



**SENATE TASK FORCE
ON ALCOHOL RELATED MOTOR
VEHICLE ACCIDENTS AND FATALITIES**

December 11, 1998

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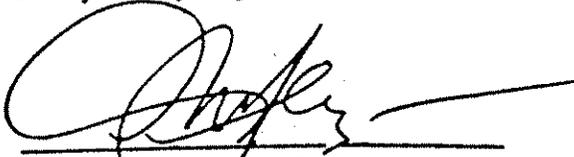
New Jersey State Legislature
SENATE TASK FORCE ON ALCOHOL RELATED
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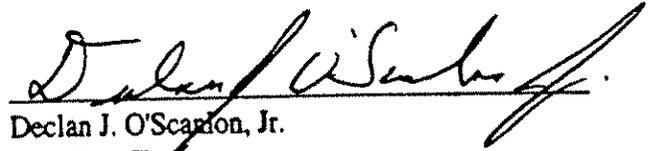
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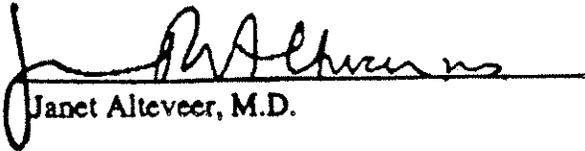
The Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities in New Jersey hereby respectfully submits its final report in compliance with its charge.



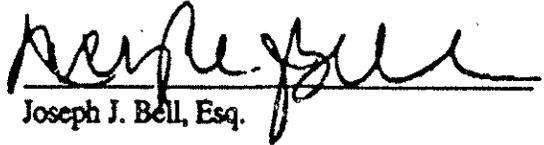
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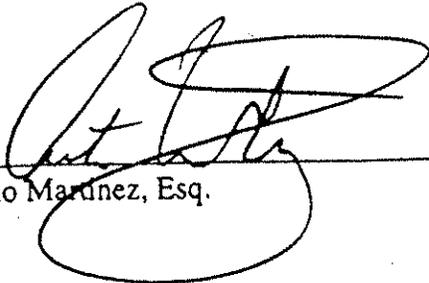
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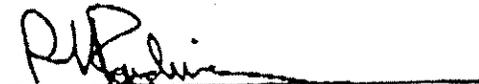
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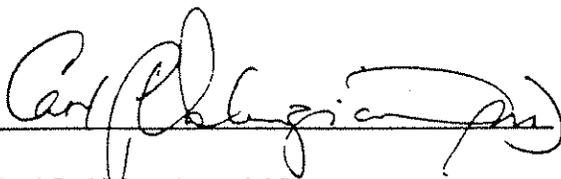
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**SENATE TASK FORCE ON ALCOHOL RELATED MOTOR
VEHICLE ACCIDENTS AND FATALITIES**

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I. BACKGROUND AND CREATION OF THE TASK FORCE

On March 24, 1997, the Senate Law and Public Safety Committee held a hearing on Senate Bill No. 1411, which proposed to lower the blood alcohol concentration at which a driver is considered to be legally intoxicated from .10 to .08 percent. The legislation was sponsored by Senator Louis Kosco, committee chairman, and Senator Gordon MacInnes.¹ More than 60 persons attending the hearing asked to testify on this legislation. Because the committee members heard conflicting testimony and were left with unanswered questions, they agreed unanimously to defer action on the legislation and ask Senate President Donald DiFrancesco and Minority Leader Senator John Lynch to establish a task force to study the issue.

In June, 1997, the Senate leaders announced the creation of and appointments to the Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities. The central focus and objective of the Task Force was to determine the most effective manner of keeping persons who are intoxicated from operating a motor vehicle.

While the Task Force was charged with conducting research and making findings in specific areas, its primary purpose was to examine the problem of drunk driving from a broad perspective and make recommendations to the Legislature concerning the prevention of drunk driving and the resulting accidents and fatalities (see Appendix A).

The Task Force was instructed to look at the experiences of other states in dealing with the problem of drunk driving. The Task Force was further instructed to draw upon all available source materials and resources to assist it in making determinations and recommendations regarding how to most sensibly and effectively keep intoxicated persons from getting behind the wheel of a motor

¹The bill is currently pending as Senate Bill No. 699 of 1998 sponsored by Senator Robert Singer and Senator John Adler. An identical bill is pending as Assembly Bill No. 762 sponsored by Assemblywoman Loretta Weinberg and Assemblyman Charles Zisa.

vehicle.

The Task Force was required to hold three public hearings in different areas of the State to receive expert testimony as well as testimony from individual citizens.

The Task Force was encouraged to examine the following specific issues, most of which were raised at the Senate Law and Public Safety Committee hearing noted above:

- Are current State laws dealing with those who drive while intoxicated adequate, or can these laws be strengthened and improved?
- Have enactments by the Legislature in recent years increasing the penalties for DWI had any effect in reducing DWI related accidents?
- To what extent do tougher State laws regarding DWI in fact serve as a deterrent?
- What is the blood alcohol content (BAC) of drivers involved in DWI related accidents, particularly those involving fatalities? The task force was instructed to obtain the most objective statistics available regarding the correlation of BAC to crashes, evaluate the data, and state the conclusions reached and the basis for those conclusions.

The Task Force was asked to develop, based upon the best scientific testing and evidence available, a chart reflecting as accurately and as scientifically possible the number of drinks of specified alcohol content in a certain time period that would have to be consumed by persons of varying weights over a given time period to reach specific blood alcohol content levels. Testimony before the Senate Law and Public Safety Committee on this matter was contradictory.

The Task Force was asked to review and evaluate the relevant studies available and to make an objective finding as to whether reducing the statutory BAC level for drunk driving from .10 to .08 percent would reduce the number of DWI accidents and fatalities in New Jersey, and if so, to what extent.

The Task Force was instructed to obtain statistical information regarding the blood alcohol concentrations of drivers arrested for DWI or who were involved in accidents and found to have consumed alcohol, including the number of cases where a driver arrested for DWI or involved in an accident had a blood alcohol concentration of .08 percent or less.

This report presents the Task Force's findings and recommendations.

II. PROCEEDINGS OF THE TASK FORCE

A. Public Hearings

In accordance with its charge, the Task Force held three public hearings. The first hearing in Trenton at the State House Annex on August 19, 1997, focused on whether the blood alcohol concentration at which a person is prohibited from operating a motor vehicle should be changed. Witnesses included representatives of various organizations and associations, employees of State and federal agencies, private citizens and United States Senator Frank Lautenberg.

The second public hearing was held on September 23, 1997 at the University of Medicine and Dentistry of New Jersey in Newark. The topics for that hearing were (1) whether the current penalties for drunk driving are adequate, including whether criminal penalties should be imposed and 2) the use and effectiveness of the breathalyzer. Testimony was presented by various organizations and private citizens, and the New Jersey State Police conducted a demonstration of the breathalyzer.

Camden County College in Blackwood was the site of the final public hearing, which was held on October 22, 1997, and concerned drunk driving education, prevention and rehabilitation.

A list of individuals and organizations presenting testimony at these public hearings appears in Appendix B.

B. Working Sessions

The Task Force held working session on the following dates:

July, 8, 1997; July 22, 1997; July 31, 1997; August 19, 1997; September 23, 1997; October 21, 1997; November 17, 1997; December 9, 1997; January 6, 1998; January 27, 1998; February 17, 1998; March 17, 1998; March 24, 1998; April 16, 1998; April 23, 1998; July 17, 1998; July 28, 1998; and October 13, 1998.

C. Subcommittees

The chairman established two subcommittees to study specific issues and make recommendations to the full Task Force. He appointed Declan O'Scanlon, Antonio Martinez and Joseph Bell to work with him on the Subcommittee on Criminal Penalties. Janet Alteveer, Robert Pandina, Carl Valenziano and Declan O'Scanlon were appointed to the Subcommittee on Rehabilitation and Programs. These subcommittees met on a regular and continuing basis.

III. EXECUTIVE SUMMARY

The Task Force was charged with identifying the most effective manner of keeping persons who are intoxicated from driving and with developing new ideas and creative approaches for dealing with this serious problem. Listed in the charge are focused questions about current laws, penalties and the issue of whether New Jersey should reduce the statutory blood alcohol concentration (BAC) threshold at which it becomes illegal to operate a motor vehicle from .10 to .08 percent.

TASK FORCE RECOMMENDATIONS

Blood Alcohol Concentrations--Legal Limit: After careful consideration of the testimony, scientific studies and experiences of other states and countries, and vigorous debate, the Task Force concluded that changes to the BAC level without substantial additions and changes in public education, enforcement and treatment will not achieve the real goal of decreasing death and disability and lessening the huge societal costs from DWI.

- Significant impairment can be clinically demonstrated at .05 BAC.
- There is a dramatic increase in crash and fatality rates at levels of .15 BAC and above.
- The impact of laws that reduce the *per se* BAC level from .10 to .08, in isolation, is inconclusive. Some studies that claim to show conclusively that reducing the legal limit to .08 BAC is effective have confounding factors, such as the implementation of administrative license revocation and major public education and awareness campaigns.
- The implementation of major public education and awareness campaigns and administrative license revocation have also been shown to have a significant effect in reducing the incidence of DWI offenses. Studies have shown that effect can be greater than changing the legal BAC limit.
- Nationally, the drunk driving fatality rate has declined over the previous 15 years because of prevention and enforcement programs and treatment programs for the DWI offender, whether or not in conjunction with a change to .08 BAC.

Public Education, Enforcement and Treatment: The State has available and must allocate more of the revenue it derives from alcoholic beverage licenses and fees and drunk driving fines and penalties for public education, enforcement and treatment to more effectively combat the drunk driving problem.

- Education programs have proven to be effective in reducing the incidence of drunk driving, particularly among young people and first offenders.
- Offenders who undergo proper treatment programs are less likely to recidivate than those who receive no treatment, particularly if treatment is coupled with other deterrent measures such as license suspension and education.

- There is little or no data on the effectiveness of existing New Jersey programs for the drunk driving offender.
- Very little of the considerable State revenue derived from alcohol licensing fees and drunk driving fines and penalties is used for drunk driving education, enforcement and treatment.

Criminal Penalties: Third and subsequent drunk driving offenses should be designated crimes of the fourth degree.

- Under current law, a third or subsequent drunk offender may be punished by only six months imprisonment, while the maximum imprisonment for a crime of the fourth degree is 18 months. Conviction of a fourth degree crime would provide judicial and administrative agencies with the tools (e.g. the threat of imprisonment) to motivate repeat offenders to seek treatment for the underlying alcohol problem that causes them to reoffend.
- Repeat offenders tend to have higher rates of alcoholism and alcohol related problems, more frequent non-traffic criminal offenses and more severe mental health problems. More elaborate evaluation of repeat offenders must be undertaken to evaluate the potential for these problems.
- If all DWI cases were designated as crimes, costs would skyrocket because this would shift all DWI cases from the municipal to the superior courts. More cases would go to trial, the average time for disposition would increase, and the deterrent value of swift and certain punishment would decrease.
- If third and subsequent drunk driving offenses are criminalized, a driver's license should be available after five years to an offender who successfully completes treatment and presents evidence of continued sobriety for the previous five years.

Permanent Study Commission: A permanent commission should be created to study the efficacy of legislative changes. This could be similar to the State Commission on Drunk Driving which studied the problem of drunk driving in this State from the mid-1980's through the early 1990's.

Breathalyzer: The Task Force supports the Attorney General's decision to switch to a modern breath testing instrument.

Miranda Warnings: N.J.S.A.39:4-50.2 should be amended to clarify that the *Miranda* warnings do not apply for purposes of taking a breath test.

Use of Videotaping by Police: As part of an arrest for drunk driving, a videotape of the defendant should be made at the police station, barracks, jail or other suitable facility.

Conditional Licenses: The Task Force found no basis to support conditional licenses for

persons whose licenses have been suspended for DWI. License actions such as suspension and revocations are effective because they provide swift and certain punishment. Mandatory license suspension is an effective tool in combating DWI recidivism when coupled with treatment.

Alcohol Chart: Because of the variables involved, it is beyond the ability of the Task Force to make a determination on a definitive chart of BAC's extrapolated from consumption of a specific amount of alcohol by persons of various weights under a given period of time.

Medical Insurance: Health care institutions, trauma centers in particular, should not be denied payment by insurance companies for care they are required to deliver to seriously injured victims, solely on the basis of alcohol being implicated as a causative factor.

- This care must be delivered by law, and trauma centers serve a disproportionate number of seriously injured victims involved in such crashes.
- The requirement of trauma centers to treat seriously injured crash victims, without a requirement of the insurance companies to reimburse, has had a negative effect on the system to manage the severely injured in New Jersey.
- Appropriate and necessary rehabilitation and follow-up care is almost impossible to arrange without this financial coverage.
- Individuals involved in such a situation must find a method of payment to get such care, even if they were not intoxicated or at fault.
- Nonpayment causes hospitals NOT to obtain BAC's.
- Police do not obtain BAC samples from victims taken to hospitals with any regularity.

IV. OVERVIEW OF THE DRUNK DRIVING PROBLEM

The social causes of drunk driving in America lie in a conjunction of institutions. American society combines a near-total commitment to private automobile transportation with positive evaluation of drinking in recreational situations....we live in a society that assures the widespread use of private automotive transportation for all daily functions including work, shopping, worship, medical care and recreation. On the other hand, we accept as appropriate the use of alcohol in variety of common activities, especially those defined as integral to leisure and recreation....drunk driving is a product of America's commitments to alcohol as a drug of recreation and hospitality and to the automobile as the near-exclusive means of transportation.

-H. Laurence Ross in Confronting Drunk Driving²

A conflict is inherent in these commitments, and from that conflict the drunk driving problem was born and continues to exist.

Drunk driving is a serious and pervasive problem in our society. Although great progress has been made in recent years in combating the problem, it still remains a major public health and safety issue. Each alcohol related fatality is estimated to cost society \$950,000. Approximately one million people are injured annually in alcohol related crashes, and the cost of each alcohol related injury averages about \$20,000. The total economic cost to society is estimated to be over \$45 billion each year.³

Alcohol related fatalities have declined dramatically in New Jersey and the rest of the nation since the early 1980's. In fact, the percentage of alcohol-related traffic fatalities has dropped to an historic low. According to the National Highway Traffic Safety Administration (NHTSA), in 1997 38.6 percent (16,189) of all traffic fatalities were alcohol related, down from 40.9 percent (17,204)

²H. Lawrence Ross, Confronting Drunk Driving: Social Policy for Saving Lives (New Haven: Yale University Press, 1991), pp.4,5 and 28.

³Setting Limits. Saving Lives: The Case for .08 BAC Laws (Washington, D.C.: National Highway Traffic Safety Administration, 1997), p.19.

in 1996 and substantially lower than the 57.3 percent (25,180) of all traffic fatalities in 1982.⁴ Of the 818 fatalities in New Jersey in 1996, NHTSA considered 34.2 percent alcohol related, the eighth lowest percentage among the 50 states. According to the State Division of Highway Traffic Safety, alcohol related fatalities constituted 51 percent of all New Jersey driving fatalities in 1981, while in 1997 they constituted 28 percent of all fatalities.

An appropriate view of the socio-political aspects of the drunk driving problem is offered by H. Laurence Ross in the following excerpt:⁵

Drinking reductions are...resisted politically not only by manufacturing and trade interests, but by large segments of the public. This opposition sets limits on what can be attempted through alcohol policy. The opposition may be weakened by a persuasive demonstration of the benefits achieved in reducing deaths and illness, but it will not disappear. Cruel as it may sound, there are other social values beyond saving lives, and we routinely make decisions that have the effect, perhaps unintended and unrecognized, of trading lives for these other values. The trade-off is quite evident in the area of traffic safety. For example, the only speed limit compatible with maximum safety is zero; and budgetary and other constraints severely limit responding to widespread opportunities to save lives by clearing roadsides of potential hazards like posts and trees and installing guardrails before bridge abutment and similar hazards.

The challenge to effect a reduction in the number of injuries and deaths resulting from drunk driving therefore lies in developing solutions that are feasible, economically sound, socially and politically acceptable, and can demonstrate a documentable change.

⁴Transportation Secretary Slater Announces Historic Decline in Alcohol-Related Traffic Deaths (Washington, D.C.: National Highway Traffic Safety Administration press release, August 24, 1998).

⁵Ross, Confronting Drunk Driving, pp.78-79.

V. CURRENT LAW

New Jersey law (N.J.S.A.39:4-50) prohibits a person under the influence of intoxicating liquor or drugs, regardless of what the person's actual BAC may be, or with a blood alcohol concentration of .10% or higher, from operating a motor vehicle.

A person may be convicted of driving under the influence, even if the BAC is below .10, based on evidence other than a chemical or blood test such as a videotape of the offender or testimony of a police officer regarding his observations of the offender's behavior. A person is considered legally intoxicated, no matter what behavior is exhibited, if a chemical (breathalyzer) or other test (blood sample), demonstrates a BAC level of .10 or higher.

For the first offense, the offender must pay a fine of \$250 to \$400 and report to an Intoxicated Driver Resource Center for a program of 12 to 48 hours in duration. The court must suspend the offender's driver's license for six months to one year.

For a second offense, the offender must pay a fine of \$500 to \$1,000 and perform community service for 30 days. The court must suspend the offender's driver's license for two years. In addition, the offender must serve a term of imprisonment of at least 48 hours, which may be served at an Intoxicated Driver Resource Center. The maximum period of imprisonment that may be imposed is 90 days.

For a third or subsequent offense, the offender must pay a fine of \$1,000 and serve a 180 day term of imprisonment, which may be reduced to 90 days when combined with the performance of community service. The court must suspend the offender's driver's license for 10 years.

The entire law and a summary of drunk driving related statutes is contained in Appendix C.

VI. FINDINGS AND RECOMMENDATIONS OF THE TASK FORCE

A. Blood Alcohol Concentrations--Legal Limit

The Task Force considered many facts in investigating the question of whether New Jersey should reduce the statutory blood alcohol concentration (BAC) threshold above which it becomes illegal to operate a motor vehicle from .10 to .08 percent.

After careful consideration of the testimony, scientific studies and experiences of other states and countries, and vigorous debate, the Task Force concluded that changes to the BAC level without substantial additions and changes in public education, enforcement and treatment will not achieve the real goal of decreasing death and disability and lessening the huge societal costs from DWI.

Fifteen states have adopted .08 percent BAC as the *per se* legal blood alcohol limit. Those states are: Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Utah, Vermont and Virginia. Vermont classifies a BAC of .08 as a traffic offense and .10 as a criminal offense. In 1998, legislation establishing .08 as the legal limit was also pending in Alaska, Connecticut, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Nebraska, Rhode Island, South Carolina, Tennessee, Washington and West Virginia. Federal legislation (P.L.105-178) that provides \$500 million in incentives to states that voluntarily adopt a .08 BAC limit was signed by President Clinton on June 9, 1998.

Great Britain, Canada, Switzerland, Australia and Austria use the .08 standard, while the measure of intoxication in Finland, the Netherlands and Norway is .05. Sweden has set a BAC limit of .02.

The Task Force found that much of the source material and testimony presented was contradictory and subject to a wide range of interpretations, as it was when the Senate Law and Public Safety Committee held a hearing on S-1411.

Blood Alcohol Concentrations Studies

There are conflicting studies regarding the effect of laws lowering the BAC threshold. Some studies have concluded that lowering the measure of intoxication to .08 BAC reduces alcohol related injuries and fatalities. Other studies by equally credible authorities present conflicting findings.

California enacted .08 BAC legislation on January 1, 1990; six months later, the state also enacted an administrative license revocation law. A study of the effect of California's .08 law was conducted by the National Highway Traffic Safety Administration (NHTSA) after both laws were implemented. The study found a 12 percent reduction in alcohol related motor vehicle fatalities. The study also found that publicity concerning the two laws was intermingled, so the reduction in fatalities could have been the result of implementation of either or both of the laws.⁶

But a 1995 study conducted by the California Department of Motor Vehicles found that the state's .08 BAC law could not be linked to any significant decreases in the direct measures of alcohol involved crashes.⁷ An impact was observed, however, on some of the indirect measures, such as fatal and severe injury nighttime and bar closing hour accidents, as well as fatal and injury bar closing hour and single vehicle nighttime male accidents. The authors wrote that the study "demonstrated qualified evidence of a significant general deterrent effect associated with the implementation of an administrative *per se* (APS) license suspension law in California and somewhat less support of such an effect associated with California's 0.08 BAC *per se* limit law."⁸

⁶The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California (Washington, D.C.: National Highway Traffic Safety Administration, 1991), pp. xv-xvi.

⁷Patrice N. Rogers, The General Deterrent Impact of California's .08% Blood Alcohol Concentration Limit and Administrative Per Se License Suspension Laws (Sacramento, California: Department of Motor Vehicles, September, 1995) p.87.

⁸Ibid.

A multi-state study on the effect of .08 BAC laws was conducted by Ralph Hingson, a professor at Boston University, who testified before the Senate Law and Public Safety Committee and the task force.⁹ Hingson's analysis compared the first five states that adopted .08 with five nearby states that retained .10 as the legal blood alcohol limit. The study found that as a group the states that lowered the limit to .08 experienced a 16 percent reduction in fatal crashes where the drivers' BAC was .08 or higher. The analysis also showed an 18 percent reduction in fatal crashes where the BAC was at .15 percent or higher. The study concluded that if all 50 states adopted .08 percent BAC laws, 500 to 600 fewer fatal crashes throughout the nation would occur each year. The authors noted, however, that all five of the .08 states also had administrative license revocation laws during the study, three of which were implemented within one year of the state's adoption of the .08 law. They stated that this restricted their ability to separate the effects of .08 laws from administrative license revocation laws.

A study performed by Robert Scopatz for Data Nexus, Inc. for the American Beverage Institute disagreed with the Hingson study. That study replicated the Hingson study and found that the choices made in the selection of comparison states and in the presentation of data in that study affected its results. Scopatz concluded that there was no statistical support for concluding that .08 BAC laws had any effect on driver behavior as expressed in the probability of a drunk driver becoming a fatality in a motor vehicle crash.¹⁰

A NHTSA study of the same first five states with .08 BAC laws found significant reductions

⁹Ralph Hingson, Timothy Heeren and Michael Winter, "Lowering State Legal Blood Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes," American Journal of Public Health, 86(9) (1996):1297-1299.

¹⁰Robert A. Scopatz, Analysis of 1975-1993 Fatal Crash Experience in States with .08% Legal Blood Alcohol Levels, Report to the American Beverage Institute (College Station, Texas: Data Nexus, Inc., 1997) p.9.

in alcohol related crashes in four of the five states examined, which ranged from four percent in California to 20 percent in Vermont.¹¹

In New South Wales, Australia, after the BAC threshold was lowered to .05 from .08, a reduction in fatal crashes was observed, but only on Saturdays, by 13 percent. However, when random breath testing was introduced two years later, fatal crashes were immediately reduced by almost 20 percent over all and 30 percent during holiday periods.¹²

Impairment

Alcohol acts directly on the brain and affects its ability to function. These effects are quite complex, but they are similar to a general anesthetic. As consumption of alcohol increases and BAC rises, the motor functions of the body are affected, which in turn affects driving-related skills. Judgment is the first function to be affected, and decision making becomes impaired. In addition, operating a motor vehicle requires simultaneous attention to several tasks, such as using directional signals and steering while being alert to other vehicles, pedestrians and road hazards. Studies have shown that one of the most pronounced effects of alcohol is on these divided attention tasks.¹³

Many studies have documented increased risks and impairment at blood alcohol concentrations much lower than .08. Some studies have been done in a conscientious fashion using closed course driving, vehicle simulators, and airplane cockpit simulators. Various studies have demonstrated that divided attentions skills are impaired at BAC's of .015, with impairment

¹¹Delmas Johnson and James Fell, The Impact of Lowering the Illegal BAC Limit to .08 in Five States in the U.S., (Washington, D.C.: National Highway Traffic Safety Administration, April, 1995) pp.8-9.

¹²R. Homell, "Drink-Driving Law Enforcement and the Legal Blood Alcohol Limit in New South Wales," Accident Analysis and Prevention. 26(2) (1994):147-155.

¹³John Brick, Drinking, Driving and Relative Risk: An Evaluation of Existing Data (Yardley, Pennsylvania: Intoxikon International, August 1997).

demonstrably increased at .03, .05, and .06.¹⁴ This is also consistent with the observation of decreased sustained attention span while operating a vehicle while under the influence of alcohol.¹⁵ Similarly, the detection of angular motion (acceleration, deceleration, and turning) is compromised at a mean BAC of .037 and persists even after the BAC returns to zero.¹⁶ This phenomenon of persistent impairment while the BAC decreases is supported by several other studies. Significant impairment is still shown after the BAC reaches zero in both vehicle and aircraft operators, and up to 14 hours after a person had reached a .10 BAC and the BAC had returned to zero.¹⁷ There is also, interestingly enough, a second phase phenomenon, with an increase in sedation in the late phase while the alcohol concentration of the blood is decreasing.¹⁸ This impairment is magnified significantly if

¹⁴H. Moskowitz and A. Williams, "Skills Performance at Low Blood Alcohol Levels," Journal of Studies on Alcohol. 46(5) (1985):482-485; V.J. Gawron, "The Effects of Alcohol Dosing on Driving Performance on a Closed Course and in a Driving Simulator," Ergonomics. 31(9) (1988):1219-1244; and L. Ross and J. Mundt, "Multiattribute Modeling Analysis of the Effects of a Low Blood Alcohol Level on Pilot Performance," Human Factors. 30(3) (1988):293-304.

¹⁵J. Rohrbaugh, J. Stapleton, R. Paraserman, H. Frowela, B. Adinoff, J. Varner, E. Zubovic, E. Lane, M. Eckardt and M. Linnolla, "Alcohol Intoxication Reduces Visual Sustained Attention," Psychopharmacology. 96 (1988):442-446.

¹⁶H. Tanwu, Y. Watanabe, M. Asai, K. Shimizu, S. Takada and K. Mizukoshi, "Effects of Alcohol Ingestion on Vestibular Function in Postural Control," Acta Otolaryngol (Stockh). 519 (1995):127-131.

¹⁷T. Roehrs, D. Claiborne, M. Knox, T. Roth, "Residual Sedating Effects of Ethanol," Alcoholism: Clinical and Experimental Research. 18(4) (1994):831-834; T. Roehrs, D. Beare, F. Zorick, T. Roth, "Sleepiness and Ethanol Effects on Simulated Driving," Alcoholism: Clinical and Experimental Research. 18(4) (1994):154-158; J. Yesavage and V. Leirer, "Hangover Effects on Aircraft Pilots 14 Hours After Alcohol Ingestion: A Preliminary Report," American Journal of Psychiatry. 143(12) (1986): 1546; J. Taylor, N. Dolhert, D. Morrow, L. Friedman, J. Yesavage, "Acute and 8-Hour Effects of Alcohol (0.08% BAC) on Younger and Older Pilots' Simulator Performance," Aviation, Space, and Environmental Medicine. (August, 1994):718.

¹⁸K. Papineau, T. Roehrs, N. Petrucelli, L. Rosenthal and T. Roth, "Electrophysiological Assessment (The Multiple Sleep Latency Test) of the Biphasic Effects of Ethanol in Humans," Alcoholism: Clinical and Experimental Research. 22(1) (1998):231-235.

a person is tired or has had a decreased amount of sleep the night before, whether or not the person feels tired.¹⁹

The time needed by a driver to identify a presented risk is substantially increased with low doses of alcohol; however, this dosage does not seem to decrease the time needed by the person to cover a closed course. The significance of this is that the person retains the same speed, yet with a decreased ability to observe and respond to a threat. This is particularly noted in younger drivers.²⁰ It also has been noted that women are more affected at the same blood alcohol concentration and by "high alcohol type" drinks than are their male counterparts.²¹

In 1986, the American Medical Association's Council on Scientific Affairs, in recommending that all states adopt .05 BAC as the *per se* legal blood alcohol limit, stated that there was a "scientific consensus" that deterioration of driving skills begins at .05 BAC or an even lower BAC for certain age groups such as young, inexperienced drivers.²² Additionally, the U.S. Department of Transportation has adopted a 1987 recommendation of the Transportation Research Board that .04 BAC be the measure of intoxication for commercial drivers. New Jersey law provides for .04 BAC for commercial drivers and zero tolerance for underage drinkers who drive.

¹⁹T. Roehrs, D. Claiborne, M. Knox, T. Roth, "Residual Sedating Effects of Ethanol," Alcoholism: Clinical and Experimental Research. 18(4) (1994):831-834.

²⁰R. West, J. Wilding, D. French, R. Kemp and A. Irving, "Effect of Low and Moderate Doses of Alcohol on Driving Hazard Perception Latency and Driving Speed," Addiction. 88 (1993):527-532; F. Gengo, C. Gabos, C. Strale and C. Manning, "The Pharmacodynamics of Ethanol: Effects on Performance and Judgment," Journal of Clinical Pharmacology. 30 (1990):748-754; N. Flanagan, P. Strike, C. Rigby and G. Lochridge, "The Effects of Low Doses of Alcohol on Driving Performance," Medical Science Law. 23(3) (1983): 203.

²¹K. Mills, and E. Bisgrove, "Body Sway and Divided Attention Performance Under the Influence of Alcohol: Dose-Response Differences Between Males and Females," Alcoholism: Clinical and Experimental Research, 7(4) (1983):393.

²²Council on Scientific Affairs, "Alcohol and the Driver," Journal of the American Medical Association. 255(4) (1986):522-527.

The Task Force found that significant impairment can be clinically demonstrated at .05 BAC.

Probability of Crash Involvement

Studies demonstrate that the relationship between BAC and risk of a crash increases steeply and geometrically. The relative risk of becoming involved in a motor vehicle crash is twice as great at .06 BAC than it is for a sober driver. At .10 BAC, the risk is six times greater (see chart in Appendix D).²³

One study found that a male driver age 25 or over, with a BAC between .05 and .09, has a fatality risk in single vehicle crashes almost nine times greater than a driver at zero BAC. At a BAC level between .10 and .14, for the same male drivers the risk is forty times as high as without alcohol. At .15 BAC or more, it is 600 times higher.²⁴

Another study estimated that 91.4 percent of crashes with driver BACs over .10, 43.5 percent of crashes with driver BACs between .08 - .099, and 24.2 percent of crashes with BACs below .08 would not have occurred in the absence of alcohol consumption.²⁵

Actual Crash Involvement

Clearly, increases in BAC levels result in increases in driver impairment. The question however, is not so much the degree of impairment, but whether and at what point impairment equates

²³John Brick, Drinking, Driving and Relative Risk: An Evaluation of Existing Data (Yardley, Pennsylvania: Intoxikon International, August 1997).

²⁴Paul L. Zador, Adrian K. Lund, Michele Fields and Karen Weinberg, "Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," Journal of Public Health Policy, 10 (1989):467-485.

²⁵Ted R. Miller, Diane C. Lestina and Rebecca S. Spicer, "Highway Crash Costs in the United States by Driver Age, Blood Alcohol Level, Victim Age, and Restraint Use," Accident Analysis and Prevention, 30(2) (1998):144.

with injury and death.

A 1994 NHTSA study found that in 23,395,971 crashes where only property damage occurred, 3,913,824 (16.7 percent) of the drivers tested positive for alcohol. Of that number, 3,560,797 (91 percent) had a BAC level over .10. The same study found that in 5,215,931 crashes with injuries, 1,064,404 (20.4 percent) of drivers tested positive for alcohol. Of that number, 812,485 (76.3 percent) had BAC levels above .10²⁶ (see chart in Appendix E). Another study also found that in the majority of crashes where the driver tested positive for alcohol, the BAC level was .10 or greater.²⁷ An examination of data for 160 New Jersey drivers with a measurable amount of blood alcohol involved in fatal crashes in 1997 showed that 73 percent (117) had a BAC greater than .10, while 24 percent (38) had a BAC level between .01 and .079. Only 5.6 percent (9) had a BAC level of .08 to .10. An analysis of BAC levels of fatally injured drivers in New Jersey from 1987 through 1997 shows a statistically significant increase in fatalities at .10 BAC and above (see chart in Appendix F).

A review of BAC levels of injured drivers admitted to trauma centers in New Jersey in 1996 showed that of the 2,387 drivers admitted, only 72.6 percent (1,734) were tested for the presence of alcohol in the bloodstream. Of those tested, 27.8 percent (482) tested positive for some level of alcohol. Seventy-seven percent (371) of those who tested positive had a BAC of more than .10. Only six percent (29) had a BAC between .08 and .099.²⁸

A review of patients seen at the trauma center at Morristown Memorial Hospital from April,

²⁶NHTSA, The Economic Cost of Motor Vehicle Crashes, p.31.

²⁷Ted R. Miller, Diane C. Lestina and Rebecca S. Spicer, "Highway Crash Costs in the United States by Driver Age, Blood Alcohol Level, Victim Age, and Restraint Use," Accident Analysis and Prevention. 30(2) (1998):142.

²⁸New Jersey State Trauma Register, American College of Surgeons, New Jersey Committee on Trauma, 1996, Dr. Jeffrey Hammond, Chairman.

1992 through October, 1998, identified 1,903 vehicle occupants and 256 motorcycle occupants. The majority of those patients were drivers--1,364 and 226, respectively. Of the 1,039 motor vehicle drivers who were tested, 806 (78 percent) had no alcohol in their bloodstreams, 13 (1.3 percent) had up to .025 BAC, 24 (2.3 percent) had from .025 to .074 BAC, 10 (one percent) had from .075 to .099 BAC, 31 (three percent) had from .10 to .149 BAC, and 155 (15 percent) had BACs of .15 and higher. As a percentage of the 233 motor vehicle drivers who had some alcohol in their systems, 5.6 percent had BAC levels up to .025, 10.3 percent had BAC levels between .025 and .075, 4.3 percent had BAC levels between .075 and .099, 13.3 percent had BAC levels between .10 and .149, and 66.5 percent had BAC levels of .15 and higher.²⁹

These studies clearly demonstrate that most alcohol related crashes and fatalities occur at BAC levels above .10.

Conclusion

1. Significant impairment can be clinically demonstrated at .05 BAC.
2. There is a dramatic increase in crash and fatality rates at levels of .15 BAC and above.
3. The impact of laws that reduce the *per se* BAC level from .10 to .08, in isolation, is inconclusive. Some studies that claim to show conclusively that reducing the legal limit to .08 BAC is effective have confounding factors, such as the implementation of administrative license revocation and major public education and awareness campaigns.
4. The implementation of major public education and awareness campaigns and administrative license revocation have also been shown to have a significant effect in reducing the incidence of DWI offenses. Studies have shown that effect can be greater than changing the legal BAC limit.
5. Nationally, the drunk driving fatality rate has declined over the previous 15 years because

²⁹Alcohol Related Motor Vehicle and Motorcycle Occurrences, 4040 Patients in Trauma Registry from 4/1/92 to 11/1/98, Morristown Memorial Hospital Trauma Registry.

of prevention and enforcement programs and treatment programs for the DWI offender, whether or not in conjunction with a change to .08 BAC.

In order to resolve the .08 issue, the Legislature must understand the facts and the critical elements beyond the isolated question of .08 BAC. The effectiveness of any legislation will depend upon the inclusion of a constant level of public education and awareness of the problem, the presence and public awareness of consistent enforcement, and effective treatment and rehabilitation of those offenders that need it.

Considering the conflicting research materials and testimony at the hearings, the finding of the Task Force and the sociological complexities of this issue, the Task Force is of the opinion that the question of whether to lower the measure of intoxication from .10 to .08 BAC is a policy decision that should be made by elected officials. Therefore, the Task Force makes no recommendation with regard to the BAC level to be adopted.

B. Public Education, Enforcement and Treatment

Introduction

The State has available and must allocate more of the revenue it derives from alcoholic beverage licenses and fees and drunk driving fines and penalties for public education, enforcement and treatment to more effectively combat the drunk driving problem.

Education

Since the early 1980's, education of the public on the evils of drunk driving has resulted in a raised public consciousness which in turn has brought about an increase in legislation, enforcement, and sober driving behavior. The result is a dramatic reduction in alcohol related crashes and fatalities.³⁰ This is evidenced by the fact that all states have experienced a reduction in drunk driving even where there has been no change in the legal BAC threshold. In fact, New Jersey has seen a reduction in drunk driving fatalities from 51 percent in 1981 to 28 percent in 1997 (see chart in Appendix G). This is not to say that lowering the BAC level has no effect on the incidence of drunk driving. It can, but public education and enforcement campaigns greatly influence and enhance any effect that a .08 law may have to diminish drunk driving offenses.

This proposition is supported by data from New South Wales, Australia, where the BAC was lowered to .05 from .08 which did reduce fatal crashes, but only on Saturdays, by 13 percent. However, when random breath testing was introduced two years later, fatal crashes were immediately reduced by almost 20 percent over all and 30 percent during holiday periods.³¹ Similarly over the last 20 years, Japan identified that diverse approaches and changing social opinion about alcohol impaired

³⁰Transportation Secretary Slater Announces Historic Decline in Alcohol-Related Traffic Deaths (Washington, D.C.: National Highway Traffic Safety Administration press release, August 24, 1998)

³¹R. Homell, "Drink-Driving Law Enforcement and the Legal Blood Alcohol Limit in New South Wales," Accident Analysis and Prevention, 26(2) (1994):147-155.

driving must be incorporated for successful reduction in DWI events rather than relying exclusively on deterrence-based laws.³² As noted, studies on the effect of a .08 BAC law in California indicate that any decrease in drunk driving offenses could not be attributed to any single action, due to the almost simultaneous implementation of the .08 BAC law and administrative license revocation, as well as the accompanying public education campaign.

Education programs have proven to be effective in reducing incidents of drunk driving. It is to be noted however that underage drinking and driving is still a serious problem. A recent report issued by New Jersey Attorney General Peter Verniero notes that "the number of persons charged with underage drinking and driving continues to increase" (see Appendix H). Since December, 1992, when New Jersey's zero tolerance law (N.J.S.A.39:4-50.14) was enacted, the number of persons under age 21 whose driver's licenses have been suspended has increased from 306 in 1993 to 790 in 1996, a 158 percent increase. Between 1995 and 1996, the number of suspensions under this law increased to 37, or five percent.³³ Nevertheless, more than half of all drivers involved in alcohol related fatalities are between the ages of 21 and 34 and drivers under age 21 continue to be over-represented in crashes (see chart in Appendix I). In San Diego, California, the Youthful Visitation Program has been shown to decrease recidivism in this group; a similar program, the Visitation Impact Program of Morristown Memorial Hospital, is currently being studied in New Jersey.

³²E. Deshapriya and N. Iwase, "Are Lower Legal Blood Alcohol Limits and a Combination of Sanctions Desirable in Reducing Drunken Driver-Involved Traffic Fatalities and Traffic Accidents," Accident Analysis and Prevention, 28(6) (1996): 721-731.

³³Attorney General Peter Verniero, Recommendations to the Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities in New Jersey, (Trenton: New Jersey Department of Law and Public Safety, August 27, 1998) p.3.

Deterrence and Enforcement

Stringent and aggressive law enforcement has proven to be very effective in deterring incidents of drunk driving. Sobriety check points and other publicized surveillance operations, for example, are effective enforcement strategies in reducing impaired driving. Studies show that there is a direct proportional relationship between an increase in law enforcement and a decrease in drunk driving.

Other tactics that seem to be effective in combating recidivism, particularly among hard core drunk drivers, include alcohol ignition interlock devices, now used in 37 states; electronic monitoring of repeat offenders, which is the law for 33 states; impounding of vehicles driven by persons with a suspended or revoked license, which is the law in 12 states; and cancellation of motor vehicle registrations of persons whose driver's licenses have been suspended for drunk driving. The latter measure has been shown to be one of the most effective means of drunk driving deterrence.³⁴

Treatment

New Jersey's drunk driving statute provides for county or regional Intoxicated Driver Resource Centers (IDRC) under the auspices of the Department of Health (subsection f. of N.J.S.A.39:4-50). There are 21 county based first-offender programs and three regional second-offender programs. In most cases, first offenders attend a 12 hour program and second offenders attend a 48 hour program. In 1997, persons attending the 12 hour programs made up 84 percent of all participants. There are no statutory requirements for third offenders concerning IDRC attendance,

³⁴National Hardcore Drunk Driver Project, Combating Hardcore Drunk Driving: A Sourcebook of Promising Strategies, Laws and Programs (Washington, D.C.:The Century Council, 1998), pp.32, 36 and 37.

but some third offenders attend the 12 hour program for tracking purposes, and part of the offender's prison term (not less than 180 days) is usually served in an inpatient rehabilitation care center. The IDRC programs are funded primarily by participant fees. The initial concept called for a longer IDRC program, but because of funding considerations the program was shortened to its present form. An independent, in-depth study of the program has not been conducted.

During the detention periods of 12 or 48 hours, IDRC participants are evaluated to determine their need for alcohol or drug treatment or for self-help. If necessary, they are referred to an appropriate agency or provider for follow-up care and treatment. The evaluation process considers testing scores, the number of offenses, autobiographical statements, counselor observations, driving records and the offender's blood alcohol content at time of arrest. Over the years, the IDRCs have developed an extensive treatment affiliate list. (There are 293 affiliates in the 21 counties.)

Treatment, when required, is usually in the form of a 16 week out-patient program. It may also include in-patient treatment when necessary. Direct referrals to self-help programs are made only if the client is a current, active participant in such a program. Alcoholics Anonymous is the principal self-help group.³⁵

In 1997 a total of 19,383 persons were referred to the IDRC program. Of the 16,289 persons who attended the 12 hour programs 5,410 (33 percent) were referred to treatment and 1,213 (seven percent) were referred to self-help. Of the 3,094 persons who attended the 48 hour programs, 2,883 (93 percent) were referred to treatment and 186 (six percent) were referred to self-help. IDRC attendance rates were 56 percent for the 12 hour programs and 46 percent for 48 hour programs.

³⁵Public hearing before the Senate Task Force on Alcohol Related Motor Vehicle Accidents and Fatalities in New Jersey, "Testimony concerning drunk driving education, prevention and rehabilitation." (Trenton, N.J.: New Jersey Office of Legislative Services, October 21, 1997) pp.4-5.

Overall compliance, however, is estimated at 74 percent because some participants are scheduled more than once or were carried over from previous years. In addition, some persons who were declared noncompliant will comply at a future date.³⁶

Attendance and completion rates for persons referred to treatment programs appear to be low. The Task Force found numerous obstacles, summarized below, that deter or prevent follow up treatment.

The first obstacle is the availability of treatment programs. DWI offenders are competing in a large pool of 700,000 individuals who are in need of treatment for substance abuse. Of those, 60 to 65% have a primary problem with alcohol. In 1997, 45,000 people in New Jersey participated in publicly funded substance abuse treatment programs. Approximately 5,000 persons are currently on waiting lists, which average seven to eight months or longer, for publicly funded long-term residential treatment. In New Jersey's publicly funded programs, a disproportionate number of persons are treated for non-alcohol drug related problems.³⁷

In addition to the obstacles imposed by the lack of adequate numbers of treatment programs, there is the further obstacle of the offender's frequent inability to pay for treatment. This is often true of those offenders who have health insurance because it does not necessarily cover alcohol rehabilitation as a medical necessity. There is no statute that requires an insurance company to pay for the IDRC program or inpatient treatment for a convicted drunk driver, even if a court orders the treatment.

³⁶Intoxicated Driving Program, The Year's Work of the Intoxicated Driver Resource Centers and the Intoxicated Driving Program. (Trenton, N.J.: New Jersey Department of Health and Senior Services, 1998), pp.2-3.

³⁷Information received from Department of Health and Senior Services, Division of Addiction Services.

Another obstacle to treatment is the lack of motivation of the offender, particularly those convicted of second and third offenses. A person who has lost his license for two or 10 years with no chance to regain it has little motivation to attend a treatment program. It is these individuals who are most apt to drive while under suspension and cause a crash.

There is some debate on the effectiveness of mandated treatment. One study concluded that appropriate treatment reduces recidivism by approximately six to nine percent.³⁸ The New York State Anti-Drug Council in a 1990 report concluded that "treatment is effective and cost saving."³⁹ Another study found that in contrast to other state DWI programs developed in the 1970's as alternatives to traditional sanctions, New Jersey combined its sanctions with mandatory education/rehabilitation for offenders. The program was effective in reducing DWI recidivism for program completers.⁴⁰ There is still controversy over exactly what constitutes an adequate and appropriate program of treatment and whether or not these programs are evaluated sufficiently.⁴¹ However, most studies conclude that treatment programs are in fact effective when treatment is coupled with sanctions such as license suspension.⁴²

³⁸E. Wells-Parker, R. Bangert-Drowns, R. McMillen, M. Williams, "Final results from a meta-analysis of remedial interventions with drink/drive offenders," Addiction, 90 (1995):907-926.

³⁹New York State Anti-Drug Council, The Case for Drug and Alcohol Abuse Treatment, (Albany, New York:1990) p.21.

⁴⁰ R.E.Green, J.F. French and P.W. Haberman and P.W. Holland, "The Effects of Combining Sanctions and Rehabilitation for Driving Under the Influence: An Evaluation of the New Jersey Alcohol Countermeasures Program," Accident Analysis and Prevention, 23(6) (1991):543.

⁴¹Ross, Confronting Drunk Driving, p.51.

⁴²David J. DeYoung, "An Evaluation of the Effectiveness of Alcohol Treatment, Driver License Actions and Jail Terms in Reducing Drunk Driving Recidivism in California," Addiction, 92 (8) (1997):989-997.

There are no New Jersey studies regarding the effectiveness of the IDRC programs and their affect on recidivism, nor are there any studies regarding the effectiveness or attendance and completion rates for aftercare treatment.

In Camden county, an IDRC non-compliance program, which is the cooperative effort of the IDRC and the municipal court, holds hearings monthly. Persons who failed to attend the IDRC or a treatment program as ordered by a municipal court are required to attend a hearing. The program is an attempt to compel persons who have not complied with IDRC requirements or mandated treatment to arrange for participation in those programs or to impose sanctions for non-compliance. According to the Administrative Office of the Courts (AOC), about 30 persons are summoned to each session, but only about half of those actually appear. Prior to hearing each case, the IDRC director reviews alternatives with each person and arranges for the person to enter into an agreement concerning the IDRC or a treatment program. After hearing brief testimony from the IDRC director regarding persons who did not appear or who are unable to enter into an agreement with the director, the judge issues a warrant or incarcerates the person. This program should be implemented in all counties in order to improve compliance by offenders with IDRC and treatment program requirements.

The Task Force found that offenders who complete proper treatment programs are less likely to recidivate than those who receive no treatment and that this is particularly so where treatment is coupled with other deterrent measures such as license suspension and education. The Task Force urges that New Jersey conduct a detailed up-to-date evaluation of the IDRC and other available treatment programs to determine their effectiveness and need for modification or implementation.

Revenue

Considerable revenue is derived from fees and penalties related to the use and misuse of

alcoholic beverages. In fiscal year 1999, it is estimated that \$84 million will be collected in alcoholic beverage taxes and \$6.3 million in alcoholic beverage license fees and penalties. The insurance surcharge imposed on drunk drivers will result in revenue of \$132 million and the additional drunk driving surcharge will yield \$2.3 million. The total sum derived from these sources in FY1999 is projected at \$224.6 million (see Appendix J).

Additional sums of money were also derived from fines levied against convicted drunk drivers. In Court Year 1998 (the period from September 1, 1997 through August 31, 1998), the municipal courts assessed \$8.8 million in DWI fines.

Of the total collected by the State, only a very small amount is allocated to the prevention and enforcement of drunk driving, specifically \$9.35 million to the counties for alcohol and drug abuser programs and \$5.55 million for enforcement.

Conclusion

New Jersey's expenditure of public funds to confront drunk driving is trivial and as such, has little impact on controlling incidents of drunk driving in New Jersey. The Task Force, therefore, urges the State to allocate more of the revenue derived from licenses, fees and penalties, especially surcharges, for treatment, education and enforcement. It believes that doing so would have a direct and lasting beneficial effect on preventing drunk driving in New Jersey.

Programs currently in use in New Jersey and elsewhere should be evaluated. An ongoing public awareness campaign should be developed and implemented. In addition, some element to enhance the motivation of the repeat offender to participate in successful treatment should be included in the penalties for drunk driving (see discussion in the Criminal Penalties section of this report).

C. Criminal Penalties

Changes Considered To Current Law

New Jersey's drunk driving laws are some of the toughest in the nation. Only Washington, D.C. and Wisconsin have a license suspension of six months for a first offense conviction, and only Tennessee unconditionally revokes a license for two years on a second conviction. Most studies conclude that mandatory license suspension is an especially effective way of reducing recidivism as well as acting as a general deterrence, particularly when coupled with a media campaign to educate the public on the penalties imposed for drunk driving.⁴³

There is no evidence to suggest that increasing New Jersey penalties will result in fewer drunk driving offenses.

The Task Force is of the opinion that the current laws are both fair and adequate without being oppressive and that, therefore, penalties for at least first and second offenders should not be changed. Any increase in the already tough New Jersey penalties would be considered draconian.

Criminalization of Second and Third Offenses

The Task Force considered the question of whether New Jersey should treat DWI offenses as criminal offenses.

Forty-eight states classify drunk driving as a criminal offense with the accompanying right to indictment and trial by jury. New Jersey is one of only two states that classifies DWI as a traffic offense. Because it is a traffic offense, it is heard in the municipal courts where defendants are not

⁴³R.D. Blomberg, D.F. Preusser, and R.G. Ulmer, Deterrent Effects of Mandatory License Suspension for DWI Conviction (Washington, D.C.: National Highway Traffic Safety Administration, 1987), p.i.

afforded the right to indictment by a grand jury or to a jury trial. If a DWI offense results in a death, the offender may be charged with vehicular homicide under N.J.S.A.2C:11-5. DWI offenders are afforded certain constitutional rights, however, which include protections from compulsory self-incrimination and certain other rights such as *Miranda* warnings and pretrial discovery. The current law provides that first offenders are subject to a fine and a loss of license for a period of not less than six months or more than one year, as well as other penalties. For a second offense, there is a mandatory license suspension of two years and for a third and subsequent offense a license suspension of 10 years.

The Task Force first considered the question of whether New Jersey should criminalize all drunk driving offenses to afford offenders the same rights of grand jury indictment and trial by jury as that afforded to DWI offenders in other states. But the Task Force determined that this proposal was impractical, extremely expensive, and would have a detrimental impact on the law's focus on swift and certain punishment.

According to the Administrative Office of the Courts (AOC), there were 35,722 new drunk driving cases added to the dockets of the municipal courts in fiscal year 1997. Of these, 76.9 percent (27,479) involved first offenders, 17.1 percent (6,119) involved second offenders, and 6.4 percent (2,124) involved third offenders. The courts disposed of 27,972 cases in that same year: 21,343 were first offenders, 4,839 were second offenders, and 1,790 were third offenders. Of the total offenders disposed of, 16,647 entered guilty pleas, 6,221 were found guilty after trial and 5,105 either were found not guilty or had their case dismissed. The AOC estimates that if second and third offenses were criminalized, the trial rate would increase from the current 32 percent to at least 50 percent, and the amount of time needed to try a case would increase from three to four hours (municipal court) to three to four days (superior court) because of the additional time which will be

required for jury selection, motions, discovery and expert testimony (see Appendix K). In addition, there would be a significant increase in the average time to disposition. Currently, DWI cases are required to be disposed of in 60 days in the municipal courts. But in criminal matters, the average time from arrest to trial is 425 days; the average time from arrest to disposition in plead cases is 193 days.

The AOC estimated that 65.7 judge teams would be necessary to dispose of second and third offenses. The cost of funding these judge teams, at a 50% trial rate, was projected to be over \$104 million for a three day trial; with a two day trial the cost would be in excess of \$74 million. The county prosecutors and the public defenders, as well as probation and other ancillary services, also would incur increased costs.

Although no estimates were given for first offenders, the estimates regarding second and third offenders make it clear that the costs to criminalize all drunk driving offenses would be prohibitive. A consideration of the costs that would result from a shifting of DWI cases from the municipal courts to the superior courts directed the Task Force to the obvious conclusion that the State of New Jersey could simply not afford to criminalize all DWI offenses. But the task force did conclude that the special problems presented by third and subsequent offenders and the inability of the system to adequately deal with these offenders under the current law necessitates criminalizing third and subsequent DWI offenses by making them fourth degree crimes.

Studies show that nationally 30 percent of all drivers arrested for DWI have already been apprehended by police and sanctioned by judicial and administrative agencies. In addition, estimates indicate that at least 35 to 40 percent of fatally injured drinking drivers had a prior drunk driving conviction. Repeat offenders tend to have higher rates of alcoholism and alcohol related problems,

more frequent non-traffic criminal offenses and more severe mental health problems.⁴⁴ The estimated cost to society by these repeat offenders is enormous; traffic safety researchers have found that approximately \$33 billion in economic costs may be attributed to hardcore drunk drivers.⁴⁵ Treating third and subsequent offenses as crimes could provide judicial and administrative agencies with the tools to motivate these offenders to seek treatment for the underlying alcohol problem that causes them to reoffend.

The Task Force, therefore, considers criminalization of third and subsequent offenses as a means of dealing with these repeat offenders. Under current law, a third or subsequent offense is subject to 180 days (six months) maximum imprisonment, of which only 90 days is mandatory. A sentence to a long term treatment program, although theoretically possible, has little clout because a violation of the court order could only result in an additional 90 days jail time. Criminalizing third and subsequent offenses by making them fourth degree crimes would permit imprisonment of offenders for up to 18 months and afford the court the opportunity to seriously address rehabilitation needs by providing an incentive for the offender to participate in treatment.

In suggesting criminalization for third and subsequent offenses, it should be noted that the Task Force is cognizant of the potential for jury nullification. Extrapolation of breathalyzer results, currently not permitted in municipal court, would be permitted in the superior court and absent a specific prohibition, plea bargaining, including down grading, would also be permitted. But the Task Force balanced these factors and the costs that would ensue from criminalization against the need to deal with chronic problem DWI offenders in a rational and proper manner. It concluded that the best

⁴⁴National Hardcore Drunk Driver Project, Combating Hardcore Drunk Driving, pp.2-3.

⁴⁵John Lawn and Marion Blakey, "Getting Hardcore Drunk Drivers Off the Road," State Government News. (June/July 1998):18.

means to do so was to make third and subsequent offenses criminal acts.

Other Considerations Regarding the Criminal Law

The Task Force considered, but did not adopt, the Attorney General's recommendation that a person who is found guilty of a DWI offense and subsequently found guilty of driving while suspended be subject to the same penalties as a person who is guilty of criminal contempt because of the person's disregard for the court's order prohibiting the offender from driving.⁴⁶ The Task Force was of the opinion that the current penalties for this offense are adequate. Additionally, such a change in the law may result in few convictions for criminal contempt, a fourth degree crime, because of plea bargaining and jury nullification.

The Task Force also considered whether persons with high BAC levels should be subject to the imposition of greater penalties or even criminal penalties. For example, should a first offense where the person's BAC was .15 or .20 be subject to harsher penalties or even be considered a criminal offense as it would in Vermont, which classifies .08 as a traffic offense and .10 as a criminal offense.

The Task Force recognizes that there may be constitutional issues in changing the law and that authorities differ regarding the rate of recidivism of persons with higher BAC levels. Nevertheless, the Task Force urges that there be a greater sensitivity regarding these persons, not necessarily in terms of penalties, but in terms of evaluation and treatment.

Time constraints limited these discussions. The Task Force recommends that this be a topic for consideration by a permanent commission.

⁴⁶Attorney General Peter Verniero, Recommendations to the Senate Task Force, p.4.

D. Other Recommendations

1. Permanent Study Commission

The Task Force recommends that a permanent commission or task force be created, similar to the State Commission on Drunk Driving which studied the problem of intoxicated driving in this State from the mid-1980's through the early 1990's. The task of the commission, as set forth in its enabling legislation, was "to assist in the effective implementation of the recently enacted drunk driving legislation, to review its impact on drunk driving, to review the efforts of all departments and organizations in this area, to provide a mechanism to bring together governmental officials and nongovernmental leaders in an effort to increase the public awareness of the drunk driving problem and to develop a coordinated and effective plan to deter drunk driving."⁴⁷ A permanent task force or commission can provide the much needed continuous monitoring of the problem of drunk drivers in this State, evaluate successful programs or modalities outside of this State and provide guidance for evolving policy regarding this serious problem. It also may serve to coordinate efforts between the three branches of State government.

2. Breathalyzer

The Task Force received various source materials and heard testimony regarding the breathalyzer machine currently in use in New Jersey, the Breathalyzer Series 900 and 900A.

Title 13 of the New Jersey Administrative Code gives the New Jersey State Police authority and responsibility for maintaining breathalyzer instruments in this State. The State Police Breath Test Unit trains operators in the proper operation of the breath test instruments, inspects and ensures that

⁴⁷State Commission on Drunk Driving, First Annual Report of the State Commission on Drunk Driving: A Plan for Progress. (Trenton, New Jersey: Department of Law and Public Safety, 1985) p.i.

those instruments are functioning properly and that they are accurate to be used for evidentiary purposes in the prosecution of DWI cases. The State Police also train breathalyzer operators and train police officers in the apprehension and detection of those drunk drivers. At the second public hearing, the Task Force was given a demonstration regarding the use of the breathalyzer by a member of the State Police Breath Test Unit.

The use of the Breathalyzer 900 is defended by a strong body of case law that has been developed by the appellate courts and the New Jersey Supreme Court that support its admissibility. Nevertheless, the consensus of the testimony at the public hearing was that the device is antiquated and premised on old technology. In fact, New Jersey and Nevada are the only two states still using that specific device.

The testimony showed that there are numerous problems with the current device. These breathalyzers were built in 1954 and are no longer manufactured, therefore spare parts are difficult to obtain. Because of its reliance on manual operations and thus the skill of the operator (11 distinct and separate steps are required for its reading), the breathalyzer lends itself to human error in its operation, misinterpretation of its readings and fraudulent manipulation ("dial a drunk"). The Task Force, on viewing the demonstration, noted a number of opportunities for error. Finally, the current device must be inspected and calibrated by a member of the Breath Test Unit of the New Jersey State Police, while the newer devices calibrate and inspect themselves, run their own diagnostic tests and may be checked by modem. Succinctly, the current breathalyzer "has had its day" and it is now necessary for the State of New Jersey to move to modern times.

The Task Force has learned that the Attorney General has approved the use of a new Evidential Breath Testing instrument, the Draeger Alcotest 7110 MK III. This new device requires very little on the part of the operator other than turning the instrument on and having the suspect

provide a breath sample. It performs both an Infrared (IR) and Electro-chemical (EC) analysis of the breath sample and the results are provided by an internal printer. The administrative code is presently being revised to include the Alcotest 7110 MK III as an approved instrument. The New Jersey State Police will be undertaking a pilot program in the near future whereby five instruments will be allocated to State Police stations and five instruments will be allocated to local law enforcement departments. Eventually, all law enforcement agencies in the State will use this instrumentation.

According to the State Police, each new instrument will cost approximately \$6,000. The Task Force has learned that the local law enforcement departments will be able to draw funds from their established account in the "Drunk Driving Enforcement Fund" to offset the cost of the instrument. This fund is the depository for the \$100 surcharge imposed on DWI offenders pursuant to N.J.S.A. 39:4-50.8 and supports drunk-driving enforcement efforts.

The Task Force concurs with the Attorney General's decision.

3. Miranda Warnings

The Task Force concluded that the language in subsection e. of N.J.S.A.39:4-50.2 (see statement in Appendix L) is ambiguous and confusing. DWI offenders believe they have a right to refuse to give a breath sample under this statute, when in fact no such right exists. The Legislature should consider amending the statute to clarify that the *Miranda* warnings do not apply for purposes of taking a breath test.

4. Use of Videotaping by Police

The Task Force recommends mandating that as part of an arrest for DWI, a videotape be made of the offender at a police station, barracks, jail or other suitable facility. Videotapes often act as compelling evidence of a driver's actual condition and as to whether the breathalyzer testing was

performed properly. Kentucky, for example, has a statute providing that law enforcement agencies may record on film or video tape or by other visual and audible means field sobriety tests administered at the scene of an arrest for a DWI violation or such tests at a police station, jail or other suitable facility, subject to certain conditions. These requirements include that the testing must be recorded in its entirety (except for blood alcohol analysis testing); that the entire recording must be shown in court unless that is waived by the defendant; that the entire recording must be available for the defense to show at trial, and that the defendant must be afforded an opportunity to view the entire recording a reasonable time before trial.⁴⁸ The cost to effectuate this recommendation would be minimal and the Task Force recommends that its suggestion be mandated by either a directive from the Attorney General's office or by statute.

5. Conditional Licenses

The Task Force addressed the issue of conditional driver's licenses for persons convicted of DWI offenses whose regular drivers' licenses are suspended.

New Jersey is one of the minority of states that currently offers no conditional licensing for DWI offenders. Thirty-six states, the District of Columbia and two territories have some form of conditional licensing available.⁴⁹

License actions such as suspensions and revocation are effective because they provide swift and certain punishment.⁵⁰ Research clearly demonstrates that mandatory license suspension is an

⁴⁸Ky. Rev. Stat. §182A.100

⁴⁹National Hardcore Drunk Driver Project, Combating Hardcore Drunk Driving, p.34.

⁵⁰James Nichols and H. Laurence Ross, "The Effectiveness of Legal Sanctions in Dealing with Drinking Drivers," Alcohol, Drugs and Driving, 6(2) (1990):33-60.

effective tool in combating DWI recidivism when coupled with treatment.⁵¹

Nevertheless, the Task Force considered recommending conditional licenses for first and second offenders because the loss of a driver's license can have a devastating impact on a person's life and livelihood that may affect an entire family. But the Task Force agreed that offering conditional licenses weakens the current punishment for drunk driving and eliminates the deterrent value of swift and certain punishment. The members felt that the reduction in drunk driving fatalities in this State is directly related to the knowledge that current law requires a driver's license suspension, even for first offenders.

Regarding third offenders, however, the Task Force recommends that if third and subsequent drunk driving offenses are criminalized, the offenders driver's license may, upon application to the court, be restored after five years if the offender successfully completes treatment and presents evidence of continued sobriety for the previous five years. The current system offers no motivation for third offenders, who are likely to have a serious alcohol problem, to obtain treatment because the loss of driver's license is for 10 years. The possibility of having a driver's license restored after five years of sobriety and no additional motor vehicle or alcohol related offenses may provide the individual with an incentive to confront and resolve his or her addiction. If the person relapses, the driver's license would remain suspended for the full 10 years.

6. Alcohol Chart

The Task Force was asked to develop a chart reflecting as accurately and as scientifically possible the number of drinks of specified alcohol content in a certain time period that would have

⁵¹ David DeYoung, "An Evaluation of the Effectiveness of Alcohol Treatment, Driver License Actions and Jail Terms in Reducing Drunk Driving Recidivism in California," Addiction, 92 (8) (1997):989-997.

to be consumed by persons of varying weights over a given time period to reach specific blood alcohol content levels.

Because of the variables involved, it is beyond the ability of the task force to make a determination on a definitive chart of BAC's extrapolated from consumption of a specific amount of alcohol by persons of various weights under a given period of time. The variables include the sex of the person, whether or not the person has ingested food, the age of the person, the person's history of alcohol ingestion and the time of day alcohol is ingested, all or some of which may affect the BAC level.

The Task Force has gathered several charts which are attached as an appendix for consideration by the Legislature (see chart in Appendix M).

Again, this may be a topic for discussion by a permanent commission.

7. BAC Levels of Persons Convicted of Drunk Driving

The Task Force was asked to obtain the BAC levels of persons convicted of DWI. Data was obtained from the Administrative Office of the Courts (AOC) for Court Year 1998 (the period from October 1, 1997 to September 30, 1998). During that time, 37,800 DWI charges were filed in the municipal courts. But only about one-third of municipalities report BAC levels of convicted DWI offenders on the Automated Traffic System. Of 6,767 convicted persons for which BAC levels were reported, 3,278 (47.5 percent) had a BAC level of .10 to .15, and 3,212 (47.5 percent) had a BAC level over .15. Only 82 (1.2 percent) had a BAC level between .08 and .099 (see chart in Appendix N). This data, however, may not be representative of the entire State. It also may be skewed because the *per se* level of intoxication in New Jersey is .10 BAC. While persons who record a BAC level below .10 may be charged under N.J.S.A.39:4-50, convictions are more difficult to obtain because

prosecutors must rely on proofs other than a breathalyzer reading.

8. Medical Insurance

Data collected from New Jersey trauma centers reveals that the blood alcohol concentration of drivers treated at these centers is not routinely determined. This is because of the frequent refusal of insurance companies to pay for any medical care where the insured had alcohol in his or her bloodstream. The Task Force recommends that legislation be enacted to require insurance companies to provide coverage for persons treated at trauma centers regardless of whether they had consumed alcohol.

There are two issues regarding the question of whether hospitals, particularly trauma centers, should obtain a blood alcohol reading from crash victims. The first issue is whether the health care system, especially the New Jersey trauma centers, should monitor the disease of alcohol-related vehicular injury and if this information should be available for forensic use. The second issue is whether hospitals, particularly the trauma centers, should bear the responsibility to treat an insured person regardless of whether they had consumed alcohol.

One study has shown that hospitalization of an injured drunk driver may afford that drunk driver protection from prosecution.⁵² In New Jersey, this often occurs because the intoxicated driver is taken to a hospital or trauma center which is a significant distance from where the crash occurred. Under such circumstances, only the State Police may be able to obtain the blood sample; a municipality may not be able to send a police officer to the hospital or trauma center. Blood alcohols drawn routinely from trauma centers' patients may be used as evidence, but a subpoena for the patient's medical record is currently required. However, a subpoena may not be sought if the victim

⁵²J. McLaughlin, R. Smith, C. Mattice and D. Scholten, "Hospitalization and Injury Influence on the Prosecution of Drunk Drivers," American Surgeon. 59(8) (1993):488-489.

was removed from the scene before the inebriation was observed. There is no follow-up by law enforcement unless there is a death at the scene.⁵³

Health care institutions, trauma centers in particular, should not be denied payment by the insurance companies for care they are required to deliver to seriously injured victims solely on the basis of alcohol being implicated as a causative factor. This care is mandated and trauma centers, due to the appropriate triage of severely injured, serve a disproportionate number of those victims that have been involved in such an incident. This care is inordinately costly yet is simply ignored by insurers.

The requirement to treat without a requirement to reimburse has had a negative effect on the system to manage the severely injured in New Jersey. First, although the care is delivered, the hospital and physicians must sue the patient for reimbursement, even though that person may not have been intoxicated but involved innocently with others who were intoxicated. Second, appropriate and necessary rehabilitation and follow-up care is almost impossible to arrange without this financial coverage. The injured person remains in the initial hospital or trauma center for a longer period, increasing costs without appropriate rehabilitation and other needed care, while appropriate post-acute care and the means to pay for it are sought

It should not be the burden of the health care industry or others injured in these alcohol related crashes to find a way to pay for care when the individuals are already insured. The insurance industry, which has already included these risk evaluations in their cost estimates, should rectify this problem with persons whom they insure.

Finally, the issue of nonpayment has one additional critical effect. Trauma centers are

⁵³C. Soderstrom, J. Birschbach and J. Dischinger, "Injured Drivers and Alcohol Use: Culpability, Convictions, and Pre- and Post-Crash Driving History," Journal of Trauma. 30(10) (1990):1208-1213.

increasingly failing to check the blood alcohol concentration of their patients so that insurers cannot use this information to deny payment. This has particular importance since it is the trauma centers that treat the most severely injured and are charged to document the disease of injury. But the centers do not document the cause of the disease in order to avoid nonpayment. Paradoxically, action by the insurance companies is inhibiting the process that leads to prevention of further costly injury, which is ultimately in their interest.

9. Attorney General's Report

On August 27, 1998, Attorney General Peter Verniero submitted a series of recommendations to the Task Force, some of which have been considered by the Task Force, others of which have not. The report appears in Appendix H for consideration by the Legislature and a permanent commission.

APPENDICES

ON ALCOHOL RELATED MOTOR VEHICLE ACCIDENTS AND FATALITIES IN NEW JERSEY

PURPOSE OF TASK FORCE

The central focus and objective of the Task Force is to determine the most effective manner of keeping persons who are intoxicated from getting behind the wheel of a motor vehicle.

While the Task Force is charged with conducting research and making findings in specific areas, its primary purpose is to look at the problem of drunk driving from a broad perspective and to recommend to the Legislature what more, if anything, should be done from a legislative standpoint to prevent drunk driving and the resulting accidents and fatalities.

The Task Force is to look at the experiences of other states in dealing with the problem. The Task Force is to draw upon all available source materials and resources to assist it in making determinations and recommendations regarding how to most sensibly and effectively deal with the problem of keeping persons who are intoxicated from getting behind the wheel of a motor vehicle.

The Task Force is encouraged to consider new ideas and to develop creative approaches for dealing with this serious problem.

PUBLIC HEARINGS

The Task Force is to hold at least three public hearings in different parts of the State to hear expert testimony as well as testimony from individual citizens who want to testify.

TASK FORCE DIRECTIVES

In its study of this complex and emotional issue, the Task Force is encouraged to examine the following specific matters, many of which were raised at the meeting of the Senate Law and Public Safety Committee:

- Are current State Laws dealing with DWI adequate, or are there ways in which they can be strengthened and improved?
- Have enactments by the Legislature in recent years increasing the penalties for DWI had any effect in reducing DWI related accidents?
- To what extent do tougher state laws regarding DWI in fact serve as a deterrent?
- What is the blood alcohol content of drivers involved in DWI related accidents, particularly those involving fatalities? The Task Force is to obtain the most objective statistics available in this connection, evaluate the data, and state conclusions reached and the basis thereof.
- Testimony before the Senate Law and Public Safety Committee regarding how many drinks it would take to reach a blood alcohol content level of 0.08% depending on body weight, food consumed, time period, etc. was contradictory. The Task Force is to develop, based upon the best scientific testing and evidence available, a chart that would reflect as accurately as scientifically possible, how many drinks of specified quantity (i.e., ounces) in what time period would have to be consumed by persons of various weights to reach various blood alcohol content levels.

- Testimony before the Senate Law and Public Safety Committee regarding whether reducing the blood alcohol content level to 0.08% would reduce the number of DWI accidents and fatalities and if so to what extent, based upon the experience in other states, was confusing. The Task Force is to review and evaluate all of the studies that are available on this issue and is to make an objective finding and conclusion as to the effect of reducing the blood alcohol level from 0.10% to 0.08%
- Under New Jersey law a driver can be charged with impairment (DWI) even though his or her blood alcohol content level (BAC) is not 0.10%, based upon other factors as observed by the police officer. The Task Force is to obtain whatever statistical information is available regarding the BAC of drivers arrested for DWI, involved in accidents, etc. Since a driver can already be arrested under current State law for DWI with a BAC of 0.08% or even less if showing signs of impairment, the Task Force is to attempt to obtain any statistical information it can regarding the number of cases where a driver arrested for DWI or involved in an accident had a BAC of 0.08% or less.

DEADLINE FOR TASK FORCE TO MAKE REPORT

There are many complex technical issues involved, and if a thorough and comprehensive study is to be done and extensive testimony is to be taken, the Task Force must be given sufficient time to complete the tasks with which it is charged in order to make the meaningful report which is expected.

Therefore, the Task Force will be given nine (9) months after it is fully constituted to conduct its study and issue its report.

PERSONS AND ORGANIZATIONS REPRESENTED THAT TESTIFIED BEFORE THE
TASK FORCE

Joseph Ardire
Vice President
New Jersey Licensed Beverage Association, Inc.

Sharon A. Balsamo, Esq.
Assistant Legislative Counsel
New Jersey State Bar Association

Richard Bellshot
Tavern Owner
Camden County

Cynthia Berchtold
Program Support Services
Governor's Council on Alcoholism and
Drug Abuse

Richard Berman, Esq.
General Counsel
American Beverage Institute

Jason Bernstein
Friend of drunken driving victim

Steve Carrellas
New Jersey Coordinator
National Motorists Association

Joseph A. Chiappa
Director
Camden County
Intoxicated Driver Resource Center, and
Vice Chairman
Intoxicated Driver Resource Center
Directors Associations of New Jersey

Robin Cincotta
Director of Advocacy and Public Affairs
Brain Injury Association of New Jersey, Inc.

James Davenport

Carl DeBell
Executive Director
National Council on Alcoholism
and Drug Dependence
North Jersey Area, Inc.

Mary Joyce Doyle
Legislation/Resolutions Chairman
New Jersey State Federation of Women's Clubs

Maria Fatima Esteves
Mother of a drunken driving victim.

Arnold N. Fisherman, Esq.
Haddon Heights

Donna Frandsen
Public Policy Director
Mothers Against Drunk Driving
New Jersey State Office, and Director
Intoxicated Driver Resource Center

Ralph W. Hingson, Sc.D.
Professor and Chair
Department of Social and Behavioral Sciences
Boston University School of Public Health

Joseph Johnson
Private Citizen

U.S. Senator Frank R. Lautenberg
State of New Jersey

Trooper Herbert H. Leckie
Breath Test Coordinator-Instructor
Alcohol-Drug Test Unit
Division Headquarters
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Peter H. Lederman, Esq.
Vice Chairman
Municipal Court Practice Committee
New Jersey State Bar Association

Rena Levine Levy
Officer

New Jersey Restaurant Association, and
Chief Executive Officer
WindMill Franchise Corporation

Senator Gordon A. MacInnes
District 25

Michael Marsh
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Richard Ricks
House Manager
Hendrix House

Lewis Rothbart
President and Director
New Jersey Licensed Beverage Association, Inc.

Phyllis Scheps
Representing
The Safety Lobby and
The 0.08 Coalition

Patrick Schultz
Representing
Tri-State Transportation Campaign

Gerald L. Solowey, D.D.S.
Father of drunken driving victim

Doug Thomson

Private Citizen

William G. Wright, Esq.
Chairman and Executive Director
Teresa G. Wright Promise Foundation

New Jersey Permanent Statutes

UPDATED THROUGH P.L.1998, c.136, and J.R.8.

39:4-50. Driving while intoxicated

R.S.39:4-50. (a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood, shall be subject:

(1) For the first offense, to a fine of not less than \$250.00 nor more than \$400.00 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year.

(2) For a second violation, a person shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances, and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director, consistent with subsection (b) of this section.

(3) For a third or subsequent violation, a person shall be subject to a fine of \$1,000.00, and shall be sentenced to imprisonment for a term of not less than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and shall thereafter forfeit his right to operate a motor vehicle over the highways of this State for 10 years.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the

conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than .10%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving Program Unit in the Department of Health and Senior Services; provided that for a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the Director of the Division of Motor Vehicles. The sentencing court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two-day term of imprisonment in a county jail and a driver license revocation or suspension and continuation of revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with Rule 7:8-2 of the Rules Governing the Courts of the State of New Jersey, or R.S.39:5-22. Upon sentencing, the court shall forward to the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of \$100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S.39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in

writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. In the event that a person convicted under this section is the holder of any out-of-State driver's license, the court shall not collect the license but shall notify forthwith the director, who shall, in turn, notify appropriate officials in the licensing jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State, in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The Director of the Division of Motor Vehicles shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol education and highway safety, as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing Criminal Practice, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicles, but subject to the approval of the Division of Alcoholism and Drug Abuse, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving as community treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of \$75.00 for the first offender program or a per diem fee of \$100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full

year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the Director of the Division of Motor Vehicles.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

Amended 1952, c.286; 1964, c.137; 1965, c.134; 1966, c.141, s.1; 1971, c.103; 1977, c.29, s.1; 1981, c.47, s.1; 1981, c.537, s.1; 1982, c.53, s.2; 1982, c.58, s.1; 1983, c.90, s.2; 1983, c.129, s.1; 1983, c.444, ss.1,3, (s.3 eff. date amended 1984, c.4, s.2); 1984, c.243, s.1; 1986, c.126; 1993, c.296, s.6; 1994, c.184, s.1; 1995, c.243; 1997, c.277, s.1.

39:4-50.2. Consent to taking of samples of breath; record of test; independent test; prohibition of use of force; informing accused

(a) Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of R.S. 39:4-50.

(b) A record of the taking of any such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

(c) In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

(d) The police officer shall inform the person tested of his rights under subsections (b) and (c) of this section.

(e) No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant. The police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test in accordance with section 2 of this amendatory and supplementary act. A standard statement, prepared by the director, shall be read by the police officer to the person under arrest.

L.1966, c. 142, s. 2. Amended by L.1977, c. 29, s. 3; L.1981, c. 512, s. 1, eff. Jan. 12, 1982.

DRUNK/DRUGGED DRIVING LAWS AND PENALTIES

INTRODUCTION

New Jersey law prohibits a person under the influence of intoxicating liquor or drugs or with a blood alcohol concentration (BAC) of .10% or higher from operating a motor vehicle. A person who is found guilty of driving under the influence (DUI) is subject to substantial penalties, including loss of driving privileges, fines and imprisonment. An offender faces various other fees and surcharges, increased automobile insurance premiums and mandatory participation in certain education and treatment programs.

STATE OF CURRENT LAW

A person who operates a motor vehicle on any public road or highway in this State is deemed to have given his consent to a breath test in order to determine his BAC pursuant to N.J.S.A. 39:4-50.4a (the implied consent law). Under N.J.S.A. 39:4-50 it is illegal per se to operate a motor vehicle with a BAC of .10%. While the BAC reading may be rebutted in certain instances, a BAC reading of .10% is sufficient to prove a DUI violation prima facie. There is no need to prove that the operator's ability to operate a motor vehicle was impaired or that the operator was driving in a reckless manner. The offender with a BAC below .10% may be convicted on the basis of chemical tests and other evidence, such as a videotape or the testimony of a police officer who conducted field sobriety tests.

DUI offenses in this State are not treated as criminal offenses, so the delays associated with criminal court dockets are avoided. Prosecutors are prohibited from plea-bargaining by a directive from the Chief Justice of the Supreme Court. Since DUI cases are tried in the municipal courts, there are no jury trials.

The penalties associated with a DUI conviction are described below and summarized in the attached table.

SUSPENSION OR REVOCATION OF DRIVER'S LICENSE

1. N.J.S.A. 39:4-50 prescribes a period of license revocation or suspension for a DUI conviction (see table).

2. In specific DUI cases, the Director of the Division of Motor Vehicles (DMV) in the Department of Law and Public Safety may exercise his discretion to suspend the offender's driver's license pursuant to other statutory authority including N.J.S.A. 39:5-30b (habitual offender); N.J.S.A. 39:5-30 (accident resulting in death or serious bodily injury); N.J.S.A. 39:5-31 (willful violation of Title 39).

DRUNK/DRUGGED DRIVING LAWS AND PENALTIES

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INCARCERATION

1. N.J.S.A. 39:4-50 prescribes a period of incarceration for a DUI conviction (see table).

2. N.J.S.A. 39:4-51 provides that a person convicted of DUI, who has been imprisoned in a county jail or workhouse, "shall not, after commitment, be released therefrom until the term of imprisonment has been served." However, the person may in the court's discretion be released on a work release program.

FINES AND COSTS

1. N.J.S.A. 39:4-50 prescribes specific DUI fines (see table).

2. Additional fees are imposed pursuant to N.J.S.A. 39:4-50.8 (Drunk Driving Enforcement Fund) and N.J.S.A. 39:3-10a (driver's license restoration fee) (see table for fee amounts).

3. A fee not to exceed \$20 is imposed if a physician testifies in a DUI case. N.J.S.A. 39:5-39.

COMMUNITY SERVICE

Pursuant to N.J.S.A. 39:4-50 (a)(2), second and subsequent offenders are required to perform community service (see table).

PARTICIPATION IN AN IDRC PROGRAM

Intoxicated Driver Resource Centers (IDRC) serve as community treatment referral centers and as court monitors of an offender's compliance with the ordered treatment, service alternative or community service. They are administered by a certified alcoholism counsellor or other professional. The centers develop individualized treatment plans and receive monthly reports from the referral agencies regarding an offender's participation and compliance with the program. See N.J.S.A. 39:4-50

1. Attendance requirements and costs (see table).

(a) The \$100 fee payable to Alcohol Education Rehabilitation and Enforcement Fund is earmarked for the Bureau of Alcohol Countermeasures in the Intoxicated Driving Programs Unit by N.J.S.A. 39:4-50(b).

(b) Counseling is sometimes required; usually 16 sessions at \$35 each.

2. Failure to satisfy the IDRC requirements results in a mandatory two day term of imprisonment in a county jail and a driver's license revocation or suspension until the requirements are satisfied. N.J.S.A. 39:4-50(b).

DRUNK/DRUGGED DRIVING LAWS AND PENALTIES

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INSURANCE

1. The offender is subject to automobile insurance surcharges for a DUI conviction pursuant to N.J.S.A. 17:29A-35(b)(2) (see table).

2. If the surcharge payments are not current, a license suspension will be continued. N.J.A.C. 13:19-12.1.

3. The offender's insurance premium will be increased pursuant to the eligibility point charge. N.J.A.C. 11:3-34.1. Insurance eligibility points are assigned on the basis of motor vehicle convictions and at-fault accidents. The offender will receive nine eligibility points for a DUI conviction. These points will be used in calculating the increased premium.

DRIVING WITH REVOKED LICENSE DUE TO DUI

For driving during a period of license suspension due to DUI, the offender is subject to a \$500 fine, suspension of his driver's license for at least one but not more than two years, imprisonment for at least 10 but not more than 90 days, and revocation of his motor vehicle registration privilege for the remainder of the period of driver's license suspension. N.J.S.A. 39:3-40.

REFUSAL TO SUBMIT TO CHEMICAL TEST

A person who refuses to submit to the breath test is subject to the following penalties:

1. License suspension--first refusal, six months; second refusal, two years; subsequent refusal; ten years.

2. Fine--not less than \$250 and not more than \$500.

3. Automobile Insurance Surcharge--same as for DUI conviction (see table).

4. Intoxicated Driver Resource Center requirements--same as for DUI conviction (see table).

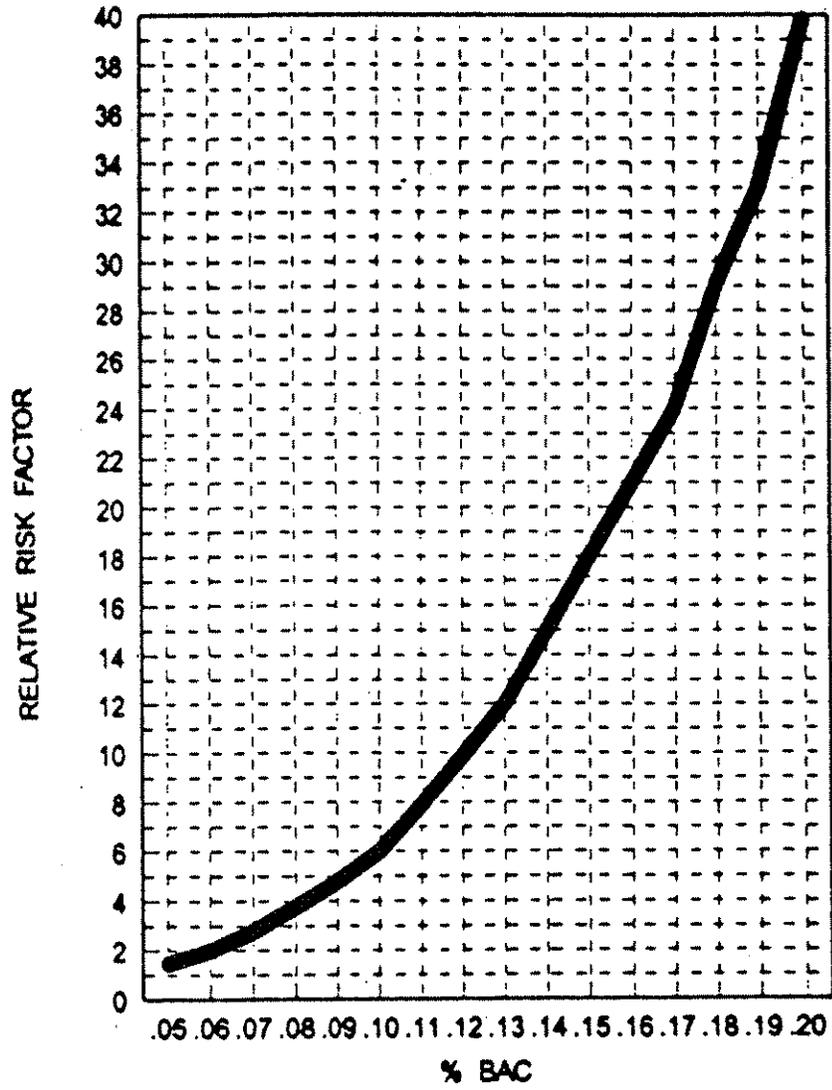
DRIVING PENALTIES FOR UNDERAGE PERSONS THAT CONSUME ALCOHOL

1) N.J.S.A. 39:4-50.14 provides that persons under 21 years of age who operate a motor vehicle with a blood alcohol concentration between .01% to .10% shall have their license suspended for 30 to 90 days. The person must also perform 15 to 30 days of community service and either satisfy the program and fee requirements of an Intoxicated Driver Resource Center or participate in a program of alcohol education and highway safety.

2) Individuals under 21 years of age who consume alcoholic beverages in a motor vehicle have their driving privileges suspended or postponed for six months and receive a fine of at least \$500. The court may also require offenders to participate in an alcohol education or treatment program, N.J.S.A. 2C:33-15.

NEW JERSEY DUI PENALTIES

	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>
Suspension of Driver's License	6 months to 1 year	2 years	10 years
Incarceration	30 days at discretion of court.	at least 48 consecutive hours; maximum of 90 days, with no probation or suspension for initial 48 hours.	180 days; treatment at an in-patient alcoholism treatment program may partially satisfy the incarceration requirement. The court also may lower the term for each day, not exceeding 90 days, served performing community service.
Fine	\$250 to \$400	\$500 to \$1,000	\$1,000
Community Service	Not required	30 days	30 days
Automobile Insurance Surcharges	\$1,000/year for 3 years	\$1,000/year for 3 years	\$1,500/year for 3 years for third conviction in 3-year period.
Intoxicated Driver Resource Center (IDRC)	2 day detainment, 6 hours/day in a county IDRC. Fee: \$75/day	48 consecutive hours detainment in a regional IDRC. Fee: \$100/day	Detainment in an in-patient alcoholism treatment program may partially satisfy IDRC requirements. Fee depends on court sentence.
Drunk Driving Enforcement Fund	\$100	\$100	\$100
Bureau of Alcohol Countermeasures Fee	\$100	\$100	\$100
Driver's License Restoration Fee	\$50	\$50	\$50



*Chart reproduced from John Brick, Drinking, Driving and Relative Risk: An Evaluation of Existing Data.

	<.10 BAC		>.10 BAC		ALL Positive Alcohol		ALL Cases	
	Incidence	% Total	Incidence	% Total	Incidence	% Total	Incidence	% Total
PDO	353,027	1.5%	3,560,797	15.2%	3,913,824	16.7%	23,395,971	100.0%
MAIS 0	408,218	11.0%	579,822	15.6%	988,040	26.6%	3,715,370	100.0%
MAIS 1	179,892	3.9%	669,917	14.5%	849,809	18.4%	4,626,495	100.0%
MAIS 2	54,145	13.6%	92,926	23.3%	147,071	36.9%	398,553	100.0%
MAIS 3	16,008	9.6%	42,139	25.3%	58,147	34.9%	166,845	100.0%
MAIS 4	1,569	9.2%	5,108	29.8%	6,677	39.0%	17,123	100.0%
MAIS 5	304	4.4%	2,396	34.6%	2,699	39.0%	6,914	100.0%
MAIS 1-5	251,919	4.8%	812,485	15.6%	1,064,404	20.4%	5,215,931	100.0%
Fatal	3,495	8.6%	13,094	32.2%	16,589	40.8%	40,676	100.0%

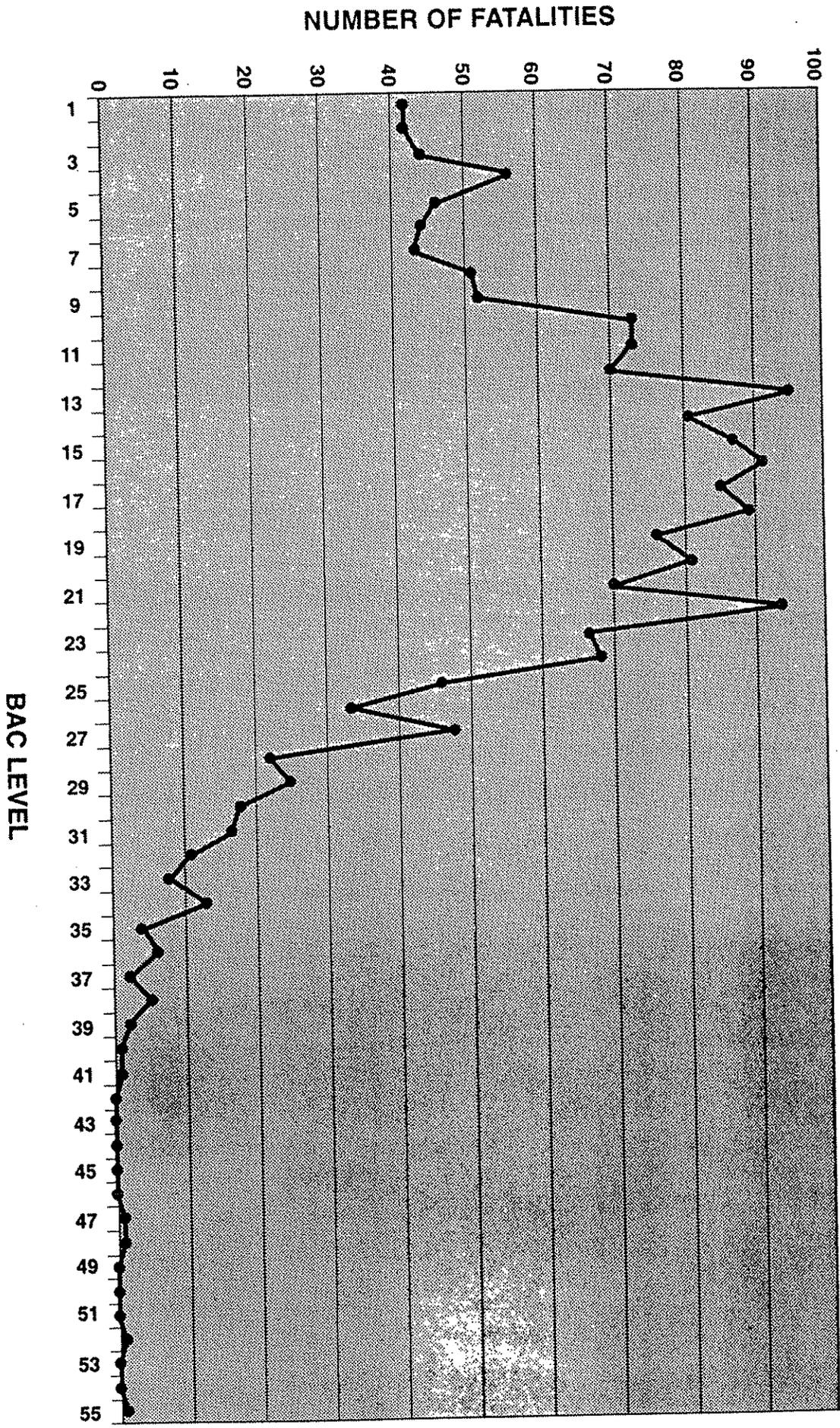
*Data from the National Highway Traffic Safety Administration, "The Economic Costs of Motor Vehicle Accidents," 1994

was .01 or greater.

BAC CATEGORIES	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
.01	1	1	3	2	2	2	1	4	8	8	10
.02	4	4	3	4	3	3	2	5	5	7	4
.03	2	5	2	2	7	1	5	6	3	9	2
.04	6	5	3	5	5	4	2	4	9	3	9
.05	3	3	1	8	1	7	8	2	5	3	5
.06	1	4	3	3	6	2	7	4	4	6	4
.07	2	4	3	0	7	4	7	4	5	3	4
.08	4	6	3	6	6	2	7	1	5	7	4
.09	0	3	3	4	11	6	5	6	7	2	5
.10	10	5	6	2	3	8	12	5	4	12	6
.11	8	5	4	5	7	6	6	7	9	7	9
.12	7	9	8	6	3	7	8	3	6	5	10
.13	7	9	8	10	5	7	9	17	8	10	5
.14	6	8	12	7	9	8	3	9	6	6	7
.15	8	10	9	9	6	7	7	3	10	9	9
.16	10	8	4	6	7	12	7	10	6	13	9
.17	9	9	6	9	8	6	7	7	7	11	6
.18	6	7	11	12	9	8	7	8	10	3	8
.19	7	6	9	11	12	4	4	6	4	8	5
.20	6	8	5	9	11	5	10	7	7	6	7
.21	4	7	16	4	7	7	5	5	5	6	4
.22	10	9	7	8	12	13	7	9	7	8	4
.23	2	7	10	9	6	2	9	11	6		0
.24	2	6	12	5	8	6	8	8	8	3	2
.25	4	2	6	4	1	11	6	6	2	2	2
.26	3	3	4	3	6	9	1	1	2	0	2
.27	2	5	11	3	1	5	7	4	4	2	4
.28	0	1	1	3	4	2	5	1		0	3
.29	4	1	0	6	2	2	3	3	1	0	3
.30	1	1	2	1	1	2	2	4	2	2	0
.31	2	1	0	2	4	0	1	4	0	1	2
.32	1	1	1	2	2	2	0	0	0	1	1
.33	0	2	1	0	0	0	0	4	0	0	1
.34	1	0	2	2	0	2	3	1	1	0	1
.35	0	1	0	0	0	0	0	1	0	1	1
.36	0	1	0	2	1	1	0	1	0	0	0
.37	0	0	1	0	0	1	0	0	0	0	0
.38	0	1	1	0	0	0	0	0	2	1	0
.39	0	0	0	0	1	0	0	0	0	0	1
.40	0	1	0	0	0	0	0	0	0	0	0
.41	0	0	0	0	1	0	0	0	0	0	0
.42	0	0	0	0	0	0	0	0	0	0	0
.43	0	0	0	0	0	0	0	0	0	0	0
.44	0	0	0	0	0	0	0	0	0	0	0
.45	0	0	0	0	0	0	0	0	0	0	0
.46	0	0	0	0	0	0	0	0	0	0	0
.47	0	0	1	0	0	0	0	0	0	0	0
.48	0	0	0	0	0	0	0	0	1	0	0
.49	0	0	0	0	0	0	0	0	0	0	0
.50	0	0	0	0	0	0	0	0	0	0	0
.51	0	0	0	0	0	0	0	0	0	0	0
.52	0	0	0	0	0	0	0	0	1	0	0
.53	0	0	0	0	0	0	0	0	0	0	0
.54	0	0	0	0	0	0	0	0	0	0	0
.55+	1	0	0	0	0	0	1	0	0	0	1
TOTALS	144	169	182	174	185	174	180	181	172	169	160

*Data from the State Division of Highway Traffic Safety

ALCOHOL-RELATED FATALITIES IN NJ (1987-1997)



*Data from the State Division of Highway Traffic Safety
-Chart prepared by Ilana Pinsky

ALCOHOL RELATED FATALITIES IN NEW JERSEY 1980-1997*

<u>YEAR</u>	<u>NUMBER</u>	<u>PERCENT OF ALL FATALITIES</u>
1980	573	51%
1981	572	49%
1982	531	50%
1983	406	43%
1984	369	40%
1985	409	43%
1986	408	39%
1987	379	37%
1988	383	36%
1989	334	37%
1990	314	35%
1991	252	32%
1992	235	31%
1993	223	28%
1994	227	29%
1995	226	29%
1996	178	22%
1997	217	28%

*Data from the Division of Highway Traffic Safety

**State of New Jersey**

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August 27, 1998

Honorable Alexander Menza, Chairman
Senate Task Force on Alcohol Related Motor Vehicle Accidents
and Fatalities in New Jersey
c/o Anne Stefane, Esq.
Office of Legislative Services
Central Management Unit
Law and Public Safety Section
P.O. Box 068
Trenton, New Jersey 08518

Re: Recommendations

Dear Chairman Menza:

As the State's chief law enforcement officer, I commend you for the work your task force has undertaken to examine the State's laws against drunk driving and to recommend changes where appropriate. I also thank you in advance for considering my recommendations.

After extensive research of New Jersey's and other states' laws, I am pleased to submit the following specific recommendations.

Supervision of Municipal Prosecutors

Issue: According to information provided by the Administrative Office of the Courts, the percentage of cases in which a defendant either pled guilty or was found guilty (the conviction rate) has steadily declined from 80.2% in 1990 to 75.9% in 1996. This percentage is determined by dividing the number of cases with a guilty disposition by the number of cases which had a disposition of guilty, not guilty, dismissed, or other. Other dispositions are findings of guilt for an offense other than for DWI. Typically, these offenses are less serious than DWI.

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The percentage of other adjudications has grown somewhat since 1990, from 6.0% in 1990 to 6.7% in 1996.

The reduction in the conviction rate is cause for some concern. Part of the problem may rest with the system of part-time municipal prosecutors who may not be receiving consistent training on prosecuting DWI cases and who may need more support from county prosecutors' offices. There are some concerns whether the Supreme Court's prohibition against plea bargaining of DWI cases is not being followed in all cases.

Recommendation: Amend the law to better define the role and responsibilities of the municipal prosecutor position (see Senate Bill No. 279 of 1998, sponsored by Senator Girgenti).

Child Endangerment

Issue: Many states have specifically included DWI as one of the criteria for a prosecution of endangering the welfare of a child or have provided for enhanced penalties if a juvenile is present in a vehicle driven by a person who is intoxicated. Although New Jersey's child endangerment laws cover many types of prohibited behavior, DWI is not specifically listed as one of the factors for prosecution under this offense. Although one could argue that the definition for abuse to a child found in N.J.S.A. 9:6-8.21 includes such behavior that "creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ," prosecution for child abuse is generally not done in DWI cases.

Recommendation: Amend the child endangerment statute, N.J.S.A. 9:6-8.21, to specifically add DWI with a child in the car as one of the criteria for child endangerment. Adding a specific offense will clearly demonstrate that a person driving while intoxicated with a child in the car is recklessly risking the health and welfare of that child. See related bills, Assembly Bill No. 2117 of 1998, sponsored by Assemblymen Bateman and Biondi and Assembly Bill No. 2126 of 1998, sponsored by Assemblymen Bates and Holtzapfel, which is identical to Senate Bill No. 1286 of 1998, sponsored by Senator Sinagra.

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Underage Drinking and Driving

Issue: N.J.S.A. 39:4-50.14, which was enacted in 1992, prohibits persons under the legal drinking age of 21 from driving with a BAC of at least .01%, but less than .10% (a BAC of .10% or greater would be a violation under the regular DWI law). A violator would be subject to driver's license suspension for a period of not less than 30 days or more than 90 days and community service of not less than 15 days or more than 30 days. A violator would also be required to attend and pay the fees for the program at an Intoxicated Driver Resource Center or participate in a program of alcohol education and highway safety as prescribed by the Division of Motor Vehicles. The penalties imposed under this statute would be in addition to those imposed by any other law. It should be noted that the implied consent law, which penalizes those who refuse to take the Breathalyzer test, only applies to those who law enforcement officers believe to be in violation of the DWI law and not those who are suspected to be in violation of the underage drinking and driving law.

In addition, the number of persons charged with underage drinking and driving continues to increase. Since December, 1992, when the law was enacted, the number of persons under 21 years of age whose driver's licenses have been suspended under this law has increased from 306 in 1993 to 790 in 1996, a 158% increase. Between 1995 and 1996, the number of suspensions under this law increased by 37, or 5%. Although this increase may indicate a problem with underage drinking and driving, it is difficult to determine because this law was enacted relatively recently. This increase may be a result of an increased awareness of this law by law enforcement officers, together with better enforcement techniques.

Recommendations: Amend the implied consent law, N.J.S.A. 39:4-50.14, to expand scope for BAC testing to include underage drivers who have consumed alcohol (see Assembly Bill No. 2118 of 1998, sponsored by Assemblymen Bateman and Biondi).

Monitor the number of cases of underage drinking and driving. Although it is difficult to determine whether there is a growing problem of underage drinking and driving because of the relatively recent change in the law, New Jersey should be prepared to take action if the problem proves to be increasing.

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Assault by Auto

Issue: Under N.J.S.A. 2C:12-1, a person is guilty of assault by auto when the person recklessly drives a vehicle and causes either serious bodily injury or bodily injury. A person is guilty of a crime of the fourth degree if serious bodily injury is caused or a disorderly persons offense if bodily injury is caused. The penalties for these offenses are a fine of up to \$10,000 and/or incarceration for up to 18 months for a crime of the fourth degree and a fine of up to \$1,000 and/or incarceration for up to six months for a disorderly persons offense. The fact that an operator was driving while intoxicated is evidence that the operator was reckless, but it is not sufficient evidence on its own for there to be a finding of guilt. The prosecutor must have other evidence to show that the operator was reckless. (See State v. Labruzzo, 114 N.J. 197 (1989) and State v. Scher, 278 N.J. Super. 249, (App.Div. 1994), certif. denied, 140 N.J. 276 (1995)).

Recommendation: Amend the assault statute, N.J.S.A. 2C:12-1, to specifically include serious bodily injury or bodily injury resulting from a person driving while intoxicated as a condition for prosecuting the offense as aggravated assault. Current law requires that the person drive recklessly, and the evidence of DWI alone is not sufficient for a successful prosecution.

Criminalization of Driving While Suspended for a DWI Violation

Issue: Under N.J.S.A. 39:3-40, a person guilty of driving with a suspended driver's license for a violation of N.J.S.A. 39:4-50 (DWI) or N.J.S.A. 39:4-50.4a (Implied Consent) is subject to various penalties, including fines, driver's license and motor vehicle registration suspension, and possible incarceration (up to 10 days for a third or subsequent offense). Even though the legislature in 1995 increased the penalties for DWI offenders who are guilty of driving while their licenses are suspended, it may be prudent to look at this statute again. Keeping DWI offenders off the road is a major priority. Although the law severely punishes those caught drinking and driving, the law is not as aggressive in keeping the offender off the road before he has had an opportunity to drink. If the offender can be prevented from driving at all, then a subsequent DWI offense cannot occur.

A person who is found guilty of a DWI offense and subsequently is found guilty of driving while suspended should be subject to the same penalties as a person who is guilty of criminal contempt because of the person's disregard for the court's order prohibiting the offender from driving. Criminal contempt is a crime of the fourth degree which carries a penalty of a fine of up to \$10,000 and/or

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incarceration for up to 18 months. By amending the law to allow for the criminal prosecution of these offenders, prosecutors would have a significant tool to use against these violators.

Recommendation: Amend the criminal code to allow for the prosecution for criminal contempt of persons (crime of the fourth degree) who drive while suspended for a DWI or an implied consent offense.

Ignition Interlock Devices

Issue: Many states, as an option for the court to allow a DWI offender to retain his or her driving privilege, allows for the use of ignition interlock devices. Generally, these devices require the driver to blow into the device which measures the BAC of the driver. If the driver's BAC, as measured by his breath, is within specified limits, the vehicle can be started. If the BAC is over the specified limit, the vehicle will not start. In addition, the device records the results of all breath tests. Use of ignition interlock devices is not a sentencing alternative in New Jersey.

Each state sets forth rules and regulations for the installation and use of breath alcohol ignition interlock devices. Typically, state laws authorize judicial discretion with respect to installation of the device, and a judge would authorize installation of a device based on a driver's eligibility and expected compliance with current law. Use of the device would permit the driver to maintain legal, but restricted, driving privileges. Requirements for approval to market an ignition interlock device vary from state to state.

The use of ignition interlock devices provides flexibility to the court, which may not want to suspend or revoke an offender's license, usually a first-time offender, by allowing an intermediate sanction. The device can also assist these offenders in learning to drink less by restricting the use of their vehicles after they have been drinking. However, the use of ignition interlock devices poses some risks because these devices can be defeated by having another party provide the breath sample. In addition, these devices are fairly expensive, costing several hundred dollars to purchase or \$50 to \$100 per month to lease. Most states require that the offender pay for the cost of the device; however, this practice is criticized because only those who can afford this alternative are allowed to retain their driving privilege.

Recommendation: Establish a pilot program to allow for the use of ignition interlock devices. Such a program could be used as an incentive for increased

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alcohol and drug treatment. See related bill, Assembly Bill No. 157 of 1998, sponsored by Assemblymen Bateman and Russo.

Blanket Criminalization of DWI Offenses

Issue: While most states define the DWI offense as a "crime," New Jersey classifies the offense as a "motor vehicle" violation. Although they are not criminal offenses, motor vehicle violations are tried as "quasi-criminal" offenses in the municipal courts, which is considerably more efficient and cost-effective than if those cases were tried as criminal offenses in the Superior Court.

Even though these offenses are adjudicated as "quasi-criminal offenses," a defendant is still afforded certain basic constitutional protections, *i.e.*, a Miranda warning upon arrest; proof of every element of the offense must be beyond a reasonable doubt; a defendant is entitled to counsel; a defendant is entitled to assert a Fourth Amendment argument; a defendant cannot be compelled to testify; discovery is provided; upon conviction the defendant is informed of his/her right to an appeal. However, a defendant is not entitled to a jury trial on a DWI charge, nor is a defendant entitled to refuse to submit to chemical breath testing or to consult with, or have, an attorney present during the breath testing.

New Jersey's penalties are comparable to those in many states which treat DWI as a "crime." While New Jersey's mandatory minimum penalties¹ for a DWI offense are average when compared with the other states, New Jersey has the longest periods of mandatory license suspension for DWI offenses². Additionally, because New Jersey has taken a tough stance against DWI, offenders are not able to plea bargain a DWI offense to a lesser offense or to receive the benefit of certain sentencing alternatives, such as restricted use driver's licenses, which reduce the effect of the penalties associated with a DWI offense.

¹The mandatory minimum fines are \$250, \$500 and \$1,000 for a first, second and third or subsequent offense, respectively, and mandatory minimum terms of incarceration are 48 hours and 90 days for a second and third or subsequent offense, respectively. There is no minimum term of incarceration for a first offense.

²The mandatory minimum period of driver license suspension is six months for a first offense, two years for a second offense and 10 years for a subsequent offense.

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Furthermore, New Jersey does presently criminalize behavior in egregious cases of assault by auto [see above] and death by auto, also referred to as vehicular homicide, which is presently a crime of the second degree. The law in this area was strengthened by virtue of the 1995 enactment of "Terry's Law." That law upgraded vehicular homicide from a crime of the third degree to a crime of the second degree and provided for a mandatory minimum term of imprisonment of three years if the defendant is found to have operated the vehicle while under the influence. As you know, second degree crimes in New Jersey are punishable by a term of five to ten years.

In addition, New Jersey is not the only state that does not treat DWI offenses as "crimes". Five other states, Connecticut, New Hampshire, New York, Wisconsin and Delaware, in certain circumstances also do not consider it a crime for a DWI offense to be a crime.

Recommendation: I do not recommend a blanket Criminalization of DWI offenses. The present system allows for the swift and sure adjudication of these cases. By making these offenses "crimes," an obvious burden would be placed on the criminal court system. The cases would not be adjudicated as quickly as at present and other criminal cases would take longer to move through the criminal justice system. In addition, all segments of the criminal justice system, defendants, prosecutors and the courts, would see significant increased costs with only limited appreciable benefit to the system. Finally, the most serious offenses such as assault and death by auto have already been criminalized.

Restricted Use Driver's Licenses

Issue: Many states offer a DWI offender the option to apply for a restricted use driver's license. These licenses are usually only offered to those who can demonstrate a hardship from the loss of license; usually the hardship relates to commuting to work and the possible loss of employment from the driver's license suspension or revocation. Usually, the restricted use driver's license can only be used during certain hours of the day, certain days of the week and for specified types of travel. The philosophy behind restricted use driver's licenses is to allow the court flexibility in adjudicating DWI cases.

Although several legislative proposals have been introduced in the recent past, New Jersey law does not allow for the use of restricted use driver's licenses. New Jersey's DWI laws are relatively swift and sure. Proponents for the restricted use driver's license state that the long license suspensions are overly harsh and are

detrimental to the DWI offender's family. They believe that the restricted use driver's license is a more realistic approach because some offenders are forced to drive while suspended in order to continue their employment. Other proponents argue that the restricted use driver's license provides a greater incentive for rehabilitation than total suspension and should be allowed even for certain multiple offenders.

Opponents of the restricted use driver's license state that the major sanction against DWI offenders, the loss of their driver's licenses, would be severely weakened. They maintain that the restricted use driver's license is difficult to enforce because officers would only be aware of the restriction on the license once they stop a vehicle for another violation. It should be noted that the DMV would be required to establish a whole new licensing system at a considerable cost.

Recommendation: I do not recommend restricted use driver's licenses at this time. In addition to the tremendous difficulty in enforcing such a law, the use of restricted use driver's licenses could severely reduce the deterrent effect that New Jersey's DWI laws currently have. One of the major benefits of this State's laws is their swift, sure and severe nature. By allowing DWI offenders the option to drive with a restricted use driver's license, the offender would not feel the sting of a mandatory license suspension.

Lowering BAC Level for Per Se Violation from .10% to .08%

Issue: Presently, all states, Puerto Rico and Washington, D.C., prohibit driving while intoxicated; however, Nevada and South Carolina, and Puerto Rico have not identified a BAC level for a "per se" violation, the level of alcohol intoxication which is illegal. Presently, 15 states have a BAC level of .08%, and 33 states, including New Jersey, and Washington, D.C. have a .10% BAC level. There has been much discussion recently for states to lower the "per se" BAC level to .08%. According to the National Highway Traffic Safety Administration (NHTSA), driving impairment occurs at the .08% BAC level, and the NHTSA advocates for the .08% BAC. The NHTSA, as well as other proponents of the .08% BAC, point to a recent study that concluded that if all states adopted the .08% BAC, at least 500 to 600 fewer fatal crashes would occur annually.

Opponents of the .08% BAC attack the study and argue that the real problem is the heavy drinker who would not be deterred by a lower BAC. They also argue that the moderate drinkers would be unable to distinguish when they would be violating the law because they could be over the .08% BAC limit without

Chairman Alexander Menza
August 27, 1998
Page 9

necessarily feeling intoxicated and that retail liquor establishments would suffer losses if the law were passed. They also contend that fatality reductions were more the result of concomitant public awareness campaigns concerning DWI and blood alcohol levels and not the law itself. However, both sides may be overstating their arguments. Although the study shows that states which adopted a .08% BAC had fewer alcohol-related fatalities than neighboring states which did not have the lower BAC, the number of such fatalities decreased in New Jersey by 47%, a greater reduction than the national average of 31% and greater than some of the states which reduced their BAC levels. In addition, no significant reduction in alcohol consumption or restaurant revenues has been documented in any of the states which adopted the .08% BAC.

Recommendation: I make no recommendation regarding the lowering of the BAC for a per se violation to .08% at this time because the evidence is not definitive regarding the benefits of a per se BAC level of .08% compared to .10%. Because statistics show that the main problems are offenders with BAC's of .15% and above and the recidivist offender, I believe our efforts should be focused on reducing the incidents of these offenses. However, this department will continue to study this issue as more data is made available and will keep an open mind.

Again, I thank you for the opportunity to provide you with my thoughts and recommendations.

Respectfully submitted,



Peter Verniero
Attorney General

dlg/lg

USE OF FUNDS DERIVED FROM ALCOHOLIC BEVERAGE TAXES AND REGULATION AND
DRUNK DRIVING PENALTIES

Alcoholic Beverage Tax

\$84 million estimated collections in FY 1999.

\$73 million to State General Fund

\$11 million to the Alcohol Education, Rehabilitation and Enforcement
Fund (N.J.S.A.54:43-1.1)

\$8,780,000 to the Department of Health and Senior Services for
distribution to the counties for planning and approved service programs for
alcohol and drug abusers (N.J.S.A.26:2B-34).

\$570,000 to Fetal Alcohol Syndrome Program (budget language).

\$1.1 million to the Division of Highway Traffic Safety in the Department
of Law and Public Safety for grants to police departments for drunk
driving enforcement (N.J.S.A.26:2B-35).

\$550,000 to the Administrative Office of the Courts for grants to
municipalities to defray municipal court costs in handling drunk driving
cases (N.J.S.A.26:2B-35).

Alcoholic Beverage Licenses, Fees and Penalties

\$6.3 million anticipated collections in FY 1999.

\$2 million to the State General Fund per language in the State Budget.

\$ 2.2 million to fund the operation of the Division of Alcoholic Beverage
Control in the Department of Law and Public Safety.

\$2.1 million to the Division of State Police for alcoholic beverage inspection and
enforcement services.

Insurance Surcharge (N.J.S.A.17:29A-35)

\$132 million collected in FY 1998 (about \$62 million, or 47 percent of this amount, may be attributable to drunk drivers).

\$73.3 million to debt service on Market Transition Facility Bonds (N.J.S.A.34:1B-21.7).

\$58 million to the State General Fund (N.J.S.A.34:1B-21.7).

Drunk Driving Surcharge (N.J.S.A.39:4-50.8)

\$2.3 million collected over past four quarters.

\$494,837 to State Police for drunk driving enforcement.

\$1,794,875 million to Division of Highway Traffic Safety for grants to local police departments for drunk driving enforcement.

Alcohol Education, Rehabilitation and Enforcement Fee (N.J.S.A. 39:4-50)

\$2 million in FY 1997 to Intoxicated Driving Program Unit in Department of Health and Senior Services.

ADMINISTRATIVE OFFICE OF THE COURTS
CRIMINAL PRACTICE DIVISION

INTEROFFICE MEMORANDUM
FEBRUARY 24, 1998

MEMORANDUM TO: David Anderson
FROM: Joseph J. Barraco, Esq.
RE: Impact of Possible Change in DWI Laws

You have asked for an assessment of the fiscal impact of a proposal to criminalize 2nd and/or 3rd convictions for DWI offenders. This report basically finds a need for 40-66 more judges, at a total system cost of between 74 and 104 million dollars.

For purposes of this memorandum I am assuming, as you suggested in your February 11, 1998 memorandum, that a 2nd conviction for DWI would be treated as a 4th degree crime and 3rd conviction for DWI would be treated as a 3rd degree crime. According to your figures there were about 35,000 DWI complaints in 1996. Of these, 17.3% (6119) were 2nd time offenders and 6.4% (2124) were 3rd time offenders. The overall trial rate for DWI cases is 32.4%.¹ Currently it is estimated that a bench trial takes 3-4 hours in municipal court. In municipal courts the standard for disposition of DWI cases is 60 days. See Directive # 1-84, dated July 26, 1984.

The following uncertainties will affect any assessment:

1. We cannot develop estimates of jail impact without the actual legislation. A number of issues impact such an estimate. In criminal matters there is a presumption against incarceration for persons who haven't been convicted of a prior offense. Would that presumption apply to 2nd and 3rd offense DWI's? Will plea bargaining be permitted?

¹ Separate trial rates for 2nd and 3rd offense were not available. It seems logical that the trial rates would be higher for 2nd and 3rd offenders as the penalties are more severe.

2. Will the conviction rate remain the same or decline because juries, instead of judges, would be deciding guilt or innocence?² A number of Criminal Presiding Judges believe conviction rates will decline.
3. Will DWI's be eligible for PTI as are other 3rd and 4th degree offenses?

I have prepared the attached chart which contains estimates of the number of cases, the number of 2nd and 3rd offenders, estimated trial rate, the number of trials, assuming alternatively a two or three day trial, the number of non-trial dispositions, the number of judges necessary to try cases and the number necessary to dispose of the other cases, the number of judge teams necessary, the cost to fund a judge team and the total projected judge team cost. The basis for the projections are contained on the chart.

Some bottom lines:

- **The trial rate will likely increase.**
It is estimated that the trial rate will increase from the current 32% to at least 50%. The Criminal Presiding Judges believe it could be even higher. Extrapolation, currently not an issue in DWI cases because they are non-criminal, see State v. Tischio, 107 N.J. 50 (1987), will likely become an issue if these cases are criminalized. See State v. Caliguiri, 305 N.J. Super. 9, 15 n. 2 (App. Div. 1997); State v. Oriole, 243 N.J. Super. 688, 695 (Law Div. 1990). If this happens it will cause a dramatic increase in the trial rate. Attorneys will want to show their client was not under the influence at the exact time of the offense. It will also have an impact on the length of trial because expert testimony, for both the State and defense, could be expected in most trials.
- **The length of trials will definitely increase.**
It presently takes about ½ day to try a case in municipal court. The Criminal Presiding Judges believe that DWI trials will take 3-4 days because of increased time for jury selection, motions, discovery and expert testimony. Some judges have expressed the opinion that juror voir dire in DWI cases will take longer than in the run of the mill criminal cases because jurors will have to be quizzed in depth about their views on alcohol and DWI.

² The conviction rate for trials in Superior Court during court year 1997 was 67%. For DWI cases in municipal court the conviction rate is over 80%.

- **There will be a dramatic increase in the number of trials in the Criminal Division.**

I estimate there will be some 4122 additional trials in the Criminal Division each year if 2nd and 3rd offense DWI's are criminalized. To give you a sense of the impact this would have – during the entire last court year there were 1883 cases tried in the criminal division.

- **A substantial increase in resources will be necessary to dispose of the influx of DWI cases or the disposition of other criminal cases will be severely impacted.**

Based on a 50% trial rate and a 3 day trial I estimate that 65.7 judge teams will be necessary. (48.8 judge teams will be necessary to dispose of 2nd offense DWI's and 16.9 to dispose of 3rd offense DWI's.)³ If one assumes a 50% trial rate and a 2 day trial, 46.6 judge teams would be necessary. (34.6 for 2nd offense DWI; 12 for 3rd offense DWI). Note: There are currently 97.5 judges assigned to the criminal division statewide.

- **The cost to fund this proposal will be substantial.**

The cost to fund these judge teams will be \$104,380,086 assuming a trial rate of 50% and three day trial. If one assumes a two day trial the cost would be \$74,035,191.

- **The average time to disposition will increase significantly.**

Presently there is a requirement that DWI cases be disposed of in 60 days in municipal courts. The current average time from arrest to trial in criminal matters is 425 days. The average time from arrest to disposition in plead cases is 193 days.

In addition to these costs there are other cost which I cannot begin to calculate without knowing the exact parameters of the legislation such as:

- Any increased cost on incarceration, both pretrial and after sentencing. The current rate of incarceration for 3rd degree offense generally is 55%. Over 1/2 of those incarcerated for 3rd degree offense receive State Prison sentences. The current rate of incarceration for 4th degree crimes is 43%. 1/3 of those incarcerated for 4th degree offense receive State Prison time.

³ *The Report of the Supreme Court Committee to Assess Criminal Division Needs in 1989* established a cost per judge trial team per year at \$1,400,000. It is estimated that cost is currently \$1,588,788 per judge team. A judge team consists of judge, court support staff, prosecutors and staff, public defenders and staff, court reporter, sheriffs officers, probation officers and costs for space to house these people. It does not include estimated expert costs.

- The cost of trial peripherals such as experts for the State and defense.
- The increased cost for summoning police officers to testify in Superior Court.


J.J.B.

cc: Honorable James J. Ciancia
Honorable Joseph F. Lisa
John P. McCarthy, Jr., Esq.

DWI Convictions⁴

	Number of 2 nd Offender DWI	Number of 3 rd Offender DWI
	6119	2124
Trial Rate⁵ 50%	3060	1062

	Number of Trial Days	Number of Trial Days
Three Day Trial⁶ 50% Trial Rate	9180	3186
	# Judges to Try Cases ⁷	# Judges to Dispose Others ⁸
Three Day Trial 50% Trial Rate	42.7	6.1
	# Judges to Try cases	# Judges to Dispose Others
	14.8	2.1

⁴ The total number of DWI cases was about 35,000 during 1996. According to figures you provided 17.3% (6119) are 2nd time offenders and 6.4% (2124) are 3rd time offenders.

⁵ These figures assume that 50%, of the cases will have to be tried. Currently the overall trial rate for all DWI cases is 32.4%.

⁶ It is currently estimated that a DWI bench trial takes 3-4 hours. The trial time will most definitely increase. Given the criminalization of DWI an entirely new body of case law will need to develop. Extrapolation, currently not an issue in DWI cases, will now become a hotly contested issue. The Criminal Presiding Judges are of the opinion each trial will take 3-4 days.

⁷ The estimate of the number of judges necessary to try cases was derived at using the assumption that a judge sits 215 days a year. If the estimated number of trials is divided by 215 the resulting figure is the number of judges necessary to try cases.

⁸ This number is derived at by subtracting the number of trials from the total number of DWI cases. The resulting figure is then divided by the average dispositions per judge (500).

Judge Teams Necessary	2 nd Offender DWI	3 rd Offender DWI
50% Trial Rate	48.8	16.9

Cost to Fund Judge Teams ⁹		
50% Trial Rate	\$77,530,414	\$26,849,672

TOTAL JUDGE TEAM COST: \$104,380,086

Two Day Trial ¹⁰	Number of Trial Days	Number of Trial Days
50% Trial Rate	6119	2124

	# Judges to Try Cases ¹¹	# Judges to Dispose Others ¹²	# Judges to Try cases	# Judges to Dispose Others
Two Day Trial				
50% Trial Rate	28.5	6.1	9.9	2.1

Total Number of Judge Teams Necessary		
50% Trial Rate	34.6	12

Cost to Fund Judge Teams ¹³		
50% Trial Rate	\$54,970,335	\$19,064,856

TOTAL JUDGE TEAM COST: \$74,035,091

⁹ The Supreme Court Committee to Assess Criminal Division Needs Report in 1989 established a cost of a judge trial team at \$1,400,000. Accounting for increased salaries since that time it is estimated a trial team would now cost \$1,588,738. A judge team consists of judge, court support staff, prosecutors and staff, public defenders and staff, court reporter, sheriffs officers, probation officers and costs for space to house these people. It does not include estimated expert costs.

¹⁰ See footnote 3

¹¹ See Footnote 4

¹² See footnote 5. This number is derived at by subtracting the number of trials from the total number of DWI cases. The resulting figure is then divided by the average dispositions per judge (500).

¹³ See footnote 6

**THE ARRESTING OFFICER MUST READ THE FOLLOWING TO THE DEFENDANT:
FULL TEXT OF STANDARD STATEMENT FOLLOWS:**

1. You have been arrested for operating a motor vehicle while under the influence of intoxicating liquor or drugs or with a blood alcohol concentration of 0.10% or more.
2. You are required by law to give samples of your breath for the purpose of making chemical tests to determine the content of alcohol in your blood.
3. A record of the taking of the samples, including the date, time, and results, will be made. Upon your request, a copy of that record will be made available to you.
4. Any warnings previously given to you concerning your right to remain silent and your right to consult with an attorney do not apply to the taking of breath samples and do not give you the right to refuse to give, or to delay giving, samples of your breath for the purpose of making chemical tests to determine the content of alcohol in your blood. You have no legal right to have an attorney, physician, or anyone else present, for the purpose of taking the breath samples.
5. After you have given samples of your breath for chemical testing, you have the right to have a person or physician of your own selection, and at your own expense, take independent samples and conduct independent chemical tests of your breath, urine, or blood.
6. If you refuse to give samples of your breath you will be issued a separate summons for this refusal.
7. According to N.J.S.A. 39:4-50.4a, if a court of law finds you guilty of refusing to submit to chemical tests of your breath, then your license to operate a motor vehicle will be revoked for a period of six months. If your refusal conviction is in connection with a subsequent offense under this statute, your license to operate a motor vehicle will be revoked for a period of two years. The Court will also fine you a sum of between \$250 and \$500 for your refusal conviction.
8. Any license suspension or revocation for a refusal conviction will be in addition to any license suspension or revocation imposed for any related offense.
9. If you are convicted of refusing to submit to chemical tests of your breath, you must also satisfy the requirements of a program of alcohol education or rehabilitation.
10. I repeat, you are required by law to give samples of your breath for the purpose of making chemical tests to determine the content of alcohol in your blood. Now, will you give the samples of your breath?

Answer: yes

(ADDITIONAL INSTRUCTIONS FOR POLICE OFFICER)

IF THE PERSON REMAINS SILENT OR STATES THAT HE/SHE REFUSES TO ANSWER ON THE GROUNDS THAT HE/SHE HAS A RIGHT TO REMAIN SILENT OR THAT HE/SHE FIRST WISHES TO CONSULT AN ATTORNEY, PHYSICIAN, OR OTHER PERSON, THE POLICE OFFICER SHALL READ THE FOLLOWING:

FULL TEXT OF ADDITIONAL STATEMENT FOLLOWS:

I have previously informed you that the warnings given to you concerning your right to remain silent and your right to consult with an attorney do not apply to the giving of breath samples and do not give you a right to refuse to give, or delay giving, samples of your breath for the purpose of making chemical tests to determine the content of alcohol in your blood. If you (1) do not respond to my question about giving breath samples; or (2) tell me that you refuse to answer this question because you have a right to remain silent or first wish to consult with an attorney, physician, or any other person; or (3) tell me that you will not give breath samples because you have a right to remain silent or first wish to consult with an attorney, physician, or any other person, then you will be issued a separate summons charging you with refusing to submit to the taking of samples of your breath for the purpose of making chemical tests to determine the content of alcohol in your blood.

Once again, I ask you, will you give samples of your breath?

Answer: _____

INTOXIKON INTERNATIONAL

1006 Floral Vale • Yardley, Pennsylvania 19067 USA • Tel. (215) 504-8004 Fax (215) 504-8002

John Brick, Ph.D., FAPA, DABFM
Executive Director

ESTIMATION OF DRINKS TO REACH .08% BAC*						
Hours of Drinking¹						
Weight²/Gender	1 hour	2 hours	3 hours	4 hours	5 hours	6 hours
Number of Drinks³						
120 / male	≥ 3.1	≥ 3.3	≥ 3.7	≥ 4.1	≥ 4.6	≥ 5.0
120 / female	≥ 2.6	≥ 2.8	≥ 3.1	≥ 3.4	≥ 3.8	≥ 4.1
160 / male	≤ 4.1	≥ 4.4	≥ 4.9	≥ 5.5	~ 6.1	≥ 6.6
160 / female	≤ 3.4	≥ 3.7	≥ 4.1	≥ 4.6	≥ 5.0	~ 5.5
200 / male	≤ 5.1	≥ 5.5	≤ 6.2	≤ 6.9	≤ 7.6	≤ 8.3
200 / female	≤ 4.3	≤ 4.6	≤ 5.1	≤ 5.7	≤ 6.3	≤ 6.9

- ¹ Cumulative hours. Relatively even rate of consumption assumed. To simplify and standardize table, calculations assume maximum BAC ~ 30 minutes, or less, after last drink with a drinking rate of ~1-2 drinks per hour (see Note, below).
- ² Weight in pounds (see 4, below).
- ³ Cumulative number of drinks to reach ~.08% (e.g., in a 160 pound woman, about 5 drinks over 5 hours). A drink is defined as: 12 ounces of 4.9% v/v beer, 5 ounces of 12% v/v wine or 1.5 ounces of 80 proof alcohol. Smaller or larger servings will alter illustrated drink estimates.
- ⁴ ≤ or ≥ : More specific pharmacokinetic modeling may increase (≥) or decrease (≤) the number of drinks needed to reach the target level of .08%. In this table, a simplified Vd of .58 for men and .48 for women was used. Slightly different drink results may occur with age, weight and height algorithms or with different rates of elimination (see Note, below).
- Note: All calculations assume an average elimination rate of .015%/hr. Beer, or any alcoholic beverage consumed when significant food is present in stomach, may delay absorption and decrease peak BAC from target. Pharmacokinetic values are averages based on beverage being consumed with little food in the stomach.

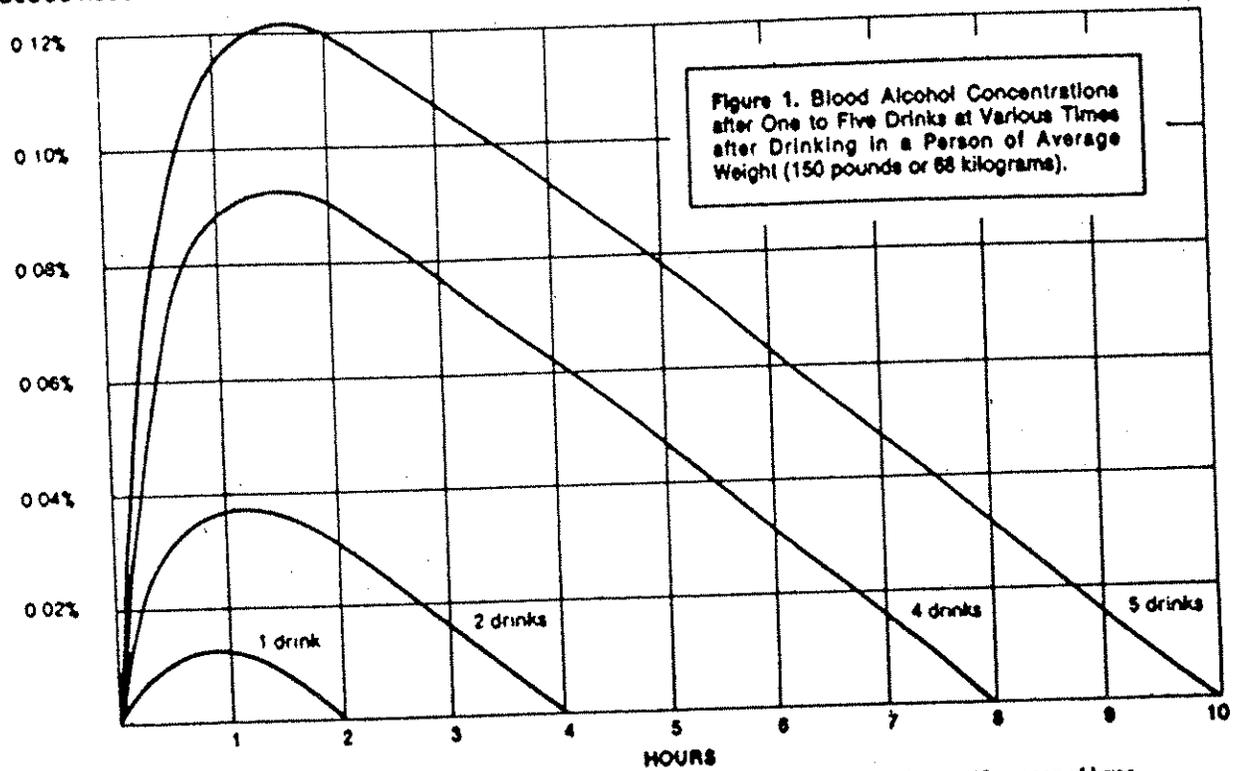
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* For comparative and educational purposes only.
From: Forensic Alcohol Test Evidence:
Handbook for Law Enforcement and Accident Investigators
by John Brick, Ph.D., Intoxikon International

**MADD, NEW JERSEY STATE OFFICE
108 WEST STATE STREET
TRENTON, NEW JERSEY 08608**

RESEARCH AND DEVELOPMENT IN ALCOHOL AND DRUG STUDIES: FORENSIC AND EDUCATIONAL CONSULTING

FIGURE 1.
BLOOD ALCOHOL CONCENTRATION

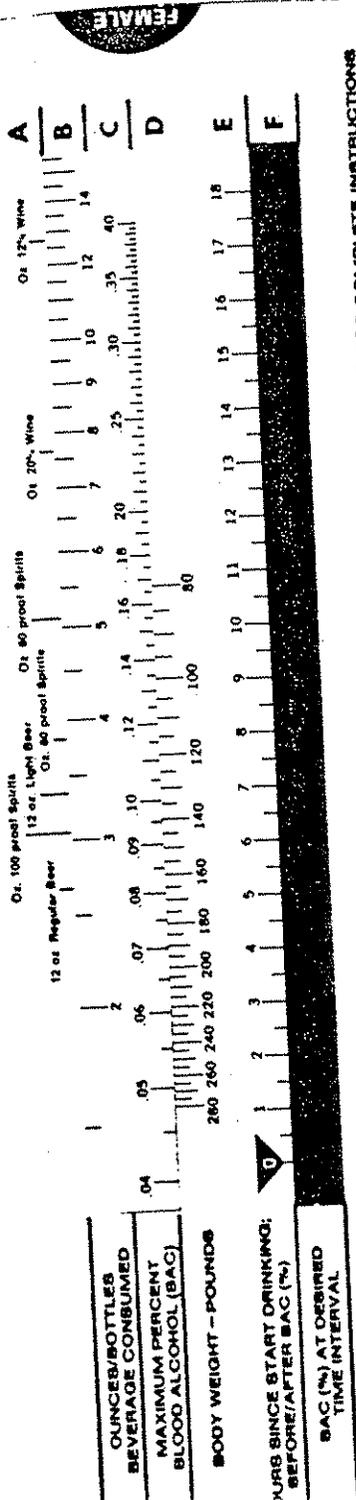


Each drink contains 1½ ounces of whisky, gin, or other distilled spirit, or 5 ounces of wine, or 12 ounces of beer.

Gail Gleason Milgram, Ed.D., Center of Alcohol Studies Pamphlet Series:
What is Alcohol? And Why Do People Drink?, Rutgers University.

ALCO-CALCULATOR

AN EDUCATIONAL INSTRUMENT



SEE REVERSE SIDE FOR COMPLETE INSTRUCTIONS

© 1993 Alcohol Research Documentation, Inc.
Rutgers University Center of Alcohol Studies

INSTRUCTIONS

WARNING: The blood alcohol concentration [BAC(%)] obtained with this device is an estimate only. Other knowledge is required to assess an individual's degree of intoxication.

ESTIMATION OF BLOOD ALCOHOL CONCENTRATION FROM BEVERAGE CONSUMPTION

1. Insert slide into case so that end notches indicate appropriate sex.
2. Align ounces/bottles markings of Scale B with beverage of Scale A.
3. Above body weight on Scale D, note maximum percent blood alcohol (BAC) on Scale C.
Example: 4 oz. (Scale B) 12% wine (Scale A) drunk by 115 lb. male (Scale D) results in .03% (Scale C); 2 bottles (Scale B) of light beer (Scale A) drunk by 90 lb. female (Scale D) results in .089% (Scale C).
4. If more than one beverage drunk, repeat steps 2 and 3 as necessary, adding readings obtained from Scale C. Continue to Step 5.
Example: 2 oz. (Scale B) 80 proof spirits (Scale A) also consumed by 115 lb. male (Scale D) attains .05% BAC (Scale C); total BAC is .03 + .05 = .08%.
5. Locate reading from Step 4 of Scale F; align this reading with hours since drinking began on Scale E. Reading on Scale F below the arrow (Scale E) is BAC estimate at the time interval desired since drinking began.
Example: If 4 hours elapsed since beginning drinking, aligning .08% on Scale F with 4 hours on Scale E indicates a BAC on Scale F of .02% (under arrow) 4 hours after start of drinking.

ESTIMATION OF BEVERAGE CONSUMED FROM BAC FOUND

6. Align BAC (Scale F) with arrow; read BAC (Scale F) at point opposite hours (Scale E) since drinking began.
Example: .02% (Scale F) opposite arrow (Scale E) shows .08% (Scale F) 4 hours before (Scale E); or .11% (Scale F) 6 hours before (Scale E); etc.
7. Transfer BAC (Scale F) from Step 6 to Scale C aligned with appropriate body weight (Scale D). From Scales A and B, read ounces/bottles required to attain BAC. Ensure that appropriate side of slide is used.
Example: .08% (Scale C) aligned with 115 lb. male (Scale D) indicates (Scales A and B) about 4.3 oz. (Scale B) 60 proof spirits (Scale A) or about 10.7 oz. (Scale B) of 12% wine (Scale A) required 4 hours after consumption began.

ESTIMATION OF ALCOHOL IN THE BODY FROM BAC FOUND

8. Align BAC (Scale C) found with body weight (Scale D); from Scales A and B, read ounces/bottles of beverage (Scale A) required to attain BAC, representing amount of alcohol circulating in the body.
Example: .08% (Scale C) aligned with 115 lb. male (Scale D) indicates that the amount of alcohol in 4.3 oz. (Scale B) of 60 proof spirits (Scale A), or its equivalent (see Step 7), is circulating in the body.

EQUIVALENCE OF VARIOUS BEVERAGE AMOUNTS

9. Alignment of Scales A and B produces desired equivalences: 16 oz. 12% wine contains the same amount of alcohol as 3.84 oz. of 100 proof spirits; 2, 12 oz. bottles of light beer contains the same amount of alcohol as 3.04 oz. of 60 proof spirits; etc.

ESTIMATION OF BAC AT TIME BEFORE OR AFTER THAT ALREADY ESTIMATED

10. Align estimated BAC (Scale F) with arrow (Scale E); BAC (Scale F) below hours before (Scale E) gives estimate of pre-BAC. Align estimated BAC (Scale F) with hours (time after) on Scale E. BAC reading below arrow is the BAC sought. (Estimate has validity only if the time sought is some hours after termination of drinking.)
Example: Setting .04% (Scale F) at arrow (Scale E) correspond to .07% (Scale F) 2 hours (Scale E) before or .10% (Scale F) 4 hours (Scale E) before. Setting .10% (Scale F) aligned with 4 (Scale E) shows reading .04% at arrow (Scale E); 4 hours needed to decrease BAC from .10% to .04%.

Sober Decreasing Sobriety Intoxicated

BLOOD ALCOHOL LEVELS FOR PERSONS CONVICTED OF DWI FROM 9/1/97 THROUGH 8/31/98	
BLOOD ALCOHOL LEVELS	NO. OF PERSONS CONVICTED (%)
Less than 0.08	195 (2.9)
0.08 to 0.99	82 (1.2)
0.10 to 0.15	3,278 (48.4)
Greater than 0.15	3,212 (47.5)
Total	6,767 (100)

*Data from the Administrative Office of the Courts

SENATE, No. 699

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED FEBRUARY 23, 1998

Sponsored by:

Senator **ROBERT W. SINGER**

District 30 (Burlington, Monmouth and Ocean)

Senator **JOHN H. ADLER**

District 6 (Camden)

Co-Sponsored by:

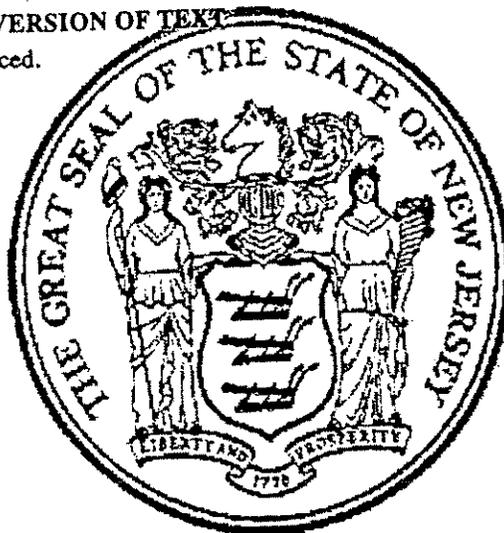
Senator Vitale

SYNOPSIS

Reduces blood alcohol level at which a person is considered to be guilty of drunk driving from 0.10% to 0.08%.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/27/1998)

1 AN ACT concerning drunk driving and amending R.S.39:4-50.

2

3 BE IT ENACTED by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. R.S.39:4-50 is amended to read as follows:

7 39:4-50. (a) A person who operates a motor vehicle while under
8 the influence of intoxicating liquor, narcotic, hallucinogenic or
9 habit-producing drug, or operates a motor vehicle with a blood alcohol
10 concentration of ~~[0.10%]~~0.08% or more by weight of alcohol in the
11 defendant's blood or permits another person who is under the influence
12 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug
13 to operate a motor vehicle owned by him or in his custody or control
14 or permits another to operate a motor vehicle with a blood alcohol
15 concentration of ~~[0.10%]~~0.08% or more by weight of alcohol in the
16 defendant's blood, shall be subject:

17 (1) For the first offense, to a fine of not less than \$250.00 nor
18 more than \$400.00 and a period of detainment of not less than 12
19 hours nor more than 48 hours spent during two consecutive days of
20 not less than six hours each day and served as prescribed by the
21 program requirements of the Intoxicated Driver Resource Centers
22 established under subsection (f) of this section and, in the discretion
23 of the court, a term of imprisonment of not more than 30 days and
24 shall forthwith forfeit his right to operate a motor vehicle over the
25 highways of this State for a period of not less than six months nor
26 more than one year.

27 (2) For a second violation, a person shall be subject to a fine of not
28 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
29 the court to perform community service for a period of 30 days, which
30 shall be of such form and on such terms as the court shall deem
31 appropriate under the circumstances, and shall be sentenced to
32 imprisonment for a term of not less than 48 consecutive hours, which
33 shall not be suspended or served on probation, nor more than 90 days,
34 and shall forfeit his right to operate a motor vehicle over the highways
35 of this State for a period of two years upon conviction, and, after the
36 expiration of said period, he may make application to the Director of
37 the Division of Motor Vehicles for a license to operate a motor
38 vehicle, which application may be granted at the discretion of the
39 director, consistent with subsection (b) of this section.

40 (3) For a third or subsequent violation, a person shall be subject to
41 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
42 of not less than 180 days, except that the court may lower such term
43 for each day, not exceeding 90 days, served performing community

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 service in such form and on such terms as the court shall deem
2 appropriate under the circumstances and shall thereafter forfeit his
3 right to operate a motor vehicle over the highways of this State for 10
4 years.

5 Whenever an operator of a motor vehicle has been involved in an
6 accident resulting in death, bodily injury or property damage, a police
7 officer shall consider that fact along with all other facts and
8 circumstances in determining whether there are reasonable grounds to
9 believe that person was operating a motor vehicle in violation of this
10 section.

11 A conviction of a violation of a law of a substantially similar nature
12 in another jurisdiction regardless of whether that jurisdiction is a
13 signatory to the Interstate Driver License Compact pursuant to
14 P.L.1966, c. 73 (C.39:5D-1 et seq.), shall constitute a prior conviction
15 under this subsection unless the defendant can demonstrate by clear
16 and convincing evidence that the conviction in the other jurisdiction
17 was based exclusively upon a violation of a proscribed blood alcohol
18 concentration of less than ~~1.10%~~ 1.08%.

19 If the driving privilege of any person is under revocation or
20 suspension for a violation of any provision of this Title or Title 2C of
21 the New Jersey Statutes at the time of any conviction for a violation
22 of this section, the revocation or suspension period imposed shall
23 commence as of the date of termination of the existing revocation or
24 suspension period. In the case of any person who at the time of the
25 imposition of sentence is less than 17 years of age, the forfeiture,
26 suspension or revocation of the driving privilege imposed by the court
27 under this section shall commence immediately, run through the
28 offender's seventeenth birthday and continue from that date for the
29 period set by the court pursuant to paragraphs (1) through (3) of this
30 subsection. A court that imposes a term of imprisonment under this
31 section may sentence the person so convicted to the county jail, to the
32 workhouse of the county wherein the offense was committed, to an
33 inpatient rehabilitation program or to an Intoxicated Driver Resource
34 Center or other facility approved by the chief of the Intoxicated
35 Driving Program Unit in the Department of Health; provided that for
36 a third or subsequent offense a person shall not serve a term of
37 imprisonment at an Intoxicated Driver Resource Center as provided in
38 subsection (f).

39 A person who has been convicted of a previous violation of this
40 section need not be charged as a second or subsequent offender in the
41 complaint made against him in order to render him liable to the
42 punishment imposed by this section on a second or subsequent
43 offender, but if the second offense occurs more than 10 years after the
44 first offense, the court shall treat the second conviction as a first
45 offense for sentencing purposes and if a third offense occurs more than
46 10 years after the second offense, the court shall treat the third

1 conviction as a second offense for sentencing purposes.

2 (b) A person convicted under this section must satisfy the
3 screening, evaluation, referral, program and fee requirements of the
4 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program
5 Unit, and of the Intoxicated Driver Resource Centers and a program
6 of alcohol and drug education and highway safety, as prescribed by the
7 Director of the Division of Motor Vehicles. The sentencing court shall
8 inform the person convicted that failure to satisfy such requirements
9 shall result in a mandatory two-day term of imprisonment in a county
10 jail and a driver license revocation or suspension and continuation of
11 revocation or suspension until such requirements are satisfied, unless
12 stayed by court order in accordance with Rule 7:8-2 of the Rules
13 Governing the Courts of the State of New Jersey, or R.S.39:5-22.
14 Upon sentencing, the court shall forward to the Division of Alcoholism
15 and Drug Abuse's Intoxicated Driving Program Unit a copy of a
16 person's conviction record. A fee of \$100.00 shall be payable to the
17 Alcohol Education, Rehabilitation and Enforcement Fund established
18 pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the
19 Intoxicated Driving Program Unit.

20 (c) Upon conviction of a violation of this section, the court shall
21 collect forthwith the New Jersey driver's license or licenses of the
22 person so convicted and forward such license or licenses to the
23 Director of the Division of Motor Vehicles. The court shall inform the
24 person convicted that if he is convicted of personally operating a
25 motor vehicle during the period of license suspension imposed
26 pursuant to subsection (a) of this section, he shall, upon conviction, be
27 subject to the penalties established in R.S.39:3-40. The person
28 convicted shall be informed orally and in writing. A person shall be
29 required to acknowledge receipt of that written notice in writing.
30 Failure to receive a written notice or failure to acknowledge in writing
31 the receipt of a written notice shall not be a defense to a subsequent
32 charge of a violation of R.S.39:3-40. In the event that a person
33 convicted under this section is the holder of any out-of-State driver's
34 license, the court shall not collect the license but shall notify forthwith
35 the director, who shall, in turn, notify appropriate officials in the
36 licensing jurisdiction. The court shall, however, revoke the
37 nonresident's driving privilege to operate a motor vehicle in this State,
38 in accordance with this section. Upon conviction of a violation of this
39 section, the court shall notify the person convicted, orally and in
40 writing, of the penalties for a second, third or subsequent violation of
41 this section. A person shall be required to acknowledge receipt of that
42 written notice in writing. Failure to receive a written notice or failure
43 to acknowledge in writing the receipt of a written notice shall not be
44 a defense to a subsequent charge of a violation of this section.

45 (d) The Director of the Division of Motor Vehicles shall
46 promulgate rules and regulations pursuant to the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to
2 establish a program of alcohol education and highway safety, as
3 prescribed by this act.

4 (e) Any person accused of a violation of this section who is liable
5 to punishment imposed by this section as a second or subsequent
6 offender shall be entitled to the same rights of discovery as allowed
7 defendants pursuant to the Rules Governing Criminal Practice, as set
8 forth in the Rules Governing the Courts of the State of New Jersey.

9 (f) The counties, in cooperation with the Division of Alcoholism
10 and Drug Abuse and the Division of Motor Vehicles, but subject to the
11 approval of the Division of Alcoholism and Drug Abuse, shall
12 designate and establish on a county or regional basis Intoxicated
13 Driver Resource Centers. These centers shall have the capability of
14 serving as community treatment referral centers and as court monitors
15 of a person's compliance with the ordered treatment, service
16 alternative or community service. All centers established pursuant to
17 this subsection shall be administered by a counselor certified by the
18 Alcohol and Drug Counselor Certification Board of New Jersey or
19 other professional with a minimum of five years' experience in the
20 treatment of alcoholism. All centers shall be required to develop
21 individualized treatment plans for all persons attending the centers;
22 provided that the duration of any ordered treatment or referral shall
23 not exceed one year. It shall be the center's responsibility to establish
24 networks with the community alcohol and drug education, treatment
25 and rehabilitation resources and to receive monthly reports from the
26 referral agencies regarding a person's participation and compliance
27 with the program. Nothing in this subsection shall bar these centers
28 from developing their own education and treatment programs;
29 provided that they are approved by the Division of Alcoholism and
30 Drug Abuse.

31 Upon a person's failure to report to the initial screening or any
32 subsequent ordered referral, the Intoxicated Driver Resource Center
33 shall promptly notify the sentencing court of the person's failure to
34 comply.

35 Required detention periods at the Intoxicated Driver Resource
36 Centers shall be determined according to the individual treatment
37 classification assigned by the Intoxicated Driving Program Unit. Upon
38 attendance at an Intoxicated Driver Resource Center, a person shall be
39 required to pay a per diem fee of \$75.00 for the first offender program
40 or a per diem fee of \$100.00 for the second offender program, as
41 appropriate. Any increases in the per diem fees after the first full year
42 shall be determined pursuant to rules and regulations adopted by the
43 Commissioner of Health in consultation with the Governor's Council
44 on Alcoholism and Drug Abuse pursuant to the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

46 The centers shall conduct a program of alcohol and drug education

