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Date

2003 HOUSE TRANSPORTATION

HB 1452

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1452

House Transportation Committee

☐ Conference Committee

Hearing Date 2-7-03

Tape Number	Side A	Side B	Meter #
1		xx	8-end
2	xx		0-2.1
2	xx		19.5-29
Committee Clerk Signature <i>Louise Galt</i>			

Minutes:

Chairman Welsz: We will open the hearing on HB 1452. A bill for an act to amend and reenact sections 39-08-01 and 39-20-04 of the North Dakota Century Code, relating to the consequences for driving while under the influence.

Rep. Steven Zaiser: I am a representative for District 21. I introduce this bill HB 1452, which deals with the development of a tiered system of ascertaining the punishment for driving while intoxicated. I began work on this tiered approach shortly after the election in November, when I asked the legislative council if they were aware of any other states that had tiered or graduated systems. I think there are some for repeat offenders. Within a week I actually got a study where there had been 25 different states that had done tiered system, so we're clearly not the only state that is looking at this. The bill deals with tiering the offenses of punishment of a DUI based on BAC and multiple offenses. In the bill I was leave the existing punishment, lower level DUI exactly the same as it is now, and I've used the .10 in the legislation, I have an amendment

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prepared that talks about .08 if indeed the committee would like to go that way. I guess it was approved in committee here the other day. The tiers start at .10 or .08 if you want to deal with that, and once you're over .15, the level of punishment goes up substantially. Then I even used one more tier when we get up to the level of .20 where again it goes up. I have talked about the increase the jail time, increase the fines, but also deal with counseling and probation services as well.

Chairman Weisz: Thank you.

Rep. Ruby: You mention that initially you had penalties the same for .10 to .15. Is this over .15 and a first offense, it still immediately moves into the higher penalties.

Rep. Zaiser: Yes, as I understand it, that is what it is supposed to do. When they are that drunk, the likelihood of them causing a fatality really increases dramatically.

Rep. Thorpe: I'd like to see the fiscal note address both ends before we act on the bill.

Rep. Zaiser: And I doubt it would cost, along with this bill, incarceration costs and a variety of other costs. On the other hand, the value of a life is significant too, and I feel there will be some additional revenue too because of the enhanced fines. Certainly the costs are greater.

Chairman Weisz: Thank you. Testimony in support in HB 1452.

Keith Ternes, Deputy Police Chief for Fargo Police Department: Several weeks ago I was here testifying before you in regards to another bill and some of the comments that I'm going to make this morning are somewhat redundant, so I beg your forgiveness in that regard. I do think that the comments that are somewhat repetitive certainly are important to this particular legislation (see attached testimony).

Chairman Weisz: Thank you.

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Rep. Thorpe: I believe you heard the testimony on the previous bill and this bill, and I guess I would like to know which bill you prefer a Do Pass.

Chief Ternes: I think the concepts of both pieces of legislation are things that definitely need to be considered by the members of this committee and the legislature in general. I think there are a number of things that you are greatly passed with, that you will have to consider that are really going to send a message, not only to your constituency but also to the people who live in North Dakota that are tired of dealing with the DUI problem, tired of people being injured or killed on our state's highways, just a very idealistic concept or approaches that can be taken and have to be balanced with realism, in terms of costs associated with these things. I can't tell you which bill I prefer, and even if I did so, I'm not sure that it would be the right one for the entire state of ND. But I think you should seriously consider several of the concepts of both of these pieces of legislation and then consider passage.

Rep. Hawken: What % would you say of people who are picked up are between .08 and .10.

Chief Ternes: The % of those, the number of people arrested with those relatively low BAC's is very, very low. But there are a number of reasons for that. Law enforcement is not beyond bearing some of the responsibility with that. Part of the problem is that there are so many people out there that police officers can identify driving with such high BAC's, that I think it skews the average to some extent. In other words, those are the people that are very obvious to police officers, very easy to identify and apprehend. Law enforcement officers receive a great deal of training to identify those people with a lower BAC, yet they aren't utilizing the training to the fullest extent. In the city of Fargo, our average BAC is .17. The number of people that are out

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there with those high BAC's and the fact that law enforcement is not focused on those lower BAC's.

Rep. Hawken: I know we have the juvenile drug court in Fargo, and I believe, in the future, will have the adult drug court. Do you feel that that might be better component then maybe higher fines or a combination.

Chief Ternes: I think there has to be a combination of the two. I think that if there isn't the deterrent component of the legislation that tells people that the consequences of driving with those high BAC's is not there, that will continue to happen. But I do think that the adjudication of those cases certainly can be considered for that drug court.

Rep. Dosch: There's been a bill that's going through to extend the bar hours to 2:00 a.m. What is your opinion on that as far as creating more people with a higher BAC. Do you think is going to be a factor or not.

Chief Ternes: I don't believe that the extension of one hour of time for the bars is going to make a drastic difference. I think what happens now is that individuals who are well aware of when they are going to turn the tap off and if people are engaging in irresponsible behavior by drinking to a point where they shouldn't be driving, that's going to occur at 1:00 a.m. just as it is at 2:00 a.m. One option I've heard is that bars no longer serve alcohol after that 1:00 a.m. hour but stay open until 2:00 a.m. serving food or what have you but there is no longer any alcohol service after that. That gives people an hour to sober up. Would that be a factor, possibly, but I don't know.

Rep. Headland: How many beers do you think it would take a man of my size to get to .10, any idea.

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Chief Ternes: I would only be speculating, because for the most part every individual is different. How alcohol is actually metabolized by your system would be relatively close to everybody else, but how it would impact you, would be really different. I would speculate over the course of an hour if you had 3 or 4 beers, I think that you would be close to be coming close to .08 without any food, without anything in your stomach.

Rep. Headland: So, if I was to drink on an empty stomach, do you think it is possible that I can drink 6 beers and not be intoxicated, over a period of a couple of hours.

Chief Ternes: Do I think you would be intoxicated, I don't know. Do I believe you would be impaired to a point where you shouldn't be driving, yes.

Rep. Headland: Do you think, then, your equipment would indicate that reading of .08 or greater.

Chief Ternes: I would suggest that they would. They certainly accurately reflect your impairment level. Would I be surprised if you were at that level of .08, no.

Rep. Dosch: What is the cost of one of these hand held breathalyzers.

Chief Ternes: They are \$300 each.

Rep. Dosch: Would there be any value to having these put in bars. A vast majority of people haven't had their BAC level checked and really have no idea what .05 or .1 looks like.

Chief Ternes: Two comments. One, there are retailers who actually sell similar devices on the market for the general use of the public and they are marketed to people so that they can utilize them to gauge where they are in terms of impairment. Do they work? I don't know. My experience is with equipment and breath machines that are certified and re-certified by people at the State Toxicologist. I don't know if the ones that are marketed over the counter are accurate

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or if they work. Personally would I rely on them, no. Should they be placed in bars? It hasn't happened for quite some time within the city of Fargo, and I guess I'm not aware of any place else that they exist, but for a while, a couple of bars in the Fargo/Moorhead area actually had machines setting on the bar for people to take a straw and blow into the machine and determine exactly what their BAC level was. Unfortunately, at midnight, 12:30 a.m. or really over the course of an evening, my experience has been it turned into a contest. People would utilize those machines to see who could get to the highest BAC. So we would dissuade liquor establishments from having those in their establishments.

Rep. Delmore: Wouldn't another problem be in using something like that, that someone could check themselves, but within an hour after leaving the bar, that BAC could indeed go higher.

Chief Ternes: That is an excellent point. I think that would be one of the flaws with these things being marketed over the counter, is that they do provide a very small sense of security. An individual may take that particular test at 10:00 p.m., after having recently consumed a number of drinks, be presented with their BAC at that point, but still having their alcohol content within their system on the ride. Yes, it would provide a false sense of security and that's why I personally would not advocate relying on them.

Chairman Weisz: Thank you. Further testimony in support to HB 1452.

Keith Magnusson, NDDOT: Support of concept. This is another approach which should be looked at with a higher BAC. We are looking at a .08 bill, lower BACs and this is something that they are looking at in a number of states. This is another piece of the puzzle. The drug court approach that Judge Haskell talked about we think is very good to help out.

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Rep. Delmore: As you look at the statistics, would you say that statistics with repeat offenders are lower here where they are working successfully with the drug court than in other areas of the state where we do have it in place.

Mr. Magnusson: We don't have those statistics, and the program is so new. We supported taking off the sunset clause off the drug court bill, there is no magic program, but what might for somebody, doesn't work for someone else. The people in drug court have to want to be there and they work very hard. I think for the right person, drug court does this job. There are a number of laws amending the DUI laws.

Chairman Welsz: Thank you. Anyone else here in support of HB 1452.

Janet Seaworth, Exec. Director of the ND Beer Wholesalers Association: Support (see attached testimony).

Rep. Schmidt: Why don't beer companies put alcohol count on their label.

Ms. Seaworth: I do believe that most of them have alcohol content labeling. The labels are regulated by the federal government and there are certain things that they have to include, and also for a product to be considered a malt beverage, it has to be less than 5% alcohol.

Chairman Welsz: Thank you. Further testimony in support.

Deb Jeyne, Spokesman of MADD: I am here to ask you to give your support in HB 1452. We do like to see stiffer penalties for the DUI offenders.

Chairman Welsz: Thank you. Further testimony in support. Opposition to HB 1452.

Dave Krabbenhoff, DOCR: We're not really in support or in favor of the bill. We are neutral. I prepared the fiscal note on this bill, I wanted to point out with the passage of the laws as stated, there becomes a fiscal impact with the bill. Presently, the Dept of Corrections has shown the

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fiscal note as 42 DUI offenders incarceration in the Dept of Corrections and if this bill were to go into effect, the fiscal impact that we estimated for the '03-05 biennium is almost \$800,000 for 42 people that will be staying longer. For the '05-07 biennium, that goes over \$1 million dollars for those 42. So while we're not in opposition to the bill, we just want to remind you that when we pass tougher DUI laws, that means more people are going to be coming to the DOCR and with that the DOCR needs more resources if we're going to take care of them. We are at capacity, we don't anticipate going below capacity, as a result of that, but we contracted that or create more space. It's going to cost a lot of money to do this.

Rep. Delmore: Can you tell me why you wrote a fiscal note for this bill but not for 1439.

Mr. Krabbenhoff: That's a good question. HB 1439 slipped under our radar screen. DOT was to find that fiscal note, we didn't get to see that fiscal note, DOT didn't contact us. We tried to contact DOT to try and get the blood alcohol levels that would fall under this bill, but we couldn't get enough information to really put more any more impact on that. We contacted the court for revenues, but we couldn't really get any hard information as far as that either.

Rep. Zaiser: Would the fiscal note be different based on incarceration for the lower levels of BAC, in the one bill vs. the other.

Mr. Krabbenhoff: I haven't had a chance to go through 1439 in detail, but I think that 1439 will probably be the more expensive bill. This has an impact not only on the people who are locked up in the DOCR but also on our field services division as was testified on 1439, that there are going to be a lot more people on supervision and that relates to probation officers, supervisors, etc.

Chairman Welsz: Thank you. Further testimony in opposition.

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Brenda Neubauer: Same opposition as 1439. I still have the same concerns. I would like to see the first offenses taken out at least. Sometimes people make mistakes. We need to allow people one mistake. Can there be some kind of middle ground, at least get the first offense out of there. Rep. Ruby: On that personal stance, on pg 6 of the bill, line 9, if that word "must" changed "may" would that be workable under certain conditions; if there was an accident involved or an injury involved, then they could impose stiffer fines for the first offense.

Ms. Neubauer: I would have no objection to that, but can't the court still do that already. The courts can already do that. If there is an accident involved, I do believe the courts are giving stiffer penalties. They are already doing these things.

Rep. Zaiser: I think Rep. Ruby had a good suggestion. Don't you think they've already made a mistake when they've gone to .15.

Ms. Neubauer: I do think so to some extent, yes, but to another extent, if someone is intoxicated to that extent, they're not using rational thought processes. They're not thinking when they are getting into their car to drive home, they're not thinking normal, not rational. We need to get them treatment, so they can learn from it. People make mistakes.

Rep. Ruby: How many people do you get off of their DUI convictions?

Ms. Neubauer: Not many, most of them plead. The majority of the people with DUI plead it out. Chairman Weisz: Thank you. Further testimony in opposition? We will close the hearing. (Reopened later on the same day)

Chairman Weisz: What are the committee's wishes in regard to HB 1452.

Rep. Weller: I move a Do Not Pass.

Rep. Headland: Seconded.

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House Transportation Committee
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Hearing Date 2-7-03

8 YES 5 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Price

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FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1452

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$799,520		\$1,045,760	
Appropriations			\$799,520		\$1,045,760	

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The figures shown above reflect the fiscal effect on ONLY the Department of Corrections and Rehabilitation (DOCR). The fiscal effect on other State agencies or local governments could not be determined. However it is evident that this bill will cause a fiscal effect to both state and local revenues and expenditures beyond the DOCR. Inquiries were made to DOT as to the number of DUI violations and the resultant blood alcohol levels, to DHS as to the cost of implementing the treatment as specified in the bill and to the district court as to the percent of fines assessed in a DUI case that are actually collected. The responses from these entities did not provide adequate information to arrive at an estimated fiscal effect beyond the DOCR. The reason for such responses is not due to the lack of effort by these entities but rather the uncertainty of the need of resources that may or may not be necessary to implement this bill. It is important to note that the fiscal effect reported in this fiscal note represents ONLY the offenders sentenced to the DOCR under current law. It is safe to assume that more individuals will be sentenced to the custody of the DOCR if this bill is implemented, however due to lack of relevant data, the DOCR is unable to estimate the additional number of individuals that would be sentenced to its custody.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

This bill provides for increased fines for a DUI violation dependent on blood alcohol levels. Although the DOCR believes it is a safe assumption that the amount of fines collected will increase as a result of this bill, we are unable to estimate the amount of increase.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

As noted above the fiscal effect on expenditures in 1a above apply ONLY to the DOCR. HB 1452 will increase the length of prison stays for those sentenced under a DUI conviction and in addition will most likely increase the number of people sentenced to the custody of the DOCR. Due to the fact the DOCR is operating and expects to continue operating at capacity, longer prison stays and more inmates equate to the need for additional prison beds. This fiscal note was prepared under the following assumptions:

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Date

1. Number of individuals convicted of DUI and sentenced to the custody of the DOCR will remain constant with the current levels (during 2002 42 individuals were admitted to the DOCR for a DUI conviction)
2. The percent of sentence served by an inmate will remain constant with the current percent of 68.4%.
3. Sentence imposed by the court on the 42 annual DUI admissions will change as follows:

	Current Law	HB1452
Felony B Conviction	0	17
Felony C Conviction	12	21
Misdemeanor A	30	4

4. The average sentence for a felony B conviction under HB1452 is estimated at 31 months. This estimate represents the current average sentence of a DOCR inmate serving time for a felony B conviction.
5. Additional prison beds \$50 day per inmate

HB1452 increases the number of months served by the estimated 42 DUI inmates in the 2003-05 biennium by 421 months (average per inmate 10.02 months). For the 2005-07 biennium the estimated increase is 688 months (average per inmate 16.4 months).

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The appropriation amount noted in 1a above is the estimated amount that would need to be added to the 2003-05 DOCR executive recommendation if HB 1452 is implemented.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/30/2003

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Date: 2-7-03
Roll Call Vote #: _____

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1452

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30725.0100

Action Taken Do Not Pass

Motion Made By Wei Seconded By Head

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt		✓
LeRoy G. Bernstein	✓		Elwood Thorpe		✓
Mark A. Dosch	✓		Steven L. Zaiser		✓
Pat Galvin		✓			
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby		✓			
Dave Weiler	✓				

Total Yes 8 No 5

Absent 0

Floor Assignment Rep. Price

If the vote is on an amendment, briefly indicate intent:

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10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 12:59 p.m.

Module No: HR-25-1980
Carrier: Price
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1452: Transportation Committee (Rep. Welsz, Chairman) recommends **DO NOT PASS**
(8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1452 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-25-1980

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2003 TESTIMONY

HB 1452

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Yolanda Richardson
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10/16/03
Date

SUGGESTED AMENDMENTS TO HB 1439 AND HB 1452

Bruce B. Haskell, District Court Judge
South Central Judicial District
222-6682
bhaskell@ndcourts.com

39-08-01(4) - "A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. **For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.**"

39-08-01(4)(e) "The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 **for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.**

Testimony of Janet Demarais Seaworth
Executive Director
North Dakota Beer Wholesalers Association

HB 1452
House Transportation Committee

Mr. Chairman, members of the committee, my name is Janet Seaworth. I am the Executive Director of the North Dakota Beer Wholesalers Association. Our association is comprised of 17 family-owned and operated beer distributors in North Dakota. Our beer wholesalers, along with our brewers, have been involved in the fight against drunk driving for a long time.

It appears to us that despite the progress we have made in the fight against drunk driving, a significant problem remains. That is, the high BAC repeat offender. In previous testimony before this committee, I provided you with copies of a 1991 study conducted by the Traffic Injury Research Foundation of Canada, and based on U.S. data, that confirmed that an effective anti-drunk driving program should focus on the high BAC repeat offender.

Most recently, a final report issued in June 2000 by the National Transportation Safety Board and relating to the serious traffic safety problem posed by the "hard core drinking driver"¹ recommended that a program to address high BAC and repeat offenders should incorporate: vehicle sanctions to restrict or separate the hard core drinking drivers from their vehicles, including ignition interlocks; legislation that defines a high BAC (.15 percent or greater) as an "aggravated" DUI offense that requires strong intervention; and legislation that restricts plea bargaining of a DUI offense. HB 1452 does provide aggravated penalties for high BAC drivers, vehicle sanctions to separate the high BAC driver from his vehicle and it prohibits plea bargaining for high BAC drivers.

We think HB 1452 is a step in the right direction. It targets the hard core drinking driver. And that's where the problem is. We urge your favorable consideration on HB 1452.

Thank you.

For more information, contact the North Dakota Beer Wholesalers Association, P.O. Box 7401, Bismarck, ND 58507; (701)258-8098.

¹ NTSB defines "hard core drinking drivers" to include repeat offenders and high BAC offenders - all offenders with a BAC of .15 percent or greater.

**FARGO POLICE DEPARTMENT**

222 4th Street North
P.O. Box 150
Fargo, North Dakota 58107

To: The Honorable House Committee Members of the Fifty-Eighth Legislative Assembly of North Dakota

From: Deputy Chief of Police Keith A. Ternes - Fargo Police Department

Re: House Bill No. 1452

Date: February 7, 2003

The Fargo Police Department, like every law enforcement agency across North Dakota, has been and continues to be dedicated to making travel on our state's roadways as safe as possible. Removing alcohol impaired drivers from our streets and avenues is a key component towards accomplishing this objective. For the past ten years the Fargo Police Department has emphasized and re-emphasized the enforcement of both state and local impaired driving laws.

In 1995, 526 drunk drivers were arrested by Fargo police officers. In 2000, 687 people were arrested for drunk driving. In 2001, 725 drunk drivers were arrested, and last year (2002), 804 drunk drivers were removed from Fargo city streets. We've literally made hundreds upon hundreds of DUI arrests, trying hard to send the message to people that if you drink and drive in the City of Fargo, you will be arrested!

Unfortunately, people don't seem to be getting the message. The measures presently in place are not capturing the attention of those that choose to drink and drive. People living in Fargo and North Dakota's everywhere continue to be at risk as they drive on our streets and highways because of drunk drivers.

What compounds the problems associated with drunk driving is that on average many of the persons arrested for DUI are driving at extremely high blood alcohol levels. It is not uncommon for police officers to encounter people with blood alcohol levels at or well above the .15% BAC level. In Fargo, and not unlike other areas across the state, the average BAC for persons arrested for DUI is .17% BAC! This is an indicator that many of the people law enforcement officers are apprehending for DUI are choosing to drink to a point of being overly intoxicated, virtually pouring themselves into their vehicles and then driving, creating a significant danger to the motoring public.

Obviously the more intoxicated a person is while driving the greater the risks become, including a higher risk of becoming involved in a motor vehicle crash. One study

EMERGENCY CALLS
911

NON-EMERGENCY
(701) 235-4493

RECORDS
(701) 241-1420
DEPARTMENT FAX
(701) 241-8272

ADMINISTRATION
(701) 241-1427
Fax (701) 297-7789
CHIEF CHRIS MAGNUS
(701) 241-1400

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Richard Costa
Operator's Signature

10/16/03
Date

developed for Mothers Against Drunk Driving (information attached) indicated that 65% of all drunk driving fatalities involved a driver with a blood alcohol concentration of .15% or higher. Clearly, the consequences and outcomes associated with operating a motor vehicle while intoxicated can be tragic, and usually is when a person is driving with any blood alcohol concentration that impairs a person's ability to safely operate a motor vehicle. However, the sanctions imposed upon those who completely disregard the responsibility of operating their vehicle safely, in other words, they drive while they are so severely intoxicated that they greatly compromise the safety and well being of anyone else who may be in their path, should be consequential enough to deter or prevent that person from ever doing so.

The legislation outlined within House Bill # 1452 enhances the penalties associated with driving while severely intoxicated. I believe these measures would be a very appropriate component of addressing the overall DUI problem, but more specifically the problem associated with person's driving while they are overly intoxicated.

On behalf of the Fargo Police Department and Fargo Police Chief Chris Magnus, I urge you to support the passing of this very important piece of legislation. Thank you.

Richard Costa
Operator's Signature

10/6/03
Date

12. Higher Risk Driver Forward

Definition

In 1998, Mothers Against Drunk Driving asked Dr. Robert Voas of the Pacific Institute to evaluate the problem of the high-risk driver. A high-risk driver is defined as:

"those individuals who have an alcohol problem and who drink and drive on a regular basis. These individuals generally have a blood alcohol content of .15 percent or higher."

According to the National Highway Transportation Safety Administration (NHTSA) in 1999, one out of nine intoxicated drivers in fatal crashes had a prior driving while intoxicated/driving under the influence (DUI/DWI) conviction within the past three years. NHTSA also reported in 1999 that about one third of all drivers arrested or convicted of driving while intoxicated or driving under the influence of alcohol (DUI/DWI) were repeat offenders.

Characteristics of the Higher Risk Driver

The demographics of the higher-risk driver are:

Age: Median 30, majority 20 to 45
Gender: 80 to 95 percent male
Education: High school or less
Marital Status: Single 46 to 55 percent; divorced 22 to 41 percent
Ethnicity: Caucasian

The personality and attitude of the DUI/DWI driver as compared to all drivers is as follows. The driving while intoxicated/driving under the influence driver is typically:

- (1) aggressive and hostile
- (2) a sensation seeker
- (3) has a history of other criminal behavior
- (4) tends to minimize the risks of impaired driving

Drinking behaviors among the DUI/DWI higher-risk driver is also of interest. These offenders tend to drink at least two to three times per

week and 13 to 38 percent are daily drinkers. When this group drinks, they tend to have five or more drinks at a time (35 to 60 percent). The average blood alcohol concentration (BAC) for this group is .18 percent to .28 percent. Overall, 64 to 79 percent of this group tends to drink primarily beer and 40 to 60 percent tends to drink in licensed establishments. Of particular importance is many in this higher-risk group have previous drinking problems and a family history of previous DUI/DWI problems.

Program Definition

Dr. Voas found that drivers with a blood alcohol concentration of .15 percent or higher accounted for 65 percent of all drunk driver fatalities. From his research in this area, Dr. Voas put together a comprehensive Higher Risk Driver Program for Mothers Against Drunk Driving. This program identifies MADD's definition of the high-risk driver as:

- (1) a second driving under the influence offense within a 5 year period
- (2) a first-time offense with a blood alcohol concentration of .15 percent or higher
- (3) a driving under the influence suspended offense, when the suspension was a result of a prior driving under the influence conviction

Higher-risk drivers under MADD's program are subjected to sanctions in three areas:

- (1) restrictions on driving
- (2) restitution sanctions
- (3) recovery provisions

Other Programs

It should also be noted that in Summer 2000 the National Transportation Safety Board (NTSB) came out with its own recommendations on the high-risk driver. The NTSB's recommendation closely follows MADD's program. The Century Council also has a high-risk driver program called "The National Hardcore Drunk Driver Project." All of these entities realize the inherent danger faced

by these types of drinking drivers being on the road. All three plans have similarities and differences. The common threads of these plans are:

- each has greater penalties for Blood Alcohol Concentration (BAC) at or higher than .15 percent,
- each supports sobriety checkpoints and increased enforcement,
- each supports implied consent for test refusals,
- Administrative License Revocation,
- some form of vehicle immobilization/impoundment,
- home confinement with electronic monitoring,
- ignition interlock devices,
- mandatory participation in treatment,
- intensive monitoring/supervision/probation,
- dedicated detention facilities,
- the use of a statewide tracking system.

The differences among the plans include:

- the use of a statewide tracking system,
- lower BAC limits for repeat offenders,
- judicial programs,
- community service,
- jail time,
- fines.

MADD's program supports all of these measures while the other programs support some in part or not at all. A complete copy of MADD's Higher Risk Driver Program follows.

Most important to any of these plans is cracking down on the higher-risk driver by implementing the measures discussed within the plan through sound legislation, followed up by strict enforcement and tough sentencing. Only through these means will states begin to see reductions in fatal crashes from this type of drunk driver.

The Three Rs for Controlling the Hardcore Drinking Driver: MADD's Program for the Repeat DWI Offender

There are few more tragic events than the death of an innocent motorist in a crash caused by a convicted drunk driver. Why is such an individual driving drunk again? Why is such an individual driving at all? From its inception, MADD has fought to ensure that the sanctions for impaired driving would prevent a reoccurrence of this high-risk behavior that results in thousands of deaths on our highways each year. Research has given us new insights into the danger that the hardcore drunk driver presents on American roads. Yet, as a nation, we have made relatively little progress over the last 20 years in controlling this menace. The driver who killed Carri Lightner, the daughter of MADD's founder Candy Lightner, was convicted of drunk driving four times before and twice after the crash that killed Carri. The deaths of innocent motorists at the hands of drivers who have been convicted one or more times of driving under the influence are a routine subject for the back pages of our major newspapers.

The Hardcore Drinking Driver Problem

Hardcore drinking drivers have been defined "as individuals who repeatedly drive after drinking, especially with high BACs [blood alcohol concentration], and who seem relatively resistant to changing their behavior [1]*. On weekend nights in the United States, only 1 percent of drivers have a BAC of .15 or higher, but drivers with BACs of .15 or higher account for 65 percent of all drinking driver fatalities [2]. Most drivers convicted of driving while intoxicated (DWI) in the United States are at very high BAC levels. The most recent MADD Rating of the States [3] report found that the average BAC of drunk drivers arrested by state police varied from .130 in Montana to .185 in Connecticut. A driver with a BAC at .15 is more than 300 times more likely to be involved in a fatal crash [4]. While most drivers in fatal crashes have not yet been convicted of drunk driving, those who have are at significantly greater risk of causing a

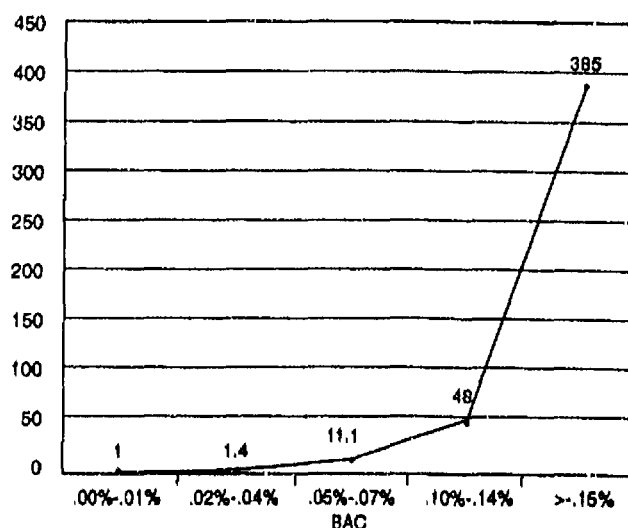


Figure 1. Relative fatality risk of a single vehicle fatal crash for drivers at .15 BAC or above.

drunk-driving crash [5].

An obvious question is why is it that drivers who have been arrested, convicted, lost their licenses, and, perhaps, served some time in jail, continued to drink and drive, and to kill innocent motorists? While there are different kinds of hardcore drinking drivers, most can be classified as problem drinkers or dependent on alcohol. Others, while alcohol abusers, are primarily a menace because they have personality problems that include aggression, hostility, and thrill seeking [6]. This involvement with alcohol, frequently in conjunction with personality problems, makes these drivers hard to change. This was dramatically demonstrated in research by Larkin and his co-workers [7] when they interviewed drinking drivers a year after they were injured in a crash. One-half of these survivors of serious crashes reported that they had driven while impaired after leaving the hospital. Thus, even the experience of having a serious injury does not appear to deter many of these hardcore drinking drivers.

Recent Research

Not all hardcore drunk drivers come to the attention of the authorities before they are involved

In a crash that takes their own or someone else's life [8]. Because they drink frequently and heavily, however many of these dangerous drivers are eventually apprehended for drinking and driving, frequently more than once before they wind up in a crash [9]. The inability of authorities to assure that an individual arrested and convicted of a drunk-driving offense does not get out on the road again under the influence of alcohol is a significant failure of our state laws and criminal justice system to control drunk driving. In part, this failure is due to a lack of knowledge about how to apprehend [10] these offenders and how to control their impaired driving [11]. However, recent evaluations of state efforts to reduce illicit driving by convicted drunk drivers through vehicle impoundment and forfeiture [12], license plate impoundment [13] and tagging [14], and the use of alcohol safety interlocks [15] have shown promise. This research, on top of the existing information on the effectiveness of license suspension and treatment programs [16], provides an array of tools for dealing with the hardcore drinking driver.

It now appears possible to develop a comprehensive plan for controlling such drivers who come to the attention of the states and localities through the drunk-driving enforcement process and to develop a system of laws and programs that can greatly reduce the risk that this group presents to the driving public. MADD's program for controlling the hardcore drinking driver embraces this research and has developed a practical program that all 50 states can put in place to deal with the repeat offender. Most of the remedies employed in this proposal are not new. However, in the past they have been implemented on a piecemeal basis producing a system full of loopholes and incomplete programs that have been failing to deal successfully with this problem. No system is perfect. MADD's Three Rs plan for controlling the hardcore offender should reduce, but will certainly not eliminate, the crashes caused by these high-risk drivers.

General Versus Specific Deterrence

MADD's Three Rs plan for controlling the risk presented by the hardcore drinking driver is aimed at those offenders who are apprehended by the police and become liable for license action by the department of motor vehicles (DMV) or the court.

The actions recommended are directed at reducing the risk that these offenders will drink and drive again and be in a crash in the future. This type of program is classified as a special deterrent program in contrast to countermeasures that are primarily directed at deterring all drivers from committing the first DWI offense, which is known as general deterrence. Thus, only those hardcore drinking drivers that are apprehended by the current law enforcement process will be impacted by the Three Rs program. Those who escape apprehension will not be deterred by this effort. Many of the sanctions such as jail, fines, and license suspension proposed for the hardcore offender may have a general deterrent effect. The general deterrent affect of these sanctions has been considered in the development of this program for the hardcore drinking driver. In general there is little conflict in the utility of a sanction between its specific and general deterrent effect. However, safety advocates should take care that in the effort to control these problem drivers, sanctions that have been shown to have a general deterrent impact not be weakened as a result of an effort to strengthen sanctions for repeat offenders.

Defining the Hardcore Drinking Driver

The hardcore drinking driver has been generally understood to refer to individuals who repeatedly drive after drinking and are likely to have a drunk-driving conviction on their record and to be at a BAC of .15 or higher when apprehended for DWI or when involved in a crash [17]. In order to deal with this high-risk group, the states must have a practical or operational definition based on objective measures growing out of the drunk-driving enforcement and criminal justice process. In order to be controlled, the hardcore drunk driver must be subjected to more severe restrictions than the social drinker who comes before the court on a drunk driving charge. Therefore, the definition cannot be left to a screening process that involves subjective elements, which are based on self-reports or professional assessments even if provided by licensed alcohol treatment specialists [18]. If the hardcore offender is to be subjected to longer periods of suspension, treatment for alcoholism, higher fines, and jail terms then the hardcore offense must be specified in objective, legal terms even if this involves some arbitrariness that may not fit some individual cases.

MADD's Definition of the Hardcore Drinking Driver

The MADD program for the states identifies hardcore offenders in three ways:

1. an individual convicted of a drunk-driving offense within 5 years of a prior conviction, i.e., a second offender
2. an individual convicted of a DWI offense who, at the time of the offense, had a BAC of .15 or higher
3. a driver convicted of driving with a suspended license (DWS) where the suspension was the result of a drunk-driving conviction.

Agencies Responsible for Controlling the Hardcore Drinking Driver

Traditionally, the criminal justice system has been responsible for apprehending, trying, and sanctioning the drunk driver. Once identified and convicted, responsibility for the drunk driver lies principally with the probation departments of local courts and, to a lesser extent, with the local director of corrections. The courts, however, share responsibility for managing these individuals with the state DMVs that maintain the critical records on drinking drivers and have under administration license laws the power to suspend a driver's license, vehicle registration, and, generally, retain the authority to determine when a suspended offender is eligible for reinstatement. The judge and the director of the department of motor vehicles jointly share the responsibility for protecting the public from the high-risk, hardcore drunk driver. These two agencies must work together closely to provide a comprehensive control program for these high-risk offenders.

The Three Rs: Elements of the MADD Control Program

A key feature of the MADD program is the creation of an integrated, comprehensive system for controlling the hardcore drinking driver. In the past, legislation to sanction hardcore drivers has been enacted piecemeal, sometimes relating to license suspension, other times relating to treatment or incarceration. Few states have established

a comprehensive system of laws covering all sanction areas related to managing DWI offenders.

The court, in conjunction with the DMV, has three responsibilities:

1. **Driving RESTRICTIONS.** First, and foremost, the court and the DMV are responsible for protecting the road-using public by minimizing the threat posed by high-risk hardcore offenders. This is principally achieved by restricting the driving privileges of convicted offenders.
2. **Community RESTITUTION.** Secondly, there is a responsibility to the community and particularly to the victims of drunk drivers to require them to provide restitution to the citizens of the community or the injured parties when they have caused a crash.
3. **Offender RECOVERY.** Finally, the court and the DMV have a responsibility to the offender to assist them in recovering from alcohol dependence by providing treatment programs. This ultimately protects the general public by stopping repeated drunk driving.



Figure 2. Three Rs sanctions for Hardcore DWI Offenders.

Interrelationships Among Elements

All of these elements are strongly interrelated. The public must be protected against the risk associated with drunk-driving (1 - Restricted Driving) while the offender is receiving treatment for his or her drinking problem and is recovering so that frequent binge drinking disappears and drunken driving no longer occurs (2 - Offender Recovery). A significant problem in the past has been that recovery from alcohol abuse or alcohol

dependence requires a considerable length of time, generally more than a year. In contrast, the license suspensions designed to keep these high-risk drivers off the road pending their recovery have been less than a year in length. Consequently, hardcore drinking drivers have been returned to the road before they have fully recovered from their drinking problem. An adequate control program must ensure that the period of treatment is sufficiently long (generally a year) to provide a high probability of recovery and that the period of license restriction is long enough to encompass both the period of treatment and a period during which recovery can be monitored to ensure there is no relapse.

The third sanction area—restitution—has in the past principally been focused on the punitive or retribution function of the law with an emphasis on deterring would-be offenders (general deterrence) and convicted offenders who are penalized (specific deterrence). Jailing DWI offenders is expensive for the community and gives little evidence of deterring their recidivism. Therefore, it serves as retribution for the offense but provides little benefit to the community. On the other hand, derivatives of incarceration—special low-cost, minimum-security facilities, house arrest, and community service—can reduce criminal justice costs and help motivate hardcore offenders in conforming to the requirements of license restrictions and recovery programs. Offenders who do not attend required treatment programs can be placed in special DWI jails or under house arrest. Restitution to the community through fines and community service is important in relieving the burden on the taxpayer and providing greater resources for law enforcement. Restitution sanctions become particularly important where the DWI conviction results from a crash involving innocent motorists. In such cases, the court should consider the victims in imposing requirements for restitution.

Program Evaluation

Legislation alone cannot produce an effective program for controlling the hardcore driver. The criminal justice system and the DMVs of the states must function smoothly together to produce an integrated program that controls the driving of repeat offenders until they have provided evidence of restitution to the community, attendance at treat-

ment programs, and a violation-free suspension period. Further, they must prove that they have overcome their high-risk drinking and driving problem. To insure that this information is available, states must take two actions:

1. Establish an adequate DWI tracking system to record the outcome of every DWI arrest so that it will be possible to determine if plea bargains, pretrial diversions, or other operational problems are interfering with the application of the 3Rs Program [19].
2. Issue an annual report on the DWI management information system that will highlight operational problems as they arise [20].

The effectiveness of the 3Rs program should be judged on the basis of three measures that can be derived from the state's driver record system, the state's crash record system, and the state's DWI tracking system:

1. The proportion of all drivers convicted of DWI who are classified as hardcore. Eventually, the more severe sanctions applied to the hardcore offender should deter some potential problem drinkers from driving which should result in a decrease of DWIs classified as hardcore. However, a significant initial decrease could signal that the system is allowing hardcore drivers to escape the enhanced sanctions through plea bargains or other means.
2. The number of repeat DWI convictions per year following the offense that resulted in their being classified as hardcore. This should provide a good indication of whether the 3Rs program is effective in reducing impaired driving by hardcore offenders. If the state implements a zero tolerance law for DWI offenders, the recidivism rate should increase initially. However, the lower BAC limit should help deter the hardcore offender and, ultimately, result in a lower rate of recidivism.
3. The number of crash involvements per year per hardcore driver. This should be the ultimate measure of the effectiveness of the 3Rs Program. The cost of crashes of varying severity has been calculated by Miller, Lestina, and Spicer [21], so that the savings from the 3Rs Program can be estimated and compared with the cost of the various elements of the program to determine its cost-effectiveness.

Program for Controlling the Hardcore Drinking Driver***1. Individuals who commit the following offenses are to be designated Hardcore Offenders:**

- a. A second driving-under-the-influence offense within a 5-year period
- b. A first driving-under-the-influence offense with a BAC greater than .15
- c. A driving-while-suspended offense where the suspension was the result of a conviction for driving under the influence.

2. Hardcore offenders are to be subjected to the following minimum sanctions in three areas:**a. RESTRICTIONS on driving:**

1. A 1-year full administrative driving suspension to start on the day of arrest, including a 2-year suspension penalty for refusal of the breath test.
2. A 60-day impoundment of the vehicle driven at the time of arrest to begin on the day of arrest.
3. A 5-year period from the date of conviction during which the offender is subject to a .02 BAC limit and required to provide a breath test if requested by an officer following a legal traffic stop.
4. The court or DMV should provide an opportunity for the offender to enter an interlock program to avoid hardship where the vehicle is required to get to and from work or for use at work.
5. The DMV shall establish a program to assess the extent to which the offender has recovered from the drinking problem manifest at the time of conviction, and shall not reinstate the driving license if there is evidence of continued problem drinking.

b. RESTITUTION sanctions:

1. Ten days incarceration, 30 days in a special facility, 90 days house arrest, or 240 hours of community service.
2. \$1,000 fine or equivalent in community service.
3. If arrest resulted from involvement in a crash, the court shall require restitution to the victims where it is within the means of the offender to provide it.

c. RECOVERY provisions:

1. The court will place the offender under probation for 2 years.
2. The court will require, under the terms of probation, that the offender attends a treatment program of up to a year in duration, as required by a state certified substance abuse treatment agency.
3. During the 1-year treatment period, the offender will be required to meet with a case manager at least once a month who will insure that the offender is attending treatment as specified by the treatment agency and remains abstinent.

See Note 22 for each item in program for additional information.

Figure 3. MADD's Three Rs Program.

Notes

Note 1. This definition is taken from Simpson, Mayhew, and Beirness (1996, p. xi). The basis for the observation regarding resistance to changing behavior is based on the high proportion of first offenders who commit a second offense (20 percent to 30 percent) and studies such as that of Larkin, Vingilis, Stoduto and Parkinson-Heyes, (1993), which found that among individuals who had been injured in a drinking-driving crash, 58 percent reported that they had driven after drinking during the year following their crash.

Note 2. Roadside surveys that stop drivers at random and request voluntary breath tests identify few individuals with BACs as high as .15. The 1 percent figure is from Foss, Voas and Beirness (1991). But drivers with BACs higher than .15 represent the majority among those fatally injured in crashes who have been drinking (Simpson et al., 1996).

Note 3. MADD Rating of the States Survey, 1996.

Note 4. This estimate of the relative risk at a .15 BAC is derived from an analysis by Zador (1991) based on the comparison of the frequency with which .15 BAC drivers are involved in fatal crashes compared to their frequency on the road.

Note 5. See Hedlund and Fell (1995) for an analysis of the relationship of conviction for DUI and involvement in an alcohol-related crash. They concluded that a driver with a DWI is 1.8 times more likely to be in a fatal crash and 4.1 times more likely to be intoxicated at the time of a crash.

Note 6. Several investigators have studied the different types of convicted drinking drivers. See Perrine, Peck, and Fell (1989); and Simpson et al. (1996), for reviews of these studies.

Note 7. Larkin et al., (1993).

Note 8. The majority of drinking drivers in fatal crashes do not have a prior DUI conviction. See Hedlund and Fell (1995).

Note 9. The majority of drivers arrested and convicted of DWI are apprehended in normal patrol operations and not at a crash site. The total number of drivers in crashes who have been convicted of a DWI is not precisely known since many of those arrested for this offense are convicted of a lesser offense and many states purge their driver records after a relatively short period. Simpson et al. (1996) argue that since the Fatality Analysis Reporting System (FARS) includes only prior DWI offenses for 3 years before the fatal crash, they underestimate the total number of crash-involved drivers with a previous DWI.

Note 10. Heavy drinkers develop sufficient tolerance to alcohol such that they can appear to behave normally at a high BAC, where a normal social drinker would be completely incapacitated. Detecting these alcohol-tolerant drivers may require special testing procedures such as the horizontal-gaze nystagmus test developed by Burns and Moskowitz (1977).

Note 11. Up to 75 percent of the individuals who are suspended continue to drive to some extent. See Nichols and Ross (1989) and Voas and Tippetts (1994) for discussion of this problem. Detecting unlicensed drivers is difficult since officers have no way to determine who is licensed unless they have a basis for stopping the car and requiring the driver to produce a driver's license.

Note 12. Vehicle impoundment has been demonstrated to be effective in reducing DWI offenses among convicted drinking drivers in California (DeYoung, 1997), Ohio (Voas, Tippetts, & Taylor, 1997, 1998a), and in the Province of Manitoba (Beirness, Simpson, Mayhew, & Jonah, 1997).

Note 13. License plate impoundment was found to be effective in this for third DUI offenders in Minnesota (Rodgers, 1994).

Note 14. Placing a sticker on the license plate of the vehicle where the driver has been apprehended for driving while suspended was found to reduce the DWI recidivism in Oregon (Voas & Tippetts, 1995).

Note 15. There have been eight studies of the effectiveness of alcohol safety interlocks. Most of these are in general agreement that when the interlock is in place on the offender's vehicle, DWI offenses are reduced. But, if the device is not properly installed and monitored, there is no difference in the driving of offenders who participate in interlock programs and comparable offenders who are fully suspended (Voas, Tippetts, & Taylor, under review).

Note 16. Lawrence Ross (1991) has argued that license suspension is the most effective sanction for DWI offenders. See also Nichols and Ross (1989) and Peck, Sadler, and Perrine (1985). The Meta-Analysis conducted by Wells-Parker, Bangert-Drowns, McMillen, & Williams (1995) and reviews by McKnight and Voas (1991) and Stewart and Ellingstad (1989) provide strong evidence for the effectiveness of treatment programs.

Note 17. See Simpson et al. (1996), "Dealing with the Hardcore Drinking Driver" for a fuller discussion of the characteristics of hardcore offenders.

Note 18. A number of self-report questionnaires and structured interview systems have been developed for identifying those first offenders who are most likely to become recidivists and are most in need of health services to overcome their dependence on alcohol. See Popkin, Kannenberg, Lacey, and Waller (1988) for a review of the instruments designed to detect alcohol abuse among DWI offenders. While these techniques are useful in classifying drivers into groups, none of them are sufficiently reliable to permit the court to base sanctions on their results. These instruments all depend upon self-reports, which can be expected to be biased in situations where the offender faces significant differences in sanction severity depending upon the outcome of the assessment.

Note 19. See NHTSA (1997) for the specifications for a model tracking system.

Note 20. See Tashima et al. (1997) for an example of such a report from California.

Note 21. See Miller, Lestina, and Spicer (1998) for cost estimates for traffic crashes.

Note 22. Commentary on MADD's Three Rs Program

1. Definitions of the Hardcore Driver

- a. **Second Offenders.** There is strong evidence that second offenders have a drinking problem since the probability of a DWI arrest is between 1 in 200 and 1 in 2,000 drunk trips (Voas & Lacey, 1990). Thus, being arrested twice indicates that the offender regularly drives while impaired.

A problem with applying this definition occurs in states where plea bargains can result in the reduction of a DWI charge to a lesser offense (Example: Maryland's use of probation before judgment). This can result in an offender arrested the second time being tried as a first offender.

An important issue is the number of years that states maintain the record of a DWI offense before purging it from their driver record system (See Simpson et al. (1996) for discussion of problem). Accuracy and completeness of records can also be an issue. See recommendations for DWI Tracking Systems developed by the NHTSA (1997).

- b. **High BAC Offenders.** A high BAC is an indication of a certain level of habituation to alcohol, producing a tolerance that permits the individual to reach high levels without passing out or vomiting. Simpson et al. (1996) have summarized the evidence that high BACs are associated with a higher probability of reoffense and crash involvement. They argue that "tiered-BAC" systems, applied only in a few states in the United States, have been effective abroad. However, a potential limitation in the implementation of a two-level offense applicable to first-time DWI offenders is that where the sanctions are substantially higher for the .15 offense, the number of breath tests refusals is likely to increase. Also, the existence of a lesser offense with lower penalties can be an opening to increased plea bargaining. To make this definition effective it will be necessary to increase the license suspension penalty for test refusal to at least equal or longer than the

proposed 2-year suspension for being over .15 BAC. Jones, Jokschi, and Wiliszowski (1991) reviewed refusal rates in several states, demonstrating that refusers had higher recidivism rates and that the probability that the offender would refuse increased with the number of prior DWI offenses. Refusal rates varied from 2 percent to 71 percent among the states.

c. **Driving-While-Suspended Offenders**

License suspension is the most effective sanction for DWI. See Nichols and Ross (1989); Peck et al. (1985); McKnight and Voas (1991) for reviews of studies on license suspension. It is important to the integrity of the DWI control system that license actions be enforced. Evidence indicates that up to 75 percent of suspended DWIs do continue to drive to some extent (Nicholas & Ross, 1989; Wiliszowski, Murphy, Jones & Lacey, 1996). Driving while suspended, where the suspension resulted from a conviction for DWI, should be treated as severely as a second DWI. Research indicates that impounding the vehicles of DWS offenders reduces subsequent DWI offenses (Beirness et al., 1997; Voas et al., 1997, 1998a).

2. **Minimum Sanctions**

a. **Restrictions on Driving**

1. **Two-year administrative suspension.**

Aside from being a strong general deterrent to impaired driving (Klein, 1989; Zador, Lund, Field & Weinberg, 1998), administrative license suspension also ensures that the suspension occurs at or shortly after the offense, which reduces the risk of re-offense that is greatest in the early period following the date of arrest. (Voas, Tippetts, & Taylor, 1998b; Beirness et al., 1997). The period required to treat the alcohol problems presented by the hardcore drinking driver will vary with the individual offender. Typical court-mandated programs will vary from 30 days in a residential facility to 3 to 12 months of group therapy. Because of the high relapse rates (Walsh et al., 1991) most programs involve aftercare programs such as Alcoholics Anonymous. Thus, at least a year is required

beyond entry into treatment to evaluate the level of recovery.

Since health services' interventions do not generally begin until after trial and adjudication, treatment frequently continues into the second year following the offense. In any case, suspension should continue for a full 2 years to maximize the opportunity for recovery before driving privileges are reinstated. Note that only one state provides for a 2-year suspension under its administrative license law (ALR); 28 states provide for less than a 1-year suspension for second DWI offenders (NHTSA, 1998) under the ALR laws. However, a number of states have much longer suspensions following conviction of second offenders. For example, West Virginia provides for a 5-year suspension.

2. **Sixty-day vehicle impoundment.** Data from studies in Ohio, California, and Manitoba, Canada, have demonstrated that vehicle impoundment reduces the number of subsequent DWI offenses (Voas et al., 1997, 1998a; DeYoung, 1997; Beirness et al., 1997). To be most effective, it is necessary for the police to impound the vehicle at the time of arrest (Voas, 1992; Voas et al., 1997, 1998a).

3. **Zero tolerance for DWI offenders.** Hingson, Heeren, and Winter (in press) have demonstrated that Maine's innovative law which provides for a .02 BAC limit for individuals convicted of DWI reduces the crash involvement and repeat impaired driving convictions of these offenders.

4. **Alcohol safety interlocks.** A concern which has limited the length of license suspensions which legislators have been willing to approve and judges impose has been the concern that inability to drive will result in job loss and hardship on innocent family members. While research indicates that this does not occur (Wells-Parker & Cosby, 1988; Knoebel & Ross, 1996), this may in part be the case because offenders continue to drive while suspended (Ross & Gonzales, 1988). Alcohol Safety Interlock Devices meeting the standards established by NHTSA (1992) have been shown to be effective in reducing recidivism of DWI offenders

12.10

who have such units installed on their cars, compared to fully suspended DWIs (Elliott & Morse, 1993; Jones, 1993; Popkin, Stewart, Beckmeyer & Martell, 1993; Voas, Tippetts & Marques, under review). States should encourage insurance companies to reduce rates for DWIs who participate in interlock programs. The insurance savings provided can reduce cost or even fully pay the interlock fees.

5. *Assessment prior to reinstatement.* Procedures have been developed for assessing the drinking status of offenders applying for reinstatement (ICADTS, 1995). Where there is evidence of relapse or failure of recovery, the department of motor vehicles can require continued treatment and participation in an interlock program as a condition for eventual reinstatement (Beck, Rauch, & Baker, 1997).

b. Restitution sanctions

1. *Jail, house arrest or community service.* While there is some question regarding the general deterrent effect of incarceration (Nichols & Ross, 1989; Zador et al., 1988; Jones, Jokschi, Lacey & Schmidt, 1988). Jail appears to have little specific deterrent value in reducing DWI recidivism (Voas, 1986; Simpson et al., 1996). Its use for DWI offenders is limited by its cost and by jail overcrowding (Voas, 1986). A more viable alternative is incarceration in a non-secure community facility where costs are lower (ACA, 1986, Vol. 2), the offenders can be placed on work release allowing them to contribute toward their maintenance and where they can be provided with an intensive treatment program (Voas & Tippetts, 1990).

Electronic house arrest has the advantage that it is generally paid for by the offender and keeps in the home at high risk driving times (Morris and Tonry, 1990). It has been shown to be effective in reducing DWI recidivism (Jones, Lacey, Berning & Fell, 1996). While there are no research studies that demonstrate that community service has a specific deterrent effect in reducing DWI recidivism (ACA, 1986, Vol. 3). Zador et al. (1988) demonstrated a general deterrent effect for states with mandatory jail or community service requirements.

2. *Fines.* There is no evidence in the United States that fines provide either a general or specific deterrent to DWI (Nichols & Ross, 1989; Voas, 1987). They are, however, important to making DWI enforcement self-sufficient (NHTSA, 1983). This is a form of restitution to the community as a whole, which otherwise must bear the full cost of the effort to control impaired driving through state and local taxes. Thus, the justification for assessing a fine is not based on whether it deters the offender, but rather on restoring to the community some of the cost of impaired driving. Fines are often reduced by the court because the offender appears to be indigent or is to be required to pay for treatment or some other aspect of the court's sanctions. However, indigent offenders can still be required to provide useful community service even if they lack the resources to pay a fine.

3. *Individual restitution.* Most DWI offenders have not been involved in a crash at the time of their arrest. Their victim is the state and the fine properly goes to the public treasury. Where the DWI arrest has occurred in conjunction with a crash there is an individual victim that also deserves compensation. Where there is such a victim, the court should, giving consideration to the individual's ability to pay, require the offender to compensate the victim. This should be given particular attention where the offender is uninsured and particularly where the state victims' compensation fund does not apply.

c. Provisions for Recovery

1. *Probation.* There is substantial evidence that monitoring attendance at treatment programs and general case follow-up is effective in reducing recidivism (Reis, 1982; Voas & Tippetts, 1990; Jones et al., 1996). Two years of probation is required for the hardcore offender because recovery may require over one year.
2. *Treatment.* Meeting the requirements to be classified as a hardcore offender as defined in the 3Rs program indicates that there is a high probability that the individual has a problem

with alcohol and requires an extended period of treatment and is not a candidate for a short-term education program (Stewart & Ellingstad, 1989). Thus, the usual initial screening interview to clarify the first offender as a "social" or "problem" drinker can be dispensed with. However, a more intensive assessment (Popkin et al, 1988) to determine the best form of intervention may be appropriate, though the recent Project MATCH, while indicating treatment was effective, raised some questions regarding the utility of rational assignment to differing treatment protocols (Project MATCH Research Group, 1997). Wells-Parker et al. (1995) conducted a Meta- Analysis of treatment programs for drinking drivers which came to the conclusion that health service intervention programs can reduce recidivism by 7 percent to 9 percent among DWI offenders. The effectiveness of treatment programs have also been

documented by McKnight & Voas (1991) and Peck et al., (1985).

3. *Monitoring.* The importance of insuring that the offender is carrying out the treatment plan specified by the court or treatment agency is frequently over-looked. In most states, the court probation office is responsible for monitoring treatment compliance. Two states—California and Maryland—have made provision for special monitoring programs. Reis (1982) found that biweekly meetings with a case manager produced the same level of reduction in recidivism as did weekly group therapy sessions. Voas and Tippetts (1990) found that the most effective treatment of first and multiple offenders in Maryland were the weekly 10 to 15 minute meetings with alcohol program monitors.

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Salvatore Riccardi
Operator's Signature

10/6/03
Date

TALKING POINTS HIGHER RISK DRIVER PROGRAM

- Drunk driving is the most frequently committed violent crime in the United States with more than 1.4 million arrests each year.
- Government estimates are that only one out of every 1,000 drunk driving incidents results in an arrest. You can imagine the millions of times people drive drunk in our country without ever getting caught.
- Nearly one-third of drivers arrested or convicted of drunk driving each year are repeat offenders.
- One out of nine intoxicated drivers in fatal crashes in 1999 had a prior drunk driving conviction within the past three years.
- Drivers with a prior drunk driving conviction are over-represented in alcohol-related fatal crashes and have a greater relative risk of being involved in a deadly wreck.
- A person with a .15 percent blood alcohol level is 380 times more likely to be involved in a fatal crash than a non-drinking driver.
- According to the National Highway Traffic Safety Administration, 65 percent of all alcohol-related traffic deaths involve drivers with a BAC of .15 or higher.
- It is estimated that as many as 75 percent of drivers who lose their license for driving drunk continue to break the law and drive on a suspended license.
- Higher Risk Drivers are defined as individuals who repeatedly drive after drinking – especially with high blood alcohol content levels and who seem relatively resistant to changing their behavior.
- Nationally, nearly one-fourth of drivers involved in alcohol-related traffic fatalities had BACs of .15 or higher when the BAC level was known. This is equivalent to one and one-half times the legal limit in most states.
- While there are different kinds of hardcore drinking drivers, most can be classified as problem drinkers or dependent on alcohol. Others, while alcohol abusers, are primarily a menace because they have personality problems that include aggression, hostility and thrill-seeking. This involvement with alcohol, frequently in conjunction with personality problems, makes these drivers hard to change.

OVER

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La Costa Richard
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TALKING POINTS HIGHER RISK DRIVER PROGRAM

Continued . . .

- In the last two decades since MADD began its crusade, alcohol-related traffic deaths have dropped more than 40 percent. However, little progress has been made to control these higher risk drivers. Apparently the penalty these drivers received the first time they were arrested did not modify their behavior.
- The goal of MADD's Higher Risk Driver campaign is to create an integrated, comprehensive system in each state where the courts, driver's licensing agencies and treatment programs work together to control these most persistent alcohol-impaired drivers.
- MADD's Higher Risk Driver Program revolves around three R's: restrictions, restitution and recovery. Driver restrictions include such things as vehicle impoundment, license suspension, and a lower BAC limit for five years. Restitution involves community service, financial restitution to the victim if a crash was involved in the drunk driving arrest, and fines. Recovery provisions include probation, alcohol-treatment programs, attendance of a Victim Impact Panel, and monthly meetings with a case manager.
- Most of the remedies in MADD's Higher Risk Driver Program are not new. However, in the past they have been implemented on a piecemeal basis producing a system full of loopholes and incomplete programs that failed to curb the higher risk driver.
- In order to reduce the risk that these hard-core drinkers pose to the driving public, more severe restrictions must be imposed on higher risk drivers than on the social drinker who comes before the court on a drunk driving charge.
- While higher risk drivers are over-represented in fatal alcohol-related crashes, the majority of alcohol-related crash deaths involve first-time offenders. That's why it's important to have a comprehensive anti-drunk driving program. We must provide general deterrents to drinking and driving as well as specific deterrents to the higher risk driver.
- As part of the Transportation Equity Act for the 21st Century (TEA-21), states were required to enact laws to crack down on repeat offender drunk drivers by October 1, 2000. Those states without these laws will have a portion of their Federal highway construction funds redirected into other state safety activities each year. Approximately one-fourth of the states have enacted these laws to date.
- MADD will be working with state lawmakers to draft new legislation or to revise existing laws to address these higher risk drivers and to meet the requirements for TEA-21.

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Richard Costa

Date

10/6/03

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