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# FORUM

## THE DEVELOPMENT OF CALIFORNIA DRUNK-DRIVING LEGISLATION

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# THE DEVELOPMENT OF CALIFORNIA DRUNK-DRIVING LEGISLATION\*

During the early 1980s, various citizens' groups, most notably Mothers Against Drunk Driving (MADD), mobilized public support around the notion that existing drunk-driving laws were inadequate and that too often the drunk driver went unpunished. The citizens' groups demanded that state governments enact stricter drunk-driving statutes. The California Legislature responded by adopting comprehensive amendments to its drunk-driving statutes. In large measure, the changes reflected two concerns: (1) facilitating the prosecution and conviction of those drunk drivers arrested and (2) ensuring that those convicted receive minimum punishments. The former was accomplished by creating a new crime — driving with a blood alcohol concentration at .10 percent or greater — which eased the burden on the state in prosecuting a drunk-driving offense. The latter resulted in mandatory minimum sentences for all offenders and lengthy prison terms for drunk drivers who cause injury or death.

The amount of legislative activity and attention directed at drunk driving that occurred in the early 1980s was unprecedented in California's history. The particular legislative strategies enacted, however, resembled previous legislative efforts. California has maintained laws prohibiting drunk driving since 1911, and during most of the time, the state has relied on statutes containing severe punishments as the principal means of deterring the drunk driver.

This FORUM, part of a comprehensive historical survey of California drunk-driving legislation, reviews the evolution of drunk driving as a criminal concern in California by examining legislative changes in an historical context. It identifies the major influences that guided previous legislative responses to the problem and thus provides a context within which the current drunk-driving strategies can be better understood. This FORUM also explains why the early 1980s — rather than another time period — witnessed the unprecedented proliferation of drunk-driving legislation.

An historical examination of the government's response to this criminal behavior provides several valuable perspectives. First, drafting effective drunk-driving countermeasures requires an awareness of previous efforts aimed at curbing the behavior. Without such knowledge, observers may ignore valuable opportunities to compare data and test assumptions. Second, even if one is cognizant of historical approaches, using previous programs' results to evaluate current proposals requires an understanding of the context in which they were implemented. Third, history demonstrates the complexity of drunk driving as a societal problem. Proponents of "quick-fix" solutions should be aware that many such "solutions" have been proposed and implemented throughout this century. Although some have had varying levels of success, none has proved to be the complete answer.

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\* This report pertains to driving under the influence of alcohol and does not comment on driving under the influence of any other substance, hence its title "The Development of Drunk-Driving Legislation."

## I. Seventy Years of California Drunk-Driving Policy Making

This FORUM surveys the chronology of the drunk-driving problem in California by dividing this century into four eras of traffic safety policies. The eras used to divide drunk-driving policy making in California are necessarily artificial: they have been created as convenient devices to highlight the predominant themes reflected by the legislation of the time period. Of course, generalizations based on time periods cannot accurately encompass all of the many overlapping developments that occurred. However, the framework developed in this study provides a starting point for discussing the major themes apparent during the past 70 years.

### A. Initial Development of Statewide Motor Vehicle Laws (1900-1934)

The first era of drunk-driving policy development corresponds with the initial formation of statewide motor vehicle codes. The rapid commercial success of the automobile in the early 1900s revolutionized transportation policy. California motor vehicle registrations increased sharply from 780 in 1900, to 44,120 in 1910, to 583,623 in 1920.<sup>1</sup> The spread of the motor vehicle, with its speed and potential threat to public safety, required that government assume responsibility for regulating transportation. Although local governments initially regulated traffic safety, it was soon recognized that statewide traffic laws were necessary. Thus, the Legislature during this period enacted statutes designed to: (1) eliminate inconsistent local regulations and ensure intrastate uniformity; (2) establish a comprehensive set of traffic regulations to govern driving behavior, ensure the competency of drivers, and improve vehicle safety through equipment standards; and (3) create a statewide authority responsible for regulating drivers' licensing and vehicle registration.

California, like several other states that had early prohibitions against drunk driving, enacted measures during this era that defined drunk driving based on the level of the driver's impairment. The 1911 statute provided that no *intoxicated* person shall drive.<sup>2</sup> To convict under this type of statute required showing that the driver was "intoxicated" and exhibited particular conduct that displays this level of impairment. Although later statutes reduced the level — from "intoxication" to the less exacting standard of "under the influence of intoxicating liquor" — until 1981, impairment of the individual driver served as the definitional element for statutes prohibiting drunk driving.<sup>3</sup>

The legislative approach to drunk driving during this period was typical of other traffic safety problems: the Legislature attempted to create a comprehensive scheme for regulating the conduct of motorists on the highways and was more concerned with the general provisions than with the specific implementation of individual regulations. This approach can best be summarized as a "wait-and-see" strategy: the Legislature prescribed general definitions of the prohibited conduct and awaited the results. As time passed and the defects of the policies were revealed, the Legislature enacted refinements to the statutes.

### B. Development of a Modern Motor Vehicle Society (1935-1959)

California entered a new phase in traffic safety policy with the enactment of the California Vehicle Code of 1935. It culminated several years of studying and planning, and resulted in a recognition that California's motor vehicle accident rate was unacceptably high. In 1927 California's motor vehicle death rate per 100,000 population was 38.2 compared to 19.6 for the entire United States.<sup>4</sup> The Legislature recognized that the "abnormal increase in traffic fatalities" was due to the "great increase in the number of motor vehicles used and operated upon the highways of the State of California."<sup>5</sup> The proposed solution to the traffic safety problem was a complete revision of the motor vehicle laws to incorporate the advances in traffic safety knowledge.

The modernization of the Vehicle Code included some significant revisions to California's drunk-driving strategies. The legislation contained provisions that distinguished between different types of drunk-driving offenses and significant changes in the license suspension and revocation scheme.

The Comprehensive Motor Vehicle Act of 1935 contained not only the traditional prohibition of driving while under the influence of intoxicating liquor (known as misdemeanor drunk driving) but also a second provision (known as felony drunk driving) that addressed those circumstances in which the driver operates a motor vehicle while under the influence *and* causes bodily injury.<sup>6</sup> The felony

drunk-driving provision was adopted as a recognition that the two types of behavior presented different levels of criminal culpability and societal harm: causing bodily injury while driving under the influence is more dangerous and thus deserves a harsher penalty. These definitions of drunk driving remained essentially unchanged throughout the remainder of this time period.<sup>7</sup>

During this era there were also several legislative efforts to remove the drunk driver from the road through non-traditional criminal penalties. Although the statutes continued to specify imprisonment and fines as penalties for offenders, the sanction that received the most legislative attention was driver's license suspension and revocation. Constructing a comprehensive licensing suspension and revocation scheme proved difficult, and the sanction appeared in several variations during this era. The practice of suspending an individual's driver's license began shortly after the state started to require each operator to obtain a license. Throughout most of the history of the drunk-driving problem in California, the statutes have provided for some form of both discretionary and mandatory suspension provisions.

One of the major problems that confronted the Legislature was deciding who should impose the license suspension sanction. The early consensus of traffic safety experts was that the judiciary should be responsible for punishing vehicle-code violators. However, when the state established a separate agency to regulate drivers' licensing, it created a dual authority. In many cases, both the judge who meted out criminal punishment to the traffic offender and the Division (later Department) of Motor Vehicles, which was responsible for ensuring that each driver was competent to operate a vehicle, had the power to revoke or suspend the offender's license.

By the end of this time period, a comprehensive license suspension policy had been created, which vested most of the authority in the Department of Motor Vehicles. Judges were given the discretionary power to suspend for up to six months drivers' licenses of those convicted of drunk driving.<sup>8</sup> The statutes, however, provided for both a mandatory and a discretionary suspension scheme for the Department. The Vehicle Code *required* the Department to suspend or revoke the licenses of certain offenders, notably recidivists. The Code also conferred on the Department a *discretionary* power to suspend licenses in addition to the mandatory suspension period.<sup>9</sup>

### C. Emergence of the Experts: Science and Traffic Safety Policy and a Growing Federal Presence (1960-1979)

The state began the third era with a completely revised Vehicle Code. In 1959, the Legislature rewrote the 1935 Vehicle Code to account for the numerous modifications that had been enacted in the interim.<sup>10</sup> By this time, the basic format for a comprehensive traffic safety program was ensconced: the Department of Motor Vehicles had been established, the "rules of the road" were enacted, and regulations concerning drivers' licensing and vehicle registration were promulgated. The 1959 Act marked a turning point in California traffic safety policy making, as the Legislature now was able to turn its attention to other, and more specific, traffic-safety concerns. The prominent features of the 1960s and 1970s legislation focused on vehicle safety and emissions, highway design and construction, and an expanded California Highway Patrol.

Drunk-driving legislation during this period reflected influence from many different quarters: the scientific community, including forensic scientists; the federal government and the federal bureaucracy; and the medical community, particularly those involved in treating alcoholism and alcohol abuse. The federal government prompted some of the state legislation during this period, and Congress and the U.S. Department of Transportation emerged as strong and permanent influences on traffic-safety policy making. Finally, in the latter part of this period, the medical community's influence appeared in legislation that permitted judges to order evaluation of drunk drivers to determine if they might benefit from an alcohol abuse treatment program.

One of the more important changes to the definition of drunk driving occurred in 1969 with the Legislature's adoption of a blood alcohol concentration presumption law, which had received the endorsement of the National Safety Council, the American Medical Association, and other organizations.<sup>11</sup> The law provided that an individual with a blood alcohol concentration of .10 percent or greater would be "presumed to be under the influence." However, the presumptions were not binding: that is, the defendant could produce evidence that he or she was not intoxicated even though his or her blood alcohol concentration level was above .10 percent.

California adopted an implied consent law in 1966 to aid in the enforcement of laws against drunk driving.<sup>12</sup> The implied consent law provided that drivers, by using the state's roads, "consent" to a blood alcohol concentration test if they are lawfully arrested for a drunk-driving offense. A refusal to submit to a lawfully ordered test results in an automatic license suspension for six months. Moreover, the refusal may be used in a subsequent drunk-driving prosecution as evidence of being under the influence.

The primary reason for the implied consent law was to aid in prosecutions of drunk-driving offenses. Prior to the implementation of the 1966 law, prosecutions of offenders relied on subjective observations made by police officers, for example, that "the driver smelled of alcohol," was weaving, or was otherwise "acting drunk." Although researchers had long been able to estimate the likelihood of impairment by using the driver's blood alcohol concentration, it was often impossible to obtain blood or breath samples. Without an implied consent law, drivers could refuse a police request for chemical analysis, and thus foreclose this method of demonstrating impairment. The influence for these laws came from the scientific community, particularly those involved in research on the effects of alcohol on driving ability. The 1960s saw the active role that scientific research could have in drunk-driving policy making.

Another significant influence that emerged during this period and which continues today is the federal government. The federal government's effect on traffic safety and drunk-driving policy in this country developed in several stages. Originally, the federal government had very little influence because the state and local governments exclusively regulated motorist behavior and automobile use. However, in the early 1900s, the federal government began to control federal projects, such as interstate highway construction, or areas of particular federal concern, such as interstate commercial carriers. In the 1950s, the federal government attempted to facilitate multi-state efforts by approving compacts among the states and by establishing joint information-sharing programs. Finally, in the 1960s and 1970s, the federal government directly influenced state policies through funding incentives.

The national character of traffic safety problems prompted Congress to enact the Highway Safety Act of 1966 and the Motor Vehicle and Traffic Safety Act of 1966. The Highway Safety Act empowered the Secretary of Transportation to promulgate safety standards for the states to follow:

"Each state (shall) have a highway safety program approved by the Secretary designed to reduce traffic accidents and death, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary."<sup>13</sup>

To induce the states to adopt the newly created standards, Congress authorized the Secretary to withhold federal highway funds to any state not complying with the standards.<sup>14</sup>

The Secretary of Transportation officially promulgated the new standards in 1967, including the first federal drunk-driving standards. Standard Number Eight — entitled "Alcohol in Relation to Highway Safety" — requires each state to "develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol." More specifically, such a program must include: (1) use of chemical tests to determine blood alcohol concentrations; (2) establishment of blood alcohol limits of no greater than .10 percent, by weight; (3) enactment of an implied consent law for those arrested for driving while intoxicated or under the influence of alcohol; (4) use of quantitative alcohol tests for all traffic accident fatalities and drivers involved in fatal crashes; and (5) enactment of procedures for administering blood alcohol concentration tests.<sup>15</sup>

By and large, Congress has been successful in using financial incentives to persuade states to comply with the Secretary's standards.<sup>16</sup> For example, by 1971 all states had enacted a specified blood alcohol concentration level as part of the drunk-driving law. California complied with the federal standards, including the enactment of a blood alcohol concentration law, in 1969.

The final influence that emerged during this period was that of the medical community, particularly the branches involved in treating alcohol problems. The medical community's position in the state's drunk-driving strategy emerged from research indicating that a significant portion of those drivers arrested for drunk driving had alcohol-abuse problems. The role that the medical community played in the state's

strategy can be characterized as one in which criminal adjudication is used as a "case-finding mechanism": the criminal justice system would identify the problem drinker whom the health community would treat. The legislation embodying this model appeared in 1972 when pre-sentence investigations of drunk drivers were ordered, and judges were empowered to require alcohol treatment as part of sentencing.<sup>17</sup>

#### **D. Punitive Approaches to Drunk Driving (1980-present)**

The current era differs from previous eras in that drunk-driving strategies exhibit a greater reliance on punitive measures. Traffic safety policy has focused on drunk driving more than any other single issue, and California legislation over the past several years has restructured and reemphasized criminal sanctions. Minimum incarceration terms and fines have been established, and discretion to plea bargain or suspend sentences has been curtailed.

Of particular note in this era is the emergence of citizens' groups that have actively lobbied the government to enact "tougher" drunk-driving laws. These groups, notably MADD, have provided a grass-roots educational campaign to increase public awareness of the drunk-driving problem.

The legislation enacted during the early 1980s is important in two respects. First, the definition of drunk driving was expanded. In addition to "driving under the influence," the legislation created a separate category of offense: driving with a blood alcohol concentration of .10 percent or greater. Unlike the traditional "under the influence" provision, this category, known as a per se law, does not focus on the driver's impairment; indeed, subjective evaluations of the individual driver's ability to drive are irrelevant. Rather, the prosecution need prove only that an individual was driving and had a blood alcohol concentration above the legal limit in order to obtain a conviction for a drunk-driving offense.

Second, the legislation revised the penalty structure for drunk-driving offenders. It provides for several punishment categories of offenders, depending upon whether the driver injured someone or had prior drunk-driving convictions. Moreover, it requires judges to impose minimum mandatory jail sentences and fines for all offenders.

#### **E. General Observations on Drunk-Driving Legislation**

The over-two-hundred different pieces of legislation enacted to address drunk driving in the past 70 years reveal some patterns and prompt some conclusions.

The legislative pattern was fairly constant from the 1910s to the 1960s: the Legislature usually enacted changes to the drunk-driving legislation as part of an overall reorganization of the state's vehicle code, rather than being prompted by a sense of urgency regarding drunk driving. The pattern changed, however, in the 1960s when the Legislature began attacking the drunk-driving problem with greater specificity. Legislation was enacted relating solely to drunk driving, and several approaches emerged. For the first time, legislation was designed to increase the apprehension — for example, enacting the implied consent law — and the conviction — for example, using blood alcohol concentrations to prove impairment — of drunk drivers. This legislative pattern of specific drunk-driving emphasis continued in the 1970s. The number of proposals enacted increased dramatically, as the Legislature sought to treat the drunk driver for alcohol abuse as well as deter and punish the drunk driver.

The 1980s have experienced an unprecedented proliferation of drunk-driving legislation. Fueled by heightened media and public attention on the problem, the State Legislature enacted comprehensive legislation that revised the government's anti-drunk-driving strategy.

## **II. Analyzing the Legislative Patterns**

### **A. Origins of the Current Approach**

The current scheme in California reflects the significant influences of the approaches used throughout this century. There has been an enduring legacy of drunk-driving policy making as each era has contributed to our current strategies. The "Initial Development" years (1900-1934) established the

framework for addressing the problem: the state government took responsibility for regulating drunk driving and the definition of the prohibited conduct was set forth. The "Modern" years (1935-1959) provided more refined definitions of drunk driving, differential punishments based on prior convictions, and a comprehensive license suspension/revocation scheme. The "Science and Federal" years (1960-1979) produced legislation containing specified blood alcohol concentrations, the implied consent law, and legislation that emphasized treating the offender's alcohol abuse problem.

Although the legislation enacted in the early 1980s was heralded by many as innovative, the legislative flurry in the 1980s contained *few* new approaches to the problem. Indeed, the recent explosion of legislation is more akin to "fine-tuning" of the existing scheme — increasing the penalties and distinguishing among differing offenders — than revamping the system.

The early 1980s produced legislation that increased the state's reliance on incarceration to deter drunk driving. To ensure effective use of this punishment, the 1980s legislation returned to a policy first used in the 1950s — restricting judicial discretion through mandatory minimum sentences. The 1957 statutes provided mandatory minimum sentences for second offenders; judges were prohibited from suspending the sentence or granting probation.<sup>18</sup> The 1980s scheme, however, is much more restrictive. The sentence for each offense has a minimum imprisonment term and fine level, which the judge must impose. The 1980s also facilitated prosecution of drunk drivers through the *per se* law.

### B. The 1980s as a Historical Moment

Despite the significance of the drunk-driving problem and the governmental responses to it in the past 70 years, in many respects the impression that drunk driving has only recently become a high priority for state policy makers is accurate. The early 1980s witnessed a legislative explosion, and government interest continues. This section attempts to explain why the heightened concern for drunk driving began during this period.

One reason for the relative lack of attention paid to drunk driving in the previous years is that policy makers were concerned with many different aspects of traffic safety. In the initial years of traffic safety regulation, the government was preoccupied with establishing general rules to govern motorist behavior, creating a system of licensing drivers and registering vehicles, improving the state's highway system, and ensuring safe vehicle design and setting minimum equipment standards. These diverse priorities often prevented state policy makers from focusing on any single cause of accidents or fatalities. When legislation was formulated to overcome these concerns, both the public and the policy makers began to concentrate on individual causes of accidents and fatalities. However, lack of information concerning traffic safety in general and drunk driving in particular hindered earlier recognition of the problem.

By the end of the 1920s, policy makers recognized that the number of highway accidents was increasing at a significant rate. However, because no state agency collected statistics regarding traffic safety, accurate estimates about traffic fatalities and injuries were unavailable. When the Joint Legislative Committee on Motor Vehicles in 1929 presented its finding that deaths in automobile accidents had increased 70 percent between 1922 and 1927, it acknowledged that "these figures are only estimates."<sup>19</sup> Indeed, much of the information that the Committee used in its investigation came from private organizations, such as the Automobile Club of Southern California. The shortage of data was partially remedied when California began uniform collection of traffic safety information in 1928.<sup>20</sup>

But the existence of statewide statistics — compiled in annual reports by the California Highway Patrol — did not ensure that causes of accidents were accurately determined and reported to state policy makers. Collecting information regarding the causes of accidents depended upon the subjective determination of local police agencies.<sup>21</sup> In particular, fatal accidents due to drunk driving were grossly underrepresented in the reported statistics. Consequently, for many years drunk driving was not perceived to be a major cause of fatal accidents. According to the official statistics available to state policy makers, the number of drunk-driving traffic fatalities and accidents paled in comparison to accidents caused by other factors. In the early years of motor vehicle transportation, the primary causes of accidents and fatalities in the minds of California policy makers were speeding, inadequate road conditions, reckless driving, and poorly trained drivers.<sup>22</sup>



The reasons for the underrepresentation of fatal accidents attributed to drunk driving are several. First, for most of this century there was a lack of adequate information relating to the dangers of driving while intoxicated. Although Europeans, particularly Scandinavians, had begun researching the effects of alcohol on driving behavior as early as 1912, research in the United States was slow to follow.<sup>23</sup> Scientific study of the relationship between alcohol and impairment in motor coordination did not begin to gain prominence in this country until the 1930s. Everyone had general notions that driving ability was affected at some point of intoxication. But beyond the vague generalities, the public and policy makers were quite ignorant about the degree to which impairment occurred.

This general ignorance about alcohol's effect on driving ability affected subjective evaluations of the "causes" of accidents. Accidents are multi-faceted situations; accidents rarely have only one cause. Attributing a single cause to an accident, such as speeding or crossing a road divider, may conceal the reasons for such driving behavior, particularly the influence of alcohol. Certainly, at times when the extent of alcohol's effect on driving ability was unknown, individuals were less likely to attribute an accident to drunk driving.

Second, problems with measuring alcohol impairment and alcohol's role in accidents thwarted accurate assessments of the drunk-driving problem. This difficulty is illustrated by the different reporting categories used over the years to indicate alcohol-related traffic accidents. The California Highway Patrol has used such categories as "Alcohol-Related" fatal accidents, defined as those in which any amount of alcohol had been consumed by any party (driver or pedestrian); "Had Been Drinking" fatal accidents, in which the driver "had been drinking" or "was intoxicated"; and "Drunk-Driving" fatal accidents, which are "caused by intoxication."<sup>24</sup> Some of the categories used have at times been misinterpreted; indeed, many commentators today equate "alcohol-related" accidents with "drunk-driving accidents" and with "accidents that would have been prevented if the driver had not been drinking."

The problems of accurately assessing the role of alcohol in traffic accidents began to diminish with the emergence of traffic safety experts in the late 1960s. Drunk-driving researchers, encouraged and funded by the National Highway Traffic Safety Administration, have made significant advances since the early 1970s. Two national systems of data collection were instituted: the Fatal Accident Reporting System in 1975 and the National Accident Reporting System in 1979. Both systems have provided substantial information regarding traffic deaths and accidents. Around the same time, data collection by the California Highway Patrol began to include a determination of the primary collision factor in fatal accidents.

The increased awareness of the drunk-driving problem among the public and policy makers has promoted greater awareness of drunk driving at the enforcement level. Law enforcement personnel have been trained in identifying drunk-driving behavior, and coroners began to test blood alcohol concentrations of deceased drivers. Moreover, as the public and law enforcement became more aware of drunk driving, more attention has been focused on the condition of drivers in accidents in general and fatal accidents in particular.

Thus, the major reason for the legislative activity in the 1980s is that perceptions about the seriousness of the drunk-driving problem changed. This change in perception occurred because fatalities attributed to drunk drivers reached magnitudes of 50 percent of all fatal accidents. Such statistics presented a startling picture of the results of drunk driving, one that provided the fuel to mobilize the public. And the vehicles that carried this message to the public were the citizen groups, such as MADD.

## Conclusion

The 1980s represent a unique time in drunk-driving policy making. Legislative activity and public concern are unprecedented. Despite the salience of the issue, however, we have arrived at a time when most of the innovations in using traditional criminal justice policies to combat drunk driving have been incorporated in legislation.

If the current trends continue, California's drunk-driving legislation of the late 1980s and early 1990s will probably resemble that of the early 1980s. The reason for this is the same reason that the 1980s legislation resembled the 1960s legislation: the various options within the traditional criminal justice arsenal have already been employed.

The true test for future policy makers is to be able to channel the current focus on drunk driving into a search for innovative strategies. The current strategies will undoubtedly have some beneficial effect on driving behavior. But until we are able to find the correct mix of strategies to minimize the societal costs of drunk driving, we will continue to experience significant losses.



## ENDNOTES

1. E. Fisher, Vehicle Traffic Law 3 Table 1 (Evanston, IL: Northwestern University Traffic Institute 1961).
2. Act of Feb. 28, 1911, ch. 77, §1, 1911 Stat. 90 (codified at Penal Code §367d). Several other states in the early 1900s had enacted legislation against drinking and driving. See, e.g., Connecticut Motor Vehicle Laws, ch. 221, Laws 1907, §13.
3. In 1917, the drunk-driving provision was amended to read: "No person who is to such extent under the influence of intoxicating liquor that he can not properly operate or drive . . . shall operate or drive." 1917 Stat. ch. 218, §17, p. 382, 400. Although the earlier provisions prohibited drivers who were "intoxicated" from operating a motor vehicle, and the later provisions prohibit drivers who were "under the influence of intoxicating liquor" from operating a vehicle, the courts treated the two as synonymous. For a review of the judicial treatment of these two terms, see Note, "Criminal Law — Statutory Interpretation — Death Caused by Drunk Driving — Penal Code (1935), §376e — Vehicle Code (1935)," 9 Southern California Law Review 142, 144 n.10 (1936).

In 1953, the California Supreme Court ruled that earlier cases had applied too narrow a definition of the offense. *People v. Haussler*, 41 Cal. 2d 252, 260 P. 2d 8 (1953). "Under the influence" did not require a showing that the driver was intoxicated: "It is generally recognized, however, that persons may be 'under the influence of intoxicating liquor' within the meaning of statutes similar to Section 501 of the Vehicle Code without having been affected to the extent commonly associated with 'intoxication' or 'drunkenness.'" *Id.* at 14.

In 1981, the Legislature shifted the focus from impairment to an offense based on blood alcohol concentration levels. The "per se" law prohibits driving with a blood alcohol concentration of .10 percent or greater, regardless of impairment. California Vehicle Code §§23152, 23153.

4. Report of the Joint Legislative Committee of the Senate and Assembly Relating to Traffic Hazards and Problems and Motor Vehicle Public Liability Insurance, Submitted to the California Legislature 17 Table 5 (California Legislature: 1929).
5. Assembly Concurrent Resolution No. 19 (passed by the Assembly on March 16, 1927 and by the Senate on April 6, 1927).
6. The passage of the felony drunk-driving provision in the Vehicle Act created some confusion about the continuing viability of Penal Code §367e. Although both provisions appeared to be substantially similar, minor differences prompted some commentators to call for clarification of the Legislature's intent. See, e.g., Comment, "Criminal Law: Homicide Committed Through the Operation of a Motor Vehicle While Intoxicated: Cal. Veh. Code §§501, 502," 24 California Law Review 555 (1936).
7. There was one change in the definition of felony drunk driving during this period. In 1947, the Legislature amended the felony drunk-driving provision so that the bodily injury had to be to someone other than the driver.
8. Vehicle Code §292 (codifying 1935 Stat. ch. 605, effective September 15, 1935).
9. Vehicle Code §307 (codifying several statutes) (mandatory); Vehicle Code §306 (codifying 1935 Stat. ch. 605, effective September 15, 1935) (discretionary).
10. 1959 Stat. ch. 3.
11. Vehicle Code §23126 (codifying 1969 Stat. ch. 231, effective November 10, 1969).
12. Vehicle Code §13353 (codifying 1966 Stat. ch. 138, effective October 6, 1966).
13. Highway Safety Act of 1966, 80 Stat. 731 §402(a).
14. The U.S. Supreme Court has upheld Congress's power to attach conditions to states' receiving of federal funding. *Oklahoma v. United States Civil Service Comm.*, 330 U.S. 127 (1947) (highway funding can be cut off for failing to remove members of the state highway commission who violated Hatch Act).

15. See Haddon & Blumenthal, "Foreword," in H.L. Ross, Detering the Drinking Driver xv-xvi (Lexington, Mass: D.C. Heath & Co. rev. ed. 1984); see also U.S. House of Representatives, Comm. on Public Works, Highway Safety Program Standards, Report from the Secretary of Transportation, Print No. 7 (Washington, D.C.: GPO 1967).
16. Although the practice of threatening funding reductions began with the first federal highway appropriation in the early 1900s, Congress greatly expanded the use of financial incentives in the mid-1960s with the passage of the Highway Safety Act. In 1974, the oil shortage prompted Congress to enact legislation requiring the Secretary of Transportation to withhold federal highway aid funding from states with maximum speed limits in excess of fifty-five miles per hour. Emergency Highway Energy Conservation Act, Pub. L. 93-239, 87 Stat. 1046 (1974), extended by Federal-Aid Highway Amendments of 1974, 23 U.S.C §154.
17. Act of August 15, 1972, ch. 901, §1, 1972 Stat. 1603, amended by Act of December 11, 1972, ch. 1196, §1, 1972 Stat. 2318 (codified at Vehicle Code §23102.3).
18. Vehicle Code §502 (codifying 1957 Stat. ch. 532, effective September 11, 1957).
19. Report of the Joint Legislative Committee of the Senate and Assembly Relating to Traffic Hazards and Problems and Motor Vehicle Public Liability Insurance, Submitted to the California Legislature 16 (California Legislature: 1929).
20. Although some statistics regarding traffic accidents and fatalities were available for years prior to 1929, they were regarded as "incomplete, poorly reported and generally untrustworthy as to accuracy." California Department of Motor Vehicles, California Highway Patrol, California Motor Vehicle Statistics (for 1932), 15 (1933). In October 1928, the Department began to collect "full accident traffic statistics." Data collection was greatly improved in August 1929 when the Legislature required police departments and coroners to submit full reports on fatal accidents to the Department.
21. Indeed, adequate means for determining the reasons for accidents were simply unavailable. Herbert Hoover, then Secretary of the Department of Commerce, lamented the lack of accident-causation information in his address to the National Conference on Street and Highway Safety in 1926:

The Committee on Causes of Accidents demonstrates very clearly the outstanding fact that very little is known about what causes a particular motor vehicle accident. It seems to be impossible at this time to even evaluate with any degree of accuracy the human and the mechanical or physical factors which are involved in every accident. . . . We are setting out to put a stop to accidents without apparently knowing the real fundamental cause of that large area of accidents which lie outside the field of sheer recklessness and negligence. . . .

Report of the Joint Legislative Committee of the Senate and Assembly Relating to Traffic Hazards and Problems and Motor Vehicle Public Liability Insurance, Submitted to the California Legislature 11 (California Legislature: 1929) (reprinting Herbert Hoover's address to the Second Meeting of National Conference on Street and Highway Safety in March 1926).

22. See, e.g., Report of the Joint Legislative Committee of the Senate and Assembly Relating to Traffic Hazards and Problems and Motor Vehicle Public Liability Insurance, Submitted to the California Legislature 26 Table 15 (California Legislature: 1929).
23. Professor E. M. P. Widmark in Sweden is credited with pioneering drunk-driving research with his studies in the early 1910s. Robert Borkenstein, "Historical Perspective: North American Traditional and Experimental Response," Journal of Studies on Alcohol, Supplement No. 10, at 3, 5 (July 1985).

24. Each of these different categories had been used along with others at different times.

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