



Log H-530E

National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: JUL 20 1989

In reply refer to: H-89-8 through -14

Honorable Wallace G. Wilkinson
Governor of Kentucky
Frankfort, Kentucky 40601

Senator John A. Rose
President Pro Tem
State Senate
Room 342, State Capitol
Frankfort, Kentucky 40601

Rep. Donald Blandford
Speaker
House of Representatives
Room 310, State Capitol
Frankfort, Kentucky 40601

About 10:55 p.m. eastern daylight time on May 14, 1988, a pickup truck traveling northbound in the southbound lanes of Interstate 71 struck head-on a church activity bus traveling southbound in the left lane of the highway near Carrollton, Kentucky. The church bus fuel tank was punctured during the collision sequence, and a fire ensued, engulfing the entire bus. The busdriver and 26 bus passengers were fatally injured. Thirty-four bus passengers survived with minor to critical injuries, and six with no injuries. The pickup truck driver sustained serious injuries.¹

Test results on a blood specimen taken from the pickup driver about 1 1/2 hours after the accident indicated a blood alcohol concentration (BAC) of 0.26 percent, which is more than 2 1/2 times the legal limit at which a person is generally presumed intoxicated. With such a high BAC, the pickup driver would have been extremely intoxicated. Considering the average rate of metabolism for ethyl alcohol (0.015 percent per hour) and assuming the pickup driver was in the elimination phase, his BAC would have been 0.28 percent at the time of the accident. However, based on the driver's drinking history, a rate of elimination of 0.015 percent per hour is a conservative estimate of his rate of alcohol metabolism, and his BAC at the time of the collision may have been higher than 0.28 percent.

A witness who had been driving southbound on I-71 9 miles north of the accident site said the pickup truck was being operated erratically. He also said that he passed the pickup truck and a tractor-semitrailer in an effort to keep away from them in case of an accident. The witness had observed the

¹For more detailed information, read Highway Accident Report--"Pickup Truck/Church Activity Bus Head-on Collision and Fire near Carrollton, Kentucky, May 14, 1988" (NTSB/HAR-89/01).

pickup truck cross the median strip north of the accident site, had later observed the pickup truck going northbound in the southbound fast lane, and had tried to alert the pickup driver by blowing his horn and flashing his lights. Two other witnesses who saw the collision said that before the accident the pickup truck was driving northbound in the southbound lanes.

Based on the results of controlled studies of the effects of alcohol on human behavior and performance, the Safety Board believes that the pickup driver's high alcohol level diminished his awareness of his surroundings, his abilities to recognize the extremely hazardous situation, and his ability to avoid the collision. Therefore, the Board concludes that the physical impairment of the pickup driver, as a result of alcohol intoxication, caused the accident.

After the accident, the governor of Kentucky formed a committee composed of various members of the Justice, Transportation, and Human Resources Cabinets to study Kentucky's current driving-under-the-influence (DUI) laws along with those of the States adjacent to Kentucky. A December 12, 1988, letter to the Safety Board from the committee chairman listed some of the committee's recommendations to the Kentucky legislature; these recommendations included:

- Enactment of the illegal per se law;
- Enactment of the administrative per se (administrative license revocation) law;
- Passage of an implied consent law plus an amendment to current law to require suspects to consent to two tests (instead of one test);
- Enactment of one comprehensive license suspension law (currently there are three statutes);
- Overhauling of current education and rehabilitation procedures and adoption of an assessment and educational agenda for the convicted DUI offender and the general public; and
- Development of a standard unified set of laws for administering the breathalyzer test.

On March 27, 1989, the Board received a letter from the governor of Kentucky which stated that the recommendations are to be proposed at the next meeting of the Kentucky General Assembly as legislative and administrative amendments. The Board urges the General Assembly to enact the DUI Committee's recommendations.

In 1984, Kentucky revised its DUI legislation, which the Safety Board believes improved the then existing laws. According to Kentucky accident records, alcohol involvement in fatal highway crashes has declined since 1983 from a level of 46 percent. The largest drop (46 to 41 percent) occurred

between 1983 and 1984 after the passage of the major DUI legislation. However, Kentucky alcohol-related fatalities, after dropping from 365 in 1983 to 315 in 1984 and to 289 in 1985, have started to increase and in 1987 reached 359.

In 1982, 1984 and 1985, the Safety Board issued recommendations to the States, urging the implementation of several specific measures to combat drunk driving:²

- Enactment of an administrative license revocation law (H-84-13).
- Enhanced DUI enforcement methods, including use of programs for citizens reporting of suspected drunk driving, sobriety checkpoints, preliminary breath test devices, and the three-part field sobriety test (H-82-35, H-84-11 and -12, and H-84-77).
- Improvements in the frequency of alcohol testing of drivers involved in fatal accidents and the reporting of test results to a designated State agency (H-85-49 and -50).
- Prohibition of plea bargaining (changing an alcohol-related charge to a nonalcohol-related charge) (H-84-80).
- Prohibition of "diverting" drunk driving offenders into education programs in lieu of license revocation or suspension or other legal sanctions (H-84-85).
- Use of presentence investigation, including evaluation of alcohol dependence (H-84-84).

Kentucky has been generally responsive to Safety Board recommendations concerning citizen reporting programs, testing and reporting of drivers involved in fatal crashes, use of breath test devices, field sobriety tests, sobriety checkpoints, and alcohol evaluations. However, the results of this accident investigation indicate that additional steps must be taken. The areas that need special attention include license sanctions, reduction of penalties for enrolling in driver education or treatment programs, enhanced DUI enforcement, reduction of alcohol-related charges to nonalcohol-related charges (plea bargaining), and presentence investigations.

The Safety Board continues to believe the adoption of administrative license revocation procedures is one of the most effective steps that States can take toward reducing alcohol-related highway crashes. The effects of

²Safety Studies--"Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers" (NTSB/SS-84/04); and "Deterrence of Drunk Driving: The Role of Sobriety Checkpoints and Administrative License Revocation" (NTSB/SS-84/01).

administrative license revocation are two-fold--the licenses of dangerous drivers are revoked more quickly, and the likelihood of receiving a penalty for drunk driving is dramatically increased. The general deterrence benefits of an administrative license revocation program and the reduced recidivism rates among DUI offenders indicate potential for a long-term impact.

Results from States with administrative revocation indicate that adoption of such a measure in all States would be a significant advance in our nation's efforts to deter people from driving after drinking by ensuring a swifter and more certain punishment for those who drink and drive. Therefore, the Safety Board urges Kentucky to adopt administrative revocation legislation.

The Safety Board is not alone in advocating the implementation of administrative revocation laws. The National Highway Traffic Safety Administration and many highway safety experts also support such laws. In addition, passage of administrative revocation laws was one of the main recommendations of the December 1988 Surgeon General's Workshop on Drunk Driving. The Congress also recognized the importance of administrative revocation laws by including in the Anti-Drug Abuse Act of 1988 (Public Law 100-690) (Title IX--The Drunk Driving Prevention Act of 1988) incentive grants to States that pass these laws.

Kentucky's 1984 DUI legislation prohibits plea bargaining when a person's BAC is above 0.15 percent and requires that prosecutors introduce into court records the reasons for reducing charges when the BAC is below 0.15 percent. Even though the Safety Board closed Safety Recommendation H-84-80 to Kentucky based on the State's partial compliance with the intent of the recommendation, we continue to believe that charges of an alcohol-related offense should not be reduced to charges of a nonalcohol-related offense. It leads to reduced penalties for drunk drivers and distorts their records. In Kentucky in 1987, 69.5 percent of those charged with DUI were convicted. However, some part of the remaining 30.5 percent of those charged with DUI had those charges reduced to some other offense. Therefore, the Board urges Kentucky to review what is actually occurring since passage of the 1984 DUI law to determine whether persons charged with alcohol-related offenses are being allowed to plea bargain to a nonalcohol-related offense.

Of equal concern is the provision in the DUI law that a 6-month license suspension may be reduced to a 30-day suspension if the defendant attends a 9-hour alcohol education course. Alcohol Driver Education (ADE) programs can be counterproductive when misused in this way and can reduce the deterrence effect. The pickup driver's license was not revoked after his 1984 DUI offense because he elected to attend the ADE program. Studies have shown that license revocation is more effective in reducing arrest recidivism than education or treatment programs. The Safety Board believes that an education or treatment program should not replace licensing sanctions. If an education/treatment program is to be part of the sentence prescribed by the court, it should be in addition to the licensing sanction and not in lieu of it. The Board urges Kentucky to modify its DUI law to prohibit the practice

of reducing the period of license suspension if an alcohol education course or treatment program is undertaken by a convicted DUI offender.

The Safety Board notes that preliminary breath test devices and the horizontal gaze nystagmus test are used by some police agencies in Kentucky. However, the Board is concerned that the breath test devices and the horizontal gaze nystagmus test are not being employed to a greater extent. The Board, therefore, urges the Kentucky State Police (KSP) and other Kentucky traffic law enforcement agencies to reconsider Safety Recommendation H-84-77 and expand the use of these devices and techniques in their law enforcement operations.

The Safety Board also notes that sobriety checkpoints are used occasionally by the KSP and, on a limited basis, by local police agencies in Jefferson County, Lexington, and Louisville. "Mini-checkpoints" for driver's license checks also are used by the KSP, during which drivers are checked for signs of impairment. The Board believes that the sobriety checkpoint is a key component of an effective DUI enforcement and deterrence program and that it warrants broader application in Kentucky. The Board, therefore, urges Kentucky to expand the use of sobriety checkpoints and to encourage and assist traffic law enforcement agencies at all levels to adopt their use.

Kentucky introduced the "RAPID" (Report a Problem Intoxicated Driver) program about the time the Safety Board recommended such programs to all States (Safety Recommendation H-82-35). The KSP reports that the program has been a success, and statistics made available to the Board appear to support their conclusion. Based on interviews with KSP representatives, the Board was given the impression, however, that the emphasis placed on the RAPID program has waned in recent years, particularly the effort to increase public awareness of this program. The Board, therefore, encourages Kentucky to renew its effort to publicize and to encourage citizens to participate in the RAPID program.

Although the law enforcement programs and procedures for detecting, testing, and apprehending DUI offenders are mostly in place, according to State officials and the KSP, emphasis placed on these programs has diminished over the years. The Safety Board believes that it is extremely important to renew and again focus public awareness and enforcement campaigns against drunk drivers.

Therefore, the National Transportation Safety Board recommends that the State of Kentucky:

Enact the recommendations made by the Driving-Under-the-Influence (DUI) Committee formed by the governor to assess the current DUI laws. These recommendations cover administrative license revocation, illegal per se, implied consent and testing, chemical analysis, suspended licenses, and alcohol driver education. (Class II, Priority Action) (H-89-8)

Amend the current driving-under-the-influence laws to prohibit the reduction or elimination of a licensing penalty if a convicted offender enrolls in an education or treatment program. Participation in these programs should be required in addition to appropriate licensing or other penalties. (Class II, Priority Action) (H-89-9)

Review all aspects of the plea bargaining prohibitions of the 1984 driving-under-the-influence law to determine if persons charged with alcohol-related offenses are being allowed to plea bargain the charge to a nonalcohol-related offense, and if so, take administrative or legislative action to correct the situation. (Class II, Priority Action) (H-89-10)

Expand the use by the Kentucky State Police of preliminary breath test devices and the three-part field sobriety test recommended by the National Highway Traffic Safety Administration, including the horizontal gaze nystagmus test, and urge and assist all other traffic law enforcement agencies in Kentucky to do the same. (Class II, Priority Action) (H-89-11)

Expand the use of sobriety checkpoints by the Kentucky State Police, and encourage and assist local law enforcement agencies to do the same. (Class II, Priority Action) (H-89-12)

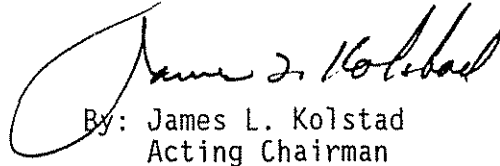
Renew State efforts to publicize and encourage citizens to participate in the "Report a Problem Intoxicated Driver" program. (Class II, Priority Action) (H-89-13)

Expand efforts to make the public aware of increased emphasis on deterring impaired driving. (Class II, Priority Action) (H-89-14)

Also as a result of its investigation, the Safety Board issued Safety Recommendations H-89-1 to the 50 States and the District of Columbia; H-89-2 to the District of Columbia and all States except Kentucky; H-89-3 to various church associations and other special activity groups; H-89-4 through -6 to the National Highway Traffic Safety Administration; and H-89-7 to the Federal Highway Administration.

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" (Public Law 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. Please refer to Safety Recommendations H-89-8 through -14 in your reply.

KOLSTAD, Acting Chairman, and BURNETT, LAUBER, NALL, and DICKINSON, Members, concurred in these recommendations.



By: James L. Kolstad
Acting Chairman

