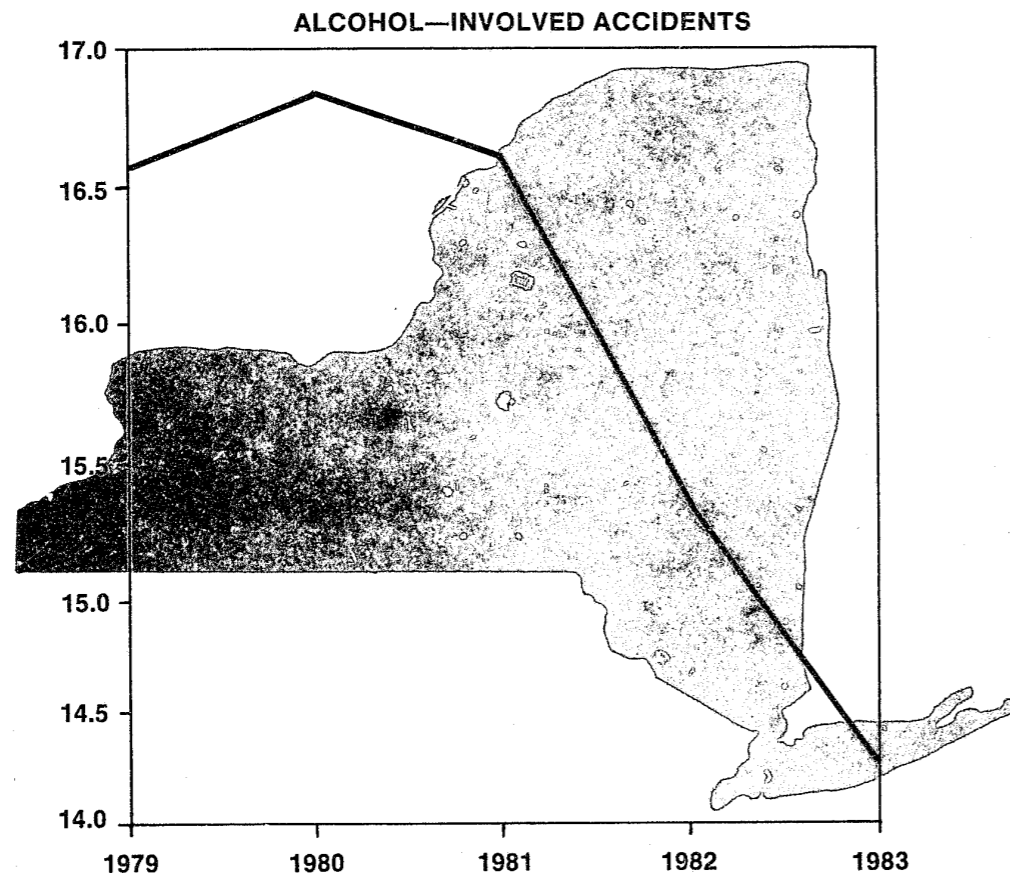


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DRUNK DRIVING REFORM IN NEW YORK STATE 1980 - 1984

Strategy, Results, and Recommendations



A REPORT TO STANLEY FINK,
SPEAKER OF THE NEW YORK STATE ASSEMBLY

Submitted By

Vincent J. Graber, Chairman
Assembly Committee on Transportation

Elizabeth A. Connelly, Chairwoman
Assembly Subcommittee on Drunk Driving

SECOND EDITION

SECOND EDITION

On the second day of May, 1984 we forwarded to Assembly Speaker Stanley Fink a comprehensive history of the drunk driving reform efforts of the New York State Legislature entitled, "Drunk Driving Reform in New York State 1980 - 1984; Strategy, Results and Recommendations." Speaker Fink has since distributed approximately 2,000 copies of the study.

We are pleased, therefore, to present a second edition of the report that has been amended to include the issues and accomplishments of the 1984 Legislative Session.

Specifically, the differences between the two editions are:

- (1) an addendum has been added to summarize the events and accomplishments of the 1984 Legislative Session;
- (2) the graphs and figures contained in the report have been revised with updated data for the last three months of 1983; and
- (3) Appendices I and II have been updated to reflect the changes brought about in 1984.

We have been encouraged by the response to our initial report and the interest it sparked regarding both the historical development of the New York program and our vision of the future. This second edition, continues our efforts to assess the impact of New York's drunk driving reform program on the highly complex socio-medical problem that has so unnecessarily cut short all too many lives.

November 1, 1984

Vincent J. Graber
Elizabeth A. Connelly

U.S. Department of Justice
National Institute of Justice

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THE ASSEMBLY
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May 2, 1984

COMMITTEES
MENTAL HEALTH CHAIRWOMAN
HEALTH
TRANSPORTATION
ENVIRONMENTAL CONSERVATION
RULES

Honorable Stanley Fink
Speaker of the Assembly
Executive Chamber
State Capitol
Albany, New York 12248

Dear Mr. Speaker,

We are pleased to submit to you a special report entitled "Drunk Driving Reform in New York State 1980 - 1984; Strategy, Results and Recommendations." This document is a comprehensive overview of the methodology by which the Assembly and the Senate have joined together to bring orderly reform to the drunk driving laws of New York State.

The report is presented in three parts. Part I traces the evolution of the legislative initiatives that have succeeded in deterring drunken driving on our roads and highways. Part II measures the impact of these reforms by analyzing the significant decreases that have occurred in highway accidents and fatalities since 1980. Part III focuses on those drunk driving issues that must be addressed by the Legislature in 1984 and makes specific recommendations for action.

The restructuring of New York's drunk driving laws has resulted from the combined efforts of an aroused public and its elected representatives. This issue exemplifies the role of the citizen in the democratic process. So too has this issue drawn upon the wisdom and insight of a cross-section of legislators from both Houses. Specifically we note the contributions of the members of the Assembly Transportation Committee and the chairmen and members of the Senate Task Force on Drunk Driving, the Senate Transportation Committee and the Assembly Codes Committee.

On behalf of the Standing Committee on Transportation and Subcommittee on Drunk Driving, we want to thank you for your support and encouragement of our efforts over the past four years. We look forward to continuing to work with you to improve the safety of New York State's roadways.

Sincerely,

Vincent J. Graber, Chairman
Assembly Transportation Committee

Elizabeth A. Connelly, Chairwoman
Assembly Subcommittee on Drunk Driving

DRUNK DRIVING REFORM
IN NEW YORK STATE
1980 - 1984
STRATEGY, RESULTS, AND RECOMMENDATIONS

A REPORT TO STANLEY FINK,
SPEAKER OF THE NEW YORK STATE ASSEMBLY

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EXECUTIVE SUMMARY

As recently as four years ago, drunk driving was perceived as an "issue" only to those who had been senselessly victimized by the acts of intoxicated motorists. For years the people of this nation inexplicably accepted as the norm the consumption of an excessive amount of alcohol in combination with the operation of a motor vehicle. In New York, the public's acceptance of the inevitability of drunken driving in our automobile-oriented society was reflected in the unfettered discretion provided by New York's drunk driving laws. The average person arrested for driving while intoxicated in New York in 1979 had a blood alcohol content (BAC) of .19, an amount that is almost twice the legal limit of .10, and his or her chances of being arrested were estimated as low as one in 2,000 drunk driving events. If caught, he or she could likely plead guilty to a non-alcohol related charge, such as reckless driving, and receive a penalty not likely to include loss of license. Even if convicted of drunk driving, the average fine imposed amounted to only \$11. With little chance of being either apprehended or adequately punished, it is not surprising that few motorists were deterred from drunk driving by New York State's laws or their enforcement.

In 1980, however, public patience expired and drunk driving emerged across the nation as one of our most prominent social issues. A new message was conveyed to public officials that unnecessary life-threatening behavior should not be tolerated by a civilized society. The response in New York State was prompt and effective. Over the past four years, the Legislature has brought gradual and orderly reform to the drunk driving laws of the State. The results of the legislative initiatives are manifested in the development of a strong, self supported system for addressing the various aspects of the problem, actual decreases in accidents and fatalities, and notable changes in the attitudes and behavior of the people of this State.

Strategy

The statistical legacy of drunk driving behavior was the starting point for legislative action. Statistics showed that: more than one-half of all fatal traffic accidents involve the use of alcohol; alcohol consumption dramatically increases the chances of being involved in an accident; and alcohol-related accidents are more severe than other accidents and therefore are more likely to result in death or serious physical injury. Yet neither the publication of these findings nor the existing laws had adequately deterred New Yorkers from driving while intoxicated.

However, concern over this issue was being voiced by a growing number of citizens and by 1980, reducing the number of alcohol-related accidents emerged as a key objective of the New York State Legislature. Reform strategy was based on the need to establish an effective deterrent to driving while intoxicated, the deterrent value of a legal threat being a function of the certainty of being apprehended, and the severity and swiftness of punishment.

To that end, the Legislature's first efforts in 1980 and 1981 focused on establishing a deterrent model that, if successful, could act as a solid foundation upon which complete reform could be undertaken. The elements of the model were:

- 1) restrictions on plea-bargaining for DWI charges;
- 2) reforms aimed at encouraging voluntary submission to breathalyzer tests;
- 3) a mandatory minimum fine schedule; and
- 4) development of county based, violator-funded drunk driving programs.

From the success of these early laws, the Legislature was able to expand the scope of its efforts to encompass a series of measures aimed at repeat offenders, aggravated offenders (those who are charged with homicide or assault arising from drunk driving), administrative reform, and the method by which alcohol is made available to the public.

Results

The measurable results of these efforts are gratifying. Based on available information we have measured traffic accident and highway data three ways: number of accidents and fatalities; number of alcohol-related accidents and fatalities; and accidents and fatalities according to time periods. The latter measure allows us to use a surrogate factor known as "bar hours" (10 P.M. - 5 A.M.) in place of alcohol reporting. Each method of measurement shows a significant reduction in accidents and fatalities despite an increase in vehicle miles traveled by New Yorkers. Specifically, the findings are:

- 1) highway fatalities from 1980 to 1983 decreased by approximately 20%, while the risk of being in an accident, as measured by vehicle miles traveled, increased by 5.5%;
- 2) alcohol-involved fatal accidents decreased 20% from 1981 to 1983;
- 3) all accidents have increased slightly (0.1%) since 1980, while reported alcohol-involved accidents have fallen dramatically by 14.5%;
- 4) accidents during bar hours have declined 20.9% since 1980, while non-bar hour accidents actually have increased 6.1%; and
- 5) fatal accidents during bar hours have decreased 35.6% since 1980, while non-bar hour fatal accidents have decreased only 8.6%.

Drinking Age

The notable success of legislative efforts in bringing about a comprehensive reform of New York's drunk driving system has been obscured by a highly publicized debate over whether the drinking age in New York should be raised from 19 to 21. Unquestionably, the issue regarding the overrepresentation of young people in alcohol-related traffic accidents is of the gravest concern. However, there is much evidence to indicate that raising the drinking age is not the panacea proponents suggest. To the contrary, upon scrutinizing the available data the following findings become evident:

- 1) proponents have ignored the dramatic decreases in alcohol-related accidents and fatalities among young people brought about by general reform between 1980 and 1983;
- 2) many of the states that raised the drinking age have experienced either an increase or no change in accident and fatality data among the affected population;
- 3) there is no rational basis for raising the drinking age for women or non-drivers;
- 4) much of the statistical evidence used to support raising the drinking age is flawed by problems inherent in the data gathering;
- 5) the data used to estimate the success of raising the drinking age obscures its significant failure regarding those 18-year-olds who continued to drink and drive; and
- 6) there has been insufficient time to evaluate the impact of changing the drinking age to 19 years-of-age in December, 1982.

As a result of these findings, we propose that a series of alternative measures that more directly address the problem be included on the 1984 Assembly agenda.

Recommendations

Much has been achieved by the Legislature during the past four years and these achievements have been manifested in the form of measurable reductions in alcohol-related accidents. Some of the more recent efforts have not even been in effect long enough to be measurably operative. Yet there remain some areas of the drunk driving problem that must still be addressed.

First, we are gravely troubled by the continuing over-representation of our young people among the seemingly endless toll of drunk driving victims. We herewith set for a series of proposals directed at the young driver.

Second, we recommend that legislation be enacted to provide additional resources to the State and counties. As much as \$29 million can be realized for drunk driving programs during the next four years without using any New York tax dollars.

Third, we urge the continued attention of the Legislature in monitoring the laws and procedures it has so carefully crafted. We, therefore include in among our recommendations a series of important procedural changes that reflect the sudden evolution of a more complex drunk driving enforcement system.

Our specific recommendations for 1984 to achieve these goals are:

- 1) Legislation that prohibits any person under 21-years-old from obtaining or regaining a driver's license if convicted of an alcohol-related offense, (A.10980);
- 2) Legislation requiring that persons under 21 be the first to be given photo identification licenses by the Department of Motor Vehicles, (A.11329);
- 3) Legislation mandating that an alcohol component, similar to the one in the pre-licensing course, be included in all driver education classes, (A.11326);
- 4) Legislation to eliminate return of one-half of the fine to drivers who successfully complete the State Drinking Driver Program and allowing the money (\$4 million per year) to accrue to the county STOP-DWI programs, (A.4171);
- 5) Legislation to qualify for \$13 million in federal funds by establishing the following penalty options for felony DWI convictions: 48 hours jail or 48 hours inpatient treatment, or 10 days community service, (A.10978);
- 6) Legislation to allow counties to share STOP-DWI money with local participating State police units in order to help them cover expenses incurred by this program, (A.10962);
- 7) That the Legislature continue to urge and assist in the development of county-wide programs designed to provide all drunk drivers with socially acceptable and economically feasible alternative methods of transportation;
- 8) Legislation to strengthen the procedure for license suspension pending prosecution for repeat offenders, (A.10979);
- 9) Legislation to clean up several unforseen issues collateral to the mandatory chemical test procedure in serious accident situations;
- 10) Legislation that eliminates requiring the prosecution to prove the existence of an additional negligent act in cases of vehicular assault, or vehicular manslaughter, unless the defendant raises the defense that the underlying accident was not the result of such person's intoxication, (A.9664); and
- 11) Legislation to streamline the method by which "scientific" evidence and other new breath test technology becomes admissible in the courts of this State, (A.6670).

This package of legislation reflects our recognition of the need to allow the major reform of the past four years to coalesce while still taking action on those related measures that deserve immediate attention.

INTRODUCTION

The emergence of drunk driving as an important public policy issue at the beginning of the decade has made it a high priority item on virtually every state and local legislative agenda in the country. As a result, most states have enacted stricter drunk driving laws aimed at reducing alcohol-related highway accidents and fatalities. Even the Federal Government has become uncharacteristically involved in what has traditionally been perceived as a local law enforcement issue. Congress has enacted legislation promising incentive money to complying states and a Presidential Commission has issued a report promoting an unabridged amalgam of inconsistent but all-encompassing recommendations.

The sudden clamour for legislative action was accompanied by an appalling litany of tragic statistics that legitimately underscored the need for drastic legislative reform: every 23 minutes an American is killed by a drunk driver; while intoxicated drivers comprise only two per cent of those on the road, they are the cause of more than half of the nation's 50,000 auto fatalities (one recent limited study showed the figure to be as high as 90 per cent); the more severe the accident, the more likely a drunk driver was involved. Seemingly overnight, an ambivalent public attitude was replaced by a crescendo of concern as the survivors of these faceless numbers surfaced in the form of grieving and outraged constituents. Elected representatives throughout the nation began to re-evaluate both the status of existing drunk driving legislation and the public mood. They discovered that a majority of their colleagues and constituents were concerned with the ineffectiveness of the existing statutes.

As recently as 1979, the public's reluctant acceptance of the inevitability of drunken driving in our automobile-oriented society was reflected in the unfettered discretion provided by New York's drunk driving laws. The average person arrested for driving while intoxicated in New York in 1979 had a blood alcohol content (BAC) of .19, an amount that is almost twice the legal limit of .10. (For a 160 pound person, that is the equivalent of 9½ drinks or beers in a one hour period.) Nevertheless, a motorist's chances of being arrested were estimated as low as one in 2,000 drunk driving events. If caught, he or she might plead guilty to a non-alcohol related charge, such as reckless driving, and receive a penalty not likely to include loss of license. Even if convicted of drunk driving, average fines amounted to only \$11. With little chance either of being apprehended or adequately punished, it is not surprising that few New York motorists were deterred from drunk driving by the laws or their enforcement.

The active role played by the State Assembly in achieving reform in this area is well documented. The Legislature's efforts were helped by the media, which found drunk driving to be a particularly appealing issue. By reporting every anti-drunk driving concept, proposal, comment and rumor, they actively participated in raising public consciousness. Nevertheless, the unusually rapid enactment of nearly 30 new drunk driving-related measures in the past four years has created some uneasiness both in the Legislature and among some affected segments of the population -- for example, organized tavern owners angered at the notable decline in business caused in part, by tough, new DWI sanctions. At the same time, highly publicized local enforcement efforts, such as random roadblocks, have prompted civil libertarians to warn of Orwellian intrusions into individual privacy. In addition, young adults are aroused by measures to raise the drinking age, viewing the proposed change short-sighted and discriminatory. Yet, bizarre and ill-conceived "get tough" proposals continue to clog committee agendas and garner heavy press coverage. Thus, it is not surprising that critics have suggested that the legislative response seems increasingly to lack direction in its apparent attempt to respond to an alarmed public and aroused press.

Amid the seemingly undirected stream of bill passings, press releases, and media saturation concerning this issue, it must be recognized that throughout the past four years, there has been an underlying concept - a design for orderly reform to which the Assembly has steadfastly adhered. The purpose of this report is to describe that plan by placing the evolution of New York's drunk driving reform movement into legislative perspective and by documenting the theory and strategy utilized by the Assembly in bringing reform to the drunk driving laws of this State.

Part I will review the accomplishments of the past four years, highlighting the methodical construction of a deterrent model and revealing how the pieces of the plan have been designed to enhance (the model's) effectiveness. Part II charts the results. It is a statistical analysis that attempts to pinpoint the effect of the new laws on accident and fatality trends, and documents the change in attitude by the public that has accompanied the reform efforts. Part III analyzes important considerations yet to be addressed and sets forth specific recommendations for 1984.

PART I: A COMPENDIUM OF REFORM

Chapter 1: The Need for Reform

General deterrence is but one of the functions of the criminal justice system. While other common components, such as retribution, incarceration and rehabilitation, attach as post-violation functions, deterrence is preventative by nature. To that end, any successful restructuring of the drunk driving legal framework in this State must start by analyzing its ability to deter would-be violators.

According to Professor H. Lawrence Ross: "... the efficacy of a legal threat is a function of the perceived certainty, severity, and swiftness or celerity of punishment in the event of a violation of the law. The greater the perceived likelihood of apprehension, prosecution, conviction, and punishment, the more severe the perceived eventual penalty, and the more swiftly it is perceived to be administered, the greater will be the deterrent effect of the threat."*

Prior to 1980, New York's drunk driving laws, and their enforcement, failed to comprise a suitable deterrent. Sociologically, the failure could be traced to the perceived societal attitude that drunk driving was an inevitable by-product of America's mobile lifestyle and, therefore, did not deserve the attention of limited law enforcement resources. This attitude was exemplified by an inconsistent statutory and enforcement framework that apprehended few, punished fewer and deterred almost no one. Drastic change was necessary.

Any indictment of the State's drunk driving laws, however, must also recognize that New York has historically been at the forefront of innovative legislation aimed at deterring the drinking driver. For example, in 1953, New York placed on the books an "implied consent" statute that states that acceptance of a driver's license carries with it consent to submit to a lawfully requested chemical test. Theoretically, such a refusal was intended to carry with it a period of license revocation and a fine.

Among the other long-standing weapons in New York's arsenal is a 'per se' law that defines a blood alcohol concentration (BAC) of .10 as the statutory misdemeanor of driving while intoxicated, and sets a standard six-month license revocation period for a DWI conviction. Moreover in 1975, the Legislature created within the Department of Motor Vehicles (DMV) an alcohol and drug education/rehabilitation program that most

*Ross, H. Lawrence, Deterring The Drinking Driver, (D.C. Heath Co., Lexington, Massachusetts, 1981), p.9.

first offenders have chosen to attend in exchange for a conditional license and return of their fine. The program has provided offenders with information about drinking and driving and, at the same time, screened out those participants identified as problem drinkers for further treatment. According to a recent report by the State Senate, the program referred 7,700 individuals to alcoholism treatment in 1980.

However, the State's innovative, yet unrelated, legislative initiatives were not, by themselves, sufficient to deter drinking drivers. The statutory framework lacked a cohesive strategy. The components necessary to threaten apprehension, prosecution, conviction and punishment were statutorily prescribed, but the system as a whole simply lacked the necessary unity to comprise an effective deterrent. Four related components can be singled out as leading to the demise of the pre-1980 drunk driving legal structure.

First, liberal plea bargaining practices reduced convictions for driving while intoxicated to virtual anomalies. Common reductions to reckless driving, failure to keep right and speeding violations not only made a mockery of the initial charge, but they deprived law enforcement personnel of a method for identifying repeat offenders.

Second, the implied consent statute that imposed a six-month license revocation for any person who refused a lawfully requested chemical test had become essentially ineffective. Because the pre-suspension hearings provided by law were taking place approximately nine months after the date of the refusal, the penalty, in most instances, simply was being waived. As a result, there was little incentive for an intoxicated motorist to provide the evidence so crucial to obtaining a drunk driving conviction.

Third, the penalties meted out to the limited number of motorists actually convicted of an alcohol-related offense were simply not commensurate with the violation committed. The Legislature's failure to proscribe minimum penalties, in conjunction with liberal plea bargaining policies, had emasculated the penalty provisions for driving while intoxicated.

Fourth, the State and most localities attached a low priority to drunk driving enforcement. As long as the citizenry continued to tolerate the unacceptable death tolls on our roadways, it was unlikely that limited law enforcement resources would be directed at DWI enforcement. As a result, there was little chance that drunk drivers would be apprehended until they had injured themselves or, more likely, someone else. If caught, they were unlikely to receive any substantial penalty. The strictest of DWI laws would remain useless until the resources were available to enforce them.

Indeed by 1979, society's continuing ambivalence and the ineffectiveness of the legal structure had become locked in a self-perpetuating cycle of indifference. It appeared that the laws and their level of enforcement would not be changed unless the electorate demanded change - and the electorate, it seemed, had been lulled into a state of uneasy acceptance by the long-standing indifference of the Legislature and the law enforcement community regarding the failures of the existing DWI laws and the lack of their proper enforcement. In 1980, however, the cycle was abruptly broken when a small but vocal group of citizens and a growing number of legislators combined to let it be known that they were not ambivalent to the senseless deaths and maimings of their friends, relatives and constituents and the system that tolerated those casualties. As a result, the Assembly reevaluated New York's system for dealing with the crime of driving while intoxicated and developed a plan for restructuring it.

In outlining the direction that New York was to follow, the Assembly determined that the four prime elements, which had failed under the existing system, needed to be reconstructed and structurally linked. Conceptually, the existing laws comprised no more than a framework for the initiation of reform. Moreover, since many years had passed since any real change in the enforcement of the DWI laws had been achieved, proponents of reform chose to be cautious regarding the introduction of any dramatic changes in the existing framework. For these reasons, an omnibus bill was rejected in favor of the more cautiously hesitant, piece-by-piece, reform approach.

This report will discuss each major bill comprising New York's drunk driving reform. Chapter 2 is the most important because it focuses on the enactment of four elements, which had been absent in previous legislation. As a result of these changes, by November, 1981, plea bargaining was restricted in virtually every case to a violation of Section 1192 of the Vehicle and Traffic Law, which pertains to operating a motor vehicle while under the influence of alcohol or drugs. Other revisions included immediate license revocation for refusal to submit to a chemical test, implementation of a new matrix of mandatory minimum fines and the channelling of new fine revenues back to the counties specifically for the creation of drunk driving programs at the county level. Subsequent chapters discuss how the enactment of the first four elements allowed the Legislature to repair a wide variety of anomalies and weaknesses within the old deterrent model and expand into the areas of public information, education and control of alcoholic beverages.

Chapter 2: Prime Components of the Deterrent Model

1. Plea Bargaining Limitations

In part, the failure of the pre-1980 deterrent model was caused by the unfettered use of plea bargaining to dispose of drunk driving cases quickly. While misdemeanor cases of driving while intoxicated were often reduced to the lesser offense of driving while ability impaired by alcohol or drugs (DWA), too often the charge was reduced to non-alcohol related offenses, such as reckless driving, failure to keep right and speeding. The effect of such pleas was three-fold. First, it made a mockery of the penalties inherent to the initial misdemeanor charge, defeating any specific deterrent effect that the drunk driving charge might have had. Second, it exempted the defendant from participation in the State's Drinking Driver Program (DDP), where the defendant either participated in the education program itself or was screened out for further treatment as a problem drinker. Third, it deprived law enforcement officials of a standard method of identifying alcohol-related recidivists.

In addressing the issue, the Legislature recognized that plea bargaining was an essential component of an already overburdened criminal justice system. It also realized that it could not compel every prosecutor in the State, many of whom were confronted by an abundance of major felonies, to abruptly alter the priorities of their staffs. The Legislature did, however, wish to convey the message that drunk driving was a complex and potentially violent crime. Violators had to be arrested, identified as alcohol-related offenders and removed from the highway.

The enactment of Chapter 806 of 1980 addressed these concerns by prohibiting a person charged with driving while intoxicated from pleading guilty to a non-alcohol related offense except under very narrow evidentiary circumstances. In addition, the law increased the penalties upon conviction of driving while ability is impaired (DWA) by providing a mandatory revocation of license upon a third or subsequent violation within seven years (rather than the former three years), and by lengthening mandatory suspension upon first conviction from 60 to 90 days. Suspension for second violation convictions was increased from 120 to 180 days and the period of time covered in determining second violations was increased from three to five years.

FIGURE 1

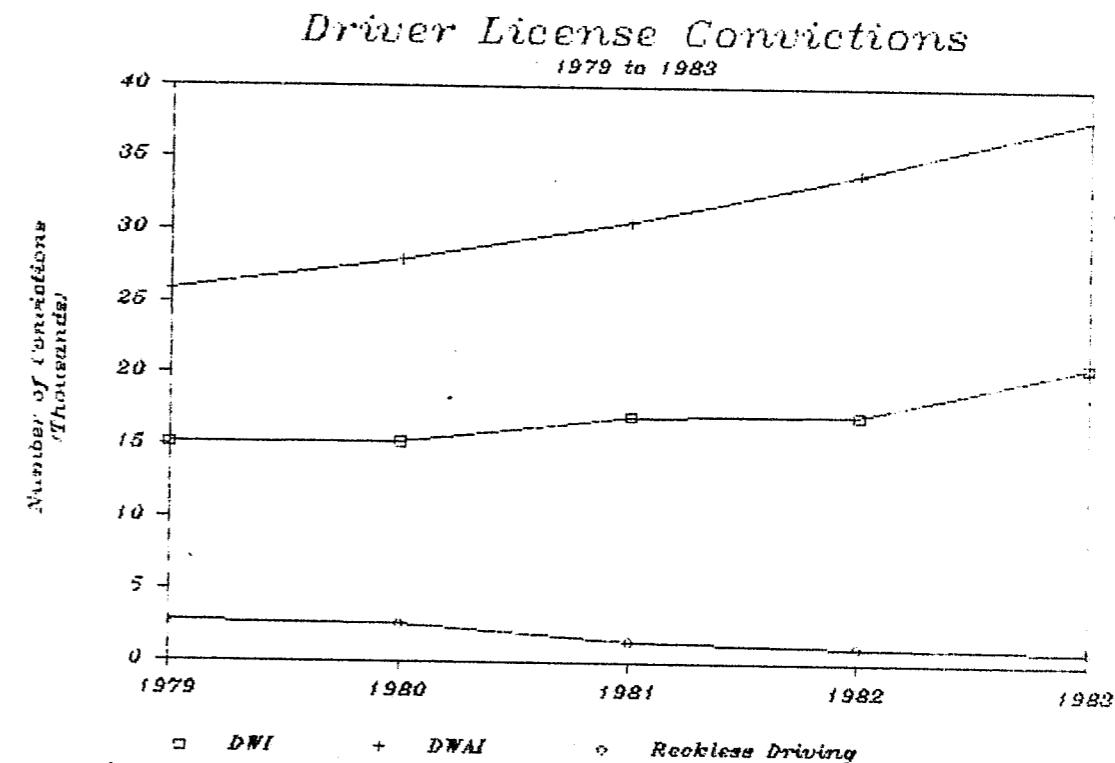
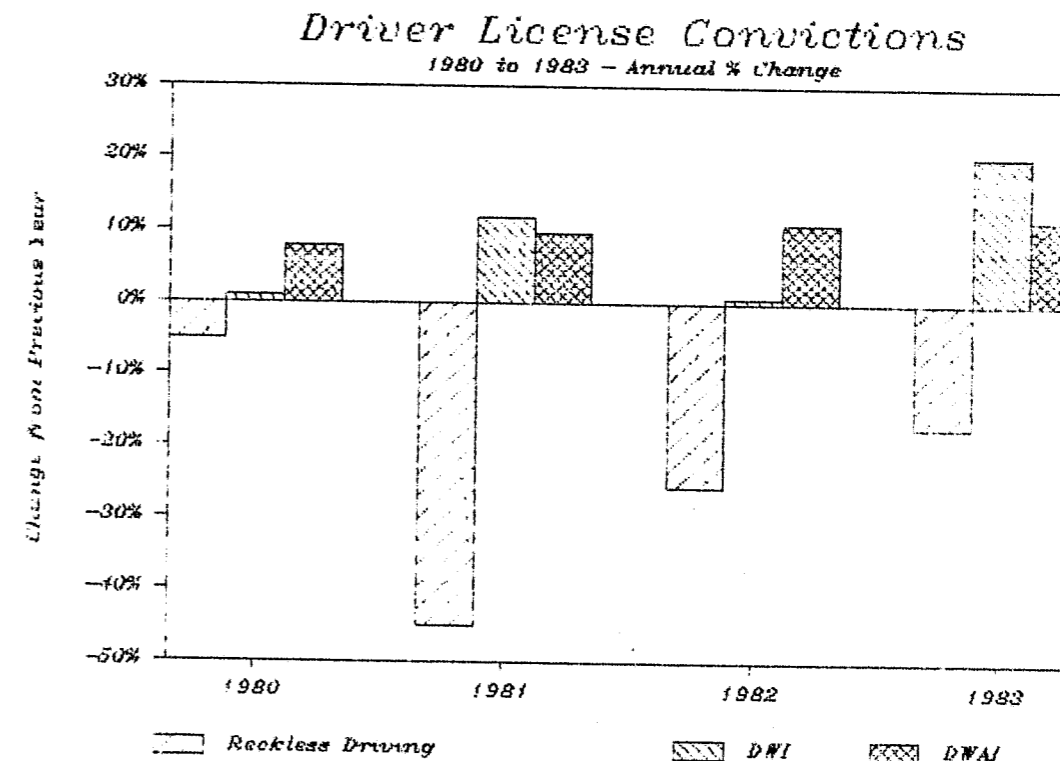


FIGURE 2



The impact of the law was immediate. During the first year after enactment of the new law, non-alcohol-related pleas decline from 56% to 15% of those initially charged with driving while intoxicated in a 10-county upstate area. Moreover, in that same area, reckless driving convictions were reduced by 69% while failure to keep right fell 86%.

Figure 1 illustrates the statewide trend. Reckless driving, a non-alcohol-related charge, began to decline dramatically as soon as the law took effect on September 1, 1980. In contrast, DWAI convictions increased consistently each year thereafter. DWI convictions changed more sporadically with a significant increase between 1980 and 1981 and an even sharper increase between 1982 and 1983.

Figure 2 focuses more closely on the impact of the plea bargaining legislation. Reckless driving convictions declined significantly by 45% in the first year after the law went into effect, with a total 68% drop since 1979. DWI convictions increased 12% in the first year and 37% overall, while DWAI convictions increased 11% the first year and 32% overall. Combined, DWI and DWAI convictions have increased by 43% since 1979.

During the five year period, total convictions for all three violations increased by 36%. Thus, more people were being charged with and convicted of alcohol offenses than ever before. In 1983 there were only 878 reckless driving convictions in New York State - down from 2,732 in 1979. Figures 1 and 2 only partially illustrate the impact of Chapter 806 because data simply is not available on a statewide basis to show the initial charge and final conviction on an individual basis for each alcohol-related offense.

Another noteworthy trend that may be attributed to Chapter 806 is shown in figures 1 and 2. In 1983 DWI convictions increased at a rate of more than 20%. Since the enactment of Chapter 806 most district attorneys have adopted a policy of allowing first time offenders charged with DWI (who are not involved in an accident or whose charge did not involve other aggravating factors) to plead guilty to DWAI. Repeat offenders, however, are seldom allowed to plea to the lesser included offense. The sudden increase in DWI convictions in 1983 reflects an influx of second and repeat offenders being apprehended and convicted of their initial charges.

2. Encouragement of Chemical Test Submission

Although New York has had for many years an "implied consent" statute requiring persons to submit to a lawfully requested chemical test and a "per se" law making a BAC of $\pm .10$ a statutory offense of driving while intoxicated, the two laws have not been effectively linked to encourage the use of the "per se" tool. The fault lay in the implied consent enforcement procedure.

According to a decision of the United States Supreme Court, a state may make mandatory chemical tests for determining blood alcohol content (Schmerber v. California, 384 U.S. 757 (1966)). While the State's implied consent statute does require such tests, in order to avoid burdening local authorities with the distasteful task of forcibly removing blood from an unwilling driver when he or she refuses to submit to the test, New York mandates the imposition of a six-month revocation of the driver's license as a penalty whether or not the motorist is found guilty of the DWI charge. Prior to 1980, the law required a due process hearing before a license could be revoked. The administrative hearing officers at the Department of Motor Vehicles (DMV) became so overwhelmed with a wide variety of mandated hearings that chemical test refusal hearings were not occurring until nine months after the arrest. By that time, most motorists had the drunk driver charge adjudicated and had satisfied the penalty imposed. Consequently, DMV would waive the hearing and the penalty in these cases altogether.

As a result of the relative weakness of the law, local authorities reported an alarming increase (about 64% between 1972 and 1979) in the amount of refusals. It has been estimated that there were more than 10,000 such cases in 1979. Without the evidence from these tests, prosecution for DWI or DWAI was extremely difficult and, in many instances, resulted in dismissal of what should have been an open and shut case. In order for the implied consent statute to have any impact, there was a need for a greater incentive for drivers to submit to the mandatory test.

Chapter 807 of 1980 provided the incentive necessary to end the epidemic of chemical test refusals. This law mandated a \$100 fine and an immediate license suspension for any person charged with DWI or DWAI who refuses to submit, upon request, to a chemical test to determine blood alcohol content. Following the constitutional guidelines promulgated by the U.S. Supreme Court in Montrym v. Mackey (443 U.S. 1 (1979)), this law requires an administrative hearing within 15 days of arraignment to determine whether there was reasonable cause to require the test. Upon a finding of reasonable cause, the suspension is converted to a mandatory six-month license revocation whether or not the person is subsequently convicted of DWI or DWAI. The purpose of the \$100 fine is to act not only as a penalty, but also to help offset the cost of the prompt administrative hearings. It has been estimated that enactment of this law resulted in an immediate 60% reduction in chemical test refusals between 1980 and 1981.

FIGURE 3

*New York State Police Arrests
Chemical Test Refusals - 1979 to 1983*

Number of Chemical Test Refusals

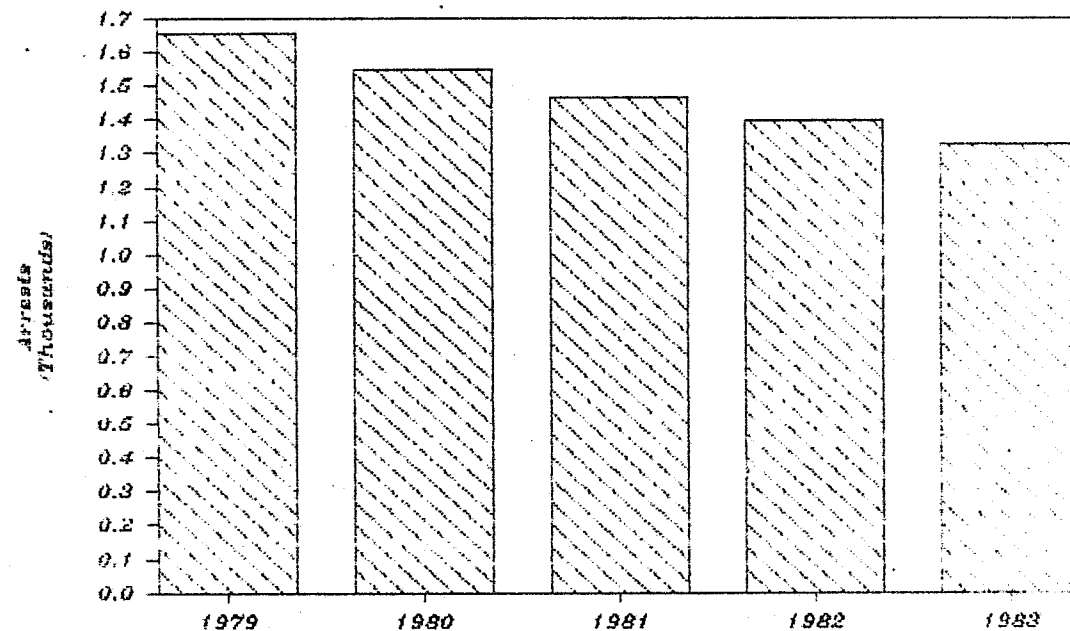
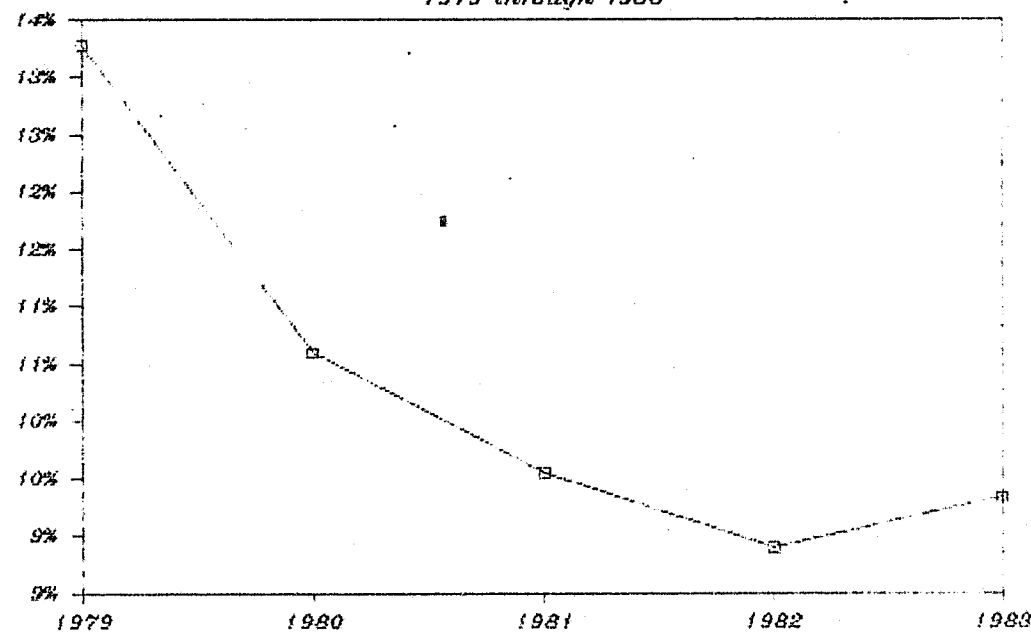


FIGURE 4

*Refusals as a Percent of DWI Arrests
1979 through 1983*



Although, accurate statewide data regarding chemical test refusal trends since 1979 is not available, the New York State Police have provided data indicating the short-term effect of Chapter 807.

Figure 3 shows a steady annual decline in chemical test refusals administered by the State Police beginning the year the bill was signed and continuing each year thereafter. These data become more meaningful when read in conjunction with an annual increase in State Police arrests for driving while intoxicated between 1979 and 1982. While DWI arrests increased by 25.5% during that four year period, chemical test refusals declined by 18.7%. This trend is best illustrated by figure 4, which shows chemical test refusals as a percentage of State Police arrests. Outside of 1983, when State Police DWI arrests fell off slightly, there is an established pattern by which increasingly fewer drivers arrested for DWI refused to submit to a chemical test. Thus, in 1979, more than 13% of DWI arrests resulted in a refusal, but in 1982 fewer than 9% of those arrested refused.

One should note that at the present time despite the enactment of Chapter 807, there are still circumstances under which it would benefit a drunk driver to refuse to submit to a chemical test (e.g. serious accident, repeat offender; see Chapters 3 and 4). As a result, the limited data from the State Police will show a higher level than expected of these types of refusals.

3. STOP-DWI

The success of the plea bargaining restriction law and the reinforcement of the "implied consent" and "per se" laws in 1980 encouraged the Legislature to continue its course by formulating a mandatory minimum fine scheme and providing the resources to allow expanded efforts at addressing the drunk driving issue. The STOP-DWI Law, (Special Traffic Options Programs for Driving While Intoxicated) Chapters 910 and 913 of 1981, has successfully embodied both concepts.

The STOP-DWI Law mandated for the first time that judges impose substantial minimum fines against convicted drunk drivers. The new law increased penalties from a maximum of \$50 for a first time conviction for DWAI to a mandatory fine of \$250. Those offenders convicted of driving while intoxicated must be fined \$350 and may be fined as much as \$500. Correspondingly, higher minimum and maximum fines for a repeat DWI and DWAI offenders were also instituted. This is a sharp contrast to the average \$11 fine collected in 1979.

The most innovative feature of the STOP-DWI Program, however, is the use of the fine monies. The law provides that when counties establish plans that are approved by DMV to combat drunk driving through any combination of increased enforcement,

FIGURE 3
New York State Police Arrests
Chemical Test Refusals - 1979 to 1983

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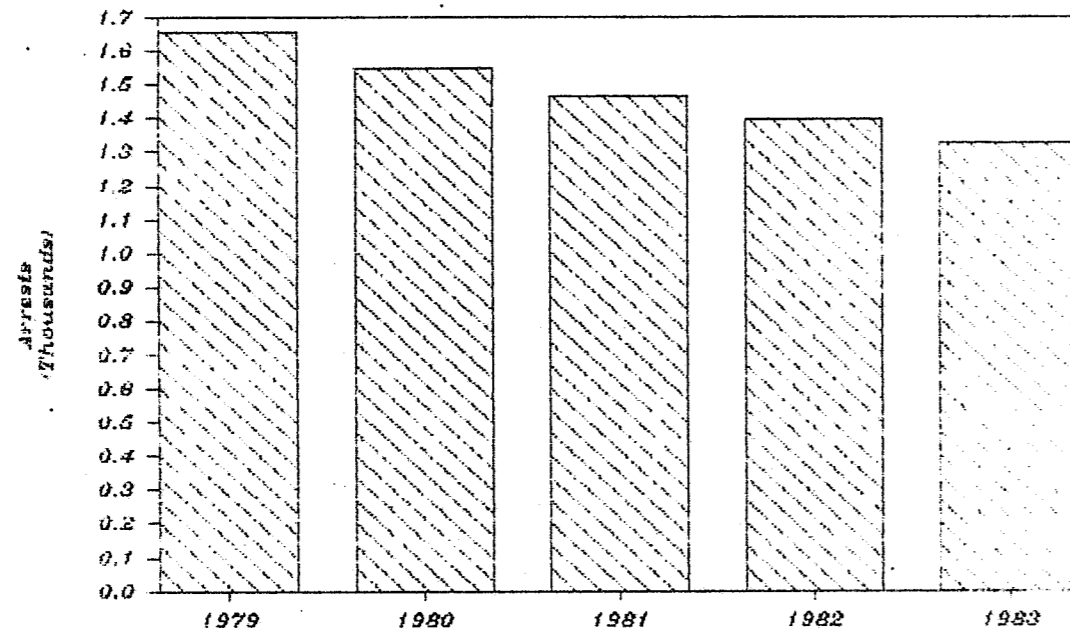
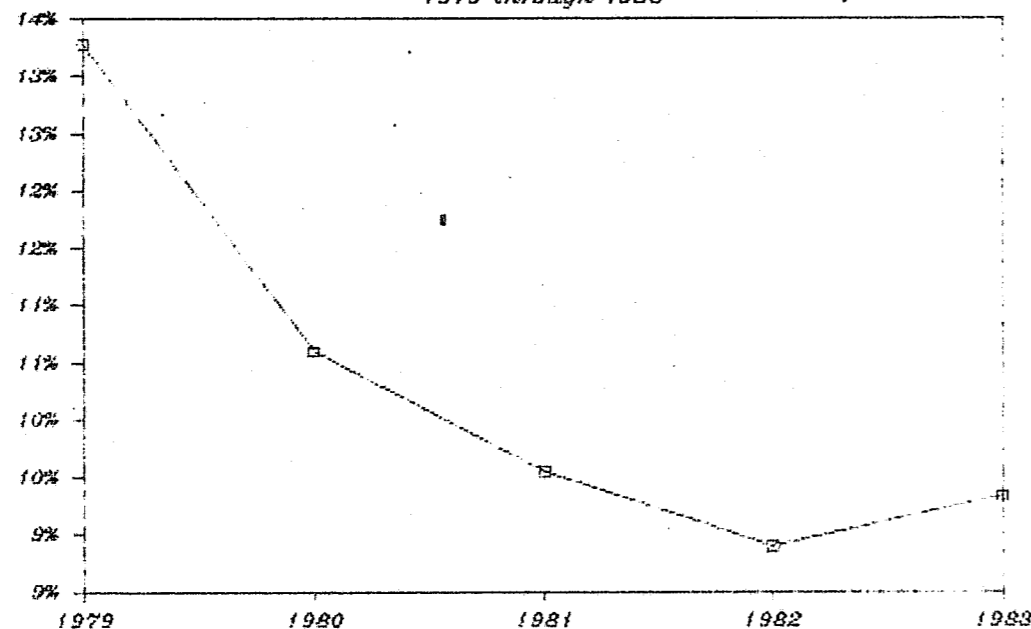


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prosecution, adjudication, education and rehabilitation, they shall receive the money derived in that county from the new fines to implement and maintain those plans. More than \$10.5 million will be distributed to the counties of the State and the City of New York for STOP-DWI programs in 1984. In contrast, a mere \$451,000 was collected by the State of New York for drunk driving convictions in 1979.

The local approach to DWI enforcement has proven effective. By allowing counties to identify their own needs and responses, STOP-DWI is sufficiently flexible to permit localities to try a variety of approaches to the complex drunk driving problem. As might be expected, during the first two years of the program's existence, the bulk of the STOP-DWI money received by the counties went into enforcement and program administration. Naturally each county's start-up costs focused on the need of capital equipment and increased personnel for enforcement and prosecution. Thus, in 1982, the first year of the program, 46% of the \$7.2 million received through the program was utilized for enforcement and 15.2% (\$1.1 million) went for administrative start-up costs. Expenditures for 1983 show small percentage declines in enforcement and administration and increasing attention to rehabilitation, education and public information services.

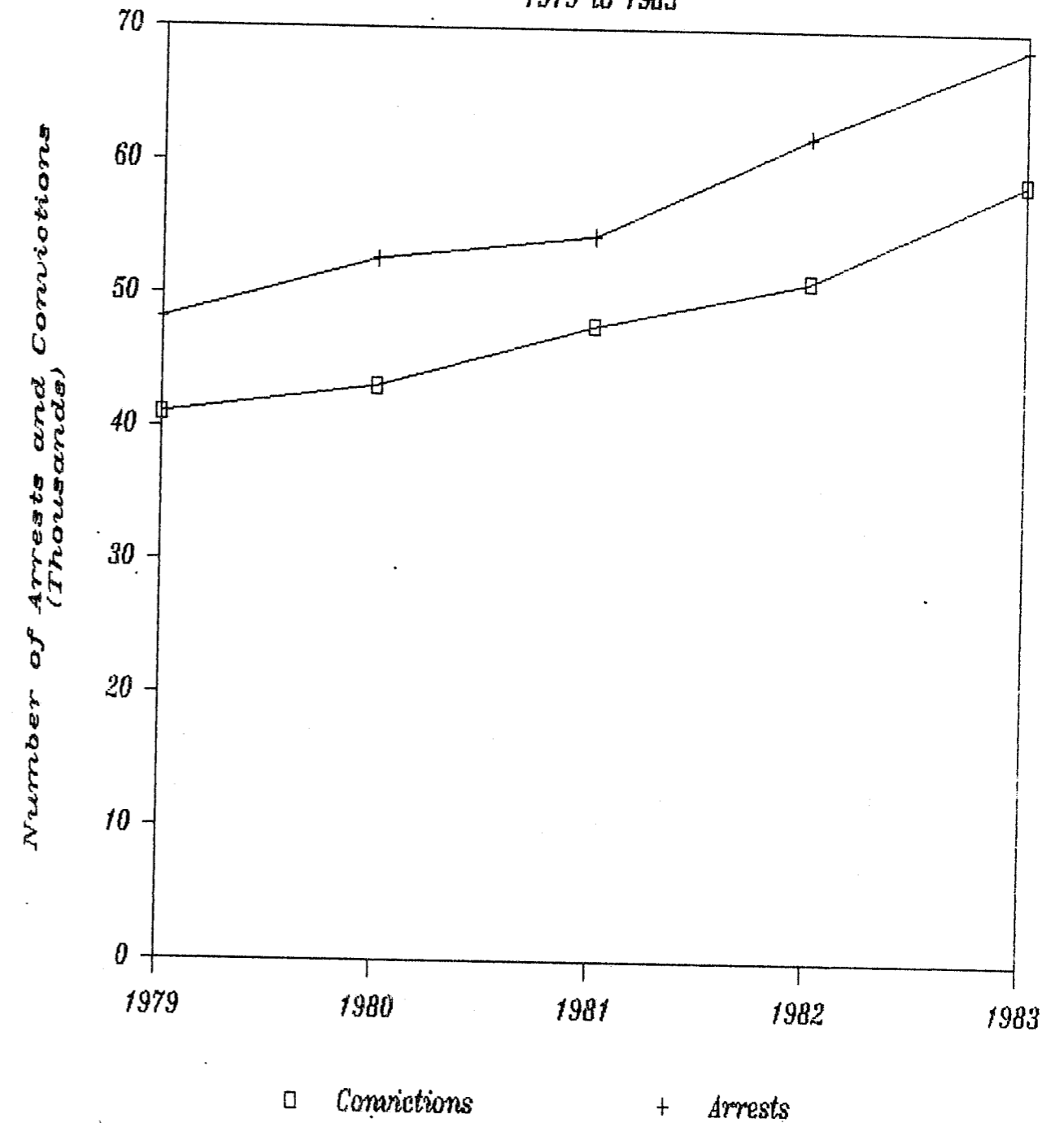
SUMMARY SHEET OF PROJECTED COUNTY STOP-DWI SPENDING FOR 1983

Program	Number of Counties Participating	Amounts	% Dollars Figures
Enforcement	61	\$ 4,803,821.29	45.1
Prosecution	52	1,595,095.81	15.0
Adjudication	35	270,636.18	2.5
Probation	19	581,835.09	5.5
Rehabilitation	40	887,472.50	8.3*
Public Information	51	581,508.56	5.5
Education	34	372,101.82	3.5
Program Evaluation	25	214,114.06	2.0
Program Administration	59	1,349,622.67	12.7
TOTALS		\$10,656,207.98	100.0

*Eligible to match a State local grant in support of new or expanded programs for alcoholism treatment services directly related to drunk driving.

FIGURE 5

Arrests and Convictions for DWI & DWAI
1979 to 1983



Most counties have now set in place a capital infrastructure to arrest, prosecute and convict drunk drivers, and some early trends are discernible. Figure 5 tracks statewide arrest and conviction patterns between 1979 and 1983. Note the 14% increase in arrests between 1981 and 1982 and steady increase thereafter. Also note the 14.6% increase in convictions between 1982 and 1983. The figures illustrate the staggered reaction of the STOP-DWI law manifesting itself first in the form of increased arrests and ultimately resulting in an equal rise in convictions.

Plans for the 1984 monies will probably turn to the prevention (e.g. education, public information) and rehabilitation components reflecting some satisfaction among the counties regarding the enforcement and prosecution aspects of the programs. The legislature can expect a full independent analysis of the STOP-DWI program by the Institute for Traffic Safety Management and Research by March of 1985. Their report will evaluate the success of the local programs measured against county program goals in order to help rate the effectiveness of the different strategies adopted by the 62 participating counties.

The concept of continuing local autonomy with State assistance goes to the heart of any permanent impact in the area of alcohol and highway safety. Most studies show that initial gains in reducing drunk driving returns are reversed and there is a return to previous levels when the public's perception of the certainty of being caught and punished declines. By continuing to provide a violator-funded flow of monies back to the counties, the State allows local officials to maintain a high enforcement profile that provides a continuing deterrent long after the initial legislative impact has worn off. Additionally, it is universally recognized that real gains cannot be made until attitudes change. The STOP-DWI program allows counties to develop the type of educational and public information programs that can help to nurture healthier attitudes, particularly among our young people, about drinking in general and drinking and driving in particular (See Part II). This type of flexibility has made New York's legislation a model for the rest of the nation.

Chapter 3: Repeat Offenders

The deterrence concept discussed throughout this report has two distinct forms. General deterrence has already been discussed in some detail (see Chapter 1) and comprises the major thrust of New York's DWI reform. Specific deterrence is, by definition, narrow in scope and applies only to those who have been caught. In order for specific deterrence to be effective, it is crucial that a person understand he or she will be convicted and punished. More importantly, any punitive treatment must carry the message that future penalties will be more severe. While specific deterrence is directed at relatively few individuals, it is important because it is aimed at preventing future anti-social behavior.

Just as New York's pre-1980 laws failed to provide a viable general deterrent, a poor conviction and punishment record did little to deter repeat behavior by the relatively few who were caught. The laws seldom set mandatory minimum penalties for repeat offenders and in conjunction with poor enforcement, conveyed no threat of strict retribution for future offenses.

In 1981, the State initiated efforts to identify repeat offenders and get them off the road and, when appropriate, into treatment programs. This chapter highlights those efforts.

1. Driving With a Revoked or Suspended License.

It is estimated that as many as 80% of those persons whose license to drive has been suspended or revoked continue to drive. Many thousands of those licenses were revoked or suspended for alcohol-related driving offenses. The operation of a motor vehicle in violation of a license revocation or suspension imposed for drunk driving is a misdemeanor and, prior to 1981, carried a fine of up to \$500 and/or a term of imprisonment of up to 180 days. There was no minimum sentence and generally only a fine would be imposed in full satisfaction of the charge. This was hardly a suitable punishment or deterrent considering that repeat offenders are usually problem drinkers and therefore create an exceptional risk to commit a violent, alcohol-related, vehicular offenses.

To respond to this situation, Chapter 911 of 1981 was enacted. This measure upgraded the penalty for operating a motor vehicle with a license suspended or revoked for an alcohol-related offense to include a mandatory minimum term of imprisonment of seven days in addition to the existing minimum \$200 fine. The mandatory sentence could be served on an intermittent basis at the court's discretion.

2. Suspension Pending Prosecution

Another grave situation is created when a driver with a prior history of alcohol-related convictions is permitted to keep his or her license pending the disposition of a new drunk driving charge. Despite the fact that the Vehicle and Traffic Law has for many years allowed an arraigning judge or magistrate to suspend a license pending prosecution, few utilize the provision. Yet there is an increasing incidence of accidents caused by persons awaiting disposition of alcohol-related charges. In many cases, the driving histories of these drivers are so bad that failure to suspend the license immediately endangers the entire community.

Chapter 912 of 1981 was developed to address this issue. It provides for the mandatory suspension of the license to operate a motor vehicle on or prior to arraignment, pending the prosecution of a charge of driving while intoxicated when the holder has been convicted of an alcohol-related driving offense within three years.

Subsequent to enactment of Chapter 912, however, it was discovered that in practice, the law did not work as intended. First, the requirement that the judge take the license on or prior to arraignment did not provide ample opportunity to determine whether the defendant had prior alcohol-related convictions. Moreover, the defendant was often in no condition to rebut the charges. Second, there was no stated procedure for showing reasonable cause. Some judges utilized the mere traffic ticket as sufficient evidence while others, wanting to avoid an undefined hearing process, simply dropped the charges. Neither extreme satisfied the legislative intent.

The Legislature responded to this problem by passing A.7099-B in 1983. This proposal addressed those procedural issues by establishing (1) that the hearing must be held on or within seven days of arraignment and (2) that reasonable cause would be established in conformity with an accusatory instrument pursuant to Section 100.40 of the Criminal Procedure Law. Under the bill, the scope of the mandatory suspension law also would be extended to those drivers charged with DWI and either a homicide or assault arising out of the same incident, and to drivers who had been convicted of an alcohol-related offense during the previous five years rather than three years. Unfortunately, a technical error contained in the bill resulted in a veto. The flaw will be corrected and the bill will be reintroduced as part of the Assembly's 1984 program (see Part III).

If a key component of deterrence is swift and certain punishment, then the immediate license suspension procedure set forth in Chapter 912 is exceptionally valuable as both a general and a specific deterrent. Moreover, although some states have adopted the concept of immediate license suspension for all offenders, New York's law is intentionally limited to repeat offenders - those involving a nexus between the charge and past behavior.

3. Exempting DWAI from Sealing Requirements.

Identification of problem drinking drivers is at the heart of any successful drunk driving policy. Consequently, Chapter 249 of 1981 was enacted to aid in this process.

The Criminal Procedure Law requires that fingerprint records be sealed when a person is arrested for, but not convicted of, an offense that is at least a misdemeanor. It is common practice to allow a first time offender who is charged with driving while intoxicated (a misdemeanor) to plead guilty to a charge of driving while ability is impaired (a violation). In these cases, the records would be sealed thereby impairing the court's and district attorney's knowledge of the prior record. Because drunk driving is both a crime and possible evidence of a socio-medical problem, it is imperative that proper authorities receive notice of prior drunk driving convictions. Chapter 249 exempted DWAI from the sealing provisions of the Criminal Procedure Law to allow this notification to occur.

4. Second DWAI

Before 1982, an individual who had two DWAI convictions automatically regained his or her license upon the expiration of the suspension period (usually 90 days). Chapter 888 of 1982 stopped this dangerous procedural treadmill by providing that a second DWAI conviction within five years must result in a license revocation rather than suspension.

This chapter forces the driver to reapply for a driver's license and enables the commissioner of motor vehicles to impose conditions with which the offender must comply before regaining his or her license. Since many of the violators who have been convicted two or more times for alcohol-related offenses have proven to be problem drinkers, the new law provides a means by which the commissioner can hereafter increase the incentive to those drivers to receive needed therapy by participating in rehabilitation programs. Alternatively, those drivers who fail to comply with the commissioner's conditions can be denied drivers licenses, thereby keeping those who pose a substantial danger to the public off the roads.

5. Second DWI Conviction

Prior to 1983, the administrative penalties imposed for a second offense of driving while intoxicated were no more severe than those imposed for a first offense. In an effort to deter drivers convicted of DWI from repeating the offense, Chapter 322 of 1983 was enacted to increase the administrative penalty for a second DWI committed within 10 years from a six-month to a one-year license revocation.

6. Chemical Test Refusal (Repeat Offenders)

Past legislative efforts to impose severe administrative penalties on those who refuse to submit to a chemical test to determine alcohol content have succeeded because penalties for rescinding one's implied consent were administratively more severe than those for DWAI. Nevertheless, the repeat offender, who is often a problem drinker, is faced with a more severe penalty if convicted of the underlying crime (usually driving while intoxicated). That person often finds it beneficial to refuse the breathalyzer test and deprive the State of valuable per se evidence.

Chapter 802 of 1983 was designed to close this significant and often-used loophole. Prior to 1983, the penalty for refusal was a six-month license revocation and a \$100 administrative penalty for withdrawing their implied consent. The law now mandates a one-year revocation period and a \$250 administrative penalty if the accused, has previously refused to submit to a chemical test or has been convicted of a drunk driving offense within the past five years.

Chapter 4: Aggravated Offenses

One particularly distressing aspect of the drunk driving problem is the difficulty encountered by our law enforcement personnel in charging, convicting and punishing those drunk drivers who have killed or maimed in the course of operating a motor vehicle. It is now well known that more than half of the nearly 50,000 annual highway deaths in the country are caused by drunk drivers. Yet procedural impediments have made it extremely difficult to assert that an automobile is a deadly weapon and that deaths caused by it should be treated accordingly. In 1983, the Legislature made two major efforts to upgrade the State's ability to prosecute and punish fully those who recklessly kill and injure.

1. Vehicular Manslaughter and Assault

Prior to 1983, those who killed while driving while intoxicated and were convicted of a homicide generally faced one of two charges: 1) manslaughter in the second degree (a class C felony) requiring evidence of recklessness on the part of the driver, or 2) criminally negligent homicide (a class E felony) requiring evidence of negligence on the part of the driver. Most prosecutors found it difficult to prove the requisite reckless mental state and therefore were forced to resort to less severe charge of criminally negligent homicide. A class E felony carries with it a penalty ranging from zero to four years in jail. A similar problem existed in the assault statute for those who injured others while driving drunk. In those cases, the prosecutor who could not prove recklessness on the part of the defendant had to be satisfied with, at best, a conviction for a class A misdemeanor - despite the fact that one or more persons may have been permanently maimed.

Chapter 298 of 1983 helped to address this matter by creating the class D felony of vehicular manslaughter carrying a three-to-seven year sentence and the class E felony of vehicular assault, which carries a zero-to-four-year sentence. Now prosecutors may establish one of these new crimes by showing criminal negligence in conjunction with driving while intoxicated. In addition to facilitating prosecution, the newly defined crimes send a strong message to the public that DWI deaths are forms of homicide and will be treated as such.

2. Mandatory Chemical Tests

In June, 1982, a law enforcement and prosecution crisis arose following a State Court of Appeals interpretation of Section 1194 of the Vehicle and Traffic Law. This section allows a person charged with DWI to refuse to submit to a breathalyzer test, but imposes a mandatory six-month license revocation penalty. The court ruled that this section applied to Penal Law prosecutions, such as manslaughter in the second degree and criminally negligent homicide (see People v Moselle 57 NY 2d 97 (1982)). As a result of this statutory interpretation, the Court had created a whole class of accused felons that were exempt from normal criminal investigation procedures.

It is well-founded in constitutional law that the warrantless taking of blood from a person suspected of drunk driving does not violate Fourth or Fifth Amendment rights (see Schmerber v. California, 384 U.S. 757, (1966)). The Supreme Court merely requires that there be reasonable cause to believe a person was driving while intoxicated and that trained medical personnel take the blood sample safely. The Court would have liked to have seen an independent magistrate make the decision, but the special quality of alcohol in the blood and the lengthy time necessary to obtain a warrant made such a requirement prohibitive.

New York, like all other states, chose to statutorily limit the Schmerber holding by allowing drivers to withdraw their implied consent to a chemical test, thereby subjecting themselves to an immediate six-month license revocation. Thus, New York created an incentive to volunteer for a breath test upon proper request and helped medical personnel avoid the distasteful task of drawing blood from unwilling drivers. This provision was not intended to apply to alcohol-related accidents when a driver is charged with manslaughter or assault. In those cases, Schmerber would continue to apply. Nevertheless, the Court of Appeals overturned two horrible drunk driving homicides -- both involving BAC's of more than .20, more than twice the legal limit -- because Section 1194 was interpreted as extending to refusals in both DWI and vehicular homicide cases. However, the court did provide that if a court order was obtained, a test could be mandated. Because the human body cleanses the blood of alcohol at the rate of approximately .02% per hour, time is of the essence in obtaining evidence of any substantial value. Without the proper mechanism in place to obtain a timely warrant before the alcohol disappeared from the blood, law enforcement officials were left without remedy.

Drawing upon this ruling and the specific guidelines established by the Court of Appeals in an earlier decision (see Matter of Abe A. 54 NY 2d 835 (1982)), the Legislature developed a thoughtful and constitutionally-acceptable procedure for balancing the individual's interest in privacy and dignity against circumstances that may call for limited

intrusion by organized society. Specifically, Chapter 481 of 1983 provides that no person who operates a motor vehicle in New York may refuse to submit to a lawfully requested chemical test to determine blood alcohol content if a court order requiring such test has been granted. Requirements for a court order are:

- an accident involving death or serious physical injury;
- reasonable cause to believe the suspect was driving while intoxicated;
- a lawful arrest; and
- refusal to submit voluntarily to a test or an inability to refuse.

The court order may be applied for by a police officer or the district attorney, or his agent, and may be requested by telephone. However, the court order must meet those qualifications established by Chapter 679 of 1982 regarding telephonic search warrants. The oral application must be recorded or taken stenographically, and the recording or record must be filed with the court. The blood test, if ordered, must be carried out by trained medical personnel pursuant to the provisions now in existence in Section 1194. The defendant may move to have the blood test results suppressed if the standards set forth in the bill are not followed.

Through this measure, the Legislature has articulated a policy that transcends necessary constitutional standards, meets all requirements set forth by the Court of Appeals and carefully balances competing interests. No longer will those who kill by the reckless or negligent operation of a motor vehicle be granted immunity from the discovery provisions of our judicial system.

3. Leaving the Scene of an Accident

Chapter 229 of 1980 was enacted in order to upgrade the offense of leaving the scene of an accident from a class B misdemeanor to a class E felony when the accident results in death or serious injury and the person leaving the scene knows, or has reason to know, that such injury has occurred.

Chapter 5: Administrative Improvements & Technical Amendments

Throughout the past five years of reform efforts, the Legislature has worked closely with the Department of Motor Vehicles in reviewing the administrative role played by the Department in controlling drunk driving. In consort, a variety of measures have been developed in order to improve the State's role in addressing the drunk driving problem. These measures have culminated in expanded alcohol education, "state-of-the-art" data gathering, uniform license surrender procedures and increased public awareness.

1. Alcohol Component for Pre-Licensing Course

Most experts agree that even the most thoughtful and intense enforcement program will falter unless it is accompanied by a change in attitudes concerning drinking and driving. While continuing to emphasize deterrence, the Legislature in 1983 turned its attention to educating our young drivers about the dangers and consequences of drinking and driving.

Chapter 719 of 1983 requires that at least one hour of the three-hour pre-licensing course, mandated by the Department of Motor Vehicles, be devoted to alcohol and drug use in relation to highway safety. Surveys have shown that there are many people who are still unaware of how alcohol and drugs affect the operation of a motor vehicle or the grave penalties now contained in recently enacted anti-drunk driving laws. Therefore, the new alcohol component in the course will not only inform prospective drivers of the inherent risks and dangers associated with driving while intoxicated, but also make them aware of the associated legal consequences they may face if caught. Since young people are provided the opportunity to learn to drive a motor vehicle before attaining the legal drinking age, incorporating an alcohol and drug prevention component in the present pre-license curriculum will hopefully lead to a decrease in the proportion of young persons in alcohol-related accidents. Moreover, it is anticipated this information will help to mold an attitude in each student that will remain long after the restless adolescent years have passed.

2. Uniform License Surrender Procedure

Prior to the enactment of Chapter 892 of 1983, there was no standard procedure for the physical removal of a suspended or revoked license from a convicted drunk driver. The myriad of haphazard methods utilized around the State was not only confusing, but also led to related enforcement problems. In some cases, sentencing courts would remove the license from the possession of the convicted motorist and forward it to the Department of Motor Vehicles. More often, the judge would send a certificate of conviction to DMV and the Department would notify the driver of the suspension or revocation, requesting that his or her license be surrendered. Many motorists never bothered to respond to this request, which, in turn, made it extremely difficult to prove that a person charged with driving on a revoked or suspended license had actually been notified of the revocation or suspension.

Chapter 892 established a uniform procedure by which all sentencing courts must physically remove the licenses from convicted drunk drivers at the time of sentencing and forward them to the Department of Motor Vehicles. The judge may allow first offenders to drive for 20 days on a temporary certificate while the Department determines whether the motorist is eligible for a conditional license.

The measure not only establishes a standard procedure for license surrender but it also removes many convicted drunk drivers from the road immediately upon conviction, thereby stressing swiftness of punishment as necessary to effective deterrence. Moreover, the procedure greatly aids in prosecuting those who continue to drive after being suspended or revoked for an alcohol-related offense.

3. Parking Lot Arrests

Prior to 1982, the Vehicle and Traffic Law limited the application and enforcement of drunk driving statutes (Section 1192) to highways and private roads open to public motor vehicle traffic. As a result, State courts had held that drunk driving arrests that took place in some public access areas, most notably parking lots, were not valid. Thus, law enforcement personnel had to wait until intoxicated drivers entered public roads before making an arrest. This dangerous precedent was eliminated by Chapter 487 of 1982, which extended the application of Section 1192 to parking areas.

4. Violating Conditions of Probation

In 1981, the New York State Probation Officers brought to the attention of the Legislature a persistent and serious problem regarding license suspensions. In numerous cases, a person who had been convicted of a drunk driving offense would be serving a period of license suspension or revocation and simultaneously be subject to a sentence of probation (usually arising out of the same incident) that precluded the person from operating a motor vehicle or applying for a new license. In cases where the minimum period of revocation or suspension expired prior to the period of probation, the Department of Motor Vehicles often unknowingly entertained applications for license restoration, or simply returned the license. When drivers who had regained their licenses in this way were stopped by police, the officers often had no way of realizing that a person apparently holding a full and valid license was operating the motor vehicle in violation of a condition of probation.

Chapter 477 of 1981 addressed the problem by requiring that, in cases involving a revocation, the commissioner deny an application for a driver's license to any individual who is serving a period of probation that prohibits operation of a motor vehicle. In some cases, the law provides that a suspended license can be restored only if a notation is made on the license and recorded by DMV stating the period and specific condition of probation.

5. TSLE&D Data System

New York is currently expanding a state-of-the-art data collection system for tracking and analyzing traffic violations. This system is now on the verge of becoming a permanent fixture in New York due to the Legislature's insertion of budget requests to keep the system operating during the past several years.

The Traffic Safety Law Enforcement and Disposition (TSLE&D) System was developed in 1980 as a demonstration project made possible by the joint efforts of the Department of Motor Vehicles and the Division of State Police (DSP). It was designed to study the feasibility of a statewide, computerized, uniform, traffic ticket accountability and information program. The demonstration program was initially made possible by Federal 402 funds. The system became operational February 1, 1980, in 10 counties: Cayuga, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates. By using a pre-numbered traffic ticket, which it has designed, purchased and distributed, the Department of Motor Vehicles can "track" all tickets issued in the 10

county area from the initial printing of the ticket, and its assignment to a specific police agency, through its issuance and the ultimate disposition of the citation in court. This ticket accountability program and management information system has been proven very successful in the field of highway safety.

Nevertheless, its potential for statewide expansion became endangered when the federal funding dried up. Local officials throughout the TSLE&D area urged State legislators to take over the cost of the program, citing its numerous advantages over traditional methods employed in ticket distribution and record keeping. A report prepared by the Traffic Institute of Northwestern University itemized the primary benefits: a reduction in administrative workload by both law enforcement agencies and the courts; increased efficiency derived through the use of the uniform traffic ticket; access to data and reports through the central data base of the TSLE&D system; and, most notably at this stage, increased accountability through computer files, data accuracy and reduced processing time. In addition, the Legislature recognized the value of the system in monitoring the impact of specific legislation in the traffic safety area.

Recognizing the benefits of the TSLE&D system, the Legislature appropriated \$750,000 to keep the program alive in 1981, and in 1982 appropriated \$1.05 million to allow the system to add 13 counties immediately and seven more by April, 1983. With the computer system already in place through the initial federal outlay, expansion merely involved the cost of hooking up input terminals and training personnel in each county. Although the system was discontinued prior to its last minute inclusion in the budget for fiscal year 1982, it is now viewed as a permanent part of the DMV and DSP budgets. It should soon undergo rapid expansion to provide New York with quick and accurate statewide and local traffic data. This type of information will assuredly aid the Legislature in monitoring existing laws and in formulating policy for the future.

5. Insurance Public Information Requirements

Tough laws will have only limited deterrent value unless motorists are aware of the legal and financial consequences attached to the various alcohol-related offenses. In order to ensure that all New York motorists are on notice that an alcohol-related offense carries substantial legal and financial ramifications, including fines, loss of license, attorneys fees and increased insurance premiums or surcharges, the Legislature developed Chapter 896 of 1983. This measure requires insurance companies, upon renewal of all auto policies, to include information regarding the breadth and impact of the State's drunk driving laws.

Chapter 6: Sale and Distribution of Alcoholic Beverages

Another component of the Legislature's expanding approach to drunk driving reform exists in modifying the standards for the sale and distribution of alcohol. During the past several years, specific measures have been adopted to eliminate the availability of alcohol to school age children, to make people more aware of the duty tavern owners to refuse to sell alcoholic beverages to intoxicated persons and to develop safe and practical ways to transport potential drunk drivers home.

1. Legal Purchase Age Raised to Nineteen

Statistics on traffic deaths and injuries involving young people convinced legislators of the need to raise the minimum drinking age to 19 in New York State. Historically, 18-year-old drivers have consistently had the highest rate of alcohol-related crashes of any age group. According to the New York State Division of Alcoholism and Alcohol Abuse (DAAA), less than two per cent of all licensed drivers are 18 years old, yet they are involved in more than seven per cent of all alcohol-related crashes and nine per cent of all alcohol-related fatal crashes. In addition, 25% of all 18-year-old deaths in New York State (excluding New York City) were due to alcohol-related accidents, of which 60% were directly attributable to 18-year-old drinking drivers. In 1979, these 18-year-old drivers were responsible for more than \$70 million of the societal costs associated with drunk driving accidents.

At the request of concerned legislators, the New York State Division of Alcoholism and Alcohol Abuse examined the potential reduction in alcohol-related accidents in New York State if the legal purchase age was increased to 19. The Division's projections -- in concert with a consensus that a 18-year-old purchase age would curtail the "trickle-down effect," making it more difficult for high school age students to obtain alcoholic beverages -- led the Legislature to adopt Chapter 159 of 1982, which changed the State's legal purchase age for alcoholic beverages from 18 to 19 as of December 5, 1982.

At this early juncture, it is difficult to determine the impact of this legislation. Statistics indicate a dramatic decrease in alcohol-related accidents in New York State for all ages beginning in 1981, thus adding an additional degree of uncertainty regarding the impact of Chapter 159. However, numerous studies of this question are in progress, including a three-year analysis by DAAA aimed at providing the 1986 Legislature with some useful data in judging the benefits of this measure.

2. Posting Signs Where Liquor is Sold

While present law prohibits the sale of liquor to persons who are, or appear to be, intoxicated, the enforcement and awareness of this law has been inadequate. Chapter 838 of 1981 requires that all establishments that have liquor licenses post on their premises a sign stating the prohibition as set forth in subdivision 2 of Section 65 of the Alcoholic Beverage Control Law. This both serves to educate the public and helps to ensure and facilitate the bartender's duty in dealing with intoxicated customers.

3. Increased Penalties

A minimum purchase age is meaningless if it is not enforced. Therefore, the maximum fine that may be assessed against a person convicted of the offense of procuring alcoholic beverages for persons under the age of 19 was increased from \$50 to \$200 by Chapter 373 of 1983.

4. Civil Liability for Serving Alcohol to Underage Persons

Chapter 641 of 1983 extends civil liability to anyone who knowingly furnishes alcoholic beverages to a person less than 19 years of age resulting in that person becoming intoxicated and while in that condition, causing himself or some else to be injured or made to suffer damage.

Prior to enactment of this law, liability was limited to those who unlawfully sell alcoholic beverages to an intoxicated person, regardless of age. The limitation of "selling" had the effect of exonerating those who furnished drinks to underage persons, even though young persons who are furnished alcohol at social events, receptions, parties and on campuses are just as capable of drinking to excess, and have the same propensity to do harm to members of the public on the roadways and otherwise, as those persons to whom alcohol has been unlawfully sold.

5. Alternative Methods of Transportation for Potential Drunk Drivers

In December, 1983, the Assembly Majority, together with DMV's Office of Alcohol and Highway Safety, sponsored a forum for the exchange of ideas and concepts regarding the development of plans to transport intoxicated persons to their homes safely. Among those present were individuals representing county STOP-DWI coordinators, tavern and restaurant owners, the insurance industry, RID (Remove Intoxicated Drivers), SASU (Student Association of the State University), taxicab drivers and the State Liquor Authority. The goal of the meeting was to develop socially acceptable and economically feasible methods of transporting persons home who might otherwise drive while intoxi-

cated. The exchange of ideas included discussion of capital equipment, personnel resources, funding mechanisms, private sector contributions and benefits, insurance and legal issues and demographic needs. The long-term goal was for the Assembly to draw upon this initial meeting and a series of smaller working sessions to draft a "menu" of program ideas from which each county could choose, if it wished, a combination of methodologies for developing and funding the program best suited to its geographic and demographic needs.

This meeting reflects the Assembly's realistic view that sanctions, while critical to the success of deterrence, are nonetheless merely a means of achieving a goal that is and always has been to save lives. Since it is only prudent to perceive that there is a portion of the public that will continue to drink and drive despite the imposition of severe sanctions, the development of alternative forms of transportation is crucial to the fundamental goal of saving lives.

PART II: ACCIDENT TRENDS & PUBLIC BEHAVIOR

Chapter 7: Accident and Fatality Data

Drunk driving legislation has been enacted by degrees since September of 1980, and has brought about a dramatic reform in social attitudes and behavior in New York State. Statistically speaking, this is a relatively short time. Yet the early results have been so convincing that they are worthy of presentation.

The success of most drunk driving laws are commonly evaluated on the basis of measureable reductions in highway accidents and fatalities. The validity of these measures for suggesting the success of new drunk driving laws is based on three supporting propositions:

1) More than half of the nations highway fatalities involve the use of alcohol, according to the National Highway Traffic Safety Administration.

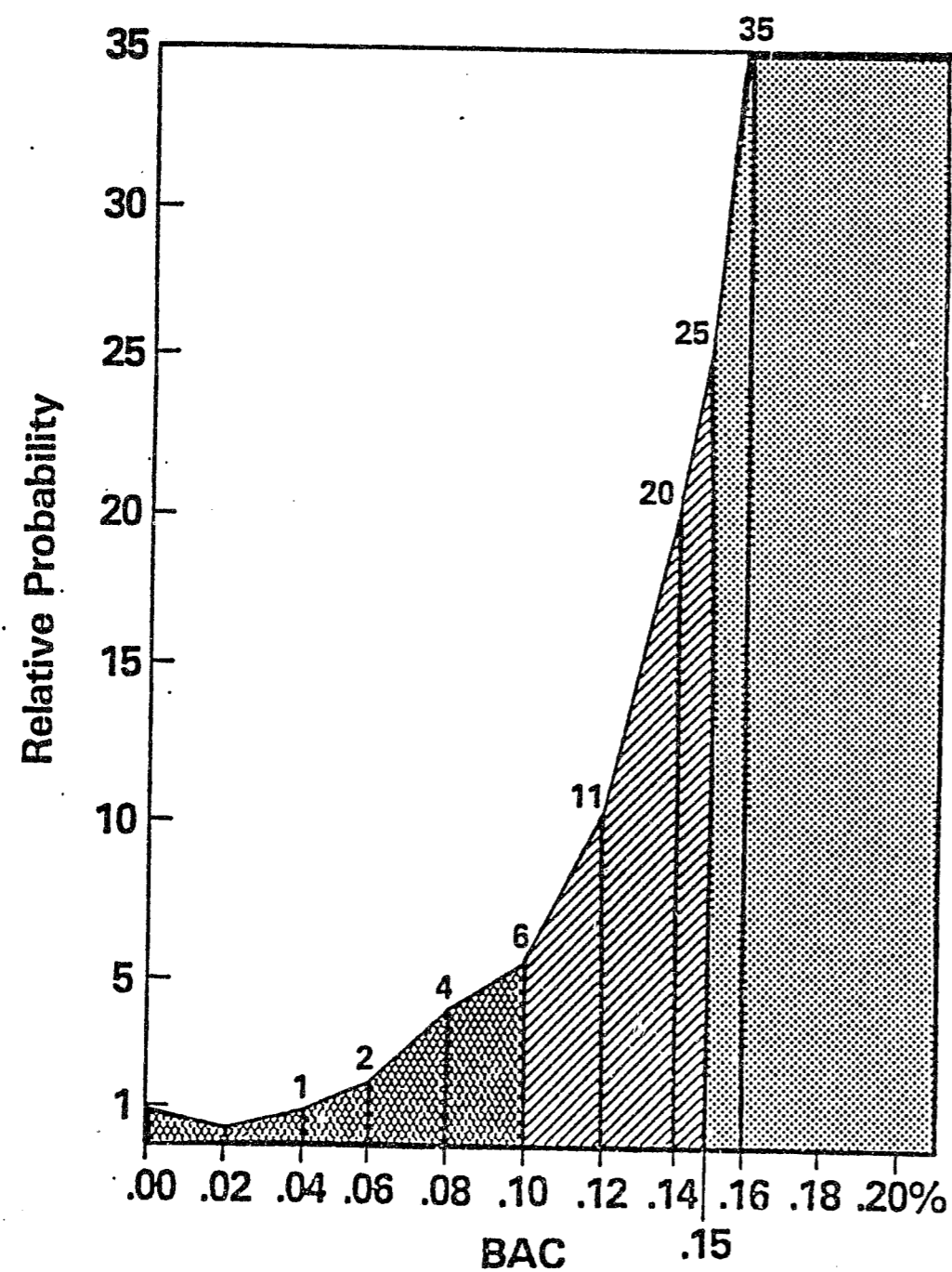
2) Consuming alcohol prior to driving dramatically increases the chances of being involved in an accident. The relationship between alcohol and probability of accident-involvement is illustrated in figure 6. A person with blood alcohol content of .15%, which is less than the average BAC of convicted drunk drivers in New York, is 25 times more likely to cause an accident than a driver who has not consumed any alcohol.

3) Alcohol-related accidents are more severe than other accidents where alcohol is not a factor and are more likely to result in death. The pie charts in figures 7 and 8 illustrate this fact. Figure 7 shows that while 4.6% of alcohol-related accidents in 1983 resulted in death, less than one per cent of all accidents (including alcohol-related) resulted in a fatality. The figure also shows that there was a greater chance of personal injury when alcohol is involved. Figure 8 depicts the fact that personal injuries resulting from alcohol-related accidents are more severe than those resulting from accidents in general. Specifically, there are almost twice as many "A" injuries, those of the greatest severity, when alcohol is a factor as there are in all accidents combined. Approximately 61% of alcohol-related accident injuries are likely to be "A" or "B" injuries, the two most severe categories, while less than 42% of all accidents result in such severe injuries.

These propositions are related, and support the use of police-reported accident data for evaluating drunk driving laws. The following analysis examines accident and fatality trends in New York from three alternative perspectives: accidents and fatalities overall; alcohol-related accidents and fatalities; and accidents and fatalities by time of day. The analysis indicates that notwithstanding the different perspective one uses, there has been a significant decrease in traffic accidents and fatalities directly following the enactment of new drunk driving laws.

FIGURE 6

**Drivers With a BAC .15% Are
25 Times as Likely to Cause an Accident
as Drivers With a .00% BAC**



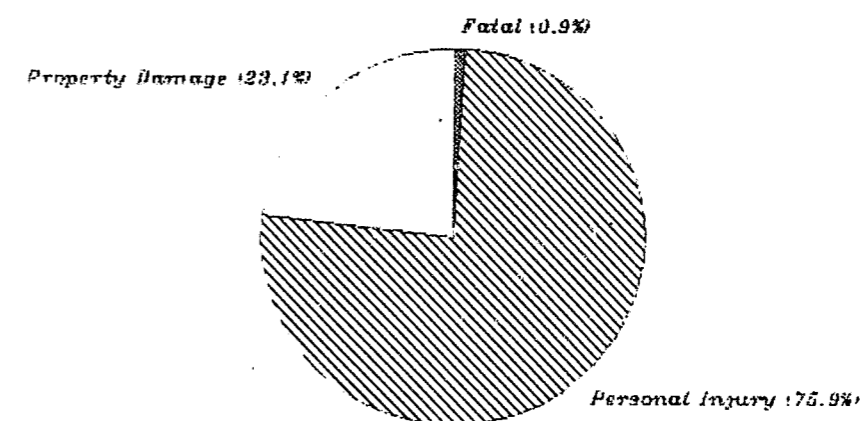
Source: National Highway Traffic Safety Administration

FIGURE 7

Accident Severity

New York State - 1983

All Accidents



Alcohol-Involved Accidents

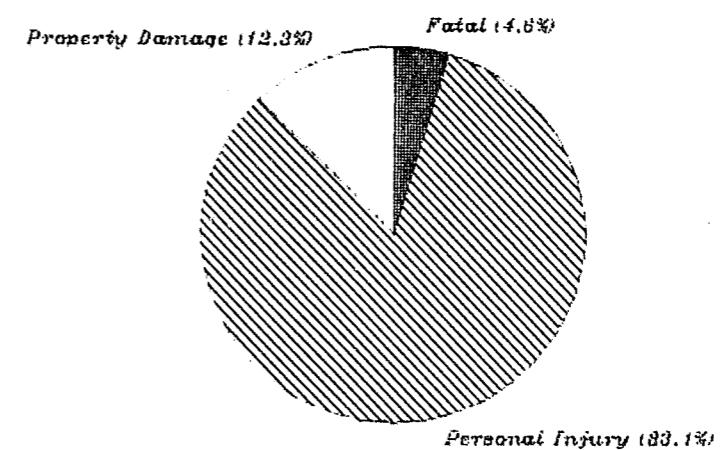


FIGURE 8

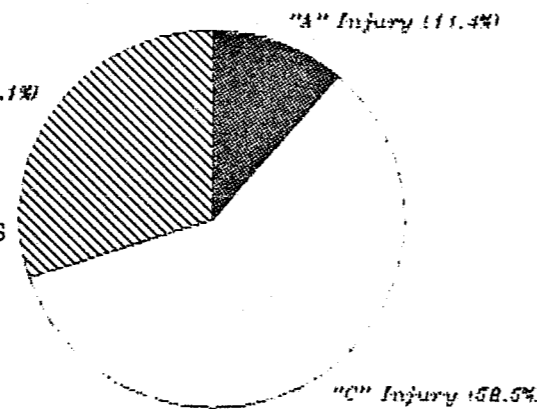
Severity of Vehicle Occupant Injuries New York State - 1983

All Accidents

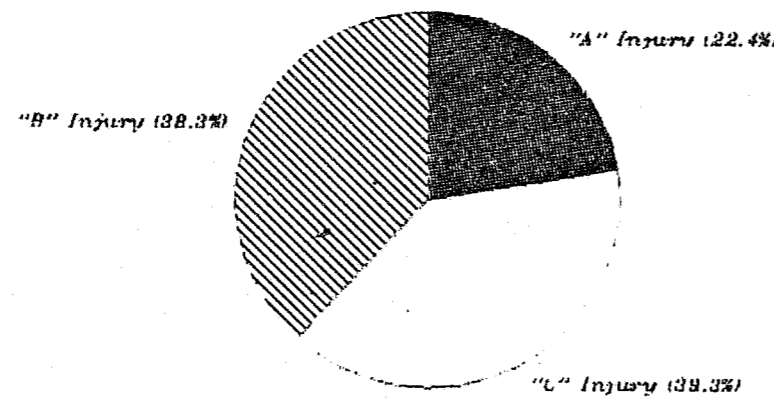
"A" INJURIES INCLUDE SEVERAL LACERATIONS, BROKEN OR DISTORTED LIMBS, SKULL FRACTURES, CRUSHED CHEST, INTERNAL INJURIES, UNCONSCIOUS WHEN TAKEN FROM THE ACCIDENT SCENE, UNABLE TO LEAVE ACCIDENT SCENE WITHOUT ASSISTANCE.

"B" INJURIES INCLUDE LUMP ON HEAD, ABRASIONS, MINOR LACERATIONS.

"C" INJURIES INCLUDE MOMENTARY UNCONSCIOUSNESS, LIMPING, NAUSEA, HYSTERIA, COMPLAINT OF PAIN (NO VISIBLE INJURY).



Alcohol-Involved Accidents



1. Traffic Fatalities Have Decreased Significantly Since 1980 Despite an Increase in Vehicle Miles Traveled

One measure of the effectiveness of drunk driving reform laws involves looking at the trend in highway fatalities over the past nine years. As we have shown, drunk drivers are more likely to be involved in accidents than other drivers and their accidents are more likely to result in death and serious injury than other accidents. Thus, if the new laws have helped to decrease the amount of drunk driving, it should be reflected by a statewide decline in highway fatalities.

Figure 9 charts traffic fatalities in New York State since 1975. Between 1975 and 1980 there was a substantial annual increase in highway fatalities, exclusive of 1979 when the second gasoline shortage occurred. Fatalies rose 9.6% during the period, including an 8.9% annual rise from 1979 to 1980. Since 1980, highway fatalities have been reduced by 20%, and this steady downward trend continues.

In retrospect, almost every major decline in highway fatalities has been accompanied by a major factor (usually an economic factor) that lead to an abrupt reduction in the amount of vehicle miles traveled (VMT). However, between 1980 and 1983 when New York's fatalities were declining, the risk of being involved in an automobile accident actually increased due to a steady rise in VMT (figure 10). Prior to 1980, the number of fatalities was directly proportional to the VMT rate. Yet after 1980, fatalities decreased approximately 20% while the VMT rose at a steady 5.5% rate.

These divergent trends are best illustrated by combining the two variables to calculate the rate of traffic fatalities per 100 million VMT. Figure 11 clearly shows that fatalities per 100 million VMT have declined 25% since 1980, with a single year reduction of 14.9% in 1981. The factor amplifies the significance of the 20% reduction in fatalities between 1980 and 1983 shown in figure 9.

FIGURE 9

Traffic Fatalities in N.Y.S.
1975 to 1983

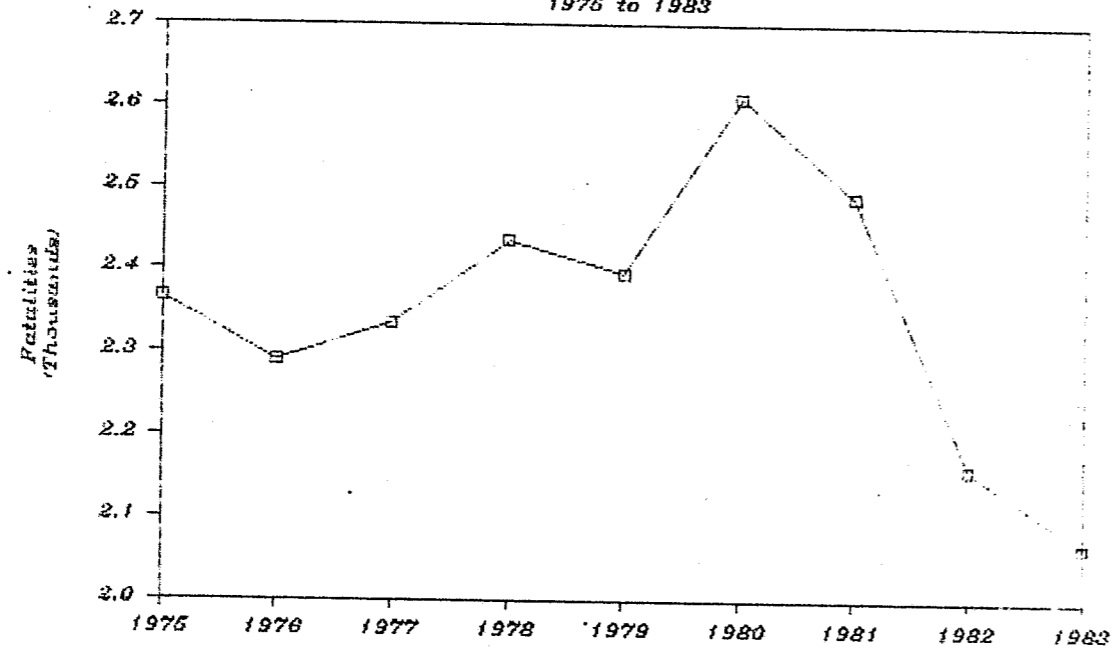


FIGURE 10

Vehicle Miles Travelled in N.Y.S.
1975 to 1983

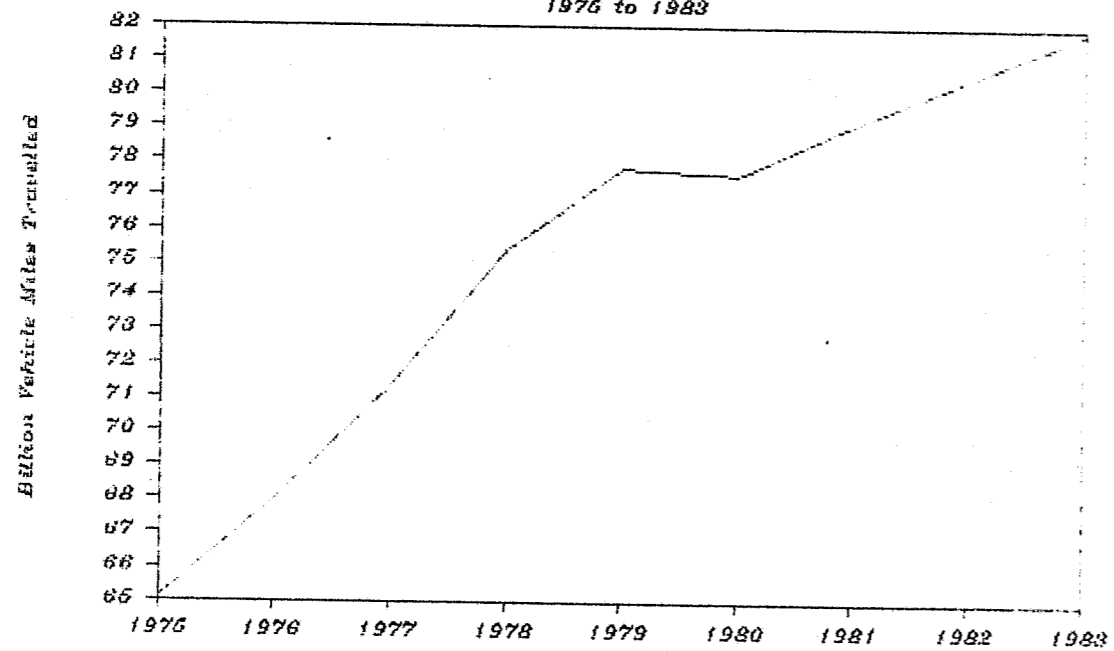
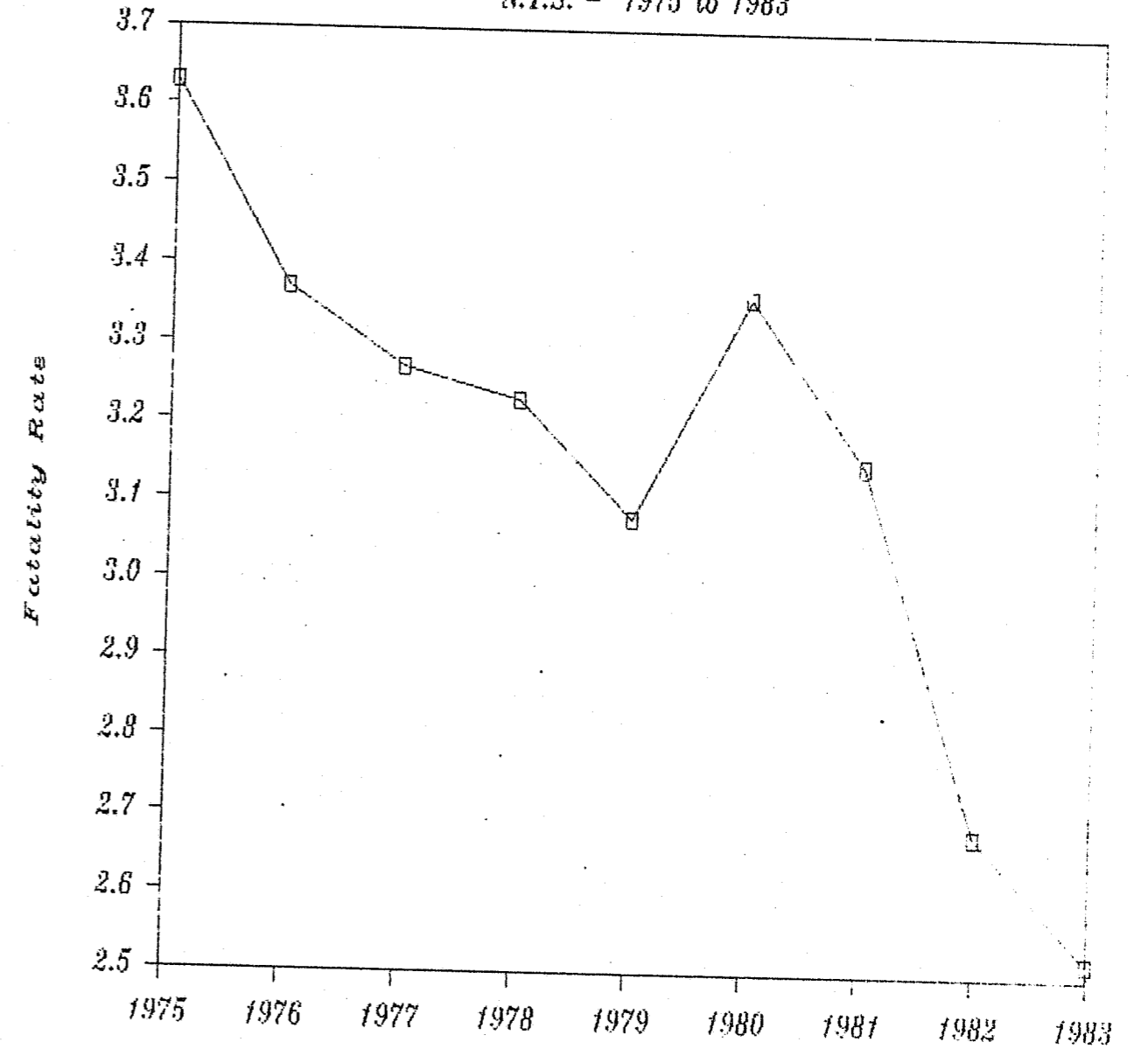


FIGURE 11

Traffic Fatalities per 100 Million VMT
N.Y.S. - 1975 to 1983



2. Alcohol-Involved Fatal Accidents Have Declined Significantly Since 1981

The ideal standard for tracing the effect of the State's DWI reform would be the trends drawn from alcohol-involved fatal accidents. (Note: "fatal accidents" is a somewhat more significant factor than "fatalities" because the number of people killed in a single accident can involve certain random factors.) Figure 7 shows that alcohol-related accidents involve fatalities at a significantly higher rate than accidents where alcohol is not a factor. Drivers in fatal alcohol-involved accidents tend to have higher blood alcohol concentrations than drivers in non-fatal alcohol-involved accidents. The drivers in these accidents tend to be heavy drinkers, and may be repeat offenders. Thus, fatal alcohol-involved accidents should be the most telling and conclusive of all available measures for evaluating the impact of our latest legislative initiatives.

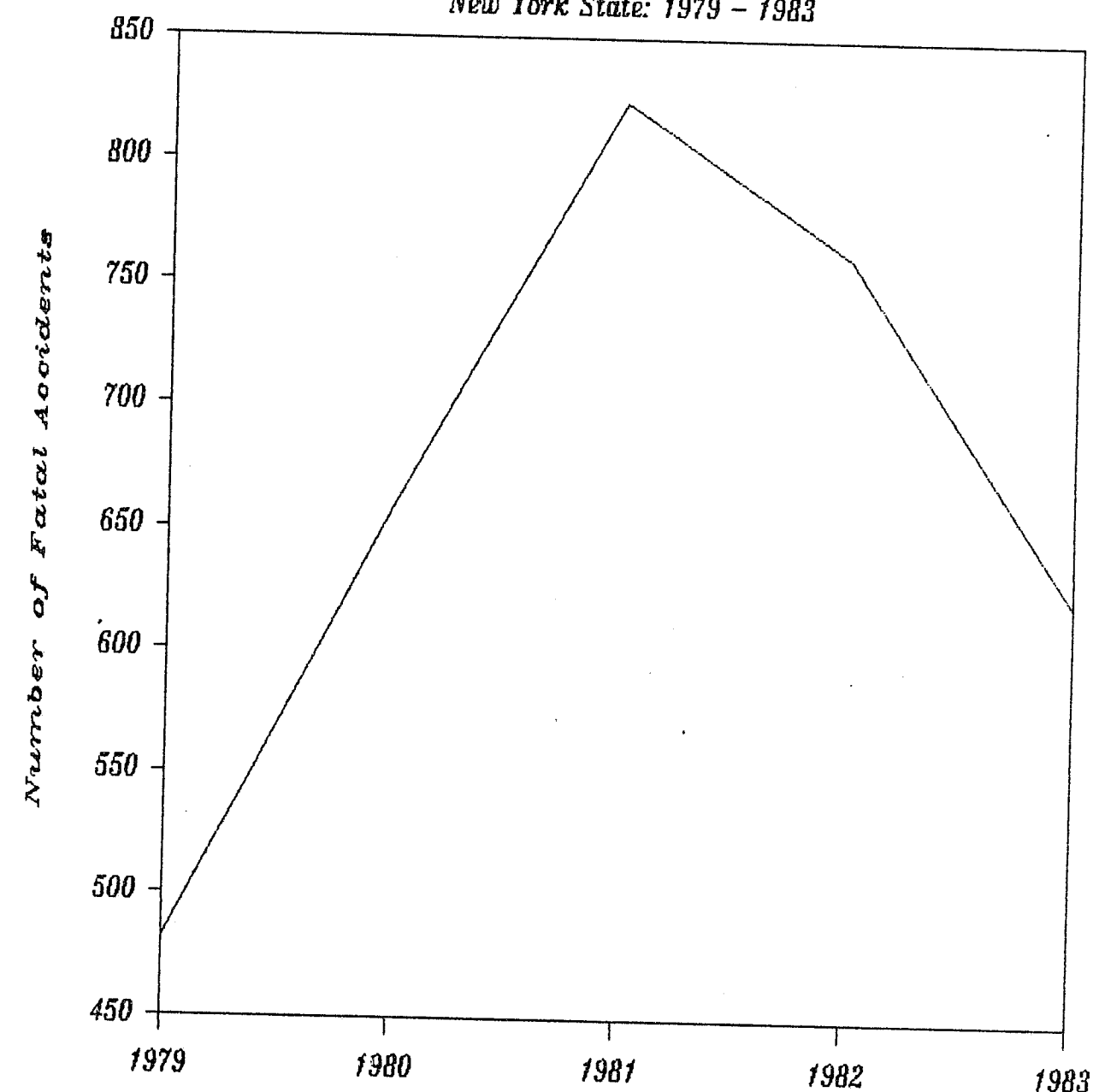
For a variety of reasons, the reporting of alcohol-involvement as a factor in fatal accidents has proven to be imprecise: it involves a disproportionate amount of subjectivity and reporting policies have varied from one police agency to another and from year to year; New York State is not considered a "good" reporting state as far as the national Fatal Accident Reporting System (FARS) is concerned; pre-1979 data utilized a different definition of "fatality," making it difficult to compare pre-1979 data with that compiled after 1979; and not until the enactment of STOP-DWI in 1981 did New York police begin to consistently report alcohol-involvement. For these reasons, alcohol involvement, at least as far as fatal accidents are concerned, may be underrepresented in both pre-1979 and, to a lesser extent, pre-1981 data.

With these caveats in mind, one can trace alcohol-involvement in fatal accidents (figure 12). Between 1979 and 1981, there was a 71% increase in reported alcohol-related fatal accidents. Between 1981 and 1983, when the DWI reform laws took effect, the trend was reversed with a 20% decrease. There is no indication that the trend is dissipating. In light of recent improvements in reporting levels, one may suggest that the actual decrease in alcohol-involved fatalities is significantly higher than 20%.

FIGURE 12

Alcohol-Involved Fatal Accidents

New York State: 1979 - 1983



3. Alcohol-Involved Accidents Have Been Reduced Significantly Since 1980 and Have Declined More Rapidly Than All Accidents

Although the methods for the reporting of alcohol involvement have proven to be imprecise, some significant overall trends regarding alcohol-related accidents can be discerned. It should be noted that reporting of alcohol involvement in non-fatal accidents has tended to be superior to that of fatal accident reporting. This is due, in part, to differences in reporting procedures and requirements inherent in the two situations.

Figure 13 graphs data for a five year period and shows 1980 as the apex for alcohol-involved accidents. During that year, the first reform laws were taking effect, resulting in a modest decline followed by a sweeping 14.5% drop through 1983. The magnitude of this figure may also be somewhat higher in actuality considering the poor reporting of alcohol involvement before 1981 and the improved reporting after 1981.

The decline shown in Figure 13 is even more significant when viewed against all accidents, including alcohol-related accidents. Figure 14 compares the rates of change in all accidents and alcohol-related accidents. It shows that alcohol-involved accidents were still rising by 1.6% in 1980, while all accidents declined by 4.1%. In 1981, however, alcohol-involved accidents declined at a faster rate than all accidents. After one year of the STOP-DWI program, alcohol-related accidents had dropped at a rate of 7.6%, while all accidents rose slightly (less than 1%). The rapid decline in alcohol-involved accidents continued by another 6.3% in 1983. Overall, all accidents have increased slightly by 0.1% since 1980, while at the same time reported alcohol-involved accidents have fallen dramatically by 14.5%.

FIGURE 13
Alcohol-Involved Accidents

New York State: 1979 - 1983

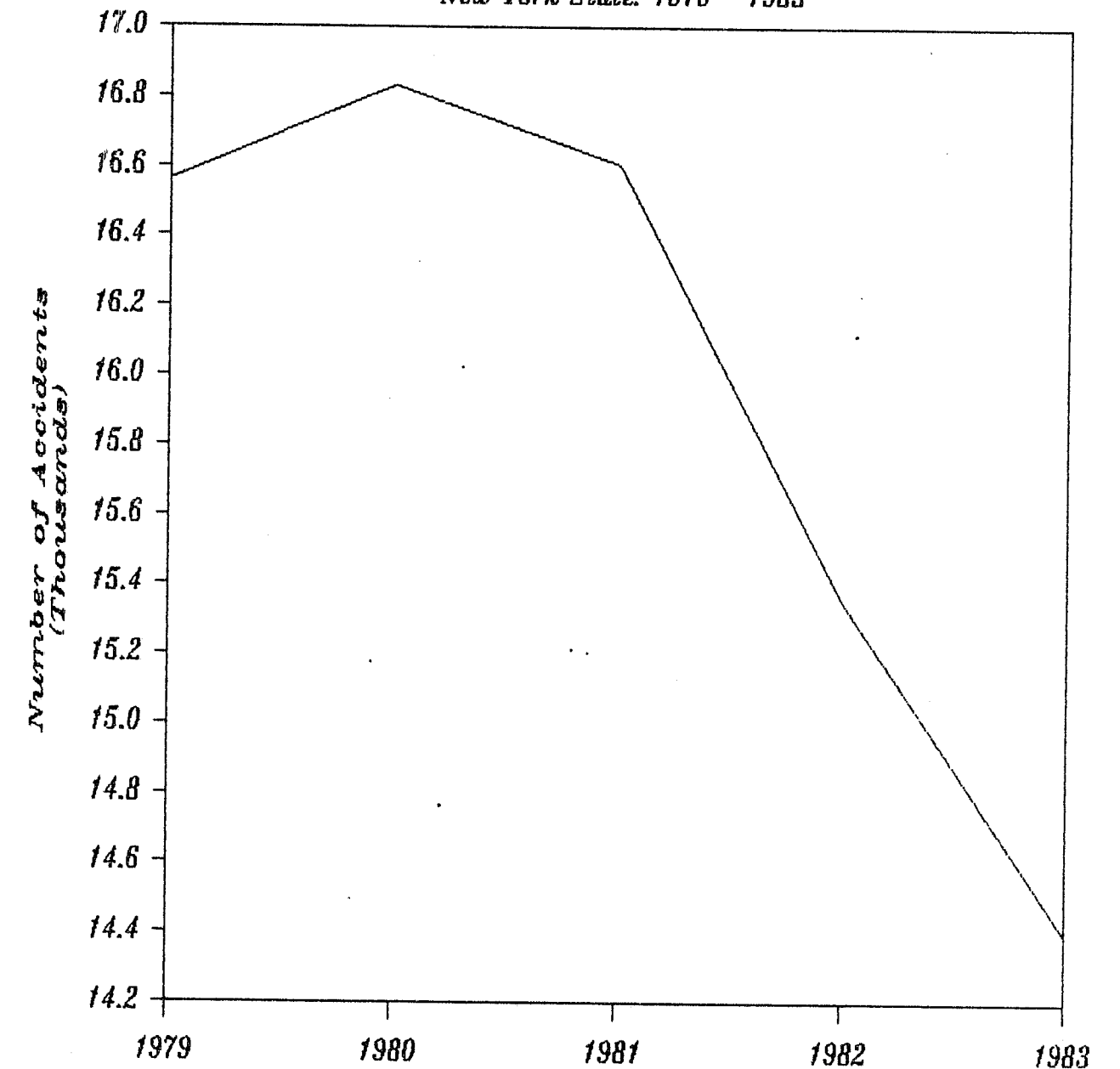
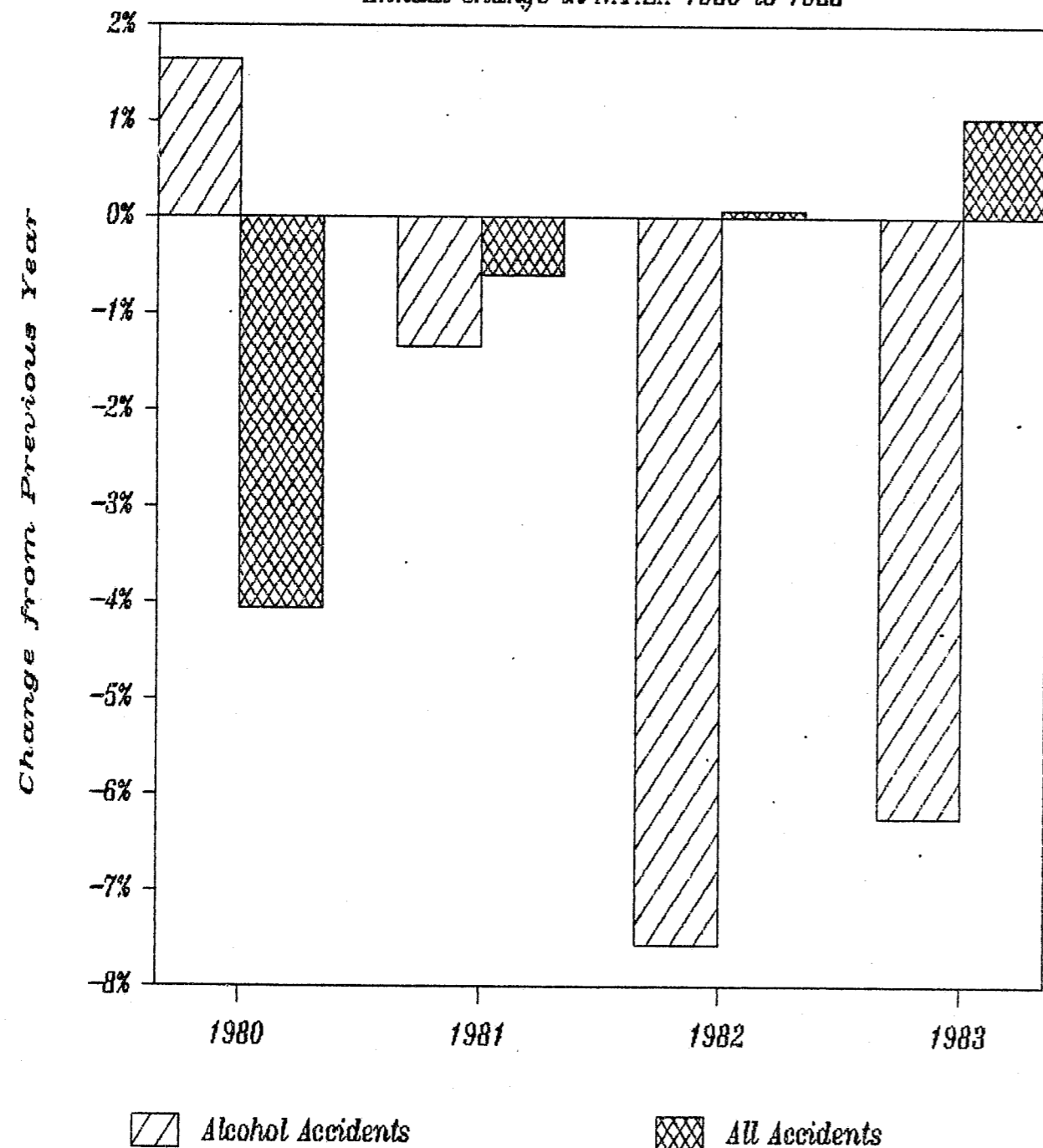


FIGURE 14

Alcohol-Related vs. All Accidents

Annual Change in N.Y.S.: 1980 to 1983



4. Accidents and Fatal Accidents Have Decreased Significantly Between 10:00 P.M. and 5:00 A.M.

One method that can be used to cope with the flaws in the alcohol-involvement reporting system is to develop a surrogate measure. A valid surrogate utilizes variables that are objective, well reported and highly correlated with alcohol to eliminate the problems associated with the reporting of alcohol involvement in accidents. One such surrogate is the "bar hours" time factor, defined as the time between 10:00 P.M. and 5:00 A.M. Highway law enforcement officials have continuously attested to the fact that the majority of nighttime accidents involve alcohol. Moreover, DMV statistics indicate that six out of 10 alcohol-related accidents occur during that seven-hour period. Thus, if the drunk driving laws have played a significant role in the decline in highway fatalities, it should be evident by compiling data concerning those hours.

We can use this surrogate factor to reveal a variety of trends. Figure 15 shows accident trends for the bar hours period in contrast to all other hours. As the graph clearly shows, since 1980, non-bar hour accidents have actually increased. At the same time, accidents during the bar hours have declined 20.9%. Figure 16 illustrates the comparative percentage changes on an annual basis. Again, the data from 1980 to 1983 shows that accidents actually rose 6.1% for the non-bar hour period. This is especially noteworthy because the rise in the accident rate mirrors the increase in vehicle miles traveled. Yet during the time period of our surrogate alcohol factor, a downward trend can be seen.

An analysis of fatal accidents broken down by time shows that the dramatic decline in fatal accidents was led by the "bar hours" period (Figure 17). Between 1980 and 1983, fatal accidents declined 19.4% overall, yet they declined 35.6% between 10:00 P.M. and 5:00 A.M. In the non-bar hours, fatal accidents declined at a rate of only 8.6%. Between 1982 and 1983, non-bar hours fatal accidents increased by 3.8%, while bar hour fatal accidents declined by 11.1%.

FIGURE 15
Accidents by Time
 New York State - 1979 to 1983

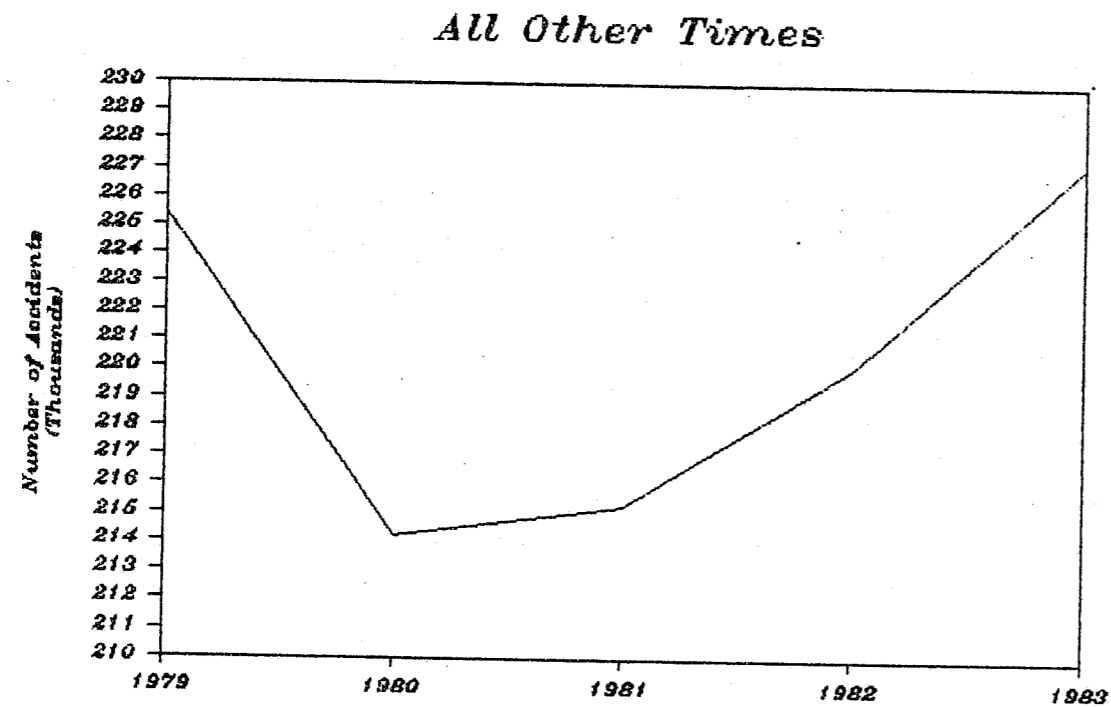
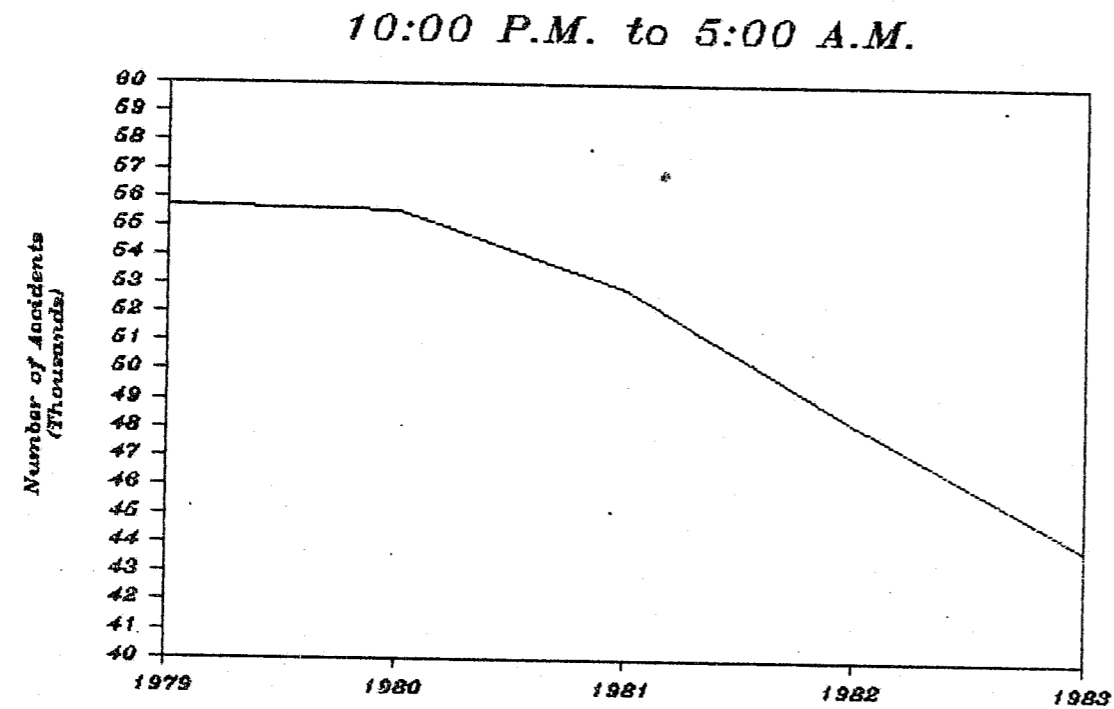


FIGURE 16
Accidents by Time
 Annual % Change - 1980 to 1983

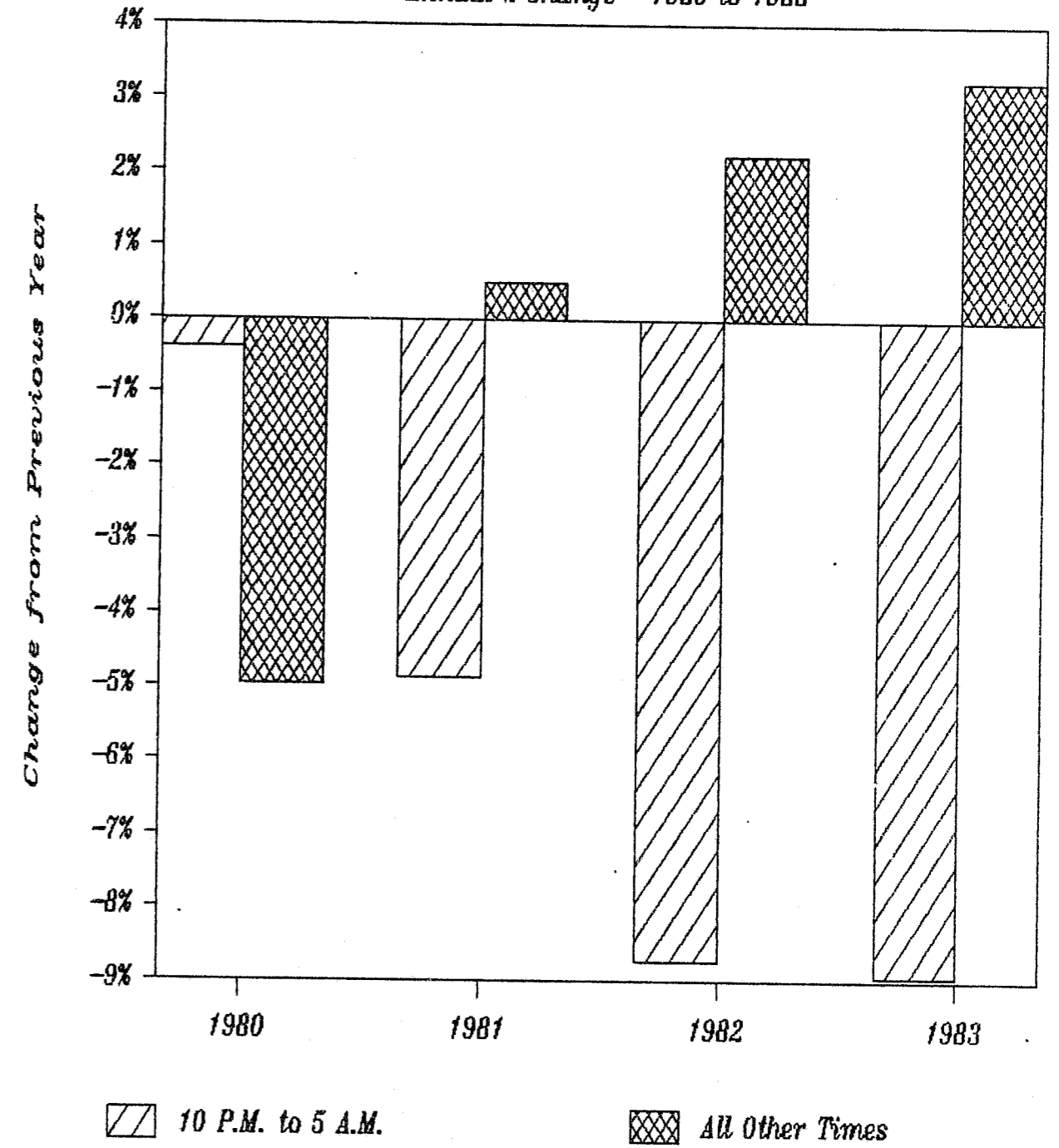
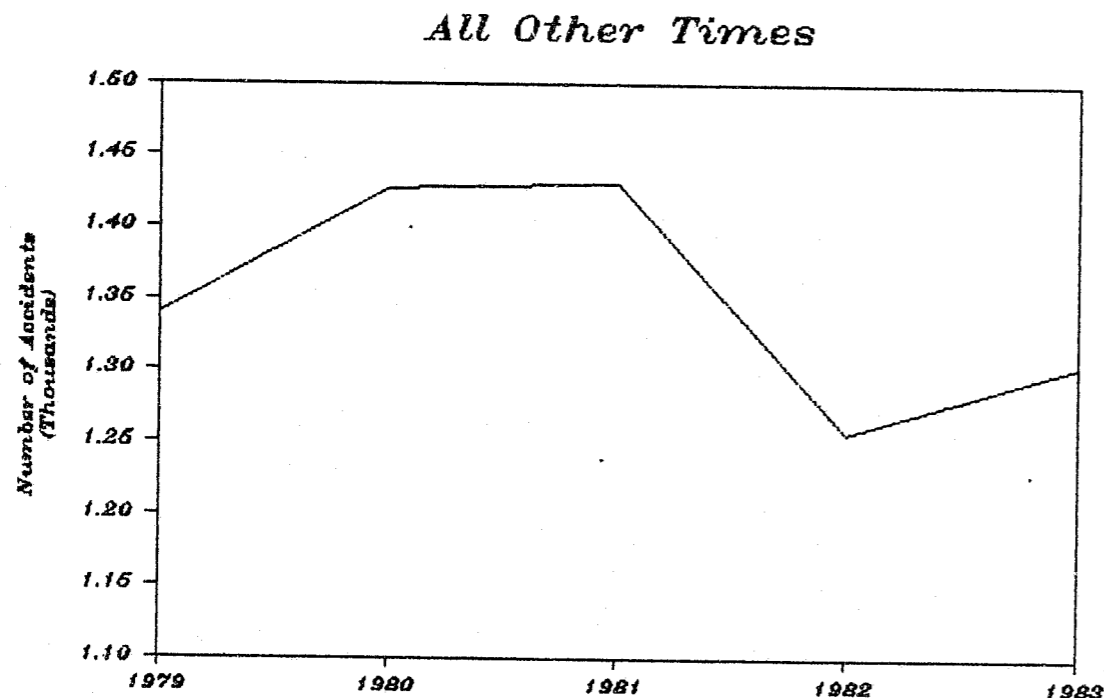
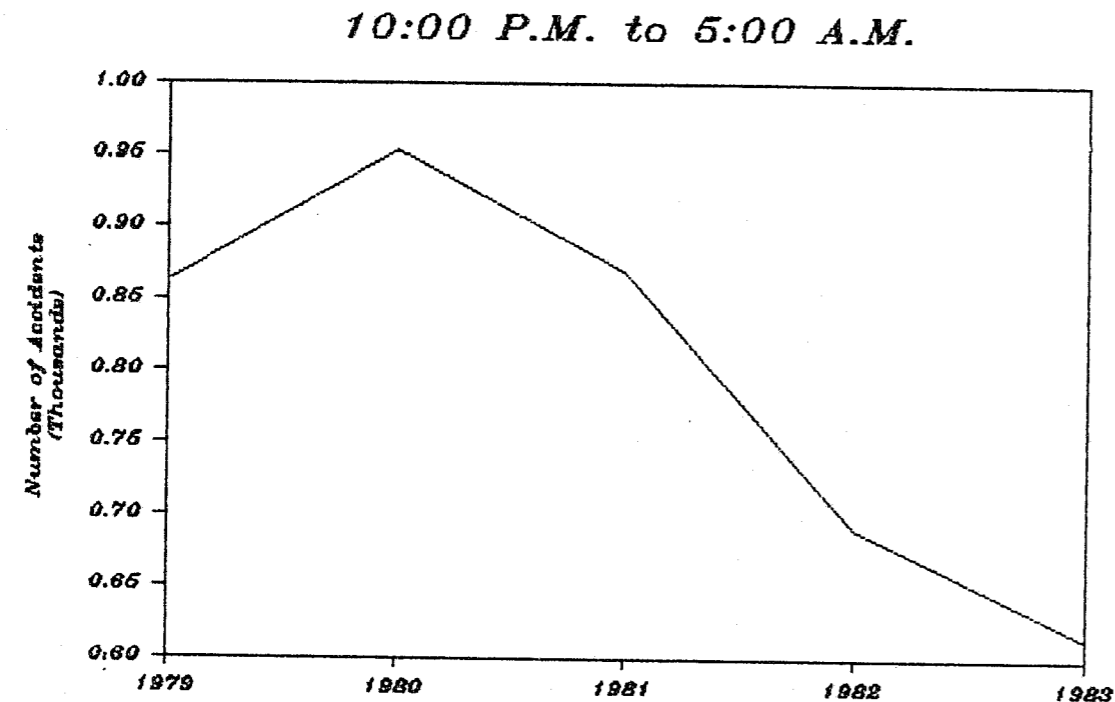


FIGURE 17

Fatal Accidents by Time

New York State - 1979 to 1983



5. Alternative Explanations

The trends set forth in figures 9 through 17 appear to support our hypothesis that the drunk driving reform laws have resulted in significant decreases in the number of accidents and fatalities in New York. In order for the hypothesis to be truly significant, however, we must review other potential factors to determine whether or not they affected the accident and fatality trends. In doing so, we draw from an April, 1983, study by the Department of Motor Vehicles regarding accident trends since STOP-DWI took effect.* The DMV study analyzed a variety of factors, which we reviewed and updated for this analysis.

Severe weather is often a major factor in accident trends. People will not venture out, speeds decrease and generally fatalities will decline when the weather is exceedingly bad. When STOP-DWI first took effect, it appeared that the sharp decrease in fatalities in the winter of 1982 was predominantly the result of severe weather. However, since that time, and in months where weather was not a factor, equally significant decreases in fatalities were recorded. Thus weather, while always an important consideration, did not appear to have an undue impact on accident and fatality trends.

Economic variables are considered by most highway experts to be a primary factor affecting accident and fatality trends. Although NHTSA has been involved in developing a relationship between Gross National Product and accidents, and is also studying the possible existence of an inverse relationship between unemployment and highway fatalities, no statistically valid relationships have been shown. Generally the most accurate economic factor is the secondary variable of vehicle miles traveled. As the economy slows, so does the rate of increase of vehicle miles traveled. As we have seen (figures 9 -11), vehicle miles traveled in New York State have actually increased while fatalities have decreased.

Increased restraint usage, is another potential factor. While the Department of Motor Vehicles reported an increase in restraint usage in New York from 10.6% to 12.4%, most of that increase probably came as a result of the mandatory child restraint law. Despite the increase, there was no significant decrease in the reporting of accidents that

*Analysis Discussion - "Accident Trends Since Initiation of the Special Traffic Options Program for Driving While Intoxicated (STOP-DWI) in New York State." Prepared by the Office of Alcohol and Highway Safety, New York State Department of Motor Vehicles, April, 1983.

cite "No Restraint Use" as the cause of the injury. Moreover, if a significant increase in seat belt use had occurred, it might have affected the fatality rate, but would not have impacted accident or alcohol-related accidents trends - both of which declined significantly.

Reduced speed by motorists would also potentially lower accident and fatality rates. However, there is no indication that speeds have been reduced since 1979. To the contrary, the average highway speed in most states, including New York, has actually increased since 1979.

While we do not purport to establish a direct causal relationship between new drunk driving legislation and the decline in accidents and fatalities following their enactment, the trends are fairly persuasive. Historically, other declines of equivalent significance have accompanied major events such as the Depression, World War II and the gasoline crises. Yet since 1980, all significant fatality and accident rates have declined each year, and the biggest declines have occurred in the prime "bar hours" period. Reports indicate that rural areas also show the greatest percentage decrease in alcohol-involved accidents during that period, while tavern owners in those areas are citing revenue losses. Moreover, other hypotheses fail to account for the major portion of the declines thus far. Therefore, it is apparent that the existing laws have resulted in significant achievements, which we anticipate will continue in the future.

Chapter 8: Public Attitudes and Behavior

The ultimate success of deterrence depends, in large part, on its ability to effect a change in attitudes and perceptions, which then may be translated into a positive behavioral change. A recent survey conducted by the Institute for Traffic Safety Management and Research (ITSMR)* measured the knowledge, perceptions, attitudes and self-reported behavior patterns of 2,546 licensed drivers in New York State. The survey, which also attempted to identify any changes that may have occurred since the enactment of STOP-DWI, portends well for past legislative efforts, and in some ways, seems to mirror the trends documented in the preceding section. The following discussion highlights some of the more significant findings of the survey.

Almost all (97%) of those surveyed consider drunk driving to be a serious problem, and most respondents (73%) indicated that they have begun to think of the problem as more serious during the past two years. This change was primarily attributed to increased publicity concerning the issue. Comparatively, younger drivers (those between 17 and 24 years of age) appear to be the most cognizant of drunk driving as a serious problem and are more likely than any other age group to have gained this awareness during the last couple of years.

Most drivers (72%) are aware that the laws relating to drinking and driving have undergone change in recent years. Forty-three per cent of these respondents said that the laws had gotten stricter or the penalties more severe; 42% knew that the drinking age was raised from 18 to 19 years and, not suprisingly, younger drivers were most aware of the current drinking age; and 29% of the respondents mentioned increased fines.

The overwhelming majority (77%) of those who were aware of the recent legislative changes approve of the new laws. Of four alternatives given, tougher penalties were chosen most often as being the most effective method for combating the problem of drunk driving, followed by increased enforcement, greater education and treatment of problem drinkers.

*Institute for Traffic Safety Management and Research: "A Survey of New York State Licensed Drivers: Attitudes, Knowledge, Perceptions, Behaviors Related to Drinking and Driving," December 1983.

Most (78%) of the people categorized as "drinkers" reported that they either drink less, not at all or wait before driving. Many of the respondents (23%) said that this behavioral change was of recent origin. Significantly, the reason most often given for this recent change in behavior, other than personal reasons, was fear of being arrested or fear of penalties. Additionally, younger drivers, more than those in any other age group, reported that they now drink differently when they have to drive. Furthermore, while the survey found a significant decrease (11%) in the specific incidence of driving while intoxicated, the reduction was greatest for those drivers in the 17 to 24 age group.

Since fear of being arrested, convicted and/or penalized is perhaps the greatest deterrent to DWI, the results of the survey in regard to the measurement of change in "drinkers" perception of risk is of particular interest. These findings indicate that the majority of respondents (53%) believe that the risk of arrest has increased substantially during the past two years due primarily to increased enforcement. Furthermore, respondents believe that the likelihood of conviction is, on the average, almost twice as great as it was two years ago. Significantly, a higher percentage of young drivers believe that the risks of both arrest and conviction have risen during the past two years.

The results of ITSMR study are particularly insightful. First, it is undisputed that the key to the long-term effectiveness of laws that seek to curb certain behavior (especially behavior formerly perceived as acceptable) is a change in attitudes toward that behavior. The study indicates that a positive change in attitude has occurred concerning drinking and driving. Second, the greatest change in attitude appears to be among the younger drivers. The findings in the study are supported by data that indicates that the greatest percentage of reduction in alcohol-involved accidents has occurred among drivers under 21. This is true even before the change in the drinking age occurred in 1982. Third, the most cited reason behind the change in attitude was fear of being caught and punished. These elements are at the heart of any effective deterrent.

These results bode well for the future. If attitudes and behavior have been affected, the trends cited in Chapter 7 should continue or, at worst, level off slightly. The financial resources provided from the STOP-DWI program will allow the counties to keep the issue before the public eye with highly visible enforcement, quick and sure prosecutions and increased education and public information programs.

PART III: RECOMMENDATIONS AND THE FUTURE OF DRUNK DRIVING REFORM

Chapter 9: The Drinking Age Dilemma

Recently, the success of the Legislature and localities in bringing about drunk driving reform has been obscured by a raging debate over whether the age at which a person may legally purchase alcoholic beverages in New York should be raised from 19 to 21. With Governor Cuomo assuming a leadership role among the proponents, interested parties have lined up on both sides of the drinking age issue to exchange highly publicized daily salvos. The Assembly has devoted considerable attention to the various viewpoints being expressed. We have examined the data, read the reports and spoken with our colleagues. After considerable analysis, we conclude that, while not compelled by many of the self-serving arguments set forth by affected opponents of the measure, we urge that the Legislature not enact the proposal to raise the drinking age at this time.

It is an acknowledged fact that drivers under the age of 21 are overrepresented in alcohol-related accident and fatality statistics. In 1982, nineteen and 20-year-olds comprised only four percent of licensed drivers, but were involved in 13% of alcohol-related accidents. Indeed, it can not be overstated that there is a significant problem regarding young drinking drivers resulting in dozens of unnecessary tragedies annually. The question at issue is how the Legislature can most responsibly and effectively solve the problem. Proponents of raising the drinking age recite the frightening raw statistics relating to young drivers and pronounce an increase in the drinking age the panacea. Opponents are outraged at the sweeping impact inherent in denying a privilege to an age group that is considered adult in most other respects. We have chosen not to become embroiled in rehashing the pros and cons of each group's position or in determining the merits of their charges and countercharges. Rather we have chosen to independently study all the statistical information available and to analyze it in the context of the drunk driving reform during the past four years. The following findings are the culmination of that research.

1. Proponents of raising the drinking age have seemingly ignored the dramatic decreases in alcohol-related accidents and fatalities, particularly among young people.

Part I of this report described in detail the development of a deterrent model, the key elements of which were plea bargaining restrictions, increased use of the breath-

alyzer, minimum fines and locally-earmarked financial resources. The short-term results for the entire population as described in Part II are impressive. The 28% reduction in "bar hour" fatalities (10 P.M. to 5 A.M.) between 1981 and 1982 is illustrative of those results. Yet an isolated look at that data reveals that between 1981 and 1983, the rate of alcohol-involved traffic accidents, per 10,000 licensed drivers, has declined in the State at a greater rate for 18 to 20-year-olds than for all other age groups.

Indeed, for a number of years there have been declines in the overall number of alcohol-involved accidents, and a greater rate of decline for 18 to 20-year-olds, even before the change in the drinking age. Specifically, in the years 1981 through 1983 drivers under 21 have consistently shown greater declines in alcohol-involved accidents than any other age group. Even before the drinking age change, drivers aged 18 showed the greatest proportionate decline. Each year since 1980, eighteen-year-old drivers experienced a faster rate of decline than they had the year before. In 1982, before the age change from 18 to 19, the figures for this group declined by 16%, and in 1983 after the age change, they declined by 28%. However, projected figures show that even if the age law had not been changed, 18-year-old alcohol-related accidents would likely have decreased by approximately 22%. This would indicate that the long-term approach developed by the Legislature has had its greatest impact on young drivers. Similar trends are shown by 19 and 20-year-old motorists. Proponents of an age change to 21 have failed to acknowledge these important trends in their zeal to promote a simple answer to a complex problem.

2. Much of the evidence used by proponents in support of raising the drinking age is flawed or misleading.

The Executive branch has compiled a dazzling array of statistics to support raising the drinking age. Upon close examination, however, it appears that these projections may be overly optimistic or even misleading.

The Governor asserted in his 1984 Message to the Legislature that raising the drinking age to 21 would save 75 lives and would result in 1,300 fewer serious accidents. These figures would represent nearly a 75% decrease from the amount of 1983 accidents and more than 65% decrease in fatalities caused by 19 and 20-year-old alcohol-involved drivers. However, our experience in this State gives us no reason to expect a 65 to 75% decline; changing the minimum age from 18 to 19 in 1982 resulted in only a 28% decline among the affected population and even that figure was partially attributable to the massive anti-drunk driving efforts undertaken statewide. Since, as we have noted, fatal alcohol-involved accidents are likely to be associated with heavy drinkers, it is reasonable

to argue that these drivers will be less likely to change their drinking norms merely by changing the drinking age.*

The Governor also mentioned in his 1984 Message to the Legislature that approximately 25% of alcohol-related auto fatalities involved drivers 21-years-old and under. While this may sound dramatic, we must understand that this 25% includes 21-year-olds who would be unaffected by the proposed drinking age change, and that many drivers 18-years-old and under were illegally drinking and driving in 1983 (approximately 1,100) and will continue to do so regardless of whether the legal drinking age is raised.

Most of Governor Cuomo's arguments on public opinion are based on a Marist College poll, which showed that 76.6% of those surveyed favored a 21-year-old drinking age. This poll was conducted to determine public opinion on Governor Cuomo's performance and on voting preferences in the Democratic primary. Minorities and young people were probably underrepresented because the pool of potential respondents was limited to registered voters. In 21 of the counties called in the poll, there were less than five respondents. No accounting was made of the ages of the respondents. Only one question was asked on the topic of the drinking age. As a result, people were not provided with an opportunity to consider and express their views on alternatives to the problem. In light of the fact that there are potential alternatives (see Chapter 10), the significance of the poll must be called into question.

It must also be recognized that the Governor, in compiling his projections for New York, has been handicapped by a variety of data problems similar to those set forth in Part II of this report. Among those problems are the following:

- For the years 1980, 1981 and 1982, New York was not considered a "good" reporting state for the Federal Government's Fatal Accident Reporting System (FARS). "Good" states report blood alcohol concentrations (BAC) for at least 85% of fatally-injured drivers. BAC levels help officials determine changes in the proportion of fatalities caused by alcohol involvement, and would help to evaluate the success or failure of drunk driving programs in New York State.

* See "A Thoughtful Critique of 'An Evaluation of the Changes in the Legal Drinking Ages in Michigan' by Alex C. Wagenaar and Richard L. Douglass, dated September, 1980," by Margaret L. Clary, April 1, 1983.

- The definition of highway "fatality" was changed in New York State on January 1, 1979. Therefore, pre-1979 data cannot be correctly compared with data collected after the effective date of the new definition.
- Reporting of alcohol-related accidents by police has increased since 1981, when the STOP-DWI program was initiated. During that period, many enforcement officials have focused on young drivers. Therefore, recent figures are not directly comparable with pre-1981 figures.
- No one knows the actual magnitude of drunk driving. We know only the number of police-reported alcohol-involved accidents, and occasional non-accident alcohol arrests.

In sum, data problems prevent us from accurately assessing the problem and leave us with no assurance that the result of the proposed increase in the drinking age will be the desired goal.

3. Proponents' projected figures ignore the impact of those who will continue to drive illegally.

Proponents of a 21-year-old minimum purchase age frequently cite the 20% reduction in alcohol-related accidents for 18-year-olds as a barometer for measuring the effect of raising the drinking age. This narrow view of the data ignores the existence of the remaining 80% of alcohol-related accidents involving 18-year-olds who have continued to drink illegally and drive. The limited success intimated by the 20% reduction obscures our failure to adequately address compliance among 18-year-olds with the existing drinking age.

Similarly, teenagers under the age of 18, who have never had legal access to alcohol, consistently have represented four per cent of alcohol-related traffic accidents in New York State. In 1983, one year after the drinking age change, 18-year-olds accounted for 7.7% of all alcohol traffic accidents. It is safe to say that raising the legal drinking age has had no positive impact on this group of illegal drinkers, nor will a subsequent change prevent these illegal purchasers from drinking and driving.

4. Many States that have raised the drinking age have experienced an increase or no change in accident and fatality data among the affected population.

Proponents of raising the drinking age cite a report by the Insurance Institute for Highway Safety that shows a 28% reduction in nighttime fatal crashes in the nine states that raised their purchase ages between 1976 and 1980. Michigan alone achieved a 30.7% reduction of accidents involving 18 to 20-year-olds when it raised the drinking age to 21 in

1978. Unfortunately, for every state that has experienced the glowing success of Michigan, there is a Minnesota, which experienced a fourfold increase in deaths among 18-year-olds when the drinking age was raised to 19. Interestingly, the death rate among older drivers did not substantially change during that time.

A wide range of reports show the failures of using an increase in the drinking age as a method of solving the drunk driving problem:

- 1) Montana - Raising the drinking age from 18 to 19 resulted in a 14% increase in nighttime fatal crashes among 18-year-olds (Institute for Highway Safety, The Effect of Raising the Legal Minimum Drinking Age on Fatal Crash Involvement, June, 1981).
- 2) Massachusetts - The drinking age was raised from 18 to 20 in April of 1979. Declines in fatal accidents among 16 to 19-year-olds in the subsequent two years were not found to be statistically significant when compared with New York's accident trends (where the drinking age remained at 18). Interviews with law enforcement officials in Massachusetts suggested that the "lack of community resources and variable willingness to enforce (the) laws" may have contributed to the minimal impact of changing the drinking age. (Ralph W. Hingson, et. al., "Impact of Legislation Raising the Legal Drinking Age in Massachusetts from 18 to 20," American Journal of Public Health 73(2): 163 - 170).
- 3) Maine, Illinois, Iowa and Florida - Showed no significant change in fatality rates among the affected populations.

If raising the drinking age is an effective solution to the drunk driving problem among our youth, why are the results so varied? Several explanations are suggested.

First, perhaps those states that witnessed a dramatic decrease in alcohol involvement by young people were affected by other variables. For example, when the drinking age was raised in Michigan in 1978, the people of Michigan were in the midst of the worst industrial economic crisis since the Great Depression. A poor economy is a key variable in affecting vehicle miles traveled and, therefore, indirectly impacts on accident data. Moreover, the second major gasoline shortage occurred in 1979. Each of these variables alone may have had as much as a 10% impact on reducing Michigan's accident data. Certainly these factors imply the possibility of misattribution of causality in evaluating the Michigan experience.

Second, some states may have relied solely on the increased drinking age approach to resolve the drunk driving problem. For example, Minnesota raised its drinking age from 18 to 19 in 1976. Within two years the number of 15 to 19-year-old drivers involved in fatal accidents increased by 32%, while the rate for the entire population increased by only 21%. By 1980, the rate among teenage drivers had increased 66% since the new drinking age had taken effect. Yet when Minnesota enacted its tough new drunk driving laws in 1981, a dramatic reversal occurred. The number of teenagers involved in fatal accidents declined by 40% in 1981 and a total of 66% by 1982.

Thus Minnesota, like New York, has increased its drinking age to 19 and enacted a comprehensive program of new enforcement laws. However, because Minnesota adopted its measures at different times, we can more accurately attribute causality in the Minnesota case than in New York, where the drinking age change was enacted at the same time as a number of major reform measures.

A third explanation that may play a role in measuring the effect of a drinking age change is the geographic location of the state. Massachusetts is a good example of a small state surrounded by states with lower drinking ages. In 1979 when Massachusetts raised its drinking age to 20, four of the five contiguous states (New York, Vermont, Connecticut, and Rhode Island) had a legal purchase age of 18. Access to the legal purchase of alcohol so near to Massachusetts borders surely has a negative impact on the Massachusetts experience. New York's long borders with Canada and Vermont where the drinking age is 18 and Massachusetts where it is 20 would assuredly contribute to interstate travel for the purposes of consuming alcohol.

5. Raising the drinking age discriminates against non-drivers and females.

Thirty-eight per cent of 20-year-olds and 44% of 19-year-olds in New York do not hold valid driver's licenses. Yet they will be denied a privilege heretofore afforded them, while 17 and 18-year-olds, as well as those 21 to 24 years old, continue to comprise a significant portion of the alcohol-related accident population.

For 19 and 20-year-old female drivers, the alcohol-involved accident rate is lower than for most male age groups that would remain unaffected by a change in the minimum drinking age. In 1980, female 18-year-old drinking drivers were involved in less than one per cent of the alcohol-involved crashes statewide (159 out of 17,000). Eighteen, 19 and 20-year-old female drinking drivers create no more of a safety risk than drinking drivers of any age. In 1983, approximately 195 females aged 19 and 20 (1/10 of one per cent) were involved in alcohol accidents, out of approximately 175,000 licensed female drivers in that age group. Yet this group too would be penalized by having their privilege to drink removed.

While there is arguably a justification for taking some action against 18 to 20 year olds because of their overrepresentation in accident and fatality data, there is no rational basis for raising the drinking age for everyone in this age group, including non-drivers and women. As long as less intrusive alternatives to raising the drinking age exist (see Chapter 10), we would be disinclined to support that measure.

6. There has been insufficient time to evaluate the impact of changing the drinking age to 19-years-of-age in December, 1982.

The Department of Motor Vehicles has compiled only one year of accident data since the drinking age was raised from 18 to 19 in December of 1982. There simply has not been adequate time to determine the impact of raising the drinking age to 19.

The significance of data compiled over this short time is exacerbated by two additional factors. First, as discussed earlier, it is impossible to isolate the impact of raising the drinking age from numerous other changes in the law that took effect between 1980 and 1983. As we have seen, the deterrent measures have had the greatest impact on young drivers prior to changing the drinking age, and alcohol-related accidents have been declining for some years among 18-year-olds. Second, experience in other states and countries reveals a sharp decline in accidents among underage drivers for the affected population the first year after the drinking age is raised, followed by a steady increase thereafter. Until it is possible to distinguish which variables have had the most significant long-term impact on the rate of alcohol-related accidents, we feel it would be imprudent to initiate a second increase in the drinking age at this time.

Chapter 10: Conclusions and Recommendations

As little as four years ago, drunk driving was perceived as an "issue" only by those who had been senselessly victimized by the acts of an intoxicated motorist. For years the people of this nation inexplicably accepted as the norm the consumption of an excessive amount of alcohol in combination with the operation of two tons of steel. Yet in 1980, drunk driving abruptly emerged across the country as one of the most prominent populist issues of the day. A new message was conveyed to public officials that unnecessary life threatening behavior must not be tolerated in a civilized society.

In New York, the Legislature responded quickly to the call for action by restructuring the basic elements that comprise effective deterrence and reforming the system based upon those elements. As described in this report, the Legislature has initiated drunk driving reform by identifying and ameliorating those areas of existing law that were inconsistent with its ultimate goal of drastically reducing alcohol-related accidents and fatalities. The results of the legislative initiatives are manifested in the development of a strong, self-supported system for addressing the problem, actual decreases in accidents and fatalities; and notable changes in the attitudes and behavior of the people of this State.

The Legislature's primary task in bringing about successful drunk driving reform is nearing completion. Thoughtful reforms of the penalty provisions and procedures of the Vehicle and Traffic Law, the Penal Law and the Criminal Procedure Law have provided the necessary legal tools for law enforcement officials and judges. The STOP-DWI Program has supplied a continuous flow of resources to each county in the State to be used as they see fit in combatting drunk driving. Moreover, the level of public cognizance is high and should remain so provided the counties continue to keep the issue before the public eye.

Still there are those who propose to undertake additional major reform even when their proposed measures are inconsistent with the carefully crafted efforts of the recent past. Others cringe at the thought of any more attempts to "get tough" with drunk drivers. After careful consideration, we have chosen to ally ourselves with neither extreme, but to propose a limited program of narrowly focused legislative action for 1984. In light of the major accomplishments of the past four years, and in recognition of the fact that many of these measures have not been given ample time to become measurably operative, we recommend that legislative action this year should be focused on three specific areas. First, we should respond to the overrepresentation of young people in

alcohol-related accidents. Second, we seek legislation to improve the State and counties' abilities to tailor programs aimed at the entire spectrum of drunk driving issues. Third, the Legislature must continue to monitor and make technical adjustments to some of the more complex legislation developed during the past four years.

The following sections examine these recommendations in detail.

1. Alcohol involvement, drunk driving and young adults.

Undoubtedly one of our gravest concerns is the overrepresentation of young adults in alcohol-related highway statistics. Governor Cuomo and many others have suggested that the best solution would simply be to raise the drinking age to 21. As Chapter 9 shows, an increase in the drinking age does not focus specifically on the few young people who, like many older adults, abuse the privilege granted by the Twenty-First Amendment. The following legislative proposals are aimed specifically at young people and are consistent with the type of legislation that has reformed the way we view drinking and driving.

A. Young Driver's License Section (A.10980)

This bill would prohibit anyone under the age of 21 convicted of an alcohol-related offense from obtaining a driver's license until they are 21 or until six months after conviction, whichever is longer. Conceptually, the Vehicle and Traffic Law already provides for this treatment with regard to persons convicted of driving while intoxicated, but it has no effect on persons convicted of DWAI or driving under the influence of drugs, those who refuse to submit to a chemical test or those who are granted youthful offender status. Our proposed language expands the law to apply to any person in this age group who is convicted of an alcohol-related traffic offense.

The intent of this approach is clear. As many as 99.6% of young licensed drivers (aged 16 to 21) are not involved in alcohol related accidents. Forty-two percent of persons 18 to 20 do not even hold a drivers license. Yet consistently persons under the legal drinking age are involved in more than seven percent of alcohol-related accidents. This proposal would direct the medicine to the illness, rather than immobilizing the entire body. Threat of license loss has been proven consistently to be the most effective deterrent for young drivers. Youthful motorists would be put on notice - if they make even one mistake, they would face a legal driving age of not less than 21.

B. Photo Driver's License Priority (A.11329)

This legislation would require that drivers under the age of 21 be the first to be issued photo licenses. The Department of Motor Vehicles plans to implement the photo licensing system by July 1. Requiring young drivers to receive photos on their licenses during the first year of implementation would immediately help control the sale of alcohol to underaged drivers. Currently, there is very little difficulty in obtaining fraudulent forms of identification for the purpose of purchasing alcohol. As it stands now, should the photo-license system take effect in July a 16-year-old licensee would have to wait four years to get a photo license. The level of the drinking age matters little if we fail to aid bars, restaurants and package stores in prohibiting underage licensees from obtaining alcohol.

C. Expanded Driver's Education Curriculum (A.11336)

Under this measure, an alcohol-drug component would be added to the drivers education curriculum. The component would be consistent with the one included in the pre-licensing course pursuant to Chapter 719 of 1983. It would convey to prospective drivers important information about the effects of alcohol on the operation of a motor vehicle and the potential consequences for engaging in such behavior.

D. Increased Seat Belt Usage (Chapter 49, Laws of 1984)

We endorse this recently enacted law that requires Class 6 drivers, or those motorists less than 18-years-old, probationary drivers, or those who have held a license for less than six months, and permit holders to be restrained by seat belts while operating a motor vehicle. This measure will go a long way toward limiting serious injuries among inexperienced drivers. While it is not specifically a drunk driving measure, it is consistent with our commitment to prevent unnecessary injuries to our young people and to aid in the development of safe driving skills.

2. Ensuring the availability of adequate resources for State and county programs

Adequate law enforcement requires adequate resources. The application of drunk driving laws requires considerable expenditure of resources for manpower, equipment, court personnel, treatment facilities, public information and education. The innovative STOP-DWI Program currently provides \$10.5 million to the counties to support their DWI programs. This money comes from the fines paid by convicted drunk drivers. In addition, the Drinking Driver Program and many treatment programs are user funded. As a result, little taxpayer money is earmarked directly for local drunk driver programs. The

following proposals could provide an additional \$29 million for State and local programs without taxing the public or invading the State's General Fund.

A. Elimination of Half-Fine Rebate (A.4171-A)

This bill would eliminate the requirement that one-half of a drunk driver's fine be returned when he or she successfully completes the State's Drinking Driver Program. The existing law costs counties as much as four million dollars annually; money they need to expand local programs. Enactment of this bill also would solve current county administrative problems caused by having to keep money indefinitely in escrow to repay these drivers.

When STOP-DWI was first formulated it was felt that returning one-half of the fine would create an incentive to attend the Drinking Driver Program. Experience has shown that the conditional license, which is available only by participation in the DDP, provides sufficient incentive. The proposed bill would restore to the counties the amount of money originally envisioned by the Legislature when the STOP-DWI concept was first conceived. We anticipate that the additional money would allow the counties to supplement their programs with better funded and more innovative approaches to enforcement, prevention and treatment.

B. Increased Federal Funds (A.10978)

This legislation would enable New York to qualify for federal funding earmarked for drunk drivers. In 1982, Congress enacted measures providing incentive grants for state highway safety programs. Each state would qualify for a threshold amount if it satisfied four basic statutory requirements in its DWI laws. Once a state has satisfied the threshold requirements, it may qualify for additional funding depending on how many of the supplemental requirements are satisfied by its existing drunk driving statutes. At the present time New York need enact only one legislative change in order to qualify for \$13 million in federal money during the next four years.

Therefore under our proposal, any person convicted of felony DWI would face a sentence of 48 consecutive hours in jail. In lieu of this sentence, however, the bill would permit the court either to require the defendant to serve 10 days of community service, or permit the defendant to submit voluntarily to not less than 48 consecutive hours of treatment in an inpatient rehabilitation program. While it has not been past policy to require mandatory jail for drunk driving convictions, due to the severity of the crime involved and the variety of options available to the court,

we think this legislation is meritorious. Additionally, it is clear that many judges currently sentence persons convicted of felony DWI to much longer jail terms. In light of these factors, we find the federal requirement to be reasonable and worthy of enactment.

C. STOP-DWI Funds for State Police (A.10962)

The State Police and counties would be permitted to enter into contracts providing funds to the State Police from STOP-DWI money. Currently, State Police make a significant portion of DWI arrests statewide, yet all STOP-DWI money is earmarked for locally-based county programs. This bill would allow the counties to help defer State Police expenses incurred in making these arrests.

D. Transporting Drunk Drivers

This bill would continue efforts to aid localities in developing alternative methods of transporting intoxicated drivers. As we indicated previously (p. 31), the Assembly has taken an active role in helping the STOP-DWI Coordinators to design and implement economically feasible and socially acceptable alternatives to driving an automobile while intoxicated. To this end, a series of working sessions have been tentatively scheduled with a wide cross section of interested parties. The meetings are intended to result in the publication of a variety of methods for financing and operating "alternative transportation" programs to give direction to the counties in developing their own programs.

3. Procedural improvements and technical adjustments

The Legislature has developed more than 25 drunk driving reform laws during the past four years. Great care was taken to assure that each measure was procedurally consistent with those adopted previously. In order to ensure that the entire system functions as intended, the Legislature has continuously monitored the operation of its reform efforts with an eye toward procedural or technical improvements. In keeping with this effort, we recommend several changes for the 1984 session that we feel will improve the level of enforcement and prosecution of drunk drivers cases.

A. Revision of Mandatory Suspension Pending Prosecution Law (A.10979)

Chapter 912 of 1981 provided for the mandatory suspension of the license to operate a motor vehicle on or prior to arraignment, pending the prosecution of a charge of driving while intoxicated when the motorist has been convicted of an alcohol-related driving offense within three years.

Subsequent to enactment of Chapter 912, however, it was discovered that in practice, the law did not work as intended. First, the requirement that the judge take the license on or prior to arraignment did not provide ample opportunity to determine whether the defendant had prior alcohol-related convictions. Moreover, the defendant was often in no condition to rebut the charges. Second, there was no stated procedure for showing reasonable cause. Some judges utilized the mere traffic ticket as sufficient evidence, while others, wanting to avoid an undefined hearing process, simply dropped the charges. Neither extreme satisfied the legislative intent.

The Legislature responded to this problem by passing A.7099-B in 1983. This proposal addressed those procedural issues by establishing (1) that the hearing must be held on or within seven days of arraignment and (2) that reasonable cause would be established in conformity with an accusatory instrument pursuant to Section 100.40 of the Criminal Procedure Law. Under this bill, the scope of the mandatory suspension law also was extended to those drivers charged with both DWI and either a homicide or assault arising out of the same incident, and to drivers who had been convicted of an alcohol-related offense during the previous five years rather than three years. Unfortunately, a technical error contained in the bill caused it to be vetoed. The error has been corrected and we recommend that the measure be adopted again this year.

B. Blood Test Law Revisions (A.11793-A)

Last year the Legislature enacted a law requiring the mandatory administration of chemical tests to suspected drunk drivers in cases involving death or serious injury (Chapter 481). Now that the law has been in effect for several months, suggestions have been forwarded by judges, prosecutors and others aimed at improving the administration of this measure. Later during the legislative session, we expect to address those problems we feel merit attention through specific legislation.

C. Drunk Driving Prosecution Reform (A.9664)

Another measure adopted last year created the crimes of vehicular assault and vehicular manslaughter (Chapter 298). This law was intended to allow prosecutors to bring specific charges for deaths and injuries caused by intoxicated motorists. Nevertheless, prosecutors are still faced with the extremely difficult task of proving

that the defendant, in addition to driving drunk, committed an additional "reckless" or "negligent" act to cause the accident. Since the prosecutors proof in establishing the elements of these crimes is usually derived from a reconstruction of the accident, the requirement that an additional reckless or negligent act be proven beyond a reasonable doubt is unduly prohibitive. This frequently leads to compromise verdicts and reduced scope of punishment.

We therefore support legislation that would eliminate the necessity of proving a defendant's criminal negligence and substitute a requirement that the prosecution prove the defendant, while driving drunk, caused the death or injury of another. If the defense claims the death or injury was caused primarily by some factor other than the defendant's intoxication or the manner of his or her vehicular operation while intoxicated, the prosecution would have to disprove this contention beyond a reasonable doubt. We feel this bill would eliminate undue confusion and add an additional measure of deterrence to this area of the law.

D. Admissibility of Scientific Breath Test Technology (A.6670)

This bill would authorize the use of any scientifically acceptable test that improves the accuracy and efficiency of determining the blood alcohol content of persons charged with driving while intoxicated.

When Article 31 of the Vehicle and Traffic Law was enacted, the "breathalyzer" was by far the most common method of measuring the alcohol content of a suspected drunk driver. While the "breathalyzer" is a "chemical test", police departments now are purchasing and using various instruments that employ methods such as infrared analysis rather than chemical techniques. Although these new instruments are extremely accurate and reliable, courts have construed them as not involving "chemical tests" under Section 1194 and 1195 of the Vehicle and Traffic Law. The proposed measure will allow for the use of the latest applicable technology and prevent the dismissal of cases charging violations of Section 1192 of the Vehicle and Traffic Law merely because the tests involved were not strictly "chemical."

The bill also would amend the Vehicle and Traffic Law to provide for swift review and approval of scientific technology to improve DWI arrest and evidence gathering techniques. Currently, the process of obtaining judicial acceptance of new technologies is ponderous and haphazard at best. This measure will assist the courts in establishing the scientific reliability of these techniques. In so doing, it

would expedite the use of these new methods by law enforcement officials and would eliminate the necessity of routinely retaining expert witnesses to establish the underlying principles and general reliability of such techniques. However, the proposal still would allow a defendant to raise issues surrounding the scientific principles or general reliability of new breath alcohol testing technology. In addition, since the State Health Department already is empowered by statute to regulate the administration of alcohol test, enactment of this legislation simply would extend that authority.

E. Preservation of Breath Test Samples

The Legislature will continue to monitor closely the judicial controversy regarding the prosecutors duty preserve breath samples and take action as necessary. At the present time, several contrasting lower court decisions in New York have put into question the extent to which the prosecutor must preserve the defendant's breath sample in a DWI case. Because a defendant has the right to have a blood sample taken on his or her own, questions have been raised as to whether the government must preserve a breath sample for such independent analysis. On April 18, the U.S. Supreme Court heard oral arguments on this issue (People v. Trombetta, 142 Cal. App. 3d 139, 1983, cert. granted January 9, 1984, 83-305). We will await the Court's ruling and then take any necessary action that might be required.

Editor's Note: On June 11, 1984 the United States Supreme Court ruled in the case of California v. Trombetta that the Due Process clause of the Fourteenth Amendment to the federal Constitution does not require that law enforcement agencies preserve breath samples in order to introduce breath-analysis tests at trial. As a result, no action was taken by the Legislature.

Addendum: The 1984 Legislative Session

This addendum chronicles the major events of the 1984 Legislative Session relating to drunk driving reform in New York State. While the drunk driving issue was dominated by the purchase age question (see Chapter 9), seven drunk driving reform bills passed both houses and six were signed by the governor.

1. Alcohol involvement, drunk driving and young adults.

A. The 21-Year-Old Purchase Age

State Action

The success of the Legislature and localities in bringing about drunk driving reform was somewhat overshadowed in 1984 by the controversial issue of raising the age at which a person may legally purchase alcoholic beverages from 19 to 21. With Governor Cuomo assuming an active leadership role among the proponents, interested parties on both sides of the issue took turns supporting their respective positions by parading reams of statistics before the public through the media. As a result, this issue dominated several months of the 1984 Session.

Although the proposal for a 21-year-old purchase age had been faithfully submitted for years by members of both houses, it had drawn little active support. However, in 1984, Governor Cuomo seized upon the issue as one worthy of his vocal endorsement. To that end he enlisted the support of all related State agencies and a loose coalition of citizens groups, including the Parent-Teacher Association, (P.T.A.) and Remove Intoxicated Drivers (RID - USA). The measure (A.8609, Zimmer) was opposed by The Student Association of the State University (SASU) and the Restaurant and Tavern Owners. Before raucous crowds of onlookers, the bill wound its way through committee meetings to the floor of the Assembly where, on May 28, it became the subject of a lengthy and emotional debate. The measure was ultimately defeated (69-80) on a roll call that revealed no discernible voting pattern. The final vote cut across both party and geographic lines, as well as virtually every recognized Assembly caucus and coalition.

Federal Action

On July 18, 1984, President Reagan signed into law a bill that would penalize states not raising their minimum drinking age to 21.

H.R. 4616, a child safety restraint bill, contains language that gives states two years to adopt a 21 minimum drinking age before losing a percentage of highway construction funds. Should a state fail to act accordingly, five percent of highway construction funds would be withheld in fiscal year 1987 and 10% in fiscal year 1988. Based on what New York should receive in construction funds in 1987, failure to comply with the federal legislation could result in a loss of approximately \$30 million in FY 1987 and \$60 million in FY 1988. Once a state enacts a 21 minimum drinking age, all lost funds would be restored.

South Dakota has already initiated a law suit challenging the constitutionality of the law on the grounds that it violates the tenth and twenty-first amendments to the federal Constitution.

B. Young Driver Sanctions (Chapters 977 and 978 of 1984)

It is widely recognized that persons under the age of 21 are overrepresented in alcohol-related traffic accidents. However, it must also be remembered that 99.6% of young licensed drivers (aged 16 to 21) are not involved in alcohol-related accidents. Moreover, 42% of those persons aged 18 to 20 do not even hold drivers' licenses.

Chapter 977 of 1984 directly addresses those few offenders who inflate the statistics with their dangerously anti-social behavior. First, the measure addresses underage drinkers by revoking the license of any person under the age of 19 who is convicted of any provision of Section 1192 of the Vehicle and Traffic Law or who has a license revoked for refusal to submit to a breathalyzer test, and prohibits restoration of that license until the person attains the age of 19 or for one year - whichever is longer. The law then provides for the revocation of the license of any person under the age of 21 who is convicted of a second alcohol-related offense (including refusal to submit to a chemical test) until that person is 21, or for one year - whichever is longer.

This law seeks to remove quickly from the roadways of the State those young people who have shown that they cannot accept the responsibility that goes with operating a motor vehicle until they reach the age of 19 or 21, or until the full period of their license sanction expires - whichever is longer. Prior law attempted to deal with the issue but failed to apply to most first offenders (i.e. those convicted of DWAI), to those who drive under the influence of drugs, to those who avoid convictions by refusing to submit to a chemical test to determine blood alcohol content, and to those who are granted youthful offender status.

Prior to the enactment of Chapter 978 of 1984, young people convicted of vehicle and traffic offenses could have been fined or jailed for their actions, but they were exempt from the imposition of mandatory license suspensions and revocations because their convictions were vacated upon a court finding that they were eligible for youthful offender status and treatment. In order to consistently remove drunk drivers of all ages from the highways, Chapter 978 provides for the retention of youthful offender status, but allows for the suspension or revocation of the licenses of these young drivers.

C. Alcohol Component for Pre-Licensing and Driver Education Courses
(Chapter 289 of 1984)

Most experts agree that even the most thoughtful and intense enforcement program will falter unless accompanied by a change in attitudes concerning drinking and driving. While continuing to emphasize deterrence, the Legislature, in 1983, turned its attention to educating young drivers about the dangers and consequences of drinking and driving.

Chapter 719 of 1983 requires that at least one hour of the three-hour pre-licensing course, mandated by the Department of Motor Vehicles, be devoted to alcohol and drug use in relation to highway safety. Surveys have shown that many people are still unaware of how alcohol and drugs affect the operation of a motor vehicle or the grave penalties now contained in recently enacted anti-drunk driving laws. Therefore, the new alcohol component in the course not only informs prospective drivers of the inherent risks and dangers associated with driving while intoxicated, but also makes them aware of the associated legal consequences they may face if caught. Since young people are provided the opportunity to learn to drive a motor vehicle before attaining the legal drinking age, incorporating an alcohol and drug prevention component in the present pre-license curriculum will lead hopefully to a decrease in the proportion of young persons in alcohol-related accidents. Moreover, it is anticipated this information will help to mold an attitude in each student that will remain long after the restless adolescent years have passed.

Chapter 289 of 1984 expands this concept by mandating that an alcohol and drug component also be part of the curriculum for all driver education courses. This measure, in conjunction with Chapter 719, should ensure that all young motorists are made aware of the dangers and risks - both legal and moral -- involved in operating a motor vehicle while under the influence of drugs or alcohol.

D. Photo Driver's License Priority (A.11329 - Veto #21)

A.11329 would have required that drivers under the age of 21 be the first to be issued photo licenses. Under the original law establishing photo licenses, a 16-year-old who received a license in June, 1984, would have had to wait until 1988 before being issued a photo license. DMV began implementing the photo license system on July 1, 1984, and the photo driver's license priority bill would have required all young drivers to receive licenses with their photos on them during the first year of implementation. The Assembly recognized that speeding-up the issuance of photo licenses to youthful motorists was necessary because young people have had very little difficulty in obtaining fraudulent forms of identification for the purpose of purchasing alcohol. Ultimately the Assembly sought an immediate measure to help control the sale of alcohol to underage drivers.

By giving priority to the issuance of photo licenses to young drivers, this measure was intended to aid bar, restaurant and package store employees, who actually implement the purchase age law. Nevertheless, Governor Cuomo vetoed the bill. His veto message stated that while the bill mandated that DMV provide photo licenses to those under the age of 21 years, it failed to impose a corresponding mandate on licensees under 21 years of age to go to local DMV offices to obtain them. The Governor also cited a \$12 million loss in revenue over the next four years but did not specify as to how that revenue loss would occur.

2. Increased resources (Chapter 190 of 1984).

Adequate law enforcement requires adequate resources. The application of drunk driving laws requires considerable expenditure of resources for manpower, equipment, court personnel, treatment facilities, public information and education. The innovative STOP-DWI Program currently provides \$10.5 million to the counties to support their DWI programs. This money comes exclusively from the fines paid by convicted drunk drivers.

Chapter 190 of 1984 eliminates the requirement that one-half of a drunk driver's fine be returned when he or she successfully completes the State's Drinking Driver Program (DDP). That requirement cost counties as much as four million dollars annually - money they needed to expand local programs. Enactment of this bill also will remove the county administrative problem of having to keep money indefinitely in escrow to repay these drivers.

When STOP-DWI was first formulated it was felt that returning one-half of the fine would create an incentive to attend the DDP. Experience has shown that the conditional license, which is available only by participation in the DDP, provides sufficient incentive. The law restores to the counties the amount of money originally envisioned by the

Legislature when the STOP-DWI concept first was conceived. It is anticipated that the additional money will allow the counties to supplement their programs with better funded and more innovative approaches to enforcement, prevention and treatment.

3. Procedural improvements.

A. Admissibility of Chemical Test Evidence (Chapter 954 of 1984)

Due to the fact that the procedure for obtaining a motorist's blood alcohol content is set forth in the Vehicle and Traffic Law, some courts have interpreted that as meaning that this evidence may be admitted in drunk driving cases, but not in the vehicular manslaughter or assault case set forth in the Penal Law, even if they arose out of the same vehicle incident. As a result, trials were being severed, and the legally, and often voluntarily obtained chemical test evidence was being deemed not admissible in the more serious cases.

Chapter 954 of the 1984 adds a new Section 60.75 to the Criminal Procedure Law to provide that whenever a DWI (or other alcohol-related offense) properly is joined with a Penal Law offense (such as vehicular manslaughter), any chemical evidence of blood alcohol content obtained pursuant to Sections 1194 or 1194-a of the Vehicle and Traffic Law shall be admissible in the Penal Law prosecution. This measure ensures that those motorists who recklessly kill and injure innocent people will be subject to the full force of the criminal justice system.

B. Revision of Mandatory Suspension Pending Prosecution Law (Chapter 192 of 1984)

Chapter 912 of the Laws of 1981 provided for the mandatory suspension of the license to operate a motor vehicle on or prior to arraignment, pending the prosecution of a charge of driving while intoxicated when the motorist has been convicted of an alcohol-related driving offense within the past three years.

Subsequent to enactment of Chapter 912, however, it was discovered that in practice, the law did not work as intended. First, the requirement that the judge take the license on or prior to arraignment did not provide ample opportunity to determine whether the defendant had prior alcohol-related convictions. Moreover, the defendant was often in no condition to rebut the charges. Second, there was no stated procedure for showing reasonable cause. Some judges utilized the mere traffic ticket as sufficient evidence, while others, wanting to avoid an undefined hearing process, simply dropped the charges. Neither extreme satisfied the legislative intent.

The Assembly responded to this problem by developing Chapter 192 of 1984. This measure addresses those procedural issues by establishing (1) that the hearing must be held on or within seven days of arraignment and (2) that reasonable cause would be established in conformity with an accusatory instrument pursuant to Section 100.40 of the Criminal Procedure Law. Under this chapter, the scope of the mandatory suspension law also is extended to those drivers charged with both DWI and either a homicide or assault arising out of the same incident, as well as to drivers who had been convicted of an alcohol-related offense during the previous five years, rather than three years.

Appendix I

COMPARISON OF PENALTIES: 1979 LAW AND 1984 LAW

<u>SECTION</u>	<u>1979 PENALTY</u>	<u>1984 PENALTY</u>
1192.1 (Driving While Ability Impaired)	<p><u>First Offense</u> Maximum \$50 fine No minimum fine Maximum 15 days in jail 60 day license suspension</p> <p><u>Second Offense</u> Maximum \$100 fine No minimum fine Maximum 45 days in jail 120 day license suspension</p> <p><u>Third Offense</u> Maximum \$250 fine No minimum fine Maximum 90 days in jail Minimum 90 days in jail Revocation if prior conviction within 3 years</p>	<p><u>First Offense*</u> Mandatory \$250 fine Maximum 15 days in jail 90 day license suspension</p> <p><u>Second Offense**</u> Maximum \$500 fine Minimum \$350 fine Maximum 30 days in jail minimum 6 month license revocation</p> <p><u>Third Offense</u> Maximum \$1500 fine Minimum \$500 fine Maximum 90 days in jail Minimum 6 month license revocation If prior conviction within 10 years</p>
1192.2 + 3 (Driving While Intoxicated)	<p><u>First Offense</u> Maximum \$500 fine No minimum fine Maximum one year in jail Minimum 6 month license revocation</p> <p><u>Second Offense</u> Maximum \$5,000 fine No minimum fine Maximum four years in jail Minimum 6 month license revocation</p>	<p><u>First Offense*</u> No change Minimum \$350 fine No change No change</p> <p><u>Second Offense**</u> No change Minimum \$500 fine No change Minimum 1 year license revocation (if prior conviction within 10 years)</p>
521(c) (Conditional licenses)	<p>Provides conditional license for driving to and from work and three hours day time driving per week (for most eligible first offenders)</p> <p>Completion of course automatically satisfies fine/jail penalty</p>	<p>No change</p> <p>Completion of course satisfies one-half of fine penalty and all of jail penalty</p>

* Persons under 19 who are convicted of any violation of Section 1192 are subject to license revocation for one year or until they are 19-whichever period is longer.

** Persons under 21 who are convicted for a second offense under Section 1192 are subject to license revocation for one year or until they are 21 whichever period is longer.

<u>SECTION</u>	<u>1979 PENALTY</u>	<u>1984 PENALTY</u>
1194 (Chemical test refusal)	<p><u>First Offense</u> - 6 month license revocation after hearing - no fine</p> <p><u>Second Offense</u> - 6 month license revocation - no fine</p>	<p><u>First Offense</u> - mandates immediate license suspension and - 6 month license revocation after hearing - \$100 civil fine</p> <p><u>Second Offense</u> (or if convicted of 1192 offense within prior 5 years) - one year license revocation - \$250 civil fine</p>
1194-a (mandatory chemical test)	<p>- no statutory provision for mandatory chemical test - case law unclear</p>	<p>Mandates submission to a chemical test when a court order is obtained on the following grounds: 1) accident resulting in serious injury or death 2) reasonable cause to charge DWI 3) lawful arrest 4) chemical test refusal</p>
1196 (plea-bargaining restrictions)	<p>No restrictions on plea-bargaining</p>	<p>Plea-bargaining to a non-alcohol offense on a charge of DWI prohibited</p>
511(2) (driving while license is suspended or revoked)	<p>- minimum fine \$200 - maximum fine \$500 - no mandatory jail (180 days jail maximum)</p>	<p>no change no change - mandatory 7 days in jail in addition to mandated minimum fine (may be served on intermittent basis)</p>
570 (immediate license suspension pending)	<p>No mandatory license suspension pending prosecution</p>	<p>Mandates immediate license suspension, pending prosecution of DWI charge, if accused had been convicted of any 1192 offense within prior 3 years</p>
600 (leaving the scene of an accident resulting in serious injury or death)	<p>- class B misdemeanor - class A misdemeanor if prior violation</p>	<p>- class E felony Whenever the accident involves death or a serious injury</p>

Appendix II

DRUNK DRIVING CHAPTERS 1980 - 1984

<u>Chapter/Year</u>	<u>Assembly/Senate Sponsors</u>	<u>Description/Effective Date</u>	<u>Page</u>
C.229/1980	Gottfried Donovan	Leaving the scene of an accident: penalty upgraded. 9/1/80	25
C.806/1980	Graber Caemmerer	Plea bargaining restricted. 9/1/80	10
C.807/1980	Bersani/Graber Rules	Immediate, mandatory license suspension/revocation for chemical test refusal. 1/1/81	13
C.808/1980	Cooke Caemmerer	Technical amendment. 6/30/80	-
C.249/1981	Jenkins Pisani	DWI fingerprint records: exemption from sealing requirement. 6/15/81	21
C.347/1981	Graber Goodhue	Technical amendment re. Drinking Driver Program. 6/29/81	-
C.477/1981	Gottfried Marino	Coordinates administrative penalties with judicial penalty of probation. 10/1/81	28
C.838/1981	Hinchey Padavan	Dram Shop Act sign posting requirement. 7/27/81	31
C.910/1981	Connelly Smith	STOP-DWI Program. 11/28/81	15
C.911/1981	Robach Marino	Mandatory imprisonment for driving while license is suspended or revoked. 9/1/81	19
C.912/1981	Connelly Padavan	Mandatory license suspension pending prosecution with prior conviction. 7/31/81	20
C.913/1981	Connelly Smith	STOP-DWI Program: Chapter Amendment. 11/28/81	15
C.159/1982	Connelly Padavan	Drinking age raised to nineteen. 12/5/82	30

<u>Chapter/Year</u>	<u>Assembly/Senate Sponsors</u>	<u>Description/Effective Date</u>	<u>Page</u>
C.192/1982	Connelly Smith	Conditional license to out of state residents. 7/15/82	-
C.391/1982	Connelly Smith	Technical Amendment. 6/28/82	-
C.487/1982	Robach Bruno	DWI arrests in parking lots. 9/1/82	27
C.510/1982	Lafayette Smith	Technical amendment. 9/1/82	-
C.888/1982	Shaffer Smith	Mandates license revocation for second conviction of DWAI. 9/1/82	21
C.298/1983	Kremer Smith	Vehicular manslaughter and assault. 9/1/83	23
C.322/1983	Ruggiero Smith	One year revocation for repeat DWI offenders. 1/1/84	21
C.373/1983	Robach Padavan	Increased fines for purchasing alcohol for those less than 19- years-old. 6/26/83	31
C.481/1983	Graber Levy	Mandatory chemical tests in accidents involving death or serious injury. 10/13/83	25
C.641/1983	Patton Smith	Civil liability extended to those who provide liquor to persons less than 19-years-old. 7/25/83	31
C.719/1983	Connelly Levy	Pre-licensing course; alcohol-education component added. 1/1/84	26
C.802/1983	Robach Smith	Chemical test refusal penalties; repeat offenders. 9/1/83	22
C.892/1983	Connelly Smith	Mandatory license removal procedure by judiciary. 1/1/84	27

<u>Chapter/Year</u>	<u>Assembly/Senate Sponsors</u>	<u>Description/Effective Date</u>	<u>Page</u>
C.896/1983	Connelly(Rules) Levy	Notification by insurance carriers of DWI penalties. 9/1/83	29
C.190/1984	Connelly Smith	Eliminates return of one-half fine to certain convicted drunk drivers. 7/27/84	71
C.192/1984	Graber Levy	Provides for mandatory suspension pending prosecution for repeat and aggravated offenders. 1/1/85	72
C.289/1984	Connelly Levy	Driver education; alcohol education component added. 10/24/84	70
C.954/1984	Marchiselli -	Allows DWI chemical test evidence in Penal Law prosecutions. 9/5/84	72
C.977/1984	Graber -	Increased administrative penalties for young drivers. 11/1/84	69
C.978/1984	- Smith	Allows license action against youthful offenders. 11/1/84	70

END