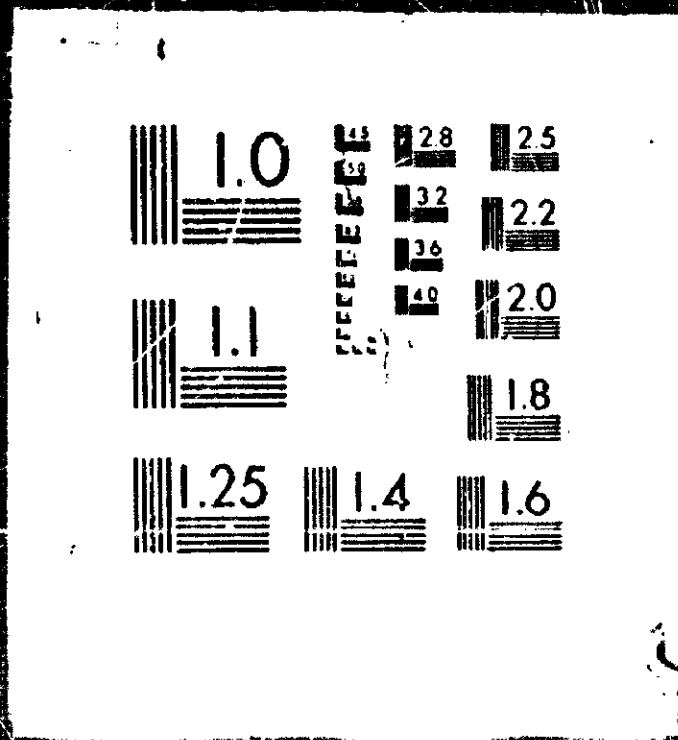


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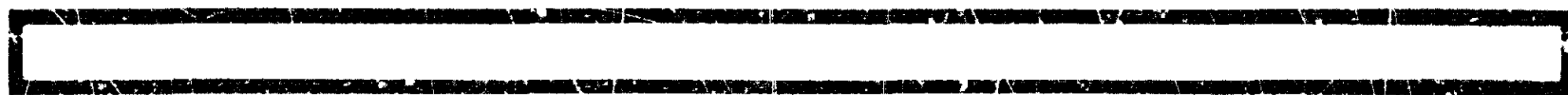
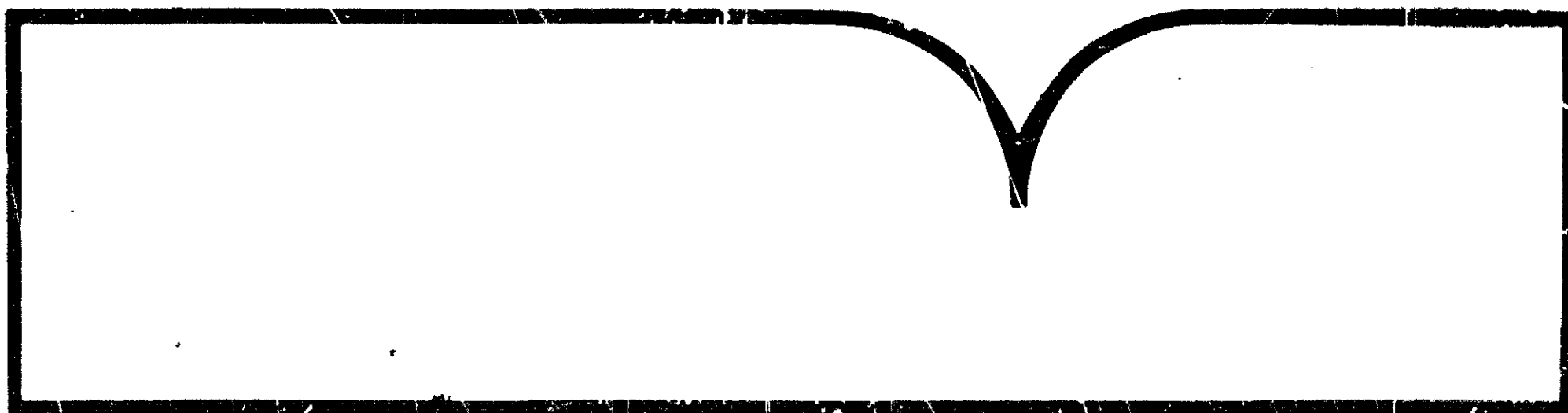


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**Safety Study - Deterrence of Drunk Driving
The Role of Sobriety Checkpoints and
Administrative License Revocations**

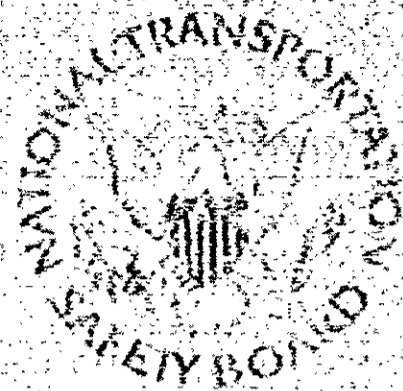
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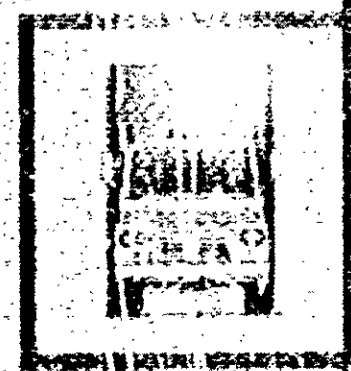
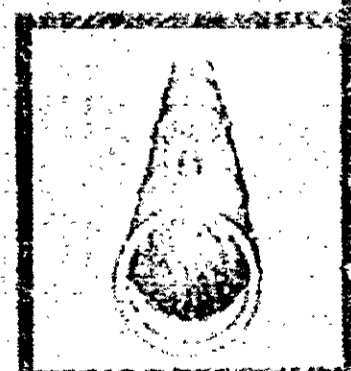
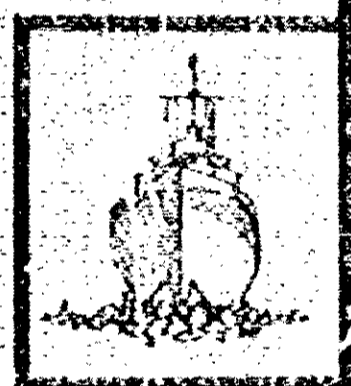
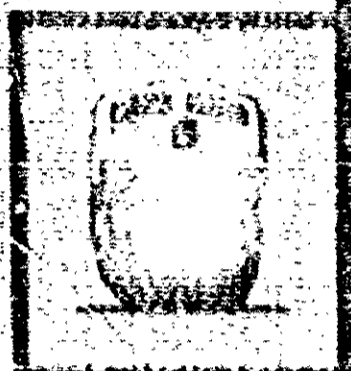
SAFETY STUDY

DETERRENCE OF DRUNK DRIVING:
THE ROLE OF SOBRIETY CHECKPOINTS
AND ADMINISTRATIVE LICENSE
REVOCATIONS

NTSB/SS-84/01

UNITED STATES GOVERNMENT

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16. Abstract The National Transportation Safety Board has reviewed recent national and international efforts to control drunk driving and has concluded that "general deterrence" programs afford the most promising approach for the short-term reduction in alcohol-related deaths and injuries on our highways. Further, upon consideration of the information presented in this report, the Safety Board believes that the sobriety checkpoint and administrative license revocation procedures are potentially effective deterrents that warrant broader application by the States. The National Safety Board, therefore, recommended that sobriety checkpoints and administrative license revocations become an integral part of a State's comprehensive alcohol and highway safety program.					
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CONTENTS

INTRODUCTION	1
DETERRENCE OF DRUNK DRIVING	4
Sobriety Checkpoints	5
International Experience	7
United States Experience	8
Administrative License Revocation Laws	10
Provisions of Administrative Revocation Laws	11
Operational Procedures Under Administrative Revocation Laws	12
Legal Issues	13
Effects of Administrative Revocation	14
License Suspensions/Revocations	14
Administrative Revocation and Licensing Agencies	17
Administrative Revocation and the Police	17
Administrative Revocation and the Courts	17
Administrative Revocation Laws and Alcohol-Related Accidents	18
Combined Effect of the Use of Checkpoints and Administration Revocation	18
CONCLUSIONS	20
RECOMMENDATIONS	20
APPENDIXES	23
Appendix A—NTSB Recommendation Raising the Drinking Age to 21	23
Appendix B—NTSB Recommendation on Citizens Reporting Drunk Drivers	28
Appendix C—1983 International Chiefs of Police Resolution Endorsing the Use of Sobriety Checkpoints	31
Appendix D—NIHSA's Model Revocation on Administrative Determination Law	32

**NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594**

SAFETY STUDY

Adopted: April 3, 1984

**DETERRENCE OF DRUNK DRIVING:
THE ROLE OF SOBRIETY CHECKPOINTS AND
ADMINISTRATIVE LICENSE REVOCATIONS**

INTRODUCTION

The National Transportation Safety Board is charged by Congress to conduct studies pertaining to safety in transportation; to investigate transportation accidents; to determine their probable cause; and to make safety recommendations to prevent their recurrence. The Board has observed that, of all modes of transportation, the highway mode produces the greatest loss of life. Of all causes/factors involved in highway deaths, alcohol/drunken driving ranks as the single leading factor.

Over the last several years, victims of alcohol-involved accidents and other anti-drunken driving activists have prompted legislative and program initiatives in most States to curb drunken driving. Special task forces have been created in at least 41 States to study the drunken driving problem and to revitalize State and local programs. Enhanced Driving While Intoxicated (DWI) enforcement programs and tougher penalties for convicted offenders are being legislated in a number of States. Yet in spite of this increase in legislative and countermeasure activity, drunken driving continues throughout this country. Roughly the same percentage (55 - 58 percent) of all highway fatalities each year involve alcohol. In 1982 alone, approximately 25,600 persons died in alcohol-involved accidents.^{1/} (See table 1.) National Highway Traffic Safety Administration (NHTSA) studies of injury producing and property damage accidents also demonstrate the substantial role alcohol plays in these less severe accidents. Nearly 670,000 persons are injured each year in alcohol-involved crashes and some 1,200,000 alcohol-involved property damage accidents occur yearly. Without question, drunken driving remains one of our Nation's most serious public health, transportation, and safety issues.

The tragic consequences of alcohol abuse have long been of concern to the Safety Board. Throughout the Board's history, it has observed the overinvolvement of alcohol-impaired drivers in fatal highway crashes. The Safety Board has issued Safety Recommendations to Federal, State, and local governments as well as to private organizations, focusing on both the specific causes of individual accidents as well as on the general factors which lead to alcohol-involved accidents on our highways.

Recently, the Safety Board has promoted several specific actions it believes are needed to reduce significantly alcohol-involved highway accidents. The first called on the States to raise the minimum legal age for drinking or purchasing all alcoholic beverages to 21 years (NTSB Recommendation H-82-18, see appendix A). The second recommended

^{1/} Data from the National Highway Traffic Safety Administration's Fatal Accident Reporting System, See: Fell, J.C., "Tracking the Alcohol Involved Problem in U.S. Highway Crashes." In Press, Proceedings at the 27th Annual Meeting of the American Association of Automotive Medicine, October 3-6, 1983.

Table 1.--Alcohol-involved highway fatalities in the United States. 1/

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Number of fatalities resulting from alcohol-involved accidents	28,000	28,100	25,600
Total highway fatalities	51,091	49,301	43,945
Percent alcohol-involvement	55	57	58

1/ The criteria for alcohol-involvement used by NHTSA is (1) any driver or pedestrian involved in a crash tested with a BAC over 0.01 mg%, or (2) any driver cited for DWI without a test, or (3) any police indications of "had been drinking" or "alcohol involvement."

the implementation of citizen awareness and drunk driver reporting programs, such as the "REDDI" program (Report Every Drunk Driver Immediately) active in six States (Safety Recommendation H-82-35, see appendix B). Most recently the Safety Board initiated an intensive study of the law enforcement, judicial, and rehabilitation systems in several States and localities with regard to their treatment of the drunk driver. The purpose of this ongoing study is to uncover and document deficiencies in these systems which allow DWI offenders to repeat their offense and which help to create the impression among many drivers that they can drive after drinking with impunity. The study may lead to recommendations designed to improve the efficiency and effectiveness of State and local drunk driving programs.

The increase in minimum legal drinking age has had a direct effect -- a demonstrable reduction in alcohol-related deaths and injuries among the Nation's youth. By restricting access to alcoholic beverages, the 21 minimum legal drinking age has helped to reduce the tragic consequences of drunk driving. Since the Safety Board recommended on July 22, 1982, that the States raise their minimum legal age to 21 years for drinking or purchasing alcoholic beverages, five States have raised their minimum age to 21; one to 20; and one to 19; three to 19 for beer and 21 for distilled spirits; one to 21 for nonresidents and 19 for residents. Interest in this issue remains high, with most States with a legal age below 21 currently considering bills to implement the change to age 21. The Safety Board will continue its efforts to encourage the remaining under-21 States to raise their minimum age in order to realize the full safety benefit of a uniform age 21.

REDDI programs have provided direct assistance to law enforcement efforts to detect and apprehend drunk drivers. With the aid of the motoring public, the detection capabilities of police have been expanded and the deterrent effect of DWI enforcement programs has been increased. Since the Safety Board recommended to the nation's Governors that they adopt REDDI-type programs in their States, 12 additional States have adopted such programs. As of August 1983, 18 States now have REDDI programs, which have reported receiving 49,719 citizen calls, resulting in 12,070 contacts with motorists and leading to 7,662 DWI arrests (63.5 percent of contacts).

During the Safety Board's continuing search for additional measures to address the drunk driving problem, it has examined State and local programs, studied efforts in other countries, and reviewed the writings of numerous experts in the field of alcohol in transportation and highway safety. As a result of this study, several conclusions have emerged. First, both short- and long-term solutions are needed. Measures to reduce the

present danger of drunk drivers now on our roads are as essential as steps to prevent the potential danger from future generations of drunk drivers. The 70 deaths and 1,800 injuries Americans suffer each day due to drunk drivers demand that actions be taken that can produce an immediate reduction in the number of alcohol-related deaths and injuries.

If drunk driving is to be reduced significantly in the short-term, motorists must be convinced that there is a strong likelihood they will be arrested and penalized if they drive drunk. Most experts agree that many drunk drivers persist in their behavior because they have a perception of low risk of arrest and penalty. These facts help explain why public perception of risk of arrest is so low. In a recent nationwide telephone survey, between 1/4 and 1/3 of the drivers who drink say they believe that the chances of being caught and punished are not great enough to deter them from driving after drinking too much. 2/ While the rate of drunk driving arrests depends largely on the aggressiveness of local law enforcement efforts, estimates of the probability of arrest vary from 1 in 200 drunk drivers to 1 in 2,000. 3/

State and local programs that focus principally on those relatively few drunk drivers who have been apprehended, as opposed to programs designed to deter the vast majority of offenders who are never caught, are not likely to achieve significant results. 4/ Experts believe that significant short-term reductions in the alcohol-related deaths and injuries are more likely to be brought about through programs designed to deter drunk drivers still on our roads than those which seek to stop an individual, convicted drunk driver from repeating his or her crime. A comprehensive program is needed that does both -- a program that efficiently arrests and penalizes all apprehended offenders and provides alcohol treatment for those who need it, but also deters potential offenders because of the increased likelihood of arrest and penalty.

In the long-term, a societal norm must be established that makes drunk driving socially unacceptable behavior. Achievement of such a goal is by nature a slow and gradual process requiring decades of effort. The focus for such an effort must be our Nation's youth. Through long-term prevention/education programs in our schools and within our communities, responsible attitudes toward the use of alcohol and driving must be established and reinforced.

Longer term programs use positive motivational incentives as well as purely punitive measures. Illustrations of motivational programs: a reduction in insurance rates, extended license periods for accident-free driving, designated drivers at locations where liquor will be consumed, and rewarding drivers who are seen to use safe driving procedures and those who have reported drunk drivers.

The purpose of this study is to review two drunk driving countermeasures that have the potential to produce short-term improvements in the safety of motorists on our highways and to discuss specific recommendations for their implementation in States and localities.

2/ Compton, R., and Engle, R., "Safety Checkpoints for DWI Enforcement," National Highway Traffic Safety Administration, July, 1983.

3/ Voas, R.B., 1982b. "Drinking and Driving: Scandinavian Laws, Tough Penalties and United States Alternatives." Final Report on NHTSA contract DTNH22-82-P-05079. Available from NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

4/ The National Highway Traffic Safety Administration (Nichols, Gundersheimer) has estimated that if every drunk driver arrested was prevented from driving impaired for 1 year, deaths would only decrease by a few percentage points. This is because (1) there are so many other motorists driving drunk so frequently and (2) the probability that one individual offender will be subsequently involved in a fatal crash is very small, therefore, removing a relative few would not appreciably reduce future crashes.

DETERRENCE OF DRUNK DRIVING

Two distinct types of deterrence have been described in the highway safety literature:

General deterrence is the effect of threatened arrest and punishment upon the total driving population. General deterrence influences all potential violators to refrain from prohibited acts, in this case driving after drinking. Specific deterrence, on the other hand, refers to efforts to prevent single offenders from driving drunk again, for example, through alcohol rehabilitation programs.

The effectiveness of general deterrence depends upon certainty, swiftness, and severity of punishment in the event a law is violated. When most drivers perceive a high likelihood of being arrested, convicted, and sanctioned, they are less likely to take the risk of driving after drinking. ^{5/} In the United States, both the perception and the reality of that likelihood is low, resulting not only from the complexity of enforcing laws regarding drinking and driving, but also from the limits imposed by the overcrowded court system typical in most communities.

The impact of increased enforcement efforts are frequently blunted by lengthening court backlogs, particularly as the judicial system struggles to impose the toughened penalties which have been enacted recently by State legislatures. The greater the penalty, the more the defendant is provoked to resist by engaging lawyers, demanding jury trials, and other procedures which cause court delays. This increased pressure on the courts leads to compromises by prosecutors and judges which translates into plea bargaining and pretrial diversion programs. Such processes frequently result in the failure to convict on the DWI charge. Thus, even in the unlikely event of an arrest, the offender has a good chance of avoiding most of the negative consequences of his or her offense.

Some of the problems encountered by the courts in implementing the new tougher drinking-driving laws have been discussed in recent newspaper articles. ^{6/ 7/} Detailed research studies have shown the effects on court procedures of increasing the severity of sanctions. When a law providing for a 1-day mandatory jail sentence was enacted by the Arizona State legislature, in the city of Phoenix requests for jury trials increased by 30 percent and innocent pleas tripled. At the same time, convictions decreased by a third, and the number of cases dismissed almost doubled. ^{8/} A similar effect was seen in Hennepin County, Minnesota, when arrests for drunk driving tripled. While court dispositions also tripled, the rise in the number of individuals convicted on the original charge was small, amounting to only about 25 percent. However, the remainder of court dispositions resulted in individuals convicted on reduced charges.

These problems of reduced charges and lack of convictions exist in most industrialized countries. However, the Scandinavian countries appear to have at least partially solved them. There, enforcement procedures take advantage of widespread

^{5/} There are, of course, problem drinkers and alcoholics who are so dependent upon alcohol that they are not easily deterred.

^{6/} The Washington Post, "Tougher Drunk-Driving Laws Blunted by Courtroom Tactics," Page 1, Section A, Monday, November 28, 1983.

^{7/} USA Today, Page 1, Wednesday, January 18, 1984.

^{8/} Vcas, R.B. "A Systems Approach to the Development and Evaluation of Countermeasures Programs for the Drinking Driver," in M.E. Chafetz (Editor), Research, Treatment and Prevention, Proceedings of the Fourth Annual Alcoholism Conference of the National Institute of Alcohol Abuse and Alcoholism, June 1974. DHEW Publication No. (ADM) 76-284, 1975.

testing of drivers at "sobriety checkpoints" to produce the perception of greater risk of arrest. Also, in Scandinavian countries a major penalty -- the loss of the driving privilege -- is automatically applied by the licensing agency on an administrative basis outside the judicial process. This combination of enforcement and administrative programs seems to produce a strong perception among Scandinavian drivers that the probability of arrest and penalty is high. 9/

While no single program will produce a solution to the complex drinking and driving problem in the United States, the uniform adoption of sobriety checkpoints and administrative license revocation by the 50 States could produce a major change in the deterrence climate in this country—a climate similar to that which appears to have developed over time in Scandinavia. A detailed discussion of these two countermeasures is presented in the following sections.

Sobriety Checkpoints

According to a number of State and local officials and law enforcement organizations, 10/ a new technique that shows promise for deterring drunk drivers is the sobriety checkpoint or DWI roadblock, currently in use or under consideration in 21 jurisdictions and in at least 5 foreign countries. (See table 2.)

Since every motorist is potentially subject to being stopped, sobriety checkpoints are believed to have a high deterrent effect in part because they preclude drunk drivers from assuming they can avoid police observation by simply driving "cautiously." As the National Highway Traffic Safety Administration (NHTSA) has stated, "Without a checkpoint program, many drivers assume they can avoid detection for DWI because their driving will appear unaffected by the amount of alcohol they have consumed and/or because they believe that very limited attention is devoted to DWI by police in their area." 11/

Table 2.—States and Localities Using
or Considering Sobriety Checkpoints

States/Localities Using Checkpoints

Arizona	Nebraska
Arkansas	New Jersey
Colorado—Colorado Springs	New Mexico
Delaware	New York—New York City
District of Columbia	Oregon
Florida--Tampa	South Dakota

9/ Scientific surveys of drivers in Scandinavia show that, compared to the U.S., there are only 1/10th the number of drivers (1 to 2 percent compared to 13 percent) who have been drinking to a significant extent (0.05 percent BAC). Moreover, the number of fatally injured drivers who have been drinking heavily (BAC greater than 0.05 percent) appears to be about 1/3 less in Scandinavia. (Voas, R.B., 1982b. "Drinking and Driving: Scandinavian Laws, Tough Penalties and United States Alternatives." Final Report on NHTSA contract DTNH22-82-P-05079. Available from NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.)

10/ A 1983 International Association of Chiefs of Police, Resolution 4R-1 endorsed the use of sobriety checkpoints. (See appendix C.)

11/ Compton, R., and Engle, R., "Safety Checkpoints for DWI Enforcement," National Highway Traffic Safety Administration, July, 1983.

Table 2 (cont.)

Georgia—DeKalb County	Utah—Salt Lake City
Idaho	Vermont
Maryland:	Virginia:
Harford County	Fairfax City
Montgomery County	Virginia Beach
Prince Georges County	Charlottesville
Massachusetts	Washington - Seattle
Missouri	

States Considering Checkpoints

California
Michigan
Rhode Island

Countries Using Checkpoints

Australia	Netherlands
Canada	Sweden
France	

Although State and local procedures for conducting sobriety checkpoints vary considerably, the typical checkpoint has several basic features:

- 1) Police agencies select the times of operation and locations of checkpoints, based on empirical evidence of high DWI activity or alcohol-related crashes.
- 2) Checkpoint sites are established with high visibility, including warning signs, flashing lights, flares, police vehicles, and the presence of uniformed officers.
- 3) Police officers conducting the checkpoint either stop all traffic or use some preestablished, nonbiased formula to decide which vehicles to stop; for example, every tenth vehicle.
- 4) After being stopped, a motorist may be requested to produce a driver's license or vehicle registration and is asked questions while the officer looks for signs of alcohol impairment. In some cases where license/registration checks are not made, the stop is very brief (15 to 30 seconds).
- 5) Based on his or her observations, the police officer either waves the motorist on or directs him or her to a secondary area for further investigation. In the latter case, a roadside psychomotor test (e.g., walking a straight line) or a breath-alcohol test is usually requested.
- 6) If the driver fails these tests and the officer has probable cause, the motorist is arrested for DWI.
- 7) The arrested driver is then transported to the station for booking and is requested to submit to an evidential breath-alcohol test. Refusal to submit to such a test invokes the State's implied consent penalties.

The use of checkpoints by Federal, State, and local governments for public health and safety purposes is not a new practice. Immigration, customs, and airport security inspections have been employed for many years. Agricultural or game inspections, truck weight checkpoints, roadblocks to check vehicle equipment, drivers licenses and vehicle registrations, and other police emergency roadblocks have long been used by State and local governments.

Because extensive use of sobriety checkpoints is a recent development in the United States, extensive data to evaluate their effectiveness in reducing alcohol-related crashes have yet to be gathered. Moreover, studies to isolate the impact of checkpoints alone are difficult to accomplish because other DWI countermeasures, associated publicity, and myriad environmental factors combine to affect crash levels. However, several studies suggest that sobriety checkpoints have been effective in such countries as Sweden, France, and Australia, as well as in several of the United States.

International Experience.—During a 1978 checkpoint campaign, the city of Melbourne, Australia, experienced significant decreases in nighttime fatal crashes, serious injury crashes, and injuries to drivers with an illegal blood alcohol concentration (BAC). Researchers reported 59 percent fewer nighttime fatalities, 39 percent fewer serious injury crashes, and 30 percent fewer crash-involved drivers with BAC's greater than 0.05 percent. ^{12/} In France, a recent time series study examining crash data from 1973 to 1980 found that the number of highway fatalities and highway injuries decreased 13.9 percent and 12.5 percent, respectively, after a series of checkpoints were instituted throughout the country during the summer of 1978. ^{13/} One section of the city of Toronto implemented a police checkpoint system involving roadblocks at more than 100 locations chosen for their visibility to motorists, their history of accidents, and the likelihood of apprehending drinking drivers. In this campaign, 180,000 cars were stopped from October 1977 to September 1979. Telephone surveys of drivers indicated that the public was well aware of this effort and that the perception of risk of arrest among the drinking-driving public increased. ^{14/} In 1974, the Swedish Parliament passed legislation permitting the police to establish sobriety checkpoints. Checkpoints have been routinely used since that time and are the most prominent feature of their DWI enforcement program. In the three years, 1975 to 1977, 1.2 million motorists were stopped and tested by the Swedish police. While not conclusive, data on the number of drunk drivers on the road (above 0.05 percent BAC) suggest that the Swedish sobriety checkpoint program is contributing to a deterrent effect: only 2 percent of drivers on the road (weekend nights) have BAC's greater than 0.05 percent (versus 13 percent in the United States). ^{15/ 16/ 17/} A recent statistical

^{12/} Cameron, M., P. Strang, and A. Vulcan, "Evaluation of Random Breath Testing in Victoria, Australia." Paper presented at the Eighth International Conference on Alcohol Drugs and Traffic Safety, Stockholm, 1980.

^{13/} Ross, H., R. McCleary, and T. Epperlein "Deterrence of Drinking and Driving in France: An Evaluation of the Law of July 12, 1978." Law and Society Review. In press, 1983.

^{14/} Vingillis, E., and L. Salutin, "A Prevention Programme for Drinking and Driving," Accident Analysis and Prevention 12:267-274, 1980.

^{15/} Snortum, J.R., "Drinking and Driving in Norway and Sweden. Another Look at 'The Scandinavian Myth'"; Presented at the American Society of Criminology Meetings, Washington, D.C., November 1981. Law and Policy Quarterly, In Press.

^{16/} Voas, R.B., "Drinking and Driving: Scandinavian Laws, Tough Penalties and United States Alternative." NHTSA Report on Contract No. DTNH-22-82-P-05079, July 1, 1982. Available from the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

^{17/} Ross, H.L., Detering the Drinker Driver: Legal Policy and Social Control, Lexington Books, DC Heath and Company, Massachusetts, 1982.

study has also attributed a reduction in highway accidents in part to the effects of their sobriety checkpoint programs. 18/

United States Experience.—Two States in this country which have been operating checkpoints--Delaware and Maryland--have reported on studies they have undertaken on the impact of sobriety checkpoints on alcohol-related accidents. The findings of these studies are summarized in table 3.

Table 3.—Impact of Sobriety Checkpoint Operations on Accidents in Two States

	<u>Roadblock Period</u>	<u>Comparison Period</u>	<u>Percent Decrease</u>
<u>DELAWARE</u>			
Injury Accidents	2,904	3,237	10
Alcohol-Related Injury Accidents	595	873	32
<u>MARYLAND</u>			
(Harford County)			
Total Accidents	665	783	15
Total Alcohol-Related Accidents	120	144	17

In Delaware, alcohol-related injury accidents dropped 32 percent during the period in which roadblocks were in progress -- December 4, 1982, to August 13, 1983. By contrast, total injury accidents declined at a lower rate of 10 percent. Alcohol-related injury accidents as a percentage of all injury accidents dropped from 27 percent to 20 percent. 19/

The Maryland State Police reported 15 percent fewer total accidents and 17 percent fewer alcohol-related accidents than the previous year in the Harford County area where checkpoint operations were conducted. 20/ In Prince Georges County, Maryland, where county police began sobriety checkpoints on New Year's Eve 1981, deaths from alcohol-related traffic accidents fell 71 percent, from 66 deaths for the first 6 months of 1981 to 19 deaths for the first 6 months of 1983. 21/ County police in Montgomery County, Maryland, initiated sobriety checkpoints in October 1981. During the latest complete reporting period in which checkpoint operations were conducted (July 1982 to July 1983), only 7 alcohol-related fatal accidents occurred, compared to 28 in the precheckpoint year (July 1980 to June 1981) — a decline of 75 percent. 22/

18/ Ross, N.L., "Effects of New Developments in Scandinavian Driving Law," paper presented to the 9th International Conference on Alcohol, Drugs, and Traffic Safety, San Juan, Puerto Rico, November 13, 1983.

19/ Traffic Control Section, "DUI, Monthly Report," Delaware State Police, August 1983. Available from Delaware State Police, P.O. Box 430, Dover, DE 19903 -- Attn. Traffic Section.

20/ Field Operations Bureau, "Sobriety Checkpoint Program Evaluation Report." Maryland State Police, Traffic Planning Unit, April 20, 1983. Available from Maryland State Police, Pikesville, MD 21208.

21/ Mitchell, D., "Prince Georges County Alcohol Program Data, 1981-1983." Available from Special Operations Division, Prince Georges County Police, 3415 N. Forestedge Road, Forestville, MD.

22/ Hiland, Jack; "Drinking and Driving in Montgomery County, Maryland: Trends." August 1983. Available from Department of Family Resources, 101 Monroe Street, Rockville, MD 20850.

In all the above locations, sobriety checkpoints were not the only drunk driving countermeasures in effect during the study periods. For example, increased publicity concerning the drunk driving issues in general, increased traditional DWI patrols, and tougher DWI penalties were all factors contributing to the reduction in the number of accidents. Therefore, it cannot be proven conclusively that the reduction in accidents is solely attributable to the implementation of sobriety checkpoints. However, it also appears that sobriety checkpoints are perhaps the most visible aspect of the crackdown on drunk driving in the public's eye. A recent public opinion survey conducted by the Insurance Institute for Highway Safety in the Washington, D.C., area (including Montgomery and Prince Georges Counties) found that "roadblock programs can increase public perceptions of the likelihood that drunk drivers will be arrested." 23/

One of the reasons sobriety checkpoints may have a strong deterrent effect is that they afford police the opportunity to contact greater numbers of motorists than during typical patrol procedures and demonstrate their localities' commitment to reducing drunk driving. Moreover, even though they are not the most efficient arrest-producing technique, 24/ checkpoints do generate significant numbers of DWI arrests. Table 4 illustrates the number of motorists stopped, detained for further investigation, and ultimately arrested in several jurisdictions. Variations in roadblock procedures, such as use of roadside breath testing equipment and checking all motorists license and registrations versus cursory checks for drinking alone, will affect the relative numbers shown. 25/

Public reaction to the use of sobriety checkpoints appears to be overwhelmingly positive. In order to gauge public opinion on this issue, police have handed out informal questionnaires as part of their checkpoint procedure. Positive reactions have been observed from motorists stopped in virtually every jurisdiction where checkpoints have been used. In the District of Columbia, 88 percent of motorists responding to a questionnaire supported the checkpoint procedure. Maryland State Police report that 86 percent of motorists surveyed supported the checkpoint procedure. The 1984 Insurance Institute for Highway Safety survey noted earlier found that checkpoints are "overwhelmingly favored by the public as an enforcement tool."

Nationally, a 1983 public opinion poll 26/ found that 51 percent of those surveyed favored police use of "roadblocks" to detect drunk drivers. When the question was rephrased dropping the word "roadblock," the percent favoring increased to 61 percent. A statewide public opinion survey in Delaware, where checkpoints are extensively used, has found an overwhelming 87.3 percent of participants approving the use of "random police roadblocks." 27/

23/ William, A. F., Lurd, A.K., "Deterrent Effects of Roadblocks on Drinking and Driving," Insurance Institute for Highway Safety, Washington, D.C. 20037.

24/ Compton, R. P., and Engle, R.E. "Safety Checkpoints for DWI Enforcement." NHTSA report, in press, July 1983. Available from National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

25/ Ibid. Voas, R.B.; "Use of Passive Sensor at Sobriety Checkpoints." Preliminary Report, August 8, 1983. Available from the Insurance Institute for Highway Safety, Watergate No. 600, N.W., Washington, D.C. 20037

26/ Public Attitude Monitor 1982 All-Industry Research Advisory Council, Oak Brook, Illinois 60521, (Survey by Yankelovich, Shelly & White).

27/ Delaware Office of Highway Safety, Dover, Delaware 19901, 1983.

Table 4.--Results of Sobriety Checkpoint Operations in Three Jurisdictions

Location	Number Stopped/ Interviewed	Number Detained	Number Arrested	Public Reaction**
District of Columbia	572	102	39	88
Maryland:				
Harford Co.	4,685	40	17	86
Montgomery Co.	5,200	NA*	9	NA*
Prince Georges Co.	22,899	NA*	48	NA*
Delaware	12,654	701	231	NA*

*NA = Not available

**Public reaction as measured by motorists responding to questionnaires distributed at roadblocks.

Administrative License Revocation Laws

While motor vehicle administrators historically have had ample statutory authority to revoke or suspend the licenses of drivers who pose a threat to the public, these administrators traditionally have been conservative in the use of that power. The result has been that most motor vehicle departments take no action to suspend licenses of drivers who violate drunk driving or implied consent ^{28/} laws until they receive a formal notice from the court of the conviction of the individual for a drunk driving or implied consent offense. ^{29/} Moreover, many of those who take a chemical test and produce a result over the legal limit will also fail to lose their licenses because of court procedures which permit reduction in charges or pretrial diversion.

Recently, the States have been enhancing their traditional presumptive drunk driving laws, which make it an offense to drive "under the influence" of alcohol, with a new provision which makes it "illegal per se" to drive with a given blood alcohol concentration. This approach is typical of that initially established in Scandinavia and recently adopted by most industrialized countries around the world. The establishment of an "illegal per se" provision increases the objectivity of enforcement and prosecution of drunk driving by defining the offense in terms of quantitative breath or blood test, thereby avoiding the subjectivity involved in judgments regarding the extent of driver impairment.

Building upon this approach, the State of Minnesota in 1976 added to its implied consent statute a provision permitting the suspension of driving privileges by the director of motor vehicles not only in the case of a test refusal, but also when a driver accepted the test and the test result was at or above the prohibited BAC limit of 0.10 percent.

^{28/} "Implied consent" laws provide penalties for refusal to submit to a chemical test for intoxication when arrested for a DWI offense.

^{29/} An exception to this rule is the District of Columbia which since 1954, has been suspending the licenses of persons charged with driving while under the influence and other serious offenses without waiting for a formal conviction notice from the courts.

Under this "administrative per se" (administrative license revocation) law, the license is suspended or revoked on the basis of a Motor Vehicle Department finding that the person drove a motor vehicle while having a BAC of 0.10 percent or greater. 30/

In 1982, Iowa and Oklahoma followed Minnesota's lead and enacted similar administrative revocation laws. Earlier, in 1981, West Virginia had passed a law modeled on the District of Columbia practice authorizing suspension of a license before a conviction on a charge of driving while under the influence of alcohol or drugs. Delaware adopted a similar law in 1982. During 1983, 13 additional States adopted administrative revocation laws. (See table 5.)

Because of the interest generated by the Minnesota law, NHTSA undertook a study of Minnesota's administrative revocation process. 31/ As a companion effort, the NHTSA sponsored the development of a model administrative revocation law entitled "Model Revocation on Administrative Determination Law" (ROAD). (See appendix D.) (The initial version of this law was released in October 1982.) Recently, NHTSA supported a study of 19 State laws, and based on this study, modified the original ROAD sample legislation. 32/

Table 5.—States With Administrative License Revocation Laws

Alaska	Missouri
Colorado	Nevada
Delaware	New Mexico
District of Columbia	North Carolina
Indiana	Ohio*
Iowa	North Dakota
Louisiana	Oklahoma
Maine	Oregon
Minnesota	Utah
Mississippi	Washington
	West Virginia

*Subject to judicial review on first offense.

Provisions of Administrative Revocation Laws.—Administrative revocation laws vary from State to State, but in general they have three major provisions. The first of these is a provision for suspension or revocation upon administrative (rather than judicial) determination. This provision normally also includes a specification that the administrative determination will be based upon a report by a law enforcement officer. It also specifies the basis for administrative revocation, such as refusal to submit to a BAC test or evidence that the individual was operating a vehicle while having a BAC of 0.10 percent or greater.

30/ Reeder, Robert H., "Analytical Study of the Legal and Operational Aspects of the Minnesota Law Entitled Chemical Test for Intoxication." MSA Sec. 169, 123. NHTSA Report No. DOT HS-806-170, December 1981, Final Report. Available from National Technical Information Service, Springfield, Virginia 22161.

31/ Reeder, 1981, *ibid.*

32/ English, J.W., *Early License Revocation for Driving While Under the Influence: Model Revocation on Administrative Determination (ROAD) Law*, Revised Edition, December 1983. Available from NHTSA, 400 Seventh Street, S.W., Washington, D.C., 20590.

The second major provision in most administrative revocation laws is that the offender must receive a notice of revocation (usually given to him or her by the police officer in exchange for his or her driving permit). The document given to the offender by the police officer also must include information on the method by which the offender can receive an administrative review or hearing on the suspension and the effective date upon which the full suspension will begin and end unless the license is reinstated upon review.

The final major provision of this type of law has to do with the administrative review and hearing procedures designed to ensure that the offender's rights are protected. Included in this section may be provisions for judicial review of the administrative action.

Operational Procedures Under Administrative Revocation Laws.--When a driver is stopped by a police officer who has probable cause to arrest the driver for a drinking/driving offense, the officer will ask the driver to submit to a breath test. The driver is warned that refusal of the test will result in a license suspension and is further warned that if he or she takes the test and is over the specified BAC limit, this will also result in a suspension. If the driver either refuses the test or takes the test with a result which is over the limit, then the police officer will then take the driver's license. The offender is then provided with a notice which serves both as a temporary driving permit (typically for 7 to 30 days) and as a notice that the driver has a right to request both an administrative and, ultimately, a judicial review of the suspension. The driver is, of course, not allowed to drive from the scene and is held in custody for a specified period of time or released to a "responsible party."

The administrative review can consist of two actions: a departmental review and/or an administrative hearing. A departmental review is conducted by a driver analyst, without the arresting officer present, and is not a hearing. This process protects the driver by providing an independent review to ensure that the officer had probable cause to stop the person and that the officer complied with the other provisions of the implied consent statute.

In addition to this review, a more formal administrative hearing, in which the police officer and the offender are present and are permitted to provide testimony, will normally be available to the offender. In addition, the offender always has the right to take the issue to the court for a judicial review. Not all States provide for a rapid departmental review or administrative hearing, but each State which has an administrative revocation procedure must provide for an administrative hearing in order to meet the requirements of due process.

The NHTSA model law requires an alcohol assessment of the driver before the license is reinstated. Most State motor vehicle laws allow the motor vehicle department to refuse licenses to individuals who are known to be alcoholics or are known to have drinking problems. The State is under some obligation, therefore, to assess the drinking status of individuals who have had their licenses suspended or revoked as a result of a drinking-driving arrest, particularly in the case of multiple offenders (found to be classifiable as problem drinkers in at least 9 out of 10 cases). 33/

33/ University of South Dakota Program Level Evaluation of ASAP Diagnosis, Referral and Rehabilitation Efforts, Volume II, 1976. Available from the NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

Legal Issues.—There has been considerable controversy over whether the driver's license represents a right or a privilege for the individual. The Supreme Court 34/ addressed this issue by taking a position somewhat in between, holding that "Once licenses are issued . . . their continued possession may become essential in the pursuit of the livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." 35/ Therefore, the summary suspension procedures provided for in the administrative revocation legislation must meet the requirements of due process. While the Supreme Court thus established a requirement for due process in the suspension of licenses, it has also recognized certain areas in which property may be seized summarily without affording an owner a determination hearing. These have included such things as protection of national security during war time and protecting the public health from unsafe food and drugs.

In considering the extent to which hearings and other due process requirements are applicable to administrative suspension of social security disability benefits, the Supreme Court established tests to determine the balance between public needs vs private rights. 36/ In this case, the court recognized three factors:

1. The private interest that will be affected by the official action.
2. The risk of an erroneous deprivation of such an interest through the administrative procedures used and the probable value, if any, of additional procedural safeguards.
3. The government's interest and need, including the fiscal and administrative burdens of additional safeguarding procedures.

Decisions by the Supreme Court and the U.S. District Courts have established the principle that the offender is protected sufficiently if an opportunity for hearing is provided speedily following the actual suspension. 37/ The hearing need not precede the suspension, providing the mechanism which is established does permit the offender to receive reasonably prompt action.

To ensure the maximum protection of the individual, the NHTSA model ROAD law proposes an immediate administrative "review" providing for independent consideration by the motor vehicle department of the written testimony presented by the police officer and of written or oral presentations by the offender. This can be done rapidly by a licensed examiner and gives the offender an early opportunity to overturn an erroneous suspension. In addition, the NHTSA model law proposes that provision be made for a more formal hearing at which the arresting officer, as well as the offender and counsel, could

34/ For a review of the relevant cases, see Reese, John H., Summary Suspension of Driver Licenses of Drunken Drivers--Constitutional Dimensions, in Administrative Driver License Suspension and Revocations Prior to Court Appearances, National Highway Traffic Safety Administration, August 1982, Washington, D.C. 20590.

35/ Bell v. Burson, 42 US535, 539, 91 S. CT, 1386, 29 L. Ed. 2d 90 (1971).

36/ Mathews v. Eldridge, 424 US 319, 335, 96 S. CT, 893, 47 L. Ed. 2D18 (1976).

37/ See, e.g., Mackey v. Montrym, 443 U.S. 1, 99 S.Ct. 2612, 61 L. Ed. 2d 321 (1979) in which the Supreme Court upheld the constitutionality of prehearing license revocation proceedings where the driver refused to take a chemical test for alcohol concentration.

be present and give testimony. Available to the offender, in any case, is an appeal to the judicial system for redress.

To date only one State's administrative revocation law has been tested in a State supreme court. In the case Heddan v. Dirkswager 336 N.W.2d 54 (S.Ct. Minn. 1983), the Minnesota State Supreme Court upheld the Minnesota law against the claim that it violates due process of law.

Effects of Administrative Revocation.—Under the general deterrence concept, administrative revocation laws should contribute to the deterrence of drunk driving if several effects are observed. First and most importantly, administrative revocation laws should make license suspensions routine for nearly all arrested drunk drivers and those who refuse a chemical test. Thus, the likelihood of an immediate and significant penalty for the DWI offense is increased. A secondary effect should be to encourage police to increase DWI arrests by ensuring that the DWI offenders they apprehend are penalized. Currently, many police officers are discouraged by the widespread practice of plea bargaining and dismissals of DWI cases. In addition to deterrence considerations, administrative revocation laws could affect the criminal adjudication of DWI cases by influencing judges to reduce the severity of court sanctions if the offender has already lost his or her driving privilege.

Since administrative revocation laws have only recently been enacted in most States, only a limited amount of data are available on these questions. However, for those States, such as Minnesota and Iowa, which have used the procedures for several years, some pertinent information is available.

License suspensions/revocations.—Perhaps the best illustration of the effect of an administrative revocation law on revocations is provided by Iowa, where the law became effective on July 1, 1982. (The effect is shown in table 6.) Historically, drinking drivers who refused to take a chemical test had their licenses revoked under the Iowa implied consent law which existed before July 1982. As can be seen from table 6, the number of revocations for refusal to take the test remained essentially constant after the new administrative per se law was passed. In contrast, revocations from court convictions for drinking-driving offenses dropped during the first year after the administrative revocation legislation took effect. More importantly, during this period there were nearly 14,000 administrative revocations which resulted from individuals who took the chemical test but provided a result over 0.10 percent. Likewise, suspensions for a test result of over 0.10 percent were greater than the total number of revocations for all reasons in the prior year. Overall, the number of suspensions almost doubled in the first year after the passage of the administrative revocation law.

Similar data are shown for the State of Minnesota in table 7.^{38/} Since 1977, the first full year after implementation of the administrative revocation law, the total number of revocations has been increasing with the number now approaching twice the total typical before enactment of the administrative revocation law. These data reflect an interesting transition in the administrative revocation law that occurred on July 1,

^{38/} Unfortunately, records were not kept of the number of revocations for refusals as compared to the number of revocations for conviction of DWI prior to the passage of the administrative revocation law on July 1, 1976. Another factor which complicates the interpretation of these data is that a 1976 decision of the Minnesota Supreme Court held that a driver had a right to counsel prior to submitting to a chemical test for intoxication. This requirement resulted in the dismissal of a number of pending DUI cases with the result that in 1976 the number of revocations dropped.

Table 6

Impact on the Number of Revocations Produced By
Passage of the Administrative Revocation Law++
in Iowa

	July 1, 1980 to June 30, 1981	July 1, 1981 to June 30, 1982	I M P L E M E N T A T I O N O F L A W	July 1, 1982 to June 30, 1982
Convictions for refusal to take test	2,262	2,313		2,389
Revocations as result of conviction	7,591	9,882		6,155
Revocations under Adminis- trative proccedures BAC 0.10%	-----	-----		13,680
TOTALS	9,853	12,195		22,224
DUI arrests in 7 major Metropolitan Counties	6,912	6,850		7,697
Fatal Accidents				
Day 6 am-9 pm	473	425*		390**
Night 9 pm-6 am	329	271***		230****

++ Source: Governor's Office of Highway Safety, State of Iowa.

- * 10 % reduction from prior year.
- ** 8 % reduction from prior year.
- *** 18 % reduction from prior year.
- **** 15 % reduction from prior year.

1982. Until that time, motorists charged with DWI could take advantage of the fact that the loss of license was only 30 days on conviction in court (as compared to 90 days under administrative revocation) by pleading guilty at arraignment before the administrative revocation took effect. Once this loophole was eliminated, almost all revocations have been a result of administrative procedures with the courts assessing only fines and jail sentences.

The more specific question regarding the apparent overall increase in revocations is what proportion of those being arrested actually lose their licenses. If the administrative revocation system is working effectively, the great majority of all individuals arrested should receive an administrative revocation since most arrests occur only when there is a chemical test at or above the State's legal limit. (In most jurisdictions, individuals are only infrequently arrested with BAC's below the State revocation limit.) Barring unusual situations, the licenses of all individuals arrested should be administratively revoked, based on having been operating a vehicle and having either refused a BAC test or provided a test with a result over the revocation limit.

Table 7
Revocation of driver's licenses and arrests
for alcohol-related offenses in Minnesota

Year	Court Based Revocations (\$169.121)	Chemical test refusal (\$169.123)	Administrative Revocations over 0.10% BAC+ (\$169.123)	Total Revocations
1974	*	*	*	15,396
1975	*	*	*	17,628
1976	*	*	*	14,251***
1977	*	*	*	17,741
1978	15,512	3,344	5,501	24,357
1979	14,797	3,427	6,742	24,966
1980	17,406	3,863	9,212	30,481
1981	19,009	4,427	8,607	32,043
1982	9,400**	8,456	19,168	36,024****
1983	156	11,583	23,064	34,903
	30 days	6 months	90 days	

* Data not broken down and not available.

** Law change in 1982 which prevented 30-day court-imposed suspension from blocking 90-day administrative suspension.

*** The lower number in 1976 is attributable to the decision of the Minnesota Supreme Court in Prideaux v. Department of Public Safety, 247 N.W.2d. 385 (1976), which held that a driver had a right to counsel when submitting to a chemical test for intoxication. It caused the dismissal of a number of pending cases.

**** Includes 3,000-case backlog.

+ Source: Motor Vehicle Department and Office of Traffic Safety of Minnesota Department of Public Safety.

There is evidence that the majority of the licenses of those arrested are being revoked in those States which have had the administrative revocation law for a long enough period of time to provide data on the number of revocations relative to the number of arrests. In Minnesota and in Iowa, there are actually more revocations than there are arrests since, under their dual track system, individuals can receive two suspensions, one as a result of the administrative procedure and one as a result of the

independent court conviction. ^{39/} In Delaware, a detailed followup of individuals arrested in the first year of the implementation of its administrative revocation law found that 96 percent of the individuals arrested for DWI by the police had licenses revoked as a result. ^{40/} Similarly high suspension rates are reported by the Department of Motor Vehicles for the District of Columbia which has been using a suspension system similar to administrative revocation for some years.

Administrative Revocation and Licensing Agencies.—A feature of the administrative revocation process is that it provides for a hearing for the driver who has been reported to have refused a BAC test or to have had a BAC above the revocation limit. One indication of the burden of revocation laws on licensing agencies is the numbers of individuals who take advantage of the hearings. In Delaware during the first year of the implementation of its administrative revocation law, only 23 percent of those suspended requested even a departmental hearing. Minnesota initially had a problem with a large number of appeals to the courts on the motor vehicle department's determination because the initiation of such an appeal resulted in a stay of the revocation. However, when the law was changed so that the revocation took place before hearing of the court appeal, the appeal rate went down. Only 7 1/2 percent of drivers whose licenses had been suspended appealed during 1983. ^{41/}

Administrative Revocation and the Police.—An important aspect of the administrative revocation procedure is its effect on individual police officers and department commanders. If the officers see administrative revocation as providing assurance that offenders will be penalized (by the loss of a license rather than avoiding conviction), this should encourage their DWI effort, resulting in an increased number of arrests. If, on the other hand, the officers see the administrative revocation procedure as being unfair to the driver, it could have the opposite effect.

As shown in table 7, DWI arrests in Minnesota, after dropping in 1977 (probably as a result of the Supreme Court decision which resulted in the dismissal of a large number of DUI cases), have been increasing yearly; in 1982, they are well above the preadministrative revocation period before 1976. In Iowa, arrests rose 12 percent after enactment of administrative revocation laws. (See table 6). These data suggest that administrative revocation laws increase rather than reduce arrest activity. The longer-term experience of the State of Minnesota suggests that the law may have a motivating effect on the police.

Administrative Revocation and the Courts.—The effect of the passage of administrative revocation legislation on the court system is not yet known from the limited experience with the law. However, initial data from Minnesota, which has had the administrative revocation system in place the longest period of time, suggest that it does not have a major effect. The number of revocations resulting from DWI court convictions after the passage of the law remained constant until additional legislation in 1982 made administrative procedures the primary procedure for revoking the license. (See table 7.)

^{39/} In Minnesota, in 1982 (table 7) there were 23 percent more revocations than arrests. This is also due to the fact that some arrests are not listed in the official files if the individual is not prosecuted as well as the double suspensions that occur. These drivers do receive revocations, however, if they refused the test or were over the legal limit. Iowa also shows more revocations than arrests.

^{40/} Information provided by the Governor's Highway Safety Representative, State of Delaware.

^{41/} Information provided by Office of Traffic Safety, State of Minnesota.

As shown in table 6, there was a reduction in the first year in the number of suspensions due to court convictions in Iowa. It remains to be seen whether this reduction will continue or whether, as suggested by the data from Minnesota, the number of suspensions due to court conviction will continue to increase beyond the number made before the law. In any case, the experience in Minnesota and Iowa suggests that the use of administrative revocation does not have a major impact on the use of suspension by the courts. Insufficient data are available to determine whether this procedure affects other penalties which are assessed by the courts.

Administrative Revocation Laws and Alcohol-Related Accidents--Obviously, the most important measure of the effectiveness of the administrative revocation countermeasure is the effect on reducing the number of alcohol-involved accidents. However, it is extremely difficult to evaluate the effect of administrative revocation laws on highway fatalities because of the various factors which influence accident statistics. The Minnesota data shown in figure 1 illustrate the problem. The graph shows a dramatic contrast in the trend of the highway death rate and the license revocation rate. While the license revocation rate had been increasing slowly before 1976, it climbed rapidly after enactment of the administrative revocation law, doubling in the next 4 years. The fatality rate in Minnesota has also dropped since the passage of the administrative revocation law. However, the reduction began in 1968, accelerating in the 1980-82 period when fatalities were decreasing nationwide. Evidence of a reduction in alcohol-related fatalities is shown in table 6. In Iowa, after passage of the administrative revocation law, nighttime fatal accidents declined 15.1 percent, compared to an 8.2-percent decline in daytime accidents. However, nighttime fatal accidents had declined 18 percent in the year before the enactment of administrative revocation legislation. Therefore, the differential reduction after enactment cannot be attributed conclusively to enactment of the administrative revocation law alone.

Combined Effect of the Use of Checkpoints and Administrative Revocation

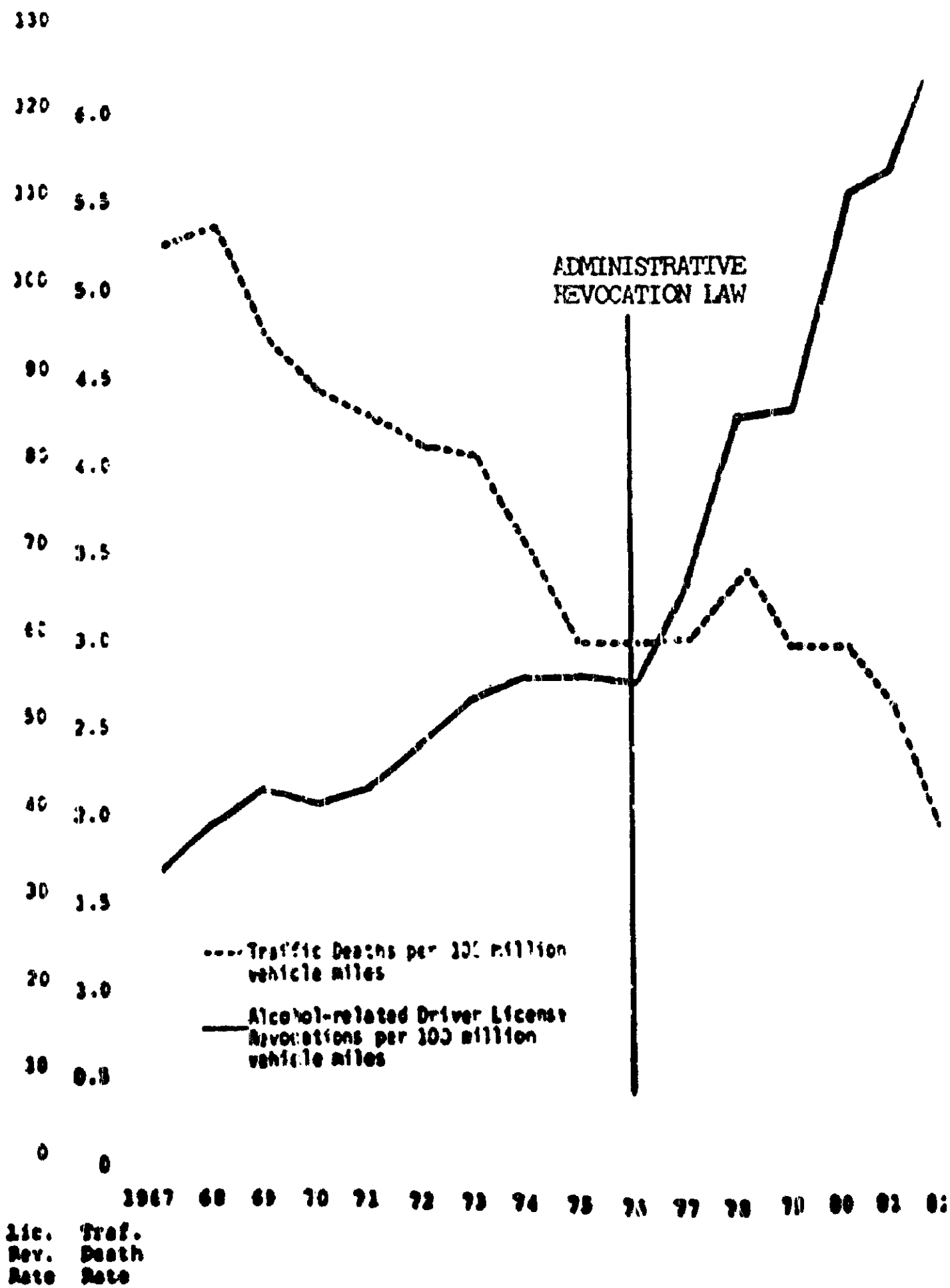
While a number of States are using the sobriety checkpoint enforcement system and also have administrative revocation laws, these elements were not enacted at the same time. Therefore, it is difficult to determine what the combined effect of these two countermeasures has been on accidents.

Delaware provides the best opportunity currently available in the United States for evaluation of the combined effects of these programs. Delaware enacted a toughened drinking-driving law in October 1982, which featured sobriety checkpoints and administrative revocation. The first full year of the implementation of both of these new countermeasures was 1983. During 1983, 84 sobriety checkpoints were established by the Delaware State Police resulting in 15,469 vehicles stopped. Of these, 890 were detained for further investigation and 295 DUI arrests were made. ^{42/} Also during 1983, as a result of the administrative revocation procedure, the licenses of 96 percent of the drivers arrested were revoked. The total number of arrests remained essentially constant, rising only 1.7 percent. However, the number of DUI arrests had already increased 2 years before when additional resources were provided for enforcement. ^{43/}

^{42/} Data provided by the Governor's Highway Safety Representative, State of Delaware.

^{43/} Ibid.

Figure 1
Comparison of Traffic Death Rate and
License Revocation Rate in Minnesota 1967-1982



The change in accident statistics in Delaware following the initiation of the checkpoint and administrative revocation legislation is encouraging. Between 1982 and 1983, there was a 13.8-percent decline in total fatal accidents and a 17.3-percent decline in alcohol-involved fatal accidents. The impact appeared to be even greater among injury accidents where the total decline was only 3.5 percent from 1982 to 1983 but the decline in alcohol-involved accidents was 21.9 percent. These declines occurred despite an 8-percent increase in sales of fuel in Delaware, indicating that the reduction could not be explained by reduced travel. ^{44/} In addition, between 1982 and 1983, there was only a small decline in fatal accidents nationwide.

Perhaps the most impressive indication of the potential impact of these two countermeasures in Delaware is the number of drinking drivers involved in fatal accidents. Delaware is one of the few States which test nearly all fatally injured drivers for alcohol. When the number of drivers who are fatally injured and tested for alcohol is added to the number of surviving drivers in fatal accidents who were charged by the police with drunken driving (and also tested for BAC), the number of drinking drivers (BAC greater than 0.05 percent) in fatal accidents decreased by 19.1 percent from 1982 to 1983. ^{45/} This reduction is based on known BAC levels and is not subject to the biases which sometimes occur in police judgments regarding whether a driver was drinking. While more detailed analysis of accident data over a number of years will be required to confirm that this change can be attributed to the new law, this reduction in the number of accident-involved drinking drivers is impressive.

CONCLUSIONS

Based upon its review of the current literature and recent experience in national and international efforts to control drunk driving, the National Transportation Safety Board believes that general deterrence programs afford the most promising approach for the short-term reduction in alcohol-related deaths and injuries on our highways. Further, upon consideration of the information presented in this report, the Safety Board believes that the sobriety checkpoint and administrative license revocation procedures are potentially effective deterrent measures that warrant broader application by the States.

The National Transportation Safety Board, therefore, concludes that sobriety checkpoints and administrative license revocations should be an integral part of a State's comprehensive alcohol and highway safety program.

RECOMMENDATIONS

As a result of this Safety Study, the National Transportation Safety Board made the following recommendations:

--to the Governors of Alabama, California, Connecticut, Guam, Hawaii, Illinois, Kansas, Kentucky, Michigan, Montana, New Hampshire, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Virgin Islands, Wisconsin, and Wyoming:

Institute the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action) (H-84-11)

^{44/} Ibid.

^{45/} Ibid.

Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. (Class II, Priority Action) (H-84-12)

Enact legislation or utilize existing authority to provide for administrative revocation of the licenses of drivers who refuse a chemical test for alcohol or who provide a result at or above the State presumptive limit. (Class II, Priority Action) (H-84-13)

Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented. (Class II, Priority Action) (H-84-14)

--to the Governors of Arizona, Arkansas, Florida, Georgia, Idaho, Maryland, Massachusetts, Nebraska, New Jersey, New York, South Dakota, Vermont and Virginia:

Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action)(H-84-15)

Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. (Class II, Priority Action) (H-84-16)

Enact legislation or utilize existing authority to provide for administrative revocation of the licenses of drivers who refuse a chemical test for alcohol or who provide a result at or above the State presumptive limit. (Class II, Priority Action) (H-84-17)

Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented. (Class II, Priority Action) (H-84-18)

--to the Governors of Colorado, Delaware, Missouri, New Mexico, Oregon, Utah, and Washington:

Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action)(H-84-19)

Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. (Class II, Priority Action) (H-84-20)

Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented.(Class II, Priority Action) (H-84-21)

--to the Governors of Alaska, Indiana, Iowa, Louisiana, Maine, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, and West Virginia:

Institute the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action) (H-84-22)

Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. (Class II, Priority Action) (H-84-23)

Evaluate the effectiveness of sobriety checkpoints and administrative license revocation procedures implemented. (Class II, Priority Action) (H-84-24)

--to the National Highway Traffic Safety Administration:

Evaluate the effectiveness of sobriety checkpoints and administrative revocation procedures. (Class II, Priority Action) (H-84-25)

--to the Mayor of the District of Columbia:

Continue and expand the use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action) (H-84-26)

Evaluate the effectiveness of the sobriety checkpoints and administrative license revocation procedures implemented. (Class II, Priority Action) (H-84-27)

BY THE NATIONAL TRANSPORTATION SAFETY BOARD

/s/ JIM BURNETT
Chairman

/s/ PATRICIA A. GOLDMAN
Vice Chairman

/s/ VERNON L. GROSE
Member

G. H. PATRICK BURSLEY and DONALD D. ENGEN, Members, did not participate.

April 3, 1984

APPENDIXES

APPENDIX A

NTSB RECOMMENDATION RAISING THE DRINKING AGE TO 21

ISSUED: July 22, 1982

.....
Forwarded to: States of: Alabama, Alaska,
Arizona, Colorado, Connecticut, Delaware,
Florida, Georgia, Hawaii, Idaho, Iowa, Kansas,
Louisiana, Maine, Massachusetts, Minnesota,
Mississippi, Montana, Nebraska, New Hampshire,
New Jersey, New York, North Carolina, Ohio,
Oklahoma, Rhode Island, South Carolina,
South Dakota, Tennessee, Texas, Vermont,
Virginia, West Virginia, Wisconsin, Wyoming
and the District of Columbia
.....

SAFETY RECOMMENDATION(S)
H-82-18

About 2:18 a.m. e.s.t on March 14, 1982, at a railroad/highway grade crossing on Herricks Road in Nassau County, New York, a southbound van, occupied by 10 teenagers, was driven around a lowered automatic gate with flashing lights onto the main line tracks of the Long Island Railroad and into the path of an oncoming train. Nine of the 10 occupants were killed and one passenger was critically injured. The blood alcohol level of the 19-year-old male owner and apparent driver of the van was .09 percent by weight. New York law determines that a blood alcohol level of .06 to .09 is evidence that the driver's ability is impaired. A level of .10 is considered to be "intoxicated." The minimum legal purchase age for all alcoholic beverages in the State of New York at the time of the accident was 18 years.

In the past 3 years, the National Transportation Safety Board has investigated three other major accidents (see table 1) involving young drivers in the 18- to 21-year-old age group where alcohol was a factor in the accident. In these four accidents, there were 30 fatalities and 15 injuries.

In July 1971, the 26th Amendment to the U.S. Constitution became effective extending the right to vote in Federal elections to citizens between 18 and 21 years of age. Between 1970 and 1973 the 50 States also extended the right to vote in State elections to this age group, and 24 States reduced their minimum legal drinking age for all alcoholic beverages as part of the trend to reduce the age of majority. ^{1/} Eighteen of the 24 States lowered the legal drinking age to 18, and 6 States lowered it to 19. Eleven other States lowered the legal drinking age for wine and beer only to either 18 or 19.

^{1/} States that reduced their legal drinking ages for all alcoholic beverages between 1970 and 1973 were: Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Rhode Island, Tennessee, Texas, Vermont, West Virginia, Wisconsin, and Wyoming.

TABLE 1--RECENT MAJOR HIGHWAY ACCIDENTS
 INVESTIGATED BY SAFETY BOARD
 INVOLVING 18-TO 21-YEAR-OLD DRIVERS

<u>Location</u>	<u>NTSB Report No.</u>	<u>Date of accident</u>	<u>BAL of driver</u>	<u>Persons killed</u>	<u>Time of accident</u>	<u>Driver's Age</u>	<u>Minimum legal drinking age in the State at the time of the accident</u>
Crofton, Maryland	HAR-79-6	04-23-79	0.135 (estimated)	10	9:15 p.m.	18	21 other * 18 (Beer & Wine)
New York, New York	HAR-79-8	06-08-79	0.12	4	11:05 p.m.	20	18
Perry, Oklahoma	HAR-80-4	02-23-80	0.21	7	12:45 a.m.	20	21 other **18 (3.2% beer)
Nassau County, New York	--	03-14-82	0.09	9	2:18 a.m.	19	18

* Changed to 21 for all alcoholic beverages May 3, 1982.
 **blood alcohol level resulted from the ingestion of
 3.2% beer.

Studies 2/ began to show that the lowered drinking age resulted in increased alcohol-related traffic accidents among the 18- to 21-year-old population, an age already overrepresented in accident statistics. As a result, at least 14 States have raised their minimum legal drinking age since 1976. 3/ (See table 2.) Currently, several other States have legislation pending to raise the legal minimum drinking age.

There have been numerous studies in States that have raised their minimum legal drinking age, showing a significant decrease in alcohol-involved accidents among drivers in the affected age group. For example, Michigan lowered its drinking age to 18 in January 1972 and raised it back to 21 in December 1978. A study that analyzed a random sample of 20 percent of all reported accidents in Michigan from January 1972 to December 1979 concluded:

Controlling for trends, seasonally, and other patterns in the frequency of police-reported "had been drinking" (HBD) crash involvement among 18-20 year old drivers, an [annual] reduction of 31 percent occurred in the first 12 months after the drinking age was raised from 18 to 21 in December of 1978.

To control for potential unreliability in police-reported alcohol-involvement, a "three factor surrogate" 4/ measure of alcohol-related crash involvement is also used. Analyses of late-night, single-vehicle crashes with a male driver, of which a majority have been consistently identified as involving a drinking driver, reveal a statistically significant reduction of 18 percent among drivers aged 18-20 after the higher legal drinking age was implemented." 5/

In another study, made after Illinois raised its minimum legal drinking age in January 1980 from age 19 to 21 years, data for single-vehicle, nighttime, male driver involvements occurring between 8 p.m. and 3 a.m. were used as a surrogate for alcohol-involved accidents. 6/ This study comparing 1980 to 1979 accident data, concluded that raising the legal drinking age law was effective in reducing the single-vehicle, nighttime, male driver involvement for drivers aged 19 and 20. For 1980, the percentage of reduction attributable to the law change was 8.8 percent.

The Michigan and Illinois studies looked at all accidents--fatal, injury, and property damage. Another study, 7/ using data from the Fatal Accident Records System (FARS) of

2/ Douglas, R. L., Filkins, L.D., Clark, P.A. "The Effect of Lower Legal Drinking Ages on Youth Crash Involvement," prepared for National Highway Traffic Safety Administration by Highway Safety Research Institute, June 1974.

3/ States that raised their legal drinking ages after 1976 include: Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, New Jersey, and Tennessee.

4/ Surrogate measures for alcohol involvement are typically used since blood alcohol level reporting for driver accident involvement is often incomplete.

5/ Wagenaar, Alexander Clarence, The Minimum Legal Drinking Age: A Times-Series Impact Evaluation, Dissertation, University of Michigan, 1980, p. 148.

6/ "Impact Analysis of the Raised Legal Drinking Age in Illinois" Delmas Maxwell, National Highway Traffic Safety Administration, December 1981.

7/ Williams, Allan F., et al., Insurance Institute for Highway Safety, "The Effect of Raising the Legal Minimum Drinking Age in Fatal Crash Involvement," Journal of Legal Studies, September 1981.

TABLE 2. MINIMUM LEGAL DRINKING/PURCHASE AGES AND DATE OF LAST LEGISLATIVE CHANGE FOR THE FIFTY STATES AND THE DISTRICT OF COLUMBIA

18	19	20	21	18/21
Hawaii (1972) Louisiana (1946) Vermont (1971) West Virginia (1980) Wisconsin (1972)	Alabama (1970) Alaska (1979) Arizona (1972) Connecticut (1982) Florida (1980) Georgia (1980) Idaho (1972) Iowa (1978) Minnesota (1976) Montana (1979) New Jersey (1980) New York (1982) Tennessee (1979) Texas (1981) Wyoming (1973)	Delaware (1972) Maine (1977) Massachusetts (1979) Nebraska (1980) New Hampshire (1979) Rhode Island (1981)	Arkansas (1925) California (1933) Illinois (1980) Indiana (1934) Kentucky (1938) Maryland (1982) Michigan (1978) Missouri (1945) Nevada (1933) New Mexico (1934) North Dakota (1936) Oregon (1933) Pennsylvania (1935) Utah (1935) Washington (1934)	* Colorado (1945) ** District of Columbia (1934) * Kansas (1949) ** Mississippi (1966) ** North Carolina (1938) * Ohio (1935) * Oklahoma (1976) *** South Carolina (1939) * South Dakota (1972) *** Virginia (1981)

- * - 18 (5.2% Beer), 21 (Over 3.2% Beer, Wine & Distilled Spirits)
 ** - 18 (Beer & Table Wine), 21 (Fortified Wine & Distilled Spirits)
 *** - 18 (Beer & Wine), 21 (Distilled Spirits)
 **** - 18 (On Premises Sale of Beer), 19 (Off Premises Sale of Beer)
 21 (Wine & Distilled Spirits)

the National Highway Traffic Safety Administration looked at nine States which raised their legal minimum age. ^{8/} Eight of the nine States experienced a reduction in nighttime fatal crash involvement among drivers in the affected age group; the average annual reduction was 26 percent.


New York State has recently raised the legal purchase age of alcohol from 18 to 19. In New York State during 1979, 26 percent of crash-involved drinking drivers were under 21 years old. This is a rate of 45.1 alcohol-related crash involvements per every 10,000 licensed drivers in the 18- to 20-year-old age group. This rate was 4.2 times higher than the rate of 10.8 per 10,000 licensed drivers 21 years and older. ^{9/} In the 10 New York counties that are contiguous to Pennsylvania (where the legal drinking age is 21) 10 percent of the alcohol-related accidents involving an 18- to 20-year-old driver involved a driver who was licensed in Pennsylvania. ^{10/}

Based on the experiences of the States that have raised their minimum legal drinking or purchasing age, the Safety Board concludes that alcohol-related accidents in the 18- to 21-year-old age group can be reduced by raising the minimum legal drinking age. Available data show a direct correlation between minimum drinking age and alcohol-related accidents in the 18- to 21-year-old age group. Studies in Illinois and Michigan, two populous States, demonstrate that dramatic reductions in alcohol-related accidents in this age group can be achieved by raising the minimum drinking age to 21.

Therefore, the National Transportation Safety Board recommends that the States of Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, and the District of Columbia:

Raise the minimum legal age for drinking or purchasing all alcoholic beverages to 21 years of age. (Class II, Priority Action) (H-82-18)

BURNETT, Chairman, GOLDMAN, Vice Chairman, McADAMS and BURSLEY, Members, concurred in this recommendation.


By: Jim Burnett
Chairman

^{8/} The States were: Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, and Tennessee.

^{9/} Lillis, R., et al., "Targeting Alcohol Safety Prevention Programs through Analysis of Crash Casualty Data," paper presented at the National Council on Alcoholism forum, New Orleans, Louisiana, April 15, 1981.

^{10/} Lillis, R., Williams, T., and Williford W., "Reported Alcohol Crashes Involving 18-21 Year Old Pennsylvania Drivers in Ten New York Border Counties," New York State Division of Alcoholism and Alcohol Abuse, Bureau of Alcohol and Highway Safety (Research Report Series Number 10), 1981.

APPENDIX B

NTSB RECOMMENDATION ON CITIZENS REPORTING DRUNK DRIVERS

ISSUED: September 9, 1982

Forwarded to:

Governors of the 50 States
and the Mayor of the District
of Columbia, excluding Colorado, Maryland,
Nebraska, Utah, and Washington

SAFETY RECOMMENDATION(S)

H-82-35

Drinking and driving continues to be our nation's most serious safety and public health problem. More than half of the 50,000 annual highway fatalities result from accidents that involve alcohol. This is a disgraceful and frightening statistic, but a reality that will not change until individual attitudes change. There are many steps which might be taken to change this situation; some involve long-term legislative changes, educational programs, and rehabilitation programs; others include short-term, immediate public awareness programs. An example of the former involves the monitoring of the sentences imposed by the courts on convicted drunk drivers. An example of the latter is encouraging reporting by citizens of drunk drivers to law enforcement officials. This recommendation letter addresses such an immediate, short-term, and inexpensive public awareness program.

Washington State has a program to encourage citizens to report drunk drivers which it calls the "poster girl" drunk driver program; Colorado, Nebraska and Utah, call their similar efforts REDDI (Report Every Drunk Driver Immediately). Maryland calls its program Citizen Report Drunk Driver Program. Through these programs, these five States successfully and relatively inexpensively ^{1/} increase public awareness of the drunk driver problem and encourage citizen involvement to help solve it. For example, in Nebraska from June 1981 to May 1982, 2,836 suspected drunk drivers were reported to police, and as a result, police intercepted 1,827 potentially drunk drivers and actually arrested 1,428 drivers for driving while intoxicated (DWI). Similar statistics for Colorado, Maryland, Utah, and Washington are shown in Table 1.

Studies have shown that drunk drivers generally do not believe they will be caught, and in fact usually they are not. The chance of their being stopped by enforcement authorities is only one in a thousand, yet DWI arrests nationwide have increased from 561,000 in 1989 to more than 1,300,000 in 1981. ^{2/} Of the 13,000 DWI arrests made in the State of Washington from March 1980 to July 1982, 1,000 arrests resulted from citizens' reports of potentially drunk drivers.

^{1/} The budget for the Colorado program was \$25,550, of which \$17,500 covered production of posters and related materials, radio spot announcements, and television materials. The budget for the State of Washington program was \$18,000, all of which was printing expenditures.

^{2/} John Volpe, Chairman, President's Commission on Drunk Driving, Statement Before the Subcommittee on Alcoholism and Drug Abuse, Senate Committee on Labor and Human Resources, August 5, 1982.

Table 1.--REDDI Program Statistics.

State and Program Name	Program Evaluation Time Period	Number of Months	Total Number of Calls and CS Reports	Total Number of Contacts	Total Number of Arrests for DWI
Colorado "REDDI"	December 1980 to July 1982	20 months	13,274	2,701 20% of Calls	1,661 62% of Contacts
Maryland "Citizen Report Drunk Driver Program"	July 1 to August 29, 1982	2 months	1,625	500 31% of Calls	230 46% of Contacts
Nebraska "REDDI"	June 1981 to May 1982	12 months	2,836	1,827 64% of Calls	1,428 78% of Contacts
Utah "REDDI"	May 1, 1982 to June 30, 1982	2 months	262	102 38% of Calls	76 74% of Contacts
Washington "POSTER GIRL"	March 1980 to July 1982	27 months	8,000	1,400 18% of Calls	1,000 71% of Contacts

Nebraska reports that during the first 12 months of its program, the State experienced 26 percent fewer fatalities than the previous year. Also, from June 1980 to May 1981, 41 percent of the fatal accidents were listed as involving alcohol yet from June 1981 to May 1982, the alcohol involvement was reported at 37 percent, constituting a 10-percent reduction in fatal accidents involving alcohol. While the Safety Board cannot specifically correlate these results to the Nebraska REDDI Program, and undoubtedly other factors contributed to some degree, it is not aware of any other significant changes in State enforcement policy or procedures which would have brought about these reductions.

The five programs discussed above have been implemented by either the States' highway safety or highway law enforcement agencies, or both. The individuals involved in the programs reviewed by the Safety Board were enthusiastic about their respective State programs, and indicated that media support and local enforcement agency involvement were key elements in the success of the programs. Most programs were "kicked off" by large press conferences hosted by the Governors of the respective States.

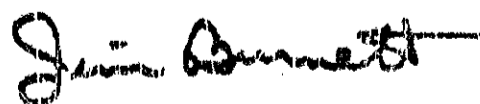
The programs typically make use of posters depicting real-life surviving victims of drunk drivers, and telephone numbers where citizens can call to report drunk drivers. Utah utilizes billboards and bumper stickers with the message "Drunk Drivers Hurt People Be REDDI". Brochures are used to give citizens information on how to spot drunk drivers, how to report drunk drivers to the police by citizens band (CB) radio and by telephone, what information should be given to the police when reporting drunk drivers, and what not to do when a drunk driver is encountered. Publicizing reports from the enforcement agency on a weekly or monthly basis is necessary to inform citizens of the effectiveness of their reporting efforts and to encourage them to continue reporting.

Based on the positive results of State programs to encourage citizens to report drunk drivers, the National Transportation Safety Board recommends that the Mayor of the District of Columbia and the Governors of the States listed:

Implement a citizen awareness and citizen drunk driver reporting program such as the REDDI-type programs now used by Colorado, Maryland, Nebraska, Utah, and Washington. (Class II, Priority Action) (H-82-35)

The Safety Board is concurrently recommending to the International Association of Chiefs of Police and The National Safety Council that they collaborate and act as focal points for gathering and disseminating information on REDDI-type programs, and provide pertinent information and assistance to interested States and local communities.

BURNETT, Chairman, GOLDMAN, Vice Chairman, and McADAMS, BURSLEY, and ENGEN, Members, concurred in this recommendation.



By: Jim Burnett
Chairman

APPENDIX C

1983 INTERNATIONAL CHIEFS OF POLICE RESOLUTION ENDORSING
THE USE OF SOBRIETY CHECKPOINTS

R E S O L U T I O N

DRIVER SOBRIETY CHECKPOINTS
(1983)

WHEREAS, in 1975, the International Association of Chiefs of Police endorsed the use of police roadblocks for emergency situations, such as for the apprehension of fleeing felons, and for the good faith purpose of checking driver licenses, vehicle registrations and equipment, and for similar purposes, and

WHEREAS, the pervasive relationship of drunk driving and other uses of alcohol to traffic crashes and highway safety generally is such that all reasonable measures must be taken to counter its effect, and

WHEREAS, the use of sobriety checkpoints by police for purposes of detecting drunk drivers is equally effective toward reducing the number of drunk drivers due to the high visibility and public interest it generates; therefore, be it

RESOLVED, that the International Association of Chiefs of Police reiterates its support and encouragement of the use of enforcement checkpoints by police when they are carefully planned within the framework of due process, and in particular, recommends the police use of sobriety checkpoints supported by adequate public information and education as a tactic conducive toward reducing the number of drunk drivers on the public highways.

APPENDIX D

NHTSA's MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW

Model Revocation on
Administrative Determination
(Road) Law Revised Edition

**State Laws on Early
License Revocation
for Driving While
Under the Influence**

**Model Revocation on Administrative Determination (ROAD) Law
With Comments and Implementation Guidelines**

<u>Table of ROAD Sections</u>	<u>Page</u>
§ 1 -- Purpose of this act	13
§ 2 -- Revocation on administrative determination	13
§ 3 -- Report by law enforcement officers	15
§ 4 -- Notice of revocation	16
§ 5 -- Notice of revocation served by officer	18
§ 6 -- Effective date and period of revocation	20
§ 7 -- Restoration of license	22
§ 8 -- Administrative review	24
§ 9 -- Hearing	27
§ 10 -- Judicial review	29
§ 11 -- Administrative procedure act	30
§ 12 -- Definitions	30

**Model Revocation on Administrative Determination (ROAD) Law
With Comments and Implementation Guidelines**

§ 1 -- Purpose of this act

The purpose of this Act is the following:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and,

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of the revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective; and,

(3) Following the revocation period, to prevent the relicensing of those persons until the department is satisfied that their alcohol problem is under control and that they no longer constitute a safety hazard to other highway users.

Comments and Implementation Guidelines

General. The statement of purpose is important because it helps to establish the state's strong interest in promoting highway safety by quickly removing drunk drivers from the highways. The significance of the state's interest is one factor which the courts weigh in determining the validity of summary revocation procedures.

* * *

§ 2 -- Revocation on administrative determination

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was 0.10 or more. For purposes of this Act, alcohol concentration shall mean either grams of alcohol per 100 milliliters or blood or grams of alcohol per 210 liters of breath.

(b) The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in section 3 of this Act, and this determination shall be final unless an administrative review is requested under section 8 or a hearing is held under section 9.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

Comments and Implementation Guidelines

General. This section provides the basis of Revocation On Administrative Determination (ROAD). Instead of waiting for the criminal adjudication process to result in a conviction, the department makes its own independent determination of the same facts, and revokes if it appears to be warranted.

ROAD provides for revocation rather than suspension because at the conclusion of a period of license revocation, the license is not automatically returned. Instead, the person may apply for a new license which may be granted if the person is found to be qualified. See the definitions of "revocation" and "suspension" in section 12, and the provision on license restoration in section 7. Whenever a license is withdrawn due to an offense relating to the use of alcohol or drugs, it is important that the department determine that it will be reasonably safe to allow the person to drive before it issues a new license.

Alcohol concentration. This definition in subsection (a) is taken without revision from UVC § 11-902.1 (a) 5 (Supp. 1979). The definition is vital. It must not be omitted from the law. It should not be modified except with the assistance of competent experts in the field of chemical testing.

The definition allows the chemical test results to be expressed directly as concentration in either the blood or the breath. Many older chemical test laws allow test results to be expressed only in terms of the blood alcohol concentration (BAC). Where breath tests are used under those laws, the test results must be converted to be expressed in terms of blood alcohol levels. No such conversion is necessary under the ROAD law.

It is especially important to the ROAD concept that breath testing be utilized, and that the accuracy and speed of the results should be maximized. This will enable the law enforcement officer, in appropriate cases, to give the revocation notice and take possession of the driver's license while the person is still in custody. This is important to the success of the ROAD approach.

Subsection (a). Revocation is mandatory under this section upon a finding that the person drove a motor vehicle while having an alcohol concentration of 0.10 or more.

Subsection (b). ROAD allows the department to base the revocation on the police officer's report alone, if an administrative review or hearing is not requested.

Subsection (c). This subsection makes it clear that the revocation under ROAD is an administrative action which is completely independent of the adjudication of the criminal charges. An acquittal in criminal court will have no effect upon the revocation.

* * *

§ 3 -- Report by law enforcement officers

(a) A law enforcement officer who arrests any person for a violation of (insert code reference -- see Note below) shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated (insert code reference -- see Note below), a report of the results of any chemical tests which were conducted, and a copy of the citation and complaint filed with the court.

(b) The report required by this section shall be made on forms supplied by the department or in a manner specified by regulations of the department.

Comments and Implementation Guidelines

Note. At the two points indicated in subsection (a), reference to the state code section which prohibits driving while having an unlawful alcohol concentration should be inserted.

General. Under the current laws of most states, the department receives records of convictions and of implied consent refusals. The department would be unaware of most drunk driving enforcement contacts until a conviction is reported. This ROAD section provides the mechanism for getting information to the department immediately concerning all arrests for driving with an unlawful alcohol concentration.

Subsection (a). The subsection requires the officer to forward the kind of information which the department will need to determine whether to revoke the license.

The officer's report must be sworn. This is consistent with the practice in most of the comparable state laws, and in most state implied consent laws. Some states require that the report be "certified." Such certification might be accomplished by affixing immediately above the signature on the report a statement that any false statement in the report is punishable as a criminal offense. This statement, together with the signature of the officer, would constitute certification.

Subsection (b). In developing the forms and/or regulations required by this section, the department should consider encouraging the utilization of copies of documents which must be prepared by the enforcement officer for other purposes, whenever feasible. The forms and regulations should also provide for the combination of this report with the officer's report of a refusal to submit to chemical testing, in appropriate cases.

* * *

§ 4 -- Notice of revocation

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in section 2 of this Act. If the department determines that the person is subject to license revocation, and if notice of revocation has not already been served upon the person by the enforcement officer as required in section 5, the department shall issue a notice of revocation.

(b) The notice of revocation shall be mailed to the person at the last known address shown on the department's records, and to the address provided by the enforcement officer's report if that address differs from the address of record. The notice is deemed received three days after mailing.

(c) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request an administrative review and a hearing, the procedure for requesting an administrative review and a hearing, and the date by which a request for an administrative review must be made in order to receive a determination prior to the effective date of the revocation.

(d) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the enforcement officer.

Comments and Implementation Guidelines

General. Sections 4 and 5 of ROAD provide two methods for serving the notice of revocation. In most cases, the notice will be served personally by the enforcement officer. Where for any reason that is not done, section 4 provides that the department will serve the notice by mail. Section 4 also specifies the minimum content of the notice.

Subsection (a). If the department determines that a license should be revoked, and if the notice has not already been given by the enforcement officer, the department issues the notice.

Subsection (b). There are several important elements here. First, the department must send the notice to the address shown on the department's records. The licensee has a legal obligation to keep the department apprised of a current address, and the department is entitled to treat that as the address to be used to give a legal notice. Nevertheless, the address provided in the officer's report is likely, as a practical matter, to be more current. If the two addresses differ, ROAD requires mailing a notice to both. ROAD does not specify the type of mail to be used, leaving that to the discretion of the department.

ROAD creates a presumption that the notice which is mailed is received by the person three days after it is mailed. This presumption allows the process to continue, even where there is no evidence of actual notification. The notice of revocation should specify the effective date of the revocation, which would be 18 days after the notice is mailed -- three days for the mail, and 15 days after the notice is presumed to be received.

Court rulings vary from state to state on the question of the necessity of actual notice. Court rulings in your state should be carefully considered in developing implementation procedures for this section. For example, if a revocation will be without effect in your state unless actual notice is given, the department should use a form of mail which will supply some evidence of notification such as certified mail with return receipt. The presumption that a mailed notice is received after three days will not hold up if your state is one which requires actual notice. It should be a part of your law, nevertheless, because it allows the department to specify the revocation effective date in the notice, but it should not be relied upon for more than that. The implementation procedures should provide for continued attempts to give the notice through alternative methods until the department has evidence of actual notice.

The best way to deal with the problem of actual notice is to maximize the use of notices issued by enforcement officers under section 5. This would be done by using chemical test procedures which provide immediate results. If service of the notice must be made under section 4, some problems are probably unavoidable, especially in those states which require actual notice.

Subsection (c). This subsection specifies the minimum content of the notice of revocation. It applies to notices served under either section 4 or section 5.

The notice of revocation should include all of the following information: clear notice that the person's drivers license and privilege to drive in this state is revoked; that the revocation is effective on a specified date; the reason for the revocation, including the time and place of the arrest, and the offense charged; that the person has the right to an administrative review and/or a hearing to contest the department's determination; that a timely request of administrative review will result in a review of the revocation before it becomes

effective, but that neither the request for an administrative review nor a request for a hearing will result in a delay of the effective date of the revocation; that the person is required to surrender the license card to the department immediately, and will receive a temporary license valid until the effective date of the revocation; the address of the department office where the license may be surrendered and a request for an administrative review or a hearing may be filed; that the period of revocation is three months for a first offender, and one year for others; and that following the period of revocation the person may make application for a new license, if qualified at that time, and if the person's alcohol problem is under control.

Subsection (d). This subsection specifies that if the department determines that revocation is not warranted, it must notify the licensee.

* * *

§ 5 -- Notice of revocation served by enforcement officer

(a) Whenever the chemical test results for a person who is being charged with a violation of (insert code reference -- see Note below) show an alcohol concentration of 0.10 or more, the officer, acting on behalf of the department, shall serve the notice of revocation personally on the arrested person.

(b) When the law enforcement officer serves the notice of revocation, the officer shall take possession of any drivers license issued by this state which is held by the person. When the officer takes possession of a valid drivers license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for 15 days after its date of issuance.

(c) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any drivers license taken into possession under this section, shall be forwarded immediately to the department by the officer.

(d) The department shall provide forms for notice of revocation and for temporary permits to law enforcement agencies.

Comments and Implementation Guidelines

Note. At the point indicate' in subsection (a), reference to the state code section which prohibits driving while having an unlawful alcohol concentration should be inserted.

General. We anticipate that most of the notices of revocation would be served under the provisions of this section.

Subsection (a). This subsection establishes very clear criteria for certain action by the enforcement officer. When the officer has obtained chemical test results showing an alcohol concentration of 0.10 or more, the officer must serve the notice of revocation on behalf of the department. If the test results are available immediately, the officer will be able to serve the notice while the person is still in custody. If the results are available later, the officer may be able to serve the notice when the person appears in court for proceedings relating to the criminal prosecution.

Subsection (b). At the same time the revocation notice is served, the officer takes possession of the person's drivers license. This is one of the most important aspects of the law. Although it is certainly possible to revoke a license without recovering possession of the drivers license card, such a revocation will be more difficult to enforce. Accordingly, an attempt is generally made to secure possession of a revoked drivers license. This can be a very difficult and time consuming process, however. This ROAD subsection should alleviate much of the difficulty in securing possession of revoked licenses.

Under the ROAD provision, only licenses issued by the state where the arrest is made are picked up. A state cannot revoke the license issued by another state; it can only revoke the nonresident's operating privilege in the state.

The most serious problem involved with taking possession of the drivers license card while the license remains valid is that it leaves the person without the most effective means of driver identification. The temporary permit which is substituted for the drivers license will be significantly less effective in identifying the licensee; it will have much less recognition as a valid drivers license; and it will be much more susceptible to counterfeiting and other kinds of fraudulent use. We have included this concept in ROAD because of the significant advantage of securing the drivers license at the time of arrest, and because the duration of the temporary permit should be very brief. Nevertheless, we would encourage further study to develop an alternative means of securing possession of revoked licenses. One concept which should be studied involves stamping or punching the drivers license to indicate that it is void after a particular date, and then returning it to the licensee. The District of Columbia law incorporates a similar concept, although the punch which is used does not place a date on the license.

The temporary permit which is issued is valid for 15 days. This is consistent with ROAD section 6 which provides that the revocation is effective 15 days after the notice is served.

Subsection (c). This specifies only that copies of all the documents must be forwarded to the department either at the same time as the initial report, or later after the notice is served.

Subsection (d). The department must provide forms for the notice of revocation and the temporary permit to appropriate law enforcement agencies.

The forms should be so designed that when completed by the enforcement officer, the notice of revocation form will meet the requirements of section 4, and the temporary permit will contain all of the relevant restrictions and descriptive information contained on the drivers license.

Several states are using a single form for the notice of revocation and temporary permit. While this may be a very convenient form, it results in a temporary permit which has few attributes of a drivers license. We recommend that the temporary permit form be designed to be as effective as possible in identifying the licensee and making the connection between person and driving record, in providing recognizable evidence of a driving privilege issued by this state, and in preventing counterfeit and fraudulent use.

* * *

§ 6 -- Effective date and period of revocation

(a) The license revocation shall become effective 15 days after the subject person has received the notice of revocation as provided in section 5, or is deemed to have received the notice of revocation by mail as provided in section 4.

(b) The period of license revocation under this section shall be as follows:

1. The period shall be three months if the person's driving record shows no prior alcohol or drug related enforcement contacts during the immediately preceding five years.

2. The period shall be one year if the person's driving record shows one or more prior alcohol or drug related enforcement contacts during the immediately preceding five years.

3. For purposes of this section, "alcohol or drug related enforcement contacts" shall include any revocation under this Act, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(c) Where a license is revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of (insert code reference -- see Note 1 below), both the revocation under this section and the revocation under (insert code reference -- see Note 2 below) shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed (the longer of the two revocation periods).

Comments and Implementation Guidelines

Note 1. In the space indicated in subsection (c), a reference to the state code section which prohibits driving with an unlawful alcohol concentration should be inserted.

Note 2. In the second indicated space in subsection (c), a reference to the state code section providing for license suspension or revocation following a conviction for driving with an unlawful alcohol concentration should be inserted.

Subsection (a). The subsection specifies that the period of revocation begins 15 days after the revocation notice is received.

Subsection (b). The subsection specifies the period of ROAD revocations. For a first offender, the license is revoked for a period of three months.

For the person who is a repeat offender, the revocation period is one year. A person is a repeat offender if the record shows one or more alcohol or drug related enforcement contacts within the past five years. Prior contacts would include any prior ROAD revocation, any conviction for driving while under the influence in this state or another, and any suspension or revocation for refusing a chemical test in this state or another. In order to implement this provision, department driver records would have to be maintained for the period necessary to determine repeat offenders -- we have recommended five years. The department should also give effect to records generated in other states, incorporating them into records maintained by the department. UVC § 6-106 (c) (1968) provides the legal foundation for doing so, and should be adopted if the state has no comparable provision now.

It is important to consider how the ROAD revocation periods compare with other suspensions and revocations related to drunk driving. If the ROAD revocation is longer than an implied consent revocation, for example, the ROAD law may serve as an inducement to test refusals. That would be very undesirable.

Subsection (c). This subsection deals with the relationship between the ROAD revocation and the conviction revocation based upon the same offense. Most states have a provision comparable to UVC § 6-205 (2) (Supp. 1979) requiring revocation (or suspension) on the basis of a conviction for driving while under the influence. (If your state law provides for suspension rather than revocation, the references in this subsection should be revised accordingly). Subsection (c) specifies that both of the revocation periods are to be imposed, but that they run concurrently, and the total period of revocation imposed is equivalent to the longer of the two periods. Thus, assuming that the period of revocation under ROAD is three months, and the period of revocation based upon a conviction is six months, the maximum period of revocation based upon the same offense would be six months. This would be true regardless of when or in what order the two revocations are imposed. The time during which the license is revoked under the earlier revocation is credited to the later revocation when it becomes effective.

* * *

§ 7 -- Restoration of license

(a) The periods of revocation specified by section 6 of this Act are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances and no restricted or hardship permit shall be issued during the revocation period.

(b) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless and until the person presents evidence satisfactory to the department that the person's problem with alcohol use is under control, and that it will be reasonably safe to permit the person to drive a motor vehicle upon the highways. No driving privilege may be restored until all applicable reinstatement fees have been paid.

Comments and Implementation Guidelines

General. This section specifies the conditions for restoration of the driving privilege revoked under ROAD. It makes it clear that no privilege may be restored prior to expiration of the revocation period.

Subsection (a). The basic goal of ROAD is to revoke the license quickly, and for an adequate period of time to impress the licensee with the seriousness of the offense and the resolution of the state to take firm, immediate, responsive action. We believe that the issuance of a limited privilege on the basis of hardship considerations at a time when the license would otherwise be revoked would seriously undermine that goal. The three-month period of revocation for a first offender under ROAD is a relatively short license deprivation, given the seriousness of the offense. Many states specify revocation of six months to one year for this offense. This relatively short revocation period has been selected in the belief that it is better to completely deprive the person of the driving privilege for a short period than to restrict that privilege to necessary or occupational driving for a longer period. We urge the states to treat this three-month revocation period as a minimum period of total withdrawal of the driving privilege.

If the state decides to make available a limited license at some point during the revocation period, optimally, such a limited license would NOT be based upon hardship considerations. It will constitute a hardship for anyone to have the driving privilege revoked, but that's not a good reason to restore the license. A better basis for restoring a limited driving privilege would be some evidence that the person has made progress in recognizing and correcting the alcohol or drug use problem which led to the offense. Many states are now requiring satisfactory completion of a prescribed treatment program as a condition to issuance of a limited license, rather than just returning the privilege to anyone who can show a hardship.

Subsection (b). This provision makes it clear that at the conclusion of any license revocation, the license is not automatically returned. Instead, the person must make application for a new license. Before issuing a new license, the department must be satisfied that it will be safe to permit the person to drive. This subsection places the burden on the person whose license has been revoked to provide evidence that the alcohol problem is under control and that it will be safe to permit the person to drive. The department should establish regulatory standards for restoring driving privileges in such cases.

The subsection also specifies that all applicable reinstatement fees must be paid before a license may be restored. The cost of administration of this program should be recovered from the drivers who make it necessary.

* * *

§ 8 --- Administrative review

(a) Any person who has received a notice of revocation under this Act may request an administrative review. The request may be accompanied by a sworn statement or statements and any other relevant evidence which the person wants the department to consider in reviewing the determination made pursuant to section 2 of this Act.

(b) When a request for administrative review is made, the department shall review the determination made pursuant to section 2 of this act. In the review, the department shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by section 3 of this Act. If the department determines, by the preponderance of the evidence, that the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more, the department shall sustain the order of revocation. If the evidence does not support such a determination, the department must rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under section 9 of this Act.

(c) The department shall make a determination upon administrative review prior to the effective date of the revocation order if the request for the review is received by the department within eight days following service of the notice of revocation. Where the request for administrative review is received by the department more than eight days following service of the notice of revocation, the department shall make its determination within seven days following the receipt of the request for review.

(d) A request for administrative review does not stay the license revocation. If the department is unable to make a determination within the time limits specified in subsection (c) of this section, it shall stay the revocation pending that determination.

(e) The request for administrative review may be made by mail or in person at any office of the department. The department shall provide forms which the person may use to request an administrative review and to submit a sworn statement, but use of the forms is not required.

(f) A person may request and be granted a hearing under section 9 without first requesting administrative review under this section. Administrative review is not available after a hearing is held.

Comments and Implementation Guidelines

General. ROAD specifies a two-step administrative review and hearing process. This section describes the first step, an administrative review. Section 9 describes the second step, a full administrative hearing.

The "administrative review" described in this section is not a hearing. Rather, it is a review by the department of papers submitted by the officer and by the person whose license is subject to revocation. It affords the person a limited opportunity to state his side of the story, and to call attention to any obvious errors in the department's determination of the facts. If promptly requested, this review can be provided before the effective date of the revocation. The purpose of the review is to provide sufficient due process to prevent clearly erroneous license deprivations which could cause irreparable injury to the licensee.

Many of the existing laws provide for a stay of the suspension or revocation pending a full administrative hearing. Experience indicates that many of those states are unable to provide such hearings until 45 to 60 days following the arrest, or even longer. The volume of hearings is one factor in this delay. Experience also indicates that many drivers are requesting hearings only because of the stay of revocation which is afforded. This greatly inflates the volume of hearings, and causes further delays. The result of such factors is obstruction of one of the most basic goals of revocation on administrative determination -- revoking the license and removing the driver from the highways quickly.

Hence, this revised version of the ROAD law provides for license revocation effective before a full hearing is provided. The revocation is effective 15 days after the person is served with the notice, generally at the time of arrest, and no stay is provided upon request for a hearing. The administrative review is intended to fill the due process gap pending the full hearing.

Several recent U.S. Supreme Court cases on the subject, especially Mackey v. Montrym, 433 U.S. 1 (1978), suggest that a law providing for immediate suspension or revocation without a prior hearing would be constitutional. Society has an important interest in getting dangerous drunk drivers off the highways immediately, and this would justify a summary suspension, especially if a post-suspension hearing is provided promptly. For an extremely well-documented and reasoned report which supports this conclusion, see J. Reese, "Summary Suspension of Driver Licenses of Drunken Drivers--Constitutional Dimensions," U.S. Department of Transportation (Nov. 1982), reprinted as an Appendix, infra.

The idea of a prompt administrative review followed by a later full hearing is drawn, with some revisions, from the Minnesota law. That law was recently upheld by the Minnesota Supreme Court against a claim that it violated due process of law. See Haddan v. Dirksvager, 336 N.W. 2d 54 (Minn. 1983).

Subsection (a). A person who has received a notice of license revocation under this Act may request an administrative review at any time prior to the date of an administrative hearing, and may accompany the request with a sworn statement or statements setting forth any facts he wants the department to consider. The person may also send other evidence (pictures, documents, ect.) in support of his case.

Subsection (b). The department is required to review its determination, giving consideration to the statements and evidence submitted by the person, and to the officer's sworn report. If the department determines on the basis of this review of the evidence in the record that the person did drive with an unlawful alcohol concentration, the revocation order is sustained; otherwise, it must be rescinded.

The review is not a hearing. The person does not appear before the department official who makes the determination. No witnesses are called. It is a paper review. It is just like the initial determination except that the record now contains papers submitted by the person whose license is being revoked.

Subsection (c). This subsection specifies the time restrictions applicable to administrative review. If the request for review is received by the department within eight days following service of the order of revocation, the department must complete the review before the revocation becomes effective. That gives the department eight days to receive the paper work from the police officer and any papers submitted by the licensee. Following that, the department has seven days to make the review and notify the licensee regarding its determination.

If the request is received more than eight days following service of the revocation notice, the department must complete the review within seven days after the request is received. In that case, the review will not necessarily be completed before the revocation becomes effective.

Subsection (d). The revocation becomes effective 15 days after the notice of revocation is served, regardless of whether or not an administrative review is requested. The only situation which results in a stay of the revocation under ROAD is a failure of the department to complete the review within the times specified in subsection (c). In that case, the revocation would be stayed until the review is completed.

Subsection (e). This subsection specifies how administrative review may be requested.

Subsection (f). This subsection makes it clear that a person need not request an administrative review first in order to request a full hearing. The administrative review step can be omitted, at the option of the person. However, administrative review may not be requested after a hearing has been held.

§ 9 -- Hearing

(a) Any person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department. If the person's drivers license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within not more than 30 days of the filing of the request for a hearing. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least 10 days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations; to examine witnesses and take testimony; to receive relevant evidence; to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.10 or more. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

Comments and Implementation Guidelines

General. This section contains substantive and procedural provisions relating to the hearing.

Subsection (a). The request for a hearing must be in writing and may be made on a form supplied by the department. When the person submits the hearing request, an opportunity is provided to collect any license card not yet surrendered.

Subsection (b). The hearing should be held as quickly as possible, since the person has lost the driving privilege without having benefit of full due process.

It is necessary to provide adequate notice to the parties as to the time and place of the hearing. This must be provided sufficiently ahead of time to permit the person to prepare for the hearing. Hence, the ROAD law specifies a ten-day notice requirement. The parties may agree to waive the ten-day requirement, however, and this provision should be utilized as much as possible. Any such waiver agreement should be in writing.

The hearing is generally held at a place designated by the department as close as practicable to the place where the arrest occurred. The ROAD law formerly specified that it would be held in the county where the arrest occurred, but many departments use a regional rather than county structure and may not have an office in some remote counties.

The reason for holding the hearing close to the place of arrest is that this location is likely to be most convenient for any witnesses, especially for the arresting law enforcement officer.

The parties may agree to hold the hearing in a different location. One possibility here is that such an agreement could also cover related matters. Thus, the department might agree to hold the hearing in the offender's county of residence, provided that the offender will not object to witnesses from the county of arrest giving their testimony by telephone. The presiding hearing officer may have authority under subsection (c) to take testimony in that manner regardless of objections, but an agreement would resolve any problem. The use of telephone testimony in administrative hearings is becoming more common. It should be encouraged because it is a time-efficient manner for the police officers and other witnesses to testify.

Subsection (c). These are fairly standard powers given to a hearing officer in an administrative hearing of the type contemplated here. Note that the hearing officer is specifically authorized to make the final ruling. There is no need for the commissioner to make the final decision. There is no departmental discretion being exercised. The task of the hearing officer is strictly fact finding. The action of the department is mandatory, based upon the facts found to exist.

Subsection (d). The issue before the hearing officer is exactly the same issue which the department is required to determine under section 2. It is essentially the same determination which is made in the criminal court, although in the administrative hearing the standard of proof (preponderance of evidence) differs, and a less formal procedure prevails.

Subsection (e). A record of all evidence, testimonial and documentary, must be established at the hearing. Judicial review under section 10 is based solely on the record.

Subsection (f). If the person fails to appear at the hearing without any just excuse, the matter is treated as if the right to a hearing had been waived.

* * *

§ 10 -- Judicial review

(a) Within 30 days of the issuance of the final determination of the department following a hearing under section 9 of this Act, a person aggrieved by the determination shall have the right to file a petition in (a court of record) in the county of (the county where the main office of the department is located) for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

Comments and Implementation Guidelines

General. This section specifies the substantive and procedural requirements relative to judicial review of the administrative determination following a hearing. Note that the person must exhaust the administrative hearing remedy before judicial review is available.

Subsection (a). Venue for judicial review is shifted to the county where the main office of the department is located. This is for the convenience of the department's attorneys. The petition for judicial review must be filed within 30 days of the final determination by the department. Such a petition does not stay the revocation order.

Subsection (b). The review is on the record established by the department at the hearing. The law does not permit the court to hold a new hearing or to redetermine the facts. The court's review is strictly limited to the grounds for reversing the department which are listed in this subsection.

* * *

§ 11 -- Administrative procedure act

The administrative procedure act of this state [applies to the extent it is consistent with] [OR] [does not apply to] proceedings under sections 9 and 10 of this Act relating to the administrative hearing and judicial review.

Comments and Implementation Guidelines

General. Here the state should select one of the two options. Many of the state administrative procedure acts are full of complex provisions which have little relevancy to the type of hearing contemplated by this Act. The same is true as to the provisions regarding judicial review. Sections 9 and 10 of ROAD provide the essential legal framework for the kind of hearing and judicial review which is appropriate for the license revocations contemplated by the Act. Each state needs to assess its own APA to determine whether its provisions should also apply to the administrative actions taken under this Act.

* * *

§ 12 -- Definitions

The following words and phrases when used in this act shall have the meanings indicated in this section:

1. **Department.** -- The department of motor vehicles of this State.

2. **Drivers license.** -- Any license to operate a motor vehicle issued under the laws of this State.

3. License. -- Any drivers license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State including:

- (a) Any temporary license or instruction permit;
- (b) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;
- (c) Any nonresident's operating privilege as defined herein.

4. Nonresident's operating privilege. -- The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this State.

5. Revocation. -- The termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this act.

6. State. -- A state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of Canada.

7. Suspension. -- The temporary withdrawal by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which temporary withdrawal shall be for a period specifically designated by the department.

Comments and Implementation Guidelines

General. The definitions in this section are based on the driver licensing definitions in the Uniform Vehicle Code. They are basic terms which are already defined in the driver licensing laws of many states. They should be a part of the legal context into which the ROAD law fits. If they are not part of the overall driver licensing law, they should be specifically adopted as part of this Act.

* * *

COMPARISON OF STATE LAWS

Revocation on Administrative Determination (ROAD)

This portion of the report compares the ROAD provisions and the laws of 19 states which provide for revocation or suspension on the basis of an administrative determination that the person drove a motor vehicle while having an unlawful alcohol concentration or while otherwise under the influence. The comparisons are in chart form. In the charts, the following abbreviations are used for the states:

Alaska	AK
Colorado	CO
Delaware	DE
District of Columbia	DC
Indiana	IN
Iowa	IA
Louisiana	LA
Maine	ME
Minnesota	MN
Mississippi	MS
Missouri	MO
Nevada	NV
North Carolina	NC
North Dakota	ND
Oklahoma	OK
Oregon	OR
Utah	UT
Washington	WA
West Virginia	WV

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	PN	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
1. What license action is taken?					LS														LS	
Revocation	<	<	<	<	<		<			<			<	<		<			<	<
Suspension					<	<		<	<		<	<			<		<	<	<	<
2. Is the action mandatory or discretionary?																				
Mandatory	<	<	<	<		<	<	<	<	<	<	<	<	<	<	<	<	<	<	<
Discretionary					<															
3. What is the period of the license action?					LS	LS					LS									
First offense	3m	90d	1y	3m		180d	120d	90d	90d	90d	90d	30d	90d	10d	90d	90d	90d	90d	90d	6m
Second offense	1y	1y		12m			240d	365d	1y		1y	1y			1y		1y	120d	1y	10y
Third and subsequent offenses		10y		18m			1y												2y	life
d = day(s) m = month(s) y = year(s)																				
4. How does this period of license action compare with the period of suspension or revocation imposed for refusing to submit to testing under the implied consent law?		same	same	less	less	less	less	less	less	less	same	less	less	less	less	less	less	less	less	less
5. How does this period of license action compare with the period of suspension or revocation imposed following a conviction for driving while under the influence?		same	same	less	less	more	less	more	same	more	same	same	same	less	same	less	less	same	same	NA
6. The suspension or revocation is --					IS						IS		IS							
Temporary, pending adjudication of the criminal charges.						<														
Independent of the disposition of the criminal charges.	<	<	<	<			<	<	<	<		<		<	<	<	<	<	<	<

IS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NW	NC	ND	OR	OR	UT	WA	WV
7. The basis for the suspension or revocation is --					LS															
Evidence the offender drove a vehicle while having an unlawful concentration of alcohol in the blood.	◇	◇	◇			◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇	◇		◇	
Evidence the offender drove a vehicle while under the influence of alcohol, drugs, or alcohol and drugs.				◇														◇		◇
8. Notice of suspension or revocation is generally given the offender by --														LS						
The arresting officer.	◇	◇	◇	◇	◇		◇	◇	◇	◇	◇	◇	◇		◇	◇	◇	◇	◇	◇
The state driver licensing agency.						◇		◇												◇
9. The facts which trigger service of a suspension or revocation notice by the officer are --					LS	NA		NA						NA						NA
The officer has reasonable grounds to believe the person was driving a vehicle while under the influence.				◇			◇			◇										
The person was arrested and charged with driving a vehicle while under the influence.	◇		◇	◇	◇			◇				◇					◇			
A chemical test was conducted under the implied consent law.	◇	◇	◇				◇			◇	◇	◇	◇		◇	◇	◇			◇
The test results indicate alcohol concentration exceeding the legal standard.	◇	◇	◇				◇	◇		◇	◇	◇	◇		◇	◇	◇			◇
A determination is made that the person had an unlawful alcohol concentration or was under the influence of alcohol or drugs.																		◇		

LS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION, ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	MO	AD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OH	UT	VA	WV	
10. Does the arresting officer seize the person's drivers license and issue a temporary permit in its place?						LS				LS					LS							LS
Yes, whenever the officer initiates license action against the person.		◊					◊		◊		◊	◊		◊			◊					
Yes, as above, but only when the person holds a valid license issued by the state in which the arrest occurs.	◊		◊	◊				◊					◊			◊		◊	◊	◊	◊	
No, the officer does not seize the person's license or issue a permit.						◊				◊					◊							◊
11. The temporary permit issued by the officer is valid for the number of days shown.	15	7	7	15	NA	NA	20	30	NA	7	30	15	7	NA	20	30	30	30	30	45	NA	
12. The facts which trigger the requirement that the officer make a report to the state driver licensing agency are --						NA	LS		NA						NA							
The officer had reasonable grounds to believe the person was driving a vehicle while under the influence.				◊			◊				◊											
The person was arrested and charged with driving a vehicle while under the influence.	◊		◊	◊						◊			◊					◊				◊
A chemical test was conducted under the implied consent law							◊				◊	◊						◊	◊		◊	
The test results indicate alcohol concentration exceeding the legal standard.							◊				◊	◊	◊	◊				◊	◊		◊	
The officer served a notice of suspension or revocation upon the person.		◊						◊								◊			◊			

LS -- see the Law Summary for more information.

NA -- the law does not specify, this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	VA	WV
13. The officer's report to the state driver licensing agency must include --					NA LS			NA LS			NA LS			NA LS						
A statement of all information relevant to the enforcement action.	<	<	<						<			<								
A statement that the officer had reasonable grounds to believe the person was driving while under the influence.				<			<			<			<		<	<	<		<	
A statement describing the officer's grounds for belief that the person was driving while under the influence.	<	<	<			<			<			<						<		
A statement that the person was arrested and charged with driving while under the influence.				<		<									<	<	<			<
A statement that a chemical test was administered under the implied consent law.						<	<			<					<					<
A statement that chemical test results indicate alcohol concentration exceeding the legal standard.		<				<	<			<					<		<			<
A statement that any chemical tests were administered according to the requirements of state law.																	<			<
A written report of the chemical test results from the agency which performed the test.	<		<						<			<	<			<		<		<
A copy of the suspension or revocation notice served on the person, or a statement that the notice was served.	<	<											<				<			
A copy of the temporary permit issued to the person, or a statement that such a permit was issued.	<											<	<			<				
Information which identifies the person.	<		<						<			<								<
A copy of the criminal complaint.	<		<						<			<						<		
Any license surrendered by the person.	<	<	<	<		<	<			<	<	<	<		<	<	<	<	<	<
See the Law Summary for additional items.		<				<						<	<				<			

LS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	NH	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OR	OR	UT	VA	WV
14. Within how much time after the arrest must the officer's report be submitted?		NA	NA	NA	NA	NA		NA		NA	NA			NA						
The report must be submitted "immediately."	<						<	<					<						<	
The report must be submitted within the time indicated (h = hours; d = days).															3d	72h		5d		60h
The time is to be specified in regulations of the department.												<					<			
15. The law specifies that the officer's report to the driver licensing agency must be --					NA			NA						NA						LS
A "sworn" report.	<	<				<			<		<				<	<	<	<	<	<
A "verified" report.			<									<								
A "certified" report.				<			<				<		<							<
16. Is an opportunity for a hearing provided prior to the effective date of the suspension or revocation?	no	yes	yes	yes	yes	no	no	yes	yes	LS	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
17. Within how many days following receipt of the suspension or revocation notice must a hearing be requested?	NA	7	7	15	5	NA	10	10	10	LS	30	15	LS	NA	5	15	10	10	7	10
18. Within what period of time must the hearing be held?		NA			NA	NA		LS	NA	LS	NA	LS	LS		NA					
Within the specified number of days from the date of receipt of the notice.	30		60	30			20						15	3-5	20					20
Within the specified number of days from the date of the arrest.							45										30	30	45	
19. Is the hearing administrative or judicial?	adm.	adm.	adm.	adm.	adm.	jud.	adm.	adm.	adm.	LS	jud.	LS	adm.	jud.	adm.	adm.	adm.	adm.	adm.	adm.

LS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION OR ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	AK	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NV	NC	ND	OK	OR	UT	VA	WV	
20. The law specifies that the following issues are within the scope of the hearing:																					
Whether the officer had reasonable grounds to believe the person was driving a vehicle while under the influence.		◇		◇			◇	◇	◇	◇				◇	◇	◇	◇	◇	◇	◇	◇
Whether the person was arrested and charged with driving a vehicle while under the influence.								◇						◇	◇	◇	◇			◇	◇
Whether a chemical test was conducted under the implied consent law.		◇						◇		◇				◇						◇	
Whether the test results indicate alcohol concentration exceeding the legal standard.		◇					◇	◇		◇			◇	◇	◇	◇	◇	◇	◇		
Whether chemical tests were administered according to the requirements of state law.										◇				◇	◇	◇	◇			◇	◇
Whether the person was in fact driving while under the influence.				◇																	◇
Whether the person was in fact driving while having a blood alcohol concentration exceeding the legal standard.	◇		◇										◇								◇
Whether there are sufficient grounds to support the proposed suspension or revocation.					◇			◇													
Whether the officer informed the person of his rights and of the consequences of taking or refusing the test.								◇		◇							◇	◇			
See the Law Summary for additional issues.						◇	◇				◇					◇	◇				
21. The law specifies that the standard of proof at the hearing is the "preponderance of the evidence."	◇	◇	◇	◇					◇	◇		◇		◇	◇						◇
22. The law specifies that a record of the hearing must be made.	◇		◇		◇		◇	◇		◇					◇	◇	◇	◇			

LS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	IR	MD	PA	CO	DE	DC	IN	IA	LA	ME	MN	MS	MO	NH	NC	ND	OK	OH	RI	TX	VA	WV	
23. Where is the hearing usually held?					NA	NA				NA													
In the county where the arrest occurred.								◊			◊	◊	◊		◊		◊	◊	◊	◊	◊	◊	◊
In the county where the person resides.									◊					◊									
Other — See the Law Summary.	◊	◊	◊				◊									◊							
24. Are any presumptions applicable to the hearing created on the basis of chemical test results?																					IS		
Test results showing BAC exceeding the legal standard create a <i>prima facie</i> presumption the person was under the influence.																							
Test results showing BAC exceeding the legal standard create a conclusive presumption the person was under the influence.					◊																		
No presumption applicable to the hearing is created (although presumptions applicable to the criminal prosecution may be created).	◊	◊	◊				◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊
25. Following the hearing, is judicial review of an adverse decision available?	yes	yes	yes	yes	yes	yes	IS	yes	yes	yes	yes	NA	IS	yes	no	yes	NA	yes	yes	yes	yes	yes	yes
26. Does a petition for judicial review stay the suspension or revocation?					NA	NA	NA				NA	NA	IS		NA		NA				NA		
No, the license action is not stayed.					◊				◊							◊		◊					
No, a stay is not automatic, but the court may grant a stay on specified grounds.	◊	◊	◊							◊					◊							◊	◊

IS — See the Law Summary for more information.

NA — The law does not specify that information, or the question is not applicable.

COMPARISON OF MODEL REVOCATION ON ADMINISTRATIVE DETERMINATION LAW AND COMPARABLE STATE LAWS

	ROAD	NK	CO	DE	DC	IN	IA	LA	ME	MI	MS	MO	NV	NC	ND	OK	OR	UT	WA	WV
27. Is the officer who administers a chemical test required to warn the person of the consequences of a BAC which exceeds the legal standard?	no	no	no	no	no	no	yes	yes	no	yes	no	no	no	yes	no	yes	yes	yes	yes	no
28. Is a person who refuses to submit to a test subject to the same procedures for license suspension or revocation as the person whose BAC exceeds the legal standard?		yes	yes	yes	no	yes	yes	yes	no	yes	yes	no	yes	yes	yes	yes	yes	no	yes	no
29. The level of alcohol concentration at which driving a vehicle is unlawful in this state (illegal per se) is --	10.10	10.15	10.10	10.10	10.10	10.10	10.13	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.08	10.08	10.10	NA
30. The level of alcohol concentration at which a person driving a vehicle is subject to license action (administrative per se) is --	10.10	10.10	10.15	NA	NA	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.10	10.08	10.08	10.10	10.10

IS -- see the Law Summary for more information

NA -- the law does not specify this information, or the question is not applicable

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DATE

7-3-84

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