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RECENT ALASKA CASE—*CLARK V. STATE*

The Alaska Court of Appeals recently examined the issue of sentencing of felony DWI offenders in *Clark v. State*, 8 P.3d 1149 (Alaska App. 2000). The sentence under appeal in this case arose from Johnny Clark's 1998 conviction for driving while intoxicated.[14] Because Clark had two prior convictions for DWI within the preceding five years, his offense was a class C felony. Because he had five prior DWI or breath-test refusal convictions within the preceding ten years, he was subject to the mandatory minimum sentence of 360 days. Because he also had two felonies among his total of 31 prior criminal convictions, he was subject to presumptive sentencing as a third felony offender. The court sentenced Clark to a three-year presumptive term with an additional six months to serve and another 18 months suspended based on his history of assaultive behavior.[15] Johnny Clark appealed the judgment of sentence.

In its discussion of the sentencing issues involved, the appeals court noted as follows:

> The felony version of DWI is relatively new . . . Because DWI has traditionally been a misdemeanor, many defendants prosecuted under the felony provision of the statute will be first felony offenders even though they have many prior DWI convictions within the preceding ten years. *The minimum sentences listed in the statute guarantee that these first felony offenders will receive the stated amount of jail time.*
>
> For example, Clark had four or more prior convictions for DWI and/or breath-test refusal within the ten years preceding his current offense. (To be precise, Clark had five prior convictions.) Because of these prior convictions, Clark was subject to a mandatory minimum sentence of 360 days' imprisonment.[16] *This would be true even if Clark had had no prior felony convictions and had not faced a presumptive term.*
>
> In this case, Clark had two prior felony convictions, so his presumptive term of imprisonment was 3 years. But the minimum sentence specified in AS 28.35.030(n) still applied. Even if [the judge] had found mitigating factors and had wanted to impose no jail time, or even if [the judge] had referred Clark's case to the three-judge sentencing panel and the three-judge panel had concluded that Clark deserved little or no jail time, Clark would still have to receive a minimum of 360 days to serve. . . . *A sentence of 360 days was the absolute minimum that Clark could receive under any circumstance.*[17]

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[14] According to Dwayne McConnell, district attorney, 3rd Judicial District, Johnny L. Clark was originally charged with four offenses. In exchange for a no contest plea to felony DWI, the State dropped charges for refusing a breath-test and driving with a revoked license. The fourth charge was eventually dismissed.

[15] That is, Clark was sentenced to five years' imprisonment with 3½ years to serve and 1½ years suspended. The additional time represented an adjustment for an aggravating factor—in this case, the defendant's history of assaultive behavior (AS 12.55.155[c][8]).

[16] See AS 28.35.030(n)(1)(C).

[17] *Clark v. State*, at1151-2, emphasis added; we have included a copy of this decision as Attachment A.

Under the law, the court could suspend neither the imposition nor the execution of the minimum sentence. Additionally, the court—even had it wished to do so—could not grant probation except on the condition that Clark serve at least the minimum amount of time.

Despite these restrictions, however, Clark—like most offenders—would be eligible for a one-third reduction in his time if he followed the rules of the correctional facility. This reduction in sentence is known as "good time." The law requiring good time reductions (AS 33.20.010) results in most offenders serving less time than judges impose.

REDUCTION OF PRISON SENTENCES FOR "GOOD TIME"

"Good time" is credit—or time-off—for good behavior while in prison. Except under very specific circumstances, all prisoners with sentences of more than three days are entitled to early release under good time if they follow the rules of a correctional facility.[18] The law requires the Department of Corrections to deduct good time from sentences imposed—one day off for every two days served. Therefore, unless an offender loses all or a portion of good time through misbehavior, he or she will be released after serving two-thirds of a sentence—even a mandatory minimum sentence.

Corrections facility personnel generally consider good time to be an important prison management tool—giving offenders incentive to cooperate with institutional rules. According to a representative of the Department of Corrections, most offenders in Alaska receive the reduction.[19]

Assuming that felony DWI offenders receive the full good time credit allowable, the amounts of time served, as compared to the mandatory minimum sentences imposed, are listed in Table 2.

[18] AS 33.20.010. Computation of Good Time.

[19] Bruce Richards, special assistant, Alaska Department of Corrections, (907) 269-7394.

Table 2: Good Time Reductions to Mandatory Minimum Sentences for Felony DWI

Number of Prior Convictions for DWI within Preceding 10 Years AS 28.35.030(a)(4)	Mandatory Minimum Time Sentenced AS 28.35.030(n)(1)	Maximum Potential Good Time Reduction (no. of days x .33) AS 33.20.010	Minimum Potential Time Served
2	120 days	40 days	80 days
3	240 days	80 days	160 days
4 or more	360 days	120 days	240 days

Notes and Sources: Under AS 28.35.030(n), a person is guilty of a class C felony if convicted for driving while intoxicated and has previously been convicted two or more times within the five years preceeding the date of the current offense. The mandatory minimum sentences represent minimum sentences imposed for felony DWI offenses, with prior convictions for DWI or breath-test refusal within the preceding ten years. The time served represents the minimum amount of time a first time felony DWI offender would spend in jail for that particular crime, assuming the offender earned the maximum good time credit allowable. Conviction for additional charges could increase the sentences imposed. Second and subsequent felony offenders would also be subject to presumptive terms under AS 12.55.125-175. Good time is always based on the total sentence and calculated at one day off for two days served. Candace Brower, program coordinator, Department of Corrections.

In our example case, *Clark v. State*, Clark was to spend three and one-half years, or approximately 1278 days, in jail. Assuming that he followed the facility rules, he could expect to be released after serving two and one-third years, or approximately 852 days. According to information provided by the Department of Corrections, Clark's felony DWI offense occurred in Seward, on July 4, 1998. He was released on November 2, 2000, after serving 852 days, or two-thirds of his 1278-day sentence, in jail.[20]

Under AS 33.20.040, an offender getting out on a good time reduction is released unconditionally if the original sentence was for less than two years. If the sentence was for two years or more, however, an offender getting out on a good time reduction spends the balance of the sentence under the supervision of the parole board, on what is known as *mandatory parole*. In Clark's case, because his original sentence was in excess of two years, he was released to serve his 426 days of good time earned on *mandatory parole*, subject to conditions set by the parole board.

[20] Clark came under the supervision of the Department of Corrections on July 18, 1998. Although the Department of Corrections computer database does not record the time Clark served in Seward's community jail, such time would nevertheless be included in the time accounting calculations of his sentence. Because 852 days elapsed between the date of the offense (day 15,526 on the perpetual calendar used for time accounting purposes) and the date of release (day 16,378), we assume that Johnny Clark was jailed in Seward at the time of his crime. We refer to Clark's sentence as "approximate" time because time accounting of sentences involves a number of factors; that Clark's time appears to "work out" with such neatness is perhaps attributable to his having a single charge, and therefore, a single sentence, in this particular case. According to Bruce Richards, some of the most complicated litigation arises over time accounting issues.

MANDATORY PAROLE

Mandatory parole is a right under AS 33.20.040, and is not related to the privilege of *discretionary parole* that prisoners may earn under AS 33.16.090. According to the *1992 Annual Report to the Governor and the Alaska Legislature* produced by the Alaska Sentencing Commission, *discretionary parole* is parole as most people think of it---a process wherein a prisoner applies for release based on his or her record while in prison and his or her plans for creating and maintaining a law-abiding life outside of prison.[21]

According to the Alaska Judicial Council's *Guide to Alaska's Criminal Justice System*, although the parole board cannot refuse to release on mandatory parole an offender who has earned good time, it can impose release conditions designed to reduce the risk to the public and to increase the chance that the offender will not return to criminal behavior. If the offender fails to comply with the conditions, the parole board may revoke a portion or all of the offender's good time credit.[22]

Larry Jones, executive director of the state parole board, notes that only about five percent of the board's revocation work is for persons out on discretionary parole; the remaining 95 percent is work connected to persons released on mandatory parole—offenders released manditorily whether ready to transition back into society or not.[23]

In our example case, *Clark v. State*, the parole board issued a warrant for Clark's arrest for a parole violation on January 23, 2001. Whether the board will revoke all or a portion of his good time is at the moment uncertain: the board is waiting for the court to decide on a new charge of misdemeanor assault stemming from an incident on December 2, 2000.

SENTENCING COMPLEXITIES

As Chris Christensen, staff counsel for the Alaska Court System, points out, overall, the sentencing statutes are "extremely complex." To illustrate his point, he described the sentence calculation for an offender recently convicted on nine separate counts ranging from a misdemeanor to an unclassified felony. In that case, each count is treated differently in the sentencing statutes: some require a mandatory sentence, some require a mandatory minimum

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[21] According to the Alaska Judicial Council's *Guide*, about one-third of imprisoned felony offenders are eligible to apply for discretionary parole—which is available to most inmates serving sentences of at least 181 days (AS 33.16.090). "Some offenders become eligible to apply after serving one-fourth or one-third of their sentences; presumptively sentenced offenders become eligible only after they serve the full presumptive term" p. 28.

[22] Alaska Judicial Council, *Guide to Alaska's Criminal Justice System*, p. 29. In regard to the terminology of parole, the Sentencing Commission noted that the term [*mandatory parole*] "causes confusion with the public by giving the impression that release is in the control of the parole board, when in fact the offender is simply being credited for good time. Offenders, on the other hand, are told they are not eligible for parole, and therefore often fail to understand that the parole board will be setting conditions for release even when good time is earned." Because of this confusion, the Commission unanimously recommended that the term *mandatory parole* be changed in statute to *mandatory release*, pp. 22-23.

[23] Larry Jones, executive director, state parole board, (907) 465-3304.

sentence, some require presumptive sentences, some require sentences be stacked consecutively, and some allow concurrent sentences.[24]

Offenders very often are convicted of multiple offenses, and each crime gets a separate sentence. Those sentences are combined into a composite sentence with an aggregate term of imprisonment. Lawmakers have expressed a preference for consecutive sentences, although judges have discretion to impose concurrent sentences when circumstances warrant.[25] Depending on the circumstances, specific laws that apply, and the facts of a case, a judge may make the sentences consecutive, concurrent, or partially concurrent. The court also imposes limits on consecutive sentences, such that, unless extraordinary circumstances exist—such as a determination that a defendant is a *worst offender* for that particular class of crime, the total aggregate term does not normally exceed the presumptive term for the single most serious offense.[26] For an offender serving consecutive sentences, good time is calculated on the composite sentence rather than on each individual sentence.[27]

In the case of DWI combined with breath-test refusals, the law is specific; if a person is convicted of both felony DWI and refusing a breath-test, then the court must impose mandatory minimum sentences for both offenses, to run consecutively.[28] Portions of sentences that are beyond the mandatory minimums, though, may be imposed concurrently.[29]

Many cases, however, are not limited to that particular combination of convictions. By way of example, we include the memorandum opinion and judgment from two recent appeals stemming from felony DWI convictions, as well as an Alaska Court of Appeals opinion regarding a 1998 sentence for felony DWI.[30]

LYON V. STATE

The summary of *Lyon v. State*, decided February 14, 2001, includes the following details:

> Jody B. Lyon was convicted of first-degree vehicle theft and driving while intoxicated, class C felonies. Lyon had six prior DWI convictions, two in the previous five years, and was therefore convicted of felony DWI. Lyon had a prior felony conviction for driving while intoxicated, and therefore faced a presumptive sentence of two years of imprisonment on each offense. Judge Bolger imposed the two-year presumptive term for each offense, and imposed the sentences consecutively to each other for a four-year composite sentence. This sentence was consecutive to an additional twenty-six months that had been suspended on

[24] Chris Christensen, staff counsel, Alaska Court System, (907) 264-8228.

[25] AS 12.55.025(e), and "Notes to Decisions" following.

[26] DiPietro, pp. 290-91.

[27] *Callan v. State*, 904 P.2d 856 (Alaska App. 1995).

[28] AS 28.35.032(g).

[29] Richard Svobodny, district attorney, 1st Judicial District, (907) 465-3620.

[30] We include as Attachments B, C, and D, respectively, *Lyon v. State*, Alaska Court of Appeals MOJ No. A-7481, No. 4353, decided February 14, 2001; *Workman v. State*, Alaska Court of Appeals MOJ No. A-7357, No. 4230, decided June 21, 2000; and *White, v. State*, 969 P.2d 646 (Alaska App. 1998).

> Lyon's prior felony DWI offense. Thus, Lyon faced a composite sentence of six years and two months of imprisonment. Lyon argues on appeal that there was insufficient evidence to support his convictions and that the trial court imposed an excessive sentence.[31]

In his sentencing, the Superior Court judge had emphasized the seriousness of the defendant's record and his present offenses.

> He noted that Lyon had driven away [while a witness was] holding on to the opened driver's door. He concluded that it was fortunate that [the witness] was not killed or seriously injured in the incident. He pointed out that Lyon was highly intoxicated at the time, that his breath alcohol content was .271, and that at the time of the offense, Lyon was driving while his license was revoked and while he was on probation for his prior felony conviction of driving while intoxicated. He noted that Lyon had consistently not abided by his conditions of probation and that he had several convictions for driving with his operator's license suspended. He concluded that Lyon had poor prospects for rehabilitation and would not abide by court restrictions on drinking or on driving.[32]

In this case, the judge found that the defendant was a *worst offender* with respect to the crime of driving while intoxicated and that the cumulative sentence in excess of six years was necessary to protect the public. The Court of Appeals concurred with the Superior Court judge's determination and affirmed the sentence as appropriate under the circumstances.[33]

According to Candace Brower, the time accounting specialist with the Department of Corrections, the calculation for good time is always based on the composite sentence, rather than on individual sentences. Therefore, as with most offenders, Lyon would be eligible for a one-third reduction in his sentence for good behavior while in jail. If he follows the rules, he could expect to be released after serving just over four years. Because his original sentence was for more than two years, he would serve the portion of his sentence reduced for good time on mandatory parole, under the custody and supervision of the parole board.[34]

Workman v. State

Workman v. State provides another example of a very complicated case and sentence. As described by the Court of Appeals in its Memorandum Opinion and Judgment, the defendant "pleaded as follows:

> Workman pleaded no contest to three class C felonies [one count of felony DWI, one count of first-degree failing to stop at the direction of a peace officer, and one count of fourth-degree assault] and a class A misdemeanor from two separate

[31] *Lyon v. State*, at 1-2.

[32] *Lyon v. State*, at 6-7.

[33] *Lyon v. State*, at 7-8.

[34] Candace Brower, program coordinator, Department of Corrections, (907) 465-3307.

> cases. He also admitted that he violated his probation in a third case for which he was on probation for another class C felony.[35]

As a result, and in consideration of the defendant's conduct and past criminal record, the Superior Court imposed a composite sentence of four years and one month for the five crimes. The appeals court provided the following description of the Superior Court's sentence:

> Judge Smith imposed a 2-year term with 1 year suspended on the 1995 second-degree burglary. On the August 1998 felony DWI, Judge Smith imposed the presumptive 2-year term consecutive to the burglary sentence. On the January 1999 felonies, although Judge Smith found no aggravating factors, he enhanced the presumptive term and imposed concurrent 4-year terms with 2 years suspended. Of the 2 years imposed, 1 year was imposed concurrently with the August 1998 DWI sentence and 1 year was imposed consecutively. For the fourth-degree assault, Judge Smith imposed a 1-year term with all but 30 days suspended.[36]

In this case, the Court of Appeals affirmed the judgment of the Superior Court, and the sentence was upheld. If the offender loses none of the good time to which he would be eligible, he could be released after serving roughly two years and nine months of his four year and one month sentence. Because his original sentence was for more than two years, he would be on mandatory parole, under the supervision of the parole board, for the portion of the sentence that was reduced by good time.

WHITE V. STATE

In a 1998 case, *White v. State*, the defendant was charged for some of his offenses, and under a plea agreement, the State dropped certain charges—but reserved the right to have the uncharged crimes considered at sentencing.

> Based on [the description of the incidents involved in the case], White was charged with two counts of felony driving while intoxicated and one count of assault. White ultimately reached a plea agreement with the State. Under this agreement, White pleaded no contest to one count of DWI; the State dismissed the assault and the other count of DWI, with the proviso that these crimes could be considered at sentencing.[37]

Because the defendant had a prior felony conviction, he was subject to a presumptive term of two years, and a maximum of five years. The Superior Court judge considered as aggravating factors his extensive history of driving while intoxicated—many involving motor vehicle accidents, and his extensive history of assaults—most directed at police officers. The judge, determining White to be a *worst offender* for sentencing purposes and concluding that a maximum sentence was required to protect the public, sentenced White to serve five years in prison—the maximum term allowable under AS 12.55.125(e). The Court of Appeals upheld the lower court's findings and

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[35] *Workman v. State*, at 1 and 4. See Attachment C for a full description of the events leading to this sentence.

[36] *Workman v. State*, at 5-6.

[37] *White v. State*, at 647.

affirmed the sentence.[38] Like most offenders, White would be eligible for good time. The one-third time off for good behavior would be calculated on his composite sentence, and White would be released after serving two-thirds of his sentence—roughly three and one-third years—if he earned the good time reduction. Because his sentence was in excess of two years, he would be on mandatory parole and under the custody of the parole board for the remaining one-third of the sentence.

In addition to meeting conditions set by the parole board for mandatory parole, most felony offenders are also required to meet conditions of probation set by the judge under AS 12.55.100. Under the felony DWI law, a judge may not grant probation except on the condition that a felony DWI offender has served the minimum term of sentence; but the judge may suspend time and grant probation on the portions of sentence that exceed the minimum.[39] If an offender fails to meet the conditions of probation, the court may revoke suspended time and send the person back to jail. Thus, whether an offender released for good time stays out of jail, or returns to jail to serve that—or additional—time, depends on his or her behavior after release.

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

[38] *White v. State*, at 647-48.

[39] AS 28.35.030(n)(2)(A) and AS 12.55.080.

Attachment A

Clark v. State, 8 P.3d 1149 (Alaska App. 2000)

LEXSEE 8 p.3d 1149

JOHNNY L. CLARK, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-7343, No. 1688

COURT OF APPEALS OF ALASKA

8 P.3d 1149; 2000 Alas. App. LEXIS 137

September 22, 2000, Decided

NOTICE:
[**1] THIS OPINION IS SUBJECT TO CORRECTION BEFORE PUBLICATION IN THE PACIFIC REPORTER. READERS ARE REQUESTED TO BRING ERRORS TO THE ATTENTION OF THE CLERK OF THE APPELLATE COURTS.

PRIOR HISTORY:
Appeal from the Superior Court, Third Judicial District, Seward, Charles K. Cranston, Judge. Trial Court No. 3SW-98-205 Cr.

DISPOSITION:
The judgement of the superior court AFFIRMED.

COUNSEL:
Diane L. Foster, Assistant Public Defender, Kenai, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

Eric A. Johnson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES:
Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY:
MANNHEIMER

OPINION:

[*1150]

MANNHEIMER, Judge.

In this appeal, we are asked to decide whether presumptive sentencing applies to defendants convicted of felony driving while intoxicated. We hold that it does.

Johnny L. Clark drove a motor vehicle while he was intoxicated, a violation of AS 28.35.030(a). This offense is normally a misdemeanor; but because Clark had two prior convictions for this crime within the preceding five years, his offense was a class C felony under AS 28.35.030(n). Clark [**2] pleaded no contest to this charge.

Clark had thirty-one prior criminal convictions. These convictions included two felonies: third-degree assault and attempted second-degree sexual assault. Based on Clark's two prior felonies, Superior Court Judge Charles K. Cranston ruled that Clark was subject to presumptive sentencing as a third felony offender. Because felony DWI is a class C felony, the judge ruled that Clark faced a 3-year presumptive term. n1

n1 *See* AS 12.55.125(e)(2).

Judge Cranston found one pertinent aggravating factor under AS 12.55.155(c): aggravator (c)(8) -- that Clark's criminal history included aggravated or repeated instances of assaultive behavior. (Besides his two assaultive felonies, Clark had been convicted of seven misdemeanor assaults over the past twenty years.) Based on this aggravator, Judge Cranston adjusted Clark's presumptive term by adding 6 months to serve and an additional 1 1/2 years suspended. That is, Clark was sentenced to 5 years' imprisonment with 1 1/2 years suspended [**3] (3 1/2 years to serve).

In this appeal, Clark contends that presumptive sentencing does not apply to his offense. He points out

that, in AS 28.35.030(n), the legislature has enacted a series of mandatory minimum sentences for felony DWI -- minimum sentences that escalate depending on how many times the defendant has been convicted of DWI or breath-test refusal within the preceding ten years. n2 Clark argues that these mandatory minimum sentences are intended to supplant or supersede the "minimum sentences" contained in the presumptive sentencing statutes (specifically, in AS 12.55.125).

n2 *See* AS 28.35.030(o)(4).

Clark's argument is flawed because the presumptive terms listed in AS 12. 55.125 are not "minimum sentences". A mandatory minimum sentence represents the legislature's judgement concerning "[the] minimum sentence ... appropriate for [an] offender whose conduct is the least serious contemplated by the definition of the offense". n3 A presumptive term, on the other hand, represents the legislature's [**4] judgement as to the appropriate sentence for a typical felony offender (*i.e.*, an offender with the specified number of prior felony convictions, and with a typical background) who commits a typical act within the definition of the offense. n4 Thus, the mandatory minimum sentences for felony DWI listed in AS 28.35.030(n) serve a different purpose from the presumptive terms for class C felonies listed in AS 12.55.125(e).

n3 *Middleton v. Anchorage, 673 P.2d 283, 284 (Alaska App. 1983).*

n4 *See Mullin v. State, 886 P.2d 1323, 1328 (Alaska App. 1994). See also Juneby v. State, 641 P.2d 823, 833, 838 (Alaska App. 1982), modified and superseded on other grounds, 665 P.2d 30 (Alaska App. 1983).*

Under AS 12.55.125(e), the sentencing range for class C felonies is normally 0 to 5 years. For defendants with at least one prior felony conviction, the presumptive terms listed in 125(e)(1) and (e)(2) establish the starting point for sentencing within [**5] that 0- to 5-year range. For instance, because Clark is a third felony offender, his presumptive term of imprisonment was 3 years, but the sentencing judge had the authority to adjust that presumptive term -- increasing Clark's sentence up to 5 years or decreasing it down to 0 years -- if aggravating and/or mitigating factors were proved. n5 (Even in [*1151] the absence of aggravating or mitigating factors, Judge Cranston could have referred Clark's case to the statewide three-judge panel under AS 12.55.165.)

n5 *See* AS 12.55.155(a)(1).

The mandatory minimum sentences listed in AS 28.35.030(n) perform another function: they modify the 0- to 5-year sentencing range that would otherwise apply to a class C felony. In other words, even though there is normally no mandatory minimum sentence for class C felonies (even for offenders who have multiple prior felony convictions), the legislature has created special mandatory minimum sentences for this particular class C felony. These minimum sentences hinge, not on the offender's [**6] prior felony record, but on the offender's prior record of DWI and breath-test refusal convictions.

The felony version of DWI is relatively new; it was enacted in 1995. n6 Because DWI has traditionally been a misdemeanor, many defendants prosecuted under the felony provision of the statute will be first felony offenders even though they have many prior DWI convictions within the preceding ten years. The minimum sentences listed in the statute guarantee that these first felony offenders will receive the stated amount of jail time.

n6 *See* SLA 1995, ch. 80, § § 3-7.

For example, Clark had four or more prior convictions for DWI and/or breath-test refusal within the ten years preceding his current offense. (To be precise, Clark had five prior convictions.) Because of these prior convictions, Clark was subject to a mandatory minimum sentence of 360 days' imprisonment. n7 This would be true even if Clark had had no prior felony convictions and had not faced a presumptive term.

n7 *See* AS 28.35.030(n)(1)(C).

[**7]

In this case, Clark had two prior felony convictions, so his presumptive term of imprisonment was 3 years. But the minimum sentence specified in AS 28.35.030(n) still applied. Even if Judge Cranston had found mitigating factors and had wanted to impose no jail time, or even if Judge Cranston had referred Clark's case to the three-judge sentencing panel and the three-judge panel had concluded that Clark deserved little or no jail time, Clark would still have to receive a minimum of 360 days to serve.

For these reasons, we reject Clark's contention that presumptive sentencing does not apply to felony DWI. This offense is governed both by the presumptive sentencing laws and the mandatory minimum sentences established in AS 28.35.030(n). There is only one inconsistency between AS 28.35.030(n) and the usual rules of felony sentencing codified in AS 12.55.125 - 175: normally, there is no mandatory minimum sentence for class C felonies, but the legislature has created mandatory minimum sentences for felony DWI. Because a more specific sentencing statute such as AS 28.35.030(n)(1) takes precedence over the general sentencing statute, AS 12.55.125(e) n8, Clark is subject to the mandatory minimum [**8] sentence specified in AS 28.35.030(n)(1)

n8 *See In re Hutchinson, 577 P.2d 1074, 1075 (Alaska 1978).*

Clark raises two more issues on appeal.

First, Clark contends that Judge Cranston gave inordinate sentencing weight to Clark's history of assaultive crimes (aggravator (c)(8)). Clark's argument is premised on the assertion that Judge Cranston increased Clark's time to serve by 2 1/2 years (from 360 days to 3 1/2 years) based on this aggravator. But Clark is again relying on the erroneous notion that a mandatory minimum sentence is the same thing as a presumptive term. Clark faced a presumptive term of 3 years to serve. Judge Cranston did not use aggravator (c)(8) to increase Clark's time to serve by 2 1/2 years. Rather, the judge relied on this aggravator to increase Clark's time to serve by 6 months.

Clark does not offer any argument why this 6-month increase was clearly mistaken. n9 We have independently reviewed the record, and we conclude that it supports Judge Cranston's decision. [**9]

n9 *See Lepley v. State, 807 P.2d 1095, 1099 n.1 (Alaska App. 1991)* (a sentencing judge's decision regarding how much to adjust a presumptive term based on aggravating or mitigating factors is reviewed under the "clearly mistaken" test).

[*1152]

Finally, Clark argues that his sentence (5 years with 1 1/2 years suspended) is excessive. Clark's argument is essentially a reiteration of the contention that his presumed sentence should have been 360 days to serve. This is incorrect. A sentence of 360 days was the absolute minimum that Clark could receive under any circumstance. A sentence of 3 years was what Clark would presumptively have received if Judge Cranston had concluded that Clark's offense was a typical felony DWI and that Clark was a typical third felony offender. Judge Cranston concluded, however, that Clark was a serious offender whose record of alcohol abuse and violence called for an upward adjustment of the 3-year presumptive term. Having reviewed the record, we conclude that Clark's sentence [**10] is not clearly mistaken. n10

n10 *See McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974)* (an appellate court is to affirm a sentencing decision unless the decision is clearly mistaken).

The judgement of the superior court is AFFIRMED.

Attachment B

Lyon v. State, Alaska Court of Appeals MOJ No. A-7481, No. 4353, decided February 14, 2001

JODY B. LYON, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-7481, No. 4353

COURT OF APPEALS OF ALASKA

2001 Alas. App. LEXIS 40

February 14, 2001, Decided

NOTICE:
[*1] MEMORANDUM DECISIONS OF THIS COURT DO NOT CREATE LEGAL PRECEDENT. SEE ALASKA APPELLATE GUIDELINES FOR PUBLICATION OF COURT OF APPEALS DECISIONS. ACCORDINGLY, THIS MEMORANDUM DECISION MAY NOT BE CITED FOR ANY PROPOSITION OF LAW, NOR AS AN EXAMPLE OF THE PROPER RESOLUTION OF ANY ISSUE.

PRIOR HISTORY:
Appeal from the Superior Court, Third Judicial District, Valdez, Joel H. Bolger, Judge. Trial Court No. 3VA-S99-0044 CR.

DISPOSITION:
The convictions and sentence AFFIRMED.

COUNSEL:
Sharon Barr, Assistant Public Defender, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

Douglas H. Kossler, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES:
Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY:
COATS

OPINION:

MEMORANDUM OPINION AND JUDGMENT

COATS, Chief Judge.

Jody B. Lyon was convicted of first-degree vehicle theft and driving while intoxicated, class C felonies. n1 Lyon had six prior DWI convictions, two in the previous five years, and was therefore convicted of felony DWI. n2 Lyon had a prior felony conviction for driving while intoxicated, and therefore faced a presumptive [*2] sentence of two years of imprisonment on each offense. n3 Judge Bolger imposed the two-year presumptive term for each offense, and imposed the sentences consecutively to each other for a four-year composite sentence. This sentence was consecutive to an additional twenty- six months that had been suspended on Lyon's prior felony DWI offense. Thus, Lyon faced a composite sentence of six years and two months of imprisonment. Lyon argues on appeal that there was insufficient evidence to support his convictions and that the trial court imposed an excessive sentence. We affirm.

n1 *See AS 11.46.360(a)(1); AS 28.35.030(a)(1)*, (n).

n2 *See AS 28.35.030(n)*,(o)(4); *AS 28.35.032(p).*

n3 *See AS 12.55.125(e)(1).*

On March 10, 1999, Lyon was drinking at the Sugarloaf Saloon in Valdez. Lyon become loud and obnoxious and the bartender decided to cut Lyon off based on his [*3] signs of intoxication. The bartender dumped Lyon's drinks when Lyon was away from the bar. Lyon was asking people in the bar for a ride to the Long Branch Saloon, apparently a bar in Anchorage.

A short time later, Lyon was seen by at least two people in the bar trying to get into a car that belonged to Jessica Groppel, a waitress at the Sugarloaf Saloon. Groppel was about to get off duty and her friend, Shiloh Stamm, had Groppel's car running outside the bar.

Apparently Lyon was unable to enter Groppel's car because the door handle on the side he was trying to enter was broken.

Stamm also had left his car outside the bar. The car had its keys in it. Someone noticed Stamm's car was moving, and Groppel and Stamm ran outside. Stamm opened the door and yelled for the person driving the car to get out. The person driving the car accelerated with Stamm hanging on to the door. Stamm was dragged a short way and fell off.

The police were called and responded in a few minutes. They found Stamm's car stuck in an alley. No one was in the car but there was a trail in the fresh snow leading from the car to a cabin where the police found Lyon. When a police officer yelled at Lyon, "Stop, police, [*4] " Lyon took off running. But the police were able to apprehend Lyon and arrest him. Lyon denied driving the car.

The police took Lyon to the police station and gave him a breath alcohol test, which yielded a result of .271. Groppel positively identified Lyon as the person she saw taking Stamm's car. The police showed Stamm a photographic lineup that included a photograph of Lyon. Stamm concluded that two photographs resembled the man who stole his car; one of the photographs that he identified was of Lyon.

Following the presentation of this evidence at trial, the jury convicted Lyon. This appeal followed.

Lyon contends that the evidence that he was the person driving Stamm's car was weak and was insufficient to support his convictions. In reviewing a conviction to determine whether the evidence is sufficient to convict, we view the evidence in the light most favorable to the state. We are to uphold the conviction if we determine that fair- minded jurors exercising reasonable judgment could conclude that the state had met its burden of proving guilt built beyond a reasonable doubt. n4

n4 *See Dorman v. State, 622 P.2d 448, 453 (Alaska 1981).*

[*5]

Lyon argues that his conviction rests largely on the testimony of Groppel and argues that her testimony contained inconsistencies that undermine her credibility. He argues that her testimony identifying Lyon as the person who was driving the car is not credible. But the question of whether a witness is credible or not is a question for the jury to determine, not this court. n5 According to Groppel's testimony, she was in a position to observe Lyon both before and during the time that he was stealing the car. Her testimony was corroborated by other witnesses, including Stamm, who picked Lyon and another person out of the photographic lineup. Furthermore, Groppel's testimony was corroborated by the circumstances immediately following the offense. The police were able to follow a trail that led directly to Lyon from Stamm's car.

n5 *See Simpson v. State, 877 P.2d 1319, 1320-21 (Alaska App. 1994).*

Taking the evidence in the light most favorable to the state, we conclude that there was sufficient [*6] evidence for a reasonable jury to conclude beyond a reasonable doubt that Lyon was the person who took Stamm's car.

Lyon argues that his composite sentence of six years and two months to serve is excessive. In imposing the sentence, Judge Bolger emphasized Lyon's prior DWI convictions. Lyon had been convicted of this offense six times in the previous ten years. In addition, he had a conviction for refusing a breath test. Judge Bolger also emphasized the seriousness of Lyon's present offenses. He noted that Lyon had driven away with Stamm holding on to the opened driver's door. He concluded that it was fortunate that Stamm was not killed or seriously injured in the incident. He pointed out that Lyon was highly intoxicated at the time, that his breath alcohol content was .271, and that at the time of the offense, Lyon was driving while his license was revoked and while he was on probation for his prior felony conviction of driving while intoxicated. He noted that Lyon had consistently not abided by his conditions of probation and that he had several convictions for driving with his operator's license suspended. He concluded that Lyon had poor prospects for rehabilitation and would [*7] not abide by court restrictions on drinking or on driving.

Judge Bolger found that Lyon was a worst offender with respect to the crime of driving while intoxicated and that it was necessary for him to impose a cumulative sentence of over six years of imprisonment to protect the public. He stated that, "quite simply, the only effective way to prevent Lyon from driving while intoxicated is to keep him behind bars."

Judge Bolger's findings are supported by the record and support the sentence that he imposed. Lyon has an extensive record of driving while intoxicated. He has an extensive record of violating conditions of probation and driving while his license was suspended. According to the presentence report, Lyon stated that he was not interested in again undergoing treatment for his

alcoholism because he had done several programs in the past and did not agree with them. From Lyon's prior criminal history, the seriousness and life-threatening nature of his current offenses, and his attitude towards rehabilitation, Judge Bolger could properly conclude that it was necessary to protect the public by incarcerating Lyon for the entire sentence of six years and two months of imprisonment. [*8] We conclude that this sentence was not clearly mistaken. n6

n6 *See Mutschler v. State, 560 P.2d 377, 381 (Alaska 1977); McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974)* (consecutive sentences not clearly mistaken where aggregate sentence not clearly mistaken).

The convictions and sentence are AFFIRMED.

Attachment C

Workman v. State, Alaska Court of Appeals MOJ No. A-7357, No. 4230, decided June 21, 2000

2 of 3 DOCUMENTS

AARON J. WORKMAN, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-7357, No. 4230

COURT OF APPEALS OF ALASKA

2000 Alas. App. LEXIS 83

June 21, 2000, Decided

PRIOR HISTORY:
[*1] Appeal from the Superior Court, Third Judicial District, Palmer, Eric Smith, Judge. Trial Court Nos. 3PA-S99-123 CR; 3PA-S98-1751 CR; 3AN-S95-9647 CR.

DISPOSITION:
The judgment of the superior court AFFIRMED.

COUNSEL:
John E. McConnaughy, III, Assistant Public Defender, Palmer, and Barbara K. Brink, Public Defender, Anchorage, for Appellant.

David G. Berry, Assistant District Attorney, and Roman J. Kalytiak, District Attorney, Palmer, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES:
Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY:
STEWART

OPINION:

MEMORANDUM OPINION AND JUDGMENT

STEWART, Judge.

Aaron J. Workman pleaded no contest to three class C felonies and a class A misdemeanor from two separate cases. He also admitted that he violated his probation in a third case for which he was on probation for another class C felony. Workman appeared before Superior Court Judge Eric Smith for sentencing and disposition on these five crimes. Judge Smith imposed a composite term of 4 years and 1 month to serve. Workman claims that this term is excessive. Because we conclude that Workman's term to serve is not clearly mistaken, we affirm.

Workman was 22 years old [*2] when he appeared before Judge Smith on these three cases. Workman was on probation on a 1995 Anchorage case where he was convicted on one count of second-degree burglary. n1 In that case, on December 15, 1995, Workman smashed in the windows of a liquor store on Muldoon Road in Anchorage and stole cans of beer. Workman was driving his car near the location of the burglary when the police stopped him. His blood alcohol level was .194. He was sentenced for driving while intoxicated on January 12, 1996. Shortly after, on January 24, 1996, Superior Court Judge Karen L. Hunt imposed a 2-year suspended imposition of sentence on the burglary.

n1 AS 11.46.310(a).

Workman was sentenced for his next crime, another DWI, on January 15, 1997. On November 17, 1997, he was sentenced for driving on a revoked license. A probation revocation followed in January 1998. Superior Court Judge Milton M. Souter revoked Workman's probation on the second-degree burglary charge because he violated terms of his probation. Judge Souter suspended [*3] imposition of sentence for 2 years and 6 months. Workman was next sentenced on April 13, 1998, for a domestic violence assault and for malicious destruction of property.

Workman's second felony case arose out of an incident in August 1998. Workman was pursued by Wasilla police because he was driving an off-road motorcycle on the road without a headlight in the late

evening. Workman eluded police for awhile but was finally contacted and arrested. Ultimately, he entered a no contest plea to a single count of felony driving while intoxicated, a class C felony. n2 As a second-felony offender, Workman faced a presumptive two-year term. n3

n2 AS 28.35.030(a)(1) & (n). Under AS 28.35.030, driving while intoxicated is normally a misdemeanor. But AS 28.35.030(n) declares that this offense is a class C felony if, within the previous five years, the defendant has been convicted two or more times of either driving while intoxicated or refusing to submit to a breath test.

n3 AS 12.55.125(e)(1).

Workman was on release [*4] from the August offense when, late at night on January 20, 1999, he stole a vehicle from in front of a bar in Wasilla. Troopers saw the vehicle and tried to stop Workman but a chase of several miles ensued. Workman drove at speeds up to 100 mph and turned his lights off during the chase. He was caught after he drove the stolen vehicle into a ditch. He fought with the troopers when they arrested him. Workman kicked one trooper in the knee. Workman was intoxicated and refused a breath test. For this misconduct, Workman eventually pleaded no contest to one count of felony driving while intoxicated, one count of first-degree failing to stop at the direction of a peace officer, n4 and one count of fourth-degree assault. n5 Workman was not yet convicted for the August 1998 felony DWI when he committed these offenses, so he faced a presumptive two-year term for the felony DWI and for the first-degree failure to stop. Workman did not allege that any mitigating factors applied at sentencing. The State did not allege that any aggravating factors applied to the August 1998 charge, but the State did file notice of the following aggravating factors: AS 12.55.155(c)(6) (Workman's conduct created [*5] a risk of imminent physical injury to three or more persons); AS 12.55.155(c)(10) (Workman's conduct was among the most serious conduct within the definition of the offense); and AS 12.55.155(c)(12) (Workman was on bail release for another felony charge) applied to sentencing for the January 1999 felonies.

n4 AS 28.35.182(a).

n5 AS 11.41.230(a)(1).

At sentencing, the prosecutor argued that the court could *sua sponte* find aggravating factor (c)(12), but the court did not address the prosecutor's comment. Apparently, the court and the parties overlooked the State's previously filed notice of aggravating factors because the court made no findings on aggravating factors.

Judge Smith found Workman's prospects for rehabilitation to be "pretty good." But he found that Workman's sentence had to reflect general deterrence and community condemnation.

Judge Smith imposed a 2-year term with 1 year suspended on the 1995 second-degree burglary. On the August 1998 felony DWI, Judge Smith imposed the presumptive [*6] 2-year term consecutive to the burglary sentence. On the January 1999 felonies, although Judge Smith found no aggravating factors, he enhanced the presumptive term and imposed concurrent 4-year terms with 2 years suspended. Of the 2 years imposed, 1 year was imposed concurrently with the August 1998 DWI sentence and 1 year was imposed consecutively. For the fourth-degree assault, Judge Smith imposed a 1-year term with all but 30 days suspended. n6

n6 *But see* AS 12.55.135(d)(1) ("A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer ... shall be sentenced to a minimum term of imprisonment of ... 60 days if the defendant violated AS 11.41.230(a)(1)[.]")

Citing *Comegys v. State*, n7 Workman attacks the propriety of his composite term. Workman argues that his composite term is excessive and that a 3-year term would be adequate to effectuate the sentencing goals discussed by Judge Smith. [*7] Workman also claims that his offenses and background compare favorably to those of the defendant in *White v. State* n8 where we affirmed a maximum 5-year sentence on one count of felony DWI. n9 He argues that a 3-year composite term is supported by his comparison of *White* to his case.

n7 *747 P.2d 554 (Alaska App. 1987).*

n8 *969 P.2d 646 (Alaska App. 1998).*

n9 *Id. at 648.*

But Workman was sentenced on the probation revocation of his first felony conviction and on his

second, third, and fourth felonies. Workman had a string of offenses as an adult following a series of contacts with the juvenile system that started when he was ten years old. As Judge Smith found at sentencing, Workman was a young man who had trouble "both with substance abuse, certainly alcohol[,] and with the property of others." Furthermore, Workman's composite sentence is less than the 5-year term imposed in *White* for one count of felony DWI.

Under *Comegys*, when we review [*8] a composite sentence imposed for several criminal convictions, we assess whether the defendant's combined sentence is clearly mistaken, given the whole of the defendant's conduct and history. n10 At the age of 22, Workman had already accumulated four felony convictions. In addition, Workman's adult criminal history included several misdemeanor convictions. From our review of the record, we are not able to say that Workman's composite term to serve is clearly mistaken. n11

n10 *Comegys, 747 P.2d at 558-59. See also Neal v. State, 628 P.2d 19, 21-22 (Alaska 1981).*

n11 *See McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974)* (an appellate court is to affirm a sentencing decision unless the decision is clearly mistaken).

Conclusion

The judgment of the superior court is AFFIRMED.

Attachment D

White, v. State, 969 P.2d 646 (Alaska App. 1998)

LEXSEE 969 P.2d 646

FREDERICK WHITE, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-6895, No. 1614

COURT OF APPEALS OF ALASKA

969 P.2d 646; 1998 Alas. App. LEXIS 52

December 24, 1998, Decided

PRIOR HISTORY:
[**1] Appeal from the Superior Court, First Judicial District, Juneau, Larry R. Weeks, Judge. Trial Court No. 1JU-97-1521 Cr.

COUNSEL:
David D. Mallet, Juneau, for Appellant.

Thomas E. Wagner, Assistant District Attorney, Richard A. Svobodny, District Attorney, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES:
Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY:
MANNHEIMER

OPINION:

[*647] OPINION

MANNHEIMER, Judge.

Frederick White was convicted of felony driving while intoxicated, a class C felony. n1 Superior Court Judge Larry R. Weeks sentenced White to serve 5 years in prison -- the maximum term allowable under AS 12.55.125(e). In this appeal, White contends that this sentence is excessive. For the reasons explained here, we conclude that the superior court properly viewed White as a "worst offender", and we therefore conclude that White's sentence of 5 years to serve [**2] is not clearly mistaken. n2

n1 See AS 28.35.030(a) & (n).

n2 See *McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974).*

This case arose in Yakutat on August 3, 1997. In the middle of the afternoon, the police received a report that Frederick White was intoxicated and was driving from the airport towards town. Investigating this report, a police officer drove toward the airport. When he saw White's truck headed the other way, the officer turned around and began to follow White. White turned onto a side road, then backed his vehicle into a ditch while trying to turn around. The officer contacted White and had him perform field sobriety tests. When White failed these tests, the officer arrested him for driving while intoxicated. White's Intoximeter result was .233 percent blood alcohol.

White was released from custody around 5:00 p.m.. As part of his conditions of release, White was ordered not to drive for the next 24 hours and not to possess or consume alcohol pending his next court appearance. [**3]

About an hour and a half later, the police received a report that White was again operating his vehicle (while still intoxicated), and that White was in possession of a bottle of vodka. When officers went to investigate, they found a 55-gallon drum that had rolled off of White's truck while he was driving. They then found White at the boat harbor; White told the officers that he had driven to the harbor to deliver groceries to his boat. The officers found a half-gallon bottle of vodka in the front seat of White's truck. White again failed field sobriety tests, and he was again arrested.

During the ride to the police station, White raised his leg over the seat divider and kicked one of the police officers in the face. The blow was forceful enough to

leave a boot imprint. The officers used cap-stun on White, but they still had to physically struggle with White to subdue him. At the station, White's Intoximeter result was .221 percent blood alcohol.

Based on these incidents, White was charged with two counts of felony driving while intoxicated and one count of assault. White ultimately reached a plea agreement with the State. Under this agreement, White pleaded no contest to one count [**4] of DWI; the State dismissed the assault and the other count of DWI, with the proviso that these crimes could be considered at sentencing.

Felony driving while intoxicated is a class C felony. n3 White had a prior felony conviction from 1983, and so he faced a presumptive term of 2 years' imprisonment and a maximum term of 5 years' imprisonment. n4 White's prior felony conviction was for third-degree assault, but the offense actually constituted an aggravated instance of driving while intoxicated: White caused a traffic accident while he was driving drunk and, as a result, six people were injured.

n3 AS 28.35.030(n).

n4 AS 12.55.125(e)(1).

White had an extensive history of driving while intoxicated. He had twelve prior convictions for that crime (or the predecessor crime, "operating a motor vehicle while intoxicated"). Many of these prior DWIs involved [*648] motor vehicle accidents; one of them involved a hit-and-run. The DWI in the present case was White's thirteenth, and the dismissed count would have been his [**5] fourteenth.

Moreover, White had an extensive history of assault offenses. Most of these assaults were directed at police officers. As already explained, White assaulted one of the arresting officers in the present case by kicking him in the head. This latest assault was similar to three other assaults that White had committed.

White was convicted of assault and battery in 1974 (under the former criminal code) for attempting to kick a police officer in the head. As in the present case, the assault occurred while the officer was trying to take White to jail. Six years later, in 1980, White was convicted of fourth-degree assault for kicking and hitting a state trooper in the face. In 1985, White was again convicted of fourth-degree assault. This incident occurred after White was arrested in Juneau. White was intoxicated, and he assaulted the officer by hitting him in the face with his fists and with handcuffs.

In addition to these assaults on police officers, White was convicted of fourth-degree assault in 1994 for shaking and threatening his wife.

Based on White's history of DWI's, Judge Weeks found aggravator AS 12.55.155(c)(21) -- that White had a history of repeated offenses similar [**6] in nature to the crime for which he was being sentenced. Based on White's history of assaults, Judge Weeks found aggravator AS 12.55.155(c)(8) -- that White's criminal history included repeated instances of assault.

Judge Weeks found that White was a "worst offender" for sentencing purposes. n5 The judge noted that White "had been through numerous alcohol rehabilitation programs", all without lasting effect. The judge also noted that White had repeatedly violated previous probations. He concluded that a maximum sentence was required to protect the public from White.

n5 See *State v. Wortham, 537 P.2d 1117, 1120 (Alaska 1975); Napayonak v. State, 793 P.2d 1059, 1062 (Alaska App. 1990).*

On appeal, White essentially concedes that he has a terrible record, but he nevertheless argues that Judge Weeks should not have classified him as a "worst offender" because the facts of his present offense are not among the worst. We reject this argument for two reasons, one legal and one factual.

First, a finding of "worst [**7] offender" need not be based on the facts of the defendant's present offense. A defendant can be classified as a "worst offender" based either on the circumstances surrounding the defendant's present offense, or on the defendant's criminal history, or both. n6 In this case, White's record amply supports Judge Weeks's finding that White is a "worst offender".

n6 *Wortham, 537 P.2d at 1120; Napayonak, 793 P.2d at 1062.*

Second, White's present offense is hardly mitigated. Although he was allowed to plead no contest to a single count of felony DWI, White in fact committed two separate DWI's. Further, as part of the second incident, White assaulted one of the officers who were transporting him to jail. Even after the officers sprayed White with cap-stun, they still had to use physical force to subdue him.

For all of these reasons, we uphold Judge Weeks's finding that White is a "worst offender". We accordingly

conclude that White's 5-year prison term is not clearly mistaken. The sentencing decision of the superior [**8] court is AFFIRMED.

HB

4

(File 7)

HOUSE JUDICIARY COMMITTEE
HOUSE BILL 4
MARCH 14, 2001

REGISTRATION AND LICENSES

STATE LEGISLATIVE FACT SHEETS

January 2001

State Legislative Fact Sheets Menu: Bicycle Helmet Use Laws

US Department of Transportation
National Highway Traffic Safety Administration

NHTSA
People Saving People
http://www.nhtsa.dot.gov

Vehicle and License Plate Sanctions

Revoking or suspending a motorist's operator's license is now a common penalty for many traffic infractions, especially those related to impaired driving. Unfortunately, many offenders continue to drive. It is not unusual for drivers with a suspended license to receive additional traffic citations or be involved in crashes during periods of license suspension. As a way of reducing this problem, many states have passed laws that directly affect the offender's vehicle or license plates as a sanction for the impaired driving offense or for driving with a suspended license.

In addition, some states now permit the vehicles of drivers convicted of certain impaired driving offenses to be impounded, immobilized (with a club or boot), or forfeited and sold. Other states allow the license plates to be removed and impounded. Still others allow for the use of specially marked license plates, or allow for the installment of alcohol ignition interlock devices.

Key Facts

- In 1998, 1.4 million people were arrested in the U.S. for driving under the influence (DUI) or driving while intoxicated (DWI)-more than all other reported criminal offenses combined, excluding larceny and theft.

- About one-third of all drivers arrested or convicted of DWI each year are repeat DWI offenders.

- Drivers with prior DWI convictions are also over represented in fatal crashes and have a greater relative risk of fatal crash involvement.

- Many second- and third-time convicted DWI offenders who had their licenses suspended accumulated traffic offenses or were involved in crashes during the suspension period. In one study, 32 percent of suspended second-time DWI offenders, and 61 percent of third-time offenders received violations or crash citations on their driving records during their suspensions.

- Many drivers do not reinstate their licenses even when eligible to do so. In one study involving first-time DWI offenders who had their licenses suspended for 90 days, 50 percent had not reinstated their licenses three years after they were eligible to be relicensed. Also, many of these offenders drive without auto insurance and do not attend treatment programs when required for reinstatement. Furthermore, 20% of all fatal crashes involve at least one improperly licensed driver.

Legislative Status

Forty-four states have laws that can affect the vehicles or vehicle plates of offenders.

- ***Vehicle Impoundment:*** Overnight impoundment of the vehicle of an individual arrested for impaired driving is a typical practice in most states. Thirteen states have laws that permit longer-term impoundments based on a DWI conviction. These states are California, Florida, Illinois, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, Ohio, Oregon, Vermont and Wisconsin.

- ***Suspension of Vehicle Registration:*** In 18 states, vehicle

registration may be withdrawn for a DWI offense. States that can withdraw vehicle registrations for a DWI offense are Alabama, Arizona, Hawaii, Indiana, Kansas, Maine, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Virginia, and Wyoming. Some of these states have their own enforcement departments that send out investigators to pick up the license plates of these offenders' vehicles. However, in general, the this type of sanction is poorly enforced.

- ***Vehicle Confiscation:*** Twenty-seven states ***permit*** the vehicle of DWI offenders (usually multiple offenders) to be confiscated based for a DWI offense. These states are Alaska, Arizona, Arkansas, California, Georgia, Illinois, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin.

- ***Vehicle Immobilization:*** Courts can prevent a DWI offender from using his or her car by immobilizing the steering wheel (by using a club) or locking a wheel (with a boot). Currently, only Ohio uses this type of sanction.

- ***Special License Plates or Plate Markings:*** Three states-Iowa, Minnesota, and Ohio-issue special license plates to permit the use of the vehicle by the family members of convicted DWI offenders.

- ***Ignition Interlock:*** The purpose of an ignition interlock is to prevent a person who has consumed alcohol from operating a vehicle. The device measures alcohol concentration in the breath and is attached to a vehicle's ignition system. Before the car can be started, a driver must blow a sample of his or her breath into the interlock device. If the driver's breath alcohol is below a specified concentration, the driver will be able to start the vehicle's engine. However, if the driver has a breath alcohol concentration above the established level, the vehicle will not start. Forty-three states have laws providing for either the

discretionary or *mandatory* use of ignition interlock devices for repeat and chronic DWI offenders. The ignition interlock is discretionary in the following states: Alaska, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, West Virginia, and Wisconsin. In fourteen states, the law is mandatory under some special circumstances. Those mandatory state are: Arizona, California, Colorado, Idaho, Iowa, New Jersey, Oklahoma, Missouri, Oregon, Texas, Utah, Virginia, and Washington. In a number of jurisdictions, provisions are also made for interlock use for first offenders.

Recommendations for Strengthening and Increasing the Use of Vehicle and Vehicle Plate Sanctions

Interviews with state and local officials, members of the judiciary, and law enforcement officers suggest that while impoundment and forfeiture legislation is common, application of these laws is rare. The reasons cited include: (1) these laws generally are reserved for the relatively few multiple DWI offenders rather than the more numerous first offenders; (2) there are difficulties in dealing with non-offender owners; (3) it is costly to store junk vehicles that are not reclaimed by their owners; and (4) judges are reluctant to punish innocent family members.

Yet some states have developed innovative ways for dealing with these problems. Minnesota experienced a twelvefold increase in the use of its license plate impoundment law when they switched from court-based to administrative enforcement of the impoundment law.

The following should be considered by states that wish to increase the use and effectiveness of their laws.

- Laws should provide for administrative impoundment of plates and civil forfeiture of vehicles. In general, the criminal laws providing for forfeiture should be avoided as courts rarely use them.

- Laws should allow for seizure at the time of arrest if officers impound either the vehicle or plate. It is more difficult and costly to track down the offender's vehicle later, and the delay gives the offender the opportunity to transfer vehicle ownership.

- Laws should prohibit the owner of a motor vehicle from allowing another person to drive the vehicle unless the owner determines the person possesses a valid driver's license. Also, non-offender owners should be required to sign an affidavit stating they will not allow the offender to drive the vehicle again while the suspension is in effect.

- A computerized state record-keeping system should be established to document vehicle (impoundment and forfeiture) and license plate actions. This would allow states to monitor use of the sanctions.

- Impoundment laws should be applied to all repeat DWI offenders and to all persons who have been convicted of driving while suspended or revoked where the offenders' original suspension or revocation was for a DWI offense (i.e., DWS). This would encourage an increase in the use of impoundment since many courts do not apply this sanction to second-time DWI offenders or to first-time DWS offenders.

- Laws that provide for special license plates (e.g., family plates or license plate sticker laws), should incorporate a provision that permits officers to stop the vehicle for the sole purpose of checking whether the driver is operating the vehicle while his/her license is under suspension.

Research and Evaluation Regarding the Effects of Vehicle and Plate Sanctions

- ***Maryland ignition interlock program lowered the re-arrest rate for repeat alcohol offenders:*** A Maryland study involving 1,380 repeat alcohol offenders randomly assigned participants to either

an ignition interlock group or a control group that did not receive the sanction. Alcohol-related traffic re-arrest rates were tabulated for a full year. They showed that only 2.4 percent of the interlock group was rearrested, whereas 6.7 percent of the control group was re-arrested-a statistically significant difference indicating that the interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent. However, there was no differences between groups after the interlock was removed. Other research on ignition interlocks is being conducted in Illinois and Alberta (Canada). Recently, NHTSA initiated another assessment of ignition interlocks in Maryland where the interlock will be on the vehicle for two years.

- ***Minnesota License Plate Impoundment Study:*** In Minnesota, violators incurring three DWI violations in five years, or four or more in ten years, can have their license plates impounded and destroyed. An evaluation of the effects of the law found a significant decrease in recidivism for violators who had their plates impounded versus violators who did not. Violators whose license plates were impounded by the arresting officer showed a 50 percent decrease in recidivism over a two-year period (when compared with DWI violators who did not experience impoundment).

- ***Ohio Impoundment and Immobilization Program:*** In Franklin County (Columbus), Ohio, researchers conducted a field test to study the deterrent effects that a combined impoundment and immobilization sanctions program has on crashes and violations for multiple DUI (Driving Under the Influence) and suspended license offenders. From September 1993 to September 1995, the vehicles of nearly 1,000 offenders were impounded and then immobilized. The recidivism rates of these offenders were compared to eligible offenders who did not receive a vehicle sanction. Offenders whose vehicles were impounded and immobilized had lower rates of DUI recidivism both during and after the termination of the sanction than offenders who managed to avoid the impoundment and immobilization sanctions. Similar findings were obtained in Hamilton County where only vehicle

impoundment was used. The project report is available (Voas, et al., 2000).

- ***California Impoundment Program:*** NHTSA, in conjunction with the State Department of Motor Vehicles, conducted a research effort to study the impact of California's new vehicle impoundment law as applied to unlicensed and suspended license offenders. The innovative 30-day impoundment law is not typical of those found in most states, since it involves a civil action independent of a criminal DWS conviction for those caught driving without a valid license. More than 6,300 unlicensed drivers and those with suspended or revoked licenses whose vehicles were impounded were compared to about the same number of drivers in 1994 whose vehicles would have been eligible had the 1995 impoundment law been in effect. Driving records of both groups were compared for a one-year period on subsequent traffic violations and crashes. First offenders whose vehicles were impounded had an average rate of subsequent DWS or driving while unlicensed (DWU) that was 24 percent lower than those whose vehicles were not impounded. Repeat offenders had 34 percent fewer DWS or DWU convictions. Also, both first-time and repeat offenders whose vehicles were impounded had fewer crashes. There was a 25 percent reduction for first-time offenders and a 38 percent reduction for repeat offenders.

- ***Zebra Tag Program in Oregon and Washington States:*** In Oregon, suspended license offenders whose vehicle plates were "zebra tagged" had fewer subsequent DWI and DWS violations than suspended offenders who did not receive the special tags. Also, among suspended license offenders, the possibility of receiving a zebra tag if re-arrested appears to reduce subsequent violations and crashes. A similar law in Washington State did not affect subsequent violations or crashes for these types of offenders; however, it was not applied to nearly as many drivers and vehicles and it was not as strongly enforced by the police. (Legislators in both states allowed the zebra tag law to expire.)

- **Vehicle Seizure and Forfeiture Programs in Nassau and**

Suffolk Counties in New York State: Programs implemented in February 1999 in both counties are being evaluated. The results of these evaluations will include detailed descriptions of how the programs were implemented and run, as well as assessments of the specific and general deterrent effects. A report is expected in late 2001.

Transfer and Grant Programs

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act, a new Federal program (see section 164) was established to encourage states to address the problem of the repeat intoxicated driver. To comply with Section 164, the state's laws must require that certain sanctions must be imposed on persons convicted more than once within a five-year period of driving while intoxicated or driving under the influence of alcohol (DWI/DUI). One of the sanctions that must be imposed is:

- that all motor vehicles of repeat intoxicated drivers be impounded or immobilized for some period of time during the driver's license suspension period, or that an ignition interlock system be installed on all motor vehicles of such drivers for some period of time after the end of the suspension period.

- States that do not meet the Section 164 requirements will have a portion of their Federal-aid highway construction funds redirected into other state safety activities, beginning in fiscal year 2001.

In addition, TEA-21 modified the Section 410 grant program. Under the program, as modified by TEA-21, states that qualify for a basic grant may also qualify for supplemental grant funds by meeting one or more of six criteria. One of the six criteria is a program to reduce driving with a suspended driver's license. In order to qualify for a supplemental grant under this criterion, a state must impose one of the following sanctions on individuals convicted of driving after their license has been suspended for an alcohol-related offense: suspension of the offender's vehicle registration and return of license plates; impoundment, immobilization, forfeiture or confiscation of the offender's motor

vehicles; or the use of distinctive license plates on the offender's motor vehicle.

Information Sources

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A Guide to Sentencing DUI Offenders. NHTSA and NIAAA, DOT HS 808 365, March 1996.

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Voas, RB, *et al.,* Effectiveness of the Ohio Vehicle Action and Administrative License Suspension Laws. Washington, DC: NHTSA technical Report DOT HS 809 000, January 2000

The reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, ATTN: NTS-11, 400 Seventh Street, S.W., Washington, DC 20590; 202-366-9588;or NHTSA's website at www.nhtsa.dot.gov

COMBATING HARDCORE DRUNK DRIVING

A SOURCEBOOK OF PROMISING STRATEGIES, LAWS & PROGRAMS

THE NATIONAL HARDCORE DRUNK DRIVER PROJECT

THE CENTURY COUNCIL

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ALASKA

DEFINITIONS

Hardcore drunk drivers can be defined as individuals who drive with a high blood alcohol concentration (BAC) of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment, or education efforts.

Listed below are the terms most closely matching the definition above which could be used in Alaska to identify these offenders:

- "Repeat offender," "Chronic offender."
- Repeat offenders are defined in statute by 2nd, 3rd, 4th, 5th, 6th or subsequent offense within 10 years at the misdemeanor level, and by 3rd, 4th, 5th or subsequent offense within 5 years at the felony level.
- DUI becomes a felony on the 3rd offense within 5 years.
- Repeat and chronic offenders are also defined in regulations and by judicial action.

DWI REPORTING

Records on repeat offenses are one of the primary means of tracking the problem of hardcore drunk drivers.

The following are key aspects of Alaska records:

- New licensees are reviewed for outstanding suspensions/revocations in other states before a license is granted, but DUI convictions from other states are not considered prior offenses in Alaska within the limits of the law.
- The approximate number of licensed drivers is 450,000.
- The average BAC level of offenders arrested falls between .15 and .20; in 1996, 68% of offenders had a BAC of .15 or greater.
- Statistics kept on repeat offenders are based on convictions. According to the most recent information available, in 1996 there were 3,350 convictions for 2nd and subsequent DUIs.

IDENTIFICATION AND ASSESSMENT

Identifying those drivers who are likely to repeatedly drive drunk and assessing the nature of their underlying problems is essential in order to keep hardcore offenders off the road.

In Alaska:

- Identification of repeat offenders occurs most frequently at the time of arrest or pre-trial.
- Offenders with a high BAC at the time of arrest are treated as follows:

— All offenders are treated the same regardless of BAC.

- Following conviction, offenders, as shown, receive a mandatory assessment/evaluation to determine the nature and extent of their alcohol problem:
  — All offenders, whenever possible (may not be available in remote areas of state).
- The assessment is conducted post-trial, but pre-sentencing and the individual returns to court for final sentencing based on the assessment. However, in some jurisdictions the assessment may be conducted post-sentencing.
- Assessments are conducted by state-certified, non-profit organizations or by the state Division of Alcohol and Drug Abuse Screening Office. The cost is $100 and is usually borne by the offender.

TREATMENT

Treatment and rehabilitation programs play an important role in reducing hardcore drunk driving.

In Alaska:

- Results of the assessment are provided to the offender's attorney, the judge/administrator presiding over the case, the treatment agency, and the prosecutor. The offender is referred to education and/or treatment on the basis of the assessment by order of the court.
- Treatment is mandated for repeat offenders under the following circumstances: All offenders are required to attend education or treatment as recommended by the assessment. Repeat offenders are in most cases required to attend treatment as a condition of probation.
- Offenders failing to comply with the terms of their program are not eligible for license reinstatement and shall be subject to revocation of probation and incarceration.
- The following treatment facility or program specifically targets the hardcore drunk driver: None.

ENFORCEMENT

While law enforcement works against drunk driving across the board, it is central in the battle against hardcore drunk drivers.

The following enforcement techniques are used in Alaska to detect and apprehend drunk drivers:

- Blanket Patrols (during holiday periods), Media Blitzes with Enforcement Campaigns, Standardized Field Sobriety Testing, Mobile Video-taping (limited basis). Sobriety Checkpoints were used in the past, but have been discontinued due to limited manpower over a large geographic area.

PROSECUTION AND SENTENCING PRACTICES

A number of factors influence the sentence a drunk driver receives.

In Alaska:

- There is no Anti-Plea Bargaining Statute for DUI.
- The period of time in which a judge or administrator can review an offender's record (the "look-back" period) is 10 years. However, for purposes of determining a felony offense, the review period is 5 years.
- At the time of sentencing, an individual's arrest and conviction records are available for consideration by the court. This information will include his or her entire criminal record.
- There are graduated penalties for DUI based on number of offenses.

SANCTIONS

Sanctions against the offender may be derived from criminal action, i.e. court-ordered, or administrative action by the licensing authority as a condition of license reinstatement. Many are aimed at preventing or limiting the opportunity of the hardcore offender to drink and drive. The purpose of others is rehabilitation.

In the State of Alaska, the following sanctions may only be ordered by the court:

- Fines: For misdemeanors - $250 to $5000; for felonies - $5000 to $50,000. Alaska's mandatory minimum fines are as follows: For misdemeanors, 1st - $250, 2nd - $500, 3rd - $1000, 4th - $2000, 5th - $3000, 6th and subsequent - $4000. For felonies, 3rd and subsequent - $5000.
- Incarceration - Mandatory minimums: For misdemeanors, 1st - 72 consecutive hours, 2nd offense - 20 days, 3rd offense - 60 days, 4th offense - 120 days, 5th offense - 240 days, 6th and subsequent - 360 days. For felonies, the following terms are mandatory and non-sus pendable, 3rd offense - 120 days, 4th offense - 240 days, 5th and subsequent - 360 days.
- Community Service: Mandatory for 1st offenders (24 hours) and 2nd offenders (160 hours), and at the court's discretion for 3rd and subsequent offenders. Community service may not serve in lieu of mandatory imprisonment.
- Intensive Supervision Probation: As part of treatment.
- Action Against Offender's Vehicle: Forfeiture when the vehicle is used in a subsequent offense.
  - — Vehicle Immobilization, Vehicle Impoundment, Registration Cancellation/Plate Seizure: None.
- Home Confinement with Electronic Monitoring, Victim Impact Panel: None.
- Other Special Assessments/Surcharges: Reimbursement of Incarceration Costs - an offender may be required to pay the cost of their incarceration up to a maximum of $1000.

The following sanctions may be ordered by the court or by the licensing authority:

- Licensing Action:
  - — Suspension/Revocation: Alaska has both pre-conviction administrative and post-conviction court-ordered with mandatory minimums beginning with the 1st offense. Reinstatement Fee: $100 for 1st offenders, $250 for repeat offenders.
  - — Conditional Licensing: At the court's discretion, 1st offenders may be allowed a limited occupational license following a 30-day minimum revocation provided that they are participating in an education or treatment program.
  - — Alcohol Ignition Interlock, Autotimer, Fuel Lock, Special Plate Markings: None.
- Rehabilitation:
  - — Education: 8 to 15 hours of classroom instruction $20 to $150.
  - — Treatment (based on DSM4 and ASAM Patient Placement Criteria): According to assessment determination more serious offenders may also be required to undergo out patient treatment, intensive outpatient treatment, or residential treatment. Cost varies and offender must pay.
  - — Intensive Weekend Intervention: None.

SANCTIONS

Which sanctions work best with hardcore drunk drivers? To a great extent, it depends on the objective of the sentencing, and often, a combination of tactics proves most effective. As noted in the sentencing section, the objectives include punishment, preventing the offender from repeating the offense, and deterring future offenses. This section divides sanctions into two broad categories:

- Driver-based sanctions, such as licensing suspensions, incarceration, supervisory programs, and victim impact panels, and
- Vehicle-based sanctions, including ignition interlock devices, license plate seizure, vehicle impoundment, vehicle immobilization, and vehicle forfeiture.

DRIVER-BASED SANCTIONS

LICENSING ACTIONS

License suspension is the most commonly applied sanction against hardcore drunk drivers, and there is solid evidence that it works. Its primary purpose is not to serve as a punitive measure or as a deterrent threat, but as a way of protecting the general public from a potentially dangerous driver. Licenses can be suspended or revoked. Although the terms often are used interchangeably, suspended licenses are automatically reinstated at the termination of the suspension, whereas revoked licenses must be replaced through renewed applications after the revocation period has expired. Retesting may be required for restoring revoked licenses.

However, compliance is poor for all licensing sanctions. A series of California studies found that about 75% of suspended drivers continue to drive, at least occasionally, while their licenses are suspended.[21] Also, many drivers do not reinstate their licenses even when they are permitted to do so. In one study involving first-time DWI offenders who had their licenses suspended for 90 days, 50% had not reinstated their licenses three years after they were eligible to be relicensed.[22] Additionally, many of these offenders drive without auto insurance and do not attend treatment programs where such programs are a prerequisite for reinstatement. Researchers note that compared to drivers not suspended, offenders who drive while their licenses are suspended or revoked tend to drive less frequently and more cautiously, in order to avoid apprehension.[1]

There is evidence that additional policies are needed to detect unlicensed drivers and to integrate ALR

laws with other sanctions in order to reduce the numbers of those who ignore their suspensions. At least two studies suggest that the combination of licensing sanctions with alcohol treatment is one of the most promising strategies for dealing with the hardcore drunk driver.[21,23]

A DWI arrest can result in two kinds of licensing actions. The first is administrative license suspension (ALS) or revocation (ALR), which is carried out by the arresting officer as an administrative action on behalf of the motor vehicle administration. The second is a judicial post-conviction action ordered by the court. A single DWI arrest frequently will result in both an ALR suspension and a mandatory post-conviction suspension action.

Post-conviction Licensing Actions

Following formal charging and pleading, post-conviction licensing actions for hardcore drunk drivers depend on conviction for the driving offense and are contingent upon a judicial finding of proof beyond a reasonable doubt that a crime (in this case, drunk driving) was committed. The criminal process generally is slow and, due to the stringent standards of proof, likely to err toward leniency. This is unlike the administrative process, which requires only that the balance of evidence indicate that the sanction is warranted. However, most states do have provisions for court-ordered suspensions which may or may not run concurrently with ALR/S.

Administrative Licensing Actions

Among the most effective and most popular legislation targeting drunk drivers are administrative license revocation (ALR) laws, also referred to as administration license suspension (ALS) laws or administrative *per se* laws. ALR laws allow the arresting officer, acting on behalf of the state motor vehicle department, to suspend or revoke a license when a driver fails or refuses to take a chemical test for alcohol.

ALR laws reduce the number of drivers involved in fatal crashes by about 9% during nighttime hours.

In states without ALR laws, offenders may lose their licenses but only after being convicted in court. The judicial process can be lengthy, and often the license is never suspended. In addition, plea bargaining and diversion programs allow many offenders to keep their licenses. A 1996 study in Texas concluded that the number of license suspensions of offenders who failed or refused a test increased from 40% pre-ALR to approximately 95% following the implementation of ALR.[24]

Although details of ALR laws vary from state to state, once the licenses are confiscated, drivers are given a notice of suspension, which serves as a temporary permit for 7 to 45 days, depending on the state. During that time, the suspension may be appealed at an administrative hearing. If there is no appeal, or the appeal is not upheld, the license is suspended for a prescribed period of time. Regardless of the outcome of the appeals hearing, the arrestee is still subject to a separate criminal process, which can lead to additional penalties, including judicial licensing actions.

For first offenders, suspensions vary from seven days to a year but most often last 90 days. Repeat offenders usually receive longer suspensions.

The National Highway Traffic Safety Administration recommends that ALR laws impose at least a 90-day suspension or a 30-day suspension followed by 60 days of restricted driving. Some states require the completion of an education or treatment program prior to relicensure.

Where Are ALR Laws in Effect?

According to the National Hardcore Drunk Driver Project Survey, 44 states, the District of Columbia, and three territories have ALR laws.

How Effective Are ALR Laws?

ALR laws are recognized as having a strong, general deterrence effect on drunk drivers because the mandatory punishment is swift and sure.

A study by the Insurance Institute for Highway Safety found that ALR laws reduce the number of drivers involved in fatal crashes by about 9% during nighttime hours.[25] NHTSA reports that, among 17 states implementing ALR either alone or in combination with other laws, the median effect is a 6% decrease in crashes likely to be alcohol-related.[25]

Although the impact of ALR laws on hardcore drunk drivers has not been determined, indirect evidence suggests that hardcore drunk drivers are more likely to violate the conditions of license suspension and are more likely to be drinking when they do. According to research,[1] drivers involved in serious crashes whose licenses have been suspended or revoked are more likely to have been drinking and to have high BACs. For example, among fatally injured drivers whose licenses were valid at the time of crash, 46% had been drinking and 62

of these had a BAC in excess of .15. By contrast, among fatally injured drivers whose licenses were suspended, 72% had been drinking and 62% of these had BACs in excess of .15. Among drivers whose licenses were revoked, 90% had been drinking and 79% of these had BACs in excess of .15.

One argument against ALR has been the contention that license revocation leads to loss of employment, which in turn impacts the offender's dependents and, subsequently, societal welfare costs. A 1996 NHTSA study of four jurisdictions found that ALR does not have a pronounced impact on the DWI offender's job and income.[26] One reason may be that the DWI offenders continued to drive, although presumably more carefully than when they were licensed. The main alternative for those who lost their licenses was riding with others. When 233 DWI multiple offenders were asked how they got to work while waiting for license reinstatement:

- 22% said they drove themselves;
- 41% said someone else drove them;
- 15% took a taxi;
- 15% walked or rode a bicycle;
- 7% responded "other."

How Much Does Implementation of ALR Laws Cost?

They can be self-sufficient. In most states, offenders must pay a reinstatement fee to receive a new license at the end of the suspension period. These fees can cover or exceed the cost of the program. A study of ALR laws in Nevada, Mississippi, and Illinois found that increased revenues from license reinstatement fees more than offset costs associated with implementing the law.[27] Additionally, reductions in crash-related costs were well over 100 times the cost of implementation.

Where to Go for More Information on ALR Laws

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INCARCERATION

Studies of the effects of incarceration have produced mixed results, and its effectiveness is the subject of intense debate. Increasingly, the public is demanding longer jail or prison sentences for hardcore drunk drivers, despite research that shows long-term incarceration alone does not lower the rate of recidivism among repeat offenders. Jail sentences often result in a high cost to the judicial and correctional systems, where overcrowding is a national concern. Regardless of incarceration's effect as a deterrent, studies imply that jail sentences may serve notice that drunk driving will not be tolerated and, in that respect, play an important role in shaping public attitudes toward drinking and driving.[28]

VEHICLE REGISTRATION CANCELLATION AND LICENSE PLATE SEIZURE

This sanction is used as an alternative to vehicle impoundment and is intended to result in vehicle immobilization. The plate can be administratively confiscated by a police officer during a DWI arrest, and the registration of the vehicle used in the offense may be revoked. A special plate can be issued for the vehicle if the violator obtains a conditional license or if a member of the violator's family has a regular license *(See License Plate Actions in the Enforcement section)*.

Where Are Registration Cancellation and License Plate Seizure Used?

In 20 states, vehicle registration is withdrawn upon conviction of a DWI offense or a driving-while-suspended offense that originated from a DWI charge, according to the National Hardcore Drunk Driver Project Survey. In Georgia, offenders may be subject to plate seizure on a third conviction. In Minnesota, police can seize plates of drivers who have had three or more DWIs within a five-year period. They may also confiscate the plates of any other vehicles owned by the same person.

How Effective Are Registration Cancellation and License Plate Seizure, and How Much Do They Cost?

Studies show that *administrative-based* plate seizure for hardcore drunk drivers is a low cost and effective procedure that can significantly reduce recidivism. Minnesota's administrative-based plate impoundment program showed a 50% decrease in recidivism over a two-year period when compared with DWI violators who did not experience impoundment.[22]

In general, however, license plate seizure laws are poorly enforced. A study of Minnesota offers a good comparison of judicial vs. administrative application of license plate seizures. During the 29 months when the plate seizure law was managed through the judicial system, only 465, or 6%, of the 7,698 eligible, third-time offenders had their license plates impounded. During the 21 months after the law was applied administratively in 1991, 3,136, or 68%, of the 4,593 third-time DWI offenders had vehicle plates impounded.[16]

Where to Go for More Information on Vehicle Registration Cancellation and Plate Seizure

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VEHICLE FORFEITURE

Vehicle forfeiture allows the state to confiscate permanently the vehicle of repeat DUI/DWI offenders or those who drive repeatedly with a suspended license. A Portland, Oregon, ordinance subjects to forfeiture vehicles of offenders arrested for driving with a license suspended as a result of drunk driving, or those arrested as habitual offenders who have committed three or more serious traffic offenses, at least one of which was driving while intoxicated. The flexibility included in some forfeiture ordinances results in a de facto combination vehicle impoundment/forfeiture law.

Where Is Vehicle Forfeiture Used?

Several states have legislation that allows vehicle forfeiture but rarely use it. There are a few notable exceptions, including:

- Portland, Oregon, where, as of May 1997, 886 cars had been seized, of which 286 were permanently forfeited;
- Deschutes County, Oregon, which enacted a vehicle forfeiture ordinance in 1992. The ordinance allows drivers to regain their vehicle if they agree to pay an administrative fee and sign an agreement that forfeits their rights to the vehicle on a future arrest for DWI or driving while suspended;
- Anchorage, Alaska, which has an impoundment/forfeiture ordinance that seeks 30 days

STATE LEGISLATIVE FACT SHEET

January 2000

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

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ADMINISTRATIVE LICENSE REVOCATION

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages states to require prompt, mandatory suspension of drivers' licenses for alcohol and/or other drug test failure and/or refusal. Motor vehicle crashes are the leading single cause of death for Americans aged 5 through 29, and almost 40 percent of those fatalities involve alcohol and/or other drugs. Suspending or revoking a driver's license for driving while under the influence of alcohol or other drugs has proven to be a successful deterrent to this behavior.

Administrative license revocation (ALR) laws are based on objective chemical tests (blood, breath, or urine), similar to "illegal per se" criminal laws against impaired driving. Administrative license revocation allows police and driver-licensing authorities to revoke a driver's license swiftly, without long delays while waiting for a criminal trial, and protects the offender's right of due process through an appeal system. ALR is similar to "implied consent" laws in states which automatically suspend a driver's license for refusing a BAC test. ALR automatically suspends the license for failing the BAC test.

Key Facts

- In 1998, 38 percent of the 41,471 motor vehicle crash deaths were alcohol-related. This percentage translates into 15,935 alcohol-related deaths in that year.
- As of 1999, 40 states and the District of Columbia had adopted some form of administrative license revocation.
- Administrative license revocation is constitutional and is not double jeopardy. All cases in the highest state appellate courts to consider the issue have upheld ALR as a constitutional means of protecting the public from impaired drivers.
- The U.S. Supreme Court has found that the right of due process is not violated if a driver's license is suspended prior to an administrative hearing, as long as provisions are made for a swift post-suspension hearing. (*Mackey v. Montrym*, 443 U.S. 1. 1979).
- An independent study found that administrative license revocation laws reduced fatal crashes by approximately 9 percent during high-risk (late night) periods of alcohol involvement.
- Illinois, New Mexico, Maine, North Carolina, Colorado, and Utah have observed significant reductions in alcohol-related fatal crashes following the implementation of administrative license revocation procedures, according to a NHTSA study.

- Based on data obtained in an agency-sponsored study of the effects of certain types of legislation, NHTSA estimates that 199 additional lives could have been saved in 1997 if ALR laws had been adopted in the 11 states without such laws at that time.
- Publicity is an important factor. A NHTSA-sponsored study conducted in Nevada found a 12 percent reduction in alcohol-related crashes following implementation of a publicity campaign designed to inform the public about the ALR procedure.
- Administrative license revocation does not have a major impact on an offender's job or income. A 1996 study compared three ALR states with one state that used other sanctions for impaired driving. There was no difference between ALR and non-ALR states in offender employment or income. In both, 94 percent of the offenders who were working at the time of arrest were still working one month later; 4 percent were unemployed; and the remaining 2 percent were in school. License revocations as long as 90 days did not lead to loss of job or income.

What Provisions Should Be Included In An Administrative Revocation Law?

- The language of the administrative license revocation law should be consistent with the provisions of the state's administrative procedures laws.
- The arresting officer should, at the time of arrest, serve the notice of revocation, take the offender's license, and issue a temporary license.
- The driver should have the opportunity for an administrative appeal hearing.
- The hearing request should not be allowed to delay the revocation. If the hearing request does not stay the revocation, between 25 and 30 percent of the offenders request a hearing. If the hearing request stays the revocation, nearly 100 percent of the offenders request a hearing.
- The initial revocation for test failure should be at least 90 days with full revocation for 30 days, followed by at least 60 days of restricted driving. Restricted driving licenses should be permitted only in very limited circumstances, and only after an initial "hard" suspension period. The initial revocation for a test refusal should be a full 90 days, with no restricted driving privileges. For a repeat offense within five years, the revocation should be a full revocation for one year, with no restricted driving privileges. Suspensions should take effect within 30 days of notice.
- The administrative sanction is handled separately from the criminal proceeding. The outcome of the administrative action should have no bearing on the criminal proceedings, including sanctions.

How Much Does An Administrative License Revocation Program Cost?

A 1991 NHTSA-sponsored study looked at the cost and benefits associated with administrative license revocation laws in Illinois, Mississippi, and Nevada. The study found that start-up and operating costs were more than covered by reinstatement fees assessed to offenders. In addition, the annual savings in costs of night-time crashes that were reduced as a result of ALR ranged from $37 million in Nevada to $104 million in Mississippi.

How Can Administrative License Revocation Be Financed?

The offenders, rather than taxpayers, should pay for these programs. Some states have significantly increased the reinstatement fee for those whose licenses are revoked for driving while intoxicated (DWI); some have raised all reinstatement fees; and others have increased all license application and renewal fees. Other fines, fees, or taxes that can be considered to provide funding include alcoholic beverage taxes that can be earmarked for alcohol program expenses such as ALR.

Who Supports Administrative License Revocation?

The following organizations have publicly supported administrative license revocation:

- Advocates for Highway and Auto Safety
- Allstate Insurance
- American Alliance for Rights and Responsibilities
- American Association of Motor Vehicle Administrators
- AAA
- American Automobile Manufacturers Association
- American Insurance Association
- Automotive Coalition for Traffic Safety
- Center for Substance Abuse Prevention
- The Century Council
- Federal Highway Administration
- GEICO
- General Federation of Women's Clubs
- Highway Users Federation for Safety and Mobility
- 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 Association of Independent Insurers
- National Association of State Alcohol and Drug Abuse Directors
- National Association of State Emergency Medical

Service Directors

- National Commission Against Drunk Driving
- National Highway Traffic Safety Administration
- National Safety Council
- National Sheriffs' Association
- National Transportation Safety Board
- Nationwide Insurance
- Operation Lifesaver
- Police Executive Research Forum
- Remove Intoxicated Drivers (RID)
- Students Against Destructive Decisions (SADD)
- U.S. Department of Justice
- USAA Insurance

Incentive Grant Program

On May 22, 1998, Congress passed H.R. 2400, the Transportation Equity Act for the 21st Century (TEA-21). TEA-21 made substantial changes to the existing Section 410 alcohol incentive grant program. States may qualify for a "Programmatic Basic Grant" if they submit materials demonstrating that they meet five out of seven basic grant criteria to combat impaired driving.

One of these seven grant criteria is a streamlined administrative license revocation basic grant criterion. To rely on this criterion as one of the criteria to qualify for a grant, a state must have an administrative license revocation system requiring that first offenders be subject to a 90-day suspension; that repeat offenders be subject to a one-year suspension or revocation; and that suspensions or revocations will take effect within 30 days after the offender refuses to submit to a chemical test or recieves notice of having failed the test. The program continues to require that these suspension and revocation terms must be hard (i.e. that during these terms, *all* driving privileges are suspended or revoked), except that first offenders who submitted to and were determined to have failed a chemical test, may be subject to a 30-day hard suspension, and then may receive restricted driving privileges or a hardship license for the remainder of the 90-day term. States may demonstrate compliance with this criterion as either "Law States" or "Data States" by submitting copies of their adminstrative revocation laws or data relating to the sanctions imposed under their programs.

Research Studies

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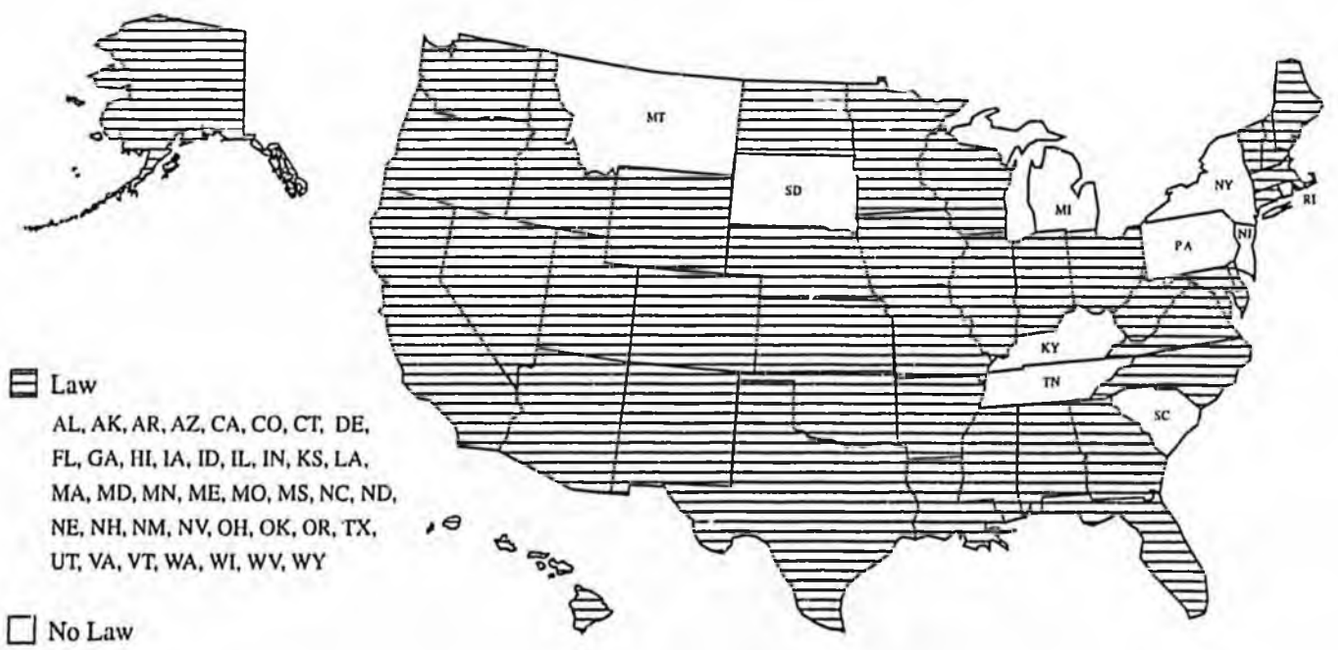
ADMINISTRATIVE LICENSE REVOCATION LAWS*
40 STATES AND DC



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The reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, ATTN: NTS-11, 400 Seventh Street, S.W., Washington, DC 20590; 202-366-9588;or NHTSA's website at www.nhtsa.dot.gov

STATE LEGISLATIVE FACT SHEET

January 2000

CONTENTS

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

NHTSA
People Saving People
www.nhtsa.dot.gov

VEHICLE AND LICENSE PLATE SANCTIONS

Revoking or suspending a motorist's operators license is now a common penalty for many traffic infractions, especially those related to impaired driving. Unfortunately, many of these offenders continue to drive. It is not unusual for suspended drivers to receive additional traffic citations or be involved in crashes during periods of license suspension. As a way of reducing this problem, many states have passed laws that directly affect the offender's vehicle or license plates as a sanction for the impaired driving offense or for driving with a suspended license.

Some states now permit the vehicles of drivers convicted of certain impaired driving offenses to be impounded, immobilized (club or boot), or forfeited and sold. Other states allow the license plates to be removed and impounded. Still others allow for the use of specially marked license plates, or allow for the installment of alcohol ignition interlock devices.

Key Facts

- In 1997, 1.5 million people were arrested in the U.S. for driving under the influence (DUI) or driving while intoxicated (DWI)–more than all other reported criminal offenses except larceny and theft.
- About one-third of all drivers arrested or convicted of DWI each year are repeat DWI offenders.
- Drivers with prior DWI convictions are also overrepresented in fatal crashes and have a greater relative risk of fatal crash involvement.
- Many second- and third-time convicted DWI offenders who had their licenses suspended accumulated traffic offenses or were involved in crashes during the suspension period. In one study, 32 percent of suspended second-time DWI offenders, and 61 percent of third-time offenders received violations or crash citations on their driving records during their suspensions.
- Many drivers do not reinstate their licenses even when eligible to do so. In one study involving first-time DWI offenders who had their licenses suspended for 90 days, 50 percent had not reinstated their licenses three years after they were eligible to be relicensed. Also, many of these offenders drive without auto insurance and do not attend treatment programs when required for reinstatement.

Legislative Status

Forty-four states have laws that can affect the vehicles or vehicle plates of offenders.

- ***Vehicle Impoundment:*** Overnight impoundment of the vehicle of an individual arrested for impaired driving is a typical practice in most states. Thirteen

states have laws which permit longer-term impoundments for certain offenses, usually for repeat DWI offenses or for Driving While Suspended (DWS) where the original offense was related to a DWI infraction. States which impound vehicles for these types of offenses include California, Delaware, Florida, Illinois, Iowa, Michigan, Missouri, Montana, Nebraska, New York, Ohio, Oregon, and Wisconsin.

- ***Suspension of Vehicle Registration:*** In 15 states, vehicle registration is withdrawn upon conviction of a DWI or DWS offense where the original licensing action ***can*** be related to a DWI offense. States which can withdraw vehicle registrations for a DWI or DWS offense are Arizona, Indiana, Kansas, Maine, Minnesota, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Virginia, and Wyoming. Some of these states have their own enforcement departments that send out investigators to pick up the license plates of these offenders. However, in general, the vehicle license plate suspension provisions are poorly enforced.
- ***Vehicle Confiscation:*** Twenty-five states ***permit*** the vehicle of multiple DWI or DWS offenders to be confiscated or sold, where the original licensing action can be related to a DWI offense. These states are Alaska, Arizona, Arkansas, California, Georgia, Illinois, Louisiana, Maine, Minnesota, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont,Washington, and Wisconsin.
- ***Vehicle Immobilization:*** Courts can prevent a DWI or DWS offender from using his or her car by immobilizing the steering wheel (by using a club) or locking a wheel (with a boot). Currently, only Ohio uses these types of sanctions.
- ***Special License Plates or Plate Markings:*** Three states–Iowa, Minnesota, and Ohio–issue special license plates to permit the use of the vehicle by family members of convicted DWI offenders. Two states-Oregon and Washington-enacted laws which ***permitted*** officers to affix a zebra sticker over the annual year portion of the license plates of offenders.
- ***Ignition Interlock:*** The purpose of an ignition interlock is to prevent a person who has consumed alcohol from operating a vehicle. The device measures alcohol concentration in the breath and is attached to a vehicle's ignition system. Before the car can be started, a driver must blow a sample of his or her breath into the interlock device. If the driver's breath alcohol is below a specified concentration, the driver will be able to start the vehicle's engine. However, if the driver has a breath alcohol concentration above the established level, the vehicle cannot be started. Thirty-seven states have laws providing for either the ***discretionary*** or mandatory use of ignition interlock devices for repeat and chronic DWI offenders. The ignition interlock is discretionary in 32 states: Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. In three states–California, Oregon, and Texas–the law is mandatory under special circumstances. In some jurisdictions, interlocks may also be used for first offenders.

Recommendations for Strengthening and Increasing the Use of Vehicle and Vehicle Plate Sanctions

Interviews with state and local officials, judiciary members, and law enforcement officers suggest that while impoundment and forfeiture legislation is common, application of these laws is rare. The reasons cited include: (1) these laws are generally reserved for the relatively few multiple DWI offenders rather than the more numerous first offenders; (2) there are difficulties in dealing with nonoffender owners; (3) it is costly to store junk vehicles that are not reclaimed by their owners; and (4) judges are reluctant to punish innocent family members.

Yet some states have developed innovative ways for dealing with these problems. Minnesota experienced a twelvefold increase in the use of its license plate impoundment law when they switched from court-based to administrative enforcement of the impoundment law.

The following recommendations may help state legislators and local officials revise existing legislation or enact new legislation to increase the use and effectiveness of their laws.

- Consider legislation that provides for administrative impoundment of plates and civil forfeiture of vehicles. In general, try to avoid criminal laws providing for forfeiture, as courts rarely use them.
- Enact legislation that allows for seizure at the time of arrest if officers impound either the vehicle or plate. It is more difficult and costly to track down the offender's vehicle later, and the delay gives the offender the opportunity to transfer vehicle ownership.
- Consider legislation that makes it unlawful for the owner of a motor vehicle to allow another person to drive the vehicle unless the owner determines the

person possesses a valid driver's license. Also, require nonoffender owners to sign an affidavit stating they will not allow the offender to drive the vehicle again while the suspension is in effect.

- Establish a computerized state record-keeping system to document vehicle (impoundment and forfeiture) and license plate actions. This allows states to monitor use of the sanctions.
- Apply impoundment laws to all repeat DWI offenders and to all DWS offenders where the original infraction was for a DWI offense. This will encourage an increase in the use of impoundment since many courts do not apply this sanction to second-time DWI offenders or to first-time DWS offenders.
- Where the law provides for special license plates (e.g., family plates or license plate sticker laws), incorporate a provision that permits officers to stop the vehicle for the sole purpose of checking whether the driver is operating the vehicle while their license is under suspension.

Research and Evaluation Regarding the Effects of Vehicle and Plate Sanctions

- ***Maryland ignition interlock program lowered the re-arrest rate for repeat alcohol offenders:*** A Maryland study involving 1,380 repeat alcohol offenders randomly assigned participants to either an ignition interlock group or a control group that did not receive the sanction. Alcohol-related traffic re-arrest rates were tabulated for a full year. They showed that only 2.4 percent of the interlock group was rearrested, whereas 6.7 percent of the control group was re-arrested-a statistically significant difference indicating that the interlock program reduced the risk of an alcohol traffic violation within the first year by about 65 percent. Additional analyses of post-interlock recidivism are being examined. Other research on ignition interlocks is being conducted in Illinois and Alberta (Canada). Recently, NHTSA initiated another assessment of ignition interlocks. The focus of this congressionally mandated study is to conduct additional research on the effectiveness of these devices once they have been removed from offenders' vehicles. The findings from this four-year research effort will become available in 2002.
- ***Minnesota License Plate Impoundment Study:*** In Minnesota, violators incurring three DWI violations in five years, or four or more in ten years, can have their license plates impounded and destroyed. An evaluation of the effects of the law found a significant decrease in recidivism for violators who had their plates impounded versus violators who did not. Violators whose license plates were impounded by the arresting officer showed a 50 percent decrease in recidivism over a two-year period (when compared with DWI violators who did not experience impoundment).
- ***Ohio Impoundment and Immobilization Program:*** In Franklin County (Columbus), Ohio, researchers conducted a field test to study the deterrent effects that a combined impoundment and immobilization sanctions program has on crashes and violations for multiple DUI (Driving Under the Influence) and suspended license offenders. From September 1993 to September 1995, the vehicles of nearly 1,000 offenders were impounded and then immobilized. The recidivism rates of these offenders were compared to eligible offenders who did not receive a vehicle sanction. Offenders whose vehicles were impounded and immobilized had lower rates of DUI recidivism both during and after the termination of the sanction than offenders who managed to avoid the impoundment and immobilization sanctions. Similiar findings were obtained in Hamilton County where only vehicle impoundment was used. A project report will be available by early 2000.
- ***California Impoundment Program:*** NHTSA, in conjunction with the State Department of Motor Vehicles, conducted a research effort to study the impact of California's new vehicle impoundment law as applied to unlicensed and suspended license offenders. The innovative 30-day impoundment law is not typical of those found in most states, since it involves a civil action independent of a criminal DWS conviction for those caught driving without a valid license. More than 6,300 unlicensed drivers and those with suspended or revoked licenses whose vehicles were impounded were compared to about the same number of drivers in 1994 whose vehicles would have been eligible had the 1995 impoundment law been in effect. Driving records of both groups were compared for a one-year period on subsequent traffic violations and crashes. First offenders whose vehicles were impounded had an average rate of subsequent DWS or driving while unlicensed (DWU) that was 24 percent lower than those whose vehicles were not impounded. Repeat offenders had 34 percent fewer DWS or DWU convictions. Also, both first-time and repeat offenders whose vehicles were impounded had fewer crashesthere was a 25 percent reduction for first-time offenders and a 38 percent reduction for repeat offenders.
- ***Zebra Tag Program in Oregon and Washington States:*** In Oregon, suspended license offenders whose vehicle plates were "zebra tagged" had fewer subsequent DWI and DWS violations than suspended offenders who did not receive the special tags. Also,

among suspended license offenders, the possibility of receiving a zebra tag if re-arrested appears to reduce subsequent violations and crashes. A similar law in Washington State did not affect subsequent violations or crashes for these types of offenders; however, it was not applied to nearly as many drivers and vehicles and it was not as strongly enforced by the police. (Legislators in both states allowed the zebra tag law to expire.)

Transfer and Grant Programs

In 1998, as part of the TEA-21 Restoration Act, a new Federal program (see section 164 program) was established to encourage states to address the problem of the repeat intoxicated driver. To comply with Section 164, the state's laws must require that certain sanctions must be imposed on persons convicted more than once within a five-year period of driving while intoxicated or driving under the influence of alcohol (DWI/DUI). One of the sanctions that must be imposed is:

- that all motor vehicles of repeat intoxicated drivers be impounded or immobilized for some period of time during the driver's license suspension period, or that an ignition interlock system be installed on all motor vehicles of such drivers for some period of time after the end of the suspension period.

States that do not meet the Section 164 requirements will have a portion of their Federal-aid highway construction funds redirected into other state safety activities, beginning in fiscal year 2001.

In addition, TEA-21 modified the Section 410 grant program. Under the program, as modified by TEA-21, states that qualify for a basic grant may also qualify for supplemental grant funds by meeting one or more of six criteria. One of the six criteria is a program to reduce driving with a suspended driver's license. In order to qualify for a supplemental grant under this criterion, a state must impose one of the following sanctions on individuals convicted of driving after their license has been suspended for an alcohol-related offense: suspension of the offender's vehicle registration and return of license plates; impoundment, immobilization, forfeiture or confiscation of the offender's motor vehicles; or the use of distinctive license plates on the offender's motor vehicle.

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The reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, ATTN: NTS-11, 400 Seventh Street, S.W., Washington, DC 20590; 202-366-9588;or NHTSA's website at www.nhtsa.dot.gov

California and the West; State Ranks 4th in 'Unlicensed to Kill' Report; Accidents: One-fifth of the drivers involved in fatal crashes had a revoked license or none at all, AAA study says. New Mexico

California and the West
State Ranks 4th in 'Unlicensed to Kill' Report
Accidents: One-fifth of the drivers involved in fatal crashes had a revoked license or none at all, AAA study says. New Mexico has worst record.
By DOUGLAS P. SHUIT, TIMES STAFF WRITER

Los Angeles Times Thursday July 13, 2000
Home Edition
Part A, Page 3
Type of Material: Infographic

More than 1 in 5 California drivers involved in fatal crashes were driving with expired, revoked or suspended licenses or had never even had a license, according to a study released Wednesday by the AAA Foundation for Traffic Safety.

The national study, analyzing accident data from 1993 to 1997, found that 22% of the drivers involved in fatal crashes in California had invalid licenses or none at all. Nationally, the rate is 13.8%, the study concluded.

California had the nation's fourth-worst record for the percentage of unlicensed drivers involved in fatal crashes. New Mexico had the worst, with unlicensed drivers involved in 23.9% of its fatal crashes. Maine, with 6.4%, had the best record.

Southern California sources familiar with the problem said they were not surprised by the state's high figure.

"The Legislature for years has been trying to deal with people driving without licenses," said Los Angeles County Court Commissioner Gary L. Bindman, who each day deals with 125 to 150 cases in which suspects are accused of driving without a license or driving under the influence of drugs or alcohol. "The problem is that no matter what the Legislature does--and no matter what the courts do--people are continuing to drive, and we can't keep them from driving."

The study, titled "Unlicensed to Kill," analyzed five years of crash data to learn more about the license status of drivers involved in fatal crashes.

According to the study, Southern California leads the nation in hit-and-run cases, and researchers said part of the reason for that may be that many of those involved in such crashes flee the scene because they don't have valid licenses.

A major contributor to California's bad record is the state's large number of drunk driving arrests, many of which result in suspended

licenses, according to Steven Bloch. Bloch is a traffic safety researcher for the Automobile Club of Southern California, which helped finance the AAA study.

"We arrest a lot of drunk drivers in this state," said Bloch. "We usually account for about 20% of all DUI arrests in the nation."

A statement released by the local AAA office suggests that stiffer measures should be used against drivers with multiple DUIs, such as impounding their vehicles or requiring ignition-locking devices that force drivers to pass an in-car Breathalyzer test before starting their cars.

Mothers Against Drunk Driving used release of the study to reiterate its call for stiff penalties for persons involved in multiple drunk driving violations.

"If you don't learn your lesson with your first DUI, then if you have a second DUI, you should lose your license," said Linda Oxenreider, the California state chairwoman for MADD, from her home in Ventura County.

Under existing laws, judges can impound vehicles or require ignition locks, but their record of imposing those requirements is spotty, Bloch said.

Citing an earlier study, Bloch said that only about 15% of judges hand down sentences calling for the locking devices.

Bloch was on a state task force that last year helped pass a law giving drivers an incentive to use the devices, which in the past was plagued by technical problems but which has been improved recently. Under that law, which went into effect last July, multiple offense drivers can reduce a two-year sentence to one year if they agree to an ignition lock.

Bindman said he believes the new law on ignition locks will help reduce the problem of people getting behind the wheel when they shouldn't. But he said people's perceived need to drive so they can get to work or meet other obligations sometimes overrides their judgment.

"I have people come in who have been stopped four, five or six times with suspended licenses before they even come to court on the first case," he said.

Findings of the study challenge what AAA researcher Bloch said was a widespread perception that a large percentage of fatal accidents in California are caused by immigrants who come across the border and drive even though they don't have licenses.

In California, Bloch said, far more drivers with suspended or revoked licenses were involved in fatal crashes than unlicensed drivers.

During the five-year period under study, 5.6% of the fatal accidents involved drivers without licenses, a group that would include unlicensed immigrants. Those with suspended or revoked licenses were involved in 9% of the fatal accidents.

(BEGIN TEXT OF INFOBOX / INFOGRAPHIC)

Deadly Drivers

Here are the nations highest percentages of drivers with invalid

licenses who were involved in fatal crashes, according to a study by the Automobile Club of Southern California.

New Mexico: 23.9%

Washington, D.C.: 23.1%

Arizona: 23.0%

California: 22.03%

Hawaii: 22.0%

Alaska: 17.5%

Alabama: 17.4%

Washington: 16.1%

Idaho: 15.9%

North Dakota: 15.7%

*

Note: Data include drivers who were unlicensed, or whose licenses were suspended, revoked,expired, canceled or denied.

*

Source: AAA Foundation for Traffic Saf
ety, 1993-97 data

DOUGLAS P. SHUIT, *California and the West; State Ranks 4th in 'Unlicensed to Kill' Report; Accidents: One-fifth of the drivers involved in fatal crashes had a revoked license or none at all, AAA study says. New Mexico.* , Los Angeles Times, 07-13-2000, pp A-3.

National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: AUG 7 2000

In reply refer to: H-00-26

Honorable Brian Porter
Speaker of the House
Alaska House of Representatives
State Capitol
120 4th Street
Anchorage, Alaska 99801-2133

The National Transportation Safety Board is an independent Federal agency charged by Congress with investigating transportation accidents, determining their probable cause, and making recommendations to prevent similar accidents from occurring. We are providing the following information to urge you to take action on the safety recommendation in this letter. The Safety Board is vitally interested in this recommendation because it is designed to prevent accidents and save lives.

This recommendation addresses ways to reduce fatalities, injuries, and crashes involving hard core drinking drivers, a term that, as defined by the Safety Board, includes repeat offender drinking drivers (that is, offenders who have prior convictions or arrests for a Driving While Impaired [DWI] by alcohol offense) and high-BAC offenders (that is, all offenders with a blood alcohol concentration [BAC] of 0.15 percent or greater). The recommendations are derived from the Safety Board's safety report *Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver* and are consistent with the analysis we performed and literature we reviewed in this report.[1] As a result of this review, the Safety Board has issued two safety recommendations, one of which is addressed to the Governors and Legislative Leaders of the 50 States and the Mayor and Council of the District of Columbia. Information supporting the recommendation is discussed below. The Safety Board would appreciate a response from you within 90 days addressing the actions you have taken or intend to take to implement our recommendation.

In 1984, the National Transportation Safety Board published a safety study titled *Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers (NTSB/SS-84/04).* That study identified repeat offender drinking drivers (included under the Safety Board's category of "hard core drinking drivers") as a serious traffic safety problem.

[1] For additional information, read *Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver,* Safety Report NTSB/SR-00/01 (Washington: National Transportation Safety Board, 2000).

In the more than 15 years that have passed since that investigation was concluded, efforts have been made by all the States to address this major safety problem. However, despite significant progress, the measures taken and the degree of implementation have not been uniform, and 15,794 people died in 1999 from alcohol-related crashes. This number is far above the target set by the Secretary of Transportation in 1995 to reduce the number of alcohol-related fatalities to no more than 11,000 by 2005, a goal that cannot be reached with a "business as usual" approach.

From 1983 through 1998, at least 137,338 people died in crashes involving hard core drinking drivers.[2] The National Highway Traffic Safety Administration's (NHTSA) data also indicate that at least 99,812 people were injured in fatal crashes involving hard core drinking drivers (as defined by the Safety Board) during that same time period. In 1998 alone, hard core drinking drivers were involved in a minimum of 6,370 highway fatalities. The estimated cost of these fatalities was at least $5.3 billion nationwide.

The Safety Board's review identified a number of measures that appear to be effective in reducing alcohol-related crashes by hard core drinking drivers. The societal cost of crashes involving these drivers, both in human and economic terms, demands that additional action be taken by the States. Although all States have some components of a program to reduce hard core drinking driving, the variations in countermeasures used among the States are numerous, and no State uses all of the countermeasures that can reduce hard core drinking driver crashes.

For example, 40 States and the District of Columbia have administrative license revocation (ALR) laws for DWI test refusal or failure. The Safety Board recommended this countermeasure in 1984 and 1989 because ALR is an effective measure to reduce alcohol-related crashes and fatalities, and studies by NHTSA and others support this view. ALR laws have resulted in a 13- to 19-percent reduction in adult driver fatal crashes.[3] However, the States of Kentucky, Michigan, Montana, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Tennessee currently do not have laws authorizing ALR for BAC test failure or refusal.

Sobriety checkpoints are conducted in 39 States. Publicized DWI enforcement including sobriety checkpoints can be very effective in identifying the hard core drinking driver and in reducing alcohol-involved driving and alcohol-related crashes. The Tennessee experience with weekly checkpoints indicates that this strategy is effective when conducted frequently, regularly, and statewide; in that State, sobriety checkpoints reduced alcohol-related fatal crashes by 20.4 percent.[4] North Carolina's multi-year checkpoint program reduced the percentage of drivers having illegal BAC levels who were stopped at checkpoints by more than half (from 1.9 percent

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[2] Nineteen ninety-eight is the most recent year for which complete data are available from the National Highway Traffic Safety Administration.

[3] Robert B. Voas and A. Scott Tippetts, *The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes* DOT HS 808 980 (Washington: National Highway Traffic Safety Administration, 1999) 11-13.

[4] John H. Lacey, Ralph K. Jones and Randolph G. Smith, *An Evaluation of Checkpoint Tennessee: Tennessee's Statewide Sobriety Checkpoint Program* (Washington: National Highway Traffic Safety Administration, 1998) 20 <http://www.nhtsa.dot.gov/search97cgi/s97_cgi.exe>.

of those tested to 0.90 percent).[5] In addition to deterring drinking and driving, checkpoints can be used to promote several other highway safety measures at the same time, including checking for valid driver's licenses, and safety belt use.[6] Sobriety checkpoints provide an opportunity to apprehend not only alcohol-impaired drivers but also unlicensed drivers and those who are driving on licenses suspended or revoked for DWI. Often, when licenses are checked at sobriety checkpoints, more unlicensed than impaired drivers are found.[7]

Measures that separate hard core drinking drivers from their vehicles are used in 38 States and the District of Columbia. These measures include license plate action (impoundment, confiscation, or other actions) (8 States), vehicle immobilization (6 States), vehicle impoundment (12 States and the District of Columbia), and vehicle forfeiture (28 States). License plate action was found in Minnesota to reduce recidivism by 50 percent in a 2-year study[8] The use of vehicle immobilization in Ohio reduced recidivism by 36 percent in a 1-year period.[9] In the same State, vehicle impoundment was found to reduce repeat offenses for driving while suspended or impaired by 40 percent in a 1-year period. Preliminary data from the New York City vehicle forfeiture program showed a 32.2 percent decrease in alcohol-related fatalities over an 11-month period.[10] To the extent permitted by the U.S. Constitution and applicable State laws, vehicle-based sanctions can be administratively ordered at the time of arrest. When taken, this action ensures swift and certain punishment for the DWI offense and prevents offenders from avoiding such sanctions by transferring possession of their vehicles to family members or friends. Another vehicle sanction is the use of ignition interlocks, which are devices that can prevent an impaired driver from operating a vehicle. Thirty-eight States permit the use of these devices in some manner, and at least five States have statewide ignition interlock programs; statewide programs are being developed in other States. In Maryland, ignition interlocks reduced recidivism by 65 percent in the first year of the assignment of these devices.[11] Overall, vehicle sanctions to separate the hard core drinking driver from his or her vehicle or to prevent him/her from drinking while impaired appear to be effective tools in reducing hard core drinking driver recidivism.

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[5] Insurance Institute for Highway Safety, "North Carolina Belt Use Peaks at 84 Percent; Future Gains Sought," *Status Report* 33:2 (7 Mar. 1998) 5 <http://www.highwaysafety.org/srpdfs/sr3302.pdf>.

[6] The Tennessee and North Carolina checkpoint programs also reported thousands of arrests for other offenses including stolen vehicles, illegal gun possession, drug offenses, and escaped felons. North Carolina reported 6,173 drug violators, 788 firearms violations, 403 stolen vehicles, and 273 fugitive arrests from 1993 through 1997. Lacey, Jones, and Smith, 20; Insurance Institute for Highway Safety, 5.

[7] Susan E. Martin and David F. Preusser, "Enforcement Strategies for the Persistent Drinking Driver," *Strategies for Dealing with the Persistent Drinking Driver*, ed. Barry Sweedler, Transportation Research Board Circular 437 (1995) 41.

[8] Alan Rodgers, "Effect of Minnesota's License Plate Impoundment Law on Recidivism of Multiple DWI Violators," *Alcohol, Drugs and Driving* 10: 2 (1994) 128.

[9] Robert B. Voas, A. Scott Tippetts, and Eileen Taylor, "Temporary Vehicle Immobilization: Evaluation of a Program in Ohio," *Accident Analysis and Prevention* 29: 5 (1997) 635-36.

[10] Howard Safir, George A. Grasso, and Robert F. Messner, "The New York City Police Department DWI Forfeiture Initiative," presented May 2000 at T2000 Conference of the International Council on Alcohol, Drugs, and Traffic Safety, Stockholm, Sweden.

[11] Kenneth H. Beck et. al., "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland," *American Journal of Public Health* 89: 11 (Nov. 1999) 1698.

Sixteen States have laws prohibiting plea-bargaining DWI cases, but eight of those States limit the ban to specific conditions, such as when the DWI has caused an injury or fatality. The Safety Board continues to support its 1984 recommendation to eliminate the option of plea bargaining a DWI offense to a lesser, non-alcohol-related offense. This type of plea bargaining reduces the State's ability to track prior alcohol-related offenses when no record is kept of the original charges brought. Laws restricting plea bargaining have been found to reduce the number of DWI repeat offenses as well as the number of alcohol-related crashes. Plea-bargaining limits reduced subsequent DWI offenses by 36 percent in Ft. Smith, Arkansas, by 17 percent in Louisville, Kentucky, and by 58 percent in Lexington, Kentucky over a 3-year period.[12]

Diversion programs that may include assessment and treatment in exchange for judicial consideration of a lesser charge or less severe sanctions are used in many States.[13] Diversion, like plea bargaining, interferes with the retention of accurate records for the hard core drinking driver. Diversion programs that allow license retention or erasure of offenses from the driver's record may prevent the State from prosecuting hard core drinking drivers as repeat offenders in the future, and should be eliminated.

As of January 1, 2000, 15 States had a high-BAC "aggravated" or "extreme" DWI offense, but the BAC that defines the offense varies from 0.15 percent to 0.20 percent. The elevated crash risk and potential for recidivism of high-BAC (0.15 percent or greater) drivers constitute a safety problem that warrants State legislation creating a high-BAC "aggravated" alcohol offense. A lowered-BAC law for repeat DWI offenders is also effective in reducing fatal crashes. Maine and North Carolina have lowered their BAC limit for drivers who have been convicted or similarly administratively adjudicated on a first DWI offense. An evaluation of the original Maine low-BAC law found a 25- to 35-percent reduction in the proportion of repeat offender drivers in fatal crashes.[14] Maine has since changed its law to zero BAC for repeat offenders.

The problem of hard core drinking drivers is complex, and no single countermeasure appears to be sufficient to address it. The Safety Board does not believe that every State must have identical countermeasures in place; however, the Board believes that a model program to reduce hard core drinking driving would incorporate the following elements:

- Frequent and well-publicized statewide sobriety checkpoints that include checking for valid driver's licenses. Checkpoints should not be limited to holiday periods.
- Vehicle sanctions to restrict or separate hard core drinking drivers from their vehicles, including license plate actions (impoundment, confiscation, or other actions); vehicle immobilization, impoundment, and forfeiture; and ignition interlocks for high-BAC first offenders and repeat offenders.

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[12] National Highway Traffic Safety Administration, *An Evaluation of the Elimination of Plea Bargaining for DWI Offenders* (Washington: National Highway Traffic Safety Administration, 1989) 1, 9-10.

[13] The total number of States in which diversion programs are used was unavailable. As stated earlier, 16 States and the District of Columbia specifically provide for diversion by State law or statewide practice. Some local courts and judges in other States also offer diversion programs.

[14] Ralph Hingson, Timothy Heeren, and Michael Winter, "Effects of Maine's 0.05% Legal Blood Alcohol Level for Drivers with DWI Convictions," *Public Health Reports* 113 (Sep.-Oct. 1998) 443.

- State and community cooperative programs involving driver licensing agencies, law enforcement officers, judges, and probation officers to enforce DWI suspension and revocation.
- Legislation to require that DWI offenders who have been convicted or administratively adjudicated maintain a zero blood alcohol concentration while operating a motor vehicle.
- Legislation that defines a high blood alcohol concentration (0.15 percent or greater) as an "aggravated" DWI offense that requires strong intervention similar to that ordinarily prescribed for repeat DWI offenders.
- As alternatives to confinement, programs to reduce hard core drinking driver recidivism that include home detention with electronic monitoring, special DWI facilities, and/or intensive supervision probation programs.
- Legislation that restricts the plea bargaining of a DWI offense to a lesser, non-alcohol-related offense, and that requires the reasons for DWI charge reductions be entered into the public record.
- Elimination of diversion programs that permit erasing, deferring, or otherwise purging the DWI offense record or that allow the offender to avoid license suspension.
- Administrative license revocation for BAC test failure and refusal.
- A DWI record retention and DWI offense enhancement look-back period of at least 10 years.
- Individualized sanction programs for hard core DWI offenders that rely on effective countermeasures for use by courts that hear DWI cases.

Therefore, the National Transportation Safety Board makes the following safety recommendation to the Governors and Legislatures of the 50 States and the Mayor and Council of the District of Columbia:

> Establish a comprehensive program that is designed to reduce the incidence of alcohol-related crashes and fatalities caused by hard core drinking drivers and that includes elements such as those suggested in the National Transportation Safety Board's Model Program.

Chairman HALL and Members HAMMERSCHMIDT, BLACK, GOGLIA, and CARMODY concurred in this recommendation. In the report that presented this recommendation, Member Hammerschmidt filed a dissent.

The Safety Board also issued one safety recommendation to the Department of Transportation.

In your response to the recommendation in this letter, please refer to Safety Recommendation H-00-26. If you need additional information, you may call (202) 314-6175.

By: Jim Hall
Chairman

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Yukon Kuskokwim Delta Regional Hospital Behavioral Health Care

Bethel, Alaska

has been

Accredited With Commendation

by the

Joint Commission
on Accreditation of Healthcare Organizations

Which has surveyed
this organization and found it
to meet the requirements
for accreditation

2000-2003

William E. Jarrett, M.D.
Chairman of the Board

Dennis S. O'Leary, M.D.
President

Joint Commission
on Accreditation of Healthcare Organizations

October 30, 2000

Gene Peltola
Chief Executive Officer
Yukon Kuskokwim Delta Regional Hospital
PO Box 287
Bethel, Alaska 99559

Dear Mr. Peltola:

The Joint Commission is pleased to award accreditation to your organization as a result of your most recent survey, subject to the type I recommendations outlined in the attached report. This accreditation status applies to all services offered by your organization that have been surveyed by the Joint Commission, including your home care services as providers of personal care and support services; your residential adult, child and adolescent mental health services; and your residential adult, child and adolescent transitional/supervised/supportive living services. We congratulate you on your efforts to provide high quality care for those you serve.

This accreditation is effective for three years from September 2, 2000, for all services surveyed using appropriate standards from the Comprehensive Accreditation Manual for Behavioral Health Care and the 1999-2000 Comprehensive Accreditation Manual for Home Care and the Comprehensive Accreditation Manual for Hospitals.

We direct your attention to two important Joint Commission policies. First, except as required by law, your accreditation report is confidential. You may, however, choose to make it available to the various publics you serve or others. Second, Joint Commission policy requires that you inform us of any changes in the name or ownership of your organization, or the health care services you provide either directly or through written agreement (s). Your certificate of accreditation must be returned if your organization requires a revised certificate, chooses to withdraw from accreditation, or allows the accreditation award to expire.

Congratulations on your achievement of accreditation.

Sincerely,

Russell P. Massaro, MD, FACPE
Executive Vice President
Division of Accreditation Operations

cc: Michael Hunt, Chair, Governing Body
Erin Garza, MD, President, Medical Staff

One Renaissance Boulevard
Oakbrook Terrace, IL 60181
(630) 792-5000
http://www.jcaho.org

JCAHO

Behavioral Health Care Accreditation Services
Accreditation Decision Grid

Organization: Yukon Kuskokwim Delta Regional Hospital / 10210
PO Box 287
Location: Bethel, Alaska 99559

Survey Date: August 29 - 30, 2000
Survey Type: Initial Full Survey

RESIDENT-FOCUSED FUNCTIONS

Rights, Responsibilities, and Ethics

Rights and Responsibilities	1
Organizational Ethics	1

Assessment

Initial Screening and Clinical Assessment	5
Pathology and Clinical Laboratory Services - Waived Testing	1
Assessment for Anesthesia	1
Assessment of Abuse and Neglect	1
Special Assessment of Children and Adolescents	5
Special Assessment of MR/DD	1
Special Assessment of Individuals in Chemical Dependency Programs and Services	1
Assessment for Discharge Planning Care Decisions and Reassessment	1
Structures Supporting the Assessment Process	1
Special Assessment for Foster Care	1

Care

Treatment Planning	1
Program Plans for Individuals with MR/DD	1
Medication Use	1
Special Treatment Procedures	1
Nutrition Care	1
Physical Therapy Care and Services	1
Anesthesia Care	1
Care-Foster Care	1

Education

Individual and Family Education and Responsibilities	1
Academic Education	1

Continuum

Continuum	1

Special Type 1 Recommendations

Accreditation Participation Requirements	1

Key
1 = Substantial Compliance
2 = Significant Compliance
3 = Partial Compliance
4 = Minimal Compliance
5 = No Compliance
N = Not Applicable

ORGANIZATIONAL FUNCTIONS

Improving Organizational Performance

IOP-Design	1
Data Collection	1
Aggregation and Analysis	1
Performance Improvement	1

Leadership

Organizational Planning	1
Directing Services	1
Integrating Services	1
Role in Improving Performance	1

Management of the Environment of Care

Therapeutic Environment	1
Management of the Environment of Care-Design	1
Management of the Environment of Care-Implementation	1
Measurement Systems	1

Management of Human Resources

Human Resources Qualifications, Competencies, and Privileges	1
Managing Staff Requests	1
Competency Requirements for Special Populations	1

Management of Information

Information Management Planning	1
Clinical Data and Information	1
Aggregate Data and Information	1
Knowledge-based Information	1
Comparative Data and Information	1

Surveillance, Prevention, and Control of Infection

Surveillance, Prevention, and Control of Infection	1

Behavioral Health Promotion

Behavioral Health Promotion	1

Summary Grid Score = 96

8.0 Financial Plan

The focus of this project is to address behavioral health needs in the Yukon-Kuskokwim Delta region. This includes the well-recognized services of intervention and treatment and the less-recognized service of prevention.

The initial stages of the project have been devoted to addressing treatment needs and providing intervention services closer to home. Devoting resources to community based services have already resulted in earlier intervention requiring less extensive treatment over time. Early intervention will also have the result of identifying individuals who would previously have not sought out services. To the extent possible, resources devoted to treatment are being shifted from central locations such as Bethel and Anchorage to villages.

The first three to five years of the project will be devoted to developing and placing services in villages and subregional locations. During this time, demand for treatment services will increase as individuals who can benefit from local interventions seek out or are referred to these services. From the fifth to sixth year of the project, it can be anticipated that the benefits of early intervention will begin to impact further increases in demand for services. At that time, resources currently devoted to treatment will begin to be available for prevention activities.

The project is identifying and developing natural support systems in the communities: these systems will provide significant additional resources for prevention and treatment.

8.1.0 Overall Budget

Project Costs for Year One:

Service Category	Cost
Emergency Services	2,061,809
Support Services	920,764
Village Services	3,365,412
Specialty Services	2,128,515
Administration	531,869
Total Project Cost	9,008,369

Service Category		Cost
Emergency Services		
	Emergency Services	607,653
	Designated Evaluation Bed	162,785
	Crisis Respite Center	462,253
	Residential Diagnostic Treatment Ctr.	770,117
	Alaska Youth Initiative	59,001
Support Services		
	Program Support Services	352,350
	Clinical Support Services: Rural Human Services	322,778
	Quality Assurance Program *	
	Community Holistic Development	142,112
	Elder Activities	103,524
Village Services		
	Associate Director Village Services *	
	Village Services Clinical Supervisor **	
	Field Based Supervisors	350,507
	Village Services Clinicians **	194,374
	Village Wellness Counselors	1,964,730
	Children's Mental Health Project	658,352
	Family Spirit Project	197,448
Specialty Services		
	Associate Director Specialty Services *	
	Clinical Specialty Services: Integrated Outpatient Clinic	715,380

	Phillips Ayagnirvik	904,280
	BASAP	66,703
	Rehabilitative Services:	
	Delta Supported Living	185,738
	Omega Transitional Living	121,644
	Therapeutic Care Homes	29,770
	Bethel Community Services Project	104,999
Administration		531,869
Total Project Cost		9,008,369

* Expenditures included in Administration
** These elements have been combined in actual practice

8.2.0 Sources of Funds

The project is funded by the state of Alaska through various grant programs, federal grant programs, Medicaid and other third party reimbursement, Yukon-Kuskokwim Health Corporation funds, and other sources such as contracts and community contributions.

Funds expended from October 1, 1999 to September 30, 2000 include:

Funding Category	Amount Provided
State Grants	2,964,814
Federal Grants	1,320,327
Bethel Community Svcs.	38,000
YKHC Funds	4,594,228
Community Contributions	91,000
Total	9,008,369

8.2.1 State Grants

The state of Alaska currently grants funds to the Yukon-Kuskokwim Health Corporation for the provision of the following services:

Division of Alcoholism & Drug Abuse:
- Village Counselors
- Residential Substance Abuse Treatment
- Outpatient Substance Abuse Treatment
- Youth Substance Abuse
- Bethel Alcohol Safety Action Program
- Family Spirit Project
- Rural Human Services

Division of Mental Health & Developmental Disabilities
- Mental Health Emergency Services
- Crisis Respite
- Residential Diagnostic Treatment Services
- Alaska Youth Initiative
- General Mental Health
- Community Support Services
- Camai Case Management

Department of Corrections
- Residential Substance Abuse Treatment

Alaska Housing Finance Authority
- Transitional Living
- HOME Program

Specific terms and conditions are attached to each grant. The project recognizes the requirements of granting agencies to provide a specific set of services. Within those requirements, the project has requested that certain terms and conditions of grant award be modified to more appropriately support a seamless service delivery model.

8.2.2 Federal Grants

Federal grant funds include:

Substance Abuse & Mental Health Services Administration:
- Children's Mental Health Initiative (village clinicians, family advocates, village based supports)

Center for Substance Abuse Treatment:
- Village Sobriety Project (field based supervisor, village clinician, wellness counselors
- Statewide Inhalant Treatment Project

8.2.3 Medicaid

Medicaid regulations provide for reimbursement of substance abuse counseling services, mental health clinical services, and mental health rehabilitation services.

Present regulations clearly separate mental health and substance abuse services: Mental health clinical services may be furnished by either a masters level (or higher) clinician or by a paraprofessional under the supervision (in person or by telephone) of a clinician. Either paraprofessional or clinical staff may furnish rehabilitation services.

Clinical services furnished to any individual eligible for Medicaid may be reimbursed; rehabilitation services are reimbursable only when medically necessary as outlined in state regulations.

Medicaid regulations governing mental health reimbursement have recently been revised: the new regulations provide additional flexibility for reimbursing services to severely emotionally disturbed children and obtaining service limit extensions for adults. The regulations do not support reimbursement of all services as they are provided in this proposal. Of particular concern are crisis intervention services and services presently in place and planned to support individuals in the community as their condition improves. Treatment planning under the new regulations began on February 15, 2001: therefore, the financial impact of the regulations is not yet known.

The project provides early intervention, especially to children and their families and to children who are in state custody. The new Medicaid regulations have revised reimbursable emergency services for individuals experiencing behavioral health crises and are projected to reduce reimbursement for children with high needs by 10% to 30%. Service limit extensions may alleviate some of this reduction: however, the process for extending emergency service limits is not clear. The Yukon-Kuskokwim Health Corporation provides service to everyone regardless of financial resources or ability to pay. Therefore, service providers working with clients experiencing emergencies provide needed services at a significant financial risk.

The project has participated in the access project conducted by the Division of Medical Assistance, which includes a review of available providers and reimbursement for services. We support this effort and encourage changes that will address service needs in a remote location. We also continue to request that the agreement governing this project allow for Medicaid reimbursement of the cost of services furnished to Medicaid recipients in the Yukon-Kuskokwim Delta region.

8.2.4 Other Sources

This category includes reimbursement from third party sources other than Medicaid, contractual arrangements, and in-kind contributions from the communities of the Yukon-Kuskokwim Delta area. Villages often contribute office space for counselors, utilities, the use of office equipment, and similar services. New village based staff seeking out office space have been encouraged by the response from their communities.

8.2.5 Yukon Kuskokwim Health Corporation Funds

The Yukon Kuskokwim Health Corporation receives funds under a PL93-638 compact. Funds from this source are designated to support behavioral health services furnished to Indian Health Service beneficiaries and to provide the support services required to maintain a behavioral health services program including human resources, corporate training and development, patient financial services, general accounting, information systems, medical records, and general administration.

8.3 Future Funding Issues

Medicaid eligibility and enrollment are a key factor in maintaining the financial stability of this project. Two issues have potential significant impact:

Welfare reform and eligibility time limits: a significant number of adults enrolled in Medicaid are at risk of losing eligibility, due to either actual time limits related to welfare reform or confusion about the relationship between eligibility for cash assistance and eligibility for Medicaid.

Insurance parity for mental health services would enhance other third party revenue available to the project.

The project continues to pursue cooperative agreements with other agencies to increase the effective use of existing resources and avoid duplication of effort and spending.

The Yukon-Kuskokwim Health Corporation, in cooperation with local governments and agencies, is applying for Denali Commission funds, other state funds, and federal dollars designated for Alaska to help improve service facilities throughout the region, train local providers, and provide job training and opportunities for area residents.

8.3.2 Sustainability

A reduction of Medicaid enrolled individuals would threaten the project's financial viability.

Building a stable, sustainable compendium of supports and services is the primary goal of the project. Medicaid enrollment and maintenance of enrollment is a key factor in maintaining long-term financial viability. Developing a reimbursement methodology that would recognize and reimburse for preventive services would contribute to the financial stability of the program and continued availability of village based staff and activities.

Development of non-financial resources is a key factor in sustaining this project. The project supports the development of community based resources for prevention and continuing care. These can vary from recreational opportunities to Alcoholics Anonymous organizations. Their existence outside of the project provides resources to Medicaid recipients without the expenditure of project or Medicaid funds. During the past year, we have seen several community based initiatives to build a local support structure, and the project has been pleased to encourage those efforts.

Establishment of realistic job training programs and local job opportunities is an important factor in creating an environment of sustainable support for the activities of the program and in providing financial resources for the program. Improvement of the economic base in extremely rural communities will reduce environmental stresses and provide additional income and activities for area residents. This will eventually have the dual effect of a healthier community and reduced need for certain behavioral health services and increased financial resources available to the area and therefore to the project.

8.3.3 Medicaid Eligibility

Approximately 40% of the residents of the Yukon-Kuskokwim Delta area are eligible for Medicaid. It is estimated that at least 80% of the children are eligible for Medicaid enrollment since the establishment of the Denali KidKare program. Actual Medicaid enrollment and maintaining enrollment are major barriers for residents of the Yukon-Kuskokwim Delta.

Forty percent of adult outpatient mental health visits involve Medicaid enrolled adults. Ten percent of adult outpatient substance abuse outpatient visit and twenty one percent of admissions to residential substance abuse treatment involve Medicaid enrolled adults.

Sixty nine percent of children's mental health visits at the Yukon-Kuskokwim Health Corporation and seventy seven percent of admissions to Residential Diagnostic and Treatment service involve Medicaid enrolled children. A year

ago, fifty six percent of children's visits and sixty seven percent of Residential Diagnostic and Treatment admissions involved Medicaid enrolled children.

Maintaining Medicaid enrollment, once established, is a major challenge for the residents of the Yukon-Kuskokwim Delta. Enrollment, renewal of enrollment, and eligibility correspondence either by mail or through a fee agent do not always result in continuous enrollment for entitled individuals. Various avenues of alleviating the requirement to re-enroll are being explored, and we encourage those efforts. The Yukon-Kuskokwim Health Corporation is enhancing its ability to monitor Medicaid and other third party coverage and continues to strengthen the Medicaid enrollment assistance program. At this time, newly established eligible individuals approximately equal the number of individuals who are dropping Medicaid eligibility. However, it is clear that recipients of behavioral health services are enrolling and remaining enrolled in Medicaid at a greater rate than previously, and this is extremely encouraging.

8.3.4 Medicaid Services

Medicaid reimbursement is available for services as outlined in Section 8.2.3. The present Medicaid fee schedule provides reimbursement for services provided directly to Medicaid eligible individuals. It also provides reimbursement for travel by patients to the nearest location where a needed service is available. Changes to the fee schedule to allow for the cost of providing services in Bush Alaska and to reimburse for travel by a provider to a group of patients would benefit this project.

It is recommended that the project continue to investigate a methodology of:

Identifying needed and appropriate services provided to Medicaid recipients

Reimbursing reasonable cost for such services provided to Medicaid recipients.

8.3.5 Availability of Funds from State and Federal Governments

State funds currently provided to the Yukon-Kuskokwim Health Corporation are made available each year by legislative appropriation, and approximately 40% of the funds are subject to a competitive grant process.

Federal grant funds are awarded annually for a period of three to five years, subject to congressional appropriation of the funds. Four federal grants are listed in this proposal: the children's mental health services project is in the second year of a five year period; the inhalant treatment program is in the first year of a three year funding period, the village based substance abuse program is in its third and

HB

4

(File 8)

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Staff

The Clitheroe Center staff is a multi-disciplinary team consisting of a combination of degreed professionals, state certified substance abuse counselors, and staff with many years of experience in recovery.

Directory

Residential and Detox
Point Woronzof
Anchorage
243-1181
Fax 248-7483

Administration and Outpatient Services
1709 S. Bragaw Suite B
Anchorage, AK 99508
276-2898
Fax 279-8526

For confidential assessment call 276-2898.

E-mail address
sacc@alaska.net

The Clitheroe Center
1709 S. Bragaw Suite B
Anchorage, Alaska 99508

The Clitheroe Center

ANCHORAGE
ALASKA

Comprehensive Substance Abuse and Dual Diagnosis Treatment

THE SALVATION ARMY

The Clitheroe Center

The Salvation Army Clitheroe Center is a non-profit, comprehensive treatment program for those suffering from substance abuse and its associated problems. We offer a wide variety of treatment services to individuals and their families.

The Clitheroe Center provides treatment programs that offer alternatives to substance abuse and dependency. Our mission is to provide affordable, appropriate, accessible professional treatment of adult individuals regardless of race, color, religion, national origin, sex, handicaps or age, who suffer from addiction to alcohol or other drugs. We view the treatment process as one of helping individuals develop an awareness of their strengths and weaknesses and providing them with the skills necessary to become productive, healthy members of our community.

Since treatment is only the first step to meaningful and responsible living, we work in close cooperation with the larger treatment community and community support groups such as Alcoholics Anonymous, Al-anon, Alateen, and other 12-Step groups.

The Clitheroe Center provides a continuum of care which includes detoxification, residential and outpatient treatment, dual diagnosis, aftercare and support services.

The Clitheroe Center's fees for services make treatment affordable for individuals. We believe that clients who invest in their treatments increase their chance of a successful outcome.

The Clitheroe Center is certified by and receives funding through the State of Alaska / DHSS / Division of Alcoholism and Drug Abuse. The Clitheroe Center is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF).

Admissions

Individuals seeking treatment services are given a thorough evaluation and assessment to determine the extent of their treatment needs. All assessments and evaluations are confidential. The Admissions Unit provides:

- Assessment interviews for all admissions to the Clitheroe Center
- Telephone evaluations for out of town referrals
- Evaluation for treatment and referrals to other community agencies

Detox / EDU

Physical withdrawal from alcohol and other drugs can be life-threatening; it often requires medical intervention to monitor and assist with the detoxification process. The Detoxification Unit provides medical and nursing services for men and women experiencing withdrawal, or who are likely to experience withdrawal, from alcohol and other drug dependence. Detox and mental health services are also provided to individuals in danger of self harm.

Intermediate Care Unit

The Intermediate Care Unit is a residential treatment program for those who need inpatient care. The program is designed for people who want to stop using but are unable to do so in their present environment.

Long-Term Care Unit

The Long-Term Care Unit provides longer term residential treatment for the chronically addicted and more severely impaired substance abuser. The program is designed for the individual for whom short-term residential treatment has proven to be ineffective.

Family Services

SACC offers a variety of treatment options to family members of clients. This comprehensive program is available to family members of all ages.

Dual Diagnosis

The Dual Diagnosis Program offers residential and outpatient programs for individuals suffering from serious mental illness and substance abuse. Treatment focuses on a broad range of problems common to this population.

Reflections

Reflections is a specialized residential treatment program for women who are experiencing problems with alcohol or other drugs. Reflections offers the necessary "time-out" for the substance abusing woman to have a new beginning. Preschool children may accompany their mothers into treatment.

Outpatient

The Outpatient Counseling Program is a program designed for people with substance abuse problems that can effectively be resolved without residential treatment. The intensity and design of the outpatient program is individualized for each client.

Aftercare / Continuing Care

All Clitheroe Center clients completing primary treatment are referred into the Aftercare Program. This program supports clients in their ongoing recovery.

YUKON-KUSKOKWIM HEALTH CORPORATION
"Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion"

Behavioral Health

Sandra Mironov, RN, LPC
Administrator
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Bethel, Alaska 99559

Yukon Kuskokwim Health Corporation

Behavioral Health Services

Business Plan

Annual Report

February 2001