

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10258 HOUSE JUDICIARY

103

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
District of Columbia	§40-716(c-1)	Vehicle may be impounded for 24 hours for any DUI offense; if licensed registered owner of vehicle who is with offender at the time of offense, may take immediate possession of vehicle
Guam	Title 16 §9104(e)	Vehicle used in offense subject to forfeiture for third or subsequent offense, or driver's license suspended one to five years in lieu of vehicle forfeiture
Puerto Rico	None	
Virgin Islands	20 §544 (c)	Vehicle may be impounded at court's discretion if defendant fails to appear on a DUI charge

Source: *Digest of State Alcohol-Highway Safety Related Legislation*, 18th edition, 2000.

In the Virgin Islands, the department of education provides programs at all grade levels on the dangers of drinking and driving. New Mexico funds school-based alcohol abuse and drunk driving awareness programs, and additionally, provides enhanced server training requirements and stiffer penalties for selling alcohol to minors.

California has adopted the Youthful Drunk Driver Visitation Program, which requires underage drunk drivers to participate in supervised visits to hospital emergency rooms, trauma centers, or county morgue facilities. The program has an excellent history of discouraging repeat offenders and has been copied in Florida, Illinois and Iowa.

Both Connecticut and Vermont make it a crime for minors to misrepresent their age to buy alcohol and require violators to participate in alcohol treatment programs, in addition to significant fines and possible jail sentences. New Jersey not only sanctions minors attempting to purchase alcohol but also adults who buy liquor on their behalf. Both are subject to a fine of \$500 and a six-month license suspension. Minors convicted of drunk driving face additional penalties and must participate in alcohol treatment programs.

New Hampshire requires that first-time applicants for a driver's license be fully informed about the state's drunk driving laws, including standards, penalties and fines, administrative license revocation, implied consent requirements, and penalties for unlawful possession or transportation of alcoholic beverages by a minor.

Georgia provides for a lengthy license suspension and requires underage drunk drivers to complete a state-approved alcohol use reduction program. Tennessee has established a separate offense of Underage Driving While Drunk, punishable by a one-year license suspension and \$250 fine, while Texas punishes underage drunk drivers with fines up to \$2,000, 180 days in jail, or both.

Vehicle Forfeitures

Although asset forfeiture laws have long been used by states and cities to target drug dealing and a variety of other crimes, they are a relatively new mechanism for traffic safety. Thirty-five states, plus the District of Columbia, Guam and the Virgin Islands, have already enacted some sort of vehicle impoundment or forfeiture law for drunk drivers. Most of the laws provide for temporary impoundment of a convicted drunk driver's vehicle, license plates or vehicle registration; some states permit hardship exceptions where a spouse or family would be unduly harmed by the loss of their means of transportation. Permanent forfeiture of a vehicle is generally reserved for those convicted of multiple offenses. (See Appendix K for current state laws regarding vehicle impoundment and forfeiture.)

Concerns about the constitutionality of asset forfeiture laws in general have been set aside by state and federal courts, which have ruled that seizure of an "instrumentality of crime" is constitutional. In the case of drunk drivers, the instrumentality of the crime is the vehicle itself. As long as drunk driving cases receive the constitutional protections of due process, forfeiture of the vehicle is an acceptable sanction.

Permanent forfeiture of a vehicle generally is reserved for those convicted of multiple offenses.

ANCHORAGE

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TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

9.28.020 Driving while intoxicated--Prohibited; sentencing.



A. It is unlawful for any person to commit the crime of *driving while intoxicated*.



B. A person commits the crime of *driving while intoxicated* if he operates, drives or is in actual physical control of a motor vehicle or operates an aircraft or a watercraft:

1. While under the influence of intoxicating liquor or depressant, hallucinogenic, stimulant or narcotic drugs as defined in AS 11.71.140--11.71.190;
2. When, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 gram or more of alcohol per 210 liters of the person's breath;
3. While the person is under the combined influence of intoxicating liquor and a drug, or intoxicating liquor and another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely;
4. While the person is under the influence of a drug, or another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely; or
5. In the case of an individual operating a commercial motor vehicle, when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.04 percent or more by weight of alcohol in the person's blood, or 40 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's breath.



C. Upon conviction for *driving while intoxicated* under this section:

1. The court shall impose a minimum sentence of imprisonment of:
 - a. Not less than 72 consecutive hours and a fine of not less than \$250.00 if the person has not been previously convicted.
 - b. Not less than 20 days and a fine of not less than \$500.00 if the person has been previously convicted once.
 - c. Not less than 60 days and a fine of not less than \$1,000.00 if the person has been previously convicted twice.
 - d. Not less than 120 days and a fine of not less than \$2,000.00 if the person has been previously convicted three times.
 - e. Not less than 240 days and a fine of not less than \$3,000.00 if the person has been previously convicted four times.



TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

- f. Not less than 360 days and a fine of not less than \$4,000.00 if the person has been previously convicted more than four times.
2. Except in mitigated circumstances, the court shall impose more than the mandatory minimum sentence. Mitigated circumstances do not exist if any of the following circumstances are present:
 - a. The defendant's driving conduct caused personal injury or property damage to another.
 - b. The defendant failed to stop for a red light or stop sign.
 - c. A container of alcoholic beverage was open in the passenger compartment of the defendant's vehicle.
 - d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or on probation for another DWI or refusal charge or conviction.
 - e. The defendant has been previously convicted of reckless driving or leaving the scene of an accident.
 - f. The defendant had a breath test result of 0.15 gram or more of alcohol per 210 liters of the defendant's breath as determined by a chemical test within four hours after the alleged offense was committed.
3. The court may not:
 - a. Suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under subsection 1 of this subsection.
 - b. Suspend imposition of sentence.
4. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under subsection 1 of this section, finds appropriate.
5. If the person has any interest in the vehicle used in the commission of the offense, the court shall order that:
 - a. The vehicle be impounded for 30 days if the person has not been previously convicted; and
 - b. The person's interest in the vehicle be forfeited to the municipality if the person has been previously convicted.



TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

At sentencing, the court shall order that any vehicle return bond which has been posted to secure the release of the vehicle be forfeited to the municipality if the vehicle subject to the vehicle return bond is not returned to the custody of the municipality within five days after the sentencing. At sentencing, the court shall order that any vehicle return bond posted to secure the release of the vehicle be exonerated when the vehicle has been returned to the custody of the municipality. At sentencing, the court may also order that any proceeds of any sale, transfer, or encumbrance of the vehicle be forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while the vehicle has been subject to a vehicle return bond. A vehicle ordered impounded pursuant to this subsection shall not be released until after the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the impound fees and the storage fees. Impound fees shall include the actual cost of impound plus an administrative fee of \$220.00 to offset the municipality's processing costs. Any order of impoundment or forfeiture entered under this subsection is subject to the rights of lienholders, owners, lessors, lessees, and co-owners who are not the person convicted of *driving while intoxicated* as those rights are adjudicated in civil proceedings under section 9.28.026. If the municipality has brought a civil action under section 9.28.026 seeking impoundment or forfeiture as against all those with an interest in the vehicle except the person charged with a violation of section 9.28.020, that civil action shall provide the sole forum in which lienholders, owners, lessors, lessees, and co-owners who claim an interest in the vehicle but are not the person charged with a violation of section 9.28.020 can seek relief.

D. Except as provided by federal law or regulation, every provider of treatment programs to which persons are ordered under subsection C of this section shall supply the state court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under subsection C of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under subsection C of this section.

E. For purposes of this chapter, the following terms shall have the meaning given in this subsection:

1. *Interest in the vehicle* means a right, claim, or title to the vehicle or a legal share in the vehicle that the oral statement of a police officer, complaint, indictment, or information alleges was used in the commission of an offense.
2. *Operate a watercraft* means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inside the territorial limits of the municipality.
3. *Physical control* means: to be behind the steering apparatus of a motor vehicle, whether asleep or awake, while the engine is running or any electrical or mechanical devices are turned on, or to be in a position to exercise exclusive control over the operation of the vehicle while possessing the apparent means to start the vehicle and the apparent ability to do so.
4. *Previously convicted* means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under this section or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or section 9.28.022 or another law or ordinance with substantially similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AMC 9.28.020.B.2.

F. For purposes of this section, convictions for both *driving while intoxicated* and for refusal to submit to a chemical test of breath under section 9.28.021, if arising out of a single transaction and a single arrest, are considered one previous conviction.

G. The court shall order a person convicted under this section to satisfy the screening, evaluation, referral and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment.

H. A program of inpatient treatment may be required by the authorized agency under subsection G of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

I. If a person fails to satisfy the requirements of an authorized agency under subsection H of this section, the court:

1. May impose any portion of a suspended sentence.
2. May punish the failure as contempt of court under AS 9.50.010 or as a violation of a condition of probation.
3. Shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a license until the requirements are satisfied.

J. The magistrate or judge who sets the conditions of release for a person arrested for *driving while intoxicated* shall at the same time set a vehicle return bond for the vehicle alleged in an oral statement of a police officer to have been used in the commission of the offense if the records of the Alaska department of public safety, division of motor vehicles or the records of an agency with similar responsibilities in another state show that the person arrested for the offense has any interest in the vehicle. The purpose of setting a vehicle return bond is to secure the presence of the vehicle pending trial and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the defendant's interest in the vehicle is sold, transferred, or encumbered after the vehicle has been released pending trial. A person who secures the release of a vehicle pursuant to a vehicle return bond must return the vehicle to the custody of the municipality upon order of the court. If the vehicle's release has been obtained through the posting of a vehicle return bond and the vehicle is not returned pursuant to the court's order after a judgment of conviction, the municipality may, in addition to obtaining the forfeited bond funds, seize the vehicle to implement the impoundment or forfeiture ordered by the court. If the person has not been previously convicted, the magistrate or judge setting the vehicle return bond shall order that the requirement of the vehicle return bond shall automatically expire 30 days after the vehicle has been seized if the vehicle has not been released pursuant to a vehicle return bond. The vehicle return bond set under the authority of this subsection may only be posted by a person alleged to have used the vehicle in the commission of the offense of *driving while intoxicated* or by a person who agrees to return the vehicle upon order of the court upon penalty of forfeiture of the bond. The vehicle return bond set under the authority of this subsection may be posted at the municipality. A vehicle return bond may be posted in cash only. A vehicle return bond shall be set at a minimum of:

TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

1. Two hundred fifty dollars if the person has not been previously convicted.
2. Five hundred dollars if the person has been previously convicted and the vehicle is 20 years old or older.
3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.

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3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.

M. Vehicles ordered impounded under section 9.28.020.C.5 which are not claimed at the end of the court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond can be recovered only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.



N. A motor vehicle that is the subject of a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle, subject only to the orders and decrees of any court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, the chief of police or his or her authorized designee may:



1. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or
2. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition in accordance with law.

O. Before disposing of any vehicle forfeited under this section, the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Property forfeited under this section shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:



1. Sell the property at an auction conducted by an auctioneer not employed by the impound contractor and use the proceeds for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and municipal attorney fees, provided if such sale is arranged for by the impound contractor the municipality shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction of those vehicles regardless of whether the costs of impound and storage exceed the value of the vehicles sold;



TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

2. Take custody of the property and use it in the enforcement of the municipal and state criminal codes; or
3. Destroy the property.

(AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-56(S); AO No. 91-190; AO No. 94-68(S), § 11, 8-11-94; AO No. 95-84(S-1), §§ 1--9, 4-27-95; AO No. 95-163(S), §§ 1--5, 8-8-95; AO No. 97-72, § 1, 6-10-97; AO No. 97-87, § 1, 6-3-97)

Editor's note--AO No. 97-87 occasioned by 1996 Proposition 3 Initiative enacting Chapter XXI.

Cross reference(s)--Penal code, tit. 8; drinking alcoholic beverages while driving, § 9.36.200; alcoholic beverages, ch. 10.50.

9.28.021 Driving while intoxicated--Implied consent to chemical test.

A person who operates, drives or is in actual physical control of a motor vehicle within the municipality or who operates an aircraft as defined by section 9.28.020.E.1 or who operates a watercraft as defined by section 9.28.020.E.2 shall be considered to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft in the municipality while intoxicated.

(AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52)

State law reference(s)--Implied consent, AS 28.35.031.

9.28.022 Driving while intoxicated--Refusal to submit to chemical tests.

A. If a person under arrest refused the request of a law enforcement officer to submit to a chemical test under section 9.28.021, after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by section 9.28.025.

B. The refusal of a person to submit to a chemical test of his or her breath under subsection A of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating, driving or in actual physical control of a motor vehicle or operating an aircraft or watercraft while intoxicated.

C. Refusal to submit to the chemical test of breath authorized by section 9.28.021 is a misdemeanor.

D. Upon conviction for refusal to submit to chemical tests under subsection C of this section:

1. The court shall impose a minimum sentence of imprisonment of:



FAIRBANKS

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

*Cross reference(s)--Disposal by the department of public safety of abandoned, stolen, forfeited, seized, and found property, § 62-31 et seq.

State law reference(s)--Forfeiture of vehicle, AS 28.35.036.

Sec. 78-961. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assessed or appraised value of a motor vehicle shall be based upon the Automobile Dealers Association Book (Blue Book) for the same or similar make and model and accessorized motor vehicle. Should there be no Blue Book value, the value shall be \$500.00.

Driver means a person who drives or is in actual physical control of a vehicle.

Motor vehicle means a vehicle which is self propelled except a vehicle moved by human or animal power.

Previously convicted means having been convicted in this or another jurisdiction within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or a refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

Registered owner refers to the owner of the vehicle at the time of the offense as shown in the vehicle ownership records of the state division of motor vehicles or another agency with similar responsibilities in another state, but may include subsequent good-faith purchases.

Regulated lienholder means an entity whose lien on the vehicle is a result of lending activities that are subject to regulation by any federal or state agency, commission or department.

Vehicle means a device in, upon or by which a person or property may be transported or driven upon immediately over a highway, road or other public right-of-way.

(Code 1960, § 7.22.117)

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PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*




ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-962. Purpose; public nuisance.

A motor vehicle that is operated, driven or in actual physical control of an individual arrested for or charged with violation of AS 28.35.030, pertaining to *driving while intoxicated*, or a violation of AS 28.35.032, pertaining to refusal to submit to chemical tests, may be impounded and may be forfeited to the city in accordance with this article. The purpose of this article is to protect the public by removing public nuisances and deterring *driving while intoxicated*. A vehicle operated in violation of the aforesaid statutes is declared to be a public nuisance for which the registered owners shall be legally responsible subject only to defenses set forth by law.



(Code 1960, § 7.22.101)

Sec. 78-963. Presumptions; vehicle seizure.

-  (a) It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with a violation of either AS 28.35.030 or AS 28.35.032 has been so operated by the registered owner or has been operated by another person with the knowledge and consent of the registered owner.
-  (b) A vehicle used in the alleged violation of AS 28.35.030 or AS 28.35.032 shall be impounded for 30 days if the person driving, operating or in the actual physical control of the vehicle has not been previously convicted, and shall be forfeited to the city if the person has been previously convicted.
-  (c) Impoundment may occur through a seizure of the vehicle incident to an arrest at the discretion of the arresting officer or a court order.



(Code 1960, § 7.22.102)

Sec. 78-964. Jurisdiction; hearings; costs.

-  (a) Civil impoundment or forfeiture cases may be heard and decided by either the district court, an administrative hearing officer, or the parking authority, which throughout this article may be referred to as "the court" or "a court." Hearings before an administrative hearing officer shall take place no less than seven days and no more than 30 days after the registered owner or lienholder requests a hearing. At the request of the city or a claimant, a civil proceeding under this section shall be postponed until the conclusion of any pending criminal charges arising out of the incident giving rise to the proceeding under AS 28.35.030 and AS 28.35.032.
-  (b) The court shall award the prevailing party in an impoundment or forfeiture case its reasonable attorney's fees and costs. Costs shall include but are not limited to filing costs, advertising costs, police officer time required for testimony, prosecution costs, and other costs incurred in processing the case.

(Code 1960, § 7.22.103)

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appear.

-  (a) A lienholder and any party having an interest in the vehicle as shown by the vehicle ownership records by the division of motor vehicles or any agency in any state where the vehicle is registered shall be served with notice of the civil action by certified mail sent to the address of record as shown in the ownership records. In a forfeiture action, the city may serve a party of record personally or by publication if mail service is unsuccessful.
-  (b) Service by publication in a forfeiture proceeding shall describe the vehicle, the date and place of impoundment and a contact person, and shall be published once per week for two consecutive weeks in a newspaper of general circulation.



(c) Any party who fails to appear within 30 days of service of notice of an impoundment or forfeiture waives the right to object to impoundment or forfeiture. Any party who requests a hearing in a civil action shall be deemed served. For actions filed in district court, district court civil rules shall apply. Requests for release of a vehicle made by a person or entity not charged with a violation of AS 28.35.030 and AS 28.35.032 must be brought in the forum of the civil action.



PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appe:

(Code 1960, § 7.22.104)

Sec. 78-966. Avoidance of impoundment or forfeiture by owners and lienholders; defenses.



(a) An owner or lienholder of record may avoid impoundment or forfeiture of that person's interest if the claimant can establish by a preponderance of the evidence that:

(1) The claimant had an interest in the motor vehicle at the time of the alleged violation or which was acquired in good faith after the violation and not to avoid impoundment or forfeiture;

(2) A person other than the claimant was in possession of the vehicle and was responsible for the act which resulted in impoundment or forfeiture; and

(3) Before permitting the operator to gain custody or control of the vehicle, the claimant did not know or have reasonable cause to believe that vehicle would be operated in violation of AS 28.35.030 or AS 28.35.032.



(b) A regulated lienholder may meet the requirements of this section by filing with the court a copy of the vehicle's certificate of title or other security instrument reflecting the lien, with an affidavit stating the amount of the lien and that the lienholder is a regulated lienholder and that the lienholder was not in possession of the vehicle at the time of the act which resulted in the seizure of the vehicle.



(c) A regulated lienholder shall have no duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so shall not be usable as evidence against the regulated lienholder in any forfeiture proceeding or other civil action.



(d) A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:

(1) The individual who allegedly used the vehicle in violation of AS 29.35.030 or AS 29.35.032 is not the person whose dealings with the lienholder gave rise to the lien; or

(2) The vehicle which the individual was driving, operating or was in actual physical control of at the time of the violation was not the vehicle involved in a prior conviction.



(e) An acquittal in a criminal proceeding under AS 28.35.030 or AS 28.35.032 shall constitute a defense against impoundment or forfeiture of a vehicle if the civil proceeding is based on the same conduct that forms the basis for the criminal charge.

(Code 1960, § 7.22.105)

Sec. 78-967. Presumptions; knowledge of violation.




(a) When a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked or canceled license, or without a valid driver's license, or in violation of a limited license, it shall be presumed that the claimant had reasonable cause to believe that the vehicle would be used in violation of AS 28.35.030 or AS 28.35.032. This subsection shall not apply to regulated lienholders.

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-967. Presumptions; knowledge of violation.

 (b) When the claimant and driver are not the same person and have a familial relationship, such as husband/wife, father/daughter, mother/stepson, etc., it shall be presumed that the claimant is responsible and that the vehicle was operated by the driver with the knowledge and consent of the claimant.

(Code 1960, § 7.22.106)

Sec. 78-968. Hearing notification.

Upon notification from the court of the time and place for a hearing in a civil action, the city shall provide to every person, unless notified by the court, who has an ascertainable ownership or security interest, written notice that includes:


- _____ (1) A description of the motor vehicle;
- _____ (2) The time and place of the forfeiture or impound hearing;
- _____ (3) The legal authority under which the vehicle may be impounded or forfeited; and
- _____ (4) Notice of the right to intervene to protect the interest in the motor vehicle.

(Code 1960, § 7.22.107)

Sec. 78-969. Seizure; evidence; burden of proof.

 (a) A seizure is legally unjustified only if there was:

- _____ (1) No reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the operation, driving or actual physical control of the vehicle; or
- _____ (2) No probable cause for the arrest of an individual for *driving while intoxicated* based on the individual's operation, driving or actual physical control of the vehicle.

 (b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative; accompanying documents; computer printouts from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status, and the record of criminal convictions of the driver; and/or tape recordings is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the city in a statement made under oath.

 (c) The burden of proof for an action under this article is preponderance of the evidence.

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-969. Seizure; evidence; burden of proof.

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(c) The burden of proof for an action under this article is preponderance of the evidence.

(Code 1960, § 7.22.108)

Sec. 78-970. Resolution agreement between city and owner/lienholder.

(a) The city may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:

(1) Acceptance by the owner or lienholder of responsibility for meeting the requirements of this section;

(2) Agreement that the owner or lienholder will take reasonable steps to prevent the person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 from operating the vehicle until properly licensed; and

(3) Agreement by the owner or lienholder that failure to fulfill the obligations under the agreement may result in forfeiture of the vehicle at the option of the city unless the lienholder is regulated and is required by law or the terms of the security agreement to relinquish possession of the vehicle upon payment of the lien or cure of any default.

(Code 1960, § 7.22.109)

Sec. 78-971. Release of motor vehicle.

A person seeking to redeem a vehicle must obtain an order authorizing release of the vehicle unless the release is made under an agreement with the city. A release shall not be granted unless the person can:

(1) Provide proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and

(2) Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees and any court costs imposed. The impound fee shall be the actual cost of impound plus an administrative charge to offset the city's processing costs. If the city agrees or the court finds that seizure of a vehicle was legally unjustified, the vehicle shall be released at no cost if the person seeking to reclaim the vehicle does so within five days after the court's finding. A vehicle not claimed within five days after the court's decision is subject to the provisions of AS 28.10.502, relating to towing and storage liens.

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-971. Release of motor vehicle.

(Code 1960, § 7.22.110)

Sec. 78-972. Bail release of motor vehicle; vehicle bond; amount of bond; costs.



(a) A person not charged with a violation of AS 28.35.030 or AS 28.35.032 may petition the court for a bail release of a motor vehicle before a civil action is filed.



(b) A vehicle return bond shall be set for each vehicle alleged in the complaint to have been used in an alleged violation of AS 28.35.030 or AS 28.35.032. The bond may be posted in cash only. The purpose of this bond is to secure the presence of the vehicle and to provide security to be forfeited if the vehicle is sold, transferred or encumbered after the vehicle has been released pending hearing. If a vehicle is not returned on a return bond, the city may forfeit the bond funds and seize the vehicle to implement the impoundment or forfeiture ordered by the court. The court may not modify the bond requirement or release a posted bond for a vehicle which has been impounded for a period less than the vehicle would have been impounded for if the person was convicted.



(c) If a person charged with a violation of AS 28.35.030 or AS 28.35.032 has no previous convictions for those statutes, the minimum vehicle return bond shall be \$400.00. Where the person charged has been previously convicted of either offense, the minimum vehicle bond shall be:

- _____ 20 years or older . . . \$ 400.00
- _____ 15--19 years . . . 1,000.00
- _____ 10--14 years . . . 1,500.00
- _____ 5--10 years . . . 2,000.00
- _____ 0--4 years . . . 2,500.00

A vehicle return bond may be set above the minimum if the vehicle appears to have been unusually high value for its age but not to exceed twice the minimum amount.



(d) A vehicle under this section may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of \$200.00 to offset the city's processing costs.



(e) The court may order all or any part of the vehicle return bond to be forfeited to the city and may also order that the proceeds of any sale, transfer or encumbrance be forfeited if the vehicle has been sold, transferred or encumbered while subject to a vehicle return bond, if the vehicle is not returned in accordance with an order entered in the case requiring impoundment or forfeiture.

(Code 1960, § 7.22.111)

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle disposal; personal property in vehicles.



PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle.



(a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 may be ordered impounded either upon conviction of the person for the offense or upon the decision of the court in a separate civil proceeding. To obtain an order for the impoundment in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the actual physical control of a person who was acting in violation of AS 28.35.030 or AS 28.35.032.



(b) If the motor vehicle is seized incident to an arrest or otherwise prior to a conviction or court-ordered impoundment, the vehicle may not be held more than two days without a court order obtained to continue its detention. For purpose of computing the two-day period, Saturdays, Sundays and legal holidays are not to be included.



(c) A vehicle which is ordered impounded under this section shall be held for a period of 30 days. An impoundment order may be made either upon conviction of the person of a violation of AS 28.35.030 or AS 28.35.032, or upon decision of a court in a separate civil proceeding.



(d) Vehicles ordered impounded under this section, which are not claimed at the end of the 30-day court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond and has not been released can be removed from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring such recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the city unless established by the parking authority. The owner may recover the fee if a court makes a specific finding that the seizure of the vehicle was legally unjustified.

(Code 1960, § 7.22.112)

Sec. 78-974. Forfeiture process.



(a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested or charged with a violation of AS 28.35.030 or AS 28.35.032 may be forfeited to the city either upon conviction of either offense or upon decision of a court in a separate civil proceeding. To obtain an order of forfeiture in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the physical control of the person acting in violation of either offense and the individual has been previously convicted.



(b) A motor vehicle may be seized and towed to a secure location by a police officer or a police officer's designee upon an order issued by a court having jurisdiction over the motor vehicle upon a showing of probable cause that the motor vehicle may be forfeited or impounded under this section. Seizure without a court order may be made if:

(1) The impoundment is incident to an arrest;

(2) The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed;
or

(3) There is probable cause to believe that the motor vehicle was operated, driven or in the actual physical control of a person in violation of AS 28.35.030 or AS 28.35.032.



(c) A court may order impoundment of a motor vehicle subject to forfeiture in a civil action for a minimum of 30 consecutive days.

(Code 1960, § 7.22.113)

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.



(a) A motor vehicle seized for the purpose of forfeiture or impoundment should be held in the custody of the department of public safety or a private corporation authorized by the department to retain custody of the vehicle, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. When a motor vehicle is seized, the director of public safety or an authorized designee may:



PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.

- (1) Remove the motor vehicle and any contents in the vehicle to a place designated by the court; or
- (2) Take custody of the motor vehicle and any contents of the vehicle and remove it to an appropriate location for disposition.



(b) Following a forfeiture the department of public safety shall make an inventory of the contents of any motor vehicle seized. Personal property can be recovered from the vehicle in the same manner as set forth in section 78-973.



(c) A person in a forfeiture action claiming an interest in the property shall file, within 30 days after service or completion of publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the city's allegations. If a claim and answer is not filed within the required time, the motor vehicle must be forfeited to the city without further proceedings. For a regulated lienholder, the notice of claim and answer is met by the filing of information required in section 78-966 and by adding to the affidavit a statement of the original amount of the loan giving rise to the lien and the current balance due on that loan.



(d) A claimant may petition the court for sale of a motor vehicle before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the city. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(Code 1960, § 7.22.114)

Sec. 78-976. Disposition of forfeited property; return to claimant.



(a) Property forfeited under this article shall be disposed of by the department of public safety in accordance with this section. Property forfeited includes both the vehicle and its contents if those contents have not been recovered before the date of disposal. The department of public safety may:

(1) Sell the property at an auction and use the proceeds for payment of all expenses of seizure, custody, costs of auction, court costs and attorney's fees; and if such sale is arranged for by the impound contractor, the city shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction regardless of whether the costs of impound and storage exceed the value of the forfeited vehicles sold;

(2) Take custody of the property and use it in the enforcement of city and state criminal codes; or

(3) Destroy the property.



(b) When a claimant to a motor vehicle is entitled to its possession, the court shall order that:

(1) The vehicle be delivered to the claimant immediately subject to costs as described in section 78-971; or

(2) If the claimant is entitled to some value less than the total value of the motor vehicle, the claimant is entitled to receive either the value of the claimant's interest after the sale of the vehicle at an auction following deduction of the costs of the auction or, upon request and payment of the difference in value by the claimant, the motor vehicle itself.



(c) When a vehicle is sold and lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the city's cost.

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-976. Disposition of forfeited property: return to claimant.

(Code 1960, § 7.22.115)

Sec. 78-977. Multiple ownership on certificate of title.

In a contested forfeiture proceeding concerning a vehicle titled in the names of more than one owner on the certificate of title, the court shall proceed as follows:

(1) If one owner does not avoid forfeiture, the court may order the forfeiture of the entire interest of all the owners in a vehicle which is titled in the names of more than one owner in the disjunctive which is signified by the word "or."

(2) If such owner does not avoid forfeiture, the court shall order the forfeiture of the interest of any owner in a vehicle which is titled in the names of more than one owner in the conjunctive which is signified by the word "and." Owners of a vehicle titled in the names of more than one owner in the conjunctive are presumed to own the vehicle in equal shares. Under this subsection, the court shall order that the vehicle be sold at public auction and further order that the proceeds from the sale of the vehicle be held by the city's department of finance. After deduction of the reasonable costs of the auction, the amount of the proceeds of the auction for the sale of that vehicle which is equal to the interests of the owners whose interests have not been forfeited shall be returned to those owners if those owners apply to the department of finance within 60 days of the auction. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the city subject to the rights of any other claimant to those funds.

(Code 1960, § 7.22.116)

Chapters 79--81 RESERVED

Chapter 82 UTILITIES*

*Cross reference(s)--Administration, ch. 2; buildings and building regulations, ch. 10; uniform mechanical code, § 10-101 et seq.; uniform plumbing code, § 10-136 et seq.; uniform housing code, § 10-171 et seq.; National Electrical Code, § 10-276 et seq.; businesses, ch. 14; health, ch. 34; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70.

ARTICLE I. IN GENERAL

Sec. 82-1. City water fluoridated.

A source of fluoride ion, approved by the state department of health, shall be added to the water supply of the city under the rules and regulations of the state department of health, such addition to be administered by Golden Heart Utilities, Inc. in a manner approved by the environmental coordinator of the city.

(Code 1960, § 10.301(a))



WELCOME TO THE CBJ CODE

This copy, including the CBJ Charter, is current as of January 18, 2001.

Navigating through the code is easier using the bookmarks accessible via Acrobat's "window" menu.

For update information call the CBJ Law Department. 907-586-5242

You can e-mail the City & Borough Attorney at

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sue@cbjlaw.com

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- (2) Order participation in such program; or
- (3) Any combination of subsections (1) and (2) above. (Serial No. 85-56 § 68, 1985; Serial No. 84-80 § 3, 1984; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.010).

72.22.045 TRAFFIC CITATION ON ILLEGALLY PARKED VEHICLE. Whenever a motor vehicle without driver is found parked, stopped or standing in violation of any of the restrictions imposed by this title the officer finding such vehicle shall take its registration number and may take any other information displayed upon or within the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation on a form provided by the city and borough for the driver to answer to the charge against him in the municipal court at an appointed time within twenty days from such alleged violation specified in the citation. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.045).

72.22.055 VIOLATIONS RESPONSIBILITIES AND DEFENSES. (a) Every person in whose name a vehicle is registered shall be responsible for violations of any parking, standing, stopping or other nonmoving traffic violations of this title. It shall be no defense for the owner of a vehicle to such a charge that the vehicle was in the possession or control of another, unless it can be shown to the satisfaction of the court that at such time such vehicle was being used without the consent of the registered owner thereof.

(b) It shall be a defense for a vehicle owner to a charge of a failure to appear if it is shown to the court's satisfaction that the owner of such vehicle was not aware of the citation and that such vehicle was being used without the consent of the registered owner. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.055).

72.22.060 AUTHORITY TO IMPOUND VEHICLES – REDEMPTION OR SALE – PRESUMPTION OF ABANDONMENT. (a) Whenever any vehicle is located or is standing upon any street or alley or right-of-way in violation of the provisions of this title or any rule or regulation adopted thereto, or whenever any vehicle is found to be mechanically unsafe to operate upon any street or alley or right-of-way, or whenever the driver is arrested for an offense involving either driving under the influence of intoxicating liquor or hypnotic or narcotic drugs, reckless driving, negligent driving, or any felony, such vehicle may be removed from the city and borough streets or alleys and may be impounded at a place to be designated by the manager. The police shall, in the proper case and whenever any other provision of this title is violated, cause a complaint to be filed against the person committing such offense. When the owner or authorized representative of the owner of the vehicle claims the same, he shall be informed of the nature of the circumstances causing the impoundment of such vehicle and to obtain release thereof shall pay all towing, impoundment and storage charges. Such fees may be established, changed or abolished by the assembly by resolution. If the operator or owner of the vehicle, upon hearing before the municipal judge, is found not guilty of the violation of which he is charged, the impounded vehicle shall be released immediately to the owner without collection of fees or other charges, or if such person found not guilty has already paid impoundment towing or storage charges, the court may order the city and borough to refund part or all of such fees or charges. If the owner or operator of such vehicle is found guilty, any fine imposed under the provisions of the appropriate section of this title shall be in addition to the towing, impounding and storage charges herein prescribed.

(b) No person shall allow, permit or suffer any vehicle registered in his name to stand or park upon

or be operated upon any street in this city and borough in violation of this title or any rule or regulation adopted or issued pursuant thereto.

(c) Whenever an officer removes or has removed a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(d) After a vehicle has been impounded for more than ten days, the chief of police shall cause to be sent by registered mail a notice to the owner and any lienholder thereof, if after the exercise of due diligence said owner's or lienholder's name can be ascertained. The notice shall accurately describe the vehicle, give the date the vehicle was impounded, and inform the owner that unless he reclaims the vehicle within ten days from the dispatch thereof, the vehicle shall be sold. Not less than fifteen days after the dispatch of the letter, if the letter can be sent, and in any event if such letter cannot be sent, the chief of police shall cause to be posted in three public places in the city and borough a description of the vehicle, the owner's name if known, and state the facts that the vehicle and other similar vehicles similarly described will be sold at public auction to the highest responsible bidder at a public sale under the direction of the chief of police at a specified time and place, not less than ten days after the publication of the notice of sale. The chief of police shall keep a permanent accurate record of all vehicles impounded containing date of impoundment, description of vehicle, cause for which impounded, date of redemption if redeemed, an amount paid upon redemption, date of letter to owner if owner known, notice of sale, record of sale and price paid at sale and name of purchaser.

(e) If the highest bid at public auction shall not be equal to or greater than the towing and storage charges, the city and borough may reject the bid and attempt to sell the vehicle at subsequent public auction or negotiate for private sale; provided, however, the price obtained at private sale must be equal to or greater than the highest bid at public auction.

(f) The proceeds of a sale of any impounded vehicle shall be applied first against any and all costs of the city and borough involved in towing, impounding and storing the vehicle, and in conducting any sale thereof, with any remaining proceeds paid first to the lienholder if known, to the extent of his interest if any, then to the owner if known, or if unknown into the operating fund of the police department.

(g) Notwithstanding any other provisions of this section, whenever any vehicle located or standing upon any street or alley or right-of-way is or has been involved in an accident resulting in personal injury, or property damage in an amount of five hundred dollars or more as judged by a police officer, such vehicle may be removed from the streets and impounded by the police department for a period not to exceed five days for the purpose of having the vehicle inspected by a competent mechanic to determine whether the vehicle is mechanically safe. The expense of this type of inspection impoundment shall be borne by the city and borough. (Serial No. 2000-20 § 5, 2000; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.060).

72.22.063 VEHICLE IMMOBILIZATION. (a) The manager or his designee may, subject to the limitations contained in this section, authorize the immobilization of any motor vehicle by the use of a vehicle immobilization device which, when attached to the wheel or other part of a motor vehicle, prevents that vehicle from being driven.

(b) No vehicle may be immobilized pursuant to this section unless there has been affixed to that or

any other vehicle owned by the same person, or that person has otherwise been issued, at least two municipal parking citations and has, with respect to each such citation, failed, within the time permitted by law, to:

- (1) Post or forfeit the bail specified for that offense; or
 - (2) Appear and answer to the charge.
- (c) The owner or operator of a vehicle immobilized pursuant to this section may obtain its release by:

- (1) Posting bail for each of the parking citations outstanding against the owner; and
- (2) Paying the release service fee established by the manager or his designee.

(d) A vehicle immobilized pursuant to this section may not be the subject of further parking citations during the period of immobilization.

(e) If a vehicle immobilized pursuant to this section is not released within twenty-four hours, it may be impounded and shall thereafter be released only upon the posting of bail and payment of the service fee required under subsection (c) of this section and compliance by the owner or operator with Section 72.22.060.

It is unlawful for a person to purposely or recklessly and without authority, tamper with, remove, attempt to remove, damage or deface any vehicle immobilization device attached to any vehicle. (Serial No. 81-13 § 2, 1981; Serial No. 80-13 § 2, 1980).

72.22.065 AUTHORITY TO EFFECT REGULATIONS. The chief of police is hereby empowered, with approval of the assembly to make all necessary regulations to effect all provisions of this title. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.065).

Chapter 72.24

SNOW EMERGENCY AND REMOVAL

Sections:

- | | |
|-----------|---|
| 72.24.010 | Parking prohibition – Snow emergency routes. |
| 72.24.015 | Snow emergency routes designated. |
| 72.24.020 | Parking prohibition – Other streets. |
| 72.24.025 | Parking prohibition – Notice. |
| 72.24.030 | Parking prohibition – Violation – Impounding and removing vehicles. |
| 72.24.035 | Parking prohibition – Termination. |
| 72.24.040 | Snow emergency route – Stalled vehicle prohibited when. |
| 72.24.045 | Snow emergency route – Stalled vehicle – Procedure. |
| 72.24.050 | Illegally parked vehicle – Citation. |
| 72.24.055 | Illegally parked vehicle – Evidence. |
| 72.24.060 | Chapter provisions – Precedence. |
| 72.24.065 | Advancement of quitting-time traffic regulations. |
| 72.24.070 | Requirement for chains or studded tires. |
| 72.24.075 | Placing snow in public ways prohibited. |

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Drunk Driving Sanctions: Vehicle, Registration and License Plate Forfeiture Laws as of January 2000

State	Statute	Details
Alabama	None	
Alaska	§28.35.036	Vehicle forfeited for second or subsequent DUI offence (not mandatory)
Amer. Samoa	None	
Arizona	§28-697.01(A)	Vehicle forfeited for either third or subsequent DUI offense or for a DUI while license revoked/suspended for prior DUI or if committed while transporting child under 15 years old.
Arkansas	§5-65-117	(a) vehicle forfeited for fourth offense within three years, at court's discretion
California	Veh. Code §23592 et.seq.	Vehicle impounded 1-30 days for first offense, and 1-90 days for second or subsequent offense within 7 years. Vehicle subject to forfeiture for a DUI homicide, for two or more DUI offenses within seven years, or for a serious injury-related DUI with one or more DUI offenses within seven years
Colorado	None	
Connecticut	§14-227h	Vehicle impounded for 48 hours if person's driving privilege was either suspended or revoked at the time of offense.
Delaware	21 §2756(c)(1)	Impoundment of vehicle, plates or registration authorized for DUI while under license suspension/revocation for DUI or i.nplied

		consent refusal, 1-90 days for first offense, one year for subsequent offenses
District of Columbia	§40-716(c-1)	Vehicle may be impounded for 24 hours for any DUI offense. If licensed registered owner of vehicle who is with offender at the time of offense, may take immediate possession of vehicle.
Florida	§316.193 (6)(d)	Vehicle used in DUI offense impounded or immobilized for 10 days for first offense, 30 days for second within three years, 90 days for third within 5 years.
Georgia	§40-6-391.2	Vehicle forfeited for fourth DUI if offense committed in habitual offender status based on three or more prior DUI convictions
	§40-6-391.2(i)	Court may order transfer of title to family member for demonstrated hardship for employment or family needs.
Guam	Title 16 §9104(e)	Vehicle used in offense subject to forfeiture for third or subsequent offense, or driver's license suspended one to five years in lieu of vehicle forfeiture
Hawaii	None	
Idaho	None	
Illinois	625 ILCS 5/4-203(e)	Vehicle impounded for 12 hours if law enforcement officers "reasonably believe" release will result in another DUI offense; 2 nd offense 24 hours; 3 rd offense 48 hours. However, vehicle may be released sooner if owner gives consent to competent driver.
Indiana	IC9-30-4-6(b)(3), & (d)(1)	Registration revoked for six months for second felony; involving a motor vehicle (second DUI)
Iowa	321J.4B (2), (5)(d), (7)(a), (7)(b)	For subsequent offenses, vehicle, registration and plates for all vehicles owned by driver may be impounded for 180 days or the period of license revocation, whichever is longer.
Kansas	8-1567(p)	Plate revoked for one year for fourth or subsequent offense.

Kentucky	None	
Louisiana	§14:98 (D)	Vehicle forfeited for 3 rd offense or subsequent offenses, if vehicle used by offender is owned by him/her.
Maine	29-A §2411 et seq	For subsequent offense within in 10 years, registration and plates are suspended for the same time period as their driver's license suspension
	29-A §2421	Vehicle must be forfeited for a subsequent DUI offense while already under license suspension for DUI; temporary impoundment for 8 hours upon arrest for drunk driving offense. (29-A MRSA §2422)
Maryland	Trans. §16-303 §27-101 §27-111(d)	Registration suspended up to up to 120 days for driving on a suspended or revoked license for a previous DUI offense and/or vehicle can be impounded for up to 180 days
Massachusetts	None	
Michigan	1998 H.B. 4960	Provides for vehicle immobilization and forfeiture for 2 nd or subsequent offenses (discretionary)
Minnesota	168041(3)	Plates may be impounded for first or subsequent offense
	168.042(1)(20)	Plates and/or vehicle impounded for first or second offense within five years or for DUI child endangerment
	169.1217	Vehicle forfeited for third offense within five years, fourth offense within five years or for child endangerment and a second conviction or second revocation within five years or a third conviction or third offense within five years
Mississippi	63-11-30(2)(c)	Vehicle forfeited for third offense within five years
	63-11-49	Spouse may retain possession in case of hardship

Missouri	§82.1000	Permits some cities to enact vehicle impoundment or forfeiture laws
Montana	61-8-714 & 722	Vehicle must be forfeited for third or subsequent DUI offense within five years.
Nebraska	None	
Nevada	§60-6, 197.01(1)(a) & (1)(b)(i)	If defendant convicted of 2 nd or subsequent offense, their vehicle must be immobilized 5 days to as much as 8 months. Vehicle can be released to co-owner of vehicle due to hardship.
New Hampshire	261:180 III	Registration suspended for same time period as license, on second or subsequent offense
New Jersey	§39:5-30(a)	Gives licensing agency discretionary authority to suspend/revoke registration of person in violation of traffic laws or "other reasonable grounds."
New Mexico	None	Previous provisions repealed
New York	Civ Prac 1301 & 1311	Vehicle forfeited for a DUI felony (i.e. second DUI offense within ten years at the discretion of the court
	V&T Law §1193 (2)(a) & (b)	Defendant's vehicle and registration may be suspended or revoked for same length of time as license revocation/suspension
North Carolina	20-28.2	Vehicle forfeited for DUI while on a revoked/suspended license
	§20-54.1	Registration for all vehicles owned by defendant can be revoked for time that license has been suspended/revoked.
North Dakota	39-08-01(3)	Plate may be impounded for same period as license.
	39-08-01.3	Vehicle may be forfeited for 2 nd or subsequent DUI within five years.
Ohio	4507.164, 4511.195,	Plates impounded for 90 days for second

	4511.99	offense within six years and 180 days for third offense within six years; vehicle forfeited for subsequent offense within six years.
Oklahoma	47 §11-902b	Subsequent DWI offender's vehicle subject to forfeiture
Oregon	§809.700 §809.2 of chapter 1100 Laws of 1999	Vehicle impounded for second or subsequent offense or for a DUI while on a suspended or revoked license; Vehicle can be forfeited if offender had prior offense with in 3 years of been convicted of murder, manslaughter, negligent homicide or assault related to operation of a vehicle.
Pennsylvania	Case law	Vehicle may be forfeited for DUI offense: Commonwealth v. Crosby 568 A.2d 233 (PA Super. 1990)
Puerto Rico	None	
Rhode Island	31-27-2(d)(3)(ii);	Vehicle forfeited for third offense within five years;
	§31-32-4(b)	If license suspended then defendant may have registration of any vehicle they own suspended. However, such registrations are not suspended if financial responsibility is provided.
South Carolina	§56-5-6240	Vehicle forfeited for third or subsequent offense within 10 years. Vehicle can either be owned and operated by offender or operated by offender who is resident of household of registered owner.
South Dakota	§32-35-44	Registration suspended for all vehicles owned by driver for same time period license is revoked/suspended for DUI
Tennessee	55-10-403(k)(1)	Vehicle forfeited for second or subsequent offense
Texas	Tran Code §704.001	Vehicle may be forfeited after three or more DUI offenses
Utah	§41-6-44.30	Vehicle is impounded if driver arrested for DUI is the owner of the vehicle

Vermont	23 § 1213a, b	If second or subsequent offense vehicle can be immobilized for 18 months. If third offense the vehicle may be forfeited. If defendant is under 18 years old, vehicle is impounded for up to 60 days.
Virgin Islands	20 §544 (c)	Vehicle may be impounded at court's discretion if defendant fails to appear on a DUI charge.
Virginia	46.2-391.1	Registration suspended when license revoked/suspended for DUI conviction, or for driving on suspended/revoked license or for vehicular homicide
Washington	46.61.5058	Vehicle forfeited for second conviction within seven years, subject to possession by spouse in case of hardship
West Virginia	None	
Wisconsin	343.305(10m); 346.65(6)	Vehicle may be forfeited for third offense within ten years; Vehicle shall be forfeited for fourth or subsequent offense within ten years.
Wyoming	31-7-128(c)	Registration suspended for same period as license revocation/suspension, for subsequent DUI conviction within two years.

Source: Digest of State Alcohol-Highway Safety Related Legislation, 18th edition.

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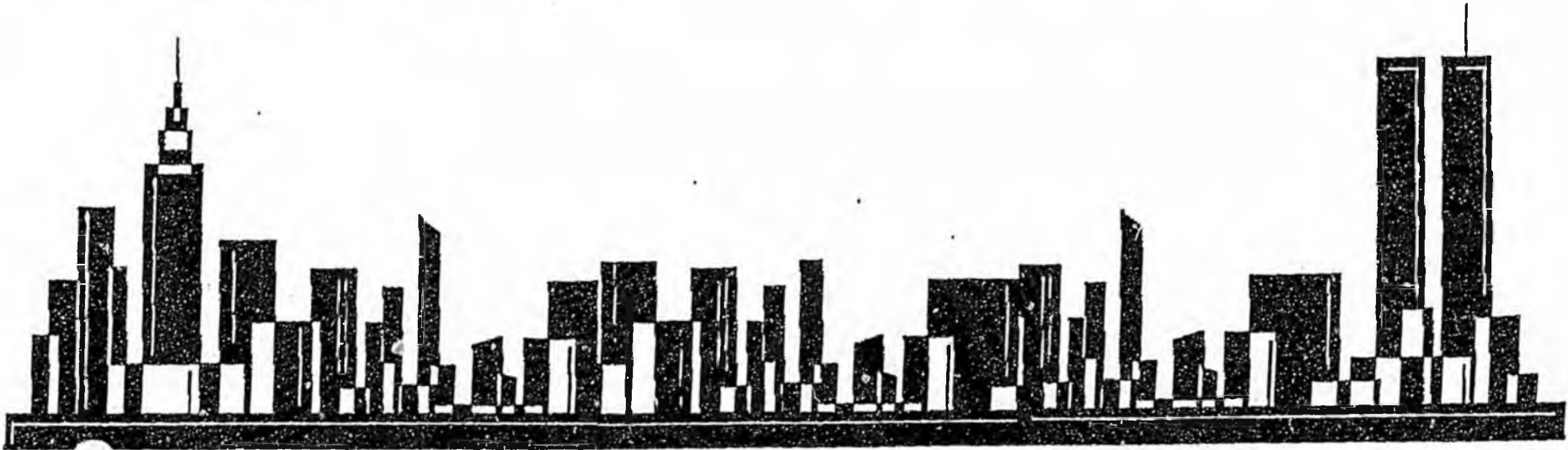
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The Cutting Edge of Policing: Civil Enforcement for the 21st Century



SAVING LIVES

1993

- Homicide Victims: 1927
- Shooting Victims: 5862
- Vehicle Deaths: 536

1998

- Homicide Victims: 629
- Shooting Victims: 2004
- Vehicle Deaths: 365

From 1993 to 1998

Homicides Decreased 67%

Shooting Victims Decreased 66%

Vehicle Deaths Decreased 32%

Public Opinion Favors DWI Forfeitures

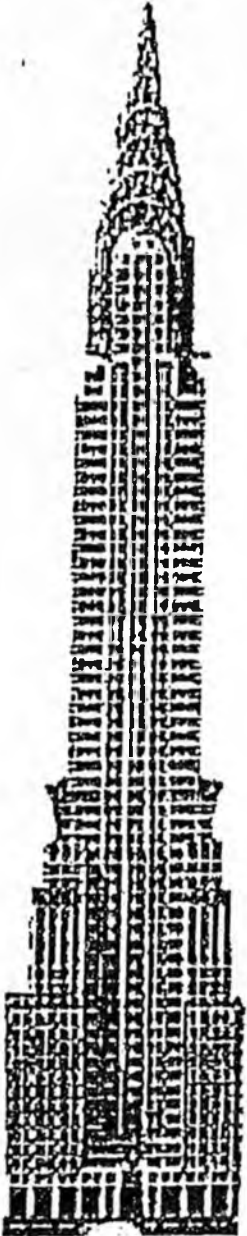
Quinnipiac College Poll of NYS registered voters,
March 24, 1999

	<u>Good Idea</u>	<u>Bad Idea</u>	<u>No Opinion</u>
Overall NYS:	54%	40%	6%
New York City:	56%	39%	5%
Women:	60%	32%	8%
Men:	46%	50%	3%



Overview of the Civil Enforcement Team

- 1 Civilian Attorney - Coordinator of the Forfeiture Unit
- 1 Lieutenant Attorney - DWI forfeiture coordinator
- 5 Staff Attorneys (3 Uniform, 2 Civilian)
- 3 Uniform law students
- 1 Civilian law school graduate
- 8 Police Officers performing litigation support functions



Results of the Program

Through April 12, 1999

- 672 arrests
 - 522 Intoxicated
 - 150 Impaired

- 255 Vehicles seized for forfeiture
- 74 Demands received
- 43 Forfeiture actions commenced



Results of the Program

Arrests for Driving while intoxicated and impaired
for the period February 22 to April 12

1998

TOTAL: 784

Intoxicated: 643

Impaired : 141

1999

TOTAL: 672

Intoxicated: 522

Impaired : 150

14.3% decrease in total arrests



Results of the Program

DWI related accidents
for the period February 22 to April 12

1998

248 Accidents

2 Deaths

1999

176 Accidents

2 Deaths

29.03% decrease in accidents



Status of the Litigation

- The DWI Forfeiture Initiative began on February 21, 1999
- The New York City Civil Liberties Union has brought a constitutional challenge against Admin Code forfeiture actions as applied to DWI vehicles
- 43 DWI-related forfeiture actions have been commenced by the Civil Enforcement Unit as of April 13, 1999

DWI Forfeiture Initiative Strategy:

In each case, before a forfeiture action is commenced:

- The facts and circumstances are investigated by the Civil Enforcement Unit**
- The decision to commence the action is made by a CEU supervising attorney**

DWI Forfeiture Initiative Strategy:

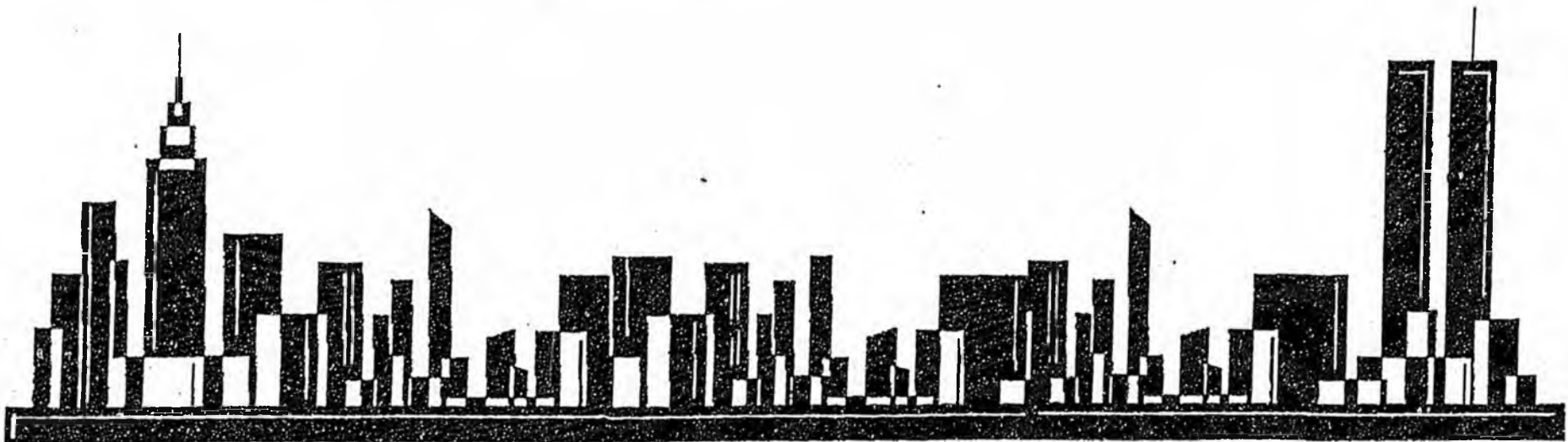
•Once the drunken driver is arrested and his or her car seized and held for forfeiture, the defendant is given both:

•a property receipt identifying the property

•a notice describing forfeiture law procedure

DWI Forfeiture Initiative Strategy:

Before a vehicle is seized and held for forfeiture, a patrol supervisor (Sergeant or above) reviews the circumstances of the arrest and seizure.



DWI Forfeiture Initiative Strategy:

- The crime of DWI cannot be committed without a vehicle.**
- The vehicle is therefore the ultimate instrumentality of DWI.**
- Use of the forfeiture law is consistent with the NYPD's authority to seize weapons from criminals.**

LEGAL BASIS

- The Admin. Code forfeiture statute allows forfeiture for any crime, including *first time* DWI arrests.
- In New York State, 87% of DWI deaths are caused by *first time* offenders.
- The statute has been upheld by both the New York State Court of Appeals and federal appellate courts.

LEGAL BASIS

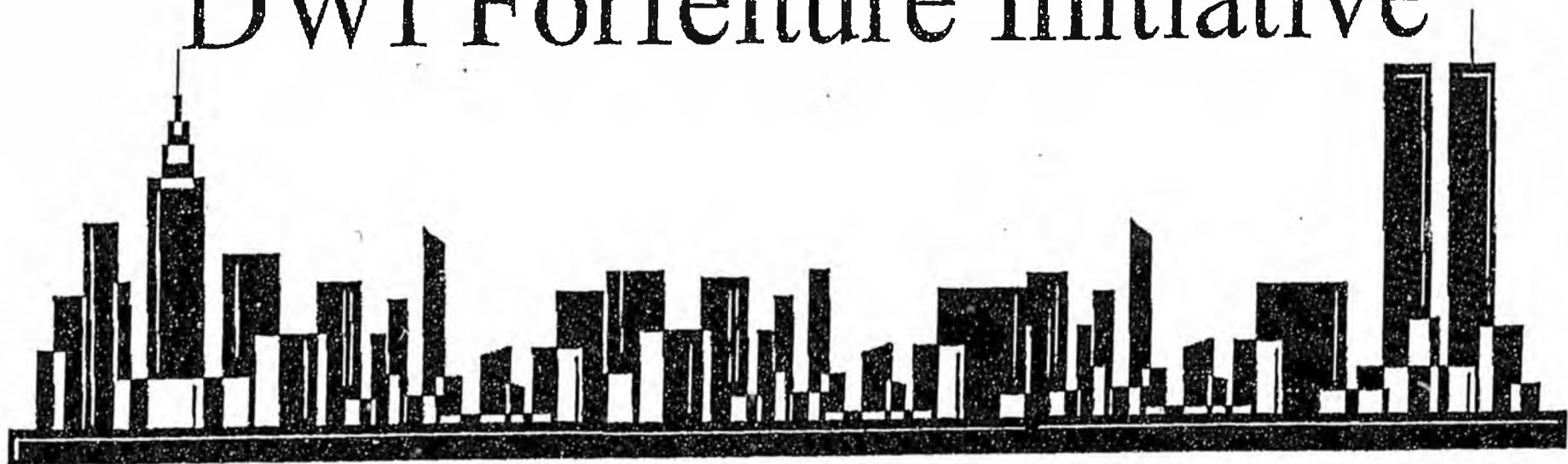
- Admin. Code Forfeiture Law has been used more than 1000 times per year for each of the last 10 years
- Crimes include:
 - Drug and Marijuana possession and sale
 - Prostitution and Patronizing a Prostitute
 - Gambling
 - Stolen Property
 - Aggravated Unlicensed driving

LEGAL BASIS

- The NYPD commences a civil law suit in State Supreme Court.
- The action seeks a declaratory judgement that the criminal defendant may not reclaim the property.
- The property is auctioned at the successful conclusion of the action.

Saving Lives

The New York City
Police Department's
DWI Forfeiture Initiative



LEGAL BASIS

- NYC Administrative Code § 14-140
- Allows the NYPD to bring a forfeiture action against property in its custody if:
 - it facilitated the commission of a crime, or
 - it is the proceeds of a crime



STATE LEGISLATIVE FACT SHEETS

CONTENTS

- [Key Facts](#)
- [Legislative Status](#)
- [Recommendations for Strengthening and Increasing the Use of Vehicle and Vehicle Plate Sanctions](#)
- [Research and Evaluation Regarding the Effects of Vehicle and Plate Sanctions](#)
- [Transfer and Grant Programs](#)
- [Information Sources](#)

[Return to Main Page](#)



US Department of Transportation
National Highway Traffic Safety
Administration



Vehicle and License Plate Sanctions

March 1999

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, 1.4 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 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 19 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, Arkansas, Delaware, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, 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. However, in general, the vehicle license plate

suspension provisions are poorly enforced.

- **Vehicle Confiscation:** Twenty-one 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, Alabama, Arizona, Arkansas, California, Georgia, Maine, Minnesota, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, 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-five 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, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, 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 re-arrested, 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 recidivism (7%) both during and after the termination of the sanction than offenders who managed to avoid the impoundment and immobilization sanctions (11%). The project will also provide information on methods and procedures for implementing such a program, the types of problems that may be experienced, and recommendations for solutions.

- **California Impoundment and Forfeiture Program:** NHTSA, in conjunction with the State Department of Motor Vehicles, is conducting a three-year 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, but involves a civil action independent of a criminal DWS conviction for those caught driving without a license. Findings indicate that during 1995, more than 100,000 vehicles were impounded, but only 246 were seized and processed for forfeiture under the new laws. 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.

- **North Carolina Alcohol Ignition Interlock Program:** A study was conducted to determine the effectiveness of an interlock program in reducing recidivism among second-time DWI offenders. In North Carolina, these offenders are eligible to petition for a conditional license that is valid for the last two years of the four-year revocation period. Assignment of petitioners to the interlock program was based on completion of the petition and the decision of a hearing officer. The findings suggested that as compared to those receiving a full four-year hard license suspension, or those given the conditional license without an interlock, offenders receiving the interlock had a reduced rate of recidivism while the interlock was installed. However, when the interlock was removed and a valid license obtained, the recidivism rate of these drivers rose substantially. The findings from the North Carolina study support those of a research study conducted in Hamilton County (Cincinnati), Ohio. In that study, an interlock program was found to reduce recidivism while the interlock was installed on the vehicles of multiple DWI offenders, but once removed the benefits did not continue (as compared to a license suspension group). Both studies suggest that, at least for multiple DWI offenders, long-term drinking and driving behavior patterns are not impacted.
- **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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Alcohol Ignition Interlock Service Support. DOT HS 807 923, Final Report, December, 1992.

De Young, N.J. *An Evaluation of the Specific Deterrent Effect of Vehicle Impoundment on Suspended, Revoked and Unlicensed Drivers in California*. DOT HS 808 727, Final Report, November 1997.

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-12, 400 Seventh Street, S.W., Washington, DC 20590; 202-366-2708.



TRAFFIC TECH



Technology Transfer Series

Number 180

July 1998

CALIFORNIA IMPOUNDS THE VEHICLES OF MOTORISTS CAUGHT DRIVING WITHOUT A VALID LICENSE

One strategy that has been pursued to reduce the number of motor vehicle crashes in the United States has been to identify and control high risk drivers through law enforcement and court imposed sanctions against the individual. These sanctions include fines; driver license actions such as suspensions or revocations; jail, community service, and alcohol treatment.

While suspending or revoking a driver's license is effective, these sanctions have limitations because they do not actually incapacitate the driver. Some studies have found that as many as 75 percent of these drivers continue to drive during periods of suspension or revocation. While other studies have shown that these individuals drive less often and more carefully during suspension and revocation periods, they still pose a threat. In California, drivers with suspended or revoked licenses have 3.7 times the fatal crash rate as the average driver.

The National Highway Traffic Safety Administration (NHTSA) sponsored a study by the California Department of Motor Vehicles to evaluate how vehicle impoundment affects the driving behavior of drivers who are unlicensed or whose licenses are suspended or revoked.

California's Impoundment Program

California began an impoundment program in January, 1995. Under the program, law enforcement officers can impound vehicles on the spot of drivers who do not have a valid license. The impoundment period lasts for 30 days. According to law enforcement agencies throughout the state, more than 100,000 vehicles are being impounded each year.

For this study, two counties (Stockton and Riverside) and two cities (San Diego and Santa Barbara) linked driver record data with vehicle impoundment data. More than 6,300 unlicensed, suspended, or revoked drivers whose vehicles were impounded were compared to about the same number of drivers in 1994 whose vehicles would have been eligible for impoundment in the new program in 1995. For one year, the driving records were gathered and compared for convictions of driving while suspended (DWS) or driving while unlicensed (DWU), total traffic convictions, and crashes for both first time and repeat offenders.



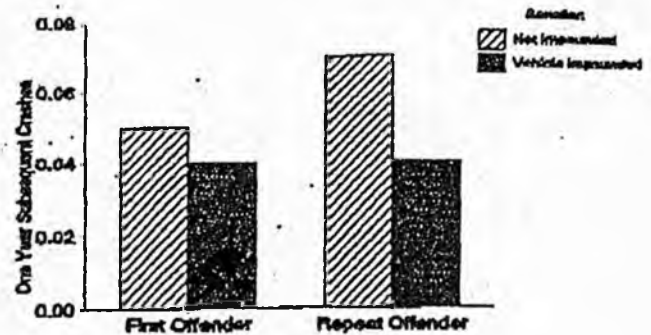
Subsequent DWS or DWU Convictions for First and Repeat Offenders

Fewer Subsequent Offenses

The graph above shows that first offenders whose vehicles were impounded had an average rate of subsequent DWS or DWU conviction that was 24 percent lower than those whose vehicles had not been impounded. Repeat offenders had 34 percent fewer DWS or DWU convictions than their control group.



Subsequent Traffic Convictions for First and Repeat Offenders



Subsequent Crashes for First and Repeat Offenders

Fewer Subsequent Traffic Convictions

Drivers whose vehicles were impounded also had fewer subsequent traffic convictions. For first offenders, recidivism was 18 percent lower than drivers who still had access to their vehicles. The differences were even more striking for repeat offenders. Repeat offenders whose vehicles were impounded had 22 percent fewer traffic convictions than those whose vehicles had not been impounded.

Fewer Subsequent Crashes

Both first time and repeat offenders whose vehicles were impounded also had fewer crashes. The next graph shows that there was a 25 percent reduction for first time offenders and a 38 percent reduction for repeat offenders in subsequent crashes.

Vehicle Impoundment Works

Vehicle impoundment is having a positive effect on traffic safety in California, reducing the number of crashes and subsequent citations. Importantly, it appears even more effective for repeat offenders — those high risk drivers who traditionally have been resistant to change. Removing access to the vehicle by impounding it is one way to limit driving during periods of suspension or revocation.

How To Order

For a copy of the report, *An Evaluation of the Specific Deterrent Effect of Vehicle Impoundment on Suspended, Revoked and Unlicensed Drivers in California*, (52 pages), write to the Office of Research and Traffic Records, NTS-31, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590, or send a fax to (202) 366-7096. Marv Levy was the contract manager for this project, email: mlevy@nhtsa.dot.gov

U.S. Department of Transportation National Highway Traffic Safety Administration 400 Seventh Street, S.W. NTS-31 Washington, DC 20590

TRAFFIC TECH is a publication to disseminate information about traffic safety programs, including evaluations, innovative programs, and new publications. Feel free to copy it as you wish. If you would like to receive a copy contact: Linda Coogrove, Ph.D., Editor, Evaluation Staff (202) 366-2759, fax (202) 366-7096 EMAIL: lcoogrove@nhtsa.dot.gov

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Drunken Driving

Does America need tougher laws?

In 1980, 28,000 people were killed in alcohol-related crashes. But the past 20 years have seen a sea change in attitudes toward drinking and driving. Drunken-driving deaths dropped to a record low in 1999, when "only" 15,786 people died. Encouraged by Mothers Against Drunk Driving (MADD) and other organizations, many states and the federal government have passed tough anti-drunken-driving legislation. Nonetheless, drinking and driving remains a serious national problem, and experts worry that the progress in reducing drunken driving has slowed. While safety advocates say the legal threshold for drunken driving should be lowered to a .08 percent blood-alcohol concentration, the alcoholic-beverage industry says the stricter standard would penalize responsible social drinkers.



IN THIS ISSUE

THIS ISSUE

THE ISSUES	795
BACKGROUND	799
CHRONOLOGY	801
CURRENT SITUATION	801
AT ISSUE	803
OUTLOOK	804
BIBLIOGRAPHY	805
THE NEXT STEP	806



Oct. 6, 2000 • Volume 10, No. 34 • Pages 793-808

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See back cover

THE ISSUES

- 795 • Should states lower the arrest threshold for drunken driving?
• Should blood-alcohol concentration (BAC) testing be mandatory after serious accidents?
• Should police confiscate the vehicles of drunken drivers?

BACKGROUND

- 799 **Drunken Charioteers**
Drunken drivers have been around since ancient times.
- 800 **First Major Initiative**
In 1970, the \$88 million Alcohol Safety Action Project was launched in 35 cities.
- 800 **Progress Slows**
Safety advocates say a variety of trends contributed to the slowdown in DWI arrests and alcohol-related traffic deaths that began in 1994.

CURRENT SITUATION

- 801 **Action in Congress**
The fight over whether states should adopt the stricter .08 BAC standard for drunken driving has held up congressional action on a \$55 billion transportation bill.
- 802 **Underage Drinking**
The distiller-funded Century Council calls drinking by youths "one of society's most serious health concerns."

OUTLOOK

- 804 **'Stuck in Neutral?'**
The administration's goal of reducing alcohol-related traffic deaths to 11,000 by 2003 may be hard to reach.

SIDEBARS AND GRAPHICS

- 796 **Most States Use Weaker Blood-Alcohol Threshold**
Motorists in 31 states can be arrested for drunken driving if their BAC reaches .10 percent.
- 798 **Drunkest Drivers Cause Most Deaths**
Drivers with a BAC of .11 percent or greater caused three-quarters of the nation's alcohol-related fatal traffic accidents in 1998.
- 801 **Chronology**
Key events since 1970.
- 802 **How Hard-core Drunken Drivers Get Off Easy**
Across the country, state laws and judges repeatedly grant multiple offenders many "second" chances.
- 803 **At Issue**
Should states lower the arrest threshold for drunken driving to a .08 percent BAC?

FOR MORE INFORMATION

- 805 **Bibliography**
Selected sources used.
- 806 **The Next Step**
Additional articles from current periodicals.

Oct. 6, 2000
Volume 10, No. 34

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Cover: Four Vermont teenagers died in this car when they crashed on the way home from a night of drinking in Canada, where the drinking age is 18. (AP Photo/Alden Pellett)

Drunken Driving

BY KATHY KOCH

THE ISSUES

Betsy Carlson was 22 when a drunken driver hit her. It was 8 o'clock on a November morning in 1977 as she drove to work in Glen Ellyn, Ill. But Carlson, who now walks with a cane, remembers as if it were yesterday.

"I remember the other car coming across the center yellow line and heading straight at me," she recalls.

She was in a coma for a month and a half, and then three months in the hospital learning to walk and talk again. She suffered brain damage, a broken neck, a shattered left knee, a broken jawbone, two broken wrists and multiple other injuries, some not discovered until years later.

The driver who hit her ended up having to take a driver's re-education course. "Remember," Carlson says, "it was the 1970s, and everybody laughed about drunk driving back then."

Since then, American attitudes about drinking and driving have undergone a sea change. The states and federal government have strengthened enforcement, sponsored anti-drunken-driving campaigns and passed tougher laws covering driving while intoxicated (DWI).

All the attention drove drunken-driving deaths to a record low in 1999, when "only" 15,786 people were killed in alcohol-related crashes — a 43 percent drop from drunken-driving death tolls of the early 1980s. At the same time, the percentage of auto fatalities caused by drunken drivers dropped from 57 percent in 1982 to 38 percent last year.¹

Such unprecedented progress is partly attributable to the public education and lobbying efforts of the highly effective grass-roots organization Mothers Against Drunk Drivers (MADD).



MADD National President Millie I. Webb urges Congress to set the national drunken-driving limit at .08 percent, at a rally on Capitol Hill on Sept. 6. Webb's nephew, in photo, and a daughter died in a crash with a drunken driver.

But MADD, which celebrates its 20th anniversary this year, says that problems remain. Alcohol-related collisions still kill 43 people a day — the equivalent of two airplane crashes a week, says Brandy Anderson, MADD's director of public policy.

"If two jetliners were crashing every week — week after week — the public outcry would be deafening," she says. "This issue should not get any less attention, especially since it's a completely preventable violent crime."

Alcohol was involved in 2.7 million car crashes in 1998, according to the Centers for Disease Control and Prevention (CDC). Moreover, the CDC says, Americans drink and drive an estimated 123 million times a year.²

The costs are enormous, according to the National Highway Transportation Safety Administration (NHTSA). Each drunken-driving fatality costs about \$3.2 million in monetary losses — an estimated \$45 billion annually — and injuries cost more than \$110 billion a year.³

Unfortunately, progress in reducing drunk-driving fatalities has slowed. Over the past three years, America's drunken-driving crash rate has leveled off, as the easiest-to-reach drivers — social drinkers — have gotten the message.

Today, heavy drinkers, alcoholics and repeat offenders are responsible for most drunken driving and most alcohol-related accidents. During weekends, when most drunken driving occurs, very heavy drinkers — those with a blood-alcohol concentration (BAC) 50 percent above the legal limit — are involved in 65 percent of drunken-driving fatalities, according to NHTSA. And up to one-third of all alcohol-related fatalities are caused by drivers with a prior conviction.

In addition, says Julie Rochman, vice president for communications at the Insurance Institute for Highway Safety (IIHS), over the past 20 years drunken driving has increased among women, Hispanics and white males ages 21 to 34.

However, alcohol industry groups claim that federal statistics are overstated because NHTSA defines an "alcohol-related" traffic accident as any crash in which the BAC of anyone involved is .01 percent or greater — one-tenth the level at which most states define drunken driving. The government also classifies an accident as alcohol-related regardless of whether the driver, a pedestrian or a passenger was drinking.

The National Beer Wholesalers Association (NBWA) points out that in 1995, while 41 percent of traffic fatalities were classified as "alcohol-related," only 27.9 percent involved legally drunk drivers. "The NBWA believes federal drunk-driving statistics should accurately reflect the true dimensions of the problem," says an NBWA fact sheet.

Rick Berman, general counsel for the American Beverage Institute (ABI) — which represents family restaurant chains, says 10 percent of those included in federal drunken-driving statistics involved drunk pedestrians who walked in front of a driver. "Did

NHTSA, MADD and a coalition of safety groups argue that lower BAC levels are needed because:

- Peer-reviewed, scientific studies show that drivers at .08 BAC cannot brake, steer, change lanes, concentrate, monitor speed or react with appropriate skill to drive safely.

- Mature drivers with a .08 to .09 level of intoxication are 11 times more likely to be in a fatal accident than non-drinkers; for young male drivers the risk is 52 times higher.

- The .08 level is reasonable, and is a higher level of intoxication than "social drinking." To reach a .08 BAC, an average-sized man would have to drink more than four beers in an hour on an empty stomach; a woman would have to drink three.

- States adopting the stricter standard saw an average 6 to 8 percent drop in alcohol-related deaths, which would translate into 500 to 600 additional lives saved annually if all states adopted it.

But restaurant and some alcoholic beverage industry groups dispute nearly all of the above arguments for .08 BAC

Berman of the ABI says the stricter standard penalizes responsible social drinking. He says a .08 BAC would make it illegal for a 120-pound woman to drink two 6-ounce glasses of wine on an empty stomach over a two-hour period. "Not many would suggest this is alcohol abuse," he says.

Most drivers know their limits and "self-select themselves" out by not driving when they are too impaired, he says. Others can handle a car fine at a .08 BAC, he adds.

Berman contends that because any alcohol consumption affects driving abilities to some extent, lowering the limit to .08 is just the first step toward making it illegal to drive after even a single drink. He notes that several European countries have lowered their BAC limits to .02 to .05 percent.

The ABI and other alcoholic beverage industry groups argue that .08 BAC

laws do not address the biggest causes of drunken-driving deaths — alcoholics, repeat offenders and those who drive at high BAC levels. Because 75 percent of alcohol-related traffic deaths involved BACs of more than .10 percent, adopting .08 BAC laws is "like lowering the speed limit to 50 mph to slow down maniacs who drive at 100 mph," Berman says.

Lowering the BAC also diverts scarce law-enforcement resources away from apprehending those high-BAC drivers, says the National Beer Wholesalers Association (NBWA).

But .08 proponents adamantly dispute critics' claim that the measure would criminalize social drinkers. They are playing "smoke-and-mirrors game," says MADD's Anderson. "We have plenty of clear, credible, peer-reviewed studies to show that drivers are too impaired to drive at .08."

As for Berman's claim that drivers know when they are too impaired to drive, she points out that about 3,500 people a year are killed by drivers with a BAC below .10. And by lowering the cutoff to .08, more .10 drivers will be arrested, she says, because police usually do not arrest drivers who are at or close to the legal limit.

Meanwhile, other opponents of .08 argue that the Senate action in June infringes on the 21st Amendment, which gives states the authority to regulate licensed beverages. "I don't believe it is the responsibility of the federal government to set these standards," said Sen. Larry E. Craig, R-Idaho, during a Senate Appropriations Committee markup June 13.⁴

But John Moulden, president of the National Commission Against Drunk Driving (NCADD) points out that all states adopted a 21-year-old drinking age law in 1984, at the urging of then-President Ronald Reagan. "Reagan was certainly no slouch when it comes to states' rights," Moulden says. "But he felt that the safety issue overrode states' rights."

Democratic Maryland state lawmaker William Bronrot argues, "This is not a states' rights issue. This is an issue of special interests vs. the public interest."

However, state and local government organizations, highway contractors and the American Automobile Association argue that states should decide how to spend highway safety and construction funds.

Since the Reagan era, says Frank Schafroth, director of state and federal relations for the National Governors' Association, states have grown increasingly opposed to restrictions being imposed on how federal funds are spent in the states. "Plus, the Senate measure would potentially divert a huge amount of money — 10 percent of federal highway funds — from state programs, and divert funds some governors feel are being used more effectively to reduce drunk driving by going after young and underage drinking drivers," he says.

As for the insurance industry, Rochman says insurers don't believe a .08 law is a silver bullet. "It's not our top priority," she says. "We believe the focus should be on effective enforcement of current laws and on repeat offenders and high-BAC drivers."

Should BAC testing be mandatory after auto accidents involving serious injuries?

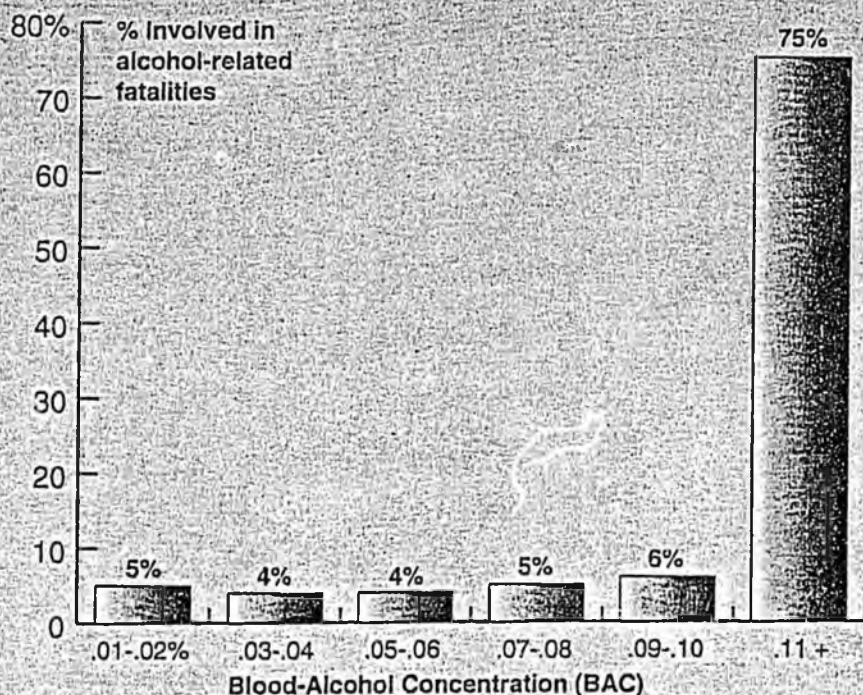
When drunken-drivers are killed in car crashes, hospitals can release their blood-alcohol levels to police investigators. But if the drivers are only injured and go to a hospital emergency room (ER), their chances of being arrested or even having their BAC levels checked by police are slim to none — even if the accident caused deaths or other injuries. In fact, some studies show as few as 5 percent of injured drunken drivers admitted to trauma centers are ever charged with DWI.⁵

Breath tests are rarely given to injured drivers at the accident scene because an officer's first priorities are getting the injured to a hospital and restoring

Drunkest Drivers Cause Most Deaths

Drivers with a blood-alcohol concentration (BAC) of .11 percent or greater caused three-quarters of the nation's alcohol-related fatal traffic accidents in 1998. The alcoholic-beverage industry argues that lowering the BAC to .08 percent is pointless because drivers at the higher BAC threshold cause most alcohol-related fatalities.

Blood-Alcohol Level of Drivers in Fatal Accidents, 1998



Note: Percentages do not add to 100 due to rounding.

Source: The Century Council, funded by America's leading distillers, National Highway Traffic Safety Administration, Sept. 2, 1999.

ing traffic flow. And once injured drunken drivers enter an ambulance or ER, state privacy laws often protect their medical records.

"It's a huge hole in the system through which large numbers of drunk drivers are not getting detected," says Carol Bononno, an emergency nurse at the Oregon Health Sciences University Hospital.

Intoxicated drivers familiar with drunken-driving laws often escape detection by demanding to be taken to a hospital, even if they only have a

scratch, says Carl A. Soderstrom, professor of surgery at the University of Maryland Medical Center in Baltimore.

"They know that once they make it to the ER, they are home free," says Stephen Simon, associate professor of clinical education at the University of Minnesota College of Law.

Yet by some estimates, Soderstrom says, 30 percent to 50 percent of injured drivers were drinking just before arriving at an emergency room, and the overwhelming majority have blood-alcohol levels well

above .10 percent, which would make them legally drunk in all 50 states.

"Intoxication is so common among injured drivers, particularly on weekends and holidays, that it is not uncommon for many trauma surgeons and nurses to think that all of their patients are drunk," Soderstrom wrote recently.⁶

But privacy laws prevent ER doctors from proactively notifying police that a driver they are treating appears drunk or tested positive for alcohol. The investigating officer or witnesses must have noticed signs of drunkenness by the driver, and the officer must go to the ER and demand a blood sample that can then be tested at a police lab.

State legislators, ER professionals, police and insurance companies are debating whether ER personnel should be compelled to automatically report drunken drivers to police, just as they have been required to do for decades regarding gunshot victims and those suspected of abuse.

The debate often pits the police — anxious to get a conviction — against medical personnel anxious to protect doctor-patient confidentiality and the sanctity of medical records.

Some hospital administrators also worry that medical insurance companies may start denying reimbursement of expenses for patients who drive drunk. Some trauma centers have recently stopped automatically testing BAC levels out of fear either that they may not be reimbursed or that doctors will be tied up in court.

State legislatures are increasingly debating the issue, and eight states have recently revised their physician-patient privilege laws to either allow or require doctors to report drunken drivers.

Although some ER doctors feel they should be able to call the police to report drunken drivers, the American College of Emergency Physicians and the Emergency Nurses' Association both

support a more limited "responsive reporting" policy, in which medical personnel can answer a question or provide BAC levels, but only if asked by a law-enforcement officer.

MADD wants medical personnel to report any positive BAC test results in traffic crashes resulting in fatalities or serious injury. The group also calls for immunity from liability for medical personnel providing such information.

Requiring such reporting would provide a more realistic count of actual drunken-driving cases and would enable more victims to be compensated by state victims' compensation funds, MADD says.

Soderstrom, whose trauma center tests the BAC levels of 95 percent of its patients, says such testing is essential for the proper medical and pain management of emergency cases, and to identify chronic alcohol abusers who should be referred for treatment.

But he agrees with NCADD's voluntary policy — at least for now — because of the high percentage of judges who only slap drunken drivers on the wrist. "Before one mandates that doctors and nurses report drunk drivers and spend lots of time involved in court cases, we need higher drunk-driving conviction rates in this country," he says.

The University of Minnesota's Simon argues, however, that testing all injured drivers, regardless of whether they appear to have been drinking, is "an inappropriate use of limited resources."

Should police confiscate the vehicles of drunken drivers?

Since February 1999, New York City has confiscated cars of those arrested for drunken driving, and two Long Island counties (Nassau and Suffolk) have adopted similar policies.

Although police in New York and more than 20 other states were already allowed to confiscate the cars of repeat offenders, Mayor Rudolph

W. Giuliani ordered police to also seize cars of first-time offenders. And just to make sure New Yorkers understood that he was serious, the mayor said the city might pursue permanent confiscation of some cars, even if the drivers were acquitted. By the end of the first year, police had seized 1,458 cars and begun forfeiture actions on 827.⁷

"We wanted to do everything we possibly could to make people think a second, third, fourth or fifth time . . . before getting behind the wheel of a car" and convince them that driving while intoxicated "is a grave, grave error and a crime," he wrote recently.⁸

Further, the mayor said, cracking down on first-time offenders was justified because first-time offenders cause 70 percent of drunken-driving fatalities in the United States.

Giuliani's get-tough policy seems to be working. During the first 11 months of the program, DWI crashes in New York City dropped more than 17 percent, and the number of DWI fatalities declined 18 percent, compared to the same period the previous year, Giuliani points out. "The number of people we've had to arrest for DWI has fallen by 24 percent," he wrote.⁹

MADD strongly supports the program. "These drunken drivers are using their cars as 4,000-pound weapons and are causing a tremendous amount of carnage on our streets and highways," said Maureen Fisher Ricardella, head of the New York City chapter.¹⁰

But Norman Siegel, executive director of the New York Civil Liberties Union, says the New York law violates the Constitution's innocent-until-proven-guilty clause. Moreover, he says, it severely penalizes innocent drivers who may be deprived of their cars for months while trying to prove their innocence.

Civil libertarians also question the disproportionate punishments resulting from the one-size-fits-all law, under which one motorist might lose a \$40,000

car while another might forfeit a car worth only \$1,000 for the same offense.

Siegel challenged the law last year, but a state judge ruled on May 19, 1999, that his group had not demonstrated that it was "unconstitutional, contrary to law or arbitrary and capricious." But Siegel vowed to continue the challenge, if necessary all the way to the U.S. Supreme Court. "We continue to believe the initiative is unfair and excessive," he said.¹¹

Generally speaking, the Supreme Court has upheld the use of forfeiture by prosecutors, who have used similar statutes to seize the property of drug traffickers. "The idea of going at people through their property has a long history," said Daniel C. Richman, a professor at Fordham Law School. "I think seizing cars on DWI-related theories is state-of-the-art forfeiture law."¹² ■

BACKGROUND

Drunken Charioteers

There have been drunken drivers as long as there have been vehicles. An intoxicated Noah had difficulty maneuvering the ark, and drunken charioteers caused problems in Roman times.¹³

In the 19th century, the problem was intoxicated railroad engineers. In 1843, the New York Central Railroad prohibited employees from drinking while on duty, according to James B. Jacobs, author of *Drunk Driving, an American Dilemma*.¹⁴

By the turn of the century, after the automobile arrived on the scene, alcohol began playing an unprecedented role in serious and fatal traffic injuries. "Inebriates and moderate drinkers are the most incapable of all persons to

DRUNKEN DRIVING

drive power motor wagons," said the authors of a 1904 article in the *Quarterly Journal of Inebriety*.¹⁵

By 1910, states had begun adding drunken-driving offenses to their traffic codes. But federal attention and resources were not mobilized to attack the problem until 1966, when NHTSA's precursor, the National Highway Safety Bureau, was established. A 1968 report by the fledgling agency found that alcohol use by drivers and pedestrians caused 25,000 deaths and 800,000 accidents a year.¹⁶

First Major Initiative

Two years later, in 1970, NHTSA launched the first major federal initiative against drunken driving — the \$88 million Alcohol Safety Action Project — a mix of stepped-up enforcement, rehabilitation and public-information campaigns in 35 cities. DWI arrests in some jurisdictions jumped more than 300 percent, and tens of thousands of drivers received treatment at rehab centers. But the program was not renewed after studies couldn't confirm that it was reducing drunken driving.¹⁷

By the early 1980s, NHTSA mandated that states enact anti-drunken-driving strategies in order to qualify for federal highway funds. About the same time, two grass-roots victims' organizations cropped up, one on each coast. Remove Intoxicated Drivers (RID) was founded in Schenectady, N.Y., in 1978, and MADD two years later in Sacramento, Calif.

Both groups received federal grants and plenty of press and TV coverage. In 1983 NBC aired a documentary about the life of Candy Lightener, the founder of MADD, whose daughter was killed by a chronic drunken driver. MADD's membership rolls promptly doubled.

In 1982, President Reagan appointed a Presidential Commission on Drunk Driving, which in a 1983 report made more than 50 recommendations, including raising the legal drinking age to 21. In 1984, Congress did just that, passing the Minimum Uniform Drinking Age Act. The law saves about 1,000 lives a year, according to NHTSA.

Since then, pressured by federal legislation linking highway funds to adoption of stricter drunken-driving laws, states have passed a variety of sanctions — including mandatory jail terms, increased fines and automatic and lengthier license suspensions. Others have restricted plea-bargaining or imposed home detention with electronic monitoring.

The policies have paid off. From 1970 to 1986, DWI arrests nationwide increased nearly 223 percent. Between 1982 and 1998, the proportion of traffic deaths involving alcohol dropped 18 percent.¹⁸

Progress Slows

In 1994, however, the decline in DWI arrests began to slow down, and alcohol-related traffic deaths leveled off. Safety advocates say a variety of trends contributed to the slowdown, including a shift in the national mood — toward more states' rights — following the Republican takeover of Congress. Congress now insists that states be granted greater freedom to decide how to spend federal highway safety dollars.

In addition, safety advocates say, other social issues — such as crime, drugs and violence — have captured the public's attention, while aggressive driving and air bags became the "hot" traffic-safety issues.

Nonetheless, in 1995 NHTSA set the ambitious goal of reducing alcohol-related driving fatalities from the

current level of 15,786 deaths to 11,000 by 2005. But safety advocates fear that will be difficult to attain because the attention of legislators, the public and the media has waned.

Plus, the restaurant and alcohol industries have spread large amounts of money around state capitols and Congress. According to a recent study by Common Cause, alcohol interests gave \$22.7 million in campaign contributions to members of Congress and the national political parties in the past 10 years. And, the citizens' lobbying group says, alcohol interests spent another \$22 million on salaries and entertainment expenses for lobbyists just between 1997 and the first half of 1999.¹⁹

In addition, in 1998 restaurant and alcohol-related businesses donated another \$12.5 million to governors and state legislators in the 33 states tracked by the National Institute on Money in State Politics. Most of that money went to California, Illinois and Texas.²⁰

The growing political strength of the opponents of anti-drunken-driving laws became evident in 1998, when MADD was handed a major political loss. After intense lobbying by alcohol and restaurant groups, Congress adopted a compromise provision that provided incentives — rather than sanctions — for states to move to the stricter .08 BAC standard. Since then, only two states have adopted the tougher standard.²¹

Meanwhile, during the past four years, proposed .08 legislation has been killed in numerous states, leading MADD's Webb to charge that lawmakers have "buckled under pressure from alcohol industry lobbyists."

"In the early days in the fight against drunk driving, MADD, the hospitality industry and law enforcement marched in lock step against drunk driving," Berman says. Since then, he says, advocates of .08 have launched a "holy war" against moderate drinkers, instead of focusing on hard-core alcoholics. "The issue has split our united front." ■

Chronology

CURRENT SITUATION

Action in Congress

The debate over whether states should have to adopt the stricter .08 percent drunken-driving standard was one of several thorny issues that delayed adoption of a \$58 billion transportation spending bill. After weeks of bitter lobbying, a compromise .08 provision was adopted by House-Senate conferees on Oct. 3.

The compromise, offered by Senate Majority Whip Don Nickles, R-Okla., would delay implementation of the .08 requirement until 2004. States that don't adopt the stricter standard by then would lose 2 to 8 percent of their highway construction funds each year that they are not in compliance. If a state adopts the .08 standard by fiscal 2007, it would recover the lost funds.

"This is a victory for the American people — a triumph of the public interest over special interests," said Sen. Frank Lautenberg, D-N.J., who had championed the Senate's original version. "Today we put the brakes on drunk driving and saved hundreds of lives by making .08 the standard for every state."

During the fight, money poured in to campaign coffers from the alcohol industry. According to the Center for Responsive Politics, the alcohol industry contributed \$6 million in the current election cycle, up one-third from the 1995-96 cycle. Anheuser-Busch Companies Inc. contributed more than \$1 million to the total.²²

NCADD's Moulden attributed Congress' action in part to public outrage over the recent Ford-Firestone tire controversy. "When the American public

1970s-1980s

Drunken-driving victims' groups turn public opinion against drinking and driving. Federal government mandating that states enact anti-drunken-driving strategies to qualify for highway funds.

1970

First major federal initiative against drunken driving — the \$88 million Alcohol Safety Action Project — is launched. DWI arrests jump more than 300 percent in some jurisdictions.

1978

Remove Intoxicated Drivers is founded in Schenectady, N.Y.

1980

Mothers Against Drunk Drivers (MADD) is founded in Sacramento, Calif., later changed to Mothers Against Drunk Driving.

1983

Commission on Drunk Driving appointed by President Reagan makes more than 50 recommendations, including raising the legal drinking age to 21. TV movie about MADD boosts group's growth. Utah becomes first state to pass a .08 BAC law.

July 17, 1984

National Minimum Drinking Age Act sets 21 as the minimum drinking age nationwide.

1990s-Present

Federal government steps up its campaign against under-

age drinking and drunken driving.

1994

DWI arrests slow down, and alcohol-related traffic deaths level off.

January 1995

Administration establishes a goal of reducing alcohol-related driving fatalities to no more than 11,000 by 2005.

July 1995

A provision sponsored by Rep. Scott L. Klug, R-Wis., allowing states to lower their drinking age without losing federal highway funds, is defeated.

May 1996

Legislation authored by Klug to sever the link between a state's drinking age and federal highway funds dies in committee.

1998

Congress offers incentive grants to pressure states to reduce the legal blood-alcohol level from .10 percent to .08 percent. States that don't go along by 2001 would lose federal highway money.

June 15, 2000

Senate adopts measure mandating states to adopt the .08 BAC standard or lose about \$1 billion in highway construction funds. MADD celebrates its 20th birthday, with 3 million members and supporters. Alcohol-related fatalities represent 38 percent of total fatalities, down from 55 percent in 1980.

How Hard-Core Drunken Drivers Get Off Easy

The family was driving home in DuPage County, Ill., after a wedding on Aug. 12, when suddenly a white van crashed through their minivan's windshield, remembers 7-year-old Kanwarjot Dhami. He and his sister Prinkia survived, but not their parents and grandparents.

The driver of the white van had a revoked license and a blood-alcohol concentration (BAC) twice the legal limit. In fact, two years earlier, he had been charged with drunken driving on the same road.¹

In Illinois and around the country, such incidents have led to public demands for a crackdown on hard-core drunken drivers — those who repeatedly drive with BAC levels of .15 percent or above. An average-sized man would need to consume seven drinks in an hour to reach the .15 level.

Hard-core drunken drivers cause much of the slaughter on America's highways, according to a recent National Transportation Safety Board (NTSB) study. In 1998, 17 people were killed *every day* in collisions involving such drivers — at an estimated cost of at least \$5.3 billion.²

High-BAC drivers make up only 1 percent of all drivers on weekend nights but are involved in nearly half of the fatal crashes during those hours. And 35 percent to 40 percent of drinking drivers killed in traffic collisions had at least one prior driving while intoxicated (DWI) conviction.

But across the country, many state laws and judges repeatedly grant such offenders multiple "second" chances. They do not consider them as felons and often do not require them to serve jail time.

Safety advocates say many judges are reluctant to send drunken drivers to already crowded jails or revoke a drivers' license or confiscate a car for fear it will prevent them or other family members from getting to work.

The NTSB and a variety of safety groups recommend a variety of proven-effective measures to get hard-core drunken drivers off the road. For instance, The Century Council, a think tank funded by America's leading distillers, recommends saturation patrols and sobriety checkpoints, statewide DWI reporting systems and increasing the

penalties for refusing a breathalyzer or blood-alcohol test. "Without statewide reporting systems, police officers don't know from one county to the next whether someone is a repeat offender," says William P. Georges, the council's vice president for traffic safety.

Among other things, the group also recommends administrative license revocation (ALR) — on-the-spot suspension of suspected drunken drivers' licenses if they fail or refuse a sobriety test. ALR is the "single most effective action a state can take to reduce alcohol-related crashes and fatalities," Georges says. States with ALR laws typically see a 6 percent to 9 percent reduction in alcohol-related traffic fatalities, he says.

Chronic drunken drivers should be forced to undergo alcoholism treatment, Georges says, and there must be intensive supervision after the treatment is finished. Finally, safety advocates recommend graduated penalties, which increase according to the driver's BAC levels and multiplicity of offenses.

The biggest obstacle to such crackdowns, says William Bronrott, a Democratic Maryland legislator, is "the old-boy attitude that, 'There but for the grace of God go I.'"

John Moulden, president of the National Commission Against Drunk Driving, agrees. "The problem isn't a lack of legislation, but the absence of our collective commitment and political will to use the statutes and countermeasures we already have."

Sukhminder Dhami, whose niece and nephew were orphaned in the DuPage County crash, has her own suggestion for getting the repeat drunken driver who killed her family off the road. "He should be hanged," said the immigrant from India.³

¹ "Man formally charged in traffic collision that killed four people in Hanover Park," *The Associated Press*, Aug. 14, 2000.

² "Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver," National Transportation Safety Board, June 2000.

³ Jeff Coen and Noreen S. Ahmed Ullah, "Youngsters Awaken to Family's Nightmare; 2 Generations Killed in Crash Tied to DUI," *Chicago Tribune*, Aug. 15, 2000, p. 4.

gets turned on to a highway-safety issue," he says, "the groundswell can swamp any economic interest involved."

The ABI's Berman, who says that "emotion won out over evidence," hasn't given up the fight. "This is still a very contentious issue and a lot of state highway administrators are upset about it. Maybe the four-year delay will allow people more time to reflect on it."

Underage Drinking

The Century Council, a research group funded by distillers, calls youth drinking "one of society's most serious health concerns."²³ Alcohol-related traffic fatalities among drivers under age 21 declined by 60 percent from 1982 to 1998; still, in 1998, 2,730 young drivers were involved in fatal crashes. To combat the problem, the

council supports zero-tolerance laws for underage drunken drivers.

The council also supports administrative license revocation (ALR), because 90 percent of teenagers say they would not drink and drive if it meant losing their license. Under ALR, teens caught driving with illegal BACs lose their license on the spot.

Besides pushing for .03 BAC laws, MADD has expanded its mission to stop

Continued on p. 804

At Issue:

Should states lower the BAC arrest threshold for drunken driving to .08 percent?

MILLIE L WEBB

NATIONAL PRESIDENT, MOTHERS AGAINST DRUNK DRIVING

WRITTEN FOR THE CQ RESEARCHER, OCTOBER 2000

most Americans support lowering the legal drunken-driving limit to .08 percent blood-alcohol concentration (BAC), according to a new Gallup survey. No reasonable person would want to get on the road or in the car with a .08 percent BAC driver.

Although it's never safe to get behind the wheel after drinking, scientific research shows that virtually everyone is impaired at the .08 level. No matter how many drinks it takes to get to a .08 BAC, driving skills — braking, steering and reaction time — are seriously impaired at that level.

A 170-pound man would have to consume four drinks in an hour on an empty stomach before reaching .08. A 137-pound woman would reach .08 after three drinks. The risk of a fatal crash is at least 11 times greater at .08 BAC.

Opponents argue that .08 doesn't address the real problem. I am living proof that they are wrong. My family was destroyed by a crash caused by a .08 driver, which killed my 4-year-old daughter Lori and baby nephew Mitchell. The crash also caused my husband and me to suffer severe injuries and burns and caused the premature birth and legal blindness of my other daughter, Kara. After two dozen surgeries and two funerals, I can tell you firsthand of the importance of passing .08. One precious life lost is one too many. We can save 500 lives each year if every state passes .08.

Although .08 may seem like common sense to most of us, 31 states still define intoxicated driving as .10 BAC — the most lenient definition of drunken driving in the industrialized world.

The alcohol lobby has worked hard to keep .08 at bay, despite widespread public support. Since 1996, .08 bills have been killed in more than three dozen states as lawmakers buckled under pressure from the alcohol and hospitality industries. The .08 laws aren't getting passed at the state level, and federal incentive grants provide little real incentive.

There is no magic wand to solve the drunken-driving problem. It demands a comprehensive solution with strong law-enforcement efforts, public awareness and effective legislation, including the all-important .08 laws.

Congress has the opportunity to save lives and eliminate "blood borders" between states by passing a federal drunken-driving limit of .08 BAC. Congress and states'-rights supporter Ronald Reagan took the same approach in passing the federal 21 drinking-age law.

There is a time to put the public's interest ahead of the special interests. The time is now.

RICK BERMAN

GENERAL COUNSEL, AMERICAN BEVERAGE INSTITUTE

WRITTEN FOR THE CQ RESEARCHER, OCTOBER 2000

the "one drink equals impairment" crowd is taking us through the looking glass one more time. These anti-alcohol nannies are once again trying to get the federal government to withhold highway money used for building safer roads from states that refuse to arrest moderate drinkers who drive.

Consider the following from Candy Lightner, founder of Mothers Against Drunk Driving: "I worry that the movement I helped create has lost direction. [Focusing on .08 BAC legislation] ignores the real core of the problem."

The General Accounting Office, commenting on the most widely cited study supporting .08, called the three-page study "unfounded." After the California Department of Motor Vehicles and the University of North Carolina studied their own states' .08 laws, both found no effect on drunken driving.

Of course, the National Highway Traffic Safety Administration (NHTSA) and MADD believe otherwise. In 1997, NHTSA Deputy Administrator Phillip Recht told a Senate committee of a study that found 12 percent fewer drunken-driving fatalities resulting from California's .08 law. He didn't mention that the 12 percent figure was only a 1991 prediction. It proved to be false one year later. The real figure, 6.1 percent, actually was slightly worse than the improvement experienced by the rest of the country.

When NHTSA was confronted with its own calculation that under .08 laws, a 120-pound woman would be facing jail after having two 6-ounce glasses of wine over two hours, the agency denied it was possible — until NHTSA's own department head acknowledged it was true.

The Washington Post also has been on an anti-drunken-driving jihad for years. Describing the .08 level of impairment, the *Post* suggests arrest and imprisonment are warranted. However, the *Post* has a different view when it comes to cell phone use, even though *The New England Journal of Medicine* called cell phone users more dangerous than .08 drivers. On this impairment, the *Post* timidly suggests some new restrictions "wouldn't be a bad thing."

The drunken-driving problem of the early 1980s has evolved dramatically. People in control of their drinking behavior obey the few laws. Drunken driving exists today at a new level — what Katherine Prescott, past president of MADD, labeled "a hard core of alcoholics who do not respond to public appeals." Passing new laws aimed at everyone else is truly a Lewis Carroll knockoff.

Continued from p. 802

underage drinking. Young people are involved in more fatal crashes involving alcohol than any other segment of the population, and as the youthful population continues to grow, so does alcohol usage among teenagers. Binge drinking is becoming increasingly popular among high schoolers, MADD says.

OUTLOOK

'Stuck in Neutral?'

Reaching the administration's goal of reducing alcohol-related traffic deaths to 11,000 by 2005 may prove to be a daunting task, safety advocates say. From 1982 to 1999, alcohol-related fatalities dropped an astonishing 37 percent. Reaching the new goal would require an additional 31 percent drop — in half the time.

Complacency may threaten that goal. "When it comes to drunk driving," says the NCADD's Moulden, "our outrage has tempered, and our efforts seem to have run out of steam. Absent the media coverage of earlier years, some people — including state and national legislators — think we have solved this problem."

"We're stuck in neutral on drunken driving," says Jackie Gillan, vice president of Advocates for Highway and Auto Safety, a coalition of insurers, citizens' groups and safety organizations. "We're not making the kind of gains that we should."

Money may also threaten the goal of lowering the death toll, says MADD's Anderson. "The interest groups that oppose stricter state BAC laws are very well-funded and very powerful," she says.

Bronrott, who has followed the issue as both a congressional staffer and now as a Maryland legislator,

agrees. "Believe me, legislator-lobbyist relationships are a lot more chummy in the state capitols than they are in Washington," he says. The alcohol industry in particular "has more leverage at the state level than at the federal level."

Given those ties, he says, "without federal action requiring states to adopt a .08 sanction bill, we will never get all 50 states to adopt a .08 level."

At the moment, industry analysts say, specialty beer and wine sales are up, because of the booming economy and the growth in the 21- to 34-year-old population, which drinks more beer. And as restaurants continue to serve super-size beverages, the amount of alcohol per drink has doubled in some cases.

Nonetheless, over the long term, the ABI's Berman says, "Americans are drinking less alcohol per capita than they did 20 years ago."

Whatever happens with the .08 BAC laws, MADD's Webb says the real long-term problem is getting judges and prosecutors to change the way they treat repeat offenders, as well as first-time drunken drivers.

"With more efforts at educating judges," she says, "we'll eventually have a judicial system that is more accountable."

Carlson, the Illinois housewife hit by a drunken driver, isn't waiting for lawmakers to make changes. For 20 years, she has been telling schoolchildren and police officers — in gruesome detail — how drunken drivers can destroy lives.

"I want to scare the hell out of them" she says. "Kids pass out on me all the time. I even had three state police officers pass out once." ■

Notes

¹ According to National Highway Traffic Safety Administration (NHTSA) figures.

² Daniel Hungerford, et al., "Screening for

Alcohol Problems May Lessen the Risk," Centers for Disease Control and Prevention, Issue Forum: Drunk Driving, *The Washington Post*, Dec. 13, 1999.

³ Injury costs include \$40 billion in health care, car damages, legal fees and court costs, and \$70 billion in lost quality-of-life, according to NHTSA's Web site: www.nhtsa.dot.gov/people/injury/alcohol/scost/us.htm.

⁴ Quoted in Jeff Plungis, "Senate Passes Lean Transportation Bill, Expecting It to Bulk Up in Conference," *CQ Weekly*, June 17, 2000.

⁵ Stephen Simon, "Medical Staff Reporting of Alcohol Levels Should be Mandatory," Issue Forum: Drunk Driving, *The Washington Post*, Dec. 13, 1999.

⁶ Carl A. Soderstrom, "Testing Injured Drivers for Blood Alcohol Content is Valuable," Issue Forum: Drunk Driving, *The Washington Post*, Dec. 13, 1999.

⁷ Juan Forero, "Police Ease Car Seizures in Some Drunken Driving Cases," *The New York Times*, January 21, 2000.

⁸ Rudolph W. Giuliani, "Policy Makes Progress in the Fight Against Drunk Driving," Issue Forum: Drunk Driving, *The Washington Post*, Dec. 13, 1999.

⁹ *Ibid.*

¹⁰ Quoted in Michael Cooper, "Driving Drunk To Mean Loss Of the Vehicle," *The New York Times*, Jan. 22, 1999.

¹¹ Kit R. Roane, "City Wins Ruling on DWI Crackdown," *The New York Times*, May 20, 1999.

¹² Quoted in Alan Finder, "Drive Drunk, Lose the Car? Principle Faces a Test," *The New York Times*, Feb. 24, 1999.

¹³ "Epidemiology of Alcohol-Related Accidents and the Grand Rapids Study," *Forensic Science Review*, Jan. 2000.

¹⁴ James B. Jacobs, *Drunk Driving, an American Dilemma*, University of Chicago Press, 1989, p. xiv.

¹⁵ Quoted in *Forensic Science Review*, *op cit.*

¹⁶ "Alcohol and Highway Safety," Department of Transportation, 1968.

¹⁷ Jacobs, *op cit.*, p. xv.

¹⁸ *Ibid.*, p. xviii.

¹⁹ "Paying the Price: How Tobacco Gun, Gambling and Alcohol Interests Block Common Sense Solutions to Some of the Nation's Most Urgent Problems," *Common Cause*, June 15, 2000.

²⁰ According to their Web site, at www.followthemoney.org/database.

²¹ For details, see 1998 *CQ Almanac*, p. 24-3.

²² *Ibid.*

²³ The Century Council, "Looking Back, Moving Forward," March 2000, p. 6.

Bibliography

Selected Sources Used

Books

Jacobs, James B., *Drunk Driving, an American Dilemma*, University of Chicago Press, 1989.

Jacobs examines the rise of drunk driving and ways to control it through deterrence, insurance surcharges, tort liability, public education and rehabilitation.

Articles

Finder, Alan, "Drive Drunk, Lose the Car? Principle Faces a Test," *The New York Times*, Feb. 24, 1999.

Finder discusses how the U.S. Supreme Court has generally upheld the use of property forfeiture, such as New York City's new law to confiscate the cars of drunken drivers.

Giuliani, Rudolph W., "Policy Makes Progress in the Fight Against Drunk Driving," *The Washington Post*, Dec. 13, 1999.

The mayor of New York City defends his new policy of confiscating the vehicles of drunken drivers, using the legal principle that private property used in a crime can be confiscated.

Plungis, Jeff, "Transportation Bill Conference Driven by National Drunken Driving Standard, Limitation on Truckers' Road Hours," *CQ Weekly*, Aug. 5, 2000.

Reporter Plungis discusses how the transportation bill conference is deadlocked over the issues of forcing states to adopt a .08 BAC and stopping federal regulators from limiting truck drivers' hours of service.

Simon, Stephen, "Medical Staff Reporting of Alcohol Levels Should be Mandatory," *The Washington Post*, Dec. 13, 1999.

An associate professor of clinical education at the University of Minnesota College of Law argues that emergency medical staff should be required or at least allowed to report drunken drivers who are injured in crashes.

Soderstrom, Carl A., "Testing Injured Drivers for Blood Alcohol Content is Valuable," *The Washington Post*, Dec. 13, 1999.

A professor of surgery at the University of Maryland Medical Center in Baltimore argues that checking the BAC of injured drivers is valuable for medical purposes, but he stops short of recommending that medical personnel should be required to report such information to police.

Studies

"Alcohol and Highway Safety," U.S. Department of Transportation, 1968.

The first federal study on alcohol consumption and driver impairment found that alcohol use by drivers and pedestrians caused 25,000 deaths and 800,000 accidents.

"Paying the Price: How Tobacco, Gun, Gambling and Alcohol Interests Block Common Sense Solutions to Some of the Nation's Most Urgent Problems," *Common Cause*, June 15, 2000.

A study of campaign contributions shows that alcohol interests gave \$22.7 million in campaign contributions to members of Congress and the national political parties from 1989 to 1999.

Stewart, Kathryn, "On DWI Laws in Other Countries," *National Highway Traffic Safety Administration*, March 2000.

A comprehensive study compares laws governing drunken driving in 22 countries.

FOR MORE INFORMATION

Advocates for Highway and Auto Safety, 750 1st St., N.E., Suite 901, Washington, D.C. 20002; (202) 408-1711; www.saferoads.org. A coalition of insurers and public health and safety organizations.

American Beverage Institute, 1775 Pennsylvania Ave., N.W., Suite 1200, Washington, D.C. 20006; (800) 843-8877; www.abionline.org. Represents restaurants that serve alcohol, including America's largest family restaurant chains.

The Century Council, 1310 G St., N.W., Suite 600, Washington, D.C. 20005; (202) 637-0077; www.centurycouncil.org. A think tank funded by America's leading distillers that seeks to reduce drunken driving.

Insurance Institute for Highway Safety, 1005 N. Glebe Road, Suite 800, Arlington, Va. 22201; (703) 247-1500; www.hwysafety.org. Researches how to prevent motor-vehicle crashes and injuries.

Mothers Against Drunk Driving, P.O. Box 541688, Dallas, Texas 75354-1688; (800) GET-MADD; www.madd.org. More than 600 chapters nationwide fight drunken driving and support victims of alcohol-related crimes.

National Beer Wholesalers Association, 1100 S. Washington St., Alexandria, Va., 22314-4494; (703) 683-4300; www.nbwa.org. Acts as an advocate for more than 2,900 independent beer wholesalers.

The Next Step

Drunken Driving

"Alcohol Blood Test Ruled OK," *Chicago Tribune*, Aug. 18, 2000, p. A3.

Requiring a man arrested for drunken driving to take a blood test did not violate his constitutional rights, a Wisconsin state appeals court ruled. The ruling by the 4th District Court of Appeals was the second in two weeks upholding the state's implied-consent law. The law requires drivers stopped for drunken driving to submit to a blood or breath test or lose their driver's license.

"Senate OKs National Blood-Alcohol Limit," *Los Angeles Times*, June 16, 2000, p. A25.

The Senate voted to set the first-ever national blood-alcohol standard for drunken driving. The \$54.7-billion spending bill to fund highway, rail, aviation and Coast Guard programs in fiscal year 2001 would require states to adopt a .08 percent blood-alcohol content level as their legal intoxication standard. Those failing to do so by 2004 would begin losing part of their highway trust fund money.

Heinzmann, David, "Plan Would Put Officers in Taverns; State's Attorney Wants Cops to Help Stop Drunks From Driving," *Chicago Tribune*, July 8, 2000, p. A5.

Will County State's Attorney James Glasgow is proposing to require employees of businesses that hold liquor licenses to take a course on handling drunken patrons. Glasgow said he also would encourage police departments to have a plainclothes officer available to go to a bar if the manager calls police. The officer would talk drunken customers out of driving or arrest them for attempted drunken driving if they resist.

Holmes, Steven A., "Bid to Toughen Drinking Law Holds Up Transportation Bill," *The New York Times*, Sept. 26, 2000, p. A1.

A major fight has erupted in Congress over a proposal to compel states to adopt a more stringent standard for drunken driving, under the threat of losing millions of dollars in federal highway aid. The fight has held up agreement on a huge transportation spending bill that provides money for highways and mass transit systems and also pays for air traffic controllers, the Coast Guard and the National Transportation Safety Board.

Long, Ray, and Douglas Holt, "Reforming DUI Laws Easier Said Than Done," *Chicago Tribune*, Sept. 1, 2000, p. B1.

The political landscape in Illinois and very practical problems with implementing some of the reforms in drunken-driving laws suggested by Illinois Secretary of State Jesse White make approval anything but a certainty. White's "tough love" program would require a sentence of jail time or community service for anyone caught

driving drunk while on a suspended or revoked license or anyone found guilty of driving with a blood-alcohol level of twice the .08 legal limit.

Nathan, Sara, "Police Officers to Set Up Sobriety Checks," *USA Today*, June 30, 2000, p. B1.

Mothers Against Drunk Driving, Nationwide Insurance, the Department of Transportation and law-enforcement officers launched an anti-drunken-driving education campaign and announced a blitz of sobriety checkpoints on roads nationwide during the Fourth of July weekend. The National Safety Council predicts that 645 people will die in traffic accidents that weekend, half from alcohol-related accidents.

Repeat Offenders

"Engler Targets Drunk Drivers," *Chicago Tribune*, Dec. 14, 1999, p. A3.

Republican Michigan Gov. John Engler said that the state's tough, new drunken-driving laws targeted at repeat offenders have allowed officers to confiscate an average of 51 license plates a day. On Oct. 1, 32 new state laws went into effect aimed at those who have two or more drunken-driving convictions in seven years. More than 100,000 licensed drivers in Michigan have been convicted of drunken driving in the past seven years.

"Man Faces 10th DUI Charge," *Chicago Tribune*, July 18, 2000, p. A3.

A Wisconsin man convicted nine times of driving while drunk was ordered to stand trial for a 10th drunken charge, this one a felony count of driving while intoxicated. Brian J. Britz, 43, has had his license revoked or suspended 18 times since 1982.

"New York City To Seize Cars of DUI Suspects," *Chicago Tribune*, Feb. 22, 1999, p. A11.

New York will become the first city in the United States to seize vehicles on the spot of drivers suspected of drunken driving, including first-time offenders. If a suspect is convicted of driving while intoxicated, the vehicle will be auctioned off by police. If the suspect is acquitted, the car will likely be returned, but city lawyers would have the ability to keep the car through a civil action. Twenty-two states allow municipal officials to seize the cars of drunken drivers, but almost all of those involve repeat offenders.

Borchmann, Phil, "Five DUI Victims Detail Anguish To Offenders; Drunken Drivers Get Emotional Earful From Panels," *Chicago Tribune*, July 13, 1999, p. A1.

Several nights a month in courthouses around the state, panels are convened with the purpose of stirring the emotions of DUI offenders. The sessions feature family members of those killed or seriously injured in drunken-

driving crashes, or drivers who have caused someone else's death. Those who work regularly with DUIs estimate that 80 percent of offenders are never caught again.

Halladay, Jessie, "Loose Laws on DWIs Will Cost States," *USA Today*, Sept. 7, 2000, p. A7.

More than half the states can expect to lose federal highway money because they haven't toughened drunken-driving laws. The loss of highway construction money will come as a result of a 1998 law, in which Congress required states to ban motorists from having open bottles and cans of alcohol in their autos and to impose tougher penalties on people convicted of multiple drunken-driving violations.

Higgins, Michael, and Ray Long, "State To Unveil Plan for Stiffer DUI Penalties; Measures Target Repeat Offenders," *Chicago Tribune*, Aug. 31, 2000, p. A1.

Illinois Secretary of State Jesse White is expected to propose a plan to crack down on drunken driving, particularly targeting repeat offenders and people who still drive after their licenses have been taken away. White wants to expand a program that makes some offenders take a breath test in their car before their ignition will work.

Hilkevitch, Jon, "Drunken Drivers Get Hard-Core Attention," *Chicago Tribune*, July 3, 2000, p. A1.

Amid indications that a federal goal of reducing alcohol-related highway deaths will not be met, new initiatives are being proposed to stop hard-core drinkers from getting behind the wheel. A two-year safety board investigation has determined that without a comprehensive national program, the Transportation Department's goal to cut alcohol-related fatal crashes to 11,000 or less annually by 2005 won't be achieved.

Parsons, Christi, "State Moves To Widen Use of Anti-DUI Ignition Locks," *Chicago Tribune*, March 25, 1999, p. A1.

Convicted drunken drivers in Illinois may soon have to take a breath test each time they climb behind the wheel of a car. Senators voted 56-1 in favor of a major expansion in the use of ignition-interlock devices, which make it impossible for drivers to start their vehicles without first blowing into a breath detector attached to the steering column.

Shaver, Katherine, and David S. Fallis, "Plenty of Blame, Few Remedies: Legislators, Judges at Odds on Drunken Driving," *The Washington Post*, Sept. 26, 2000, p. A1.

Maryland is about to forfeit \$7.5 million in federal road-building funds because the state legislature has not complied with congressional mandates to ban open alcohol containers for everyone in cars and stiffen penalties for repeat drunken drivers. In a study of drunken-driving cases handled in Montgomery County courts, *The Washington Post* found that drivers who had killed others or driven drunk repeatedly faced little jail time.

Sipress, Alan, "U.S. May Cut Road Aid Over DWI Laws," *The Washington Post*, May 16, 2000, p. B1.

Two years after Congress told states to restrict open alcohol containers in cars and crack down on repeat drunken drivers, only nine have fully complied, raising the prospect that most will be penalized millions of dollars in highway construction money.

Teen Drinking and Driving

"Alcohol Warning Sought in Anti-Drug Ads," *Los Angeles Times*, May 15, 1999, p. A10.

A House Appropriations subcommittee voted to require the federal government's five-year, \$1-billion youth anti-drug advertising campaign to include anti-alcohol messages as well. By a voice vote, lawmakers approved an amendment requiring the White House Office of National Drug Control Policy to include the ads against underage drinking.

"Data Suggest Teens Not Getting Message on Drunken Driving," *Chicago Tribune*, April 30, 1999, p. A3.

Rates of teenagers who drink and drive dropped dramatically in the last decade, but the reductions have leveled off, says a new study that is raising concern among alcohol experts. Drunken driving among teens fell about 40 percent between 1984 and 1997, says the study by Patrick O'Malley of the University of Michigan. But progress seems to have peaked in 1992, O'Malley reported in the *American Journal of Public Health*.

Burke, Rhonda Hetrick, "Schools Take Aim at Teen Drinking," *Chicago Tribune*, May 6, 1999, p. A3.

Prom and graduation are milestones often marked with parties. Because of the temptation to drink alcohol at many such events, area schools have made drunken-driving dramatizations and alcohol abuse education an annual rite of spring in McHenry County, Ill. The McHenry Area Youth Commission recently formed a 14-member task force of community and school leaders who have made it their mission for this year to educate students and parents about the dangers of underage drinking.



MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY

MAR 13 2001

MEMORANDUM

DATE: March 13, 2001

TO: HEATHER

FROM: Richard K. Payne, Assistant Municipal Attorney *RKP*

SUBJECT: HB 4; Request for Citation List From House Judiciary Committee

QUESTION: You have requested that we address the following question:

The House Judiciary Committee requested a copy of several case citations that were discussed in testimony provided by Richard K. Payne, Assistant Municipal Attorney, on March 12, 2001.

The following is the case citation list requested by the Committee Chair:

1. *McCormick v. Municipality of Anchorage*, 999 P.2d 155 (Alaska App. 2000).
2. *Bingaman v. Municipality of Anchorage*, 2000 WL 124801 (Alaska App. 2000).
3. *Hillman v. Municipality of Anchorage*, 941 P.2d 211 (Alaska App. 1997).
4. *Davis v. Municipality of Anchorage*, 945 P.2d 307 (Alaska App. 1997).
5. *Haynes v. State*, 1998 WL 238563 (Alaska App. 1998).
6. *Blanchard v. Municipality of Anchorage*, 1997 WL 759676 (Alaska App. 1997).
7. *Municipality of Anchorage v. Shaffer*, 1997 WL 295618 (Alaska App. 1997).
8. *Municipality of Anchorage v. Skagen*, 920 P.2d 284 (Alaska App. 1996)
9. *State v. Zerkel*, 900 P.2d 744 (Alaska App. 1995).

999 P.2d 155 MCCORMICK V. MUNICIPALITY OF ANCHORAGE (Ct. App. 2000)
2000 Alas. App. Lexis 35

JOHN McCORMICK, Appellant,

vs.

MUNICIPALITY OF ANCHORAGE, Appellee.

Court of Appeals No. A-6557, No. 1667
COURT OF APPEALS OF ALASKA
999 P.2d 155, 2000 Alas. App. LEXIS 35
March 10, 2000, Decided

<CASE SUMMARY>

Appeal from the District Court, Third Judicial District, Anchorage, John R. Lohff, Judge. Trial Court No. 3AN-96-1024 Cr.

Rehearing Granted March 10, 2000, Reported at: 2000 Alas. App. LEXIS 34.

This Opinion Substituted on Grant of Modified Rehearing for Withdrawn Opinion of January 28, 2000, Previously Reported at: 2000 Alas. App. LEXIS 9.

COUNSEL

Frederick T. Slone, Kasmar and Slone, Anchorage, for Appellant.
Benjamin O. Walters, Jr., Deputy Municipal Prosecutor, and Mary K. Hughes, Municipal Attorney, Anchorage, for Appellee.

JUDGES

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.
AUTHOR: MANNHEIMER

OPINION

MANNHEIMER, Judge.

John McCormick was involved in a motor vehicle accident. When the police arrived on the scene, an officer asked McCormick to perform field sobriety tests. McCormick agreed to perform a horizontal gaze nystagmus test, and the results from all six segments of the test indicated that McCormick was under the influence of alcohol. The officer next asked McCormick to perform two other tests: the turn-and-walk test, and the stand-on-one-leg test. McCormick refused to perform these tests. The officer then arrested McCormick for driving under the influence.

At McCormick's trial, the Municipality introduced evidence that McCormick had refused to perform the latter two field sobriety tests. In this appeal, McCormick contends that the Municipality should not have been allowed to introduce evidence of, or comment on,