Approved: May 23, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 15, 1996 in Room 313-S of the Capitol.

All members were present except:
Representative David Adkins - Excused
Representative Gary Merritt - Excused
Representative Ed Pugh - Excused
Representative Vince Snowbarger - Excused

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Representative Rocky Nichols
Tony Mattivi, Shawnee County District Attorneys Office
Kyle Smith, Kansas Bureau of Investigation
Judge Joe Cox, Chairman Municipal Judges Conference
Representative Greg Packer
Jim Clark, County & District Attorneys Association
Kacie Wessel, Topeka
Sarah Meissner, Topeka
Representative Brenda Landwehr
Judge Mark Vining, Sedgwick County Judge
Stan Stewart, El Dorado City Manager
Gene Johnson, Kansas Community Alcohol Safety Action Projects Coordinator
Representative Doug Spangler
Jerry Gentry, LifeSafer Interlock
Sherry Cassidy, Interlock of Kansas
Rosalie Thornburgh, Bureau Chief of Traffic Safety

Others attending: See attached list

HB 2921 - third or subsequent DUI conviction, forfeiture of vehicle, **HB 2922** - penalties for DUI; driving while licenses suspended or revoked; fleeing or eluding a police officer & **HB 2838** - involuntary manslaughter while driving under the influence of alcohol or drugs, were opened.

Representative Rocky Nichols appeared before the committee as a proponent to the bills. He stated that **HB 2921** would require the person convicted of being a habitual violator to forfeit his car. (Attachment 1)

Tony Mattivi, Shawnee County District Attorneys Office, appeared before the committee in support of the bills. He stated that **HB 2922** would send the message to DUI drivers that when the State suspends an offender's drivers license the state is serious that the offender not drive by making the statute applicable to anyone caught driving on a license suspended for DUI be subjected to mandatory and increased penalties. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigation, appeared before the committee with concerns on **HB 2921**. He believes that striking section 1 of the statute is not necessary. The forfeiture statute does not list forfeiture as part of the punishment. (Attachment 3)

Judge Joe Cox, Chairman Municipal Judges Conference, appeared before the committee in support of **HB 2922 & 2933**. He stated that in Topeka most 1st offenses for DUI do not serve jail time; most receive a diversion. The City of Wichita does not use diversion but a weekend intervention program. They have found that it is hard to get anyone to serve during a weekend program. (Attachment 4)

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinator Association, did not appear before the committee but requested that his written testimony on **HB 2922** be included in the minutes. (Attachment 5)

Representative Greg Packer appeared before the committee as the sponsor of **HB 2838**. He explained that this bill would increase the penalty one severity level greater than currently allowed for those who are convicted of involuntary manslaughter while driving under the influence of alcohol or drugs. (Attachment 6)

Sarah Meissner, Topeka, appeared before the committee in support of the bill. She stated that her best friend, Debby, Debby's father and her were in an accident where a driver who was drunk hit their vehicle and killed Debby. The driver had several previous DUI's, but was allowed to drive again. (Attachment 7)

Kacie Wessel, Topeka, appeared before the committee in support of the bill. She explained that they didn't want this type of accident to happen to anyone else. She believes that this bill will have a positive effect on the community. (Attachment 8)

Jim Clark, County & District Attorneys Association, appeared before the committee as a proponent to the bill. The Association supports the bill because the present law is inadequate for punishment for a DUI related homicide. (Attachment 9)

Hearings on **HB 2921, 2922 & 2838** were closed.

HB 2933 - amendment to the penalties for DUI violation, were opened.

Representative Brenda Landwehr appeared before the committee as the sponsor of the bill. The state needs to be sending the message that driving under the influence is wrong. It kills lives and if a person is convicted of a DUI the consequences will become more severe for each subsequent conviction. (Attachment 10)

Judge Mark Vining, Sedgwick County Judge, appeared before the committee in support of the bill. He stated that the goal of the criminal justice system is to raise the expected costs so that the price is too high for the criminal. Unfortunately, the price being paid by DUI violatiors is extremely low. (Attachment 11)

Stan Stewart, El Dorado City Manager, appeared before the committee as a proponent to the bill. They are in opposition to using House Arrest for second and third time offenders because it does not send a strong enough message to the repeat offender. (Attachment 12)

Gene Johnson, Kansas Community Alcohol Safety Action Projects Coordinator, appeared before the committee in support of the bill because it provides safety to our roads from the drinking driver. (Attachment 13)

Hearings on **HB 2933** were closed.

HB 3038 - amendments to the penalties the division of motor vehicles enforces concerning the suspension of drivers' licenses for driving under the influence, were opened.

Representative Doug Spangler appeared before the committee as the sponsor of the bill. This would expand the interlock program currently approved by the state to help keep those who receive a DUI from driving drunk.

Jerry Gentry, LifeSafer Interlock, appeared before the committee as a proponent to the bill. He explained how the interlock works and that currently the courts are required to order installation of an interlock for an unspecified period of time after a repeat DWI offender serves a mandatory court-imposed one year license revocation. He has found that few courts have complied with the law. (Attachment 14) He also provided the committee with a summary of the Hamilton County Drinking and Driving Study (Attachment 15) and a newsletter from LifeSafer Interlock, Inc. (Attachment 16)

Sherry Cassidy, Interlock of Kansas, appeared before the committee as a proponent to the bill. She explained features of the interlock and stated that in conjunction with an interlock treatment for drinking is mandatory. (Attachment 17) She also provide the committee with a list of states that currently mandate the use of interlocks and the program that they have enacted. (Attachment 18)

Gene Johnson, Kansas Community Alcohol Safety Action Projects Coordinator, appeared before the committee in opposition of the bill because there has not been enough usage of the device to determine if it works or not. (Attachment 19)

Rosalie Thornburgh, Bureau Chief of Traffic Safety, appeared as neither a proponent nor opponent of the bill. She explained that even though ignition interlock devices have been used for some time their effectiveness is unknown due to the lack of significant numbers of the devices in use. The courts have not been reporting the

interlocks that have been ordered to the Department of Motor Vehicles so they have no idea of how many are actually being used in the state but suggested the number was over 100. (Attachment 20)

Hearings on **HB 3038** were closed.

The committee meeting adjourned at 6:30 p.m. The next meeting is scheduled for February 18, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 15, 96

NAME	REPRESENTING
Mike Smith	KBI
Kelly Peterson	DASCWS
Katie Wessel	Self
Sarah Meissner	Self
Shawn Meissner	Self
Brenda Wessel	self
Randy Wessel	self
Frances Wessel	self
Ellie Wessel	self
Max Sutherland	KS MADD
Stan Stewart	Ks MADD City of Eldorado
Kori Bruce	
Sarah Oeter	Intern for Maj. Lar. Sonnenberger
Kim Clary	KCDAA
Rosalee Thornburgh	KDOT
Kent Kumberg	Ks. ASAP
Gene Johnson	Ks ASAP Assn
Sherry Cassidy	KBI Co
Lina Brown	Peterson Public Affairs group
Jennifer Brandberry	KAP City of Overland Park

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
TONY MATTIVI	SHAWNEE COUNTY DA'S OFFICE
Stanley Sutton	KDHE KHEL Breath Alcohol

STATE OF KANSAS

ROCKY NICHOLS
STATE REPRESENTATIVE
58TH DISTRICT
SHAWNEE COUNTY

HOME
2329 S.E. VIRGINIA
TOPEKA, KANSAS 66605
(913) 357-6262
E-MAIL—rnichols@cjnetworks.com
Internet Homepage—
http://www.cjnetworks.com/~rnichols/home.html

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS COMMITTEE
SUBCOMMITTEE ON HOSPITALS AND GENERAL GOVERNMENT
SUBCOMMITTEE ON KPERS AND RETIREMENT ISSUES
KANSAS FILM COMMISSION

OFFICE
STATEHOUSE—284 W
TOPEKA, KANSAS 66612-1504
(913) 296-7675

February 15, 1996

Chairman O'Neal and Members of the Committee:

Thank you for giving me the opportunity to testify in favor of House Bills 2838, 2921 and 2922. For the sake of brevity, I will focus my remarks on HB 2921 and will allow the Shawnee County District Attorney's representative to inform the committee on HB 2922. However, I would add that I am also supportive of HB 2838.

HB 2921 and HB 2922 were both requested for introduction by Shawnee County District Attorney Joan Hamilton in order to address the changing nature of driving under the influence (DUI) offenses in Kansas.

HB 2921 deals with the forfeiture of vehicles for habitual DUI offenders. Under this bill, when a drunk driver receives his or her third or subsequent conviction of a DUI within the last five years, then the vehicle of the offender can be forfeited under our current forfeiture statute. We have a serious problem with habitual DUI offenders in the state of Kansas. For example, last fall the members of the Shawnee County Delegation were informed that we had well over 100 DUI offenders with 3 or more DUI offenses. This figure of over 100 habitual DUI offenders is in Shawnee County alone.

Our society is based in a large part on freedom. The freedom to live your own life and the freedom to own property. However, when you have an individual that has committed over 3 DUI offenses, then that drunk driver should lose many of their freedoms. With passage of this bill we will not only be taking away the driver's license of the habitual DUI offender (as in current law), we will also be taking away their vehicle. In the hands of a habitual DUI offender a vehicle can become a dangerous weapon. This bill
takes away the keys to that weapon.

Thank you for listening to my comments on this important legislation. I will be happy to answer any questions.

House Judiciary
2-15-96
Attachment 1

ESTIMONY IN FAVOR
F THE FOLLOWING BILLS

Anthony W. Mattivi
Joan M. Hamilton
Shawnee County District
Attorney's Office
200 SE 7th St., Ste. 214
Topeka, KS 66603
913/233-8200, Ext. 4330

House Bill No. 2921 - Forfeiture of Vehicle for 3+ DUI

Third or subsequent DUI offenders (3+ DUIs) constitute a significant number of the DUI cases prosecuted here in Shawnee County. Approximately 100 to 150 per year are prosecuted here in the District Court, and the City of Topeka reports to prosecute a similar number. This staggering number of repeat offenders would seem to indicate that: (i) the rehabilitative efforts directed at first- and second-time offenders are clearly inadequate; and (ii) the penalties for third or subsequent DUI offenders clearly need to be strengthened.

Other states have adopted measures which allow for the criminal or civil forfeiture of a vehicle driven by the defendant who receives a third or subsequent DUI conviction within the statutory enhancement period (currently five years, although that issue is also presently before the legislature). House Bill No. 2921 is a reasonable and responsible effort to adopt a similar provision here in Kansas.

The Shawnee County DA's Office believes that allowing for civil forfeiture of the vehicle on a third or subsequent DUI conviction would serve as a needed enhancement to an already stiff penalty. Civil forfeiture is a remedy already in effect for drug cases in this state, and this bill adds third-time DUIs to the list of offenses (all others of which are drug offenses) eligible for forfeiture, and allows forfeiture of the vehicle but only the vehicle, as opposed to drug cases which allow forfeiture of other possessions and items used in trafficking of drugs.

Forfeiture of the vehicle of third-time DUI offenders would probably not be a windfall for the state, since the vehicles driven by these offenders are typically not among the nicest on the road. Many of these drivers do not have valid licenses, however, so it seems illogical that they could or would own a vehicle. This legislation directly impacts the issue, allowing the state to seize the vehicle from an offender who has demonstrated that he or she cannot be trusted to be on the roads with the remainder of the population. A similar law in Ohio was upheld by their appellate courts as recently as last month.

A situation very similar to third-time DUIs is that of offenders convicted of Driving While Habitual Violator (DWHV) and third or subsequent Driving While Suspended (3+ DWS), both of which are level 9 felonies. A conviction for 3+ DWS requires at least two

House Judiciary
2-15-96
Attachment 2

prior convictions for DWS, and a conviction for DWHV requires having previously been adjudicated an habitual traffic violator. Obviously, these are people who have been through the system before. Additionally, someone who has been adjudicated an habitual traffic violator has had his driving privileges revoked for a minimum of three years (so there is clearly no reason this person should even own a vehicle, other than to serve as a omnipresent temptation to violate the law).

We would like to add this same forfeiture language for convictions of Driving While Habitual Violator (K.S.A. 8-287) and for third or subsequent convictions of Driving While Suspended (K.S.A. 8-262). If the revokee owns a car and doesn't violate the law, the forfeiture provision will not apply. If the revokee does succumb to temptation and drives that vehicle, the State will step in and seize the vehicle (thus removing the temptation of having the vehicle available to be driven).

House Bill No. 2922

This bill encompasses three different issues, each of which will be addressed in turn.

K.S.A. 8-262 - Driving While Suspended

Subsection (a)(4) of this statute is a good idea, providing for increased penalties for offenders who drive on a license suspended for DUI, but the current law is both vague and so restrictive as to be worthless (I personally have never seen it used). First, the statute applies only to drivers who were suspended as the result of a DUI **conviction**, which seldom happens (drivers are much more frequently suspended for failing or refusing a breath or blood test for alcohol). Second, it requires that a conviction for DUI also result from the offense. This means that a person driving after his or her license has been suspended for DUI is subject to no more stringent penalty than someone caught driving on a license suspended for failure to pay a speeding ticket.

The Shawnee County DA's Office believes that the language regarding the requirement of a DUI conviction (resulting from the same arrest as the DWS) should be removed from the statute. This would make the statute applicable to anyone caught driving on a license suspended for DUI, and subjects that driver to a mandatory and vastly increased penalty. This sends a message to the DUI driver that when the State suspends the offender's drivers license, the State is serious that the offender not drive.

The language of HB 2922 is an excellent extension of this statute, in that it would include drivers license suspensions which result from alcohol test refusals as well as convictions (the language concerning K.S.A. 8-1014). It does not, however, help to clarify the statute. We would recommend the following language:

(4) If a person is convicted of a violation of this section, committed while the person's privilege to drive was suspended pursuant to K.S.A. 8-1014, and amendments thereto, or suspended or revoked for a violation of K.S.A. 8-1567, and any amendments thereto, or any ordinance of any city or law of another state, which ordinance or law prohibits the acts prohibited by that statute, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 30 days imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

This would have the effect of mandatorily incarcerating for 30 days anyone caught driving on a license which was suspended pursuant to a refusal or failure of a DUI breath or blood test.

If the legislature wishes, it could then go an additional step and pass legislation which punishes even more severely anyone caught driving on a license which was suspended for a breath/blood test failure/refusal **who was also DUI when arrested** for driving on the suspended license. For example:

(5) If a person is convicted of a violation of this section, and is convicted of a contemporaneous violation of K.S.A. 8-1567, and amendments thereto, committed while the person's privilege to drive was suspended pursuant to K.S.A. 8-1014, and amendments thereto, or suspended or revoked for a violation of K.S.A. 8-1567, and any amendments thereto, or any ordinance of any city or law of another state, which ordinance or law prohibits the acts prohibited by that statute, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 120 days imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

Thus, if this offender was driving on a license suspended for a breath/blood test failure/refusal, and was DUI at the time of this arrest, the offender would be mandatorily incarcerated for 120 days. Although this is a very stiff sentence, it would seem roughly proportionate to the flagrant and deliberate manner in which this offender has flaunted the license suspension and has resultingly endangered the safety of innocent motorists on the roads of Kansas.

K.S.A. 8-1568 - Fleeing or Attempting to Elude a Police Officer

The premeditated and egregious act of fleeing from a police officer who is uniformed, in a marked vehicle, and attempting to stop a violator is not punished severely enough under the current statutory scheme. As a result, we support this effort to have the

penalty for this offense increased, as indicated in the language of this bill.

Currently a first conviction for using a vehicle to flee an officer is classified as a B misdemeanor and the second is an A misdemeanor. Conversely, physically running from an officer (Obstructing Legal Process, K.S.A. 21-3808) is an A misdemeanor if done to avoid apprehension for a misdemeanor offense, and is a level 9 felony if done to avoid apprehension on a felony. We support a change in the penalty section of this statute making a first conviction an A misdemeanor, and any subsequent offense a level 9 felony. Although not included in the language of this bill, we would also suggest and support this statute being moved from the Chapter 8 traffic code to the Chapter 21 criminal code.

K.S.A. 8-1567 - DUI Penalty Changes

This bill is a request for stiffer sentencing of second-offender DUIs, and to eliminate house arrest for third- or subsequent-offender DUIs. To avoid confusion, there is another bill (HB 2933) which seeks elimination of house arrest on all DUIs and for an unlimited enhancement period.

Under the current statutory scheme, there is minimal difference between the penalties routinely imposed for first-time DUI offenders and those imposed for second-time DUI offenders. While first-timers must spend two consecutive days in jail, second offenders are only required to serve five consecutive days in jail. The fact that we are currently seeing so many third-timers would seem to indicate that these penalties for first- and second-timers are not adequate to change the behavior of these offenders.

In suggesting the increase in penalty from 5 to 30 days for a second conviction, we are not asking that these days all be served consecutively. In fact, our colleagues at ASAP have expressed reservations about that type of penalty because of the potential to cost an offender his job and begin an unstoppable downward socioeconomic spiral. In fact, our suggestion would be to require a minimum mandatory sentence of 30 days, but require that only five of those days be served consecutively (allowing the offender to serve the rest of the time on weekends or days off from work).

The additional benefit (beyond the obvious) of a stiffer sentence for second offenders is that it would strongly motivate the second offender to participate in a house arrest program (as that is the only way under the current statute to avoid a jail sentence in a DUI case). This would encourage all rehabilitative efforts to occur upon a second conviction, and dovetails into our next request.

We then seek to eliminate the house arrest program as it pertains to third-offender DUI convictions. Although we don't have a viable house arrest program in use in the Shawnee County District Court, we acknowledge that there are potential benefits to such a

program. This is not, however, a reasonable solution to the problem posed by third offenders. By the time a driver has accumulated three or more DUI convictions, we submit that society's interest in deterrence and punishment outweighs the interest in rehabilitation.

We anticipate opposition to this proposal from the municipal court system, but would offer the following argument. A 3+ DUI offender prosecuted in the district court system receives a felony conviction, a mandatory sentence of at least 90 days in jail, and usually is sentenced to in-patient alcohol treatment at Osawatomie State Hospital or a comparable facility. A 3+ DUI offender prosecuted in the municipal court system, conversely, receives a misdemeanor conviction only (municipal court to our knowledge lacks jurisdiction over felony offenses), and then may be sentenced to house arrest after serving only **48 hours** in jail. Although we acknowledge that a properly structured and monitored house arrest program may have its place for second offenders, we submit that it is completely inappropriate for use on 3+ DUI offenders, as it is currently being used in some municipal court systems.

Again, we would argue that these two proposals (increased penalties for second-time DUIs but leaving house arrest available, and eliminating house arrest for third convictions) integrate well. We submit that this would accomplish the end result of encouraging house arrest and/or other rehabilitative efforts on the second conviction, but would acknowledge that the third offender by nature of his repeated intentional conduct has waived such pampering and must now be punished.

<u>House Bill No. 2933 - Unlimited Enhancement and Complete Elimination of House Arrest</u>

The current DUI penalty section bases the severity of the offense on the number of prior DUI convictions within the enhancement period, which is currently set at five years. The length of the DUI enhancement period drastically affects cases which we prosecute. For example, our office is currently prosecuting a Reckless Second Degree Murder case against a defendant who has only one prior DUI conviction within the enhancement period, but who has another conviction (a diversion, actually, but those qualify under the statute as convictions) just outside the statutory enhancement period. With a slightly longer enhancement period, this defendant would be facing a felony DUI charge, rather than the current misdemeanor DUI charge, in addition to the murder charge.

This bill proposes that the enhancement period be without limit. Although the Shawnee County DA's Office doesn't disagree with that concept in general, we have received information that DMV will have difficulty tracking prior convictions for longer than ten years. For that reason, our office would suggest and support an

extension of the enhancement period from the current five year period to a ten year period.

The other aspect of this bill is the complete elimination of the house arrest program. In HB 2922, we seek to eliminate the availability of house arrest to third-time DUI offenders. While house arrest is certainly not appropriate by the time an individual has been thrice convicted of DUI, there may be situations in which it would be appropriate for second offenders. For that reason, we would support this provision eliminating house arrest, but only for third-time offenders. We believe house arrest may serve a purpose for second offenders and should continue to be available in those situations.

House Bill 2838 - Involuntary Manslaughter

This bill seeks to separate from the other types of Involuntary Manslaughter those cases which arise from a DUI vehicular fatality, and thus to increase the penalty for those offenders. The problem we see with these cases (of which we have prosecuted several), is that many offenders land in border boxes as a result of their conviction. Although technically the dispositional presumption in a border box is one of imprisonment, many judges impose probation in spite of the fact that a death was involved. Because a sentence of probation is not a departure when imposed in a border box situation, such a sentence is not appealable by the State.

Our position is that this offense would be better classified as one which results in a presumptive prison sentence. If the sentencing court wishes to sentence an offender to probation, he must then do so by means of a departure. This would result in a far greater likelihood of prison sentences in these cases, which we feel is the more appropriate outcome in this class of case.

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS

LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
CONCERNING HOUSE BILL 2921
FEBRUARY 15, 1996

Chairman O'Neal and Members of the Committee:

I appear today on behalf of the Kansas Bureau of Investigation concerning House Bill 2921. While we have no official position for or against the merits of this legislation, we would make a recommendation that if it is passed, that Section 1 of the bill be struck as unnecessary.

As the Chairman and several members of this Committee will remember, for over two years we worked long and hard in passage of the Standard Asset Seizure and Forfeiture Act in Kansas. One of the benefits incorporated in that act was the ability to simply add offenses to the act which could serve as the basis for forfeiture.

HB 2921 takes advantage of that format by adding a third conviction of the DUI statute as conduct giving rise to forfeiture in K.S.A. 60-4104 and adding the vehicle as property subject to forfeiture under K.S.A. 60-4105.

However, it also amends the criminal statute itself, K.S.A. 8-1567 by specifically stating that forfeiture of a vehicle is part of the penalty for a third or subsequent conviction. It should be noted that other statutes which give rise to forfeiture, such as violations of the Uniform Controlled Substances Act, do not list forfeiture as part of the punishment. The forfeiture act creates a separate civil cause of action against the rem utilized to commit crimes. It has not been, and I believe should not be, considered part of the punishment of a criminal statute.

As I believe I have mentioned to this Committee previously, there is currently extensive litigation

1620 TYLER TOPEKA, KANSAS 66612
(913) 296-8200 FAX: 296-6781

in the courts on this very point, whether civil forfeiture is, punishment and thus violates the double jeopardy clause of the United States Constitution if the owner is also criminally charged. In fact, certiorari has been granted on a case before the U.S. Supreme Court resolving a conflict in various circuits on this very point.

Section 1 of HB 2921 is unnecessary to create the right to forfeit the vehicle utilized in a third conviction. That's taken care of in Sections 2 and 3. But, worse than being unnecessary, it clearly indicates that part of the punishment for this third violation is the civil forfeiture of the vehicle.

This would place our forfeiture act on very shaky grounds constitutionally. We would request that Section 1 be stricken as unnecessary and as bringing into question the viability of the asset forfeiture act under the double jeopardy clause.

I should note there is such a concept as criminal forfeiture frequently utilized by the federal courts and in Kansas under the gambling and commercial gambling statutes, K.S.A. 21-4303 and 21-4304. In criminal forfeiture, the property utilized to commit the crime is forfeited as part of the conviction, not in a separate civil action. This procedure avoids any double jeopardy problems as there is only proceeding - the criminal one. If the intent was to create a criminal forfeiture, which given the fact a conviction is required may well have been the intent of the proponents, then references to the civil forfeiture act should be stricken from Section 1; Sections 2 and 3 stricken; and the language on page 2 modified to reflect the property utilized to commit the crime is forfeited, much as is done in the gambling statutes.

Thank you for your time and consideration. I would be happy to stand for questions.

JOSEPH L. COX
910 SE 43RD STREET
TOPEKA, KANSAS 66609

Municipal Judge for the City of Topeka, Kansas; and
Legislative Committee Chairman for the Kansas Municipal Judges Association

To: Members of the House Judiciary Committee

Bills: 2922 and 2933

I have combined by testimony on the two bills because they each have similarities regarding Kansas Statute Annotated 8-1567.

I am presenting this testimony on behalf of the President and Board of Directors of the Kansas Municipal Judges Association. It is the request of the President and Board of Directors of the Municipal Judges Association that the committee table both of the above bills and do an interim study on the effects these bills would create on the Judiciary, Treasury and Jails in both the State of Kansas and the municipalities.

We have not had time to gather the data necessary to present a full disclosure of the effect because of the recent introduction of these bills. But using some calculated estimates, we believe that these bills would cause the County Jails to need to increase there capacity by at least 839 beds. The cities in Kansas pay between $45.00 and $103.00 per day, per bed. For this example we used the figure of $70.00 and the annual cost to provide this space would be $21,436,450.00. At this point, I must point out that we are only using the figures as are derived by the number of Driving Under the Influence cases that were in municipal courts. This does not include any cases heard by the District Courts.

We know these figures are large, however they are using the current five (5) year limitation that is now in effect under 8-1567(k)(3). This limits only using prior convictions that have occurred within the last 5 years. If we used the new proposed change to all DUI convictions within a persons lifetime, then the figures could easily double. We do know that if the State Legislature does terminate the house arrest program and does increase the second offender jail sentence to 30 days then these figures are close to being accurate. If the Legislature enacts the bill expanding the 5 years for enhancement purposes, the figures could easily double.

The figures that have been presented are based on the 1995 DUI totals in the Municipal Courts. That total is 15,700 cases. Of those we estimated that at least 20 per cent are second time offenders, and 15 percent are third time offenders. It is with these figures that we arrived at our totals.

House Judiciary
2-15-96
Attachment 4

House Bill 2933 also asks that the use of house arrest be eliminated. Most of the facilities in the State of Kansas do not have a work release program. So to eliminate the house arrest program is to require that the offender loose his job. This is also true if you increase the second offender's jail time to 30 days. Also the doing away with the house arrest program would terminate a program that the City of Topeka has started the now gets between 50 and 60 per cent of the third time DUI offenders off of alcohol permanently. That house arrest program monitors the offender with video and requires that the person take breath tests 2 to 4 times a day. The offender also has to take urinalysis for drugs and alcohol on demand. This program takes between 90 and 180 days to work. Therefore, all third time DUI offenders in the City of Topeka that receive house arrest are sentenced not to 90 days, but to 180 days.

We do not have the time at this hearing to present all of our concerns, however, we cans state without any reservation, that if these bills pass, then the cities will have no alternative but to refuse these cases and have them all transferred to the District Court. At a time when the courts are wanting more cases, we will give them 15,700 more cases. Of these, if the 5 year enhancement period is extended, most will require a jury trial. This will cause the state to increase the judiciary and the facilities to hold the new judges. We hope that this does not happen.

If the Legislature passes these bills, then where will we put the defendants until the jails are built. There are many agreements now that require expansion of facilities are to small to hold the prisoners we now have. It will take 3 to 4 years to build new jails. What will we do in the immediate future:

The last comment is with the new .02 DUI law for those offenders under 21. We agree something needs to be done, but where are we going to house these defendants that are under 18. In Topeka, the Shawnee County Juvenile Facilities charges $209.04 per day for their services. The only problem is there is a court order to take no more defendants. Where do we put these defendants?

Respectfully submitted,

JOSEPH L. COX

House Judiciary Committee
February 15, I996

Testimony
House Bill 2922

Good Afternoon, Mr. Chairman and Members of the Judiciary Committee:

I am Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. It is a pleasure to appear before this committee today in support of House Bill 2922. We support the concept in HB2922 in regard to the increase of penalties to those person who violate our Kansas laws concerning driving while suspended and DUI offenses.

We suggest a change in language on page 1, line 28 through line 32 to read as follows:

"Except as otherwise provided by subsection (a) (4), every person convicted under this section shall be sentenced to at least ten days' imprisonment and fined at least $100 and upon the second conviction shall not be eligible for parole until completion of ten days' imprisonment. Upon a third or subsequent conviction, shall not be eligible for parole until completion of thirty days' imprisonment."

On page 3, beginning with line 31 through line 35, we have some problems with the 30 days' imprisonment mandated by this subsection. At the present time the court has within its authority to impose a 90 days' imprisonment on those second time offenders. The court can excuse 85 days of those days, if that defendant is involved in an alcohol and drug treatment program for their alcohol and drug abuse. Imposing thirty days as a minimum, would not only create a problem for the defendant with employment and could result in the loss of that employment, but would also be detrimental to the mandated alcohol and drug treatment as provided under the present law.

This committee may wish to keep the five consecutive days, presently mandated, for a second time offender, and allow the remaining 25 days to be served in increments of no less that two days at a time.

Remember, the court, at its discretion, can impose up to ninety days' imprisonment for those persons whom they deem this is appropriate.

Thank you for allowing me to appear in support of House Bill 2922. I will attempt to ask any questions you may have.

Respectfully submitted,

Gene Johnson
Legislative Liaison
Kansas Community Alcohol Safety Action Project Coordinators Association

STATE OF KANSAS

GREG A. PACKER
REPRESENTATIVE, FIFTY-FIRST DISTRICT
7200 WATTLING CT.
TOPEKA, KANSAS 66614
(913) 478-0502
OFFICE:
STATE CAPITOL, 112-S
TOPEKA, KANSAS 66612-1504
(913) 296-7689
1-800-432-3924

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR: BUSINESS, COMMERCE, AND LABOR
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON ARTS AND CULTURAL
RESOURCES
SELECT COMMITTEE—TELECOMMUNICATIONS

February 15, 1996

Thank You Mr. Chairman & Members of the Committee:

Thanks for the opportunity to testify on H.B. 2838. My name is Greg Packer, State Representative from the 51st. District. Today we have the drunk driving legislation

HB 2838 addresses the present sentence of involuntary manslaughter while driving under the influence of alcohol or drugs. This bill would make this penalty one severity level greater in the sentencing grid. Please look at attachment #1. Today if you are convicted of involuntary manslaughter while under the influence of drugs or alcohol you currently go to category 1, if you have no prior record. This then coordinates with severity level V. If you have noticed there is a shaded box, this means you may not serve anytime at all. This is a travesty. You can knowingly go out, drink as much as you want, jump in a 2,000 lb. gun and kill someone and never see a bit of jail time other than the day of the accident. This bill would move this up one severity level to IV. This would put the defendant in a position to serve at least 3 years and 5 months. If you look at my chart #2 it compares the current law and the proposed legislation. As you can see, if you have one diversion you may not serve any time but if

you have one diversion and one conviction you would be eligible to serve 52 months and so on with the chart explaining these situations.

I would like to take a moment and tell you why I am proposing this legislation. The best way to tell you is to read the letter that was sent to me by a thirteen year old girl, Kacie Wessel who will be testifying later.

We must fit the punishment with the crime. This letter tells us that children are confused with why our legal system is failing us; at least children see it that way. Theodore Roosevelt states it perfectly: "Obedience of the law is demanded; not asked as a favor".

Thank you, I stand for questions

SENTENCING RANGE - NONDRUG OFFENSES

Category→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	408 388 370	386 366 346	178 170 161	167 158 150	154 146 138	141 134 127	127 122 115	116 110 104	103 97 92
II	308 292 276	288 274 260	135 128 121	125 119 113	115 109 103	105 100 95	96 91 86	86 82 77	77 73 68
III	206 194 184	190 180 172	89 85 80	83 78 74	77 73 68	69 66 62	64 60 57	59 55 51	51 49 46
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

COMPARISON OF PRISON TERMS BASED ON RECORD OF PRIOR DUI DIVERSIONS* AND DUI CONVICTIONS**

	Current Law	Bill Draft
No Diversion or Conviction	32 months***	41 months
1 Diversion	32 months***	66 months
1 Diversion + 1 Conviction	52 months	154 months
1 Diversion + 2 Convictions	120 months	162 months
1 Diversion + 3+ Convictions	130 months	162 months

*Assumes that only one diversion is allowed

**Convictions of other crimes are not included; sentence will be increased if there is a record of convictions of other crimes

***Court may impose nonprison sentence

My name is Sarah Meissner. I am 14 years old and a 8th grader at Shawnee Heights Middle School.

I am here today to tell you about something that has affected and changed my life. This past October 3rd., l995, my best friend Debra "Debby" Smith, her father, Bob and I were in a serious car accident. We were headed home after Debby and I had been at Kinkos having birthday party invitations made. Debby was giving a birthday party for me on my birthday, October 20th.

We were headed home going east on 17th street, when we were hit on the side of our truck. Debby's dad and I were both injured, but not seriously. Bob had some broken ribs and a broken shoulder. I had a cut on my head that needed stitches and some cuts and bruises on my arms and body. Debby died that night from internal injuries.

Debby was 13 years old. This was the scariest night of my life, and my life has been changed forever. I had never been in an accident before, but I will always remember being in a room with my parents and being told my best friend just died. Unless you have had a good friend die you can't possibly imagine how it feels to have someone that close to you not be there any more.

Debby and I have been best friends since 2nd grade. We played on the same softball teams, played on school teams and even played against each other in basketball. We had many of the same classes, but no matter what we-- we loved to be together, just having fun! As some really good friends do, we even talked about going to

college and being roommates. Also, we decided when we got married we would name our children after each other.

Now, because of a man's choice to drink and drive, Debby's and my hopes and dreams will never happen. This drunk driver killed my best friend. His choice to drink and drive has affected many people. I have asked myself many times, "Why did this have to happen to Debby?" All I know is that she should never have died this way---She was doing nothing wrong. The person in the wrong is the person who killed Debby!

What is really hard for me to understand, is why he was out on the streets able to drink and drive. Since this accident we have found information that he had a record of DWI's and had been arrested several times. Why didn't our laws stop him before he had the chance to kill Debby?? I'm here today to ask you, our lawmakers to PLEASE change the laws on drinking and driving. I hope you will make the laws more strict. Remember, anyone of you in this room could be affected by a drunk driver. I only hope you or your families never have to experience what myself, Debby's family, and Debby's friends have had to.

February 15, 1996

Sarah Meissner
2504 S.E. Faxon Ct.
Topeka, Kansas 66605
913-379-0540

In the Vietnam War approximately 58,000 Americans were killed in a 10 year period. According to statistics provided by KDOT, KBI, and MADD there were 1,629 alcohol related fatalities in Kansas over a 10 year period. Take the 1629 fatalities times the 50 states and you have 81,450 Americans killed. In 1991, during desert Storm, 269 Americans were killed in a 1 year period. In 1991, 112 Kansans died in alcohol-related accidents. When you think of people going to war you think of fatalities. You usually don't think about that many people dying on the roads. You should be safe on the roads. At least safer than you would be in a war! Drunk Driving is a very serious problem in Kansas and the USA. Every 3 hours 1 Kansan is injured or killed in an alcohol related accident. In 1994, over 100 Kansans were killed in an alcohol-related crash.

The reason we wanted to get involved was because our good friend Debby Smith was killed by a drunk driver. We didn't want what happen to her, to happen to anyone else, or let the driver that killed her get off easy. That's what this bill is about. If you would look at the first page of the packet, there is a chart. This chart shows our current law compared to the new bill. Our current law says if you are convicted of involuntary manslaughter while under the influence of drugs or alcohol, and have no pervious record, the maximum sentence is 32 months. But the court can impose a nonprison sentence. This new bill will make the sentence 41 months and no chance of a nonprison sentence. Also notice that if you have 1 diversion and 1 conviction you can be sentenced to 154 months instead of 52 months. I really feel this bill will have a positive effect on our

community. We can bring criminals to justice. I look forward to seeing the number of alcohol-related accidents and fatalities decrease in the following years. Now I'd like to read a poem by and unknown author. The poem is titled "One Last Question."

Now at this time we would like to thank you for giving us this wonderful opportunity to share our thoughts and feelings about Debby Smith and drunk driving. We would also like to thank Greg Packer for all his help in seeing this bill through. We really appreciate it. Thank you!

By

Kacie Wessel

Phone #- 232-2559

2224 SE Stinson Dr.

Topeka, KS 66605

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL NO. 2838

The Kansas County and District Attorneys Association is in support of HB 2838, which creates a new crime of involuntary manslaughter while DUI, and raises the penalty to a level 4, person felony, from a level 5 under current law.

Our support of the bill is due to the present law's inadequate punishment for a DUI-related homicide. The level 5 p felony, when there are no prior convictions, results in a placement on the border box, allowing a court to grant probation without finding grounds for departure. Under the bill, a defendant would be sentenced to incarceration for 38 to 43 months. The bill also makes persons convicted for the new offense ineligible to purchase or possess firearms, and counts prior DUI convictions, adjudications or diversions as a person felony for criminal history determination.

KCDAA had similar concerns when it requested this Committee to introduce HB 2993, which attacks the inadequate punishment issue by making the sentence for involuntary manslaughter based on a DUI presumptive imprisonment, which would have resulted in a mid-range sentence of 32 months. We have no ownership interest or pride of authorship, however, as both measures provide a remedy to a serious defect in the present sentencing classification.

House Judiciary
2-15-96
Attachment 9

HOUSE OF REPRESENTATIVES
STATE OF KANSAS

BRENDA K. LANDWEHR
REPRESENTATIVE, NINETY-FIRST DISTRICT
HOME ADDRESS: 1927 N. GOW
WICHITA, KANSAS 67203-1106
316-945-0026
OFFICE: SUITE 303-N STATEHOUSE
TOPEKA KANSAS 66612-1504
(913) 296-7500

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: FINANCIAL INSTITUTIONS AND INSURANCE
PUBLIC HEALTH & HUMAN SERVICES
SELECT COMMITTEE ON JUVENILE CRIME

TESTIMONY ON HB 2933

Thank you Mr. Chairman & Committee Members for allowing me to appear here today in support of HB 2933. HB 2933 removes some of the lenient treatment afforded to Repeat DUI offenders.

Under Current Law:

(1) On a second or subsequent conviction of a DUI the court is given discretion to place the convicted offender under a house arrest program after serving only 48 hours of Imprisonment.

and

(2) In determining whether a conviction is a first, second, or third subsequent conviction, only convictions occurring in the immediately preceding five years shall be taken into account.

HB 2933 removes both of these provisions from KSA 8-1567. This bill ensures that repeat offenders will be held accountable for their prior acts and requires at least the minimum sentence of imprisonment proscribed be satisfied.

Currently in Kansas, a third conviction of driving without a license results in a stricter penalty than a third conviction DUI. Under current law, third conviction for driving without a license results in a severity level 9, while a third or subsequent conviction DUI is punishable as a nonperson felony, without a severity level designation. **Why?** We need to be sending the message that driving under the influence is wrong. It kills lives. If a person is convicted of a DUI, they need to be aware that the consequences will become more severe for each subsequent conviction.

Our goal should be to deter future violations by first time DUI offenders. Giving a convicted offender a 'clean slate' after 5 years is inappropriate. DUI offenders need to be held accountable for their actions.

(statistics from Nancy Bogina, Kansas Department of Transportation and Sheila Walker, Kansas Department of Revenue)

1) In the past 5 years, **373** families in Kansas have lost loved ones from DUI accidents.
2) Of those 373 who died, **126** were innocent victims.
3) **60%** of DUI drivers in Kansas are repeat offenders.
4) With harsher penalties for repeat DUI offenders, we can reduce the loss of innocent lives.

Driving under the influence is a serious offense, it kills innocent people. We should not be lenient on this crime. I urge you to support HB 2933. Mr. Chairman, I will be available for questions.

House Judiciary
2-15-96
Attachment 10

STATISTICS:

*sources: Kansas Department of Transportation, Accident Records System;
Kansas Department of Revenue, Public Information Office

For the Past Five Years: 1990-1994:

ACCIDENTS

TOTAL ACCIDENTS IN KANSAS:	325,185	
• Alcohol Related	14, 405	(4.43%)
TOTAL FATALITY ACCIDENTS IN KANSAS:	1,834	
• Alcohol Related	329	(17.94%)
TOTAL INJURY ACCIDENTS IN KANSAS:	98,814	
• Alcohol Related	7,662	(7.75%)

MOTOR VEHICLE FATALITIES

TOTAL FATALITIES:	2,110	
• Alcohol Related	371	(17.58%)
TOTAL INJURIES:	149,835	
• Alcohol Related	11,718	(7.83%)

DUI DRIVERS

Total Licensed Drivers in Kansas: 1,800,000

IN THE LAST 5 YEARS:

- TOTAL DUI'S 99,773
  - Drivers with 2 or more DUI's 60,176**
  - Drivers with only 1 DUI 39,597

**60.3% are repeat offenders --> 2 or more DUI's within the last 5 years

TESTIMONY OF MARK A. VINING
IN SUPPORT OF HB 2933
February 15, 1996

My name is Mark Vining. I am a District Court Judge in the Eighteenth Judicial District in Wichita, Sedgwick County, Kansas. I recently completed a six month assignment as the Traffic Court Judge for the District. It provided me an opportunity to become acquainted with the various statutes that govern the operation of a motor vehicle on the roads of our state. During my term I also identified some areas which seemed inconsistent in the approach to violators. The amendments in HB 2933 address some of the problems.

The annual legislative review of provisions of the Kansas statutes dealing with driving under the influence, K.S.A. 8-1567, has led to some proposed amendments which I support for three reasons. First, the changes will make the penalty provisions of the DUI statute more consistent with similar traffic offenses in this state. Second, the amendments, in my opinion, improve the deterrent affect of the statute. Third, the amendments will eliminate some of the confusion which surrounds the application of the present penalty provisions.

Below I have set out in a comparison table the current DUI provisions along with those for the statutes involving driving while suspended or revoked, K.S.A. 8-262, and driving without liability insurance, K.S.A. 40-3104. As can be readily seen, the current provisions treat a person who may be able to drive safely, albeit without a license or insurance, more severely than a person who, by definition of the crime of DUI, is "incapable of safely driving a motor vehicle."

	No Liab. Ins. KSA 40-3104	Driving While Suspended KSA 8-262	Driving Under the Influence KSA 8-1567
1st conviction	Class B Misd. $200-$1000 Up to 6 months	Class B Misd. $100-$1000 5days- 6months (5days can be waived)	Class B Misd. $200-$500 48 hrs-6months
2nd conviction	Class A Misd. Up to $2500 Up to 1 year (If w/in 3 yrs of 1st conv.)	Class A Misd. $100-$2500 5days- 1 year	Class A Misd. $500-$1000 90 days-1 year (except that only 5 days must be served prior to prob.) (except that after 48 hours balance of 5 days can be served in house arrest)
3rd conviction and add'l	Class A or B Msd. depending on time factor	SL9NPF Guidelines Up to $100,000 5-17 months depending on crim. history	SL9NPF $1000-$2500 90 days-1 year (except that after 48 hours balance of 90 days can be served in house arrest) (except that only those convictions in the last five years count toward in classifying the offense)

Another fact to consider in the current penalty provisions is the current approach to drug crimes. A first possession conviction is a SL4NPF and carries a fine of up to $100,000 and 10-42 months

in prison. A second conviction is a SL2NPF carrying a fine of up to $300,000 and presumptive prison time of 46-83 months depending on the criminal history of the individual. A person convicted of his third DUI, even if it is caused by the influence of illegal drugs (8-1567(a)(4) or (5)) faces a maximum jail time of 1 year in the county jail.

The amendment which eliminates the conveniences of a house arrest program also has the affect of making the violator serve the minimum sentence in prison. This alone will make it more likely that a second or third conviction carries a higher inconvenience to the violator. Given the present state of half-way houses in Wichita, I am sure that I do not have to relate the hesitation Sedgwick County judges have with trying to place convicted DUI violators with any of these programs. Until some method of oversight of house arrest programs is established which verify that the violator follows the restrictions of house arrest, the option should be eliminated.

Some may argue that this will crowd the jails, but the actual impact of the changes should be minimal. In Sedgwick County there were 895 DUI cases opened in 1995. In the last year 420 of these types of cases were disposed of by findings of guilt or no contest pleas. Of the 420, 78 had been convicted of a second offense, and only 18 were facing the court for their 3rd or greater conviction within five years. Thus the changes recommended in the current statute should have little affect on the prison population over the course of a year.

In the last 25 years economists have been developing a new model of criminal activity which is based upon the concept that the criminal is acting rationally- at least to the extent that the criminal is acting out of self interest (For further information on this model I refer you to writings by Ed Rubenstein, Economics Analyst, *National Review*, "The Economics of Crime"). Using this model, the criminal, when deciding to commit a crime will weigh the expected costs of the crime with the expected benefits. The expected costs is a probability factor which includes the fact that many times a crime is unpunished because the criminal is never caught. The goal of the criminal justice system is to raise the expected costs so that the price is too high for the criminal. Unfortunately, the "price" being paid for DUI violations is shockingly low. HB 2933 is a step toward raising the costs of DUI to the violator.

MADD™
Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (913) 271-7525 • 1 (800) 228-6233
KANSAS STATE OFFICE

February 15, 1996

Dear House Judiciary Committee Member:

Kansas MADD supports the provision in House Bill 2933 repealing expungement of DUI driving records of offenders every five years. Kansas MADD believes an offender's driving record is an integral part of the offender's history and pertinent to sentencing. Kansas MADD also supports House Bill 2933 and the repeal of the provisions allowing for House Arrest as a condition of satisfying the time of imprisonment for a second and subsequent DUI conviction. Under present law, a third time offender must serve a minimum of 90 days imprisonment. Under provisions of House Arrest, the offender would actually serve only 48 hours imprisonment with the remainder being served under House Arrest.

Kansas MADD opposes House Arrest based on the following:

- House Arrest is too lenient for second and third time offenders. It does not send a strong enough message to the repeat offender.

- House Arrest programs are not available in every jurisdiction. The conditions of House Arrest may vary from home-based incarceration with electronic monitoring to half-way house residency consisting of little or no monitoring.

- In many instances, the cost of House Arrest is assessed the offender creating an ability to pay situation. If the offender does not have access to House Arrest or does not have the ability to pay, he/she does jail time.

- Unlike Work Release programs where the offender is monitored and must return to imprisonment at the end of the work day, House Arrest programs generally lack the control and monitoring associated with Work Release programs.

Kansas MADD encourages your support for HB 2933.

Stan Stewart

House Judiciary
2-15-96
Attachment 12

House Judiciary Committee
February 15, I996
Testimony
House Bill 2933

Good Afternoon Chairman O'Neal and Members of the Judiciary Committee:

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. It is my pleasure to address this committee concerning House Bill 2933.

Our Association is comprised of those individuals who conduct the pre-sentence evaluations and monitor those individuals charged with DUI and other alcohol related offenses in the State of Kansas.

We support H.B.2933 as another method of providing safety to our streets and roads from the drinking driver in the State of Kansas. We suggest one change in this legislation, which we feel would benefit our citizens and particularly those persons who have problems with alcohol and drugs.

On page 3, line 32: we suggest reinstating the language to read:

" only convictions occurring in the immediately preceding ~~(five~~) ten years, including prior to the effective date of this act; shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and"

We believe that an individual, during his or her teenage years or college years, may drink excessively and receive a DUI. Some fifteen to thirty years later, this individual may again receive a DUI, and we do not feel that this offender should be subject to the penalties of a second conviction over that period of time. We feel very comfortable with the ten year enhancement period and we support this legislation in this regard.

Thank you. I will attempt to answer any questions you may have at this time.

Respectfully submitted,

Gene Johnson

Gene Johnson
Legislative Liaison
Kansas Community Alcohol Safety Action Projects Association

House Judiciary
2-15-96
Attachment 13

LifeSafer Interlock

1136 St. Gregory Street Suite 2-C Cincinnati, OH 45202-1724
513 651-9560 800 531-0006 Fax 513 651-9563

Advanced Technology to Deter Drinking and Driving

December 18, 1995

Mr. Jerry Gentry
Ignition Interlock of Kansas
1 East 9th Street, Suite 120
Hutchinson, KS. 67501

Dear Mr. Gentry:

I understand that there may be interest in revising Kansas statutes to better ensure that repeat DWI offenders and "high risk" offenders not operate a motor vehicle unless it is equipped with a functioning ignition interlock device.

There are compelling arguments to do so. The Transportation Research Board published the "Persistent Drinking Drivers" study in 1995 in which they estimated that 1.5% of the adult population causes 65% of all alcohol-related fatalities, injuries and property damage. In addition to identifying the demographics of these individuals which included repeat DWI offenders and first offenders who refuse the breath test or register a High BAC, a number of promising strategies of dealing with this alcohol-dependent group were put forward including use of ignition interlock programs, (an excerpt is enclosed).

The question to resolve is how to most effectively utilize ignition interlock devices in the mix of sentencing sanctions including license revocation. Although NHTSA recognizes that 80% of DWI offenders continue to drive under revocation, additional studies including "Unlicensed Driving by DWI Offenders" (excerpt enclosed) published in 1993 show that over 50% of all DWI offenders receiving a license revocation of 90 days or longer never reapply for a license and for those that do reinstate their license after revocation 70% of their recidivism and alcohol-related crashes occur within the first 12 months of license reinstatement.

This information has lead a number of states, (brief write-up enclosed) to create ignition interlock license reinstatement programs operated through the administrative licensing authority. Ignition interlock is required as an additional condition to gradually reinstate the full privilege of repeat DWI offenders. West Virginia for example, has produced outstanding results with this program (2 1/2 years of data enclosed). And the legislature has gone further by offering restricted interlock licenses and reducing the mandatory long-term revocation of all DWI offenders.

Several states have unsuccessfully attempted to mandate use of interlocks through the court systems as a condition of probation for repeat DWI offenders while the individual's license is under administrative revocation; California, Kansas and Tennessee are examples.

In the State of Kansas the courts are required to order installation of an interlock device for an unspecified period of time after a repeat DWI offenders serves a mandatory court-imposed one year license revocation. Few courts have complied with the law. There are issues with extending probation beyond one year and the burdens place upon the court to "go back" and reprocess offenders.

In California, less than 3% of repeat offenders since the mandatory law went into effect in July of 1993 have had a device installed in their vehicles. Either the judges refuse to impose an installation order in the vehicle of a car the offender cannot legally operate or many of those ordered transfer title to their vehicles and are exempted under the law.

Court-ordered programs are not all unsuccessful. However, successful interlock programs, (administrative or court-ordered) are tied to the immediate ability to impose the sanction either through granting a restricted driving privilege or as a condition of license reinstatement.

In Texas, a new law went into effect in September of 1995, that mandates installation of an interlock device within thirty (30) days of release for a second DWI arrest as a condition of bail or bond as well. And when occupational privileges are granted or community supervision is granted, (an alternative to 30 days hard jail time and available immediately after conviction), interlock is required by law. This law appears to be on its to very successful implementation due to the simple facts that the courts can immediately impose interlock upon conviction and the can utilize interlock as an option with an incentive, (an alternative to hard jail-time or hard revocation of the license).

If the State is absolutely committed to "hard suspension", the public safety would be better served to increase the mandatory revocation period for 2nd and greater DWI offenders, mandate that a 2nd or greater offender successfully complete a minimum of 12 months on an interlock-restricted license prior to full reinstatement and consider offering an incentive to apply for the interlock-restricted through the licensing authority after the minimum hard revocation period is served.

Additionally, the state should target the "high-risk" first offender, (those that refuse the breath test and score a high BAC) and treat those offenders much the same as repeat offenders by requiring interlock as a condition for an administratively-issued restricted driving privilege prior to full reinstatement after serving a mandatory minimum hard revocation.

Lastly, nothing in the administrative law should prevent the courts from utilizing interlocks as a condition of probation or part of the established diversion programs. Successful time and participation in such court-directed interlock programs could be credited against the administrative requirement to avoid any claims of double jeopardy.

I hope this information is useful to you. And please let me know what else I can do to help forward effective interlock legislation in the State of Kansas.

Sincerely,

Richard Freund
President

HAMILTON COUNTY DRINKING AND DRIVING STUDY: 30 MONTH REPORT

by

Barbara J. Morse, Ph.D.
Institute of Behavioral Science
University of Colorado, Boulder

and

Delbert S. Elliott, Ph.D.
Institute of Behavioral Science
University of Colorado, Boulder

February, 1990

Executive Summary

The present report provides information on the effectiveness of ignition interlock devices in reducing recidivism among convicted DUI offenders in Hamilton County, Ohio. The findings presented here are based on data collected over the first 30 months of the five year Hamilton Country Drinking and Driving Study (HCDDS), and represent the most complete findings published to date.

The HCDDS is a longitudinal, quasi-experimental study with nonrandom assignment of subjects into judge and self-selected experimental (interlock) and control (license suspension) groups. Eligible subjects include: 1) offenders with a BAC of .20 or higher at arrest, 2) offenders with a prior DUI conviction during the last 10 years, and 3) persons who refused to take the BAC test upon arrest. Evaluation of the group assignment process revealed some evidence of selection bias in both the judicial and self-selected groups, limiting generalization of study findings with any known degree of statistical accuracy. However, the direction of the selection bias indicates that those in the study experimental group (to which controls are matched) should be at higher risk for a repeated DUI than those in the eligible pool, suggesting that the findings would be more appropriately generalized to a more serious population of DUI offenders.

In order to protect against selection biases, subjects were precision-matched on three factors statistically shown to be predictive of DUI recidivism (i.e, using multiple regression and discriminant analyses). Using a cluster analysis, control group members were matched to experimental group members on the basis of their similarity on: 1) problem drinker classification; 2) number of prior alcohol-drug related arrests (non-DUI); and 3) number of prior DUI arrests. The matching process was verified by a series of t-tests which indicated that the experimental and control groups were significantly different on one of the three matching variables - number of prior DUI arrests. Experimental group members had more prior DUI arrests, putting them at a slightly greater risk for a repeated DUI.

Short-term survival rates for DUI indicate that interlock devices installed in the vehicles of DUI offenders significantly reduced the likelihood of a repeated DUI arrest as compared to license suspension. The risk period for all subjects, that is, the time during which experimentals had the interlock installed and controls were under license suspension, ranged from 12 to 30 months. The DUI rearrest rate for persons with license suspension was approximately three times as great as that of persons with interlock installation across the entire 30 month risk period. Compared to a 30 month failure rate of 9.8% for the control group, the 3.4% failure rate in the experimental group represents a 65% decrease in the probability of DUI recidivism.

Further, evidence of sanction circumvention was significantly lower for those offenders with interlock installation. Estimates of short-term survival rates for DUS (Driving Under Suspension) and NDL (No Driver's License) indicate that compared to license suspension, interlock installation reduced sanction circumvention by 91% across the 30 month study period. After 30 months, 16.1% of those offenders with license suspension were arrested for DUS or NDL compared to 1.5% of those with the interlock device.

Findings based upon self-report data collected from experimental group subjects 12 months post interlock installation revealed substantial user complaints. While over 90% claimed that they had some difficulty starting their car while sober, the frequency and nature of these complaints did not appear to be particularly serious, reflecting operational rather than mechanical problems. Questions assessing interlock users' perceptions of their experience with the device indicate that the vast majority felt that the system was very successful at both preventing them from drinking and driving as well as changing their drinking and driving habits.

LifeSafer Interlock, Inc.
1136 St. Gregory Street
Cincinnati, Ohio 45202-1724
1 800 531-0006
1 523 651-9563

This Progress Report is provided by LifeSafer Interlock, Inc.

Ignition Interlock Progress Report

Industry Update

Since the introduction of the advanced LifeSafer design in July of 1992, two existing manufacturers; AutoSense and Guardian have update their equipment to emulate the SC100's features and functions and two new manufacturers, CST and ASI have introduced technology emulating the LifeSafer design.

Jurisdictions now have a choice in technology. And in making that selection; the experience and reliability of the Service Provider managing the monitoring program become all the more important. Technology considerations are still relevant because there are significa differences in quality and reliability of the manufacturer's products.

NHTSA Interlock Guidelines

Published on April 7, 1992, the guidelines were intended to raise the base level of interlock technology by addressing; accuracy, operating environments, reliability, stability, and most importantly features to deter undetected circumvention of the devices.

All of the devices now available record events in memory including but not limited to; breath test results, vehicle starts and stops, and violation conditions. The devices incorporate *"random rolling retest"* to deter vehicle idling at bars or sober starts by a third party, the devices detect push-starting and deter use of bogus breath samples like balloons and compressed air.

The net effect of NHTSA guidelines are to; "raise the stakes for undetected circumvention" and there is no easy way to "cheat" the device "without detection" as in the past.

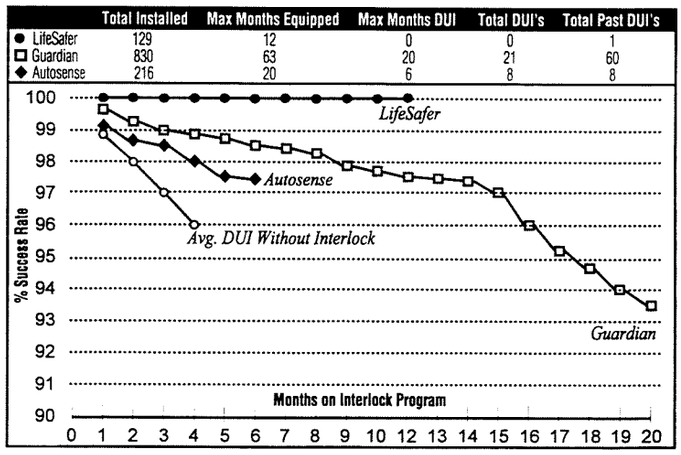
Legislation Authorizing Use and Estimated Number of Devices Installed

End of 1994 IID Legislation

State	Legislation	#Device
Alabama	No	0
Alaska	Yes	0
Alberta	Yes	500
Arizona	No	0
Arkansas	Yes	0
California	Yes	2000

Verifiable Results

The following data, collected by the State of Michigan indicates the 2nd generation LifeSafer significantly reduced recidivism of participants over the pre-NHTSA Guardian and AutoSense models. Less than ½ of 1% of the 5000 participants utilizing LifeSafer in 1994 were re-arrested for DWI.



The technology is not "fool proof." Five to ten percent of participants are bound and determined to circumvent the device and will go to great extremes by: trying to bribe Service Providers forcing children to blow the test and Retest functions or obtaining another vehicle prior to pre-medi tated drinking. These issues represent a challenge to Service Providers to "get to know the client, their driving patterns and their family better."

For example, a Provider payin close attention learned from a child that on weekends when Daddy picked her up, that she had to blow into the device to open the sunroof of the car. By spotting and identifying this problem case, the Service Provider was able to help focus the resources of the Jurisdiction to intervene early before a crisis occured.

"The Program is Only as Good as the Provider"

With improved technology and increased competition, there is expanded use and increased interes in ignition interlocks. In order to ensure the effective utilization of interlock on an extensive basis, th reliability of vendors to deliver quality programs both from servicing the client to reporting client statu to the jurisdiction is paramount.

Whether a jurisdiction chooses a single vendor or multiple vendors, key consideration should be given to ensuring that minimum program standards are met and that the vendor(s) are qualified and structured to take on the role of quasi-probation officer, defacto alcohol counselor and installer and monitor of equipment.

There are differences amongst manufacturer's distribution/service plans. One company has focuse on selling, "service franchises" to businesses already in auto repair or other installation businesses to operate an interlock program as a sideline. Another is focusing on installing devices through car dealerships and then monitoring the devices through a mail-in service directly with the client. Anoth intends to stock the interlock in electronic stores and will sell the device to the client along with car stereos, auto burglar alarms and radar detectors. These distribution strategies seem more oriented t "cost reduction and profit maximization" than "quality program maximization."

All Distributors of the LifeSafer device, are independent, dedicated Service Providers who have invested capital and dedicated personnel to provide service, 24 hours per day, 7 days per week, whos **Primary** business focus is operating interlock programs.

Colorado	No	5
Connecticut	No	0
Delaware	Yes	5
District	No	0
Florida	Yes	200
Georgia	Yes	100
Hawaii	Yes	0
Idaho	Yes	200
Illinois	Yes	100
Indiana	Yes	1200
Iowa	Yes	1000
Kansas	Yes	100
Kentucky	No	0
Louisiana	Yes	10
Maine	No	0
Maryland	Yes	800
Massachusetts	No	0
Michigan	Yes	500
Minnesota	Yes	0
South Dakota	Yes	100
Mississippi	No	0
Missouri	No	0
Montana	No	0
Nebraska	Yes	25
Nevada	Yes	0
New Hampshire	No	0
New Jersey	No	0
New Mexico	No	0
New York	Yes	100
North Carolina	No	1000
North Dakota	Yes	0
Ohio	Yes	1500
Oklahoma	Yes	100
Oregon	Yes	1500
Pennsylvania	No	500
Rhode Island	Yes	0
South Carolina	No	0
Tennessee	Yes	300
Texas	Yes	1600
Utah	Yes	0
Vermont	No	0
Virginia	No	0
Washington	Yes	0
West Virginia	Yes	500
Wisconsin	Yes	250
Wyoming	No	0

Total number of states with IID Laws =30
Total number of IID's installed = 15,000
Total number of LifeSafer's installed = 5,000

Featured Program

WEST VIRGINIA. In July of 1993, a statewide law went into effect that created incentives for all classes of DWI offenders to obtain an interlock restricted license. After enrolling in and remaining in compliance with an Alcohol Safety Treatment Program, the individual could apply for a license on the following basis:

Convictions	Administrative Revocation	Revocation Reduced	Length on Interlock
1st	6 months	30 days	5 months
1st/Refusal	12 months	90 days	9 months
2nd	5 years	1 year	1 year
3rd	10 years	1 year	2 years

Administered by the Department of Motor Vehicles, this unique licensing program was the first competitively-bid, statewide, sole vendor contract awarded in the industry. **Life Sciences Corporation**, utilizing the LifeSafer, is the contract provider and has established a statewide dedicated service network for this program. **LSC**, in its first annual report to West Virginia DMV, indicated that of the *150 participants* who had completed the program, there were *0 re-arrests* and *15 removals* from the program for violations. And after *10,000 man-months only 3 program participants have been re-arrested* in West Virginia, (*less than .2% on an annualized basis*). At the end of 1994 there were approximately *500* participants in the program.

Electronic Management of Information, (MIS)

When a Court Administrator saw LifeSafer's MIS for the first time, she remarked, *"This interlock reall is intensive supervision."* As a jurisdictions use of interlock programs grow, the daily administration issues of a large program must be addressed.

LifeSafer provides at no cost to a participating jurisdiction; computers, software and phone connections that enable a jurisdiction to link-up to a computerized data base that stores all client enrollment data, device programming and the entire events log of each individual client.

The system provides daily global reports of installations/removals, violations, compliance and bypasses. And complete program records checks can be looked up and/or printed on each individual client.

The system guarantees integrity by automatically reporting all violations, eliminates paperwork and greatly simplifies administration of programs.

The first installation of this system was in the West Virginia Department of Motor Vehicles and it ha greatly reduced the administrative time needed to manage their statewide interlock license reinstatement program.

And the system is applicable for court jurisdictions as evidenced by the switch of Hamilton County, (Cincinnati, OH) Municipal Court system, to LifeSafer and its MIS system from Guardian Interlock on March 1, 1995.

For more information please contact LifeSafer at 1 800 531-0006.

Facts About the Persistent Drinking Driver

Who are they? They are repeat DWI offenders, high BAC first offenders and individuals that tend to refuse the breath test.

How much do they drink and drive? On average they spend $16.00 per day on alcohol and drive intoxicated 4 times per week or 200 times a year.

How drunk are they when arrested? Most of these individuals have developed high tolerance for alcohol and can operate a vehicle without signs of impairment at levels of .15% and below.

How much damage does this group cause? The persistent drinking driver represents less than 3% of the adult population. According to the Transportation Safety Board this group is responsible for over 60% of all alcohol-related fatalities and serious injuries each year, causing and estimated $60 billion in economic losses-an average $20,000 per person.

How can you stop this group from drinking and driving? You will never completely eliminate the problem unless each of these individuals completely stops drinking. And increased revocations, impoundments, confiscations are having a marginal impact when evaluated on a cost/benefit basis.

What is the impact of interlock on this group? Significant. In the 10 years of interlock use the number of alcohol-related fatalities with the interlock users has been reduced by at least 90% when compared to the average of this group.

** (1 for every 5000 interlock users each year-vs-an estimated 25 for every 5000 persistent drinking drivers.)*

TREND SETTERS INTERLOCK CO.
6000-H LEAVENWORTH ROAD
KANSAS CITY, KANSAS 66104
(913) 334-2650

Breath Alcohol Ignition Interlock Devices (**BAIID'S**) are available in the Kansas City Metro area through TREND SETTERS INTERLOCK CO., and authorized Guardian Interlock Service Center. Person convicted of driving while intoxicated or impaired can be court ordered to participate in the Guardian Interlock Responsible Driver Program. This program combines a state of the art ignition interlock device with a disciplined program of follow-up and control enabling the court and the probation officers updated information as to the progress of the participant. The device also ensures that the participants comply with the rules set by the court and probation officials.

An ignition interlock device is a breath analyzer that is attached to the ignition system of a vehicle owned or leased by, or assigned to a voluntary or involuntary DUI offender. Each time the offender wished to start the vehicle they must blow into the unit. The unit determines if the breath alcohol level is above .04: if it is above the preset limit the unit will prevent the vehicle from starting. The participant is given three chances to pass the breath test; on failing the third time the unit will shut down the vehicle's ignition system.

Continuous sobriety is ensured through the use of random rolling retests. This feature requires a retest at random intervals while the vehicle is in operation. If the driver fails or refuses a random rolling retest, the horn on the vehicle will sound repeatedly until the key is turned off. At this point, the driver must utilize the system to restart the vehicle.

Interlock users are required to return to the Guardian Interlock Service Center every 30 - 60 days. During these visits, the device is checked for accuracy to assure its continued effectiveness and information is retrieved from the Datalogger. The Datalogger is an internal memory that keeps a record of the users activity, recording the day, date and time of every event that takes place with the unit and the vehicle. Included in this record are the results of every breath test and whether or not it was passed or failed. This information is recorded in the Guardian Information System and reports are filed with the court and probation officials.

In the event of a suspected bypass or tamper, the interlock will reset it's internal clock to 5 days. If the participant does not return within the 5 day period, the vehicle will be rendered inoperative, and the unit will shut down not allowing any breath tests. In addition, all suspected alcohol fails, power interrupts, and any other noncompliance issues the court orders will be reported. In cases of a rolling retest failure or refusal, the clock again will reset to 5 days and the participant will have to return to the Service Center. At that time information can be retrieved from the datalogger and faxed immediately to the appropriate monitor for action.

House Judiciary
2-15-96
Attachment 17

The installation and lease of an ignition interlock device to be at the person's own expense. restricts the participants to operating only vehicles equipped with an ignition interlock device and requires a notation of this restriction be affixed to the person's driver's license. The court also determines which vehicle the interlock is assigned to.

The real utility of this technology is not only the fact that needless deaths and injuries resulting from alcohol related traffic collisions can be prevented, but also the potential savings to the taxpayers. As the taxpayers realize a savings in the cost of the program and in the cost of supervising the offender while on probation. This program allows the offender to remain in the community with his/her family, to continue working and paying taxes and to participate in community based treatment programs. while reducing the number of DUI offenders incarcerated in the State's prison system.

The best part of the whole program is that the device really works. it will prevent a person whose breath alcohol concentration is over .04 from starting and subsequently operating their vehicle. The end result is safer streets and highways for all of us.

There is also an educational value associated with this device:. Merely encouraging people not to "drive drunk" is ineffective because the word "drunk" is subjective. What is "drunk to you is not drunk to me". The law does not mention the word "drunk" but rather intoxication or impairment, which is a physiological term that is the same for all of us. Some people can consume 12 beers and not feel drunk where others can only consume 4 beers and feel drunk. The problem is that both individuals are probably intoxicated or impaired and therefore violating state law if they choose to drive. This coupled with the fact that the participant must blow into the device every time they start their car makes them conscious of their sobriety when they get behind the wheel. Over the course of the program. which can last for several years. the Participant's driving sobriety is reinforced every time they attempt to start their car.

Treatment is a must. but we also must address the driving behavior itself. Without the interlock there is no physical barrier between the intoxicated person and the vehicle. Suspended drivers still drive the majority of the time. And if they do drive. they can still drink and drive. If it were required to have an interlock during the entire treatment program. the success rate would rise even more.

Not all vendors are in the interlock business for the sole purpose of making money quickly off drunk driving offenders. Guardian and myself as owner of a Guardian franchise are interested in helping to prevent drunk driving crashes as well as providing reliable information to persons who monitor these offenders to determine the best choice of treatment for the offender. If we can help bring an offender out of denial by using an interlock. he may well be more receptive to treatment and the whole program could be a success.

Ignition Interlock Systems

GUARDIAN INTERLOCK SYSTEMS

TREND SETTERS INTERLOCK

6000-H Leavenworth Road
Westgate Shopping Center
Kansas City, Kansas 66104
(913) 334-2650

"The largest supplier of Ignition Interlock Devices in the United States"

SYSTEM FEATURES

Random Rolling Retest

- This feature requires a rolling retest at randomly selected intervals from 5 to 30 minutes after the vehicle has been started and every 5 to 30 minute interval thereafter while the vehicle is in operation.

Memo Minder

- Reminds the Interlock user of a scheduled service date . .If the Interlock user does not return to the Service Center by the due date, the vehicle is rendered inoperative.

Time Lapse Fail Mode

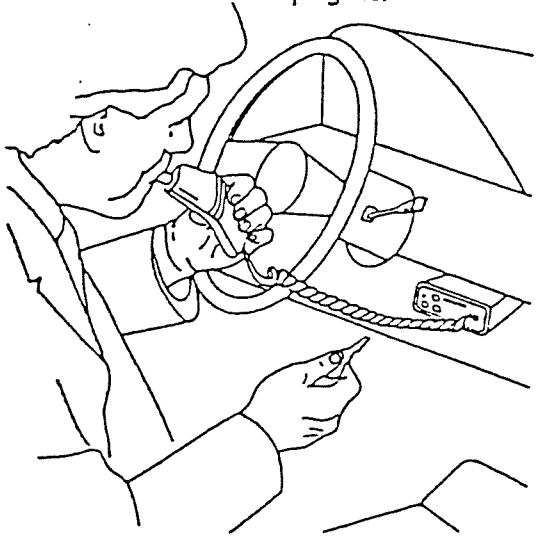
- This feature will reset the scheduled service date prematurely in the event of a bypass or rolling retest refusal. The Interlock user will be required to return to the Service Center within 5 days or the vehicle will be rendered inoperative.

Data Logger

- Keeps a record of the users activity, recording day, date and time of every event related to the Interlock device.

GIS (Guardian Information System)

- An on-line computer system linking the Corporate office, Court system, and the Service Center together to provide accurate information on the individuals progress.



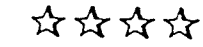
PROGRAM FEATURES

The "GUARDIAN INTERLOCK RESPONSIBLE DRIVER PROGRAM"™ is directed through a national network of Service Centers who:

- Install the Guardian Interlock System.
- Administer training on the use of the system and program requirements.
- Physically and electronically inspect the system at regular intervals.
- Provide the court system with hard copy compliance reports.
- Provide Guaranteed Warranty Service within 24 hours.
- Collect all program fees.
- De-install the interlock device after successful completion of the program.

BENEFITS TO THE COURT:

- Guardian monitors and reports on program compliance and, in so doing, relieves authorities of the responsibility.
- Bi-monthly compliance reports are generated for the courts and program monitor.
- Opportunity to grant occupational driver's license to offenders while being assured of the operator's sobriety while driving.
- Opportunity to alter an offender's drinking/driving behavior through constant reinforcement.



BENEFITS TO DRUNKEN DRIVING OFFENDERS:

- Opportunity to retain driving privileges.
- Alternative to lengthy incarceration.
- Optional payment plan.
- Education regarding drinking/driving behavior and support for behavior change.
- Installation and monitoring appointments made to conveniently fit into work schedule.
- Complete training on use of system and program requirements.

GUARDIAN INTERLOCK SYSTEMS LEGEND

nmary Report for demo. dmp serial no. 4228

EVENT	TOTAL
PASS	514
WARN	0
FAIL	46
CBPA FAIL	0
USER ABORT	10
UNSTABLE	2
LOCKED OUT	10
SERVICE	0
CAR RUNNING	336
CAR STOPPED	337
BYPASSED	0
POWER-ON	0
RR REFUSED	0

SUMMARY LEGEND

Pass-	CLIENT PASSED BREATH TEST
Warn	DEVICE DETECTS SMALL AMOUNT OF ALCOHOL
Fail-	CLIENT FAILED BREATH TEST
User Abort-	BREATH TEST WAS EITHER - NOT LONG ENOUGH OR HARD ENOUGH
Unstable-	HAND SET NOT READY TO ACCEPT A BREATH TEST
Lockout-	VEHICLE LOCKED OUT DUE TO 3 FAILED BREATH TESTS WITH 5 MINS. CLIENT UNABLE TO START VEHICLE. MAY TRY AGAIN IN 15 MINS.
Service-	DATALOGGER MEMO MINDER REMINDS CLIENT TO RETURN TO SERVICE CENTER
Car Running-	VEHICLE MOTOR IS RUNNING
Car Stopped-	VEHICLE MOTOR IS STOPPED
Bypassed-	INTERLOCK DEVICE DETECTS A BYPASS IN THE SYSTEM IE: POP CLUTCH, DISCONNECT. DETECTS MOTOR RUNNING WITHOUT BREATH TEST. MEMO MINDER RESET TO 5 DAYS. HORN WILL SOUND AND OR LIGHTS WILL FLASH UNTIL MOTOR IS TURNED OFF.
Power on-	INTERLOCK DEVICE DETECTS INSUFFIENCENT POWER FROM BATTERY POWER INTERRUPT. INTERNAL BATTERY ACTIVATED.
RR Refused-	ROLLING RETEST REFUSED. INTERLOCK PROMPTS FOR A ROLLING RETEST AND NO TEST IS GIVEN. MEMO MINDER RESET TO 5 DAYS. HORN WILL SOUND AND OR LIGHTS WILL FLASH UNTIL MOTOR IS TURNED OFF.

BI-MONTHLY MONITOR CHECKS ARE ROUTINELY DONE (EVERY 2 MONTHS OR SOONER IF THE COURT DESIRES). THE DATALOGGER'S MEMO MINDER FEATURE IS GIVEN 65 DAYS. IF THE CLIENT FAILS TO SHOW FOR BI-MONTHLY APPOINTMENT THE VEHICLE WILL SHUT DOWN AND NOT ACCEPT ANY BREATH TEST. VEHICLE WILL THEN NEED TO BE TOWED TO THE SERVICE CENTER AT THE CLIENT'S EXPENSE. IF THE INTERNAL MEMO MINDER HAS BEEN RESET DUE TO A BYPASS OR RR REFUSAL, THE CLIENT WILL NEED TO RETURN TO THE SERVICE CENTER WITHIN 5 DAYS OR THE VEHICLE WILL SHUT DOWN AND NOT ACCEPT ANY BREATH TEST. THE VEHICLE WILL THEN NEED TO BE TOWED TO THE SERVICE CENTER AT THE CLIENTS EXPENSE.

Guardian Interlock Systems

[redacted].dmp Serial No. 4825 06/20/1995 09:56

DATE	DAY	TIME	EVENT	BRAC%
01/23/95	Monday	13:22	CAR RUNNING	
01/23/95	Monday	13:27	CAR STOPPED	
01/23/95	Monday	13:27	PASS	0.039
01/23/95	Monday	13:28	CAR RUNNING	
01/23/95	Monday	13:30	CAR STOPPED	
01/23/95	Monday	13:34	PASS	0.032
01/23/95	Monday	13:34	CAR RUNNING	
01/23/9[redacted]				
01/23/9[redacted]				
01/23/9[redacted]				
01/23/9[redacted]				
01/24/9[redacted]				
01/24/9[redacted]				
01/24/9[redacted]				
01/24/9[redacted]				
01/24/9[redacted]				
01/24/9[redacted]				
01/24/95	Tuesday	17:55	CAR RUNNING	
01/24/95	Tuesday	18:09	CAR STOPPED	
01/24/95	Tuesday	19:20	PASS	0.001
01/24/95	Tuesday	19:20	CAR RUNNING	
01/24/95	Tuesday	19:28	PASS	0.001
01/24/95	Tuesday	19:29	CAR STOPPED	
01/24/95	Tuesday	20:18	PASS	0.022
01/24/95	Tuesday	20:18	CAR RUNNING	
01/24/95	Tuesday	20:20	CAR STOPPED	
01/24/95	Tuesday	20:56	PASS	0.022
01/24/95	Tuesday	20:56	CAR RUNNING	
01/24/95	Tuesday	21:05	CAR STOPPED	
01/24/95	Tuesday	22:20	FAIL	0.055
01/24/95	Tuesday	22:21	FAIL	0.074
01/25/95	Wednesday	00:37	PASS	0.007
01/25/95	Wednesday	00:37	CAR RUNNING	
01/25/95	Wednesday	00:44	CAR STOPPED	
01/25/95	Wednesday	08:22	PASS	0.001
01/25/95	Wednesday	08:22	CAR RUNNING	
01/25/95	Wednesday	08:32	CAR STOPPED	
01/25/95	Wednesday	08:34	PASS	0.000
01/25/95	Wednesday	08:34	CAR RUNNING	
01/25/95	Wednesday	08:40	PASS	0.015
01/25/95	Wednesday	08:43	CAR STOPPED	
01/25/95	Wednesday	11:44	PASS	0.000
01/25/95	Wednesday	11:44	CAR RUNNING	
01/25/95	Wednesday	11:52	CAR STOPPED	
01/25/95	Wednesday	11:54	PASS	0.001
01/25/95	Wednesday	11:54	CAR RUNNING	
01/25/95	Wednesday	12:02	CAR STOPPED	

DRIVER SOBRIETY DOWNLOAD RECAP

CLIENT: MALE DRIVER

NOTE: CLIENT FAILED BREATH TEST
ON 1/24/95 AT 10:20 P.M.
DID NOT PASS UNTIL AFTER MIDNITE

17-5

ADDITIONAL NON-COMPLIANCE ISSUES

1. Ignition Interlock does not drain the battery. It uses no more electricity than the clock in your car. Also, in the event the battery does go bad, the internal battery will activate in the interlock device. This battery will hold all datalogger events for up to 6 months. This information will be reported.

2. Mileage is recorded at each monitor check. If low mileage is detected, it will be reported.

3. If little or no activity is logged on the datalogger, it will be reported along with the low mileage.

4. Once the event has been recorded, there is no way for the service center to alter information on the datalogger. All information will be reported.
The servicing center can only retrive and print information.

5. If the court so chooses, all alcohol fails will be reported and all lock outs will be reported

6. If the court so chooses, house arrest feature can be implimented. The device can be programmed to only allow breath tests during certian times of the day. ie: 6:00 am to 8:00am and 16:00 pm to 18:00 pm (4-6p.m.)

7. If your car stalls, you can re-start (without taking a breath test) if you do so within one (1) minute.

8. The system can not be bypassed in emergencies. You must deliver a clean breath to start the vehicle at all times.

9. If you fail or refuse a rolling retest, the horn will sound repeatedly until the vehicle ignition system (motor) is turned off. The internal memo minder (days on computor) will be reset to 5 days. After 5 days, the vehicle will shut down and will not accept any breath tests. This event will be recorded and reported.

10. If you bypass the system, the horn will sound repeatedly until the vehicle ignition system (motor) is turned off. The internal memo minder (days on computor) will be reset to 5 days. After 5 days, the vehicle will shut down and will not accept any breath tests. This event will be recorded and reported.

ADDITIONAL NON-COMPLIANCE ISSUES

1. Ignition Interlock does not drain the battery. It uses no more electricity than the clock in your car. Also, in the event the battery does go bad, the internal battery will activate in the interlock device. This battery will hold all datalogger events for up to 6 months. This information will be reported.

2. Mileage is recorded at each monitor check. If low mileage is detected, it will be reported.

3. If little or no activity is logged on the datalogger, it will be reported along with the low mileage.

4. Once the event has been recorded, there is no way for the service center to alter information on the datalogger. All information will be reported.
The servicing center can only retrive and print information.

5. If the court so chooses, all alcohol fails will be reported and all lock outs will be reported

6. If the court so chooses, house arrest feature can be implimented. The device can be programmed to only allow breath tests during certian times of the day. ie: 6:00 am to 8:00am and 16:00 pm to 18:00 pm (4-6p.m.)

7. If your car stalls, you can re-start (without taking a breath test) if you do so within one (1) minute.

8. The system can not be bypassed in emergencies. You must deliver a clean breath to start the vehicle at all times.

9. If you fail or refuse a rolling retest, the horn will sound repeatedly until the vehicle ignition system (motor) is turned off. The internal memo minder (days on computor) will be reset to 5 days. After 5 days, the vehicle will shut down and will not accept any breath tests. This event will be recorded and reported.

10. If you bypass the system, the horn will sound repeatedly until the vehicle ignition system (motor) is turned off. The internal memo minder (days on computor) will be reset to 5 days. After 5 days, the vehicle will shut down and will not accept any breath tests. This event will be recorded and reported.

10 IMPERATIVES FOR IGNITION INTERLOCK

1. "DRIVER'S LICENSE SUSPENSION OR REVOCATION PENALTIES ARE INEFFECTIVE IN PREVENTING DWI CONVICTED CHRONIC DRINKERS FROM DRIVING WHILE INTOXICATED" *Texas Commission on Alcohol and Drug Abuse.*

2. "BETWEEN 60% AND 80% OF DRIVERS WITH SUSPENDED LICENSES CONTINUE TO DRIVE" *National Highway Traffic Safety Administration.*

3. "14% OF ALL INTOXICATED DRIVERS IN FATAL CRASHES HAVE A CURRENT SUSPENDED OR REVOLKED LICENSE" *National Highway Traffic Safety Administration.*

4. "HALF OF ALL CONVICTED DRUNKEN DRIVERS WHO LOSE LICENSES DON'T REAPPLY WHEN THEY BECOME ELIGIBLE." *National Public Service Research.*

5. "ABOUT 2 IN EVERY 5 AMERICANS WILL BE INVOLVED IN AN ALCOHOL-RELATED CRASH AT SOME TIME IN THEIR LIVES." *National Highway Traffic Safety Administration.*

6. "DRUNKEN DRIVERS DRIVE DRUNK 200 TO 2,000 TIMES BEFORE THEY GET ARRESTED." *National Highway Traffic Safety Administration.*

7. "INTERLOCK APPEARS TO SIGNIFICANTLY REDUCE RECIDIVISM, TO PREVENT PEOPLE FROM DRINKING AND DRIVING AND TO HELP MOST USERS TO DEAL MORE EFFECTIVELY WITH THEIR DRINKING PROBLEM." *AAA Foundation for Traffic Safety.*

8. "OVER 90% OF INTERLOCK USERS REPORTED THAT THE DEVICE HAS BEEN SUCCESSFUL OR VERY SUCCESSFUL IN PREVENTING THEM FROM DRINKING AND DRIVING; OVER 90% ALSO REPORTED THAT INTERLOCK HAS BEEN EITHER VERY EFFECTIVE OR SOMEWHAT EFFECTIVE IN CHANGING THEIR DRINKING HABITS. AAA *Foundation for Traffic Safety.*

9. "THE AVERAGE AMOUNT OF MONEY SPENT ON ALCOHOL BY COVICTED DWI DRIVERS IS OVER $16.00 PER DAY." *Harris County Probation Department.*

10 "DWI RECIDIVISM IS REDUCED BY 65% WHEN IGNITION INTERLOCK IS USED ON DRIVERS VEHICLES." *Cincinati - Hamilton County, Ohio.*

TRANSPORTATION
RESEARCH
CIRCULAR

Number 437, February 1995
ISSN 0097-8515

STRATEGIES FOR DEALING WITH THE PERSISTENT DRINKING DRIVER

Group 3 Council
OPERATION, SAFETY, AND MAINTENANCE
OF TRANSPORTATION FACILITIES

Jerome W. Hall, *Chairman*
Group 3 Council
University of New Mexico
Albuquerque, New Mexico

COMMITTEE ON ALCOHOL, OTHER DRUGS, AND TRANSPORTATION
Barry M. Sweedler, *Chairman*
Carol Lederhaus Popkin, *Secretary*

Marcelline Burns
William E. Collins
Grady C. Cothen, Jr.
Kurt M. Dubowski
James Hedlund
Ralph Hingson
Hans Laurell
Roy E. Lucke
Adrian K. Lund
Susan E. Martin
A. J. McLean
Judy Z. Meade
James F. O'Hanlon
Raymond C. Peck
David F. Preusser
Laurence Ross
Stephen M. Simon
Herbert M. Simpson
Anthony C. Stein
Lawrence R. Sutton
Maria E. Vegega
Evelyn Vingilis
Robert B. Voas
Alexander C. Wagenaar
Elizabeth Wells-Parker
Jean R. Wilson

Richard Pain, Transportation Research Board Staff

Subscriber Category
IVB safety and human performance

Transportation Research Board
National Research Council
2101 Constitution Ave., N.W.
Washington, D.C. 20418

Ignition Interlock of West Virginia
Statistics
July, 1993 -- August, 1995

		Installations	Completed Program	Applicants
1993				
	July	45	0	
	August	35	0	
	September	27	0	
	October	19	0	
	November	21	0	
	December	24	0	
	Sub-Total	171	0	181
1994				
	Janurary	17	5	
	Feburary	22	3	
	March	24	1	
	April	26	2	
	May	29	5	
	June	33	5	
	July	35	44	
	August	43	31	
	September	37	19	
	October	32	17	
	November	26	23	
	December	36	22	
	Sub-Total	360	177	438
1995				
	January	36	17	
	February	32	21	
	March	39	21	
	April	38	16	
	May	37	25	
	June	55	28	
	July	43	38	
	August	49	32	
	September	41	45	
	October	69	35	
	November	40	43	
	Sub-Total	479	321	579
	TOTALS	1010	498	1198

The following are a sampling of Judicially directed programs.

1. **TEXAS.** Effective September 1, 1995, the courts are required to order interlock as a condition of bond, community supervision and occupational licenses for all 2nd or greater offenders. Texas has no administrative per se law. The community supervision program is Texas' probation system and courts have wide latitude to grant occupational licenses. **Prior to the law there were 2000 clients on interlock and when fully implemented this state could have 25,000 people on interlock.** Courts are wrestling with the issue about whether they have the authority to select vendors or have to give offenders a choice to install any approved device. The law is silent.

2. **OHIO.** Ohio has a very short duration administrative license revocation and impoundment law for repeat offenders. Court have wide latitude to grant restricted licenses and have the legislative discretion, (not a mandate) to require interlock. **There are 1500 people on interlock programs. 1000 on LifeSafer and 500 on Guardian.** Again several jurisdictions want to select vendors but the law has been interpreted to allow the client to choose any approved device.

3. **CALIFORNIA.** In July of 1993, the state passed the first mandatory interlock law for all 2nd or greater offenders to install devices within 30 days of conviction. The law is in direct conflict with the administrative per se law that requires one year minimum hard revocation. **To date less than 3% of the 85,000 repeat offenders each year have installed an interlock device.** The main problem is that judges cannot grant restricted licenses and view ordering the device as conferring an illegal privilege to drive. Of the offenders actually ordered 4 out of 5 transfer title to their vehicles to avoid the installation. The law needs to give judges the authority to grant a restricted licenses superseding the admin per se law.

4. **NEW YORK.** A pilot program law was passed in 1988 to allow probation to request a minor reduction in the mandatory revocation for 3rd or greater offenders if they installed an interlock device. There are no real incentives in the New York law for clients to participate and resistance to even implanting a program has been strong. **In 8 years less than 200 people have installed interlocks in the state.** There has been discussion about a major rewrite of the interlock law in the state at the administrative levels, including the Governor's office, Probation and Parole and the DMV.

5. **VIRGINIA.** A statewide program went into effect, July 1, 1995, granting judges the discretion to order interlock restricted licenses for all classes of DWI offenders with interlock required. **The program will be administered and monitored on a centralized basis through the state's specialized DWI probation system: ASAP. Stated goal is 15,000 interlock restricted licenses issued each year.** Contact Mr. William T McCollum, Executive Director ASAP. 1-804-786-5895.

5. **ILLINOIS. 1994.** 400 clients. After serving a revocation period, completing alcohol treatment and providing proof of abstinence, selected repeat offenders are offered a restricted interlock license for a minimum of one year. **The state divided the state into 4 regions and approved 4 vendors: LifeSafer, CST, AutoSense and Guardian. Each vendor must transmit data electronically and the state has developed its own in-house interlock-management data base.** Contact: Jim Martin-Illinois Interlock Coordinator at 1-217-744-1409. The interlock program is being limited to only offering this restriction to 10% of the very worst group of repeat offenders and should be required for all repeat offenders.

6. **FLORIDA. 1993.** 100 clients Similar program like Illinois. However, is a pilot program that may be expanded statewide. Currently utilize LifeSafer, but there is no contract awarded. **There has been a major review of both interlock and the mandatory treatment programs in the state that includes client surveys which may provide useful insight.** Contact: Ms. Sandra Lambert, Director Management and Planning Services, DHSMV, 1-904-488-4300.

7. **NORTH CAROLINA. 1989.** 300 clients. Implemented a discretionary reinstatement program for repeat DWI offenders after serving two years of mandatory revocation. **This program was implemented without the need for passage of legislation specifically authorizing its use.** Currently use an older version of Guardian Interlock that does not meet NHTSA standards. The program and technology is provided through an independent company, Monitech. I do not have a state contact. Contact: Mr. Jerry Mobley at Monitech, 1-919-781-4246.

8. **WEST VIRGINIA. 1993.** 500 clients. Have a statewide restricted licensing program for all classes of DWI offenders like Alberta and Colorado. Have collected data on recidivism. **Utilize the LifeSafer MIS system which in addition to electronic data reporting provides an interactive client data base for report generation and client look-up activities for efficient time-management of the program.** Contact Mr. Dave Bolyard-WV-DMV, 1-304-558-2723.

9. **MARYLAND. 1993.** 500 clients. Similar to Illinois, multiple-offenders after serving a revocation period, completing treatment, documenting abstinence and completing a hearing before a medical advisory board are granted interlock restricted licenses for a minimum of 12 months. **Most importantly, licensee's are randomly assigned interlock or no interlock and study is being conducted on the effectiveness of interlock.** Clients can choose from a list of approved vendors which includes Guardian, LifeSafer and ASI. Contact: Ms. Valerie Serio-MD. MVA, at 1-410-768-7522.

9/21/95

The following are the key administratively-DMV managed interlock programs and a brief synopsis of the program and issues.

1. ALBERTA. 1990. 700 clients. Allows for reduction in revocation to statutory minimum with interlock restricted license available for a minimum of 6 months for first DWI and minimum of 12 months for 2nd or greater. They have collected good data and have been very instrumental in driving technology and guidelines for program management. They now utilize a fuel cell technology through contract provided by Guardian Interlock of Canada. Contact: Mr. Brian Bolin-Alberta Driver Control at 1-403-427-0937.

2. OREGON. 1988. 1500 clients. Requires interlock as a condition of reinstatement of the license after serving a one year hard revocation. (6 months for 2nd offenders and 18 months for multiple offenders). Currently, the largest administrative program. Recently upgraded to NHTSA level technology. Data collection is unknown. Utilize technology through contract provided by Guardian Interlock Systems, (This is a different company and product than Guardian Interlock of Canada). Contact: Pete Nunnenkamp-DMV at 1-503-945-5090.

3. COLORADO. 1995. Begins October 1, 1995. Statewide program that allows for interlock restricted license for all classes of DWI offenders with significantly-reduced revocation period. Unique is that interlock is required for twice the length of the reduced suspension period. Currently utilizing LifeSafer for a limited number of clients in their pilot program. Expect 3,000 clients when fully implemented. Interesting is how a DWI task force was formed and agency-supported to pass the legislation authorizing the interlock program. Contact: John Duncan, Assistant Director DMV, 1-303-572-5652.

4. IOWA. 1988. 1000 clients. Until July of 1995, this state allowed a work permit for repeat offenders. The implementation of the administrative revocation law, (requiring a mandatory one year revocation), effective July 1995, eliminates this program. New legislation allows interlock work permits for 1st offenders for five months. New law highlights the major issue preventing widespread use of interlock for repeat offenders: Current Federal 408 highway safety grant moneys have no provisions for interlock restricted licenses and require mandatory one year revocation for repeat offenders. The client chooses from a list of approved vendors, currently includes; LifeSafer, CST and AutoSense. Contact: Mike Rehberg-IA-Dept of Transportation, at 1-515-239-1111.

Figure 3 provides the same information for crash involvements of licensed and unlicensed DUI offenders. Once again there is relatively little difference between the unlicensed first and multiple offenders. However, there does appear to be a tendency for the multiple offenders with valid licenses to have more crash involvements than do the reinstated first DUI offenders. As before, the largest difference is between the licensed and suspended groups. The number of crash involvements for the reinstated drivers is three times higher than for those offenders who remain suspended. In considering the differences in crash and in citation frequency between the suspended and licensed drivers it should be kept in mind that more of those in the suspended as compared to the reinstated group may have left the state or died (events generally not recorded on the driver file) so that the relationships shown probably exaggerate the effectiveness of suspension. Further, those who go to the trouble of reinstating their licenses and pay the increased insurance costs are likely to be those that drive most and have the greatest exposure to crashes. Finally, suspended drivers may avoid reporting crashes to avoid being charged with driving while suspended.

An important question regarding the effectiveness of the DUI enforcement effort is whether it is successful in reducing crash involvements among drinking drivers. Since many if not most heavy drinkers are never arrested for DUI, it is not possible to identify the whole at risk heavy drinker group. However it is possible to look at the prior as well as the post conviction records of those who are apprehended for DUI and determine whether there was a reduction in frequency in the traffic citations and crash involvements for these groups. Figure 4 gives three year before and after trends in proportions of drivers with moving violations separately for all first and multiple DUI offenders. For first offenders there is a slight increase in citations as the year of the DUI event approaches. In the three years following the year in which the DUI citation was received the violation frequency declines by about a third. For multiple offenders there is a similar rise in violation frequency as the year of the second or multiple offense approaches and then a more dramatic (two thirds) decline in the years following the year of the index conviction.

Figure 5 provides the same type of trend data for crashes for all first and multiple offenders. Once again there is some evidence of a build up of crash involvements as the year of the index DUI approaches and a reduction (more dramatic for the multiple offenders) in the three years following the year of the index offense. This suggests that the suspension of the license which results from the apprehension (Oregon has an administrative licenses revocation law) or conviction for DUI is successful in reducing crash involvements of these high risk groups. The large differences in the moving violation and crash involvement frequencies between violators who are reinstated and those who remain suspended suggests the need for either longer license suspensions or some method such as the use of alcohol safety interlock systems in the offenders vehicles to continue to monitor their driving after they are reinstated.

Part of the change seen in Figures 4 and 5 is due to reduced exposure of drivers who are suspended. Figures 6 and 7 present similar data for only those drivers who were fully licensed in the year indicated. As can be seen, the percentage of drivers with crashes is highest in the first full year of reinstatement. This further emphasizes the potential utility of interlock devices on the vehicles of reinstated DUIs.

Unlicensed Driving by DUIs - A Major Safety Problem?

by

Robert B. Voas and A. Scott Tippetts

National Public Services Research Institute

8201 Corporate Drive, Suite 220

Landover, MD 20785

December 31, 1993

The principal sanction for the Driving Under the Influence (DUI) offense is suspension of the license to drive. Extensive research in California, Washington and North Carolina among other states has demonstrated that while suspended drivers continue to operate their vehicles they appear to drive less and more carefully with the result that they have fewer crashes and fewer traffic offenses. The most frequent cause of license loss is the DUI offense and lack of financial responsibility (FR) due to failure to be insured. A large number of the FR suspensions are the result of a previous DUI which resulted in a large increase in insurance premium which the offender is unable to pay when he is eligible for reinstatement. As a result from half to two thirds of suspended DUI offenders fail to apply for licenses when they become eligible for reinstatement.

In a previous paper on this topic we presented data indicating that in the states of Washington and Oregon over half of the DUI offenders suspended during the last four years remained suspended at the end of the four year period. This paper presents an extended analysis of these data on first and multiple DUI offenders in the state of Oregon from 1987 to 1990 (see Table 1). An example of the extended period of suspension experienced by those convicted of DUI is provided by Oregon drivers convicted of DUI in 1987. Figure 1 presents the license status of first and multiple DUI offenders convicted in 1987 on the first of January of the four years following their DUI offense. Two thirds of the first offenders were suspended in January of 1988. This proportion declines in the second year and remains constant over the next two years. In January of 1991 over half remain suspended. Eighty eight percent of the multiple DUI offenders are suspended in January of 1988 following their second or multiple conviction. This proportion decreases by fifteen percent over the next three years leaving over seventy percent still suspended four years later in January of 1991.

As is well known operators who are suspended continue to drive and therefor continue to experience accidents and accumulate violations. Figure 2 provides the number of moving violations per hundred drivers for each full year following the year in which the offender was arrested for DUI. Four separate graphs are shown for licensed and unlicensed first and multiple offenders. As can be seen there is little difference between the three year trends for first and multiple DUI offenders. However, there is a very large difference within each group in the number of offenses experienced by licensed as compared to unlicensed drivers. The frequency of citations for those who have been reinstated and are validly licensed is six times higher than those who remain suspended.

Recently, Marques and Voas (1994) have suggested integrating a case management system with an interlock program. A test of this concept will begin later this year in Alberta, Canada. This procedure provides that following a 1 year suspension, multiple DUI offenders can enter an interlock program. The program includes treatment, installation of the interlock, and interviews with a case manager each month at the time the interlock unit is read and serviced. Participation in the program allows the offender a limited license to drive instead of an additional year of full suspension. The case manager will have the results of diagnostic measures collected during the treatment program. Thus, the case manager will be in a position to refer the client to a broad range of health and social services to support recovery from the alcohol/drug problem that produced the license suspension. The information from the interlock data recorder assists in this process by highlighting the problems that the client may be having in maintaining sobriety, thereby allowing an early intervention by the case manager. This procedure appears to provide a model by which a Department of Motor Vehicles responsible for ensuring treatment attendance and managing an interlock program can combine the two successfully.

Require drinking drivers who have multiple offenses or are arrested with very high BACs to participate in a rehabilitation program of adequate duration and intensity and that includes frequent monitoring. Consequences should be imposed for failure to comply with the rehabilitation program.

Analysis of previous research on the effectiveness of rehabilitation programs for impaired driving offenders indicates that, overall, programs have a modest effect on reducing incidence of alcohol-related driving recidivism and crashes (7- to 9-percent decrease). This effect is smaller for "severe" or "high problem" drinking drivers (the definitions of these terms varied from study to study) (Timken et al. 1994). More intensive programs involving incarceration combined with treatment and frequent followup monitoring have been found to have more marked effects (Voas and Tippetts 1994). It is possible that improved techniques used in programs could increase the effectiveness of rehabilitation, but evaluations have not yet been carried out to measure the effects. More research is needed to determine the components and length of the optimum rehabilitation program. As discussed in earlier sections of this report, licensing sanctions have the best proven record of effectiveness. Therefore, it is important that rehabilitation be combined with license sanctions for all convicted offenders. In addition, research suggests that strategies combining some education and therapeutic interventions along with followup monitoring (usually through probation) are more effective than education and therapy alone or monitoring alone.

A promising, but as yet unevaluated, treatment mode described in the background paper by Timken et al. Appendix C. This model combines incarceration, vehi immobilization, and license restraint in a year-long treatm program. The treatment includes cognitive restructuri behavioral skills building, relapse prevention, and community reinforcement approach originally developed Hunt and Azrin (Azrin et al. 1982).

Drivers involved in alcohol-related crashes, even th who are not charged with impaired driving, also should considered as candidates for rehabilitation. Physicians a emergency medical facilities could screen and refer su patients to appropriate programs. This concept has be recommended by the Ontario (Canada) Medical Associati (OMA) (OMA 1994).

Evaluate victim impact panels fully to determine th effects on the persistent drinking driver.

Courts in a growing number of states are sentenci DWI offenders to attend victim impact panels, usually a requirement of probation. As many as 200 counties in states now hold panels, bringing groups of offenders togeti with victims or their family members.

The results of these panels have not been evalua rigorously, but data are available from a number of progra There seems to be some evidence that attendance at th panels may reduce recidivism and results in behavior chan The background paper by Anne Russell found in Appendix reviews the results of programs in Dallas, Texas; Washingt and Klackamus counties, Oregon; and Portage County, Oh More extensive evaluation of victim impact panels curren is being conducted by NHTSA and the National Institute Alcohol Abuse and Alcoholism. If the results of the ongoi studies are positive, these panels should be more widely us

Alternative sanctions need to be evaluated further determine the potential role they play in deterring t persistent drinking driver.

With jail overcrowding becoming a national problem number of alternative sanctions to incarceration have receiv considerable attention. These include intensive supervisi probation, boot camps/shock incarceration, day reporti centers, day fines, and house arrest. Some have be suggested as countermeasures for dealing with the persiste drinking driver. The evaluations conducted to date on the alternative sanctions have either found no measurab reductions in recidivism or have not been conducte appropriately to answer the question of how effective th might be for the persistent drinking driver.

An evaluation is currently being conducted for NHTS on an intensive supervision probation program, an electron monitoring/home detention program, and a weeker intervention program. It is hoped that this evaluation wi

Research evidence indicates that each of these strategies can have a traffic-safety impact. The degree to which the persistent drinking driver is particularly affected by these strategies is not known. It seems likely, however, that these drivers would be likely to be influenced. The degree to which these strategies affect the persistent drinking driver is an area that could benefit from further research. (For more information, see Hingson's background paper in Appendix C).

Take steps to control the geographic density of alcohol outlets and the number of outlets per capita.

Gruenewald et al. (1993) have reported that the greater the geographic spread between people and outlets and the lower the ratio of outlets to people, the lower the observed sales of alcohol. A state-level 10 percent increase in outlet density results in a 4 percent increase in sales of spirits and a 3 percent increase in sales of wine. Research by Rush and colleagues (1986) and Watts and Rabow (1983) suggests the greater physical availability of alcohol is related to higher arrest rates for public drunkenness and drunk driving.

Dull and Giacopassi (1988) examined alcohol control regulation (wet versus dry) and outlet density in 95 counties of Tennessee. After analytically controlling for population size, percent change in population, urbanization, and percent nonwhite, they found both outlet density and absence of restrictions on alcohol sales were associated with increased motor vehicle mortality.

Whereas the effect of changes in density on the persistent drinking driver, in particular, is not known, it seems likely that controls on density would have an effect on this group. (For more information, see Hingson's background paper in Appendix C.)

Targeted media campaigns designed specifically to affect the persistent driver should be attempted and evaluated.

Two types of media campaigns appear to be particularly promising. First, publicity to heighten awareness of enforcement campaigns and the potential consequences of violating the law has repeatedly been shown to increase the effectiveness of enforcement (Atkin 1988; Voas and Hause 1987; and Atkin et al. 1986). Second, media campaigns that provide motivation and models for intervention by significant others (e.g., wives and girlfriends) into the behavior of high-risk drinking drivers have been shown in formative research to be promising as an approach to reach this population. (For further details, see Isaac's background paper in Appendix C.)

Treat first offenders with extremely high BACs (e.g., above .20 percent) as repeat offenders, both with respect to punitive sanctions and rehabilitation.

There are two reasons for implementing this strategy. First, the risk of a crash becomes much greater at high BACs. For example, a driver with a BAC of .08 is estimated to have a nine-times greater probability of involvement in a crash than a driver with no alcohol. A driver with a BAC at or above .15 has a risk of crashing 300 to 600 times greater (Zador 1991). Thus, driving with high levels should be treated as a very serious offense. Second, driving with an extremely high BAC indicates that the offender has a high alcohol tolerance and hence is likely to be a severe problem drinker. Therefore, penalties should be applied that help to prevent the offender from drinking and driving in the future through license and vehicle sanctions. In addition, the offender is likely to need significant treatment for the alcohol problem. A two-level system of penalties tied to BAC level has been implemented in some Scandinavian countries for many years.

Consider requiring vehicle interlock devices as a condition of probationary driver's license reinstatement for repeat offenders. Combine use of interlocks with treatment and periodic monitoring. Interlocks should *not* be used as a substitute for license revocation or suspension.

The higher crash and offense rates demonstrated by reinstated DUIs (Voas and Tippetts 1994A) suggests the need for a transitional system that will reduce the crash risk of those returning to licensed status. The alcohol safety interlock system is being offered in some states (California and West Virginia, for example) as a means for offenders to return to licensed status following a minimum period of full suspension. In theory this system provides a number of potential benefits. The offender is allowed to use the vehicle for vocational purposes while the public is protected from being victimized in an alcohol-related crash. Strong evidence for the effectiveness of the interlock [illegible] perhaps, the programs that have been evaluated to date have been managed through the courts. Courts generally lack the personnel and resources to administer the programs properly (EMT Group 1990; Marques and Voas 1993. See, however, Elliot and Morse 1993; Jones 1993; Collier 1994). Assigning responsibility for program administration to the state motor-vehicle licensing agencies should improve the programs' application and, provide evidence of their effectiveness.

House Judiciary Committee
February 15, 1996

Testimony
House Bill 3038

Good Afternoon, Chairman O'Neal and Members of the Committee,

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association.

In December of 1995, our Association established a legislative platform for the 1996 Legislative Session. Our Association resolved not to support any further expansion of the inter-lock devices in the State of Kansas for those individuals who have been convicted of DUI or other alcohol related offenses.

The inter-lock program has been around for a number of years and to the best of our knowledge, only approximately 100 offenders had taken advantage of this program on a voluntary basis. This number alone was not enough for us to measure the effectiveness of the inter-lock program in regard to highway safety.

Therefore, on an unanimous vote, our Association chose not support any inter-lock legislation for the 1996 session.

Respectfully,

Gene Johnson

Gene Johnson
Legislative Liaison
Kansas Community Alcohol Safety Action Project Coordinators Association

House Judiciary
2-15-96
Attachment 19

STATE OF KANSAS

E. Dean Carlson
Secretary of Transportation

KANSAS DEPARTMENT OF TRANSPORTATION
Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095

Bill Graves
Governor of Kansas

TESTIMONY SUBMITTED TO HOUSE JUDICIARY COMMITTEE

REGARDING HOUSE BILL 3038 USE OF IGNITION INTERLOCK DEVICES IN DUI OFFENSES

February 19, 1996

Mr. Chairman and Committee Members:

Mr. Chairman and members of the committee, I am Rosalie Thornburgh, Bureau Chief of Traffic Safety. On behalf of the Department of Transportation, I am submitting testimony on House Bill 3038 regarding the enhanced use of ignition interlock devices for DUI offenders.

The agency is not opposed to the use of ignition interlock devices. However, the proposed use of such devices as a replacement for current license suspensions does cause the Department some concern. The specific proposal causing this concern involves the reduction of license suspension periods for second and third offenses to 60 and 90 days, respectively. Years of study have shown that full license suspension is the most effective countermeasure for reducing crash involvement of DUI offenders. However in the twenty-five years of the highway safety program, many strategies have been used to reduce the public risk of the drinking driver. As of August 8, 1995, thirty-four states had enacted some form of ignition interlock laws. In most cases, these laws have been an addition to, not a substitute for, the current penalties for a DUI offense.

Although ignition interlock devices have been in use for some time, the development of reliable interlocks is relatively new. Hence, research to determine their effectiveness is sparse. The studies, to date, all lack random assignment, and consequently, it is difficult to isolate the effects of interlock from other intervening influences. In conversations with the Washington D.C. staff of the National Highway Traffic Safety Administration, findings to date suggest that while the interlock is on the vehicle it serves to reduce recidivism. However, it appears that the interlock does not serve to change the long-term behavior patterns of drinking drivers. Once the interlock is removed, the offender reverts to a high-crash-involvement rate.

House Bill 3038
House Judiciary Committee
February 19, 1996

In a "Report to Congress," Compton (1988) concluded that because "there was not enough evidence that the devices are effective, it is not appropriate for the devices to be used in lieu of other sanctions that have evidence of beneficial effects (e.g., suspension); however, use of this technology as an additional condition of probation or for reinstatement of a restricted driving privilege does appear appropriate."

A study is underway in the State of Maryland, sponsored by the Insurance Institute of Highway Safety, which will employ a scientific random assignment of interlock devices and which should give us a good evaluation of the effectiveness of the ignition interlock device. The State of Illinois embarked on a pilot study last summer.

The committee should be applauded for their record of passing sound DUI legislation and their interest in pursuing the viability of ignition interlock as an effective countermeasure against drinking drivers. Improvements to administrative and monitoring regulations by the Department of Revenue could provide future evaluation needed to determine if the ignition interlock device is as effective a countermeasure as license suspension.

In summary, based on the studies to date, the interlock device appears to be a potentially useful countermeasure to address the problem of drinking and driving and clearly supports the growing interest in continued experimental programs to determine the effectiveness. However, until such time that sound evaluation is available, it would appear that maintaining current law on license suspensions is the better countermeasure.