

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10241 HOUSE JUDICIARY

86



RECORDS CERTIFICATION



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William J. Carter

Signature of Camera Operator

10/14/2003

Date

OVERVIEW

ALASKA

PUBLIC

DEFEND:

1/10/01

May 15, 1998

Members of the Legislative Budget and Audit Committee:

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

DEPARTMENT OF ADMINISTRATION
PUBLIC DEFENDER AGENCY
CASE MANAGEMENT TIME STUDY
AND PERFORMANCE REVIEW

May 15, 1998

Audit Control Number

02-4530-00

The objectives of this audit were to determine: (1) if the Alaska Public Defender Agency (PDA) funding and related expenditures allow for efficient and effective operations in accordance with laws, regulations, and administrative policies and procedures; and (2) if PDA management and operations are efficient and effective in providing for adequate representation of clients in accordance with applicable laws, regulations, and court rules. The latter objective included an attorney time study to determine the adequacy and reasonableness of the attorney staffing level.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report. Further, audit results are in the Report Conclusions, Findings and Recommendations, and Prior Audit Recommendations sections of this report.

Pat Davidson, CPA
Legislative Auditor

ORGANIZATION AND FUNCTION

Created in 1969 by AS 18.85, the Public Defender Agency (PDA) was initially organized under the Office of the Governor. In 1980 the governor transferred PDA to the Department of Administration.[10] The governor appoints the public defender to head the agency from nominations made by the Alaska Judicial Council. The appointment is subject to confirmation by the legislature. The public defender serves a four-year term and may serve additional terms with reappointment by the governor and legislative confirmation.

By statute[11] the Alaska Court System (ACS) is responsible for determining eligibility for public defense services. After eligibility criteria have been met, an attorney is appointed either from PDA or, for some cases, from the Office of Public Advocacy (OPA).[12] Since ACS determines eligibility,[13] neither PDA nor OPA have control over the number of individuals each agency will be appointed to defend.

PDA has 13 offices statewide: Juneau, Ketchikan, Sitka, Barrow, Kotzebue, Nome, Anchorage, Dillingham, Kenai, Kodiak, Palmer, Bethel and Fairbanks. The number and classification of authorized positions for FY 97 are shown in Exhibit 4. It should be noted however, that given the vacancy and turnover factor typically assessed against each agency's operating budget, the full-time equivalent attorney positions available to PDA in FY 97 was 61.5 rather than the 66 authorized.

In FY 97, PDA was appointed 18,463 new cases, while OPA was appointed 2,544 cases. State expenditures for these public defense services totaled \$13,161,000: \$8,891,000 for PDA and \$4,270,000 for OPA representation.

State public defense costs are partially reimbursed by convicted defendants.[14] ACS is responsible for including, as part of the sentencing of a convicted defendant, the entry of a judgment and forwarding it to the Department of Law (DOLaw) for collection. Since FY 94, DOLaw has processed 31,563 judgements totaling \$7.8 million, of which \$2.5 million had been collected. Exhibit 5 shows the allocation of those collections.

¹⁰ See Executive Order No. 42.

¹¹ See AS 18.85.120.

¹² In some instances, there may be conflict of interest between the individual needing representation and PDA. For example, two individuals may be involved and charged with the same crime. It may be in the interests of the "less culpable" one to testify against his collaborator. In such instances, the courts may appoint a defense attorney from the Office of Public Advocacy for one of the individuals and a PDA attorney for the other.

¹³ ACS only has the authority to limit appointments to those defendants found under Criminal Rule 39 to be indigent.

¹⁴ See AS 18.85.120 and *Alaska Rules of Court*, Criminal Rule 39.

Exhibit 1

**Public Defender Agency
Open Caseload Inventory as of November 1, 1996**

Case Classifications	Totals	% of Cases
Felonies	1124	18.8%
Misdemeanors	2340	39.1%
Probation Revocations:		
Felonies	379	6.3%
Misdemeanors	571	9.6%
Sentence Appeals:		
Felonies	15	.2%
Misdemeanors	1	.0%
Post-Conviction Relief	47	1.0%
Involuntary Commitments	19	.3%
Parole Hearings	40	.7%
Fugitives	2	.0%
Merit Appeals:		
Felonies	121	2.0%
Misdemeanors	26	.4%
Other	2	.0%
Subtotal: Adult Proceedings	4687	78.4%
Juvenile Delinquencies	287	4.8%
JD Probation Revocations	78	1.3%
Merit Appeals:		
Juvenile Delinquencies	1	.0%
Child-In-Need of Aid (CINA)	4	.1%
Child-In-Need of Aid	921	15.4%
Subtotal: Children Proceedings	1291	21.6%
Total All Cases	5978	100.0%

Exhibit 3
Final Case Time Estimates

Case Classifications/Types	Average Hours
Homicides	176.12
Felonies	
Felony Drug	49.00
Felony Sexual Abuse	44.60
Felony Sexual Assault	67.56
Felony Violent	78.71
Felony DWI	29.09
Felony Property	34.73
Felony Other	37.49
Weighted Average of Felonies	48.92
Felony Post-Conviction Relief Proceedings	48.04
Felony PTR	15.79
Misdemeanors:	
Misdemeanor Drug	8.06
Misdemeanor Sexual Assault	31.61
Misdemeanor Violent	9.93
Misdemeanor DWI	9.94
Misdemeanor Property	4.39
Misdemeanor Other	8.96
Weighted Average of Misdemeanors	8.98
Misdemeanor PTR	2.36
Felony Sentence Appeal	25.39
Misdemeanor Sentence Appeal	10.23
Felony Merit Appeal	114.34
Misdemeanor Merit Appeal	29.98
Other Merit Appeals:	
Post-Conviction Merit Appeal	188.85
Juvenile Delinquency Merit Appeal	120.59
Child-in-Need of Aid Merit Appeal	163.79
Weighted Average Other Merit Appeals	160.77
Juvenile Delinquency	21.30
Juvenile Delinquency PTR	26.14
Child-In-Need of Aid	38.28
Parole Hearing	6.29
Involuntary Mental Health Commitments	2.86

Exhibit 7
Legislation Passed Affecting PDA Caseload
For the Years 1992 through 1997

- Expansion and elimination of statute of limitations for certain crimes
- Mandatory 99-year sentences for certain crimes
- Expansion of State's right to appeal in criminal cases
- Stalking law
- Sex offender registration law
- Conspiracy criminal law
- Mandatory waiver of certain juveniles into adult court
- Felony driving while intoxicated
- Limitations on suspended imposition of sentencing
- Domestic violence legislation (including mandatory arrests)
- Increased penalties for an assault on a police officer
- Conversion of joyriding from misdemeanor to felony auto theft
- "Three Strikes" felony sentencing provisions
- Knowingly interfering with a report of domestic violence
- Discharging firearms at or towards a building or dwelling felony crime
- Expansion of automatic waiver of juveniles into adult court
- Truth in Sentencing Act of 1997
- Mandatory minimum jail sentences for domestic violence crime
- Governor's Omnibus Child Protection Bill
- Dual sentencing for serious juvenile offenders
- Fleeing or evading a police officer misdemeanor

changed to a felony

- Changes in sex offender registration law

Exhibit 8

Additional Positions Needed to Handle Caseload

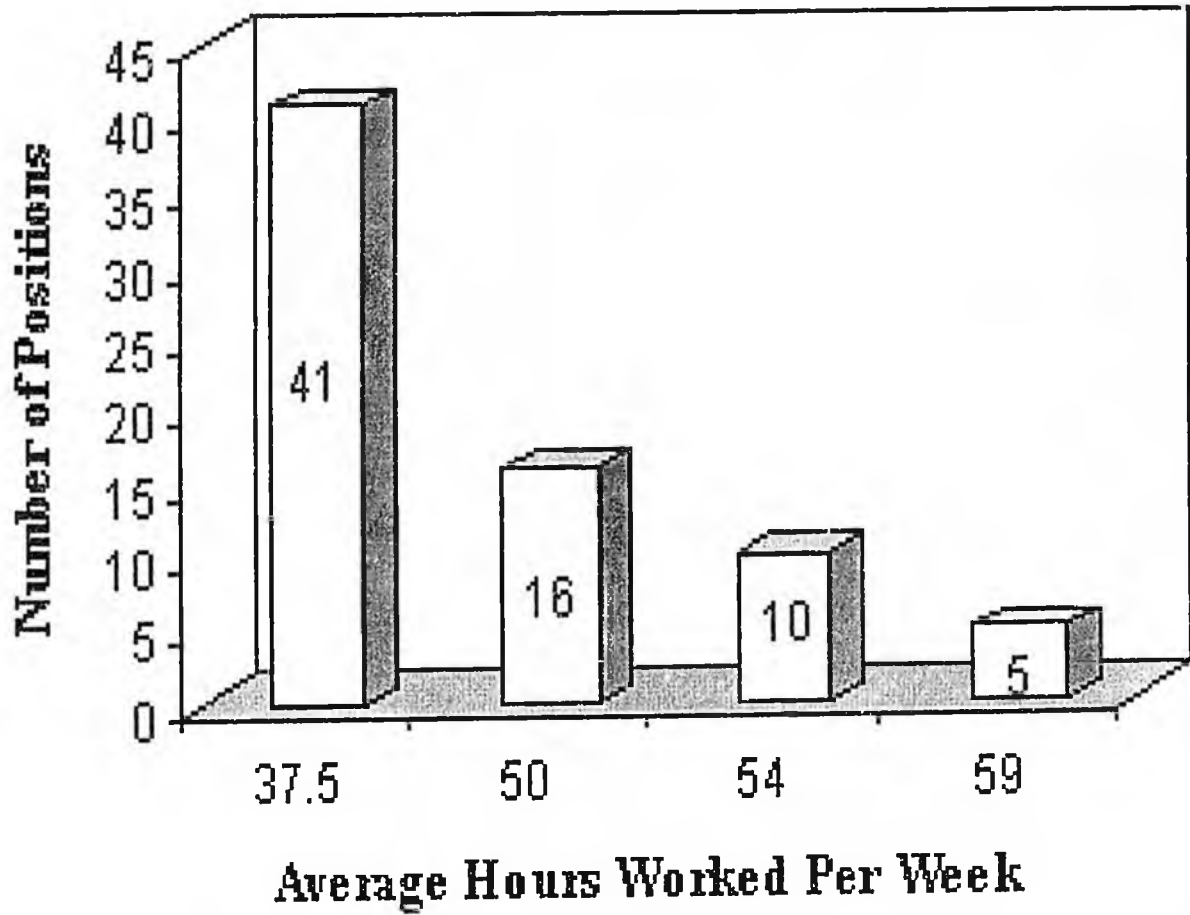
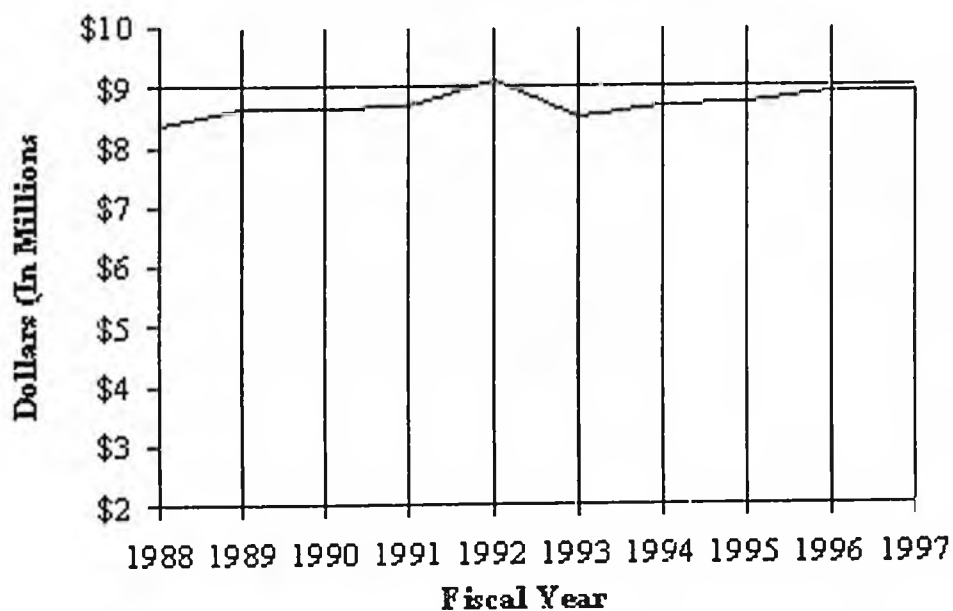


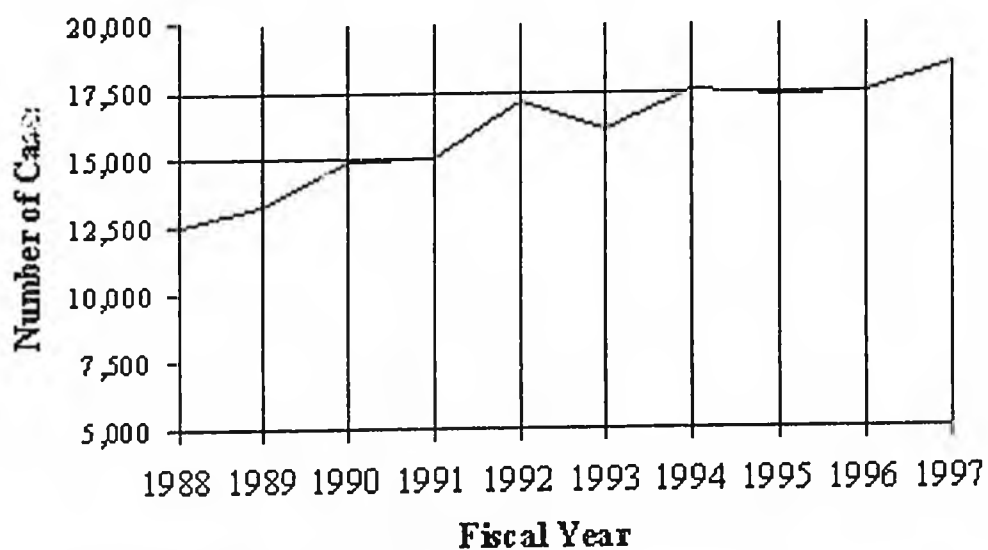
Exhibit 12
Summary Byrne Grant Recipients
FY 94 through FY 98

Recipient/Agency	Amount	Percent
Local Law Enforcement	\$1,170,214	11.5%
Alaska Court System	395,088	3.9%
Department of Corrections	616,406	6.0%
Department of Law	1,783,248	17.5%
Department of Public Safety	<u>6,218,912</u>	<u>61.1%</u>
Total Byrne Grant Funding	<u>\$10,183,868</u>	<u>100.0%</u>

Exhibit 6
PDA Expenditures Increase 6.6%
(Stated in FY 99 Dollars)



PDA Caseload Increases 47%



PUBLIC DEFENDER AGENCY CASELOAD CHANGE
 FY 88 - 00

OFFICE	FY 88	FY00	CHANGE IN CASELOAD
Anchorage	2858	5242	45%
Barrow	278	439	37%
Bethel	1190	1699	30%
Dillingham	279	427	35%
Fairbanks	2301	2944	22%
Juneau	785	1280	39%
Kenai	1198	1346	11%
Ketchikan	696	993	30%
Kodiak	597	454	-31%
Kotzebue	552	587	6%
Nome	474	1004	53%
Palmer	935	2488	62%
Sitka	381	383	1%

ALASKA PUBLIC DEFENDER AGENCY

FY 00 NEW CASES FILED

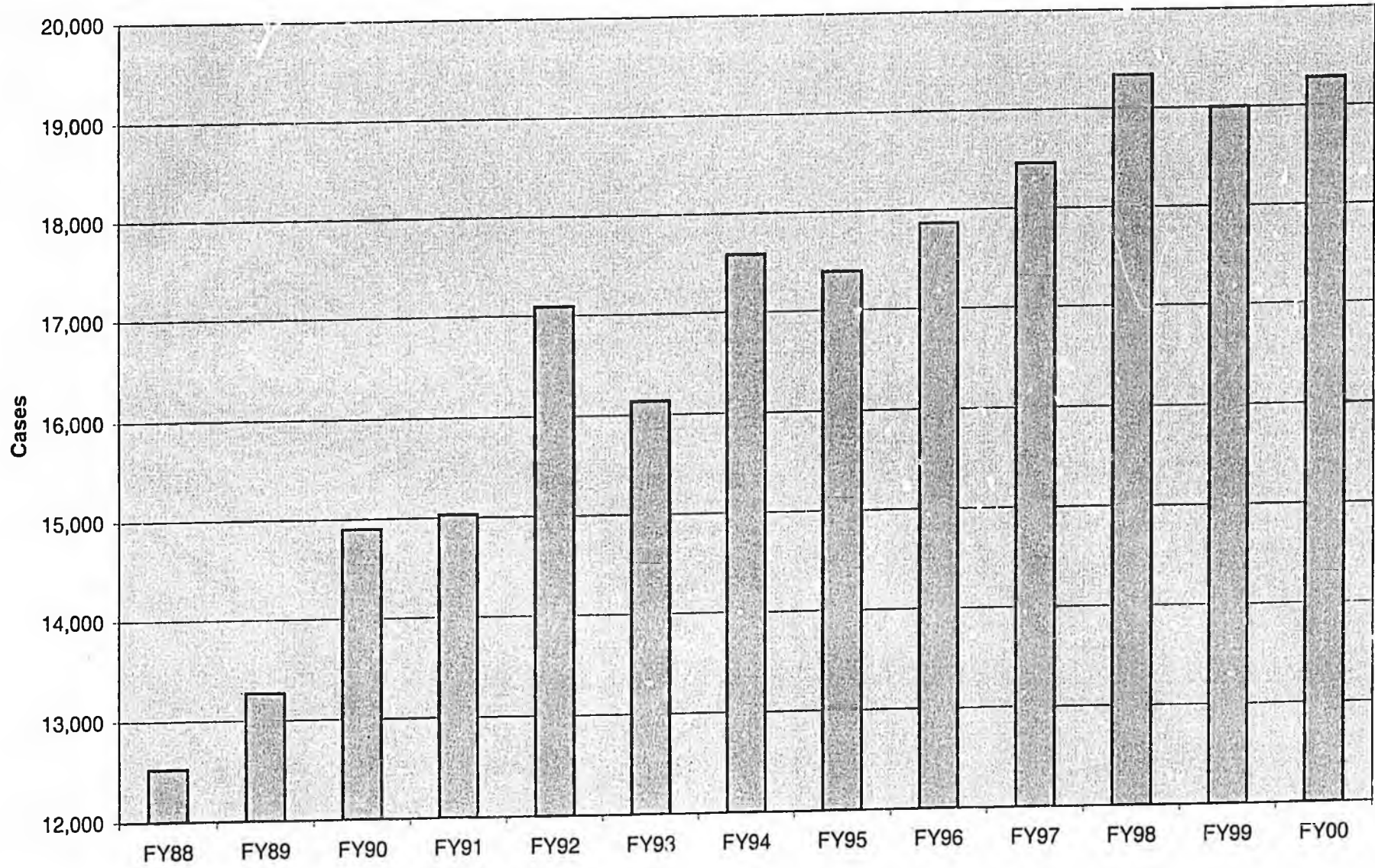
LOCATION	FELONY	MISDEMEANOR		PROBATION REVOCATION			JUVENILE	CINA	SANITY	SENTENCE APPEAL		MERIT APPEAL			PCR'S	PAROLE BOARD	SPECIAL APPT.	TOTAL
		City	State	Fel	Mis	Juv				Fel	Mis	Fel	Mis	Other				
Anchorage	1347		967	624	257	96	267	575	682	13		54	5	5	65	255	30	5242
Barrow	47		278	49	9	2	6	34	10	2	1			1				439
Bethel	313		982	105	163	5	62	57			3			3	6			1699
Dillingham	43		291	38	23	6	7	16						3				427
Fairbanks	335		1434	324	456	20	61	63	140	3	3	11	4	4	48	32	6	2944
Juneau	136		568	96	289		57	48	55	5		3	5		2	16		1280
Kenai	180		862	62	131	2	45	50		1		4	4		1	4		1346
Ketchikan	156		466	53	115	11	62	18	61	1		1	1		33	11	1	993
Kodiak	68		219	32	84	10	21	8	7	1			2		1	1		454
Kotzebue	99		417	30	23	1	8	8										587
Nome	108		518	53	193	16	23	16	9	1	7	1	1		55	3		1004
Palmer	313		1049	110	695	27	49	51		2		5	1		182	2	2	2488
Sitka	43	7	196	23	53	2	10	9	30	1		2	2		3		2	383
TOTAL	3191	7	8247	1599	2491	198	678	953	994	31	14	81	25	10	396	330	41	19286

ALASKA PUBLIC DEFENDER AGENCY

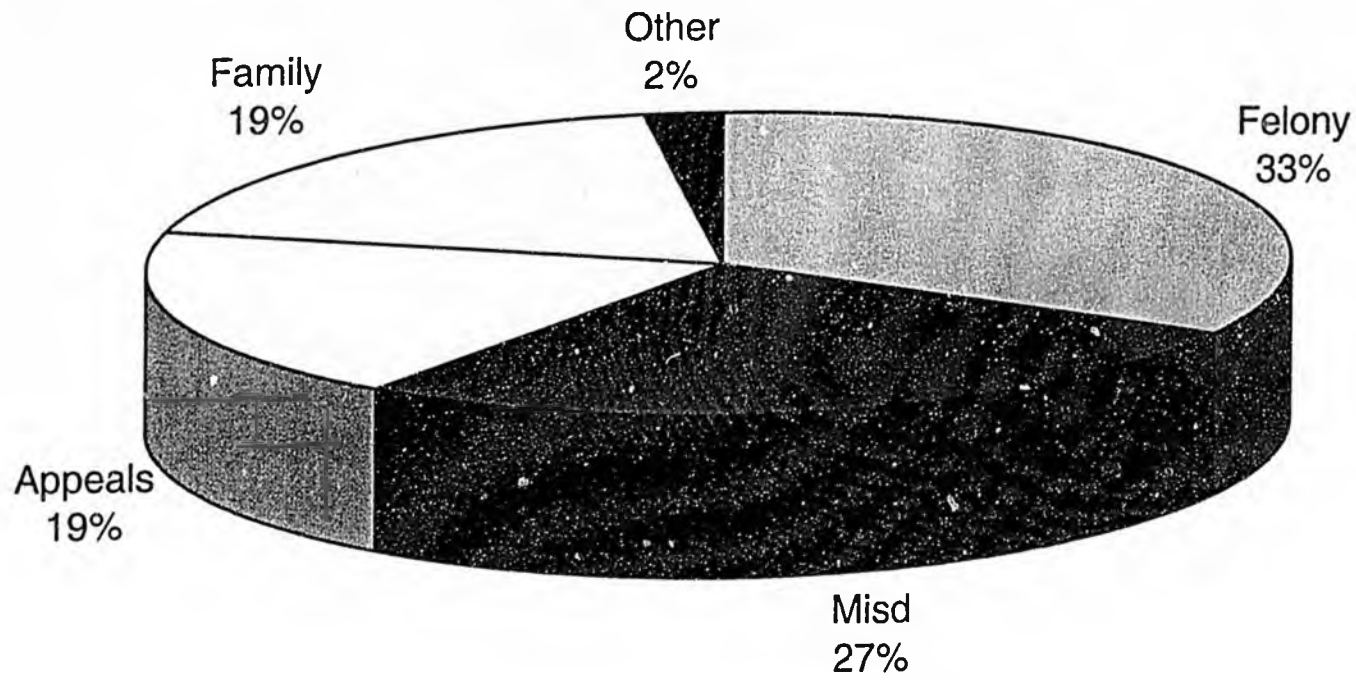
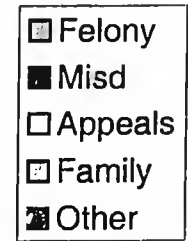
FY 88 NEW CASES FILED

LOCATION	FELONY	MISDEMEANOR		PROBATION REVOCATION			JUVENILE	CINA	SANITY	APPEALS		MERIT APPEAL			PCR'S	PAROLE BOARD	SPECIAL APPT.	TOTAL
		City	State	Fel	Mis	Juv				Fel	Mis	Fel	Mis	Other				
Anchorage	669		946	272	96		139	183	278	82	6				82	31	74	2858
Barrow	34	2	151	15	8		8	24	4	2	5				20		5	278
Bethel	150		661	88	73		31	103	1	12	17				31	3	20	1190
Dillingham	19		197		63													279
Fairbanks	267		1318	116	284		60	65	72	25	32				49	7	6	2301
Juneau	126		441	41	4		43	57	31	7	1				22		12	785
Kenai	93		891	39	71		37	20	5	15	13				13		1	1198
Ketchikan	74	35	461	12	22		20	40	18	5					6		3	696
Kodiak	50		389	28	29		9	2	12	1					9		68	597
Kotzebue	71		433	9	13		10	12		1					3			552
Nome	91		261	17	17		18	22	18	5	2				22		1	474
Palmer	130		653	22	45		24	30		7	5				19			935
Sitka	47	13	204	13	54		16	7	9	9	1				8			381
																		0
																		0
																		0
TOTAL	1821	50	7006	672	779	0	415	565	448	171	82	0	0	0	284	41	190	12524

Public Defender Agency Caseload

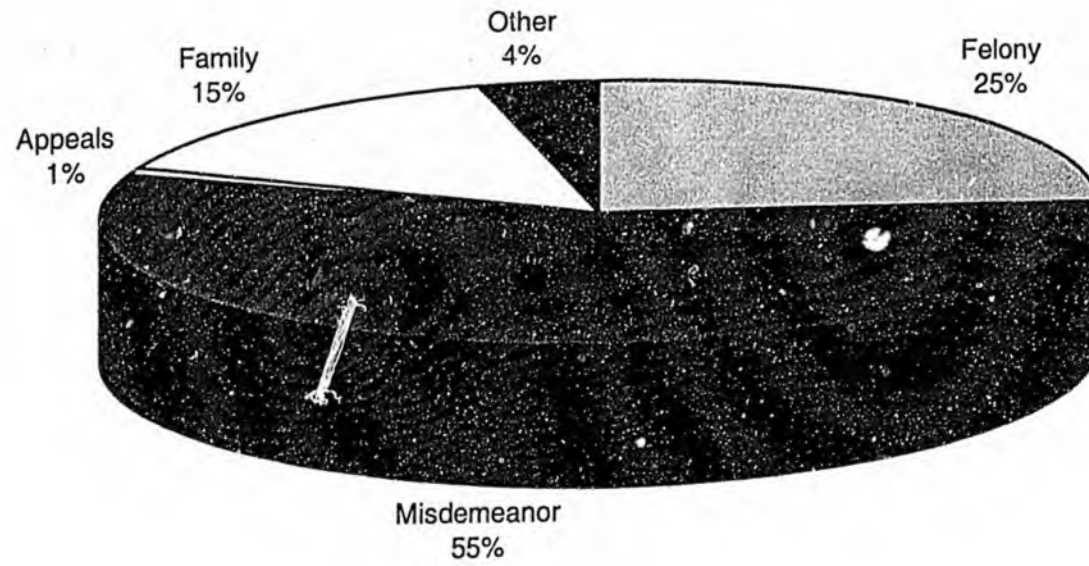


FY 00 Public Defender Workload by Case Type



FY 00 Public Defender Caseload by Type

- Felony
- Misdemeanor
- Appeals
- Family
- Other



The Alaska Public Defender Agency



BARROW
Kristy Smith, Stacy Hoagland

KOTZEBUE
Shannon Ewing, Jennifer Fiess



NOME
Chelle Hall, Kirsten Bey,
Grace Cross, Drew Stave



FAIRBANKS
Rob Lowrey, Traev Shikles, Carolyn Kelly,
Marcia Hollar, Jeff Wildridge, Paul
Canarsky, Bill ...rs, Michelle McComb,
Beth Spalding, Jim Cannon



BETHEL
Adam Gurewitz, Kent Mitchell, Bobbi Fuller,
Marv Hamilton, Gary Soberay, John Cashion



ANCHORAGE
Lee Jones, Julia Moudy, Linda Wilson, Mike
Dieni, Dan Lowery, Doug & Erin Moody,
Quin Steiner, Dave Reineke, Craig Howard,
Kathy Murphy, Ben Summit, Nancy Groszck,
Cynthia Rabe, Jeanne Lavonne, Barb Brink,
Paul Malin, Scott Purden, Kristy Gibbs,
Jeff Mahlen, John Parrish, Marjorie Allard,
Judy Scherger, Blair McCune, Teresa Cobb,
Lisa Wilson, Glenda Kerry, Margi Mock,
Sharon Barr, Liz Brennan, Maria Bahr,
Guy Kemer, Linda Beecher



DILLINGHAM
Steve Wells, Terry Rogers



PALMER
Greg Heath, Bruce Johnson, George Davenport,
Danna White, Carmen Spiropolous,
Rachel Leavitt and Lev, Laurel Bennett



KENAI
Sam McQuerry, Margaret Moran, Diane Foster,
Joe Montague, Darin Goff, Abigail Sheldon



JUNEAU
Kirsten Swanson, David Seid, Susan Phillips
Rob Meachum, Monte Brice



SITKA
Galen Paine

KODIAK
Jake Ketscher, Allan Thielen



KETCHIKAN
Barb Kissner, Sue Crocker,
Ana Guevara, Sharon Zink



ALASKA PUBLIC DEFENDER AGENCY

Sharing in our clients' successes

Elizabeth Plummer. Elizabeth Plummer was born and raised in Ekwok. She went to school in Mount Edgecumbe, where she had her first drink and liked it. She moved back to the village and continued drinking. In 1987, she was charged with murder in the first degree.

Elizabeth's story: We moved to Anchorage. My thinking was, you know, Anchorage is a big city. Nobody will know I was drinking. It was easy access to alcohol. That's when I started drinking on a daily basis. I met my husband, moved in with him, moved back to the village and continued drinking. It was a really, really abusive relationship. My husband was very abusive. January of '87, I woke up after a night of drinking. My husband was dead. I was charged with first-degree murder. I don't really remember what happened. I know I fought to leave the house but he wouldn't let me go. At trial I was convicted of second-degree murder and sentenced to twenty years. I spent two years at the Sixth Avenue Jail and then went to Hiland Mountain Correctional Center. That's where I really started my program. They offered a lot of things and I joined everything I can. I joined the Inside-Out program. I was going out on passes to talk to schools about my alcoholism and what kids could do to not drink. I told them how I started drinking and how alcohol made me feel. I told them about my crime and that jail is not a place to be, but I'm there. I attended AA meetings and told them how I was changed, even though I was incarcerated. I continued doing my sentence but I was still real hopeful. My public defender came to see me and said, "We're gonna take it before the judge for a sentence modification." So I went in there and I wrote a letter to the judge and I read that and I was real surprised when I got my sentence modification with twenty years, ten suspended, five years probation, released immediately. I was shocked. I found a place in Anchorage, got a job right away working at the Holiday Inn for a while, I was paying my bills, got my driver's license, starting to feel like a normal person. I met a real nice guy, you know, we started dating. This is a picture of my husband Greg and myself. We opened



Elizabeth Plummer



Elizabeth and Greg

up a Mr. Electric franchise in 1997, I believe. I worked in the office. My husband worked in the Mr. Electric van. Now, today we got three vans. I attend AA meetings. I was in jail seven or eight years. I've been sober since 1989 and you know, it's gonna be for the rest of my life. If I didn't have a public defender I'd still be incarcerated, probably going up for parole. I had a wonderful person working for me and they didn't give up hope - I didn't give up hope. My frame of mind was changing even while I was locked up. I knew one day I'd walk out of the doors and I did. I thank my lawyer very, very much, and the judge for giving me a second chance. It's a wonderful chance.

10 years in jail: \$408,398

5 years in jail: \$204,199

A second chance at life: priceless

Brian Petrilla. At seventeen years of age, Brian Petrilla was charged with robbery in the first degree. He was raised in a classic nuclear family, but had a teenager's rebellious spirit. He had been trying to live on his own since the age of sixteen. He found he could not really support himself working minimum wage jobs with no education. He started hanging out with the wrong crowd and decided to rob a bank and get a lot of money to change his life. He also suspected it could end his life. One way or the other it was going to be different. Not surprisingly, he was immediately arrested. Because Brian was seventeen at the time, the state wanted to treat him as an adult, and send him to adult court and adult jail.

Brian's story: I was assigned a public defender who really took an interest in my case. She researched it, looked into my history, my school records, my family, the kind of friends I had before the kind of friends I had at the time, and she tried to convince the court that I didn't have a history of crime or incidents with the law and that I could be rehabilitated in the juvenile system instead of waived to adult court and go off to adult prison. My parents wouldn't have had the funds or even wanted to hire a lawyer for me at that point. I definitely didn't have the money for a lawyer, so it was a good thing for me. If I didn't have a public defender, I'm pretty sure I'd still be in adult jail or just about to get out of adult jail. It was a pretty serious crime and had a lot of years attached to it. At McLaughlin Youth Facility, where I was sent instead, they really make you focus on yourself and try and teach you some things about yourself, along with school and education. So it was two years of answering a lot of questions and looking myself in the face every day and questioning my behaviors instead of just riding out a sentence. It was a very big learning experience.



Brian Petrilla



Brian and family

The judge decided to give me a chance. He said, "While no system, juvenile or adult, can infuse intestinal fortitude or backbone into those participating in the program, time and the best efforts of the Department of Health and Social Services will in all likelihood result in the rehabilitation of Brian Dean Petrilla by June 19, 1996." He was right. I've turned my life around. I got my degree from UAA. I'm married and have a child. I'm really close to my wife's family and my family. My daughter Mercedes, she's two years old, she goes to the same day care as my public defender's child. I'm working for the state in public assistance. I'm working part time for a youth center for delinquent girls, Booth Memorial Home, and I also volunteer time for McLaughlin Youth Center for the kids that are transitioning into the community through Big Brothers and Big Sisters. Right now I'm just paying off my student loans. My life is moving in exactly the right direction.

Incarceration in adult jail for 7 years: \$285,878

Incarceration at MYC for 2 years: \$113,150

Getting your family back: priceless

ALASKA PUBLIC DEFENDER AGENCY

Sharing in our clients' successes

Mike Johnson. Mike was well known to the public as a University of Alaska, Anchorage, star basketball player. He was an all-American and had recently had his jersey retired. Mike came into the public eye for another reason, however. He was charged with sexual assault in the first degree, a crime that could have gotten him thirty years in jail.



Mike's story: I was in a custody battle for over two years before I was accused of sexual assault by the kids' mother. Throughout our custody issue, even though it was bad at times, me and the kids' mother were still involved sexually. On the day I received custody of the children, I called her and told her I had received custody and she didn't believe me. She was very upset. She said, 'I'm gonna tell 'em you raped me.' First of all I thought she was joking. I mean, I just didn't take it seriously. I didn't think she was capable of that. The police were called and I went to jail. I was afraid, you know? I mean, I was afraid. It was like something you never expected. You just knew you were headed somewhere bad. It was humiliating. The law says innocent until proven guilty. That's what our society lives by when it comes to the law, innocent until proven guilty. I don't believe that any more, you know? At the time I did believe it, but now I just don't believe it any more. I just think it's the other way around, guilty until proven innocent. Before I was charged with sexual assault, I lied under oath about having sex with my kids' mother. I was afraid at the time that my wife would find out. It

was selfish. I was afraid she was gonna leave me. I went back and told my custody lawyer. He sent a motion to the judge to straighten that out, but I felt no one was going to believe me now. I think at a certain point maybe my public defender didn't believe me right away, but as the case took off, I think she really started to believe me. I knew, and I believed that she believed I was telling the truth and that right there alone made the difference. She got all the facts together. This lady was working non stop on my case. What the Public Defender Agency did was that they investigated the case. The police just charged me with it. I don't feel like it was thoroughly investigated by them. You know, they told me they wanted a statement from me, they wanted to hear both sides, but I didn't feel like they wanted to hear both sides. I felt like they were after me. They arrested me and that was that. The public defender investigator got out, did some street work for me, got some names, witnesses who were very important, people that were tied to the case. They found people to come forward on my behalf to support me. It took the case almost a year. For all that time it was like a pie with all these missing pieces. I never thought we would get all the pieces together and have a whole pie and that's where the Agency came together. They brought all those pieces together and made the whole pie. I just felt like they were there with me. We were a team. We were in this to the end. That's how I felt about the people that were working with me at the Public Defender Agency. Without the proper representation for people like me, it's like feeding fish to an alligator. We just don't have a chance. Finally, the state dropped the sexual assault charges. I told my lawyer if perjury was offered to me, I was gonna plead to it. I got a suspended sentence so in two years, if I do my 250 hours of community service, it could be off my record. The punishment I got is for something I did and I can accept that. I see now how people can be convicted of crimes they didn't do. I had three jobs at the time I was arrested. I was working at FedEx as a handler, at UAA as an adjunct faculty and I was a part-time instructor there, and I was working at the Laurel Street Shelter as a counselor there. I am currently working at the Anchorage Daily News. I like my job but I'd like something a bit more challenging. I hate to say this brought us closer together as a family, but it did. We were close but this brought us together.

8 years in jail: \$326,718
2 years on probation: \$9,435
A fair result: priceless

Dorothy Kawaglia. Between 1993 and 1998, Dorothy was charged with misdemeanor assaults, disorderly conduct, criminal mischief, and DWI.

Dorothy's story: I drank from the time I got up til the time I went to bed. I mean, I was a full-blown alcoholic. But, I didn't think so because I thought that was normal for me. I thought that was the normal thing to do. You know, my kids were taken away from me for a while. It got to the point where I wanted to go to jail because I didn't drink. I felt safe in there. And you know, the assault charges, I don't even remember them. We had gone to court and were sitting there and, you know, at that point I didn't care. But my public defender said something, you know, and I still remember it word for word. She told the judge that 'I don't see Ms. Kawaglia as a criminal. I see that she has an alcohol problem.' And that just blew me away. And so, because of what she said, the judge ordered me to do two months in-patient treatment. You know, I don't know, she just wanted me to get better I guess. For the very first time here was somebody telling me that I had an alcohol problem. You know, at first I was like, how dare she? But then it's like, you know, that really sunk in, and how very true it was. My public defender has always been so sweet to me, you know, even though I'd call her and I'd say, well, I'm back in jail, you know, or I'd call her on the phone and I'd be drunk. She wouldn't get on me. I mean, she treated me like I was a human, you know? She was very caring. I've got three years sobriety now and ever since my first anniversary I always call her and tell her.



Because if it wasn't for her for saying that and defending me the way that she did in the courthouse, I don't know where I'd be. After I completed residential treatment at Nugen's Ranch, they hired me as a counselor trainee. I've been there almost a year. I get to work with clients who are, you know, like I was, and I love it. I remember feeling that hopelessness. My kids are doing really well now and I've got a great relationship with them. I talk to them. They know about drugs and alcohol, I mean, they see me. I stay sober because I love them. I don't know, I just love it. I love my life.

One day in jail: \$111
60 days in jail: \$6713
A sober life: priceless



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

10/14/2003

Date

OVERVIEW

ALCOHOL

& .08 BAC

ISSUES

**US DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
ANNUAL CORE APPORTIONMENTS AND POTENTIAL PENALTIES UNDER SEC. 163(a)
FOR FY 2004 AND THEREAFTER*
(Assuming Various Rates of Penalty)**

<u>State</u>	<u>IM / STP / NHS Total</u>	<u>.08 BAC adopted as Legal Standard</u>	<u>2% Penalty</u>	<u>4% Penalty</u>	<u>6% Penalty</u>	<u>8% Penalty</u>
Alaska	179,048,339	-	3,580,967	7,161,934	10,742,900	14,323,867
Washington	297,631,829	X	0	0	0	0
Oregon	221,819,579	X	0	0	0	0
Idaho	140,668,319	X	0	0	0	0
Wyoming	156,383,521	-	3,127,670	6,255,341	9,383,011	12,510,682

- Based on estimated FY 2003 apportionments, after distribution of Minimum Guarantee funds

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106TH CONGRESS
2D SESSION

H. R. 5394

Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2000

Mr. WOLF introduced the following bill, which was referred to the Committee on Appropriations

A BILL

Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the following sums are appropriated, out of any
 4 money in the Treasury not otherwise appropriated, for the
 5 Department of Transportation and related agencies for
 6 the fiscal year ending September 30, 2001, and for other
 7 purposes, namely:

2

1

TITLE I

2

DEPARTMENT OF TRANSPORTATION

3

OFFICE OF THE SECRETARY

4

SALARIES AND EXPENSES

5

For necessary expenses of the Office of the Secretary,
6 \$63,245,000: *Provided*, That not more than 52 percent
7 of the funds made available under this heading shall be
8 obligated and not more than 224 full time equivalent staff
9 years funded through the end of the second quarter of fis-
10 cal year 2001: *Provided further*, That funds in excess of
11 52 percent and 224 full time equivalent staff years shall
12 be available only if the Secretary transmits a request to
13 the House and Senate Committees on Appropriations for
14 these additional funds: *Provided further*, That not to ex-
15 ceed \$60,000 for allocation within the Department for of-
16 ficial reception and representation expenses as the Sec-
17 retary may determine: *Provided further*, That not more
18 than \$15,000 of the official reception and representation
19 funds shall be available for obligation prior to January 20,
20 2001.

21

OFFICE OF CIVIL RIGHTS

22

For necessary expenses of the Office of Civil Rights,
23 \$8,140,000.

83

1 That all information submitted in such reports shall be
2 current as of the last day of the preceding quarter.

3 Sec. 351. Notwithstanding any other provision of
4 law, beginning in fiscal year 2004, the Secretary shall
5 withhold 2 percent of the amount required to be appor-
6 tioned for Federal-aid highways to any State under each
7 of paragraphs (1), (3), and (4) of section 104(b) of title
8 23, United States Code, if a State has not enacted and
9 is not enforcing a provision described in section 163(a)
10 of chapter 1 of title 23, United States Code, in fiscal year
11 2005, the Secretary shall withhold 4 percent of the
12 amount required to be apportioned for Federal-aid high-
13 ways to any State under each of paragraphs (1), (3), and
14 (4) of section 104(b) of title 23, United States Code, if
15 a State has not enacted and is not enforcing a provision
16 described in section 163(a) of title 23, United States Code;
17 in fiscal year 2006, the Secretary shall withhold 6 percent
18 of the amount required to be apportioned for Federal-aid
19 highways to any State under each of paragraphs (1), (3),
20 and (4) of section 104(b) of title 23, United States Code,
21 if a State has not enacted and is not enforcing a provision
22 described in section 163(a) of title 23, United States Code;
23 and beginning in fiscal year 2007, and in each fiscal year
24 thereafter, the Secretary shall withhold 8 percent of the
25 amount required to be apportioned for Federal-aid high-

Oct. 2003

1 ways to any State under each of paragraphs (1), (3), and
2 (4) of section 104(b) of title 23, United States Code, if
3 a State has not enacted and is not enforcing a provision
4 described in section 163(a) of title 23, United States Code.
5 If within four years from the date the apportionment for
6 any State is reduced in accordance with this section the
7 Secretary determines that such State has enacted and is
8 enforcing a provision described in section 163(a) of chap-
9 ter 1 of title 23, United States Code, the apportionment
10 of such State shall be increased by an amount equal to
11 such reduction. If at the end of such four-year period, any
12 State has not enacted and is not enforcing a provision de-
13 scribed in section 163(a) of title 23, United States Code,
14 any amounts so withheld shall lapse.

15 SEC. 352. (a) IN GENERAL.—Notwithstanding any
16 other provision of law, including the Surplus Property Act
17 of 1944 (58 Stat. 765, chapter 479; 50 U.S.C. App. 1622
18 et seq.), the Secretary of Transportation (or the appro-
19 priate Federal officer) may waive, without charge, any of
20 the terms contained in any deed of conveyance described
21 in subsection (b) that restrict the use of any land de-
22 scribed in such a deed that, as of the date of enactment
23 of this Act, is not being used for the operation of an air-
24 port or for air traffic. A waiver made under the preceding

HIGHWAYS

FEDERAL-AID HIGHWAYS

23 USCS § 164

obligated at the end of
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under paragraph (1), the
shall lapse.

June 9, 1998, P. L. 105-

ES

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not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.

(e) Savings clause. The Secretary shall not withhold any grant or impose any requirement on a State as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter [23 USCS §§ 101 et seq.]

(f) Federal share. The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to, or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

(Added June 9, 1998, P. L. 105-178, Title I, Subtitle B, § 1219(a), 112 Stat. 219.)

§ 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

(a) General authority. The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

(b) Grants. For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying—

- (1) the amount authorized to carry out this section for the fiscal year; by
- (2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) Use of grants. A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) Federal share. The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) Authorization of appropriations. (1) In general. There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, and \$110,000,000 for fiscal year 2003.

(2) Availability of funds. Notwithstanding section 118(b)(2), the funds authorized by this subsection shall remain available until expended.

(Added June 9, 1998, P. L. 105-178, Title I, Subtitle D, § 1404(a), 112 Stat. 240.)

§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

(a) Definitions. In this section, the following definitions apply:

(1) Alcohol concentration. The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) Driving while intoxicated; driving under the influence. The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) License suspension. The term "license suspension" means the suspension of all driving privileges.

(4) Motor vehicle. The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) Repeat intoxicated driver law. The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

- (A) receive a driver's license suspension for not less than 1 year;
- (B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;
- (C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and
- (D) receive—

(i) in the case of the second offense—

Responses to Statements Regarding .08 BAC Laws

Statement: Most state legislatures have looked at the research evidence and have concluded that .08 laws are not effective. In New Jersey, for example, a Task Force concluded that there is no evidence that .08 laws result in reductions in alcohol-related fatalities.

Response: The research with regard to the effectiveness of .08 BAC laws is consistent and persuasive. At least eight studies have indicated that these laws are associated with reductions in alcohol-related crashes, fatalities, and injuries, particularly in conjunction with administrative license revocation (ALR) laws.

The New Jersey Task Force reviewed only four early studies of the effects of .08 BAC laws and concluded that the results were "mixed." Since that time, four additional comprehensive studies have been conducted. Together with the four original studies, these studies provide consistent and even more persuasive evidence of the effectiveness of .08 BAC laws, both alone and in conjunction with other laws and activities.

A 1999 GAO review of seven of these eight studies concluded that there are "*strong indications that .08 BAC laws in combination with other drunk driving laws ... can save lives*" (p2). GAO also stated that "*.. we and DOT reach essentially the same conclusion regarding the effectiveness of .08 BAC laws, both by themselves and in combination with other measures*" (p24).

While the studies of effectiveness have been persuasive, effectiveness is not the primary basis for supporting a .08 BAC law. **The primary reasons for supporting such a law are that, at .08 BAC, virtually everyone is impaired in important skills related to driving and their risk of being involved in a fatal crash is greatly increased.** Several states have recognized this. In New Mexico, for example, a State Task Force carefully reviewed only the evidence of impairment and crash risk at .08 BAC. Following this review, New Mexico chose to enact a .08 BAC law.

Statement: The Government Accounting Office (GAO) has recently conducted a critical review of the .08 studies and has concluded that these laws are not effective in reducing alcohol-related fatalities.

Response: This statement is not correct! The GAO report stated that there are "*strong indications that .08 BAC laws in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives*" (p2).

Statement: The GAO study concluded that "the evidence does not conclusively establish that

.08 laws, by themselves, result in reductions in the number and severity of alcohol-related crashes.

Response: No research is ever conclusive in an "unequivocal" sense. Neither are laws ever implemented "by themselves." The combination of strong laws, highly visible enforcement, and strong public information is the key to reducing alcohol-related fatalities. NHTSA has maintained that the evidence of the effectiveness of .08 BAC laws is consistent and persuasive, particularly in conjunction with the administrative license revocation (ALR) laws, already enacted in 40 states.

The GAO report confirms this relationship and further states that *"although we characterize the strength of the study results differently, we and DOT reach essentially the same conclusion regarding the effectiveness of .08 BAC laws, both by themselves and in combination with other measures"* (p24).

Statement: We keep hearing that enactment of .08 BAC laws in all states would result in 500 lives being saved every year. The GAO report looked at the study that made this estimate and found it to be groundless.

Response: At the time of the GAO study, two studies had independently formulated estimates of lives saved. A Boston University study estimated that 500-600 additional lives would be saved if all states adopted .08 BAC laws. An NHTSA (50-state) study used a more detailed analysis and estimated that 590 lives would be saved -- a very similar estimate. While GAO criticized the Boston University Study for not describing how it arrived at its estimate, GAO did not criticize the elaborate and detailed methodology of the NHTSA 50-state study.

Further, a new Boston University study was recently published. This study evaluated the effectiveness of .08 BAC laws enacted in six states in 1993 and 1994 and concluded that, overall, these states experienced a 5-6 percent greater decline in measures of alcohol-related crashes, compared with six nearby states that did not lower their BAC limits. This study estimated that, if all states adopted a .08 BAC law, 400-500 fewer fatalities would occur annually.

Advocates of .08 BAC laws have used the mid-point of these three estimates and have projected that, if all states were to adopt .08 BAC laws, an additional 500 lives would be saved each year. This estimate of 500 lives saved is well within the confidence boundaries of all of the estimates made to date.

Statement: .08 BAC laws make criminals out of normal social drinkers.

Response: Impairment and crash risk are the issues - not how many drinks it may take to get to .08 BAC. Scores of studies have been conducted which indicate that, at .08 BAC virtually everyone is impaired in important skills related to driving and that, at that level, the risk of being involved in a fatal crash is many times greater than at .00 BAC.

Statement: “.08 BAC legislation will not affect problem drinker drivers who have high BAC levels.”

Response: The research shows that .08 laws not only reduce the incidence of impaired driving at lower BACs, they also reduce the incidence of impaired driving at higher BACs (i.e., over .10). A .08 law serves as a general deterrent to drinking and driving. It sends a message that the state is getting tougher on impaired driving, and it makes many people think twice about getting behind the wheel after they've had too much to drink. A .08 BAC law is a key component of an overall program to reduce impaired driving. While problem drinkers do account for a significant part of the problem, most fatally injured drinking drivers (70-80%) have no prior alcohol-related offenses.

A comprehensive anti-DWI program must use all available laws and programs to reduce fatalities.

Statement: “.08 is just the first step toward even lower BACs and eventually another attempt at prohibition.”

Response: The notion that safety organizations seek a return to prohibition is unfounded. Although there is strong research evidence that driving-related skills begin to deteriorate below .08 BAC, most safety advocates have adopted .08 BAC as a reasonable and acceptable compromise that will save lives, prevent injuries and reduce costs to society.

LEGISLATIVE RESEARCH REPORT

NOVEMBER 28, 2000



REPORT NUMBER 01.023

FEDERAL HIGHWAY FUNDING AND STATE DWI LAWS

PREPARED FOR REPRESENTATIVE NORMAN ROKEBERG

BY PATRICIA YOUNG, LEGISLATIVE ANALYST

SUMMARY	2
INCENTIVE GRANT—ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES (SECTION 410).....	3
INCENTIVE GRANT—0.08 BAC (SECTION 163)	6
TRANSFER PROGRAMS—OPEN CONTAINER (SECTIONS 154) AND REPEAT OFFENDER (SECTION 164).....	7
Section 154—Open Container Requirements.....	7
Section 164—Minimum Penalties for Repeat DWI Offenders.....	8
SANCTION—0.08 BAC [SECTION 163(A)].....	9
<i>Table One: Federal Highway Funding and Alcohol-Related Programs.....</i>	<i>10</i>

You asked for an explanation of the connection between federal highway dollars and a state's drinking and driving laws. Specifically, you asked whether Alaska has foregone federal funding opportunities as a result of not having enacted certain provisions regarding open containers and repeat offenders. If so, you wished to know how long the state has foregone such revenue and the amount of funding that has been "lost." Additionally, you asked for an explanation of the funding consequences of the recent federal requirement concerning a blood alcohol concentration standard of 0.08 percent.

For purposes of this report, we focus on measures relating to driving while intoxicated (DWI) addressed by Congress in the Transportation Equity Act for the 21st Century, the current federal authorization for surface transportation programs. After a brief summary, we address each provision, and its impact on transportation and highway safety funding in Alaska, individually. We consolidate the data in Table One.

SUMMARY

In order to encourage states to adopt and enforce specific anti-drunk driving laws, Congress authorized two incentive grant programs and two transfer provisions as part of the Transportation Equity Act for the 21st Century (TEA-21) in 1998.¹ These provisions are in effect from federal fiscal year 1998 through 2003. More recently, President Clinton signed into law a sanction provision to take effect in federal fiscal year 2004, for states that fail to adopt and enforce a 0.08 percent blood alcohol concentration (BAC) standard by that time.

Under the two incentive programs authorized by TEA-21, grant funds are available to states that have enacted specific drunk driving countermeasures (Section 410) and to states that have enacted a 0.08 percent BAC standard (Section 163). The countermeasures incentive under Section 410—with different eligibility criteria—was available under ISTEA, the predecessor of TEA-21. Alaska qualified for funding under the ISTEA version of the program, and because of a delayed effective date, received approximately \$200,500 during 1998. With the change in requirements, however, the state no longer qualifies, and as a result, "lost" approximately \$127,000 in 1999. Section 410 is a broad program with numerous eligibility requirements and several variables in the funding formula. According to Mary Moran, director of the state's highway safety program, qualification demands more staff resources than are presently available. Thus, even if the state were to qualify, she would not apply with the program's current staffing level.

Potential funding under the Section 163 incentive program is significantly more substantial than that available under Section 410. Because Alaska has not implemented the 0.08 BAC standard needed to qualify for funding under this section, since 1998, the state has foregone approximately \$2.3 million that could have been used for any transportation project eligible for federal assistance. The state will continue to "lose" approximately \$700,000 to \$800,000 during each year through 2003 unless lawmakers choose to lower the BAC from 0.10 percent to 0.08.

The transfer provisions require states to implement specific provisions regarding open containers (Section 154) and minimum penalties for repeat offenders (Section 164) by October of 2000. Because Alaska's laws do not conform precisely to the federal requirements of either provision, 1.5 percent of the state's highway construction funds will be transferred to the highway safety program for each of the provisions during FY 2001—a combined total of approximately \$5.2 million. Another 1.5 percent for each provision will be transferred for fiscal year 2002 if the state has not complied with the federal requirements; the transferred amounts double to three percent for each provision during fiscal year 2003 and each year thereafter that the state has not complied.

Lastly, beginning with federal fiscal year 2004, the U.S. Department of Transportation will begin to withhold a percentage of the highway funds apportioned to states that continue to resist implementing the 0.08 BAC standard for *per se* DWI (Section 163[a]). According to federal estimates, if Alaska has not implemented such a standard by FY 2004, the state will lose 2

¹ The Transportation Equity Act for the 21st Century (TEA-21), enacted June 9, 1998, as Public Law 105-178, authorized federal surface transportation programs for the six-year period of 1998-2003. The Act reauthorized existing National Highway Traffic Safety Administration programs, including the DWI countermeasures incentive grant program under Section 410. Additionally, TEA-21 created the incentive grant program for 0.08 BAC under Section 163. The TEA-21 conferees also agreed upon two provisions for transfer of a portion of a state's highway construction funds to its highway safety program if the state fails to establish and enforce minimum penalties for repeat drunk driving (Section 164) and for open containers in the passenger compartment of a vehicle (Section 154). These two initiatives, omitted from the conference report, were restored to TEA-21 by the TEA-21 Restoration Act, on July 22, 1998, as Public Law 105-206.

percent, or approximately \$3.6 million of its 2004 funding. The annual penalty would rise by an additional 2 percent each year to an estimated \$14.3 million by FY 2007. States that implement the standard before the end of FY 2007, however, will recover the withheld funding.

INCENTIVE GRANT—ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES (SECTION 410)

As part of the Transportation Equity Act for the 21st Century, Congress authorized approximately \$220 million for grants under Section 410, to encourage states to adopt and implement programs to reduce traffic safety problems resulting from individuals driving under the influence of alcohol.² The program includes two basic grant options. States may qualify for both basic grants, and those that qualify for either can also apply for supplemental grants.

The Section 410 program was in place under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Congress reauthorized the program with TEA-21 but amended the eligibility requirements and delayed the effective date until FY 1999. According to Mary Moran, director of the Alaska Highway Safety Office, the amendments, to a large extent, reversed the eligibility requirements for the basic and the supplemental grants. As a result, although Alaska qualified under ISTEA, the state no longer does so.

Prior to the eligibility change, Alaska qualified for basic grant funding because criteria such as videotaping of drunk drivers by police, an on-going DWI-prevention program, and the use of passive alcohol sensors (breath tests) by police were in place. Because the shift did not become effective until 1999, Alaska received approximately \$200,500 during 1998. Since the shift, however, those criteria pertain to the supplemental grants, rather than to the basic ones. Because a state must qualify for a basic grant to apply for a supplemental grant, Alaska is currently ineligible for all Section 410 funding. Had Alaska qualified, the state would have received approximately \$127,000 in 1999 to support anti-drunk driving programs. Because of the high number of variables involved in Section 410 funding, Ms. Moran is unable to estimate the amount that Alaska "lost" in 2000. Specific details of the current Section 410 program follow.³

Section 410 Eligibility: States have two options for qualifying for the basic Section 410 grant funding. States that qualify for a basic grant may apply for supplemental grants:

Basic Grant A—implement at least 5 of the following 7 criteria:

- ◆ Administrative license revocation;
- ◆ A program to prevent drivers under age 21 from obtaining alcoholic beverages;
- ◆ A program for intensive impaired driving law enforcement;

² 23 USC 410, Alcohol-Impaired Driving Countermeasures.

³ Federal Highway Administration, "TEA-21 Fact Sheet: Alcohol-Impaired Driving Countermeasures Incentive Grants," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_410.htm (accessed 10/10/2000).

- ◆ A graduated licensing law with nighttime driving restrictions and zero tolerance;
- ◆ A program to target drivers with high BAC;
- ◆ Young adult drinking programs to reduce impaired driving by individuals age 21 through 34;
- ◆ An effective system for increasing the rate for BAC of drivers in fatal accidents—beginning in FY2001, the testing rate must be above the national average.

Basic Grant B—demonstrate both of the following:

- ◆ A reduction in the percentage of fatally injured drivers with 0.10 BAC or greater, in each of the last 3 years; and
- ◆ A percentage of fatally injured drivers with 0.10 BAC or greater that is lower than the national average for each of the last 3 years.

Supplemental Grants—implement any of the following:

- ◆ Videotaping of drunk drivers by police;
- ◆ A self-sustaining impaired driving prevention program;
- ◆ Laws to reduce driving with suspended license;
- ◆ Use of passive alcohol sensors by police;
- ◆ Effective system for tracking information on drunk drivers;
- ◆ Other innovative programs.

Distribution of Funds: Beginning in FY 1999, qualifying states receive up to 25% of their FY 1997 Section 402 apportionment for each basic grant; supplemental grants may not exceed 10% of funding made available for Section 410.

Program Administration: The federal share for Section 410 shall not exceed 75% in the 1st and 2nd years in which a state receives a grant, 50% in the 3rd and 4th years, and 25% in the 5th and 6th years. States may use Section 410 grant funds only to implement and enforce impaired driving programs.

At present, Alaska meets at least two of the seven program criteria for basic grant A. The state must meet at least five in order to qualify for funding. According to Ms. Moran, Alaska's eligibility in regard to some criteria is debatable: the state might qualify, for example, in regard to programs for reducing alcohol-impaired driving by young adults. Similarly, the state might qualify in regard to the rate of BAC testing of drivers involved in fatal crashes if the rate is above the national

average.⁴ Alaska's DWI countermeasures scheme does not qualify in regard to the following basic grant A criteria:

Administrative license revocation. Alaska qualified in regard to this criterion until state lawmakers reduced the duration of license revocation for minors driving after consuming alcohol from 90 days, one year, and three years for first, second, and third or subsequent revocations to 30 days, 60 days, 90 days, and one year for first, second, third, and fourth or subsequent revocations, respectively.⁵ Although other provisions still qualify, the revocation scheme as a whole now does not.

Graduated licensing law with nighttime restrictions and zero tolerance. Although the state has a graduated licensing system in place and an absolute zero tolerance law (rather than the federally required 0.02 BAC), Alaska's system does not satisfy the federal requirements in the following ways:

- ◆ Program eligibility requires that all occupants must be properly restrained. Alaska law refers only to proper restraint of children under the age of 16.⁶
- ◆ Program eligibility requires that, absent a state-approved exception, a person authorized to drive under a learner's permit or an intermediate driver's license may not drive during some period of the night unless a licensed driver who is 21 years of age or older is in the vehicle. Alaska law has no nighttime restriction.⁷
- ◆ Program eligibility requires that holders of learner's permits and intermediate licenses must remain crash and conviction free. In addition to the revocation provisions noted above, Alaska law addresses license revocation for minors between the ages of 13 and 17 who are convicted of or adjudicated as delinquent for misconduct involving a controlled substance, or for offenses involving the illegal use or possession of a firearm.⁸

Program targeting drivers with high BAC (a system of graduated sanctions for DWI offenders with higher than average BAC).

In regard to basic grant B, according to Ms. Moran, the state is close to qualifying for both criteria. She notes, however, that applying for and monitoring either of the Section 410 grant possibilities require a substantial amount of effort. Even if the state could qualify today, she concludes, she would not apply because she lacks sufficient staff to handle the paperwork.

⁴ Testing the BAC of all drivers involved in crashes that result in fatalities—regardless of whether the drivers survive—would provide highly useful data, according to Ms. Moran.

⁵ AS 28.15.183(d), Administrative Revocation of License to Drive; changed by Chapter 88, SLA 1999.

⁶ AS 28.05.095, Use of Seat Belt and Child Safety Devices Required.

⁷ AS 28.15.051-055, Instruction Permits and Provisional Driver's License.

⁸ AS 28.15.185, Court Revocation of a Minor's License to Drive.

INCENTIVE GRANT—0.08 BAC (SECTION 163)

Along with the reauthorization of Section 410 funding, Congress authorized a new incentive program under Section 163.⁹ Section 163 provides a total of \$500 million in incentive grant funds for states that enact and enforce laws providing that any person with a BAC of 0.08 percent or greater while operating a motor vehicle will be deemed to have committed a *per se* offense of driving while intoxicated. These funds may be used for highway safety or highway construction—any project eligible for assistance under Title 23 U.S.C. No matching state dollars are required. Program particulars follow.¹⁰

Section 163 Eligibility: Any state that has in effect and is enforcing a 0.08 BAC law, before the end of the fiscal year, is eligible to receive incentive funds for that fiscal year. To be eligible, a state's law must meet six basic elements:

- ◆ It must apply to all drivers;
- ◆ It must set a BAC level of no more than 0.08;
- ◆ It must establish driving at 0.08 BAC as an offense that is illegal *per se*;
- ◆ It must provide for primary enforcement of the law (rather than requiring probable cause that another violation has been committed before allowing enforcement of the 0.08 BAC law);
- ◆ It must apply to the criminal code and, in states with administrative license revocation (ALR) laws, to the ALR law as well; and
- ◆ It must be deemed to be equivalent to the state's standard DWI offense.

Distribution of Funds: Available funding each year is apportioned among all eligible states. According to the Section 402 formula—

- ◆ 75 % based on the ratio of the state's population in the latest federal census to the total population in all states.
- ◆ 25 % based on the ratio of the public road miles in the state to the total public road miles in all states.

The apportionment to each state is no less than one-half of one percent.

Program Administration: The federal share of a project funded under Section 163 is 100 percent. States may use Section 163 grant funds for any project eligible for federal funding under Title 23.

⁹ 23 USC 163, Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons.

¹⁰ Federal Highway Administration, "TEA-21 Fact Sheet: Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_163.htm (accessed 10/10/2000).

Because Alaska's BAC standard is 0.10 percent, Alaska has not qualified for Section 163 incentive funding. Had Alaska lawmakers lowered the BAC limit to 0.08 and had that law been in effect before the end of 1998, Alaska would have received approximately \$762,500 for that year. Had the state qualified in 1999 or 2000, the funding received would have been approximately the same. As Ms. Moran notes, although federal authorization for the program has increased slightly each year, the number of states that qualify has also increased. Nevertheless, at this point, the state has foregone roughly \$2.3 million in funding that could have been used for any project eligible for assistance under Title 23. If the state certifies with the U.S. Department of Transportation before the end of September, 2001, that Alaska has enacted and is enforcing a conforming law, Alaska could receive an estimated \$700,000 to \$800,000 a year in Section 163 funds for federal fiscal years 2001 through 2003.¹¹

TRANSFER PROGRAMS—OPEN CONTAINER (SECTIONS 154) AND REPEAT OFFENDER (SECTION 164)

In addition to the incentive funding programs, Congress authorized two new programs in which a percentage of a state's highway construction funds (National Highway System, Surface Transportation Program, and Interstate Maintenance) will be transferred to its highway safety program if that state has not enacted or does not enforce specific provisions to counter alcohol-impaired driving by October 1, 2000.¹² These programs have identical funding consequences. The penalty for each is transfer of 1.5 percent of a state's construction funds for FY 2001 and 2002, and 3 percent for each year thereafter. The funds transferred to the safety program must be used for alcohol-impaired driving countermeasures, for DWI law enforcement, or for hazard elimination programs. Projects funded with the transferred funds do not require state matching funds.

SECTION 154—OPEN CONTAINER REQUIREMENTS

For the purposes of Section 154, a state must have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle on a public highway or the right-of-way of a public highway in the state.¹³

U.S. Department of Transportation officials deem Alaska's open container law as nonconforming because of ambiguous wording in regard to motor cycles. The problematic portion of AS 28.35.029 reads as follows:

(b) . . . a person may transport an open bottle, can or other receptacle containing an alcoholic beverage

¹¹ Mary Moran, director, Alaska Highway Safety Office, (907) 465-4374.

¹² 23 USC 154, Open Container Requirements; and 23 USC 164, Minimum Penalties for Repeat Offenders for DWI or DUI.

¹³ Federal Highway Administration, "TEA-21 Fact Sheet: Open Container Requirements," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_154.htm (accessed 10/25/2000).

(1) in the trunk of a motor vehicle;

(2) on a motor driven cycle, or behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle, if the open bottle, can, or other receptacle is enclosed within another container

State officials have attempted to persuade federal officials that the provision was intended to mean—and is enforced as meaning—that a person may transport an open bottle on a motor cycle only if it is enclosed within another container. Federal officials maintain, however, that the provision could be interpreted to mean that a person may transport an open bottle on a motor cycle. Under this view, the phrase "if the open bottle . . . is enclosed . ." could have been intended—and could be interpreted—to refer to "motor home, station wagon, hatchback, or similar trunkless vehicle" without also referring to "motor cycle." As a result, federal officials conclude that Alaska law does not meet Section 154 requirements.

SECTION 164—MINIMUM PENALTIES FOR REPEAT DWI OFFENDERS

To meet the requirements of Section 164, a state must have in effect a law that provides, as a minimum penalty, that an individual convicted of a second or subsequent DWI offense shall be subject to the following penalties.¹⁴

- ◆ License suspension for not less than one year;
- ◆ Impoundment or immobilization of each of the individual's motor vehicles, or installation of an ignition interlock system on each of the individual's motor vehicles;
- ◆ Assessment of the individual's degree of alcohol abuse and treatment as appropriate; and
- ◆ Receiving, for a 2nd offense, assignment of not less than 30 days community service, or not less than 5 days imprisonment; and for a 3rd or subsequent offense, an assignment of not less than 60 days of community service, or not less than 10 days imprisonment.

Alaska's statutory provisions meet Section 164 requirements except in regard to impoundment and immobilization of a repeat offender's vehicles and the installation of ignition interlock devices. Alaska law provides that the state may order the forfeiture of a vehicle involved in a DWI offense, but forfeiture is not mandatory, and it applies only in third or subsequent offenses. Further, the sanction applies only to the vehicle used in the offense, rather than to all vehicles owned by the offender.¹⁵ As with vehicle forfeiture, the installation of ignition interlock devices is authorized but not mandatory and would not be required in all vehicles owned by an offender. Additionally, installation of such devices applies only in cases wherein the offender receives probation.¹⁶

¹⁴ Federal Highway Administration, "TEA-21 Fact Sheet: Minimum Penalties for Repeat Offenders for DWI or DUI," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_164.htm (accessed 10/10/2000).

¹⁵ AS 28.35.036, Forfeiture of Vehicle or Aircraft.

¹⁶ AS 12.55.102, Alcohol Related Offenses.

As noted earlier, in order to avoid transfer of highway construction funds, states must have met the requirements by October 1, 2000, the beginning of federal fiscal year 2001. As a result of not meeting the requirements for Sections 154 and 164, a total of approximately \$5.2 million in funds that would have gone for highway construction in Alaska will be transferred to the state's safety program. The same percentage will be transferred for fiscal year 2002 if the state has not complied with the federal provisions; the transferred amounts double to three percent for fiscal years 2003 and each year thereafter that the state has not complied.

SANCTION--0.08 BAC [SECTION 163(A)]

As you know, on October 23, 2000, President Clinton signed into law a national standard for drunk driving. The act requires states to implement laws providing that any person driving with a blood alcohol concentration of 0.08 percent or greater is deemed to have committed a *per se* offense of driving while intoxicated. Currently, 31 states, including Alaska, define *per se* drunken driving at 0.10 percent BAC.

Under the act, states have until October 1, 2003, to pass a 0.08 BAC *per se* law. Those that do not will face the withholding of 2 percent of their highway construction funds in federal fiscal year 2004, with the penalty increasing by an additional 2 percent each year for a total of 8 percent in FY 2007. States that implement the standard by 2007 will recoup the withheld funding. Based on estimated FY 2003 apportionments, the U.S. Department of Transportation foresees the possibility of up to approximately \$36 million withheld from Alaska by the end of FY 2007 if the state does not pass a conforming BAC law.

We consolidate data and information on each of the TEA-21 alcohol-related programs—incentives, transfers, and sanctions—in Table One, "Federal Highway Funding and Alcohol Related Program."

I hope this information is useful to you. Please do not hesitate to contact us if you have questions or need additional information.



SETTING LIMITS, SAVING LIVES

THE CASE FOR .08 BAC LAWS

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SECTION 1

Introduction

Overview of the Problem

Impaired driving is the most frequently committed violent crime in America. Every 33 minutes, someone in this country dies in an alcohol-related crash. In the time it takes you to read this booklet, someone else will die needlessly.

For many years, we were making good progress. Due to the tireless efforts of many organizations and citizens around the country, alcohol-related traffic deaths decreased significantly. In the last decade, alcohol-related fatalities dropped from 23,630 in 1988 to 15,935 in 1998, according to the National Highway Traffic Safety Administration (NHTSA).

This 33% drop in alcohol-related deaths is generally attributed to:

- **STRONGER LAWS,**
- **TOUGHER ENFORCEMENT, AND**
- **GOOD CONSUMER EDUCATION.**

Americans better understand the impaired driving problem, fewer are driving after drinking, and more are getting caught when they do.

While alcohol-related fatalities have decreased the past three years (after an increase in 1995),

alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. Only about 5% of all crashes involve the use of alcohol, but 38% of fatal crashes do.

15,935 deaths in one year is 15,935 grieving families too many. But the carnage doesn't end there. In addition to these tragic deaths, another one million people are injured in alcohol-related traffic crashes annually. And these crashes cost society over \$45 billion every year for things like:

- **EMERGENCY AND ACUTE HEALTH CARE COSTS,**
- **LONG-TERM CARE AND REHABILITATION,**
- **POLICE AND JUDICIAL SERVICES,**
- **INSURANCE,**
- **DISABILITY AND WORKERS' COMPENSATION,**
- **LOST PRODUCTIVITY, AND**
- **SOCIAL SERVICES FOR THOSE WHO CANNOT RETURN TO WORK AND SUPPORT THEIR FAMILIES.**

Just one alcohol-related fatality is estimated to cost society \$950,000. Each alcohol-related injury averages \$20,000. Eventually, we all bear the costs of these deadly actions, through taxpayer supported services and programs, higher insurance costs and even higher prices on goods and services, since employers pick up about half the costs associated with motor vehicle crashes.

**EVERY 33
MINUTES SOMEONE
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WILL DIE
NEEDLESSLY.**

TERMINOLOGY

THE PHRASE "DRUNK DRIVING," WHILE STILL COMMON IN EVERYDAY LANGUAGE AND COMPLETELY UNDERSTANDABLE, IS NOT USED AS A LEGAL TERM SINCE MANY DRIVERS WHO ARE PART OF THE PROBLEM DO NOT EXHIBIT VISIBLE OUTWARD SIGNS OF DRUNKENNESS. "IMPAIRED DRIVING" IN GENERAL MEANS DRIVING WHILE ABILITIES ARE IMPAIRED BY ALCOHOL OR DRUGS. "DRIVING WHILE INTOXICATED (DWI) OR "DRIVING UNDER THE INFLUENCE" (DUI) MEANS DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. IN GENERAL, THIS BOOKLET WILL USE THE TERM IMPAIRED DRIVING TO DESCRIBE THE OVERALL PROBLEM AND DWI TO DESCRIBE THE CRIME OF DRIVING WHILE OVER THE LEGAL LIMIT OR UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS.

We Know What Works

We know what works to reduce the incidence of impaired driving—a combination of:

- EFFECTIVE LAWS,
- STRONG ENFORCEMENT, AND
- HIGHLY VISIBLE PUBLIC INFORMATION AND EDUCATION.

The successes of the past two decades can be attributed to all of these factors combining to change people's behavior. We've made some real progress, thanks to grassroots organizations, citizen activists, national highway safety and public health groups, concerned legislators and other elected leaders, involved industries and millions of people with plain old common sense.

"One for the road" used to be the standard and the antics of a drunk used to be considered funny. Now we've made some changes in the way we look at impairment. Many of us have changed our behavior as well, either by moderating our drinking if we must drive or designating a driver before alcohol is consumed. Party hosts are more cautious and guests look out for one another. And the hospitality industry has made a commitment to training servers to recognize the signs of impairment.

Impaired driving has been reduced since the early 80's, but it is still an enormous problem. There is more we can do, and it all begins with effective laws.

Key Laws That Every State Needs

There are four key laws that have been proven effective in the fight against impaired driving (see chart, "State Anti-Impaired Driving Laws," page 6). It is important to understand what each is and how it works, both alone and together with other laws.

Illegal per se – An illegal *per se* law makes it illegal in and of itself to drive with an alcohol concentration measured at or above the

established illegal level. Forty-eight states have established a *per se* law (the exceptions are Massachusetts and South Carolina). In 31 of those states, the legal limit is .10% blood alcohol concentration (BAC) *per se*. That means it is against the law to drive a motor vehicle if you have a BAC of .10 or more, whether or not you exhibit visible signs of intoxication. Seventeen other states and DC have established .08 BAC as the legal limit (see chart, "States with BAC *Per Se* Laws," page 4).

Administrative license revocation (ALR) – An ALR law gives state officials the authority to suspend administratively the license of any driver who fails or refuses to take a BAC test. Notice of the suspension is given immediately, although a temporary permit is usually issued. The permit is valid from 7-45 days, depending on the state. During that time, the accused person can appeal through administrative channels. If no appeal is filed, the license is then automatically suspended for a prescribed period of time. Suspensions range from seven days to six months for first-time offenders, again depending on the state, and are longer for repeat offenders. ALR laws do not replace criminal prosecution, and their constitutionality has been consistently upheld whenever challenged. As of late 1999, 40 states had ALR laws.

Zero tolerance – Zero tolerance laws make it illegal for drivers under age 21 to drive with any measurable amount of alcohol in their system, regardless of the BAC limit for older drivers. Since it is illegal in every state for those under 21 to purchase or publicly possess alcoholic beverages, it makes sense that no amount of alcohol be tolerated for drivers under that age. Many states have set the limit for underage drivers at .02 BAC. This helps reduce legal challenges that claim mouthwash, gum or cold medicine are somehow responsible for a positive but very low BAC reading (there is no evidence that such substances affect the standard breath analysis tests when they are

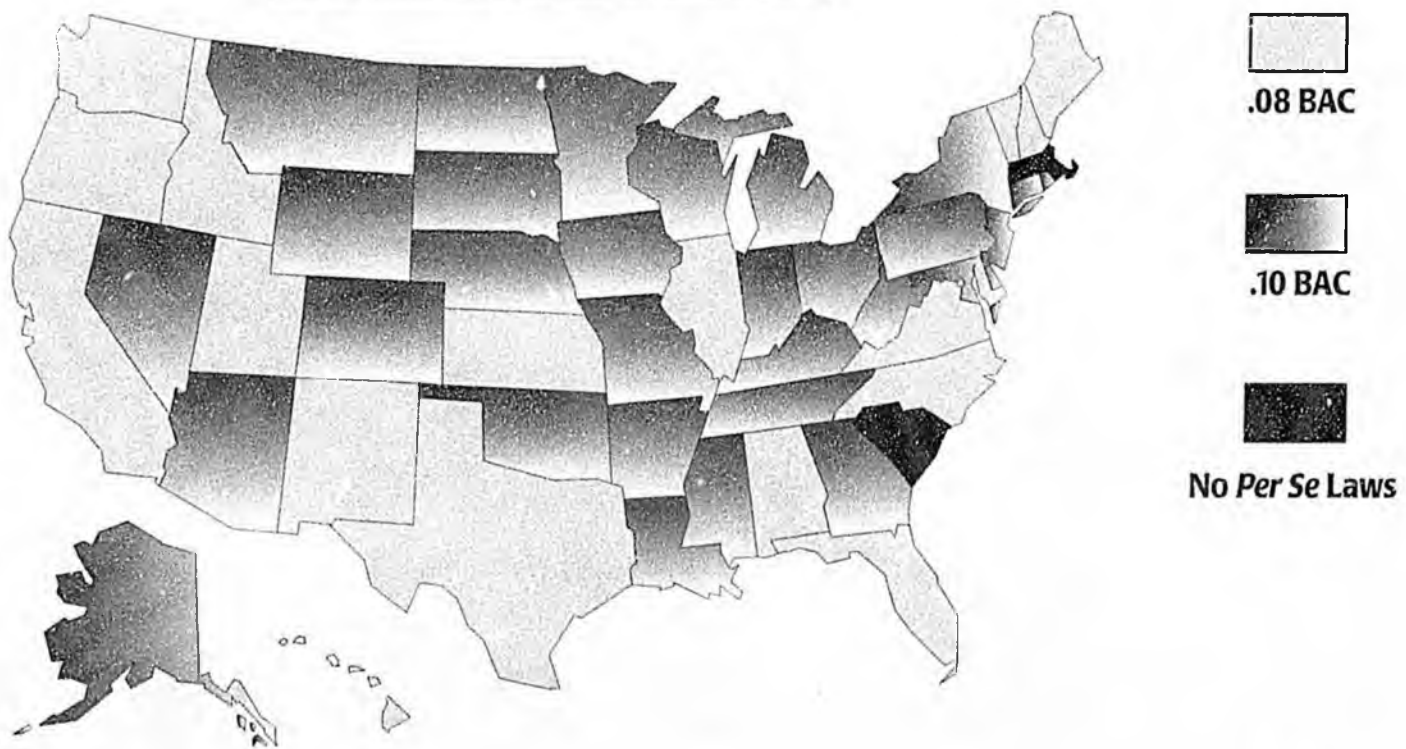
conducted properly or that other challenges about the accuracy of alcohol detection equipment are valid). As of late 1999, all 50 states plus DC had zero tolerance laws for youth. States that did not have zero tolerance laws for youth by 1998 faced a federal sanction of the withholding of highway construction funds.

.08 BAC – .08 establishes a lower limit to define intoxication for all drivers. Lowering the BAC limit to .08 sets the illegal limit at a point at which driving skills are proven to be compromised. At .08 BAC, all drivers, even experienced ones, show impairment in driving ability. For the great majority, there is serious deterioration in driving performance at .08. Although virtually all highway safety groups and transportation safety agencies support .08, only 17 states, plus DC have adopted such laws as of late 1999. Some organizations in the alcohol and hospitality industries vigorously oppose .08 legislation whenever it is proposed.

In addition to these four key laws, the National Safety Council and the National Highway Traffic Safety Administration (along with many other organizations and agencies) encourage other anti-impaired driving steps such as:

- THE USE OF SOBRIETY CHECKPOINTS AND SATURATION PATROLS BY LAW ENFORCEMENT AGENCIES COUPLED WITH HIGH LEVELS OF PUBLICITY;
- INCREASED ENFORCEMENT FOR UNDERAGED DRINKING AND DRIVING;
- GRADUATED DRIVER LICENSING PROGRAMS FOR NEW, YOUNG DRIVERS;
- THE USE OF DESIGNATED DRIVER AND SAFE RIDE PROGRAMS;
- RESPONSIBLE SERVER PROGRAMS;
- CONSUMER EDUCATION; AND
- CONTINUED RESEARCH TO FIND NEW AND BETTER WAYS TO COMBAT IMPAIRED DRIVING.

States With BAC *per se* Laws



"State Anti-Impaired Driving Laws"

STATE	BAC per se level	ALR	Zero Tolerance*	.08 BAC
Alabama	•	•	•	•
Alaska	•	•	•	
Arizona	•	•	•	
Arkansas	•	•	•	
California	•	•	•	•
Colorado	•	•	•	
Connecticut	•	•	•	
Delaware	•	•	•	
Dist. of Col.	•	•	•	•
Florida	•	•	•	•
Georgia	•	•	•	
Hawaii	•	•	•	•
Idaho	•	•	•	•
Illinois	•	•	•	•
Indiana	•	•	•	
Iowa	•	•	•	
Kansas	•	•	•	•
Kentucky	•	•	•	
Louisiana	•	•	•	
Maine	•	•	•	•
Maryland	•	•	•	
Massachusetts	•	•	•	
Michigan	•	•	•	
Minnesota	•	•	•	
Mississippi	•	•	•	
Missouri	•	•	•	
Montana	•	•	•	
Nebraska	•	•	•	
Nevada	•	•	•	
New Hamp.	•	•	•	•
New Jersey	•	•	•	
New Mexico	•	•	•	•
New York	•	•	•	
N. Carolina	•	•	•	•
N. Dakota	•	•	•	
Ohio	•	•	•	
Oklahoma	•	•	•	
Oregon	•	•	•	•
Pennsylv.	•	•	•	
Rhode Isl.	•	•	•	
S. Carolina	•	•	•	
S. Dakota	•	•	•	
Tennessee	•	•	•	
Texas	•	•	•	•
Utah	•	•	•	•
Vermont	•	•	•	•
Virginia	•	•	•	•
Washington	•	•	•	•
W. Virginia	•	•	•	
Wisconsin	•	•	•	
Wyoming	•	•	•	
TOTAL	48	40+DC	50+DC	17 STATES + DC

*Zero tolerance is defined as .02 or less for all drivers under age 21.

SECTION 2

What is .08?

Measuring Impairment

The amount of alcohol in a person's body is measured by the weight of the alcohol in a certain volume of blood. This is called the blood alcohol concentration, or "BAC." Because the volume of blood varies with the size of a person, BAC establishes an objective measure to determine levels of impairment.

The measurement is based on grams per deciliter (g/dl), and in most states a person is considered legally intoxicated if his or her BAC is .10 g/dl or greater; that is, alcohol makes up one-tenth of one percent of the person's blood.

A driver's BAC can be measured by testing the blood, breath, urine or saliva. Breath testing is the primary method used by law enforcement agencies. Preliminary breath testing can be performed easily during a roadside stop using a hand-held

device carried by police officers. It is non-invasive and can even be performed while the person is still in his or her vehicle.

Evidentiary breath testing equipment is evaluated for precision and accuracy by NHTSA. Test instruments approved by NHTSA as conforming to specifications are accurate within plus or minus .005 of the true BAC value.

State BAC Levels

All states but two (Massachusetts and South Carolina) have established BAC *per se* levels. Seventeen of those states plus the District of Columbia have set that level at .08 (Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Texas, Utah, Virginia, Vermont and Washington). For more state-specific data, see the chart "The State of the States," on next page.

**"A DRINK IS A
DRINK IS A DRINK"**

**1 DRINK EQUALS .54
OUNCES OF ALCOHOL.
THIS IS THE
APPROXIMATE AMOUNT
FOUND IN:
ONE SHOT OF DISTILLED
SPIRITS, OR ONE CAN
OF BEER, OR ONE GLASS
OF WINE.**

“The State of the States”

BECAUSE THE VOLUME OF BLOOD VARIES WITH THE SIZE OF A PERSON, BAC ESTABLISHES AN OBJECTIVE MEASURE TO DETERMINE LEVELS OF IMPAIRMENT.

STATE	BAC PER SE LEVEL	# OF FATALITIES (1998)	PERCENT ALCOHOL-RELATED
Alabama	.08	1,071	38
Alaska	.10	71	44
Arizona	.10	980	43
Arkansas	.10	625	31
California	.08	3,494	38
Colorado	.10	628	37
Connecticut	.10	329	43
Delaware	.10	115	39
Dist. of Col.	.08	54	51
Florida	.08	2,824	33
Georgia	.10	1,569	32
Hawaii	.08	120	47
Idaho	.08	265	34
Illinois	.08	1,393	43
Indiana	.10	978	39
Iowa	.10	449	36
Kansas	.08	493	35
Kentucky	.10	858	33
Louisiana	.10	922	46
Maine	.08	192	28
Maryland	.10	606	34
Massachusetts	-	406	47
Michigan	.10	1,367	39
Minnesota	.10	650	43
Mississippi	.10	948	37
Missouri	.10	1,169	45
Montana	.10	237	44
Nebraska	.10	316	38
Nevada	.10	361	49
New Hamp.	.08	128	47
New Jersey	.10	743	36
New Mexico	.08	424	45
New York	.10	1,498	24
N. Carolina	.08	1,596	32
N. Dakota	.10	92	47
Ohio	.10	1,422	33
Oklahoma	.10	755	33
Oregon	.08	538	43
Pennsylv.	.10	1,481	42
Rhode Isl.	.10	74	48
S. Carolina	-	1,002	30
S. Dakota	.10	165	41
Tennessee	.10	1,216	41
Texas	.08	3,577	50
Utah	.08	350	14
Vermont	.08	104	37
Virginia	.08	935	37
Washington	.08	660	46
W. Virginia	.10	354	41
Wisconsin	.10	714	42
Wyoming	.10	154	44
U.S. Total		41,471	38

SECTION 3

Effect of BAC on Traffic Crashes

The Effect of Alcohol on Ability

With each drink consumed, a person's blood alcohol concentration increases. Although the outward appearances vary, virtually all drivers are substantially impaired at .08 BAC. Laboratory and on-road research shows that the vast majority of drivers, even experienced drivers, are significantly impaired at .08 with regard to critical driving tasks such as braking, steering, lane changing, judgment and divided attention. In a recent study of 168 drivers, every one was significantly impaired with regard to at least one measure of driving performance at .08 BAC. The majority of drivers (60-94%) were impaired at .08 BAC in any one given measure. This is regardless of age, gender, or driving experience (see chart, "BAC and Impairment," at right).

The risk of being in a motor vehicle crash also increases as the BAC level rises. The risk of being in a crash rises gradually with each BAC level, but then rises very rapidly after a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their system.

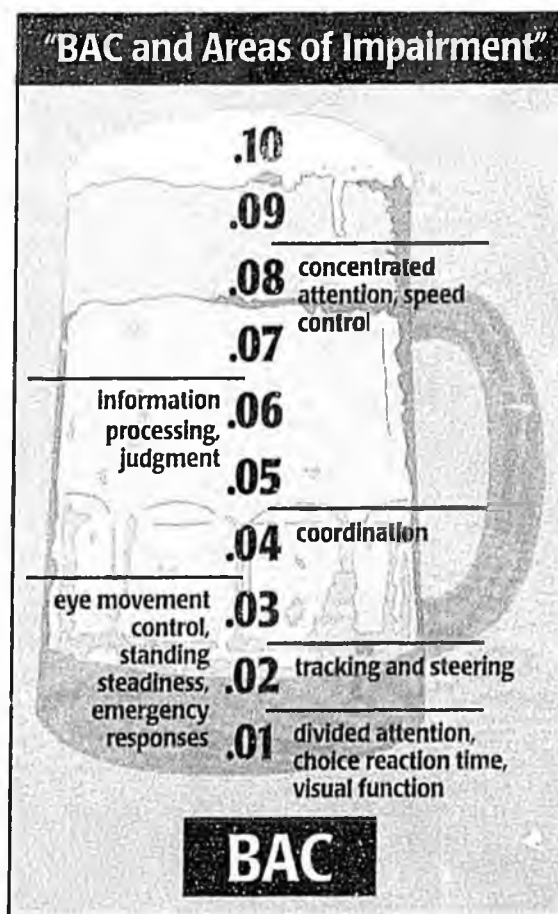
A recent study found that the risk of being killed in a single vehicle crash at .08 to .099 BAC ranged from 11 times the risk at .00 BAC for older drivers to 52 times the risk at .00 BAC for young male drivers.

.08 Sets a Reasonable Limit

Setting the BAC limit at .08 is a reasonable response to the problem of impaired driving. This is not a couple of beers after work or a glass or two of wine with dinner. At .08, everyone is impaired to the point that driving skills are degraded. Most states that have lowered their

BAC to .08 have found a measurable drop in impaired driving crashes and fatalities, as have many countries that have adopted .08 (see chart, "BAC Levels in Other Countries," on page 10). .08 also serves to deter driving after drinking. Crash statistics show that even heavy drinkers, who account for a high percentage of DWI arrests, are less likely to drink and drive because of the general deterrent effect of .08. At the same time, lowering the BAC limit to .08 makes it possible to convict seriously impaired drivers whose BAC levels are now considered marginal because they are at or just over .10.

**SETTING THE BAC
LIMIT AT .08 IS A
REASONABLE
RESPONSE TO THE
PROBLEM OF
IMPAIRED
DRIVING.**





SECTION 4

The Case for .08 BAC Laws

.08 Laws Work

The effect of California's .08 law was analyzed by NHTSA, which found that 81% of the driving population knew that the BAC limit was stricter (from a tremendously successful public education effort). The state experienced a 12% reduction in alcohol-related fatalities, although some of this can be credited to the new administrative license revocation law. The state also experienced an increase in DUI arrests.

The second multi-state analysis of the effect of lowering BAC levels to .08 was conducted recently by Ralph Hingson, Sc.D., a professor at Boston University's School of Public Health and Chairman of the school's Social and Behavioral Sciences Department, along with two other researchers. The results of their study were reported in the September 1996 issue of the *American Journal of Public Health*, a peer-reviewed journal.

Hingson compared the first five states to lower their BAC limit to .08 (California, Maine, Oregon, Utah and Vermont) with five nearby states that retained the .10 limit. Overall, the .08 states experienced a 16% reduction in the proportion of fatal crashes with a fatally injured driver whose BAC was .08 or higher, as well as an 18% reduction in such crashes with a fatally injured driver whose BAC was .15 or higher.

The immediate significance of these findings is that, not only did the .08 BAC laws reduce the overall incidence of alcohol fatalities, but also reduced fatalities at the higher BAC levels. The effect on extremely impaired drivers (the "problem drinking drivers") was even greater than the overall affect.

The study concluded that if all states lowered their BAC limits to .08, alcohol-related highway deaths would decrease by 500-600 per year.

In a NHTSA analysis of these five states (Johnson and Fell, 1995), significant reductions in alcohol-related fatal crashes were found in 4 out of the 5 states ranging from 4% to 40% when compared to the rest of the states with .10 BAC laws.

Impaired Driving Affects Us All

About two out of every five Americans will be involved in an alcohol-related crash at some time in their lives, and many of them will be innocent victims. There is no such thing as a drunk driving accident. Virtually all crashes involving alcohol could have been avoided if the impaired person were sober.

As BAC levels rise, so does the risk of being involved in a fatal crash. Recent research has shown that, in single vehicle crashes, the relative fatality risk for drivers with BACs between .08 and .099 is at least eleven times greater than for drivers with a BAC of zero and is 52 times greater for young males.

A RECENT COMPARISON STUDY (COVERING ALL 50 STATES) ANALYZED THE EFFECTS OF .08 BAC AND OTHER LAWS OVER A 16 YEAR PERIOD. THE STUDY ESTIMATED THAT .08 BAC LAWS HAD AN 8% EFFECT IN REDUCING FATAL CRASHES INVOLVING DRIVERS AT BOTH HIGH BACs AND LOWER BACs. IT ESTIMATES THAT IF ALL 50 STATES HAD .08 BAC LAWS IN EFFECT IN 1997 AN ADDITIONAL 590 LIVES WOULD HAVE BEEN SAVED.

States Have the Responsibility

In the United States, BAC limits are set by states. The limit of .10 found in most states is the highest in the industrialized world (see chart, "BAC Levels in Other Countries, on next page).

An eleven state study also examined the effects of .08 BAC (and ALR) laws. It found that .08 BAC legislation was associated with reductions in alcohol-related fatalities, alone or in conjunction with ALR laws, in seven of the eleven states studied. In five of these states (VT, KS, NC, FL, NM), implementation of the .08 BAC law itself was associated with significantly lower rates of alcohol-related fatalities. These results take into account any pre-existing downward trends the states were already experiencing, due to other factors such as the presence of other laws, use of sobriety checkpoints, etc. In two states (CA and VA), significant reductions were associated with the combination of .08 BAC and ALR laws, implemented within 6 months of each other. This study also found evidence of reduced alcohol (beer) consumption in several states following implementation of .08 laws.

The third study analyzed the effects of a .08 BAC law implemented in 1993 in North Carolina, a state which had already been experiencing a sharp decline in alcohol-related fatalities since 1987. This study concluded that there was little clear effect of the lower BAC limit. Results from various analyses suggested that some portion

of the reductions may have been associated with the law but the magnitude of these effects was not sufficient to make this conclusion.

In aggregate, these three recent studies provide additional support for the premise that .08 BAC laws help to reduce alcohol-related fatalities, particularly when they are implemented in conjunction with other impaired driving laws and programs. Nearly all of the findings of these and previous studies show changes that suggest that .08 BAC legislation (as well as .10 BAC laws and ALR laws) have contributed to the trend toward reduced alcohol-related crashes and fatalities that have been experienced across the nation.

NHTSA, the federal agency charged with the safety of motor vehicles and our nation's highway safety, has long supported .08 state laws. In a 1992 Report to Congress, the agency recommended that all states lower their illegal *per se* limit to .08 for all drivers 21 years and



above. (NHTSA supports zero tolerance for drivers under the legal drinking age – see Section 1 for more information.) Numerous other federal agencies with an interest in public health and safety issues, as well as dozens of private sector organizations, support NHTSA's call for universal .08 state laws (see box, "Who Supports .08 BAC Laws?," page 13).

Why Some States Don't Have .08

As a public policy to deter impaired driving, .08 has lagged behind other countermeasures such as *per se*, administrative license revocation and zero tolerance for those under 21. Nearly all states have *per se*, the vast majority have ALR and all have zero tolerance.

But the passage of new .08 laws have been few and far between, despite consistent evidence that they work, because some organizations in the alcohol and hospitality industries oppose any and all such proposals at the state level. This is both sad and ironic, since these industries have not only been strong supporters of many other anti-impaired driving laws, but have also been crucial partners in getting safety messages out to hard-to-reach audiences.

Promotions such as designated driver programs and sober ride/call-a-cab efforts showcase their concern, generate enormous goodwill from the general public and raise awareness. It is tragic that some of the same companies and trade associations that have launched excellent server training programs, public information campaigns and other efforts to reduce impaired driving so vigorously oppose legislation when it comes to .08 (see box, "What the Hospitality Industry Can Do," on page 18).

A recently released report by the General Accounting Office (GAO), which reviewed the currently available .08 BAC studies stated that, while the evidence of impact of .08 BAC laws is not conclusive, "there are...strong indications that

"Who Supports .08 BAC Laws?"

The following organizations support a BAC limit of .08 or lower:

ADVOCATES FOR HIGHWAY AND AUTO SAFETY
 ALLSTATE INSURANCE
 AMERICAN ALLIANCE FOR RIGHTS AND RESPONSIBILITIES
 AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS
 AMERICAN ASSOCIATION OF NEUROLOGICAL SURGEONS
 AMERICAN AUTOMOBILE ASSOCIATION
 AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
 AMERICAN COALITION FOR TRAFFIC SAFETY
 AMERICAN INSURANCE ASSOCIATION
 AMERICAN MEDICAL ASSOCIATION
 AMERICAN SPINAL CORD INJURY ASSOCIATION
 AMERICAN SPINAL INJURY ASSOCIATION
 AMERICAN TRUCKING ASSOCIATIONS
 ASSOCIATION FOR THE ADVANCEMENT OF AUTOMOTIVE MEDICINE
 CENTER FOR SUBSTANCE ABUSE PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DAIMLER-CHRYSLER CORPORATION
 FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
 FORD MOTOR COMPANY
 INSURANCE INFORMATION INSTITUTE
 INSURANCE INSTITUTE FOR HIGHWAY SAFETY
 INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
 KEMPER INSURANCE GROUP
 MOTHERS AGAINST DRUNK DRIVING (MADD)
 NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES
 NATIONAL COMMISSION AGAINST DRUNK DRIVING
 NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES
 NATIONAL DISTRICT ATTORNEYS ASSOCIATION
 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
 NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM
 NATIONAL SAFETY COUNCIL
 NATIONAL SHERIFFS' ASSOCIATION
 NATIONWIDE INSURANCE
 OPERATION LIFESAVER
 REMOVE INTOXICATED DRIVERS
 STUDENTS AGAINST DESTRUCTIVE DECISIONS (SADD)
 USAA INSURANCE
 U.S. DEPARTMENT OF JUSTICE
 U.S. SURGEON GENERAL

.08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives.”

We commend GAO for reaching the sound and accurate conclusion that a .08 blood alcohol concentration (.08 BAC) law can be an important component of a state’s overall highway safety program. We agree that highway safety research shows that the best countermeasure against drunk driving is a combination of laws, including .08 BAC, sustained public education, and vigorous enforcement and we agree that there are strong indications the .08 BAC laws, when added to existing laws and programs, are associated with reductions in alcohol-related fatalities.

With regard to whether the studies are “conclusive,” it must be pointed out that all research is equivocal and therefore, by that definition,

inconclusive. In context, however, particularly with the addition of the recently released studies conducted by NHTSA, the evidence is consistent and convincing that, in most states where .08 BAC laws have been added to existing impaired driver control efforts, they have been associated with reductions in alcohol-related fatalities.

The Time is Now

Recent research by NHTSA and past studies by the Boston University School of Public Health and the California Department of Motor Vehicles have shown impaired driving reductions already attributable to .08, as well as the potential for saving additional lives if all states adopted .08 BAC laws. Not only would deaths and injuries go down, but costs would as well. Alcohol-related crashes cost society \$45 billion every year, not including pain, suffering and lost quality of life. For more information on these enormous costs, see the fact sheet “Economic Issues” in the appendix.

SECTION 5

Myths about .08 BAC

Myths about .08 abound, many proliferated by those who actively oppose .08 laws. Here are a few of the commonly heard myths, countered by research-based facts from the National Highway Traffic Safety Administration, academic and scientific institutions, and credible private sector organizations such as Mothers Against Drunk Driving.

MYTH:

"If you lower the BAC limit to .08, it means I can't even have a couple of drinks with my dinner."

FACT: While there is no "safe" amount of alcohol for drivers, most people can drink moderately and drive legally when the illegal *per se* limit is set at .08. A 170-pound male typically would have to consume more than four drinks in one hour on an empty stomach to reach a BAC of .08. A 135-pound female typically would have to consume three drinks in the same time frame.

MYTH:

"I know when I'm 'too drunk to drive' – I don't need to be concerned about my blood alcohol concentration."

FACT: Your driving skills can be seriously compromised even when your behavior is not observably "drunk." Alcohol causes impairment in reaction time, attention, tracking, comprehension and other skills essential for safe driving. Even when attempting to drive carefully, an impaired driver cannot compensate for those reduced abilities. In addition, alcohol affects your ability to judge whether or not you are impaired.

MYTH:

"The American public does not support .08 because most people have no idea how much alcohol it would take to put them over the legal limit."

FACT: According to several national surveys, most Americans would not drive after having two or three drinks in one hour, an amount that would put them below .08. Most people know how much alcohol it takes to impair their driving ability and they accept lower limits such as .08 for adults.

MYTH:

".08 BAC legislation will not affect problem drinker drivers who have high BAC levels."

FACT: The latest research shows that .08 laws not only reduce the incidence of impaired driving at lower BACs, they also reduce the incidence of impaired driving at high BACs over .10 (Voas and Tippetts, 1999). A .08 law serves as a general deterrent to drinking and driving, sends a message that the state is getting tougher on impaired driving, and makes people think twice about getting behind the wheel after they've had too much to drink. .08 is a key part of a complete package to reduce impaired driving. While problem drinker drivers do account for a significant part of the DWI problem, most fatally injured drinking drivers (70-80%) had no prior alcohol-related offenses. A comprehensive anti-impaired driving program must use all available laws and programs to reduce DWI.

A .08 LAW SERVES AS A GENERAL DETERRENT TO DRINKING AND DRIVING, SENDS A MESSAGE THAT THE STATE IS GETTING TOUGHER ON IMPAIRED DRIVING, AND MAKES PEOPLE THINK TWICE ABOUT GETTING BEHIND THE WHEEL AFTER THEY'VE HAD TOO MUCH TO DRINK.

MYTH:

"Lowering the BAC limit to .08 places an unnecessary strain on the law enforcement community by forcing officers to monitor the behavior of currently legal drivers and pay less attention to the real problem, repeat offenders and those with high BACs."

FACT: Lowering the *per se* limit to .08 does not place an unnecessary strain on police. Officers still must have probable cause to stop and test drivers to determine if they are impaired. A .08 law will actually make it easier for police to arrest drivers at .10 or .11 BACs because these are no longer "borderline" cases.

MYTH:

"If you start arresting people driving with a .08 BAC, you will clog up the court system."

FACT: In the largest state, California, the .08 law has had little impact on the state's judicial system. No increases have been reported in the proportion of arrested drivers who plead guilty, request jury trials or appeal convictions. .08 is a deterrent to impaired driving, especially when coupled with other effective anti-DWI measures. Anything that reduces the incidence of DWI reduces the overall burden on society, including the judicial system.

MYTH:

".08 is just the first step toward even lower BACs and eventually another attempt at prohibition."

FACT: Widely accepted public health research has identified .05 as the BAC level at which driving

skills begin to deteriorate. Because of this, some organizations — most notably the American Medical Association — officially support .05 as the safest limit. However, safety professionals generally do not believe such laws would have any reasonable chance politically in this country. Even those organizations that have adopted such policies accept .08 as the best reasonable and acceptable compromise that will save lives, prevent injuries and reduce costs to society. The notion that safety organizations seek a return to prohibition is unfounded.

MYTH:

"The United States General Accounting Office (GAO) says .08 BAC laws do not work."

FACT: The GAO report actually stated the following: "Overall, the evidence does not conclusively establish that .08 BAC laws, by themselves, result in reductions in the number or severity of alcohol-related crashes." They went on to say: "There are, however, strong indications that .08 BAC laws in combination with other drunk driving laws (particularly licence revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives." Of course, .08 BAC laws do not save lives by "themselves". They must be publicized as enforced and work in combination with the other laws of the state. The evidence shows that, in aggregate, when states adopt .08 BAC laws, they can save lives, especially in combination with administrative licence revocation laws which 40 states already have.

SECTION 6

Consumer Education and Public Support

Polls Support Anti-DWI Efforts

The American public overwhelmingly supports legislation and programs to curb impaired driving. In a poll conducted for Mothers Against Drunk Driving (MADD), the Gallup Organization found that the vast majority of the American public considers drunk driving the number one major highway safety problem and most support tough laws and sanctions to reduce impaired driving.

All of the approaches to deal with impaired driving do well in public opinion polls, but the programs that have received more attention in the media and other public forums – ALR, zero tolerance, sobriety checkpoints and vehicle confiscation for repeat offenders – poll higher than .08. The likely reason is that people do not understand the technical aspects of how BACs are determined and what .08 means in real terms. When it comes to their own tolerance for alcohol and their own abilities, however, the American public is certain: most say they would not drive after consuming two or three drinks in one hour.

.08 is a Public Health Policy

The challenge for .08 supporters is to help people make a connection between their own common sense and the public policy that would define impaired driving as .08. Clearly, the more people know about the problem and the potential solutions, the more they support changes to bring about those solutions. .08 is a key part of any public health initiative that aims to reduce society's burden from impaired driving.

Supporters of .08 have many allies and resources to call upon, both at the national level and in the states. A list of resource organizations is included in the appendix.

Help is Available

Federal and State Governments and several private sector organizations hold workshops, publish idea samplers and planners, and offer other helpful organizing tools that may help .08 supporters achieve their public policy goals.

"What You Can Do"

Around the country, voluntary efforts are underway by concerned citizens who support adoption of .08 BAC laws. To become part of the activities in your state:

FIND OUT YOUR STATE'S BAC LIMIT, AND WHETHER THERE IS AN ILLEGAL PER SE LAW, BY CALLING YOUR GOVERNOR'S HIGHWAY SAFETY REPRESENTATIVE, YOUR LOCAL SAFETY COUNCIL OR YOUR LOCAL MADD CHAPTER (SEE RESOURCE SECTION);

IF YOUR STATE DOESN'T HAVE AN ILLEGAL PER SE LAW OF .08, CONTACT EXISTING GRASSROOTS AND GOVERNMENT ORGANIZATIONS INVOLVED IN PREVENTION EFFORTS TO FIND OUT HOW YOU CAN HELP;

JOIN OR HELP FORM A COALITION TO SUPPORT LEGISLATIVE EFFORTS IN YOUR STATE TO LOWER THE BAC LIMIT;

SPREAD THE WORD ABOUT THE IMPORTANCE OF .08 LAWS, THROUGH NEWSLETTER ARTICLES, PRESS RELEASES, CONFERENCES, SPEECHES TO LOCAL ORGANIZATIONS, ETC.; COOPERATE WITH STATE HIGHWAY AND PUBLIC HEALTH AGENCIES TO DRAW ATTENTION TO YOUR EFFORT;

LET YOUR GOVERNOR AND STATE LEGISLATORS KNOW ABOUT THE EFFECTIVENESS OF .08 LAWS IN SAVING LIVES AND TAXPAYER DOLLARS.

A MADD/GALLUP POLL FOUND THAT THE VAST MAJORITY OF THE AMERICAN PUBLIC CONSIDERS DRUNK DRIVING THE NUMBER ONE MAJOR HIGHWAY SAFETY PROBLEM AND MOST SUPPORT TOUGH LAWS AND SANCTIONS TO REDUCE IMPAIRED DRIVING.

Contact information on these and other organizations is available in the appendix. Here are just a few suggestions:

Campaign Safe and Sober – The National Highway Traffic Safety Administration publishes a quarterly planner with useful facts, tips and suggestions for state and community-based highway safety programs, particularly in the area of impaired driving, occupant protection and speed. For copies of past planners or to receive future quarterly planners, contact your NHTSA Regional Administrator.

Drunk and Drugged Driving (3D) Prevention Month Program Planner – The annual 3D planner is chock full of ideas and helpful information on organizing grassroots efforts around the December 3D Month as well as other times of the year. The planner is produced by NHTSA in cooperation with a national coalition of anti-drunk driving organizations and is available through your NHTSA Regional Administrator.

Mothers Against Drunk Driving – MADD offers many resources to local activists through chapters in every state, including Impaired Driving Issues Workshops, publications and training materials, victim support services, and community programs such as Project MADD Ribbon, Operation Prom/Graduation and Team Spirit. Contact your local MADD chapter or the national office.

National Safety Belt Coalition – Although not directly involved in impaired driving issues, the Coalition and its parent organization, the National Safety Council, have published several useful books for local organizers, including *Patterns for Partnerships – A Guide to Creating and Nurturing Grassroots Coalitions* and *Building Traffic Safety Partnerships – A Guide for State Highway Safety Professionals to Work with Local Government Associations*.

"What the Hospitality Industry Can Do"

The restaurant and hospitality industries have plenty of incentives to bring customers into their establishments while helping reduce the risk of impaired driving. Here are some of the ideas many establishments already have used successfully:

PROMOTING DESIGNATED DRIVER PROGRAMS BY PROVIDING FREE OR REDUCED-PRICE NON-ALCOHOLIC BEVERAGES AND FOOD TO DESIGNATED DRIVERS;

PROMOTING NON-ALCOHOLIC BEERS AND WINES;

PROVIDING FREE RIDES HOME TO DRIVERS WHO APPEAR IMPAIRED (OR PARTICIPATING IN AND PROMOTING FREE RIDE PROGRAMS SPONSORED BY SAFETY GROUPS, TAXI COMPANIES, ETC.);

ENGAGING IN RESPONSIBLE ALCOHOL SERVICE BY TRAINING SERVERS, MAKING FOOD AVAILABLE TO PATRONS, NOT SERVING INTOXICATED CUSTOMERS, OR THOSE UNDER THE AGE OF 21.



SECTION 7

Law Enforcement

Enforcing .08

One of the arguments used against .08 is the impact on the law enforcement and judicial system. However, when the largest state, California, lowered the BAC limit to .08, there was little impact on court administrators or judges.

The main impact in California has been on prosecutors' decisions concerning whether or not cases should be filed. Previously, those arrested for DWI with BACs below .12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about .10 BAC. No increases were reported in the proportion of DWI defendants pleading guilty, requesting jury trials, or appealing convictions.

Quick and Easy Testing

Modern breath analysis equipment is easy to use during a roadside stop, whether the legal limit is .08 or any other limit. The devices are small enough and inexpensive enough that every patrol car on traffic duty can be equipped with one. Law enforcement officers can administer the test quickly and easily, without the driver even leaving the car. If the preliminary breath test shows the person is not impaired, motorists can be on their way and police can continue their duties. .08 does not change the fact that law enforcement officers can conduct these roadside tests quickly and easily.

Law Enforcement Supports .08

.08 is supported by law enforcement organizations, including two of the largest: the International Association of Chiefs of Police and the National Sheriffs' Association. These organizations and others like them would not support a law that is unenforceable, ineffective or burdensome on police officers.

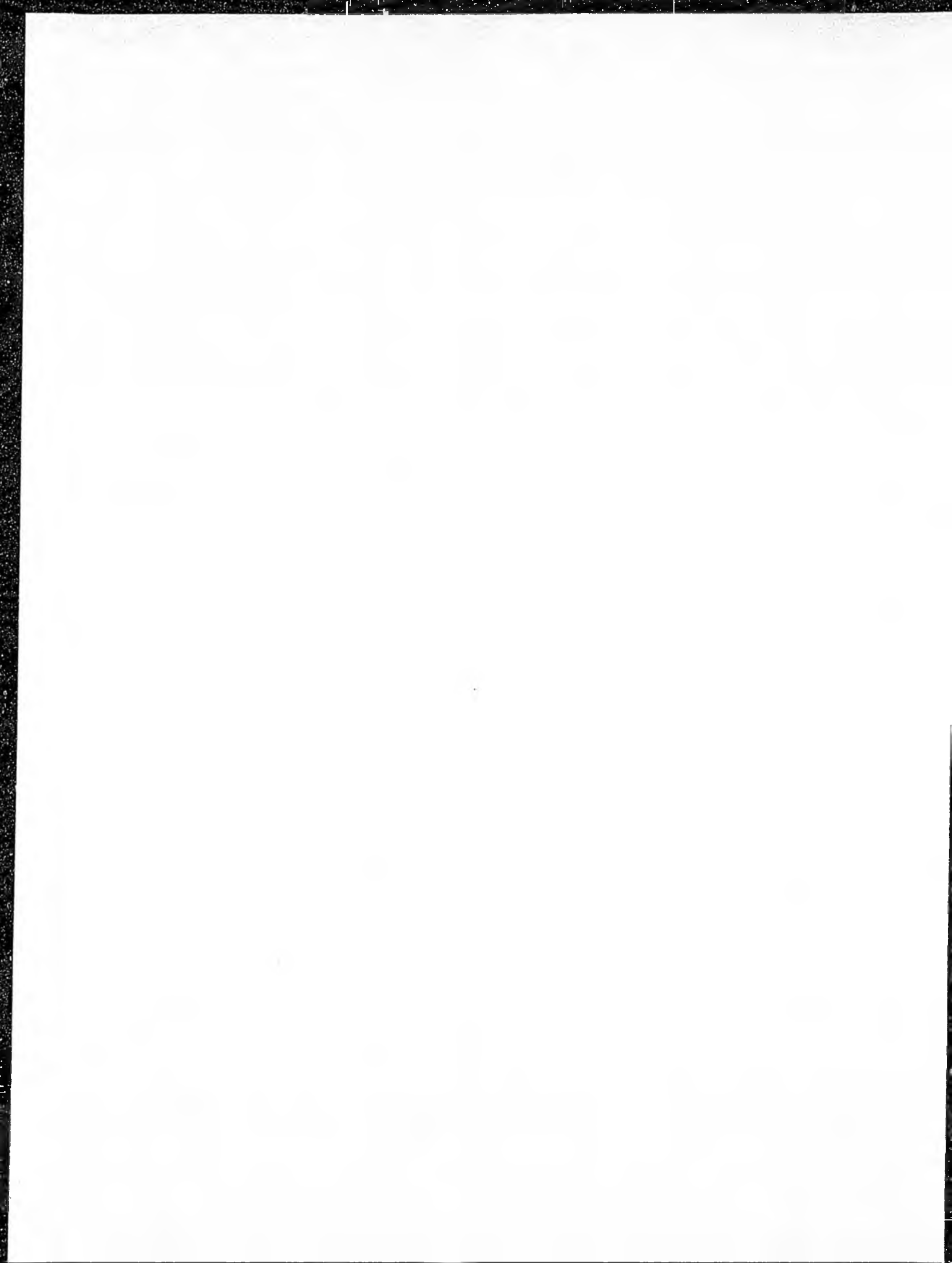
Treatment Can Help

Medical treatment programs for repeat offenders — and sometimes even first time offenders — have become an increasingly popular part of the sentencing process. Some states require certain treatments while others recommend but do not require them.

This leads to concern that programs will be overcrowded with long waiting lists. Most safety organizations recommend that impaired driving programs be self-supporting. Fines and fees paid by offenders should cover the cost of all sentencing, including treatment for alcoholism or alcohol abuse. This reduces the burden on taxpayers while helping to ensure that offenders get the help they need.

Medical treatment for impaired drivers, whether required by law or ordered at the discretion of a judge, correctly positions impaired driving as a public health problem. .08 laws do not contribute to burdens on society but help to identify those with a problem and get them into programs to reduce the chance they will eventually kill or injure themselves or someone else.

**.08 IS SUPPORTED
BY LAW
ENFORCEMENT
ORGANIZATIONS . . .
[GROUPS THAT]
WOULD NOT
SUPPORT A
LAW THAT IS
UNENFORCEABLE,
INEFFECTIVE OR
BURDENSOME ON
POLICE OFFICERS.**



SECTION 8

Summary

.08 is Reasonable

.08 is a reasonable BAC level. A .08 BAC is not reached with a couple of beers after work or a glass or two of wine with dinner. The public supports .08, and surveys show that most people would not drive after consuming two or three drinks.

.08 Works

As a public health initiative and a traffic safety policy, .08 works and works well, especially in combination with other laws and programs. A .08 BAC *per se* law will:

- INCREASE THE ARREST AND CONVICTION RATES FOR IMPAIRED DRIVERS AT .10 AND ABOVE;
- RAISE THE PERCEIVED RISK OF ARREST FOR DRIVING AFTER DRINKING;
- IMPROVE PUBLIC AWARENESS ABOUT HOW MUCH ALCOHOL IT TAKES TO BE DANGEROUSLY IMPAIRED; AND
- BRING THE U.S. CLOSER TO *PER SE* LIMITS OF MOST INDUSTRIALIZED NATIONS.

.08 Could Save Your Life

If every state adopted a .08 *per se* law, hundreds of lives could be saved every year, with thousands of injuries prevented and millions of dollars saved. But even more important would be all the extra birthday candles that would get blown out, the graduation ceremonies that would be attended, the weddings that would be celebrated and the millions of everyday smiles that would be exchanged.

No one will ever know if they or one of their loved ones will be the next victim of impaired driving, just as no one will ever know if they are the one who was spared thanks to good public policy. .08 is sensible, reasonable and effective. It's time to adopt .08 in every state.

IF EVERY STATE
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SE LAW, HUNDREDS
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WITH THOUSANDS
OF INJURIES
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MILLIONS OF
DOLLARS SAVED.



APPENDIX A

Facts on The Impaired Driving Problem

According to the US Department of Transportation's Fatality Analysis Reporting System and the National Highway Traffic Safety Administration's National Center for Statistical Analysis:

- In 1998, 41,471 people were killed in highway crashes. Another 3 million were injured. These crashes cost society \$150 billion every year.
- Of those killed on our highways in 1998, 15,935 died in alcohol-related crashes (38%).
- Approximately one million people are injured in alcohol-related traffic crashes annually.
- Alcohol involvement is the single greatest factor in motor vehicle deaths and injuries. While about 5% of all crashes involve the use of alcohol, 38% of fatal crashes do.
- Anti-impaired driving efforts work. From 1988 to 1998, alcohol-related fatalities dropped 33%. This drop is generally attributed to stronger laws, tougher enforcement, and good consumer education.
- Among all drivers involved in fatal crashes in 1998, 23% had been drinking.
- Many states now are lowering the BAC defining impaired driving from .10 to .08. A BAC as low as .02 has been shown to affect driving ability and crash likelihood.
- The probability of a crash increases significantly at .05 and even more rapidly at .08.
- Among drivers with BACs above .15 on weekend nights, the likelihood of death in a single-vehicle crash is more than 380 times higher than it is for nondrinking drivers.
- The highest proportion of driver deaths involving BACs at or above .08 in 1998 occurred in passenger vehicles. The group of drivers with the lowest proportion was tractor-trailer drivers.
- In 1998, 29 percent of all fatal crashes during the week were alcohol-related, compared to 52 percent on weekends. For all crashes, the alcohol involvement rate was 5 percent during the week and 12 percent during the weekend.
- The highest rates of drivers involved in fatal crashes in 1998 with BACs at or above .10 were recorded for drivers 21-24 years old (28 percent), followed by ages 25-34 (24 percent) and 35-44 (21 percent).

Facts on the Economic Issues

According to the National Highway Traffic Safety Administration:

- In 1998, 41,471 people were killed in highway crashes. Another 3 million were injured.
- Motor vehicle crashes cost society \$150 billion each year in emergency and acute health care costs, long-term care and rehabilitation, police and judicial services, insurance, disability and workers compensation, lost productivity, and social services for those who cannot return to work and support their families.
- Alcohol-related crashes cost society over \$45 billion every year. Just one alcohol-related fatality is estimated to cost society about \$950,000. Each alcohol-related injury averages about \$20,000.
- Almost a quarter of first-year medical costs for persons hospitalized as a result of a crash are paid by tax dollars, about two-thirds through Medicaid and one-third through Medicare.
- Employers pay for approximately half the cost of motor vehicle crashes, through insurance, disability, worker's compensation, and lost productivity. Eventually, we all bear the costs through tax-payer supported services and programs, higher insurance costs, and higher prices on goods and services.

According to a 1994 study by economist Ted R. Miller of the National Public Services Research Institute:

- *The indirect costs of alcohol-related crashes (pain, suffering and lost quality of life) increase the toll for alcohol-related crashes to \$134 billion a year.*
- *Alcohol-related crashes cost society \$1.00 per drink or \$2.20 per ounce of alcohol consumed. This figure includes drinks consumed in the home.*
- *Crash costs are \$5.54 for every mile driven drunk. This includes \$2.34 to people other than the drunk driver. By comparison, crash costs are \$.10 per mile driven while sober.*
- *Alcohol-related crashes account for 19% of auto insurance payments in 1993 (a decline from 26% in 1990).*
- *A drunk driving crash costs each innocent victim \$36,000. Comparable crime costs per victim are: assault – \$30,000; robbery – \$16,000; motor vehicle theft – \$4,000. Yet, the drunk driving crash is the only one of these crimes that is often not considered a felony upon the first offense.*

The Facts About .08

- A law making .08 BAC the legal limit is a reasonable, sensible approach to the problem of impaired driving.
- .08 laws increase the arrest and conviction rates for impaired drivers at .10 and above while raising the perceived risk of arrest for driving after drinking.
- .08 laws raise public awareness about how much alcohol it takes to be dangerously impaired.
- Most other industrial nations already set their legal limit at .08 or lower.
- Supporters of .08 BAC laws include federal and state agencies, consumer and victim's organizations, highway safety groups, law enforcement organizations, medical and public health groups, insurance companies and other business interests, and many others.
- According to a recent poll by the Gallup Organization for Mothers Against Drunk Driving, 97% of Americans believe drunk driving is a major highway safety problem.
- If every state had adopted a .08 *per se* law in 1997, instead of the 15 states that had .08 laws, an additional 590 lives could have been saved, according to a recent study conducted by researchers at the Pacific Institute for Research and Evaluation.
- It takes about 3-4 drinks in one hour on an empty stomach to reach a .08 BAC. This does not affect the casual, social drinker who may have a couple of beers after work or a glass or two of wine with dinner once in a while.
- On average, alcohol metabolizes in the body and dissipates from the blood at a rate of about .015 BAC per hour.
- At .08, virtually all drivers are impaired to the point that critical driving skills such as reaction time, attention, tracking, and comprehension are degraded.

What You Can Do About Impaired Driving

Mothers Against Drunk Driving (MADD) offers the following suggestions to help fight impaired driving:

- *Your best defense against a drunk driver is to wear your safety belt and be sure children are properly secured in child safety seats.*
- *Be a responsible host. Serve food and have non-alcoholic drinks available. Don't let your guests drive after drinking alcohol and never serve alcohol to someone under the age of 21.*
- *Write letters to the editor of local newspapers expressing your concern over drunk driving and underage drinking in your community.*
- *Never ride in a car operated by someone who has been drinking - call a cab or ask a friend to drive you home.*
- *Support measures to strengthen drunk driving and victims rights laws by contacting elected officials.*
- *Report drunk drivers immediately to area law enforcement from a car phone or pay phone with the license plate number, description of the vehicle, and the direction in which it was traveling. Keep a safe distance from anyone driving erratically and do not try to intervene yourself.*

If you or someone you love becomes the victim of a drunk driving crash, call 800-GET-MADD or your local MADD chapter for victim assistance and support.

APPENDIX B

Resources

The Federal Government

The National Highway Traffic Safety Administration (NHTSA), an agency of the US Department of Transportation, is responsible for anti-impaired driving and other highway safety programs. NHTSA maintains statistics and fact sheets, and provides information to the media, grassroots organizations, other government agencies, and the general public. Check out their homepage on the World Wide Web (<http://www.nhtsa.dot.gov>) for more information about the agency's services and publications, as well as highway safety facts.

NHTSA also has ten regional offices to serve the safety community and the general public. The NHTSA regional administrator that serves your state is a great resource for those working to fight impaired driving.

NHTSA Region I

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont)

Volpe National Transportation Systems Center
Kendall Square, Code 903
Cambridge, MA 02142
Phone 617/494-3427
Fax 617/494-3646

NHTSA Region II

(New Jersey, New York, Puerto Rico, Virgin Islands)

222 Mamaroneck Avenue, Suite 204
White Plains, NY 10605
Phone 914/682-6162
Fax 914/682-6239

NHTSA Region III

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

10 South Howard Street, Suite 4000
Baltimore, MD 21201
Phone 410/962-0077
Fax 410/962-2770

NHTSA Region IV

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Allanta Federal Center
61 Forsyth Street, Suite 17T30
Atlanta, GA 30303
Phone 404/562-3739
Fax 404/562-3763

NHTSA Region V

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

19900 Governor Drive, Suite 201
Olympia Fields, IL 60461
Phone 708/503-8822
Fax 708/503-8991

NHTSA Region VI

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Indian Nations)

819 Taylor Street, Room 8A38
Fort Worth, TX 76102
Phone 817/334-3653
Fax 817/334-8339

NHTSA Region VII

(Iowa, Kansas, Missouri, Nebraska)

901 Locust Street
Kansas City, MO 64106
Phone 816/329-3900
Fax 816/329-3910

NHTSA Region VIII

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

555 Zang Street, 4th Floor
Lakewood, CO 80228
Phone 303/969-6917
Fax 303/969-6294

NHTSA Region IX

(Arizona, California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands)

201 Mission Street, Suite 2230
San Francisco, CA 94105
Phone 415/744-3089
Fax 415/744-2532

NHTSA Region X*(Alaska, Idaho, Oregon, Washington)*

3140 Jackson Federal Building
 915 Second Street
 Seattle, WA 98174
 Phone 206/220-7640
 Fax 206/220-7651

Two other federal agencies are also good sources of information:

National Clearinghouse for Alcohol and Drug Information
Center for Substance Abuse Prevention
US Department of Health and Human Services
PO Box 2345
Rockville, MD 20847-2345
Phone: 800/729-6686
Web site: <http://www.health.org>

National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594
Phone: 202/314-6000
Web site: <http://www.nts.gov>

State Governments

Each governor appoints a highway safety representative to manage the state's highway safety program, including administration of the federal Highway Safety Community Grant program. The governor's representative also serves as a liaison between the governor and the highway safety community. These professionals and their staffs are a great resource on all highway safety issues, particularly impaired driving. The governor's representatives have a national organization in Washington:

National Association of Governors' Highway Safety Representatives
 750 First Street, NE, Suite 720
 Washington, DC 20002
 Phone: 202/789-0942
 Fax: 202/789-0946

The following are the offices of the governors' highway safety representatives:

Alabama Department of Economic & Community Affairs
Law Enforcement/Traffic Safety Division
 PO Box 5690
 Department of Economic & Community Affairs
 401 Adams Avenue, Suite 580
 Montgomery, AL 36103-5690
 Phone: 334/242-5803
 Fax: 334/242-0712

Highway Safety Planning Agency
Alaska Department of Public Safety
 PO Box 111200
 Juneau, AK 99811-1200
 Phone: 907/465-4374
 Fax: 907/463-5860

Governor's Representative/Commissioner of Public Safety
American Samoa Government
 PO Box 1086
 Pago Pago, AS 96799
 Phone: 011-684-633-1111
 Fax: 011-684-633-5111

Governor's Office of Community and Highway Safety
Arizona Department of Public Safety
 3030 North Central, Suite 1550
 Phoenix, AZ 85012
 Phone: 602/255-3216
 Fax: 602/255-1265

Highway Safety Program
Arkansas Highway & Transportation Department
 PO Box 2261
 11300 Baseline Road
 Little Rock, AR 72203
 Phone: 501/569-2648
 Fax: 501/569-2651

Office of Traffic Safety California Business, Transportation, & Housing Agency
 7000 Franklin Boulevard, Suite 440
 Sacramento, CA 95823
 Phone: 916/262-0990
 Fax: 916/262-2960

Colorado Office of Transportation Safety
Department of Transportation
 Headquarters Complex
 4201 East Arkansas Avenue
 Denver, CO 80222
 Phone: 303/757-9381
 Fax: 303/757-9439

Division of Highway Safety
Connecticut Department of Transportation
 2800 Berlin Turnpike
 PO Box 317546
 Newington, CT 06131-7546
 Phone: 860/594-2363
 Fax: 860/594-2374

Office of Highway Safety
Delaware Department of Public Safety
 PO Box 1321
 Dover, DE 19903-1321
 Phone: 302/739-3295
 Fax: 302/739-5995

Transportation Safety Branch
DC Department of Public Works
 2000 14th Street, NW, 7th Floor
 Washington, DC 20009
 Phone: 202/939-8018
 Fax: 202/939-7185

Safety Office Florida Department of Transportation
605 Suwannee Street, MS 53
Tallahassee, FL 32399-0450
Phone: 904/488-3546
Fax: 904/922-2935

Georgia Governor's Office of Highway Safety
1 Park Tower
34 Peach Tree Street, Suite 1600
Atlanta, GA 30303
Phone: 404/656-6996
Fax: 404/651-9107

Highway Safety Coordinator
Guam Department of Public Works
PO Box 2950
Agana, GU 96910
Phone: 011-671-646-3211
Fax: 011-671-649-3733

Operator Assisted Calls: 01-671-646-3211
Motor Vehicle Safety Office
Hawaii Department of Transportation
601 Kamokila Boulevard, Suite 511
Kapolei, HI 96707
Phone: 808/692-7650
Fax: 808/692-7665

Office of Highway Safety
Idaho Transportation Department
PO Box 7129, 3311 West State Street
Boise, ID 33707-1129
Phone: 208/334-8101
Fax: 208/334-3858

Division of Traffic Safety
Illinois Department of Transportation
PO Box 19245
3215 Executive Park Drive
Springfield, IL 62794-9245
Phone: 217/782-4972
Fax: 217/782-9159

Indiana Governor's Council on Impaired and Dangerous Driving
150 West Market Street, Suite 330
Indianapolis, IN 46204
Phone: 317/232-1299
Fax: 317/232-5150

Indian Highway Safety Program
Bureau of Indian Affairs
Department of the Interior
PO Box 2006
Albuquerque, NM 87103
Phone: 505/248-5053
Fax: 505/248-5064

Governor's Traffic Safety Bureau
Iowa Department of Public Safety
307 East 7th Street
Des Moines, IA 50319-0248
Phone: 515/281-3907
Fax: 515/281-6190

Kansas Bureau of Traffic Safety
Thacher Building, 2nd Floor
217 S.E. 4th
Topeka, KS 66603-3504
Phone: 913/296-3756
Fax: 913/291-3010

Highway Safety Standards Branch
Kentucky State Police Headquarters
919 Versailles Road
Frankfort, KY 40601
Phone: 502/695-6356
Fax: 502/573-1634

Highway Safety Commission
Louisiana Department of Public Safety
PO Box 66336
Baton Rouge, LA 70896
Phone: 504/925-6991
Fax: 504/922-0083

Bureau of Highway Safety
Maine Department of Public Safety
164 State House Station
Augusta, ME 04333
Phone: 207/624-8756
Fax: 207/624-8768

Northern Mariana Islands
Department of Public Safety
PO Box 791
Saipan, M.P. 96950
Phone: 011-670-034-6505
Fax: 011-670-234-8531

Office of Traffic & Safety
Maryland State Highway Administration
7491 Connelley Drive
Hanover, MD 21076
Phone: 410/787-5822
Fax: 410/787-5823

Massachusetts Governor's Highway Safety Bureau
100 Cambridge Street, Room 2104
Boston, MA 02202
Phone: 617/727-5073
Fax: 617/727-5077

Michigan Office of Highway Safety Planning
4000 Collins Road, PO Box 30633
Lansing, MI 48909-8133
Phone: 517/333-5291
Fax: 517/333-5756

Office of Traffic Safety
Minnesota Department of Public Safety
Town Square, Suite 100-B
444 Cedar Street
St. Paul, MN 55101-2128
Phone: 612/296-3804
Fax: 612/297-4844

Highway Safety Office
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PO Box 23039
401 North West Street, 8th Floor
Jackson, MS 39225-3039
Phone: 601/359-7842
Fax: 601/359-7832

Missouri Division of Highway Safety
PO Box 104808
Jefferson City, MO 65110-4808
Phone: 573/751-7643
Fax: 573/634-5977

Highway Traffic Safety
Montana Department of Justice
 P.O. Box 201001
 2701 Prospect Avenue, Room 109
 Helena, MT 59620-1001
 Phone: 406/444-3412
 Fax: 406/444-7303

Office of Highway Safety
Nebraska Department of Motor Vehicles
 PO Box 94612
 301 Centennial Mall South
 Lincoln, NE 68509-4789
 Phone: 402/471-3900
 Fax: 402/471-3865

Office of Traffic Safety Nevada Department of
Motor Vehicles & Public Safety
 555 Wright Way
 Carson City, NV 89711-0900
 Phone: 702/687-3243
 Fax: 702/687-5328

New Hampshire Highway Safety Agency
 Pine Inn Plaza
 117 Manchester Street
 Concord, NH 03301
 Phone: 603/271-2131
 Fax: 603/271-3790

Division of Highway Traffic Safety
New Jersey Dept. of Law & Public Safety, CN 048
 225 East State Street
 Trenton, NJ 08625
 Phone: 609/633-9300
 Fax: 609/633-9020

Traffic Safety Bureau New Mexico State Highway &
Transportation Department
 PO Box 1149
 Santa Fe, NM 87504-1149
 Phone: 505/827-0429
 Fax: 505/827-0431

New York State Governor's Traffic Safety Committee
 Empire State Plaza, Swan St. Bldg., Room 521
 Albany, NY 12228
 Phone: 518/474-0858
 Fax: 518/473-0041

North Carolina Governor's Highway Safety Program
 215 East Lane Street
 Raleigh, NC 27601
 Phone: 919/733-3083
 Fax: 919/733-0604

Driver Licensing & Traffic Safety
North Dakota Department of Transportation
 608 East Boulevard Avenue
 Bismarck, ND 58505-0700
 Phone: 701/328-2601
 Fax: 701/328-4545

Office of the Ohio Governor's Highway Safety
Representative
 PO Box 182081
 1970 W. Broad Street
 Columbus, OH 43218-2081
 Phone: 614/466-3250
 Fax: 614/466-0433

Highway Safety Office
Oklahoma Department of Public Safety
 3223 N. Lincoln
 Oklahoma City, OK 73105
 Phone: 405/521-3314
 Fax: 405/524-4906

Transportation Safety Section
Oregon Department of Transportation
 555 13th Street, N.E.
 Salem, OR 97310-1333
 Phone: 503/986-4192
 Fax: 503/986-4189

Pennsylvania Bureau of Highway & Traffic Engineering
 555 Walnut Street, 7th Floor, Forum Place
 Harrisburg, PA 17105-2047
 Phone: 717/787-7350
 Fax: 717/783-8012

Traffic Safety Commission
Puerto Rico Department of Public Works
 Box 41289, Minillas Station
 Santurce, PR 00940
 Phone: 809/723-3590
 Fax: 809/727-0486

Rhode Island Governor's Office of Highway Safety
 345 Harris Avenue
 Providence, RI 02909
 Phone: 401/277-3024
 Fax: 401/277-2086

South Carolina Department of Public Safety
Office of Safety & Grants
 5400 Broad River Road
 Columbia, SC 29210
 Phone: 803/896-7896
 Fax: 803/896-8393

South Dakota Office of Highway Safety
 118 West Capital
 Pierre, SD 57501
 Phone: 605/773-4493
 Fax: 605/773-6893

Tennessee Governor's Highway Safety Program
Department of Transportation
 505 Deaderick Street, Suite 600
 James K. Polk State Office Bldg.
 Nashville, TN 37243-0341
 Phone: 615/741-7590
 Fax: 615/741-9673

Traffic Operations Division
Texas Department of Transportation
 125 E. 11th Street
 Austin, TX 78701-2483
 Phone: 512/416-3167
 Fax: 512/416-3349

Utah Department of Public Safety
Highway Safety Office
 5263 South 300 West, Suite 202
 Salt Lake City, UT 84107
 Phone: 801/293-2481
 Fax: 801/293-2498

Governor's Highway Safety Program
Vermont Department of Public Safety
 103 South Main Street
 Waterbury, VT 05671-2101
 Phone: 802/244-1317
 Fax: 802/244-1106

**Virginia Department of Motor Vehicles
Transportation Safety Office**
PO Box 27412
2300 West Broad Street
Richmond, VA 23269
Phone: 804/367-8140
Fax: 804/367-6631

**Governor's Representative
Virgin Islands Office of Highway Safety**
Lagoon Street Complex, Fredricksted
St. Croix, VI 00840
Phone: 809/776-5820
Fax: 809/772-2626

Washington Traffic Safety Commission
PO Box 40944
1000 South Cherry Street
Olympia, WA 98504-0944
Phone: 360/753-6197
Fax: 360/586-6489

**Governor's Highway Safety Program West Virginia
Criminal Justice & Highway Safety Division**
Capito Complex, Building 3, Room 118
Charleston, WV 25301
Phone: 304/558-6080
Fax: 304/558-0391

**Bureau of Transportation Safety
Wisconsin Department of Transportation**
PO Box 7936
4802 Sheboygan Avenue, Room 809
Madison, WI 53707
Phone: 608/266-0402
Fax: 608/267-0441

**Highway Safety Program
Wyoming Transportation Department**
PO Box 1708
Cheyenne, WY 82003-1708
Phone: 307/777-4450
Fax: 307/777-4250

The Private Sector

The National Safety Council, with chapters all over the country, can provide information on a wide range of occupational, home and traffic safety issues. The Council produces dozens of publications and provides services and educational opportunities in these areas.

National Safety Council
1121 Spring Lake Drive
Itasca, IL 60143
Phone: 630/285-1121
Fax: 630/285-1315
Web site: <http://www.nsc.org>

Mothers Against Drunk Driving is a non-profit, grass roots organization with more than 400 chapters nationwide. It "is not a crusade against alcohol consumption;" its focus is "to look for effective solutions to the drunk driving and underage drinking problems, while supporting those who have already experienced the pain of these senseless crimes." To join, find a chapter in your area or for more information, contact the National Office at:

Mothers Against Drunk Driving
511 E. John Carpenter Freeway., #700
Irving, Texas 75062
Phone: 214/744-MADD (6233)
Fax: 972/869-2206/2207
Web site: <http://www.madd.org>

Other private sector groups may be helpful. Here is a list of some of the national organizations that support .08 BAC laws.

Advocates for Highway and Auto Safety
750 First Street, NE, Suite 901
Washington, DC 20002
Phone: 202/408-1711
Web site: <http://www.saferoads.org>

American Automobile Association
1000 AAA Drive
Heathrow, FL 32746
Phone: 407/444-7000
Web site: <http://www.aaa.com>

American Automobile Manufacturers Association
1401 H Street, NW, Suite 900
Washington, DC 20005
Phone: 202/326-5500
Web site: <http://aama.com>

American Coalition for Traffic Safety
1110 N. Glebe Road, Suite 1020
Arlington, VA 22201
Phone: 703/243-7501

American Insurance Association
1130 Connecticut Avenue, Suite 1000
Washington, DC 20036
Phone: 202/828-7100
Web site: <http://www.aiadc.org>

American Medical Association
515 North State Street
Chicago, IL 60610-4379
312/464-5000
Web site: <http://www.ama-assn.org>

Insurance Institute for Highway Safety
1005 North Glebe Road
Arlington, VA 22201
Phone: 703/247-1500
Web site: <http://www.hwysafety.org>

International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314
Phone: 703/836-6767
Web site: <http://www.theiacp.org>

National Commission Against Drunk Driving
1900 L Street NW, Suite 705
Washington, DC 20036
Phone: 202/452-6004
Web site: <http://www.ncadd.com>

Remove Intoxicated Drivers (RID)
PO Box 520
Schenectady, NY 12301
Phone: 518/393-4357
Web site: TBA

Students Against Destructive Decisions (SADD)
PO Box 800
Marlboro, MA 01752
Phone: 508/481-3568
Web site: www.sadd.org



APPENDIX C

Model Law

The Uniform Vehicle Code, published by the National Committee on Uniform Traffic Laws and Ordinances, is a document developed by transportation and highway safety professionals to serve as a guideline for those developing state motor vehicle legislation. Inclusion of this model law here should not be interpreted as a formal endorsement by the National Safety Council or the National Highway Traffic Safety Administration. The entire Uniform Vehicle Code is available on the World Wide Web at <http://www.ncutlo.org>.

CHAPTER 11 - Rules of the Road**ARTICLE IX – SERIOUS TRAFFIC OFFENSES****11-902 – Driving while under the influence of alcohol or drugs**

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

1. The alcohol concentration in such person's blood or breath is 0.08 or more based on the definition of blood and breath units in [Section 11-903(a)(5)].

Optional 1. The alcohol concentration in such person's blood or breath as measured within three hours of the time of driving or being in the actual physical control is 0.08 or more based on the definition of blood and breath units in [Section 11-903]. If proven by a preponderance of evidence, it shall be an affirmative defense to a violation of this subsection that the defendant consumed a sufficient quantity of alcohol after the time of driving or actual physical control of a

vehicle and before the administration of the evidentiary test to cause the defendant's alcohol concentration to be 0.08 or more. The foregoing provision shall not limit the introduction of any other competent evidence bearing upon the question whether or not the person violated this section, including tests obtained more than three hours after such alleged violation.

2. Under the influence of alcohol;

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

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

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

(c) In addition to the provisions of [Section 11-904], every person convicted of violating this section shall be punished by imprisonment for not less than 10 days or more than one year, or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment and on a second or subsequent conviction, such person shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than \$1,000.



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.08 BAC Illegal Per Se Level (State Legislative Fact Sheet); National Highway Traffic Safety Administration, Washington, DC; September 1996.

.08 – Save Lives in Your State, 11-minute video produced by USAA, San Antonio, TX, for the National Highway Traffic Safety Administration, Washington, DC; 1985.

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Mothers Against Drunk Driving, press release dated September 20, 1996.

"The Impact of Lowering the Illegal BAC Limit to .08 in Five States in the U.S.," by Delmas Johnson and James Fell, National Highway Traffic Safety Administration, Washington, DC, 39th Annual Proceedings of the Association for the Advancement of Automotive Medicine, Chicago, IL, October 16-18, 1995.

Too Impaired to Drive?, 12-minute video on impairment at .08 BAC by USAA, San Antonio, TX, for the National Highway Traffic Safety Administration, Washington, DC, 1999.

The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes, by Robert B. Voas and A. Scott Tippetts, Pacific Institute for Research and Evaluation, Bethesda, MD, for the National Highway Traffic Safety Administration, April, 1999.

The Effects of .08 BAC Laws, by Robert Apsler, A.R. Choat, and Wayne M. Harding, Rainbow Technology, and Terry M. Klein, National Highway Traffic Safety Administration, March, 1999, DOT HS 808 892.

Evaluation of the Effects of North Carolina's .08 BAC Law, by Robert D. Foss, J. Richard Stewart, and Donald W. Reinfort, Highway Safety Research Center, University of North Carolina, for the National Highway Traffic Safety Administration, March, 1999.

Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent, by Jack W. Stuster and Marcelline Burns, Anacapa Science, Santa Barbara, CA, for the National Highway Traffic Safety Administration, August 1998, DOT HS 808 839.

Effectiveness of State .08 Blood Alcohol Laws, General Accounting Office (GAO) Report to Congressional Committees, June 1999, GAO/RCED-99-179.

A review of the Scientific Literature Regarding the Effects of Alcohol on Driving-Related Behavior at Blood Alcohol Concentration of 80 mg/dl and Lower, by Herbert Moskowitz and Dary Fiorentino, Southern California Research Institute, for the National Highway Traffic Safety Administration, 1999, in press.

Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Age and Sex: An Update Using 1996 Data, by Paul Zador and Sheila Krawchuk of Westat, OInc, and Robert B. Voas of Pacific Institute for Research and Evaluation, May 1999, in press.

Driver Characteristics and Impairment at Various BACs, by Herbert Moskowitz, et al, Southern California Research Institute, for the National Highway Traffic Safety Administration, 1999, in press.

For additional copies of this publication please contact NHTSA at (202) 366-2727.



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Safety
Council**



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Traffic Safety
Administration**

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NSC #82353-0000

**DOT HS 808 524
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THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, DEPARTMENT)	
OF PUBLIC SAFETY, DIVISION)	Supreme Court No. S-8239
OF MOTOR VEHICLES,)	
)	Superior Court No.
Appellant,)	3AN-95-9156 CI
)	
v.)	
)	O P I N I O N
PATRICK NIEDERMEYER,)	
)	[No. 5346 - December 15, 2000]
Appellee.)	
_____)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Eric T. Sanders, Judge.

Appearances: Eric A. Johnson and Timothy W. Terrell, Assistant Attorneys General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellant. William H. Ingaldson, Ingaldson Maassen, P.C., Anchorage, for Appellee.

Before: Matthews, Chief Justice, Eastaugh, Fabe, and Bryner, Justices. [Carpeneti, Justice, not participating.]

BRYNER, Justice.

I. INTRODUCTION

The Department of Motor Vehicles (DMV) revoked Patrick Niedermeyer's driver's license after Niedermeyer was arrested for underage consumption of alcohol. Because DMV's administrative revocation was punitive, and because DMV acted without the safeguards that attend a criminal prosecution, Niedermeyer's right to due process was violated and his suspension must be overturned.

II. FACTS AND PROCEEDINGS

On July 4, 1995, Patrick Niedermeyer was arrested at a cabin for underage consumption of alcohol. There was never any allegation that Niedermeyer had previously driven after consuming alcohol or intended to drive on the evening of his arrest. Following the arrest, Niedermeyer's arresting officer read him the "Under 21 Notice of Revocation," in accordance with former AS 28.15.183. That notice said:

YOUR DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IN THIS STATE IS REVOKED. THIS IS YOUR OFFICIAL NOTICE OF REVOCATION. THIS REVOCATION WILL TAKE EFFECT 7 DAYS AFTER THE DATE SHOWN ABOVE, UNLESS YOU REQUEST AN ADMINISTRATIVE REVIEW OF THE REVOCATION. INFORMATION ON THE REVERSE SIDE OF THIS FORM TELLS YOU HOW TO APPLY FOR THIS REVIEW. [Fn. 1]

Niedermeyer requested administrative review of his license revocation. After conducting telephonic hearings, DMV affirmed the revocation.

Niedermeyer appealed to the superior court. Judge Eric T. Sanders reversed the revocation, finding former AS 28.15.183 unconstitutional for the reasons stated in Quinn v. State, Department of Public Safety, [Fn. 2] a similar case decided by another superior court judge. The state appealed the superior courts' rulings in both the Quinn and Niedermeyer cases. We initially stayed the appeal in this case pending our decision in Quinn, but reactivated this appeal after summarily affirming Quinn by an evenly divided that the superior court erred in declaring Alaska's former AS 28.15.183 unconstitutional.

III. DISCUSSION

A. Standard of Review

The constitutionality of former AS 28.15.183 is a legal question to which this court applies its independent judgment. [Fn. 4]

B. Mootness

The state did not prosecute Niedermeyer for unlawful possession or consumption of alcohol. Because recent amendments to AS 28.15.183 now require DMV to reissue a minor's revoked license if the state fails to prosecute the underlying criminal offense or if a prosecution ends in dismissal or acquittal, [Fn. 5] the only live controversy in this case is the award of prevailing party attorney's fees. We must nevertheless address the merits of the parties' constitutional arguments, for we have previously held that we "will review an otherwise moot issue to determine who the prevailing party is if such a determination is necessary for purposes of awarding attorney's fees." [Fn. 6]

C. Substantive Due Process

The superior court, incorporating Quinn's reasoning, found that former AS 28.15.183 violates substantive due process because its age-based restriction is not rationally related to a valid legislative purpose. Niedermeyer urges us to uphold this ruling. He insists that there is no close or obvious connection between underage possession or consumption of alcohol and dangerous driving. But substantive due process demands no direct connection of this kind; the substantive due process requirement allows a law to pass muster as long as it bears any rational relation to a legitimate legislative goal:

Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people. The constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy. [Fn. 7]

Under this minimal test, even a modest statistical increase in accident rates might give the legislature a rational basis for action aimed at discouraging potential underage drivers from possessing or drinking alcohol. And previously recognized traffic studies seem to suggest that this kind of increased risk does exist. [Fn. 8] But even without statistical evidence to confirm an increased risk, the legislature might have had a rational basis to enact former AS 28.15.183 as a purely precautionary measure. After all, the same concerns that motivate traditional legal restrictions on the minimum ages for drinking and for driving -- concerns over immaturity, inexperience, and unsound judgment -- might also support a logical belief that minors lacking sufficient judgment to obey laws governing possession and consumption of alcohol will generally be more likely than others to

lack sufficient judgment to drive carefully or to abstain from drinking before driving.

As the state argues in its briefing, a chain of rational inferences can be forged to link underage drinking to dangerous driving: a minor who possesses or consumes alcohol might do so again in the future; minors cannot be trusted to handle alcohol in a mature and socially acceptable manner; and minors who consume alcohol might drive under the influence of alcohol. Though this inferential nexus may be tenuous, it is nonetheless rational. Accordingly, we cannot dismiss as arbitrary or irrational the legislature's decision to restrict the driving privileges of minors cited for illegal possession and consumption. [Fn. 9]

The state's failure to present affirmative evidence proving the existence of a nexus between underage drinking and dangerous driving does not alter this conclusion; rather, the heavy burden of proving that the legislature acted irrationally falls on Niedermeyer:

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification. [[Fn. 10]]

Thus, absent convincing evidence refuting any potential correlation between underage drinking and driving safety -- and Niedermeyer presents no such evidence -- we find no basis for declaring that former AS 28.15.183 denies substantive due process. [Fn. 11]

D. Procedural Due Process

The superior court also found former AS 28.15.183 unconstitutional because it violates procedural due process by not adhering to constitutionally prescribed criminal procedures. In reaching this conclusion, the court found that the statute is punitive in nature, rather than remedial, and that Niedermeyer therefore has a right to the procedural safeguards that normally protect the rights of a person accused in a criminal proceeding.

On appeal, Niedermeyer argues that the superior court correctly decided this issue. DMV responds that criminal safeguards are unnecessary because former AS 28 15.183's purpose was to remove unfit drivers from the roads, not to punish underage drinking. But at best the statute sends a mixed message, for it accomplishes its purported regulatory goal by punishing criminal conduct that has no obvious connection to driving.

To be sure, revoking a driver's license does not always equate to imposing a criminal sanction. In *Baker v. City of Fairbanks*, [Fn. 12] we defined criminal prosecutions to include the trial of offenses that "may result in the loss of a valuable license, such as a driver's license." [Fn. 13] We then qualified this definition by carving out an exception for administrative revocations based on conduct that demonstrates unfitness to drive:

[The category of "criminal" prosecutions] does not cover revocation of licenses pursuant to administrative proceedings where lawful criteria other than criminality are a proper concern in protecting public welfare and safety, as the basis of revocation or suspension in such instances is not that one has committed a criminal offense, but that the individual is not fit to be licensed, apart from considerations of only guilt or innocence of crime. [[Fn. 14]]

Baker thus establishes that when an agency revokes a driver's license, its action can be either a criminal sanction or an administrative measure, depending on whether the revocation is