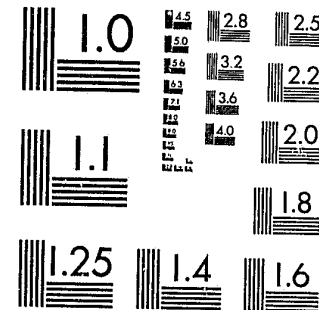


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United States Department of Justice
Washington, D. C. 20531

10/10/83

Kansas

Governor's Committee on Drinking and Driving

P.O. BOX 4052 TOPEKA, KANSAS 66604

FINAL REPORT

Submitted to
Governor John Carlin
December 13, 1982

89514

The Kansas Governor's Committee on
Drinking and Driving

Presentation

"The reasonable man adapts himself to the world
The unreasonable one persists in trying to adapt
the world to himself.
Therefore, all progress depends upon the unreasonable
man."

George Bernard Shaw

George Bernard Shaw's perspective of the unreasonable man depicts the essence of this committee's endeavor. Expecting the "world" to adapt itself to the unpopular necessities for deterring the drinking driver, in order to accomplish the noblest of goals -- saving lives on our state's roads and highways -- feels very much like the unreasonable man's plight. Nonetheless progress has been made -- and the final report of the Governor's Committee on Drinking and Driving is hereby submitted to Governor John Carlin of Kansas.

The committee members would like to acknowledge that working on the task was not always easy. There were times when the subject matter at hand generated enthusiasm and other times when the task seemed impossible. Of course there also were times when agreement as to the proper course was debated vigorously.

Now that the task is accomplished it is agreed that the experience has been both rewarding and fruitful.

The recommendations contained in this report represent a comprehensive plan for deterring the drunk driver in Kansas. The plan was formulated from months of work on the committee's part. It is felt that the essence of these recommendations will provide Kansas with the best of all possible strategies for an effective, life-saving social/legal policy. It is also acknowledged that without Governor Carlin's recognition of the problem and his strong commitment to finding solutions there would not have been a committee; more importantly there would not be recommendations to combat the problem. The committee members thank Governor Carlin for committing Kansas to solving the biggest health and safety problem the state faces and for the opportunity to be part of the solution.

In that light it is hoped that the proposals contained herein will prove to be effective and enduring.

Respectfully submitted,

Herb Rohleder

Judge Herb Rohleder
Chairman

U.S. Department of Justice
National Institute of Justice

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I. INTRODUCTION

A. BACKGROUND

The tragic consequences of drunk driving have been identified by Governor John Carlin as a major problem in Kansas. In response to this concern, in his 1982 State of the State address, Governor Carlin committed Kansas to the implementation of a plan to reduce the number of alcohol related traffic offenses. Work on the plan was initiated by the appointment of the Governor's Committee on Drinking and Driving on March 9, 1982. Governor Carlin mandated that the Committee study the drinking and driving issue and subsequently make recommendations to him for use in future policy formulation. In addition to creating the Committee, on May 12, 1982 Governor Carlin signed a new drunk driving law, Senate Bill 699. Passage of SB 699 introduced a stricter approach to drunk driving in Kansas. Determining the impact of the new law and its relevance for the future would be one dimension of the Committee's task.

The Governor's Committee on Drinking and Driving utilized two methods of study in its examination of the drinking and driving problem. The first method was to review the literature about the issue. A nationwide perspective of drunk driving, insight about strategies being used in other nations and states to address the issue, and facts pertaining specifically to Kansas were obtained. The second method of study was to conduct public hearings. The hearings were scheduled in eleven (11) locations in Kansas for the purpose of obtaining information from interested citizens throughout the State.

A variety of lay persons, professionals, and special interest groups thus were provided a formal mechanism for giving input to the Committee. (A complete review of the hearings will be included later in this report.) The information obtained by both methods was compiled, and subsequently evaluated in the formulation of final recommendations.

Two reports have been written for the Governor by the Committee on Drinking and Driving. In August, 1982 the Committee submitted a preliminary report. Nine (9) of the eleven (11) public hearings were held before that report was made. The intent of that report was to notify the Governor of the ten (10) major categories of concern which had surfaced in the public testimonies. These basic areas were carefully considered after all eleven (11) hearings had been conducted. This report contains the outcome of those deliberations, in the form of the final recommendations of the Governor's Committee on Drinking and Driving.

B. LITERATURE REVIEW

Other Studies:

The primary point to be made in regard to the literature review is that previous studies about drinking and driving have produced results and conclusions that are consistent with those reached by the Kansas Committee. The Presidential Commission on Drunk Driving, which was appointed to initiate problem-solving at the national level, has made recommendations that are complementary to those offered for attacking the problem at the local level. Recently, House of Representatives Bill #6170 (amended) was passed as Drunk

Driving legislation at the national level. Not only does that act provide criteria for State Governments to implement Alcohol Traffic Safety programs, it also provides for participating states to receive incentive grants for doing so. (H.R. 6170 will be considered at length elsewhere in this report.) In addition to the national approach to the problem, many states are actively struggling with the drunk driving issue. A number of states have tackled the problem in a way similar to that of Kansas: with special sub-committees, Governor's task forces, and other groups doing studies. The outcome of their work has been recommendations in line with those of the Kansas Governor's Committee. The differences between the states in the drunk driving problem are minimal. Drinking and driving is a nationwide tragedy.

The Greatest National Health and Safety Problem:

Americans now recognize drinking and driving as the greatest health and safety problem in our nation. There is no debate over the existence of the problem. On a national level it is recognized that billions of dollars and thousands of lives are lost each year due to alcohol related crashes. Conservative estimates from the Department of Health and Human Services, made in 1975, indicated losses amounting to five (5) to six (6) billion dollars annually. That study also estimated the number of lost lives due to alcohol related crashes to be 25,000 per year. In 1980 the National Safety Council reported that all motor vehicle accidents accounted for 39.3 billion dollars in damages. A conservative estimate of 40% (of that total) means that 15-16 billion dollars in losses were amassed for drinking related driving accidents. In the State of Kansas, every category of alcohol related accidents has shown a continuous rise over the last ten (10) years. An

example of this upward trend is the 28.3 percent increase in alcohol related fatal accidents from 1972 to 1980. Every State has similar statistics to substantiate the magnitude of the problem caused by drinking and driving. The impact of drinking and driving on a national level is to such an extent that more 18-24 year old persons die each year in alcohol-related crashes than from any other single cause; in many parts of the nation, this is true for all persons up to the age of 40.

Recognition of the Problem:

Recognition of the problem is now growing at a fast pace, spawning major developments for combatting drunk driving. The level of public awareness is proliferating across the country because the media are focusing on the issue. Major publications are providing space for articles illustrating the suffering and loss attributed to drinking and driving incidents. Newsweek, with its article, "The War Against Drunk Drivers," (September 13, 1982), is a prime example, and many professional publications are devoting full pages to various aspects of the problem. Television is also in on the campaign. A Good Morning America (ABC-TV) series, early this fall, entitled "Drunk Driving: A Dead End for Teenagers" is a credit to the effort aimed at increasing drunk driving awareness in the United States. Perhaps the most momentum has come from the grassroots level through organizations such as Mothers Against Drunk Driving (MADD), Students Against Driving Drunk (SADD), and Remove Intoxicated Drivers (RID). These organizations represent a movement which is demanding greater punishment for drunk driving offenders. Their activities have had a tremendous positive impact on media coverage and public awareness. This is not to say, however, that the overall public perception of the problem is the

same as that of special interest groups. In actuality, despite the recent media blitz and increasing levels of awareness, the public is basically uninformed about the issue. This lack of awareness is a basic factor in determining needed policies and legislation to deter drunk driving.

The Framework of a Plan:

Public awareness is not the only major factor pertaining to the drunk driving issue found consistently in the literature. The literature, coupled with testimonies delivered at public hearings, provides several considerations which together should comprise the framework for construction of a comprehensive plan to deter drunk driving. Establishment of an effective deterrence program requires the incorporation of all the considerations into the recommendations and concomitant policies.

A Legal and Social Problem:

The experiences of all states and other countries (e.g., Sweden, Norway, Canada) which have approached the drinking and driving issue as a health and safety problem have indicated that it is both a legal and social problem. Although the exact solutions are not uniformly applied, it is generally agreed that effective deterrence of the drinking driver population requires legal and social policy. Social control is needed because drinking and driving in the United States is recognized as a social "norm". Given that drinking and driving has long been accepted in America, changing the law alone will not be sufficient. Having an impact on the problem entails changing the law and the collective social attitude ("norm") that accepts the practice of drinking and driving.

Possibility of Apprehension Remote:

In light of the fact that drinking and driving is a social norm, it is not surprising that one of the obstacles in the way of effective policy is the public perception that the possibility of being apprehended is remote. Statistically for the nation, one (1) in every two thousand (2,000) drinking drivers is apprehended. The figures for Kansas are not significantly different. The cumulative knowledge emphasizes that perceived certainty of apprehension is necessary to accomplish long range deterrence. Unequivocally, planning for the reduction of drunk driving tragedies in Kansas requires programming that can reverse the attitude that one will not be caught if he chooses to drink too much before driving, and increase the number of apprehensions. (There are inherent problems which accompany the apprehension concept; the recommendations will speak to them and suggest specific means to accomplish this aim as optimally as possible.)

The Consequences will be Escaped:

A closely related consideration found throughout the literature is that there is a public perception of escaping the consequences. In order for legal sanctions to be effective they must pertain to all offenders and they must be applied swiftly and surely. A system which provides loopholes for escaping the penalties or delays the penalties for extended periods is antithetical to this precept. The data suggest that when offenders are currently apprehended, only a minute percentage of them receive more than a slap on the wrist. Although severe legal sanctions are available, few offenders receive maximum

penalties. The potential for conviction, especially with meaningful penalties, is minimal because the system is riddled with escape hatches, such as the delays which leave the offending driver free for a long time. Escaping the consequences thus tends to be the rule for those offenders who are apprehended. It is important to distinguish between the severity and the certainty of punishment. Increasing the severity of punishment historically has not reduced the numbers involved in drinking and driving accidents or arrests; on the other hand, measures designed to increase the (perceived) certainty of punishment has usually produced reductions. Therefore, regardless of what the penalties are, it is important that offenders not be able to escape them.

Awareness Needed for Deterrence:

Inherently correlated to the perception of both apprehension and punishment, as previously mentioned, is the level of public awareness. In his book, Detering the Drinking Driver, H. Laurence Ross proposes a deterrence model in which apprehension of impaired drivers is substantially increased and penalties are imposed swiftly and surely; a prevailing public perception that both apprehension and punishment are certain is a prerequisite for development of the suggested model. A consistently high level of public awareness is mandatory in order to ensure that the legal code is strictly enforced. Affecting statistics for an extended period of time requires that awareness activities be on-going. Measures to counter drunk driving must include media programs and other effective techniques on a continual basis, so that the

public is constantly aware of the realities of the problem. One-time campaigns will not work, as demonstrated in some Scandinavian nations for over 40 years and recently in the State of California. (These experiences will be explored later in this report.)

C. CONCLUSIONS FROM THE LITERATURE REVIEW

The Governor's Committee on Drinking and Driving views drunk driving as the greatest health and safety problem in our nation, as well as in the State of Kansas. The study done by the Committee has produced results and corresponding recommendations which are consistent with those found in the literature. The framework for a comprehensive plan to deter drinking and driving, thereby reducing the number of alcohol related traffic offenses, must be comprised of three basic considerations which have been documented in the literature and supported by public testimony: 1) High level of Public Awareness; 2) Perception of Apprehension; and 3) Perception of Suffering the Consequences. The recommendations of the Committee are premised on these three concepts.

II. RECOMMENDATIONS

A. RECOMMENDATIONS/PREVENTION - EDUCATION - PUBLIC AWARENESS

High Level of Public Awareness

Previously in this report, the necessity for a consistently high level of public awareness was documented; this need cannot be over emphasized. The history in situations where anti-drunk driving legislation has been implemented is sufficient to demonstrate the importance of public awareness. Beyond that, the major focus of attention in both oral and written testimony presented to the Governor's Committee on Drinking and Driving was prevention through public awareness. While conducting the eleven (11) public hearings in Kansas, the Committee heard suggestions for accomplishing the objectives of a Public Information/Education (PIE) program. Although various methods for informing and educating the public were proposed, the intent of every method was prevention of the drinking and driving problem. The vehicles of prevention are information and education, and any public awareness program will incorporate both elements.

Public Education Information Program Needed

The need for public awareness activities has been stated by committees beyond the domain of Kansas. In the words of the Chairman of Michigan's counterpart to the Governor's Committee on Drinking and Driving, "... We must recognize that we cannot expect to stop drinking and driving solely through our legal system. We must persuade the driving public to reduce alcohol consumption before driving. For this reason, I am also asking that a public awareness

education campaign be designed in partnership with a full range of public and private sector organizations ..."¹ As contained in the policy report to the Governor and Legislature in Michigan on Recommended Drunk Driving Countermeasures in that State, these words accurately reflect a view which is applicable to Kansas. A constant campaign, or program, is required to inform and educate the public.

One-Time Campaigns Not Enough

The past experiences of the Scandinavian countries of Norway and Sweden, along with those of California, dictate the need for on-going awareness programs. In all three cases, new tough legislation to deter drunk driving was passed, with a corresponding media blitz announcing the stricter laws also occurring. California's injury/fatality rates from alcohol-related traffic accidents were markedly reduced during the first year; by the end of the second year, the figures had returned to their original levels. Both Norway and Sweden had similar experiences over a longer period of time. The cause for the common phenomenon of noticeably lower statistics followed by inordinately high ones should be noted by all who want to reduce the number of drunk driving episodes in their localities: media effort was halted after the original blitz, and the public perception and attitude soon returned to its original state. Analysis indicates that one time campaigns are not enough to inform and educate the public. Continuous awareness efforts, as a part of a comprehensive approach to improvement of the alcohol traffic safety problem, are a must for the prevention of drinking and driving.

KDOT Cites Need for Continuous Awareness

The importance of continuous awareness efforts has already been reported by a Kansas entity. The Kansas Department of Transportation purports, "It is imperative that an on-going drunk driving campaign be kept before the general public." Along with that statement, KDOT further claims in the 1983 Highway Safety Plan that, "In order to have a lasting impact on alcohol related crashes, it is crucial that media be a regular and constant activity".² The Governor's Committee on Drinking and Driving shares these conclusions of KDOT.

Prevention by NHTSA

The National Highway Traffic Safety Administration (in the Alcohol Highway Safety Program component) specifies four (4) primary areas of emphasis for a local drunk driving program, all of which are directly related to public awareness:

1. Efforts to prevent drunk driving by means of public information and education;
2. Efforts to prevent drunk driving by raising the actual and/or perceived risk of apprehension for drunk driving;
3. Efforts to prevent drunk driving by imposing substantial penalties on apprehended drunk drivers;

4. Efforts to prevent a recurrence of drunk driving by exposing offenders to educational or rehabilitation programs.

The rationale for the four (4) areas of emphasis is, "The greater the perceived likelihood of apprehension and swiftness of adjudication, with sure and severe penalties, the greater the deterrence". The perception of apprehension with certain consequences requires public information/ education programs. General prevention is accomplished through basic PI/E programs, specific deterrence occurs with efforts regarding the risk of apprehension and penalties for offenses, and intervention after an offense has been committed is accomplished through practices such as the Alcohol and Drug Safety Action programs established in Kansas by Senate Bill 699. The NHTSA thus recognizes that awareness activities must encompass prevention in a general manner, specific to certain aspects of the issue, and in terms of intervention.

Wichita - Experimental Alcohol Safety Program

The National Highway Traffic Safety Administration has selected key cities in the United States for experimental Alcohol Safety projects. Wichita, Kansas is one of the sites selected. Consequently, the Kansas Department of Transportation, in the 1983 Highway Safety Plan, has proposed the following activities as a part of the agenda for the state as a whole, as well as Wichita:

1. Coordinate a comprehensive systems approach to the drinking and driving problem. This will include PI/E efforts for short and long term prevention and rehabilitation;
2. Continue distribution of mass media materials related to DUI;
3. Continue to publicize the REDI (Report Every Drunk Driver Immediately) program. The message of this campaign is that drunk driving is a violent crime in which everyone is a victim; the intent is to raise the actual and perceived risk of being arrested for drunk driving;
4. Produce a media campaign to publicize any 1983 legislative changes in the drunk driving law.

The four (4) primary areas of emphasis for a local drunk driving program, outlined by the NHTSA, have all been incorporated into this particular state plan by KDOT. Furthermore, the significance assigned by KDOT to continuous media efforts is thus not only a matter of belief, but is adopted into action. Beyond the public awareness activities for the entire state, a proposal unique to Wichita, contained in the Highway Safety Plan, accentuates the educational aspects of deterrence as it calls for the following: "In an effort to change societal attitudes toward drinking and driving through long term education programs, a plan to develop and implement a Kindergarten through 12th Grade alcohol and drug abuse prevention program addressed to traffic safety is proposed". This program is a part of the special Wichita project and is intended for use in the Wichita public school system.

Specific Public Awareness Recommendations of the Committee:

There are primary and secondary recommendations of the Governor's Committee on Drinking and Driving selective to public information and education. The proposals are the culmination of a review of the various ideas presented in the literature, articulated by Kansas citizens in testimony, and included in the Highway Safety Plan of the Kansas Department of Transportation. The primary recommendations are as follows:

1. An on-going public information effort to inform and educate the public about the drinking and driving issue should be implemented. The social norm of drinking and driving must be changed by persuading the public to reduce alcohol consumption before driving. The perceived risk of apprehension for drunk driving, with definite severe penalties imposed for the offense, needs to be increased.
2. A statewide program of long term education to prevent alcohol and drug abuse, specifically focused on traffic safety, should be mandated as a required part of the curriculum in kindergarten through 12th grade. The Committee regards the program described for the Wichita school system as a model. The program would emphasize scientific information, self-image enhancement, and life skills training (e.g., problem solving, decision-making, etc.) for the purpose of avoiding alcohol and drug abuse. It is realized that this proposal would require the education of teachers, determination of responsibility for curriculum content, and other implementation

considerations. In regard to these issues, the only stipulation of the Committee beyond program emphasis is that driver education classes should include Alcohol Traffic Safety specific curriculum content, but that information should not be restricted to driver's education students and classes. The scope of this recommendation is more expansive, aimed at the entire student populace.

The secondary recommendations of the committee, closely related to the primary ones, are as follows.

3. Curriculum content relative to Alcohol Traffic Safety for Private Drivers' Education pupils/schools should be mandated. Accomplishment of this objective, in practical terms, will require strengthening the prerequisites for private driver's education teachers in regard to training, given that the education and licensing standards for the schools will be higher.
4. Alcohol and drug information and education should be provided for college students. Courses for credit could be instituted.
5. Comprehensive coverage of alcohol/drugs and driving should be included in the Kansas Driver's Handbook, with provisions for failure of the portion of the test covering that material to result in withholding of the driver's license until an acceptable score is achieved.

6. Required alcohol and drug education should be provided by the state for all criminal justice personnel who work with DUI offenders. The category of personnel for which this education is applicable would include police, prosecutors, judges, probation officers and any others who have job contact with DUI offenders.

Implications of the Recommendations:

The Committee acknowledges that there may be practical restrictions on the implementation of the public awareness proposals. Foremost among these are monetary limitations. It would take a considerable commitment of dollars, by the state and/or from other sources, to provide all of the services recommended. However, the Committee also recognizes that it is more cost-effective to prevent the problem than to pay for the damage caused to persons and property by it. The necessity for the proposed services is basic to the alleviation of the drunk driving tragedy. Expenditures on the public awareness side of the issue are worthwhile because they are inherent to success in lowering the alcohol related statistics.

A second factor impinging on the implementation of the recommendations is legislation. There will be a need for new legislation and/or changes in existing laws for some of the proposals to be put into effect. However, most of the recommendations can be instituted by other means, such as changing existing policies, rules and regulations.

Summary

A consistently high level of public awareness is an inherent requirement of any plan to reduce the number of alcohol related traffic accidents, as recognized in the literature, by the citizens of Kansas, and in the Highway Safety Plan for Kansas. Prevention of the problem must involve an on-going media effort to inform and educate the public and a statewide education program to include alcohol and drug abuse. School curriculums should include prevention programs, with attention given to traffic safety. All drivers must understand the influence of alcohol and drugs on driving, as should those who work with DUI offenders. Public awareness is the key to an effective and efficient drunk driving deterrence effort.

Summary of Recommendations: Public Information/Education

On-going Media Program

- Mandatory - Drug/Alcohol Education grades K-12
- Alcohol Traffic Safety curriculum - high school
- Alcohol Traffic Safety curriculum - for private driver's education schools

Alcohol and Drug Information and Education for college students (Credit courses preferred).

Coverage of Alcohol/Drugs and Driving in Kansas Driver's Handbook, with receipt of license contingent upon attainment of a defined acceptable score.

Mandatory alcohol and drug education and training for criminal justice personnel.

¹ Recommended Drunk Driving Countermeasures in Michigan, "A Policy Report to the Governor and Legislature On a Proposed System of Comprehensive Drunk Driving Countermeasures"

² Kansas Department of Transportation, "Kansas Highway Safety Plan 1982"

B. RECOMMENDATIONS - LAW ENFORCEMENT

The public's perception of suffering the consequences, and to a lesser extent the perception of apprehension, are inherently tied to law enforcement practices. The suggested changes in the current structure of DUI offenses, in conjunction with other recommendations to support those changes, contain the integral concepts related to law enforcement of a comprehensive plan for the deterrence of drunk driving. In the Committee's Preliminary report, five (5) ideas in regard to the law enforcement aspect of drinking and driving were specified:

- 1) An Impaired Driving Law;
- 2) A Per Se Law;
- 3) Improved Records Keeping System;
- 4) Breathalyzer Laws;
- 5) Dram Shop Law;

The initial four of these ideas constitute the nucleus of the final recommendations pertaining to law enforcement; the Dram Shop Law will be reviewed in the next section, which concentrates on Adjudication.

Revised Offender Code

The majority of recommendations related to law enforcement constitute a revised offender code. In order to present the suggested changes in a format which makes it readily apparent that they are consistent with a comprehensive plan, the chart on page 20A has been devised. The Revised Offender Code

REVISED OFFENDER CODE

DRIVING WHILE IMPAIRED Misdemeanor
(Greater than or equal to .05% and less than .10%)

1st Offense = Any combination of - fine (\$50.00 - \$200.00), Community Service, d.l. restriction/suspension, ADIS, diversion.
2nd Offense = Any combination of - fine (\$50.00 - \$200.00), d.l. suspension/revocation, ADIS, Treatment (No diversion)
3rd Offense = 48 hours jail, (\$200.00 - \$500.00) fine, automatic d.l. suspension/revocation
(Per Se Standard)

DRIVING UNDER THE INFLUENCE
(0.10% or greater B.A.C.)

1st Offense = Not less than 48 hours or more than 6 months in jail or 100 hours of Public Service, fine of \$200 to \$500, restriction of driver's license, completion of ADSAP program and treatment program if ordered (diversion). 90 day automatic suspension consistent with Fed. Regs.
2nd Offense = Not less than 90 days nor more than 1 yr. in jail, fine \$500 to \$1,000, treatment program completed sentence reduced, but not less than 5 days, and suspension of driver's license for 1 yr (or completion of treatment). 1 year automatic suspension consistent with Fed Regs. (without restoration).
3rd Offense = Not less than 90 days nor more than 1 yr. in jail, fine \$1,000 to \$2,500, and revocation of driver's license for not less than 1 yr. (No changes)
4th Offense = Habitual Violator = Class E Felony (within 5 years)

DRIVING WITH A B.A.C. OF 0.10% OR ABOVE
(Per Se Law)

1st Offense through 4th Offense = Same as D.U.I.

ALCOHOL RELATED OFFENSE/with property damage - (Restitution)
/with personal injury

Could be Driving While Impaired or Driving Under the Influence.
Offender could be convicted/sentenced to either misdemeanor (Class A) or felony (Class E) depending upon mitigating circumstances (left to prosecutor's, judge's discretion). No Probation or Diversion.

ALCOHOL RELATED OFFENSE/with fatality(ies)
Class D Felony
No Probation/Diversion

DRIVING WHILE ON A SUSPENDED LICENSE/FOR AN ALCOHOL RELATED OFFENSE
Class B Misdemeanor - Impoundment - consistent with Fed. Regs.

(Could be used as an additional charge or an individual, separate charge, but not for use as a file/plea-bargaining item.

This revised Offender Code does not allow for either Plea-Bargaining or Probation/Suspended Sentences (until the minimum sentence has been satisfied), in any of the categories. It does allow for diversion in certain categories.
Chart 20A

incorporates changes in the current law into a structure which is considered appropriate for implementation. Additional recommended laws, intended to supplement current law SB 699, are combined in the chart with changes in the current law. It is anticipated that the Revised Offender Code, as logically presented in the chart, will be a viable tool for the criminal justice personnel responsible for enforcing the law.

Driving While Impaired

As illustrated in the chart, a new offense of Driving While Impaired has been added. Driving While Impaired would be a lesser offense than Driving Under the Influence. The Driving While Impaired law would apply to persons whose blood alcohol content (b.a.c.) was .05% or above, but less than .10%. Many law enforcement workers testified before the Committee that such a law is necessary in order to be able to charge persons who are obviously incapacitated by alcohol, but do not have b.a.c.'s of .10%, with an alcohol related offense. Reckless driving is not inherently an alcohol related offense, which makes Driving While Impaired a charge which more accurately describes the crime when alcohol is involved. The perceived risk of being apprehended for an alcohol related offense would be greater with the inclusion of this charge in the code. Furthermore, the Committee supports the option of considering all alcohol related offenses in determining the penalties for a Driving While Impaired or Driving Under the Influence charge. This means that if a person was first charged with Driving While Impaired and then charged with Driving Under the Influence at a later date, or vice versa, the latter charge would be considered a second offense; the person thus would warrant penalties of a second offense for that charge.

Driving Under The Influence

The Revised Offender Code retains the Driving Under the Influence law (SB 699), with slight modifications. It is recommended that a fourth offense in a five (5) year period constitute an Habitual Violators category, which would be a Class E felony. Changes in the license suspension provision are also recommended, to a minimum 90 day suspension for the first offense, and a minimum one (1) year suspension for a second offense. These tougher suspension requirements are necessary in order to make Kansas law meet the criteria of the recently passed Federal Law (HR 6170) to address drunk driving.

Per Se Law

The Driving Under the Influence law is currently the standard for blood alcohol content utilized in providing prima facie evidence of an alcohol-related offense. The Committee recommends that the b.a.c.'s for Driving While Impaired and Driving Under the Influence constitute Per Se evidence of an alcohol related offense. A Per Se law eliminates the need for proving that the one who was operating a vehicle was actually either impaired or influenced by alcohol because the Per Se provision (as opposed to Prima Facie) constitutes irrefutable evidence. For example, when used as the standard for Driving Under the Influence offenses, Per Se establishes as an undeniable traffic offense the operation of a motor vehicle by a driver with a blood alcohol concentration of .10% and above. This law will change traditional D.U.I. enforcement dramatically, as well as the anticipated enforcement of the D.U.I. law. The Per Se law raises the legal significance given to the

standards for b.a.c. from prima facie evidence of being affected by drinking alcohol to conclusive evidence of illegal alcohol consumption when coupled with driving. Consequently, the need for some of the more subjective methods of establishing the offense of DWI and DUI (e.g., behavioral tests, slurred speech, etc.) as evidentiary indicators of guilt or innocence, is eliminated. Hence, with a Per Se law the b.a.c. is the sole legal criterion necessary to demonstrate problems with driving due to alcohol. The primary argument in favor of the Per Se concept is that the probability of conviction is greater, thus increasing the perception of suffering the consequences. The Committee has concluded that a Per Se law should be adopted in Kansas, making the operation of a motor vehicle by any person under the influence of alcohol, any other drug(s), or the combination thereof, to a degree which renders him incapable of safely driving, an illegal act in and of itself. However, application of the Per Se concept to drugs other than alcohol is not feasible at this time due to pragmatic limitations. (This subject will be discussed in more detail later in this report.) Given the impossibility of applying the law to all drugs, the Per Se law as incorporated in the Revised Offender Code pertains solely to alcohol.

It should be noted that among the arguments against a Per Se law, the question of constitutionality is the strongest. The Committee acknowledges this, but points out that both the Delaware and Utah State Supreme Courts have upheld the Per Se laws in their states. Furthermore, ten (10) states other than the two listed have already adopted Per Se laws, and even more, like Kansas, are considering them.

Alcohol Related Offense/With Property Damage/Personal Injury

The Committee has ascertained that the current law does not adequately address the penalties for driving under the influence with property damage and/or personal injury. The Committee feels that DUI offenses which include property damage, personal injury, or both, should be handled in a more severe manner than those which do not. Therefore, it is recommended that an Alcohol Related Offense/with Property Damage and/or Personal Injury be included in the law as a separate offense, equivalent to either a Class A Misdemeanor or a Class E Felony, contingent upon the mitigating circumstances. In addition, another alternative of Restitution could be utilized, especially in cases of property damage, where payment for damages would constitute the most justifiable action and effective deterrent.

Alcohol Related Offense/With Fatality(ies)

Even though there are current laws under which persons can be charged in cases involving motor vehicle fatalities, the Committee does not consider them adequate. The Committee therefore recommends that an Alcohol Related Offense with Fatality(ies) be incorporated into the Revised Offender Code with a Class D felony as the corresponding classification. The significance of this offense can not be overemphasized. Fatalities are among the most tragic consequences of the drinking and driving problem. Deterrence to reduce the number of fatalities is imperative. Reduction of fatalities is the goal of utmost attention by the public in regard to impacting on the drunk driving issue. For that reason, the consequences of alcohol-related offenses with fatality(ies) should be much more severe than the traditional sanctions have been.

Driving On A Suspended License

The Committee has concluded that the existing statute for driving on a suspended license is insufficient, citing the need for a specific alcohol-related offense. The offense when it is alcohol related could receive the same classification as the current Driving on a Suspended License (Class B misdemeanor), coupled with the additional deterrent of Impounding the vehicle. Impoundment could be for a certain period of time or permanently, but it should be automatic (in the same way that license suspension should be automatic). Utilization of an Impoundment provision would bring Kansas law into uniformity with the new federally legislated criteria for obtaining funds to implement drunk driving policy.

Need For All Items In the Revised Offender Code

In formulating legislation to implement the recommendations contained in the Revised Offenders Code, it is vehemently encouraged that all items be included. The elimination of one or more components would seriously weaken the overall strength of the code. The combination of all proposed offenses is viewed as the most potent equitable approach for overall deterrence of drinking and driving from the law enforcement angle. Assuming apprehension, the perception of suffering the consequences is important, which highlights the need for the per se law. There are other implicit benefits from the utilization of this expanded offenders code. The new categories of offenses (particularly the Driving While Impaired Statute), provide for a range of options under which an offender can be sentenced. The broader scope of

offenses, together with the additional charges with which offenders can be sentenced, provides the hope that the Revised Code will be used instead of avoided by criminal justice personnel. Prosecutors, judges, and law enforcement personnel should find the Revised Code more palatable than the present one because it will extend the amount of discretion they can exercise. The greater level of discretion should reduce the amount of resistance that professionals have had in regard to the current offenders code. The major weakness in the new law (SB 699), which states the present code, is the resistance it has met from the professionals at both the law enforcement and court/adjudication levels. Thus, there is a need for implementing all of the proposals in order to effect optimal deterrence.

Breathalyzer Laws

The Committee's preliminary report indicated that breath-testing would be one category of recommendations in the final report. There are three (3) specific recommendations.

Automatic License Suspension

Provisions for refusal to take a requested breath test should be made tougher by stating that anyone who refuses to have a breath analysis when asked to do so by the authorities will automatically lose his or her license for a pre-determined amount of time. The benefit of an administrative hearing, with the potential of reversing that decision, would not be permitted. The Department (Bureau) of Motor Vehicles would have the authority to automatically administratively suspend the license of an operator who refuses

to take a breath test for 90 days on a first offense and one (1) year on a second offense. This recommendation is consistent with the federal guidelines in HR 6170. A procedure whereby arresting officers would confiscate licenses and send them to the Department of Motor Vehicles, with that Department returning them to operators at the appropriate times, is suggested. If an offender continued to drive subsequent to refusing to take the breath test and having the license taken, the charges could then be the same as those suggested for Driving on a Suspended License for an Alcohol Related Offense. Other dispositions such as revocation of the license should be left to the judge/jury as appropriate to the circumstances.

Written Consent For Breath Test

The Committee urges that the Implied Consent as outlined in the current law be changed and therefore strengthened by making it written consent which could be stated on the driver's license and signed as a part of the agreement to hold the license. Persons refusing to sign their name to that clause on their driver's license would be denied the privilege to drive; no license would be issued. (Locations where the Written Consent Standard has been applied and proven successful include Canada and the State of Florida.)

Preliminary Breath-Testing

In order to substantially increase both the arrest and conviction rates, a system which provides for the use of Preliminary Breath-Testing Procedures is necessary. The prescribed system would be one which protects the constitutional rights of all persons by using the Preliminary Breath-Test

(P.B.T.) as a tool for determining probable cause in what appears to be an alcohol-related offense. It is important to distinguish between a preliminary breath test and an actual one, as defined by the point in the sequence of time in which the test is taken. It is suggested that in using a P.B.T., a law enforcement officer could give the test and, if the results justify it by giving him probable cause, another test could be requested after an arrest is made (either at the scene or elsewhere). The preliminary breath test would be utilized only to determine probable cause, and would not be admissible as evidence. However, the consequences of refusing to take either test would be the same (as specified earlier), and the fact that a person refused to take the test would be admissible as evidence.

It may not be necessary to pass a law in order to implement this recommendation, although a study done in Michigan suggests a law allowing P.B.T.'s. Whether or not legislation is necessary, it is advisable to have a system of uniform patrol procedures. One potential hindrance to the institution of P.B.T.'s, about which the Committee was informed, is a current Department of Health and Environment requirement specifying that only one breath-testing device can be utilized at a given time. If this requirement poses a problem, the Committee suggests that it be changed; P.B.T.'s merit the needed changes.

Tests For Other Drugs

Sanctions corresponding to those described for refusal to take breath-tests for alcohol consumption should be instituted for refusal to take tests for other drug use, once such tests are developed and utilized. (Other points regarding this problem are contained in the Chapter on SB 699.)

Improved Records Keeping System

An integral component of an effective comprehensive plan to deter drinking and driving is an improved Records Keeping System. It is unreasonable to expect the arrest/adjudication process to be improved without the support of an accessible complete records system. Without access to the pertinent information, the Pre-Sentence Investigation (diagnostic evaluation) is not credible; the Pre-Sentence Investigation is the most important product in the adjudication process. The present Kansas system for maintenance and retrieval of relevant information is problematic. The Committee's preliminary report noted two (2) ways in which "records" are vital: as a systematic mechanism for tracking prior offenses, and as a permanent log of all alcohol-related offenses. The usefulness of any records keeping system correlates with its quality in these two respects.

Beyond the importance of a good records keeping system at the State level, it is also mandatory to have a procedure for tapping into the systems pertaining to out-of-state offenders, and these need to be quality systems as well. The recently passed federal legislation (HR 6170) underscores the concept of a statewide driver record system by including it in the criteria for grants to be awarded to participating states. In addition, HR 6170 mandates that the United States government establish a "National Driver Register" to assist the states in rapidly exchanging driving record information on problem drivers.

The development of a statewide driver record system, as recommended by both the federal government and the Kansas Governor's Committee, might be

accomplished by expanding a currently existing system, sharing computer space on an already existing computer system, or through some other innovative cost-effective means. Wherever the records are stored, an optimal system will require that municipal courts report appropriate information and law enforcement personnel have acceptable uniform reporting procedures.

Apprehension Techniques and Evidence of Offense

The reports of other states' study groups scrutinized by the Committee and testimony from Kansas citizens provided suggestions for increasing the apprehension rate for DUI offenders and collecting evidence of offense. Some of these are particularly relevant in the context of a comprehensive approach to deterrence.

Roadblocks

Many states have utilized Roadblocks specifically for the purpose of finding drinking drivers. Other nations have done the same, with Canada serving as the best model; Canada has used roadblocks in this way for a period of years. The Canadian project sets up roadblocks for driver's license checks, but if other violations for which arrests can be made are found in the course of checking licenses, this is within the law enforcement's authority. The constitutionality of such a practice in the United States is questionable. There is no doubt, however, that roadblocks are an effective law enforcement tool in the apprehension and deterrence of drunk drivers. They would be particularly effective in raising the perception of apprehension.

Camera Equipment

Filming persons during their field tests provides an extra tool for law enforcement in achieving higher conviction rates. Pilot projects utilizing film equipment have experienced dramatically increased conviction rates. Filming could be especially useful in cases where drugs other than alcohol have been used, given that the breath test does not work for other drugs and it is necessary to know what drug to test for if blood tests are to be valuable. Sophisticated camera equipment involves an expense beyond the means of many departments. Nonetheless, use of the equipment is encouraged, and may be cost-effective, given the potential impact.

Testing Equipment

Law enforcement personnel are permitted to test blood, breath, or urine in DUI cases, in accordance with SB 699. There are pragmatic reasons why most law enforcement agencies only test breath, including expensive equipment and lack of technology. Time-consuming trips to the hospital and expense are the two major reasons why breath tests are the norm for alcohol, and failure to test for other drugs is attributed to lack of technology as well as the other two reasons. The Committee encourages obtaining equipment for the testing and laboratory analysis of specimens in DUI cases, to be utilized by law enforcement personnel.

Summary of Recommendations - Law Enforcement:

Revised Offender Code:

Driving While Impaired

Driving Under The Influence-Habitual Violators, License Suspension
Per Se Law

Alcohol Related Offense/Damage/Personal Injury

Alcohol Related Offense/With Fatality(ies)

Driving On A Suspended License-Alcohol Related Offense

Breathalyzer Laws

Automatic License Suspension

Written Consent

Preliminary Breath Testing

Record System

State

National

Apprehension Techniques and Evidence Of Offense

Roadblocks

Camera Equipment

Drug Testing Equipment

C. RECOMMENDATIONS - ADJUDICATION

Included in this section is a recommendation for a Dram Shop Law, which was originally placed in the Law Enforcement section. The law would present ramifications for both law enforcement and adjudication, but the courts would probably be more directly affected by it. The impact of a Dram Shop law on the courts would be due to the civil liabilities that are inherent in the concept.

Dram Shop Law

The Dram Shop law is a concept providing for third party liability, wherein establishment owners and potentially others (such as parents or party hosts) could be held liable for personal and/or property damages for serving alcoholic beverage(s) to an intoxicated person who subsequently caused such damages, with his/her intoxication a contributing factor. Kansas definitely could implement a Dram Shop law if current statutes would be elaborated upon, and it is possible that present laws could be interpreted to include the Dram Shop concept as they are now written. The laws Kansas now has prohibit the sale of liquor to intoxicated persons and minors, but civil liability is not explicit in those laws. An edition of the Washburn Law Journal reviews the Dram Show Law concept, stating, "To supply a remedy against the furnisher of liquor - in a sense, to fill the void left by the common law -- the Legislators of many states (twenty-one states presently have such civil damage statutes, as noted later in the review) enacted statutes, commonly known as 'Civil Damage Acts' or 'Dram Shop Acts' which assign liability to the vendor

or donor for injury to person, damage to property, and loss of support, resulting from the wrongful or unlawful sale or gift of the beverage. To establish grounds for recovery under the civil damage statutes, the plaintiff had to alledge and prove: (1) Sale or gift of intoxicating liquor; (2) intoxication caused by such sale or gift; (3) death or injury resulting from the intoxication; and (4) damage or loss to the plaintiff as a result thereof." The Dram Show concept as described in this Washburn Law Journal review is a model for enactment of Dram Shop legislation.

The Committee perceives the Dram Shop Law as a viable part of the plan for reduction of drunk driving tragedies. Many recommendations which supported the concept were received in testimony. However, it should be noted that while the Dram Shop Law embodies both common law and civil liability in an innovative way, it is not without controversy. Philosophically, some objection can be made because the emphasis of accountability for drinking behavior is taken off of the offender and put on a third party. Pragmatically, implementation is time consuming and costly. While recognizing them, the Committee does not consider these disadvantages significant enough to warrant discarding the idea.

The Dram Shop (type) law has withstood legal objections in a test case before the Indiana Supreme Court. It is operational in 21 states at this time. Some states have roughly the model law, and others are more restrictive. California has utilized the Dram Shop concept extensively, but currently its law applies only to minors/juveniles who are served alcoholic beverages by

negligent establishments. It is interesting to note that in 1859 the territorial legislature of Kansas enacted a Dram Shop Act, which was repealed in 1949. Since its repeal there have been no cases asserting the seller's liability.³

The Dram Shop concept lends itself to the use of creative programming in other areas of a comprehensive deterrence model, particularly prevention/education. California has operated a training/education program for bartenders, waitresses, and other personnel in conjunction with the Dram Shop Law. Testimony supporting bartender training was received in the Kansas public hearings as well.

Improving Offender Flow Through Court System

It is obvious that deterring the drinking driver presents practical problems when it comes to the movement of DUI offenders through the criminal justice system, in both the court system and the jail system. In its considerations the Committee has examined possibilities for alleviating the "overcrowding" problem which seem to be practical and cost effective.

Borrowing Judges

One possibility for easing the load on the system is a practice which has been recommended by other states - utilizing judges from districts or areas where caseloads and dockets are light to help clear up heavy dockets in districts other than their own. "Borrowing" judges is the essence of this idea. The Michigan Drunk Driving Task Force included that idea in a lengthy list of

preliminary recommendations as a means of expediting trials. In their report it reads "...lending district court judges without backlogs to those with lengthy dockets, should be further explored." This practice is currently in place at the district court level, but not at the municipal court level.

Night Courts

A similar possibility for alleviating court dockets which has a lot of merit is (additional) "night-courts". There are very few courts in Kansas currently utilizing the night-court concept, although there are many courts with lengthy backlogs. The night-court concept would also provide the potential for persons (including witnesses, defendants, etc.) to appear in court with a lot less hardship, in terms of taking time off from work and that sort of problem, thus reducing continuances and other unnecessary delays.

Judicial Guidelines Manual

In helping the courts adjudicate, another recommendation found in the Michigan study should not go unnoticed. That is the development of a judicial guidelines manual for all courts dealing with drunk driving issues.

Community Service

The committee would also urge that Community Service as an option in the sentencing process become more widespread. That issue, however, leads into those which are more related to the overcrowded jail problem.

Improving Offender Flow Through The Jail System

Several innovations present themselves in respect to the jail system, included in the categories of alternative detention facilities and government minimum security facilities.

Alternative Detention Facilities

Alternative detention facilities such as work-release centers, halfway houses and juvenile detention and holding centers are among the options. Many such facilities already exist in Kansas. Their utilization for use with DUI offenders is recommended along with cooperative efforts among various localities in the housing and incarceration of DUI offenders.

Government Minimum Security Facilities

Specifically, the Committee further recommends the development of centralized minimum security (or even non-security) units operated by either the state or local government as a potentially workable approach to the problem of housing sentenced offenders. The practices of week-end jail sentences, work-release type sentences, etc., have been experimented with in various locations (including Kansas) and lend themselves to supplementing this solution to overcrowded jails. An exemplary program which brings together the criminal justice and treatment perspective is now being operated in Dayton, Ohio. Known as the Weekend Intervention Program, all of the integral components are combined into one program. During a weekend at the WID, a client: is evaluated, receives the typical drug and alcohol information germane to ASAP

schools (in Kansas, Alcohol/Drug Information Schools); and, in the case of repeat offenders, referred on for further treatment. (This third step becomes part of the clients' probation requirements). Outcome data for the WIP indicate a remarkably high rate of success in respect to re-arrests. This program is highlighted here to illustrate the wide range of possibilities in dealing with an overcrowded system, as well as pointing out that the best solutions require cooperation from all of the system components.

Juveniles and The Law

Among the many considerations that are relevant to the adjudication of DUI offenders in Kansas, one which remains is application of present laws to juveniles.

The Committee recommends that the DUI laws in Kansas apply to juveniles consistent with their application to adults. In making this recommendation the Committee does realize that juveniles present special problems which will require special solutions.

Incarceration of Juveniles

The incarceration of juveniles is one of the problem areas. The juvenile code (effective January 1, 1983) specifies that juveniles who are incarcerated for traffic offenses (as well as any other offense) must be separated from adult offenders. It is agreed that such a requirement is important in the case of juveniles, even though it is difficult to access facilities that are equipped for separate housing requirements. It is, in fact, considered important to

attempt to raise the standards for separation so that complete isolation from adult offenders can be achieved: not just physical separation with bars between cell blocks, but sight and sound separation as well. Related to this problem, the new juvenile code also specifies that 14-18 year olds can be incarcerated for a period not to exceed ten (10) days. This requirement is inconsistent with the requirements for adults, particularly in the case of repeat offenses. Here the Committee would opt for consistency especially if the standards for incarceration are upgraded.

Definition of 'Indigent DUI Offender'

In line with other adjudication problems is one related to Indigent Persons. Several problems have already surfaced in the adjudication process (of indigent persons), causing additional backlogs in the courts. Municipal courts particularly, have felt the impact because of a lack of resources to accommodate indigent clientele. It is suggested that a uniform definition of Indigent or Indigency for DUI offenders be developed. It is reasonable to assume that the criteria for determining Indigency in many criminal cases would not be the same as in DUI cases. Therefore, a uniform application of Indigency criteria for DUI offenders should be developed. This definition and application procedure would be a logical part of the Judicial Guidelines Manual recommended earlier.

Summary of Recommendations/Adjudication

Dram Shop Law

- Bartender training

Improving Offender Flow through Court System

- Borrowing Judges from One Court District to Another
- Night Court
- Judicial Guidelines Manual
- Increased Use of Community Service

Improving Offender Flow Through Jail System

- Alternative Detention Facilities/Cooperation Among Localities
- Centralized Non-Security Units
- Week-end Jail Sentences
- Combined Incarceration/Education/Treatment Programs

Juveniles and Driving Under the Influence

- Consistency with Adult Requirements

Indigents

- Uniform Definition/Application of Indigency for DUI Offenses.

³ Washburn Law Journal Vol. 6, 1967 "Torts - Intoxicating Liquors - Liability to Third Persons of One Selling or Furnishing Liquor".

D. RECOMMENDATIONS - LEGAL DRINKING AGE

Determining a recommendation in regard to the minimum legal age for purchasing alcoholic beverages was the most difficult part of the Committee's task. The legal drinking age is an issue which will always arise whenever a comprehensive plan to deter drinking and driving is being developed. The Committee devoted a considerable amount of time to debating the issue. Even within the parameters of the Committee, it was apparent that the issue is controversial and emotional, with no simple solutions. From the Committee's perspective, the question of whether the legal drinking age should be raised is still unanswered.

Not A Major Topic in Hearings

It must be stated at the onset that the legal drinking age was not a major topic of concern in the testimony presented at the public hearings held in Kansas. That is not to say that it did not come up, but it was not emphasized. When the issue did arise, representatives of special interest groups were the ones who made statements. Some testimony in favor of raising the minimum legal drinking age was presented, particularly by parent groups such as the Parent-Teachers Association. Other testimony was delivered in opposition to such a move, mostly from student groups. Based solely on the testimony, it is impossible to reach a consensus about what should be done. Resolution of the issue is problematic, even when it is not the utmost priority of Kansas citizens who are concerned about drinking and driving.

Evidence is Suggestive, But Not Conclusive

The available literature on the subject of the legal drinking age is confusing. The purpose of raising the drinking age is to reduce the statistics for alcohol related traffic accidents, particularly in terms of the number of fatalities and injuries. Numerous observers claim that the intent will be achieved, to a measurable extent, by raising the minimum legal age to purchase alcoholic beverages. However, objective scientific analysis does not document that claim to a statistically significant degree. At best it can legitimately be purported that the evidence is suggestive, but not conclusive. The most widely known research thus far is that which was done immediately after raising the minimum legal drinking age in Michigan, which pointed in the direction of decreased fatalities as a result. Not widely known is that the most recent material available from Michigan suggests that the impact of changing the minimum legal drinking age is not what it seemed at first. A synopsis of the results of the recent study, written by the program administrator, is highlighted as follows: "Of greatest significance is looking at trends during the years 1978, 1979, and 1980. The drinking age was raised at the end of 1978. From 1978 to 1979 there appeared to be a significant comparative drop in drinking related accidents among 18-20 year olds. However, between 1979 and 1980, this trend did not seem to hold. Note that 18-20 year old drinking drivers represented 12% of all drivers involved in accidents in 1978. In 1979 (the first year of the raised drinking age) that proportion moved down to 10%. However, in 1980 that percentage increased to its 1978 rate of 12%. Similarly between 1979 and 1980 drinking driver accidents involving 18-20 year olds reduced by 5.9% for the same period, drinking driver accidents involving all age groups decreased by 7.2%." The

administrator continues by saying, "I cannot offer a suggestion as to why there was greater improvement among all age groups than among the 18 to 20 year olds who were intended to be influenced by the drinking age increase." The only conclusion stated in the synopsis is that at this point one should hesitate to draw firm conclusions about the effects of changing the legal drinking age. Based on the Michigan experience, the conclusion that merely raising the legal drinking age will decrease accidents among persons in the age bracket between the present minimum and the new minimum age is not justified. Beyond that, other states have had similar experiences after raising their minimum legal drinking ages.

Inconclusive Evidence Is Hope For Some People

In fairness it must be emphasized that, despite the lack of conclusive evidence, the suggestive evidence serves as a compelling reason to raise the drinking age from the perspective of many people. Various organizations and some governmental entities have requested a uniform drinking age of 21 throughout the nation in hopes of decreasing the appalling statistics. Given the genuine concern for the victims, there is sometimes a tendency to want to try anything that might help alleviate the suffering caused by drunk driving accidents. Any improvement is considered better than no improvement, and consequently the possibility of decreased statistics is appealing.

More Thorough Analysis Needed

Despite the emotionally persuasive aspects of the arguments in favor of raising the minimum drinking age, the fact that scientific evidence is not

conclusive creates a discrepancy in the opinions about what should be done to address the drinking age issue. The controversial and highly emotional nature of the topic makes it confusing. With issues such as this one it is difficult to be objective, yet it is perhaps more important than ever to carefully consider the implications of any recommendation as fully as possible. It has been decided that a recommendation to raise the drinking age would be a hasty judgement on the part of the Committee. A more thorough analysis of the impact of raising the legal minimum drinking age is in order.

Special Sub-Committee

The suggestion to raise the minimum legal drinking age has enough merit to warrant continuing the evaluation of it. Therefore, the Committee recommends that a Special Sub-Committee be assigned the task of further studying that single issue. The Committee encourages the establishment of a special legislative committee or blue ribbon committee to investigate the data relative to the issue and consider the ramifications of instituting such a change in Kansas.

Age Discrepancy A Problem

A final comment about the drinking age is that in Kansas the issue is complicated by the fact that the age to buy 3.2% beer is 18 while the age to purchase all other alcoholic beverages is 21. This situation makes it more difficult to determine how the drinking age relates to the alcohol traffic safety problem.

The inconsistency is not reasonable, given that one can get just as drunk drinking beer (be it 3.2% or any other, which indicates a difference only in weight, not alcoholic content) as by drinking other alcoholic beverages. The approval given to one form of drinking but not to another presents special problems from a prevention/treatment perspective. Any considerations made in the future about changing the legal drinking age in Kansas must face the age discrepancy as a part of the issue.

Summary of Recommendations/Legal Drinking Age

Special Sub-Committee to study the subject in depth.

E. RECOMMENDATIONS - SENATE BILL 699

The preliminary report proposed that the final report would contain specific types of corrective action necessary to "clean up" certain parts/problems of SB 699. There are also problem areas which will be reviewed here that will not have specific recommendations attached to them. This is because they fall into the category of constitutionality, which the Committee is not qualified to act upon. Some of the latter type of questions will undoubtedly reach the courts and will thus be resolved in time. It is the major intention herein to review problem areas as the Committee perceives them, and to point out any possibilities for action that might apply.

Plea Bargaining/File Bargaining

The most obvious and well-known loophole found thus far has to do with the prohibition of plea-bargaining contained in SB 699.

Before elaborating on the problem that exists it is important to make note of a semantical problem (that could easily be remedied) that the Committee has become aware of. The section of the bill which sets out the penalties for 1st, 2nd, and 3rd offenses and which specifies the plea-bargaining prohibition (Section 4, Subsection C, D, and E) reads:

"No plea-bargaining agreement shall be entered into nor shall any judge approve a plea-bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the penalties established by this subsection or the ordinance."

The last sentence cited from those subsections does not account for plea-bargaining for reasons other than to avoid the penalties. Conceivably, if a person wanted to pay the penalties, but plea-bargain to a lesser offense so that there would not be a DUI offense on the record that would therefore not affect insurance rates, etc., the law would not prohibit it. Although there have not been any known incidents related to this loophole it is not without possibility for the future, and even though it is a very technical point, it would be easy to correct by simply eliminating the last sentence of those subsections.

The prohibition of plea-bargaining in DUI cases probably represents the greatest source of resistance connected to the law itself. It also represents a significant legal question: Is the prohibition of "plea-bargaining" a legislative intrusion into the executive prerogative of the prosecutor or the judicial prerogative of the court? That question cannot be answered by the Committee, but it is recognized as one which will probably be dealt with in the Kansas courts. Many prosecutors definitely feel it is an intrusion into their discretionary power, and the process of "file-bargaining" has cropped up as a method for "getting around" the plea-bargaining prohibition. File-bargaining occurs when a prosecuting attorney amends, changes or drops a charge (in this case DUI) in lieu of filing a different charge, such as reckless driving, or in many cases no charge at all. Upon analysis it appears that this is a normal part of any prosecutor's job -- to determine if and when an arrested person is to be officially charged. Even though "file bargaining" in itself does not imply impropriety, when the motivation with which it is done is strictly for the purposes of curtailing the prerequisites of the DUI

law, it contradicts the spirit of the law. The Committee believes that it is counterproductive not only to the law, but also especially to a deterrence model wherein perception of apprehension and suffering the consequences are the most important aspects.

Previous parts of this report made recommendations for increasing the level of discretion that both prosecutors and judges can apply in drinking and driving cases, by providing additional appropriate offenses for which an offender might be charged and additional sanctions which can be applied in the sentencing process. It is hoped that such an approach will impact upon the resistance that has surfaced in regard to the plea-bargaining prohibition. The Committee emphasizes the necessity of retaining that provision in the law, and in any related laws, and amendments which might occur in the future. Prohibition of plea-bargaining is an integral part of an effective deterrence model.

Chemical Test Refusal

Does admission into evidence of a Defendant's refusal to submit to a chemical breath test violate the defendant's right to remain silent as protected by the Fifth Amendment to the U.S. Constitution? That is another question the Committee is unqualified to answer, but which is sure to arise in the Kansas courts eventually. It is understood that the same question is currently before Supreme Courts in other states. When the question is answered by the courts, the Committee is confident that admission of such information should be upheld. No consideration should be made for changing that part of the law either (unless a court ruling dictates otherwise). Breath-testing and

pre-breath testing have been alluded to in this report as germane to the comprehensive deterrence package; refusal to submit to the testing negates the potential impact of those procedures on the process.

Other Drugs and Driving

Also in respect to the area of testing for other drugs (as related to driving) a small, but important semantical problem exists in SB 699. That problem is as follows: Section 3 states:

"KSA 1981 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given consent to submit to a chemical test of breath or blood..."

However, Section 4 reads:

"KSA 1981 Supp. 8-1005 is hereby amended to read as follows: 8-1005. (a) In any criminal prosecution for violation of the laws of this state relating to driving of a motor vehicle while under the influence of alcohol, or a combination of alcohol and any drug, or the commission of vehicular homicide or manslaughter while under the influence of alcohol, or a combination of alcohol and any drug, or in any prosecution for a violation of a city ordinance relating to the driving of a motor vehicle while under the influence of alcohol, or a combination of alcohol and any drug, evidence of the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance may be admitted and shall give rise to the following presumptions:..."

First of all, that subsection does not provide any enforcement ability in the case of persons who are intoxicated on a drug or drugs other than alcohol; it only refers to a combination of other drugs and alcohol. Research does show that many impaired, intoxicated drivers are under the influence of drugs, both licit and illicit, without necessarily being in combination with alcohol.

Either Section 4 or another Subsection needs to specify application of the law under those circumstances.

Secondly, inasmuch as Section 4 specifies testing blood, breath, urine, or other bodily substance while Section 3 only specifies breath or blood, it is felt that Section 3 should be changed to specify blood, breath, urine, or other bodily substance. This is particularly important as it relates to Section 3, Subsection C which deals with chemical test refusal. Section 3, Subsection C states:

"If a person so arrested refuses to submit to a test of breath or blood, it shall be admissible in evidence against the person at any trial for driving under the influence of alcohol."

Again the law only specifies breath or blood and only in respect to a trial for driving under the influence of alcohol. It is probably mere oversight that created the discrepancies in the law, because it seems certain that the intention of the legislature was to cover all of those details. However, as it is currently written that portion of the law presents practical problems for both the law enforcement and adjudication components of the criminal justice system charged with its application. It is urged that language be included or revised to provide consistency in the testing possibilities and enforcement of the law in relation to all drugs and driving.

Diversion

The inclusion of diversion as a sentencing option is part and parcel to DUI law on first offense only. The Committee agrees with that arrangement and finds no reasoning which would justify change in that regard. It has also

been recommended that diversion be part of the sentencing scheme for the driving while impaired offense, again for first offense only. Both current law and the proposed revised offender code require that diversion agreements be considered "conviction" when applied to 2nd or more offenses. The constitutional question which arises is: Does consideration of diversion agreements as prior "convictions" for purposes of levying enhanced penalties violate due process provisions of the Fifth and Fourteenth amendments of the U.S. Constitution?

Again this is a question for the courts. However, the Committee would suggest no changes in the current or proposed structure.

Out of State Convictions

Kansas Attorney General's opinion No. 82-182 in reference to DUI offenses states (in part) that: "...convictions under a statute of another state are excluded from consideration at time of sentencing. While the legislature has included reference to the laws of other states in some Kansas statutes (see e.g. KSA 1981 Supp. 8-285, as amended by L. 1982, ch. 144), it did not choose to do so in the statute governing driving under the influence of intoxicating liquor or drugs."

The Attorney General's interpretation of the statute implies that a semantical error was made in this subsection as well. The Committee feels that it probably was the legislature's intent to include prior offenses from other states for sentencing purposes, but the eventual wording was not sufficient. There is a need for such a sentencing option in the Kansas DUI law, if only

for uniformity with federal legislation. The Committee therefore urgently recommends that language changes, etc., be made to revise the law so that out of state offenses/records can be utilized in the sentencing process.

Right to Counsel

A question surrounding Right to Counsel for Indigent Defendants exists: Do the increased penalties of SB 699 require municipal judges to appoint counsel for Indigent Defendants pursuant to the right to counsel requirements of the Sixth Amendment of the U.S. Constitution? While the Committee does not choose to answer that question, it is cognizant of the impracticalities of that requirement. The adjudication section referred to a uniform definition of indigency strictly for DUI offenses. The inherent impracticalities of indigency requirements (especially for municipal courts) should be considered in the application of that recommendation.

Administrative Hearing

Although it is not a widely publicized concern, it has become apparent through the Committee's investigation that the changes in the process of the Administrative Hearing pursuant to a driver's license suspension present a legal question to many lawyers and defense attorneys. The fact that the arresting officer is no longer required to be present for the administrative hearing (before the Department of Revenue - Driver's License Division) brings up the question: Does that fact violate due process requirements for (cross-examination) confronting one's accusers? Inasmuch as the driver's license hearing is an administrative hearing and is based on the state's

prerogative to issue licenses consistent with the underlying premise that driving is a privilege and not a right, the Committee does not suggest any changes. The only recommendation that the Committee makes relative to such hearings is to urge that driver's license suspension for specified DUI offenses become "automatic" and without benefit of an administrative hearing. It is believed that this is within the state's authority. It is also an important aspect of the deterrence model and could prove to be cost-effective to the state in the long run.

Community Service

One last item that should be reviewed here is that of Community Service. This report has stated the benefits of the Community Service option in the sentencing scheme. The Committee is also aware of the problems that have surfaced in the use of Community Service and would therefore highlight two (2) recent Attorneys General's opinions which are applicable.

The first of those opinions (81-98, 82-157) says that the local units of government which are the recipient organization of the Community Service may be liable for injuries and damages inflicted or suffered by persons acting within the scope of their designated duties. An optimistic note here is that it is possible for organizations to obtain extremely low-cost insurance which would cover the liability problems.

The second Attorney General's opinion on the subject (which is number 82-183), is another optimistic item because it states that judges, court services, etc.

would be exempt from liability under the Tort Claims Act, which means that Workmen's Compensation benefits would not apply to Community Service participants.

It is hoped that these legal opinions will stimulate the use of community service across the state.

Summary

The review of SB 699 contained in this section highlights the problem areas that are legalistic and generally beyond the Committee's mandate as well as those which are semantical in nature and could be easily corrected by revision of the wording itself. The areas to which either or both types of consideration were given are:

Plea-bargaining/File-bargaining

Chemical Testing/Refusal

Other Drugs

Diversion

Out of State Convictions

Right to Counsel

Administrative Hearings

Community Service

III. HOUSE OF REPRESENTATIVES

BILL 6170

House of Representatives Bill 6170 (amended) has been passed by both the United States Senate and the U.S. House of Representatives. It was signed by President Reagan on October 5, 1982. The intent of that law is to encourage the establishment by states of effective alcohol traffic safety programs. In order to accomplish that end, HR 6170 specifies that the Secretary (of Transportation) shall make grants to those states which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol.

Because of the timeliness of this act in relation to the Committee's task and the potential impact of federal legislation on the drinking and driving problem in Kansas, it is important to illustrate the major considerations of HR 6170 in this report.

The Introduction pointed out that states would be required to submit Highway Safety Plans which include certain criteria in order to receive program grants. The basic criteria are detailed here; however, it is important to note that rulemaking provisions (rules and regulations) are to be published by February 1, 1983,

There are two (2) types of grants, basic grants and supplemental grants, which can be awarded contingent upon how many of the criteria are fulfilled. The amounts awarded are limited to three (3) years with a formula for 75%, 50% and 25% allocation (of the total program amount) over those years. In addition, the amount a state which meets the basic criteria can receive in any fiscal year is set at 30% of the amount apportioned to the state under the regular section 402 Highway Safety program. The amount a state which meets the basic criteria plus some or all of the supplemental criteria can receive in any

fiscal year is limited to 50% of the amount apportioned to the state under the regular section 402 Highway Safety program. (Subsection "b" requires each state that receives incentive funds as a condition for the receipt of the funds to maintain its funding for alcohol safety, excluding incentive grants, at a level representing an average of total funds spent during the two years preceding the enactment of this program.)

A. BASIC GRANT

The minimum criteria a state program must meet to qualify for a Basic grant are laws or regulations which provide for:

- 1) Prompt suspension of the driver's license for at least 90 days for first offense; prompt suspension of the driver's license for at least one year for repeat offenses, for any driver whose blood alcohol concentration equals or exceeds 0.10% or who refuses a chemical test for blood alcohol. (Recommendations which would make Kansas law consistent with this criterion have been made in appropriate places.)
- 2) A second offense in any five (5) year period requires mandatory imprisonment for not less than 48 consecutive hours or 10 days of community service. (Kansas law is already well within the requirement for this criterion.)
- 3) Any person with a B.A.C. of 0.10% or greater when driving shall be deemed to be driving while intoxicated (Kansas will need to adopt a Per Se law in order to be in compliance with permanent federal Rules and Regulations for H.B. 6170.)

- 4) Increased efforts or resources must be dedicated to the enforcement of alcohol-related traffic laws and to inform the public of such enforcement. (The Kansas REDI program would help meet this criterion.)

B. SUPPLEMENTARY GRANT

To determine whether a state's alcohol safety program qualifies for a supplemental grant, considerations such as the following shall be required:

- 1) Establishing or expanding a statewide driver record system readily accessible to the courts and the public. (The driver record system is a mandatory item for supplementary grants. Kansas would probably not be in full compliance in this category.)
- 2) Provide courts with authority to do pre-sentence screenings, (Kansas does provide for P.S.I.'s)
- 3) Provide for creation and operation of treatment programs for DUI offenders. This criteria is in effect at this time, however, as of July 1, 1983, alcohol and drug prevention and treatment programs will be facing significant reductions due to decreases in the alcohol and drug block grant appropriations. Any further losses to the Kansas alcohol and drug treatment system will seriously effect the state's ability to meet this requirement. These reductions make it obvious that additional funds must be secured if Kansas is to ever maintain its current level of existing services.
- 4) Provide for impoundment of any vehicle operated by a person whose license has been suspended or revoked for an alcohol related offense.

(Kansas law is not in compliance with this criterion. A recommendation for bringing Kansas into compliance was made in the Law Enforcement section.)

5) Providing for a minimum drinking age of 21. (Kansas law would meet half of this requirement because of the different legal ages of 18 and 21, depending upon the type of alcohol.)

6) Consideration of the recommendations of the Presidential Commission on Drunk Driving.

7) Establishing an alcohol traffic safety program in each major political subdivision (e.g. major cities and heavily populated counties) that is controlled at the local level, and permitting each local program to retain fines and other monies collected by convicted drunk drivers so that it can become financially self-sufficient. (Kansas does have Alcohol Drug Safety Action Programs, "ADSAPS", in each judicial district. However, because of different methods of collecting and distributing funds and assessments, it is unknown if our system would meet the self-sufficiency requirement.)

C. SUMMARY

In summary, the Committee reiterates that the criteria set out by HR 6170 are based on many premises which are essentially the same as many of those recommendations in this report. That is an important realization which serves to emphasize the need for complete implementation of the plan.

HR 6170 also represents a potential source of funding which could be beneficial in the implementation of a deterrence model for Kansas.

IV. SUMMARY A COMPREHENSIVE PLAN

A. RECOMMENDATIONS/COMPREHENSIVE PLAN

All of the recommendations of the Governor's Committee on Drinking and Driving are found in this report. It is further recommended by the Committee that the major recommendations be adopted as a package and implemented as a comprehensive plan and that administration of the DUI deterrence plan be accomplished by the formation of a DUI Coordinating Board.

The comprehensive plan is couched in the three major premises identified in the first Chapter: 1) High Level of Public Awareness; 2) Perception of Apprehension; 3) Perception of Suffering the Consequences.

Expenditure Problem for Local Governments

There is one item which also needs to be considered in the summary. The eighth preliminary area of recommendation found in the preliminary report was "Revenue Returned to Local Governments". Additionally, it was noted that municipal governments are able to benefit from the revenue (of fines) generated by aggressive DUI enforcement, while the county governments are not. It is also recognized that implementation of more DUI programming represents additional expenditures for local governments. Although the Committee does not have a specific recommendation as to how to solve the expenditure problem for the local governments involved, the need to explore all avenues is emphasized because it is an important "cog" in the "wheel" for accomplishment of the objectives. Suggestions have been made for changes in the tax structure, additional tax revenue from various sources, and uniformity between city and county government in respect to utilization of fine money.

B. IMPLEMENTATION OF THE PLAN

This report has constantly emphasized the need for the development of the recommendations into a comprehensive plan to reduce drunk driving problems in the State of Kansas. In summary, the report will illustrate "how" to do that.

There are two (2) major considerations imperative to putting the recommendations into effect. The first is that all of the recommendations should be implemented as a package thereby accomplishing the goal of a comprehensive plan. Without exception, the importance of adopting all of the major recommendations cannot be overstated. There are some concepts which have been identified as useful techniques for the local level effort that are not major recommendations; but it is imperative that the major concepts be considered in a package form in order to maintain the integrity and strength of a comprehensive plan.

Given the magnitude of effort required to implement the major recommendations into policy and procedure for the state, it is readily apparent that an Administrative structure is necessary. This is the second major consideration relative to the plan.

Accomplishing implementation as well as the ongoing work of a comprehensive deterrence model will undoubtedly require coordination between many governmental agencies, institutions and private sector entities. An administrative body must be authorized to perform those functions.

DUI Coordinating Board/Authority

The Committee proposes a structure similar to the model in operation in California, which was a result of the California Task Force Report on Alcohol, Drugs and Traffic Safety. California's Task Force Report recognized a lack of statewide coordinated efforts to combat the DUI problem. The same can be said of Kansas as it begins to mobilize its efforts against drunk driving.

A DUI coordinating agency assisted by an Advisory Council (appointed by the Governor), is the administrative framework California has chosen. That seems to be an effective arrangement, and the Committee suggests a similar arrangement, differing in that it would be tailored to the needs of Kansas.

It is believed that the most effective approach to coordination of a DUI plan that Kansas could take is the formulation of a special board or authority specifically delegated to coordinate the many facets of the comprehensive plan.

Such a board should be comprised of persons from all of the agencies that would be involved from both government and private sectors. Examples of appropriate agencies would include the Department of Transportation, the Department of Education, the Department of Social and Rehabilitation Services, Department of Administration, the Department of Corrections, the Supreme Court/Judicial Administration, Court Service representatives, etc. Private sector individuals from the insurance industry, advertising, and the grass-roots, special interest groups would be considered appropriate as

representatives. Most importantly, a DUI Coordinating Board should have the support of the Governor and the Legislature and be given the necessary tools to accomplish the goals of administering the DUI deterrence plan.

C. RECAPITULATION OF THE RECOMMENDATIONS

The Committee proposes a comprehensive plan that includes major and minor recommendations, based on their review of the current "state of the art" and the testimony received in the public hearings across the state, and the new developments that represent potential impact for the future. The Committee's Preliminary Report (August 18, 1982) presented ten (10) major areas in which specific recommendations would be made in this final report. Those ten (10) areas are: 1) Prevention; 2) Dram Shop Law; 3) Records Keeping; 4) Impaired Driving Law; 5) Per Se Law; 6) Breathalyzer (Consent) Law; 7) Legal Drinking Age; 8) Revenue Returned to Local Governments; 9) SB/699, Loopholes; and 10) Mechanism for Maintaining Visibility.

The final report has made specific and/or general recommendations in all of these areas. A recapitulation of those recommendations follows:

Public Information Education

- On-Going Media Program
- Mandatory Drug/Alcohol Education Grades K-12
- Alcohol Traffic Safety Curriculum - High School
- Alcohol Traffic Safety Curriculum - Private Driver's Education Schools

- Alcohol/Drug Information and Education for College Students
- Coverage of Alcohol/Drugs and Driving in Kansas Driver's Handbook, with Receipt of License Contingent Upon Attainment of a Defined Acceptable Score.
- Mandatory Alcohol/Drug Education and Training for Criminal Justice Personnel

Law Enforcement

Revised Offender Code:

- Driving While Impaired
- Driving Under The Influence-Habitual Violators, License Suspension
- Per Se Law
- Alcohol Related Offense/Damage/Personal Injury
- Alcohol Related Offense/With Fatality(ies)
- Driving On A Suspended License-Alcohol Related Offense

Breathalyzer Laws

- Automatic License Suspension
- Written Consent
- Preliminary Breath Testing

Record System

- State
- National

Apprehension Techniques and Evidence Of Offense

- Roadblocks
- Camera Equipment
- Drug Testing Equipment

Adjudication

Dram Shop Law

- Bartender Training

Improving Offender Flow Through Court System

- Borrowing Judges from One Court District to Another
- Night Court
- Judicial Guidelines Manual
- Increased Use of Community Service

Improving Offender Flow Through Jail System

- Alternative Detention Facilities/Cooperation Among Localities
- Centralized Non-Security Units
- Week-end Jail Sentences
- Combined Incarceration/Education/Treatment Programs

Juveniles and Driving Under the Influence

- Consistency with Adult Requirements

Indigents

- Uniform Definition/Application of Indigency for DUI Offenses.

Legal Drinking Age

- Special Sub-Committee/Study Group

Senate Bill 699

- Plea-bargaining/File-bargaining
- Chemical Testing/Refusal
- Other Drugs
- Diversion
- Out of State Convictions
- Right to Counsel
- Administrative Hearings
- Community Service

Other

- Mechanism for Returning Revenue to Local Governments
- DUI Coordinating Board/Authority
- Encourage Development of State Plan to Acquire Grant Money Under H.R.

6170

V. MEDIA REPORT

A. REVIEW OF PUBLIC HEARINGS

The Committee scheduled eleven (11) public hearings in various locations across the state with the intent of providing all interested Kansas citizens the opportunity of testifying and participating.

The complete schedule of hearings follows:

Wichita	Thursday, April 15, 1982	2:00 p.m.
Pittsburg	Thursday, April 29, 1982	2:00 p.m.
Kansas City	Thursday, May 13, 1982	9:30 a.m.
Olathe	Thursday, May 13, 1982	2:00 p.m.
Salina	Thursday, June 17, 1982	9:30 a.m.
Manhattan	Thursday, June 17, 1982	7:00 p.m.
Dodge City	Thursday, July 15, 1982	2:00 p.m.
Colby	Thursday, August 19, 1982	9:30 a.m.
Hays	Thursday, August 19, 1982	7:00 p.m.
Emporia	Thursday, September 16, 1982	2:00 p.m.
Topeka	Thursday, September 28, 1982	2:00 p.m.

Over 800 persons participated in 11 public hearings held statewide. These represented a diverse cross-section of public officials and private citizens including: state legislators, city/county commissioners, county attorneys, city attorneys, educators (principals, counselors, etc.), alcohol/drug program representatives, judges, law enforcement officials, including police chiefs and police officers, highway patrol administrators and officers and county sheriff officers, liquor distributors, parent groups, citizens groups, and victims. The media were also invited to each of the hearings and media-coverage at all of the hearings was excellent.

HEARINGS:

1. WICHITA PUBLIC HEARING
April 15, 1982
Sedgwick County Courthouse
Court of Appeals

Courtroom, 3rd Floor
510 North Main
Wichita

Participants - 150 - including persons from:

Maize	El Dorado
Derby	Haysville
Clearwater	Peck
Winfield	Valley Center
Mulvane	Hesston

Media:

- Pre-hearing interview on the Kansas Information Network and KAKZ Radio
- KAKZ
- KKRd
- KFDI
- KARD - TV
- KAKE - TV
- KTVH - TV
- Wichita Eagle Beacon (2 articles)

2. PITTSBURG PUBLIC HEARING
April 29, 1982
Crawford County Judicial Center
Pittsburg

Participants - 85 - including persons from:

Pittsburg	Neodesha
Coffeyville	Ft. Scott
Independence	Parsons
Fredonia	Humboldt
Iola	

Media:

- Pittsburg Morning Sun article and an editorial
- KOAM - TV
- KTUJ - TV
- KSEK
- KKOW

3. KANSAS CITY PUBLIC HEARING
May 13, 1982
Wyandotte County Courthouse
Kansas City, Kansas
and
Olathe
Johnson County Courthouse
Sante Fe and Kansas

Participants - 105 - including persons from:

Kansas City, Kansas	Shawnee
Kansas City, Missouri	DeSoto
Leavenworth	Mission
Atchison	Overland Park
Bonner Springs	Merriam
Olathe	Leawood
Lenexa	Shawnee Mission

Media:

- WDAF Radio
- WHB
- KMBZ - KMBR
- KCMO Radio
- WDAF - TV
- KCMO - TV
- Kansas City Kansan (2 articles)
- Kansas City Star
- Olathe Daily News

4. SALINA AND MANHATTAN PUBLIC HEARINGS
June 17, 1982
Salina
City/County Building
Room 300
300 West Ash

Participants - 65 - including persons from:

Salina	Ellsworth
McPherson	Abilene
Hutchinson	Barnard
Minneapolis	Wilson

Manhattan
Riley County Courthouse
5th and Poyntz

Participants - 35 - including persons from:

Manhattan	Beloit
Marysville	Ft. Riley
Junction City	Concordia

Media:

- KSAL Radio
- KINA
- Cablevision 6
- KMAN
- Salina Journal (2 articles)
- Manhattan Mercury

5. DODGE CITY PUBLIC HEARING
July 15, 1982
St. Mary's of the Plains College
Avenue A at San Jose Drive

Participants - 85 - including persons from:

Dodge City	Hugoton
Jetmore	Johnson
Ulysses	Coldwater
Hudson	Larned
Burdett	Meade
Liberal	Johnson
Garden City	Colby

Media:

- . Garden City Telegram
- . Dodge City Globe (2 articles)
- . KEDD
- . KTVC - TV (interview program and newscast)
- . KGNO (2 interviews)
- . KSCG (interview, newscasts and psa's)

6. COLBY PUBLIC HEARING
August 19, 1982
Thomas County Courthouse

Participants - 65 - including persons from:

Colby	Rexford
Oberlin	McDonald
Bird City	Goodland
Hill City	Oakley
Hoxie	Morland
Sharon Springs	Grainfield

Media:

- . Thomas County Herald
- . Editorial
- . Goodland article
- . Oberlin Herald articles
- . Radio - TV notices

7. HAYS PUBLIC HEARING
August 19, 1982
Hays Public Library
1205 Main

Participants - 42 - including persons from:

Hoisington	Ellinwood
Ness City	Great Bend
WaKeeney	Smith Center
Russell	Goodland
La Crosse	

Media:

- . Hays Daily News
- . KAYS

8. EMPORIA PUBLIC HEARING
September 16, 1982
Emporia State University

Participants - 50 - including persons from:

Emporia	Topeka
Lyndon	Overbrook
Council Grove	Osage City
Lawrence	Cedar Point
Reading	Lebo

Media:

- . Emporia Gazette (two articles and interviews)
- . KVOE (pre-Hearing and Hearing coverage plus an interview)

9. TOPEKA PUBLIC HEARING
September 28, 1982
State Capital Building

Participants - 135 - including persons from:

Topeka	Lawrence
Auburn	Grantville
Hiawatha	Perry
Valley Falls	Baldwin
Junction City	Olathe
Scranton	Marysville
Overland Park	Ottawa
Kansas City, Mo.	Berryton

Media:

- . Topeka Capital-Journal (3 articles)
- . KSNT
- . WIBW - TV
- . WREN
- . KSKX (Pre Hearing interview and Marshall Barber testified)
- . AP
- . UPI (Hearing coverage and interview)

Post hearings coverage includes:

- . 2 Kansas Information Network interviews
- . 2 Kansas City Times interviews
- . KAKE-TV "Live at Five" interview
- . KAKE-TV "Sunday Magazine" interview
- . Wichita Eagle-Beacon interview
- . Hutchinson News interview
- . KCKT - TV interview

B. EXEMPLARY MEDIA PROJECT

An example of an ongoing awareness program that could be developed is P.R.I.D.E. (Prevent Impaired Driving Everywhere), which originated in Canada.

The program was designed in a total community response to preventing the problem of driving while impaired.

Activities included media, educating people about the problem and informing them about Canada's Driving While Impaired Law. They developed displays, poster contests, etc. to involve the community.

P.R.I.D.E. is highlighted here because it is a good example of an effective awareness campaign where media is combined with prevention strategies.

VI. ADDENDA

A. PRESIDENTIAL COMMISSION ON DRUNK DRIVING MEMBERS

John A. Volpe, Former Secretary of Transportation and Former Governor of Massachusetts, Chairman of the Commission.

V.J. Adduci, President of Motor Vehicle Manufacturers Association of the U.S., Inc.

Ven Henry Archer, Jr., Council member in San Antonio, Texas, and a stockbroker with George E. Dullnig Company.

Rep. Michael D. Barnes (D-MD), sponsor of drunk driving legislation in the U.S. Congress.

Ross Barrett, Senior Vice President of Metromedia.

Michael D. Bradbury, District Attorney for Ventura County, California.

Morris E. Chafetz, M.D., former Director of National Institute on Alcohol Abuse and Alcoholism and President of Health Education Foundation.

Joseph M. Dealy, Chairman, A.H. Belo Corporation and Publisher of The Dallas Morning News.

Sen. Robert Dole (R-KS), Chairman of the Senate Finance Committee.

James R. Edgar, Secretary of State for the State of Illinois.

Sherman G. Finsliver, District Judge, U.S. District Court, Colorado.

Rep. James V. Hansen (R-UT), supporter of drunk driving legislation in U.S. Congress.

James S. Kemper, Jr., Chairman, Kemper Group, and Board member of the National Council on Alcoholism.

Henry B. King, President, U.S. Brewers Association.

Patience Latting, Mayor, Oklahoma City, Oklahoma.

Ann Landers, syndicated human relations columnist.

Candace Lightner, President, Mothers Against Drunk Driving.

Forst Lowery, Safety Program Coordinator, Minnesota Department of Public Safety.

G.W. Hank McCullough, founder of Alcoholism Council of California and Board member of the National Council on Alcoholism.

Frederick A. Meister, Jr., President, Distilled Spirits Council of the United States.

CONTINUED

1 OF 2

Sen. Claiborne Pell (D-RI), sponsor of drunk driving legislation in U.S. Congress.

William N. Plymat, Executive Director, American Council on Alcohol Problems.

Joseph A. Pursch, M.D., Corporate Medical Director and Member of the Board of Directors, Comprehensive Care Corporation.

Walter Shea, Executive Assistant to Teamster General President Roy L. Williams.

Milton Skyring, Project Director, Checkmate, Baton Rouge City Court, Louisiana.

William T. Smith II, New York State Senator and Chairman, Senate Special State Task Force on Drunk Driving.

Stan Statham, State Assemblyman for California.

Vincent L. Tofany, President, National Safety Council.

Dick Vincent Van Patten, actor, Beverly Hills, California.

Frank D. White, Governor, State of Arkansas.

Governor's Committee on Drinking and Driving

P.O. BOX 4052 TOPEKA, KANSAS 66604

B. FACT SHEET

KANSAS SENATE BILL 699

NEW PENALTIES FOR DRINKING AND DRIVING CREATION OF ALCOHOL AND DRUG SAFETY ACTION PROGRAMS

Senate Bill 699 becomes effective July 1, 1982. The provisions of 699 include more stringent penalties and provisions than previous Driving While Intoxicated laws.

I. THOSE PROVISIONS INCLUDE:

- a) Broadening the law to include driving under the influence of (alcohol and/or) other drugs,
- b) Stipulating that 0.10% or more blood alcohol content constitutes Prima Facie evidence that a person is incapable of driving safely. (Prima Facie Evidence = sufficient enough to be presumed as fact.)
- c) Penalties for refusal to submit to a blood alcohol test, which can result in suspension of license pursuant to administrative hearing. (Not less than 120 days nor more than 1 year.)
- d) Provision for refusal to take a blood alcohol test as admissible evidence at any trial for driving under the influence of alcohol.
- e) Elimination of Plea-bargaining or reduction to a lesser charge.
- f) Specific conditions for diversion agreements.
- g) Mandatory Alcohol/Drug Safety Action Programs and completion of such programs for certain offenders.
- h) Empowering the state authority to certify ADSAP programs and defines their purpose.
- i) Specification of the information contained in Pre-Sentence Evaluations to be written by ADSAP personnel.

II. SPECIFIC PENALTIES FOR 1ST, 2ND, AND 3RD OFFENSES ARE:

- a) 1st Offense - Not less than 48 hours imprisonment nor more than 6 months imprisonment, or 100 hours of Public Service.
 - Fine of \$200.00 to \$500.00 or a combination of fine and imprisonment.
 - Restriction of driver's license for employment, medical emergencies, or attending ADSAP or treatment programs only.
 - Successful completion of ADSAP program, treatment program or both.

The convicted person shall not be eligible for release on probation or suspension or reduction of sentence until the minimum sentence has been satisfied.

- b) 2nd Offense - Not less than 90 days imprisonment nor more than 1 year imprisonment.
- Fine of \$500.00 to \$1,000.00.
 - If the person completes a treatment program the sentence may be reduced, but not to less than 5 days imprisonment.
 - Suspension of driver's license for 1 year or until treatment is completed.

The convicted person shall not be eligible for release on probation or suspension or reduction of sentence until the minimum sentence has been satisfied.

- c) 3rd Offense (and subsequent offenses)
- Not less than 90 days imprisonment, nor more than 1 year imprisonment.
 - Fine of \$1,000.00 to \$2,500.00
 - Revocation of driver's license for a period of time specified in accordance with procedure (not less than 1 year).

The person convicted shall not be eligible for release on probation or suspension or reduction of sentence.

Governor's Committee on Drinking and Driving

P.O. BOX 4052 TOPEKA, KANSAS 66604

C. FACT SHEET

Juveniles and Driving Under the Influence Of Alcohol and/or Other Drugs

- A New Juvenile Code (enacted as SB 520) becomes effective January 1, 1983.
- The New Juvenile Code permits individuals 14-18 to be incarcerated in a city or county jail for any traffic offense (which includes DUI) up to a maximum of 10 days. (Section 118 K.S.A. 1981 Supp. 8-2117).
- Juveniles who are incarcerated for traffic offenses must be separated from adult offenders.
- Traffic offenses for juveniles may be heard by any court of competent jurisdiction (not just juvenile court).
- The court may suspend the license of any person who is convicted of a traffic offense and who was under 18 years of age at the time of commission of the offense.
- Suspension of a license shall be for a period not exceeding one year.
- Instead of suspending a driver's license the court may place conditions on the person's drivers license. The conditions shall apply for a period not to exceed one year, at which time the person must apply for the return of the (original) license or a new one if the original would be expired.

Other provisions of (SB 699), the DUI law (which became effective July 1, 1982) also applicable to juveniles include:

- possibility for conviction of driving under the influence of alcohol and/or other drugs.
- 0.10% blood alcohol content constitutes Prima Facie evidence for D.U.I. (Prima Facie evidence = sufficient enough to be presumed as fact).
- Refusal to submit to tests for determining amount of alcohol or other drugs can result in suspension of license.
- No plea-bargaining.
- Diversion only with specific conditions that must apply to the individuals case and only on first offense.
- Mandatory pre-sentence evaluations.
- Mandatory ADSAP program or other treatment as part of the sentence.

Union Calendar No. 539

97TH CONGRESS
2D SESSION

H. R. 6170

[Report No. 97-867]

To amend title 23, United States Code, to encourage the establishment by States of effective alcohol traffic safety programs.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 1982

Mr. HOWARD (for himself, Mr. BARNES, Mr. CLAUSEN, Mr. ANDERSON, Mr. SHUSTER, Mr. ROE, Mr. BREAUX, Mr. LEVITAS, Mrs. BOUQUARD, Mr. FARY, Mr. ERTTEL, Mr. CLINGER, Mr. BONER of Tennessee, Mr. WOLF, Mr. MATSUI, and Mr. LANTOS) introduced the following bill; which was referred to the Committee on Public Works and Transportation

SEPTEMBER 23, 1982

Additional sponsors: Mr. ALBOSTA, Mr. SAVAGE, Mr. SUNIA, Mr. OBERSTAR, Mr. EDGAR, Mr. RAHALL, Mrs. KENNELLY, Mr. MINETA, Mr. MARRIOTT, Mr. DASCHLE, Mr. HORTON, Mr. FLIPPO, Mr. RATCHFORD, Mr. HAGEDORN, Mr. YATES, Mr. MOTT, Mr. MURPHY, Mr. WHITEHURST, Mr. NELIGAN, Mr. RODINO, Mr. FRANK, Mr. ROSENTHAL, Ms. OAKAR, Mr. BEIL-ENSON, Ms. MIKULSKI, Mr. ROEMER, Mr. BEVILL, Mr. FLORIO, Mr. MINISH, Mr. PEPPER, Mr. MOAKLEY, Mr. LOWRY of Washington, Mr. D'A-MOURS, Mr. STUDDS, Mr. STANGELAND, Mr. HUGHES, Mr. MITCHELL of Maryland, Mr. STARK, Mr. HOYER, Mr. LEHMAN, Mr. FROST, Mr. FAZIO, Mr. JOHN L. BURTON, Mr. GORE, Mr. MAZZOLI, Mr. SCHUMER, Mr. HAM-MERSCHMIDT, Mr. NEAL, Mr. MCHUGH, Mr. ROSE, Mr. WEISS, Mr. ERDAHL, Mr. MCCLORY, Mr. FORD of Tennessee, Mr. WEBER of Minnesota, Mrs. COLLINS of Illinois, Mr. HEFTTEL, Ms. FERRARO, Mr. WOLPE, Mr. GOODLING, Mr. MORRISON, Mr. WON PAT, Mr. FISH, Mr. DUNN, Mr. GREEN, Mr. COELHO, Mr. DYSON, Mr. GUARINI, Mrs. HOLT, Mr. HUTTO, Mr. LEBOUTILLIER, Mr. RUSSO, Mr. SAWYER, Mr. GIBBONS, Mr. NOWAK, Mr. DOWDY, Mr. WAXMAN, Mr. RITTER, Mr. HARKIN, Mr. WYDEN, Mr. ECKART, Mr. BARNARD, Mr. CONABLE, Mr. EMERY, Mr. GINGRICH, Mr. BAILEY of Pennsylvania, Mr. GRAY, Mr. VENTO, Mr. MOLINARI, Mr. RIN-ALDO, Mr. BLANCHARD, Mr. MARKEY, Mr. IRELAND, Mr. CHAPPIE, Mr. WYLIE, Mr. DWYER, Mr. MCCOLLUM, Mr. GREGG, Mrs. MARTIN of Illinois,

2

Mr. JAMES K. COYNE, Mr. BAFALIS, Mr. AUCOIN, Mr. BENNETT, Mrs. FENWICK, Mr. KOGOVSEK, and Mr. WALKER

SEPTEMBER 23, 1982

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 27, 1982]

A BILL

To amend title 23, United States Code, to encourage the estab-
lishment by States of effective alcohol traffic safety pro-
grams.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

TITLE I

ALCOHOL TRAFFIC SAFETY

5 *SECTION 101. Section 402 of title 23, United States*
6 *Code, is amended by adding at the end thereof the following*
7 *new subsection:*

8 *“(k)(1) Subject to the provisions of this subsection, in*
9 *addition to other grants authorized by this section, the Secre-*
10 *tary shall make grants to those States which adopt and im-*
11 *plement effective programs to reduce traffic safety problems*
12 *resulting from persons driving while under the influence of*
13 *alcohol. Such grants shall be made in accordance with crite-*
14 *ria which the Secretary shall establish and publish. Such*

1 grants may only be used by recipient States to implement
2 and enforce such programs.

3 “(2) No grant may be made to a State under this sub-
4 section in any fiscal year unless such State enters into such
5 agreements with the Secretary as the Secretary may require
6 to ensure that such State will maintain its aggregate expend-
7 itures from all other sources for alcohol traffic safety pro-
8 grams at or above the average level of such expenditures in its
9 two fiscal years preceding the date of enactment of this sub-
10 section.

11 “(3) No State may receive grants under this subsection
12 in more than three fiscal years. The Federal share payable
13 for any grant under this section shall not exceed—

14 “(A) in the first fiscal year the State receives a
15 grant under this subsection, 75 per centum of the cost
16 of implementing and enforcing in such fiscal year the
17 alcohol traffic safety program adopted by the State
18 pursuant to paragraph (1);

19 “(B) in the second fiscal year the State receives a
20 grant under this subsection, 50 per centum of the cost
21 of implementing and enforcing in such fiscal year such
22 program; and

23 “(C) in the third fiscal year the State receives a
24 grant under this subsection, 25 per centum of the cost

1 of implementing and enforcing in such fiscal year such
2 program;

3 except that the Secretary may not make grants under this
4 subsection to a State in any fiscal year the aggregate
5 amounts of which exceed 50 per centum of the amount appor-
6 tioned to such State for such fiscal year under subsection (c).
7 of this section.

8 “(4) The Secretary may only establish the criteria re-
9 quired by paragraph (1) in cooperation with the States and
10 political subdivisions thereof, appropriate Federal depart-
11 ments and agencies, and such other public and nonprofit or-
12 ganizations as the Secretary deems appropriate. In establish-
13 ing such criteria, the Secretary shall consider legislation
14 which enhances the implementation of comprehensive State
15 and community-based programs to effectively reduce traffic
16 safety problems resulting from persons driving while under
17 the influence of alcohol with provisions such as enhanced en-
18 forcement supported by public information; enactment of a
19 statute providing that a person with a blood alcohol concen-
20 tration of .10 per centum or greater when driving a vehicle
21 shall be deemed to be driving while intoxicated; a statewide
22 driver record system from which repeat offenders may be
23 identified and which is easily accessible to the courts and the
24 public; administrative suspension or revocation by the State
25 licensing agency of the driver's license of each offender; em-

1 powering the courts to make recommendations concerning
 2 suspension or revocation of drivers' licenses of offenders; pro-
 3 viding the courts with presentence screening authority and
 4 with the following sanction options for all persons convicted
 5 of driving while intoxicated: community service, fines, im-
 6 prisonment, and attendance in either an alcohol safety educa-
 7 tion or treatment program; and providing for locally coordi-
 8 nated alcohol traffic safety programs in each major political
 9 subdivision of the State which are administered by local offi-
 10 cials and are financially self-sufficient.

11 "(5) Funds for grants under this subsection shall be in
 12 addition to other funds authorized by this section. There is
 13 hereby authorized to be appropriated to carry out this subsec-
 14 tion, out of the Highway Trust Fund, \$25,000,000 for fiscal
 15 year ending September 30, 1983, and \$50,000,000 per fiscal
 16 year for each of the fiscal years ending September 30, 1984,
 17 and September 30, 1985. No part of the sums authorized by
 18 this subsection shall be apportioned as provided in subsection
 19 (c)."

20 REGULATIONS

21 SEC. 102. The Secretary of Transportation shall issue
 22 and publish in the Federal Register proposed regulations to
 23 implement subsection (k) of section 402 of title 23, United
 24 States Code, as added by section 101 of this Act, not later
 25 than September 1, 1982. The Secretary shall allow public

1 comment and hold public hearings on the proposed regula-
 2 tions to encourage maximum citizen participation. The final
 3 regulations shall be issued, published in the Federal Regis-
 4 ter, and transmitted to Congress before February 1, 1983.
 5 Such regulations shall become effective April 1, 1983, unless
 6 before such date either House of Congress by resolution dis-
 7 approves such regulations. If such regulations are disap-
 8 proved by either House of Congress, the Secretary shall not
 9 obligate any amount authorized to carry out this section for
 10 the fiscal year ending September 30, 1983, or any subse-
 11 quent fiscal year, unless specifically authorized to do so by a
 12 statute enacted after the date of enactment of this Act.

13 TITLE II

14 SHORT TITLE

15 SEC. 201. This title may be cited as the "National
 16 Driver Register Act of 1982".

17 DEFINITIONS

18 SEC. 202. For purposes of this title—

19 (1) the term "Advisory Committee" means the
 20 National Driver Register Advisory Committee estab-
 21 lished in section 209(a);

22 (2) the term "alcohol" has the meaning given
 23 such term by the Secretary of Transportation under
 24 regulations prescribed by the Secretary;

1 (3) the term "chief driver licensing official"
 2 means the official in each State who is authorized to
 3 (A) maintain any record regarding any motor vehicle
 4 operator's license issued by such State; and (B) grant,
 5 deny, revoke, or cancel any motor vehicle operator's li-
 6 cense issued by such State;

7 (4) the term "controlled substance" has the mean-
 8 ing given such term in section 102(6) of the Compre-
 9 hensive Drug Abuse Prevention and Control Act of
 10 1970 (21 U.S.C. 802(6));

11 (5) the term "highway" means any road or street;

12 (6) the term "motor vehicle" means any vehicle,
 13 machine, tractor, trailer, or semitrailer propelled or
 14 drawn by mechanical power and used on a highway,
 15 except that such term does not include any vehicle, ma-
 16 chine, tractor, trailer, or semitrailer operated exclusive-
 17 ly on a rail or rails;

18 (7) the term "motor vehicle operator's license"
 19 means any license issued by a State that authorizes an
 20 individual to operate a motor vehicle on a highway;

21 (8) the term "participating State" means any
 22 State that has notified the Secretary of its participa-
 23 tion in the Register system, pursuant to section 205;

24 (9) the term "Register" means the National
 25 Driver Register established under section 204(a);

1 (10) the term "Secretary" means the Secretary of
 2 Transportation;

3 (11) the term "State" means each of the several
 4 States, the District of Columbia, the Commonwealth of
 5 Puerto Rico, the Virgin Islands, Guam, American
 6 Samoa, the Northern Mariana Islands, the Trust Ter-
 7 ritory of the Pacific Islands, and any other territory or
 8 possession of the United States; and

9 (12) the term "State of record" means any State
 10 that has transmitted to the Secretary, pursuant to sec-
 11 tion 206, any report regarding any individual who is
 12 the subject of a request for information made under
 13 section 207.

14 REPEAL OF EXISTING STATUTE

15 SEC. 203. The Act entitled "An Act to provide for a
 16 register in the Department of Commerce in which shall be
 17 listed the names of certain persons who have had their motor
 18 vehicle operator's licenses revoked" approved July 14, 1960
 19 (Public Law 86-660; 74 Stat. 526), hereby is repealed, ef-
 20 fective at the expiration of the four-year period following the
 21 date of the enactment of this Act.

22 ESTABLISHMENT OF REGISTER

23 SEC. 204. (a) The Secretary shall establish and main-
 24 tain a register to be known as the "National Driver Regis-
 25 ter", to assist chief driver licensing officials of participating

1 States in exchanging information regarding the motor vehicle
2 driving records of individuals. The Register shall contain an
3 index of the information that is reported to the Secretary
4 under section 206, and shall be designed to enable the Secre-
5 tary to—

6 (1) electronically receive any request for informa-
7 tion made by the chief driver licensing official of any
8 participating State under section 207;

9 (2) electronically refer such request to the chief
10 driver licensing official of any State of record; and

11 (3) electronically relay to such chief driver licens-
12 ing official of a participating State any information
13 provided by any chief driver licensing official of a
14 State of record in response to such request.

15 (b) The Secretary shall not be responsible for the accu-
16 racy of any information relayed to the chief driver licensing
17 official of any participating State under subsection (a)(3),
18 except that the Secretary shall maintain the Register in a
19 manner that ensures against any inadvertent alteration of
20 such information during such relay.

21 (c)(1) The Secretary shall determine whether any infor-
22 mation contained in any record maintained under the Act
23 described in section 203 shall be maintained in the Register,
24 except that no such information shall be maintained in the
25 Register after the expiration of the six-year period following

1 the date of the enactment of this Act if maintaining such
2 information is inconsistent with the provisions of this title.
3 Any other record maintained under the Act described in sec-
4 tion 203 shall be disposed of in accordance with chapter 33 of
5 title 44, United States Code.

6 (2) The Secretary shall not maintain any report or in-
7 formation in the Register for more than a seven-year period
8 after the date such report or information is entered into the
9 Register. Such report or information shall be disposed of in
10 accordance with chapter 33 of title 44, United States Code.

11 (d) The Secretary shall assign to the administration of
12 this title such personnel as may be necessary to ensure the
13 effective functioning of the Register system.

14 (e) The Secretary shall prescribe such regulations as
15 may be necessary to carry out the provisions of this title.

16 STATE PARTICIPATION

17 SEC. 205. (a) Any State may become a participating
18 State under this title by notifying the Secretary of its inten-
19 tion to be bound by the provisions of section 206.

20 (b) Any participating State may terminate its status as
21 a participating State under this title by notifying the Secre-
22 tary of its withdrawal from participation in the Register
23 system.

1 (c) Any notification made by a State under subsection
2 (a) or (b) shall be made in such form, and according to such
3 procedures, as the Secretary shall establish by regulation.

4 *REPORTS BY CHIEF DRIVER LICENSING OFFICIALS*

5 *SEC. 206. (a) The chief driver licensing official in each*
6 *participating State shall, before the end of the applicable*
7 *period established in subsection (c), transmit to the Secretary*
8 *a report containing the information required in subsection (b)*
9 *regarding any individual who—*

10 (1) *is denied a motor vehicle operator's license by*
11 *such State, or is granted such a license by such State*
12 *following such denial;*

13 (2) *has his motor vehicle operator's license can-*
14 *celed, revoked, or suspended by such State, or has such*
15 *license reinstated following such cancellation, revoca-*
16 *tion, or suspension; or*

17 (3) *is convicted in such State of, or, following*
18 *such conviction, is acquitted or pardoned of—*

19 (A) *a traffic offense comprising the operation*
20 *of a motor vehicle while under the influence of, or*
21 *impaired by, alcohol or a controlled substance;*

22 (B) *a traffic offense associated with a fatal*
23 *traffic accident, reckless driving, or racing on the*
24 *highways; or*

1 (C) *any other traffic offense, if the Secretary*
2 *determines, in accordance with regulations pre-*
3 *scribed by the Secretary, that information regard-*
4 *ing any individual who is convicted of such traf-*
5 *fic offense should be listed in the Register in order*
6 *to assist any person authorized by section 207 to*
7 *receive information by means of the Register*
8 *system.*

9 (b) *Any report regarding an individual that is transmit-*
10 *ted by a chief driver licensing official pursuant to subsection*
11 *(a) shall contain—*

12 (1) *the legal name, date of birth (including day,*
13 *month, and year), and sex of such individual;*

14 (2) *the name of the State transmitting such*
15 *report; and*

16 (3) *the social security account number and the*
17 *motor vehicle operator's license number of such indi-*
18 *vidual;*

19 *except that any report, concerning an occurrence specified in*
20 *paragraph (1), (2), or (3) of subsection (a) that occurs during*
21 *the two-year period preceding the date on which such State*
22 *becomes a participating State, shall be sufficient if it con-*
23 *tains all such information that is available to such chief*
24 *driver licensing official on such date.*

1 (c) Any report required to be transmitted by a chief
2 driver licensing official of a State under subsection (a) shall
3 be transmitted to the Secretary—

4 (1) not later than thirty days after any occurrence
5 specified in paragraph (1), (2), or (3) of subsection (a)
6 that is the subject of such report, if the date of such
7 occurrence is after the date on which such State be-
8 comes a participating State; or

9 (2) not later than the expiration of the two-year
10 period following the date on which such State becomes
11 a participating State, if such report concerns an occur-
12 rence specified in paragraph (1), (2), or (3) of subsec-
13 tion (a) that occurs during the two-year period preced-
14 ing such date.

15 (d) Nothing in this section shall be construed to require
16 any State to report any information concerning any occur-
17 rence that occurs before the two-year period preceding the
18 date on which such State becomes a participating State.

19 ACCESSIBILITY OF REGISTER INFORMATION

20 SEC. 207. (a)(1) For purposes of fulfilling his duties
21 with respect to driver licensing, driver improvement, or high-
22 way safety, any chief driver licensing official of a participat-
23 ing State may request the Secretary to electronically refer
24 any request for information regarding the motor vehicle driv-

1 ing record of any individual to the chief driver licensing offi-
2 cial of any State of record.

3 (2) The Secretary shall electronically relay to any chief
4 driver licensing official of a participating State who requests
5 information under paragraph (1) any information received
6 from the chief driver licensing official of any State of record
7 regarding an individual identified pursuant to paragraph
8 (1), except that the Secretary may refuse to relay any infor-
9 mation to such official if he is the chief driver licensing offi-
10 cial of a participating State that is not in compliance with
11 the provisions of section 206.

12 (b)(1) The Administrator of the Federal Aviation Ad-
13 ministration, for purposes of requesting information regard-
14 ing any individual who has applied for, or received, a license
15 to pilot an aircraft, may request the chief driver licensing
16 official of the State in which the primary office of the Admin-
17 istrator is located, if such State is a participating State, to
18 obtain information under subsection (a) regarding such indi-
19 vidual. The Administrator may receive any such information
20 obtained by such chief driver licensing official regarding such
21 individual.

22 (2) The Chairman of the National Transportation
23 Safety Board, for purposes of requesting information regard-
24 ing any individual who is the subject of any accident investi-
25 gation conducted by the Board, may request the chief driver

1 licensing official of the State in which the primary office of
 2 the Chairman is located, if such State is a participating
 3 State, to obtain information under subsection (a) regarding
 4 such individual. The Chairman may receive any such infor-
 5 mation obtained by such chief driver licensing official regard-
 6 ing such individual.

7 (3) Any employer of any individual who is employed as
 8 a driver of a motor vehicle, or any prospective employer of
 9 any individual who seeks employment as a driver of a motor
 10 vehicle, may request the chief driver licensing official of the
 11 State in which the individual involved is employed, or seeks
 12 employment, if such State is a participating State, to obtain
 13 information under subsection (a) regarding such individual.
 14 Such employer or prospective employer may receive any such
 15 information obtained by such chief driver licensing official
 16 regarding such individual.

17 (4) Any individual, for purposes of requesting informa-
 18 tion regarding such individual, may request the chief driver
 19 licensing official of any participating State to obtain infor-
 20 mation under subsection (a) regarding such individual. Such
 21 individual may receive any such information obtained by
 22 such chief driver licensing official regarding such individual.

23 (5) Any request made under this subsection shall be
 24 made in such form, and according to such procedures, as the
 25 Secretary shall establish by regulation.

1 (c) The Secretary shall permit the use of any informa-
 2 tion maintained by the Secretary relating to the operation of
 3 the Register and any information contained in the Register,
 4 other than information specified in paragraph (1) or (3) of
 5 section 206(b), by any person who requests such information
 6 for purposes of conducting statistical research relating to the
 7 operation or utilization of the Register. Such person shall
 8 pay all direct costs of the processing of such request. Any
 9 such request shall be made in such form, and according to
 10 such procedures, as the Secretary shall establish by regula-
 11 tion.

12 (d) Any request for, or receipt of, information by means
 13 of the Register system shall be subject to the provisions of
 14 sections 552 and 552a of title 5, United States Code, and
 15 any other applicable Federal law, except that—

16 (1) the Secretary shall not relay, or otherwise
 17 transmit, information specified in paragraph (1) or (3)
 18 of section 206(b) to any person not authorized by this
 19 section to receive such information;

20 (2) any request for, or receipt of, information by
 21 any chief driver licensing official, or by any person
 22 authorized by subsection (b) to request and receive in-
 23 formation, shall be considered to be a routine use for
 24 purposes of section 552a(b) of title 5, United States
 25 Code; and

1 (3) any receipt of information by any person au-
2 thorized by this section to receive information shall be
3 considered to be a disclosure for purposes of subsection
4 (c) of section 552a of title 5, United States Code,
5 except that the Secretary shall not be required to retain
6 the accounting made under paragraph (1) of such sub-
7 section for more than a seven-year period after the date
8 of such disclosure.

CRIMINAL PENALTIES

10 SEC. 208. (a) Any person, other than an individual
11 described in section 207(b)(4), who receives under section
12 207 information specified in paragraph (1) or (3) of section
13 206(b), the disclosure of which is not authorized by section
14 207, and who, knowing that disclosure of such information is
15 not authorized, willfully discloses such information, shall be
16 fined not more than \$10,000 or imprisoned not more than
17 one year, or both.

18 (b) Any person who knowingly and willfully requests or
19 obtains under false pretenses information specified in para-
20 graph (1) or (3) of section 206(b) from any person who re-
21 ceives such information under section 207 shall be fined not
22 more than \$10,000 or imprisoned not more than one year, or
23 both.

1 (3) any receipt of information by any person au-
 2 thorized by this section to receive information shall be
 3 considered to be a disclosure for purposes of subsection
 4 (c) of section 552a of title 5, United States Code,
 5 except that the Secretary shall not be required to retain
 6 the accounting made under paragraph (1) of such sub-
 7 section for more than a seven-year period after the date
 8 of such disclosure.

9 CRIMINAL PENALTIES

10 SEC. 208. (a) Any person, other than an individual
 11 described in section 207(b)(4), who receives under section
 12 207 information specified in paragraph (1) or (3) of section
 13 206(b), the disclosure of which is not authorized by section
 14 207, and who, knowing that disclosure of such information is
 15 not authorized, willfully discloses such information, shall be
 16 fined not more than \$10,000 or imprisoned not more than
 17 one year, or both.

18 (b) Any person who knowingly and willfully requests or
 19 obtains under false pretenses information specified in para-
 20 graph (1) or (3) of section 206(b) from any person who re-
 21 ceives such information under section 207 shall be fined not
 22 more than \$10,000 or imprisoned not more than one year, or
 23 both.

1 ADVISORY COMMITTEE

2 SEC. 209. (a) There hereby is established a National
 3 Driver Register Advisory Committee, which shall advise the
 4 Secretary concerning the efficiency of the maintenance and
 5 operation of the Register, and the effectiveness of the Register
 6 in assisting States in exchanging information regarding
 7 motor vehicle driving records.

8 (b) The Advisory Committee shall consist of fifteen
 9 members, appointed by the Secretary, as follows:

10 (1) Three members from among individuals who
 11 are specially qualified to serve on the Advisory Com-
 12 mittee by virtue of their education, training, or experi-
 13 ence, and who are not employees of the Federal Gov-
 14 ernment or of any State; and

15 (2) Twelve members, geographically representative
 16 of the participating States, from among individuals
 17 who are chief driver licensing officials of participating
 18 States.

19 (c)(1) Except as provided in paragraph (2) and para-
 20 graph (3), each member of the Advisory Committee shall be
 21 appointed for a term of three years.

22 (2) Of the members first appointed—

23 (A) one of the members described in subsection

24 (b)(1) and four of the members described in subsection

25 (b)(2) shall be appointed for a term of one year;

1 (B) one of the members described in subsection
2 (b)(1) and four of the members described in subsection
3 (b)(2) shall be appointed for a term of two years; and

4 (C) one of the members described in subsection
5 (b)(1) and four of the members described in subsection
6 (b)(2) shall be appointed for a term of three years;
7 as designated by the Secretary at the time of appointment.

8 (3) Any vacancy in the Advisory Committee shall be
9 filled in the same manner as original appointments. Any
10 member appointed to fill any vacancy shall serve for the re-
11 mainder of the term for which his predecessor was appointed.
12 Any member may serve after the expiration of his term until
13 his successor has taken office.

14 (d) The members of the Advisory Committee shall serve
15 without compensation, but the Secretary is authorized to re-
16 imburse such members for all reasonable travel expenses in-
17 curred by them in attending the meetings of the Advisory
18 Committee.

19 (e)(1) The Advisory Committee shall meet not less than
20 once each year.

21 (2) The Advisory Committee shall elect a Chairman
22 and a Vice Chairman from among the members of the Advi-
23 sory Committee.

24 (3) Eight members of the Advisory Committee shall
25 constitute a quorum.

1 (B) one of the members described in subsection

2 (b)(1) and four of the members described in subsection

3 (b)(2) shall be appointed for a term of two years; and

4 (C) one of the members described in subsection

5 (b)(1) and four of the members described in subsection

6 (b)(2) shall be appointed for a term of three years;

7 as designated by the Secretary at the time of appointment.

8 (3) Any vacancy in the Advisory Committee shall be

9 filled in the same manner as original appointments. Any

10 member appointed to fill any vacancy shall serve for the re-

11 mainder of the term for which his predecessor was appointed.

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13 his successor has taken office.

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15 without compensation, but the Secretary is authorized to re-

16 imburse such members for all reasonable travel expenses in-

17 curred by them in attending the meetings of the Advisory

18 Committee.

19 (e)(1) The Advisory Committee shall meet not less than

20 once each year.

21 (2) The Advisory Committee shall elect a Chairman

22 and a Vice Chairman from among the members of the Advi-

23 sory Committee.

24 (3) Eight members of the Advisory Committee shall

25 constitute a quorum.

1 (4) The Advisory Committee shall meet at the call of the

2 Chairman or a majority of the members of the Advisory

3 Committee.

4 (f) The Advisory Committee may receive from the Sec-

5 retary such personnel, penalty mail privileges, and similar

6 services, as the Secretary considers necessary to assist it in

7 performing its duties and functions under this section.

8 (g) Not less than once each year, the Advisory Commit-

9 tee shall prepare and submit to the Secretary a report con-

10 cerning the efficiency of the maintenance and operation of the

11 Register, and the effectiveness of the Register in assisting

12 States in exchanging information regarding motor vehicle

13 driving records. Such report shall include any recommenda-

14 tions of the Advisory Committee for changes in the Register

15 system.

16 (h) The Advisory Committee shall be exempt from the

17 requirements of section 10(e), section 10(f), and section 14 of

18 the Federal Advisory Committee Act (5 U.S.C. Appendix).

19 REPORT BY SECRETARY

20 SEC. 210. Not later than the expiration of the nine-year

21 period following the date of the enactment of this Act, the

22 Secretary shall prepare and submit to the Congress a com-

23 prehensive report setting forth the extent and level of partici-

24 pation in the Register system, and the effectiveness of such

25 system in the identification of unsafe drivers. Such report

1 *shall include any recommendations of the Secretary concern-*
2 *ing the desirability of extending the authorization of appro-*
3 *priations for this title beyond the period of authorization pro-*
4 *vided in section 211.*

5 *AUTHORIZATION OF APPROPRIATIONS*

6 *SEC. 211. There are authorized to be appropriated such*
7 *sums as may be necessary to carry out the provisions of this*
8 *title for fiscal year 1983, and for each of the succeeding nine*
9 *fiscal years.*

Amend the title so as to read: "A bill to amend title 23, United States Code, to encourage the establishment by States of effective alcohol traffic safety programs and to require the Secretary of Transportation to administer a national driver register to assist State driver licensing officials in electronically exchanging information regarding the motor vehicle driving records of certain individuals."

END