

# NATIONAL TRANSPORTATION SAFETY BOARD

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## SAFETY RECOMMENDATION(S)

H-84-90

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Drunk driving, and particularly repeat offense drunk driving, is one of the most difficult aspects of this country's highway safety problem. In 1983, there were about 38,000 fatal motor vehicle accidents, which killed 42,600 persons. A National Highway Traffic Safety Administration (NHTSA) study indicates that the alcohol involvement in these fatal accidents may be as high as 65 percent. NHTSA has estimated that 30 percent of the 773,000 drunk driving convictions each year are of "repeat offenders." 1/

Highway safety professionals have been concerned for decades about the highway fatalities and injuries due to drunk driving. Recently, grassroots organizations such as Mothers Against Drunk Driving (MADD), Remove Intoxicated Drivers (RID), and Students Against Drunk Driving (SADD) have heightened public attention to the problem. Many Governors have appointed task forces on drunk driving, and in 1982, President Ronald Reagan appointed a Commission on Drunk Driving to examine the problem. The Commission held hearings on drunk driving issues, and in November 1983, issued its final report to the President. The Surface Transportation Assistance Act of 1982 provided for incentive grants to the States to encourage improvements in traffic safety programs directed at drunk driving.

In September 1983, the National Transportation Safety Board began a Safety Study to document and highlight the flaws in the enforcement, judicial, and treatment systems which contribute to the persistence of this problem. It is based on a literature search, research, and accident investigations conducted by the Safety Board's Atlanta, Chicago,

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1/ "Repeat offender" refers to a person arrested more than once for drunk driving.

Denver, Fort Worth, Los Angeles, and Kansas City field offices. The Safety Board investigated 50 accidents involving drunk drivers as a part of this study. Of these, 45 were fatal accidents, involving 73 fatalities. The 56 drunk drivers in these accidents had accumulated 164 arrests for offenses involving alcohol, including 131 for DWI; they also had at least 124 convictions for alcohol-related offenses, including at least 93 for drunk driving. 2/

NTSB investigators reviewed State alcohol education and treatment systems in 10 States. 3/ Local enforcement systems 4/ and local judicial systems 5/ were probed in selected counties and four cities within these States. In addition, the statewide enforcement system for two of these States 6/ and the State judicial system in one State 7/ were reviewed.

Finally, the Safety Board interviewed 40 convicted drunk drivers with previous alcohol-related convictions, seeking their views on what events might have been handled differently at the time of their first encounter with an alcohol-related offense to influence their behavior and perhaps prevent additional offenses. The interviews were conducted while offenders were in treatment, on probation, in jail, or after the sentence was completed.

#### Educating Judges

Those familiar with the State and local court systems agree that many judges lack the training necessary to permit them to adjudicate drunk driving cases in a way that helps to reduce this problem and to do justice to the interests of both the offender and the public. The Presidential Commission on Drunk Driving commented in its final report:

It should be kept in mind that the public, and not only the defendant, has certain rights. Thus, the judiciary plays a vital role in discouraging driving under the influence. There are about 21,000 judges hearing traffic cases in the nation's 17,000 courts. 8/ [DWI] cases constitute a substantial portion of their caseload. Nonetheless, most of these judges have had little formal training in either the adjudication of these cases or in alcohol use and traffic safety. All too often, the judiciary fails to view driving under the influence as a serious offense meriting certain, swift, and appropriate punishment. 9/

2/ For more information read, "Safety Study: Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Drunk Drivers" (NTSB/SS-84/04).

3/ California, Colorado, Georgia, Illinois, Kansas, Missouri, North Carolina, Utah, Washington, and West Virginia.

4/ Adams County, Colorado; Hermosa Beach, Los Angeles, and Manhattan Beach, California; Gwinnett County, Georgia; Kanawha County, West Virginia; Kansas City, Missouri; King County, Washington; Raleigh, North Carolina; and Salt Lake City, Utah.

5/ Dupage County, Illinois; Gwinnett County, Georgia; Johnson County, Kansas; Kanawha County, West Virginia; Kansas City, Missouri; King County, Washington; Los Angeles, California; Raleigh, North Carolina; and Salt Lake City, Utah.

6/ Illinois and Kansas.

7/ Colorado.

8/ The American Bar Association estimates that about 6,000 judges handle the bulk of these cases. However, given the relatively high rate of turnover among these judges, ensuring that they are appropriately trained in DWI adjudication is a fairly formidable task.

9/ Presidential Commission on Drunk Driving, Final Report, 1983, p. 16.

The Commission noted that "new judges . . . are generally assigned to the trial of DWI cases. They should receive entry level and annual in-service training in the trial of such cases, and in alcohol abuse and in its relation to highway safety." 10/

Most State judges are afforded judicial training at the State level, and training is available at a national level. However, there are a number of obstacles that stand in the way of assuring that judges actually receive adequate training. Our court systems are generally so overburdened by their case backlogs that it is difficult for a judge to take a significant amount of time away from his or her courtroom for training. If a judge does find time for training, he or she is faced with the need to study in an enormous range of subjects, since most courts are of general jurisdiction, and not limited to a particular type of offense, such as traffic offenses. Even in courts of limited jurisdiction, such as traffic courts, a judge must have a wide range of legal expertise in order to perform well. Many courts are further hampered by inadequate funds to pay for thorough training programs, especially at the national level. In those jurisdictions which have limited jurisdiction courts, there often is a problem with turnover, since most judges prefer to handle other types of cases.

A 1981 survey found that only 2 States require some form of mandatory training for new judges, 17 States hold annual mandatory judicial conferences, and 26 States have mandatory continuing judicial education programs. 11/ Although each State sets its own standards, the American Bar Association (ABA) adopted Standards for Education and Training of State Trial Judges at its 1982 annual meeting. These standards address the goals, planning, development, administration, curriculum, faculty, and other aspects of States' training programs. Among the areas of emphasis which the standards mention are:

- Comprehensive educational training for new judges designed to acquaint them with major legal subjects and skills for everyday use on the trial bench;
- Periodic evaluation and training for all judges on the substantive procedural and evidentiary laws of the State;
- Advanced or specialized programs, attended by judges not less frequently than every three years, which stress detailed examination of specific judicial concerns;
- Continuing education and programs directed to new developments, both procedural and technological; and
- Independent learning opportunities for judges. 12/

Likewise, the National Advisory Commission on Justice Standards and Goals has proposed a standard on judicial education. Although less specific than the ABA standard, it calls for every State to create and maintain a comprehensive program of continuing mandatory judicial education. Education on alcohol-related issues or DWI adjudication is not specifically mentioned in either of these standards. However, the standards do call for specialized subject matter programs, which might include DWI adjudication.

10/ Presidential Commission on Drunk Driving, *op. cit.*

11/ American University Criminal Courts Technical Assistance Project, Survey of State Mandatory Judicial Education Requirements, cited in American Bar Association, National Conference of State Trial Judges, Standards for Judicial Education, August 1982.

12/ ABA, *op. cit.*, Standard 3.B.

Virtually every State court system has a judicial education administrator who is a part of the administrative office of the court. These officials are responsible for carrying out the education of a State's judges. In addition, there are State judicial organizations and professional associations which sponsor annual judicial conferences, often a significant source of judicial education. Traffic safety issues are only one of many competing topics which must be covered in the training, and therefore, often do not receive in-depth attention. The Safety Board identified only one State, Florida, with a judicial education program directed specifically at traffic courts.

In addition to the programs in individual States, there are training resources available to judges on a national basis. The National Judicial College offers an intensive week-long seminar on alcohol and drugs which addresses the handling of substance abusers in the judicial system, from initial identification through referral, monitoring, and followup. However, this workshop has been attended by only 600 judges to date.

The American Academy of Judicial Education (Academy), in conjunction with the NHTSA, has developed a model traffic law adjudication curriculum for use by judges and judicial educators. The curriculum includes training in alcohol pharmacology; DWI trials and sentencing; habitual, suspended, and revoked offenders; traffic case information and proof requirements; and other legal and technical issues related to traffic law adjudication. According to the NHTSA and the Academy, 2,050 judges in about 45 jurisdictions have received training under this curriculum between 1980 and 1983.

In order to reach a larger number of judges, the NHTSA is developing a self-taught home study course on DWI adjudication for both judges and prosecutors. It is hoped that this will enable judges who are now bound by time and resource constraints to receive training. In addition, it hopes to prepare a bench book which can serve as a reference tool for judges during the course of a DWI trial. These measures also will help to address the problems caused by the high rate of turnover among judges who hear traffic cases. Constraints imposed by the set schedule of outside training courses are avoided by the home study approach, and jurisdictions will be able to avoid expending major resources on an individual judge who might be on the bench for only a short time before moving on to other types of cases.

The NHTSA also has provided two forms of support to address the resource problems which States face in providing DWI-related training to judges. The first involves a technical assistance grant to the Academy which enables it to organize and administer training programs in the States and to tailor the traffic law adjudication curriculum to a particular State's laws and procedures. The second involves providing Federal highway safety funds to finance judicial education programs at the State level and to pay for training such as that offered by the National Judicial College. However, while helpful, these resources will not totally alleviate the problems faced by the States in providing adequate training to their judges.

It is the Safety Board's view that the States and judicial and professional organizations within the States should give greater attention to the provision of alcohol-related and DWI adjudication training for judges, including the handling of the more difficult repeat offender cases, since in many courts DWI cases make up a large and growing portion of the docket.

The National Transportation Safety Board recommends that the American Bar Association, the National Association of Judicial Educators, and the National Judicial State College:

Work with State governments, State judicial organizations, and the National Highway Traffic Safety Administration to vigorously promote initial and recurrent training for judges in alcohol issues and DWI case adjudication and to develop more sources of funds for financing this training. (Class III, Longer-Term Action) (H-84-90)

The National Transportation Safety Board is an independent Federal agency with the statutory responsibility "...to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations" (P.L. 93-633). The Safety Board is vitally interested in any actions taken as a result of its safety recommendations and would appreciate a response from you regarding action taken or contemplated with respect to the recommendations in this letter.

BURNETT, Chairman, GOLDMAN, Vice Chairman, and BURSLEY, Member, concurred in this recommendation. GROSE, Member, did not participate.

  
By: Jim Burnett  
Chairman