Yes No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year:

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted:

Other law enforcement agencies in the State conducting sobriety checkpoints:

Houston P.D. conducts sobriety checkpoints with other local police agencies. Those other agencies are not identified at this time.

Court note: Upon the finding of Michigan Department of State Police v. Sitz, Texas reviewed whether sobriety checkpoints are a violation of the U.S. Constitution (Higbie v. State, 780 S.W.2d 228 [1989]). At this time legislative authority needs to be granted to conduct checkpoints.

## Utah

Conducting sobriety checkpoints: Yes No

Utah Department of Public Safety: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year:

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted:

Other law enforcement agencies in the State conducting sobriety checkpoints:

As of July 1, 1992 legislation becomes effective allowing checkpoints in Utah and enforcement activity is being planned to begin at that time.

## Vermont

Conducting sobriety checkpoints: Yes  No

Vermont State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 12

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Monthly

Other law enforcement agencies in the State conducting sobriety checkpoints:

Several police agencies in Chitterden County participated in a sobriety checkpoint in 1990, as well as all eight CRASH program agencies.

## Virginia

Conducting sobriety checkpoints: Yes  No

Virginia Department of State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 27\*

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Weekly

\* The Virginia State Police conducted 27 checkpoints using their Batmobile last year and an undetermined number of sobriety checkpoints based out of the district or "barracks" level.

Other law enforcement agencies in the State conducting sobriety checkpoints: Henrico P.D.; Hanover County S.O.; Richmond P.D.; Chesterfield County P.D.; Virginia Beach P.D.; Norfolk P.D.; Chesapeake P.D.; Prince William County P.D.; Charlottesville P.D.

## Washington

Conducting sobriety checkpoints: Yes No

Washington State Patrol: Yes No

- Statewide: Yes N/A No N/A

Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions N/A Throughout year N/A

- Conducted on a regular basis: Yes N/A No N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:  
None

Court note: Sobriety checkpoints have been found to be in violation of the Washington constitution by State court (City of Seattle v. Mesiani, 755 P.2d 775 [1988]). In an earlier case, a checkpoint for the purpose of checking driver's licenses, vehicle registrations and equipment was held to be an invalid seizure by the State supreme court (State v. Marchand, 706 P.2d 285 [1985]). Legislation was defeated in 1992 to allow checkpoints, however, legislation will be reintroduced in 1993.

## West Virginia

Conducting sobriety checkpoints: Yes  No

West Virginia State Police: Yes  No

- Statewide: Yes  No

- Number of sobriety checkpoints conducted within the last year: 37

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions Throughout year

- Conducted on a regular basis: Yes  No

Frequency conducted: Presently every month at the local level

Other law enforcement agencies in the State conducting sobriety checkpoints: Cabell County S.O.; Beckley P.D.; St. Albans P.D.; Huntington P.D.; Harrison County Task Force; Taylor County S.O.; Fairmont P.D.

Wisconsin

Conducting sobriety checkpoints: Yes \* No

Wisconsin State Patrol: Yes No

- Statewide: Yes  N/A No  N/A

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  N/A Throughout year  N/A

- Conducted on a regular basis: Yes  N/A No  N/A

Frequency conducted: N/A

Other law enforcement agencies in the State conducting sobriety checkpoints:

\* The Walworth County S.O. conducted a series of sobriety checkpoints starting on Labor Day 1991. All police agencies in Walworth County participated in the sobriety checkpoints, with several other agencies from around the State participating in the planning process.

Note: Sobriety checkpoints are receiving strong opposition from the Wisconsin Tavern League. While support for sobriety checkpoints by law enforcement has been strong, it has not been sufficient to overcome the lobbying efforts of the League.

Wyoming

Conducting sobriety checkpoints: Yes No

Wyoming Highway Patrol: Yes No

- Statewide: Yes No

- Number of sobriety checkpoints conducted within the last year: N/A

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Throughout year

- Conducted on a regular basis: Yes No

Frequency conducted: N/A

Note: Department policy restricts the use of sobriety checkpoints to daylight hours only.

\* The Wyoming Highway Patrol use "roadside safety checkpoints" that target safety and DWI violations.

\*\* Department policy restricts the use of sobriety checkpoints to daylight hours only.

Other law enforcement agencies in the State conducting sobriety checkpoints:

None

American Samoa

Conducting sobriety checkpoints: Yes Unknown No Unknown

- Territory-wide: Yes Unknown No Unknown

- Number of sobriety checkpoints conducted within the last year: Unknown

- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:

Special occasions  Unknown Throughout year  Unknown

- Conducted on a regular basis: Yes Unknown No Unknown

Frequency conducted: Unknown

Guam

Conducting sobriety checkpoints: Yes No X

- Territory-wide: Yes N/A No N/A
- Number of sobriety checkpoints conducted within the last year: N/A
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions N/A Throughout year N/A
- Conducted on a regular basis: Yes N/A No N/A  
Frequency conducted: N/A

Puerto Rico

Conducting sobriety checkpoints: Yes X No

- Territory-wide: Yes X No
- Number of sobriety checkpoints conducted within the last year: 350
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions Throughout year X
- Conducted on a regular basis: Yes X No  
Frequency conducted: Bi-monthly

Virgin Islands

Conducting sobriety checkpoints: Yes X No

- Territory-wide: Yes X No
- Number of sobriety checkpoints conducted within the last year: 14
- Used only for special occasions or throughout the year as part of an overall DWI enforcement program:  
Special occasions Throughout year X
- Conducted on a regular basis: Yes X No  
Frequency conducted: Weekly

SEH: 02/06/91  
Revised: 04/01/91  
Revised: 04/10/91  
Revised: 04/23/91  
Revised: 08/21/91  
JPM: 06/15/92



States	Conducting Sobriety Checkpoints	State Police/Highway Patrol						Number of Other Agencies in State Using Checkpoints
		Using Check-points	Used More than Holidays	State-Wide	Regular Basis	# of Check-points in Last Year	Frequency	
Ohio *	Yes	Yes	Yes	Yes	Yes	4	Quarterly	7
Oklahoma	No	No	N/A	N/A	N/A	N/A	N/A	None
Oregon	No	No	N/A	N/A	N/A	N/A	N/A	None
Pennsylvania *	Yes	Yes	Yes	Yes	Yes	180	Monthly	19
Rhode Island	No	No	N/A	N/A	N/A	N/A	N/A	None
South Carolina *	Yes	Yes	Yes	Yes	Yes	550	Weekly	16
South Dakota *	Yes	Yes	Yes	Yes	Yes	20	Bi-monthly	1
Tennessee *	Yes	Yes	Yes	Yes	Yes	1,210	Weekly	Unknown
Texas	Yes	No	N/A	N/A	N/A	N/A	N/A	1
Utah	Yes	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Vermont *	Yes	Yes	Yes	Yes	Yes	12	Monthly	1+
Virginia *	Yes	Yes	Yes	Yes	Yes	27+	Weekly	9
Washington	No	No	N/A	N/A	N/A	N/A	N/A	None
West Virginia *	Yes	Yes	Yes	Yes	Yes	37	Monthly	7
Wisconsin	Yes	No	N/A	N/A	N/A	N/A	N/A	1+
Wyoming	No	No	No	No	No	N/A	N/A	None

Territories and District	Conducting Sobriety Checkpoints	Territory-wide or District-wide	# of Check-points in Last Year	Used More Than Holidays	Regular Basis	Frequency
American Samoa	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Guam	No	N/A	N/A	N/A	N/A	None
Puerto Rico	Yes	Yes	350	Yes	Yes	Bi-monthly
Virgin Islands	Yes	Yes	14	Yes	Yes	Weekly
Washington D.C.	Yes	Yes	9	Yes	Yes	Monthly

\* Indicates those States where the State Police/Highway Patrol agencies conduct sobriety checkpoints statewide at least once a month. These State agencies also coordinate and combine their checkpoints with local agencies. There are presently 30 States meeting this criteria (Hawaii is included in this figure due to the widespread use of sobriety checkpoints in that State).

Although they do not specifically meet the above criteria, an additional 9 States are conducting sobriety checkpoints on a limited basis.

10 States are not conducting sobriety checkpoints. Of these States, State supreme courts have found sobriety checkpoints to be in violation of State constitutions in Wyoming, Idaho, Louisiana, Rhode Island, and Washington. Five States have legal or administrative impediments precluding the use of sobriety checkpoints: Michigan, New Hampshire, Oklahoma, and Oregon. One State has made the decision not to do sobriety checkpoints: North Dakota.

SEH: 02/06/91  
 Revised: 04/01/91  
 Revised: 04/19/91  
 Revised: 04/23/91  
 Revised: 08/21/91  
 JPM: 06/15/92



U.S. Department  
of Transportation  
National Highway  
Traffic Safety  
Administration

---

DOT HS 807 656

November 1990

# The Use of Sobriety Checkpoints for Impaired Driving Enforcement

---

This document is available to t

NAT HWY  
TRAFFIC SAFETY ADMIN  
GUIDELINE/SOBRIETY  
CHECKPOINTS

---

Service, Springfield, Virginia 22161.

1. Report No. DOT HS 807 656	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle The Use of Sobriety Checkpoints for Impaired Driving Enforcement		5. Report Date November 1990	6. Performing Organization Code
7. Author(s)		8. Performing Organization Report No.	
9. Performer's Organization Name and Address		10. Work Unit (TRAIS)	11. Contract or Grant No.
12. Sponsoring Agency Name and Address U.S. Department of Transportation National Highway Traffic Safety Administration 400 Seventh Street, S.W. Washington, DC 20590		13. Type of Report and Period Covered	
15. Supplementary Notes		14. Sponsoring Agency Code	
<p>16. Abstract</p> <p>Sobriety checkpoints have been a valuable tool for law enforcement's continuing fight to remove impaired drivers from the road. The purpose of the checkpoint is twofold; to apprehend impaired drivers at the physical location of the checkpoint; and secondly, to increase the "risk of apprehension" in those who might decide to drive while impaired.</p> <p>The legality of checkpoints has been questioned on numerous occasions in the courts. The rulings indicate that certain standards must be upheld when operating checkpoints. This report has compiled the court ruled requirements and put them together in the form of guidelines. The guidelines can be used by police agencies to formulate individual policies governing the use of sobriety checkpoints. This will put a degree of uniformity in the operation of sobriety checkpoints and give departments much needed information on the requirements and procedures they should use. This report comes at a time when many agencies are reinstating sobriety checkpoints.</p> <p>The report contains guidelines to govern the establishment of departmental policy and procedure; a briefing guide that can be used for personnel staffing the checkpoints; a set of questions that can be utilized on questionnaires for public comment and feedback; and, a model policy which can be adopted by individual departments.</p>			
17. Key Words Checkpoints, impaired driving, enforcement, alcohol		18. Distribution Statement Document is available to the U.S. public through the National Technical Information Service, Springfield, VA 22161	
19. Security Class. (of this report) Unclassified	20. Security Class. (of this page) Unclassified	21. No. of Pages	22. Price

## TABLE OF CONTENTS

PREFACE . . . . .	iii
GUIDELINES . . . . .	1 - 6
APPENDICES	
Appendix A - Briefing Guide . . . . .	A1-A3
Appendix B - Motorist Survey Questions . . . . .	B4
Appendix C - Model Policy . . . . .	C5-C8

**THIS DOCUMENT SUPERSEDES SECTION II OF "THE USE OF SAFETY CHECKPOINTS FOR DWI ENFORCEMENT," DOT HS 806-476, PUBLISHED SEPTEMBER 1983**

## PREFACE

Impaired driving and impaired-related crashes constitute one of the nation's leading health problems. These events result in more deaths each year than do total homicides. The impact is particularly severe among young people, age 15-24, where impaired driving is the leading cause of death. Clearly, impaired driving and impaired related crashes constitute a major threat to the safety and well-being of the public. The costs resulting from alcohol-related crashes should be recognized and weighed against the costs and inconveniences associated with efforts to reduce them.

These guidelines have been designed to provide law enforcement agencies with a uniform and successful method to plan, operate and evaluate sobriety checkpoints. When implemented in conjunction with departmental policy and any constraints imposed by state or local courts, sobriety checkpoints provide an effective enforcement tool to combat the impaired driving problem.

Any agency considering the use of sobriety checkpoints should integrate them with a continuing, systematic and aggressive program, including vigorous enforcement, public information and education. The purpose of the program is to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or drugs. There is convincing evidence that the use of checkpoints has a marked, dramatic effect on reducing alcohol-related crashes in a community.<sup>1</sup>

The National Highway Traffic Safety Administration wishes to express its appreciation to Sergeant Barbara Bent, Dayton Police Department, Dayton, Ohio; Sheriff Earl Smith, Franklin County Sheriff's Department, Columbus, Ohio; 1st Sergeant Larry Larkin, Indiana State Police; Maryland State Police; Lieutenant Nancy Brunzos, Sergeant David Kochubka and Technician Floyd Wing, Metropolitan Police Department, Washington, D.C.; 1st Lieutenant Al Slaughter, Michigan State Police; Major Raymond Dutcher, New York State Police; Deputy Charles Fortunato, Palm Beach County Sheriff's Department, West Palm Beach, Florida; Sergeant Keith Adams, Redding Police Department, Redding, California. We are grateful for the effort and contribution from each of these individuals.

We also wish to acknowledge the International Association of Chiefs of Police (IACP) and the National Sheriffs' Association for their recommendations and participation. Mr. Charles Peltier (IACP) provided valuable technical assistance.

<sup>1</sup> "Sobriety Checkpoints for DWI Checkpoints - A Review of Current Research," National Highway Traffic Safety Administration, 1987

## GUIDELINES FOR SOBRIETY CHECKPOINTS

These guidelines suggest and describe operational procedures that police administrators may want to consider in order to ensure that sobriety checkpoints are used legally, effectively and safely. These points are consistent with those specified in recent court decisions, including the United States Supreme Court ruling in Michigan Department of State Police v. Sitz, upholding the constitutionality of sobriety checkpoints. An effective sobriety checkpoint program consists of the following components:

- Ongoing Program to Deter Impaired Driving
- Judicial Support
- Existing Departmental Policy
- Site Selection
- Special Warning Devices
- Visible Police Authority
- Chemical Testing Logistics
- Contingency Planning
- Detection and Investigation Techniques
- Operational Briefings
- Comprehensive Public Information and Education Programs
- Data Collection and Evaluation

Ongoing Program to Deter Impaired Driving - Agencies considering implementing sobriety checkpoints should integrate them with a continuing, systematic and aggressive enforcement program. Vigorous enforcement, public information and education need to be part of this program. The purpose of the checkpoint is to maximize the deterrent effect and increase the perception of "risk of apprehension" to motorists who would operate a vehicle while impaired by alcohol or other drugs. The use of checkpoints alone will not maintain the perception of risk essential to an effective general deterrence program.

Judicial Support - When officials decide to use sobriety checkpoints, they should involve their prosecuting attorney (district attorney, attorney general, etc.) in the planning process to determine legally acceptable procedures. This person can assist in identifying any legally mandated requirements and the types of evidential information that will be needed to prosecute cases emanating from checkpoint apprehension.

The jurisdiction's presiding judge should be informed of the proposed checkpoints and procedures, an essential step if the judiciary is to accept their use. The judge can provide insight on what activities would be required to successfully adjudicate such cases.

The site should have maximum visibility from each direction and sufficient illumination for the safety of both the motorists and officers. If permanent lighting is unavailable, ensure that adequate portable lighting is provided. Planners should also ensure that sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway. Any other conditions that may pose a hazard should be taken into consideration.

**Warning Devices** - Special care should be taken to warn approaching motorists of the sobriety checkpoint. Such notice can be accomplished using warning signs indicating the upcoming checkpoint; flare or fuses (if weather permits) and safety cones or similar devices for marking and/or closing lanes on the roadway; permanent or portable lighting to illuminate the checkpoint area; and, marked patrol vehicles with warning lights flashing.

A sign or device should be placed to provide advance warning stating why motorists are stopped. The U.S. Supreme Court has found that visible signs of the officers' authority generate less concern and fright on the part of lawful travelers, and is therefore less of a subjective intrusion (United States v. Martinez-Fuerte, 428 U.S. 643 (1976)).

The placement and types of traffic control devices used should comply with federal, state or local transportation codes. Planners should check with appropriate agencies administering the location and placement of signaling devices.

**Visible Police Authority** - The visibility of uniformed officers and their marked vehicles makes the police presence obvious. It also serves to reassure motorists of the legitimate nature of the activity. This is an important aspect of the sobriety checkpoint and part of the effort to reduce the intrusion to the passing motorists affected by the checkpoint.

A sworn, uniformed officer should be assigned to provide on-site supervision of the checkpoint operation. This officer should be responsible for the overall operation and should be well versed in contingency planning for the checkpoint. The checkpoint should be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation, based on traffic volume, roadway size, type of location, etc.

**Chemical Testing Logistics** - Since impaired driving arrests are anticipated at the selected location, the logistics of chemical testing must also be included. If possible, a mobile breath testing unit with a qualified operator could be physically located at the checkpoint. If one is not available, a system for expeditiously transporting suspected violators to chemical test sites should be established. In applicable locations, a Drug Recognition Technician (DRT) should be available, at a suitable location, to examine subjects who may be impaired by drugs other than or in combination with alcohol.

# **CORRECTION**

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

## GUIDELINES FOR SOBRIETY CHECKPOINTS

These guidelines suggest and describe operational procedures that police administrators may want to consider in order to ensure that sobriety checkpoints are used legally, effectively and safely. These points are consistent with those specified in recent court decisions, including the United States Supreme Court ruling in Michigan Department of State Police v. Sitz, upholding the constitutionality of sobriety checkpoints. An effective sobriety checkpoint program consists of the following components:

- Ongoing Program to Deter Impaired Driving
- Judicial Support
- Existing Departmental Policy
- Site Selection
- Special Warning Devices
- Visible Police Authority
- Chemical Testing Logistics
- Contingency Planning
- Detection and Investigation Techniques
- Operational Briefings
- Comprehensive Public Information and Education Programs
- Data Collection and Evaluation

Ongoing Program to Deter Impaired Driving - Agencies considering implementing sobriety checkpoints should integrate them with a continuing, systematic and aggressive enforcement program. Vigorous enforcement, public information and education need to be part of this program. The purpose of the checkpoint is to maximize the deterrent effect and increase the perception of "risk of apprehension" to motorists who would operate a vehicle while impaired by alcohol or other drugs. The use of checkpoints alone will not maintain the perception of risk essential to an effective general deterrence program.

Judicial Support - When officials decide to use sobriety checkpoints, they should involve their prosecuting attorney (district attorney, attorney general, etc.) in the planning process to determine legally acceptable procedures. This person can assist in identifying any legally mandated requirements and the types of evidential information that will be needed to prosecute cases emanating from checkpoint apprehension.

The jurisdiction's presiding judge should be informed of the proposed checkpoints and procedures, an essential step if the judiciary is to accept their use. The judge can provide insight on what activities would be required to successfully adjudicate such cases.

Prosecutors, judges, and other involved members of the criminal justice system can be invited to observe the actual operation of the checkpoint.

Existing Policy/Guidelines - Before using sobriety checkpoints, the agency must have specifically established procedures outlining how the checkpoints are to be conducted. The courts have been very clear in requiring the advance planning of sobriety checkpoints. Failure to do so has been used as evidence that the checkpoint techniques involved unfettered discretion. The policy should also assure that the checkpoints are conducted with a minimal amount of intrusion or motorist inconvenience.

Site Selection - Planning should assure the safety of the general public and law enforcement officers when selecting an operational site. Sobriety checkpoints must not create more of a traffic hazard than the results of the driving behavior they are trying to modify.

Planners should remember to select a site that allows officers to pull vehicles out of the traffic stream without causing significant subjective intrusion (fright) to the drivers (United States v. Ortiz 422 U.S. 891 (1975)) and/or creating a safety hazard, e.g., by creating a traffic backup. Furthermore, officers' safety must be taken into account when deciding where to locate the checkpoint.

The department should objectively outline criteria used in the site selection process, e.g., an unusual incidence of alcohol/drug involved crashes or driving violations, unusual number of nighttime single vehicle crashes or other documented alcohol/drug related vehicular incidents.

The site should permit the safe flow of traffic through the checkpoint. Consideration should be given to the posted speed limits, traffic volume and visibility. Most jurisdictions have the capability to review the Average Traffic Volume (ATV) during the surveillance period for major roadways in their area. Once a jurisdiction has decided on possible locations for the sobriety checkpoints, the effect on traffic flow can be determined by ascertaining how long each interview takes, then, multiplying that time by the number of available officers, and finally, dividing that figure into the average number of vehicles which can be expected at that location. This will suggest whether all vehicles can be examined without causing a traffic build-up.

If the traffic volume precludes stopping every vehicle, a nondiscretionary scheme should be adopted, in advance, for stopping some subset of vehicles. In Delaware v. Prouse, 440 U.S. 648 (1979) the United States Supreme Court indicates that stopping all cars would be an acceptable method of conducting spot checks. In a concurring opinion, Justice Blackmun (joined by Justice Powell) suggests that other methods would also be acceptable, such as stopping every tenth car that passes a given point. If every vehicle is not stopped, the method used to determine which ones will be stopped must appear in the administrative order authorizing the use of the sobriety checkpoint.

The site should have maximum visibility from each direction and sufficient illumination for the safety of both the motorists and officers. If permanent lighting is unavailable, ensure that adequate portable lighting is provided. Planners should also ensure that sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway. Any other conditions that may pose a hazard should be taken into consideration.

**Warning Devices** - Special care should be taken to warn approaching motorists of the sobriety checkpoint. Such notice can be accomplished using warning signs indicating the upcoming checkpoint; flare or fusees (if weather permits) and safety cones or similar devices for marking and/or closing lanes on the roadway; permanent or portable lighting to illuminate the checkpoint area; and, marked patrol vehicles with warning lights flashing.

A sign or device should be placed to provide advance warning stating why motorists are stopped. The U.S. Supreme Court has found that visible signs of the officers' authority generate less concern and fright on the part of lawful travelers, and is therefore less of a subjective intrusion (United States v. Martinez-Fuerte, 428 U.S. 643 (1976)).

The placement and types of traffic control devices used should comply with federal, state or local transportation codes. Planners should check with appropriate agencies administering the location and placement of signing devices.

**Visible Police Authority** - The visibility of uniformed officers and their marked vehicles makes the police presence obvious. It also serves to reassure motorists of the legitimate nature of the activity. This is an important aspect of the sobriety checkpoint and part of the effort to reduce the intrusion to the passing motorists affected by the checkpoint.

A sworn, uniformed officer should be assigned to provide on-site supervision of the checkpoint operation. This officer should be responsible for the overall operation and should be well versed in contingency planning for the checkpoint. The checkpoint should be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation, based on traffic volume, roadway size, type of location, etc.

**Chemical Testing Logistics** - Since impaired driving arrests are anticipated at the selected location, the logistics of chemical testing must also be included. If possible, a mobile breath testing unit with a qualified operator could be physically located at the checkpoint. If one is not available, a system for expeditiously transporting suspected violators to chemical test sites should be established. In applicable locations, a Drug Recognition Technician (DRT) should be available, at a suitable location, to examine subjects who may be impaired by drugs other than or in combination with alcohol.

Contingency Planning - Any deviation from the predetermined plan for stopping vehicles should be thoroughly documented and the reason for the deviation given (e.g., traffic backing up, intermittent inclement weather). Courts have allowed this as long as documentation of the reason requiring the deviation from the interview sequence is kept (United States v. Prichard, 645 F2d 854). If such an event occurs, jurisdictions should have prepared an alternative plan, in advance, to handle the checkpoint.

Detection and Investigation Techniques - An agency considering the use of sobriety checkpoints should ensure that the participating officers are properly trained in detecting impaired drivers. The use of sobriety checkpoints which allow impaired drivers to pass through undetected will not achieve the desired deterrence effect. Officers should look for the following indicators of impairment during initial contact with a driver at a checkpoint: odor of alcoholic beverages or other drugs (marijuana, hashish, some inhalants); bloodshot eyes; alcohol containers or drug paraphernalia; fumbling fingers; slurred speech; admission of drinking or drug use; inconsistent responses; detection of alcohol by a passive alcohol sensor; etc. It is highly desirable that officers assigned to conduct the sobriety checkpoint receive the DWI Detection and Standardized Field Sobriety Testing (SFST) training. Police are using these techniques taught in the SFST course to quickly detect whether a driver is impaired.

Once an officer's suspicion is raised, further investigation can take place out of the traffic lane without impeding the flow of traffic. If an officer believes it is necessary to move a suspect's car after he or she has reasonable suspicion of impairment, it should be moved by someone other than the suspect.

The officer should then continue the investigation using non-incriminating divided attention questions (e.g., by the officer simultaneously asking for driver's license and vehicle registration, requiring the subject to do two things at once) and the administration of the SFST battery, which includes the Walk and Turn test, One-Leg Stand test, and Horizontal Gaze Nystagmus. After the completion of the SFST, the officer may use a portable breath testing device (PBT), if permissible in that jurisdiction. An evidential test to determine the blood alcohol concentration (BAC) should then be administered.

If the officer determines the subject is impaired and obtains a low BAC, a DRT should be utilized for further investigation. If a DRT is not available, normal departmental procedures regarding drug impaired drivers should be followed.

Operational Briefings - The success of a sobriety checkpoint depends greatly upon smooth and efficient operations. The persons selected as supervisors of the operation should be briefed thoroughly on all procedures. This includes maintaining as little delay to the motoring public as possible and keeping records of any deviation from the original operational plan.

Persons selected to staff the checkpoint should be briefed on both its purpose and operation. They should understand the necessity for standard and uniform questions asked of drivers to avoid subjectivity. The use of an operational briefing is one way to accomplish this.

**Public Information and Education** - To obtain maximum benefit in terms of its general deterrent effect, sobriety checkpoints should be publicized aggressively. Most drivers will probably never encounter a sobriety checkpoint, but will only learn of it through media reports or by word of mouth. These two valuable forms of public communication will greatly enhance any such program and should be employed consistently.

Checkpoints are an ideal opportunity to give educational materials regarding impaired driving, speeding, child restraint and seat belt usage, as well as seasonal reminders such as schools opening, to persons stopped at the checkpoint.

**Data Collection and Evaluation** - A systematic method of data collection and evaluation should be used to monitor and ensure standardization and consistency of sobriety checkpoints. This may be done by measuring the reaction of the public to the checkpoint and administrative evaluation of collected data.

**Public reaction** - This can be measured by immediate feedback received by officers at the site of the sobriety checkpoint. Also, a short questionnaire which includes an explanation of why the checkpoint is conducted, given to drivers stopped at the checkpoint, can provide data. It may ask of the driver such questions as: Does the driver believe the checkpoint is fair? Did the driver mind being stopped briefly? Did the driver feel checkpoints help deter driving while impaired? The response can be completed later and mailed back to the agency. If the jurisdiction has the resources, a stamped, self-addressed postcard can be used as the questionnaire.

**Evaluation** - This concerns the extent to which the program's implementation, operation and efficiency meets targets set for the program. The following items may be addressed:

- Number of vehicles passing through the checkpoint
- Average time delay to motorists
- Number of motorists detained for field sobriety testing
- Number and types of arrests
- Identification of unusual incidents such as safety problems or other concerns

- Reaction of police officers participating in the sobriety checkpoint, including degree of support and effect on morale
- Perception of the quality of checkpoint cases brought before prosecutors and judges, including special problems
- Change in number of impaired driving arrests
- Change in number of impaired driving related nighttime crashes
- Other information deemed necessary by individual agencies

The National Highway Traffic Safety Administration strongly supports the regular use of sobriety checkpoints. They should be integrated into an overall drunk and drugged driving program, along with vigorous selective enforcement, public information and education. Effective enforcement of drunk driving laws, combined with swift and sure license removal, provides the most important element for reducing alcohol-related fatal and serious injury crashes. Roadside sobriety checkpoints have provided among the most effective results of any enforcement procedure. Checkpoints are an important part of a comprehensive enforcement program designed to raise the perceived probability among potential impaired drivers that they will be stopped and arrested for DWI.

## APPENDIX A

### SOBRIETY CHECKPOINTS BRIEFING GUIDE

Prior to conducting the sobriety checkpoint, the following items should be discussed and thoroughly explained to all officers and supervisors participating in the detail. Routine information, such as location, times, and personnel assignments, including chemical test operators, should be included at each briefing.

- Explain the goal(s) of the roadside sobriety checkpoint.
- Discuss the sobriety checkpoint location and the statistical data supporting the chosen checkpoint site.
- Stress the need for safety for both the officers and motorists
- Assign the sobriety checkpoint operational supervisor. The supervisor shall remain at the checkpoint location to oversee all on-site enforcement activities.
- Discuss the placement of personnel and traffic control devices in conformance with established roadside sobriety checkpoint guidelines and federal, state and/or municipal signing regulations.
- Develop and establish a systematic approach to stopping the vehicles as they enter the checkpoint location. For example, all vehicles or every fifth vehicle will be stopped. At no time will a random stop be utilized. If a problem such as traffic congestion occurs and requires a change in the pattern of stopping vehicles, the on-scene supervisor will determine if there will be a change from the systematic vehicles stopping sequence. All changes, no matter how slight, shall be documented including the time of change with an appropriate explanation of the reason for the change.
- Instruct all participating officers to explain the purpose of the checkpoint to the motorist as they approach a vehicle. A uniform statement/question to the driver should be used, for example:
  - "Good Evening. You have been stopped at a Department Name sobriety checkpoint. We use checkpoints in an effort to detect and deter the impaired driver. Have you consumed any alcohol or controlled substance today?"
  - If the driver's answer is no and there is no other compelling reason to detain the vehicle, the officer should permit the motorist to proceed.

- If the driver's answer is yes, ask how much and when. Depending on the answers and other circumstances, the officer should decide if further investigation is warranted. If so, direct the driver to safely exit the vehicle and escort him or her to the designated area for further investigation. If not, permit the motorist to proceed.
- Sobriety checkpoint pamphlets, questionnaires and occupant protection booklets should be given to each motorist stopped during the detection phase.
- Also during the detection phase, the officer should see if the occupants of the stopped vehicle are properly using required safety restraints (including child safety seats). If a violation exists a verbal reminder may be given.
- Instruct officers to inspect the driver for the smell of alcoholic beverages or other drugs, bloodshot eyes, fumbling fingers, slurred speech, admission of drinking or drug use, abusive language, inconsistent responses, etc. Be observant of the interior of the vehicle for alcoholic beverage containers, drug paraphernalia or other contraband, such as weapons, that are in plain view.
- The motorist should be permitted to proceed on his/her way unless the officer observes evidence of intoxication, or there is evidence of another serious violation requiring immediate action.
- Those persons suspected of impairment should be subjected to the battery of Standardized Field Sobriety Tests. If impairment is obvious and the blood alcohol level (BAC) is low, a Drug Recognition Technician (DRT) should evaluate the subject. If a DRT is not available, normal departmental policy for handling impaired drivers should be followed.
- Searches of a motor vehicle, the driver, or passengers, shall be conducted only when consistent with departmental policies or when legally permissible.
- A motorist who wishes to avoid the checkpoint by legally turning before entering the checkpoint area should be allowed to do so unless a traffic violation(s) is observed or probable cause exists to take other action. The act of avoiding a sobriety checkpoint does not constitute grounds for a stop.

Sobriety Checkpoints Briefing  
Page Three

An accurate and complete written evaluation report shall be prepared for each sobriety checkpoint operation. Items in the report should include but are not limited to:

- number of vehicles passing through the checkpoints
- number of motorists detained for Standardized Field Sobriety Testing
- average time delay for motorists
- number and types of arrests
- identification of unusual incidents such as safety problems or other concerns
- reaction of police officers participating in the sobriety checkpoint, including the effect on morale and degree of officer support
- reaction of the motoring public to the sobriety checkpoint

## APPENDIX B

### Motorist Survey - Sobriety Checkpoints

- Question 1      Did the sobriety checkpoint cause a significant delay to your journey?
- Question 2      Do you believe sobriety checkpoints will deter some people from driving while impaired by alcohol or other drugs?
- Question 3      Do you believe that sobriety checkpoints will increase an impaired driver's risk of being detected and arrested?
- Question 4      Do you approve of sobriety checkpoints as a Name of Department enforcement measure to detect and remove drunk and drugged drivers from the highway?
- Question 5      Do you have any comments about sobriety checkpoints?
- Question 6      What is your age?
- Question 7      What is your sex?

These questions, with appropriate spaces for answers, can be utilized in questionnaires given to motorists going through sobriety checkpoints. They can be filled out and later mailed back to the agency.

(Prepared by Maryland State Police Traffic Program Planning Unit and Washington, D.C. Metropolitan Police)

# MODEL POLICY

## SOBRIETY CHECKPOINT GUIDELINES

---

### I PURPOSE

The purpose of this policy is to provide guidelines for the physical construction and operation of a sobriety checkpoint in order to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or other drugs.

### II POLICY

It shall be the policy of this law enforcement agency to implement a sobriety checkpoint program. This will be done as part of a comprehensive enforcement program. To ensure standardization of this program a clear and concise set of written guidelines has been developed governing procedures on how checkpoints will be operated within this jurisdiction.

To implement this policy this agency must:

- Satisfy federal, state and local legal requirements.
- Conduct checkpoints with a minimal amount of intrusion or motorist inconvenience.
- Assure the safety of the general public as well as law enforcement officers involved.
- Provide for an objective site selection process based on relevant data.
- Provide for public information and education to maximize the deterrent effect and heighten awareness of the impaired driving problem.
- Provide for a systematic procedure for data collection and after impact analysis report to monitor and ensure standardization and consistency of the sobriety checkpoint program.
- Officer selection should be based on experience and training. Operational procedures will be covered during a briefing period prior to each checkpoint.

### III. DEPARTMENTAL GUIDELINES

Written guidelines, consistent with existing agency policies, prepared in advance of the checkpoint program must:

- A. Be approved by the agency's chief law enforcement official or designee prior to commencement of the checkpoint.
- B. Specify signing, safety equipment, warning devices, barriers, etc. that will be used, their placement and proper use at the scene. This specification will be consistent with applicable standards and regulations. (See the relevant state or local manuals on traffic control devices, etc.)
- C. Specify the method for selecting motorists to be contacted, e.g., "every vehicle, every fifth vehicle," etc. to ensure objectivity.
- D. Provide for an operational briefing of personnel prior to each checkpoint. At this time designate assignments and respective duties.
- E. Specify dialogue and educational material to be used by checkpoint personnel.
- F. Provide for the removal of vehicles to the predetermined area when further investigation is required.
- G. Public reaction to the use of sobriety checkpoints can be obtained by several different methods. Recommended procedures for obtaining feedback are:
  1. Mail in surveys.
  2. Verbal feedback from motorists at checkpoint site.
  3. Periodic public opinion polls.

### IV. PROCEDURES

#### A. Site Selection

This department must be able to objectively outline criteria utilized in the site selection process:

1. Alcohol/Drug related traffic experiences.
  - a. Unusual incidence of alcohol/drug related crashes.
  - b. Alcohol/drug impaired driving violations.
  - c. Unusual number of nighttime single vehicle crashes.
  - d. Any other documented alcohol/drug related vehicular incidents.
2. Select locations which permit the safe flow of traffic through the checkpoint.

- a. Consideration should be given to posted speed limits, traffic volume and visibility.
  - b. Ensure sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway.
  - c. Consider other conditions that may pose a hazard.
3. The site should have maximum visibility from each direction and sufficient illumination. If permanent lighting is unavailable ensure that portable lighting is provided.

#### B. PERSONNEL

1. A sworn, uniformed officer will be assigned to provide on-scene supervision of the checkpoint.
2. The checkpoint will be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation.

#### C. ADVANCE NOTIFICATION

1. For the purpose of public information and education, this agency will announce to the media that checkpoints will be conducted.
2. This agency will encourage media interest in the sobriety checkpoint program to enhance public perception of aggressive enforcement to heighten the deterrent effect and to assure protection of constitutional rights.
3. This agency will provide advance notification of the checkpoint to public safety agencies expected to be impacted.

#### D. MOTORISTS WARNINGS / SAFETY METHODS

1. Special care is required to warn approaching motorists of the sobriety checkpoint.
2. Basic equipment will include, but is not limited to:
  - a. Warning signs placed in advance of the checkpoint
  - b. Flares, fusees, or similar devices
  - c. Safety cones or similar devices
  - d. Permanent/portable lighting
  - e. Marked patrol vehicles
3. The use, placement and types of traffic control devices must comply with federal, state, or local transportation codes.

#### E. CONTINGENCY PLANNING

Any deviation from the predetermined guidelines must thoroughly document the reason for the deviation. (i.e. traffic backing up, intermittent inclement weather.)

F. DATA COLLECTION AND EVALUATION

To monitor and ensure standardization and consistency of the sobriety checkpoint program a systematic method of data collection will be incorporated.

1. After action report may include, but is not limited to:
  - a. Time, date, and location of checkpoint.
  - b. Weather conditions.
  - c. Number of vehicles passing through checkpoint.
  - d. Average time delay to motorists.
  - e. Predetermined order of selecting motorists.
  - f. Number and types of arrests.
  - g. Number of motorists detained for field sobriety testing.
  - h. Identification of unusual incidents such as safety problems/other concerns.
  
2. To assist in determining the effectiveness of a checkpoint operation, a periodic impact analysis will include the following types of information.
  - a. Crash rate reduction.
  - b. Impaired driving offenses.
  - c. Impaired driving convictions
  - d. Public opinion survey to determine increased perception of detection and apprehension of impaired drivers.

~~89-5-3~~  
50112



# MADD

## Mothers Against Drunk Driving

---

669 Airport Freeway, Suite 310 • Hurst, Texas 76053 • (817) 268-MADD • FAX (817) 268-6827  
(817) 268-6233

### INTRODUCTION

Throughout MADD's existence, the organization has sought to address the drunk driving issue by promoting public policies which would aid victims of drunk driving crashes, discourage impaired driving and deal more effectively with those who do drive under the influence. This brochure compiles position statements adopted by the national organization of Mothers Against Drunk Driving. New position statements are added as issues are studied and evaluated.

For further information about MADD's legislative goals and position statements, and for resources and/or model laws on these issues, contact MADD National Public Affairs Department, 669 Airport Freeway, Suite 310, Hurst, Texas, 76053.

MOTHERS AGAINST DRUNK DRIVING  
POSITION PAPER  
SOBRIETY CHECKPOINTS

A recent method of apprehending alcohol-impaired drivers on America's highways is the use of sobriety checkpoints. Many drinking drivers feel their actions can go undetected and, unfortunately, many do. Only one out of every thousand impaired driving trips results in an arrest.

Sobriety checkpoints offer a safe method to detect impaired drivers. They provide law enforcement officials with the opportunity to identify DUI offenders before a possible crash occurs.

Surveys in a number of states including Delaware, Maryland, Missouri, Washington, and Virginia, along with the District of Columbia, have shown strong support for checkpoints. Up to 90 percent of the public have indicated in such public opinion surveys that they favor this procedure. Moreover, in communities which have implemented checkpoints, citizens indicate even greater support for this law enforcement method. Checkpoints are supported not only by those who do not drink and drive, but also by those who are most at risk for being apprehended at checkpoints. This indicates that those of us who drive at night are willing to be stopped at a checkpoint in order to reduce the threat imposed by the drunk driver--the threat that kills an average of 25,000 people and costs this nation \$25 billion per year.

SOBRIETY CHECKPOINTS  
PAGE 2

A study by the Insurance Institute for Highway Safety has shown that drinking drivers have a higher perception of the risk of arrest in communities where checkpoints are utilized than in communities which do not employ this technique. It is this fear of arrest that is the most effective deterrent to drunk driving.

Sobriety checkpoints should be carefully planned, highly organized, and supervised to ensure public safety, fairness and minimum intrusion upon the non-drinking driver. Those who do not show signs of impairment or being under the influence are normally passed through a checkpoint in fifteen to thirty seconds. Like the brief security check at airports, this is a small price to pay for safety on our roads.

While some have expressed concern that checkpoints are not an efficient method to apprehend the drunk driver, actual experience in Delaware, Virginia, and the District of Columbia has shown that police officers make as many or more arrests per hour at checkpoints as they do in the more traditional role of patrolling the streets.

Many federal and state courts support the constitutionality of the principal of sobriety checkpoints. Despite records of roadblock effectiveness abroad, only a few of the most advanced law enforcement agencies in the U.S. to date have taken advantage of this new enforcement technique.

It is time that all Americans are afforded protection from impaired drivers by the regular use of checkpoint procedures. The men and women of MADD urge local and state officials to immediately implement sobriety checkpoints.

---

## **SOBRIETY CHECKPOINTS**

### **RESOLUTION 93-19 (new)**

*WHEREAS, impaired driving kills more than 20,000 people each year and costs the nation as much as \$46 billion annually; and*

*WHEREAS, highway experts agree that deterrence of drinking and driving requires a perception that detection and arrest are likely to occur; and*

*WHEREAS, only one in 200 to 2,000 impaired driving trips results in an arrest; and*

*WHEREAS, a study by the insurance institute for Highway Safety bears out that drinking drivers have a higher perception of the risk of arrest in communities where checkpoints are used than in communities which do not employ this technique; and*

*WHEREAS, sobriety checkpoints can offer a safe and effective means of detecting and discouraging alcohol impaired driving; and*

*WHEREAS, the Supreme Court of the United States upheld the legality of sobriety checkpoints finding that they balance Fourth Amendment rights against public safety;*

*NOW THEREFORE BE IT RESOLVED, that NAGHSR supports the use of sobriety checkpoints to detect and apprehend alcohol impaired drivers and urges states to implement the use of them as an effective alcohol countermeasure.*

*Submitted by: Impaired Driving Committee*

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 4, 1994

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the use of sobriety checkpoints to discover and deter drivers who are impaired by alcohol or drugs.*

*Drunk driving is a major highway safety concern in Alaska. The deterrence, or apprehension and successful prosecution, of drivers impaired by alcohol or drugs has been and remains a major concern of law enforcement.*

*This bill authorizes a law enforcement agency to establish and operate a sobriety checkpoint under a court order authorizing the checkpoint. To obtain the order, the law enforcement agency must submit to the judge a written plan describing the proposed checkpoint. If the judge determines that the plan meets certain standards and appropriately minimizes delays and intrusions that will be caused by its operation, the judge will issue an order authorizing the proposed checkpoint.*

*In my State of the State address on January 12, 1993, I identified "alcoholism, along with the abuse of other drugs," as "Alaska's number one health problem." I reiterated my commitment to dealing with this issue in my State of the State address this year, as well. This proposed legislation gives law enforcement officers additional tools that they need to combat the significant highway safety problem presented by those drivers who drink or use drugs and then cause accidents that are fatal or cause serious injury.*

*I urge your favorable action on this bill.*

*Sincerely,*

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel  
Governor

# SOBRIETY CHECKPOINTS

Studies have shown sobriety checkpoints to be an effective deterrent to drunk driving and their use has been approved by the U.S. Supreme Court. However, some law enforcement agencies have been reluctant to adopt them, and others use sobriety checkpoints only infrequently. Articles and interviews with law enforcement personnel reveal reasons why some officers view sobriety checkpoints with skepticism. These views are summarized along with facts and information that can be offered to encourage greater use of sobriety checkpoints as effective strategies to reduce impaired driving.

## Point 1

Sobriety checkpoints are unproductive. They yield fewer drunk driving arrests than traditional patrols.

## Counterpoint 1

Research has found that properly conducted sobriety checkpoints can be just as productive in terms of arrests as traditional patrols. More important, however, deterring drunk driving requires creating the perception that a law violator will be caught. Deterrence is achieved not so much by arrests of violators, as by contacts between the police and the driving public in which the risk of apprehension for a law violator is demonstrated. Sobriety checkpoints are uniquely suited for this.

## Point 2

Sobriety checkpoints are expensive, requiring the commitment of dozens of police and the acquisition of expensive equipment. The necessary resources are either unavailable in small departments or are lost in competition with other police duties like responding to calls for assistance from citizens.

## Counterpoint 2

Preventing drunk driving is one of the most important and most effective roles of law enforcement, and this function has a legitimate claim for support in the police budget. Although large-scale sobriety checkpoints can be expensive, checkpoints can be mounted in some circumstances with as few as two or three officers. Necessary equipment such as special signs, generators for lighting the scene, and so forth, along with additional personnel, can be obtained inexpensively through cooperation among neighboring law enforcement agencies.

## Point 3

Sobriety checkpoint activity is boring and dangerous police work.

## Counterpoint 3

The dangers of being in the street at times and places where impaired drivers are expected are real but they can be minimized with proper planning and execution. For example, by providing adequate illumination and placing police vehicles where they can shield the officers from an errant car. Police who are convinced of the deterrent value of sobriety checkpoints seldom claim they are bored. Rather, they appreciate the opportunity to interact with the driving public in a positive context.

## Point 4

Sobriety checkpoints damage relations between the police and the public.

## Counterpoint 4

Numerous surveys reveal that the public support checkpoints. The experience of agencies employing checkpoint programs has been that they improve public relations, measured by compliments and gifts of food and coffee at the checkpoints, as well as overwhelming approval in questionnaires returned in the mail.

## Point 5

Sobriety checkpoints are unfair, objectionable in principle.

### Counterpoint 5

*Stopping motorists in the absence of a reasonable suspicion that they have been doing something wrong does require justification. This justification has been provided by the U.S. Supreme Court in the 1990 case of Michigan Department of State Police v. Sitz. The Court balanced the intrusion on the motorist against the government's interest in reducing drunk driving and the effectiveness of checkpoints in advancing that interest, and found it justified. Most state courts have come to the same conclusion.*

## Point 6

Sobriety checkpoints are not supported by local government, and encouragement and resources are lacking.

### Counterpoint 6

*Checkpoints are supported by more than three-quarters of the public in recent polls. Law enforcement officials can point to this fact in negotiating for the support of government officials. Community leaders should be informed that checkpoints not only deter drunk driving but are also used to encourage the use of lifesaving seat belts and child protection devices.*

FIRST-CLASS MAIL  
POSTAGE & FEES PAID  
NATIONAL HIGHWAY TRAFFIC  
SAFETY ADMINISTRATION  
PERMIT NO. G-90

U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**  
410 Seventh St., S.W.  
Washington, D.C. 20590

DOT HS 807 916  
January 1993

# SOBRIETY CHECKPOINTS

## Point

### Counterpoint



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

FISCAL NOTE

No. 4  
 Bill Version: SB 278  
 (S) Publish Date: 2-4-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: January 24, 1994  
 Title: "An Act relating to sobriety checkpoints..."  
 Sponsor: Rules/By Request of the Governor  
 Requestor: Governor's Office

Department Affected: Department of Law  
 BRU: Prosecution  
 Component: All  
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
 Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: January 24, 1994  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law January 24, 1994

PREPARER TO PROVIDE  
 For further details

FISCAL NOTES

GVERNOR'S LEGISLATIVE OFFICE  
 Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION:

This bill authorizes law enforcement agencies to establish and operate sobriety checkpoints upon a written order issued by a judge. To obtain such an order, the law enforcement agency must submit to the judge a written plan describing the proposed checkpoints. Before signing an order authorizing the proposed checkpoints, the judge must determine that the plan meets certain standards and appropriately minimizes delays and intrusions caused by the operation. Because sobriety checkpoints could only be conducted by court order, helping to overcome defenses based on the state's right to privacy doctrine, we do not believe that the bill will have a fiscal impact for the Department of Law. Moreover, because the bill requires that public notice be given of the dates and hours when a sobriety checkpoint will be operated and therefore serves mainly as a deterrent to driving while intoxicated, the number of new prosecutions will be minimal.

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 278  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: "An Act relating to sobriety checkpoints and providing for an effective date." BRU: Alaska State Troopers  
Sponsor: Rules Component: Detachments  
Requestor: Governor COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	2.0	2.0	2.0	2.0	2.0	2.0
TRAVEL						
CONTRACTUAL	.5	.5	.5	.5	.5	.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.5	2.5	2.5	2.5	2.5	2.5

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MIITIA						
Other	2.5	2.5	2.5	2.5	2.5	2.5
TOTAL	2.5	2.5	2.5	2.5	2.5	2.5

Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) Trooper Overtime - \$2.0; Contractual - \$.5 (Sign Rental). It is anticipated that Federal Highway Funds through the Highway Safety Planning Agency will be available to offset these costs.

*Handwritten:* 1/21/94

Prepared By: Francis C. Allan Phone: (907) 269-5691  
Division: Alaska State Troopers Date: 01/20/93  
Approved by Commissioner: [Signature] Date: 01/21/93  
Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 278

BII (S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "Authorizing Sobriety Checkpoints..." BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 Sponsor: Rules Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 43

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

**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)

Prepared by: Brant McGee, Director Phone: 274-1684  
 Division: Office of Public Advocacy Date: \_\_\_\_\_  
 Approved by Commissioner: Nancy Bear Usher Date: 1/21/94  
 Agency: Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

No. 2  
 Bill Version: SB 278  
 (S) Publish Date: 2-4-94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "Authorizing Sobriety Checkpoints..." BRU: Public Defender Agency  
 Component: Public Defender Agency  
 Sponsor: Rules Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

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)

Prepared by: John Salemi, Director Phone: 264-4400  
 Division: Public Defender Agency Date: \_\_\_\_\_  
 Approved by Commissioner: Nancy Bear Usher Date: 1/21/94  
 Agency: Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

## GOVERNOR HICKEL'S SOBRIETY CHECKPOINTS LEGISLATION (SB 278 & HB 444)

Governor Hickel's proposed legislation authorizes a law enforcement agency to establish and operate a sobriety checkpoint under a court order authorizing the checkpoint. To obtain the order, the law enforcement agency must submit to the judge a written plan describing the proposed checkpoint. If the judge determines that the plan meets certain standards and appropriately minimizes delays and intrusions that will be caused by its operation, the judge will issue an order authorizing the checkpoint.

In 1992, 89 traffic crashes on Alaska roadways resulted in the deaths of 108 people. A major contributor to these fatal crashes was alcohol. The rate of alcohol involvement in Alaska's crash fatalities is 60.2 percent as compared to the national average of 45.1 percent. Alaska ranks third highest in the nation behind only New Mexico at 63.9 percent and Texas at 61.2 percent.

Sobriety checkpoints have been a valuable tool for law enforcement's continuing fight to remove impaired drivers from the road. Checkpoints along with aggressive public information efforts, are a vital part of any program to reduce impaired driving. Checkpoints provide an excellent means of increasing public awareness. If the public is aware that law enforcement will be conducting checkpoints, they tend to be much more careful about drinking and driving. They may drink less, or find alternative transportation.

The deterrence of drunk driving requires creating the perception that a law violator will be caught. Deterrence is achieved not so much by the arrest of violators, as by contacts between the police and the driving public in which the risk of apprehension for a law violator is demonstrated. This proposal will ensure both the rights of the motorist from intrusion on their privacy, while allowing for the use of checkpoints in achieving the goal of deterring drunk driving.

# ALASKA STATE TROOPER

## FYI - DWI

### (Road Sobriety Checkpoint Fact Sheet)

Driving While Intoxicated (DWI) arrests are one step toward reducing the number of alcohol related fatalities. In 1992, there were 108 motor vehicle fatality accidents in Alaska which resulted in 63 alcohol-related deaths. In 1992, over 5,578 DWI arrests were made in Alaska.

#### AS 28.35.030 and AS 28.35.032 Class A Misdemeanor Penalties for Driving While Intoxicated and Refusal to Take a Breath Test

In Alaska, a blood alcohol concentration (BAC) of .10 or higher may result in a conviction for driving while intoxicated.

**First Offense:** Minimum fine \$250, maximum \$5000; minimum imprisonment 72 hours, maximum 1 year; driver's license revocation minimum 90 days.

**Second Offense:** Minimum fine \$500, maximum \$5000; minimum imprisonment 20 days, maximum 1 year; driver's license revocation minimum 1 year; possible loss of vehicle.

**Third Offense:** Minimum fine \$1000, maximum \$5000; minimum imprisonment 60 days, maximum 1 year; driver's license revocation minimum 3 years; possible loss of vehicle.

**Fourth Offense:** Minimum fine \$2000, maximum \$5000; minimum imprisonment 120 days, maximum 1 year; driver's license revocation minimum 5 years; possible loss of vehicle.

Nationally, motor vehicle accidents involving drunk drivers are responsible for a majority of the deaths in young people age 5 to 32. Each year 25,000 lives are lost as a result of drunk drivers; there are approximately 500 funerals each week or 70 funerals each day. A life is lost as the result of a drunk driver, every 21 MINUTES.

The odds indicate about 2 in every 5 Americans will be involved in an alcohol-related traffic crash at some time in their lives. From 1982 through 1990, over 210,000 people died in alcohol-related crashes. One out of every 3 people killed in alcohol-related crashes is not the drinking driver or pedestrian. These people are the victims of a drinking driver. Drinking is a factor in 17 percent of serious injury crashes and in 4 percent of all property damage crashes.

Nationally, nearly 45.1 percent of the 39,235 traffic fatalities recorded in 1992 died in alcohol-related crashes. Thirty-six percent of all drivers who were fatally injured in 1992 were driving while intoxicated. In 1992, drinking was a factor in approximately 16,793 fatal crashes; 228,000 injury crashes; and 220,000 property damage crashes.

Roadway Sobriety Checkpoints have been proven effective across the nation in reducing the number of alcohol-related highway fatalities. Your courtesy, cooperation, and support on this program is appreciated. Help the Alaska State Troopers keep things in check.

Walter J. Hickel, Governor, State of Alaska

Safety  
Troopers

ALASKA STATE TROOPER  
FACT SHEET