

Enhanced Sanctions for Higher BACs: Evaluation of Minnesota's High BAC Law



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16. Abstract Thirty-one states provide for enhanced sanctions for DWI offenders with "high" BACs. States vary in terms of the high-BAC threshold (which ranges from .15 to .20), and the types, severity, and complexity of sanctions. On January 1, 1998, Minnesota implemented a law imposing enhanced mandatory minimum administrative and criminal sanctions on offenders with BACs \geq .20. The percentage of first offenders with BACs \geq .20 declined from 16.9% in 1998 to 15.5% in 2000; the percentage of high-BAC repeat offenders declined from 21.0% to 20.4%. The alcohol test refusal rate for first offenders declined from 12.7% in 1997 to 10.5% in 2000; the refusal rate for repeat offenders was about 22% before and after the law. After the law, high-BAC offenders received more severe case dispositions than lower-BAC offenders. In 1998, 85.6% of high-BAC first offenders received enhanced administrative and/or court sanctions; 65.0 percent received both an enhanced administrative and enhanced court disposition. The percentage of high-BAC first offenders receiving enhanced sanctions declined from 1998 (85.6%) to 1999 (77.6%) and 2000 (78.3%), but was consistently about 97% for repeat high-BAC offenders. Based on survival analysis involving first offenders arrested in 1998, the 1-year recidivism rate (controlling for age and gender) for high-BAC offenders was significantly lower than for offenders who refused the alcohol test and for a "comparison" offender group with BACs .17-.19, but was not significantly different than for offenders with BACs $<$.17. There were similar, but not significant, effects of alcohol test results on 2-year recidivism rates for 1998 first offenders and 1-year recidivism rates for 1999 first offenders. There were no significant effects of alcohol test results for repeat offenders arrested in either 1998 or 1999.					
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Summary of States' High-BAC Sanctioning Systems¹

Thirty-one states, as of January 2002, have a statute or regulation that provides for additional or more severe sanctions for DWI offenders with a "higher" Blood Alcohol Concentration (BAC), that is, a BAC threshold above the level for a standard DWI charge. In 29 of the 31 high-BAC states, at least some of the high-BAC provisions are statutory; in the other two states, the high-BAC provisions are administrative rules. High-BAC sanctioning systems are based on evidence that DWI offenders with higher BACs are more likely (than DWI offenders with lower BACs) to be involved in a crash and more likely to recidivate. The objective of such systems is to reduce recidivism among this high-risk group of offenders by increasing the certainty and severity of punishment.

Most high-BAC statutes have been enacted since 1990. Thirteen states have implemented high-BAC laws since 1998, and eight additional states have recently strengthened an existing high-BAC statute. The high BAC threshold ranges from .15 percent to .20 percent; most commonly, the threshold is either .15 (14 states) or .20 (6 states). Even when focusing solely on first-time offenders, states' high-BAC sanctioning systems vary widely in terms of complexity, the types and severity of enhanced sanctions, and whether the sanctions are mandatory. Some states have adopted high-BAC sanctions for a first offense that are comparable to those for a second DWI offense, for a BAC test refusal, or for a DWI offense with another "aggravating" circumstance. The types of sanctions for first offenders ages 21 years and older include the following:

- Longer or more intensive education and/or treatment (11 states)
- Limitations on deferred judgment provisions (2 states)
- Limitations on plea reductions (3 states)
- Enhanced driver sanctions including jail (8 states), driver license sanctions (3 states) jail or jail/community service (5 states), and jail or jail/electronic home monitoring, fine, and license sanctions (5 states)

¹This summary updates the report: McCartt AT. 2001. *Evaluation of Enhanced Sanctions for Higher BACs: Summary of States' Laws*. Washington, DC: National Highway Traffic Safety Administration (DOT HS 809 215). This report is available free-of-charge on NHTSA's website www.nhtsa.dot.gov.

- Vehicle sanctions, including ignition interlock devices (6 states) and administrative plate impoundment (1 state) or vehicle registration revocation (1 state)
- Court consideration of high BAC as an aggravating or special factor (3 states) or requirement that court explain why certain sanctions are not imposed (1 state)
- “Hold for court” provision that restricts release from jail upon arrest (1 state)

Most states report few problems with implementing high-BAC sanctions and believe the sanctions have had a positive impact on the state’s DWI system. However, some states report concerns and/or problems, including: 1) high-BAC sanctions may further complicate an already complicated DWI system; 2) enhanced sanctions may increase the number of alcohol test refusals; 3) courts and/or prosecutors may allow high-BAC offenders to plead to a lower charge and, thus, evade the enhanced penalties; 4) courts may view the high-BAC penalties as onerous and, thus, fail to impose the penalties; and 5) there may be inadequate capacity in jails and/or treatment facility to absorb additional offenders.

Evaluation of Minnesota’s High-BAC Law

Minnesota’s high-BAC sanctioning law was implemented on January 1, 1998. This evaluation of Minnesota’s law represents the first systematic examination of the implementation or effects of a high-BAC sanctioning system. Data on alcohol test results, case dispositions, and recidivism were obtained from the state’s driver license files, and interviews were conducted with approximately 20 experts in Minnesota’s DWI laws and practices.

Description of High-BAC Law

Minnesota’s system of DWI laws is characterized by substantial pre-conviction administrative license and vehicle sanctions. These sanctions are imposed for “implied consent” violations that involve either failing the alcohol test (*per se* BAC \geq .10) or refusing the test. Minnesota’s laws related to test refusals are among the strongest in the nation; a refusal is a criminal offense. Effective January 1, 1998, statutes define a “qualified prior impaired driving incident” as either a prior DWI conviction or a prior DWI-related loss of license. All persons who are convicted of a DWI offense or plead guilty to a reduced offense must submit to an alcohol assessment.

Minnesota’s high-BAC statute was enacted as part of an Omnibus DWI Bill that also increased penalties for repeat offenses. The state’s statutes for impaired driving were restructured, simplified, and strengthened in a recodification that took effect January 1, 2001. This study evaluated Minnesota’s high-BAC law during the years 1998-2000.

Minnesota’s high-BAC threshold, .20, is relatively high, but in other respects the high-BAC law is among the strongest in the nation. Enhanced penalties for a high-BAC offense include more severe pre-conviction administrative sanctions and post-conviction court sanctions that are mandatory, substantial, and applicable to both first and subsequent offenses. The enhanced sanctions for a high-BAC first offender include a mandatory minimum jail sentence, compared to no mandatory minimum sentence for other first offenders; a doubling of the license revocation sanctions; a pre-conviction administrative license plate impoundment; stiffer fines; and other enhanced penalties. High-BAC repeat offenders receive more severe penalties than lower-BAC repeat offenders. For example, a second or greater offense involving a BAC \geq .20 results in the administrative forfeiture of the vehicle.

Profile of DWI Offenses and Alcohol Test Results

Persons arrested for DWI may have an administrative sanction only, a DWI court conviction only, or both an administrative sanction and a DWI court conviction. In this report, a “DWI offense” refers to DWI arrests that resulted in a pre-conviction administrative sanction, a post-conviction court sanction, or both, according to the state’s driver license records. Persons who were arrested for DWI but did not receive either a court conviction or an implied consent driver licenses revocation (an estimated 1% -2% of DWI arrests) were not included in the study.

Data on DWI offenses were examined for 1997, the year prior to the high-BAC law, and for the years 1998-2000. The number of total DWI offenses increased from 32,625 in 1997 to 35,737 in 2000. In all four years, about 29% of total DWI offenses were repeat offenses.

BAC results became available on the driver license record effective January 1, 1998. From 1998 to 2000, the percentage of first offenders with BACs at or above .20 declined from 16.9% to 15.5%, a modest but statistically significant decline ($p < .001$). The percentage of repeat offenders with BACs at or above .20 declined negligibly from 21.0% to 20.4%.

The test refusal rate in 1997 was 12.7% for first offenses and 22.2% for repeat offenses. The refusal rate for first offenses experienced a gradual and significant decline to 10.5% in 2000; the rate for repeat offenses was essentially unchanged.

Severity of Case Dispositions

Among first offenders with BACs at or above .20 in 1998, 85.6% received enhanced sanctions, and therefore more severe penalties. The enhanced sanctions included an enhanced administrative sanction and enhanced court sanction (65.0%), an enhanced administrative sanction and standard court sanction (9.5%), an enhanced administrative sanction only (7.8%), and an enhanced court sanction only (3.3%). The remaining offenders received a standard administrative sanction and standard court sanction (4.7%), a standard administrative sanction only (less than one percent), or a standard court sanction only (9.1%). The great majority of high-BAC first offenders received more severe case dispositions than offenders with lower BACs. This was due not only to the imposition of enhanced penalties, but also to the fact that the high-BAC offenders were more likely to receive both administrative and court sanctions, rather than only an administrative sanction. For example, in 1998, 8.4% of high-BAC first offenders received the implied consent administrative violation but were not convicted for a DWI-related offense, compared to 20.3% of first offenders with lower BACs.

The proportion of high-BAC first offenders receiving enhanced sanctions declined from 1998 (85.6%) to 1999 (77.6%) and 2000 (78.3%). The percentage of offenders who received both enhanced administrative and enhanced court sanctions also declined, from 65.0% in 1998 to 53.0% in 1999 and 52.6% in 2000. The decline in severity of disposition was particularly acute among first offenders with “borderline” high BACs (.20-.22). For example, the percentage of offenders receiving both enhanced administrative and enhanced court sanctions was 60.1% for offenders with BACs .20-.22 and 72.0% of offenders with BACs $\geq .23$ in 1998, but 44.2% of offenders with BACs .20-.22 and 65.4% of offenders with BACs $\geq .23$ in 1999.

From 1998 to 2002, the percentage of high-BAC repeat offenders who received enhanced administrative and/or enhanced court sanctions ranged from 96.6% to 98.0%. The dispositions received by high-BAC repeat offenders were more severe than those received by repeat offenders with lower BACs.

Rates of Recidivism

The rates of recidivism for offenders arrested in each of the years 1997, 1998, and 1999 were examined. The rates after one year were significantly lower for total first offenders arrested in 1998 than for those arrested in 1997 (6.7% vs. 7.3%) and significantly lower for total repeat offenders arrested in 1998 than for those in 1997 (7.9% vs. 9.0%). The total rates of recidivism for total first and total repeat offenders arrested in 1999 were similar to the rates in 1998.

Because BAC information became available only in 1998, recidivism rates by BAC level could not be examined for the period before the law. First offenders arrested in 1998 (the first year of the law) who had BACs at or above .20 and, thus, were subject to the high-BAC enhanced penalties, had significantly lower rates of recidivism than a “comparison” group of offenders who had BACs of .17-.19 but were not subject to the enhanced penalties. BACs of .17-.19, although lower than BACs of .20 and above, are also relatively “high” and considered indicative of a high-risk offender. For example, the rate of recidivism after one year was 8.0% for offenders with BACs .17-.19 and 6.3% for offenders with BACs at or above .20; the rate after two years was 14.2% for offenders with BACs .17-.19 and 12.6% for high-BAC offenders. These differences were statistically significant, based on the chi-square test ($p < .01$). For offenders arrested in 1999, after one year following the arrest, the difference in the rates of recidivism among first offenders in the “comparison” group (7.8%) and those with high BACs (6.7%) was marginally significant ($p < .05$). Recidivism among repeat offenders with high BACs and those with borderline BACs did not differ significantly in 1998 or 1999.

Survival analysis examined the one-year rate of recidivism among first offenders arrested in 1998. The results indicated that, after controlling for the offender’s age and gender, the rate of recidivism was significantly lower for high-BAC offenders than for offenders who refused the alcohol test ($p < .01$) and offenders with BACs .17-.19 ($p < .02$), but was not significantly different than the rate among offenders with BACs less than .17. A significant association between the alcohol test result and the rate of recidivism was not detected for 2-year survival models examining recidivism among first offenders arrested in 1998, or in models for first offenders arrested in 1999 and repeat offenders arrested in 1998 and 1999.

Interviews

Most experts interviewed believed that the high-BAC law had resulted in more severe sanctions for persons with BACs at or above .20. In particular, it was reported that judges and prosecutors have become much more reluctant to allow a high-BAC offender to plead to a non-DWI-related charge, and some reportedly do not allow a high-BAC offender to plead to a standard DWI offense. However, it also was noted that some courts do not impose the statutory minimum criminal sanctions for a high-BAC conviction, particularly the jail sanction for first offenders. However, there was general consensus that the administrative sanctions for DWI are consistently applied. There was considerable skepticism regarding the general or specific deterrent effects of the high-BAC law.

When the law was first implemented, there were concerns that the high-BAC law had added substantial complexity to the state’s already complex DWI laws. It was believed that the recodification of the laws had alleviated some of this complexity.

DISCUSSION

High-BAC sanctioning systems are viewed as a promising approach for reducing recidivism among “hardcore” impaired drivers.” Many U.S. states have implemented high-BAC sanctioning systems, but the scope and severity of sanctions in these systems vary widely. Minnesota’s high-BAC law has a relatively high BAC threshold ($\geq .20$), but also relatively strong mandatory administrative and criminal sanctions. Despite concerns that the rate of alcohol test refusals would increase after the law took effect, the rate declined for first offenders and was unchanged for repeat offenders. This was likely attributable to Minnesota’s strong laws pertaining to test refusals. Minnesota’s law appears to have been successful in increasing the severity of case dispositions for high-BAC offenders, although the severity apparently declined somewhat over time. There also is evidence suggestive of an initial effect on recidivism among high-BAC first offenders. These effects may in part be attributable to the high-BAC law’s reliance on strong administrative sanctions.

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I. INTRODUCTION

One of the predominant recent concerns of the impaired driving safety community in the U.S. has been the development of countermeasures that target high-risk individuals variously referred to as hard core, persistent, chronic, or repeat drinking drivers. Although there is no single operational definition for this group, two criteria are often applied: evidence of repeated alcohol-impaired driving, such as repeat convictions, and driving with a “high” Blood Alcohol Concentration (BAC).

Although enhanced sanctions for repeat DWI² offenders have been part of most state legal systems for many years, a more recent phenomenon is a statute or regulation that applies more severe sanctions to first-time or repeat offenders with higher BACs. Historically some prosecutors have routinely negotiated, and some judges have routinely applied, stronger sanctions for high-BAC offenders within the framework of the general impaired driving statutes. Now an increasing number of states have enacted statutes that enable or mandate enhanced sanctions for these offenders. The primary objective of a high-BAC sanctioning system is to reduce recidivism among this high-risk group of offenders by increasing the certainty and severity of punishment and by reducing statutory or procedural “loopholes.” In a high-BAC sanctioning system, the high-BAC threshold is established above the *per se* level for a standard offense, currently set by states at .08 or .10.

The rationale for high-BAC sanctioning systems is that DWI offenders with higher BACs pose a greater risk than offenders with lower BACs. There is evidence that DWI offenders with higher BACs are more likely than DWI offenders with lower BACs to be involved in a crash (Zador, Krawchuck, Voas, 2000; Compton *et al.*, 2002). Data from the National Highway Traffic Safety Administration (NHTSA) indicate that in the year 2000, 64 percent of drinking drivers who were fatally injured had BACs of .15 or higher (Hedlund, McCartt, 2002). After adjusting for covariates such as driver age and gender, the relative risk of a crash of any severity increases as BAC increases (Compton *et al.*, 2002). Compared to drivers with zero BACs, the relative risk of a crash is 4.8 for a BAC of .10, 22.1 for a BAC of .15, 81.8 for a BAC of .20, and 153.7 for BACs of .25 or higher.

It is estimated that over half the drivers arrested or convicted of DWI have BACs of .15 or above (Hedlund, McCartt, 2002). A study of DWI offenders in California found that first-time offenders with high BACs were more likely to recidivate than first-time offenders with lower BACs (Peck, Helander, 2001). Some studies suggest an association between a higher

²In this report, the term “DWI” (Driving While Intoxicated) is used as a generic term for alcohol-impaired driving.

BAC and a higher likelihood of alcohol abuse or dependence (Ruud, Gjerde, Morland, 1993; Snow, 1996), but other research has not found this association (Wieczorek, Miller, Nochajski, 1992).

Several safety organizations advocate that states adopt high-BAC sanctioning programs. In 2001, Mothers Against Drunk Driving (MADD), the National Transportation Safety Board (NTSB), and The Century Council developed similar strategies for addressing “hard core” drinking drivers, defined as persons who drive at BAC levels of .15 and above or those who have a prior DWI offense. For example, according to the NTSB (2000), a model program to reduce DWI should include legislation that defines a BAC of .15 or greater as an aggravated DWI offense that “requires strong intervention similar to that ordinarily prescribed for repeat DWI offenders.” According to the NTSB, the sanctions for high-BAC offenders should include mandatory treatment and administratively imposed vehicle sanctions.

TEA-21 High-BAC Incentive Grants

In passing the TEA-21³ legislation in 1998, Congress amended the alcohol-impaired driving countermeasures incentive grant program (“410” program), which provides funding for states that meet certain criteria. Beginning in federal fiscal year 1999, a state could qualify for a basic 410 grant by meeting five of seven criteria to qualify for a programmatic basic grant or a performance basic grant. The criteria for the programmatic basic grant included a program targeting drivers with a high BAC.

According to the final rule issued by NHTSA in 2000, states qualifying under the high-BAC criteria must demonstrate the establishment of a graduated sanctioning system that applies enhanced or additional sanctions to drivers convicted of alcohol-impaired driving if they were determined to have a high BAC. To qualify as a high BAC system, the state’s BAC threshold must be higher than the BAC level for the standard DWI offense, and also less than or equal to .20 percent BAC. The enhanced sanctions must be mandatory; must apply to the first DWI offense; and may include longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, or mandatory assessment and treatment as appropriate. The enhanced sanctions may be provided by state law, regulation, or binding policy directive implementing or interpreting the law or regulation.

³Transportation Equity Act for the 21st Century.

Study Objectives and Approach

Despite the attention focused on enhanced sanctions for high-BAC offenders, the current project represents the first systematic study of the features, implementation, or effects of high-BAC sanctioning systems. The primary objectives of the study were to:

- determine the effectiveness of high-BAC sanctioning systems
- determine whether high-BAC offenders, in fact, receive the specified enhanced sanctions
- determine whether a high-BAC sanctioning system creates additional problems in the prosecution, adjudication, and/or sanctioning systems.

In the first phase of the study, a summary of states' high-BAC sanctioning systems was prepared (McCartt, 2001). It was based on a review of the literature and states' laws and on discussions with states with high-BAC sanctioning systems. States' high-BAC sanctioning systems as of January 2002 are summarized in Chapter II of this report.

In the second phase of the study, a process and outcome evaluation of Minnesota's high-BAC sanctioning system was conducted. Chapter III of this report presents an evaluation of Minnesota's statute.

II. SUMMARY OF STATES' HIGH-BAC SYSTEMS

As of January 2002, 31 states were identified as having a statute, regulation, or rule that provides differential sanctions for persons with a higher BAC (Appendix A). Illinois and Virginia have only administrative rules that provide for longer, more intensive education/treatment of offenders with BACs at or above .15 or .20, respectively. For all other 29 states, at least some of the high-BAC provisions are statutory.

Most high-BAC statutes have been enacted since 1990. Thirteen states have implemented high-BAC laws since 1998, and eight additional states have recently strengthened an existing high-BAC statute. Higher levels of publicity about the enactment of the high-BAC sanctions were reported by states with more extensive or more recent sanctions, states where other statutory changes were also implemented, and states where the high-BAC sanctions included jail or vehicle-based sanctions. The availability of 410 funding for high-BAC sanctions did not appear to be the primary motivation for the states that have recently enacted or strengthened a high-BAC statute.

Given the considerable differences in states' DWI laws, it is not surprising that state provisions for high-BAC offenders also vary widely. Some high-BAC statutes impose additional or enhanced penalties that are relatively clear-cut and limited. Other high-BAC statutes are complex and integrated into the full range of a state's DWI laws. In all states, high-BAC offenders may still be able to avoid the enhanced sanctions by, for example, pleading guilty to a lesser charge or completing a "deferred judgment" program. Also in all states, courts and prosecutors have considerable discretion in determining case adjudications and sanctions, even if there are statutory limitations on charge reductions or mandatory statutory penalties for DWI offenses.

High-BAC Threshold

The high BAC threshold in the 31 states ranges from .15 percent to .20 percent; within a given state, a different threshold may apply to different sanctions. The minimum threshold is at or above .15 percent in 14 states, .16 percent in five states, .17 percent in three states, .18 percent in three states, and .20 percent in six states. In some states the mean BAC for DWI offenders was selected as the threshold, and in other states the threshold is double the *per se* BAC level for a standard offense. In still other states, the threshold represented a compromise between a lower threshold advocated by the highway safety office and a higher BAC preferred by other groups. Following the lowering of the *per se* BAC level from .10 to .08 in their states, New Hampshire and Arizona lowered the high-BAC threshold from .20 to .16 and from .18 to .15, respectively.

In a few states, the new high-BAC statute became part of a “three-tiered” BAC system of graduated penalties. For example, in July 2000, Rhode Island established different penalties associated with each of the following three BAC levels: at or above .08 percent but less than .10 percent, at or above .10 percent but less than .15 percent, and at or above .15 percent.

410 Incentive Funding

The number of states relying on a high-BAC program to qualify for Section 410 program funds⁴ was 13 in federal fiscal year 1999, 16 in federal fiscal year 2000, and 15 in federal fiscal year 2001. Other states included in this study had high-BAC programs, but did not rely on these programs to qualify for 410 incentive grant funding. There are various reasons for this. Some states may have had a high-BAC program that met the 410 requirements, but the state was able to qualify for a grant based on other laws and programs. Some states may have had a high-BAC program that met the 410 requirements, but the state did not apply for a 410 grant at all (perhaps because the state did not meet a sufficient number of the other requirements). Other states may have had a high-BAC program that did not meet the 410 requirements. For example, the state's program may have been discretionary rather than mandatory, or it may have applied only to repeat offenders.

Types of Enhanced Penalties

The following discussion focuses on states' high-BAC penalties for first-time offenders over 21 years of age, as summarized in Appendix A. The high-BAC penalties are contrasted to the penalties imposed for a first-time standard DWI offense, that is, a DWI offense not involving an extenuating circumstance (for example, involvement in an injury crash) that carries special penalties. Appendix A summarizes only the high-BAC penalties that differ from the penalties for a standard first-time offense. Thus, if a state's driver license sanctions are the same for high-BAC offenders and other offenders, driver license sanctions are not noted.

Even when focusing solely on first-time offenders, states' high-BAC sanctions run the gamut in terms of complexity, the types and severity of enhanced sanctions, whether the sanctions are mandatory, and whether the sanctions are court-imposed or administratively imposed. Some states have adopted high-BAC sanctions for a first offense that are comparable to those for a second DWI offense, for a BAC test refusal, or for a DWI offense with another type of “aggravating” circumstance. Several states have created a new, more serious offense for offenders with high BACs, for example, Driving Under the Extreme Influence, or Aggravated Driving While Intoxicated.

⁴ States could apply for Section 410 program funds under five of seven criteria.

As detailed in Appendix A, the types of sanctions for high-BAC adult (21 years or older) first-time offenders include the following:

- Longer or more intensive alcohol education and/or treatment (11 states)
- Limitations on deferred judgment provisions (2 states)
- Limitations on plea reductions (3 states)
- Additional or enhanced driver sanctions (mandatory minimum and/or maximum)
 - ✓ jail (8 states)
 - ✓ driver license sanctions (3 states)
 - ✓ jail or jail/community restitution and fine (5 states)
 - ✓ jail or jail/electronic home monitoring, fine, and license sanctions (5 states)
- Vehicle sanctions, including ignition interlock devices (6 states), and administrative plate impoundment (1 state) or vehicle registration revocation (1 state)
- Court consideration of high BAC in sentencing as an aggravating or special factor (3 states) or requirement that court explain why certain sanctions are not imposed (1 state)
- “Hold for court” provision that restricts release from jail upon arrest (1 state).

Experiences with High-BAC Sanctions

Most states reported few problems with implementing high-BAC sanctions and believed the sanctions had had a positive impact on the state's DWI system. However, some states reported concerns and/or problems. The most common concern was that the imposition of high-BAC sanctions might increase the number of alcohol test refusals if the state's penalties for refusal were insufficiently strong. At least one state, Maine, increased the penalties for test refusals when a high-BAC statute was enacted. After the high-BAC law was implemented in Maine, the state reported that of the 11,000 DWI arrests in 1998, only 585 persons refused the BAC test. However, in several other states where the rate of refusals is one-third or higher, officials expressed concerns that this rate would increase as a result of the high-BAC sanctions.

The following additional concerns were noted by states: 1) high-BAC sanctions may complicate an already complicated DWI system; 2) courts and/or prosecutors may allow high-BAC offenders to plead to a lower charge (directly or indirectly) and, thus, evade the enhanced penalties; 3) courts may view the high-BAC penalties as onerous and, thus, fail to impose the penalties; 4) and the limited availability of treatment programs and jail capacity in some areas may hinder the effectiveness of these sanctions.

Evaluations of High-BAC Sanctioning Systems

States noted the considerable obstacles to evaluating the effects of high-BAC sanctions. In particular, states' historical case records for DWI offenses generally have not included information on the BAC at the time of the arrest. In the process of conducting the review of states' high-BAC sanctioning systems, only one study of the relationship between BAC and the severity of penalties was located. The study, conducted by the California Department of Motor Vehicles (Tashima, 1986), examined the relationship between the severity of court sanctions and the BAC level and licensing status. The study was prompted by the state's 1985 law that provided that courts may consider a BAC of .20 or higher as a special factor in sentencing DWI offenders. Based on the DWI offenders with reported BAC levels (43 percent of all offenders), first-time offenders with higher BACs received a jail sanction more frequently than did those with lower BACs. Sanctions given to most second offenders did not vary with BAC level.

In discussions with states with high-BAC sanctioning systems, none reported that they had undertaken a systematic study of the implementation or the effects of high-BAC sanctions. As noted earlier, the second phase of this study involved a process and outcome evaluation of the high-BAC sanctioning system in Minnesota. The following chapter presents the evaluation of Minnesota's high-BAC statute.

III. EVALUATION OF MINNESOTA'S HIGH-BAC LAW

The State of Minnesota implemented a high-BAC law on January 1, 1998. In most respects, the law was one of the strongest high-BAC statutes in the country. This evaluation of Minnesota's high-BAC statute examined the types and numbers of offenders affected by the law and the effects of the law on the severity of case dispositions and recidivism among high-BAC offenders. The evaluation encompassed three tasks. First, documents related to impaired driving (termed DWI) laws and the high-BAC statute were reviewed. Second, analyses were conducted of data on high-BAC and other DWI offenses and their dispositions, rates of recidivism among DWI offenders, and BACs among fatally injured drivers. To the extent possible, these data were examined for a period before and a period after the high-BAC law took effect. Third, interviews were conducted with enforcement, court, prosecutorial, and sanctioning experts about the implementation and perceived effects of Minnesota's high-BAC statute.

Minnesota has an active impaired driving safety community. A longstanding DWI Task Force works to identify ways to strengthen DWI laws and practices. There is considerable documentation related to DWI laws and practices in Minnesota. For example, the annual *Minnesota's DWI Laws and Practices* provides detailed descriptions of DWI laws and associated penalties, as well as a historical perspective on the DWI system (for example, Cleary, Shapiro, 2001). In addition, the impaired driving safety community has benefited from strong analytical capabilities in the Office of Traffic Safety, the State Legislature, and the academic community. Although DWI case-level data are not readily available from the court system, the wide application of administrative sanctions to DWI offenses has made it possible to conduct research studies and produce periodic statistical reports using data from the driver license files. The annual *Impaired Driving Facts* (Minnesota Office of Traffic Safety, 2001) provides detailed current and historical summaries of the dispositions of impaired driving incidents, rates of recidivism, and alcohol-related crashes.

There have been several special studies on the implementation or effects of various countermeasures and sanctions in Minnesota (for example, Cleary, 2000). For example, a 1994 study of license plate impoundment for repeat DWI offenders found that implementation increased 12-fold when the law became administrative rather than solely court-based. The rate of recidivism among violators who received administrative impoundment orders was significantly lower than the rate among those who did not (Rodgers, 1994).

In short, Minnesota provided an ideal setting for this study, due to the relatively strong provisions of the high-BAC law; the availability of good historical and current data on DWI offenses; access to a wide range of publications that describe and analyze the DWI system of laws and penalties; the availability of considerable expertise concerning Minnesota's DWI laws and systems; and the state's interest in taking a critical look at the high-BAC law.

High-BAC Statute

The following description of Minnesota's DWI laws is based on interviews with DWI experts and on a review of NHTSA's annual *Digest of State Alcohol Highway Safety Related Legislation, Minnesota Statutes* posted on the Minnesota state website, scientific papers and reports, and numerous publications from the Minnesota House Research Committee and the Department of Public Safety (DPS). Citations for these publications are provided in "References."

Minnesota's DWI penalties are characterized by substantial pre-conviction administrative license and vehicle sanctions. These sanctions are imposed for "implied consent" violations that involve either failing the alcohol test ($BAC \geq .10$) or refusing to take the test. Minnesota's laws related to test refusals are among the strongest in the nation; a refusal is a criminal offense. Statutes define a "qualified prior impaired driving incident" as either a prior DWI conviction or a prior DWI-related loss of license. All persons who are convicted of a DWI offense or who plead guilty to a reduced offense must submit to an assessment for alcohol dependency.

Minnesota's high-BAC law was enacted as part of an Omnibus DWI Bill implemented on January 1, 1998. Minnesota's high-BAC threshold, .20, is relatively high. However, in other respects, the high-BAC statute was one of the strongest in the nation. As part of a restructuring of criminal penalties in the DWI Omnibus Bill, a standard first-time DWI offense was defined as a misdemeanor, a high-BAC first-time offense or a standard second DWI offense became a gross misdemeanor, and a high-BAC second offense or a standard third or subsequent DWI offense became an enhanced gross misdemeanor. In addition, either a prior DWI conviction or a prior DWI-related license revocation became relevant for penalty enhancement. The Omnibus DWI Bill also increased penalties for repeat offenses; plate impoundment and vehicle forfeiture sanctions were advanced to the second and third offense, respectively, and an administrative process was established for vehicle forfeiture (Cleary, Shapiro, 1997).

The following evaluation of Minnesota's high-BAC law focuses primarily on high-BAC first-time offenses. As summarized in Table 1, enhanced penalties in 1998-2000 for a first-time offender with a high BAC included pre-conviction administrative sanctions and post-conviction court sanctions that were mandatory, substantial, and comparable to those for a standard repeat offense. The enhanced sanctions included the doubling of all license revocation and restricted license waiting periods. In addition, Minnesota became the only state to provide a pre-conviction administrative license plate impoundment for high-BAC first-time offenses. The 1998 statute also provided more severe penalties for high-BAC repeat offenders. For example, the law provided for administrative vehicle forfeiture for a high-BAC second or subsequent offense (Cleary, Shapiro, 1997).

Table 1
Enhanced Mandatory Minimum Penalties for
High-BAC (BAC \geq .20) First DWI Offense vs. Standard First DWI Offense
Minnesota 1998-2000

Type of Penalty	Standard Offense (Misdemeanor)	High-BAC Offense (Gross Misdemeanor)
Jail	None	30 days, or 8 hours community service for each day less than 30 served, or intensive probation program. Judge may not apply mandatory minimum sentence under certain mitigating circumstances, but 48 consecutive hours jail or 80 hours community service must be served.
Fine	\$210	\$900; court may impose additional \$1,000 penalty
Administrative License Revocation	90 days; restricted license available after 15 days	180 days; restricted license available after 30 days
Post-Conviction License Revocation	30 days; restricted license available after 15 days	60 days; restricted license available after 30 days
Administrative License Plate Impoundment	None	Same as license revocation; special plates available with a restricted license
Required Chemical Use Assessment	Court may stay sentence except license revocation if offender submits to recommended treatment	Court must order person to submit to recommended treatment
Conditional Release from Pretrial Detention	Not applicable	Release requires maximum bail or alcohol abstention with daily electronic alcohol monitoring

The state's DWI statutes were restructured, simplified, and strengthened in a recodification that took effect January 1, 2001. The new laws created a uniform "look back" period of 10 years for repeat offenses and three degrees of DWI offenses. The degree of the offense is based on the number of aggravating factors, which include having a BAC at or above .20, a qualified prior DWI incident within 10 years, and a child endangerment provision. The high-BAC provisions in the recodified laws are

summarized in Appendix A. However, the following analyses are based on the high-BAC statutes in effect during the years covered by this study, 1998-2000 (Table 1).

During the study period, upon conviction of first-time offenders (including high-BAC first-time offenders), a shorter conviction-based license revocation period replaced the administrative revocation period that had been in effect. Thus, a guilty plea to the DWI charge was termed a “turnaround.” A high-BAC turnaround conviction also allowed the license plate to be restored more quickly. In 2001, the DWI laws were amended to close this “loophole” by prohibiting first-time offenders with a high BAC from receiving a shortened license revocation period upon conviction for DWI (Cleary, 2001).

Profile and Disposition of DWI Cases 1997-2000

In this chapter, the term “DWI offense” refers to a DWI arrest that resulted in a pre-conviction administrative sanction, a post-conviction court sanction, or both, according to the Department of Public Safety driver license records. In late spring 2000, data on DWI offenses were extracted from the driver license file of the Minnesota Department of Public Safety. A data record was provided for each driver with at least one DWI offense (that is, an administrative sanction and/or court conviction) on his/her driver history record. In addition to demographic characteristics, the data record for each driver included a complete history of impaired driving incidents and other types of traffic violations for all years. Identifying driver information such as name and address was not provided. By linking data elements for historical and current violations on each driver’s data record, it was determined whether a given DWI offense was the first offense, second offense, etc. Effective January 1, 1998, the alcohol test result at the time of arrest is placed on the driver record, and this information was provided for DWI offenses occurring after this date. Prior to 1998, available information on alcohol test results was limited to whether the offender refused or submitted to the test.

It is important to note that the analyses below do not include persons who were arrested for DWI but did not receive either a court conviction or an implied consent driver license revocation. It is estimated that 1 to 2 percent of persons arrested for DWI have no entry on their driver license record due to the rescission of the implied consent revocation, or failure of the officer to invoke implied consent upon arrest, coupled with acquittal, plea bargaining, or dropping of the charge (Cleary, Shapiro, 2001).

In the following analyses of the characteristics and dispositions of DWI cases, statistical differences were examined with the chi-square statistic ($p < .05$).

Profile of DWI Cases

Profiles of first-time and repeat DWI offenses for the years 1998-2000 were developed, based on the alcohol test result and driver’s age and gender. During the study period, there were differences in the definition of a repeat offense among different sanctions and over time. To provide a consistent basis for comparison, the repeat offenders were defined as those with a prior DWI offense (administrative action and/or court conviction) within the past five years, or two or more offenses (administrative action and/or court conviction) in the past 10 years.

The number of DWI offenses totaled 32,625 in 1997, the year prior to the high-BAC law; 33,662 in 1998; 35,832 in 1999; and 35,737 in 2000. In all four years, about 29 percent were repeat offenses.

Also in all four years, female drivers committed about 20 percent of first-time offenses and 14 percent of repeat offenses. The percentage of drivers ages 21-24 increased gradually from 1997 to 2000, rising from 17 percent to 20 percent for first-time offenses and from 14 percent to 17 percent for repeat offenses. A corresponding decline occurred in the percentage of drivers ages 25-34 (32 percent to 28 percent for first-time offenses and 40 percent to 36 percent for repeat offenses). In all four years, drivers under 21 years of age represented about a tenth of first-time offenders and 4 percent of repeat offenders.

Alcohol Test Results

In both years 1998 and 2000, the distribution of alcohol test results between first-time and repeat offenders was statistically different (1998: $X^2 = 1,021.4$, $df = 5$, $p < .001$; 2000: $X^2 = 1,230.4$, $df = 5$, $p < .001$) (Table 2). Also in 1998 and 2000, a test refusal was almost twice as likely among repeat offenses as among first-time offenses (22.7 percent vs. 11.5 percent in 1998 and 22.4 percent vs. 10.5 percent in 2000).

Table 2
Alcohol Test Results for First-time and Repeat DWI Offenses
Minnesota, 1998 and 2000

Type of Offense	1998			2000		
	1 st	Repeat	Total	1 st	Repeat	Total
	%	%	%	%	%	%
.01-.14 BAC	35.8	23.6	32.3	38.6	26.3	35.1
.15-.16 BAC	14.8	11.7	13.9	14.7	11.7	13.8
.17-.19 BAC	16.9	16.2	16.7	17.4	15.5	16.9
.20+ BAC	16.9	21.0	18.1	15.5	20.4	16.9
Refusal	11.5	22.7	14.7	10.5	22.4	14.0
Unknown	4.2	4.7	4.3	3.2	3.7	3.3
TOTAL	100%	100%	100%	100%	100%	100%
(N)	(23,996)	(9,666)	(33,662)	(25,520)	(10,217)	(35,737)
	$X^2 = 1,021.4$, $df = 5$, $p < .001$			$X^2 = 1,230.4$, $df = 5$, $p < .001$		

In 1998, 16.9 percent of first-time offenses and 21.0 percent of repeat offenses involved a BAC at or above .20 (Table 2). The percentages of high-BAC offenses remained at these levels in 1999 and declined slightly in 2000 to 15.5 percent of first-time offenses and 20.4 percent of repeat offenses. The differences between the 1998 and 2000 patterns of alcohol test results for all BAC categories, including test refusals and unknown BAC test results, were statistically significant for first-time offenses ($X^2 = 84.5$, $df = 5$, $p < .001$), and for repeat offenses ($X^2 = 28.8$, $df = 5$, $p < .001$).

The test refusal rate for first-time offenses gradually declined from 12.7 percent in 1997 to 11.5 percent in 1998, 10.7 percent in 1999, and 10.5 percent in 2000. This decline was statistically significant

($X^2 = 106.3$, $df = 3$, $p < .001$). For repeat offenses, the test refusal rate was essentially unchanged from 22.2 percent in 1997 to 22.7 percent in 1998, 22.0 percent in 1999 and 22.4 percent in 2000 ($X^2 = 1.11$, $df = 3$, $p = .774$).

Profiles of 1998 alcohol test results by gender and age category for first-time and repeat offenses appear in Table 3. (The distribution of these demographic characteristics across alcohol test results was similar for 1999 and 2000.) First-time offenses committed by women were slightly more likely than offenses committed by males to involve a high BAC and slightly less likely to involve an alcohol test refusal. Female repeat offenders were more likely than males to have a high-BAC test result. (However, as males committed the large majority of first-time and repeat offenses, they also represented the majority of offenses involving high BACs and alcohol test refusals.) With the exception of first offenders age 55 and older, increasing age was associated with an increasing proportion of high-BAC test results among first and repeat offenders. Test refusal rate was the highest among 35-54 year-old first and repeat offenders.

Table 3
Alcohol Test Results for First-time and Repeat DWI Offenses by Gender
and Age Category
Minnesota, 1998

		<.20 BAC	≥.20 BAC	Refuse	Missing
First-time Offense					
	N	%	%	%	%
TOTAL	23,996	67.4	16.9	11.5	4.2
Male	17,263	67.7	16.4	11.5	4.4
Female	4,946	68.1	18.9	9.2	3.8
Unknown	1,787	63.2	16.6	17.5	2.6
$X^2 = 113.6, df = 6, p < .001$					
< 21 yrs	2,642	78.7	8.2	7.5	5.6
21-24	4,214	75.6	12.8	6.1	5.6
25-34	7,243	69.0	15.9	11.2	3.8
35-54	8,780	59.2	21.9	15.5	3.4
≥ 55	1,112	64.4	20.6	11.6	3.4
$X^2 = 805.4, df = 12, p < .001$					
Repeat Offense					
	N	%	%	%	%
TOTAL	9,666	51.6	21.0	22.7	4.7
Male	8,113	51.8	20.5	22.9	4.8
Female	1,341	50.8	24.5	21.3	3.4
Unknown	212	47.2	20.3	24.1	8.5
$X^2 = 22.6, df = 6, p < .001$					
< 21 yrs	390	70.0	14.4	11.8	3.8
21-24	1,376	63.8	18.5	12.9	4.9
25-34	3,654	53.4	19.1	22.9	4.7
35-54	3,922	44.1	23.8	27.5	4.6
≥ 55	324	46.9	28.1	19.1	5.9
$X^2 = 274.4, df = 12, p < .001$					

Case Dispositions

Analyses examined whether high-BAC offenders actually received the statutory enhanced dispositions, whether their dispositions were more severe than those received by other offenders, and whether the patterns of dispositions changed over the years 1998-2000. As offenders' BAC results were unavailable prior to 1998, the severity of dispositions for all first-time offenders and for all repeat offenders in the years 1998-2000 were compared to the severity of dispositions for all first-time offenders and for all repeat offenders in 1997.

Tables 4-8 report the patterns of case dispositions by alcohol test results for first-time and repeat DWI offenders arrested during the period 1997-2000. The "Total" for the years 1998-2000 in the tables excludes the small number of offenders with missing alcohol test information. The case disposition codes on the driver license files indicate whether a given disposition is standard or enhanced. Tables 4-8 provide all possible combinations of dispositions, including "standard" pre-conviction administrative dispositions, "standard" post-conviction court-imposed dispositions, "enhanced" pre-conviction administrative dispositions, and "enhanced" post-conviction court-imposed dispositions. A disposition described as "enhanced" (shown in *Italics font* in the tables) is the statutory disposition applicable to offenders with high BACs and carries more severe penalties, as described in Table 1, than a disposition described as "standard."

The records extracted from the driver license files did not indicate whether a given offense represented a first-time or repeat DWI offense. As noted earlier, the criteria for determining whether an offense was a first or repeat offense was whether there was a prior DWI offense (administrative action, court conviction, or both) within the prior 5 years, or two or more DWI offenses within the prior 10 years. For persons with two or more DWI incidents in a given year and no prior sanctioned DWI, the first offense was counted in tables for first-time offenders, and subsequent offenses were counted in tables for repeat offenders.

Case Dispositions of First-Time Offenders

Table 4 summarizes case dispositions for first-time offenders in 1997 and 1998. BAC results for persons who submitted to the alcohol test were not available for offenses committed in 1997. The implementation of the high-BAC statute resulted in more severe case dispositions for all first-time offenders in 1998, when compared to case dispositions for all first-time offenders in 1997. Among all first-time offenders in 1998, 15.2 percent received enhanced sanctions, including an enhanced administrative sanction only (1.4 percent), an enhanced administrative sanction and a standard DWI court conviction (1.7 percent), an enhanced DWI court conviction only (0.6 percent), an enhanced administrative and an enhanced DWI conviction (4.2 percent), or an enhanced "turnaround" disposition (7.3 percent).

In 1998, first-time offenders with BACs $\geq .20$ received more severe case dispositions overall than first-time offenders with BACs $< .20$ (Table 4). The majority of high-BAC offenders received enhanced administrative and/or court sanctions (85.6 percent) rather than standard DWI sanctions (14.4 percent). Furthermore, first-time high-BAC offenders were more likely than first-time offenders with BACs $< .20$ to receive a court conviction in addition to an administrative sanction. Of high-BAC first-time offenders, 8.4 percent received an implied consent administrative disposition (0.6 percent with test refusal or standard administrative sanction only and 7.8 percent with enhanced administrative sanctions) but not a DWI conviction in court. In contrast, of lower BAC first-time offenders, 20.3 percent received only an implied consent disposition.

Table 4
Case Dispositions for First-time DWI Offenders
Minnesota, 1997 and 1998

	1997*		1998			
	Alcohol Test Refusal	Total	Alcohol Test Refusal	BAC <.20	BAC ≥.20	Total
Total Cases (N)	2,937	23,076	2,761	16,187	4,055	23,003
	%	%	%	%	%	%
Refusal or Standard Administrative Only	16.3	18.5	18.7	20.3	0.6	16.6
<i>Enhanced Administrative Only</i>	---	---	---	---	7.8	1.4
Standard DWI Conviction Only	---	7.2	---	2.4	9.1	3.3
<i>Enhanced DWI Conviction Only</i>	---	---	---	---	3.3	0.6
Refusal Conviction Only	0.9	0.1	2.1	---	---	0.2
Standard Turnaround (Admin & Convict)	33.9	40.2	29.3	42.6	4.7	34.3
<i>Enhanced Turnaround (Admin & Convict)</i>	---	---	---	---	41.3	7.3
Standard Administrative & Standard Conviction	28.4	31.4	27.4	34.7	---	27.7
<i>Enhanced Administrative & Standard Conviction</i>	---	---	---	---	9.5	1.7
<i>Enhanced Administrative & Enhanced Conviction</i>	---	---	---	---	23.7	4.2
Refusal Administrative and DWI Conviction	20.5	2.6	22.6	---	---	2.7
Total Standard Sanctions	100.0	100.0	100.0	100.0	14.4	84.8
<i>Total Enhanced Sanctions</i>	---	---	---	---	85.6	15.2

*BAC results for offenders who submitted to the alcohol test were not available for 1997.

The percentage of high-BAC first-time offenders receiving enhanced administrative and/or court dispositions declined from 85.6 percent in 1998 to 77.6 percent in 1999 (Table 5). The percentage of high-BAC first-time offenders who received both enhanced administrative and enhanced court sanctions (including an enhanced turnaround) also declined, from 65.0 percent (23.7 percent with enhanced administrative sanctions and enhanced convictions plus 41.3 percent with enhanced turnaround) in 1998 to 53.0 percent (23.0 percent with enhanced administrative sanctions and enhanced convictions plus 30.0 percent with enhanced turnaround) in 1999. The pattern of dispositions in 2000 was similar to that in 1999. It should be noted that a small proportion of offenses occurring in 2000 might not have reached final disposition in court when the data were extracted from the driver license file.

Table 5
Case Dispositions for First-time DWI Offenders with BACs \geq .20
Minnesota, 1998, 1999, 2000

	1998	1999	2000
Total Cases (N)	4,055	4,209	3,961
	%	%	%
Refusal or Standard Administrative Only	0.6	0.5	0.4
<i>Enhanced Administrative Only</i>	7.8	8.9	13.6
Standard DWI Conviction Only	9.1	11.8	10.0
<i>Enhanced DWI Conviction Only</i>	3.3	3.1	2.2
Standard Turnaround (Administrative & Conviction)	4.7	9.9	11.0
<i>Enhanced Turnaround (Administrative & Conviction)</i>	41.3	30.0	31.0
Standard Administrative & Standard Conviction	---	0.2	0.3
Standard Administrative/ <i>Enhanced Conviction</i>	---	0.3	0.1
<i>Enhanced Administrative/Standard Conviction</i>	9.5	12.4	9.8
<i>Enhanced Administrative & Enhanced Conviction</i>	23.7	23.0	21.6
Total Standard Sanctions	14.4	22.4	21.7
<i>Total Enhanced Sanctions</i>	85.6	77.6	78.3

First-Time Offenders with "Borderline" High-BACs

To determine if first-time offenders with "borderline" high-BACs were less likely than other high-BAC offenders to receive enhanced sanctions, case dispositions for offenders with "borderline" BACs of .20-.22 were compared to case dispositions for offenders with BACs \geq .23 (Table 6). In 1998, 81.2 percent of first-time offenders with BACs .20-.22 received enhanced high-BAC sanctions, compared to 91.3 percent of offenders with BAC \geq .23. The sanctions included both enhanced administrative and enhanced court dispositions (including enhanced turnaround) for 60.1 percent of offenders with BACs .20-.22 and 72.0 percent of offenders with BACs \geq .23. In 1999, the difference in severity of case dispositions widened considerably between these two groups of offenders: 71.1 percent of offenders with BACs .20-.22 received enhanced sanctions, compared to 87.2 percent of offenders with BACs \geq .23. The sanctions included both enhanced administrative and enhanced court dispositions (including enhanced turnaround) for 44.2 percent of offenders with BACs .20-.22, compared to 65.4 percent of offenders with BACs \geq .23. The patterns of case dispositions for the two groups of high-BAC offenders in 2000 (not shown) were not markedly different from those in 1999.

Table 6
Case Dispositions for First-time DWI Offenders
BAC .20-.22 vs. BAC \geq .23
Minnesota, 1998 and 1999

	1998		1999	
	BAC .20-.22	BAC \geq .23	BAC .20-.22	BAC \geq .23
Total Cases (N)	2,351	1,705	2,443	1,766
	%	%	%	%
Refusal or Standard Administrative Only	0.7	0.4	0.7	0.3
<i>Enhanced Administrative Only</i>	7.7	8.0	8.6	8.5
Standard DWI Conviction Only	11.3	5.1	15.4	6.5
<i>Enhanced DWI Conviction Only</i>	2.3	3.5	2.3	3.7
Standard Turnaround (Administrative & Conviction)	6.5	2.7	13.5	5.5
<i>Enhanced Turnaround (Administrative & Conviction)</i>	39.1	44.6	24.6	37.8
Standard Administrative & Standard Conviction	0.3	0.5	0.3	0.5
Standard Administrative & <i>Enhanced Conviction</i>	0.3	0.4	0.4	0.3
<i>Enhanced Administrative</i> & Standard Conviction	10.8	7.4	14.7	9.3
<i>Enhanced Administrative & Enhanced Conviction</i>	21.0	27.4	19.6	27.6
Total Standard Sanctions	18.8	8.7	29.9	12.8
<i>Total Enhanced Sanctions</i>	81.2	91.3	71.1	87.2

Case Dispositions of Repeat Offenders

Case dispositions for repeat offenders also were examined for the years 1997-2000. Virtually all repeat offenders in these years received an administrative sanction, and almost all also received a DWI conviction. Case dispositions for repeat offenders overall were more severe after the implementation of the High-BAC law compared to 1997, the year prior, due to the application of enhanced sanctions. For example, 22.1 percent of all repeat offenders in 1998, the first year of the High-BAC law, received an enhanced sanction (Table 7). In addition, there was a decline from 1997 to 1998 (not shown in Table 7) in the percentage of repeat offenders who received a standard DWI conviction but no administrative sanction (8.7 percent vs. 2.8 percent). In 1998, virtually all high-BAC repeat offenders received enhanced sanctions (96.8 percent).

Table 7
Case Dispositions for Repeat DWI Offenders
Minnesota, 1997 and 1998

	1997*		1998			
	Test Refusal	Total	Test Refusal	BAC <.20	BAC ≥.20	Total
Total (N)	1,825	8,191	1,918	4,333	1,814	8,065
	%	%	%	%	%	%
Refusal or Standard Administrative Only	12.3	9.6	10.8	7.9	0.5	7.0
<i>Enhanced Administrative Only</i>	---	---	---	---	7.6	1.7
Standard DWI Conviction Only	---	8.7	---	4.2	2.4	2.8
<i>Enhanced DWI Conviction Only</i>	---	---	---	---	1.5	0.4
Refusal Conviction Only	0.8	0.2	1.0	---	---	0.2
Standard Turnaround (Admin & Convict)	0.4	0.2	0.2	0.2	---	0.2
<i>Enhanced Turnaround (Admin & Convict)</i>	---	---	---	---	6.1	1.4
Standard Administrative & Standard Conviction	62.0	75.8	60.7	87.3	0.5	61.4
Standard Administrative & <i>Enhanced Conviction</i>	---	---	0.8	0.2	0.6	0.2
<i>Enhanced Administrative</i> & Standard Conviction	---	---	---	---	35.7	8.1
<i>Enhanced Administrative</i> & <i>Enhanced Conviction</i>	---	---	---	---	45.3	10.3
Refusal Administrative and DWI Conviction	24.6	5.5	26.3	---	---	6.3
Total Standard Sanctions	100.0	100.0	99.2	99.8	3.4	77.9
<i>Total Enhanced Sanctions</i>	---	---	0.8	0.2	96.8	22.1

*BAC results for persons who submitted to the alcohol test were not available for 1997.

Table 8 summarizes the case dispositions for high-BAC repeat DWI offenders for each of the years 1998-2000. Due to space limitations on the records created to support the analyses, case dispositions were missing for some repeat offenses in 1999 (N=453) and 2000 (N=801). These cases were excluded from the analyses summarized in Table 8.

The percentage of high-BAC repeat offenders receiving an enhanced sanction ranged from 96.8 percent in 1998 to 98.0 percent in 2000. A percentage point decline occurred in enhanced turnaround sanctions (which should be available only to first-time offenders); the percentage of these dispositions was 6.1 percent in 1998, 0.2 percent in 1999, and 0.1 percent in 2000. A small proportion of offenses occurring in 2000 may not have reached final disposition in court when the data were extracted from the driver license file, which may have affected an increase in the proportion of cases that received administrative sanctions only but not court sanctions (8.1 percent in 1999 vs. 13.7 percent in 2000).

Table 8
Case Dispositions for Repeat DWI Offenders with BACs \geq .20
Minnesota, 1998, 1999, 2000

	1998	1999	2000
Total Cases (N)	1,814	1,468	1,049
	%	%	%
Refusal or Lower BAC Administrative Only	0.5	1.1	0.5
<i>Enhanced Administrative Only</i>	7.6	6.2	13.2
Standard DWI Conviction Only	2.4	1.8	1.4
<i>Enhanced DWI Conviction Only</i>	1.5	1.2	1.4
<i>Enhanced Turnaround (Administrative & Conviction)</i>	6.1	0.2	0.1
Standard Administrative & Standard Conviction	0.5	---	0.1
Standard Administrative & <i>Enhanced Conviction</i>	0.6	0.4	0.4
<i>Enhanced Administrative & Standard Conviction</i>	35.7	46.5	38.6
<i>Enhanced Administrative & Enhanced Conviction</i>	45.3	42.6	44.2
Total Standard Sanctions	3.4	2.9	2.00
<i>Total Enhanced Sanctions</i>	96.8	97.1	98.0

Rates of Recidivism

Rates of recidivism were examined for DWI offenders arrested in each of the years 1997-1999. In accordance with the definition of DWI offense used in this chapter, recidivism was defined as a subsequent arrest that resulted in an administrative penalty, a conviction in court or both, as recorded on the driver license files. For persons with more than one offense in a given year, the focal offense was the first offense that occurred in that year. For persons arrested in 1997 and 1998, first subsequent offenses were tallied for each of the 24 months following the month of arrest. For persons arrested in 1999, first subsequent offenses were tallied for each of the 12 months following the arrest. (The discussion of results focuses on the recidivism rates after one year and after two years, which are shown in *Italics font* in Tables 9-11). As specific BAC information was unavailable before 1998, comparisons of recidivism before and after the law focused on total first-time offenses, total repeat offenses, offenses involving test refusals, and offenses involving test failures.

For each of the years 1998 and 1999, the rates of recidivism were examined for repeat and first-time offenses for offenders who refused the alcohol test, had BACs at or above .20, and had BACs less than .20. In addition, the rate of recidivism among high-BAC offenders (BAC \geq .20) was contrasted to the rate among a "comparison" group defined as persons with BACs .17-.19. These offenders represent persons who also recorded a "high" BAC but should have been unaffected by the law.

Differences in rates of recidivism were examined with the chi-square statistic ($p < .05$). Survival analysis was used to examine the association between the rate of recidivism and the results of the alcohol test, in the presence of other predictors.

Overall Rates of Recidivism among First-Time and Repeat Offenders

As shown in Tables 9-10, the overall rates of recidivism after one year were significantly lower in 1998 than in 1997 for total first-time offenders (6.7 percent vs. 7.3 percent, $X^2 = 6.51$, $df = 1$, $p = .01$) and total repeat offenders (7.9 percent vs. 9.0 percent, $X^2 = 6.51$, $df = 1$, $p = .01$). The rates of recidivism among first-time offenders after two years were similar for the years 1997 (12.9 percent) and 1998 (12.6 percent), and did not reach statistical significance. The rates of recidivism among repeat offenders after two years were significantly lower in 1998 than in 1997 (15.7 percent vs. 17.5 percent, $X^2 = 9.74$, $df = 1$, $p = .002$). The overall patterns of the one-year recidivism rates for first-time offenders and repeat offenders arrested in 1999 were similar and not statistically different from the rates in 1998.

Recidivism Rates by Alcohol Test Results

For both first-time and repeat offenders arrested in 1997 and 1998, the one-year and two-year rates of recidivism were higher among offenders who refused the alcohol test than among all other offenders (Table 9 and Table 10). These differences were statistically significant for first-time offenders arrested in 1997 and 1998, as well as for repeat offenders arrested in 1998. However, this difference was not statistically significant for repeat offenders arrested in 1997.

With regard to first-time offenders arrested in 1998, the rates of recidivism over two years for high-BAC offenders were comparable and not statically different from the rates for offenders with BACs below .20, (6.3 percent vs. 6.7 percent after one year; 12.6 percent vs. 12.5 percent after two years) (Table 10). With regard to the recidivism rates among repeat offenders, there were no significant differences between high-BAC offenders and those with lower BACs (6.8 percent vs. 7.1 percent after 12 months; 14.1 percent vs. 14.7 percent after 24 months). These results are summarized in Table 10. For both first-time and repeat offenders, Table 10 also indicates that rates of recidivism were consistently higher among offenders who refused the alcohol test than among high-BAC offenders. These differences were statistically significant.

The patterns and the magnitude of the one-year recidivism rates by alcohol test results (Alcohol Test Refusal, $BAC < .20$, $BAC \geq .20$) for first-time and repeat offenders arrested in 1999 were similar to those arrested in 1998.

Table 9
Rate of Recidivism for DWI Offenders Arrested in 1997, Minnesota
Cumulative Percent of Offenders with Subsequent Offense

	First-time Offenders			Repeat Offenders		
	Alcohol Test Refusal	Test Failure or Unknown	Total	Alcohol Test Refusal	Test Failure or Unknown	Total
Total Cases (N)	2,937	20,139	23,076	1,825	6,375	8,200
Months Elapsed since Arrest	%	%	%	%	%	%
3	3.3	2.3	2.4	3.3	3.0	3.1
6	5.0	4.0	4.1	5.3	5.0	5.1
9	7.2	5.5	5.7	7.2	6.9	7.0
12	9.1	7.1	7.3	9.2	8.9	9.0
15	10.5	8.6	8.9	12.1	11.2	11.4
18	12.4	10.0	10.3	14.7	13.0	13.4
21	13.7	11.4	11.6	17.2	15.1	15.5
24	15.0	12.6	12.9	18.6	17.1	17.5

Table 10
Rate of Recidivism for DWI Offenders Arrested in 1998, Minnesota
Cumulative Percent of Offenders with Subsequent Offense

	First-time Offenders				Repeat Offenders			
	Alcohol Test Refusal	BAC < .20	BAC ≥ .20	Total*	Alcohol Test Refusal	BAC < .20	BAC ≥ .20	Total*
Total Cases (N)	2,761	16,182	4,056	23,996	1,918	4,326	1,814	8,440
Months Elapsed since Arrest	%	%	%	%	%	%	%	%
3	2.2	1.9	1.8	1.9	2.7	2.2	2.6	2.6
6	4.5	3.5	3.4	3.6	4.7	3.8	4.1	4.3
9	6.1	5.1	4.7	5.2	6.6	5.6	5.6	6.1
12	7.6	6.7	6.3	6.7	9.1	7.1	6.8	7.9
15	9.5	8.2	7.8	8.3	11.5	9.1	8.5	9.9
18	11.0	9.6	9.6	9.8	13.5	11.1	10.0	11.7
21	12.3	11.0	11.1	11.2	15.9	12.7	11.9	13.6
24	13.8	12.5	12.6	12.6	18.4	14.7	14.1	15.7

*In addition to the categories of test refusal, BAC < .20, and BAC ≥ .20, total includes offenses with missing alcohol test results.

Recidivism Rates by High BACs vs. BACs .17-.19

The recidivism rates for first-time high-BAC offenders arrested in 1998 were consistently about 2 percentage points lower than for the “comparison” group of offenders with BACs .17-.19 (Table 11). Differences in the rates of recidivism after one year were 8.0 percent for BACs .17-.19 vs. 6.3 percent for high-BACs ($X^2 = 9.3$, $df = 1$, $p = .001$) and after two years were 14.2 percent for BACs .17-.19 vs. 12.6 percent for high-BACs ($X^2 = 4.5$, $df = 1$, $p = .03$).

The rates of recidivism among repeat offenders arrested in 1998 with BACs $\geq .20$ and those with BACs .17-.19 were generally comparable (Table 11). Neither the recidivism rates after one year (6.8 percent for both groups) nor the rates after two years (14.4 percent for BACs .17-.19 vs. 14.4 percent for BACs $\geq .20$) were statistically significant.

Table 11

**Rate of Recidivism for DWI Offenders Arrested in 1998, Minnesota
BACs .17-.19 vs. BACs $\geq .20$
Cumulative Percent of Offenders with Subsequent Offense**

	First-Time Offenders		Repeat Offenders	
	BAC .17-.19	BAC $\geq .20$	BAC .17-.19	BAC $\geq .20$
Total Cases (N)	(4,058)	(4,056)	(1,389)	(1,814)
Months Elapsed since Arrest	%	%	%	%
3	2.4	1.8	1.7	2.6
6	4.3	3.4	3.3	4.1
9	6.2	4.7	5.0	5.6
12	8.0	6.3	6.8	6.8
15	9.7	7.8	8.9	8.5
18	11.4	9.6	10.5	10.0
21	12.8	11.1	12.1	11.9
24	14.2	12.6	14.4	14.1

By the end of the first year following arrest, recidivism among high-BAC first-time offenders arrested in 1999 (6.7 percent) was lower than recidivism among first-time offenders with BACs .17-.19 (7.8 percent) (Table not shown). This difference was marginally significant ($X^2 = 3.89$, $df = 1$, $p = .05$). For repeat offenders arrested in 1999, high-BAC offenders had a slightly lower recidivism rate than offenders with BACs .17-.19 after one year (7.2 percent vs. 7.7 percent). This difference was not statistically significant.

Survival Analysis Models

Survival analysis further examined the association between the alcohol test result (test refusal, BAC .17-.19, BAC < .17, BAC ≥ .20) and the rates of recidivism among first-time and repeat offenders. Separate models were developed for first-time and for repeat offenders arrested in each of the years 1998 and 1999. In addition to the alcohol test results, predictors included offenders' gender and age.

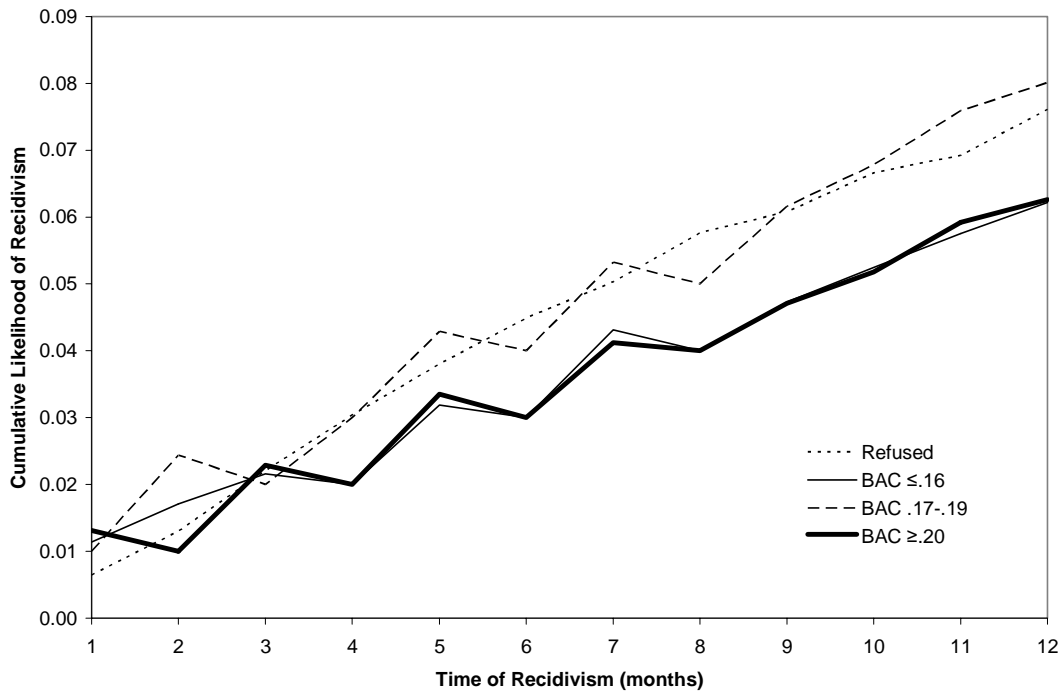
In the presence of other predictors, the alcohol test result among first-time offenders arrested in 1998 was significantly associated with the rate of recidivism during the 12 months following arrest (Table 12). In comparison to high-BAC offenders, the likelihood of recidivism was higher among persons who refused the alcohol test (HR = 1.27, p < .01) and persons with BACs .17-.19 (HR=1.23, p < .05), but was not significantly different from persons with BACs less than .17 (HR = 0.89, p < .14). Male offenders were more likely to recidivate than female offenders (HR=1.28, p < .001). Compared to drivers ages 55 and older, the likelihood of recidivism also was higher among drivers younger than 21 years old (HR=1.95, p < .001) and drivers 21-24 years of age (HR=1.89, p < .001).

Table 12
Multivariate Survival Analysis Model of First Subsequent Offense during
12 Months Following Arrest
First-time DWI Offenders Arrested in 1998, Minnesota

	Parameter Estimate	Standard Error	Hazard Ratio (HR) (Confidence Interval)	p-value
<i>Gender</i>				
Female			1.00	
Male	0.25	0.07	1.28 (1.12-1.47)	<.001
<i>Age (yr)</i>				
55+			1.00	
< 21	0.67	0.16	1.95 (1.44-2.64)	<.001
21-24	0.63	0.15	1.89 (1.41-2.53)	<.001
25-34	0.26	0.15	1.29 (0.97-1.72)	0.08
35-54	0.11	0.15	1.12 (0.84-1.49)	0.44
<i>Test Result</i>				
≥ .20			1.00	
Refused Test	0.24	0.10	1.27 (1.05-1.53)	0.01
.17-.19	0.20	0.09	1.23 (1.04-1.45)	0.02
< .17	-0.11	0.08	0.89 (0.77-1.04)	0.14

Figure 1 graphically depicts the results from Table 12 for the cumulative adjusted likelihood of having a subsequent DWI offense by the alcohol test result for first-time offenders arrested in 1998. Throughout the first year following their arrest, the likelihood of re-arrest among high-BAC first-time offenders was not significantly different than the likelihood for lower-BAC offenders, but was significantly less than the likelihood for offenders who refused the alcohol test and offenders with BACs .17-.19.

**Figure 1 – Adjusted Cumulative Hazard Function:
Cumulative Likelihood of Subsequent DWI Offense over First 12 Months
by Alcohol Test Result
First-time DWI Offenders Arrested in 1998, Minnesota**



Several other survival models for first-time offenders were constructed. A one-year survival analysis model for first-time offenders arrested in 1999 produced the same pattern of association between the alcohol test result and the rate of recidivism as the model for first-time offenders arrested in 1998, but the results were not statistically significant. Models also examined recidivism among first-time offenders for the first two years following arrest. Although these models also produced similar patterns for the effects of alcohol test results on recidivism as were produced in the models looking at the first year after arrest, the effects were not significant.

In one-year survival analysis models developed for repeat offenders for 1998 and for 1999, alcohol test result was not a significant predictor.

High BACs among Fatally Injured Drivers

It was hoped that the effects of the high-BAC statute on alcohol-related crashes could be determined. In all states, information on a driver's BAC is generally not available for non-fatal personal injury and property-damage-only crashes. However, Minnesota has a very high rate of testing drivers for alcohol in fatal crashes. For example, in 2000, 93 percent of fatally injured drivers were tested for alcohol.

The percentage of high-BAC drivers among fatally injured drivers who were tested for alcohol was examined for the years 1997-2000. The percentage rose from 14.4 percent in 1997 to 17.9 percent in 1998 and then fell to 16.2 in 1999 and 2000. However, these differences were not statistically significant ($X^2 = 1.6$, $df = 3$, $p = .66$).

Interviews with Experts

Semi-structured interviews were conducted in summer 2001 with about 20 DWI experts in Minnesota's DWI laws and practices, including representatives from the enforcement, judicial, prosecutorial, public defender, and research communities; driver license sanctioning officials in the Department of Public Service; legislative staff; and officials in the Traffic Safety Office.

The experts were asked to express their views on the following topics:

- good and bad aspects of Minnesota's DWI laws
- support for high-BAC sanctions
- whether high-BAC threshold is appropriate, too high, or too low
- impact (either positive or negative) of high-BAC statute on the arrest, prosecution, adjudication, and sanctioning of DWI offenders
- whether high-BAC offenders received more severe case dispositions after the high-BAC law took effect
- extent to which the statutory high-BAC administrative and criminal penalties are actually applied
- ways that a high-BAC first-time or repeat offender can avoid the high-BAC sanctions (for example, plea to lower BAC at conviction)
- whether the high-BAC statute had had an impact on the rate of alcohol test refusals, an increase in contested cases, or an increased burden on administrative sanctioning staff
- effectiveness of high-BAC sanctions in reducing recidivism

The following discussion summarizes the main points emerging from the interviews.

Complexity of DWI Laws.

There was a general consensus that when implemented in January 1998, the high-BAC statute added a considerable level of complexity to the existing body of DWI laws, which were viewed as already highly complex. Because of this added complexity, some experts believed that the high-BAC statute may have had the unintended effect of increasing the number of “loopholes” in the system.

The added complexity was a particular concern for law enforcement officers, who typically initiate the process to impose administrative driver license and vehicle sanctions. In cases where the officer fails to initiate the administrative sanctions, imposition of the license revocation or vehicle sanctions must await conviction. Lack of clarity about the applicability of administrative sanctions was reportedly especially problematic for officers assigned to regular traffic patrols rather than dedicated DWI patrols.

All the experts indicated that the complexity of the laws had been significantly reduced by the recodification in 2001. Some suggested that the complexity introduced by the high-BAC statute may have contributed to the perceived need for recodification.

Enforcement of High-BAC Statute.

Despite the apparent confusion about the high-BAC statute among some police officers, all the experts believed that most high-BAC offenders were being charged appropriately.

Support for the High-BAC Law.

The level of support for the high-BAC law was mixed. Most experts believed that a BAC of .20 or higher is a strong indicator of alcohol dependency and repeated alcohol-impaired driving, and most believed that a high-BAC threshold of .20 was appropriate. It was suggested that the enactment of the high-BAC law had served to educate some judges about the value of the BAC in predicting future behavior and as an indicator of alcohol dependency. Several persons noted that the law was helpful in providing a “benchmark” for the treatment of offenders with higher BACs. However, as discussed below, some interviewees questioned the efficacy of the high-BAC law as a general or specific deterrent measure. Several judges and other experts reported that the enactment of the high-BAC law created “quite a stir” among many judges, who believed the penalties, especially the jail sanction for a first-time offense, were onerous and unreasonable.

Effects on Case Dispositions and Penalties.

It was the consensus that the high-BAC law had increased the severity of case dispositions among high-BAC offenders. It was reported that as a result of the law, prosecutors and judges have become much more reluctant to allow a high-BAC offender to plead guilty to a non-DWI related charge such as reckless driving. In addition, it was reported that after the law, many judges became unwilling to reduce a high-BAC offense to a standard offense except under limited extenuating circumstances. Some judges and prosecutors perceived the high-BAC statute as creating another level of plea bargaining, that is, an offender can now plea from a high-BAC DWI offense to a low-BAC DWI offense.

Interviews were conducted with judges and prosecutors located in various types of jurisdictions, including rural, suburban, and urban areas. Discussions with these experts indicated that courts vary widely in their treatment of high-BAC cases and the imposition of the enhanced penalties required by law. It was noted that the availability of treatment facilities, jail facilities, probation programs, and other resources varies widely among counties and may affect the application of some sanctions. None of the judges indicated that he or she always imposes the mandatory statutory high-BAC penalties. Apparently some impose the penalties as a general rule, but others regard the statutory mandatory penalties as a maximum, rather than a minimum, penalty. Some, but not all, judges reported that high-BAC first-time offenders are likely to serve some jail time. There was also a range of views concerning the application of statutory criminal sanctions for high-BAC repeat offenders. One expert believed that a high-BAC repeat offense would result now in "serious time in jail." Another expert indicated that the enhanced penalties for high-BAC repeat offenses are "buried in the law" and, thus, not widely applied.

There was a strong sentiment among DWI experts that the administrative license and vehicle sanctions are generally imposed in a consistent and efficient manner by the Department of Public Service. It also was reported that law enforcement officers have increased the extent to which they initiate the vehicle sanctions. One expert estimated that the administrative plate impoundment was currently initiated in about 85 percent of the indicated cases, up from 50 percent several years ago. Legislative staff, sanctioning officials, the Chair of the DWI Task Force, and other interviewees were knowledgeable about the technical aspects of the administrative sanctions and work together to identify problems and address them through procedural or statutory changes.

Although some states report considerable problems with a large number of appeals of administrative license revocations, this did not appear to be the case in Minnesota. Minnesota law provides for two independent review processes for administrative license revocations. The administrative review is rarely used. In 1998, only about 1 percent of the total revocations were appealed administratively, and 5.5 percent of the appeals (less than 0.1 percent of all revocations) resulted in a rescission of the revocation. Almost 12 percent of the total revocations underwent a judicial review, and 13.6% of these appeals (1.6 percent of all revocations) resulted in a rescission. An increase in appeals in 1998 was attributed to the law, effective January 1, 1998, that allowed implied consent revocations to be used for penalty enhancements for repeat offenses (Cleary, Shapiro, 2001).

It was noted by the public defenders interviewed that they do not represent offenders in the administrative processes. Thus, they believed that the increased emphasis on administrative penalties has adversely affected less affluent offenders who rely on public defenders for court representation and cannot afford an attorney for the administrative hearing.

Implementation Issues.

Officials with the state DPS reported that the implementation of the law necessitated some programming changes to trigger the appropriate license and vehicle sanctions for high-BAC offenders, and to include the BAC on the driver license record. However, two other issues emerged after the law had been in effect for some time.

First, some defense attorneys sought to have the BAC of record lowered on the conviction record and the driver license record when a high-BAC offense was pled down to a standard DWI conviction. It was reported that both the court clerks and DPS officials refused to accommodate this request. A second problem emerged as a result of the turnaround dispositions available to high-BAC first-time offenders. When DPS initiates an administrative plate impoundment, DPS confiscates the plate. Because a turnaround disposition reduces the length of the plate impoundment period, a significant proportion of offenders receiving a turnaround disposition were entitled to restoration of the plate. Processing the restoration and purchasing and mailing the new plates represented a considerable cost to the DPS. As noted earlier, this issue was resolved by legislation enacted in 2001 that excludes high-BAC offenders from a reduced impoundment period.

Several experts noted that there were initial concerns that the BAC test refusal rate would increase, especially among repeat offenders, when the high-BAC law was implemented. (Based on the results of this evaluation, the BAC test refusal rate declined from 1997 to 2000.) It was believed that the strong penalties for refusals helped to prevent an increase in the refusal rate. It also was believed by some experts that the high-BAC law had had little effect on the refusal rate because many offenders, especially first-time offenders, are unaware of the high-BAC law.

Perceived General and Deterrent Effects.

There was considerable skepticism regarding the law's general deterrent effects. Several persons noted that there had been little publicity about the law; thus, it was believed that the general public was largely unaware that a higher BAC would result in more severe penalties. It was believed that there was possibly greater awareness of the high-BAC law among offenders who frequently drink and drive. However, some experts did not believe that the imposition, or threat, of more severe penalties would be effective in reducing drinking and driving among such persons, most of whom – the experts believe – have an alcohol dependency.

IV. DISCUSSION

Many in the highway safety community view a high-BAC sanctioning system as a promising approach for reducing recidivism among a group of impaired drivers identified to be at higher risk for recidivism and for crash involvement. As of January 1, 2002, thirty-one U.S. states have implemented high-BAC sanctioning systems, most within the past few years. These systems vary in their scope and complexity. However, in most states it is difficult to predict how many offenders would be affected by a high-BAC statute or to determine the effects of such a statute because there is scant information on BAC test results or case dispositions. Information is seldom readily available on what proportion of offenders refuse the test, the distribution of BACs, or how alcohol test results differ for first-time and repeat offenders. Information on offenders' BAC results and case dispositions may be incomplete, especially for persons who are not convicted in court.

Minnesota's high-BAC law, implemented on January 1, 1998, has a relatively high BAC threshold ($\geq .20$), but relatively strong mandatory sanctions. Most notably, the law imposes an administrative mandatory license plate impoundment and longer license revocations for high-BAC first-time offenders.

The availability of historical data on DWI offenses and recent data on offenders' BAC results provided an opportunity to study the implementation and effects of Minnesota's law. In 1998, the first year of the law, 16.9 percent of first-time DWI offenders and 21.0 percent of repeat offenders had a BAC at or above .20. The evaluation found that the great majority of these high-BAC offenders received more severe penalties than lower-BAC offenders after the law took effect. In 1998, of first-time offenders with BACs at or above .20, 85.6 percent received enhanced administrative and/or court sanctions rather than standard DWI sanctions, and therefore received more severe penalties. Furthermore, high-BAC first-time offenders were more likely than offenders with lower BACs to receive a court conviction in addition to an administrative sanction, and the majority of high-BAC offenders received both an enhanced administrative and an enhanced court disposition. In 1998, virtually all high-BAC repeat offenders (96.8 percent) received enhanced administrative sanctions and/or enhanced court DWI-related convictions. Thus, the law had the intended results of increasing the severity and certainty of sanctions for high-BAC offenders compared to lower-BAC offenders. Comparisons of case dispositions for total first-time and total repeat offenders before and after the high-BAC law indicated that the overall severity of case dispositions also increased.

The severity of dispositions for high-BAC offenders declined from 1998 to 1999 and to 2000. For example, 65.0 percent of high-BAC first-time offenders received both enhanced administrative and enhanced court sanctions in 1998, compared to 53.0 percent in 1999. If sustained over time, this likely would dilute the high-BAC law's deterrent effects. A comparable decline in the severity of dispositions was especially acute among first-time offenders with "borderline" high BACs (.20-.22). A decline in the severity of dispositions was not identified for high-BAC repeat offenders.

Following the law's implementation, the rate of alcohol test refusals experienced a small, but significant, decline among first-time offenders; the rate was essentially unchanged among repeat

offenders. This was likely due to Minnesota's strong laws pertaining to test refusals. Other states experiencing rising test refusal rates, with or without high-BAC sanctioning systems, may wish to consider Minnesota's approach of criminalizing refusals.

Recidivism rates by BAC level could not be examined for the period prior to the law. This was a significant limitation of the study. However, first-time offenders arrested in 1998 (the first year of the High-BAC law) who had BACs of .20 or greater and, thus, were subject to the high-BAC enhanced penalties, had lower rates of recidivism than offenders who had BACs of .17-.19, who were not subject to the enhanced penalties. These differences were statistically significant. BACs of .17-.19, although lower than BAC of .20 and above, are also relatively "high" and considered indicative of a high-risk offender. In fact, in 14 of the 31 states with high-BAC systems, the high-BAC threshold is .15. In addition, several highway Safety organizations (e.g., MADD, National Transportation Safety Board) recommend that the high-BAC threshold be set at .15. In Minnesota, about half of DWI offenders would qualify for enhanced sanctions under a .15 threshold. However, at a lower threshold, enhanced sanctions might be less fully implemented if courts and prosecutors were reluctant to apply them more broadly. In some jurisdictions in some states, the courts may not apply mandatory statutory sanctions.

As with the offenders arrested in 1998, recidivism was lower among high-BAC first-time offenders arrested in 1999 than among offenders with BACs .17-.19. However, the difference was lower than in 1998 and not statistically significant. It is possible that the decline in the severity of sanctions in 1999 may have diluted the effects of the high-BAC law. However, it also is important to note that there may have been other intervening factors in the DWI system during the study period that differentially affected particular groups of DWI offenders. In addition, there may be ways in which offenders with BACs .17-.19 do not represent an appropriate comparison group, or differences between these two groups of offenders may have existed prior to the law. Nevertheless, although not conclusive, these findings are suggestive of an initial positive effect of a high-BAC sanctioning system on the rates of recidivism among the first-time offenders targeted by the law.

As part of a process evaluation of Minnesota's high-BAC statutes, interviews were conducted with judges, prosecutors, enforcement personnel, driver licensing officials, researchers, and others. It was noted that the law is widely perceived as being effective in increasing the severity of dispositions for high-BAC offenders. It is believed that as a result of the law, judges and prosecutors have become more reluctant to allow a high-BAC offender to plead guilty to a non-DWI-related offense. However, it also was noted that some courts may choose not to impose the enhanced sanctions mandated by law. Many experts also expressed skepticism regarding the general and specific deterrent effects of the law.

When the law was first implemented, there were concerns that the high-BAC statutes had added substantial complexity to Minnesota's already complex DWI laws. This was a problem not only for prosecutors and judges, but also for enforcement personnel, who must initiate the appropriate license and vehicle administrative actions based on the BAC, whether the offender has prior violations, and other factors. It is believed that the recodification of Minnesota's impaired driving statutes has alleviated some of this complexity. The high-BAC statutes were strengthened in 2001. Most notably, high-BAC offenders are now ineligible for a shortened license revocation (and vehicle license impoundment) period upon conviction.

As the primary goal of Minnesota's high-BAC statute was to reduce recidivism among offenders with higher BACs, this study focused on the specific deterrent effects of the law, rather than any general deterrent effects. According to the experts interviewed about the implementation of the high-BAC law, there was little, if any, publicity associated with the law's passage or implementation. Several experts reported that they believed the general driving population was largely unaware that enhanced sanctions may be imposed on drivers with higher BACs. Conducting an assessment of any general deterrent effects of the law would also be problematic because the high-BAC law was enacted as part of an Omnibus DWI Bill; thus, any changes in general DWI trends would be difficult to attribute to the high-BAC law rather than other statutes implemented at the same time. Although no in-depth analyses of general deterrent effects were conducted, the number of total DWI offenses (one measure of general deterrent effects) rose slightly from 32,625 in 1997, the year prior to the implementation of the high-BAC law, to 33,662 in 1998, 35,832 in 1999 and 35,737 in 2000.

In sum, high-BAC sanctioning systems are viewed as a promising approach for reducing recidivism among "hardcore" impaired drivers. Minnesota's law appears to have had some success in increasing the severity of case dispositions for high-BAC offenders. There is also evidence suggestive of an initial effect on recidivism. These effects may in part be attributable to the high-BAC law's reliance on strong administrative sanctions and strong laws for alcohol test refusals. However, the analyses also showed that the severity of case dispositions applied to high-BAC offenders, especially first-time offenders, declined somewhat over time. Furthermore, the initial positive effects of the high-BAC law on recidivism also appeared to decline over time. This suggests that in order to achieve a long-term deterrent effect from high-BAC sanctioning systems, the imposition of enhanced sanctions must be sustained over time.

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Appendix A

**Summary of States' Enhanced Penalties for
First-Offense High-BAC Offenders 21 Years or Older
As of January 1, 2002**

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Arizona	.15	.08	<p>If high BAC, mandatory jail 30 consecutive days; all but 10 consecutive days may be suspended if screening/treatment program completed. Mandatory 10 consecutive days for standard 1st offense; all but 24 consecutive hours may be suspended if complete screening/treatment. Jurisdictions may provide work release program after 48 consecutive hours in jail for high-BAC offenders vs. 24 consecutive hours for other offenders. Jurisdictions also may provide home monitoring program after 15 consecutive days in jail for high-BAC vs. 24 consecutive hours. Maximum 6 months (with 30 consecutive days) vs. 6 months (10 consecutive days)</p> <p>Mandatory minimum fine \$250 and \$250 assessment vs. \$250.</p> <p>Upon conviction, 12-month administrative ignition interlock required (or court may require) for high-BAC offenders after license suspension ends or conviction, whichever is later vs. no requirement.</p>	statute	1999, 2000, 2001
Arkansas	.15	.08	<p>For administrative license suspension, high-BAC offenders receive 180 days suspension or 30 days suspension followed by 150 days restricted driving privileges vs. 120 days suspension with restricted license. Restricted license can be available to all 1st offenders. Court can order ignition interlock.</p>	statute	2000, 2001
California	.20	.08	<p>Court may consider BAC \geq .20 as a special factor in imposing enhanced sanctions and determining whether to grant probation and may give high BAC "heightened consideration" in ordering an ignition interlock up to 3 years.</p> <p>In counties with licensed alcohol education/ counseling program, offenders placed on probation with high BAC must participate in program for at least 6 months vs. 3 months.</p>	statute	

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Colorado	.15	.10	For state's mandatory treatment/screening program for all offenders, assessment tool recommends Level I if BAC \geq .15; judge, however, has discretion.	policy	
	.20		<p>If BAC \geq .20: mandatory 90 days jail (10 days if participate in alcohol education/treatment program) vs. 5 days unless participate in program.</p> <p>\$500-1500 fine vs. \$300-1,000.</p> <p>60-120 days (mandatory 60) community service vs. 48-96 hours (mandatory 48).</p> <p>Administrative licensing action for BAC \geq .20: completion of alcohol education or treatment program required for license reinstatement.</p> <p>If driving under the influence (DWI) charge is reduced to the lesser charge of driving while impaired, and if BAC \geq .20, then "because of such aggravating factor," sanctions imposed must be for (greater) DWI offense.</p>	statute	
Connecticut	.16	.10	<p>120 days administrative driver license suspension vs. 90 days, but all offenders may obtain restricted license after 30 days.</p> <p>Under state's diversion program, completion of pre-trial rehabilitation/alcohol education results in dismissal. If BAC \geq .16, offender attends more sessions at higher cost than other offenders.</p>	statute	
Delaware	.16	.10	BAC \geq .16: not automatically eligible, but can apply, for "First Offense Election Process" (dismissal of criminal charges upon completion of education/treatment program).	statute	
	.20		BAC \geq .20: DMV conducts "character review" (references and interview) prior to reinstating license.	policy	

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Florida	.20	.08	Fine \$500- \$1,000 vs. \$250 -\$500. Maximum 9 months jail vs. 6 months. Judge cannot accept guilty plea to lesser offense.	statute	1999, 2000, 2001
Georgia	.15	.08	Court cannot accept <i>nolo contendere</i> plea if violate illegal <i>per se</i> law and BAC \geq .15.	statute	
Idaho	.20	.08	Mandatory minimum 10 days jail (beginning with 48 consecutive hours) vs. no mandatory minimum; maximum 1 year vs. 6 months. Fine up to \$2,000 vs. \$1,000. Mandatory minimum 1 year driver license court suspension after release from confinement vs. mandatory minimum 30 days suspension followed by restricted license for 60-150 days.	statute	1999, 2000, 2001
Illinois	.15/ .20	.08	BAC one of several criteria for assignment to "risk category" for completion of treatment program for license reinstatement: BAC < .15 = minimal risk (10 hours education); .15-.19 BAC = moderate risk (10 hours education and 12 hours early intervention); BAC \geq .20 = significant risk (10 hours education and 20 hours treatment). High risk multiple offenders must receive \geq 75 hours of treatment for reinstatement.	rule	1999, 2000, 2001
Indiana	.15	.08	BAC \geq .15 is Class A vs. Class C misdemeanor. Maximum fine \$5000 vs. \$500. Maximum jail 1 year vs. 60 days.	statute	

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Iowa	.15	.10	High-BAC offenders excluded from deferred judgment or sentence generally available to 1 st offenders. Mandatory minimum 48 hours jail vs. no mandatory jail. Mandatory minimum \$500 fine. For other offenders, minimum is \$500, or \$1,000 if personal injury or property damage crash. However, court may order unpaid community service in lieu of fine.	statute	1999, 2000, 2001
Kentucky	.18	.08	BAC ≥ .18 is one of several “aggravating circumstances”; enhanced penalty is mandatory minimum 4 days jail, which “shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.” Must also be detained 4 hours after arrest. Other 1 st offenders must receive one of the following: \$200-\$500 fine, 48 hours-30 days jail or community labor, or 48 hours-30 days community service.	statute	2001
Louisiana	.15	.10	Mandatory 48 hours jail prior to probation. For other 1 st offenders, in lieu of minimum 10 days jail, may participate in substance abuse/driver improvement program and 1) serve 2 days jail, or 2) perform 4 days community service.	statute	2000, 2001
Maine	.15	.08	Mandatory minimum 48 hours jail prior to probation alternatives vs. no mandatory jail.	statute	

State	High Br/ BAC	Illegal <i>Per Se</i> BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Minnesota	.20	.10	<p>Effective 1/1/2001, DWI offenses are categorized into three degrees based on the number of aggravating factors present, which include a prior DWI offense, BAC \geq .20, and driving with passenger < 16 years old and > 36 months younger than driver. Criminal penalties if high BAC only aggravating factor, i.e., second degree DWI, include maximum jail 1 year vs. 90 days, mandatory minimum fine \$900 vs. \$210, maximum fine \$3,000 vs. \$700. If BAC \geq .20 court also may impose additional penalty assessment of \$1,000.</p> <p>In addition, court may stay sentence except license revocation if offender submits to level of care recommended in required chemical use assessment report. Court must order high-BAC offenders person to submit to recommended level of care.</p> <p>Mandatory "hold for court": unless maximum bail is imposed after arrest, high-BAC offender released from jail only if agree to abstain from alcohol with daily electronic alcohol monitoring.</p> <p>Mandatory administrative pre-conviction license revocation 180 days (30 days hard revocation) vs. 90 days (15 days hard); mandatory post-conviction license revocation 60 days (30 days hard revocation) vs. 30 days (15 days hard).</p> <p>Administrative plate impoundment equal to license revocation period if BAC \geq .20.</p>	statute	1999, 2000, 2001
Missouri	.15	.08	<p>Upon conviction, the court must order offender to complete substance abuse program. For persons with administrative per se violations, driving privileges cannot be restored until successfully complete program. For cause, court may modify but may not waive this requirement if BAC \geq .15</p>	statute	

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Montana	.18	.10	Court may restrict driving to vehicle with ignition interlock device, if device is reasonably available, for BAC \geq .18.	statute	
Nevada	.18	.10	Offenders with BAC \geq .18 must be evaluated for alcohol/drug abuse prior to sentencing, with \$100 fee. Also serve minimum 2 days jail or 48 hours community service. Other 1 st offenders may receive suspended sentence if participate in treatment program but must serve 1 day jail or 48 hours community service.	statute	1999, 2000, 2001
New Hampshire	.16	.08	Class A misdemeanor vs. violation. Up to 1 year jail vs. no jail. Mandatory minimum fine \$500 vs. \$350; maximum \$2,000 vs. \$1,000. Mandatory minimum 1 year license revocation vs. 90 days. Administrative revocation of registration of vehicle registered to offender revoked for same period as license revocation; hardship registration available vs. no revocation. May receive conditional discharge, which may include up to 50 hours community service.	statute	1999, 2000, 2001
New Mexico	.16	.08	Mandatory minimum 48 consecutive hours jail vs. no mandatory jail.	statute	1999, 2000
North Carolina	.15 .16	.08	Person convicted with BAC \geq .15 must complete substance abuse assessment and treatment program, if indicated, to reinstate license. BAC \geq .16 considered gross impairment and an aggravating factor in sentencing; level of punishment is determined by weighting aggravating and mitigating factors. Also, to obtain restricted license after hard suspension, ignition interlock must be installed for one year, and driving with BAC \geq .04 prohibited.	statute	1999, 2000, 2001

State	High Br/ BAC	Illegal Per Se BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Ohio	.17	.10	Mandatory jail time doubled from 3 consecutive days (may attend 3 consecutive days driver's intervention program in lieu of jail) to 6 days (may attend program for 3 days in lieu of 3 days jail but must serve 3 days jail).	statute	2000, 2001
Oklahoma	.15	.08	In addition to other penalties for all offenders, offenders convicted of driving with BAC \geq .15 receive mandatory minimum 28 days inpatient treatment, followed by minimum 1 year of supervision, periodic testing, and aftercare at defendant's expense, 480 hours of community service following aftercare, and minimum 30 days ignition interlock device. This shall not "preclude the defendant being charged or punished under other DWI statutes." Note: For any type of DWI offense, probation before judgment available. Deferred judgment also available upon guilty plea if complete alcohol/drug program.	statute	
Rhode Island	.15	.10	In contrast to $.10 \leq \text{BAC} < .15$, offenders with BAC \geq .15 receive \$500 fine vs. \$100-\$300 fine, 20-60 hours public community restitution and/or imprisonment for up to 1 year vs. 10-60 hours public community restitution and/or imprisonment for up to 1 year. Note: $.08 \leq \text{BAC} < .10$ is a civil offense.	statute	
South Dakota	.17	.10	Courts must require pre-sentencing alcohol evaluations vs. no such requirement	statute	
Tennessee	.20	.10	Mandatory minimum 7 consecutive days of jail vs. 48 consecutive hours. It appears that in certain counties with more than 100,000 residents, court may allow 200 hours community service in lieu of jail term.	statute	1999, 2000, 2001

State	High Br/ BAC	Illegal <i>Per Se</i> BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Utah	.16	.08	As an alternative to imprisonment or community service, an offender may be allowed to participate in home confinement electronic monitoring program; alcohol testing may be part of program. Court also may order alcohol or drug treatment and may require ignition interlock as condition of probation. For each of these sanctions court must give reasons on record if not imposed/ordered if offender had BAC \geq .16.	statute	
Virginia	.20	.08	Mandatory minimum jail: 5 days if BAC .20-.25; 10 days if BAC > .25; no mandatory minimum if BAC < .20. 1st offender may attend Virginia Alcohol Safety Action Program (VASAP) to obtain restricted license. BAC \geq .20 is one of several criteria used to indicate longer and more intensive education.	statute rule	1999, 2000

State	High Br/ BAC	Illegal <i>Per Se</i> BAC	Enhanced Penalty for High-BAC First Offenders vs. Penalty for Standard First DWI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds FY '99-'01
Washington	.15	.08	<p>Mandatory minimum 2 days jail or 30 days electronic home monitoring vs. 24 hours or 15 days for standard offense.</p> <p>Ignition interlock device (after license suspension or revocation period) not less than 1 year vs. court discretion.</p> <p>Mandatory minimum fine \$925 vs. \$685.</p> <p>Mandatory court driver license suspension/ revocation 1 year vs. 90 days.</p> <p>Deferred prosecution program for all 1st offenders results in issuance of 5-year probationary license and dismissal of charge upon completion of 2-year treatment program. However, court must order ignition interlock if BAC \geq .15.</p>	statute	1999, 2000, 2001
Wisconsin	.17 .20/ .26	.10	<p>Fine penalties for persons convicted of 3rd, 4th, and 5th DWI are doubled if BAC .17-.199, tripled if BAC .20-.249, and quadrupled if BAC \geq .25. The law does not include enhanced penalties for high-BAC 1st offenders.</p> <p>Wisconsin law also provides that if BAC is known (for first or subsequent offenses), the "court shall consider that level as a factor in sentencing."</p>	statute	

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