



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: August 7, 2000

In reply refer to: H-00-27

Honorable Rodney E. Slater
Secretary
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

In the more than 15 years that have passed since the National Transportation Safety Board published *Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers*, efforts have been made by all the States and by Congress to address this major safety problem. However, despite significant progress, the measures taken and the degree of implementation have not been uniform, and 15,794 people died in 1999 from alcohol-related crashes. This number is far above the target set by your office in 1995 to reduce the number of alcohol-related fatalities to no more than 11,000 by 2005. The Safety Board recently completed a review of actions to reduce fatalities, injuries, and crashes involving the hard core drinking driver, a term that, as defined by the Safety Board, includes repeat offender drinking drivers (that is, offenders who have prior convictions or arrests for a Driving While Impaired [DWI] by alcohol offense) and high-BAC offenders (that is, all offenders with a blood alcohol concentration [BAC] of 0.15 percent or greater).¹

The Transportation Equity Act for the 21st Century (TEA-21), enacted June 9, 1998, as Public Law 105-178, authorizes the Federal surface transportation programs for highway safety, highways, and transit and other surface transportation programs for the period 1998-2003. A total of \$2.7 billion is authorized for nonconstruction highway safety programs; approximately \$2.3 billion of these funds are authorized for grant programs. TEA-21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),² which was the last major authorizing legislation for Federal surface transportation programs.

The new act combines the continuation and improvement of ongoing programs with new initiatives. One new incentive program (Section 164) encourages States to strengthen their repeat intoxicated driver laws.³ TEA-21 addresses impaired driving in three sections, two of which address hard core drinking drivers: Section 410 provides for incentive grants to those

¹ For additional information, read *Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver*, Safety Report NTSB/SR-00/01 (Washington: National Transportation Safety Board, 2000).

² Pub. L. 102-240. 18 Dec. 1991. Stat. 105.1914.

³ A State that does not have a law that meets the minimum standards described in the act by October 1, 2000, will have Federal-aid funds transferred from highway construction programs to the State's highway safety or hazard elimination programs.

States that meet the designated criteria and Section 164 authorizes penalties for States that do not meet certain requirements.

Section 410 provides \$219.5 million over 6 years to the States, available through three types of grants: Basic Grants A and B, and Supplemental Grants. States may apply for one or more grants, which are awarded based on the State's implementation of programs to reduce traffic safety problems resulting from individuals driving while intoxicated.

Under Basic Grant A, a State must satisfy five of seven criteria, which include addressing administrative license revocation (ALR), underage drinking, intensive enforcement, sobriety checkpoints, and high-BAC drinking drivers, among other issues.

A State may also qualify for a Basic Grant B by demonstrating a reduction in its percentage of fatally injured drivers with a BAC of 0.10 percent or greater during each of the 3 most recent calendar years for which such statistics are available. The percentage of these drivers must be lower than the national averages for the same 3 calendar years.

States eligible for a basic grant may qualify for a Supplemental Grant by implementing at least one of six programs; the options include a program to reduce driving with a suspended license as well as an effective DWI tracking system.

Section 164 requires the U.S. Department of Transportation (DOT) to penalize any State that fails to enact and enforce repeat intoxicated driver laws. If a State has not met the requirements of Section 164 by the start of fiscal year (FY) 2001, the DOT must transfer 1.5 percent of the State's highway construction money provided under 23 U.S.C. Section 104(b)(1), (3), and (4) to highway safety programs authorized by Federal law. The amount of the penalty will increase to 3 percent in FY 2003.

Section 164 requires mandatory minimum sanctions to be imposed against repeat offenders who are convicted of a second or subsequent DWI offense within 5 years. These mandatory minimum sanctions include license suspension; either vehicle impoundment, immobilization, or installation of ignition interlock devices (IIDs); assessment and treatment; and either confinement or community service.

TEA-21 is a substantial effort by Congress to address the hard core drinking driver problem. By providing incentive grants to States that implement specified countermeasures and penalizing those States that fail to enact certain life-saving alcohol safety legislation, Congress has enlisted States in a national effort to combat hard core drinking driving. However, the Safety Board believes that this legislation could be even more effective. For example, the TEA-21 definition of repeat offender applies only to convictions and does not include offenders who have received only administrative sanctions such as those received under ALR laws. Administratively granted permits, such as driver's licenses, that are administratively withdrawn for DWI offenses should be included in the TEA-21 repeat offender definition.

TEA-21 requires that mandatory minimum sanctions be imposed against repeat offenders who are convicted of a second or subsequent offense for DWI within 5 years of a previous conviction for that offense. All States have enacted laws that define a look-back period for enhancement of a DWI offense to a repeat offense.⁴ These periods range from 3 years (Arkansas, Maryland, and Ohio) in length to the lifetime of the offender (Delaware, Florida, Idaho, Illinois, Indiana, Minnesota, and Vermont). The National Highway Traffic Safety Administration (NHTSA)-operated National Driver Register (NDR) at one time had a records retention period of 3 years. The NDR does not now retain records itself, but refers inquirers to State databases.⁵ NHTSA has recommended that States retain records of major offenses, including driving while impaired by alcohol or other drugs, for 10 years.⁶ Given the low likelihood of arrest and the need for long-term measures to change the behavior of hard core drinking drivers, longer record-retention and look-back periods are needed.

Section 164 of TEA-21 requires States to provide appropriate assessment and treatment for repeat offenders. Pre-adjudication screening may be helpful in assigning offenders effective sanctions, including ignition interlock, impoundment, and intensive supervision probation. Referral to treatment—where an intake assessment, classification, and assignment to treatment modalities may be performed—is also effective if used in conjunction with other sanctions in an individualized sanction process.

Intensive supervision probation, electronic monitoring, and jail treatment (special DWI) facilities appear to be effective in reducing hard core drinking driver recidivism and share a common approach of frequent contact with and long-term aftercare for the hard core drinking driver.

Substance abuse treatment for DWI offenders in the past has resulted overall in a 7- to 9-percent reduction in DWI recidivism.⁷ However, California has found treatment in combination with license suspension and interlocks to be the most effective in preventing such recidivism.⁸

⁴ Personal communication with Bill Holden, Chief, Driver Register and Traffic Records Division, National Highway Traffic Safety Administration, February 4, 2000.

⁵ The National Driver Register is a central repository of information, provided by the States, on individuals whose licenses to operate a motor vehicle have been revoked, suspended, canceled, or denied, or who have been convicted of certain serious traffic offenses such as driving while impaired by alcohol or other drugs. As of 1998, all States and the District of Columbia converted to the Problem Driver Pointer System (PDPS). Under PDPS, the NDR contains only identifying information to check whether an adverse action has been taken against an individual. NDR no longer contains specific information regarding the reason for the adverse action. When a match occurs with a record on the NDR file, the NDR electronically points to the State of record for the adverse action. The State of record retrieves the information and relays it to the State initiating the inquiry for verification and licensing decision.

⁶ The following States do not have a 10-year look-back period: Alaska, Arizona, Arkansas, California, Colorado, Georgia, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, and West Virginia.

⁷ House of Representatives, U.S. Congress, "A Factsheet on Alcohol-Impaired Driving from the Center for Disease Control" Extension of Remarks E952 (Washington: House of Representatives, May 19, 1997).

⁸ Helen N. Tashima and Clifford J. Helander, *1999 Annual Report of the California DUI Management Information System* CAL-DMV-RSS-99-179 (Sacramento: California Department of Motor Vehicles, Jan. 1999) 30, 38.

The California Department of Motor Vehicles noted in its 1999 annual report that a treatment and ignition interlock combination program had a “significantly lower 1-year DUI [Driving Under the Influence] incident rate” than license suspension. Over a 7-year period, treatment and license suspension showed “the lowest re-offense rates...the jail sanction group accumulat[ed] significantly higher rates than the other two [treatment and license suspension groups].”⁹ These findings reinforce the need for assigning DWI offenders not to treatment alone but to a combination of sanctions that include treatment.

The Safety Board believes that treatment of both high-BAC first offenders and repeat offenders should be mandatory and should be imposed in conjunction with sanctions that include vehicle immobilization and ignition interlock. Allowing treatment to be a voluntary option invites its use by defense attorneys as a bargaining tactic.¹⁰ States must use multiple avenues, including treatment, to reduce hard core drinking driving. TEA-21 provisions may need revisions so that all hard core DWI offenders receive appropriate sanctions.

TEA-21 requires that States impound, immobilize, or install IIDs on each of the repeat offender’s vehicles. The immobilization requirement of Section 164 is linked to the conviction of the offender. Based on a review of existing immobilization programs, immobilization should occur at the time of arrest, not conviction, thereby both ensuring that the immobilization will take place and preventing the repeat offender from transferring vehicle ownership. Vehicle sanctions including immobilization and impoundment should be imposed administratively where possible.

TEA-21 mandates a 1-year license suspension period; Section 164 and the NHTSA rule permit the installation of the IID device upon conclusion of this suspension period. However, there is some question whether license reinstatement (after a 1-year suspension) is sufficient motivation for offenders to elect IID installation. Voluntary use and even court-mandated IID installation are limited to 15 percent or fewer of the eligible offenders. Further, even when eligible for license reinstatement, only a small proportion of DWI offenders choose to have their licenses reinstated. Accordingly, IID installation permitted after a shorter period of license suspension might serve as an inducement to the hard core drinking driver to install an IID.

Among the other countermeasures of Section 164 of TEA-21, the repeat offender provision requires that State laws mandate either community service or imprisonment for repeat DWI offenders. Community service for DWI offenders was developed in the 1980s as an alternative to jail because of high jail costs and limited available space. As of January 2000, 10 States have laws providing for community service as an alternative to jail for a first DWI conviction, 16 States for a second conviction, and 7 States for a third conviction.¹¹ While community service may help relieve the problem of limited jail space, existing research has not identified any significant effects of community service on recidivism or crashes.¹² Since community service has no proven effect, the option in TEA-21 permitting its substitution for imprisonment is of concern.

⁹ Tashima and Helander 30.

¹⁰ Tashima and Helander 30.

¹¹ Jones, Wiliszowski, and Lacey 34.

¹² National Highway Traffic Safety Administration, DOT HS 808 365, 8.

As an alternative, home detention with electronic monitoring is an effective countermeasure for reducing DWI recidivism. In its rule implementing section 164 of TEA-21, NHTSA includes home detention in its definition of imprisonment. The rule allows States to give repeat offenders the option of a day-for-day substitution of home detention for jail.¹³ This substitution may not be prudent, in that jail terms for these offenders are already usually short, and even mandatory minimums are not routinely imposed. Home detention with electronic monitoring requires a longer sanction period (the mean electronic monitoring period in Los Angeles was 83 days). States should consider periods of home detention with electronic monitoring that last sufficiently longer than a jail sentence to reduce recidivism.

The Safety Board concludes that TEA-21 might be more effective in assisting the States to reduce the hard core drinking driver problem if it were modified to (a) include a revised definition of “repeat offender” that included administrative actions, (b) require mandatory treatment for hard core offenders, (c) establish an extended period (10 years minimum) for records retention and DWI offense look-back; (d) require administratively imposed vehicle sanctions including interlocks; (e) eliminate provisions for community service as an alternative to incarceration; and (f) provide for the inclusion of home detention with electronic monitoring as an alternative to incarceration.

Therefore, based on the foregoing information, the National Transportation Safety Board makes the following safety recommendation to the U. S. Department of Transportation:

Evaluate modifications to the provisions of the Transportation Equity Act for the 21st Century so that it can be more effective in assisting the States to reduce the hard core drinking driver problem. Recommend changes to Congress as appropriate. Considerations should include (a) a revised definition of “repeat offender” to include administrative actions on DWI offenses; (b) mandatory treatment for hard core offenders; (c) a minimum period of 10 years for records retention and DWI offense enhancement; (d) administratively imposed vehicle sanctions for hard core drinking drivers; (e) elimination of community service as an alternative to incarceration; and (f) inclusion of home detention with electronic monitoring as an alternative to incarceration. (H-00-27)

Chairman HALL and Members BLACK, GOGLIA, and CARMODY concurred in this recommendation.

Member HAMMERSCHMIDT did not concur with this recommendation.

Also, the Safety Board issued one safety recommendation to the Governors and Legislative Leaders of the 50 States and the Mayor and Council of the District of Columbia.

¹³ Robert B. Voas, “The NHTSA Rules on Repeat Intoxicated Driver Laws: An Important First Step to Control High-Risk Drivers,” *Impaired Driving Update* (Spring 1999) 30.

Please refer to Safety Recommendation H-00-27 in your reply. If you need additional information, you may call (202) 314-6175.

By: Jim Hall
Chairman