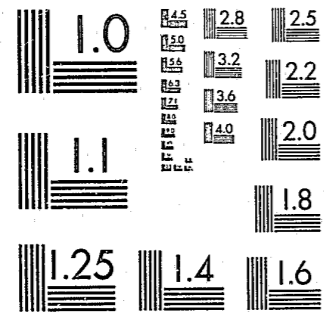


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# DWI Sanctions: The Law and the Practice

TABLE OF CONTENTS

	<b>NCJRS</b>	<u>Page Number</u>
I. INTRODUCTION	AUG 31 1983	I-1
II. SURVEY METHODOLOGY	<b>ACQUISITIONS</b>	II-1
III. SUMMARY OF FINDINGS		III-1
IV. INDIVIDUAL STATE SITE DESCRIPTIONS		IV-1
V. PROBLEMS/RECOMMENDATIONS		V-1

Appendices

- A. REVIEW OF THE SANCTIONING LITERATURE
- B. DIRECTORY OF RESPONDENTS
- C. SANCTIONS ON THE BOOKS AND TYPICALLY IMPOSED FOR EACH STATE SURVEYED

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## Summary

The Department of Transportation recognizes that although attention has been focused increasingly during the last 20 years upon individuals who drive while under the influence of alcohol, there is weak, sparse, and highly selective information available about the sanctions being imposed on persons convicted of driving while intoxicated (DWI) offenses.

The principal objective of this 15-month study of traditional and innovative sanctions was to obtain detailed, factual information about sanctions mandated by law and those actually imposed on DWI offenders. Sanctions of particular interest to this study included: (1) mandatory confinement, (2) license actions, and (3) community service.

In order to meet this objective, the study had three major phases:

- Conduct a survey of current literature that addresses traditional and innovative DWI sanctioning practices and identify jurisdictions employing the particular sanctions of interest.
- Obtain detailed information from all 50 States and the District of Columbia about their sanctioning practices.
- Identify and study jurisdictions that are applying the sanctions of interest to this study and make detailed studies of three of them to see how their sanctioning programs operate in the "real-world" context.

The initial task was to review the sanctioning literature to obtain an overview of the range of sanctions that State statutes mandate for individuals convicted of drunk driving and to compile a list of jurisdictions that impose sanctions of particular interest to this study.

Telephone contact was then made with all 50 States and the District of Columbia to obtain information about their sanction programs. Information was collected about the sanctions mandated by State law and how those programs are actually operationalized at the local level. This report presents the results of the literature review and the telephone contacts.

To ensure that maximum information was obtained during each interview conducted, an unstructured question guide and interview protocol was developed to solicit information in five areas: legislative background information, sanctions prescribed by statutes and those actually imposed, day-to-day operations of the sanction programs, results of the sanction programs as viewed by the various actors and agencies involved, and considerations for replicating the sanction programs in other jurisdictions. In order to gain a variety of perspectives about each State's sanction operations, representatives of several components of the drinking driver control system were surveyed. Respondents included: judges, prosecutors, and police officials, as well as representatives of the State Court Administrator's Offices and Departments of Motor Vehicles. In many cases, more than one person was interviewed from a single agency. Contacts were often knowledgeable about particular aspects of a sanction program. This necessitated multiple interviews to obtain the required information.

Once a detailed description of the sanction programs operating in a particular State had been completed, copies were mailed to respondents with a request that the information be verified. This process was initiated to ensure that each program description was an accurate representation of that State's sanctioning practices. The information presented in this report represents the statutes on record as of November 30, 1982.

Respondents indicated that there is increasing public awareness nationwide of the number of alcohol-related highway fatalities and the problems associated with drinking and driving. This public concern has led to considerable legislative activity across the country. Twenty-two States and the District of Columbia have passed DWI legislation during 1982 that mandates more severe DWI sanctions or plugs loopholes to ensure that existing statutes are more consistently imposed.

Generally, it was found that sanctions mandated by State statutes are not being imposed as prescribed because individual jurisdictions often interpret State legislation differently. Sanctions typically imposed are considerably less severe than those stipulated by State law. The study also found that sanctioning practices are often inconsistent across jurisdictions within a particular State. In many States, judicial discretion remains a divisive issue and this has precluded attempts to make sanctioning of DWI offenders more consistent.

Twenty-five States currently have statutes requiring mandatory confinement (that according to law, technically cannot be suspended or avoided by probation in the courts) for DWI offenders. However, penalties that are less severe than those stipulated are actually served by first and subsequent offenders. In many cases, offenders are given the option of serving weekend confinement, as long as jail space is available. The jail sentence actually served by DWI offenders depends on the law's wording, the number of previous DWI offenses, and the amount of jail space available. Mandatory confinement is often a factor in increased requests for jury trials and plea bargains to lesser offenses to avoid the jail sanction.

All 50 States and the District of Columbia mandate the use of license actions for DWI offenders and 26 States stipulate a mandatory penalty that cannot be suspended or probated by the courts. The administrative actions actually taken against a DWI offender vary from State to State. Some States suspend the offender's

license, while others revoke it. In practice, an offender rarely serves the full term of a license action. In some cases, some portion of the sentence is suspended, while many States modify mandated sanctions by allowing the offender to drive under specified conditions or restrictions. License actions are often suspended, waived or reduced if the offender attends a court approved alcohol education/treatment program.

Twenty-two States have adopted community service as sanction for DWI offenders and eleven of these States mandate the sanction on a statewide basis. Community service programs were not yet operational on a completely statewide basis in any of the States surveyed. When imposed, community service is often prescribed as a condition of probation so the court can maintain some degree of control over offenders who fail to meet their sanction requirements. Preliminary observations indicate that DWI offenders are successful candidates for community service programs and many States implementing these programs view them to be cost-effective relative to other sanctioning alternatives.

This study documents state-of-the-art DWI sanctioning practices nationwide and provides new information about the sanctions on the books and those actually imposed on DWI offenders. It provides the first practical review of DWI sanctioning practices in each of the 50 States and the District of Columbia and provides detailed information about mandatory confinement, license actions and community service as DWI sanctions. This operational information will be useful to decisionmakers at the Federal, State and local levels who determine policy for handling DWI offenders.

## I. INTRODUCTION

The Department of Transportation recognizes that, although attention has been focused increasingly during the last 20 years upon individuals who drive while under the influence of alcohol, there is weak, sparse, and highly selective information available about the sanctions being imposed on persons convicted of driving while intoxicated (DWI) offenses.

The principal objective of this 15-month study of Traditional and Innovative Sanctions was to obtain detailed, factual information concerning sanctions mandated by law and those actually imposed in sanctioning traffic offenders convicted of DWI offenses. Sanctions of particular interest to this study include: (1) mandatory confinement, (2) licensing actions, and (3) community service.

In order to meet this objective, the study had three major phases:

- . Conduct a survey of current literature regarding traditional and innovative DWI sanctioning practices and identify jurisdictions employing the particular sanctions of interest.
- . Obtain detailed information from all 50 States and the District of Columbia regarding the practical applications of their sanctioning practices.
- . Identify and study in-depth, jurisdictions that are applying the sanctions of interest to this study to see how their sanctioning programs operate in the "real-world" context.

The initial task was to review the sanctioning literature to obtain an overview of the range of sanctions that State statutes mandate for individuals convicted of drunk driving and to develop a list of jurisdictions that impose sanctions of particular interest to this study.

We then contacted, by telephone, all 50 States and the District of Columbia to obtain information about their sanction programs. Information was collected

regarding the sanctions mandated by State law and how those programs are actually operationalized at the local level. This report presents the results of the literature review and the telephone survey, and contains the following chapters.

- Study Methodology--This chapter discusses the review of the sanctioning literature and details the interviewing process that was implemented and identifies the nature of the information collected.
- Summary Of Findings--This chapter discusses the specific findings and conclusions obtained via the telephone contacts. Major findings are presented and followed by a summary discussion of how mandatory confinement, license actions, and community service sanctions are typically imposed in all 50 States and the District of Columbia.
- Individual Site Descriptions--This chapter presents detailed descriptions of the sanction programs operating in each State. The areas discussed include: (1) general background information, (2) sanctions prescribed by statutes and those typically imposed, (3) operational data for each sanction type imposed, (4) general reactions to the sanctions imposed, and (5) factors considered vital for replicating the sanction program.
- Problems/Recommendations--This chapter identifies a number of major problem areas common to many of the States surveyed along with a series of recommendations for each of the problems identified. These recommendations were presented to the Presidential Commission on Drunk Driving, Committee on Enforcement and Adjudication, August 1982.

## II. STUDY METHODOLOGY

### Review Of The Sanctioning Literature

The initial task in the study of traditional and innovative driving while intoxicated (DWI) sanctions was a review of the sanctioning literature. The review served a twofold purpose: (1) it provided an overview of how sanctions are currently being used with individuals convicted of drunk driving and (2) it provided a list of jurisdictions that warrant further study.

The review focused on three types of sanctions--mandatory confinement, license actions, and community service--and investigated specific sanctions imposed on multiple offenders. For each sanction type, jurisdictions that may impose these sanctions by law and those that in fact use the sanctions were identified. Available studies of sanction impacts were reviewed.

The literature review was conducted using an iterative approach. Individuals, publications, and organizations that provided information about the subject sanctions were identified first. Those sources were used to identify additional information until the field was exhausted. Initial human resources included Dr. H. Laurence Ross, D . Burt Galaway, and Dr. Vern Ellingstad, acknowledged experts in legal, community service, and administrative sanctions, respectively.

The published sources are described in the annotated bibliography found in Appendix A. They include: reference works by the National Committee on Uniform Traffic Laws and Ordinances, studies and reports sponsored by the National Highway Traffic Safety Administration (NHTSA), journal articles, and both published and unpublished reports prepared in specific jurisdictions. Our publications search was facilitated by cooperation from the National Criminal Justice Research System (NCJRS), the National Technical Information Service (NTIS), and the American Criminal Justice Association.

## Telephone Survey

Twenty-five States were originally selected for further study: Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maine, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Vermont, Washington, and West Virginia. These States were selected based on information gathered during the literature search that indicated they consistently apply the sanction(s) of interest to the study and maintain adequate record-keeping systems to provide the information required. During the course of contacting these States, it became apparent that many States were in the process of changing their DWI legislation.

Due to this increased legislative activity nationwide, it was decided to expand the survey to include the remaining 25 States: Alabama, Arkansas, Connecticut, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Louisiana, Wyoming, and the District of Columbia, in order to more accurately assess DWI sanctioning practices nationwide.

To ensure that maximum information was obtained during each interview conducted, an unstructured question guide and interview protocol was developed. This guide was developed to solicit information in five areas of interest:

- . Legislative background information
- . Sanctions prescribed by statutes and those actually imposed
- . Day-to-day operations of the sanction programs
- . Results of the sanction programs as viewed by the various actors and agencies involved
- . Considerations for replicating the sanction programs in other jurisdictions

In order to gain a variety of perspectives about particular sanction operations, representatives from throughout the drinking driver control system were contacted. Judges, prosecutors, and police officials, as well as representatives of the individual State Court Administrator's Offices and Departments of Motor Vehicles were interviewed. Table 1 demonstrates the range of respondents interviewed in each State.

Respondents were identified via an iterative approach as persons most knowledgeable about a particular sanction program. Initial contacts were suggested by project consultants (Drs. Ellingstad, Galaway, and Ross), by DOT NHTSA staff, and from results of the literature review. In many cases, more than one person was interviewed from a single agency. Contacts were often knowledgeable about particular aspects of a sanction program. This necessitated multiple interviews to obtain the required information. Appendix B provides a directory of persons contacted.

Once a detailed description of the sanction programs operating in a particular State had been completed, copies were mailed to respondents with a request that the information be verified. This process was initiated to ensure that each program description was an accurate representation of that State's sanctioning practices. Table 2 indicates those States for which verified program descriptions were and were not received. The information presented in this report represents the statutes on record as of November 30, 1982.

Table 1. Agencies Contacted For Each State Surveyed

State	Agencies Contacted		
	Courts	Department of Motor Vehicles	Community Service Program
Alabama	x	-	-
Alaska	x	x	-
Arizona	-	x	x
Arkansas	x	x	-
California	x	x	x
Colorado	x	x	x
Connecticut	x	x	-
Delaware	x	x	x
District of Columbia	-	x	-
Florida	x	x	x
Georgia	-	x	-
Hawaii	x	-	x
Idaho	x	x	-
Illinois	x	x	-
Indiana	x	x	x
Iowa	x	x	-
Kansas	x	-	x
Kentucky	x	x	x
Louisiana	x	x	x
Maine	x	x	-
Maryland	x	x	x
Massachusetts	x	x	-
Michigan	-	x	-
Minnesota	-	x	x
Mississippi	-	x	-
Missouri	-	x	-
Montana	x	x	-
Nebraska	-	x	-
Nevada	x	x	-
New Hampshire	x	x	-
New Jersey	x	x	x
New Mexico	x	x	-
New York	-	x	x
North Carolina	x	x	-
North Dakota	x	x	-
Ohio	x	x	-
Oklahoma	-	x	-
Oregon	-	x	-
Pennsylvania	-	x	-
Rhode Island	-	x	-
South Carolina	x	-	-
South Dakota	x	x	-
Tennessee	x	x	-
Texas	-	x	-
Utah	x	-	-
Vermont	-	x	-
Virginia	-	x	-
Washington	x	x	-
West Virginia	x	x	-
Wisconsin	x	x	-
Wyoming	x	-	-

Table 2. Verification Status Of State Programs

<u>States Verified</u>	<u>States Not Verified*</u>
Alabama	Arkansas
Alaska	Delaware
Arizona	Massachusetts
California	Mississippi
Colorado	Missouri
Connecticut	South Carolina
District of Columbia	Tennessee
Florida	Texas
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Michigan	
Minnesota	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Dakota	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

\* States not verified as of December 1982.

### III. SUMMARY OF FINDINGS

The findings summarized in this chapter are the result of information gained during telephone contacts with DMV, court, enforcement, judicial, and/or other individuals in each of the 50 States and the District of Columbia. More than one respondent was contacted in each State and respondents verified the abstracts written about their States. These actions were taken to maximize the accuracy of the information reported. In spite of these actions, the report may reflect respondent perceptions of sanctioning practices and their results rather than actual practices.

Respondents indicated that there is increasing public awareness nationwide of the number of alcohol-related highway fatalities and the problems associated with drinking and driving. This public concern has led to considerable legislative activity across the country. Several States have passed DWI legislation that mandates more severe DWI sanctions or plugs loopholes to ensure that existing statutes are more consistently imposed. The legislation often prescribes "mandatory" sanctions for drunk-driving offenders. In this report, only those sanctions that cannot be probated or suspended are considered to be mandatory.

Generally, it was found that sanctions mandated by State statutes are not being imposed as prescribed in the laws because individual jurisdictions often interpret State legislation differently. Major findings from this study are:

- A total of 25 States have statutes that prescribe mandatory confinement for DWI offenders. Thirteen of these States prescribe mandatory confinement for DWI first and subsequent offenders; eleven States for second and subsequent offenders; and one State mandates confinement for third and subsequent offenders.

- All 50 States and the District of Columbia have statutes that prescribe drivers license actions to be imposed on first and/or subsequent DWI offenders. In 26 States these actions are mandatory; in 24 of these States, license actions are mandatory for first and subsequent offenders; in two they are mandatory for second and subsequent offenders.



Eleven States have laws that prescribe community service for drunk drivers. In three States, it is available for first offenders only; in six States it is available for both first and second offenders; in one State it is available for second and subsequent offenders; and in one State it is available for all DWI offenders. In eleven additional States, some local jurisdictions use community service on a discretionary basis.

Respondents indicated that there is broad-based support for mandatory sanctions and increased penalties in local communities and among enforcement officials and representatives of the judicial system.

Though respondents stated that there is broad-based support for mandatory, stringent penalties, they reported that judges often use discretion in imposing penalties. Respondents asserted that sanctions imposed on both first and subsequent offenders are less severe than those stipulated by law.

In many States, judicial discretion appears to be used at the local level even when statutes require that more stringent mandatory penalties be imposed.

In addition to these general findings, there are a number of specific findings that pertain to the particular sanctions imposed, as well as to other components of the DWI driver control system. For example, legislative activity has been influenced by pressures from the local community:

Pressure from local grass roots organizations (MADD, RID, PARKIT) has been highly successful in lobbying State legislatures for passage of more effective DWI legislation.

Twenty-two States and the District of Columbia enacted new legislation during 1982. This activity reflects the awareness of the drinking and driving problem at the local community level throughout the country.

In most States, local communities have been supportive of toughening the drunk-driving legislation and in dealing more effectively with the DWI problem.

Five States have modified their DWI statutes to lessen the probability of plea bargaining to avoid penalties for alcohol-related offenses.

Relatively little information is currently available about the effectiveness of specific sanction practices, although a few States (e.g., Alaska, Maine, and California) have recently started to examine the results of their sanctioning practices.

Although most States have not yet compiled information regarding the effectiveness of their sanction practices, preliminary observations and comments from the field suggest:

Consistent media exposure and public information and education campaigns enhance the deterrent effect of sanctions.

There is a general decrease in alcohol-related traffic fatalities during the period following enactment of new legislation.

There is often an increase in DWI arrests and subsequent convictions during the period following enactment of new legislation.

The use of license actions may be a more effective sanction than mandatory confinement in some States, particularly for multiple offenders.

Imposition of mandatory sanctions by local jurisdictions has led to significant increases in operating costs; and funding to meet these new obligations generally has not been made available.

The use of alcohol education/treatment programs, as well as some traditional punitive sanctions, was reported in many States. Generally, it was found that:

Education and treatment programs are often used as diversionary programs in lieu of traditional penalties.

States are beginning to use education and treatment in combination with punitive sanctions.

Monetary fines are imposed in most States in combination with other sanctions. Fines range from \$50 to \$700 for first offenders, with the same range imposed on persons convicted of a second offense. Fines as high as \$2,000 were reported for persons convicted of a third or subsequent offense.

Impoundment is "on the books" in a few States but is rarely, if ever, employed.

When questioning respondents, detailed information was solicited about how mandatory confinement, license actions, and community service sanctioning programs are operated in their States. Detailed information is presented for each of these sanctions. Appendix C illustrates the sanctions on the books and those sanctions typically imposed for each of the 50 States and the District of Columbia.

## MANDATORY CONFINEMENT

Throughout this study, mandatory confinement is defined as confinement that cannot be probated or suspended. Using this definition, 25 States have statutes that prescribe mandatory confinement for DWI offenders. Thirteen States prescribe mandatory confinement for first offenders. In Connecticut and Maine, confinement is mandatory for first offenders whose BAC is .20 percent or greater. In Kansas, Rhode Island, and Tennessee, either confinement or community service is mandatory. California's statute prescribes mandatory confinement or license action. Hawaii's prescribes mandatory imposition of two of three sanctions (confinement, license action, community service) and Louisiana's states that if probation is granted, either confinement or community service is mandatory. Utah allows "confinement" to be served working in or being treated in an alcohol treatment facility. In Arizona, the judge may sentence a first offender to receive treatment or to spend time in jail. Iowa, Washington, and West Virginia statutes prescribe mandatory confinement for all first offenders.

A total of 24 States prescribe mandatory confinement for second offenders. This figure includes all of the States that mandate confinement for first offenders and eleven additional States. In Connecticut, confinement is mandatory for second offenders whose BAC is .20 or greater. Similar to stipulations for first offenders in Hawaii, two of three sanctions are mandatory (confinement, community service, or license action); Louisiana's statute stipulates that if probation is granted, either confinement or community service is mandatory; Tennessee allows community service to be imposed in lieu of or in addition to confinement; and Utah allows "confinement" to be served working or receiving treatment in an alcohol treatment facility. Alaska, Arizona, California, Colorado, Delaware, Florida, Iowa, Kansas, Kentucky, Maine, Massachusetts, Montana, Nevada, New Mexico, Rhode Island, Virginia, Washington, West Virginia, and Wyoming have statutes that stipulate mandatory confinement for all second offenders.

A total of 25 States prescribe mandatory confinement for third offenders. This figure includes all of those that mandate confinement for second offenders with the addition of North Carolina. In Connecticut, Louisiana, Tennessee, and Utah the conditions noted for second offenders are similar for third offenders. All of the other States noted stipulate mandatory confinement for all third offenders.

Some general conclusions may be drawn:

- Most States mandate (by law) and impose longer jail sentences for second and subsequent offenders than for first offenders. The sentences served are significantly less than those imposed although, technically, the sentences are not subject to suspension or probation.
- The use of mandatory confinement, however limited, has reportedly contributed to overcrowding in local jails. Based on respondent statements, Macro researchers have observed that overcrowding is more prevalent in urbanized than rural areas.
- Generally, offenders are given the option of serving jail sentences on the weekends when space is available.
- Mandatory confinement is often a factor in increased requests for jury trials and plea bargains to lesser offenses to avoid the jail sanction.

The jail sentence actually served by a DWI offender depends on the law's wording, the number of previous DWI offenses on the offender's record, and the amount of jail space available. The following paragraphs explain in detail how jail sentences are imposed on and served by first, second, and multiple offenders.

### First Offenders

Six States impose mandatory confinement on first offenders--Arizona, Iowa, Louisiana, Tennessee, Washington, and West Virginia. Five of the six rarely impose the sanctions stipulated by law. Arizona and West Virginia specify a 24-hour sentence but it is rare that a full 24 hours is served. The time waiting to post bond, "sleep it off," or complete processing is usually considered sufficient to fulfill the sentence. Washington State recently revised "one day" to read "24 consecutive hours" and now requires the court to document, in writing, any reason for noncompliance. Before the law was changed, offenders often reported to jail at 11:00 p.m. and were released at 12:01 a.m. the following morning.

Iowa required that a two-day sentence be imposed on first offenders, however, this has recently been changed to "48 hours," as the sentence was rarely served as intended. Offenders often reported late in the evening on Saturday and were

released shortly after 12:01 a.m. on Sunday. Any time waiting to post bond was credited to the sentence already served. It is too early to tell whether the changes made to the Washington and Iowa laws are having an effect on how the sanction is currently being imposed at the local jurisdictional level. Tennessee mandates, and typically imposes, a 48-hour sentence on all first offenders. The most severe jail sentence mandated for first offenders is a 10-day minimum sentence imposed by Louisiana. However, if probation is granted, a two-day sentence is typically imposed. Operational data are not yet available because the legislation was enacted January 1983.

#### Second Offenders

Twenty-four States impose a mandatory minimum jail sentence on persons committing second and subsequent offenses. These jail sentences range from 48 hours to 90 days for a second offense and as high as 120 days for a third conviction. Persons convicted of a second offense in California, Maine, and New Mexico receive a 48-hour sentence and, typically, serve the full 48-hour period. Some offenders in California are serving as long as 72 hours. Virginia law mandates a 48-hour sentence; typical operational data were not available. Montana and Kentucky require a mandatory three-day sentence. However, in Montana, most offenders are reported to serve from 24 to 72 hours, while Kentucky usually imposes a sentence of from three to ten days in jail. In Indiana, a five-day minimum sentence is mandated, and a five- to ten-day sentence is usually served.

Seven-day sentences are required by Iowa, Massachusetts, Washington, and Wyoming. In Iowa and Washington, however, offenders usually serve considerably less. Iowa generally suspends five days of the sentence and often treats the remaining two days as a first offender sentence. Most offenders simply remain overnight, "sleep it off," and are released. In Washington, there is a wide variation between jurisdictions--in some counties, the required confinement is consistently imposed and served. In the more populous jurisdictions, the sentences served are usually less than the minimum, as jail space is often not available. In

Massachusetts, the judge may substitute 14 days confinement in a residential treatment facility in lieu of the minimum 7 days in jail. More specific operational data from Massachusetts and Wyoming are not yet available.

Alaska, Florida, Nevada, and Rhode Island mandate 10-day minimum sentences for second offenders. Alaska typically imposes 30 days, with 20 days suspended if the offender complies with a treatment recommendation. If the second offense occurs within one year of the previous charge, a 20-day sentence is imposed. Persons convicted in Nevada are also receiving as many as 20 days at the discretion of the court. Offenders in these States typically serve the minimum sentences in consecutive days. Operational data as to how this sanction is imposed in Rhode Island and Florida are not yet available. Louisiana mandates a 30-day minimum sentence although, if probation is granted, the courts have the option to impose 15 days in jail or 30 days community service work. Tennessee requires a 45-day sentence, however, information about how this sanction will be operationalized is not yet available.

In Utah, second offenders are sentenced: (1) to spend 2 to 10 days in jail, or (2) to work "in service" 10 to 30 days in an alcohol treatment facility, or (3) to obtain treatment in an alcohol rehabilitation facility. Hawaii, as with first offenders, allows for judicial discretion as to which two of three sanctions are imposed.

#### Multiple Offenders

Typically, persons convicted of a third or subsequent DWI offense are charged with felony offenses and are subject to more severe penalties. Fourteen States (Arizona, California, Florida, Hawaii, Iowa, Kentucky, Louisiana, Massachusetts, Montana, Nevada, North Carolina, Rhode Island, Virginia, and West Virginia) specify more severe minimum jail penalties for third offenders than are prescribed for persons convicted of a second offense. However, in six States the sentence can be reduced or suspended if the offender completes an approved alcohol treatment program.

Alaska typically imposes a sentence of 100 days in jail, although 85 to 90 days are suspended if the offender complies with a treatment recommendation. These recommendations often suggest confinement at a residential treatment facility. Montana requires a 10-day mandatory minimum sentence; however, most offenders serve fewer days if they attend a court-approved treatment program. Third offenders in California are subject to a term of 120 days to one year. The minimum sentence (120 days) is served if the offender also attends the county alcohol treatment program for a period of one full year. Iowa imposes a sentence of one to five years in the State penitentiary. Most chronic offenders receive the one-year sentence although, after serving a few months in jail, they are often released to a residential treatment facility for the remaining portion of their sentence. Offenders in Nevada and West Virginia are subject to spend a minimum sentence of one year in jail, however, in both cases this sanction is suspended if a treatment program is completed.

States that have enacted legislation requiring mandatory jail sentences or are revising their statutes to ensure that complete jail penalties are being served, have reported overcrowding in their correctional facilities. This problem has led to a variety of innovative approaches to the confinement of DWI offenders. In order to have offenders serve their sentence when space is available, "reservations" often must be made--sometimes months in advance. The practice of releasing offenders serving longer terms a few days early in order to make room for other offenders has also been widely reported. Maine and Colorado have reported transporting prisoners from one county to another, as jail space is often more available in the rural counties of the State.

Some States have resorted to confining offenders in buildings other than jail facilities. Local high school gymnasiums have been converted into makeshift "detention centers" where offenders sleep on cots while serving their time on weekends. In Ohio, offenders can be "confined" at a motel facility where they take part in an intensive alcohol treatment program.

Massachusetts and Louisiana plan to confine DWI offenders in minimum security facilities where their alcohol problems can be addressed more appropriately than

would be the case in more traditional correctional facilities. This approach addresses directly the offender's problem of alcohol abuse, allows the offender to "serve his time" for society, and does not exacerbate an already overcrowded jail situation, according to respondents.

#### LICENSE AND OTHER ADMINISTRATIVE ACTIONS

All 50 States and the District of Columbia have statutes that prescribe drivers license actions to be imposed on first and subsequent DWI offenders. In 26 States, these actions are mandatory; in 24 States (Alaska, California, Delaware, Florida, Georgia, Hawaii, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia, Wisconsin), license actions are mandatory for first and subsequent offenders; in two States (Alabama, South Dakota) license actions are mandatory for second and subsequent offenders. In California, either license action or incarceration is mandatory and in Hawaii, two of three sanctions (license action, incarceration, or community service) are mandatory. In general, respondents stated that:

- . License actions are typically imposed judicially, i.e., by the DMV in response to court action.
- . Mandatory license action sanctions are not consistently imposed.
- . Restricted licenses are relatively easy to obtain in most States.
- . License actions are often suspended, waived, or reduced if the offender attends a court approved alcohol education/treatment program.
- . Many offenders drive while their licenses are suspended/revoked or violate the conditions of their restricted license.
- . Impoundment of the offender's vehicle is rarely, if ever, imposed except for protective custody.
- . The deterrent effect of license actions cannot be determined due to the lack of formal evaluation efforts and the recency of many State laws.

The effect of license actions would be enhanced if the driver had an increased perceived risk of being apprehended and convicted when driving while under the license action.

The administrative actions actually taken against DWI offenders vary from State to State. Some States suspend the offender's license, others revoke it.\* In practice, however, an offender rarely serves the full term of a license action. In many cases, even though the statute forbids it, some portion of the sentence is suspended based on occupational (work-related) or hardship (e.g., transporting a sick or injured family member to a doctor) claims. Many States modify mandated sanctions by allowing the offender to drive under specified conditions or restrictions.

#### Suspensions/Revocations

License actions are judicially imposed in all States except Iowa, Minnesota, and West Virginia. An action is considered judicially imposed when it is dependent upon or results from a court action (i.e., conviction). Iowa, Minnesota, and West Virginia use a two-track system for DWI offenders: judicial and administrative. An administrative license action is imposed by the DMV if the offender registers a BAC of .10 percent or higher on an evidentiary test, regardless of subsequent court action. Additional sanctions may be imposed judicially. In April 1983, Oklahoma will also implement an administrative license action based solely upon a BAC reading of .10 percent or higher.

Many States allow license actions to be imposed administratively once a judicial conviction has been obtained if the courts do not impose the action as mandated. For example, the State of Maine has recently implemented a procedure that allows the Secretary of State to review the sanction imposed on all convicted DWI offenders, levy a license action if the courts have failed to do so, and to increase the license action imposed if the offender fails to complete a prescribed treatment program or if the instant offense is the offender's third in seven years.

\* The definitions of suspension and revocation are not consistent across States. In general, the difference between them is the requirements that must be fulfilled for reinstatement.

Connecticut has established a pilot program in selected jurisdictions that permits the arresting officer to hold an offender's license for 24 hours if he exhibits a BAC level between .07 and .13 percent. The Department of Motor Vehicles is notified of this action and a formal warning is issued. However, the offender is not charged with a DWI offense. Offenders are permitted only one such warning before a DWI offense is formally charged.

The basic operating difference between a license suspension and revocation is the procedure an offender must follow in order to regain his/her full driving privileges. In the case of a suspension, if the license has been confiscated by the DMV or some other authorized agency, it is returned to the offender by that agency when the suspension expires. If the license has not been confiscated, the offender generally does not need to take any action because restoration simply requires the DMV to update their records. Typically, restoration following a revocation is more complex and requires the offender to submit an application, pay a fee, and, in some cases, complete a drinker evaluation and/or treatment.

#### Restricted Licenses

A modification of the license action, known as a restricted, hardship, conditional, or occupational license is available in most States. Only Arizona, Connecticut, Hawaii, Kentucky, Nebraska, New Hampshire, New Jersey, Rhode Island, and West Virginia do not have any provisions for restricted licenses. The theoretical purpose of the restricted license is to prevent any undue hardship on the offender or his/her dependents that would result from an unconditional loss of all driving privileges. It was reported that while in Arkansas, Mississippi, Nevada, and Oklahoma, restricted privileges are available, they are rarely, if ever, granted.

The most common criteria required for issuance of a restricted license are: (1) the need for transportation to work, (2) use of a vehicle as a part of work (e.g., delivery), and/or (3) residence in a rural location. However, these criteria are widely abused, as some State routinely grant restricted licenses with few formal restrictions. This serves to dilute the intended effect of the original license suspension or revocation.

Ohio, for example, mandates a 30-day to three-year license suspension for DWI offenders and the first 30 days are prescribed as a mandatory sanction. In practice, however, many local jurisdictions violate this constraint and frequently issue restricted privileges. In Texas, offenders typically request a formal hearing and are routinely granted a restricted license.

Many States use the threat of a license suspension or revocation to coerce an offender into a treatment program, at which time the license is reinstated, a restricted license issued, or the term of the original license action is significantly reduced. In Kentucky, a six-month revocation is waived for first offenders if an educational program is completed. First and second offenders in Oregon are eligible for, and usually accept, a diversionary treatment program. This makes them eligible for, and usually results in, the issuance of restricted driving privileges. In Maine, an offender can apply for a restricted license after DWI school is completed and two-thirds of the mandated suspension has elapsed. North Carolina permits DWI offenders to plea bargain down to other alcohol-related offenses that either do not carry a license action, or that permit the issuance of restricted license privileges.

#### Impoundment Of Vehicle

Impoundment was reported to be available in California, Georgia, and Washington. In California, the judge has discretionary power to impound the vehicle for 30 days. This sanction is not perceived as being significantly effective and, therefore, is not frequently imposed. In Georgia, the vehicle may be impounded when other passengers are not capable of operating it and the suspect is unable to contact another person to secure the vehicle. In this situation, the purpose of the impoundment is to protect the vehicle and its contents. In Washington, a bill was recently passed that authorized a vehicle to be impounded and sold at public auction if its driver is caught driving in violation of license suspension or revocation. However, this sanction is very rarely imposed.

Many persons who have had their driver's licenses suspended or revoked were reported to continue to drive in violation of the license action. Some States attempted to counteract this phenomenon by imposing severe sanctions on persons apprehended for driving while under a license sanction. Wisconsin, for example, revised its sanctions for this offense to include a combination of monetary fine, jail sentence, and an additional six-month loss of license. For offenders who own their vehicles, the court may order that the vehicle be impounded for an unspecified period of time.

In many States where severe penalties are mandated for driving while license is suspended or revoked, offenders typically receive only token sanctions. Tennessee, for example, mandates a fine of \$500 and a sentence of two days to six months in jail. The typical offender, however, is required to pay a fine of approximately \$50.

#### COMMUNITY SERVICE

Six States (Arizona, Colorado, Florida, Hawaii, New Jersey, and Rhode Island) have enacted legislation mandating statewide community service programs for DWI offenders during 1982. Five States (Connecticut, Kansas, Louisiana, Michigan, and Tennessee) prescribe the discretionary use of community service to be imposed in lieu of other punitive sanctions. Eleven States (California, Delaware, Georgia, Indiana, Iowa, Kentucky, Maryland, Minnesota, New York, Oregon, and Washington) impose this sanction on a local jurisdictional basis only.

Of the eleven States that have community service on the books for drunk drivers, three States (Florida, Kansas, Rhode Island) prescribe it for first offenders only. In six States (Arizona, Colorado, Hawaii, Louisiana, Michigan, New Jersey) it is available for first and second offenders. Connecticut's law prescribes community service for second and subsequent offenders. Tennessee's statute allows community service to be served in lieu of, or in addition to, confinement for all DWI offenders.

General conclusions drawn from respondent statements include:

- Community service programs are not yet operational on a statewide basis in any State surveyed.
- Those States mandating statewide programs will structure their programs around many of the features common to currently operating community service programs.
- Community service is most often prescribed as a condition of probation so the court can maintain some degree of control over offenders who fail to meet their sanction requirements.
- Preliminary observations indicate that DWI offenders are successful candidates for community service programs.

In general, traffic offenders constitute less than half of the community service population, and DWI offenders are only a fraction of the traffic offenders in the programs.

Most program populations contain fewer than 40 percent DWI offenders. Program eligibility is based on several factors. In California and Minnesota, program eligibility is based on offender indigency; Delaware, Florida, and Rhode Island admit only first DWI offenders; and in Indiana and Iowa judicial discretion determines eligibility. Connecticut, Hawaii, Kansas, and Louisiana impose the community service sanction in lieu of a jail term or a fine, which is most typical. Florida imposes the sanction in combination with a jail term and/or a fine.

There is a consistent effort across all programs to assess the skills of the DWI offender so that his/her community service assignment can be made commensurate with his/her skills whenever possible. The average community service sentence imposed across the programs contacted is 40 to 60 hours. Typically, the offender must complete the service in four to six months.

Primary responsibility for performance evaluation of the client, as well as tracking of time served, generally belongs to the participating agency. The agency reports on the number of hours served and the client's level of performance. When the required number of hours have been served satisfactorily,

the sentence is completed. Average completion rates generally exceed 90 percent for DWI offenders. Five States (Delaware, Florida, Indiana, Maryland, and New York) viewed community service programs as being particularly cost-effective relative to other sanctioning alternatives.

#### IV. INDIVIDUAL STATE SITE DESCRIPTIONS

This chapter presents the detailed descriptions of the sanction programs operating for each State and the District of Columbia. The specific areas discussed include: (1) general background information, (2) sanctions prescribed by statutes and those typically imposed, (3) operational data for each sanction type imposed, (4) general reactions to the sanctions imposed by the various actors and agencies involved, and (5) factors considered vital for replicating the sanction program.

In many States, detailed information regarding sanction operations, specific costs associated with the sanction program, and the overall effectiveness of the sanctions imposed was not readily available. This lack of data was often attributed to inadequate records, wide variation in judicial interpretation, or the relative newness of the DWI legislation.

The information presented in the program descriptions has been verified for all but eight States (Arkansas, Delaware, Massachusetts, Mississippi, Missouri, South Carolina, Tennessee, and Texas). The information represents statutes "on the books" for each State as of December 1982.

\* \* \* \*

Summary tables describing DWI sanctions prescribed and sanctions actually imposed are provided with each State Program Description.



ALABAMA

I. BACKGROUND

During the regular session of the Alabama Legislature in 1980, the Rules of the Road Act was passed which brought Alabama's traffic laws up to date with federal standards. Several revisions in this act impacted on laws dealing with driving under the influence. During August, 1982, the legislature passed a number of minor revisions to the 1980 drunk driving legislation. These revisions were later ruled unconstitutional because of an administrative error in forwarding that legislation to the Secretary of State.

II. LEGISLATION

The current laws dealing with drunk driving include the following provisions:

- . On a first offense, judges are permitted full discretion on licensing sanctions where prior to 1980 there was an automatic license revocation of six months
- . Judges cannot reduce DUI charges to a lesser offense
- . First offenders must be sent to DUI counterattack programs approved by the Administrative Office of Courts

The sanctions that are currently prescribed by law are:

1st offense:	\$100-\$1,000 fine* Up to 1 year jail 6-month license suspension (optional) DUI education program (mandatory)
2nd and subsequent offenses (within a 5-year period)	\$200-\$1,500 fine Up to 1 year jail 6-month license revocation (mandatory)

\* Municipal courts are limited to a maximum sanction of \$500.00 fine and 6 months confinement.

Sanctions that are typically imposed on DUI offenders are as follows:

1st offense:	\$200-\$300 fine Seldom jail Occasional license suspension DUI educational program
2nd and subsequent offenses:	\$300-\$600 fine Jail term varies from 0-3 months (often suspended based on court-imposed conditions) 6-month license revocation DUI multiple offenders program (varies)

III. OPERATIONS

Upon arrest by State troopers and some municipal officers, offenders are given a preliminary breath test and if it is more than .10, they are taken to the nearest station where a breath test is given on a State-approved intoximeter. If the BAC is .10 or higher, offenders are charged with driving while intoxicated and confined for a minimum of 4 hours, after which they may be released on bond depending on the local circumstances. During the trial, the judge usually determines the guilt or innocence and, in most cases, continues the case pending completion of the DUI school and alcohol assessment. When the defendant returns to court, sentencing is completed including, in some cases, long range rehabilitation where the need is indicated.

License Actions

If a motorist refuses to take a chemical test for intoxication, his license is automatically suspended for 45 days, after which he must pay a \$25.00 reinstatement fee. Upon conviction of DUI, a copy of the arrest citation is sent to the Department of Public Safety where the appropriate entry is made on the driving record. Persons convicted of a first DUI offense are subject to a discretionary six-month license suspension. If the judge chooses to invoke this option, the license is surrendered in court and transferred with the citation to the Department of Public Safety which formally notifies the offender. Licenses are usually suspended only in cases where there is a poor driving record or where warranted by unusual circumstances surrounding the DUI offense.

Second offenders are subject to a mandatory six-month license revocation and typically receive this sanction. Restricted driving privileges may only be granted in cases in which revocation or suspension is not required by a statute or rule. Offenders can request an administrative hearing; however, these hearings only determine whether offenders have been correctly identified and do not argue the circumstances of the particular case. Appeal is not allowed on mandatory revocations.

In order to have a license reinstated, offenders must wait the full six-month revocation period which begins when the offender surrenders his license to the court or to the licensing authority. After that time, he must pay a \$25.00 reinstatement fee, show proof of financial responsibility for the next three-year period, pay a \$5.00 examination fee and retake all driving examinations, and pay \$15.00 for the issuance of a new driver's license. The penalty imposed on persons apprehended for driving while under a license suspension/revocation varies considerably across jurisdictions. Sentences range from time in jail to a modest \$25.00 fine. Additional license action is also taken by the licensing authority.

#### Confinement

Due to severe overcrowding in jails throughout the State, this sanction is usually not imposed on persons convicted of a first DUI offense. As the number of prior convictions increases, however, so does the probability of offenders being sentenced to jail. Typical sentences imposed vary across jurisdictions. Weekend confinement is often available, and in some cases, a work release program can be granted. Courts often give jail time as part of the sentence and suspend the actual confinement conditioned on good behavior, attendance at AA, or some other court order.

## IV. RESULTS

### Reactions

Judges, prosecuting attorneys and defense bar have been openly supportive of the drunk driving legislation. As plea bargaining is not available for DUI offenses, more cases are being tried in the courts. The high rate of appellate convictions has discouraged appeals to higher courts and has increased the number of persons attending the statewide network of DUI schools. Many more persons are now receiving some alcohol education with formal assessment of their drinking problem. The general community has also been highly supportive of this program.

### Effectiveness

Formal evaluations of the DUI sanctioning program have not been conducted. However, prior to 1980, the conviction rate for DUI offenses was approximately 40 percent. When the law was changed permitting judges full judicial discretion on licensing sanctions on first offense and making reductions illegal, the rate increased to between 80 to 90 percent convictions.

### Costs

The cost of running the DUI school is supported by the defendants. Fees range from \$35.00 to \$50.00 each for educational programs between 8 and 12 hours. Other cost information is not available.

## V. REPLICABILITY

This program is similar in many ways to others throughout the country and was first patterned after the DWI Phoenix program. Alabama has added the screening and treatment based on NHTSA recommendations.

STATE: ALABAMA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200 - \$1,000	\$200 - \$300	1/ License suspended if offender has a poor driving record
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	6 months	Varies 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol education	Alcohol education	
Community Service			
<u>2nd Offense</u>			
Fine	\$500 - \$2,500	\$300 - \$500	
Jail	15 days-11 mo. 29 days	Varies	
License Action:			
. Suspension	6 months	6 months	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$1,000 - \$5,000		
Jail	120 days-11 mo. 29 days		
License Action:			
. Suspension			
. Revocation	2 - 10 years		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

## ALASKA

### I. BACKGROUND

In October 1978, the State of Alaska instituted mandatory sentencing for persons convicted for DWI offenses. The legislation was passed partly to combat the extremely high rate of alcohol-related highway fatalities in the State. During September 1982, a series of revisions to this legislation was passed that will further toughen the State statutes. In Alaska, approximately 85 percent of all highway fatalities are alcohol related, as compared to 50 percent nationwide. The State's efforts to pass more stringent legislation were spearheaded by the Alaska Highway Safety Planning Agency and the State Office of Alcoholism and Drug Abuse.

The Municipality of Anchorage, with almost one-half the State's population, instituted in 1976 a 24-hour mandatory confinement program, which received strong support from the local community. Statewide legislation was adopted in 1978 under considerable pressure from one member of the State Legislature.

### II. LEGISLATION

The mandatory sentencing program includes a combination of jail sentence, license action, and referral to an appropriate alcohol education/treatment program. Elements of the legislation that are particularly relevant include:

- . Minimum jail sentences that cannot be suspended or probated
- . An illegal per se law that makes driving a vehicle while having a BAC of .10 percent a misdemeanor
- . Mandatory minimum penalties for DWI offenders, which include:

1st offense:	Fine not mandated 72 hours jail (mandatory in Anchorage) 30-day license revocation (or restricted privileges for 60 days) Alcohol education program
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2nd offense:	Fine not mandated 10 days jail (mandatory - 20 days if within 1 year of previous offense) 1-year license revocation Alcohol treatment program
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3rd or subsequent offense:	Fine not mandated 10 days jail (mandatory) 3 years license revocation Alcohol treatment program
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In practice, the typical DWI offender will receive the mandatory jail penalty, required license action, and a reduced fine. Sentences most often prescribed are:

1st offense:	\$200-\$300 fine 30 days jail with 27 suspended (if comply with treatment recommendation) 30-day restricted driving privileges Alcohol program
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2nd offense:	\$200-\$400 fine 30 days jail with 20 suspended (if comply with treatment recommendation) 1-year license revocation Alcohol program
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3rd offense:	\$200-\$400 fine 100 days jail with 60-90 days suspended 3-year license revocation Alcohol program
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Alaska has a unified court system that operates throughout the State. The laws are interpreted fairly consistently, though there is some variability in how local courts process and sentence DWI offenders. As the State's population is relatively small (400,000) and concentrated in only three main population centers (Anchorage, Fairbanks, and Juneau), the courts are more visible and can be more easily controlled. Local magistrates and judges are appointed by the Governor and remain by retention elections.

### III. OPERATIONS

Upon arrest for DWI, the individual is arraigned and released on corporate bond, cash bail or his own recognizance. Upon reporting to the court, the defendant can plead guilty, nolo contendere, or not guilty and request a trial by jury or judge. In the City of Anchorage, there is a committing magistrate on

call 24 hours a day. An arresting officer can bring an offender in at any time to have bail or release conditions set and receive a court date. There is a three-man enforcement team funded by the Alaska Highway Safety Planning Agency that is used for processing DWI offenders. This special unit has reduced the down time for arresting officers from an average of three hours to just over 20 minutes. DWI arrest rates were significantly increased.

Once a DWI offender has been found guilty, a condition of the sentence requires attendance at the Alaska Alcohol Safety Action Program for alcohol screening. This program acts as an independent agency that serves as a link between the courts and the alcohol treatment community by providing post-disposition case management for the courts. The offender's drinking diagnosis is determined on the basis of scores obtained on the Mortimer Filkins Questionnaire and Interview, BAC at time of arrest, and number of prior convictions. The alcohol screening assignment is a mandatory condition of the suspended portion of the sentence as well as part of the sentence itself. As such, either the prosecutor or the court may initiate proceedings to force compliance.

#### License Actions

License actions are handled by the courts. Offenders are notified of action to be taken in open court and made to surrender the license as appropriate. The Department of Motor Vehicles is notified and makes the changes on the Motor Vehicle records. In order to have a license reinstated after a suspension or revocation, proof of financial responsibility must be made. There is no provision or authority for impounding an offender's vehicle.

A first offender is subject to a license revocation for 30 days. However, 60-day restricted licenses are available for first offenders who can show that a loss of license will have a negative impact on their ability to maintain employment and will cause financial hardship. The availability of these licenses varies with the individual courts. The prosecuting attorney can object to a restricted license being issued; such objections are usually seriously considered by the courts. There do not appear to be many abuses of these restrictions. Restricted licenses are not available second or subsequent DWI offenses.

#### Confinement

Alaska consistently imposes the minimum jail sentence on all DWI offenders. Offenders are required to serve the entire sentence in consecutive days. Weekend confinement is generally not available after the first offense as an attempt is made to keep the jails from becoming overcrowded. First offenders outside of Anchorage sometimes report to serve their three-day sentence immediately before midnight and complete the sentence immediately after midnight the following day. These offenders would thus be serving "three days" in 24 hours and two minutes. The new revisions now require 72 hours consecutive incarceration to be served to ensure that the full three days are served. Anchorage judges already had informally adopted the 72-hour standard. Persons convicted of a second or subsequent offense are subject to, and generally serve a 10-day jail sentence. However, if this offense occurs within one year of the previous charge, then a 20-day mandatory sentence is imposed.

#### IV. RESULTS

##### Reactions

The courts generally support the mandatory sanctions. The more populated jurisdictions (Anchorage, Fairbanks, and Juneau) tend to be more strict with their sentencing policy, whereas the outlying, more rural courts have been somewhat more lenient. The jails are reporting overcrowding conditions in spite of attempts to avoid such conditions (i.e., limited weekend confinement). There is an increased workload throughout the court system. With a temporary freeze on hiring, they are understaffed and are experiencing difficulties completing the required work.

Judges report that their job has been made easier as the burden of selecting appropriate sanctions has been removed. They simply have to follow guidelines; yet, they have retained the discretion to impose additional sanctions as appropriate. Judges feel that mandatory sentencing makes a more lasting impression with offenders.

Plea bargaining has not been affected by the mandatory legislation, as it is not an option under policies of the Alaska Attorney General. Anchorage allows the municipal prosecutor to plea bargain for a lesser charge if he/she cannot win a conviction for DWI. It is rarely used for a DWI offense. The City of Anchorage reports an increase of 50 percent in the number of trial requests and a DWI conviction rate of around 90 percent. With the illegal per se law, it is not difficult to obtain a conviction if the offender's BAC level at the time of arrest is higher than .10 percent.

Defense attorneys attempted to "beat" the per se law by attacking the validity of the calibration and operating procedures used with the breathalyzer and filed an appeal stating that breath samples must be saved and made available to defendants to obtain an independent BAC determination. Both attempts were unsuccessful.

The Department of Motor Vehicles reported that license actions employed by the State of Alaska are not effective because they are not severe enough to be a deterrent for DWI behaviors. Our respondents stated that limited or restricted licenses should not be made available under any circumstances. During 1981, slightly more than 2,750 DWI convictions were recorded with approximately 2,720 suspended/revoked or limited licenses initiated. Although license actions are imposed consistently, many offenders are believed to be driving anyway.

#### Effectiveness

The only formal evaluation completed, thus far, examined the effectiveness of the Alaska Alcohol Safety Action Program and the effect of alcohol treatment referral. It did not examine the issue of mandatory sentencing. A study currently underway will examine the question of sanction effectiveness. The driving behavior of persons convicted of DWI will be monitored for two years. Driving records and sanction history will be monitored via an automated computer management information system currently in operation throughout the State Judicial System.

#### Costs

Specific cost data were not available.

#### V. REPLICABILITY

Respondents indicated that a major factor in developing a successful sanctioning program in the State of Alaska is the high degree of visibility obtained by the local jurisdictions throughout the State. With approximately only 2,000 to 3,000 DWI arrests processed each year through the single, unified court system, the interpretation of the DWI statutes at the local level can be easily monitored. Judges and court personnel throughout the system have been trained in the new DWI provisions and have agreed to implement the system as proposed. Acceptance of the basic program by the courts is vital to the success of the program.

STATE: ALASKA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine		\$200 - \$300 <sup>1/</sup>	<sup>1/</sup> Fine not mandated by statutes <sup>2/</sup> Mandatory in Anchorage <sup>3/</sup> Can receive 30-day revocation <u>or</u> 60-day restricted license
Jail	72 hours <sup>3/</sup>	72 hours <sup>3/</sup>	
License Action:			
. Suspension			
. Revocation	30 days	30 days <sup>3/</sup>	
. Restricted	60 days	60 days <sup>3/</sup>	
Impoundment			
Educ/Trmt Program	Alcohol screening	Alcohol screening	
Community Service			
<u>2nd Offense</u>			
Fine		\$200 - \$400 <sup>1/</sup>	<sup>1/</sup> Fine not mandated by statutes <sup>2/</sup> 20 days mandatory if within 1 year of previous offense
Jail	10 days <sup>2/</sup>	10 days <sup>2/</sup>	
License Action:			
. Suspension			
. Revocation	1 year	1 year	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol screening	Alcohol screening	
Community Service			
<u>Subsequent Offenses</u>			
Fine		\$200 - \$400 <sup>1/</sup>	<sup>1/</sup> Fine not mandated by statutes <sup>2/</sup> 20 days mandatory if within 1 year of previous offense
Jail	10 days <sup>2/</sup>	10 days <sup>2/</sup>	
License Action:			
. Suspension			
. Revocation	3 years	3 years	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol screening	Alcohol screening	
Community Service			

ARIZONA

I. BACKGROUND

As a result of the growing concern in the State legislature, the Governor's Office, and local grass-roots organizations, new DWI legislation was passed in April 1982 and will become effective on July 24, 1982. The Governor's Office has paid particular attention to the DWI problem in Arizona. For the last three years, the Governor has encouraged the introduction of an illegal per se provision into the State's DWI legislation. Additionally, the Governor's Office of Highway Safety has funded a "DWI squad" in Tucson, consisting of six police cars carrying intoxilyzers on patrol throughout the area. As a result, the incidence of alcohol-related accidents in Tucson has been drastically reduced.

II. LEGISLATION

There are several significant elements in the new Arizona DWI legislation:

- . An illegal per se law prohibiting driving a motor vehicle while having a BAC of .10 or higher
- . Mandatory minimum fines and jail sentence
- . Establishment of a statewide community service program

The new legislation provides for the following sanctions to be imposed:\*

1st offense:	\$250-\$1,000 fine 24 hours jail 30-90 day license suspension Alcohol treatment program 8-24 hours community service
2nd offense:	\$500-\$1,000 fine 60 days jail 1-year license revocation Alcohol treatment program 8-24 hours community service

\* All minimum penalties are mandatory and cannot be suspended or avoided through probation.

3rd offense:

Up to \$150,000 fine  
6 months-2½ years in State prison  
3-year license revocation

III. OPERATIONS

All DWI offenders will be required to participate in an alcohol screening program. Those offenders requiring further education or treatment programs will be referred to the appropriate facilities and required to pay a surcharge of 37 percent on the fine imposed as a result of the DWI offense. Fines for first offenders range from a minimum mandatory \$250 to \$1,000 maximum. For second offenders, a minimum mandatory fine of \$500 to \$1,000 maximum is required. The 15 percent surcharge will be sent to the Department of Health Services to help fund the countermeasures program. The 37 percent surcharge will be used to fund various aspects of the criminal justice system and to help pay for the expenses incurred by the criminal justice system in processing DWI offenders.

License Actions

Under the new law, first offenders with a BAC of .10 to .19 percent are subject to a mandatory 30-day license suspension if recommended by a prosecutor and no accident is involved. A BAC of .20 percent or higher dictates a mandatory license suspension of 90 days for a first offender. Second offenders are subject to a 1-year revocation, and third offenders to a 3-year revocation. There are no provisions for restricted licenses under current legislation or under the new law. Respondents indicate that this policy is adhered to. In either case, a suspension or revocation, DMV takes physical custody of offender licenses. When the suspension period expires, they may simply retrieve their licenses from DMV. In the case of a revocation, offenders must show proof of completion of the treatment program, file an application, and pay the appropriate fees prior to retrieving their licenses.



### Confinement

Under the old law, first DWI offenders were subject to a mandatory 1-day jail term. Typically, however, the time spent in lockup during arrest and booking procedures was credited to, and often constituted, the one day of jail. Under the new law, the offender must serve 24 consecutive hours in jail or attend a treatment program. Second offenders were subject to a minimum of 60 days in jail under the old law, and that will not change under the new law. However, the period of time within which commission and conviction of two DWI offenses constitutes a second offense will be expanded from 24 to 36 months. Third offenders must serve a sentence of six months to 2½ years in prison, with the minimum sentence being mandatory.

### Community Service

The new legislation provides for community service as a DWI sanction. At the time interviews were conducted, efforts to design and implement the community service program were being coordinated. The legislation provides for a sentence of 8-24 hours of community service time and is primarily geared toward indigents who are unable to pay fines. Many legislators and practitioners feel that community service will be more of a deterrent than incarceration, because an offender is more visible in community service and, therefore, runs a greater risk of being seen and identified as a "criminal" by others in society.

## IV. RESULTS

### Reactions

Court and DMV officials are anticipating that the new legislation will lead initially to an increase in jury trials resulting from challenges to the illegal per se provision and the legislative mandate against charge reduction in DWI cases. It is further anticipated that the courts will uphold all provisions of the new law and that the increased number of jury trial requests will be short lived.

### Effectiveness

Evaluations of the sanctions imposed and their deterrent effect on DWI behavior are expected following the implementation of the new law.

### Costs

The new law mandates the courts to levy a surcharge of 37 percent of the DWI fine. These funds will be used to support various operations and personnel associated with the criminal justice system.

## V. REPLICABILITY

Respondents identified two factors that should be considered in efforts to replicate anyone's proposed system. The first is the establishment of a statewide system of records regarding arrests, convictions, and pending DWI cases. The second factor is the need for coordination of a strong PI&E campaign and grass-roots support.

STATE: ARIZONA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$250 - \$1,000	\$250	1/ Restricted license not available
Jail	24 hours	24 hours	
License Action:			
. Suspension	30 - 90 days 1/	30 days	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Approved alcohol treatment program	Alcohol education	
Community Service	8 - 24 hours	8 - 24 hours	
<u>2nd Offense</u>			
Fine	\$500 - \$1,000	\$500	1/ Restricted license not available
Jail	60 days 1/	60 days	
License Action:			
. Suspension			
. Revocation	1 year	1 year	
. Restricted			
Impoundment			
Educ/Trmt Program	Approved alcohol treatment program		
Community Service	8 - 24 hours		
<u>Subsequent Offenses</u>			
Fine	Up to \$150,000	Varies	1/ Restricted license not available
Jail	6 months - 2 1/2 years in State prison	6 months	
License Action:			
. Suspension			
. Revocation	3 years 1/	3 years	
. Restricted			
Impoundment			
Educ/Trmt Program	Approved alcohol treatment program		
Community Service			

## ARKANSAS

### I. BACKGROUND

In July 1982, the Governor of the State of Arkansas appointed an Alcohol Task Force to investigate the DWI problem throughout the State. This Task Force will examine closely the current DWI legislation and will develop recommendations to be considered during the 1983 legislative session. Currently, there is no consistently applied policy of sanctioning persons convicted of drunk driving offenses. Local grass-roots organizations (MADD, SADD) have formed and are generating community support for more effective legislation. These groups have received media attention with their activities which has been instrumental in publicizing the problems associated with DWI activities.

### II. LEGISLATION

Arkansas has a variety of amendments and provisions currently on record which comprise its drunk driving legislation. However, the interpretation of these provisions at the local jurisdictional level varies considerably across the State. The basic legislation calls for the following sanctions to be imposed:

1st offense:	\$50-\$500 fine 24 hours-30 days jail 90 days license suspension
2nd offense:	\$250-\$1,000 fine Up to 1 year jail 6 months-1 year license suspension

Sanctions typically imposed on DWI offenders vary greatly throughout the State. Generally, persons convicted of alcohol-related offenses are given the following sentences:

1st offense:	\$50-\$100 fine (varies) Jail (rarely) License suspension (rarely)
2nd offense:	\$50-\$200 fine (varies) Jail (rarely) 1-year license suspension

### III. OPERATIONS

The adjudication process begins with the arrest and the police officer's filing an arrest ticket with the court. Individuals are booked and an arraignment date is set. Suspects are arraigned and first tried in Municipal Court, but typically ask for a de novo appeal to the circuit court level where a jury trial can be requested. The courts must request a copy of the driving record from the Office of Driver Services to determine whether or not the suspect has any prior convictions. Respondents indicated that in many cases this process is not completed and suspects are tried routinely as first offenders.

#### License Actions

Upon a judicial conviction, the courts determine whether or not a license action should be imposed. If license actions are taken, licenses are surrendered to the court. The courts notify the Office of Driver Services of the actions, and the Office sends a hearing officer to pick up the court abstract, the ticket and the offender's license. Individuals are notified by certified mail of the action taken and the appropriate entry is made on the permanent driving record. Offenders can request an administrative hearing to appeal any action taken, or to petition for restricted driving privileges.

If the courts do not impose a license action, the ticket and court abstract are filed with the Office of Driver Services which records violations and assigns the appropriate number of points to the offenders' records. Ten points are assessed for a DWI conviction and 13 points are required for a license suspension to be initiated.

Persons convicted of their first DWI offense are subject to a 90-day license suspension, which is rarely imposed. Second offenders are subject to a suspension of six months to one year, and most offenders receive the one-year suspension. If the courts do not initiate the license action, the additional points accumulated usually exceed the 13-point limit, giving the Office of Driver Services authority to suspend the license. Offenders can request restricted driving privileges, but they are not often granted. Persons convicted of their third offense accrue enough total points on their driving record to warrant a revocation of their driver's license. Restricted licenses are not available for these individuals.

In order to have licenses reinstated after a suspension has been initiated, offenders must successfully complete an alcohol education/rehabilitation course that has been approved by the Office of Driver Services. To have a revoked license reinstated, offenders must successfully complete the alcohol education/rehabilitation program, show proof of financial responsibility for three years and formally re-apply for the license and take all driving examinations normally required.

#### Confinement

First offenders are required to serve 24 hours to 30 days in jail and repeat offenders are subject to serve up to one year. However, due to severe overcrowding conditions in the local jail facilities, this sanction is rarely imposed on persons convicted of DWI offenses.

#### IV. RESULTS

##### Reactions

The drunk driving laws in Arkansas are administered at the local jurisdictional level. Judges exercise considerable discretion and sanction DWI offenders on a case-by-case basis. Final dispositions are often deferred by the judge until offenders complete a local alcohol education program.

The State Legislature is considering a minimum 48-hour jail sentence that would be mandatory for all DWI offenders, however, respondents assert that any type of mandatory sentencing policy would significantly increase the number of requests for jury trials and would exacerbate already congested court dockets. Respondents indicated that more than 25 percent of all DWI cases are plea bargained to lesser charges in order to reduce the number of court cases heard.

Currently, each municipality maintains its own court records but does not consistently report final misdemeanor dispositions to a central or controlling agency. Therefore, offenders can be convicted in one county and never be identified as repeat offenders if arrested on the same charge in another jurisdiction.

In Arkansas, all judges and prosecutors are elected by their constituents. Respondents suggested that as local support for more effective DWI policies increases, then sanctioning practices may begin to change.

##### Effectiveness

The current DWI laws as practiced in Arkansas are not considered to be effective in deterring drunk driving. Respondents feel that there are effective provisions and statutes "on the books," but they need to be more consistently enforced and adjudicated. Formal impact evaluations of the DWI sanctioning program have not been initiated.

##### Costs

Specific cost information for this sanctioning program is not available.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of the sanctioning program that would be required to replicate the program elsewhere.

STATE: ARKANSAS

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$50 - \$500	\$50 - \$100	
Jail	24 hours - 30 days	Rarely	
License Action:			
. Suspension	90 days	Rarely	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$250 - \$1,000	\$50 - \$200	
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	6 months - 1 year	1 year	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

## CALIFORNIA

### I. BACKGROUND

As of January 1982, the legislation regarding penalties imposed on persons convicted of drunk driving offenses was significantly modified. Structured to encourage participation in alcohol education/treatment programs, the laws now provide for minimum sentences that are mandatory upon conviction. Typically, the sanctions imposed will include some combination of fine, jail, license action, and attendance at an appropriate treatment facility.

In past years, penalties that have been assessed for drunk drivers were either inconsistently imposed or too easily avoided to be effective. Strong media coverage of the DUI problem and intense lobbying efforts by Mothers Against Drunk Drivers (MADD) helped organize community pressure for the passage of a stricter drunk driving bill.

### II. LEGISLATION

Three elements of the legislation are particularly significant to this project:

- Mandatory minimum sanctions must now be imposed.
- Driving a vehicle with a BAC level of .10 percent or higher is a misdemeanor offense.
- In cases where persons plea bargain down to "reckless driving" from an alcohol-related charge, the offense of record will constitute a prior conviction for purposes of a subsequent alcohol-related offense.

A judge must impose a minimum sanction on persons convicted of a DUI charge; however, there are sentence options from which he can choose. If the offender accepts entrance into a county-sponsored education/treatment program,

then probation is granted for a period of three years. Punitive sanctions must accompany this option, but are usually the minimum allowable under the new legislation. The legislation has been structured with the expectation that probation will be awarded; offenders will undergo an appropriate treatment program, and minimum punitive sanctions imposed. Fines range from \$375 to \$500 for first offenders and \$375 to \$1,000 for a second or subsequent offense.

### III. OPERATIONS

#### License Actions

The Department of Motor Vehicles controls all license actions but can only exercise this control when informed to do so by the courts. Persons convicted of a first offense are subject to one of three license options: no action, 90-day restricted license, or license suspension for six months. In some counties, first offenders are offered a 48-hour jail sentence in lieu of any license action. Those offenders who do receive a license action generally have their license restricted to employment use for the full 90-day period.

Persons convicted of a second offense are subject either to a one-year license suspension without provisions for reinstatement during this time or to restricted driving privileges for one year that can be fully restored after a six-month period. Typically, second offenders enter a treatment program and receive a restricted license for a period of only 90 days. All third and subsequent convictions are subject to and most often receive a three-year license revocation. Previous legislation allowed for the reinstatement of the license if the offender attended a treatment program; however, this option was rescinded. Once the period of license suspension or revocation has expired, an offender's license may be reinstated if "proof of ability to respond for damages" can be made (financial responsibility).

Research in California and other States indicates that many individuals drive while under a license suspension/revocation or in violation of their license restriction. If a suspended/revoked driver is apprehended, a first offense can result in a 10-day jail sentence and a 30-day sentence available for subsequent violations. The judge also has discretionary power to impound the vehicle for 30 days, however, this is considered to be the least effective sanction available and is rarely, if ever, imposed.

### Confinement

Mandatory jail sentences are consistently imposed throughout the State and the minimum allowable periods of confinement are most often served. First offenders are subject to serve up to six months in jail but, most typically, receive and serve a 48-hour sentence. Though persons convicted of a second offense face up to one year in jail, they, too, typically receive and serve a minimum of 48 hours. Some recidivists serve sentences as long as 76 hours. Jail sentences are usually served on weekends, at the convenience of the defendant, when jail space is available. In many cases, longer sentences can be served on consecutive weekends.

Third offenders are subject to a jail term of 120 days to one year, with virtually all offenders serving the minimum sentence. For both second and third offenders, the minimum jail sentence is authorized only if the individual attends the county alcohol treatment program for a period of one full year. Most offenders appear to be complying with this requirement. Failure to attend these programs results in additional jail time being imposed.

### Community Service

Community service is not available as a statewide sanction but, rather, is coordinated and implemented on a county-by-county basis. In Marin County, for example, the local judge uses community service quite extensively for DUI and other traffic offenders. During 1981, 75 percent of all referrals to the Marin County Volunteer Work Program were traffic offenders and 60 percent of all referrals were DUI offenders.

The general criterion for admission to the community service program is indigence. Offenders who refuse community service must attend a State "work farm" on weekends. Typically, a first offender is sentenced to 50 hours, to be completed within a three-month period. Second offenders are typically sentenced to 100 hours of service, to be completed within six months. Generally the time is served at the convenience of the individual.

The local agency to which the offender is referred is responsible for recording the amount of time served and for evaluating work performance. This information is forwarded to the probation officer responsible for monitoring the offender's progress. The offender is routinely contacted by the probation officer approximately one month prior to the completion date to ensure that the sentence imposed will be completed as scheduled. As community service is generally imposed as a condition of a probated sentence, offenders who fail to complete the program may be required to serve the portion of their sentence that was originally suspended.

## IV. RESULTS

### Reactions

The courts have noted a dramatic increase in judicial activity at all levels since implementation of the new legislation. The use of mandatory jail sentences has resulted in overcrowding in many local county jails and early release programs have been initiated in a few counties in order to make more room. Prosecutors and defense attorneys favor the new procedures, although defense attorneys are seeking the loopholes that will allow their clients to avoid harsh sanctions. Defense attorneys are attempting to circumvent the requirement to report DWI cases that are plea bargained to reckless driving as alcohol-related offenses.

The number of plea bargains has been significantly reduced by the new restrictions imposed. In some counties, prosecutors will not attempt to plea bargain if a BAC level is at the .10 percent level or higher. During the year immediately preceding the new laws, 90 percent of all reckless driving convictions were the result of reduced DUI charges.

The initiation of mandatory sanctions draws a mixed reaction from the local judges. They were at first concerned that their judicial discretion was being threatened, although they appreciated the various sentence "options" that were made available. Many judges now support the basic program,

although some continue to have reservations. Local enforcement personnel also support the new legislation, especially with respect to repeat offenders, as they feel the mandatory sanctions are appropriately harsh for DUI offenses.

The Department of Motor Vehicles suggests that the general public perceives licensing actions to be a more severe DUI sanction than mandatory incarceration, especially if the suspension or revocation is for a significant period of time. Many offenders prefer to spend a few days in jail rather than having to face the loss of their driving privilege, as alternative modes of transportation are not readily available throughout most of the State.

The community generally supports the new legislation. There is an active MADD organization that has stirred the public interest and has kept the problems associated with drunk driving continually in the public view.

#### Effectiveness

Both the courts and the DMV reported that alcohol-related accidents and fatalities have been reduced by 25 percent during the first few months of the new legislation. Both groups hope that the new laws will have a general deterrence effect. They also noted that both DUI arrests and convictions have declined during this time period, which may be due to less drinking driving activity or to less vigorous enforcement activities. It appears that reliable computerized records are being maintained by the DMV, which is monitoring the results of the new legislation. A more formal evaluation will be performed once sufficient data have been collected.

#### Costs

The increased judicial activity has been estimated to cost \$30 million annually that will have to be absorbed by the DMV and local communities. Members of the State legislature are proposing a \$.05 per drink tax on bar and restaurant patrons that will raise the needed revenue to finance the increased sanctioning efforts. A few local counties have filed a joint law suit against the State legislature to provide funding for the increased

enforcement effort. They feel that it is incumbent upon the State to provide the funds necessary to implement and enforce programs adopted by the State legislature.

#### V. REPLICABILITY

To develop and maintain a DUI program of this nature, a number of important factors must be considered. The program's success depends on the public perception that strict, consistent penalties will be imposed on individuals apprehended for drunk driving offenses. An effective media campaign developed to maintain the public awareness of the drunk driving problem and the sanctions to be imposed is required to keep the issue in the public eye. Coordinating with local grass-roots organizations (i.e., MADD) was extremely effective, both in keeping the public's awareness level high and in applying pressure in the State legislature during passage of the bill.

As this program is designed to encourage detection of alcohol problems and early intervention by education and treatment programs, the coordination and linkages with local treatment agencies were required early in the planning process. The State Department of Alcohol and Drug Problems established program standards and coordinated activities at the State level. Local jurisdictions, through the county alcohol program administrators, had the responsibility for assuring fiscal and programmatic integrity. With the passage of the new legislation, individual counties were required to certify and approve all education programs for use with first offenders.

In order to standardize the sanctioning process statewide, judges and other court personnel were trained to impose the sanctions most appropriate for a particular offender. In part, the training was designed to promote linkages between the traffic safety system and community-based treatment resources.



STATE: CALIFORNIA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$375 - \$500	\$375	<u>1/</u> Judicial discretion to impose jail <u>or</u> restricted driving license <u>2/</u> Imposed on jurisdictional basis only
Jail	48 hours	48 hours <u>1/</u>	
License Action:			
. Suspension			
. Revocation			
. Restricted	90 days	90 days <u>1/</u>	
Impoundment	30 days	Rarely	
Educ/Trmt Program	County treatment	County treatment	
Community Service		50 hours <u>2/</u>	
<u>2nd Offense</u>			
Fine	\$375 - \$1,000	\$375	<u>1/</u> Minimum jail if attend treatment program for 1 year <u>2/</u> If enter treatment program for 1 year <u>3/</u> Imposed on jurisdictional basis only
Jail	48 hours - 1 year	48 hours <u>1/</u>	
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted	1 year <u>2/</u>	90 days <u>2/</u>	
Impoundment	30 days	Rarely	
Educ/Trmt Program	County treatment	County treatment	
Community Service		100 hours <u>3/</u>	
<u>Subsequent Offenses</u>			
Fine	\$375 - \$1,000	\$375	<u>1/</u> Minimum jail if attend treatment program
Jail	120 days - 1 year	120 days <u>1/</u>	
License Action:			
. Suspension			
. Revocation	3 years	3 years	
. Restricted			
Impoundment	30 days	Rarely	
Educ/Trmt Program		1 year treatment	
Community Service			

COLORADO

I. BACKGROUND

In July 1982, the State of Colorado enacted new legislation that imposes mandatory minimum sanctions on persons convicted of Driving Under the Influence (DUI) offenses. Responding to the national concern about the increasing number of alcohol-related traffic fatalities and the increased efforts of local grass-roots organizations (PARKIT) to strengthen existing DUI statutes, the State legislature enacted this law to demonstrate support for combating the drunk driving problem throughout the State.

II. LEGISLATION

This new legislation increases the certainty that sanctions will be imposed on persons convicted of DUI offenses by:

- . Limiting judicial discretion by stipulating mandatory minimum sanctions that cannot be suspended or avoided through probation
- . Establishing mandatory short-term confinement for persons convicted of a second offense
- . Establishing a statewide community service program
- . Increasing the minimum fine imposed from \$100 to \$300

Colorado law identifies two levels of alcohol-related offenses. Persons exhibiting a BAC level of .05 to .09 percent are charged with "Driving While Ability Impaired" (DWAI), and are subject to the following penalties:

1st offense:           \$100-\$500 fine  
                          2-180 days jail (suspended if complete  
                          alcohol evaluation)  
                          24-48 hours public service (24 hours  
                          mandatory)  
                          8 points on driving record

2nd offense:           \$300-\$1,000 fine  
(within 5 years)       45 days-1 year jail (40 days suspended  
                          if complete alcohol evaluation)  
                          48-96 hours public service (48 hours  
                          mandatory)  
                          8 points on driving record

Persons convicted of a DWAI offense who have a prior DWI offense on their record within 5 years are subject to:

\$400-\$1,200 fine  
60 days-1 year jail (54 days suspended  
if complete alcohol evaluation)  
52-104 hours public service (52 hours  
mandatory)  
8 points on driving record

Persons exhibiting a BAC level of .10 percent or higher are charged with Driving Under the Influence (DUI). Penalties to be imposed on persons convicted of DUI are:

1st offense:           \$300-\$1,000 fine  
                          5 days-1 year jail (suspended if complete  
                          alcohol evaluation)  
                          48-96 hours public service (48 hours  
                          mandatory)  
                          12 points on driving record

2nd offense:           \$500-\$1,500 fine  
                          90 days-1 year jail (83 days suspended if  
                          complete alcohol evaluation)  
                          60-120 hours public service (60 hours  
                          mandatory)  
                          12 points on driving record

Persons convicted of a DUI offense who have a prior DWAI offense on their record within 5 years are subject to:

\$450-\$1,500 fine  
70 days-1 year jail (63 days suspended  
if complete alcohol evaluation)  
56-112 hours public service (56 hours  
mandatory)  
12 points on driving record

Persons convicted of a DUI offense are currently subject to attend a mandatory alcohol education program and to be evaluated to determine if further treatment is warranted. An alcohol and drug safety program has been established in each judicial district which provides pre-sentence alcohol/drug evaluations on all persons convicted of an alcohol-related offense. Treatment is prescribed as a condition of probation and is paid for by the offender.

### III. OPERATIONS

#### License Actions

License actions are currently initiated by the State Department of Motor Vehicles and based on a cumulative point system. Upon conviction of DUI offenders are given 12 points on their driving record. A conviction for DWAI results in 8 points assessed. Twelve points technically result in a license suspension for a period of up to one year. A total of 18 points results in a 24-month suspension. As the typical DUI offender can often plea bargain to the DWAI charge, license actions are rarely imposed on first or second offenders unless there are other traffic offenses on the individual's driving record. Persons convicted of a third DUI offense are subject to a permanent revocation of their driving privileges, although a minimum two-year revocation is most likely. Persons receiving a license suspension are able to obtain a probationary license once a treatment program has been completed. The use of license actions as a sanction for DUI and DWAI offenses did not change as a result of the new legislation.

#### Confinement

Persons who complete alcohol evaluations and appropriate treatment programs are subject to have most of their jail sentences suspended, but must serve mandatory minimum penalties. However, because of an already overcrowded jail situation, any jail sentence imposed will be a practical decision based upon available jail space.

The new legislation requires a seven-day jail sentence for DUIs. However, this sentence can be suspended if the individual agrees to enter an alcohol education program. A conviction for DWAI requires a five-day sentence; however, it also may be suspended for attendance in an alcohol education program. Approximately 90 to 95 percent of all first offenders enter programs in lieu of any punitive sanction being imposed.

#### Community Service

The new legislation established community service as a mandatory sanction to be imposed on all first and second DUI and DWAI offenders. First offender DUIs are subject to a 48-hour sentence to "useful public service" while a second DUI offense results in a 60-hour penalty. First offender DWAI receive a 24-hour sentence while persons convicted of a second DWAI offense receive a 52-hour sentence. All minimum sentences are considered mandatory and cannot be suspended.

Very few jurisdictions statewide currently offer alternative or community service programs. Approximately 30 percent of all referrals to community service are DUI offenders. As a result of the new legislation, however, new programs will be developed and tailored to DUI offenders. It is anticipated that as many as 85 percent of all community service referrals will be DUI or DWAI offenders.

A county-funded community service program is currently operating in the metropolitan Denver area that will serve as a prototype for the programs to be developed. The program coordinator is responsible for placing DUI offenders into the 95 participating agencies and for monitoring their progress. The range of services performed by offenders extends from highly skilled to unskilled. The type of service to which offenders are assigned is based on their skills. Time is served at the convenience of the offender; day and weekend positions are usually available. In general, the courts require the community service assignment to be completed within the first six months of sanctioning.

Prior to the new legislation, sentence to community service was a condition of probation. Offenders who did not complete the program successfully were brought back into court, where execution of the original sentence could be ordered. Under the new law, although not necessarily a condition of probation, additional punitive sanctions can be imposed if the program is not completed to the satisfaction of the participating agency. The completion rate for DUI offenders in the current Denver area project is approximately 90 percent.

In order to help cover the costs for the new programs, it is proposed that a \$10 evaluation fee be charged to each offender. This is expected to cover one-half of the program operating expenses, with the rest of the money coming from local county funds.

#### IV. RESULTS

##### Reactions

The present criminal justice system is overloaded to the point that there is an inadequate number of judges, insufficient jail space, and insufficient court time to handle the number of cases currently being processed. Under the Speedy Trial Law, a trial must be started within six months of an arrest. In order to accommodate most offenders, plea bargaining has become a standard way of disposing of cases. The new legislation is not expected to significantly affect the current court operating procedures. If the new sanction policy is to be implemented successfully, the capacity of the criminal justice system will have to be expanded from its present level.

Judges generally favor mandatory short-term incarceration, especially for second offenders. However, with lack of jail space, they feel frustrated by the system. The "hard liners" still wish to use the jail sanction, whereas the more "realistic" judges try to use alternatives. They hope referral to community service will prove to be a viable alternative.

##### Effectiveness

The new legislation is not expected to affect the numbers of persons arrested for alcohol-related offenses. Although the arrest rate has been increasing during the past few years, the increase has been attributed to increased funds made available for enforcement activities rather than to any particular sanction program.

##### Costs

Specific cost data were not available.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of this sanction program that would be required to replicate the program elsewhere.

STATE: COLORADO

Sanctions	Prescribed by Statutes	Typically Imposed *	Comments
<u>1st Offense</u>			
Fine	\$300 - \$1,000		1/ Suspended if complete alcohol treatment  2/ Restricted license available if complete alcohol treatment
Jail	5 days - 1 year <sup>1/</sup>		
License Action:			
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	48-96 hours		
<u>2nd Offense</u>			
Fine	\$500 - \$1,000		1/ 7 days mandatory if complete alcohol treatment  2/ Restricted license available if complete alcohol treatment
Jail	90 days - 1 year <sup>1/</sup>		
License Action:			
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	60 - 120 hours		
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data unavailable - legislation enacted July 1982.

## CONNECTICUT

### I. BACKGROUND

In response to citizen concern and public outcry for tougher drunk driving legislation, the State of Connecticut revised its DWI legislation effective October 1982. These revisions attempt to strengthen statutes that were initiated one year ago and impose more severe sanctions on persons convicted of DWI.

Recently, Remove Intoxicated Drivers (RID) held its national convention in Connecticut and generated substantial media attention. The media have kept the DWI issue in the "public eye" and have been instrumental in generating local community support. Local grass-roots organizations have mobilized and will be pressuring the State legislature during the coming months. A Governor's task force has been established that will examine the DWI problem on a statewide basis and will make recommendations to strengthen the DWI legislation further.

### II. LEGISLATION

Two elements of the revised legislation are significant to this project:

- A mandatory minimum jail sentence has been established that cannot be suspended for persons who have a BAC level of .20 percent or more.
- Persons entering a withheld judgment program will no longer have their court records expunged.

The revised legislation provides for the following sanctions to be imposed on persons convicted of DWI offenses:

1st offense:           \$300-\$1,000 fine  
                          Up to 6 months jail (2 days cannot be sus-  
                          pended if BAC  $\geq$  .20 percent)  
                          1-year license suspension

2nd offense:           \$300-\$1,000 fine  
                          60 days-1 year jail (30 days cannot be  
                          suspended if BAC  $\geq$  .20 percent)

- Can serve 15 weekends community service in lieu of 30-day mandatory incarceration
- 2-year license suspension

3rd offense:           \$300-\$1,000 fine  
                          6 months-1 year jail (30 days cannot be  
                          suspended if BAC  $\geq$  .20 percent)

- Can serve 15 weekends community service in lieu of 30-day mandatory incarceration
- Revocation of drivers license

### II. OPERATIONS

The State of Connecticut utilizes a three-level unified court system: there are 21 local Geographic Area (GA) Courts, 12 District Courts, and the State Supreme Court. All DWI cases are treated as motor vehicle violations and are handled at the GA court level from arrest through final disposition.

During October 1981, a pretrial alcohol education diversionary system was implemented through the State Adult Probation Department. Provided offenders do not have any prior DWI convictions, have not previously attended this program, had a BAC less than .20 percent at the time of arrest and are not problem drinkers, individuals can be assigned to the agency for assessment and recommendation for placement in an alcohol education or treatment program. If offenders meet all eligibility requirements and the judge so chooses, individuals are referred to a State-approved education/treatment agency as appropriate. Upon successful completion of this program, including a one-year probation period, the DWI charges are dismissed and no formal record of conviction is maintained. However, as of 1 October 1982, a record of participation in this program will be maintained for a seven-year period, precluding reentry into the first offender program. A \$200 fee is assessed to cover the costs of the pretrial program.

Although most persons arrested for a first DWI offense are eligible for and typically complete this program, the diversionary program was initiated as an alternative sanction option and was not intended to limit the judicial discretion of the courts.

#### License Actions

Upon notification of judicial conviction, the Department of Motor Vehicles makes appropriate entries on the driving records and notifies individuals of the actions taken. Within a few days, individuals are further notified of the conditions to be met in order to have their licenses reinstated. These conditions are set on a special, case-by-case basis and afford offenders the opportunity to avoid most of the judicially imposed license suspension. Specific conditions for early reinstatement can include: attendance at approved alcohol/education treatment facilities, conference with a DMV alcohol counselor, filing of a medical examination form, payment of a \$10 reinstatement fee, and filing of a financial liability statement (SR22).

Typically, persons convicted of a first offense are sentenced to a 1-year license suspension but have this sanction reduced to a 6-month suspension by attending a DMV alcohol education program. Second offenders face a 2-year suspension; however, a license may be reinstated in 1 year, following completion of an alcohol education program. Third and subsequent offenders typically have their driver's licenses revoked, although many take advantage of a reduced sentence option described above. The penalty for driving while under a license suspension is a 90-day additional suspension and a \$100-\$200 fine. Jail is available for second offenders of this offense but is rarely, if ever, imposed. Restricted licenses for occupational or employment purposes are not available for DWI offenders.

The October 1982 revisions establish a pilot program that permits the issuance of a warning and a 24-hour license revocation to individuals who have a BAC of .07-.13 percent. Officers may physically take driver's licenses into custody, providing offenders with a written statement of the time the revocation goes into effect, the duration of the revocation,

and the location where the license may be recovered upon termination of the revocation. The Department of Motor Vehicles is notified of this action but, under the circumstances, does not charge individuals with a DWI offense.

#### Confinement

The use of jail as a sanction for DWI offenders has traditionally not been consistently imposed throughout the State. The new provisions stipulate mandatory jail sentences for persons who have a BAC of .20 percent or higher; however, weekend community service may be substituted for this sanction. More specific operational information regarding the use of confinement as a sanction for DWI offenders is not yet available.

#### Community Service

There is no formal community service program available for DWI offenders. A limited number of individuals may be selected and referred by the courts to the Adult Probation Department for limited community service activity; however, this will occur on an individual, case-by-case basis only. For these select individuals, the Probation Department will find a referral agency and monitor clients through the normal probation channels.

### IV. RESULTS

#### Reactions

Under current statutes, many offenders were becoming "repeat first offenders" as the original charge was dismissed after successful completion of the pretrial program. It is anticipated that the 1982 provisions requiring program attendance to be recorded will limit this possibility. The Probation Department feels, however, that the seven-year limit on maintaining records is not sufficient, and would like to see the initial offense recorded for a longer period of time.

Persons who do not comply with the conditions of the pretrial program are referred back to the courts for violating their probation. However, in many cases, the courts are sending offenders back to the probation program rather than imposing a more severe sanction alternative. This has significantly increased the Probation Department case load, stretching available resources and reducing time available for individual clients.

Prior to October 1981, most DWI cases were plea bargained to reckless driving charges in order to avoid the imposition of DWI sanctions. Currently, because of the pretrial diversionary program, plea bargaining is rarely initiated.

Offenders can request a jury trial, but this option is rarely exercised. It is generally felt that juries raise the probability of more severe sanctions being imposed if suspects are found guilty. Most courts use the .10 percent BAC level as prima facie evidence, which is difficult to refute.

The Department of Motor Vehicles reported that, once the pretrial program was initiated, the number of license suspensions issued dropped 60 to 70 percent over previous years. There is discussion about revising this policy, however, and imposing license suspension while offenders participate in the pretrial program.

During the upcoming 1983 session of the State legislature, there will be some pressure to modify the current system beyond the revisions that become effective in October 1982. Items that may be discussed include: tightening up the pretrial eligibility requirements to ensure that an individual can only attend the program once, restricting program eligibility to persons who have a BAC level of .20 percent or under, prohibiting persons who refuse the chemical test to enter into the program, and allowing the chemical test to be administered only once.

#### Effectiveness

Formal evaluations of the overall sanction program have not been conducted, although it was noted that the number of DWI arrests has increased substantially since the pretrial diversion program has been in effect. However, whereas more persons were being processed as DWI offenders, the number of guilty pleas declined as most individuals arrested for DWI were opting for the diversionary program. Currently, centralized computerized records are maintained in Hartford, Connecticut, that include court histories and any education or treatment programs that were attended. The State is in the process of updating these files to include all criminal and driving histories, along with any pertinent family and civil case information.

#### Costs

The start-up costs of the pretrial education program were approximately \$100,000. The \$200 fee paid by individual offenders covers all services provided by the service agencies, and there is no cost to the local county government. The use of the program, however, has cost the State approximately \$500,000 in lost revenue. Money that was previously collected as DWI fines and deposited into the State's general operating fund is now being collected by the pretrial education program as the fee paid to cover its operating expenses.

#### V. REPLICABILITY

The administrative bureaucracy necessary to operate this program was already in place and required only start-up monies to coordinate the existing agencies. Although each participating agency submitted a proposed agenda, there was no way of ascertaining whether the procedures were actually being followed. There is a clear need to monitor individual participating agencies' compliance with stated objectives. Monies should be made available to cover the cost of such program monitoring and to conduct overall effectiveness evaluations.



STATE: CONNECTICUT

Sanctions	Prescribed by Statutes	Typically Imposed *	Comments
<u>1st Offense</u>			
Fine	\$300 - \$1,000		<u>1/</u> If BAC .20 or greater, 2 days mandatory  <u>2/</u> Can be reduced to 6 months if attend alcohol treatment
Jail	Up to 6 months <u>1/</u>		
License Action:			
. Suspension	1 year <u>2/</u>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$300 - \$1,000		<u>1/</u> If BAC .20 or greater, 30 days mandatory  <u>2/</u> Community service can be imposed in lieu of jail sentence
Jail	60 days - 1 year <u>1/</u>		
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	15 weekends <u>2/</u>		
<u>Subsequent Offenses</u>			
Fine	\$300 - \$1,000		<u>1/</u> If BAC .20 or greater, 30 days mandatory  <u>2/</u> Community service can be imposed in lieu of jail sentence
Jail	6 months - 1 year <u>1/</u>		
License Action:			
. Suspension			
. Revocation	Revocation		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	15 weekends <u>2/</u>		

\* Operational data not yet available - legislation enacted October 1982.

DELAWARE

I. BACKGROUND

In July 1978, revisions were made to the Delaware Motor Vehicle Code (Section 4177) that established options, both administrative and judicial, in the sanctions available for DWI offenders. The revisions permitted offender participation in treatment programs as an alternative to mandatory fines and incarceration. The impetus for these legislative provisions came primarily from practitioners who felt that the earlier laws, although strict in nature, were inconsistently implemented. Additionally, there were growing concerns about increases in alcohol-related highway accidents, repeat offenders, overloaded court calendars, and overcrowding in prisons.

The geography of the State of Delaware is a relevant factor with respect to DWI behavior. A relatively small State, composed of three counties, Delaware borders with Maryland, New Jersey, and Pennsylvania. Access into and out of the State from any of the aforementioned States is quite easy. Respondents from the Office of Highway Safety indicated that many youth, from both within and out of the State, congregate at popular bars accessible near the borders and drive through the State when intoxicated.

II. LEGISLATION

The following two elements are significant in the revised DWI legislation:

- First offenders now have the option of waiving their right to a speedy trial and applying for enrollment in a suitable rehabilitation program.
- The DWI arrest may be expunged from the police record of a first offender if the rehabilitation program is completed satisfactorily.

The revised legislation provides for sanctions involving fines, jail, license actions, and additional options for both first and second offenders. A wide range of fines and jail sentences is available:

- 1st offense: \$200-\$1,000 fine  
60 days-6 months in jail  
1-year license revocation (mandatory)  
Instruction/rehabilitation program
- 2nd offense: \$500-\$2,000 fine  
60 days-18 months jail  
1-year license revocation (mandatory)  
Instruction/rehabilitation program

Typically, first offenders and second offenders actually receive the following:

- \$250-\$500 (second offenders only)  
30-day license revocation  
Participation in an instruction/rehabilitation program

III. OPERATIONS

License Actions

Licensing actions are court imposed and are administered by the Office of Highway Safety. Under the revised legislation, a one-year license revocation is mandatory for first and second offenders. However, offenders may apply for a restricted license after 30 days of their suspensions have elapsed, eight hours of a suitable rehabilitation program have been completed, and appropriate fees have been paid. Restricted driving privileges are routinely issued to most offenders. After six months have elapsed, offenders may apply for, and typically receive, full restoration.

Confinement

Although the revised statute provides for incarceration as a possible sanction for both first and second offenders, it is rarely imposed. There has been an overwhelming trend toward encouraging offender participation

in rehabilitation programs. Upon finding first offenders guilty, the courts hold the discretionary authority to require completion of a rehabilitation program. In the case of second offender convictions, the courts may sentence offenders to up to 15 months of confinement in a rehabilitation center. Respondents state that the number of defendants sentenced to prison has been reduced by over 50 percent under the new legislation. However, the average sentence length of those incarcerated has more than doubled, indicating only the most hard-core offenders receive this sanction.

#### Community Service

The community service program in Delaware operates on a county-by-county basis. Each of the State's three counties has a community service office that reports to a statewide coordinator.

Roughly, one-third of all community service referrals are categorized as traffic offenders and almost all of these are DWI offenders. (In February 1982, 42 of 125 new clients referred were DWI offenders.) Approximately one-third of the DWI offenders successfully complete their community service obligation. The program is funded at the rate of \$65,000 per year, as compared to the \$18,000 required to incarcerate a single offender in Delaware for one year.

The program was designed to deal with misdemeanants, including DWI first offenders. Referral to the community service program is the result of a discretionary decision by the judge. Referral criteria vary from one judge to another; community service is generally ordered in lieu of a fine or an education program.

Offenders are typically placed with Federal, State, municipal, or non-profit agencies for a period of not more than 30 days. Work days may not exceed seven and one-half hours. Attempts are made to fit the type of service assigned to the skills of offenders; and, if possible, the court allows community service time to be served at the convenience of the offenders. In practice, however, few evening positions are available.

Offenders' participation in the program is monitored by members of the agencies with which they are placed. Time reports are kept so that the amount of service provided by the offenders can be accurately logged. The agencies report to the community service coordinator, who reports to the probation officer (75-80 percent of all community services cases are probated). Should offenders fail to comply with the rules governing their community service sanctions, they are brought back to court on charges of contempt and sentenced again.

#### IV. RESULTS

##### Reactions

Statistics available for 1981 DWI cases statewide show that 92 percent of all those arrested on a DWI charge were not convicted of that charge. Of these 92 percent, the great majority (almost eight out of every ten) waived their right to a speedy trial in order to apply for enrollment in a suitable rehabilitation program or were assigned to such a program by the judge. Roughly, one out of every 10 of these cases were resolved via a plea bargain, and the remainder were either nolle pros or acquitted. Only 8 percent of the offenders were convicted of the charge originally filed.

While the revised legislation has produced a system that is not as taxing on the court's time as another might be, the reaction of the judiciary has not been exceptionally favorable. The judiciary believes that changes should be made in the licensing action procedures to enhance the deterrent effect of those actions. For example, they state that offenders should be required to surrender their licenses to the arresting officer at the time of arrest.

Office of Highway Safety officials do not consider the current licensing actions to be effective in deterring DWI behavior. They cite a 46 percent rise in total DWI arrests, a 23 percent increase in accidents where alcohol was a major factor, and a 60 percent increase in alcohol-related fatalities.

Police and other members of the legal community felt that there was an insufficient amount of time provided to study and implement the initial 1978 revisions to the DWI legislation. The State Attorney General has instituted a policy requiring any plea bargain to be approved by a deputy attorney general. A written record of each negotiation must be maintained as well.

#### Effectiveness

The legislature directed the Secretary of Public Safety to present an overall review of the revised legislation during the first week of January 1982. That report cites an increase in arrests, a decrease in plea bargaining, and large numbers of referrals to (and completions in) the Delaware Safety Council DWI Education course as support for the success of the legislation. Practitioners (respondents in the judiciary and Office of Highway Safety), however, question the value, in terms of the deterrent effect, of the revised legislation. They cite the same increase in DWI arrests, as well as increases in alcohol-related accidents and fatalities, to support their viewpoint.

#### Costs

Specific cost data were not readily available from any of our sources.

### V. REPLICABILITY

Both the Office of Highway Safety and court officials agreed that the Delaware system can be easily replicated. The system involves fairly standard procedures for court-imposed licensing actions carried out through an administrative agency.

STATE: DELAWARE

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200 - \$1,000	Varies	<u>1/</u> Restricted license available after 30 days and full reinstatement usually granted after 6 months  <u>2/</u> Available on a county-wide basis only
Jail	60 days - 6 months	Rarely	
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>1/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program		Education	
Community Service		Varies <u>2/</u>	
<u>2nd Offense</u>			
Fine	\$500 - \$2,000	\$250 - \$500	<u>1/</u> Restricted license available after 30 days and full reinstatement usually granted after 6 months
Jail	60 days - 18 months	Varies	
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>1/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program		Treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

DISTRICT OF COLUMBIA

I. BACKGROUND

On 25 September 1982, the District of Columbia enacted major revisions to its drunk driving legislation that served to strengthen the existing statutes. The national exposure and publicity to the DWI issue, nationwide, created the political climate locally to pass a variety of revisions to the law that had been only considered during previous years. The new laws attempt to allow for a more efficient processing of DWI offenders, lessen the opportunity for persons who refuse the chemical test to avoid criminal prosecutions, and sharply increase the fines imposed on repeat drunk driving offenders.

II. LEGISLATION

Significant elements of the new DWI legislation include:

- . Establishment of an illegal per se law, making it a crime to operate a motor vehicle with a BAC of .10 percent or higher.
- . Establishment of "driving while under the influence (DUI)" for persons with a BAC of .05 to .09 percent that carries lower penalties than "driving while intoxicated (DWI)."
- . Eliminated the right to a jury trial for persons convicted of a first DWI offense.
- . Increased the license suspension for persons who refuse the breath test from six months to one full year and allow the fact of refusal to be used as evidence in court.

The penalties to be assessed for persons with a BAC of .05 to .09 percent and convicted of driving while under the influence (DUI) under the new law are as follows:

1st offense:                   \$300 and/or  
                                  30 days in jail  
                                  6 months license suspension

2nd offense: \$300 fine and/or  
90 days in jail  
6 months to indefinite license suspension

3rd offense: \$5,000 fine and/or  
1 year in jail  
6 months to indefinite license suspension

Penalties assessed for persons with a BAC of .10 percent or greater and convicted of "driving while intoxicated" (DWI) are as follows:

1st offense: \$300 and/or  
90 days in jail  
6 months license suspension

2nd offense: \$5,000 fine and/or  
1 year in jail  
6 months to indefinite license suspension

3rd offense: \$10,000 fine and/or  
1 year in jail  
6 months to indefinite license suspension

#### IV. OPERATIONS

Individuals stopped for probable cause are given a preliminary breath test and appropriate field sobriety tests. If it is indicated that a BAC of .05 percent or greater is evident, a mobile van is summoned to the scene, where an evidential chemical breath test is administered. Offenders recording a BAC of .05 to .09 percent are cited for DUI, and those exhibiting a BAC of .10 percent or higher are cited for DWI. Per se offenders are not usually placed in jail but are issued a citation release and are informed when to appear for a hearing (5 days for DC residents, 15 days for residents of VA and MD). At the hearing, the corporation counsel (prosecution attorney) makes the determination as to what charge will be filed, and arranges for the court date.

First DWI offenders with a BAC of .20 percent or less, not involved in an accident, are eligible for a diversion program to alcohol treatment. Upon completion of this program, the charges are formally dismissed, although a record of participation is maintained. Participation in this treatment program is allowed once a one-time basis only.

#### License Action

The new legislation requires a mandatory six-month licensure suspension to be imposed on persons convicted of their first DUI or DWI offense. Upon judicial conviction, the Department of Transportation has the administrative authority to suspend the driving privilege, regardless of the sanctions imposed by the courts. Offenders completing the diversion program are also subject to the six-month license action, although it is generally recommended by the corporation counsel that the license action be limited to a 90-day period.

Persons convicted of a second or subsequent offense are subject to a six-month to indefinite license suspension. The actual length of the license action will be determined by the Department of Transportation during their review of the offender's conviction abstract. It is too early to determine what typical license action will be imposed for these offenders.

Restricted licenses will be available for hardship purposes, however, restrictions can only be granted after a mandatory hearing with the Department of Transportation at which time the specific circumstances of the request will be reviewed. Respondents indicated that while restricted licenses will be available, they will not be issued on a routine basis.

#### Confinement

While jail penalties are available for all DUI and DWI offenders, respondents indicate that this sanction will be rarely, if ever, actually served. Jail sentences will usually be suspended, unless specific circumstances of a particular case should warrant such a penalty. In most cases, the individual will be able to pay a monetary fine in lieu of the jail sentence.

#### IV. RESULTS

##### Reactions

The general reaction to the new legislation has been overwhelmingly supportive. The judiciary believes that their case loads will be more easily managed now that first offenders can no longer request a jury trial. By reducing the potential jail sentence from six months to 90 days, these offenders can only be tried before a judge which is a much speedier trial. Also, the establishment of the .10 illegal per se law will make appeals for jury courts or higher courts less advantageous because the original charge will be more easily prosecuted. A further advantage to the judicial process will be the testimony in court that an individual refused the chemical test. This will hopefully result in fewer acquittals when test results cannot be presented.

Respondents anticipate that the amount of fine money collected from offenders will substantially increase, although the severity of the fines may facilitate more active plea-negotiation to a reduced fine. It is still too early to determine how the system will eventually operate.

##### Effectiveness

Due to the recency of the new legislation, it is too early to determine what impact these laws will be having on the numbers of alcohol-related fatalities. During the last two years, the alcohol-related fatality rate has been dropping, and is currently estimated to at approximately 32 percent, well under the national average. Preliminary observations indicate that DWI arrests have increased approximately 30 percent over last year at this same time.

##### Costs

All fine money that is collected in the District of Columbia will be used to fund alcohol-related enforcement and administrative activities as part of the D.C. alcohol countermeasures program. All costs of the diversion treatment program for first offenders must be borne by the individual offender.

In previous years, while there was an 89 percent conviction rate of persons charged with DWI offenses, most of these convictions were reduced to reckless driving. The intent of this legislation is to maintain the alcohol-related charges and subsequent conviction.

#### V. REPLICABILITY

Respondents indicated that the major factors for implementing a successful sanction program are the cooperation of all components of the driver control system and the adequate training for all individuals involved, to include law enforcement personnel, judges and attorneys. It was also indicated that having a variety of sanction alternatives available, to include a strong treatment program, is more valuable than having severe mandatory sentences imposed in all cases.



**CONTINUED**

**1 OF 6**

STATE: DISTRICT OF COLUMBIA

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$300 <sup>1/</sup>		1/ Fine and/or jail sanction imposed
Jail	90 days		
License Action:			
. Suspension	6 months <sup>2/</sup>		2/ Reduced to 90 days if attend treatment program
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2rd Offense</u>			
Fine	\$500 <sup>1/</sup>		1/ Fine and/or jail sanction imposed
Jail	1 year		
License Action:			
. Suspension	6 months-indefinite		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$10,000 <sup>1/</sup>		1/ Fine and/or jail sanction imposed
Jail	1 year		
License Action:			
. Suspension	6 months-indefinite		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted September 1982.

## FLORIDA

### I. BACKGROUND

Concerned with the increased numbers of alcohol-related highway fatalities and the general problems associated with drunk driving behaviors throughout the State of Florida, the State legislature passed new DWI legislation in March 1982 to become effective 1 July 1982. DMV officials cited local community organizations (MADD) as being particularly effective in supporting the new legislation, which was passed overwhelmingly in both houses of State government.

### II. LEGISLATION

The severity of sanctions imposed on DWI offenders in Florida will increase markedly under the new legislation. Generally, the law limits judicial discretion by imposing mandatory minimum penalties on persons convicted of drunk driving behaviors. Considered significant in the new legislation is:

- A statewide community service program to be designed and implemented
- Establishment of an illegal per se law (driving with unlawful blood alcohol level)
- The provision for mandatory fines, incarceration, and license actions as follows:

1st offense:	\$250-\$500 fine Up to 6 months jail 6-month license suspension (restricted license available after attend DWI school) Participation in DWI school 50 hours of community service (mandatory)
2nd offense:	\$500-\$1,000 fine 10 days-9 months jail (10 days mandatory) 5-year license revocation Participation in DWI school

3rd offense:

\$1,000-\$2,500 fine  
30 days to 1 year jail (30 days mandatory)  
10-year license revocation

### III. OPERATIONS

#### License Actions

Currently, Florida statutes provide for a three-month license revocation for first DWI offenders, six-month to two-year revocation for second offenders, and one- to five-year revocation for third offenders. These sanctions will be significantly changed under new legislation. Under the new law, there will be a mandatory six-month license suspension for first offenders, a mandatory five-year license revocation for second offenders, and a mandatory ten-year license revocation for third offenders. Upon convicting an offender under the new law, the court will notify the Bureau of Driver Improvement at the Department of Highway Safety and Motor Vehicles, where the licensing action will be administratively handled.

Under the present law, one-third of all those offenders convicted of DWI request a hardship license. This application process necessitates a hearing by the Department of Highway Safety. Approximately two-thirds of all requests are approved. In order to obtain a hardship license currently, offenders must: (1) justify the need (e.g., for employment) and (2) prove that they are trustworthy. Under the new law, only first offenders will be eligible for a temporary driving permit. The DWI school course must be completed and also must recommend the offender as being "safe" to obtain a temporary license.

The DWI school performs drinker diagnoses and will continue to do so under the new legislation. To date, an average of 40 percent of those tested have been found to be alcohol problem cases. These evaluations are used by the Driver Improvement Bureau when reinstatement of driver licenses is being considered.

#### Confinement

Presently, DWI offenders who are sentenced to jail serve their time in a minimum security facility. Under the new law, second and third

offenders are subject to a mandatory 10-day jail sentence. These offenders will serve their sentence in county facilities. Members of the criminal justice system feel the mandatory confinement sanction will exacerbate the overcrowding in facilities that are already filled beyond capacity.

#### Community Service

Florida will soon conduct a statewide community service conference to design uniform community service procedures that will aid in implementing the new law. The legislation provides for 50 hours of mandatory community service for persons convicted of a first DWI offense. A fee of approximately \$60 per person will be charged to each offender to cover program costs. Currently, community service programs operate on a jurisdictional basis in Florida.

Currently, the Dade County Community Service Program for Misdemeanants accepts DWI referrals and is a prototype for programs to be developed under the new legislation. To date, all participants in the Dade County program have been traffic offenders, 35 percent of whom have been first and second DWI offenders. Entrance into this program is the result of the judge's discretion, although offender indigence is generally a heavily weighted factor. Dade County has recently hired a new program coordinator who will be attempting to make additional contacts with potential sponsoring agencies to participate in the community service program.

Currently, referrals to the program help answer phones and provide clerical assistance to county agencies, clean parks, provide church and hospital assistance, and donate blood. The sentence is generally given in combination with a fine, license suspension, or incarceration. To date, attempts have been made to schedule community service time to be served at the convenience of the offenders. The typical length of service sentenced is 50 hours. Estimates of the differential length of service for first and second offenders are not available.

Successful completion of the program is defined as fulfillment of the number of hours sentenced to the satisfaction of the agency. At the time the offenders are originally placed, the agency is notified as to the number of hours that must be served and is responsible for monitoring the individuals. The completion rate for DWI offenders in the Dade County program is approximately 85 percent. In cases where community service has been sentenced as a condition of a probated or suspended sanction and offenders fail to complete their service, the judge may issue bench warrants ordering offenders to appear before the court to be sentenced again.

#### IV. RESULTS

##### Reactions

Although the legislature felt that more severe sanctions would act as a deterrent, court and DMV officials are anticipating problems in the judiciary and with enforcement. It is thought that police may be concerned with the mandatory nature of the new legislation and view it as being too harsh. There is also concern about the potential increase in jury trials. Currently, only 3 percent of all DWI cases result in a jury trial.

The DMV is anticipating an increase in their activity regarding DWIs. Due to the mandatory sanctions to be imposed under the new law, the DMV may be receiving a large number of requests for hearings concerning occupational or hardship licenses that are available to first offenders. Recently, first offenders have constituted 75 percent of the DWI cases in Florida.

##### Effectiveness

Prior to the inception of the statewide DWI school network, records compiled showed a 25 percent recidivism rate among DWI offenders within two years of the first offense. Of those completing the program, the recidivism rate was 5-10 percent over the same period. No evaluations have been performed on other sanctions imposed prior to the new law and

their deterrent effect. Such evaluations are planned after the new law has been implemented; the community service program has attracted special interest.

#### Costs

The new law provides DMV with the right to charge a \$35 fee for each administrative hearing. Additionally, all fees for the DWI school are to be paid by the offenders at no cost to the taxpayers. Based on these factors, costs to the State involving license actions are expected to be minimal.

#### V. REPLICABILITY

Respondents within the judiciary indicated several factors as being significant in an effort to replicate the new system. They stated that the Florida system is most appropriate in States that utilize a one- or two-tier court system. Additionally, a centralized record-keeping system (such as the one the Florida DMV operates), a strong PI&E campaign, and extensive grass-roots support are necessary.

STATE: FLORIDA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$250 - \$500	\$250	1/ Restricted license available after DWI School completed
Jail			
License Action:			
. Suspension	6 months	6 months 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	DWI School	DWI School	
Community Service	50 hours	50 hours	
<u>2nd Offense</u>			
Fine	\$500 - \$1,000	\$500	
Jail	10 days		
License Action:			
. Suspension			
. Revocation	5 years	5 years	
. Restricted			
Impoundment			
Educ/Trmt Program	DWI School		
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$1,000 - \$2,500	\$1,000	
Jail	30 days	30 days	
License Action:			
. Suspension			
. Revocation	10 years	10 years	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

GEORGIA

I. BACKGROUND

The present DWI laws in Georgia have been in place for several years. Respondents describe the State as one undergoing extensive industrial expansion and growth but without any particular or unusual factors contributing to drinking and driving behavior. Typically, sanctions imposed include a fine and license suspension.

II. LEGISLATION

Georgia's DWI statutes call for a combination of mandatory license actions, fines, and incarceration. Three elements of the legislation are significant:

- . Mandatory license actions
- . A habitual offender statute
- . Provisions by which a vehicle may be impounded

Sanctions prescribed by statutes are as follows:

1st and 2nd offense:	\$1,000 fine (maximum) 1 year jail (maximum) 1-year license suspension (mandatory) Participation in a DWI training school
3rd offense:	5-year license revocation Eligible for restricted license after 2 years

Sanctions typically imposed on DWI offenders are as follows:

- 1st offense: \$150-300 fine  
1 week restricted license (full restoration of driving privileges when DWI training school completed)  
Participation in (1 week) training school
- 2nd offense: \$250-500 fine  
1-year license suspension (restricted license available after DWI training school)  
Participation in DWI training school (1 week)
- 3rd offense: 5-year license revocation (restricted license available after 2 years of revocation period have elapsed)

### III. OPERATIONS

A plea of nolo contendere may be entered by defendants who do not have any other such pleas, or DWI convictions, during the past five years. This plea does not require any license action as a sanction. Offenders subject to a licensing action are entitled to administrative hearings with the Department of Public Safety, at which they may appeal the action.

#### License Actions

A high percentage of first offenders enter a plea of nolo contendere. Second offenders who have pled nolo contendere on their first offense receive a one-year license suspension, but are eligible for reinstatement of driving privileges upon completion of a DWI training school. Upon certification from DWI school, these offenders may apply to the Department of Public Safety (DPS) for reinstatement of full driving privileges if they obtain high-risk insurance and pay a \$10 fee. Second offenders whose first offense did not result in a nolo plea become eligible for a restricted occupational license upon completion of the DWI school. Third (habitual) offenders are subject to a five-year license revocation. Habitual offenders become eligible for a restricted occupational license after two years of the revocation have elapsed if they have maintained a clean driving record. All license actions are court imposed and administered through the Department of Public Safety.

#### Confinement

Respondents provided little information concerning the use of jail as a sanction for DWI offenders, as this sanction is apparently imposed infrequently.

#### Community Service

A few local jurisdictions operate community service programs to which DWI offenders may be referred. These programs, however, are run with complete autonomy from one another. Respondents were unable to offer more information concerning this infrequently imposed sanction.

### IV. RESULTS

#### Reactions

Department of Public Safety (DPS) officials maintain that an assessment of the deterrent effects of the Georgia system would be very difficult to perform due to a variety of "loopholes" available to offenders (i.e., availability of hardship licenses, leniency in sentencing). Officials from the judiciary cite the unwillingness of corrections officials in penal institutions to accept the flow of offenders from jails to State facilities because they contribute to the overcrowding in jails and courts. DPS officials claim that the most significant problem Georgia encounters in DWI enforcement is no different from that experienced by other States: it is difficult to provide a mobile society with the mobility to which it has become accustomed and upon which it is dependent, while trying to curb DWI behavior.



Effectiveness

No data were available, nor were any evaluations conducted to assess the effectiveness of the Georgia system.

Costs

One source of large expenditures of money under the Georgia system is the requirement of a DPS hearing officer to attend hearings at the request of offenders who have been subjected to a license action. The requirement includes a stipulation that arrest hearings be held in locations convenient to offenders. This proves to be quite time consuming, and expensive as well.

V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.

STATE: GEORGIA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$1,000 maximum	\$150 - \$300	<u>1/</u> Offenders pleading "nolo contendere" receive no license action <u>2/</u> Full driving privileges restored after completion of DWI School <u>3/</u> Operate on a limited jurisdictional basis
Jail	1 year maximum		
License Action:			
. Suspension	1 year	Varies <u>1/</u>	
. Revocation			
. Restricted		1 week <u>2/</u>	
Impoundment	Until bond is paid		
Educ/Trmt Program	DWI School	DWI School	
Community Service		Varies <u>3/</u>	
<u>2nd Offense</u>			
Fine	\$1,000 maximum	\$250 - \$500	<u>1/</u> If first offense resulted in a "nolo contendere," full restoration possible after completion of DWI School. If first offense did not result in a "nolo" plea, then restricted license available after DWI School
Jail	1 year maximum		
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted		1 year <u>1/</u>	
Impoundment	Until bond is paid		
Educ/Trmt Program	DWI School	DWI School	
Community Service			
<u>Subsequent Offenses</u>			
Fine			<u>1/</u> Sentenced under habitual offender law
Jail			
License Action:			
. Suspension			
. Revocation	5 years <u>1/</u>		
. Restricted	After 2 yrs. of revoc. have elapsed	After 2 yrs. of revoc. have elapsed	
Impoundment			
Educ/Trmt Program			
Community Service			

HAWAII

I. BACKGROUND

On June 15, 1982, the State of Hawaii enacted new drunk driving legislation. The impetus for this change came about from a media study of the DWI problem which highlighted the inconsistent application of the drunk driving laws throughout the State. Reflecting the publicity given the DWI issue nationwide, the State Legislature decided to initiate a tougher drunk driving sanction policy. Local grass-roots organizations (MADD) are beginning to form but have not yet become visibly active.

II. LEGISLATION

Two elements of the new legislation are particularly significant to the present study:

- . A community service program for DWI offenders is being implemented on a statewide basis
- . Minimum sentences are mandatory and can not be suspended or avoided through probation

The sanctions prescribed by law are:

1st offense:	48 hours jail 30-day license suspension 72 hours community service Alcohol education	} Two of three mandatory
2nd offense:	\$250-\$1,000 fine <u>or</u> 72-150 hours community service 2-10 days jail 90-day license suspension	} Two of three mandatory

3rd offense:           \$500-\$1,000 fine  
                          10-180 days jail  
                          1-5 year license suspension

Under the new statutes, the court has the discretion to select the sanction combination to be imposed on first and second offenders. No portion of any sentences may be suspended or probated, and the minimum penalties listed for repeat offenders are considered mandatory.

Typically, the sanctions being imposed on DWI offenders throughout the State are:

1st offense:           30-day license suspension  
                          72 hours community service  
                          Alcohol education

2nd and  
subsequent  
offense:               Operational data not yet available

Under the new legislation, all drivers were given a clean drunk driving record. Due to the recency of the statute, reliable operational data for second and subsequent offenses cannot yet be determined.

### III. OPERATIONS

Hawaii operates under a statewide court system. All DWI cases are first heard in the local District courts. Any requests for jury trials are automatically remanded to the court of general jurisdiction, the Circuit Court. Subsequent appeals go to the State Court of Appeals and then to the Supreme Court, if accepted.

#### License Actions

Upon a judicial conviction, the court docket and notification of any license action taken is forwarded to the Department of Finance in the appropriate county, and the driving record is amended. Licenses are surrendered to the courts and held for the entire penalty period. Though the statute does not discuss issuance of restricted driving privileges, the administrative judges of the courts have agreed that hardship or restricted licenses will not be issued.

Persons convicted of a first DWI offense are subject to and appear to be receiving a 30-day license suspension. Second offenders face a 90-day suspension while subsequent offenses carry a one- to five-year license suspension. Operational data regarding repeat offenders were not yet available.

#### Confinement

Respondents indicated that while the jails are generally overcrowded throughout the State, this would not dissuade the courts from imposing a jail sentence. However, to date, the jail sanction has not been routinely selected for first offenders. When jail is imposed, any time spent waiting to post bond, or "sleeping it off" is credited to the sentence imposed.

#### Community Service

Community service is available to persons convicted of their first or second DWI offense at the discretion of the courts. Typically, first offenders are sentenced to serve 72 hours of service.

Offenders' referrals are in eight basic types of service: building maintenance, clerical, ground keeping, kitchen help, housekeeping, mechanical care, nursing, recreational and technical aid. Attempts are made to schedule service hours at the convenience of the offender. Most assignments have a completion deadline, which varies among offenders.

Participating program staff and court volunteers monitor the offenders' performance through field visits and regular telephone contact. Offenders who fail to meet their community service obligations can be remanded back to the court for additional sentencing.

#### IV. RESULTS

##### Reactions

The judiciary appears to be supportive of the new legislation although they would have preferred to retain more judicial discretion. They have agreed to impose sanctions as mandated, and exercise their discretion in selecting the specific sanction combination imposed, and the severity of sanction for repeat offenders.

Preliminary observations indicate no increase in requests for jury trials or postponements. With the penalties made more clear and the prosecutor's case made stronger, rather than court dockets becoming overcrowded, cases are being adjudicated more expeditiously.

An information and education campaign was initiated to educate the general public to the new laws. Posters and flyers were distributed throughout the State. Local communities appear to be quite supportive of the program and favor consistent application of sanctions. Law enforcement officers now feel that actions are being taken to handle individuals who are arrested for drinking and driving.

##### Effectiveness

Due to the recency of the new legislation, it could not yet be determined how effective the sanctioning policy will be on the reduction of drunk driving. Formal evaluations have not been planned. It is anticipated that the numbers of DWI arrests will increase with the advent of a consistent sanctioning policy.

##### Costs

Specific cost data were not available.

#### V. REPLICABILITY

Respondents felt that because Hawaii is a small State, with only 25 full-time district judges, the sanctioning program will be consistently employed. Individual judges are more visible and the entire court system can be more easily monitored. A series of judicial seminars has been scheduled that will further educate judges about the DWI problem and allow time for further discussion and definition of the new laws and the sanctioning policies to be established.

STATE: HAWAII

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine			<u>1/</u> Any two of these three sanctions must be imposed
Jail	48 hours <u>1/</u>	Rarely	
License Action:			
. Suspension	30 days <u>1/</u>	30 days	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol education	Alcohol education	
Community Service	72 hours <u>1/</u>	72 hours	
<u>2nd Offense</u>			
Fine	\$250 - \$1,000 <u>1/</u>	*	<u>1/</u> Fine or community service may be imposed; two of three sanctions must be imposed
Jail	2 - 10 days <u>1/</u>	*	
License Action:			
. Suspension	90 days <u>1/</u>	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	72 - 150 hours <u>1/</u>	*	
<u>Subsequent Offenses</u>			
Fine	\$500 - \$1,000	*	
Jail	10-180 days	*	
License Action:			
. Suspension	1 - 5 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted June 1982.

IDAHO

I. BACKGROUND

There is mounting pressure within the State of Idaho to review the existing drunk driving legislation and to make revisions to deal more effectively with the increasing statewide DWI problem. Recent studies indicating that more than 50 percent of all statewide traffic fatalities are alcohol-related have prompted the Governor to appoint a Task Force to study the problem. A subcommittee of the Alcohol Intoxication Treatment Act Committee has also been established that will make recommendations regarding the sanctions to be imposed on persons convicted of drunk driving.

Remove Intoxicated Drivers (RID) has become active within the State and has begun to generate local community support for stricter DWI legislation. A citizen involvement program "Report Every Drunk Driver Immediately" (REDDI) has been implemented and appears to be gaining local support.

II. LEGISLATION

Sanctions that are currently mandated for persons convicted of DWI offenses are:

1st offense:	Up to \$300 fine Up to 6 months jail 90-day license suspension
2nd offense:	Up to \$300 fine Up to 5 years in the State penitentiary 6-month license suspension
3rd offense:	Up to \$300 fine Up to 5 years in the State penitentiary 1-year license suspension

The sanctions imposed are significantly less severe than those mandated by statute. Persons convicted of DWI offenses generally receive the following:

1st offense:	\$150-\$200 fine 90-day license suspension (restricted license available) Withheld judgment
2nd offense:	\$150-\$300 fine (usually lower end) A few days in jail (varies across State) 6-month license suspension (restricted license available)
3rd offense:	\$150-\$300 fine A few days in jail (varies across State) 6-month license suspension (restricted license available)

III. OPERATIONS

Upon arrest, most offenders post bond, appear before a magistrate and plead guilty to the DWI charge. The judge offers approximately 60 percent of all first offenders a withheld judgment program. Offenders who accept a withheld judgment are placed on probation (time varies across districts), pay a fine of approximately \$150, and generally have to attend a court-sponsored alcohol education school, if one is located in that jurisdiction.

Once the period of probation has expired, the original charge is dismissed and no record is ever made in the driving history. A record is kept on file in the Supreme Court, however, and is maintained for a period of seven years. Offenders are technically able to have only one withheld judgment during any seven-year period. However, judges can grant a second withheld judgment if they can show good cause. In practice, second DWI arrests usually result in a first DWI conviction.

If a withheld judgment is not offered, the judge sets a date for formal sentencing. Generally, the severity of the sanction imposed is dependent upon such criteria as: family financial responsibility, prior arrest history and occupation.

All first offenses are heard in Magistrate Court as are many second and subsequent offenses. Second charges involving an aggravated arrest, as well as those charged as a felony are heard in District Court. Persons tried in District Court for the first time are also eligible for withheld judgments, even if they have received one earlier in the lower court.

### License Actions

Once a conviction is obtained in the courts, the Department of Motor Vehicles is notified and updates the offender's driving record. The DMV then requests the offender to return his driver's license to the DMV office. If the individual has not held a restricted license during the previous two-year period, limited driving privileges are usually granted for traveling to and from work or treatment. If a withheld judgment is given, no driver action is taken.

Persons convicted of a first DWI offense are subject to a 90-day suspension, but, generally, receive restricted driving privileges. Second and third offenders receive a six-month driving suspension, and are also eligible for restricted privileges.

Individuals can ask for a formal DMV hearing to review a particular case, however, this occurs only rarely. Once the period of suspension has expired, the DMV automatically reinstates the license. If the license has been revoked for some reason, the individual must simply reapply.

Persons apprehended for driving while under license suspension are not eligible to receive restricted licenses. Penalties for this violation include: 10-day to six-month jail sentence, a fine of \$100, and an additional six-month suspension for first offenders; and 30-day to six-month jail term, a \$100-\$300 fine, and an additional one-year license revocation for second and subsequent offenders. Typically, sanctions imposed are less severe than those in the law.

### Confinement

Confinement is a potential sanction for all DWI offenders in Idaho and repeat offenders are subject to as many as five years in the State penitentiary. However, it is rare that any jail time is actually imposed. Some jurisdictions sentence second or third offenders to a few days in the local jail.

## IV. RESULTS

### Reactions

Law enforcement personnel would like to see stricter DWI legislation enacted and more severe sanctions consistently imposed. They perceive drunk driving to be a very serious problem but do not see actions being undertaken to find a solution. They would like to see the practice of granting withheld judgments significantly reduced.

The DMV also favors stricter handling of drunk driving cases. However, they are aware that present resources are inadequate to handle an increased caseload.

Most judges are satisfied with the present system and are resisting any movement to impose stricter penalties. A significant minority, however, would favor a more structured system with some mandatory sentences. They assert that the present system allows too much freedom to bargain, which dilutes the whole program. Although plea bargaining is used only if the prosecutor feels a case is too weak, the extended use of withheld judgments has significantly weakened the system.

Publicly, prosecutors and defense attorneys are very supportive of imposing stricter sanctions on DWI offenders. However, in most jurisdictions, offenders receive sanctions that are less severe than those mandated.

### Effectiveness

During 1981, there were 10,600 DWI arrests recorded. Of these, 3,945 were convicted and sentenced, 4,761 were granted withheld judgments, and the remaining 1,694 were dismissed, dropped, or subject to other dispositions. Formal impact evaluations have not been undertaken. The completeness of records vary across counties; the larger, more urban centers have more accurate data available.



Costs

Specific cost information is not available at this time.

V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction programs that would be required to replicate the program elsewhere.

STATE: IDAHO

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$300	\$150 - \$200	1/ Restricted license available
Jail	Up to 6 months	Rarely	
License Action:			
. Suspension	90 days	90 days 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$300	\$150 - \$300	1/ Restricted license available
Jail	Up to 5 years	Varies	
License Action:			
. Suspension	6 months	6 months 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$300	\$150 - \$300	1/ Restricted license available
Jail	Up to 5 years	Varies	
License Action:			
. Suspension	1 year	6 months 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

## ILLINOIS

### I. BACKGROUND

On January 1, 1982, a new DUI law was enacted in the State of Illinois. Part of the impetus for legislative reform came from statewide statistics which revealed that approximately 50 percent of all persons killed in traffic accidents in 1980 (within the State) died in alcohol-related accidents. Additionally, there was dissatisfaction with the previous legislation which was perceived as being complicated and outdated, as evidenced by the requirement for two chemical tests to determine BAC level, and a two-hour time frame within which chemical testing could be conducted. Respondents in the Office of the Secretary of State indicated that the proximity of the Wisconsin State line to northern Cook County contributes to Illinois' DUI problem because the drinking age in Wisconsin is 18, whereas in Illinois it is 21. Many Illinois youth travel across the border to do their drinking, then return to Illinois and drive home while under the influence. The new law is intended to attack the problem by streamlining the arrest process and giving law enforcement officers more time to enforce it and other traffic safety laws.

### II. LEGISLATION

Significant elements of the new legislation include:

- . An implied consent law
- . The Secretary of State has the authority to require participation in a designated driver remedial or rehabilitative program as a condition for the issuance of a restricted driving permit
- . License actions that are mandated upon conviction and can be imposed administratively

The sanctions currently prescribed by State law include:

- |              |  |
|--------------|--|
| 1st offense: | \$1,000 (maximum) fine<br>1 year (maximum) jail<br>1-year license revocation (mandatory)<br>Attendance at DUI school                 |
| 2nd offense: | \$1,000 (maximum) fine<br>1 year (maximum) jail<br>5-year license revocation (mandatory)<br>Attendance at approved treatment program |

Sanctions typically imposed on DUI offenders vary greatly throughout the State. Generally, persons convicted of DUI offenses are given the following sentences:

- |              |   |
|--------------|---|
| 1st offense: | Fine varies (operational data unavailable)<br>Jail terms are seldom imposed, and vary when they are<br>1-year license revocation or<br>1-year restricted license while attending<br>DUI school (which is conditional for early<br>reinstatement to full privileges)   |
| 2nd offense: | Fine varies (operational data unavailable)<br>Jail terms are seldom imposed, and vary when they are<br>Length of revocation varies (while Secretary<br>of State's policy is a mandatory 5-year<br>revocation, offender may reapply for his<br>license beginning 1 year from the original<br>revocation)<br>Attendance at approved treatment program |

### III. OPERATIONS

The adjudication process begins with the arrest and the police officer's filing an arrest ticket with the court. Defendants are then booked, and the court sets an arraignment date. At the time of arraignment, the State's attorney will file complaints and defendants will plead guilty (and be sentenced) or not guilty (and be tried at a later date). To enter a lesser plea, the prosecutor can nolle prosequi that charge, file an amended information form, and enter a new charge.

### License Actions

As of January 1, 1982, persons convicted of DUI are subject to one- to five-year revocation of their driver's licenses. Upon conviction, offenders surrender to the court clerk all driver's licenses or permits they hold. Within 10 days, the clerk forwards the licenses or permits along with a report of the conviction to the Secretary of State, who maintains appropriate records of all license/permit suspensions and revocations.

As was the case with the previous legislation, DUI offenders under the new law may be subject to at least one year of revocation. Under the previous legislation, there was an incentive for offenders to enter a remedial driving program, which would preclude records being sent to DMV for entry into the DMV files. Under the new law, however, the Secretary of State may require the applicant to participate in a designated remedial or rehabilitative program as a condition for granting a restricted license, and his records are sent to and maintained by the Secretary of State.

Prior to obtaining a restricted license, offenders must attend the driver education/remedial program, submit to a professional evaluation assessment, and establish proof of financial responsibility.

It was reported that first offenders often receive restricted driving privileges for the entire one-year period of their revocation, however, there is wide variation across jurisdictions regarding the terms and duration of these restrictions. Restricted driving privileges are available to second offenders as well, however, guidelines are much stricter and such privileges are seldom granted. As the new legislation has only been in effect a short period of time, more complete operational data were not readily available.

Under implied consent, a first refusal warrants a six-month license suspension, and a second refusal within five years warrants a one-year license suspension.

### Confinement

The new law provides up to one year of incarceration for both first and second DUI offenders. Due to the recency of the new law, accurate information regarding trends in imposition and service of the jail sanction was unobtainable.

## IV. RESULTS

### Reactions

Respondents did not have specific reactions to the new law. They felt that anything other than general statements would constitute premature speculation. DMV officials are of the opinion that the new legislation and accompanying sanctions will prove to be an effective deterrent to DUI. They are concerned, however, that the mandatory nature of the license action, especially for first offenders, will lead to lenient enforcement practices.

Both court and DMV officials have identified a variety of grass-roots organizations that are at least minimally active throughout Illinois. RID, MADD, the Illinois Conference of Women and the Leaders for Traffic Safety were prominent among those mentioned. The Conference of Women is currently operating a statewide citizen court-watching program to observe, record, and make public judicial behavior regarding DUI.

### Effectiveness

It is too early to tell whether the new law is meeting its overall objectives. DUI arrests showed an increase over last year for the first quarter of the year. This increase may be attributable to a number of factors: renewed enthusiasm by law enforcement personnel, the new law, increased DUI behavior, or national awareness of the problem. Formal impact evaluations have not been conducted.

### Costs

Specific cost data regarding implementation of the program are not available as of this time.

STATE: ILLINOIS

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000	Varies	1/ Seldom used as a sanction, but varies greatly when it is used
Jail	Up to 1 year	Varies 1/	
License Action:			
. Suspension			2/ Offender will either have his license revoked for 1 year or have his driving privileges restricted for 1 year while attending DUI School, which is a condition for early reinstatement
. Revocation	1 year	1 year 2/	
. Restricted		1 year 2/	
Impoundment			
Educ/Trmt Program	Approved treat. prog.	Approved treat. prog.	
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000		1/ Seldom used as a sanction, but varies greatly when it is used
Jail	Up to 1 year	Varies 1/	
License Action:			
. Suspension			2/ Length of revocation varies as offender may reapply for restricted or full privileges beginning 1 year from the original revocation
. Revocation	Up to 5 years	Varies 2/	
. Restricted			
Impoundment			
Educ/Trmt Program	Approved treat. prog.	Approved treat. prog.	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

## INDIANA

### I. BACKGROUND

Indiana's current DUI legislation has been in effect for a number of years. Recently, the local media have begun to publicize the DUI issue and the inconsistent sanctions imposed on DUI offenders statewide. Local community support is growing for stricter enforcement of the drunk driving laws. The Governor has appointed a blue-ribbon committee to study the issue and to make recommendations for more effective legislation. Local chapters of MADD are becoming active throughout the State, particularly in the larger metropolitan communities.

### II. LEGISLATION

Significant aspects of the current legislation include:

- Participation in a pretrial diversion program must be recorded on motor vehicle records
- Mandatory minimum sentences for second and subsequent offenders

The sanctions prescribed by current statute include:

1st offense:	Up to \$5,000 fine Up to 1 year in jail 60 days-2 years license revocation
2nd offense:	Up to \$10,000 fine 1-4 years jail (mandatory 5 days) 60 days-2 years license revocation
3rd offense:	Up to \$10,000 fine 1-4 years jail (mandatory 5 days) 10-year license revocation (as per habitual offender statute)

The sanctions typically imposed on persons convicted of drunk driving offenses often vary greatly throughout the State. Generally, the following sentences are imposed:

1st offense:	\$50-\$100 fine 1 year restricted license Probation
2nd offense:	\$100-\$200 fine 5-10 days jail (varies) 60 days-6 months license suspension (varies)
3rd offense:	\$100-\$200 fine 5-10 days jail (varies) 10-year license revocation (if convicted of habitual offender statute)

A pretrial diversion program is available to all offenders on a countywide operational basis. Approximately one quarter of all counties currently operate this type of program. Offenders who successfully complete an approved alcohol education/treatment program are never charged with the DUI offense. Recent legislation now requires participation in this program to be recorded on the motor vehicle records so that offenders cannot be eligible for the program a second time. Persons arrested for their second offense who participated in the program previously, will be charged with a first DUI, but will not be allowed to enter the treatment program. These individuals will be subject to the sanctions typically imposed on DUI first offenders.

### III. OPERATIONS

Indiana does not have a unified court system. Persons stopped for DUI are tried in the city, town, municipal or county court that has jurisdiction in that area. All decisions made in the local jurisdiction can be appealed to the State circuit court or Indiana Court of Appeals in cases involving municipal and county courts.

#### License Actions

Upon judicial conviction, the Bureau of Motor Vehicles is notified by the courts of any license action to be taken. Offenders surrender licenses at the time of conviction. They are forwarded along with the court abstract to the Bureau of Motor Vehicles where the appropriate entry is made on the central motor vehicle records.

Persons convicted of a first or second DUI offense are subject to a 60-day to two-year license suspension. However, first offenders may petition the court for, and receive a one-year restricted driver's license that can be used for driving to and from their place of employment. Second offenders generally receive a license suspension ranging from 60 days to six months. Second offenders cannot petition the court for restricted driving privileges, but because of legal technicality on occasion restricted licenses are issued to second or subsequent offenders. Persons who are convicted of a third DUI offense can be tried under the State's habitual offender statute which requires a 10-year license revocation. Restricted licenses are not available for third or subsequent offenders, or to habitual traffic offenders.

In order to have a license reinstated, offenders must complete the period of license suspension, file a statement of financial responsibility and pay a \$10 reinstatement fee. They must show proof of financial responsibility for three years. Persons who are apprehended for driving while under a license suspension or revocation are subject to a fine and an additional period of suspension.

#### Confinement

Persons convicted of their first offense are subject to a jail sentence of up to one year, although jail sentences are rarely imposed on first offenders. Second and subsequent offenders face a one to four year prison term, but usually serve considerably less. While the actual jail time served varies considerably across jurisdictions, many repeat offenders spend 5-10 days in the local jails. In most cases, weekend confinement is available, as are work release programs.

#### Community Service

Community service is available on a local jurisdictional basis only. When employed, it is often prescribed as a condition of probation or a suspended sentence.

## IV. RESULTS

### Reactions

Judges throughout the State are reluctant to support a program of sanctions that would limit judicial discretion. Some judges view DUI offenses more seriously than others and consistently impose more severe penalties. The general public is beginning to become more aware of the DUI issue and is pressuring the legislature for more effective legislation. Some major changes in the laws are anticipated during the next legislative session.

Currently, prosecutors use plea bargaining to reduce DUI offenses to a nonalcohol-related charge. As all prosecutors are elected officials, it is anticipated that growing public concern over this issue will eventually curb routine use of this practice.

### Effectiveness

There has not been a formal evaluation of the overall effectiveness of the DUI sanctioning practices in Indiana. Respondents indicated, however, that sanctions are more effective in those counties where they are imposed on a more consistent basis. Currently, the only central records maintained are the motor vehicle files which contain convictions of driving violations. Courts retain individual case files for their records, but this information is not routinely available to other jurisdictions throughout the State.

### Costs

Specific cost data were not available.

## V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of this sanction program that would be required to replicate the program in another State.



STATE: INDIANA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$5,000	\$50 - \$100	<u>1/</u> Available on local jurisdictional basis only
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension			
. Revocation	60 days - 2 years		
. Restricted		1 year	
Impoundment			
Educ/Trmt Program			
Community Service		Varies <u>1/</u>	
<u>2nd Offense</u>			
Fine	Up to \$10,000	\$100 - \$200	<u>1/</u> Five days mandatory
Jail	1 - 4 years <u>1/</u>	5 - 10 days	
License Action:			
. Suspension		60 days - 6 months	
. Revocation	60 days - 2 years		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$10,000	\$100 - \$200	<u>1/</u> Five days mandatory <u>2/</u> No restricted license available
Jail	1 - 4 years <u>1/</u>	5 - 10 days	
License Action:			
. Suspension			
. Revocation	10 years	10 years <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

*ok*

IOWA

I. BACKGROUND

During July 1982, the State of Iowa enacted a number of revisions to its drunk driving laws. These changes came about in part due to the growing awareness of the DWI problem nationwide and the increasing local public concern over the statewide drunk driving problem. Grass-roots organizations are becoming more visible and publicizing the dangers of drinking and driving behaviors. With the State's 1.7 million licensed drivers primarily on open highway and rural farm roads, the general feeling is that the risk of being apprehended is relatively low.

II. LEGISLATION

Persons convicted of Operating a Motor Vehicle Under the Influence (OMVUI) are subject to a combination of sanctions. Significant aspects of the legislation that are particularly relevant include:

- An administrative procedure for initiating license actions has been established
- Offenders that accept a deferred sentence option now have their offense of record constitute a prior conviction for purposes of a subsequent alcohol-related offense
- Mandatory minimum sentences must now be imposed. These sanctions include:

1st offense:	\$300-\$1,000 fine Up to 1 year jail (mandatory 48 hours) 120 days-1 year license revocation
2nd offense:	\$500-\$1,000 fine Up to 1 year jail (mandatory 7 days) 240 days-1 year license revocation

3rd offense:	Up to 5 years in State penitentiary 1 year license revocation
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Typically, DWI offenders receive the following penalties:

1st offense:	\$300 fine 48 hours jail 30-day restricted license Attendance at OMVUI school
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2nd offense:	\$500 fine 48 hours jail 30-day license suspension Alcohol treatment/education program
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3rd offense:	1-5 years in State penitentiary Referral to treatment (inpatient) program
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III. OPERATIONS

Local judges still exercise judicial discretion, although more formal guidelines have been established with the use of mandatory minimum sentences. Criteria for sanction decisions vary among judges and a variety of data are considered. Once an OMVUI conviction has been handed down, the Courts Services Office conducts a presentence investigation. Diagnostic tools such as the Mortimer Filkins test, BAC at time of arrest, and prior convictions are reviewed, and a drinker diagnosis of problem or social drinker is determined. Problem drinkers are referred to treatment programs, whereas social drinkers attend the OMVUI education school. If the offenders have a clean history, are heads of household, and exhibit financial hardships, then any jail sentence is likely to be suspended.

For first offenders who plead guilty to the OMVUI charge, a deferred judgment is sometimes imposed. In this case, the court does not accept the guilty plea but defers conviction until a one-year probation period has expired. Most offenders complete the OMVUI education school and receive a 30-day restricted driver's license. When completed, no record of the DWI offense appears on the

driving record; however, the record will note that a deferred judgment has been awarded. A deferred judgment will constitute a prior OMVUI conviction for purposes of a subsequent alcohol-related offense. A defendant's sentence may also be suspended. In this case, the record of conviction stands but the defendant is placed on probation and serves only part or none of his or her sentence.

#### License Actions

The new provisions establish an administrative license revocation procedure. Persons are subject to revocations of 120 days for a first offense, 240 days for a second offense and a 1-year period for a third or subsequent offense. Upon obtaining a BAC reading of .10 percent or greater, the police officer may request the offender to surrender the driver's license. A temporary 20-day license is issued to the offender, along with a DMV "notice of intention to revoke" which goes into effect after this 20-day period has expired. Restricted licenses are available for occupational purposes, or to attend evaluation, treatment or educational services for alcohol or drug dependency.

Persons convicted of a first OMVUI offense are subject to a 120-day to 1-year license revocation. However, if they attend OMVUI school, then a restricted license can be granted for a minimum of 30 days, after which time the license can be reinstated. Respondents indicated that most first offenders exercise this option and receive restricted licenses for at least the duration of the OMVUI program.

Those persons convicted of their second driving offense are faced with the revocation of their drivers' licenses for a period of 120 days to 1 year. However, most second offenders also attend OMVUI school and receive a 30-day license suspension. Restricted licenses are typically not available for a second offense. A third offense is generally treated more severely, with the imposition of a 1-year license revocation. As there is a strong rapport with local treatment agencies, if treatment is required but not completed, the DMV is promptly notified and takes action to impose administrative license sanctions.

Procedures for reinstatement of a driver's license require offenders to complete the term of the license action; show proof of liability insurance; retake the written portion of the driver's test; and revalidate the vehicle registration. There is no provision for impounding an individual's vehicle.

#### Confinement

More than 95 percent of persons convicted for a first offense are sentenced to spend "48 hours" in jail. For most of these persons, this sentence is interpreted to allow offenders to report to jail at 11:00 p.m. Saturday and to be released shortly after 12:00 a.m. on Sunday as the court may then accommodate the sentence to the work schedule of the offender. Any time waiting to post bond is credited to the sentence already served.

A second OMVUI offender generally receives a mandatory seven-day sentence with five days suspended. The remaining two days to serve are often treated as were first offenders. Most offenders simply remain over night, "sleep it off," and are released.

Persons convicted of a third offense can be sentenced to the State penitentiary for up to a five-year term. Most chronic offenders receive a one-year sentence but are generally released to a residential treatment facility after only a few months in jail.

#### Community Service

Iowa does not have a statewide community service program, but several programs do exist on the district/county levels. In the 5th judicial district (Polk County), for example, the director of Correctional Services initiated a community service program for first-time misdemeanants, to be offered in lieu of jail or fine.

Of the 1,433 offenders referred to Polk County community service programs from July 1980 through December 1981, 37.7 percent were convicted of an OMVUI offense, and a total of 53.1 percent were traffic offenders. Nearly 90 percent of the referrals were first offenders.

There are currently two types of community service programs operating in Polk County. Under deferred prosecution, individuals are screened by the Des Moines Chapter of the National Alcohol Council, placed in treatment, and assigned to 40 hours of community service. Under the deferred sentence program, offenders are sentenced to one year of probation and 40 hours of community service. If no problems are noted for the year, the charge is dismissed. A large number of agencies participate in the community service program in Polk County. An attempt is made to utilize the offenders' skills when selecting their particular assignment. The time is generally served at the convenience of the offenders, with a completion date typically set three to four months from the date the sentence was issued.

Offenders are monitored through site visits by program personnel, and their time is recorded daily by the participating agency's personnel. In order to successfully complete the requirement, the offenders must serve all 40 hours, within the established time frame, to the satisfaction of the agency. The completion rate for OMVUI offenders is 85 percent; however, because some are revoked for other reasons (e.g., rearrest), the actual rate is probably much closer to 90 percent. Failure to complete the program generally results in the imposition of a fine, probation, or jail.

The Polk County program was formed by combining the pretrial release program with the pre-sentence investigation staff and, therefore, required no additional funding. Additionally, volunteers are recruited and trained to aid in placement. The annual budget is \$50,000.

#### IV. RESULTS

##### Reactions

Even though the mandatory jail sentence actually served is often less than the two days cited in the legislation, the courts are reporting that

jail space is becoming scarce, especially in the urban areas. Considerable time often elapses between conviction and actual sentence completion. In some instances, the courts are taking reservations for jail space.

There has not been any significant increase in numbers of plea bargains to a lesser offense or in requests for jury trials. More than 50 percent of all plea bargains are for third offenders down to a second offense to avoid having to serve time in the State penitentiary. As long as the offenders enter a treatment program, this practice has not been questioned.

Enforcement activity currently operates on a quota system whereby an officer receives points for OMVUI arrests. These points are a consideration for merit raises and promotions. Enforcement personnel are more inclined to make OMVUI arrests if more severe penalties, particularly jail, are imposed.

Department of Motor Vehicle personnel feel that the potential loss of a person's driver's license may be more of a deterrent than spending a few days in jail. They noted that, although many offenders drive while under suspension/revocation or outside the provisions of their license restrictions, they drive less frequently and more carefully. The penalty on the books for driving while under license suspension/revocation is currently up to \$100 fine and 30 days in jail; however, the typical sanction imposed is a simple \$25 fine.

The general community favors stricter sanctions. There are chapters of MADD and RID in the larger cities that are becoming more highly visible. They are keeping the drunk driving problem in the media's attention. Larger towns are more lenient toward drinking and driving, and the courts tend to reflect this attitude by reducing charges more easily and by imposing less strict sanctions. In smaller towns, however, the drunk driving issue is more personalized and the local courts are inclined to impose more severe sentences.

Effectiveness

The Court Administrator's Office does not feel that mandatory jail as imposed by the courts in Iowa will provide an effective deterrent. The loss of an individual's license, however, may prove to be more successful. Evaluations or formal documentation have not been compiled to date. Records are maintained at the local levels and vary from jurisdiction to jurisdiction.

Costs

Specific cost data were not available.

V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of this sanction program that would be required to replicate the program elsewhere.

STATE: IOWA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$300 - \$1,000	\$300	1/ 48 hours mandatory
Jail	Up to 1 year <sup>1/</sup>	2 days	2/ License action administratively imposed
License Action:			3/ Restricted license available
. Suspension	120 days - 1 year <sup>2/</sup>	30 days <sup>3/</sup>	4/ Imposed on local jurisdictional basis only
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI School	
Community Service		40 hours <sup>4/</sup>	
<u>2nd Offense</u>			
Fine	\$500 - \$1,000	\$500	1/ 7 days mandatory
Jail	Up to 1 year <sup>1/</sup>	2 days	2/ License actions administratively imposed
License Action:			
. Suspension	240 days - 1 year <sup>2/</sup>	30 days	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI Educ./Treat.	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail	Up to 5 years	Few months <sup>1/</sup>	1/ After few months served in prison, offenders often released to residential treatment facility
License Action:			2/ License action administratively imposed
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		Inpatient treatment	
Community Service			

KANSAS

I. BACKGROUND

The State of Kansas enacted legislation which became effective July 1, 1982, that established new penalties and provisions for persons convicted of driving while under the influence (DUI) of alcohol or drugs. This new legislation was the result of efforts of local grass-roots organizations that support tougher action against drunk drivers and the Department of Social and Rehabilitative Services that wanted to preserve State-funded alcohol treatment programs. The DUI issue began to generate media coverage and publicity when a particularly bad multiple crash was determined to be caused by a drunken driver. A local MADD group became active and the public outrage against DUI offenders increased.

II. LEGISLATION

There are several significant elements in the new DUI legislation:

- . Minimum sentences are mandatory and cannot be suspended or avoided
- . Plea bargaining is not available for a DUI offense
- . Community service can be used as an alternative sanction
- . A statewide alcohol and drug safety action program is established

The new legislation provides for the following sanctions:\*

1st offense:	\$200-\$500 fine
	48 hours-6 months jail or
	100 hours public service
	90 days-1-year license suspension
	Attend alcohol treatment

\* Offenders can perform public service in lieu of paying any fine imposed at a rate of \$5.00 per hour.

2nd offense: \$500-\$1,000 fine  
 90 days-1 year jail (5 days  
 mandatory if attend treatment)  
 1-year license suspension  
 Attend alcohol treatment

3rd offense: \$1,000-\$2,500 fine  
 90 days-1 year jail  
 1-year license revocation (minimum)  
 Attend alcohol treatment

Preliminary observations indicate that the minimum sanctions prescribed are being imposed throughout the State. Typically, DUI offenders appear to be receiving the following:

1st offense: \$200 fine, \$85 ASAP assessment and \$19  
 docket fee  
 48 hours jail  
 90-day restricted license (or until treat-  
 ment program completed)  
 Attend alcohol treatment

2nd offense: \$500 fine, \$85 ASAP assessment and \$19  
 docket fee  
 5 days jail  
 1-year license suspension (or until treat-  
 ment program completed)  
 Attend alcohol treatment

3rd offense: \$1,000 fine  
 \$85 ASAP assessment and \$19 ticket fee  
 90 days jail  
 1-year license revocation  
 Attend alcohol treatment

### III. OPERATIONS

Persons arrested for DUI are arraigned either in a municipal court or at the district court level. Offenders found guilty in municipal court can request a jury trial at the district court level, as jury trials are not available at the local level. Offenders found guilty of DUI are subject to a pre-sentence alcohol and drug evaluation conducted by a community-based alcohol and drug safety action program.

The evaluators consider the offender's prior traffic record, characteristics and history of alcohol and/or drug problems, and the amenability of the individual to education or rehabilitation. They refer the offender to an appropriate alcohol program. First offenders who show promise of rehabilitation are offered a diversion agreement. This agreement allows successful completion of the rehabilitation program to result in a dismissal of the DUI charge. While the conviction is not recorded on the court records, a record of participation in the program is maintained. The new legislation allows for only one diversion agreement to be negotiated during any five-year period. A second alcohol-related charge within this time frame results in the prosecution for a repeat offense. Approximately 70 percent of all first offenders qualify for the diversion agreement.

### License Actions

Upon conviction, offenders surrender their licenses to the court which transmits them to the Division of Motor Vehicles (DMV). The DMV retains the license until ordered by the court to take further action. Persons convicted of their first DUI offense are eligible for, and generally receive, a restricted driving permit for a period of 90 days, or until the offender completes the treatment program.

Second offenders have their license suspended for one year, or until the treatment program has been completed. Subsequent offenders are subject to a license revocation of at least one full year. Restricted driving privileges are not available to third or subsequent DUI offenders.

In order to have their licenses reinstated, offenders must wait the required period of suspension/revocation and then reapply to the Division of Motor Vehicles. In the case of a license revocation, offenders must make formal application, pay all required fees and retake all driving examinations.

### Confinement

Persons convicted of a first DUI are subject to serve a 48-hour to six-month jail sentence or to serve 100 hours community service. Offenders



are given the choice of sanctions, and most often choose to serve the time in jail. Typically, first offenders serve the minimum 48-hour jail sentence.

Second offenders face 90 days to one year in jail but, usually have the sentence reduced to five days if they attend the required treatment program. Third and subsequent offenders are reported to serve the minimum 90-day jail sentence.

The lack of adequate jail facilities is becoming a problem throughout the State, and especially in the more rural western portion of the State, where there is a smaller tax base from which to generate revenues. In some of these more rural counties, deteriorating facilities make it necessary to transfer prisoners to other counties to serve their sentences. Weekend confinement and work release programs are generally available.

#### Community Service

The new legislation provides for the use of some form of public service to be used as an alternative sanction for first DUI offenders. Individuals are given the option of serving 100 hours public service in lieu of spending 48 hours in jail.

The public service program is coordinated by court services personnel through the local alcohol safety action project. However, due to the recency of the legislation, as of late 1982, only nine counties of the 105 State counties have a local program in operation.

### IV. RESULTS

#### Reactions

Although most judges have accepted the new sanctioning policies, a few judges are upset that their judicial discretion has been limited. The general public favors the tougher legislation and therefore, it is thought

that judges who are either directly elected, or selected by the Governor but subject to be retained by their constituents, will support the program.

Prosecutors basically favor the new laws. Although plea bargaining is technically no longer available for a DUI offense, attempts are made to amend the charge to a lesser offense when a case is particularly weak. However, this is done only on rare occasions. The judiciary anticipates an increase in the numbers of requests for jury trials, although this has not yet become a problem.

#### Effectiveness

Due to the recency of the new legislation, no evaluation of its impact on DUI behavior has yet been determined. Preliminary observation has indicated no appreciable difference in the number of DUI arrests being made. Records are being maintained of the numbers of arrests, convictions and final dispositions.

#### Costs

Specific cost data for implementation of the new program were not yet available.

### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program in other States.

STATE: KANSAS

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200 - \$500	\$300	1/ Jail or community service imposed
Jail	48 hours - 6 months <sup>1/</sup>	48 hours	
License Action:			2/ Available on local jurisdictional basis only
. Suspension	90 days - 1 year		
. Revocation			
. Restricted		90 days	
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service	100 hours	Varies <sup>2/</sup>	
<u>2nd Offense</u>			
Fine	\$500 - \$1,000	\$600	1/ Or until treatment completed
Jail	90 days - 1 year	5 days	
License Action:			
. Suspension	1 year	1 year <sup>1/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$1,000 - \$2,500	\$1,000	1/ No restricted license available
Jail	90 days - 1 year	90 days	
License Action:			
. Suspension			
. Revocation	1 year	1 year <sup>1/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			

KENTUCKY

I. BACKGROUND

DWI legislation in the State of Kentucky has been in effect since 1974. Amid growing concern for the statewide drunk driving problem, attempts are currently being made to toughen the existing laws. Public hearings are being held throughout the State that are generating public support for revised legislation. There is an active MADD chapter that is developing an effective court watching program and lobbying the Governor and the State Legislature. There appears to be growing support for increased DWI activities as State 402 monies have recently been earmarked for DWI enforcement activities.

II. LEGISLATION

The penalties for persons convicted of DWI in Kentucky include a combination of fines, license actions and mandatory confinement for repeat offenders. The current legislation calls for:

1st offense:	\$100-\$500 fine 6-month license revocation (waived if attend Alcohol Driving Education Program)
2nd offense:	\$100-\$500 fine 3 days-6 months jail (mandatory) 1-year license revocation
3rd offense:	\$100-\$500 fine 30 days-1-year jail (mandatory) 2-year license revocation

Typically, DWI offenders receive the following sanctions:

1st offense:	\$100-\$250 fine (varies) Alcohol Driving Education Program 100 hours community service
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2nd offense:	\$150-\$300 fine (varies) 3 days-10 days jail (varies) 1-year license revocation 200 hours community service
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3rd offense:	\$150-\$300 fine (varies) 7 days-10 days jail 2-year license revocation 300 hours community service
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III. OPERATIONS

Due to the existence of a pretrial release program, persons arrested for DWI offenses who have a BAC of .10 percent or greater must spend some time in jail. The actual length of confinement is established by local rule and varies from court to court. Before being released, offenders are interviewed by a pretrial release officer who determines the defendant's eligibility for release. Actual release must be by order of the court.

At arraignment, first offenders may plead guilty and request attendance at an Alcohol Education School in lieu of a license action. Repeat offenders are infrequently offered a diversionary treatment program that allows for a reduced charge. The case is continued for a period of 30 days, at which time, if treatment has been successfully completed, the DWI charge is reduced to a nonalcohol-related offense.

License Actions

Upon receipt of court abstracts and notification of judicial convictions, the Department of Justice, Division of Driver Licensing notifies the individual of the action taken and amends the driving record as appropriate. If the court fails to impose the license action or pick up the driver's license at the time of the conviction, the DMV has the administrative authority to impose the sanction as mandated.

Persons convicted of a first offense are subject to a six month license revocation. However, approximately 70 to 75 percent of first offenders are diverted to the Alcohol Driving Education program and do not, therefore, receive the license action. Persons convicted of second and subsequent DWI

offenses generally have one-year and two-year revocations imposed, respectively. Restricted licenses are not available and the mandated sanctions must be imposed for every conviction.

#### Confinement

Jail sentences are only mandated for persons convicted of a second or subsequent DWI offense. Second offenders face a three-day to six-month penalty, while third and subsequent offenses carry a 30-day to one-year sentence.

The length of jail sentence actually served in these cases varies considerably throughout the State. Available jail space is becoming a problem in many parts of the State, especially in the more urban population centers. Work release programs are available and are granted in most cases. Second offenders often receive sentences ranging from three days to ten days while third and subsequent offenders may serve a few days longer.

#### Community Service

Kentucky does not mandate community service programs for DWI offenders although programs are available on the county level. One such program is the Court Referral Program started in 1975 by the Voluntary Action Center of Davis County. Funded through a State law enforcement grant, the program was established for indigent misdemeanants and juveniles. During the past year, 13 percent (60 of 459) of the referrals to the Davis program were traffic offenders and only 4 percent were DWI offenders.

Offenders are referred to the several nonprofit agencies participating in the Davis program. They perform a variety of tasks, predominantly unskilled labor and maintenance. Community service is normally sentenced in lieu of a fine and in combination with a jail sentence. If they are unemployed, offenders must serve 40 hours weekly, and if they maintain steady employment, they must serve nights and weekends at the program's convenience. First offenders are typically sentenced to 200 hours of community service work, second offenders to 300 hours.

The program cites a 95 percent completion rate though there does not seem to be any specific incentive for offenders to complete their requirements as they are likely to have been sentenced to brief jail terms as well.

#### IV. RESULTS

##### Reactions

In general, sanctions are imposed based on the judicial discretion of the presiding judge. Plea bargaining is often used to reduce a DWI charge, especially when a case is not very strong. Jury trials are often requested, as juries tend to be more lenient than judges.

The general public is becoming more supportive of mandatory penalties and more severe sanctions will probably be introduced during a special 1983 legislative session. Sanctions to be considered will include the mandatory confinement for first offenders and more severe penalties for driving while under license revocation.

##### Effectiveness

The sanction policies, as currently practiced in the State, do not appear to be effective in reducing the incidence of drinking and driving. Formal impact evaluations or studies of sanction effectiveness have not been conducted.

During August 1982, the Alcohol Driving Education Program was revised and is currently being pilot tested. This program will be formally evaluated.

##### Costs

Offenders pay a \$25 fee to attend the Alcohol Driving Education Program which covers all operating costs of the program. The fine money that is collected goes to the State's general fund and is not available for DWI activities. Local counties must rely on existing operating budgets.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.

STATE: KENTUCKY

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$500	\$100 - \$250	1/ Waived if attend education program 2/ Available on a local jurisdictional basis only
Jail			
License Action:			
. Suspension			
. Revocation	6 months <sup>1/</sup>		
. Restricted			
Impoundment			
Educ/Trmt Program		Education	
Community Service		100 hours <sup>2/</sup>	
<u>2nd Offense</u>			
Fine	\$100 - \$500	\$150 - \$300	1/ Restricted license not available 2/ Available on a local jurisdictional basis only
Jail	3 days - 6 months	3 - 10 days	
License Action:			
. Suspension			
. Revocation	1 year	1 year <sup>1/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service		200 hours <sup>2/</sup>	
<u>Subsequent Offenses</u>			
Fine	\$100 - \$500	\$150 - \$300	1/ Restricted license not available 2/ Available on a local jurisdictional basis only
Jail	30 days - 1 year	7 - 10 days	
License Action:			
. Suspension			
. Revocation	2 years	2 years <sup>1/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service		300 hours <sup>2/</sup>	

## LOUISIANA

### I. BACKGROUND

Louisiana passed new drunk driving legislation that became effective during January 1983. This action came about in response to active lobbying efforts of the local MADD chapters and increased publicity about the drunk driving problem statewide. The general public has become more aware of the DWI issue and appears to favor stricter penalties. The legislation reflects these views and incorporates recommendations made by the Governor's DWI Task Force.

### II. LEGISLATION

Significant elements of the new legislation are:

- Community service is an alternative sanction
- Mandatory minimum sentences cannot be suspended or avoided through probation

The new legislation calls for the following sanctions to be imposed:

1st offense:           \$125-\$500 fine  
                          10 days-6 months jail  
                          60-day license suspension (restricted  
                          license available)  
If probation is granted--must impose:  
                          2 days jail or  
                          4 days community service  
                          Substance Abuse Education program  
                          Driver Improvement School  
                          60-day license suspension (restricted  
                          license available)

2nd offense:

\$300-\$500 fine.  
30 days-6 months jail  
1-year license suspension  
If probation is granted--must impose:  
15 days jail or  
30 days community service  
Substance Abuse Treatment program  
Driver Improvement School  
1-year license suspension

3rd offense:  
(felony)

Up to \$1,000 fine  
1-5 years imprisonment  
3-year license revocation  
If probation is granted--must impose:  
6 months imprisonment  
Substance Abuse Treatment program  
Driver Improvement School  
3-year license revocation

### III. OPERATIONS

Persons apprehended for drunk driving by city police officers within the boundaries of a municipality are first tried in the City courts. Those arrested by the State police outside the city limits are brought before the District court. All cases can be appealed to the State Circuit court and finally to the State Supreme Court of Appeals.

#### License Actions

License actions are considered to be civil penalties and are imposed administratively by the Department of Public Safety (DPS), Office of Motor Vehicles rather than by the courts. However, these actions can only be initiated once a judicial conviction has been obtained. The courts notify DPS of the conviction; the DPS then amends the driving record and formally notifies the offender of the license action imposed.

Offenders can petition the courts for a restricted license or simply request a hearing through the DPS. In either case, an interview with a licensing examiner is arranged, and the offender presents his case for acquiring restricted driving privileges.

Persons convicted of a first DWI offense are subject to a 60-day license suspension, and usually are granted restricted driving privileges during this time period. Second offenders receive a one-year suspension and subsequent offenders (within 5 years) are considered to be habitual offenders and face a three-year revocation of their driver's license. Restricted licenses are not available for repeat offenders.

Under previous legislation, third and subsequent offenders were prosecuted as habitual offenders and subject to the stiffer penalties imposed only if the DPS recommended such action to the prosecutor. The new legislation allows the DPS to impose administratively the habitual offender penalty without court interaction.

Reinstatement of a suspended license requires offenders to show proof of financial responsibility (SR22), and to petition the courts to restore their driving privileges. Often, if a revoked license expires during the period of revocation, the offender must formally reapply and retake all driving examinations. Persons apprehended for driving while under suspension or revocation receive one additional year on their suspension/revocation period and are usually fined a nominal fee of \$35-\$40. It was reported that many offenders caught driving while under suspension/revocation are also apprehended for a subsequent DWI charge and are assessed more punitive penalties.

#### Confinement

Due to a significant problem of overcrowding, confinement has been used rarely as a sanction for DWI offenders. Currently, alternative, minimum security facilities are being developed that would be used exclusively for DWI offenders. These facilities will combine alcohol education/treatment programs with confinement. When feasible, weekend confinement and work release programs will be granted.

#### Community Service

Under the new law, community service will also be used as a sanction for DWI offenders in lieu of incarceration. Community service programs are being implemented on a statewide basis, although only a few urban areas have programs that are currently operational. Each local jurisdiction is responsible for developing its own program policies and procedures, and the presiding judge in that area will maintain discretion in how it is used. Monies collected from fines will fund the community service project in that jurisdiction.

#### IV. RESULTS

##### Reactions

Judges have had mixed reactions to the new legislation as the use of mandatory sentences will limit judicial discretion. Seminars have been planned to educate the judiciary about the DWI issue and the new laws. Respondents anticipate most judges will be supportive.

The use of mandatory sentencing may increase the use of plea negotiations, the numbers of requests for jury trials and a general overcrowding of court dockets. In an attempt to strengthen the prosecutor's case, recommendations expected during the 1983 legislative session will include the establishment of an illegal per se provision, and an administrative revocation of the driver's license that is not predicated upon a judicial conviction.

##### Effectiveness

Formal evaluations of overall sanction effectiveness have not been planned at this time.

##### Costs

Driver Improvement Schools and any education or treatment programs attended are paid for by the individual offender. More specific cost information was not available.

V. REPLICABILITY

A major factor in enacting tougher DWI legislation is to involve several legislators in writing the new statutes. This fosters a sense of commitment to the new program among the legislature by providing for legislative input during the initial planning and drafting of the bill. This approach will be used to further strengthen the DWI statutes during the 1983 legislative session.



STATE: LOUISIANA

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$125 - \$500		1/ Restricted license is available
Jail	10 days - 6 months		
License Action:			
. Suspension	60 days 1/		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	4 days		
<u>2nd Offense</u>			
Fine	\$300 - \$500		
Jail	30 days - 6 months		
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service	30 days		
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000		
Jail	1 - 5 years		
License Action:			
. Suspension	3 years		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted January 1983.

MAINE

I. BACKGROUND

During September 1981, the State of Maine enacted major revisions in its drunk driving legislation. These changes resulted from a research effort that documented the presence of alcohol in a significant number of automobile accidents throughout the State as well as wide variation in the prosecuting and sentencing of persons arrested for drinking and driving offenses. These new laws provide for mandatory minimum sentences that cannot be suspended and, thus, significantly reduce judicial discretion. Typically, the sanction imposed includes a combination of fine, license action, or jail sentence for persons convicted of "Operating Under the Influence" (OUI).

II. LEGISLATION

Three elements of the statute are significant:

- It is now illegal to drive with a BAC level of .10 percent or higher
- Prosecutors have the option (in certain cases) to try the offense as either a civil or criminal case. Generally, a first offense undergoing a routine arrest would be tried as a civil case. A criminal charge would be lodged under aggravated circumstances, such as a first offender exhibiting a BAC of .20 percent or higher, individuals arrested after a high-speed chase, and persons arrested for a second offense.

Penalties are as follows:\*

Civil charge: (1st offense)	\$250 to \$500 fine 45 - 180 days license suspension
Criminal charge: (2nd offense)	\$350 to \$1,000 90 - 365 days license suspension 48 hours - 6 months in jail

\* Minimum sentences prescribed are mandatory and cannot be suspended by the courts.

Typically, sanctions imposed on OUI offenders reflect closely those minimum penalties defined by the statutes.

Civil charge:	\$250 fine 45-day license suspension (restricted license granted after 30 days and DWI school)
Criminal charge:	\$350 fine 90-day license suspension (restricted license granted after 60 days and DWI school) 48 hours jail

Generally, defendants are required to attend an alcohol education program operated by the State's Department of Human Services. Diagnostic evaluations are required, and referrals to a variety of approved treatment rehabilitation programs can be made.

Although judges must now impose minimum penalties on persons convicted of OUI offenses, they are still free to impose more harsh penalties on an individual, case-by-case basis. The DMV has the authority to lengthen license suspensions and routinely adds 90 days for third offenders. These cases might include persons exhibiting extremely high BAC levels or persons exhibiting chronic recidivism. Habitual offenders, for example, are often charged before the grand jury and generally receive a 60-day jail sentence plus a jail sentence plus a one year license revocation.

The use of license revocation and short-term confinement is of particular interest to this study.

### III. OPERATIONS

#### License Actions

Administrative procedures regarding license actions were modified during April 1982 to ensure the imposition of mandatory licensing actions. Upon conviction, the court takes physical custody of the defendant's driver's license and forwards to the Secretary of State's Office the license along with an abstract of the court's proceedings. The offender signs an acknowledgment of the court suspension and is formally notified of the action taken by the Secretary's Office. Upon review of the court abstract, the Secretary has the authority to impose a license sanction if the court has failed to do so or impose a more lengthy license action if warranted.

Following the expiration of two-thirds of the total period of suspension, a restricted license can be issued upon written notice that the individual has completed the Driver Education and Evaluation Program (DEEP). This license is intended to be restricted for occupational use only; however, offenders generally receive somewhat more lenient restrictions.

There are three conditions required for reinstatement of the driver's license: (1) completion of the minimum term of license suspension, (2) completion of DEEP and any alcohol program required--this can include further diagnostic evaluation and counseling as appropriate, and (3) payment of a \$20 reinstatement fee.

#### Confinement

Jail sentences are imposed consistently throughout the State for persons charged with OUI offenses under the criminal statutes. Typically, the 48-hour minimum jail sentence is served on weekends as scheduled by the judge. There is no intent to have the offender miss days from work. In most cases, the full 48-hour sentence is served.

### IV. RESULTS

#### Reactions

In general, the courts are very pleased with the results of the new OUI legislation. By decriminalizing the first offense, most first offenders are pleading guilty, which expedites the case load in the local courts. Plea bargains have been virtually stopped because a person with a BAC of .11 percent who plea bargains to "driving to endanger" (a criminal charge) would now be subject to an equal or greater penalty than the original charge.

Requests for jury trials have also significantly decreased. Persons convicted of a second offense can still request a trial; however, most

attorneys will recommend that, because driving with a BAC of .10 percent or greater is cause enough for conviction, the burden of proof is now on the defense and more difficult to win. The State Superior Court, which conducts jury trials, has significantly reduced its case load as jury trials are not allowed for persons convicted of a civil offense.

Local police officers also seem to be pleased with the tougher legislation. They now feel that arrests for OUI will be more valid because both the community and the courts are taking the offense more seriously and penalties are being imposed on a more consistent basis.

The general public has been very supportive of the new sanctions. A strong media campaign has kept the issue in the public eye and has increased the public's awareness of the drinking behaviors that are needed to raise the BAC to a legally intoxicated .10 percent level. Most people think they are going to jail when they are arraigned for their first OUI offense. When they find that it is only a "civil" infraction, they appear almost "happy" to plead guilty.

The new legislation has not proven popular with the State's defense attorneys, several of whom intend to challenge the laws in court. They wish to preserve complete judicial discretion, as well as to maintain access to a jury trial for persons convicted on the civil charge. Judges, on the other hand, feel comfortable having to impose mandatory minimum sentences for first and second offenders and still feel judicial discretion can be exercised for more serious offenders.

A few jurisdictions have been reporting a shortage of adequate jail space for OUI offenders. The increase in numbers of persons arrested, combined with deteriorating facility conditions, have caused some defendants to be confined in nondetention facilities such as local school gymnasiums. Sheriffs have been transporting prisoners to other counties on weekends to serve their sentences.

### Effectiveness

The new legislation appears to be meeting its overall objectives, as preliminary indicators report a reduction in fatal accidents, statewide, of approximately 40 percent through the first six months of the program. Arrests for OUI offenses have increased approximately 10 percent during this same time frame. Although these reports appear to be favorable, it is still too early for any meaningful impact evaluation or statement to be made.

Formal impact reports are to be produced on an annual basis and a mandatory reporting system has been instituted that will provide permanent records from which impact statements and progress can be documented. The University of Southern Maine has been monitoring the development of the program and has just completed a preliminary report. A final report is scheduled to be completed by year's end 1982.

### Costs

Maine utilizes a State Court System and all fine monies collected to the State. The local counties bear the full costs of implementing the sanctions prescribed by the new statute. At this point, there does not seem to be a problem meeting this obligation. The DEEP program is fully supported by fees paid by offenders. More specific cost data were not readily available.

### V. REPLICABILITY

The key to a successful program is the cooperation and coordination at all levels of the system before the program becomes operational. The basic legislation was written and supported by the Attorney General's Office, who was able to pass it through the State legislature. It created publicity surrounding the bill, highlighting the OUI problem and emphasizing the benefits of the new program. As there were only about eight or nine State prosecutors, they were able to agree to standardize the process of handling all OUI cases. A two-day seminar

was conducted to develop uniform procedures to be used throughout the State. A meeting was held for all local judges, and basic sanctions were agreed upon by all but one judge. He now consistently imposes a fine \$100 higher than the minimum and gives no leeway as to when jail time can be served.

A second major factor for implementation of the sanction affecting any type of general deterrence is a continued, high-visibility public information and education campaign that will keep the potential penalties of an OUI offense in the public eye.

STATE: MAINE

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$250 - \$500	\$250	1/ Restricted license granted after 30 days of DWI School completed; usually lenient restriction
Jail			
License Action:			
. Suspension	45 - 180 days	45 days 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI School	
Community Service			
<u>2nd Offense</u>			
Fine	\$350 to \$1,000	\$350	1/ Restricted license granted after 60 days of DWI School completed; usually lenient restriction
Jail	48 hours - 6 months	48 hours	
License Action:			
. Suspension	90 - 365 days	90 days 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI School	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

MARYLAND

I. BACKGROUND

During the past two years, Maryland has passed numerous revisions to its drunk driving legislation. During August 1980, a Governor's Task Force was appointed to examine the problem of drunk driving throughout the State and to make policy and legislative recommendations. This Task Force was re-appointed through April 1982. During November 1982, the Governor appointed a new task force to study this problem, although many of the previous task force members continued to serve in this capacity.

II. LEGISLATION

Recent legislative changes include:

- . Participation in the "probation before judgment" program is now recorded on the driving record
- . Probation before judgment is now prohibited for second and subsequent offenders
- . The drinking age is now 21 years (raised from 18)

Maryland's laws identify two levels of alcohol-related offenses, the lesser Driving While Under the Influence (DUI) for persons with a BAC of .08- .13 percent and Driving While Intoxicated (DWI) for persons exhibiting a BAC of .13 percent or greater. The sanctions prescribed by statute for DUI are:

1st offense:	Up to \$500 fine <u>and/or</u> 2 months jail 60-day license suspension
2nd and sub- sequent offense:	Up to \$500 fine <u>and/or</u> 1 year jail 120-day license suspension

Persons exhibiting a BAC level of .13 or above are charged with Driving While Intoxicated (DWI). The penalties for DWI are:

- 1st offense: Up to \$1,000 fine and/or  
1 year jail  
License revocation (may reapply after  
6 months)
- 2nd offense: Up to \$1,000 fine and/or  
2 years jail  
License revocation (may reapply after  
1 year)
- 3rd offense: Up to \$1,000 fine and/or  
2 years jail  
License revocation (may reapply after  
18 months)

Respondents indicated that of those persons eventually convicted of an alcohol-related charge, approximately 70 to 80 percent are convicted of the lesser offense (DUI). Sanctions typically imposed on these offenders are:

- 1st offense: Probation before judgment (PBJ)  
Alcohol education program  
60-day license suspension (restricted  
license available)
- 2nd offense: Fine (varies)  
Jail (varies)  
120 days license suspension

Under previous legislation, persons receiving a "probation before judgment" (PBJ) could attend an education/treatment program as a condition of probation. If the program was successfully completed, probation was terminated and the court records were expunged. No reference to these charges would therefore be found on an offender's driving record. As of July 1981, however, a record of participation in this program is now maintained on the driving record. A probation before judgment is no longer available for second and subsequent offenders.

### III. OPERATIONS

Upon arrest, offenders are brought to the nearest police station for administration of the breath test. Persons with higher BAC levels spend a few hours in jail; those with lower BAC levels may be released on their own recognizance. DWI trials are held in District Court, unless the defendant requests a jury trial. Jury trials are held in the circuit courts. If a "Probation before Judgment" is offered, offenders must agree to the terms of probation before the judge pronounces the sentence. Acceptance in this program automatically waives the offender's right to appeal the case further.

#### License Actions

The court notifies the Motor Vehicle Administration (MVA) once a judicial conviction is obtained. A suspension/revocation notice is sent to the offender who has 15 days in which to request a hearing. The entry is made on the driving record and the appropriate license action is initiated.

Persons convicted of a first "Driving While Under the Influence" are subject to and generally receive a 60-day license suspension. Second offenders receive a suspension of 120 days. A conviction for DUI also carries a six-point assessment on the driving record. A total of eight points results in a suspension for 30 days, and 12 total points requires a one-year license revocation.

Persons convicted of a DWI offense typically receive the mandated license revocation. Persons convicted of a first offense may reapply for driving privileges after six months of the revocation period has elapsed, while second and third offenders must wait 12 months and 18 months respectively. Suspended licenses are reinstated automatically by the MVA once the period of suspension has elapsed. Reinstatement of a revoked license, however, requires payment of a \$25 fee and a \$6 charge for a new license, formal re-application and retaking of all driving examinations, and an investigation by an MVA official. This investigation includes checks with neighbors and friends to see whether offenders were driving while under revocation and whether they still have a drinking problem.



#### Confinement

Confinement is not often used as a sanction for persons convicted of alcohol-related offenses and, therefore, specific operational data were not available.

#### Community Service

Community service is available on a local jurisdictional basis only, although it is only infrequently used for DWI offenders. When employed, it is often sentenced as a condition of probation or a suspended sentence.

### IV. RESULTS

#### Reactions

Enactment of the two alcohol-related driving offenses has not changed the number of cases that are plea bargained. However, most offenders plea-bargain to the lesser (DUI) offense and more individuals are being convicted of an alcohol-related offense than prior to enactment, when offenders were pleading down to a nonalcohol-related charge.

Respondents indicated that tougher laws were required, but did not favor the use of mandatory sentencing. They asserted that a range of penalties would be effective if the judiciary were consistent and more severe in their sanctioning practices.

It is believed that an administrative license procedure will be introduced by the legislature in the near future. This would make the license action independent of the court system and allow for a more consistent use of these administrative sanctions.

#### Effectiveness

Formal impact evaluations of the overall sanctioning program have not been conducted. An evaluation is currently being conducted on the driver rehabilitation program in Baltimore County.

#### Costs

Specific cost data were not available.

### V. REPLICABILITY

Respondents were unable to provide information about particular elements of their sanction program that would be required to replicate the program in other States.

**CONTINUED**

**2 OF 6**

STATE: MARYLAND

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000 <sup>1/</sup>	Varies	<sup>1/</sup> Fine and/or jail prescribed <sup>2/</sup> Restricted license available <sup>3/</sup> May reapply after 1 year <sup>4/</sup> Available on local jurisdictional basis only
Jail	1 year	Varies	
License Action:			
. Suspension		60 days <sup>2/</sup>	
. Revocation	Revocation <sup>3/</sup>		
. Restricted			
Impoundment			
Educ/Trmt Program		Alcohol education	
Community Service		Varies <sup>4/</sup>	
<u>2nd Offense</u>			
Fine	Up to \$1,000 <sup>1/</sup>	Varies	<sup>1/</sup> Fine and/or jail prescribed <sup>2/</sup> May reapply after 1 year
Jail	2 years	Varies	
License Action:			
. Suspension		120 days	
. Revocation	Revocation <sup>2/</sup>		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000 <sup>1/</sup>	Varies	<sup>1/</sup> Fine and/or jail prescribed <sup>2/</sup> May reapply after 18 months
Jail	2 years	Varies	
License Action:			
. Suspension			
. Revocation	Revocation <sup>2/</sup>		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

## MASSACHUSETTS

### I. BACKGROUND

On 1 September 1982, the Commonwealth of Massachusetts enacted new drunk driving legislation. This action came about (1) because of vigorous grass-roots support for stricter DWI laws, generated by local media attention to the DWI issue, and (2) from a series of recommendations submitted by the Governor's Task Force on Drunk Driving. In light of escalating alcohol-related highway fatalities and injuries, and the death of an entire family during the holiday season, the Task Force was charged with designing a comprehensive program to alleviate the problems related to alcohol abuse and highway safety and to propose a coordinated executive, legislative, and judicial response to the problem.

### II. LEGISLATION

Significant elements of the new legislation include the following:

. A diversionary education/treatment program is no longer available.

. Mandatory minimum penalties have been instituted:

1st offense:	\$100-\$1,000 fine Up to 2 years in jail 1-year license revocation (mandatory) (If probation granted, then attend alcohol treatment program (\$400 fee)) 30-day license suspension
2nd offense:	\$300-\$1,000 fine 7 days - 2 years in jail (7 days mandatory) (14-day confinement in residential treat- ment facility can be imposed in lieu of 7 days in jail) 2-year license revocation (mandatory)

3rd offense:	\$500-\$1,000 fine 60 days-2 years in jail (60 days mandatory) 5-year license revocation (mandatory)
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### III. OPERATIONS

Drunk driving offenses are misdemeanors in Massachusetts and are tried in District Court or in Boston Municipal Court. Trials may be initially heard by either a judge or a jury. In most cases, defendants choose to have their cases heard first by a judge sitting without a jury. If they are dissatisfied with the decision of the primary court session, they are entitled to a completely new trial before a jury of six persons. This second trial is referred to as a trial de novo or appeal de novo.

The law permits offenders to plead "guilty," "not guilty," or "not guilty, but admit to facts sufficient to warrant a finding of guilty." This last alternative is a technical admission of guilt, but it avoids the guilty plea and preserves the defendant's right of appeal. Under these conditions, the judge will typically "continue the case without a finding" for a one-year period.

Persons receiving a continuance without a finding are formally placed on one-year probation and must attend a Driver Alcohol Education Program (DAEP) operated by the Division of Alcoholism, Department of Public Health. Persons referred to DAEP attend an intake/diagnostic session, group counseling sessions, and a disposition/recommendation session, which may result in referral to additional treatment programs.

Under previous legislation, if the terms of probation were successfully completed, the original charge was dismissed. There was no finding of guilt established and no formal conviction recorded. The new statutes, however,

mandate that a record of this transaction be maintained by the courts for a period of six years. Offenders are allowed only one "continuance without a finding" during this period. Persons arrested for a second DWI offense during the six-year period will be charged with DWI regardless of the disposition of the first arrest.

#### License Action

The Registry of Motor Vehicles can only initiate license action upon notification by the courts of a judicial conviction. Driver's licenses are physically surrendered at the time of conviction and forwarded to the Registry. Offenders are notified by mail of the action taken, and the appropriate entry is made on the driving records.

Persons convicted of a first DWI offense are subject to a license revocation of one year. Most first offenders, however, accept a "continuance without a finding" and have their licenses suspended for a period of 30 days. In this case, licenses are surrendered to and maintained by probation officers for the full suspension period.

Under the new law, mandatory two-year and five-year license revocations will be imposed on persons convicted of second and subsequent offenses, respectively. Restricted driving privileges will be available to these individuals if they can prove financial hardship and show evidence of sobriety and successful completion of an alcohol treatment program. Second offenders may petition the Registry for a restricted license after one year of the original revocation has elapsed. Third and subsequent offenders cannot petition the Registry until two years of the five-year sentence have been served. Once the full term of the license revocation has elapsed, individuals can apply for new driver's licenses by completing the license application and retaking all driving examinations.

#### Confinement

Persons convicted of a first DWI charge are subject to a term of up to two years in the county jail. It is anticipated, however, that

many first offenders will be offered a "continuance without finding" and will accept the conditions of probation, which do not include a minimum jail penalty. It is unknown what jail sentence (if any) will be imposed on persons actually convicted of the first offense.

Second offenders face a term of seven days to two years in jail, with the minimum sentence "mandatory." Judges will retain discretion to substitute 14 days confinement in a residential treatment facility, as appropriate, in lieu of the minimum seven days in jail.

A sentence of 60 days to two years in jail can be imposed on persons convicted of a third or subsequent DWI offense. The minimum 60-day sentence is a "mandatory" penalty.

Arrangements have been made with various hospitals and other treatment facilities to confine DWI offenders who are sentenced to jail terms. For those serving longer than minimum sentences, work-release programs will be available on a case-by-case basis. The legislative intent is to confine DWI offenders together in a minimum security facility where their alcohol problems can be addressed most appropriately, rather than incarcerating them in more traditional correctional facilities. Respondents indicated that there are a number of alternative facilities available that can accommodate drunk driving offenders.

#### IV. RESULTS

##### Reactions

Due to the recency of the new legislation and the media attention it has generated, most components of the judicial system are voicing support for the program. Respondents indicated, however, that they cannot be certain just how consistently the sanctions will eventually be imposed. The use of plea bargaining, for example, has always been

available but may be used more frequently now that more severe sanctions can be imposed. The program has the full support of the Chief Justice of the District Court Department, which should have a positive effect throughout the court system.

The court dockets are expected to become more crowded, as more requests for jury trials are expected. Traditionally, defendants have received more favorable outcomes with jury trials. It was noted, however, that court-watching activity has begun in various communities and may offset this phenomenon.

The Registry of Motor Vehicles does not anticipate any problems in processing the increased numbers of license actions expected. Respondents indicated that the loss of license is potentially the most effective sanction that can be imposed on DWI offenders.

The general community has been extremely supportive of tougher DWI legislation and the subsequent enforcement of these laws. Public outcry against DWI offenders was a major catalyst in the development of the current statutes, and local support for the tougher program appears to be very strong.

#### Effectiveness

The State Senate Committee on Post Audit and Oversight is charged with monitoring the new legislation and determining how effective the program will be in curtailing drunk driving throughout the State. The use of selective enforcement patrols and highly visible enforcement policies has been in operation for some time. Preliminary observations have indicated that there has been an increase in DWI arrests and increased public perception of the risk of being apprehended. Extensive use of the media has been cited as a crucial component in the ultimate success of this program.

#### Costs

The cost of the Driver Alcohol Education Program (DAEP) is funded through the \$400 fee paid by individual offenders when they enter the program. Approximately \$200 of this fee covers the program operating costs; the remaining \$200 is returned to a general State account established to fund DWI law enforcement activities and other alcohol treatment/rehabilitation programs. Fine monies collected are funneled back to local communities as general revenue. No additional monies were made available for implementing the new sanctioning program.

#### V. REPLICABILITY

The Governor's Task Force was the primary vehicle for analyzing the current DWI situation, determining the major problem areas, and recommending potential solutions to these problems. The State legislature relied heavily on the findings of this panel when drafting the current legislation. Task Force membership included State commissioners, police chiefs, health and rehabilitation professionals, prosecutors, educators, clergymen, former alcoholics, parents of alcohol-related accident victims, highway safety officials, and other professionals. It was felt that the broad-based nature of the task force--all major components of the system were represented--was responsible for the adoption of many of the proposed changes in the legislation.

STATE: MASSACHUSETTS

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$1,000		
Jail	Up to 2 years		
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$300 - \$1,000		
Jail	7 days - 2 years		
License Action:			
. Suspension			
. Revocation	2 years		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 - \$1,000		1/ Cannot petition for restricted license until 2 years have elapsed
Jail	60 days - 2 years		
License Action:			
. Suspension			
. Revocation	5 years 1/		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted September 1982.

MICHIGAN

I. BACKGROUND

During October 1982, the State of Michigan signed into law new drunk driving legislation that will become effective in April 1983. The laws were passed in the wake of growing concern throughout the State about the OUIL problem. The national press attention paid to the drunk driving issue generated local interest and grass-roots organizations (MADD) started to become very active. Court monitoring programs were established and a Governor's Task Force was charged with reviewing the situation statewide.

II. LEGISLATION

Michigan legislation identifies three types of alcohol-related driving offenses: Operating While Impaired (OWI), for persons who exhibit a BAC level of .07 percent to .09 percent, Operating While Under the Influence of Liquor (OUIL) for persons with a BAC of .10 percent or higher, and a .10 illegal per se law. Elements of the new legislation that are particularly significant to this study are:

- . Tougher sanctions for alcohol convictions
- . An illegal per se law was established
- . Restricted licenses are no longer available to persons convicted of a second OUIL offense or third OWI offense
- . Community service will be used as a sanction on a statewide basis
- . Authority to request a person take a preliminary breath test

The new legislation prescribes the following sanctions:

Operating While Impaired (OWI)

- 1st offense: Up to \$300 fine plus costs  
Up to 90 days jail  
90-day-1-year license suspension (restricted license available)  
Alcohol assessment  
Can also be subject to:  
Treatment program  
Community service (up to 12 days)
- 2nd offense: Up to \$1,000 fine plus costs and/or  
(within 7 years) Up to 1 year jail  
6-18 months license suspension (restricted license available after 60 days)  
Alcohol assessment  
Can also be subject to:  
Treatment program  
Community service up to 12 days)
- 3rd offense: Up to \$1,000 fine plus costs and/or  
(within 10 years) Up to 1 year jail  
License revocation (reviewable after 1 year)  
Alcohol assessment  
Can also be subject to:  
Treatment program  
Community service (up to 12 days)

Operating While Under the Influence of Liquor (OUIL)

- 1st offense: \$100-\$500 fine plus costs and/or  
Up to 90 days jail  
6 months-2 years license suspension (restricted license available)  
Alcohol assessment  
Can also be subject to:  
Treatment program  
Community service (up to 12 days)
- 2nd offense: Up to \$1,000 fine plus costs and/or  
(within 7 years) Up to 1 year jail  
License revocation (reviewable after 1 year)  
Alcohol assessment  
Can also be subject to:  
Treatment program  
Community service (up to 12 days)



3rd offense: (within 10 years)	Up to \$1,000 fine plus costs 1-5 years jail License revocation (reviewable after 1 year)
2nd revocation (within 7 years)	Revocation (reviewable after 5 years)

### III. OPERATIONS

Persons who are stopped for reasonable cause are administered a preliminary breath test. If they fail, they are taken to the nearest police station for a formal BAC determination (Breathalyzer). Persons with a BAC of .07 and higher may be arrested and charged with OUIL, OWI or .10.

#### License Actions

Upon a judicial conviction, the court abstract is forwarded to the Office of the Secretary of State for record update. The person's driving record is amended as ordered. The Secretary's office may take action under an alternative appropriate section as well.

Offenders have two opportunities to appeal any license action taken. They can request an informal administrative hearing through the Office of Hearings and Legislation, Department of State, or they can hire an attorney and petition the circuit court for a formal hearing.

Persons convicted of a first OWI offense are subject to a 90-day to 1-year suspension but are eligible to receive restricted driving privileges from the courts. Second offenders face a six to 18-month suspension but are eligible for a restricted license after 60 days has elapsed. Persons convicted of a first OUIL charge face a six month to two-year license suspension, although restricted privileges are available. Persons convicted of a second or subsequent OUIL offense or a third OWI are subject to license revocation, reviewable after one year at the offender's request. Under the new legislation, restricted licenses are not available for second OUIL or third OWI.

In order to have a license reinstated, offenders must pay a \$25 reinstatement fee. Suspended licenses are automatically returned at the end of the suspension period. Persons who have had their licenses revoked must formally reapply and retake all driver examinations. Persons who have been convicted of a second or subsequent OUIL are classified as habitual offenders and must "disprove the presumption of habitual violation" before a new license can be granted. That is, they must prove, to the satisfaction of the department, that they no longer have an alcohol problem.

#### Confinement

Although a jail sentence is allowed by statute, this sanction is not expected to be typically imposed on persons convicted of drunk driving. Respondents reported considerable overcrowded conditions throughout the State making it difficult to find room for drunk driving offenders.

#### Community Service

Community service will be available on a statewide basis as a sanction for persons convicted of alcohol-related offenses. Offenders will be subject to serve up to 12 days of service work. The community service sanction is implemented through the court system and offenders are monitored by State probation officers.

This sanction is expected to be operational at the local jurisdictional level and offenders are required to pay the State insurance costs in order to participate in the program.

### IV. RESULTS

#### Reactions

Respondents anticipate a considerable increase in administrative work load once the new legislation goes into effect. It is expected that the numbers of plea bargains to a lesser charge will increase, in an attempt

to keep the court dockets at a reasonable level. The courts expect the number of requests for jury trials to increase and the number of appeals is expected to double.

The legislation package is long and complex, and interpretation of some of the provisions may be subject to jurisdictional bias. Because of new reporting requirements, all court abstracts and forms need to be revised to make them compatible with existing computer systems.

The Department of State will expand their staff to handle the large number of administrative appeals anticipated in reaction to the increased number of license actions that are expected to be imposed.

#### Effectiveness

The statutes require that a new reporting system be initiated that will allow the program to be evaluated annually. The State police will compile the necessary data which will be supplied by the courts, the Department of State, treatment programs and local law enforcement agencies.

#### Costs

Specific cost data were not available.

### V. REPLICABILITY

Respondents indicated that adequate lead time is required from the time the new legislation is passed to the date the law goes into effect. This will allow for changes in existing procedures to be made and for training and education of all judicial, Department of State and law enforcement personnel involved. Before any changes are made to existing systems, the legislation must be carefully studied for proper implementation. This will allow the agencies involved to review their current procedures and to determine how they must be modified to implement the new system.

STATE: MICHIGAN

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$500 <sup>1/</sup>		1/ Fine and/or jail sanction imposed
Jail	Up to 90 days		
License Action:			
. Suspension	6 months - 2 years		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment		
Community Service	Up to 12 days		
<u>2nd Offense</u>			
Fine	Up to \$1,000 <sup>1/</sup>		1/ Fine and/or jail sanction imposed
Jail	Up to 1 year		
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment		
Community Service	Up to 12 days		
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000		
Jail	1 - 5 years		
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted October 1982.

## MINNESOTA

### I. BACKGROUND

Minnesota has been characterized by respondents as a very average State. They stated: "take one-fiftieth of the U.S., across virtually all variables, and you would have Minnesota." However, the State is unique in its method of acting against drunk drivers. Minnesota utilizes a bifurcated, or two-track, system. One track is the traditional criminal justice procedure whereby drivers are arrested, charged with a violation of a (drunken driving) statute, and, if convicted, penalized by a fine or jail sentence. The other track uses a law that provides for administrative revocation of the driver license when a test reveals a blood alcohol concentration of .10 percent or higher.

### II. LEGISLATION

Significant elements within the Minnesota legislation include:

- . Implied consent/administrative per se law prohibiting the operation of a motor vehicle while having a BAC of .10 percent or higher
- . Administrative license revocation procedure
- . Mandatory Alcohol Problem Assessment (APA) for all individuals convicted of drunk driving
- . Mandatory license revocation for all categories of DWI offenders

The following sanctions are prescribed by statute:

1st offense:

Up to \$500 fine and/or  
Up to 90 days jail  
30-day minimum mandatory administrative revocation  
(Community service authorized as condition of probation)

- 2nd offense: Up to \$1,000 fine and/or  
Up to 1 year jail  
90-day minimum mandatory administrative  
revocation  
(Community service authorized as condition  
of probation)
- 3rd offense: Up to \$1,000 fine and/or  
Up to 1 year jail  
1-year minimum mandatory administra-  
tive revocation

Typically, the following sanctions are imposed:

- 1st offense: \$350 fine  
30-day revocation (restricted license  
available)  
50 hours community service (in some  
counties)
- 2nd offense: \$500 fine  
90-day revocation (restricted license  
available)  
100 hours community service (in some  
counties)
- 3rd offense: Fine (amount varies)  
1-year revocation (restricted license  
available)

### III. OPERATIONS

The administrative revocation process begins with the filing of police reports with the Department of Public Safety disclosing that, upon apprehension, suspects either refused to take a chemical test or exhibited a BAC level of .10 percent or higher. Drivers are given a 7-day temporary driving permit at the time the police officer picks up the plastic license and are notified of the revocation. The Department of Public Safety automatically revokes the license for the prescribed period of time. This process may occur exclusive of, or in conjunction with, an arrest for DWI. If arrested, the offenders are arraigned and may then negotiate a plea with the prosecutor. Approximately 75 percent of all DWI cases are found guilty on the original charge. The ratio of plea bargained cases varies considerably from county to county.

### License Actions

Three types of license revocations are imposed on DWI offenders in Minnesota: (1) revocations resulting from DWI convictions, 30-day minimum; (2) revocations resulting from a BAC level of .10 percent or greater, 90-day minimum; and (3) revocations resulting from refusal to take a chemical test, six-month minimum. License revocation upon a second conviction (within five years) is for a period of time not less than 90 days and until rehabilitation efforts have been deemed successful by the court. For a third conviction (within five years), the revocation is for not less than one year, and until rehabilitation is assumed to be completed, as required by the Commissioner of the Department of Public Safety. Fourth or subsequent convictions carry revocations of not less than two years.

In any case in which a license has been revoked, the Commissioner of the Department of Public Safety may issue a limited license, the parameters of which are set individually for each offender. Limited licenses are fairly common, but data concerning their distribution were not available.

At any time during a period of revocation, persons may request in writing a review of the order of revocation by the Commissioner of Public Safety. The evidence upon which the order was based and any other material information are reviewed by the Commissioner, and a determination as to whether sufficient cause exists to sustain the revocation is made within 15 days of receiving the request. In addition to the administrative review, there is also the right to a judicial review. However, the temporary permit is not extended beyond the 7-day period pending either review.

Upon expiration of any period of revocation, under either track of the two-track system, the Commissioner of Public Safety notifies offenders of the terms under which full driving privileges may be restored. Generally, these conditions are: (1) successful completion of a driving test, (2) proof of compliance with the terms of any alcohol treatment or counseling previously prescribed, (3) payment of a \$30 fee, and (4) any additional requirements requested by the Commissioner.

Although offenders' vehicles are not impounded, provisions exist to impound the license plates. Plates are less costly to impound and store; and, without them, vehicles are theoretically immobilized. This sanction is rarely, if ever, implemented.

#### Confinement

Only those persons processed via the criminal justice track are subject to a jail term as a sanction for a DWI offense. The legislation provides for a fine or jail term. Typically, for first offenders, the fine is imposed with a stayed jail sentence in an effort to coerce the offender into a treatment program. Second and subsequent offenders typically serve some jail time, although more specific information was not available.

A "natural experiment" is currently being conducted in Hennepin County, Minnesota, regarding jail as a mandatory sanction. The judiciary in that jurisdiction decided to uniformly impose a two-day jail term for first offenders convicted of DWI. They will continue to do so through June 1982 and then evaluate the results. (In June 1982, the policy was continued in force with another review at the end of 1982).

#### Community Service

In 1975, a county court judge in Winona County began using community service as a sanction for misdemeanants. Currently, community service programs in Minnesota are in operation throughout the State but operate on a local jurisdictional basis. Currently, the program is funded through the Department of Court Services (the State's Department of Probation). Approximately 50 percent of all referrals are traffic offenders; more than one-half of the traffic offenders are DWIs.

The program is designed primarily for indigents; the community service sanction is imposed in lieu of a fine or cash restitution. The type of service assigned varies according to the offenders' skills and to the positions available. Community service sentences are served at offenders'

convenience; time limits for sentence completion vary to accommodate offenders' ordinary work schedules. First offenders are typically assigned 50 hours of work, second offenders 100 hours.

The community service agency is primarily responsible for monitoring client performance as well as for maintaining records of the amount of time served. Should offenders fail to complete the program, the judge usually offers a second chance at community service before sending them to jail. The program utilizes existing Court Service staff; no additional costs are incurred with program implementation.

#### IV. RESULTS

##### Reactions

Department of Public Safety officials believe a mandatory administrative revocation is more effective as a deterrent to DWI than a court-imposed sanction, which may be probated or lessened by judicial discretion. Additionally, DPS believes the administrative revocation process induces a plea of guilty. The guilty plea purges a person of eligibility for the revocation for refusing to take the chemical test. Revocation for refusal carries the most severe penalty of any revocation.

Police, prosecutors, and judges appear to be pleased with the progress under the Minnesota legislation. While the State represents national averages in virtually all vital statistics, the likelihood of DWI arrest is nearly seven times greater in Minnesota than it is nationally.

##### Effectiveness

Department of Public Safety studies have shown that Minnesota has the highest ratio in the country of penalties imposed on apprehended drunken drivers. Leading deterrence theorists consider this type of certainty in administration of sanctions as the key to establishing a deterrent effect.

Costs

Data were not available regarding operating costs of the program.

V. REPLICABILITY

In order to replicate Minnesota's administrative per se practices in other jurisdictions, DPS officials explain that variations in the system would be necessary depending on DPS/DMV structure and capability and enforcement practices. The adoption of administrative revocation procedures in other States is viable and has been done by West Virginia, Iowa and Oklahoma. Other States have the program under consideration.

A review of the number of revocations for alcohol-related offenses indicates the system is apprehending more drinking drivers each year. However, the increasing case load was beginning to be problematic, particularly in the Office of the Attorney General. Since the new, non-renewable 7-day temporary license replaced the earlier 30-day license, renewable during judicial review, the requests for judicial review have declined dramatically.

STATE: MINNESOTA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$500 and/or	\$350	<u>1/</u> Administratively imposed <u>2/</u> Restricted license available <u>3/</u> Operates on a county-wide basis; based on indigency
Jail	Up to 90 days		
License Action:			
. Suspension			
. Revocation	30 days <u>1/</u>	30 days <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service		50 hours <u>3/</u>	
<u>2nd Offense</u>			
Fine	Up to \$500 and/or	\$500	<u>1/</u> Administratively imposed <u>2/</u> Restricted license available <u>3/</u> Operates on a county-wide basis; based on indigency
Jail	Up to 1 year		
License Action:			
. Suspension			
. Revocation	90 days <u>1/</u>	90 days <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service		100 hours <u>3/</u>	
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000 and/or	Unspecified	<u>1/</u> Administratively imposed <u>2/</u> Restricted license available
Jail	Up to 1 year		
License Action:			
. Suspension			
. Revocation	1 year <u>1/</u>	1 year <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			



MISSISSIPPI

I. BACKGROUND

The current drunk driving legislation in Mississippi has been in effect since 1 July 1981. Since this time, there has been increased pressure to toughen the statutes and to deal more effectively with the growing DWI problem. The media have been focusing attention on the DWI issue during recent months, and a local MADD chapter is generating public support for proposed changes in the legislation. The State Medical Association and various local insurance companies have expressed concerns about the cost to the victims of drunk driving and have been instrumental in applying pressure to State legislators to tighten the DWI system. Recently, enforcement policies have been strengthened by supplying hand-held intoxilyzers to each patrol car. Officers now have a roadside alcohol screening device that can be used in making their arrest-release decision.

II. LEGISLATION

Significant aspects of the Mississippi DWI legislation include:

- . Administrative capacity to impose license actions by the Department of Highway Safety
- . Use of a diversionary alcohol education program

The sanctions that are mandated by the October 1981 legislation are as follows:

1st offense:                      \$200 fine  
   1-year license suspension\*  
   Attendance at Mississippi Alcohol Safety  
   Education Program (MASEP)  
   (\*No suspension if complete MASEP)

2nd offense: (within 2 years)	\$250 fine-\$1,000 fine 10 days-1-year jail 6-month license suspension
3rd offense: (within 4 years)	\$500-\$1,000 fine 30 days-1-year jail 2-year license suspension

Typically, the sanctions that are actually imposed are somewhat less severe than those stipulated by law:

1st offense:	\$200 fine plus costs Jail (rarely) 1-year license suspension* Attendance at MASEP (*No license suspension if attend MASEP)
2nd offense:	\$250 fine 10 days jail (suspended) 6-month license suspension (hardship license available)
3rd offense:	Operational data not yet available

DWI convictions received prior to the enactment of this legislation will be expunged from individuals' driving records. Persons arrested for drunk driving, therefore, will be charged with a first DWI offense, regardless of their previous DWI history. Due to the recency of this legislation, operational data for third and subsequent offenders were not yet available.

### III. OPERATIONS

After an arrest ticket is issued, the offenders are taken into custody, post bond, and appear for arraignment in a court of limited jurisdiction. Most individuals plead guilty and receive a fine. Offenders can request a trial or appeal to a higher court; however, fewer than 5 percent of DWI cases exercise this option.

When officers make arrests, they must check the previous driving record of the alleged offender and retain a hard copy of the computer printout. This information must be turned over to the judge at arraignment. An offender can only be tried on the basis of the arrest affidavit.

Plea bargaining is not allowed under Mississippi law. The State's Attorney General's office has ruled that, once a DWI is listed as such on the arrest affidavit, it cannot be changed. All DWI offenses are classified as misdemeanors, and a misdemeanor charge cannot be reduced to a lesser misdemeanor charge.

### License Actions

Once judicial conviction has been obtained, a conviction report, complete with offender driving history, is received by the Department of Highway Safety. The Department initiates license action, as appropriate, and a letter is sent to offenders requesting a meeting with a department official. If the MASEP school reports noncompliance, or if individuals are determined to be repeat offenders, licenses are surrendered at this meeting. In many cases, the conviction report is not generated or is never received by the Department of Highway Safety. There were approximately 18,000 DWI arrests reported through May 1982; however, only 6,000 conviction reports were received.

As Mississippi is a rural State, local politics sometimes come into play and attempts have been made to try an offender for a lesser DWI offense than warranted. Some repeat offenders have been tried for a first offense. To guard against this practice, the Department of Highway Safety now has the authority to override the court's decision and to impose administrative license action as dictated by statute.

Persons convicted of a first DWI offense are subject to a one-year license suspension; but, if the MASEP school is satisfactorily completed, the sanction is not imposed. Second offenders are subject to a six-month suspension and usually receive this sentence. Although hardship licenses are available, they are granted in only 1 percent of the cases. A two-year suspension is mandated for persons convicted of a third offense; however, operational data for these offenders are not yet available.

In order to have licenses reinstated, individuals must show proof of financial responsibility (SR22) and pay a \$25 fine to the Department of Highway Safety.

Although 25,000 suspensions for alcohol-related offenses were initiated during 1981, it is believed that most individuals are still operating their motor vehicles. The mandated penalty for driving while under license suspension is a fine of \$1,000 and a two-day jail sentence. The sentence typically imposed on persons apprehended and convicted of this charge is a fine of \$27 and a two-day suspended jail term.

#### Confinement

Incarceration is rarely imposed as a sanction for DWI offenses in the urban areas of the State. Most of the local jail facilities are severely overcrowded due to a backlog of inmates from the State penitentiary who are being housed in the county jails until new facilities can be constructed.

In the more rural counties, there is often more space available, and incarceration is sometimes imposed. First offenders spend the night waiting to post bond and repeat offenders can be sentenced to up to 10 days. Time is served consecutively as long as space permits; however, if space is required for another criminal offender, the individual can be released to make room. Once a DWI offender has been released, the jail sentence is considered to be complete.

#### IV. RESULTS

##### Reaction

Respondents anticipate that a number of revisions to the DWI statutes will be considered in the coming legislative session. Rather than attempting to develop a new set of laws, the focus will be on making the existing sanctions more enforceable, thereby creating a more effective program. Proposed changes will include: establishing an illegal per se law; changing the definition of a second offender from "within two years from the previous charge" to four years, and changing the definition of a third offense from "within four years from the previous charge" to read six years; doubling the fine and requiring a minimum 12-hour jail sentence for all second offenders;

expanding the present six-month license suspension for a second offense to one year; and, for third offenders, permanently cancelling all driving privileges.

Revisions will also be proposed to remove the use of hardship licenses, upgrade the MASEP educational materials, raise the drinking age from 18 to 21 years of age, and increase the penalty for driving while under a license suspension.

Enforcement personnel strongly advocate removing the DWI offender from the road and support more severe sanctioning policies. If penalties are not being imposed consistently, there is no incentive for making the arrest.

Judges in the lower courts prefer to retain judicial discretion and the flexibility of sanctioning DWI offenders on an individual basis. The County and Circuit Court judges, however, are more inclined to support mandated sanctions, as they are not as easily visible to their constituents.

The general population is becoming more educated regarding the problems associated with drinking and driving and appears to be in favor of toughening the State's DWI statutes. Groups such as private insurance companies and the State Medical Association have spoken out in favor of a more enforceable program.

##### Effectiveness

Formal evaluation or monitoring of this program has not been established. Preliminary observations, however, indicate that alcohol-related highway fatalities have been steadily increasing. It has been concluded that the State's DWI legislation, as currently enforced, is not effective in reducing drinking and driving behaviors.

A statewide computerized records system, available 24 hours a day to law enforcement personnel in each county throughout the State, contains

complete driving histories of all drivers licensed in the State. A DWI offense is never deleted from the system.

Costs

All fine money collected by the local courts goes into the general county treasury for that jurisdiction. Of the \$200 fine assessed first offenders, \$190 remains in the county fund and \$10 is returned to the individual court to cover local costs. All other assessments levied (\$20 driver education fee, \$5 general assessment, \$50 MASEP school) are turned over to the State treasury.

V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program.

STATE: MISSISSIPPI

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200	\$200	1/ Waived if attend alcohol education
Jail			
License Action:			
. Suspension	1 year 1/	1 year 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Education	Education	
Community Service			
<u>2nd Offense</u>			
Fine	\$250 - \$1,000	\$250	1/ Hardship license available
Jail	10 days - 1 year	Varies	
License Action:			
. Suspension	6 months	6 months 1/	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 - \$1,000	*	
Jail	30 days - 1 year	*	
License Action:			
. Suspension	2 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not available.

MISSOURI

I. BACKGROUND

During August 1982, the State of Missouri significantly revised its legislation governing driving while under the influence of alcohol (DUI). This action came about in response to the lobbying efforts of one State Senator who publicized the DUI issue and from the State chapter of Remove Intoxicated Drivers (RID). Local media kept the issue before the public and generated grass-roots support for more effective legislation. In the St. Louis area, the local newspapers are printing the names of persons arrested for drinking and driving offenses.

II. LEGISLATION

Elements of the new legislation that are significant to this study include:

- . An illegal per se law
- . Restriction of a "suspended imposition of sentence" for use with first offenders only
- . Establishment of two classifications of alcohol-related offenses:
  - DUI
  - Violation of the illegal per se law

The sanctions mandated by the new legislation are:

	<u>Per Se Law</u>	<u>DUI</u>
1st offense:	\$300 fine 15 days jail 6 points	\$500 fine 6 months jail 8 points
2nd offense:	\$300 fine 15 days jail 12 points (1 year sus- pension)	\$1,000 fine 1-year jail 12 points (1 year suspension)

The Department of Mental Health is establishing criteria for certifying alcohol education programs to be used with DUI offenders. The court may, as a condition of probation or with a suspension of any sentence, order first offenders to complete a traffic offender education or treatment program. These programs are funded by fees paid by offenders.

### III. OPERATIONS

Most municipalities have adopted the State law in their municipal codes, but there is wide variation in DUI arrest and adjudication procedures across local jurisdictions. Arresting officers can bring offenders to either the municipal court or to the State circuit court with jurisdiction for that particular county. Each municipality establishes its own procedures and determines where an offender will be eventually prosecuted. For example, in one major metropolitan area, first offenders are processed at the municipal level, while repeat offenders are taken to the county circuit court for arraignment.

#### License Actions

License actions are based on a point system in which accumulation of 12 points within any three-year period results in a one-year license suspension. License actions are initiated only after a judicial conviction has been obtained in a circuit court. Municipal judges or officials do not have the authority to revoke or suspend driving privileges.

Persons convicted of first DUI offenses are assessed 8 points on their driving record. Persons convicted of a first violation of "driving with a blood alcohol content (BAC) of .10 percent or more" are assessed 6 points. Twelve points (license suspension) are assessed for a second offense of either DUI or driving in violation of the per se law. Restricted licenses are not available.

Effective January 1984, the Director of Revenue will put into effect a system for staying the assessment of points. Persons who satisfactorily complete a driver improvement program approved by the Director of the Department of Public Safety within 60 days of the date of conviction will not be subject to a point assessment. This driver improvement course will meet or exceed the Standards of the National Safety Council's eight-hour "Defensive Driving Course." The completion of this driver improvement program will not be accepted in lieu of points more than once in any thirty-six month period.

#### Confinement

The new legislation calls for a 15-day jail sentence to be imposed on persons convicted of violating the illegal per se statute. Persons convicted of a first DUI offense face a 6-month jail sentence; second and subsequent offenders are subject to one year in jail. Persons convicted of DUI offenses under previous legislation rarely served any time in jail, and it is too early to tell whether or not the new statutes will be interpreted any differently. The severity of sanctions imposed probably will vary considerably throughout the State.

### IV. RESULTS

#### Reactions

Most components of the driver control system are supportive of the new legislation, although respondents do not feel that the new provisions will have a significant impact on Missouri's DUI problem. The Department of Public Safety has been sponsoring judicial workshops for local judges and prosecutors. These seminars educate the judiciary about the effects of alcohol on driving and provide a forum for discussing effective methods for implementing the new legislation. They also discuss potential modifications to the new legislation and alternative sanctions. A series of similar seminars has been conducted to educate State legislators about the alcohol and DUI problem and to discuss potential legislative changes.

Under the old legislation, 70 percent of the persons arrested for alcohol-related offenses were convicted of careless driving and given a suspended imposition of sentence (SIS). This practice placed the offender on probation for two years, and in most cases, sanctions were not imposed. The new statute allows the SIS procedure to be granted to first offenders only, and requires the SIS to be considered as a prior conviction for purposes of sentencing subsequent offenders. The per se law was enacted to increase the number of persons convicted of alcohol-related offenses. It is an easier offense to prosecute, and per se convictions carry lighter penalties than DUI.

#### Effectiveness

Due to the recency of the new legislation, overall impact of the statutes cannot be determined. However, the Department of Public Safety is committed to monitoring the new system and evaluating its general effectiveness.

Currently, each individual county maintains its own file system and no central file exists. In order to determine if an offender has been convicted in another county, records must be requested from each of the 114 counties throughout the State. In August 1983, a new system of maintaining offenders' records will go into effect that will centralize the record keeping process.

The new system will require a record of all final dispositions of alcohol and/or drug-related offenses to be forwarded to the Missouri State Highway Patrol for inclusion in the Missouri uniform law enforcement system records. This information will be available to all law enforcement officers, prosecuting or circuit attorneys and any judge of a municipal or State court upon request.

#### Costs

Specific cost data are not available at this time.

#### V. REPLICABILITY

Respondents were unable to provide information about particular elements of their sanction program that would be required to replicate the program in other States.



STATE: MISSOURI

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$500		1/ Accumulation of 12 points on the driving record results in a 1 year license suspension
Jail	6 months		
License Action:			
. Suspension	8 points 1/		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$500		1/ Accumulation of 12 points on the driving record results in a 1 year license suspension. Restricted license not available
Jail	1 year		
License Action:			
. Suspension	12 points 1/		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted August 1982.

MONTANA

I. BACKGROUND

During October 1981, Montana modified its drinking and driving legislation and initiated mandatory minimum sentences for persons convicted of DUI offenses. These laws coincided with the public's growing awareness of changing attitudes toward drinking and driving behaviors. Having the highest per capita beer consumption and the fourth highest consumption of alcohol in general in the nation, Montana's combination of small towns and great distances to drive provides a favorable condition for drinking and driving to occur. Recent programs such as Montanans Against Drunk Driving (MADD) and Report a Drunk Driver (RADD) and increased efforts by law enforcement agencies statewide have been successful in promoting public support for removing intoxicated drivers from the roads.

II. LEGISLATION

The penalties for persons convicted of DUI in Montana include a combination of fine, incarceration, license action, and alcohol education/treatment program. The current statutes, as written, include:

1st offense:	\$100-\$500 fine 24 hours jail* 6 months license suspension Montana Court School
2nd offense: (within 5 years)	\$300-\$500 fine 7-30 days jail (3 days mandatory)* 1-year license revocation Montana Court School

\* Any part of all of the jail sentence may be suspended if the judge finds that jail will pose a risk to the offender's physical or mental well being.

3rd offense:  
(within 5 years)

\$500-\$1,000 fine  
30 days-1 year jail (10 days mandatory)\*  
Up to 3 years license revocation as per  
Habitual Offender Law

Although these sentences are written as mandatory minimum sentences, multiple DUI offenders often receive a somewhat reduced penalty. The sanctions imposed on typical DUI offenders are:

1st offense:

\$250 fine  
24 hours jail  
6 months restricted license  
Montana Court School

2nd offense:

\$350 fine  
3 days jail  
1-year license revocation (restricted  
license after 3 months)  
Montana Court School

3rd offense:

\$350 fine  
10 days jail  
1-3 years license revocation (restricted  
license available)  
Montana Court School

### III. OPERATIONS

Montana employs a dual court system; first and second DUI offenses are referred to a lower local court, and third offenders are tried at the higher District Court level. The State's Attorney General is attempting to have third offenders referred back to the lower courts to help reduce the caseload of the District courts.

The Montana Court School is an umbrella organization that includes a variety of Education/Treatment Agencies. Individuals are interviewed by an alcohol counselor and appropriate programs are imposed. Attendance at the appropriate Education/Treatment Agency is then written into the original order.

A conviction for DUI can be brought about by three methods. One is for the offender to plead guilty, another is for the offender to be found guilty in the courts, and the third is if the offender posts a bond but does not show for the scheduled court appearance. Failure to show acts as a conviction under Montana State Law.

### License Actions

When an individual is arrested and arraigned on a drunk driving charge, certified driving records are sent to the court for inspection. These records are used to make a determination as to whether or not prior convictions for DUI have been noted. Driver Improvement Bureau records are maintained for a period of five years, at which time the offender's driving record is expunged. Upon conviction of the drunk driving charge, the DMV initiates the license action imposed by the courts.

Montana has a Habitual Traffic Offender Law that puts points on the driving record for all moving violations. Any combination of driving violations that accumulate a total of 30 points within a three-year period will result in a license suspension for up to three years. At the end of a three-year period, an offense is expunged from the record, as far as points are concerned. Ten points are assessed for each DUI conviction. It is therefore possible that persons with poor driving records may be classified as habitual traffic offenders a first or second DUI conviction. Restricted drivers licenses are not available to Habitual Traffic Offenders.

Once a license has been revoked and the term of revocation has expired, there are a number of steps required for reinstatement. Persons must first file for high-risk insurance and show proof of financial responsibility. Upon completion of the Montana Court School program, they must pay a modest reinstatement fee and reapply for a new license. If the individual wishes to request a restricted license, a letter must be sent to the Driver Improvement Bureau, stating the need for reinstatement of driving privileges. Appropriate restrictions are made on this request, usually for occupational or financial hardship. Although the Driver Improvement Bureau administratively performs the license action, the judge can still order a license to be reinstated or a restricted license to be issued. Persons apprehended driving while under a license suspension are subject to a six-month additional suspension of their driving privileges.

### Confinement

In practice, first offenders receive "some jail time," which usually is defined as the time spent in jail waiting to post bond or to dry out. Rarely is a full 24-hour period served. Second offenders serve a full 24- to 72-hour sentence. The sentence is typically served on weekends, at the convenience of the offender. According to the law, persons convicted of a third DUI receive a minimum 10-day sentence; in practice, however, most receive considerably less.

### Community Service

Community service programs are used by the lower courts for a variety of criminal actions but currently are not used for persons convicted of DUI offenses. A local court judge, however, indicated that if county insurance can be obtained, he may begin to experiment with this sanction for DUI offenders.

## IV. RESULTS

### Reactions

The use of mandatory incarceration does not appear to be creating a problem, as local jails are averaging only two offenders per day. If jail space is not available or the facility is in too poor condition to be used, offenders are transported to other counties to serve their time. Weekend confinement is available to minimize adverse effects on the offenders' employment. Consecutive weekends are often served when longer sentences are imposed.

Plea bargaining a DUI offense to reckless driving was used considerably during the past year, but the State's Attorney General has been discouraging its use and it is beginning to be used less frequently. It is increasingly difficult to "beat the system" because a BAC of .10 percent or higher is

adequate evidence to prove intoxication and a BAC level of .05 to .10 percent can be used in conjunction with other evidence. The Sheriff's Office has begun to use videotape cameras during booking procedures to document an individual's behavior. These videos are now accepted as evidence of intoxicated behavior by the courts.

Many judges are complying with the basic program, as the use of mandatory incarceration is prescribed by most local court judges. They welcome sentence guidelines but would prefer to maintain their judicial discretion. Lower court judges have to attend a school wherein DUI is one of the subjects taught, or they can be removed from office. There is an attempt to get sentencing on DUI so that it is consistently imposed throughout the State.

The community has been tolerant of drinking and driving behaviors in the past but is beginning to become more educated about the issue. There is a very active MADD group that has increased public awareness and has used the media to focus public attention on the problem. This campaign includes billboards along the highways, press releases, and the regular broadcasting of local arrest rates. Attempts are being made to increase the public's perception that DUI laws are being strictly enforced. The State has encouraged local citizens to report suspected DUI behaviors (RADD), which has proven very successful.

### Effectiveness

Less than one year has passed since the new legislation went into effect, and formal impact evaluations have not been conducted. However, preliminary statistics indicate that there has been a substantial reduction in alcohol-related highway fatalities since the new legislation went into effect. There has not been any significant increase in the DUI arrest or conviction rate, though statistics compiled by the Driver Impairment Bureau indicate a 16 percent increase in suspensions and revocations for the period from December 1981 through March 1982, when compared to the preceding 12-month period.

Costs

Specific cost data were not available; however, it was reported that communities are having no problems meeting their local obligations.

V. REPLICABILITY

A major factor in developing this program was the local grass-roots support of the general community and the intense lobbying efforts of the MADD chapter. The outside pressures were significant in persuading the State legislature to strengthen the sanctioning laws. Efforts are continuing in hopes of adding further mandatory legislation for first-time offenders.

STATE: MONTANA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$500	\$250	1/ Usually time waiting for bond; rarely full 24 hours
Jail	24 hours	24 hours <sup>1/</sup>	
License Action:			
. Suspension	6 months		
. Revocation			
. Restricted		6 months	
Impoundment			
Educ/Trmt Program	Montana Ct. School	Montana Ct. School	
Community Service			
<u>2nd Offense</u>			
Fine	\$350 - \$500	\$350	1/ 3 days mandatory 2/ If attends treatment, restricted license available after 90 days to finish term of revocation
Jail	7- 30 days <sup>1/</sup>	24- 72 hours	
License Action:			
. Suspension			
. Revocation	1 year	1 year <sup>2/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program	Montana Ct. School	Montana Ct. School	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 - \$1,000	\$350	1/ 10 days mandatory
Jail	30 days - 1 year <sup>1/</sup>	10 days	
License Action:			
. Suspension			
. Revocation	1 year - 3 years	1 year	
. Restricted			
Impoundment			
Educ/Trmt Program	Montana Ct. School	Montana Ct. School	
Community Service			

NEBRASKA

I. BACKGROUND

During July 1982, the State of Nebraska enacted new drunk driving legislation. This action came about through State efforts to publicize the DWI issue and through local efforts to involve the community in combatting the problem. For example, Nebraska initiated one of the first programs to have local citizens report suspected DWI behaviors to police authorities and has implemented a vigorous public information and education campaign. The recent national focus on the DWI problem has generated increased support for the State efforts and has influenced State legislators to develop a more strict DWI program.

II. LEGISLATION

Significant elements of the new legislation include the following:

- . All DWI offenses are now misdemeanor offenses
- . Minimum sentences shall be imposed, even if probation is granted
- . The issuance of restricted driving licenses has been discontinued as a result of DWI convictions only

The sanctions prescribed by the new DWI legislation are:

1st offense:	\$200 fine 7 days jail 6-month license revocation If probation granted 60-day license suspension imposed .
2nd offense:	\$500 fine 30 days jail 1-year license revocation If probation granted 6-month license suspension 48 hours jail imposed

3rd offense:           \$500 fine  
                          3-6 months in jail  
                          Permanent revocation  
If probation granted  
                          1-year license suspension  
                          7 days county or city jail imposed

### III. OPERATIONS

Persons arrested for DWI behavior are arraigned in the Jurisdiction County Court, except in Omaha and Lincoln, which, because of their size, are served by municipal courts. According to the new legislation, judges must review the offenders' driving records and determine whether Pre-Sentence Investigation (PSI) is required. The County Probation Department conducts the investigations and reports the results to the court.

Prior to the new law, a pretrial treatment/rehabilitation referral was made, which, if successfully completed, resulted in dismissal of the charge. All records were expunged at this time. Under current statutes, a post-adjudication referral is made and the conviction remains on the driving record.

It was noted that all sanctions stipulated in the new legislation can be suspended and are not to be considered mandatory. The offender can be placed on probation and attend some type of alcohol education/treatment program. If probation is granted, however, then a minimum sentence shall be imposed. This was the general intent of the legislative action.

#### License Actions

Once convictions have been obtained in the courts, the Department of Motor Vehicles is informed of this action and so modifies the offenders' driving records. The DMV then notifies individuals of the license action and requests the voluntary return of the driver's license. If offenders do not comply, a law enforcement officer is dispatched to retrieve the license physically. If officers fail to get the license, they can be charged with a misdemeanor offense, although this practice has not been enforced.

Under the new legislation, first offenders are subject to a six-month revocation, which can be reduced to 60 days if probation is granted. Second offenders receive a one-year revocation that is reduced to six months if they are placed on probation. Third and subsequent offenders are subject to a permanent revocation of their driving privileges, although, if they are granted probation, their driver's licenses can be reinstated after a one-year period. Restricted licenses are no longer available under the new legislation as it was generally agreed that these privileges had been widely abused and did not constitute the license sanction intended.

In order to have suspended licenses reinstated, offenders must wait the full term of license action, show proof of financial responsibility (SR22), pay a fee of \$100, and retake the driver's license exams.

The penalty for driving while under license revocation for a DWI offense has been increased under the new statutes. Persons convicted for this offense can now be subject to 30 days in jail and a one-year license revocation for a first offense, and a six-month jail sentence plus a two-year license revocation for each subsequent offense. Persons operating a motor vehicle while their license has been permanently revoked are guilty of a felony offense and subject to a fine of \$10,000 and a five-year sentence to the State penitentiary.

#### Confinement

Periods of confinement for second and subsequent DWI offenders have been substantially reduced. The new law stipulates that first offenders are subject to a seven-day jail sentence. Although this sentence was available under previous statutes, it was rarely imposed.

Second offenders were formerly subject to a three-month jail sentence but usually served approximately only 15 days. Work permits and weekend confinement were generally available, although the terms of the actual sentence served varied considerably through the State. Second offenders are now subject to a 30-day jail term under the new legislation. If probation is granted, a 48-hour sentence should be imposed.



Persons arrested for their third DWI offense formerly were charged with a felony offense and faced a possible five-year term in the State penitentiary. Under the current statutes, a third offense has been reduced to a misdemeanor charge and individuals are subject to a three- to six-month sentence in the county jail facilities. This sentence is further reduced to a seven-day term if probation is granted. It is still too early to tell how this sanction will be actually operationalized at the local jurisdictional levels throughout the State.

#### IV. RESULTS

##### Reactions

Judges are aware of the public's attitude and would like to see appropriate sanctions imposed. They realize, however, that court calendars are currently significantly overcrowded and wonder how they will be able to handle the anticipated increased work load. Not allowing plea bargaining will also increase judicial activity. In the past, the DWI charge was often reduced to reckless or negligent driving violations, especially if the case was considered to be weak.

Some judges are upset at having some judicial discretion removed. Although they are appointed to the bench, they are subject to recall every four years by the electorate in their county and should reflect more closely the prevailing attitudes of their constituency.

Prosecutors anticipate many more requests for jury trials and general overcrowding of the court dockets. Although in the past, jury trials usually have resulted in a DWI conviction, there is always the opportunity to beat the charge. For example, if enough time has passed and the arresting officer is not available, then the charge is usually dismissed.

Members of the enforcement community appear to be in favor of the legislative changes. Since the increase in media publicity, the numbers of DWI arrests have been increasing steadily. Enforcement agencies have been receiving positive support from the local community and numerous citizen reports of suspected DWI behavior.

##### Effectiveness

From January through September 1982, there were 50 alcohol-related accident fatalities, as compared to a total of 118 accident fatalities for the same monthly period during 1981. This decline was attributed to a heightened publicity campaign that went into effect during this time. It will be difficult to determine whether the new sanctions per se will have any deterrent effect on drunk driving behaviors, as the State plans to maintain the vigorous advertising campaigns. Implementation of the new sanction program, along with the media attention it will generate, is expected to continue the downward trend of alcohol-related fatal accidents.

##### Costs

It was reported that offenders must pay for any alcohol treatment or rehabilitation program to which they are assigned. All fine money that is collected by the court is distributed to local county school districts. Operating budgets of the court system are financed by the State, except for the municipal courts in Lincoln and Omaha.

#### V. REPLICABILITY

The statewide court system and the probation department are both administered by the State of Nebraska (except for Lincoln and Omaha, which are responsible for their own probation personnel). There is one central administrative body to coordinate these efforts, which allows for more consistency at all levels of program operation. The State has both supported and conducted training programs for persons in all components of the criminal justice system: more than 70 percent of all judges have received training in alcohol education and the DWI problem, and training seminars have also been conducted for prosecutors, probation staff, and law enforcement personnel.

The Office Highway Safety feels that the key to effecting general deterrence is to keep the problem in the public's eye. Whenever the media begin to ignore the issue, a new program will be initiated to generate more media attention. The number of DWI arrests has increased by approximately 2,500 over last year.

STATE: NEBRASKA

Sanctions	Prescribed by Statutes	Typically * Imposed	Comments
<u>1st Offense</u>			
Fine	\$200		1/ If probation granted, 60-day suspension imposed
Jail	7 days		
License Action:			
. Suspension			
. Revocation	6 months 1/		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$500		1/ If probation granted, 48 hours jail and 6 months suspension imposed
Jail	30 days 1/		
License Action:			
. Suspension			
. Revocation	1 year 1/		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500		1/ If probation granted, 7 days jail and 1 year suspension imposed
Jail	3 - 6 months 1/		
License Action:			
. Suspension			
. Revocation	Permanent 1/		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted July 1982.

NEVADA

I. BACKGROUND

Responding to the national trend to deal with the problems of drunk driving, the State of Nevada, in July 1981, enacted tougher drunk driving legislation. These laws removed most of the discretionary power of the courts by imposing mandatory minimum sentences for DUI offenders. A local grass-roots campaign, primarily the result of a one-woman effort, was successful in lobbying the State legislature to stipulate the use of mandatory minimum sentences.

II. LEGISLATION

Three elements of the new legislation are particularly significant:

- . A prosecuting attorney may not dismiss a charge of DUI in exchange for a guilty plea to a lesser charge unless it is obvious that the DUI charge is not supported by probable cause or cannot be proved at the time of trial
- . Persons convicted of a second or third offense within five years may elect to attend an alcohol treatment program for a period of not less than one year in lieu of more punitive sanctions
- . Minimum sentences that technically cannot be suspended or avoided through probation are as follows:

1st offense:           \$100-\$1,000 fine (mandatory)  
                          0-6 months jail  
                          30-day-1 year license suspension

2nd offense:           \$500-\$1,000 fine (mandatory)  
                          10 days-6 months jail (10 days mandatory)  
                          6 months-1 year license suspension (mandatory)

3rd offense:           \$2,000 - \$5,000 fine (mandatory)  
                          1 year - 6 years in State penitentiary  
                          (mandatory)--may be reduced to 30  
                          days if rehabilitation is elected)

Although the law states that the minimum sentences imposed are not to be suspended or avoided through probation, offenders are typically subject to less severe sanctions than originally proposed. In practice, typical DUI offenders receive:

1st offense:           \$400-\$700 fine  
                          DUI Alcohol Education School

2nd offense:           \$400-\$700 fine  
                          10-20 days in jail  
                          1 year license suspension  
                          DUI Alcohol Education School

3rd offense:           Approximately \$2,000 fine  
                          Some are going to the State penitentiary for  
                          a period of time; however, most elect to  
                          attend a formal treatment program for 1 year

III. OPERATIONS

Once offenders have been cited for DUI by a city policeman, county sheriff, or State patrolman, they must appear before a local county judge for arraignment. At this time, defendants can either plead guilty and appear before a local magistrate for sentencing, or plead not guilty and demand a jury trial.

License Actions

Upon a judicial conviction, the courts will recommend to the DMV the license action to be taken. The Driver's License Division initiates the action, amends the driving record and formally notifies the offender of the action taken. The courts "may" impose a suspension of driving privileges for up to a one-year period to persons convicted of a first offense. However, respondents indicated that this sanction is typically not employed.

A mandatory six-month to one-year suspension is required to be imposed on repeat offenders. These offenders generally receive the one-year suspension. Offenders can apply to the Driver's License Division for restricted driving privileges, however, these permits are not typically granted.

To have a suspended license reinstated, offenders must file proof of financial responsibility (SR22), retake all license examinations and pay a \$15 reinstatement fee.

#### Confinement

A second DUI conviction within three years typically results in a 10- to 20-day jail sentence imposed. This time is usually served at the convenience of both the courts and offenders. Weekend confinement on consecutive weekends is generally served as long as jail space is available.

### IV. RESULTS

#### Reactions

Many local courts are still not certain how to enforce the new laws. The use of mandatory confinement has caused severe overcrowding in some local jails and has increased the work load significantly. The Court Administrator's Office reports a dramatic increase in the number of jury trials requested. This is creating a burden, especially on the smaller jurisdictional courts. Many courts are initiating night court and working weekends in order to handle the increased case load. As new monies were not made available, some courts reduced the size of their juries and attempted to expedite court trials. These procedures vary greatly from jurisdiction to jurisdiction.

Although some plea bargaining has continued, the new provision in the law states that, only in the absence of probable cause or valid proof sufficient to obtain a DUI conviction, may the prosecuting attorney plea bargain.

The State Bar Association is reportedly upset about the use of minimum sentences. Prosecutors argue the constitutionality of minimum sentences, and defense attorneys argue the removal of discretionary powers. The legality of the issue is currently on appeal and will be decided by the State Supreme Court. Judges initially were concerned about mandatory sanctioning requirements but now find them less burdensome.

Local police report that they are not going out of their way to arrest more DUI offenders. They also report that they feel better about making a DUI arrest, knowing that some type of sanction will be imposed. The local community appears to be supportive of the new laws and there is no formal opposition taking place. There also appears to be grass-roots support for tougher DUI legislation.

#### Effectiveness

The Court Administrator's Office reports that alcohol-related accidents are down and that DUI arrests have been increasing. Due to poor record-keeping and reporting systems, however, specific numbers are not readily available. General deterrent effect has been reported by some local counties, but formal outcome studies or evaluations have not been conducted.

The courts are reporting, via the police departments, that there is an increased in "hit and run" incidents. While it cannot be absolutely attributed to the increase in DUI penalties, there is a feeling that drunk drivers are involved in these incidents.

#### Costs

Specific cost information was not available.

### V. REPLICABILITY

Training court personnel and educating the public by personalizing the DUI issue are major factors for a successful sanctions program. The Court Administrator's Office held two seminars for the lower courts to explain the new DUI laws and their potential ramifications. Prosecutors, defense attorneys, DUI officials, and local police officers were involved in order to give a better idea how the system is integrated at all levels.

STATE: NEVADA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$1,000	\$400 - \$700	
Jail	Up to 6 months		
License Action:			
. Suspension	30 days - 1 year		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI School	
Community Service			
<u>2nd Offense</u>			
Fine	\$100 - \$1,000	\$400 - \$700	1/ Weekend confinement; consecutive weekends available
Jail	10 days - 6 months	10 - 20 days 1/	
License Action:			
. Suspension	6 months - 1 year	1 year	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		DWI School	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$2,000 - \$5,000	\$2,000 1/	1/ Can be as high as \$2,000; often less 2/ Most attend treatment program in lieu of confinement; the statute states that the minimum penitentiary sentence can be reduced to 30 days if this option is taken
Jail	1-6 yrs. State Pen.	Varies	
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		1 year treatment 2/	
Community Service			

## NEW HAMPSHIRE

### I. BACKGROUND

Respondents indicated overcrowding of court dockets (specifically with respect to DWI cases) as part of the momentum which encouraged recent legislative changes. They attributed some of the increased DWI activity to the combination of the influx of out-of-State tourists (to northern New Hampshire's White Mountains) and State-owned and operated liquor stores, which are located near borders and along State highways. The intention of the legislation was to reduce the case load of the court by eliminating jail as a sanction for first offenders. Legislators had hoped to maintain levels of tourism as well as profits realized from liquor sales without inducing a perception by the public of lenient State policies toward DWI.

### II. LEGISLATION

Recently, the State of New Hampshire enacted revisions to their DWI legislation. Significant elements in the new legislation include:

- Reduction of a first DWI offense from a misdemeanor to a traffic violation
- Minors with a BAC level of .05 percent or greater are subject to a license action
- Mandatory license actions for first and second offenders

Sanctions required for DWI offenders are as follows:

1st offense:                   Up to \$1,000 fine  
                                  60 days to 2 years license revocation  
                                  (minimum is mandatory)  
                                  Alcohol information program

2nd offense:                   Up to \$1,000 fine  
                                  7 days jail  
                                  3-year license revocation  
                                  Alcohol information program

3rd offense:                   Indefinite revocation (3-year  
                                  mandatory minimum)

Sanctions typically imposed on DWI offenders are as follows:

1st offense:                   Fine (wide variation)  
                                  60-day license revocation  
                                  Alcohol information program

2nd offense:                   Fine (wide variation)  
                                  3-year license revocation  
                                  Alcohol information program

### III. OPERATIONS

The mandatory nature of the new legislation severely limits judicial discretion. While statistics are unavailable, respondents indicate that the use of plea bargaining is, and will continue to be, significant. A plea bargain to "recklessly operating a motor vehicle," which carries no mandatory license action, is most common. In New Hampshire, this process necessitates the dismissal of the DWI charge and the drawing of a complaint of "reckless." The legislative change that reduced a first DWI offense from a misdemeanor to a violation was perceived by the public as labeling the offense "less serious." The only actual change made was the elimination of a seldom, if ever, used jail provision.

#### License Actions

Currently, court-appointed counsel is not needed for first offenders since incarceration is not possible; first offenders are subject to a mandatory 60-day license revocation, and second offenders a mandatory three-year revocation. There are no provisions in the law for restricted/conditional licenses. The length of any licensing action is determined by the court, which notifies the DMV through an "abstract" (a copy of the complaint). Vehicle impoundment is not used. In the case of the multiple offenders, administrative action may be taken by the DMV to require proof of alcohol consumption control and medical evaluations and to extend the revocation period.

Because statutory provisions do not exist for restricted/conditional licenses, reinstatement is not possible until the period of suspension/revocation has elapsed completely. In order to have driving privileges reinstated, offenders must (1) document proof of insurance (via State Form SR-22), (2) file a new license application, and (3) pay a \$20 fee.

#### Confinement

The legislative provision has eliminated confinement as a possible sanction for first offenders. Confinement is still available as a sanction for second offenders; however, it is used very infrequently. When imposed, the sentence is generally seven days or fewer and is served in a county jail.

#### IV. RESULTS

##### Reactions

In general, members of the criminal justice system, the DMV, and the community at large favor tougher DWI laws. Our respondents, however, pointed out an inherent inconsistency in New Hampshire. The State encourages the consumption of alcoholic beverages through its State-owned and operated liquor stores. Prices are low, and stores are strategically placed to be convenient to drivers along major State highways as well as near the State border so as to attract out-of-State customers. The State also wants to "get tough" with DWI offenders who may be avid customers of the State-run liquor stores.

The impetus for recent legislative changes was to reduce the court's case load and eliminate jail as a possible sanction for first DWI offenders. Data were not available to determine whether any effect on the case load has been realized. Court officials have let it be known that, in general, tougher DWI laws are desired by criminal justice personnel throughout the State. DMV officials believe that the current sanctions are as effective as they can be, but they too favor more stringent sanctions. The general public is dissatisfied with current DWI legislation because they perceive that making the first DWI offense a traffic violation rather than a misdemeanor makes the offense seem less serious. Although there are currently no grassroots campaigns to rally around, public sentiment clearly favors tougher laws.

##### Effectiveness

Arrests for DWI were up almost 11 percent; however, it is unclear what caused this increase. Additionally, many DWI arrests are plea bargained down and, as a result, the DWI charge is nolle prosequi, which makes recidivism analysis more difficult. To date, formal evaluations of the system have not been performed.

##### Costs

Data regarding operating costs of the system were unavailable.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.

STATE: NEW HAMPSHIRE

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000	Wide Variation	
Jail			
License Action:			
. Suspension			
. Revocation	60 days to 2 years	60 days	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol Inform. Prog.	Alcohol Inform. Prog.	
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000	Varies	
Jail	7 days	Rarely	
License Action:			
. Suspension			
. Revocation	3 years	3 years	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol Inform. Prog.	Alcohol Inform. Prog.	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation	Indefinite <sup>1/</sup>		<sup>1/</sup> 3-year mandatory minimum
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			



NEW JERSEY

I. BACKGROUND

Effective January 12, 1982, the State Legislature amended its DWI legislation. Two grass-roots organizations were influential in the drafting of the new legislation: MADD and RID. Each group was highly visible and received considerable media attention. This new legislation left intact most revisions of the drinking driving statute recommended by the Motor Vehicle Study Commission of 1975, which represented police, judiciary, prosecutors, and defense attorneys, DMV, and the community at large. The Commission based its recommendations relative to drinking/driving on the results of the Alcohol Countermeasures Project, a four-county pilot which began operating in 1972.

II. LEGISLATION

The following are significant elements of New Jersey's legislation since 1977.

- Mandatory participation by all DWI offenders in an alcohol education/rehabilitation program
- Mandatory fines and license actions for all DWI offenders
- A community service program is being implemented on a statewide basis

The following mandatory sanctions are prescribed by the new legislation:

1st offense:           \$250-\$400 fine  
                          6 months to one year license suspension  
                          30 days community service  
                          Alcohol countermeasures program

2nd offense:           \$500-\$1,000 fine  
                          90 days jail or  
                          30 days community service  
                          2-year license revocation  
                          Alcohol countermeasures program

3rd offense:           \$1,000 fine  
                          180 days jail  
                          10-year license revocation  
                          Alcohol countermeasures program

Sanctions typically imposed are as follows:

1st offense:           \$250 fine  
                          6-month license suspension  
                          30 days community service  
                          Alcohol countermeasures program

2nd offense:           \$500 fine  
                          2-year license revocation  
                          30 days community service  
                          Alcohol countermeasures program

3rd offense:           \$1,000 fine  
                          90 days jail (suspended in exchange for  
                                  90 days community service)  
                          10-year license revocation  
                          Alcohol countermeasures program

III. OPERATIONS

Any person convicted of an alcohol-related traffic offense must participate in the New Jersey Division of Motor Vehicles, Bureau of Alcohol Countermeasures (BAC) program. This program has three components: an alcohol problems screening clinic; an alcohol safety and driving school (Alcohol Safety Institute); and, for persons with severe alcohol problems, Alcoholics Anonymous or formal treatment. Individuals convicted of an alcohol-related traffic offense are screened for alcohol problems and then referred to the appropriate education or treatment mode.

Referrals to school or "treatment" from the screening clinic are made on the basis of driving record, blood alcohol level at time of arrest, a scored questionnaire, and an interview, if necessary, with a BAC counselor. The questionnaire was developed at the Rutgers Center for Alcohol Study and contains 106 items designed to assess the drinking behavior of the respondent. An individual referred to "treatment" may elect Alcoholics Anonymous as a form of rehabilitation.

AA attendance is certified by cards distributed by cooperating AA groups. Treatment in a structured inpatient or outpatient program is mandated for the length of time prescribed by a treating agency. BAC monitors AA or treatment attendance for periods of up to one year.

The Alcohol Safety Institute (ASI) program includes six hours of intensive education on: (1) how alcohol affects the body and behavior; (2) how alcohol affects driving ability; (3) presumptive blood alcohol levels, New Jersey drinking-driving law, and the breathalyzer; and (4) problem drinking and alcoholism. Students in the ASI are presumed to be capable of separating their drinking and driving when motivated. Drivers who fail to participate in or to complete a prescribed education, treatment, or rehabilitation mode lose their licenses until they do so.

#### License Actions

Because the new law has been recently implemented, data regarding what sanctions are actually operational are limited. To this point, it appears that license actions typically imposed are adhered to.

License actions are initiated by the court; the license is physically taken from the offender at the time of conviction and DMV is notified of the conviction and suspension/revocation. A six-month suspension, two-year revocation, and 10-year revocation are prescribed as mandatory sanctions by statute. The statute does not stipulate that restricted or conditional licenses can be issued. Restoration is automatic for first offenders, after their suspension has elapsed and all appropriate fees have been made. Second and subsequent offenders must apply to the Director of DMV.

#### Confinement

Although jail is a possible sanction for second and subsequent DWI offenders, it is too early to tell how the sanction will be used.

#### Community Service

A statewide community service sanction is currently being implemented to comply with the new legislation. However, although offenders are being referred to community service, programs at the jurisdictional level are still being developed. More specific operational data regarding this sanction were not yet available.

### IV. RESULTS

#### Reaction

The legislation has not been operational for a sufficient period of time to warrant detailed opinions/reactions from participants in the system. However, respondents did express a concern that police may interpret the mandatory sanctions as too severe--especially for first offenders--and, consequently, may make fewer DWI arrests. DMV officials have given a conditional positive assessment of the new legislation pending further study, and community-based groups seem satisfied as well.

#### Effectiveness

Since the inception of the alcohol education/rehabilitation program (which preceded passage of the new law), recidivism rates for those completing the program have been shown to be consistently lower than those who have not participated in or completed the program. Since the inception of the new legislation, the recidivism rate for those completing the program is approximately 7 percent, whereas the rate for others has been approximately 15 percent.

#### Costs

Fees and fines recovered from offenders essentially cover the costs of the program. Offenders are required to pay for the treatment program in which they participate. The program has a very small

professional staff of four to five persons statewide. Additionally, because the drunk driving law has been moved to the motor vehicle code, the State avoids the expenses associated with jury trials.

V. REPLICABILITY

DMV officials question the reality of a national model. They do believe that the New Jersey system would be effective and replicable in small to medium size States.

STATE: NEW JERSEY

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$250 - \$400	\$250	1/ Community service programs not yet operational on statewide basis
Jail			
License Action:			
. Suspension	6 months	6 months	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Bureau of Alcohol Countermeasures Prog.	Alcohol treatment	
Community Service	30 days 1/	30 days 1/	
<u>2nd Offense</u>			
Fine	\$500 - \$1,000	\$500	1/ Jail or community service sanction imposed. 2/ Community service programs not yet operational on statewide basis
Jail	90 days 1/		
License Action:			
. Suspension			
. Revocation	2 years	2 years	
. Restricted			
Impoundment			
Educ/Trmt Program	Bureau of Alcohol Countermeasures Prog.	Alcohol treatment	
Community Service	30 days 1/	30 days 2/	
<u>Subsequent Offenses</u>			
Fine	\$1,000	\$1,000	1/ Legislation too new to determine typical sanction for a 3rd offender 2/ Community service may be imposed in lieu of jail sentence
Jail	180 days	90 days	
License Action:			
. Suspension			
. Revocation	10 years	10 years 1/	
. Restricted			
Impoundment			
Educ/Trmt Program	Bureau of Alcohol Countermeasures Prog.	Alcohol treatment	
Community Service		90 days 2/	

NEW MEXICO

I. BACKGROUND

The laws governing the sanctions imposed on persons convicted of DWI offenses in New Mexico have been in effect since 1980. Respondents stated that mounting pressures to deal more effectively with the DWI problem statewide may cause the next State legislative session to modify the current legislation significantly. Recent studies have indicated a higher rate of DWI activity and alcohol-related traffic fatalities over the past few years. The local press has begun to publicize the DWI issue, and grass-roots organizations are beginning to mobilize. For example, a local MADD chapter has started a court-watching campaign in various communities that has attracted statewide media attention.

II. LEGISLATION

The current legislation calls for the following DWI sanctions:

1st offense:	\$300 - \$500 fine 30-90 days in jail 1-year license revocation
2nd and subsequent offense:	Up to \$1,000 fine 90 days-1 year in jail (2 days mandatory) 1-year license revocation

Typically, the following sanctions are actually imposed:

1st offense:	Attendance at diversionary DWI school
2nd offense:	\$350-\$400 fine 2 days in jail (some serve longer, but sentences vary statewide) 1-year license revocation (restricted license available)

3rd offense: \$500 fine  
150-200 days in jail (sentence varies statewide)  
1-year license revocation (restricted license available)

### III. OPERATIONS

Persons arrested for drunk driving are first tried in a court of limited jurisdiction. A DWI case can be appealed, however, to the court of general jurisdiction, a District Court, and, eventually, to the State Supreme Court, if appropriate. Persons arrested on Indian reservation property can be tried by Tribal Courts, which are not bound by the State criminal or vehicle codes.

Persons convicted of their first DWI offense are given the option of attending a diversionary DWI school. If the course is successfully completed, the DWI charge is dismissed; however, a record of attendance is maintained on the driving history and is considered during sentencing for subsequent arrests and convictions. In the more rural areas of the State, DWI school is often not available. Persons convicted of their first offense in these areas are usually subject to a minimal fine, if a sanction is imposed.

The local chapter of the National Council on Alcoholism was recently awarded a grant to develop an alcohol screening program. Individuals will be evaluated after attending the DWI school, and further treatment programs will be recommended, as necessary. A \$85 fee will be paid for this service by each offender. Ensuring compliance with this referral may become a problem, as all trial actions within the State must be completed within a 90-day period. Therefore, an offender will not be legally bound to comply with the referral agency once the 90-day period has expired. This program is expected to become operational during November 1982.

#### License Actions

The Motor Vehicle Division of the Department of Transportation receives the original citations along with notification that individuals have been convicted of DWI by the courts. The Department enters this information on

driving records and notifies offenders to surrender their licenses. The period of revocation begins once a license has been surrendered. If offenders do not comply within 20 days of initial notification, the police are notified to generate a "pick-up" order. Offenders may request a hearing; however, this generally results only in verification of identity and does not entail review of individual cases. Persons convicted of a first and second DWI are subject to a license revocation for one full year. Persons convicted of a third offense are subject to a five-year revocation. Subsequent conviction results in permanent revocation of driving privileges.

Although first offenders are subject to a license revocation, they are typically sentenced to attend DWI school. Once they have completed the program, the school notifies the Motor Vehicle Division, which flags the offenders' driving records. Although no license action is taken, this notice serves as a prior conviction for purposes of a subsequent arrest. Judges must inquire about past driving records before sentencing offenders. If their records have been flagged to indicate attendance at DWI school, individuals are convicted of a subsequent offense.

In order to have a license reinstated, offenders must pay a \$10 reimbursement fee, take all licensing exams and driving tests, and provide a statement of financial liability. In most cases, offenders can petition the court for a limited license, once a revocation has been initiated. If offenders can prove that they have liability insurance and can show that driving is required for employment reasons, then limited privileges are usually granted. Persons who are apprehended for driving while under license revocation or a violation of their driving restrictions are subject to a fine of up to \$500, two days to six months in jail, and an additional year of license suspension. In practice, however, the only penalty imposed for this offense is the loss of driving privileges for an additional year's time.

It has been suggested that the Division of Motor Vehicles become the agency to control all traffic citations issued statewide. This would centralize all citation records and allow for complete inventory maintenance. At this writing, New Mexico does not have a controlling agency in operation.

#### Confinement

Persons convicted of a first DWI offense are subject to a 30- to 90-day jail sentence; however, most offenders enter the diversionary DWI school program and avoid confinement. Second and subsequent offenders generally serve some time in local jails. Persons convicted of a second offense are subject to a 90-day to one-year sentence; however, most serve a minimum two-day sentence. Some offenders may serve longer sentences, but this varies statewide.

Overcrowding of the local jails is a major problem, especially in the metropolitan areas. Generally, jail time is only imposed when space is available. Offenders usually serve time during the week but are allowed to participate in a work release program if they are employed. The local jails may also reduce sentences for time already served, i.e., time spent waiting to post bond.

Persons convicted of a third offense in the greater Albuquerque area generally serve 180 days in jail. Work release programs are available, and as offenders' sentences approach completion, they can be released to make room for other offenders. Information regarding the length of jail sentence imposed on third and subsequent offenders in the more rural jurisdictions was not available, although it was believed to be significantly less.

#### IV. RESULTS

##### Reactions

In order to reduce the number of cases on the court dockets, plea bargaining is used extensively, especially for persons convicted of a second or subsequent offense. This is done to expedite cases and to reduce the overall work load of the courts.

It was suggested that stricter legislation and more vigorous enforcement could ultimately be counterproductive, by significantly increasing an already overtaxed judicial system.

There has been no real attempt to reduce the use of plea bargaining, as judges and prosecutors feel that eliminating this option would leave too many cases to handle. Attempts have been made, however, to restrict plea bargaining to the more routine cases. Less routine cases, for example, those with high BAC levels, aggravated arrest cases, and all accident or vehicular homicide cases are tried on their merit. In general, judges are not supportive of mandatory sanctions and do not wish to lose their judicial discretion.

DWI enforcement activities have been intensified and made more visible. Law enforcement agencies favor stricter penalties. The general public also appears to favor more severe sanctions, especially in light of recent press attention to the DWI issue. Local television is currently announcing the number of persons arrested, and the newspapers are publishing the names of persons convicted of DWI.

##### Effectiveness

The number of alcohol-related accidents and fatalities has been decreasing statewide. During the past few months, however, there has been a 16 percent decrease in the number of DWI arrests in the Albuquerque area. This decline is attributed to the use of BAT mobiles and to increased public awareness of DWI law enforcement.

There have not been any formal evaluation or attempts made to determine whether the sanctions imposed have any deterrent effect. Currently, the only information maintained on a computerized basis statewide is traffic arrest history. Dispositions are not recorded, except for the flag indicating completion of DWI school. Court records are maintained for a period of only two to three years. A computer system is currently being implemented that will maintain a complete criminal profile, including arrests and convictions statewide.

#### Costs

All fine monies collected are deposited in the State general fund. All local court operating expenses are paid by the State. A \$25 fee, paid by offenders for each chemical test performed, also goes to the State fund.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.



STATE: NEW MEXICO

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$300 - \$500	Varies	
Jail	30 - 90 days	Rarely	
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program		Education	
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000	\$350 - \$400	<u>1/</u> Two days mandatory
Jail	90 days - 1 year <u>1/</u>	2 days	<u>2/</u> Restricted license available
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000	\$500	<u>1/</u> Two days mandatory
Jail	90 days - 1 year <u>1/</u>	5 - 6 months	<u>2/</u> Restricted license available
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

NEW YORK

I. BACKGROUND

The drafting and adoption of new legislation enacted in November of 1981, known as the "Stop-DWI" law, was largely the work of the Senate and Assembly Task Forces on drunk driving. Additionally, the Governor's Task Force report endorsed the concept of the Stop-DWI law by recommending that drinking drivers pay a greater share of the cost of solving the problem. This new legislation "not only sets minimum fines to be levied against offenders, but also earmarks the revenue for use by the various counties in alcohol and highway safety efforts" (p. 25/Governor's Task Force Report).

The emphases and concerns of the legislature are evidenced in several sections of the Vehicle and Traffic Law. Article 21, Alcohol and Drug Rehabilitation Program, states that "The ever-increasing number of accidents, personal injuries and deaths resulting from alcohol or drug-related traffic offenses is a matter of great concern to the legislature." Article 43-A, Special Traffic Options Program For Driving While Intoxicated, outlines the establishment of a special traffic options program for DWI, as well as the program's organization, purposes, duties and functions of the coordinator, and the county purposes and charge.

II. LEGISLATION

A significant element in the New York Stop-DWI Law provides for:

- . Mandatory minimum fines or periods of confinement
- . Mandatory license revocations

Legislation distinguishes between two categories of offenses related to drinking and driving: Driving While Ability Impaired (DWAI), and Driving While Intoxicated (DWI). The DWAI charge pertains to persons found driving with a BAC of greater than .05 percent but less than .10 percent. The DWI charge reflects a BAC of .10 percent or greater.

**CONTINUED**

**3 OF 6**

Sanctions currently prescribed by statute to be imposed on DWI and DWAI offenders are:

For DWI:	1st offense: (Misdemeanor)	\$350-\$500 fine and/or Up to 1 year jail 6 months license revocation (minimum)
	2nd offense: (Felony)	\$5,000 fine Up to 4 years jail 6 months license revocation (minimum)
For DWAI:	1st offense: (Traffic Infrancion)	\$250 fine and/or Up to 30 days jail 90-day license suspension
	2nd offense: (Within 5 years)	\$350-\$500 fine and/or Up to 60 days jail 180-day revocation of license
	3rd offense: (Within 10 years)	\$500-\$1,500 fine and/or Up to 180 days jail Minimum 6 month license revocation

The sanctions typically imposed on DWI offenders include:

1st offense:	\$350-\$500 fine 6 months license revocation (restricted) license available if attend treatment) Alcohol education program
2nd offense:	\$500 fine 6 months license revocation

### III. OPERATIONS

Ten counties in New York participate in a cooperative traffic ticket accounting system called "TSLED." The Traffic Safety Law Enforcement and Disposition (TSLED) program is a computerized traffic ticket accountability and highway safety management information system. The program, a joint effort of the Department of Motor Vehicles (DMV) and the New York State Division of State Police (DSP), was developed and implemented as a demonstration program under Federal 402 funding and has been operational in 10 New York counties since February 1980:

Cayuga, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates. DMV and DSP officials will attempt to get State funding in the next legislative session so that TSLED can be expanded statewide.

Under the new Stop-DWI law, there is a Drinking Driver Program operative in all 62 counties of New York State; there are 59 local Stop-DWI coordinators responsible to manage the Stop-DWI program at the local level; there is an Office of Alcohol and Highway Safety (OAHS) in the Department of Motor Vehicles that approves, monitors and evaluates the local Stop-DWI programs as well as coordinates the implementation of the recommendations of the Governor's Alcohol and Highway Safety Task Force; there is an Office of Driver Safety in the Department of Motor Vehicles to manage the State's Drinking Driver Programs, pre-licensing programs and other areas of the alcohol and highway safety system.

### License Actions

DWI first offenders are subject to a six-month license revocation. A mandatory six-month revocation is provided for second offenders. For those who have two DWI convictions that involved personal injury within a 10-year time period, the law provides for a lifetime license revocation.

The new law makes a distinction between DWI, which is a misdemeanor or a felony, and DWAI, which is a traffic violation. Under the law, first-time DWAI offenders are subject to license suspensions of 90 days. All first and some second DWAI offenders, as well as some first DWI offenders, are eligible for an alcohol education program that makes a restricted license possible. Most participants in the alcohol program obtain a restricted license.

Respondents indicated that plea bargaining is extensive. Although the new legislation prohibits plea bargaining down from an alcohol-related offense (DWI or DWAI) to a lesser nonalcohol-related offense (below DWAI), many DWI cases are reduced to DWAI. Offenders who plea to a DWAI and enter a countermeasures program, pay for costs within that program. The

significantly higher fines under the new legislation provide funding at the county level for additional efforts that supplement, not duplicate, the existing educational and treatment programs. Typically, offenders arrested on first or second DWI charges will plea bargain to a DWAI charge, thereby avoiding a license revocation. They most often receive a license suspension of 90 to 180 days and, upon entering an education program, become eligible for the restricted license. The licensing action is court imposed and administered by the DMV upon receipt of a sentencing certificate from the judge.

Offenders who complete the Drinking Driver Program use the Notice of Completion to apply for reinstatement of full driving privileges. This process is generally followed and full licensure is routinely granted.

#### Confinement

Incarceration is available for judges in sanctioning DWI offenders under the new law. The jail sanction is not mandatory for DWI offenders; it does exist as an option in combination with fines. It appears that jail is most often used as part of a suspended sentence mechanism to encourage participation in alcohol education programs. Very few DWI offenders actually serve a jail sentence. This follows the recommendation of the New York State Task Force, which proclaimed that a certain, swift license penalty was most appropriate for the majority of DWI offenders. New York State does have mandatory jail for convictions of driving with a license suspended or revoked in cases where the suspension or revocation was based on an alcohol-related offense.

#### Community Service

Community service programs are not operational in New York on a statewide basis. However, some individual jurisdictions operate their own programs at the county level. An example of such a program is operational in Onondaga County, New York.

In 1980, as a cooperative effort between the Office of the District Attorney, Onondaga County, New York, and the Volunteer Center, Inc., of Syracuse, New York, a community service program for misdemeanants and minor offenders was established. Offenders enter the program as a result of judicial discretion. The judge typically assigns an offender to community service because he/she feels that a fine (which is a standard sanction for misdemeanants and minor offenders in this county) is not sufficient.

Approximately 10 percent (fewer than 100) of the clients participating in this program are traffic offenders. Nearly three-fourths of these are DWI offenders; however, most have not been convicted of DWI because the program is designed to be a diversionary program prior to the conviction stage.

Offenders may choose one of three work sites: a senior citizen home, the county government (maintenance staff), or the town (drama) theatre. To a large extent, the work involves maintenance, unless offenders exhibit a particular (and useful) skill. Community service is typically sentenced in combination with a fine. The average sentence is for a period of 20-30 hours (although sources recall as many as 102 hours being sentenced), and it is served at the convenience of the defendant. Limitations are not set for completion of the required number of hours; however, a court appearance date is generally scheduled within three months, and the offenders are encouraged to have their requirements completed by that date. The offenders successfully complete the program when all required hours are served and a satisfactory agency evaluation is received by the Volunteer Center. The program is funded, in part, through the United Way and city/county youth bureaus.

#### IV. RESULTS

##### Reactions

Judges and prosecutors favor the new legislation because its provisions are severe; however, there is room to plea bargain down from a DWI offense to a DWAI offense. New York has a legislative mandate forbidding plea

bargaining an alcohol-related offense down below DWAI. DMV officials feel that the new legislation provides the most effective and meaningful sanction for DWI offenders, that is, license actions.

#### Effectiveness

Because the new legislation has been operational for a short period of time, data concerning the effectiveness of the sanctions were not yet available. Formal impact evaluations have not been performed. However, there has been a significant increase in convictions and a steady increase in program entry for convicted motorists eligible for the Drinking Driver Program.

#### Costs

Fines and offender fees are used to finance countermeasure programs. The cooperative effort involved in the TSLED program helps reduce administrative costs for the individual counties participating because they collectively share in the administrative maintenance of the system.

#### V. REPLICABILITY

Key considerations have been identified by our respondents for program replicability. The first of these, interagency cooperation/coordination, necessarily needs to be extensive. Statewide uniform recordkeeping systems and consistency in enforcement and sanctioning policies have also been identified as crucial to program implementation.

STATE: NEW YORK

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$350 - \$500	\$350 - \$500	<u>1/</u> Issued immediately if attending alcohol program <u>2/</u> Operated on a county-wide basis, infrequently imposed
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension			
. Revocation	6 months minimum		
. Restricted		6 months <u>1/</u>	
Impoundment			
Educ/Trmt Program	Drinking Driver Prog.	Drinking Driver Prog.	
Community Service		20 - 30 hours <u>2/</u>	
<u>2nd Offense</u>			
Fine	\$500 - \$5,000	\$500	<u>1/</u> Operated on a county-wide basis, infrequently imposed
Jail	Up to 4 years		
License Action:			
. Suspension			
. Revocation	6 months minimum	6 months	
. Restricted			
Impoundment			
Educ/Trmt Program	Drinking Driver Prog.	Drinking Driver Prog.	
Community Service		20 - 30 hours <u>1/</u>	
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation	Lifetime revocation		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

NORTH CAROLINA

I. BACKGROUND

The rural composition of the State of North Carolina (three main population centers and virtually no mass transportation system) makes license actions a relatively harsh sanction. The intent of the courts and Department of Motor Vehicles officials is to utilize the current legislation for persons convicted of driving under the influence (DUI) such that its deterrent capabilities are maximized. The current legislation provides for severe sanctions, particularly with respect to license actions.

II. LEGISLATION

Significant elements of the DUI legislation in North Carolina are:

- . An implied consent provision
- . Mandatory fines and license actions to be imposed on persons convicted of DUI offenses

Sanctions prescribed by law are as follows:

1st offense:	\$100-\$500 fine (mandatory) 6 months jail 1-year license revocation (restricted license available in 6 months if treatment program completed) Alcohol treatment program (optional)
2nd offense: (within 3 years)	\$200-\$500 fine (mandatory) 3 days-1 year jail 4-year license revocation (possible reinstatement in 2 years after hearing) Alcohol treatment program (mandatory)
3rd offense: (within 5 years)	\$500 fine (mandatory) 3 days-2 years jail (mandatory) Lifetime revocation (possible reinstatement in 3 years after hearing) Alcohol treatment program (mandatory)



The sanctions imposed on typical DUI offenders are as follows:

1st offense:	\$100 fine 1-year restricted license Alcohol treatment program
2nd offense:	\$200 fine 3 days jail (suspended if attend alcohol treatment program) 4-year license revocation
3rd offense:	\$500 fine 3 days jail (suspended if attend alcohol treatment program) Permanent license revocation

### III. OPERATIONS

Sanctions on the books in this State are fairly severe. In practice, however, sanctions actually imposed are somewhat less harsh. DMV officials attribute this disparity to the effect of licensing actions in a State such as North Carolina where, without driving privileges, a person is virtually immobile.

The adjudication process begins with the police officer's issuance of a citation for DUI. Offenders appear before a magistrate and bond is set, as well as a subsequent court appearance date. A plea is made and the offenders will either be sentenced or go to trial, depending on the plea made. A presentence investigation is provided for by statute; however, this provision is typically carried out only in the more populated jurisdictions. Participation in an alcohol treatment program is voluntary for first offenders; however, the judge can mandate treatment for second and subsequent offenders.

#### License Actions

In the State of North Carolina, licensing actions are imposed by the courts through the DMV. Revocations of one and four years are on the books for the first and second DUI offenders, respectively. A permanent revocation is provided for repeat offenders. First offenders are eligible for, and generally receive, a restricted license based on their need for transportation

to maintain employment or on the rural nature of their surroundings. Persons convicted of a second offense may be issued a new license in two years, while third and subsequent offenders may be issued a new license after 3 years if none of the motor vehicle, alcohol, or drug laws have been violated during this time. However, the driving privileges generally remain revoked until alcohol counselors have indicated rehabilitative efforts have been successful.

Respondents indicated that actual loss of driving privileges in North Carolina is infrequent. The charge of DUI is generally plea bargained to one of these other charges: "careless and reckless driving after consumption," which carries no revocation penalty; and a statutory offense entitled ".10" which carries a one-year revocation but allows for a restricted license. The .10 offense is particularly attractive to offenders because it is not cumulative, that is, regardless of the numbers of .10 convictions, offenders receive the penalty imposed on a first offender.

License reinstatement, following the conclusion of a license action, is accomplished via the filing of a form, taking of a retest, and payment of a \$25 fee.

#### Confinement

The statute provides for a mandatory jail term of three days to one year for second DUI offenders and three days to two years for third and subsequent offenders. In practice, however, the first three days of the sentence for a second offender may be suspended in lieu of participation in a treatment program. Consequently, few second offenders serve any time in jail.

### IV. RESULTS

#### Reactions

In spite of the disparity between sanctions on the books and those actually imposed, criminal justice personnel did not express adverse opinions of the sanctioning policy.

Given the rural nature of the State, respondents find flexibility in sanctioning desirable. License actions are viewed as the sanction with the greatest deterrent capability. Plea bargaining is extensive, especially among first offenders. Flexibility in sanctioning is made possible by the two options generally available to those involved in plea negotiations. Offenders may plead to "careless and reckless driving after consumption" which carries no revocation penalty, but does put four points on the offender's record; or depending on the bargain struck, they may plead to ".10". The ".10" offense has the same criminal penalties as DUI, however, it is not a cumulative offense. That is, each and every ".10" conviction carries a one-year revocation. The limited privilege restrictions are the same as for a DUI as well.

DMV officials anticipate the decriminalization of the first DUI offense, and institution of a 60-day license revocation across the board. They also indicated that, if the current law were fully enforced and utilized, it could be an effective deterrent.

#### Effectiveness

No data were available regarding evaluative efforts concerning the effectiveness of the North Carolina sanctioning system.

#### Costs

Data concerning costs incurred in operating this system were not available.

### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.

STATE: NORTH CAROLINA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$100 - \$500	\$100	<u>1/</u> Restricted license available after 6 months if alcohol program is completed  <u>2/</u> Optional
Jail	6 months		
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>1/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment <u>2/</u>	
Community Service			
<u>2nd Offense</u>			
Fine	\$200 - \$500	\$200	<u>1/</u> Suspended if attend alcohol treatment  <u>2/</u> Possible reinstatement after 2 years restricted license  <u>3/</u> Mandatory
Jail	3 days - 1 year	3 days <u>1/</u>	
License Action:			
. Suspension			
. Revocation	4 years	4 years <u>2/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment <u>3/</u>	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 minimum	\$500	<u>1/</u> Possible reinstatement after three years  <u>2/</u> Mandatory
Jail	3 days - 2 years	3 days	
License Action:			
. Suspension			
. Revocation	Lifetime revocation	Revocation <u>1/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment <u>2/</u>	
Community Service			

NORTH DAKOTA

I. BACKGROUND

The current DWI legislation has been operational for a number of years and features fines, jail, and license actions as potential sanctions. North Dakota is primarily rural and sparsely populated, which tends to intensify the effect of the license action sanction. The immobilization resulting from these actions has greater implications in this rural environment than it might in an area with an extensive mass transportation system.

II. LEGISLATION

Significant elements within the legislation include:

Mandatory license actions that cannot be suspended

Sanctions provided for by DWI legislation in North Dakota are as follows:

- |                                    |  |
|------------------------------------|--|
| 1st offense:                       | Up to \$500 fine <u>and/or</u><br>Up to 30 days jail<br>28-day license suspension<br>Alcohol treatment program   |
| 2nd offense:<br>(Within 24 months) | Up to \$1,000 fine <u>and/or</u><br>Up to 1-year jail<br>15-week license suspension (maximum<br>duration depends on time lapse between<br>first and second offense)<br>Alcohol treatment program |
| 3rd offense:                       | Indefinite license suspension<br>Human services counseling   |

Typically prescribed sanctions are as follows:

- |              |  |
|--------------|--|
| 1st offense: | \$250 fine<br>28-day license suspension (restricted license available after 7 days)<br>Alcohol treatment program         |
| 2nd offense: | \$300 fine<br>Up to 15 weeks license suspension (restricted license available after 7 days)<br>Alcohol treatment program |
| 3rd offense: | Indefinite license suspension (restricted license available after counseling)<br>Human services counseling               |

### III. OPERATIONS

#### License Actions

Upon a conviction of a first DWI offense, offenders are assessed an automatic 15 points on their driving record. In North Dakota, a seven-day suspension is issued for each point in excess of eleven. Therefore, first offenders are subject to a 28-day suspension, the first 7 days of which are irrevocable. Second offenders are subject to a license suspension, not to exceed 15 weeks. The duration of the suspension is dependent on the amount of time between the first and second DWI offenses.

The court notifies the Drivers License Division within the State Highway Department of a DWI conviction, and the Drivers License Division initiates the appropriate action and notifies offenders. (Offenders have 10 days to appeal the conviction before the action is ratified.)

Restricted licenses are available and are frequently issued on an occupational needs basis. First and second offenders are eligible to apply after the first seven days of their suspension has elapsed. Convicted first or second DWI offenders will typically receive the minimum license suspension (first seven days are irrevocable), as well as restricted licenses at the earliest possible date.

Offenders committing three DWI offenses within five years are sentenced as repeat offenders. Repeat offenders are required, based on administrative rule, to participate in human services counseling at an approved human services center. Their licenses are suspended indefinitely, and they must be approved by a human services counselor prior to requesting a DMV hearing for the issuance of a limited license. In the case of repeat offenders, the human services center will perform a drinker diagnosis. Pre-sentence investigations are not conducted due to the State's limited probation and parole staff.

The procedure for applying for reinstatement of full license privileges, once a suspension/revocation has expired, is as follows: (1) offenders must furnish proof of financial responsibility via an insurance policy and for revocations, (2) must file an application and pay appropriate fees. Repeat offenders require approval from an alcohol counselor and a State Highway Department hearing in addition to the other requirements.

#### Confinement

The statutes provide for a possible jail term of up to 30 days for first offenders and up to 1 year for persons convicted of a second DWI offense within 24 months. The jail sanction is typically suspended, however, in lieu of attendance at an alcohol education/treatment program. Education/treatment programs are generally conducted at a human services center.

### IV. RESULTS

#### Reactions

Given the large land mass area, and relatively small size of the State police force, it might be expected that detection would be infrequent and apprehension difficult. However, due to the low population, State Police have been able to more accurately pin point particular problem areas and impact on the State DWI problem. The average DWI arrest record per officer in North Dakota far exceeds the national average.

### Effectiveness

No formal evaluations have been conducted, therefore, data concerning the effectiveness of this system were not available. Respondents indicated that the State is not experiencing an unusual or extraordinary DWI problem.

### Costs

Costs of this program are significantly reduced by the following factors: (1) human services centers are (at least partially) State funded and (2) offenders contribute to the cost of their treatment, based on their ability to do so.

## V. REPLICABILITY

Administratively, the North Dakota system is not a difficult one to replicate. Once a finding of guilty has been made in court, DMV or the corresponding agency administers the license action and all subsequent hearings and procedures. Treatment and evaluations in the human services centers may prove to be a funding problem in other jurisdictions. In North Dakota, these centers are State funded, which helps keep the direct operating costs (as far as DMV is concerned) down. Were these funds not available, the frequency with which the centers are used would be drastically reduced.

STATE: NORTH DAKOTA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$500 <sup>1/</sup>	\$100	<sup>1/</sup> Fine and/or jail prescribed <sup>2/</sup> Jail sentence suspended if attend counseling program <sup>3/</sup> First seven days irrevocable
Jail	Up to 30 days	Rarely <sup>2/</sup>	
License Action:			
. Suspension	28 days	28 days <sup>3/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000 <sup>1/</sup>	\$200	<sup>1/</sup> Fine and/or jail prescribed <sup>2/</sup> Jail sentence suspended if attend counseling program <sup>3/</sup> First seven days irrevocable
Jail	Up to 1 year	Rarely <sup>2/</sup>	
License Action:			
. Suspension	15 weeks	15 weeks <sup>3/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000	\$500	
Jail			
License Action:			
. Suspension	Indefinite	Indefinite	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			

OHIO

I. BACKGROUND

In October 1982, the Governor's Traffic Safety Committee (GTSC) held its annual conference in Columbus. The State's policies and procedures with respect to drinking drivers were the focus of an all-day discussion, which was initiated to address the continuing and increasing DWI problem within the State. As a result, the Governor's Study Group on Alcohol-Impaired Driving in Ohio was formed. The study group comprised four subcommittees: Enforcement, Licensing/Adjudication, Rehabilitation, and Public Education/Community Action. Each of the four subcommittees submitted a separate report providing an analysis and recommendations for their area of concern. The study group has found that alcohol-related injuries in 1980 created an economic cost of \$214 million dollars, that the percentage of alcohol-related injuries is expected to rise from 36 percent to 39 percent, and that six of every 10 DWI violators being arrested by Ohio police agencies are plea bargaining their way to a reduced charge.

The findings of this study group are expected to create greater awareness in the public, police, and judiciary with respect to current DWI practices and have significantly influenced proposed legislation currently in the State's House of Representatives.

II. LEGISLATION

A significant element in Ohio's DWI legislation is:

Mandatory minimum jail and license actions imposed on DWI offenders, which are as follows:



1st and  
subsequent  
offenses:

Up to \$1,000 fine  
3 days-6 months jail  
30 days-3 year suspension (restricted license  
available)  
Attendance in an alcohol treatment program

Respondents indicated that great sentencing disparity exists throughout the State, e.g., a typical offender might be subject to a 30-day license suspension in one part of the State and a 3-year suspension in another part of the State. Because of this variation in sentencing policy, a determination of sanctions typically imposed could not be reported.

### III. OPERATIONS

The adjudication process begins with the DWI arrest. Offenders may or may not be taken into custody. A court date is given and offenders are arraigned, where they issue a plea: guilty to DWI, not guilty, or guilty to a lesser charge as a result of a plea bargain. (Plea bargaining is especially attractive to DWI offenders in Ohio. The charge most commonly pled to is "reckless driving," which carries no mandatory penalties, does not require filing insurance or posting bond, and carries a 4-point rather than a 6-point penalty on the driver's license.) Following a plea of guilty, a sentence is issued. Following a plea of not guilty, a trial date is set and a judge is identified.

#### License Actions

Under current law, all DWI offenders are subject to a license suspension of up to three years, but a minimum of thirty days is mandatory. Upon DWI conviction, the court confiscates the driver's license and notifies the DMV of the action. Due to the great sentencing disparity statewide, a "typical" license action cannot be ascertained. Although the law stipulates that restricted/conditional licenses may not be granted within the first 30 days of a license action, in practice, many jurisdictions violate this constraint. As in most States, restricted licenses are not difficult to obtain

and are frequently issued. Reinstatement of license, following a suspension, requires the offender to: file a motion (written or via telephone) requesting reinstatement, furnish proof of insurance, and pay any applicable fees.

#### Confinement

Although the current legislation provides for a "mandatory" jail term of three days, our respondents indicate that this sanction is rarely imposed. In lieu of jail, the judge typically sentences offenders to an alcohol education program, which may be a residential program. However, this residential program must be recognized by local legislative authority as a "jail facility." Although disparity exists statewide in terms of imposition of fines and license actions, the rare imposition of the jail sanction seems to be consistent.

### IV. RESULTS

#### Reactions

Most of the reaction elicited was to the "DeWine Bill," the proposed legislation, which was greatly influenced by the Governor's Study Group. The DeWine Bill is currently being debated in the Ohio legislature and is considered much harsher than current legislation. The bill contains an illegal per se provision that is being met with some opposition.

The defense bar is opposing the bill, claiming that it is too severe and extensive in its limitations on drivers' rights. Prosecutors and judges are generally satisfied with the bill; however, they believe the current legislation is satisfactory as well. They assert that inconsistent enforcement and application of sanctions are the real problems.

#### Effectiveness

Formal evaluations have not been conducted to measure the effectiveness of the current DWI sanctioning system. The Governor's Study Group asserts that the system's major problem is that far too many persons charged with

DWI are escaping judicial review of the offense. Our respondents concur with this statement and feel that it is necessary to limit the available avenues to avoid inconsistent enforcement and sanctioning.

#### Costs

No data concerning costs of operating the program were available; however, the Study Group has determined that, in 1980, the economic loss resulting from alcohol-related accidents/injuries was well in excess of \$214 million.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of the sanction program that would be required to replicate the program in other States.

STATE: OHIO

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000	Wide variation <sup>1/</sup>	<sup>1/</sup> Great sentencing disparity statewide; typical sanction could not be determined <sup>2/</sup> Jail or treatment sanction imposed <sup>3/</sup> May be a residential program
Jail	3 days-3 years <sup>2/</sup>	Varies <sup>1/</sup>	
License Action:			
. Suspension	30 days - 3 years	Varies <sup>1/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment <sup>3/</sup>		
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000	Wide variation <sup>1/</sup>	<sup>1/</sup> Great sentencing disparity statewide; typical sanction could not be determined <sup>2/</sup> Jail or treatment sanction imposed <sup>3/</sup> May be a residential program
Jail	3 days - 3 years <sup>2/</sup>	Varies <sup>1/</sup>	
License Action:			
. Suspension	30 days - 3 years	Varies <sup>1/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment <sup>3/</sup>		
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000	Wide variation <sup>1/</sup>	<sup>1/</sup> Great sentencing disparity statewide; typical sanction could not be determined <sup>2/</sup> May be a residential program
Jail	3 days - 3 years	Varies <sup>1/</sup>	
License Action:			
. Suspension	30 days - 3 years	Varies <sup>1/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment <sup>2/</sup>		
Community Service			

OKLAHOMA

I. BACKGROUND

During May 1982, the State of Oklahoma passed new drunk driving legislation that toughens the sanctions imposed on DUI offenders and ensures that these penalties will be enforced. These actions are the result of an effective media and press campaign publicizing the drunk driving issue and increased public concern about the problems caused by DUI activities. A local MADD chapter became active and mobilized local grass-roots support for the issue. Support for new legislation was also generated by the Department of Public Safety and the Oklahoma District Attorney's Association.

II. LEGISLATION

A number of provisions in the new legislation are significant to this study.

- . Establishment of an illegal per se law
- . Administrative license action procedures to be enacted April 1983
- . Establishment of implied consent provisions

The sanctions currently prescribed by law include: (Where the conviction is in a District Court or other court of record).

1st offense:	Up to \$500 fine 10 days-1 year jail 6 months license revocation *
2nd offense: (Felony if filed as 2nd or subsequent)	Up to \$1,000 fine 1-5 years pentitentiary 2-year license revocation
3rd offense: (Felony if filed as 3rd or subsequent)	Up to \$1,000 fine 1-5 years pentitentiary 2 years license revocation

\* One year revocation if subject has ever been suspended previously based on driving record points or a noncourt of record DUI conviction.

Oklahoma statutes allow for an intermediate offense of Impaired Driving (ID) to be charged when individuals exhibit BAC levels of .06-.09 percent. Sanctions to be imposed on persons convicted of this reduced charge are:

1st offense:                 \$100-\$300 fine  
                                  5 points on driving record

2nd offense:                 \$300-\$500 fine  
                                  6 months license suspension

Sanctions typically imposed on persons convicted of DUI offenses vary considerably throughout the State. Generally, offenders receive the following sentences:

1st offense:                 Fine (varies)  
                                  Jail (varies across jurisdictions)  
                                  6 months license revocation

2nd offense:                 Fine (varies)  
                                  1 year and 1 day in State penitentiary  
                                  1 year license revocation

3rd offense:                 Specific operational data not yet available

### III. OPERATIONS

After being arrested, DUI offenders are taken to the nearest location for an evidential BAC test. They are then booked and jailed for a minimum period of 4-6 hours. Offenders then post bond, are arraigned and receive a court date.

Many courts offer offenders conditional participation in lieu of jail sentence in an approved DUI school sponsored by a nonprofit organization. Some courts offer deferred sentencing prior to a final judgment being entered and suspend jail sentences if the program is completed successfully. Then a formal conviction is recorded. However, many times the conviction recorded is not for the original charge of DUI. In some cases records are expunged upon successful completion of the program. The policy regarding this procedure varies across jurisdictions.

In a number of district courts, an informal pre-sentence investigation (PSI) is conducted by the Department of Corrections, Probation and Parole Office to make recommendations to the court regarding appropriate referral to education or treatment programs after a judicial conviction has been obtained.

### License Actions

Beginning April 1983, persons exhibiting a BAC level of .10 percent or greater will be subject to a 90-day administrative license revocation that is imposed regardless of judicial disposition of the criminal charge. Offenders will surrender the license to the arresting officer who will issue a temporary 30-day permit. The temporary permit constitutes a formal notice of revocation by the Department of Public Safety that becomes effective at the end of the 30-day period.

Offenders will, upon written request within fifteen days of license seizure, be granted an administrative hearing to contest the license action within the 30-day period. The license and a copy of the receipt form is attached to the arrest affidavit and submitted by mail to the Commissioner of Public Safety within 72 hours of arrest. If the department sustains 90-day revocation, the subject has a right to appeal to a District Court. The court has authority to grant occupational modifications of order. Persons convicted of the criminal charge of DUI shall, in addition to any other license action, be subject to mandatory license revocation without modification.

DUI convictions in District Court or other courts of record: First offense (with no previous suspension) results in a six months revocation; first offense (with one or more previous suspensions) results in a twelve month revocation; a second DUI conviction, in a court of record, results in a two-year revocation. No revocation based on a DUI conviction in a court of record can be modified by the department or a court. Persons revoked under the implied consent law may request an administrative hearing, within thirty days.

Offenders can petition the District Court for a modification of their license action to include a restricted driving permit for occupational or hardship reasons. The Department of Public Safety can only issue restricted licenses upon notification by the courts. During the first nine months of 1981, there were 3,992 revocations issued with only 645 cases appealed to the courts. A total of 623 court ordered modifications were issued. After six months, a person may be reinstated by paying a \$25 reinstatement fee.

Suspensions and revocation based on drinking-related offenses are reviewed by a hearing officer and licenses are granted on a case-by-case basis. As a condition for reinstatement, the Bureau can ask for more supportive evidence of sobriety (such as medical information), if warranted. A medical committee is available to review a particular case or to interview an individual to determine if it would be in the best interest of the State to issue a new driver's license. A person with 3 or more drinking-related convictions is classified as an excessive user of alcohol. One year free of drinking-related violations qualifies him/her for a driving permit (letter) which is reviewed every three to six months.

#### Confinement

The use of confinement as a sanction for DUI offenders varies considerably throughout the State. This sanction is rarely imposed on persons convicted of a first DUI offense, although some judges issue a suspended jail sentence to coerce an offender to accept a treatment program. Sentences of up to 5 or 6 days are imposed in cases of aggravated circumstances (e.g., elevated BAC, accident involvement).

Second offenders are guilty of a felony offense and are subject to a 1-5 year prison term in the State penitentiary. The maximum sentence is rarely imposed and sometimes the sentence is suspended. Those repeat offenders that are sent to the penitentiary are often paroled after a period of about 6 to 7 months.

## IV. RESULTS

### Reactions

All components of the driver control system are highly supportive of the new legislation and the procedures to be implemented. Law enforcement officers have already shown an increase in DUI arrests and see the administrative procedures as supportive of their efforts. They feel that offenders will be receiving a swift, certain sanction.

The Department of Public Safety anticipates a higher workload and plans to add six new personnel to the legal division to help with the additional cases that will be reviewed. Work space has been expanded. The Driver Improvement Bureau will also need to increase its clerical staff.

The Oklahoma District Attorney's Association was highly supportive of the new legislation and lobbied for its passage. Currently, each county has its own plea bargaining policy; some jurisdictions reduce DUI cases down to ID routinely. It is anticipated that the illegal per se law will curtail this policy somewhat, and the use of the administrative procedures will ensure that a license sanction will be imposed.

### Effectiveness

Due to the recency of the new legislation and the fact that certain statutory provisions do not go into effect until April 1983, specific information about the overall effectiveness of the new procedures is not yet available. Oklahoma maintains a computerized system for all motor vehicle violations, however, only a record of convictions is available. No formal evaluation or impact assessment is currently planned.

### Costs

Specific cost data regarding the implementation of this program were not available.

V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of this sanction program that would be required to replicate the program elsewhere.

STATE: OKLAHOMA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$500	Varies	1/ 90-day administrative revocation imposed as of April 1983
Jail	10 days - 1 year	Varies	
License Action:			
. Suspension			
. Revocation	6 months 1/	6 months 1/	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000	Varies	1/ When imposed, offenders often paroled within 6-7 months  2/ 90-day administrative revocation imposed as of April 1983
Jail	1-5 years	1 year and 1 day 1/	
License Action:			
. Suspension			
. Revocation	2 years 2/		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$1,000	*	
Jail	1 - 5 years	*	
License Action:			
. Suspension			
. Revocation	2 years	*	
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operated data not available - legislation enacted July 1982.



OREGON

I. BACKGROUND

The present DUI law was revised at a recent (date not obtained) legislative session. The change allows first-time DUI offenders to qualify for a diversion education/treatment program, mandates alcohol education, and raises the first DUI offense from a traffic infraction to a misdemeanor.

A MADD chapter has been laying the groundwork for extensive lobbying in the next session of the legislature. They have been gathering and disseminating information, and our respondents feel that they will be highly influential.

II. LEGISLATION

Significant elements of the DUI legislation in Oregon include:

- . The change of a first DUI offense from a traffic infraction to a misdemeanor charge
- . Establishment of a diversionary alcohol education/treatment program for first offenders
- . Mandatory minimum license actions to be prescribed to DUI offenders

Sanctions contained in the current legislation are as follows:

1st offense:	Up to \$2,500 fine Up to 1 year jail 1-year license suspension Alcohol treatment program (as part of the diversionary program, or as a condition to a restricted license)
2nd and 3rd offense:	Up to \$2,500 fine Up to 1 year jail 3-year license suspension Alcohol treatment program (as part of the diversionary program, or as a condition to a restricted license)

Sanctions typically imposed are:

1st offense:	Fine (amount varies) Restricted license Alcohol treatment program (required if there has been another alcohol-related offense in the past 10 years)
2nd offense:	Fine (amount varies) Restricted license Alcohol treatment program
3rd offense:	Fine (amount varies) 3-year license revocation (restricted license after 90 days) Alcohol treatment program

### III. OPERATIONS

Upon arraignment of a DUI offender, the court notifies that offender of the action taken against him and the options (if any) available. Most first offenders qualify for diversionary treatment programs. Offenders must pay a \$275 diversion "application fee" in addition to a fee which averages \$60 for education classes, and contribute, on the basis of financial ability, to their own rehabilitation counseling needs. Upon completion of this program, DMV records still retain the alcohol-related charge.

As part of the diversionary treatment program, the court may order a drinker evaluation for any offender. This evaluation is performed by independent mental health evaluators who are approved by the State Division of Mental Health. Offenders will be classified as being in need of a Level I or Level II program. Evaluations are considered in the efforts toward rehabilitation only, not in sanctioning decisions. Evaluators are independent of any program or agency that will actually be involved in the rehabilitative effort so as to maintain the highest degree of impartiality in the evaluation process.

#### License Actions

Under the current law, first offenders are subject to mandatory one-year suspensions. Second and third offenders face mandatory three-year suspensions.

Respondents indicate that most first offenders qualify for the diversion program; and, even though they are subject to a one-year suspension, they are able to obtain a license restricted to occupational use almost immediately. Second offenders typically have their licenses suspended for some or most of the prescribed three years, but they too are eligible for a restricted license immediately. Most first and second offenders apply for and obtain restricted licenses. Third offenders generally suffer the imposition of a three-year license suspension and are not eligible for a restricted license until 90 days of their suspension has elapsed. Second and third offenders must have recommendations from the judge and the alcohol treatment program they have attended prior to issuance of the restricted license. Given the recent implementation of the legislation, estimates of the typical actions taken against DUI offenders were unobtainable.

Reinstatement of a license, following a period of suspension/revocation, requires the offender to: (1) furnish proof of insurance for a three-year period and (2) pay a reinstatement fee of \$25.

#### Confinement

A jail term for a period of time not to exceed one year is possible sanction for all DUI offenders. Respondents indicated that this sanction was used very infrequently. Rather, it was felt that license suspensions were particularly devastating, especially to residents of the rural communities where mass transit is unavailable.

#### Community Service

Community service is available on a local jurisdictional basis only. When employed, it is often prescribed as a condition of probation or a suspended sentence.

#### IV. RESULTS

##### Reactions

DMV personnel anticipate a decrease in recidivism among DUI offenders under the revised legislation. They feel the diversion program is a worthwhile alternative to the standard sanctions previously imposed on DUI offenders. Criminal justice personnel feel that the law has not been in place long enough to offer a reaction to it.

##### Effectiveness

Formal evaluations of the program have not been performed. It is hoped that the diversion alternative, coupled with mandatory license actions, will provide an enhanced deterrent to DUI behavior.

##### Costs

Most costs in the process are incurred by the mental health division in their evaluations. Offenders are charged an application fee and an education fee and contribute--according to ability--to their counseling costs. These fees cover most costs associated with the program.

#### V. REPLICABILITY

The key issue identified by DMV personnel with respect to replication of the Oregon system is the offender evaluation performed by the mental health division. Evaluations are performed by persons not connected in any way with service providers, thereby offering what is expected to be an honest evaluation. Any effort at replicating this diversionary system would need to concentrate on removing all opportunities for a conflict of interest on the part of those performing evaluations. Also relevant to replicability of the Oregon system are the issues regarding costs, discussed previously.

STATE: OREGON

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	Up to \$2,500	Wide variation	<u>1/</u> If attends treatment program <u>2/</u> As part of diversionary program <u>3/</u> Available on local jurisdictional basis only
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted		1 year <u>1/</u>	
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment <u>2/</u>	
Community Service		Varies <u>3/</u>	
<u>2nd Offense</u>			
Fine	Up to \$2,500	Wide variation	<u>1/</u> Restricted license available if attend treatment program
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	3 years		
. Revocation			
. Restricted		1 - 3 years <u>1/</u>	
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$2,500	Wide variation	<u>1/</u> Restricted license after 90 days if treatment accepted
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	3 years	3 years <u>1/</u>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			

PENNSYLVANIA

I. BACKGROUND

The State of Pennsylvania uses a computer-supported information system that provides the courts with a detailed personality and alcohol intake profile of a person charged with drunk driving. The system is called the Court Reporting Network (CRN). The need to provide uniformity within the evaluation process, education and treatment of DUI offenders, uniformity within the judiciary's disposition, coupled with a declining DUI arrest rate and an increasing alcohol-related highway fatality rate (per million vehicle miles traveled) provided the impetus for this systems approach to the alcohol-highway safety problem in Pennsylvania.

II. LEGISLATION

Significant elements in the legislation include the following:

- . A pretrial alcohol treatment diversionary program is available in lieu of traditional sanctions
- . Mandatory minimum license actions are required

Sanctions prescribed by statutes are as follows:

1st offense:	\$300 fine 48 hours jail 1-12 months license suspension Alcohol treatment program (optional)
2nd offense within 7 years:	\$300 fine 30 days jail 1-12 months license suspension Alcohol treatment program
3rd offense within 7 years:	\$300 fine 90 days jail 1-12 months license suspension Alcohol treatment program

4th offense  
with 7 years:

\$300 fine  
1 year jail  
1-12 months license suspension  
Alcohol treatment program

Sanctions typically imposed are:

1st offense:

\$300 fine  
Restricted license (if attend alcohol  
treatment program)  
Alcohol treatment program

2nd offense:

\$300 fine  
1-year revocation  
Alcohol treatment program

### III. OPERATIONS

The criterion on which sanction decisions are primarily based is the CRN report. CRN provides information intended to direct the court and probation department to the offender's problem areas. CRN diverges from traditional approaches to DUI in that health care personnel generally become involved prior to the sentencing stage.

CRN is initiated when an interviewer (preferably one who has been certified) administers a standardized interview instrument to produce a Client Intake Form (CIF). The CIF is a screening evaluation designed to identify the level of the driver's drug and/or alcohol abuse and psychological impairment. The results from the CIF are merged with information from the Pennsylvania Department of Transportation on the defendant's traffic offense history and license status, to generate the Client Profile Form. Persons who are not diagnosed as problem drinkers may be sent to Alcohol Safe Driving School and then released. Persons whose background indicated problem drinking may receive outpatient alcohol counseling prior to their release, and others may be placed in residential intensive alcohol rehabilitation programs.

Typically, first offenders enter an education/treatment diversionary program and are subject to some license action. A fine may be imposed as well. Second offenders are required to pay a fine and also suffer a license action.

### License Actions

DUI first offenders in Pennsylvania are potentially subject to a mandatory one-year license suspension. Both actions are court-imposed and administratively carried out by the State Department of Transportation.

First offenders are eligible for, and typically enter, the accelerated rehabilitative disposition (ARD) diversionary program. While the vehicle code does not provide the courts with the authority to issue restricted licenses, they are generally issued to first offenders entering ARD. A first DUI offender in ARD is not subject to any DOT license actions, however, the courts are not constrained by this and may impose a 1- to 12-month action. These offenders will typically not incur a fine, but rather, will be held responsible for the costs of their participation in ARD. If the offenders fulfill one year of the ARD program requirements, their records are expunged. Second offenders are not eligible for ARD and generally receive a 1 year revocation when convicted. In those instances when CRN is not used, information on prior DUI activity is often unavailable. Consequently, the courts are unaware of previous convictions and many second offenders are treated as first offenders. The CRN system, however, interfaces with the Office of Traffic Records. Any prior DUI information is provided on the profile form.

Restricted licenses are available as a hardship or occupational license. Driving privileges are usually restricted to within a single-county area. Suspended licenses are returned by the DOT when the term of the suspension has elapsed. Those who have had their licenses revoked must reapply for a driving permit, and cannot do so until the period of revocation has expired.

### Confinement

Specific operational information was not available as jail is rarely imposed as a DUI sanction.

#### IV. RESULTS

##### Reactions

Pennsylvania officials believe the CRN system to be well founded in its approach toward the DUI problem. The emphasis is on the integration of a health and legal systems approach of which license action is a valuable tool. Currently, Pennsylvania officials are looking at several issues that may be forthcoming in discussions to be held in the State legislature on DUI. These issues are: the use of preliminary breath test devices, the establishment of an illegal per se law, longer duration for license actions, the use of possible mandatory confinement as a sanction for DUI offenders, mandatory participation in alcohol education programs and treatment services if necessary.

##### Effectiveness

Respondents were unaware of any formal efforts at evaluating the effectiveness of the entire Pennsylvania approach. They felt that any such efforts would be premature at this time.

##### Costs

A review of DUI costs by the Office of Drug and Alcohol Programs of the Department of Health during fiscal 1979 indicates that court costs associated with adjudication of DUI offenders range up to \$125.00 and average \$72.96. Fines assessed range up to \$700.00, with the average fine being \$235.28. The maximum statutory fine for the offense is \$2,500 in Pennsylvania. Costs for DUI programs range from \$25.00 to \$500.00 for each offender, including evaluation. The average cost for these programs statewide is \$114.00.

Ideally, the DUI enforcement system in Pennsylvania offers a viable method for early detection and prevention of alcohol abuse and alcoholism. This system, by bringing a significantly greater proportion of problem drinkers to the attention of the "health/legal" system of Pennsylvania helps pay for itself.

CRN, the latest development in the continuing Pennsylvania Alcohol Highway Safety Program, improves even more on the cost-effectiveness of DUI programs throughout Pennsylvania. By providing an efficient network for better communication between participating subsystems, heightened awareness of innovative techniques, systematic sharing of significant results, and comparative evaluations, CRN supplies the local DUI program and the entire PAHSP (Pennsylvania Alcohol Highway Safety Program) with the data necessary for judicious policymaking and effective change. By better integrating already existing systems such as law enforcement, adjudication, and rehabilitation into a cohesive unit, CRN is both effective and economical because it improves upon already existing agencies rather than creating new ones.

#### V. REPLICABILITY

Replication of Pennsylvania's system would be dependent on cooperation among the Pennsylvania DOT (or equivalent), the health care community, law enforcement personnel, and the remainder of the legal system. The Pennsylvania system is based on contribution of information and avoidance of duplication of effort. Additionally, uniform record-keeping and interviewing techniques statewide are critical. Statistical information may be accessed from the CRN system by any of its contributors; however, individual CRN evaluations are available only to the courts.

STATE: PENNSYLVANIA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$300 - \$2,500	\$300 <u>1/</u>	<u>1/</u> Offenders referred to ARD programs pay program costs in lieu of fine <u>2/</u> If attend ARD program, limited to use within a single county only <u>3/</u> Can include outpatient counseling
Jail	48 hours		
License Action:			
. Suspension	1-12 months		
. Revocation			
. Restricted		Varies <u>2/</u>	
Impoundment			
Educ/Trmt Program	Alcohol Safe Driving School	Alcohol Safe Driving School	
Community Service			
<u>2nd Offense</u>			
Fine	\$300 - \$2,500	\$300	<u>1/</u> Restricted license may be granted on a hardship basis <u>2/</u> Can include outpatient counseling
Jail	30 days		
License Action:			
. Suspension			
. Revocation	1 year	1 year <u>1/</u>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol Safe Driving School	Alcohol Safe Driving School <u>2/</u>	
Community Service			
<u>Subsequent Offenses</u>			
Fine			<u>1/</u> For 3rd offenders; 1 year for 4th offenders within 7 years
Jail	90 days <u>1/</u>		
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			



## RHODE ISLAND

### I. BACKGROUND

On 1 July 1982, the State of Rhode Island enacted new DWI legislation as a result of strong pressure from a MADD chapter as well as from other groups of families, relatives, and friends of drunk driving accident victims. Tougher legislation had often been proposed during previous legislative sessions but had not been passed. This time, however, a vigorous grass-roots campaign supported by the attention being focused on the DWI issue nationwide lobbied the State legislature to pass the tougher statutes. Local media have been publicizing the DWI problem in recent months, and a series of newspaper editorials generated public support for a more effective DWI policy.

### II. LEGISLATION

The new legislation provides for minimum mandatory penalties and an alcohol safety action program that is responsible for alcohol screening and referral activities. Significant elements of the new statutes include the following:

- Community service is used as an alternative sanction on a first offense. Jail is mandatory on all subsequent offenses
- Plea bargaining is no longer allowed for DWI charges
- The stipulation that "no fines, suspensions, assessments, community service, or jail penalties may be suspended" is included

The following mandatory sanctions are prescribed by the new legislation:\*

\* "No fines, suspensions, assessments, community service, or jail penalties may be suspended."

1st offense:	\$200 fine + \$150 assessment for highway fund 10-60 hours public community service <u>and/or</u> Up to 1 year jail 3-6 months license suspension Attendance at drunk driving school and/or alcohol or drug treatment
2nd offense:	\$500 fine + \$150 assessment for highway fund 10 days - 1 year jail 1-2 years license suspension Attendance at alcohol/drug treatment program
3rd offense:	\$500 fine + \$150 assessment for highway fund 6 months - 1 year jail 2-3 years license suspension Attendance at alcohol/drug treatment program

Due to the recency of the new legislation, only preliminary operational data were available. Based on relatively few observations, it appears that the following sanctions are typically imposed:

1st offense:	\$200 fine + \$150 assessment for highway fund 10 hours community service 3-month license suspension Attendance at drunk driving school (\$25 fee assessment)
2nd offense:	No operational data available for second or subsequent offenders

### III. OPERATIONS

Upon judicial conviction, offenders are referred to the Alcohol and Drug Safety Unit of the Governor's Office on Highway Safety for alcohol screening. This Unit administers the Alcohol Safety Action Program, which provides assessment, placement, and follow-up services to the courts and recommends appropriate community service placement and/or treatment programs. The Unit is administered in cooperation with alcohol and drug programs within the Departments of Health and Retardation and various local hospitals. The program will become fully operational during January 1983.

Treatment is offered in addition to other, punitive sanctions. A high BAC at time of arrest will often result in imposition of more severe sanctions. Alcohol screening determines the type of community treatment to which offenders are referred. If offenders fail to attend or complete the prescribed education/treatment program, the court may impose a jail sentence that does not exceed one year. The new legislation does not allow for suspended sentences or probation.

#### License Actions

The Registry of Motor Vehicles can only initiate a license action upon notification from the courts that a DWI conviction has been obtained. Preliminary observations indicate that typical first offenders are receiving the minimum three-month license suspension prescribed. Restricted or conditional licenses are not available.

In order to have licenses reinstated offenders must wait the full term of the suspension and present release forms indicating successful completion of any education/treatment or service program attended. Persons convicted of driving while under license suspension are subject to 10 days in jail, 3 months additional suspension, and a \$500 fine for the first offense, and 6 months to 1 year in jail, 1 year additional suspension, and \$1,000 fine for any subsequent conviction. These sanctions were also instituted by the 1 July 1982 legislation.

#### Confinement

The new legislation permits a jail term of up to 1 year to be imposed on persons for their first DWI conviction. Preliminary observation, however, reveals that jail time is rarely sanctioned for this offense. Although minimum sentences are mandated for second and subsequent offenses, it is too early to determine how this sanction will be imposed. Although minimum sentences cannot be suspended or probated, judges can impose confinement either in a minimum or maximum security facility and can allow for a work release program on a case-by-case basis.

#### Community Service

Community service is available only to first offenders, and most receive a sentence of 10 service hours, although some have been sentenced the maximum of 60 hours. The community service program is administered statewide by the Alcohol and Drug Safety Unit within the Governor's Office on Highway Safety. Offenders must contact the Unit for service referral within 14 days of conviction.

Attempts are made to locate agencies close to offenders' homes and to match individual skills to work placement. After the referrals are made, individual offenders establish their work schedules with the participating agencies.

Monitoring is performed by case workers assigned to each offender. Once the terms of the service agreements are completed, the Office on Highway Safety is notified, and release forms are signed and presented to the offenders. If individuals fail to comply with the work program, the Office on Highway Safety is also notified, and bench warrants are initiated.

#### IV. RESULTS

##### Reactions

The new legislation has considerable support from the general community, as well as from members of the judiciary. There has not been any formal opposition from prosecutors, defense attorneys, or judges. It is anticipated that the numbers of requests for jury trials will increase significantly, especially when persons are charged with their second or subsequent offense. It is uncertain how the deletion of the plea bargaining option will affect the adjudication process. If the jail sanction is imposed more frequently, some overcrowding of jail facilities is expected.

The numbers of alcohol-related arrests have shown an increase during the first few months of the new program. Police are very supportive of the new policy. They feel that DWI arrests are now worth the time and effort involved and that prescribed sanctions will be imposed.

##### Effectiveness

Formal monitoring or tracking systems that provide information regarding the relative effectiveness or impact of the new legislative program have not been developed. Driving records are computerized and easily accessible throughout the State. They contain driving history only and record all arrests and final dispositions.

##### Costs

The \$150 assessment collected from persons attending the alcohol screening program is deposited in a special fund, separate from all other fines collected by the judiciary. These monies pay all costs for alcohol screening, education, and treatment programs.

#### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of the sanction program that are essential to its replication in other States.

STATE: RHODE ISLAND

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200 <sup>1/</sup>	\$200 <sup>1/</sup>	1/ Fine plus \$150 assessment for highway fund
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	3 - 6 months	3 months	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol education	Alcohol education	
Community Service	10 - 60 hours	10 hours	
<u>2nd Offense</u>			
Fine	\$500 <sup>1/</sup>	*	1/ Fine plus \$150 assessment for highway fund
Jail	10 days - 1 year	*	
License Action:			
. Suspension	1 - 2 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment		
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 <sup>1/</sup>	*	1/ Fine plus \$150 assessment for highway fund
Jail	6 months - 1 year	*	
License Action:			
. Suspension	2 - 3 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment		
Community Service			

\* Operational data not yet available - legislation enacted July 1982.

## SOUTH CAROLINA

### I. BACKGROUND

During 1982, the State of South Carolina passed minor revisions to its drunk driving legislation. Although the State has traditionally been tolerant of DWI offenders, legislative bills are now being introduced that call for stricter DWI penalties. The State Alcohol and Drug Abuse Commission has consistently lobbied for tougher handling of DWI offenders and local MADD chapters are generating grass-roots support for the drunk driving issue statewide.

### II. LEGISLATION

Significant among the South Carolina revisions are the following elements:

- Plea bargaining may not be used in DWI cases
- Mandatory attendance in an alcohol screening program is combined with traditional sanctions of fine, jail sentence and license actions

The sanctions prescribed by current statutes include:

1st offense:	\$50-\$200 fine or 10 days-30 days jail 6 months license suspension Alcohol screening and treatment
2nd offense:	\$1,000 fine (minimum) and/or 1 year jail 1-year license suspension Alcohol screening and treatment
3rd offense:	\$2,000 fine (minimum) and/or 3 years jail 2 years license suspension Alcohol screening and treatment

Typically, the sanctions imposed on drunk drivers are:

1st offense:	\$100-\$200 fine Jail (seldom) 6 months license suspension (provisional license if attend ADSAP) Alcohol screening Treatment program
2nd offense:	\$500 fine Jail (varies) 1-year license suspension Alcohol screening Treatment program
3rd offense:	\$500 fine Jail (varies) 2 years license suspension Alcohol screening Treatment program

As of August 1982, offenders must undergo an alcohol screening procedure by the State Alcohol and Drug Abuse Commission to determine the level of alcohol problems that might exist. Referral is then made to appropriate treatment agencies. Upon successful completion of the treatment program, the Highway Department is notified and the license is reinstated at the end of the statutory suspension period.

### III. OPERATIONS

South Carolina employs a two-tiered court system. All first offense DWI cases are tried in the local magistrate or municipal courts while second and subsequent offenses are heard at the circuit court level. Offenders can request a trial by judge or jury at both levels.

Plea bargaining is not used with DWI cases because South Carolina does not recognize any other offense as being "a lesser included offense" of DWI. The arrest ticket is the charging document and in order to change the offense, a new citation must be issued.

### License Actions

Upon a judicial conviction, the court notifies the State Department of Highways and Public Transportation which makes the appropriate entry on the permanent drivers' files. Persons convicted of a first offense are subject to a six-month license suspension, second offenders a one-year suspension and subsequent offenders face a license suspension of two years. These suspensions are usually imposed as mandated, however, first offenders can apply for the Alcohol Driver Safety Action Program (ADSAP) and receive a provisional license during the six-month suspension period.

In order to have their licenses reinstated, persons must attend alcohol screening and treatment programs ordered by the courts, wait the full period of suspension and appear before the Alcohol and Drug Abuse Commission, which then notifies the Highway Department to reinstate the license.

Respondents indicated that many persons drive while under license suspension. Local communities are supposed to be supplied with the names of persons on suspension, but in many cases, this information is not transmitted. When apprehended, offenders usually are subject to a \$100 fine and an additional six-month license suspension.

### Confinement

Respondents provided little information concerning the use of jail as a sanction for DWI offenders, as this sanction is infrequently imposed.

## IV. RESULTS

### Reactions

In general, local communities are relatively tolerant of drunk driving. This attitude is reflected in the lenient sanctions typically imposed on DWI offenders throughout the State. Law enforcement personnel favor stricter

penalties for DWI offenses. Proposals to use mandatory jail sentences and establish an illegal per se law have been discussed and will be introduced during the next legislative session.

### Effectiveness

Respondents see no major trends in arrest and conviction rates during the last few years. Formal evaluations of the sanctioning program have not been undertaken, although a study of the new screening procedure is being conducted.

### Costs

All fine monies collected by the magistrate courts are transferred to the county treasury and can be used to fund local activities. In the circuit courts, 75 percent of all fines collected remain in the county and 25 percent go into the State funds. Offenders entering the alcohol screening procedure are assessed a \$200 fee which covers the cost of assessment and subsequent treatment programs. More detailed cost information was not available.

## V. REPLICABILITY

Respondents were unable to provide information about particular elements of their sanction program that would be required to replicate the program in other States.

STATE: SOUTH CAROLINA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$50 - \$200	\$200 - \$300	<u>1/</u> Restricted license available if attend education program
Jail	10 - 30 days	Varies	
License Action:			
. Suspension	6 months	6 months <u>1/</u>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol screening	Screening & education	
Community Service			
<u>2nd Offense</u>			
Fine	\$1,000 (minimum)	\$500	
Jail	1 year	Varies	
License Action:			
. Suspension	1 year	1 year	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol screening	Screening & treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$1,000 (minimum)	\$500	
Jail	3 years	Varies	
License Action:			
. Suspension	2 years	2 years	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol screening	Screening & treatment	
Community Service			

## SOUTH DAKOTA

### I. BACKGROUND

In support of the changing climate throughout the State regarding drunk driving, South Dakota revised its DWI laws effective 1 July 1982. Prior to the national campaign to combat drunk driving, the Governor of South Dakota began a statewide "get tough" program against DWI offenders. After reviewing results of the State ASAP program of the mid-1970's, the Governor increased enforcement efforts and implemented a public information and education program to raise awareness of the drunk driving problem. A statewide media campaign includes the use of highway roadside markers that state "THINK--X Marks the Spot" where each fatality has occurred.

An alcohol education program was initiated at various levels of State government, including: the Department of Revenue, which administers State liquor control laws; the Department of Health, which coordinates State alcohol programs; and the Department of Education and Cultural Affairs, which has established alcohol education programs in many of the local school systems.

### II. LEGISLATIVE

Significant aspects of the new DWI laws are as follows:

- Second and subsequent DWI offenders are subject to one year "unconditional revocation" of their driver's licenses
- Mandatory jail sentence of three days for driving under revocation from a second offense DWI
- Mandatory jail sentence of ten days for driving under revocation from a third or subsequent offense DWI
- Implied consent statute was amended to permit chemical analysis to determine the presence of marijuana or any controlled drug or substance

The following sanctions are currently stipulated by State law:

1st offense:	Up to \$1,000 fine Up to 1 year in county jail 30 days to 1 year license revocation
2nd offense:	Up to \$1,000 fine Up to 1 year in county jail 1-year license revocation (mandatory)
3rd offense: (felony)	Up to \$2,000 fine Up to 2 years in State Penitentiary 1-year license revocation (mandatory)

### III. OPERATIONS

#### License Actions

Upon conviction for DWI, offenders must surrender driver's licenses to the court. Licenses are sent to the Department of Public Safety, where the official driving records are changed. Persons convicted of a first offense are subject to a license revocation of 30 days to one year; most first offenders receive the minimum 30-day revocation. A work permit is available and, in most cases, granted. This is not expected to change under the revised statutes.

Persons convicted of a second or subsequent DWI offense are now subject to "unconditional license revocation" for a period of one year. Previously, there was a 60-day minimum revocation period, but the court in its discretion could revoke the license for up to 1 year. Currently, if the courts do not impose the full year sentence, the Director of Highway Safety has the administrative authority to revoke offenders' licenses.

In order to have licenses reinstated, offenders must pay a \$50 reinstatement fee, prove financial responsibility, retake all driving examinations, and make a formal application to the Department of Public Safety. This procedure applies to persons whose licenses have been officially revoked, including the first offenders who may have been granted work permit licenses by the courts.



In an attempt to reduce the number of persons who drive while under license revocation for a DWI conviction, the 1982 revisions have increased the sanctions for persons apprehended for this offense. Three days in jail are now mandatory for driving under revocation from a second offense DWI, and a 10-day jail sentence must be imposed for driving under revocation from subsequent DWI offenses. These penalties cannot be suspended by the courts.

#### Confinement

Current statutes call for sentences of up to 1 year in the county jail for persons convicted of a first or second offense DWI. Third and subsequent DWI offenders can serve up to 2 years in the State Penitentiary.

First offenders will probably receive a 30-day jail sentence which will usually be suspended in whole or in part. Persons convicted of their second offense will usually serve between 10 and 20 days in jail. Weekend confinement and work release programs will most likely be available on a case-by-case basis. A third DWI is a felony offense, and these offenders will serve some time in the State Penitentiary, typically one to two years. The amount of time served, however, will vary considerably.

#### IV. RESULTS

##### Reactions

In general, judges have been supportive of the DWI statute revisions. Approximately half of the circuit judges have come out with a formal public policy for handling DWI cases. Most will enforce at least the minimum sanctions for repeat offenders. Judges do not favor mandatory sentencing, however, as this would limit their judicial discretion. Most judges have indicated they will impose sanctions consistently.

Prosecutors and the defense bar have also been openly supportive of the new laws. With the use of videotaping during booking procedures, it is anticipated that cases will be stronger and less likely to be appealed. All judges and local prosecutors are elected officials and should, therefore, reflect the attitudes of the local communities. Currently, the general population is strongly supportive of these efforts and is making its opinions known. It is believed, therefore, that local jurisdictions will handle the problem in response to the community wishes.

Recently, there has been an increased level of DWI enforcement, though officials have attempted to avoid the use of roadblocks and other actions that have generated controversy in the past. High visibility will be stressed. Saturation patrols will be used in high problem areas, and their presence will be publicized to enhance their deterrent effect.

Court calendars have become slightly more crowded and the numbers of jury trial requests have been slowly increasing. However, because of the rural nature of the State, the numbers of persons being processed are not large enough to create any major problems. This situation is not expected to change during the near future. In 1981, there were fewer than 100 jury trials conducted, though there were 5,000 DWI arrests.

##### Effectiveness

Although a formal evaluation of the DWI sanctioning program has not been conducted, it is reported that sanctions are being more consistently imposed on persons convicted of drunk driving offenses than has been the case in previous years. In addition, there has been a noticeable increase in the number of alcohol-related arrests. Of the approximately 5,000 DWI arrests during 1981, almost 80 percent were convicted for the alcohol-related charge. Recently, a reporting system has also been implemented that maintains computerized records of the numbers and results of chemical tests being performed by the State Chemical Testing Program.

The number of alcohol-related fatalities reportedly dropped from the 105 deaths recorded last year at this time to 78; the percentage of alcohol-related traffic fatalities has decreased from 68 percent in 1981 to less than 50 percent currently. These trends have been attributed to the increased level of enforcement activity statewide, as well as to the well-publicized alcohol education campaign.

#### Costs

All fine monies collected are earmarked for State aid to education. The \$50 license reinstatement fees are used to cover the expense of the Driver Licensing Program.

#### V. REPLICABILITY

South Dakota has a relatively small population widely dispersed over the rural State. Officials state that the small numbers make the DWI program easily manageable.

The major emphasis in South Dakota is on existing resources. There is an attempt to maintain an ongoing integrated program that is highly visible to the local community. Respondents asserted that implementing a strong public information and education program, increasing visible enforcement practices, and maintaining a vigorous media campaign are three necessary components in effecting a lasting deterrent. Another important factor, according to the respondents, is strong commitment to combatting DWI from highly placed public officials. The Governor of South Dakota is viewed as a strong leader who has made a public commitment to assure the program's success.

STATE: SOUTH DAKOTA

Sanctions	Prescribed by Statutes	Typically Imposed *	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000		
Jail	Up to 1 year		
License Action:			
. Suspension			
. Revocation	30 days - 1 year		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$1,000		
Jail	Up to 1 year		
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$2,000		
Jail	Up to 2 years		
License Action:			
. Suspension			
. Revocation	1 year		
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted July 1982.

TENNESSEE

I. BACKGROUND

Responding to increasing grass-roots pressure to deal more severely with the problem of drunk driving, the State of Tennessee enacted significantly tougher DWI legislation effective July 1, 1982. A major thrust for this legislation came from a small but highly visible MADD chapter that was able to lobby the State Legislature effectively.

II. LEGISLATION

The new DWI legislation has increased the penalties that are imposed on persons convicted of drunk driving offenses. The statute limits judicial discretion by stipulating that minimum penalties cannot be suspended. Significant provisions of the legislation include:

- Diversionary education/treatment programs are combined with more traditional sanctions
- Plea negotiations are no longer allowed
- The severity of fines, license actions, and sentences to confinement has been increased

The current DWI legislation mandates the following sanctions:\*

1st offense:	\$250-\$1,000 fine (plus \$10 chemical test fee)
	48 hours-11 months 29 days jail, or work house
	1-year license suspension (restricted license available)
	Alcohol safety DWI school (condition of probation)

\* Judicial discretion allows use of public service in lieu of or in addition to the mandated penalties.

2nd offense: \$500-\$2,500 fine (plus \$10 chemical test fee)  
 45 days-11 months 29 days jail or work house  
 2-year license suspension  
 Alcohol treatment/rehabilitation program (condition of probation)

3rd offense: \$1,000-\$5,000 fine (plus \$10 chemical test fee)  
 120 days-11 months 29 days jail or work house  
 3-10 years license suspension  
 Alcohol treatment/rehabilitation program (condition of probation)

Sanctions typically imposed on DWI offenders are as follows:

1st offense: \$250 fine plus court costs  
 48 hours jail  
 1-year license suspension (restricted license available)  
 Attendance at alcohol safety school

2nd offense: \$500 fine (plus court costs)  
 45 days jail (minimum)  
 2-year license suspension  
 Attendance at rehabilitation program (urban areas only)

3rd offense: \$1,000 fine (plus court costs)  
 120 days jail (minimum)  
 3-year license suspension  
 Attendance at rehabilitation program (urban areas only)

There have been very few repeat offenders prosecuted under the new legislation because of loopholes in previous statutes. Most individuals arrested after the new law came into effect have been tried as first offenders regardless of their driving history.

### III. OPERATIONS

If suspects fail the roadside sobriety tests administered by the arresting officer, a mobile BAC unit is summoned to the scene. A breath test is administered and if suspects have a BAC of .10 percent or greater, they are arrested and placed in the "drunk tank" until sober. Persons exhibiting elevated BAC levels are often kept for a longer period of time. Most persons post bond and are arraigned in the local jurisdictional court.

Second or subsequent offenders are required to undergo a pre-sentence investigation to ascertain the nature and extent of their drinking problem. They are subsequently referred to one of 18 State medical facilities most appropriate for their needs, as a condition of probation.

Under the new law, suspects can no longer negotiate a plea bargain to avoid the drunk driving charge. Previously, offenders could plead guilty to a lesser charge, accept a diversionary treatment program and never be cited for the alcohol-related offense. However, under current legislation, they attend the education treatment program and receive punitive sanctions.

#### License Actions

The Department of Safety can only suspend an individual's driver's license upon notification of a judicial conviction. The court orders offenders not to drive, and the State notifies offenders to surrender their licenses. Persons convicted of a first offense are subject to and generally receive a one-year license suspension. However, 10 days after the date of conviction, offenders can apply to the court for restricted driving privileges. They must obtain the signatures of both judge and prosecutor, pay a \$20 fee and retake the driving test. Restricted privileges are often granted.

Persons convicted of a second and subsequent offense are subject to two and three years suspension, respectively. Restricted licenses are not available for repeat offenders. In order to have a license reinstated, an offender must file a formal application and retake the driver's examination. More specific operational data are not available due to the recency of the new legislation.

It is recognized that habitual offenders drive while under license suspension. If apprehended for this charge, an offender is mandated to pay a \$500 fine and serve from two days to six months in jail. However, the only sanction typically imposed is a \$50 fine.

#### Confinement

Persons convicted of a first offense usually are sentenced to and serve a 48-hour jail sentence. Offenders often serve this time on weekends, as space permits. In Nashville and in other urban areas where jail space is less available, many offenders are being assigned to confinement in a halfway house run by the County Sheriff's department.

Repeat offenders are subject to serve minimum jail sentences of 45 days and 120 days for second and third offenses, respectively. The relatively small number of repeat offenders processed under the new law appear to be serving these minimum sentences. Repeat offenders can also be assigned to halfway house confinement, if local jail space is not available. Sheriffs have been reporting logistical problems in juggling available jail space. Individuals receiving longer sentences are sometimes released a few days early in order to make room for other offenders. Work release programs are often granted as an attempt is made to have the individual serve the time required, without experiencing financial hardship.

#### Community Service

The new statute allows judges to impose public service in lieu of, or in addition to the traditional sanctions specified as long as it does not interfere with regular employment hours. Tennessee does not have a statewide community service program in operation. Respondents feel that this option will be used in rare cases as a further condition of probation. Due to the recency of the new legislation, operational information about imposition of this sanction alternative was not available.

#### IV. RESULTS

##### Reactions

Judges have been generally supportive of the new program and do not oppose the use of mandatory minimum sentences. Prosecutors and defense attorneys have also voiced support although the defense bar is attempting to find the loopholes in the legislation. Offenders are still able to request a trial by jury and trial requests are expected to increase. Prosecutors consistently seek the minimum sentence available but the defense bar will argue a few test cases to see how flexible sanctioning practices will be. Judicial seminars have been conducted to discuss the new program and to develop a consistent operating policy. It is still too early to tell how the new policies will be interpreted.

##### Effectiveness

Preliminary observations indicate a 23 percent decrease in arrest activity since the new law has been in effect. It is believed that people are aware of the tougher sanctions and are more fearful of being apprehended. The number of total stops has remained the same, but police are finding fewer individuals who are legally intoxicated. There are no plans for any formal program monitoring or impact evaluation to be conducted.

##### Costs

The new legislation mandates that a portion of the fine money collected be returned to the Sheriff of the county jail or chief administrative officer of the city jail to cover the costs of confinement. Local sheriffs, however, are not certain that this reimbursement schedule will work out as planned. There are no major problems at this time, but it is anticipated that jail overcrowding will become a problem.

#### V. REPLICABILITY

Respondents feel that it is important to combine the education and treatment component with the more traditional sanctions of confinement and license action.

STATE: TENNESSEE

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$250 - \$1,000	\$250	<u>1/</u> 48 hours mandatory <u>2/</u> Restricted license available
Jail	48 hrs-11 mos. 29 days <sup>1/</sup>	48 hours	
License Action:			
. Suspension	1 year <sup>2/</sup>	1 year <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Education	Education	
Community Service			
<u>2nd Offense</u>			
Fine	\$500 - \$2,500	*	<u>1/</u> 45 days mandatory
Jail	45 days-11 mo. 29 days <sup>1/</sup>	*	
License Action:			
. Suspension	2 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment	*	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$1,000 - \$5,000	*	<u>1/</u> 120 days mandatory
Jail	120 days-11 mo. 29 days <sup>1/</sup>	*	
License Action:			
. Suspension	3 - 10 years	*	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment	*	
Community Service			

\* Operational data not yet available - legislation enacted July 1982.

TEXAS

I. BACKGROUND

During January 1982, the Governor established a Task Force to review the State's Traffic Safety programs and to examine the current laws and statutes pertaining to drinking and driving. The Task Force was composed of representatives from several interested groups and reflected a range of perspectives on the DUI issue, including State agencies, the judiciary, the State Legislature, private industry, the media, alcohol treatment agencies, law enforcement and the general community.

Public awareness and concern about the DUI issue is increasing. Mothers Against Drunk Driving (MADD) is receiving increased publicity and the media are highlighting all accounts of DUI activity statewide. In many areas, lists of persons arrested for drunk driving are being printed in the daily newspapers.

II. LEGISLATION

The Texas DUI legislation calls for a combination of fines, license actions and jail sentences to be imposed on persons convicted of drunk driving. Sanctions currently "on the books" prescribe the following:

1st offense:	\$50-\$500 fine 3 days-2 years jail 1-year license suspension
2nd offense:	\$100-\$5,000 fine and/or 10 days-2 years jail 18 months license suspension

Subsequent offenders are subject to up to five years in the State penitentiary. The courts have the discretion to commute any jail sentence to a probation period of not less than six months.

The sanctions typically imposed on DUI offenders vary greatly throughout the State, but are generally considerably less severe than those mandated by statute. Sanctions imposed are:

1st offense:	Fine (varies widely) Deferred adjudication or probation Alcohol education school
2nd offense:	Fine (varies widely) Jail (varies, usually a few days if imposed) License action (varies)

III. OPERATIONS

Persons arrested for DUI are brought to the county jail where they are booked, allowed to post bond and arraigned. Many cases are plea bargained down to a lesser charge at this time. All DUI cases are tried in the County courts and can be appealed to the District court. In many cases, County court judges grant a delayed adjudication. Offenders attend a DUI education program, and if there are no subsequent alcohol-related activities during a period of two years, the case is dismissed and no records of the DUI charges are maintained.

License Actions

License actions cannot be imposed by the courts, but rather are initiated by the Department of Public Safety (DPS) upon notification of a judicial conviction. Once notified by the courts, the DPS amends the driving record and notifies the offender of the action to be taken. Offenders have 10 days to request an administrative hearing to appeal the action. In many cases, DPS is never notified by the courts and no action is taken. When a license action is initiated, offenders can often receive a restricted license by requesting a formal hearing.

Confinement

Respondents provided little information concerning the use of jail as a sanction for DUI offenders as this sanction is infrequently imposed due to a severe overcrowding problem in the county jails.



#### IV. RESULTS

##### Reactions

After a comprehensive examination of DUI sanctioning procedures statewide, the Governor's Task Force identified a number of legislative changes that could be made to strengthen the existing DUI laws. Respondents stated that the judiciary is expected to resist any attempt to restrict significantly their discretionary powers, therefore, any changes will be designed to strengthen the prosecutor's case. Specific recommendations made by the Task Force include: use of .10 percent BAC as prima facie evidence of intoxication, consider court ordered probated sentences as previous offenses, and permit use of breath test refusal as evidence in court.

Other task force recommendations that may be considered include: eliminate deferred adjudication for DUI offenses, institute mandatory jail for repeat offenders, restrict the issuance of hardship licenses, and institute a 90-day license suspension for refusing to take the chemical breath test. Currently, there is no penalty on the books for refusing to allow a determination of the BAC to be made.

##### Effectiveness

No data were available nor were any evaluations conducted to assess the effectiveness of the Texas system. Respondents indicated that the system as currently implemented is not an effective deterrent to DUI activity. The conviction rate for DUI cases was estimated to be approximately 20 percent, with most of these convictions being made in the more urban areas.

##### Costs

Specific cost data were not available.

#### V. REPLICABILITY

Respondents were unable to provide information about particular elements of their sanction program that would be required to replicate the program in other States.

STATE: TEXAS

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$50 - \$500	Varies	
Jail	3 days - 2 years	Rarely	
License Action:			
. Suspension	1 year		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program		Education	
Community Service			
<u>2nd Offense</u>			
Fine	\$100 - \$5,000 <sup>1/</sup>	Varies	1/ Fine and/or jail sentence imposed
Jail	10 days - 2 years	Varies	
License Action:			
. Suspension	18 months		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

UTAH

I. BACKGROUND

On February 19, 1982, the State of Utah enacted new legislation that requires mandatory minimum sentences to be imposed on persons convicted of a DUI offense. This change came about as a result of government officials' and the general public's concern over the growing numbers of accidents and deaths on Utah's highways contributed to, or directly caused by, drivers who are impaired due to consumption of alcohol or drugs. A Governor's Commission on Drinking and Driving has made a comprehensive study of this problem and has compiled a report of recommended legislative changes for presentation to the 1983 legislature. Significant amendments to the present laws are anticipated.

II. LEGISLATION

The new legislation calls for a combination of fines, mandatory confinement or service in an alcohol rehabilitation facility, and license actions. Significant aspects of this new law include:

- Plea bargaining to a lesser offense will require the prosecutor to indicate whether alcohol or drugs were involved with the offense of record; if so, the resulting conviction will constitute a prior offense for purposes of a subsequent alcohol-related offense
- Mandatory short-term confinement or service in an alcohol treatment facility that cannot be suspended or probated
- Imposition of the following sanctions on persons convicted of Driving While Under The Influence (DUI):

1st offense:

Up to \$299 fine  
60 days to 6 months jail  
1-year license suspension  
(2 to 10 days is mandatory to be served in jail or 2 to 10 days service at an alcohol treatment facility or in treatment at an alcohol rehabilitation facility)

**CONTINUED**

**4 OF 6**

2nd offense: Up to \$299 fine  
60 days to 6 months jail  
1-year license suspension  
(2 to 10 days jail is mandatory to be served  
in jail or 10 to 30 days service at an alcohol  
treatment facility or in treatment at an  
alcohol rehabilitation facility)

3rd offense: Up to \$299 fine  
60 days to 6 months jail  
1-year license suspension  
(30 to 90 days in jail or 30 to 90 days in  
service at an alcohol treatment facility and  
treatment in an alcohol rehabilitation facility)

Upon conviction for a DUI offense, individuals undergo a pre-sentence investigation that assists the judge in making an appropriate sentence. Although the new legislation mandates a minimum penalty to be imposed, the courts retain judicial discretion as to which sanctions are to be imposed.

### III. OPERATIONS

#### License Actions

The Department of Motor Vehicles (DMV) can only undertake a license action upon notification from the courts that a DUI conviction has been obtained. License revocation authority lies with the Division of Driver's License and is mandatory for a one-year period upon conviction of a DUI. The trial judge may make recommendations to the department that limited driving privileges be extended where hardship would result. However, the discretion to issue a restricted license is vested with the DMV.

#### Confinement

There was no information available regarding how the mandatory jail term will be imposed or eventually served. Although there is a jail sentence available for each category of DUI offenders, the courts may sentence offenders to serve this time by working at an alcohol treatment facility in lieu of actual confinement. When jail is to be imposed, the legislation calls for the time to be served in the "drunk tank" of the jail. The minimum sentence to either jail or service cannot be suspended or avoided through probation.

### IV. RESULTS

#### Reactions

As the legislation has been in effect for only two months, there are inadequate data available to determine how well the program will eventually operate. It is anticipated, however, that a number of problems will develop. The use of short-term mandatory confinement is expected to cause severe overcrowding in the jails, especially in the more populated areas. It is also expected that there will be an increase in numbers of not-guilty pleas and requests for jury trials.

Upon previous legislation, plea bargaining was sometimes used to avoid having an alcohol-related offense recorded on offenders' driving records and to protect the offender's drivers license. Under the new law, however, the alcohol-related offense must be recorded, regardless of the final charge, and will be considered a previous offense. However, the new legislation requiring mandatory confinement will probably offset the anticipated reduction in the use of plea bargaining. Although the incentive of avoiding the license action has been eliminated, offenders may now seek to plea bargain to a lesser charge to avoid the mandatory jail sentence. The full impact of these legislative changes has yet to be documented.

#### Effectiveness

The new legislation should lead to an improvement in the State's record-keeping system, as a new case-by-case tracking system has been implemented to monitor offenders' progress through the system.

#### Costs

Specific cost data were not available.

### V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.

STATE: UTAH

Sanctions	Prescribed by Statutes	Typically Imposed *	Comments
<u>1st Offense</u>			
Fine	Up to \$299		1/ Two to 10 days mandatory to be served in jail or in service to alcohol treatment facility or obtain treatment in alcohol rehabilitation facility  2/ Restricted license available
Jail	60 days - 6 months <sup>1/</sup>		
License Action:			
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	Up to \$299		1/ Two to ten days mandatory to be served in jail or 10-30 days service at alcohol treatment facility or obtain treatment at alcohol rehabilitation facility  2/ Restricted license to be made available
Jail	60 days - 6 months <sup>1/</sup>		
License Action:			
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	Up to \$299		1/ Thirty to 90 days in jail or 30-90 days in service in alcohol treatment facility plus obtain treatment at alcohol rehabilitation facility  2/ Restricted license to be made available
Jail	60 days - 6 months <sup>1/</sup>		
License Action:			
. Suspension	1 year <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Legislation enacted February 19, 1982. Operational data not yet available.

VERMONT

I. BACKGROUND

Vermont is a relatively rural State with very limited mass transportation available statewide. The current DWI legislation contains rather severe license actions, which is considered to be an effective sanction in rural States. Wanting to remain flexible in the sanctioning process, the State legislature has retained provisions for offenders deemed to be less chronic offenders or who may be potentially receptive to rehabilitative efforts to receive more lenient sanctions and enter the statewide "CRASH" program.

II. LEGISLATION

Vermont statutes provide for fines and license actions as sanctions for DWI offenders as follows:

1st offense:	\$125-\$500 fine and/or Up to 1 year prison 1-year license suspension
2nd offense:	\$125-\$500 fine and/or Up to 1 year prison 3-year license revocation
3rd offense:	\$125-\$500 fine and/or Up to 1 year prison 6-year license revocation
4th offense:	\$125-\$500 fine and/or Up to 1 year prison Life revocation

Sanctions typically imposed on DWI offenders are:

1st offense:	\$125 fine 1-year suspension reduced to 90-day suspension if participates in the State's "CRASH" (alcohol counseling) program
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2nd offense:	\$125 fine 3-year revocation reduced to 18-month revocation if participates in the State's "CRASH" (alcohol counseling) program and completes therapy
3rd offense:	\$125 fine 6-year revocation reduced to 3-year revocation if participates in the State's "CRASH" (alcohol counseling) program and completes therapy
4th offense:	\$125 fine Life revocation

III. OPERATIONS

Upon conviction for DWI, the courts notify the Department of Motor Vehicles (DMV). The DMV then notifies the offenders of the two options available. The first option is to accept the mandatory license action prescribed by the State statutes as follows: first offenders receive a 1-year suspension, second offenders a 3-year suspension, and third offenders a 6-year suspension. The second option is to enroll in the State's alcohol counseling and therapy program, Project CRASH, upon completion of which the duration of these license actions is significantly reduced.

License Actions

License actions are the primary penalties imposed on drunk drivers in Vermont. Once offenders' licenses are suspended, full restoration of driving privileges is available and is usually obtained by individuals who attend the State's CRASH treatment/education program. For first offenders, restoration occurs after 90 days; for second offenders, 18 months; and for third offenders, 3 years. In addition to the CRASH program, second and third offenders must also complete therapy to be eligible for early reinstatement. To obtain full restoration, the offenders must file verification of insurance and pay all appropriate fees.

### Confinement

Respondents provided little information concerning the use of jail as a sanction for DWI offenders as this sanction is rarely, if ever, employed for this offense.

## IV. RESULTS

### Reactions

DMV officials believe that the current system is a strict and effective one. They further contend that DWI legislation is set up in such a way as to encourage participation in the CRASH program and that these rehabilitative efforts will produce positive results.

### Effectiveness

Formal evaluations of DWI procedures and sanctions as they relate to deterrence of DWI behavior have not been performed. During the last year, however, DMV officials cited a 28 percent increase in convictions of first DWI offenders and a 49 percent increase in convictions for second DWI offenders. They were not able to determine whether these increases could be attributed to changes in enforcement, prosecution, drinking and driving behavior, or some combination of factors.

### Costs

Respondents identified the CRASH program as a significant expense within the DWI program. Offender fees, however, help to greatly reduce the financial burden to the State.

## V. REPLICABILITY

Respondents were unable to provide information regarding particular elements of their sanction program that would be required to replicate the program elsewhere.



STATE: VERMONT

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$125 - \$500 <sup>1/</sup>	\$125	<u>1/</u> Fine and/or jail sanction imposed  <u>2/</u> Full restoration of driving privileges after 90 days if treatment program has been completed
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	1 year	1 year <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	"CRASH" program	"CRASH" program	
Community Service			
<u>2nd Offense</u>			
Fine	\$125 - \$500 <sup>1/</sup>	\$125	<u>1/</u> Fine and/or jail sanction imposed  <u>2/</u> Full restoration after 6 months if treatment program completed
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	3 years	3 years <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	"CRASH" program	"CRASH" program	
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$125 - \$500 <sup>1/</sup>	\$125	<u>1/</u> Fine and/or jail sanction imposed  <u>2/</u> Full restoration after 3 years if treatment program completed
Jail	Up to 1 year	Rarely	
License Action:			
. Suspension	6 years	6 years <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	"CRASH" program	"CRASH" program	
Community Service			

VIRGINIA

I. BACKGROUND

The State of Virginia implemented new DWI legislation on 1 July 1982 in response to the increasing numbers of alcohol-related traffic fatalities occurring during the past few years. Studies conducted by the Virginia Alcohol Safety Action Project (VASAP) indicated that local jurisdictions across the State had diverse policies regarding the disposition of drunk driving cases and that, in general, DWI offenders were not being dealt with "harshly enough." Local grass-roots organizations (e.g., MADD, SADD) generated local public support for stricter enforcement of drunk driving laws and have effectively lobbied the State legislature to enact tougher DWI legislation. A Governor's task force has been appointed to examine the DWI problem more closely, focusing on enforcement, adjudication, public information and education, treatment, and rehabilitation.

II. LEGISLATION

Significant elements of the new legislation include the following:

- . Confinement is mandatory for second and subsequent offenses within 5 years of first offense
- . DWI convictions on driving records are no longer expunged upon completion of the Virginia Alcohol Safety Action Program (VASAP)

The sanctions prescribed by the new legislation are as follows:

1st offense:	Up to a \$1,000 fine and/or Up to 12 months in jail (Without VASAP) 6-month license suspension
	(With VASAP) 6-month license suspension, may be suspended in whole or in part and/or restricted driver's license

2nd offense:  
(within 5 years)

\$200-\$1,000 fine and/or  
1-12 months in jail (48 hours mandatory)

(Without VASAP)

3-year license suspension

(With VASAP)

3-year license suspension, of which 2 of  
the 3 years suspension may be suspended  
in whole or in part and/or restricted  
driver's license

(5-10 years)

\$200-\$1,000 fine and/or  
1-12 months in jail

(Without VASAP)

2-year license suspension

(With VASAP)

2-year license suspension, of which 1 of  
the 2 year suspension may be suspended  
in whole or in part and/or restricted  
driver's license

3rd offense:  
(within 5 years)

\$500-\$1,000 fine and/or  
2-12 months in jail (30 days mandatory)  
License suspension - indefinite  
VASAP not available

(5-10 years)

\$500-\$1,000 fine and/or  
2-12 months in jail (10 days mandatory)  
License suspension - indefinite  
VASAP not available

### III. OPERATIONS

Persons apprehended for DWI offenses are given a preliminary breath test and appropriate field sobriety tests. If arrested, offenders are booked, given a chemical test to determine BAC level, and arraigned before a local District Court judge. Persons can appeal to Circuit Court and request a trial by judge or jury.

Once formal conviction for DWI has been obtained and entered in driving records, offenders may be eligible for referral to the Virginia Alcohol Safety Action Program (VASAP) for probation supervision, alcohol screening, and referral to appropriate education/treatment providers. Under previous legislation, VASAP was offered as a post trial/pre-conviction program. Under the old law, successful completion may have resulted in dismissal or reduction of the alcohol-related charge.

### License Actions

License action can only be taken by the Department of Motor Vehicles upon notification by judges of judicial conviction for DWI. If individuals participate in the VASAP program, restricted driver's licenses may be issued by the courts for employment and VASAP attendance purposes. The courts notify the DMV of any restricted licenses issued.

Persons convicted of a first offense are subject to a 6-month license suspension; however, all or part of this sentence may be suspended if individuals participate in the VASAP program. If offenders do not attend VASAP, 6 months suspension is imposed. Persons convicted of a second offense (within 5 years) are subject to a 3-year suspension, 2 of the 3 year suspension may be suspended and/or a restricted license issued for participation in and successful completion of VASAP. Persons convicted of a second offense within 5 to 10 years after the first offense receive 2-year suspension, 1 of the 2 year suspension may be suspended and/or a restricted license issued for participation in and successful completion of VASAP.

Offenders convicted of a third or subsequent DWI charge are subject to lifetime administrative revocation of their driver's license. However, offenders who, after 5 years, can confirm their sobriety can petition the Circuit Court for reinstatement of their driving privileges. In order to have suspended licenses reinstated, offenders must make a formal application and undergo the full licensing procedures: eye exam, driving tests, and payment of all fees. Participation in the VASAP program and issuance of restricted privileges are no longer available for third or subsequent convictions.

### Confinement

A second DWI conviction within 5 years results in a 1 to 12-month jail term, with a 48-hour mandatory minimum sentence not subject to suspension by the court. It is anticipated that weekend confinement will be allowed, as long as jail space is available.

Persons convicted of a second offense within 5 to 10 years are subject to a jail term of 1 to 12 months; there is no mandatory minimum sentence specified. A third or subsequent conviction can result in a jail term of 2 to 12 months, 30 days of which are mandatory and not subject to suspension if the conviction occurred within 5 years of the first conviction. If the third offense occurs within 5 to 10 years of the first offense, then 10 days of sentence must be served. Due to the recency of the new legislation, more precise operational data are not yet available.

## IV. RESULTS

### Reactions

The overall program appears to be well supported by members of the judiciary, the enforcement community, and the general public. Because of the recency of the new legislation, it is difficult to determine just how the system will eventually be operationalized locally. Some individuals assert that the new law is too lenient and support increased emphasis on the punitive aspects of the sanctions rather than on the use of education and rehabilitation countermeasures.

It is anticipated that the increase in emphasis on punitive sanctions as proposed, may be self-defeating. For example, the use of confinement is expected to lead to increased requests for trials, more crowded court dockets, and potential overloading of the general court system. With minimal jail space currently available, it is uncertain how the problem of jail overcrowding will be overcome.

Further changes in the current DWI legislation are already being considered. These include: establishing an illegal per se law, raising the drinking age from 18 to 21 years of age, and ensuring that all alleged DWI offenders submit to a chemical determination of BAC level.

### Effectiveness

Due to the recency of the new legislation, it is too early to determine its relative effectiveness. However, preliminary observations have indicated that most offenders are pleading guilty to the DWI charge and are accepting and completing the VASAP option. Records are not being expunged once the program has been completed.

A number of new enforcement programs have recently been introduced, and arrests have been steadily increasing. There has been formal education and training of police officers. A program of citizen involvement called "I Report Drunk Drivers" has been initiated. The time required to arrest and process a DWI offender had been reduced from approximately 2 hours and 45 minutes to approximately 55 minutes. The average BAC level of DWI offenders has dropped from 0.23 in 1975 to 0.175 in 1981.

Currently, there is a great concern regarding the DWI issue and how the new legislation will be implemented. A vigorous public information and education campaign has been initiated, which is keeping the issue before the general public. Although the media exposure will have an effect on how the local population perceives the DWI problem, it is not certain how long the effect will last.

Currently, VASAP is maintaining extensive files that contain complete driver profiles of all individuals referred. Records include such information as age, sex, occupation, socioeconomic status, education, prior convictions, and alcohol history. The DMV only maintains records of driving history. Attempts are being made to combine DMV and VASAP record systems to develop a single master file that would be available to the courts for reference when making sanctioning decisions.

### Costs

Each offender who enters the VASAP program is charged a \$250 fee, which helps defray costs for probation screening, diagnosis, and education/treatment. General fine money collected goes to the State literary fund, which is used to purchase books and educational materials for local schools and colleges. This fund is not available for use by other agencies.

As the courts experience increased operating costs, it does not appear that budget resources will be expanded to meet this need. Therefore, the Governor's task force will be investigating alternative funding mechanisms, including increased fine structure, surcharges, victim fees, and restitution funds.

### V. REPLICABILITY

Based on their experiences in Virginia, our respondents offered some general guidance for implementing new sanctioning programs. Before a new program is considered, a complete history of the existing program should be reviewed to establish what has been tried, what works, and what does not work. This will help to identify potential problem areas and ensure that mistakes are not repeated.

More States have widely divergent population centers ranging from urban areas to rural towns and municipalities. Specific procedures, problems and potential solutions should reflect the particular area in question and not be totally constrained by statewide regulations. In other words, the State should have the authority to develop and maintain guidelines that will ensure general conformity and statewide consistency, but local communities should not be bound by regulations that are not applicable to their particular circumstances.

All State agencies involved with the program should be integrated and take part in the development of the overall program. In Virginia, this included the Departments of Health and Mental Health, community colleges, the Supreme Court, the State Police, the DMV, and various alcohol and drug treatment and rehabilitation facilities.

A strong training program should be established for all components of the judicial system. Training should cover not only provisions of the new legislation but also legislative intent and sentencing guidance.

STATE: VIRGINIA

Sanctions	Prescribed by Statutes	Typically Imposed *	Comments
<u>1st Offense</u>			
Fine	Up to \$1,000 <sup>1/</sup>		<sup>1/</sup> Fine and/or jail sanction prescribed  <sup>2/</sup> Suspended or restricted license can be granted if attend alcohol safety program
Jail	Up to 1 year		
License Action:			
. Suspension	6 months <sup>2/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>2nd Offense</u>			
Fine	\$200 - \$1,000 <sup>1/</sup>		<sup>1/</sup> Fine and/or jail sanction prescribed  <sup>2/</sup> 48 hours mandatory  <sup>3/</sup> 2 years suspended or restricted license granted alcohol safety program
Jail	1 - 12 months <sup>2/</sup>		
License Action:			
. Suspension	3 years <sup>3/</sup>		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$500 - \$1,000 <sup>1/</sup>		<sup>1/</sup> Fine and/or jail sanction prescribed  <sup>2/</sup> 30 days mandatory
Jail	2 - 12 months <sup>2/</sup>		
License Action:			
. Suspension	Indefinite		
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

\* Operational data not yet available - legislation enacted July 1982.

## WASHINGTON

### I. BACKGROUND

In 1980, the Washington State Legislature enacted new Driving While Intoxicated (DWI) legislation that contained stricter evidence requirements for the determination of guilt and provided for mandatory sentencing of DWI offenders. It was the intent of the legislation that such a change would ultimately act as a deterrent to future drinking and driving.

### II. LEGISLATION

The new legislation increases the certainty of punishment for DWI offenders by:

- . Establishing a per se section that makes driving a vehicle while having a BAC level of .10 percent or higher illegal throughout the State
- . Introducing a provision that mandates jail sentences for both first and repeat offenders
- . Imposing mandatory minimum penalties, as follows:

1st offense:	\$500 fine 1 day in jail (mandatory) 30-day license suspension (non-suspension may be recommended by the court) Alcohol treatment evaluation Attendance at Alcohol Information School
2nd offense:	\$1,000 fine 7 days in jail (mandatory) 60-day license suspension Alcohol treatment evaluation Attendance at Alcohol Information School

The sanctions that are actually imposed on the typical DWI offender are often those that are mandated. However, in practice, the sanctions actually served may be somewhat less severe. The sanctions imposed are:

1st offense:	\$350-\$400 fine 1 day jail (often less) Courts recommend "no suspension in approximately 60% of all cases Alcohol treatment evaluation Alcohol Information School
2nd offense:	\$700-\$1,000 fine 7 days jail 60-day suspension (occupational license available) Alcohol treatment evaluation Alcohol Information School

Many judges believe that first offenders are not the problem and that recidivists should be dealt with more harshly. In many cases, the severity of the sanction imposed is related to the time elapsed between offenses. That is, a tougher sentence is more likely to be imposed if a subsequent offense occurs within a short time after a previous offense.

### III. OPERATIONS

The adjudication process is initiated with the arrest for a DWI offense. The individuals are taken to jail, booked, charged with DWI, and released on bond. After entering a plea, a pretrial determination of BAC at time of arrest, prior driving, and alcohol history is made. If a plea of "not guilty" is entered, these offenders may choose a judge or jury trial. All trials must be conducted within 90 days of date of arrest and most defendants choose to be tried by jury. Because of the high level of DWI activity in the greater Seattle area, the adjudication process is somewhat different from the rest of the State. Individuals are arrested, cited for DWI, and given a "desk appearance ticket" (i.e., released on their own recognizance). This practice has led to a significantly higher rate of nonappearances for this area.

### License Actions

License actions are mandatory upon conviction of a DWI offense; however, the Department of Licensing must be informed by the courts of a conviction. Once the Department has been notified, then appropriate license action is initiated within a 15-day period.

First offenders are subject to a 30-day license suspension. However, the court can recommend that no license action be taken if the following criteria are met: (1) there is no prior alcohol-related violation, (2) the individual is not under departmental probation, (3) the individual is not under a deferred prosecution charge, (4) the individual has a current, valid driver's license, and (5) has attended Alcohol Information School and undergone evaluation of need for alcohol treatment. Overall, more than 50 percent of first offenders meet these conditions and, therefore, undergo no license suspension.

Most first offenders who receive a license suspension, as well as the majority of persons convicted of a second offense, can petition the DOL through the courts and request a driver's license that is restricted to occupational use only. These licenses are generally granted to individuals who currently possess a valid driver's license and have no prior alcohol-related offenses during the previous year. Although restricted licenses are technically issued for up to only 12 hours a day, 5 days per week, local courts are granting them for as many as 24 hours a day, 7 days a week, in order to "get around" any actual restrictions.

Persons who are convicted of a third DWI offense within a five-year period are considered to be Habitual Offenders and subject to a five-year revocation. Prior to the revocation, drivers are notified of their right to a formal hearing. The only two issues that are considered at the time of a hearing are: (1) whether the driver is the person named on the record and (2) whether all of the violations listed actually belong to the individual. If the finding is affirmative on both points, the Department of Licensing then imposes the five-year revocation. A stay of the revocation may be issued if the offenses were due to alcoholism and since the last offense, the driver has undergone treatment.

To have licenses reinstated, individuals must complete the terms of license action, file proof of liability insurance, pay a \$10-\$20 reinstatement fee, and simply reapply. Recent legislation also now requires a diagnostic evaluation to be completed to determine if adequate progress from any alcohol treatment or education program attended has been made. In the case of a license revocation, individuals must completely requalify for a new license by retaking both the written and open driving tests.

A vehicle impoundment bill was also recently passed that authorizes a vehicle to be confiscated and sold at public auction if its driver is apprehended for driving under a license suspension or revocation. Further information regarding this action was not available.

### Confinement

Persons arrested for a first DWI offense are required to serve one day in jail. Experience has indicated, however, that wide interpretation of this sanction has been exercised. Because of overcrowding of jails in many jurisdictions, defendants can often report for jail at 11:00 p.m. and be officially released at 12:01 a.m. on the following day. It was also noted that the time spent waiting to post bond or spending the night is considered as time served and, in most cases, is deemed sufficient to cover the penalty imposed. The Court Administrator's Office reported that many first offenders are spending at least some time in jail. A new bill passed in April 1982 changes the wording to read 24 consecutive hours and requires the courts to document, in writing, the reason for noncompliance.

Persons convicted of a second DWI offense are subject to a seven-day mandatory jail sentence. Although the Court Administrator's Office reported that most of these persons are serving this time in jail, it was also suggested that, in many jurisdictions, this is not the case. Some jurisdictions are reported to have doctors "on call" who can determine that jail would be "injurious to the well being" of the defendant. Generally, many local jurisdictions retain judicial discretion and interpret the law as they feel it to be appropriate for their needs.



### Community Service

Community service is available on a local jurisdictional basis only. When employed, it is often prescribed as a condition of probation or a suspended sentence.

## IV. RESULTS

### Reactions

The new DWI legislation has not been operating as the legislature intended, primarily because of the variation in sanctions being imposed across the State's 350 jurisdictions. Recently, a five-member Court Watching Commission was created to establish regulations with which to govern the conduct of the local courts and judges. Under the authority of the State Supreme Court, this panel will act as a disciplinary board that will monitor the local jurisdictions' handling of DWI cases and will have the authority to remove judges from office for not complying with the DWI statutes. The Court's Administrative Office feels that the panel's actions will increase the consistency with which the mandatory minimum sentences are imposed. The legislation is adequate as written but often needs to be more consistently applied.

The per se section of the law has led to a significant reduction in the percentage of cases where DWI is reduced to a lesser charge. If the offender's BAC at time of arrest is over the .10 percent level, the charge cannot be reduced. Persons with a BAC at or close to .10 percent are able to plea bargain to a lesser charge, usually "physical control while impaired"; however, this charge now also requires a license action. Defense attorneys do plea bargain down to lesser charges, such as "negligent driving," which are not associated with a license action.

Since enactment of the new legislation, the administrative work load throughout the court system has significantly increased. Many offenders have requested jury trials, although the conviction rate is almost 85 percent. Each trial costs approximately \$600 and takes almost a full day to complete. Prior to passage of the new legislation, guilty convictions were routinely appealed to the State Superior Court. Under the new laws, an attorney must specify the legal point being questioned before the higher court will hear the case. This has resulted in a significant reduction of cases appealed to higher courts.

The use of jail sentences has increased substantially since the new DWI laws went into effect. Most jails show a significant increase in the number of short-term sentenced DWI offenders confined. Judges have counteracted the impact of the increase in short-term offenders by shortening the sentences imposed on habitual DWI offenders. The overcrowding of jails has angered the local county sheriffs and judges. They feel that the State should provide the monies to build facilities to implement the new laws. A law was passed about the same time as the DWI legislation that would provide for this aid, but funding has still not been made available.

The driving public is supportive of the mandatory sanctions. There has been an extensive public relations effort that has kept the issue in the media. Local grass-roots organizations (MADD/RID) have recently developed that are active in Washington, and they are becoming increasingly visible.

A delayed prosecution program has recently been implemented that allows offenders to have the DWI conviction expunged from their record. Once offenders plead guilty to a DWI charge, they can petition that they are alcoholics. If the courts agree to a treatment program, then a two-year period of probation is granted. After successful completion of the program and an outside progress evaluation, the original charge is dropped and the records are expunged. The majority of persons accepted for this program are repeat offenders who show a strong tendency toward alcoholism. Less than 10 percent of DWI offenders are accepted into this program.

### Effectiveness

Documentation of this new legislation reports significant decreases in alcohol-related traffic deaths, in spite of an increase in numbers of miles driven and increases in the number of jury trials requested and litigated. Jury trials have resulted in the overcrowding of many court dockets and an increase in the administrative work load. Respondents agree that the mandatory jail component of the new program has not been effective in reaching program objectives because it is not consistently imposed. License actions and rehabilitation efforts are credited with the decrease in alcohol-related highway fatalities.

Both the Court Administrator's Office and the Department of Licensing agree that licensing actions are a more effective sanction than mandatory short-term incarceration. However, a strong PI&E campaign and an adequate enforcement program must also be present. The long-term license revocation imposed on habitual offenders has been shown to be effective as a special deterrent. Offenders subjected to this five-year action show a marked reduction in subsequent moving violations and accidents. It is generally accepted that approximately 90 percent of offenders who receive license suspensions continue to drive, though they drive more carefully and less often.

### Costs

Based upon preliminary information available, the new DWI legislation did increase the operating costs throughout the criminal justice system. However, more detailed cost information was not readily available.

### V. REPLICABILITY

The major factor in implementing an effective sanction program is to have control over the judicial discretion employed by the local courts. Without consistent application of the statutes statewide, program objectives can never be realized.

STATE: WASHINGTON

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$500	\$350 - \$400	<p>1/ Most spend less than one full day; time waiting for bond typically counted</p> <p>2/ Over 50 percent actually receive <u>no</u> license action</p> <p>3/ Includes evaluation for alcohol treatment</p> <p>4/ Community service is available on a jurisdictional basis</p>
Jail	24 hours	24 hours <sup>1/</sup>	
License Action:			
. Suspension	30 days		
. Revocation			
. Restricted		30 days <sup>2/</sup>	
Impoundment			
Educ/Trmt Program	Alcohol Info. School <sup>3/</sup>	Alcohol Info. School <sup>3/</sup>	
Community Service		Varies <sup>4/</sup>	
<u>2nd Offense</u>			
Fine	\$1,000	\$700 - \$1,000	<p>1/ May serve less than full sentence</p> <p>2/ Many second offenders petition for and receive restricted license privileges</p> <p>3/ Includes evaluation for alcohol treatment</p>
Jail	7 days	7 days <sup>1/</sup>	
License Action:			
. Suspension	60 days	60 days <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol Info. School <sup>3/</sup>	Alcohol Info. School <sup>3/</sup>	
Community Service			
<u>Subsequent Offenses</u>			
Fine			
Jail			
License Action:			
. Suspension			
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program			
Community Service			

WEST VIRGINIA

I. BACKGROUND

New legislation for Driving Under The Influence (DUI) was passed and became effective in September 1981 that uses a two-track system of action against drunk drivers. Part of the impetus for this legislation was the desire of the State legislature to institute a sanctioning process that would best deter DUI activity. Given the rural nature of West Virginia (no city population above 75,000 and no notable mass transportation system), it was determined that administrative license actions would provide the desired deterrent effect.

II. LEGISLATION

Significant elements in West Virginia's DUI legislation include:

- . Administrative license action procedures
- . Establishment of an implied consent provision
- . Mandatory license suspension or revocation for all categories of DUI offenders

Sanctions prescribed by statutes are as follows:

- |              |  |
|--------------|--|
| 1st offense: | \$200-\$1,000 fine<br>24 hours-6 months jail<br>6 months license suspension<br>Alcohol treatment program |
| 2nd offense: | \$200-\$1,000 fine<br>6 months-1 year jail<br>10-year license revocation<br>Alcohol treatment program    |
| 3rd offense: | 1-3 years jail<br>Lifetime revocation<br>Alcohol treatment program                                       |

Sanctions typically imposed are:

- 1st offense: Fine (wide variation)  
Jail suspended in lieu of treatment  
6 months license suspension (restoration of license after 30 days if attend treatment)  
Alcohol treatment program
- 2nd offense: Fine (wide variation)  
Jail suspended in lieu of treatment  
10-year license revocation (can reapply after 5 years if attend treatment program)  
Alcohol treatment program
- 3rd offense: Jail (wide variation)  
Lifetime license revocation (can reapply after 10 years if attend treatment program)  
Alcohol treatment program

### III. OPERATIONS

Drunk drivers may be processed through the criminal justice system, whereby the arrest is made and drivers are charged with violation of a statute and penalized by a fine and/or jail sentence if convicted. Offenders also may be processed through the administrative track, which utilizes a law that provides for the revocation of a driver's license, via an administrative procedure, when a test reveals an alcohol concentration of .10 percent or higher.

Although a two-track system is used, the tracks are not mutually exclusive. An offender who has entered the administrative track may still be processed through the courts and subjected to additional sanctions. The severity of all sanctions imposed is dependent upon the number of prior DUI offenses and the severity of the offense of record.

#### License Actions

The administrative process for dealing with licensing actions is initiated with the filing of a police report with the DMV. By law, police officers must file notice with the DMV within 24 hours of an apprehension of a suspect who has refused a chemical test or has attained a BAC level of .10 percent or higher. Should officers fail to comply with this regulation, they are guilty of a misdemeanor.

Upon receipt of the notice from the police officers, the DMV notifies the offenders of the license action to be imposed, and an appropriate notation is made on the offenders' DMV records.

Processing through the criminal justice track is initiated with the arrest for DUI and continues with the arraignment, followed by a plea negotiation (in most cases) or a trial (and subsequent sentencing).

First DUI offenders are subject to a six month license suspension, although it is generally reduced to 30 days if they are enrolled in the safety treatment program. The license suspension may be extended to whatever period of time is necessary to complete the program. A second DUI offense warrants a 10-year revocation of license, and a third offense requires a lifetime revocation. However, reinstatement of driving privileges is possible after 5 and 10 years, respectively. Reinstatement typically requires successful completion of the safety program, all court costs/fees paid, and a determination by a committee of DMV officials that repeated DUI behavior is unlikely.

Restricted licenses are not provided for in the legislation; however, they are typically issued in the case of first offenders enrolled in the safety program. Restricted licenses are sometimes issued to persons convicted of a first DUI offense but are rarely available to second and subsequent offenders.

#### Confinement

The imposition of jail penalties is effected via the criminal justice track of the system. A first DUI offense can result in a jail term of 24 hours, a second offense 6 months to 1 year, and a third offense (felony) 1 to 3 years. Jail terms are usually suspended, however, in lieu of some activity (e.g., alcohol treatment program, work release) and are rarely served.

#### IV. RESULTS

##### Reactions

DMV officials believe that mandatory license actions, imposed administratively, will be a more effective deterrent than other DUI sanctions. Respondents report that the new legislation has been especially well received by court officials and prosecutors. They feel that the administrative track removes much of the burden of DUI offenders from the courts (i.e., judicial processing) and that it will be more effective in removing the problem drinker from the highways while still allowing the court to intercede when warranted.

##### Effectiveness

Formal evaluations of the new DUI legislation and its associated procedures as deterrents to DUI behavior have not been performed. Respondents have indicated, based on their own observations, that incidence of DUI and alcohol-related accidents appears to be declining.

##### Costs

Data were not available regarding operating costs of the program.

#### V. REPLICABILITY

DMV officials indicate that the implementation of an administrative license action system is viable, as evidenced by the operation of such a system in both Minnesota and West Virginia. Officials report that an accurate record-keeping system is essential. Furthermore, although not yet a problem under the West Virginia system, officials take note of the increasing caseload and resulting demands placed on prosecutor staff in Minnesota.

STATE: WEST VIRGINIA

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$200 - \$1,000	Wide variation	<p>1/ Can be suspended for participation in treatment program</p> <p>2/ Eligible for reinstatement after 30 days if attend treatment program.</p>
Jail	24 hours - 6 months <sup>1/</sup>	Rarely	
License Action:			
. Suspension	6 months	6 months <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>2nd Offense</u>			
Fine	\$200 - \$1,000	Wide variation	<p>1/ Can be suspended for participation in treatment program</p> <p>2/ Eligible for reinstatement after 5 years if attend alcohol treatment program</p>
Jail	6 months - 1 year <sup>1/</sup>	Rarely	
License Action:			
. Suspension			
. Revocation	10 years	10 years <sup>2/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			
<u>Subsequent Offenses</u>			
Fine			<p>1/ Due to recent implementation of legislation, operational data not available yet</p> <p>2/ Eligible for reinstatement after 10 years if attend alcohol treatment program</p>
Jail	1 - 3 years <sup>1/</sup>		
License Action:			
. Suspension			
. Revocation	Lifetime revocation	Lifetime revocation <sup>2/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program	Alcohol treatment	Alcohol treatment	
Community Service			

WISCONSIN

I. BACKGROUND

Concerned over the increase of alcohol and/or controlled substance-related traffic fatalities and the general lack of penalties imposed on persons convicted of Operating While Intoxicated (OWI) offenses, the State of Wisconsin significantly revised its drunk driving legislation as of 1 May 1982. A series of public hearings and local workshops educated the public and helped generate publicity and grass-roots support for reexamining all components of the drinking driver control system. As a result of these efforts, the focus of the new legislation is not only to develop new sanction policies, but to strengthen the system to ensure that these sanctions actually will be imposed.

II. LEGISLATION

Elements of the new legislation significant to the present study include:

- . Establishment of an illegal per se law (.10 percent)
- . Plea bargaining is discouraged for OWI offenses
- . Alcohol and/or controlled substance screening and subsequent treatment referral are now combined with more traditional sanctions
- . Persons apprehended for driving while under license suspension or revocation may have their vehicle impounded
- . Mandatory minimum penalties established by the new law include:

1st offense:	\$150-\$300 forfeiture (plus \$150 surcharge and court costs)
	3-6 month license suspension
	Alcohol and/or controlled substance assessment (and appropriate referral)



- 2nd offense: \$300-\$1,000 fine (plus \$150 surcharge and court costs)  
5 days-6 months in jail  
6-12 month license revocation  
Alcohol and/or controlled substance assessment (and appropriate referral)
- 3rd offense: \$600-\$2,000 fine (plus \$150 surcharge and court costs)  
30 days-1 year in jail  
1-2-year license revocation  
Alcohol and/or controlled substance assessment (and appropriate referral)

Preliminary observation indicates that the minimum sanctions are being imposed as mandated. Typically, OWI offenders are receiving the following sanction combinations:

- 1st offense: \$150-\$250 forfeiture (plus \$150 surcharge and court costs)  
3-month license suspension (occupational license available)  
Alcohol and/or controlled substance assessment  
Attend Group Dynamics Safety School or treatment program
- 2nd offense: \$300-\$400 fine (plus \$150 surcharge and court costs)  
5-20 days in jail (varies across jurisdictions)  
6-month license revocation (occupational license available after 30 days of revocation)  
Alcohol and/or controlled substance assessment  
Attend treatment program
- 3rd offense: \$600-\$700 fine (plus \$150 surcharge and court costs)  
30 days-6 months in jail (varies across jurisdictions)  
1-year license revocation (occupational license available after 60 days of revocation)  
Alcohol and/or controlled substance assessment  
Attend treatment program

Within 14 days after being convicted for Operating While Intoxicated (OWI), offenders must comply with an assessment of their alcohol problems by an approved public treatment facility. "Driver Safety Plans" are developed and offenders are

referred to additional education and/or treatment programs, as appropriate. Attendance in these programs is mandatory. Under previous legislation, license revocations could be reduced or waived if the offenders agreed to participate in an education or treatment program. Offenders must now complete any education/treatment program prescribed and are still subject to the other sanctions. Failure to comply would result in an indefinite suspension of all operating privileges.

### III. OPERATIONS

Upon arrest for OWI, offenders are usually brought to the county seat for chemical testing. If a BAC of .10 percent or greater is recorded, the drivers' licenses are surrendered and driving receipts are issued. Offenders are placed in jail and may not be released until 12 hours have elapsed for the time of arrest or unless a chemical test indicates a BAC of .05 percent or less. The person may be released to a responsible adult.

Offenders can be charged and tried for two offenses: (1) driving with a BAC of .10 or greater, (2) driving while under the influence, or both. Generally, offenders are found guilty of one or the other. If they are found guilty of both charges, they receive the same penalties assessed on individuals found guilty of either charge, and the action counts as one conviction on the driving record.

#### License Actions

After a judicial conviction, the Department of Motor Vehicles (DMV) is notified and the appropriate entry is made on the driving record. If the courts fail to impose the appropriate license action, the DMV has the administrative authority to do so.

The DMV orders an assessment if they are not notified by the assessing agency within 60 days that the offender has reported for an assessment and Driver Safety Plan. If the Driver's Safety Plan has not been completed within a six-month period, the DMV follows up. Although the court orders the assessment procedure, all monitoring, follow-up, and punitive actions taken for noncompliance are handled directly through the approved public treatment agency and the DMV. Noncompliance with the Driver's Safety Plan results in

suspension of operating privileges for an indefinite period. Generally, persons are able to apply for new licenses after a five-year period.

Persons convicted of a first offense are subject to a three to six month license suspension, although they typically receive the minimum sentence. First offenders are immediately eligible to apply for and generally receive an occupational license, valid 12 hours per day, with a maximum of 60 driving hours allowed per week.

Persons convicted of a second offense face a six-month to one-year revocation of their operating privileges. Most second offenders receive the six-month revocation and can apply for an occupational license after 30 days of the revocation have elapsed. Third and subsequent offenders face a revocation period of one to two years, although most receive the minimum sentence. Third and subsequent offenders are eligible for occupational driving privileges after a 60-day revocation period.

To have a license reinstated after an OWI revocation, individuals must retake all driver's license examinations, show proof of financial responsibility for a period of three years, and pay a \$35 reinstatement fee. A suspended license is automatically reinstated once the period of suspension has elapsed and a \$20 reinstatement fee has been made.

In hopes of reducing the number of persons who drive while under a license suspension or revocation, the penalties for this charge have been significantly revised. Penalties now include a combination of monetary fines, a jail sentence, and a six-month loss of license. For offenders who own their vehicles, the court may also order that the vehicle be impounded (with the manner and period of impoundment to be determined).

#### Confinement

Under previous legislation, jail was rarely, if ever, imposed on persons convicted of second or subsequent OWI offenses. Currently, persons convicted of a second or subsequent charge are serving some time in county jail facilities. The sentences imposed, however, vary greatly across jurisdictions throughout the State.

Persons convicted of a second offense are subject to a five-day to six-month jail sentence. However, the sentence typically imposed varies from the minimum five days to 20 days. Third offenders are subject to a 30-day to one-year jail sentence, but actually serve sentences ranging from the minimum 30 days to as much as six months. Jail time is generally served in consecutive days, although a work release program is available.

#### IV. RESULTS

##### Reactions

The new drunk driving policies appear to be well supported by all components of the judicial system. Judicial discretion has been limited by the new statutes and most judges appear to be imposing sanctions as mandated. Prosecutors favor the new program as they have been given the tools to obtain an OWI conviction.

Preliminary observations indicate that less plea bargaining is occurring, but there are more requests for jury trials. It is anticipated that this may contribute to an overcrowding of court dockets and an overall increase of judicial activity. It was noted that the percentage of guilty pleas recorded has remained stable.

##### Effectiveness

Due to the recency of the new legislation, it is difficult to anticipate how the sanctions will be eventually imposed. The Bureau of Driver's Licensing, however, is under mandate to monitor the new drunk driving policies and to evaluate the effectiveness of the new legislation. A report on findings and recommendations must be presented to the State Legislature by December 31, 1986.

### Costs

The new legislation provides for a driver improvement surcharge in the amount of \$150 to be paid whenever a court imposes a fine or forfeiture for OWI. This surcharge is in addition to the general penalty assessment imposed. Money received from this surcharge will be used to fund treatment programs and DOT positions created to process driver's license actions as well as for other OWI related activities. The surcharge was initiated to allow for a general buildup of operating capital. Offenders must pay an additional assessment fee ranging between \$30-\$80 to pay the cost of the assessment, as well as incur all costs associated with subsequent education/treatment referrals. User paid treatment programs are based on the user's ability to pay.

### V. REPLICABILITY

A major factor cited as being critical to the potential success of the new drunk driving policies is the cooperation and coordination among all components of the operating system. This includes social service agencies, traffic safety, the DMV, law enforcement and the judicial branch. There was a conscious attempt to implement a system that would be perceived to be fair and practical. A formal public relations campaign was initiated to educate and inform the public of the drunk driving problem and to involve civic organizations in the general education program. In Walworth County, for example, a judges' association was established that holds quarterly seminars to discuss the issue and ensure that sanctions are being consistently imposed.

STATE: WISCONSIN

Sanctions	Prescribed by Statutes	Typically Imposed	Comments
<u>1st Offense</u>			
Fine	\$150 - \$300	\$150 - \$250 <sup>1/</sup>	<u>1/</u> \$150 surcharge added to all fines assessed  <u>2/</u> Restricted license available
Jail	Up to 6 months	Rarely	
License Action:			
. Suspension	3 - 6 months	3 months <sup>2/</sup>	
. Revocation			
. Restricted			
Impoundment			
Educ/Trmt Program	Education		
Community Service			
<u>2nd Offense</u>			
Fine	\$300 - \$1,000	\$300 - \$400 <sup>1/</sup>	<u>1/</u> \$150 surcharge added to all fines assessed  <u>2/</u> Restricted license available after 30 days
Jail	5 days - 6 months	5 - 20 days	
License Action:			
. Suspension			
. Revocation	6 - 12 months	6 months <sup>2/</sup>	
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment		
Community Service			
<u>Subsequent Offenses</u>			
Fine	\$600 - \$2,000	\$600 - \$700	<u>1/</u> \$150 surcharge added to all fines imposed  <u>2/</u> Restricted license available after 60 days
Jail	30 days - 1 year	30 days - 6 months	
License Action:			
. Suspension			
. Revocation	1 - 2 years	1 year	
. Restricted			
Impoundment			
Educ/Trmt Program	Treatment		
Community Service			

WYOMING

I. BACKGROUND

During the 1982 legislative session, the State of Wyoming revised its DWI legislation. Many counties have noticed an increase in DWI activity during recent years. This is attributed to a dramatic increase in population and a general lack of available recreational activities. The media has begun to publicize the DWI issue more actively and local grass-roots support has generated pressure for more effective legislation. A local chapter of MADD directly lobbied the State Legislature, which was responsible for the recent legislative revisions.

II. LEGISLATION

Significant elements of the new legislation include:

- . Increased monetary fines
- . Elimination of plea bargaining for use with an alcohol-related charge
- . Mandatory confinement for repeat offenders that cannot be suspended or avoided through probation

The new legislation currently prescribes the following sanctions:

1st offense:	Up to \$750 fine or Up to 6 months jail 30-day license suspension (can receive 30-day temporary license)
2nd offense: and subsequent	\$200-\$750 fine 7 days-6 months jail (7 days mandatory) 6-month license suspension

Due to the recency of the new legislation, only preliminary operational data were available. Based on relatively few observations, it appears that the following sanctions are being typically imposed:

1st offense:	\$500 fine 30-day temporary license
2nd offense:	No operational data available for second or subsequent offenders

With the passage of the new legislation, all drivers who had previous DWI convictions are being given a clean driving record. They are being treated as first offenders for sanctioning purposes.

### III. OPERATIONS

#### License Actions

Upon a judicial conviction, the Department of Revenue, Motor Vehicle Division receives an abstract of the court proceedings and issues notification to offenders by mail of the license suspension. If offenders do not surrender their licenses to the court at the time of conviction, they must forward it to the Motor Vehicle Division when they receive this notification. Upon first conviction only, the court may issue a temporary license for 30 days or until a hearing is held. Second and subsequent offenders are not eligible for temporary licenses but may request a hearing in order to reduce the duration of the suspension.

Persons convicted of driving while under license suspension are subject to serve up to six months in jail and pay a \$750 fine. Typically, however, offenders apprehended for this charge pay a fine of \$500 and do not serve time in jail.

#### Confinement

Persons convicted of a first offense are subject to serve up to six months in jail, however, it is rare that any jail term is served. Second offenders face a jail term of seven days to six months with the minimum

sentence not subject to suspension or probation. The judge may suspend all or part of the discretionary portion of the jail sentence if the offender agrees to pursue and completes an alcohol education or treatment program.

Offenders who are sentenced to serve time in jail are allowed to participate in a work release program or to serve weekend confinement until their sentences are complete. In the more rural areas where jail facilities are not readily available, cooperative agreements with county sheriffs are arranged. Detailed operational data are not yet available.

### IV. RESULTS

#### Reactions

Judges have been very supportive of the new revisions and do not see any major negative impact on the judiciary system as a result of the legislation. They feel that the court dockets may become more crowded and that there may be an increased number of appeals to higher courts because plea bargaining is no longer available. The number of jury trials held has never posed an administrative problem and this situation is not expected to change. Prosecuting attorneys, the defense bar and law enforcement personnel have also voiced their support for the legislative program.

#### Effectiveness

It is still too early to assess the overall impact of the new revisions on DWI activity. The courts will be monitoring their caseload on a monthly basis and the Highway Patrol will be recording all citations issued and the final dispositions obtained. This information will be entered in centralized computer record systems. At this time, there is no formal impact evaluation planned.

Costs

By State constitution, all fine monies collected in the district courts are allocated to the local school fund; all additional fees and costs collected go to the general State fund. Fines collected at the municipal level are forwarded to the municipal government. More specific cost data for the program were not available.

V. REPLICABILITY

Respondents indicated that judicial training and seminars were extremely helpful in gaining the support of judicial personnel, especially for those judges who have not been trained as attorneys.

STATE: WYOMING

Sanctions	Prescribed by Statutes	Typically Imposed	Comments	
<u>1st Offense</u>				
Fine	Up to \$750 <sup>1/</sup>	\$500	1/ Fine or jail sanction prescribed	
Jail	Up to 6 months			
License Action:				
. Suspension	30 days	30 days <sup>2/</sup>	2/ Temporary license available	
. Revocation				
. Restricted				
Impoundment				
Educ/Trmt Program				
Community Service				
<u>2nd Offense</u>				
Fine	\$200 - \$750	*	1/ 7 days mandatory	
Jail	7 days - 6 months <sup>1/</sup>	*		
License Action:				
. Suspension				
. Revocation				
. Restricted				
Impoundment				
Educ/Trmt Program				
Community Service				
<u>Subsequent Offenses</u>				
Fine				
Jail				
License Action:				
. Suspension				
. Revocation				
. Restricted				
Impoundment				
Educ/Trmt Program				
Community Service				

\* Operational data not yet available - legislation enacted July 1982.



V. PROBLEMS/RECOMMENDATIONS

During the conduct of this study, a number of problem areas surfaced that were common to many of the States surveyed. The following section represents those problems most frequently reported, along with a series of recommendations for addressing these issues.\*

DWI LEGISLATION

Problem: Many States have tried to pass laws requiring mandatory sanctions for DWI offenders. However, unless the law states that a sanction cannot be probated or suspended, it is not, in practice "mandatory."

Recommendation: Statutes requiring mandatory sanctions should be written so that minimum sentences cannot be suspended or probated, thereby providing true mandatory penalties.

IMPOSITION OF SANCTIONS

Problem: Wide variation exists in many States within and across local jurisdictions with regard to the type and severity of sanctions imposed on DWI offenders.

Recommendation: Information and results of sanction practice studies sponsored by NHTSA should be disseminated to States and local jurisdictions.

\* These recommendations were presented in testimony to the Presidential Commission on Drunk Driving, Committee on Enforcement and Adjudication conducted in August 1982.

### PUBLIC AWARENESS

**Problem:** The threat of DWI sanctions is not an effective deterrent unless the perceived risk of apprehension among drivers is sufficiently high.

**Recommendation:** A strong publicity and education campaign should accompany the sanction program to promote perception of high risk of apprehension and consistent imposition of sanctions for all DWI offenders.

### FUNDING FOR DWI SANCTION PROGRAM

**Problem:** Monies for effective implementation of sanction programs are often not made available by various State legislatures to the local jurisdictions.

**Recommendation:** A special priority of existing Federal funds (e.g., 402, 403 monies) should be made to promote the development and implementation of effective DWI sanction programs.

### COORDINATION THROUGHOUT THE DRINKING DRIVER CONTROL SYSTEM

**Problem:** In many States, there is a lack of coordination in imposing DWI sanctions among the various components of the Driver Control System.

**Recommendation:** Periodic joint sessions involving representatives of the enforcement, judiciary; Department of Motor Vehicles, rehabilitation components, and public interest groups at the local and State level should be promoted to increase awareness of operating initiatives, problems, and alternatives.

Training initiatives that have been begun by NHTSA (i.e., the DWI enforcement training package) should be expanded and developed for other components of the Driver Control System.

A program should be established to provide technical assistance to State and local communities who are considering developing alternative sanction programs. Standardized materials, program models, and workshops should be presented to the various components of the Driver Control System.

### IMPOSITION OF LICENSE ACTIONS

**Problem:** Despite DMV intentions to impose consistent license actions on DWI offenders, this sanction can only be imposed (in most States) upon recommendation by the courts, once a conviction has been obtained.

**Recommendation:** Administratively imposed license actions should be given careful study and considered for greater use. Minnesota has successfully implemented an administrative license sanction and a NHTSA-sponsored study of the program is available.

### THE EFFECTIVENESS OF SANCTIONING PRACTICES

**Problem:** Few studies of sanction effectiveness have been completed to date. New legislation requiring different sanctioning patterns is being enacted in several States. Sanction effectiveness should be a consideration in new legislation.

Recommendation: Evaluations should be conducted of specific practices to assess their impact and relative effectiveness.

A follow-up study of individual offenders should be initiated to determine generic sanction effectiveness. This can be tied into alcohol studies sponsored by NIAAA or the State Alcohol Authority of each State.

#### RECORD-KEEPING SYSTEMS

Problem: In several States, multiple DWI offenders are treated as first offenders because original DWI charges are not recorded on driving records when the final case disposition is a reduced charge. Some States do not check prior records if a defendant pleads guilty to a DWI charge.

Recommendation: States should be encouraged to develop computerized record systems that record initial charges, final dispositions, and alcohol diagnostic evaluations in addition to offender driving information. These records should be easily accessible to judges and DMVs during sentencing procedures.

#### THE RECORDING OF DWI OFFENSES

Problem: Many States expunge an offender's driving record in exchange for participation in a court-ordered program (usually education or treatment). This dilutes the deterrent effect of the sanction program and often allows individuals to become "repeat first offenders."

Recommendation: If participation in a court-ordered treatment or education program is designed to allow an offender to avoid a more punitive sanction (i.e., confinement or license actions), a record of participation should be maintained and should constitute a prior conviction for purposes of a second or subsequent arrest.

#### AVAILABILITY OF CURRENT LEGISLATIVE INFORMATION

Problem: Many States are currently examining and modifying their existing DWI legislation. There is presently no centralized national database that effectively monitors this activity.

Recommendation: There should be an annual review of DWI laws and sanctioning practices in each State that will serve as a centralized information base.

ANNOTATED BIBLIOGRAPHY ON SANCTIONING PRACTICES

Alternative Sentencing Evaluation Committee for Driving Under the Influence, Alternative Sentencing Evaluation Project: Final Report (prepared for Municipal Court Judges Association Committee on Alternative Sentencing), Capitol Research and Consulting Corporation, Sacramento, CA, 1981.

This report details the findings of a project undertaken to conduct a comprehensive analysis of the more commonly used sentence alternatives for DWI offenders arrested in Los Angeles County. Published in three volumes, the report contains: (1) the overall project description and findings, (2) a detailed summary of methodology and statistics (Appendix A), and (3) an annotated review of relevant literature (Appendix B). The data collected indicate the impact of various sentencing alternatives on DWI recidivism. In summary, no significant differences were detected between various sanction alternatives when DWI and other serious traffic offense recidivism data were compared.

Andenaes, J. Punishment and Deterrence, University of Michigan Press, 1974.

Although the bulk of this book is a standard presentation of deterrence theory, the author specifically addresses the issue of deterrence and drunk driving by examining the drunk driving legislation and enforcement policies in Norway and the 1967 Highway Safety Act of Great Britain.

(Anonymous) "Tougher Laws Crack Down on Drinking Drivers in N.Y.," Traffic Safety, 80(10), 1980.

This article briefly describes the stiffer penalties for drunk driving that are among the provisions of new laws that took effect in New York State on September 1, 1980. This new legislation lengthens the period of time that a license will be suspended after a conviction for driving while ability impaired (DWAI) and mandates an automatic license revocation upon a third conviction within a seven-year time frame. Other provisions in this legislation place a limit on a person's ability to plead guilty to a nonalcohol-related offense following a drunk driving arrest.

(Anonymous) "Tough Legislation Proposed to Combat Drunk Driving," Traffic Safety, 81(3), 1981.

In an effort to curb drunk driving, Rep. Michael D. Barnes (D-MD) and Sen. Claiborne Pell (D-RI) have introduced to the Congress a proposed amendment to Section 402 of Title 23 of the United States Code, which controls Federal funding of State highway programs. This legislation would require States, in order to continue to receive Federal highway safety funds, to "establish comprehensive

## APPENDIX A(2)

alcohol-traffic safety programs at the local level, ...enact mandatory criminal penalties for drunk driving, suspend or revoke violators' licenses, and set up a statewide record system to identify repeat offenders." Sanctions would include: mandatory community service, education/treatment programs, short-term confinement, and required license suspensions and revocations, as appropriate.

Barni, E. "What to Do with the DWI Offender: A Question of Attitudes," Traffic Safety, 81(4), 1981.

This article emphasizes that typical DWI offenders are not social drinkers and misplaced kindness toward them is a great mistake and should be replaced by "caring coercion." The author suggests that court referral programs be combined with penalties such as "suspended execution of a sentence, with a special condition requiring the completion of a court referral program." The Missouri statutes that allow for plea bargaining to a lesser alcohol-related offense are cited as a way to maintain the defendant's level of responsibility for his/her drinking behaviors while, at the same time, helping the client avert the full measure of the DWI arrest.

Blumenthal, M. and Ross, H.L. Two Experimental Studies of Traffic Law, Vol. I: The Effects of Legal Sanctions on DUI Offenders, Contract No. DOT-HS-249-2-437, University of Denver, College of Law, 1973a.

This report evaluates the relative effectiveness of fines, standard probation, rehabilitative probation, and jail sentences in the improvement of subsequent driving performance of first offenders in Denver, Colorado. Results indicated no significant differences between groups on any of the one-year posttreatment comparisons performed. Subsequent accidents, moving violations, points accrued, and further DWI convictions were examined. It was noted, however, that representation by a lawyer proved to be effective in obtaining a more favorable legal treatment for DWI defendants. A discussion of significant sample selection biases is presented.

. Two Experimental Studies of Traffic Law, Vol. II: The Effects of Court Appearance on Traffic Law Violators, Contract No. DOT-HS-249-2-437, University of Denver, College of Law, 1973b.

This report compares the effects of required court appearance on the subsequent driving records of moving traffic violators not ordinarily required to appear in court, with those persons given a warning only, those subjected to a mail-in fine, those given optional court appearance, and those allowed court clerk appearance only. No significant differences were obtained when subsequent crash data, numbers of moving violations, or total point accumulations were examined between the treatment groups. The authors conclude that the commonly held assumption that face-to-face contact with a judge necessarily results in lower recidivism rates and greater benefits to society was not supported by this investigation.

Blumstein, A.; Cohen, J.; and Nagin, W. (Eds.). Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates, National Academy of Sciences, 1978.

This book is the product of the work of a research panel on deterrence and incapacitation effects, whose purpose it was to focus on the benefits (crimes averted) associated with different sanctions and to assess the scientific validity of available evidence on the crime reduction benefits of these sanctions. Major assumptions made by this panel were that human behavior can be influenced by various incentives and/or sanctions and that there is a negative association between aggregate crime rates and the imposition of sanctions. Sources of bias that were identified during attempts to estimate deterrent effects were: measurement error, confounding of incapacitation and deterrence, and the simultaneous relationship between the level of crime and sanctions imposed.

Carver, Frank. Driving Under the Influence Legislation: Final Evaluation Report, Delaware Criminal Justice Planning Commission, Wilmington, Delaware, 1981.

This evaluation reports on the overall impact of a series of revisions, passed in 1978, to the motor vehicle code on the drunk driver problem in the State of Delaware. These revisions established administrative and judicial options that allow DWI offenders to participate in alcohol education or treatment programs as an alternative to mandatory fine and/or incarceration. Examination of recidivism data indicated that the new revisions were responsible for a 60 percent reduction in first offender re-arrests, with nearly a 50 percent reduced recidivism rate reported for multiple offenders. The author notes the difference between a "tough" law and "effective" law.

Department of Transportation, NHTSA, Results of National Alcohol Safety Action Projects, Washington, DC, 1979.

This overview reports the results of the National Alcohol Safety Action Project (ASAP) initiated in 35 project sites, nationwide, during the early 1970s and highlights the areas of enforcement, adjudication, rehabilitation, public information, and education, as well as project financing and general administration. It was noted that ASAP countermeasures in the judicial area were among the most successful and innovative of all program activities. The projects showed that cooperation between the courts and rehabilitation agencies was not only feasible, but also mutually beneficial. This resulted in increased numbers of offenders in rehabilitation, increased numbers of offenders being processed through the courts, and increased DWI arrest rates. It was found that all project sites advocated the use of a package of sanctions that could be varied to suit the particular dynamics of different kinds of offenders.

Department of Transportation, NHTSA, Alcohol and Highway Safety Laws: A National Overview, Washington, DC, 1980.

This volume displays a variety of charts and graphs that illustrate the various traffic laws, practices, and procedures used by individual States. This national

overview examines: Preliminary Breath Test laws (PBT); BAC laws with regard to: statutory authority, traffic accidents, police authority, defendant options, and evidentiary testing; and the legal age required for the consumption of beer, wine, and distilled spirits. Chart 7 focuses on the various administrative and judicial procedures available, including the use of mandatory sentencing for imprisonment; license revocations and suspensions; and issuance of a limited license; as well as retraining and rehabilitation programs for offenders.

Division of Criminal Justice, Assessment of the Implementation and Impact of SHB665: The New Driving While Intoxicated Law, Olympia, WA, 1980.

Enacted in January 1980, SHB-665 increases the certainty of punishment for DWI offenders in Washington State by establishing the Illegal Per Se Section (i.e., the assumption of guilt when the BAC level reaches or exceeds .10 percent) and by introducing a provision for mandatory jail sentences for first-time and repeat offenders. This report provides an assessment of the impact of the new law on the various segments of the criminal justice system, as well as an initial indication as to its deterrent effect on DWI behaviors.

Reporting on data generated during the first six months of the new legislation, the study indicates that although the use of jail sentences increased to almost 100 percent, increases were also noted in requests for jury trials, appeals to a higher court, and defendant failure to appear at trial or sentencing. An increase in total costs of operating the criminal justice system was reported, especially in the jails, with a resulting decrease in the quality and efficiency of services delivered. It was also reported that, based on percentages of accidents and percentages of injury and fatal accidents per the number of DWI arrests, the new law was not having the desired deterrent effect. However, more time and better analysis are needed before the deterrent outcome can be more accurately assessed.

Ellingstad, V.S. and Struckman-Johnson, D.L. Interim Analysis of STR Performance and Effectiveness, DOT-HS-6-01366, NHTSA, Washington, DC, 1977.

This report describes the status of the NHTSA Short-Term Rehabilitation Study (STR) as of May 1977 and summarizes the progress of data collection efforts by the 11 participating ASAP projects. The development of criterion measures employed in analyses of the effectiveness of STR alcohol rehabilitation mandates are documented and a summary of alternative STR rehabilitation countermeasure programs is provided. Preliminary results indicated evidence of treatment effectiveness for alcohol safety schools. It should be noted, however, that data collected were for the initial six-month follow-up period only and, therefore, must be interpreted with caution.

Erickson, M.L. and Gibbs, J.P. "On the Perceived Severity of Legal Penalties," The Journal of Criminal Law and Criminology, Vol. 70(1), 1979.

This article reports the results of surveys conducted in four Arizona cities from 1974 to 1976 in order to obtain police and civilian estimates of severity for a variety of legal sanctions. Analyses indicated that police view conventional

criminal sanctions as being more severe than do private citizens. It was suggested that police are aware of the reality that the imposition of punishment is not the norm and, therefore, perceive any such sanction as exemplary. It should be noted that no specific mention was made of DWI offenders.

Galaway, B. Traffic Offenders and Community Service Sentencing: An Overview, Social Development Associates, Duluth, MN, 1981.

This report presents preliminary data about the relationship between sentencing to community service, traffic offenders, and highway safety. Presented in five sections, the report covers: (1) a review of the literature, (2) a review of the files of the national assessment of adult restitution program files, (3) judicial reaction to use of community service as a sanction for traffic offenders, (4) program descriptions and background characteristics of various community service programs, and (5) potential sites for further evaluation and research.

Analyzing data from nine jurisdictions, nationwide, that offer community service alternatives for traffic offenders, Galaway noted that there is marked variation across projects as well as within each project site in the number of hours sentenced for each type of offense committed. He also reported that individuals at several projects could elect to pay fines in lieu of completing their service agreement, a practice which may discriminate against less affluent offenders. It was concluded that community service is a useful alternative when courts are dissatisfied with the use of more traditional sanctioning.

General Accounting Office. The Drinking Driver Problem--What Can Be Done About It? Washington, DC, 1979.

This General Accounting Office (GAO) report documents the Department of Transportation's major activities to combat the drinking-driving problem and describes various countermeasure programs being conducted by State, local, and foreign government to deal effectively with this issue. The report also indicates that one of the major obstacles that impede anti-drinking-driver campaigns is the acceptance of this behavior by the general public. The report concludes that, before any significant reduction in alcohol-related traffic accidents will occur, a long-term educational commitment must be made in order to change attitudes about drinking and driving behavior.

Gibbs, J. Crime, Punishment and Deterrence, Elsevier Press, 1975.

This book is an effort to identify problems and issues that preclude a categorical rejection or acceptance of the deterrence doctrine. It is argued that the basic doctrine should not be considered a systematic theory and, therefore, any attempt at testing it is debatable. There is no mention of the conditions, situations, and individuals that deter, or are deterred, and omission of an act (as cited in the doctrine) may well be due to extraneous factors (e.g., personal conscience). It is suggested that for purposes of policy development and implementation, the question of deterrence needs to take the form, "How much more does punishment X deter crime Y than does punishment Z?" The issue of drunk driving is not specifically cited in this discussion.

## APPENDIX A(6)

Grasmick, H.G. and Appleton, L. "Legal Punishment and Social Stigma: A Comparison of Two Deterrence Models," Social Science Quarterly, Vol. 58(1), June 1977.

The authors compare two models of deterrence in this article and indicate that the function of legal punishment is to be a social control mechanism that exposes the individual as an offender to his peers. The Additive Model assumes that both the threat of legal punishment and the threat of social stigma have significant deterrent effects on the frequency of violations, with the effects of each component to be additive in nature. The Interaction Model, however, states that only in the presence of a perceived threat of social disapproval will the threat of legal punishment have a significant deterrent effect. Results of a survey conducted indicated no basic differences between the potential deterrent effectiveness of the two models.

Gusfield, J.R. The Culture of Public Problems, University of Chicago Press, 1981.

Gusfield indicates that the proliferation of drinking-driving studies only became possible after the perfection of chemical/physical means of detecting and measuring blood alcohol level. He then categorizes these studies into three basic categories: those examining the presence of alcohol in the blood of persons involved in automobile accidents; those collecting demographic, social, cultural and medical characteristics of drinking drivers; and, most recently, those concerned with the nature of the drinking driver as a causal agent. The author claims that, because it is the legal process that defines society, the law of DUIA then becomes a ritual that perpetuates the nature and order of society. Gusfield concludes that it is this fictive character of the law that provides a legitimacy to the notion of the drinking driver.

Hagen, R.E. Effectiveness of License Suspension or Revocation for Drivers Convicted of Multiple Driving Under the Influence Offenses, State of California DMV, 1977.

This is the first interim report of an evaluation of an innovative sentencing strategy for multiple DWI offenders implemented in California during January 1976. It provides the initial understanding of the magnitude, nature, and duration of the treatment effect associated with the mandatory imposition of license suspensions or revocations on drivers convicted of multiple DWI offenses. Results generally noted that mandated licensing actions (one-year suspension for second offense, three-year revocation for third or more) had a more positive effect on subsequent overall driving record than the use of fine and/or jail sentences only. It was also found that the rate of reported crashes was positively affected for those drivers over the age of 30.

Hagen, R.E.; McConnell, E.J.; and Williams, R.L. Suspension and Revocation Effects on the DUI Offender, State of California DMV, 1980.

This is another in a series of evaluation efforts regarding the use of mandatory license actions on multiple DWI offenders in California. Researchers compared subsequent driving history and accident involvement data and found that

## APPENDIX A(7)

groups of first DWI offenders should also be considered to be high-risk recidivists and should receive some form of license restriction program, particularly in connection with treatment-oriented programs. Results also indicated that 65 percent of those persons given 12-month license suspensions and 75 percent of those under 36-month revocation, were found to still drive during their period of license actions, although somewhat more carefully and less frequently. It was noted that the effect of licensing actions could probably be enhanced if the driver had an increased perceived risk of being identified and convicted when driving while under the licensing action.

Ingraham, W.S. and Waller, J.A. Alcohol-Impaired Driving, License Suspensions and Transportation Needs During Intoxication or Suspension Among Alcoholics, CRASH Report #IV-1, Waterbury, VT, 1977.

This report documents the extent of driving while under the influence of alcohol by persons with drinking problems and their contacts with local police officers. A number of AA members were surveyed, and their responses indicated that conviction and suspension of licenses have only limited effect in changing their basic drinking behavior, in preventing illegal driving, or in altering the frequency of drinking and driving. Of those individuals who reported contact with local police while driving under the influence, few were apprehended or officially charged.

Jones, R.K. and Joscelyn, K.B. Alcohol and Highway Safety 1978: A Review of the State of Knowledge, Highway Safety Research Institute, University of Michigan, Ann Arbor, Final Report, January 1978.

This 1978 report provides a state-of-the-art overview and analysis of the identification of the alcohol-related traffic safety problem, various program developments, and the impact of specific countermeasure responses. Its primary objectives are to review, evaluate, and summarize existing knowledge about alcohol and highway safety and to identify priorities for research to help remedy or alleviate the problem. Both the nature of the alcohol-crash problem and societal responses to that problem are examined. Conclusions and recommendations for future research and action programs are developed.

Kaestner, N. and Speight, L. Oregon Study of Driver License Suspensions, Oregon Department of Transportation, Motor Vehicles Division, April 1974.

This study completed a sequence of evaluative inquiries into the effectiveness of a three-stage driver improvement program in the State of Oregon and provides background and ancillary data on the effectiveness of license suspension as a driver improvement device. Individuals receiving a 30-day suspension of driving privileges were compared to those receiving four alternative sanctions: warning letter, probationary license, defensive driving course, and no treatment. Examination of subsequent driving records indicated that defensive driving courses or the probationary license proved more effective than did the suspension or no treatment groups. It should be noted that DWI arrests and convictions were not specifically discussed in this study.

APPENDIX A(8)

Kaestner, N.; Howard, V.; and Warmoth, E. A Summary Report: Oregon Study of Drinking Drivers, Oregon Department of Transportation, Motor Vehicles Division, July 1969.

This is a summary of a report undertaken to document the nature of the drinking driver situation in the State of Oregon. Based on data obtained from arrest abstracts, the authors attempted to determine the particular circumstances of the DUI arrest, the actual dispositions levied, and the personal case histories of the typical offender. Results indicated that there are multiple aspects of the drinking-driver problem and their interactions are extremely complex. The authors conclude that it is unwise to search for a single solution to the problem.

Lempert, R.O. "Grievances and Legitimacy: The Beginnings and End of Dispute Settlement," Law and Society Review, Vol. 15, 1981.

This article addresses the issue of dispute settlement within the context of the sociology of law. It notes that the legitimacy of punishing violators is generally not questioned in our system unless equals have been perceived as being treated differently on the basis of special characteristics. The author concludes that the only way to gain an understanding of dispute settlement in our society is in terms of the social implications involved.

McEwen, J.T. and McGuire, J.P. Traffic Law Sanctions, Public Management Services, Inc., DOT-HS-805-876, Final Report, March 1981.

The research described in this report was conducted to assess variations in the perceived severity and impact of traffic offense sanctions, and the actual recidivist behavior of sanctioned offenders resulting from the differences in traffic offense sanction policies. Driver surveys were conducted in three jurisdictions (Colorado, Maryland, and North Carolina) to determine perceptions of sanction policy in terms of: risk of apprehension for unsafe driving, chances of being found guilty by courts if challenged, amount of fine for the first offense, perceived severity of fine, and other related topics. Data were collected on subsequent traffic violation rate and DWI recidivism. Results generally indicated that drivers were not aware of the sanctions for these violations and that the fine for a first DWI conviction was usually overestimated.

McGuire, J.P. and Peck, R.C. Traffic Offense Sentencing Processes and Highway Safety, Vol. I: Summary Report, PRC Public Management Services, Inc., April 1977.

This summary volume reviews the history and development of traffic offense sanctions and discusses four specific sanction policies: habitual offender laws, driver license suspension/revocations, mandatory penalties, and restricted/occupational licenses. The research literature on traffic offense sanctions is reviewed with an emphasis on both specific and general effectiveness, and an agenda for further research is proposed. The report presents a framework for developing standards for traffic offense sanctions and discusses a variety of criteria for their development.

APPENDIX A(9)

The report indicates that, although a general deterrence effect does result from license suspensions, it is probably due, in part, to the public's being unaware of the extent of suspension violation and the resulting lack of enforcement. It was also noted that little has been reported regarding the long-term effects of this sanction once the license has been restored.

McGuire, J.P. and Peck, R.C. Traffic Offenses Sentencing Processes and Highway Safety, Vol. III Appendices, PRC Public Management Services, Inc., April 1977.

This volume contains three appendices to the general review and analysis of traffic offense sanctions reported in the Summary Volume and Technical Report. Appendix A contains statutory provisions regarding sanctions based on a traffic code survey as well as from published documents. Appendix B contains a detailed investigation of the enforcement of the North Carolina Habitual (Traffic) Offender Statute that imposes a mandatory five-year license revocation. No subsequent improvement in driving performance was noted when outcome for the sanctioned groups was compared to a habitual offender group not so treated. Appendix C reviews in investigation of the use of jail penalties for first DWI offenders in Arizona and Washington State that did not find differences in subsequent driving behavior when compared to those offenders not receiving short-term confinement. The presence of selection bias and lack of random assignment were discussed.

McIntyre, D. M. Comparative Analysis of Alcohol Highway Safety Judicial Standards and Existing Professional Standards, Volume II: Analysis of Standards and Codes, Indiana University, DOT-HS-804-129, Final Report, Washington, DC, 1978.

This volume contains a technical analysis and comparison of the existing professional standards and codes that affect the processing of drinking-driving cases through the courts. It is noted that existing standards concentrate on problems commonly arising in the adjudication of all crimes and do not deal adequately and appropriately with the judicial processing of drinking-driving cases. The report presents a functional analysis organized according to the chronology of processing a drinking-driving case through the courts. A general discussion of sentencing alternatives is included.

National Committee on Uniform Traffic Laws and Ordinances. Traffic Laws Annotated, 1979, Washington, DC.

This book contains five chapters from the Uniform Vehicle Code (196B, Supp. II 1976) and compares State traffic laws with significant portions of those chapters. It reviews State laws and regulations on rules of the road, scope of traffic ordinances, uniform traffic-control devices, accidents and accident reports, and certain definitions in the context of Uniform Vehicle Code provisions covering those subjects. Annotations are supplied, where appropriate, that update all State laws in effect as of January 1, 1979.



National Committee on Uniform Traffic Laws and Ordinances. Driver Licensing Laws Annotated, 1973, 1978 (Annual Supplements), Washington, DC.

This book compares State driver licensing laws with relevant portions of the Uniform Vehicle Code. It discusses licensing actions taken by the States (suspension/revocation) upon conviction of a drunk driving offense. The 1978 manual supplement makes the information contained in the Driver Licensing Laws Annotated (1973) current as of January 1, 1978 by reflecting all relevant 1973 State legislation and the 1975 Uniform Vehicle Code revisions.

National Committee on Uniform Traffic Laws and Ordinances. Traffic Laws Commentary, Penalties for Traffic Offenses, Washington, DC, 1978, Vol. 7, No. 4.

This commentary reviews the various traffic laws penalties as defined by the Uniform Vehicle Code and the laws of the 50 States and the District of Columbia. It examines the basic approaches to penal sanctions and will compare specific penalty options from one State to another and from one offense to another. Ten traffic offenses have been selected for these comparisons, including the offense of Driving While Under the Influence (DUI). This edition compares provisions of the Uniform Vehicle Code as last amended in 1975 with the relevant State law provisions in effect as of January 1, 1977.

National Technical Information Service, Drinking Drivers, published search, July 1980.

This document is an updated bibliography containing 173 citations obtained from the National Technical Information Service (NTIS). This group of selected abstracts cover the effects of alcohol on motor vehicle operations and includes studies on visual perception, performance tests, alcohol ingestion, safety, and criminal justice interaction.

Nichols, J.L.; Weinstein, E.B.; Ellingstad, V.S.; and Struckman-Johnson, D.L. "The Specific Deterrent Effect of ASAP Education and Rehabilitation Programs," Journal of Safety Research, Vol. 10(4), 1978.

This article reviews evaluation studies of the education and rehabilitation programs developed by the 35 original ASAP programs, as well as the 11 short-term rehabilitation study sites. The overall results of these studies indicate a small, but positive effect in reducing subsequent DUI arrests for persons diagnosed as social drinkers, although no difference was noted for those persons diagnosed as problem drinkers. The paper does not address "crash reduction" per se but rather, the specific "deterrent" effect of these programs as measured by subsequent re-arrest rate for alcohol-related traffic offenses. It was noted that continued evaluation and program development were warranted.

Nichols, J.L.; Weinstein, E.B.; Ellingstad, V.S.; Struckman-Johnson, D.L.; and Reis, R.G. "The Effectiveness of Education and Treatment Programs for Drinking Drivers: A Decade of Evaluation," paper presented at 8th International Conference on Alcohol, Drugs, and Traffic Safety, Stockholm, Sweden, 1980.

This paper examines the various types of information collected and analyzed by NHTSA from 1971 through 1980 to assess the effectiveness of drinking driver

education and treatment programs in reducing subsequent drinking-related driving offenses. Much of the documentation centers around results of the ASAP experience, with a review of the basic methodology employed by these projects. It was suggested that one of the major positive characteristics of a DWI referral program is that it can facilitate a general deterrence program that is based on increased perception of risk of apprehension brought upon by increasing the DWI arrest rates. It also discusses the evaluation of the NHTSA-initiated Comprehensive DUI (CDUI) project undertaken in Sacramento, California, during 1975.

Palmer, J.A.; Ripberger, R.J.; Skelton, D.T.; and Scrimgeour, G.J., Evaluation and System Description of ASAP Judicial Systems, Vol. I: Technical Report, Institute for Research in Public Safety, Indiana University, Bloomington, July 1977.

This report describes and evaluates the adjudication/disposition systems that were operative during 1975 in five of the federally funded Alcohol Safety Action Projects (ASAPs): Puerto Rico; Phoenix, Arizona; Los Angeles County; Hennepin County, Minnesota; and Idaho. These sites were selected because of significant changes in their legal or judicial systems or because they had developed innovative approaches for handling drunk-driving cases. A number of conclusions and recommendations were reported, including: the full range of statutory penalties was applied so rarely as to make them irrelevant except in terms of general deterrence, and administrative licensing actions were not routinely used where they affected offenders' ability to travel.

Pease, K. and McWilliams, W. (Eds.). Community Service by Order, Columbia University Press, 1980.

This text is a collection of articles pertaining to the emergence of community service as a sanction alternative in the United Kingdom. It discusses the history and development of the community service sentence, selection policies, suitability of implementing the sentence, and the wide disparity found in length of sentence imposed and overall program administration. The report acknowledges the need for an expanded range of noncustodial powers for dealing with those offenders who would not normally be sentenced to jail. Selection criteria for sentence recommendation were found to vary between probation districts, which contributed to the disparity found in the imposition and administration of final sentence. Specific reference to DWI offenders was not made.

Preusser, D.F.; Ulmer, R.G.; and Adams, J.R. "Drinking Record Evaluation of a Drinker Driver Rehabilitation Program," Journal of Safety Research, No. 3, September 1976.

This article reports on an evaluation of the rehabilitation program for convicted DWI/DWAI drivers conducted by the Nassau County (New York) Alcohol Safety Action Program (ASAP). Examination of recidivism rates for a group of drivers assigned traditional punitive sanctions (60-day license suspension plus fine) and an experimental group who participated in a 13-week counseling program revealed no significant differences.

## APPENDIX A(12)

Reed, D.S. "Reducing the Costs of Drinking and Driving," in Moore, M.H., and Gerstein, D.R. (Eds.). Alcohol and Public Policy: Beyond the Shadow of Prohibition, National Academy Press, Washington, DC, 1981.

This paper, commissioned by the National Academy of Sciences, places the question of the deterrence of drinking and driving behaviors into the context of the range of potential policies available that relate to drunk driving. The author examines the costs to society (both monetary and nonmonetary) generated by the drinking and driving problem, reviews the extensive experience worldwide with programs to reduce this behavior, and discusses the manner in which the Federal government has designed and managed programs of drinking driving counter-measures. It is concluded that general deterrence of drunk driving does seem possible if a high perceived risk of arrest can be sustained. Public information and administration campaigns that provide information useful to those who wish to avoid driving while illegally drunk, without radically changing their drinking or driving behavior, may also be useful.

Reis, R.E. Analysis of the Traffic Safety Impact of Educational Counseling Programs for Multiple Offense Drunk Drivers, 1980 Annual Report: Vol. V, Interim Report, NHTSA, Washington, DC, 1981.

This is an interim analysis of the effectiveness of the Comprehensive DUI (CDUI) project's educational counseling programs developed for use by multiple DUI offenders (second offenses). Analysis of driving violation data indicated that the year-long group counseling programs resulted in significantly lower DUI re-arrest rates relative to a nontreatment control group, although there did not seem to be any impact on subsequent accident involvement. These findings are discussed in the perspective of education/counseling programs being only one counter-measure in the post-detection portion of the drinking-driver control system.

Analysis of the Traffic Safety Impact of Education Programs for First Offense Drunk Drivers, 1980 Annual Report: Vol. IV, Interim Report, NHTSA, Washington, DC, 1981.

This is an interim analysis concerning the effectiveness of the Comprehensive DUI (CDUI) project's educational programs for drivers convicted of their first drunk-driving offense. Using random assignment to either a home-study program, an in-class education program, or a no-treatment control group, a significant reduction in subsequent DUI arrests was noted for each of the treatment groups when compared to the no-treatment control. No such differences were found, however, in subsequent accident involvement rate. These results are discussed in the context of a more complete drinking-driver control system.

Ross, H.L. Deterrence of the Drinking Driver: An International Survey, NHTSA, DOT-HS-805-820, Final Report, Washington, DC, 1981.

This report surveys the international literature on drinking and driving laws to determine what is known concerning their impact on driver behavior. Focusing

## APPENDIX A(13)

on "Scandinavian-type" laws designed to create the impression of relative certain, severe, and prompt penalties for their violation, it was noted that in the short run they were very effective deterrents, but, in the long run, drivers learn through experience that the probability of apprehension remains low. A number of enforcement campaigns established in several countries (including the United States) that were based on these laws were also reviewed, as was a discussion of the general Scandinavian and deterrence models.

Ross, H.L. "Law Science and Accidents: The British Road Safety Act of 1967." Journal of Legal Studies, 1973, 2, 1-78.

This article discusses the British Road Act of 1967, which prohibited persons who have a BAC of .08 or greater from driving or attempting to drive or be in control of an automobile. It also made failure of or refusal to submit to a breath test punishable by fine and automatic license suspension. The principal objective of the law was to raise the motorists' perception of the risk of being identified and subsequently convicted. Time series analyses indicated a significant drop in traffic accidents immediately upon passage of the bill; however, as the driving public's perception of the risk changed, the accident rate returned to its earlier level.

Saari, D. Sanction Combinations: An Exploratory Essay With the Drunk Driver Example, The American University, Washington, DC, unpublished.

The author provides a basic review of general sanctioning theory and how traffic sanctions, in particular, are used in combination. Focusing on the drunk driver problem, the report emphasizes that sanctions are often combined to meet a combination of goals and that a combination of sanction types is often a realistic way to understand and justify sentencing practices. A realistic sanctioning system must have elements to it that allow judges to understand the goals, and in what combination, that underlie their sentences for particular offenders. Seven major clusters of sanction types for drunk drivers are discussed in terms of the general goal for each of these sanction groups. The report also calls for the collection of more effective data on sanctions and/or their combinations.

Salzberg, P.M. and Klingberg, D.L. License Revocation and Alcoholism Treatment Programs for Habitual Traffic Offenders, Report No. 049, Department of Licensing, Olympia, WA, 1981.

This report evaluates the Washington Habitual Offender Act, which currently requires a five-year license revocation for persons accumulating three or more major traffic convictions or 20 or more total lesser convictions. The law also permits a stay of licensing action for alcoholic drivers who undertake an alcohol treatment program. Assessment of subsequent driving performance found license revocations to be associated with significant reductions in moving violation convictions and accidents when compared to a driver control group of those persons attending the treatment program. It was suggested that drivers continue to drive during their period of license revocation, although they drive more cautiously to avoid detection.

APPENDIX A(14)

Scrimgeour, G.L.; Palmer, J.A.; Edwards, H.L.; Goldspiel, S.; and Logan, A.B. Comparative Analysis of Alcohol Highway Safety Judicial Standards and Existing Professional Standards, Vol. I, Technical Report, Indiana University, DOT-HS-804-128, Final Report, Washington, DC, 1978.

This volume contains the technical report of a contract to examine all existing professional standards and model codes that are in some way related to the processing of drinking-driving cases through the courts. This report provides a summary of the major conclusions and advice provided by Volume II: Analysis of Standards and Codes. It also presents a list of recommendations for present and future needs in the area of developing standards or codes for adjudicating drinking-driving cases.

Summers, L.G. and Harris, D.H. The General Deterrence of Driving While Intoxicated, Vol. 1, System Analysis and Computer-Based Simulation, NHTSA, DOT Contract No. DOT-MS-6-01456, Final Report, January 1978.

This report, in two volumes, describes the DWI general deterrence framework and the results of a computer-based system analysis of this model. The analysis in Volume 1 identifies the system elements relevant to the DWI decision and addresses the potential countermeasures that might be employed in general deterrence programs. A system model for interrelating factors influencing DWI deterrence is presented as well as a simulation program for examining DWI deterrence alternatives. Results of simulation experiments indicate that public information is potentially the most effective method for exposing drivers to information on the risk of drinking and driving. A general discussion of deterrence and utility theory are presented.

Summers, L.G. and Harris, D.H. The General Deterrence of Driving While Intoxicated, Vol. 2, Subsystem Analysis, NHTSA, DOT Contract No. DOT-HS-6-01456, Final Report, April 1978.

This volume presents detailed descriptions of the subsystems that potentially influence the DWI decision. Subsystems discussed include: enforcement, patrol deployment, arrest, adjudication, and public information. Although specific sanctions and/or combinations of sanctions, per se, are not discussed, attempts to influence the rate and content of messages generated by the adjudication process are presented. Subsystem changes most likely to enhance the general deterrence of DWI behaviors are suggested.

Tittle, C.R. Sanctions and Social Deviance: The Question of Deterrence, Praeger Press, 1980.

This text examines the author's research on deterrence based upon a 1972 survey regarding an individual's perceptions of the probability of being apprehended and punished for a variety of deviant acts, e.g., assault, theft, marijuana smoking, gambling, etc. Analyzing individual self-reports of deviant conduct and inclination

APPENDIX A(15)

toward such conduct, the author sought to draw inferences concerning the effects of fear of sanction as a deterrent to deviant behavior. It was concluded that fear of sanctions did lead to significant curtailment of deviance, and perceptions of possible informal sanctions (i.e., loss of respect by peers) were shown to be far more effective deterrents than were perceptions of more formal sanctions (i.e., police arrest).

Witham, P. Work Referral Program: Department of Correction, Program Unit, Delaware Criminal Justice Planning Commission, Wilmington, April 1980.

The report documents the accomplishments of the Work Referral Program implemented in the State of Delaware in 1974 and discusses its impact on the criminal justice system. The program was developed to provide an option for persons who are assessed costs and fines but who are financially unable to pay them, as it is unlawful to incarcerate individuals simply for failure to pay assessed fines and/or court costs. It was also reported that the per day cost of "supervising" an individual sentenced to jail is \$25, compared to less than \$1.00 per day to supervise them on work referral. Traffic offenders, and in particular DWI offenders, were not discussed.

Witham, P. Community Service Program: Department of Correction, Program Unit, Delaware Criminal Justice Planning Commission, Wilmington, April 1980.

This report documents a community service program implemented by the State of Delaware during 1974 that provides an alternative sentence option to traditional fines and periods of incarceration. It was reported that the largest category of offenders for which persons were sentenced to community service was traffic offenses, although DWI offenders were not identified as such. The program was shown to clearly provide an additional sentencing option; however, the specific impact of the program on the overall criminal justice system could not be determined.

Zimring, F.E. and Hawkins, G.J. Deterrence: The Legal Threat in Crime Control, the University of Chicago Press, 1973.

This book examines the rationale of deterrence theory, the effects of general and specific deterrence, and the problem of measurement. The authors address the issue of sanctions for both persistent and serious traffic violators, specifically, those who have had their license revoked. The loss of driving privileges is seen as both a general deterrent and as a mechanism to reduce recidivism among persistent offenders. The authors assume the deterrent effect of license revocation is enhanced by the fact that penalties for driving under license revocation appear to be among the most severe available. It should be noted, however, that DWI offenders were not specifically mentioned.

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SANCTIONS ON THE BOOKS AND TYPICALLY IMPOSED BY STATE

State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed					Comments		
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions				Com- munity Service	Education Treat- ment
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
Alabama	1	x	x		x			M	x			x <sup>1</sup>			x	1--License suspended if poor driving record.  Plea bargaining no longer allowed for DUI.
	2	x	x		M				x			x				
	3	x	x		x											
Alaska	1		M	M <sup>1</sup>		M <sup>1</sup>		x	x	x			x		x	1--30-day revocation or 60-day restriction.
	2		M		M			x	x			x		x		
	3		M		M			x	x			x		x		
Arizona	1	x	M	x <sup>1</sup>			x	x	x	x	x			x	x	1--Restricted license not available.
	2	x	M		x <sup>1</sup>		x	x	x			x				
	3	x	M		x <sup>1</sup>			x	x			x				
Arkansas	1	x	x	x					x							
	2+	x	x		x				x							
California	1	x	x <sup>1</sup>		x <sup>1</sup>			x	x	x <sup>1</sup>			x <sup>3</sup>	x <sup>4</sup>	x	1--Jail or license action prescribed. 2--Minimum jail imposed if attend treatment program. 3--Restricted license after 6 months. 4--Available on local jurisdictional basis only.  Plea-bargain counts as prior charge.
	2	x	M		M			x	x	x <sup>2</sup>			x <sup>3</sup>		x	
	3	x	M		M			x	x	x					x	
Colorado	1	x	x <sup>1</sup>		x	x <sup>2</sup>	M									Operational data not yet available, Legislation enacted July 1981.  1--May be suspended if attend treatment program. 2--Restricted license available if attend treatment program.
	2	x	M		x	x <sup>2</sup>	M	x								
Connecticut	1	x	x <sup>1</sup>		x <sup>2</sup>											Operational data not yet available, Legislation enacted October 1982.  1--If BAC .20 or greater, 2-day mandatory for first offense and 30-day mandatory for subsequent offenses. 2--Length of suspension can be reduced if attend treatment program. 3--Community service available in lieu of jail penalty.
	2	x	x <sup>1</sup>		x <sup>2</sup>		x <sup>3</sup>									
	3	x	x <sup>1</sup>		x <sup>2</sup>		x <sup>3</sup>									

M = Mandatory sanction that cannot be suspended or probated by the courts.



State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed							Comments
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
Delaware	1	x	x <sup>1</sup>		M			x	x			x <sup>2</sup>	x <sup>3</sup>	x	1--Confinement in treatment available in lieu of jail. 2--Restricted license available after 30 days, with full restoration granted after 6 months. 3--Available on local jurisdictional basis.	
	2	x	M <sup>1</sup>		M			x	x			x <sup>2</sup>		x		
District of Columbia	1	x	x		x						Operational data not yet available, Legislation enacted September 1982.					
	2	x	x		x											
	3	x	x		x											
Florida	1	x	x		M		M	M	x			x	x <sup>1</sup>	x	1--Restricted license available after DWI school is completed.	
	2	x	M		M		M	M	x			x		x		
	3	x	M		M		M	M	x	x		x		x		
Georgia	1	x	x		M			x	x				x <sup>1</sup>	x <sup>4</sup>	1--Full restoration of driving license after DWI school completed. 2--Restricted license available after DWI school completed. 3--Restricted license available after 2 years. 4--Available on local jurisdictional basis only.	
	2	x	x		M			x	x				x <sup>2</sup>			
	3				x								x <sup>3</sup>			
Hawaii	1		x <sup>1</sup>	x <sup>1</sup>			x <sup>1</sup>	x			x			x	1--Any two of these sanctions are mandatory. 2--Fine or community service prescribed; any two of these sanctions are mandatory.	
	2	x <sup>2</sup>	x <sup>2</sup>		x <sup>2</sup>		x <sup>2</sup>				Operational data not available for second and third offenses. Legislation enacted June 1982.					
	3	x	x		x											
Idaho	1	x	x		x				x			x	x <sup>1</sup>		1--Restricted license is available.	
	2	x	x		x				x			x	x <sup>1</sup>			
	3	x	x		x				x			x	x <sup>1</sup>			
Illinois	1	x	x		M			x	x		x		x <sup>1</sup>		1--Restricted license available while attending DUI school. After completion, full privileges restored.	
	2	x	x		M			x	x		x					
Indiana	1	x	x		x				x				x	x <sup>1</sup>	1--Available on local jurisdictional basis only. 2--Restricted license not available.	
	2	x	M		x <sup>2</sup>				x	x						
	3	x	M		x				x	x						

M = Mandatory sanction that cannot be suspended or probated by the courts.

State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed							Comments
		Fine	Jail	License Actions			Community Service	Education Treatment	Fine	Jail	License Actions			Community Service	Education Treatment	
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
Iowa	1 2 3	x x x	M M x		M <sup>1</sup> M <sup>1</sup> M <sup>1</sup>				x x x	x x x	x <sup>2</sup> x x			x <sup>3</sup> x x	x x x	1--Administratively imposed. 2--Restricted license available. 3--Available on local jurisdictional basis only.
Kansas	1 2 3	x x x	x <sup>1</sup> M M		x x x		x <sup>1</sup>	x x x	x x x	x x x		x <sup>2</sup> x <sup>3</sup>	x	x <sup>4</sup> x x	x x x	1--Jail or community service prescribed. 2--Until treatment program complete. 3--Restricted license not available. 4--Available on local jurisdictional basis only.  Plea-bargaining no longer allowed.
Kentucky	1 2 3	x x x			M <sup>1</sup> M M				x x x	x x x		x <sup>2</sup> x <sup>2</sup>		x <sup>3</sup> x <sup>3</sup> x <sup>3</sup>	x x x	1--Waived if attend education program. 2--Restricted license not available. 3--Available on local jurisdictional basis only.
Louisiana	1 2 3	x x x	M <sup>1</sup> M <sup>3</sup> M <sup>4</sup>	x <sup>2</sup>	x x x		x <sup>1</sup> x <sup>3</sup>	x x x			Operational data not available. Legislation enacted January 1983.					1--If probation granted, 2 days jail or 4 days community service, alcohol education, DUI school, 60-day suspension. 2--Restricted licenses will be available. 3--If probation granted, 15 days jail or 30 days community service, alcohol education, DUI school, 1 year suspension. 4--If probation granted, 6 months jail, treatment, DUI school, 3-year revocation.
Maine	1 2	x x	M M	M	M			x x	x x	x x	x x	x <sup>1</sup> x <sup>2</sup>				1--Restricted license available after 30 days if DWI school completed. 2--Restricted license available after 60 days if DWI school completed.
Maryland	1 2 3	x x x	x x x		x x x				x x		x x	x <sup>1</sup> x	x <sup>2</sup> x <sup>2</sup> x	x x x	x x x	1--Restricted license available. 2--Available on local jurisdictional basis only.
Massachusetts	1 2 3	x x x	x M M		M M M <sup>1</sup>						Operational data not available. Legislation enacted September 1982.					1--Cannot petition for a restricted license until 2 years has elapsed.

M = Mandatory sanction that cannot be suspended or probated by the courts.

State	DWI/DUI Offense	Sanctions - On-The-Books						Sanctions - Typically Imposed						Comments		
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions				Com- munity Service	Education Treat- ment
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
Michigan	1 2 3	x <sup>1</sup> x <sup>1</sup> x <sup>1</sup>	x x x		x x x	x x x		x x			Operational data not available. Legislation enacted October 1982.				1--Fine and/or jail sanction prescribed.	
Minnesota	1 2 3	x <sup>1</sup> x <sup>1</sup> x <sup>1</sup>	x x x	M <sup>2</sup>		M <sup>2</sup> M <sup>2</sup>			x x x		x x x		x <sup>3</sup> x <sup>3</sup>		1--Fine and/or jail sanction prescribed. 2--All license actions imposed adminis- tratively; restricted license available. 3--Available on local jurisdictional basis only.	
Mississippi	1 2 3	x x x	x x x		x x x			x x			x <sup>1</sup> x	x <sup>2</sup>		x	1--Waived if attend alcohol education program. 2--Restricted license is available.	
Missouri	1 2	x x	x x			x <sup>1</sup>					Operational data not available. Legislation enacted August 1982.				1--Accumulation of 12 points results in 1-year license suspension. Restricted license not available.	
Montana	1 2 3	x x x	x M M		x x x			x x x	x x x			x x <sup>1</sup>		x x x	1--Restricted license available after three months.	
Nebraska	1 2 3	x x x	x x x		x <sup>1</sup> x <sup>1</sup> x <sup>1</sup>						Operational data not available. Legislation enacted July 1982.				1--Restricted license no longer available.	
Nevada	1 2 3	M M M	x M M		x M			x x x	x x <sup>1</sup>		x			x x x	1--Can attend formal treatment pro- gram in lieu of jail sentence.	
New Hampshire	1 2	x x	x x	M		M		x x		x	x			x x		
New Jersey	1 2 3	M M M	x <sup>1</sup> x x		x x x		x <sup>1</sup>	x x x	x x x <sup>2</sup>		x x x		x x x <sup>2</sup>		1--Jail or community service sanctions imposed. 2--Community service sometimes imposed in lieu of jail.	
New Mexico	1 2 3	x x x	x M M		x x x			x x x	x x		x <sup>1</sup> x <sup>1</sup>			x	1--Restricted licenses are available.	
New York	1 2	x x	x x		M M			x x			x x	x <sup>1</sup>		x	1--Restricted license available if attend alcohol education. Plea bargaining on alcohol-related offense not allowed.	

M = Mandatory sanction that cannot be suspended or probated by the courts.

State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed						Comments	
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions			Com- munity Service		Education Treat- ment
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
North Carolina	1	M	x		M			x	x							1--Suspended if attend treatment program.
	2	M	x		M			x	x	x <sup>1</sup>		x				
	3	M	M		M			x	x	x		x				
North Dakota	1	x	x	M				x	x	x <sup>1</sup>	x					1--Typically suspended if attend counseling program.
	2	x	x		M			x	x	x <sup>1</sup>		x				
	3				M							x				
Ohio	1+	x	x		x			x	x			x	x <sup>1</sup>		x <sup>2</sup>	1--Restricted license often available. 2--Can be a residential treatment facility. Sanctioning practices vary widely across the State.
Oklahoma	1	x	x		M <sup>1</sup>				x				x			1--Effective April 1983, 90-day administrative license action initiated.
	2	x	x		M <sup>1</sup>			x				x				
	3	x	x		M <sup>1</sup>								x			
										Operational data for third offenders not available.						
Oregon	1	x	x		M			x	x			x	x <sup>1</sup>	x <sup>3</sup>	x	1--Restricted license available if attend diversionary program. 2--Restricted license available after 90 days if attend diversionary program. 3--Available on local jurisdictional basis only.
	2	x	x		M			x	x			x	x <sup>1</sup>		x	
	3	x	x		M			x	x			x	x <sup>2</sup>		x	
Pennsylvania	1	x			M				x			x	x <sup>1</sup>		x	1--Restricted license available if attend diversionary program. 2--Restricted license may be granted on a hardship basis.
	2	x			M				x			x	x <sup>2</sup>		x	
Rhode Island	1	M <sup>1</sup>	x <sup>2</sup>		M		x <sup>2</sup>	x	x <sup>1</sup>			x		x	x	1--Fine plus \$150 assessment for the Highway Fund. 2--Jail and/or community service. Plea-bargaining not allowed for DUI offense.
	2	M <sup>1</sup>	M		M			x								
	3	M <sup>1</sup>	M		M			x								
										Operational data for second and third offenders not available. Legislation enacted July 1982.						
South Carolina	1	x	x		x			Screening	x			x	x <sup>1</sup>		x	1--Restricted license if attend education program. Plea-bargaining not allowed for DUI offense.
	2	x	x		x			Screening	x			x		x		
	3	x	x		x			Screening	x			x		x		

M=Mandatory sanction that cannot be suspended or probated by the courts.

**CONTINUED**

**5 OF 6**

State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed							Comments
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	
				< 3 Mos.	> 3 Mos.	Restricted					< 3 Mos.	> 3 Mos.	Restricted			
South Dakota	1 2 3	x x x	x x x		x M M									Operational data not yet available. Legislation enacted July 1982.		
Tennessee	1 2 3	x x x	M M M		M M M		x <sup>1</sup> x <sup>1</sup> x <sup>1</sup>	x x x	x x x					Operational data not yet available for second and third offenses. Legislation enacted July 1982.	x x x	1--Judicial discretion allows the use of public service in addition to or in lieu of all mandated sanctions. 2--Restricted license available.
Texas	1 2	x x <sup>1</sup>	x x		x x				x x	x <sup>2</sup>		x <sup>2</sup>	x <sup>3</sup>		x	1--Fine and/or jail sanctions prescribed. 2--Imposition of these sanctions varies across the State. 3--Restricted license available. First offenders generally receive deferred adjudication or probation.
Utah	1 2 3	x x x	x <sup>1</sup> x <sup>2</sup> x <sup>3</sup>		x x x									Operational data not yet available. Legislation enacted February 1982.		1--2-10 days (M) to be served in jail, in service, or in treatment. 2--2-10 days (M) jail, or 10-30 days service to, or receive treatment in, rehabilitation facility. 3--30-60 days in jail (M) or in service and receive alcohol treatment.
Vermont	1 2 3 4	x <sup>1</sup> x <sup>1</sup> x <sup>1</sup> x <sup>1</sup>	x x x x		M M M M				x x x x			x <sup>2</sup> x <sup>3</sup> x <sup>4</sup> x			x x x x	1--Fine and/or jail sanction prescribed. 2--Reduced to 90 days if attend counseling program. 3--Reduced to 18 months if attend counseling program and complete therapy. 4--Reduced to 3-years if attend counseling program and complete therapy.
Virginia	1 2 3	x <sup>1</sup> x x	x M M		x <sup>2</sup> x <sup>3</sup> x	x <sup>2</sup>								Operational data not yet available. Legislation enacted July 1982.		1--Fine and/or jail sanction prescribed. 2--Can be suspended or restricted license granted if attend alcohol safety program. 3--Suspension can be reduced if attend alcohol safety program.

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State	DWI/DUI Offense	Sanctions - On-The-Books							Sanctions - Typically Imposed							Comments
		Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	Fine	Jail	License Actions			Com- munity Service	Education Treat- ment	
				<3 Mos.	>3 Mos.	Restricted					<3 Mos.	>3 Mos.	Restricted			
Washington	1	x	M	x				x	x	x			x <sup>2</sup>	x	1--Restricted license is often granted. 2--Available on local jurisdictional basis only.	
	2	x	M		x			x	x		x			x		
	3		x		x			x	x		x <sup>1</sup>			x		
West Virginia	1	x	M		M <sup>1</sup>			x	x						1--All license actions are adminis- tratively imposed. 2--Reduced to 30 days if attend alcohol treatment program. 3--Can reapply after 5 years if com- plete alcohol treatment program. 4--Can reapply after 10 years, if complete alcohol treatment program.	
	2	x	M		M <sup>1</sup>			x	x							
	3		M		M <sup>1</sup>			x		x						
Wisconsin	1	x <sup>1</sup>	x		x			x	x		x			x	1--\$150 surcharge added to all fines. 2--Restricted license available, 3--Restricted license available after 30 days. 4--Restricted license available after 60 days.	
	2	x <sup>1</sup>	x		M			x	x	x	x			x		
	3	x <sup>1</sup>	x		M			x	x	x	x <sup>2</sup>			x		
Wyoming	1	x <sup>1</sup>	x	x		x			x						1--Fine or jail sentence prescribed.	
	2	x	M		x					Operational data for second offense not yet available. Legislation enacted July 1982.						

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