AN INTRODUCTORY HANDBOOK FOR STATE TASK FORCES TO COMBAT DRUNK DRIVING

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(The opinions, findings, and conclusions expressed in this report are those of the authors and not necessarily those of the sponsoring agencies.)

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TABLE OF CONTENTS

I. INTRODUCTION AND HISTORIES

On June 7, 1982, Governor Charles S. Robb created the Governor's Task Force to Combat Drunk Driving. The task force is to identify and assess current efforts to address the problem of drunken driving in Virginia and to make appropriate recommendations by June 15, 1983.

The Governor divided the task force into four committees: law enforcement, licensing and adjudication, prevention and rehabilitation, and public education and community action. Governor Robb specified six tasks to be accomplished:

1. Identify and assess current efforts to address drunken driving in Virginia and the state of the art of combating this problem.

2. Identify any gaps between current efforts and the state of the art.

3. Determine the feasibility of implementing additional elements to Virginia's approach to fighting drunken driving.

4. Identify potential sources of funds where required for implementing recommendations.

5. Determine how the coordination of management, funding, and resources can be improved at local and statewide levels to implement recommendations.

6. Prepare a report on the findings of the task force, including recommendations to the Governor and the General Assembly.

At the request of Delegate Mary Sue Terry, chairman of the task force, and Vincent M. Burgess, the administrator of the Virginia Alcohol Safety Action Program, the Virginia Highway and Transportation Research Council has prepared this booklet to assist the task force in its deliberations. The booklet discusses the nature and scope of the drunken driving problem as well as the history of attempts to control the problem in Virginia. It also notes recent changes in Virginia's DUI laws. The second section, which includes an introductory paper dealing with topics of interest to each of the four committees, highlights some alternatives for action in each area. The third section presents a number of issues that could be considered by the task force.

The booklet is meant to be an introduction only; it is not an exhaustive report on any of the topics. However, it does offer broad-based information on the drunken driving problem in Virginia and can be utilized by each committee as a starting point in its deliberations.

The Magnitude of the Drunken Driving Problem

The problem of drinking and driving is receiving much attention, not only among transportation safety professionals but also among the press and the public. This is in part due to such factors as the obvious sericusness of the problem and the emphasis placed upon it by the Reagan administration. This interest in drunken driving, however, is not new; over the last ten years, millions of dollars in federal, state, and local funds have been spent in an attempt to reduce the number of alcohol-related motor vehicle accidents. In Virginia, as far back as 1971, 18% of all funds received by the Department of Transportation Safety, whose task it then was to combat this problem, was spent on alcohol countermeasures. In spite of the wide recognition of the problem and the wide variety of programs designed to alleviate it, alcohol-related accidents remain highly resistant to highway safety efforts, both nationally and in the Commonwealth.

The National Perspective

According to the National Highway Traffic Safety Administration (NHTSA),drunken driving continues to be one of the nation's most serious health and safety problems.* It is, in fact, a national epidemic, transcendent of state boundaries, to which no one is immune. Some 50% of all drivers killed each year have blood alcohol concentrations in excess of the legal limit, 0.10%. About 60% of all fatal crashes involve a driver who has been drinking. In single vehicle fatal crashes, where it is reasonably certain who is at fault, upwards of 65% of those drivers who die are legally drunk. Over the past 10 years, the proportion of highway deaths involving alcohol has averaged a tragic 25,000 a year. Thus, a quarter of a million Americans lost their lives in alcohol-related crashes over the last decade.

Drunken driving has a high economic cost to this country as well. A conservative estimate is between five and six billion dollars a year.

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*Much of the material describing the national perspective is drawn from the Executive Summary of the NHTSA's Alcohol Highway Safety Program Plan dated September 1981. The Executive Summary has also been used as a source for other introductory material throughout this booklet.

Background

Alcohol is a major contributing factor to fatal and serious injury automobile crashes. It is not just the fact that drinking drivers are involved in a large percentage of fatal crashes that causes concern among safety professionals; it is the fact that more than three-quarters of these drinking drivers have BACs greater than that required for presumed intoxication. The average is approximately 0.20%, double the level for presumed intoxication. Estimating an average period of alcohol consumption at 4 to 5 hours, this means that the average fatally injured drinking driver has had about 15 drinks prior to becoming involved in the crash.

With regard to alcohol and responsibility for fatal crashes, the drinking-driver problem is even more significant. In one study drivers judged to be at fault in fatal crashes were six times more likely to have had BACs greater than 0.10% than were drivers judged not at fault for their crashes (60% vs. 10%). This strong relationship between crash responsibility and high alcohol levels is shown further in single vehicle crashes, where between 60% and 75% of dead drivers have BACs greater than 0.10%.

What the high BAC figures suggest is that the majority of alcohol-related fatal crashes are caused by heavy drinkers. Some portion of the approximately 15% of fatal crashes which involve drivers who have been drinking but who do not have BACs greater than 0.10% may be caused by less heavy, less chronic social drinkers. This is an important consideration from a countermeasure standpoint, since it is commonly believed and reasonably well documented that problem drinkers (and problem drivers) are less likely to respond to prevention, rehabilitation, deterrence, or any other approach when used alone. Thus, it would appear that few, if any, of the most frequently used countermeasures are likely to have a major impact on the persons responsible for the majority of drinking-driver-caused fatal crashes; i.e., problem drinkers.

The General Driver Population

The majority of drivers are either abstainers or light-to-moderate drinkers. Even quite liberal estimates suggest that only about 10% to 15% of the nation's drivers would be classified as being problem drinkers.

The average proportion of licensed drivers arrested for drunken driving over a one-year period is estimated to be 1%.

This translates to approximately 1.3 million out of approximately 130 million licensed drivers. On a nightly basis, between one in five hundred and one in two thousand drivers on the road with a BAC greater than 0.10% are arrested for drunken driving. These arrest figures also have important implications for countermeasures. They suggest that there is presently very little risk that an intoxicated driver will be arrested for such behavior. The perceived risk of arrest among such drivers is similarly low, or nonexistent.

Number of Crashes Caused by Arrested Drunken Drivers

An important consideration in assessing the likely impact of a given countermeasure approach is how many apprehended drunken drivers will be involved in fatal or serious injury crashes in the near future; e.g., in the following year. Because of record-keeping and common judicial procedures such as plea bargaining and diversionary programs, the answer to this question cannot be given with total confidence. What is known, however, is that between 10% and 20% of all fatal crashes investigated by the NHTSA's multidisciplinary accident investigation teams involve a driver with a previous arrest for drunken driving on his record.

Using another approach, Nichols and Gundersheimer, in a 1972 unpublished study, attempted to determine how many apprehended drunken drivers would have to be totally rehabilitated or removed from the road (i.e., crash probability reduced to zero) to prevent one fatal crash in the following year. The data examined came from a variety of studies. Their calculations suggested that approximately 700 arrested drivers would have to be totally rehabilitated or removed from the road to prevent one fatality in the next 12-month period. At that time (1972) the annual number of drunken driving arrests was estimated at five hundred thousand. Thus, they estimated that approximately 714 fatalities (500,000/700 = 714) could be prevented from a 100% effective countermeasure program that dealt exclusively with all apprehended drunken drivers. This would result in a reduction in fatalities of approximately 1.5%. At today's drunken driver arrest rate, which is estimated at 1,300,000/year, this would translate to approximately 1,850, or 5.7% of crash fatalities. More recently, the Fourth Special Report to the U. S. Congress on Alcohol and Health from the Secretary of Health and Human Services, January 1981, has estimated this figure to be slightly lower.

Even if these estimates are somewhat speculative, the implications are clear — any countermeasure that deals exclusively with apprehended drunken drivers, i.e., a specific prevention or a

specific deterrence program — must be nearly 100% effective (i.e., it must reduce each client's crash probability to near zero) to have even a small impact on the following year's fatal crash problem. In fact, few countermeasures have been shown to reduce a particular target group's crash or arrest probability by as much as 10% to 20%. If all arrested drinking drivers were exposed to a program having this level of effectiveness, the overall impact in terms of reduced crashes would be less than 1%. It should also be pointed out that the majority of apprehended drunken drivers are likely to be problem drinkers who are less responsive to most forms of intervention than are social drinkers. This is especially true of education and rehabilitation approaches.

Further, the majority of alcohol-related fatal crashes in any single year will involve drivers with no previous drunken driving arrest on their records. Thus, countermeasures implemented to reduce alcohol-related crashes must be designed to impact those persons who are not caught as well as those who are. While highly publicized enforcement and penalty-oriented programs have some potential for doing this (i.e., they have some general deterrence potential), education, treatment, and unpublicized, penalty-oriented programs have little or no such potential. Even the most effective general deterrence programs are not likely to solve most of the alcohol crash problem, because they are most likely to have their greatest impact on social drinkers and to have, at best, only a small to moderate impact on problem drinkers.

In general, then, it is unrealistic on all levels to expect immediate results to be large, since (1) the problem drinker population is very resistant to treatment, (2) specific deterrence programs have their greatest impact on the group least involved in alcohol-related crashes, and (3) general deterrence programs lack the incentives to motivate the target population of unapprehended problem drinking drivers in the general population to change their behavior. Thus, significant immediate reductions in alcohol-related crashes are not to be expected on a national basis.

The Commonwealth Perspective

In Virginia, crash statistics reflect the national crash situation particularly well. Figure 1 shows both the total number of crashes occurring annually in Virginia since 1970 (indicated by the solid lines) and the percentage of these crashes that were alcohol-related (indicated by the dashed line). It is clear that while numbers of reported crashes generally decreased, the percentage of those crashes that were alcohol-related steadily increased, in spite of

considerable effort to reverse this trend.* Similar findings are noted with regard to fatal crashes in Virginia (see Figure 2). Again, fatal crashes were generally on the decline during this time period, while the percentage that were alcohol-related increased. The resistance of these alcohol-involved accidents to safety efforts was particularly well illustrated during the 1973-1974 energy crisis. The reductions in travel and speed induced by the energy shortage drastically reduced almost all types of crashes, except for drunken driving accidents. If constraints which make people stay off the roads and travel at slower speeds do not affect drunken drivers, then it would be expected that less drastic countermeasures would have even less impact. However, one factor which would be expected to have negatively affected the highway safety environment was the 1974 reduction in the drinking age, which is discussed later.

Additionally, the difficulty of controlling the drunken driver problem is increased by the diversity of the problem itself. For example, the local bar from which intoxicated patrons must drive to get home poses different control problems than does the campus pub from which students can walk or ride motorcycles, mopeds, or bicycles to their dormitories. The chronic problem drinker poses different control problems than does the so-called social drinker. In the case of the chronic alcoholic, for instance, considerable evidence shows that it may be difficult, if not impossible, to deal adequately with his abuse of alcohol in the motor vehicle context without also dealing with his alcohol problem in other contexts. By contrast, whether the social drinker's occasional abuse of alcohol in relation to motor vehicles can be controlled separately from his use of alcohol in other contexts is presently unknown.

Many misconceptions held by the general public about the drunken driver also cloud the issues. Contrary to popular opinion, for instance, the overwhelming bulk of motor vehicle crashes in which alcohol plays a role usually involve large quantities of alcohol and not merely one or two drinks. Clearly, the BACs necessary for a driving under the influence conviction, 0.10% or above, cannot be reached by the ingestion of one or two drinks. Lacking knowledge of this, however, many people tend to believe that alcohol-related offenses typically involve moderate drinkers like themselves — "There but for the grace of God go I." This belief is reinforced by the fact that a majority of adult Americans do, in fact, occasionally drive after some drinking. These people often do not understand

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*There are two alternative hypotheses to be considered when analyzing these accident data. First, it is possible that in the early 70's, as police awareness of the drunken driving problem increased, the officers were more likely to report crashes as alcohol-related. This, however, does not explain the continued increases in the percentage of alcohol-related crashes noted in the late 70's. Also, the reporting threshold, or amount of property damage necessary to make an accident reportable, increased several times in the last 11 years, which could have had the effect of decreasing total but not alcohol-related crashes. However, inflation also made equivalent accidents more expensive as time went on, cancelling out this effect.

that those involved in crashes after drinking typically have consumed exceptionally large amounts of alcohol. They, therefore, believe it is unreasonable to harshly or unduly penalize drunken driving offenders. This interaction between public opinion and public policy indicates that drunken driving is a problem that cannot be deterred through specifically treating only the apprehended drunken driver.

In summary, it can be concluded from research and from crash statistics that alcohol-related crashes pose a serious problem in the highway environment and are one of the most difficult traffic safety problems to impact. However, the fact that this problem remains resistant to change does not mean that nothing can be done to alleviate the situation. Rather, professionals in the fields of traffic safety, alcohol abuse, counseling, community action, and public information must work with private citizens to harness the new awareness of alcohol and driving and to improve and refine current efforts to reduce drunken driving in the Commonwealth.

A Brief History of Alcohol Countermeasures in Virginia

This section attempts to note the major milestones with regard to alcohol and highway safety in the Commonwealth. Drinking and driving has been a serious problem in Virginia since the 1940's, and probably before, although crash statistics were not kept before then. The history of alcohol countermeasures, however, is generally thought to begin with the activities of the Mann Commission, which was formed in 1966 and headed by Delegate C. Harrison Mann. The commission recommended that Virginia respond to the Federal Highway Safety Act of 1966 (which mandated a state highway safety function) by establishing the Highway Safety Division, later the Department of Transportation Safety, as an independent agency. The commission also considered a number of other highway safety issues and submitted some 56 pieces of legislation for consideration by the General Assembly, 11 of which involved the drunken driver.

Their recommendations included allowing breath testing by local ordinance and reducing the presumptive limit to 0.10% BAC. These recommendations constituted the first attempt at modernizing and streamlining at least the enforcement and judicial aspects of processing drunken drivers.

At about the same time as the Mann Commission Report, the 1968 General Assembly passed the local option "liquor by the drink" laws, allowing communities the power, based upon referendum, to allow restaurateurs to serve mixed drinks in their establishments. Before the end of that year, 19 cities, 14 counties, and 5 towns had passed the local option. Although the impact of liquor by the drink is as yet unknown, no immediate change in the alcohol-related crash situation was noted.

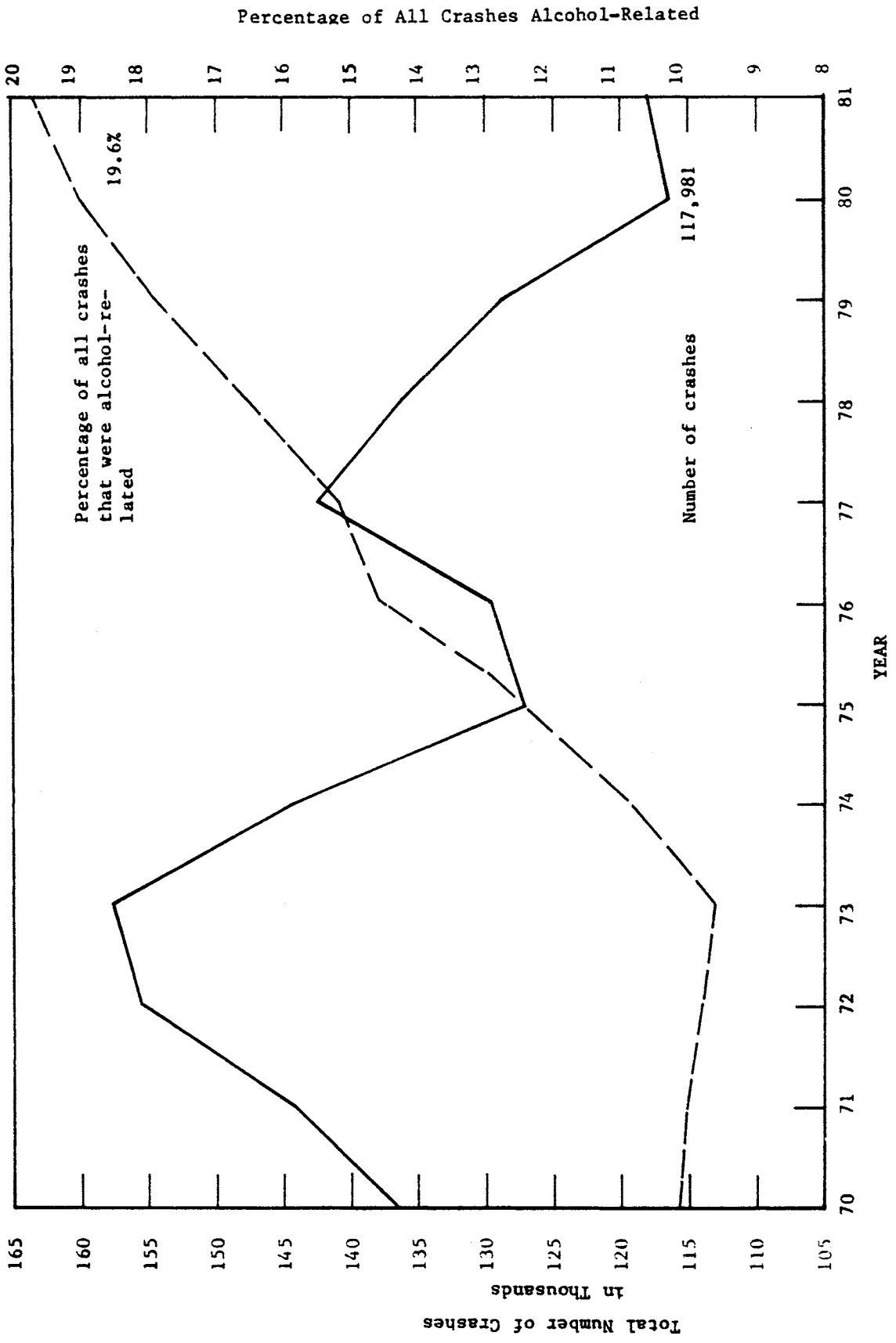

Figure 1. Total number of motor vehicle crashes and percentage of alcohol-related crashes.

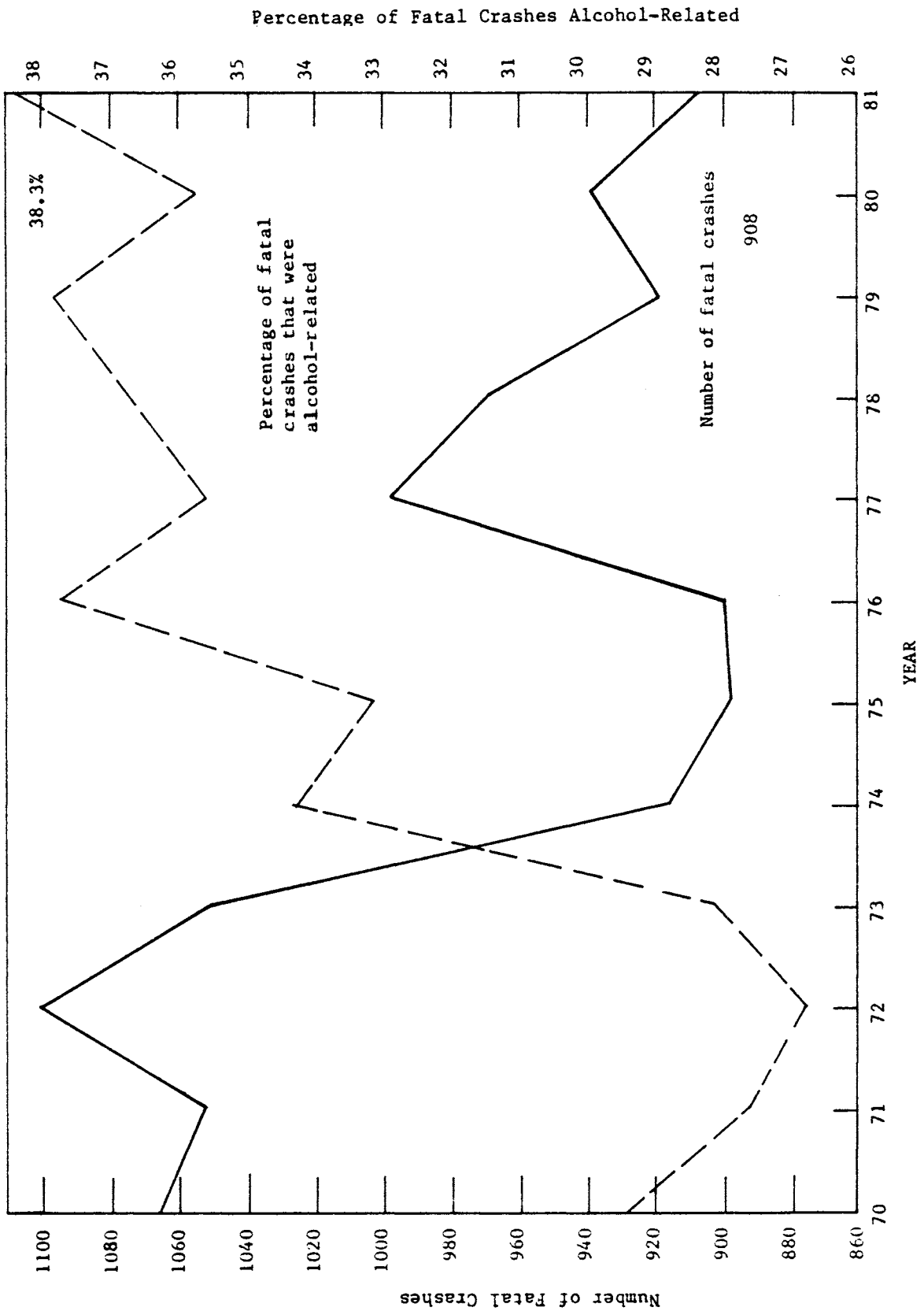

Figure 2. Number of fatal motor vehicle crashes and percentage of fatal crashes that were alcohol-related.

It can be safely said that at the time of the Mann Commission, and for several years afterward, the system for arresting, prosecuting, and treating (in this case punishing) drunken drivers was not working very well, as indicated by very low levels of activity. In 1971, there were only 10,257 convictions for drunken driving in the entire state. There were a number of reasons for this. Beginning with the police officer's point of view, making a drunken driving arrest was extremely cumbersome and time consuming and very rarely resulted in a conviction. After the officer had apprehended the drunken driver, he first had to take the party before the magistrate in his locality and obtain a warrant by showing probable cause for obtaining the requisite blood sample (the only admissible quantitative evidence). Once done, he was then required to escort the defendant to the nearest clinic or hospital where a blood sample could be obtained. The blood sample had to be taken within 2 hours of arrest, and it was difficult for officers in rural areas to obtain a sample within this time period, especially on weekends. Additionally, hospitals and doctors were wary of withdrawing blood for fear of civil liability if the blood was negligently withdrawn. For this reason (and because blood testing obviously took a secondary priority to treating sick and injured individuals), officers would often wait considerable lengths of time for service, even past the 2-hour time period dictated by the DUI laws. Even if the sample were obtained before the end of the 2-hour period, the subject's BAC may have had time to drop below the 0.15% level necessary for conviction. Additionally, the blood samples had to be sealed and packaged in a special way, and many test results were nullified due to deviations in packaging.

Once the sample was obtained, the defendant was returned to jail where he could post bail or be released under his own recognizance. A trial date was set, and the officer was required to appear and testify at the trial, where his evidence could often be refuted. Officers were routinely taking 3 and 4 hours off from regular duty to appear in court, and even then receiving very little satisfaction for their efforts.

An additional problem was that many judges felt that the penalties for DUI were overly harsh. At that time, Virginia had one of the strictest drunken driving laws in the country, specifying for the first offense (1) a fine of not less than $200 and not more than $1,000, (2) imprisonment for between 1 and 6 months, and (3) a mandatory 1 year license suspension. Additionally, there was still a widespread belief that one or two drinks would result in a BAC over the legal limit of 0.15%. These factors made the judiciary as a whole hesitant to convict persons of drunken driving except in very blatant cases, such as when the defendent's BAC reached 0.20% and above. Once this hesitancy was noted by police, they also

ceased making arrests except in extreme circumstances, since they would be unlikely to obtain a conviction in less serious cases. Although an offense of impaired driving for obvious intoxication with lesser BACs existed, it was even more difficult to prove. It is clear from these facts that something needed to be done with regard to alcohol countermeasures, if only to improve the operational handling of drunken driving cases.

In 1972, several things happened. First, the General Assembly reduced the presumptive limit to 0.10% BAC, and allowed breath testing results as admissible evidence. Concurrently, the Fairfax County Alcohol Safety Action Program (ASAP) became operational. The ASAP program was begun in the early 1970's by the NHTSA and consisted of 35 community-based alcohol countermeasure programs, each funded for 3 years (seven, including Fairfax, were given a 2-year extension, making them 5-year programs). These ASAPs were originally designed to demonstrate how the systems approach could be applied to the problem of drunken driving, and used four basic, interrelated countermeasures: (1) improved enforcement measures, (2) streamlined judicial functions, (3) rehabilitation, and (4) public information. The original Fairfax ASAP was a pre-conviction program. As defendants came to court, they were advised by the prosecutor (and often by their own attorneys) that the ASAP option was available, at which time they could agree to join the program and their cases were continued on the docket (eventually, they were handled in groups, speeding the process even more). Following successful completion of the program, they were returned to court and usually convicted of a lesser charge. This method circumvented the mandatory 1-year suspension for a first DUI offense and gave the judges an easy way to see that each defendant's drunken driving problem was addressed without having to take license action or impose what they considered to be a harsh penalty. Police officers no longer had to appear in court, a lesser BAC level was in effect which was less often refuted since no license sanction was immediately imposed, and consequently, numbers of arrests quickly increased. While very little can be concluded about the success of the 35 ASAP programs in reducing alcohol-related crashes (which will be discussed in a later section of this booklet), the Fairfax ASAP laid the groundwork for a smooth-running and community-involved system to address the drunken driving problem.

The next milestone with regard to alcohol and driving was a somewhat dubious measure which lowered the legal drinking age for beer from 21 to 18 years. (This law and its negative impact are discussed at length in a later section of the booklet.) In 1981, the General Assembly raised the drinking age for beer to 19, except in restaurants, where the drinking age remains at 18.

In 1975, when the federal funding for the Fairfax ASAP was ending, a decision had to be made as to whether to continue the program. Due to demands for similar services from other localities, VDTS was asked to submit legislation to the General Assembly to expand the program statewide. The Department funded feasibility studies and then funded local programs, each under its own choice of administrative agency and each dealing with the treatment facilities in its area. While each program developed autonomously, each used the four countermeasure approaches espoused by the ASAPs. Currently, almost every locality in the state has a VASAP program.

There have been several policy-related changes in the VASAP program in the past few years. The program itself has sought to standardize its procedures and its treatment alternatives, and to deal with the problem of multiple offenders entering the program.

With the advent of such citizen activist groups as Mothers Against Drunk Drivers, Many Against Drunk Driving, and Students Against Drunk Drivers, these citizens' perceptions manifested themselves in a call for more strictly enforced penalties and for a post-conviction rather than a pre-conviction VASAP program.

Changes in DUI Legislation

The Virginia General Assembly adopted several revisions of laws pertaining to drunken driving effective July 1, 1982. The primary purpose of these revisions is to stiffen the penalties for driving an automobile under the influence of alcohol or drugs, especially for repeat offenders. In addition, the revisions make it difficult for persons charged with DUI to avoid the consequences of a DUI conviction by entering a VASAP. The changes made by the new legislation can be classified and analyzed in the following areas: (1) increased authorized penalties, (2) mandatory minimum jail sentences, (3) mandatory periods of license revocation, (4) VASAP entrance requirements, (5) issuance of restricted licenses to operate an automobile, and (6) treatment of out-of-state convictions for DUI.

Increased Authorized Penalties: §18.2-10(e), §18.2-36, §18.2-270

The statutory changes reclassify involuntary manslaughter and DUI, thus increasing the maximum authorized penalty for these offenses. Involuntary manslaughter is upgraded from a class 6 to a class 5 felony. This change increases the maximum penalty from 5 years imprisonment to 10 years imprisonment. However, the jury, or the court trying the case without a jury, in its discretion could impose a penalty of confinement for not more than 12 months and a fine of not more than $1,000, either or both.

Similarly, the offense of DUI has been upgraded from a class 2 misdemeanor to a class 1 misdemeanor. This change increases the maximum period of confinement from 6 months to 12 months and the maximum fine from $500 to $1,000. It should be noted that these are the maximum authorized criminal punishments for involuntary manslaughter and DUI convictions. These penalties are subject to judicial discretion. A judge may impose less than the maximum penalty or suspend a portion of a sentence upon such conditions as he sees fit.

Mandatory Minimum Jail Sentences: §18.2-270

The new law prescribes mandatory minimum jail sentences for certain classes of DUI offenders, thus limiting the discretion of a judge to suspend jail sentences. Under prior law, a person convicted of DUI for a second time within 10 years faced an increased penalty. Conviction for a second or subsequent offense within 10 years was punishable by confinement for not less than 1 month nor more than 1 year and a fine of not less than $100 nor more than $1,000. Va. Code §18.2-270. However, no mandatory period of confinement was prescribed. Consequently, the period of confinement set forth in the statute could be suspended in whole or in part by the judge.

Under the new law, however, a judge's authority to suspend all of the jail terms for certain offenders is removed. Section 18.2-270 sets forth mandatory periods of confinement for three classes of offenders: (1) persons convicted of DUI twice within 5 years will spend at least 48 hours in jail; (2) persons convicted of DUI three times within 5 years will spend at least 30 days in jail; and (3) persons convicted of DUI three times within a period of 5 to 10 years of a prior conviction will spend at least 10 days in jail. Consequently, revision of §18.2-270 ensures that repeat offenders will serve some time in jail.

Mandatory Periods of License Revocation: §18.2-271, §46.1-417, §46.1-421

Under the prior law, conviction of DUI resulted in mandatory license revocation. Conviction for DUI by itself operated to deprive a person of his license to drive for at least 6 months. A second conviction within a period of 10 years resulted in license revocation for 3 years. A third conviction resulted in permanent revocation of a person's license. Under this provision, however, after the expiration of 5 years a person was able to petition the court for restoration of the privilege to drive. The court, in

its discretion and for good cause, was empowered to restore the privilege to drive. Upon conviction, the court did not have discretion to suspend a portion of the license revocation, nor did it have the authority to issue a license on a restricted basis. These penalties were perceived as harsh, especially in the case of a first offender. The only method to avoid the mandatory license revocation was to avoid conviction for DUI.

Revision of §18.2-271 has placed some discretion with the court in deciding the appropriate period of license revocation. A first conviction for DUI results in license revocation for 6 months. However, the court may suspend this period of license revocation in whole or in part, upon the condition that the offender complete VASAP. A second conviction within 5 years results in license revocation for 3 years. Up to but no more than 2 years of this period may be suspended by the court. A second conviction within a period of from 5 to 10 years of a previous conviction results in license revocation for a period of 2 years. No more than 1 year of this period may be suspended by the court. The net effect of these changes is to permit the court in its discretion to suspend the entire period of revocation for the first offender. In the case of a second conviction within 10 years, the court may exercise its discretion and suspend all but 1 year of the license revocation. The statutory changes did not alter §46.1-421(b) and its treatment of persons convicted for a third DUI offense. Thus, license revocation for a third conviction remains automatic and judicial discretion operates only with respect to restoration of the license under §46.1-421(b).

VASAP Entrance Requirements: §18.2-271.1

One of the most apparent changes in the law concerns the entrance of persons into VASAP. Under the prior law, referral to VASAP was used as a means to mitigate the punishment for those persons charged with DUI, primarily those charged for the first time. Entrance into VASAP and completion of the program was accepted in lieu of a DUI conviction. Upon a plea of guilty or after hearing evidence sufficient to establish guilt, the court was authorized to refer a person to VASAP. Completion of VASAP could be accepted by the court in lieu of a conviction or the court could amend the warrant and find the person guilty of a different offense. Referral to VASAP, therefore, did not require a conviction for DUI. More importantly, referral to VASAP protected a person's record from the blemish of a DUI conviction. Thus, a person charged with DUI could avoid a mandatory license revocation as well as the prospect of a stiffer penalty upon a subsequent conviction.

Under the revision of §18.2-271.1, however, persons charged with DUI may not be referred to VASAP, unless a conviction has been entered by the court. The court no longer has the authority to accept completion of VASAP in lieu of a DUI conviction or to amend the warrant following completion of the program. Therefore, the revision of §18.2-271.1 has removed VASAP as a mechanism to protect the person charged with DUI from the consequences of a DUI conviction.

Issuance of Restricted License to Operate an Automobile: §18.2-271.1 (b1a)

Referral to VASAP no longer carries with it the benefit of protecting a person from a DUI conviction. Nevertheless, referral to VASAP under the new legislation retains one considerable benefit: it permits a person to be considered for issuance of a restricted license. Prior to the adoption of §18.2-271.1 (b1a), the law did not provide for the issuance of restricted licenses. Under §18.2-271.1 (b1a), however, a court may issue a restricted license to persons referred to VASAP. In effect, these licenses are limited use licenses and are substitutes for the general unrestricted license. Whenever a person has been referred to VASAP and his license has been suspended, the court may in its discretion issue a license for particular and specific purposes. The license may be issued for any or all of the following reasons:

1. To travel to and from a place of employment.
2. To travel to and from VASAP.
3. To travel during hours of employment if the operation of a motor vehicle is necessary for a person's employment.

The purposes for which a restricted license may be issued are not limited to participation in VASAP; however, only those persons referred to VASAP may be considered for issuance of such a license. Consequently, persons not requesting referral to VASAP or persons excluded from VASAP by virtue of a third conviction are not eligible for a restricted license.

Out-of-State Convictions

The statutory revisions pertaining to out-of-state convictions for DUI attempt to maintain a symmetrical relationship between conviction for DUI under Virginia law and convictions under the laws of other states. Under prior law, conviction for DUI under the

laws of another state was treated as a conviction both for the purposes of sentencing under §18.2-270 and for purposes of license revocation under §18.2-271, §46.1-417, and §46.1-421. However, under the previous version of §18.2-271 (b1), a person convicted for DUI in another state could petition the court to refer him to VASAP. Upon such petition and finding by the court that a person would have qualified for VASAP had he been charged in Virginia, the court was required to grant the person's request for referral. In addition, the court was required to restore the person's privilege to drive, conditional upon successful completion of VASAP. Upon the successful completion of VASAP, the privilege to drive was restored without restriction and the record of the out-of-state conviction was expunged. Therefore, the person convicted of DUI in another state was able to use VASAP just as the person charged with DUI in Virginia. In both cases, entrance into VASAP protected the person from a record for DUI and use of such a conviction in subsequent DUI cases.

However, §18.2-271 (b1) as revised grants the court discretion in deciding whether to grant a person's petition for referral to VASAP following conviction for DUI in another state. Secondly, the person's privilege to drive is not conditionally restored simply upon referral to VASAP. Section 18.2-271 (b1) now incorporates the provisions of §46.1-417 and §18.2-271 concerning license suspension. Thus, the person convicted of DUI in another state faces possible suspension of his license rather than automatic restoration of the privilege on a conditional basis. Finally, the revision of §46.1-417 (b1) has stricken the provision calling upon the Division of Motor Vehicles to expunge the record of an out-of-state conviction for DUI when a person has successfully completed VASAP after referral under §18.2-271 (b1). Consequently, the out-of-state conviction remains on DMV records and subjects the person to stiffer penalties upon subsequent convictions for DUI.

What Has Been Learned From the Original ASAPs and From VASAP

When the NHTSA established the 35 original ASAPs, they were designed as demonstration projects rather than as research. However, the NHTSA did not lose sight of the need to evaluate how well each of the programs was working, both from an operational perspective and with regard to its impact on drunken driving and alcohol-related crashes. Each of the four countermeasures (enforcement, adjudication, rehabilitation, and public education) was scrutinized and extensive data were collected. A series of analytic studies were designed to generate detailed project data and to evaluate all aspects of the programs.

While a great deal of effort went into evaluating both the 35 original ASAPs and the Fairfax ASAP project, very little can be concluded regarding program effectiveness, for several reasons.

1. Depending upon the philosophy of the program director, the population being serviced, and the treatment providers in the area, each program developed quite different characteristics. Thus, comparing different programs became similar to comparing apples and oranges. Because of this, it was difficult to combine data from different programs to determine if the program was achieving its goals nationwide.

2. Because of program differences and differing interpretations of NHTSA requirements, non-crash data were not collected in a standard way, again making the development of a nationwide data set impossible.

3. Because the ASAPs were operating within the real world judicial setting, many judges were hesitant to establish control groups, or groups of defendants who are equivalent to defendants attending ASAP but who are denied entrance to the program. Unfortunately, this lack of control groups made the evaluation of the effects of treatment impossible.

The result of these problems was to make a nationwide evaluation of ASAP impossible, and to make a local ASAP evaluation very difficult. In Virginia, for instance, it was generally found that activities associated with ASAP such as numbers of DUI arrests and convictions, BAC tests and results, alcohol-related classes and other treatments increased dramatically and that some types of crashes decreased concurrent with program operation. However, there was no method of determining whether these declines in crashes were actually due to the Fairfax ASAP or whether they were due to the many other equally valid explanations.

More recent research by the NHTSA has led to somewhat more concrete results with regard to ASAP effectiveness. Federal evaluators chose control or comparison sites for each of the 35 original ASAPs based on a number of community characteristics. The Box Jenkins time series technique was applied to each of the 35 ASAPs and 35 comparison sites to determine whether changes in crash patterns could be attributed to the ASAP program. Of the 35 ASAP sites, 12 had significant reductions in nighttime fatal crashes during the demonstration period, while 23, including Fairfax County, did not. Among the 35 non-ASAP sites, no reductions in nighttime fatal crashes were noted. Of the 12 ASAPs demonstrating crash

reductions, 8 had also conducted roadside surveys at which breathalyzer tests were administered at random. All 8 showed significant reductions in BAC levels over 0.10%. Of the ASAPs not demonstrating crash reductions, 11 had conducted roadside surveys. None of these 11 showed reductions in BAC levels over 0.10%.

While these findings appear positive, several facts should be noted. First, no matter how carefully comparison cities and counties are chosen, they may still be different in aspects other than ASAP which are directly related to DUI. Second, the NHTSA has a history of optimism concerning ASAP, and at the time this research was published may have had a vested interest in proving ASAP impact. Third, although federal regulations require prompt release of all information, the NHTSA has not yet fully published its ASAP data.

In summary, there is still considerable controversy concerning ASAP effectiveness on a national and local level. Even if the federal studies are accurate, questions still remain as to which portions of the program were highly effective and which were less. Unfortunately, these questions concerning the ASAP demonstration projects may never be answered.

Like the ASAPs, the VASAP program has resulted in increases in activities statewide. Up to now, however, very little has been concluded about the impact of the state VASAP on alcohol-related crashes and recidivism, for many of the same reasons. Although recidivism rates for persons successfully completing the program are half those for persons not in the program, the two groups are not comparable. Persons not in the program are not in the program for a reason; therefore, it is not reasonable to expect that differences between the recidivism rates of the two groups would be due to VASAP and not to preexisting differences in other factors. Also, there are methodological problems preventing researchers from determining if the VASAP is achieving its goals of reducing drunken driving and subsequent alcohol-related crashes.

A new study, however, has been begun at the Virginia Highway and Transportation Research Council. The main thrust of the study involves the use of Box Jenkins intervention analysis, a powerful statistical tool now being extensively used by the NHTSA. Previously, changes in crash patterns noted in VASAP areas could not be attributed to VASAP operations (as opposed to other influences, such as the energy crisis, the economy, etc.). Box Jenkins analysis overcomes many of the problems inherent in other time series designs and allows a determination of which changes in accident trends are due to the program under scrutiny and which are due to other factors. The technique will be applied to each of the 25 regional VASAPs to determine how well they have achieved their goal of reducing alcohol-related crashes. Additionally,as a check,the technique will be applied

to non-alcohol-related crashes upon which the VASAP program should have had very little impact. Also, additional analyses will be conducted to examine the impact of local option liquor-by-the-drink laws and changes in the drinking age.

Levels of Effort Among the Local ASAPs

This section presents some data concerning the current level of effort being expended by the local VASAPs. It should be noted that while the information available for this section does not describe all possible project activity, it does represent a reasonable estimate of program effort. The data presented represent the most current information available. While some data, such as number of licensed drivers, are several years old, most were drawn from 1981 and 1982 sources.

Figure 3 shows the location of the current VASAPs and denotes the counties and cities they represent. It should be recognized that the city of Alexandria and the counties of Charles City, Bath, Highland, and Henrico are not officially represented by a VASAP, although some judges in Henrico County refer defendants to other programs.*

Local program budget information appears in Table 1. About six million dollars were devoted to these local alcohol countermeasures projects in 1981. These funds are drawn mostly from defendants' fees and only infrequently involve the use of federal monies. In fact, all but 5 local programs were self-sufficient in 1981. Overall, about $2.13 was spent on alcohol countermeasures for every licensed driver in the state.

Information on staffing within the local program appears in Table 2. About 161 persons are employed full-time in the local programs, one staff member for every 18,241 licensed drivers in the area. Staff sizes vary from 1 to 22 persons. With regard to diagnosis and referral, there is one case manager for every 237 clients in the local system at any one time.

Arrest and referral data appear in Tables 3 and 4 respectively. In 1981, there were 39,733 arrests within VASAP jurisdictions.

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*Alexandria currently runs an alcohol countermeasures program, but it is not officially affiliated with the state VASAP program.

1760

1. Southwest Virginia—Counties of Lee, Wise, Scott, Buchanan, Dickenson, Tazewell and Russell; City of Norton.
2. Mount Rogers—Counties of Bland, Carroll, Grayson, Smyth, Washington and Wythe; Cities of Bristol and Galax.
3. New River Valley—Counties of Floyd, Giles, Montgomery and Pulaski; City of Radford.
4. Roanoke Valley—Counties of Alleghany, Botetourt, Craig and Roanoke; Cities of Covington, Clifton Forge, Roanoke and Salem.
5. Rockbridge—County of Rockbridge; Cities of Lexington and Buena Vista.
6. Valley—Augusta County; Cities of Staunton and Waynesboro.
7. Old Dominion—Counties of Clarke, Shenandoah, Page, Warren, Loudoun and Frederick; City of Winchester.
8. Rockingham—Harrisonburg—Rockingham County; City of Harrisonburg.
9. District Nine—Counties of Rappahannock, Fauquier, Madison, Orange and Culpeper.
10. Region Ten—Counties of Albemarle, Fluvanna, Greene, Louisa and Nelson; City of Charlottesville.
11. Central Virginia—Counties of Amherst, Appomattox, Bedford and Campbell; Cities of Bedford and Lynchburg.
12. Dan River—Counties of Pittsylvania, Franklin, Henry and Patrick; Cities of Danville and Martinsville.
13. Southside—Counties of Brunswick, Halifax and Mecklenburg; City of South Boston.
14. Piedmont—Counties of Charlotte, Lunenburg, Amelia, Nottoway, Buckingham, Cumberland and Prince Edward.
15. Capital—Counties of Goochland and Hanover; City of Richmond.
16. Rappahannock—Counties of Caroline, King George, Spotsylvania and Stafford; City of Fredericksburg.
17. Bull Run—Prince William County; City of Manassas and Manassas Park.
18. Fairfax—Fairfax County; Cities of Fairfax and Falls Church.
19. Arlington—Arlington County.
20. Tri River—Counties of Middlesex, Gloucester, Essex, King and Queen, King William, Lancaster, Westmoreland, Mathews, Northumberland and Richmond.
21. Peninsula—Counties of York, James City and New Kent; Cities of Hampton, Newport News, Williamsburg and Poquoson.
22. Capital Area Safety Council—Counties of Chesterfield, Dinwiddie, Greensville, Prince George, Surry, Sussex and Powhatan; Cities of Colonial Heights, Emporia, Hopewell and Petersburg.
23. Southeastern Virginia—Counties of Isle of Wight and Southampton; Cities of Chesapeake, Franklin, Portsmouth and Suffolk.
24. Tidewater—Cities of Norfolk and Virginia Beach.
25. Eastern Shore—Counties of Accomack and Northampton.

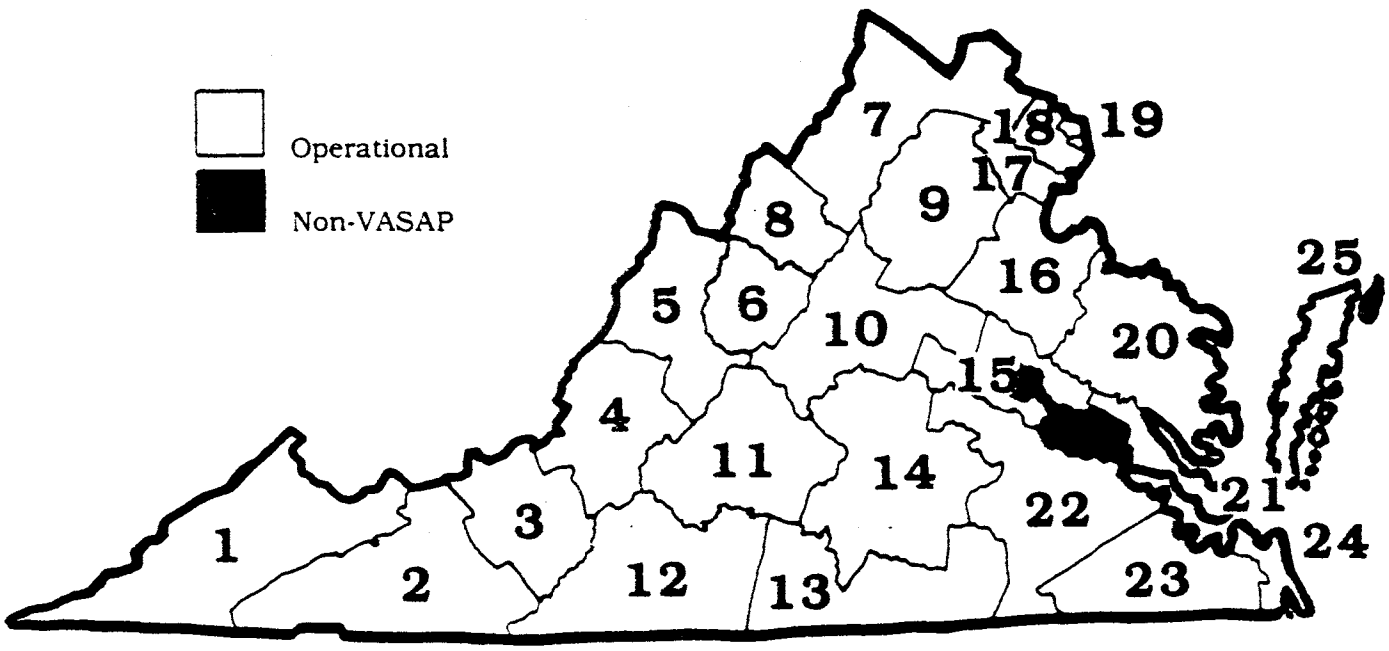

Figure 3. VASAP areas.

TABLE 1

BUDGET INFORMATION, FY 1983

	Total Budget	402 Funds	% 402 Funding	Minimum DUI Selective Enforcement Funds, 80-82	Funds Expended/ Licensed Driver[a]
Arlington	$382,500	0	0	0	$2.64
Bull Run	324,000	0		$17,998	3.86
Capital[b]	283,146	0	0	58,656	1.69
Central Virginia	235,358	0	0	40,000	2.53
Dan River	168,936	0	0	11,684	1.25
District 9	82,558	$ 9,158	11%	10,000	1.64
Eastern Shore	52,185	15,385	30%	0	1.99
Fairfax[b]	692,295	76,956	11%	10,000	1.78
John Tyler[b]	388,147	0	0	19,500	2.37
Mount Rogers	226,541	0	0	28,400	2.35
New River Valley	156,935	0	0	0	2.27
Old Dominion	274,812	0	0	53,675	2.56
Peninsula	548,750	0	0	39,981	2.77
Piedmont	94,020	12,410	13%	24,481	2.08
Rappahannock	133,489	19,369	15%	0	2.39
Region 10	124,064	0	0	34,660	1.65
Roanoke Valley	294,384	0	0	43,100	1.90
Rockbridge	48,300	0	0	0	2.77
Rockingham	105,031	0	0	0	2.55
Southeastern	313,060	0	0	34,211	1.82
Southside	125,598	0	0	10,640	2.68
Southwest	310,153	0	0	64,440	2.62
Tidewater	609,277	0	0	0	2.39
Tri River	87,076	0	0	0	1.47
Valley[b]	73,415	0	0	26,420	1.33
Total	$6,135,980	$133,584	-	$527,796.00	$2,13

[a] Licensing information correct as of January 29, 1979.

[b] Budget information for FY 83 not available.

TABLE 2

MANPOWER INFORMATION, 1982

	Number Of Full-time Staff Members[a]	Arrests/ Staff Member	Referrals/ Staff Member	Case Load/ Case Manager	Licensed Drivers/ Staff Member
Arlington	9	231.3	221.8	220	16,100
Bull Run	9	333.3[b]	188.4	170	9,322
Capital	6	266.7	232.7	276	27,775
Central Virginia	6	266.2	183.7	262	15,495
Dan River	4	263.7	217.8	145	33,591
District 9	3	253.7	160.0	230	16,724
Eastern Shore	2	150.0[b]	92.5	75	13,080
Fairfax	22.5	246.5	148.9	255	17,249
John Tyler	9	216.6	287.3	278	18,179
Mount Rogers	7	277.7	160.8	257	13,740
New River Valley	4[c]	194.3	157.5	348	17,263
Old Dominion	11	200.0[b]	109.1[b]	250	9,734
Peninsula	13	249.5	208.8	250	15,187
Piedmont	3	217.3	124.0	181	14,999
Rappahannock	2	310.5	254.5	248.5	27,839
Region 10	3	200.0[b]	207.3	250	24,989
Roanoke Valley	8[c]	164.6	150.9	250	19,320
Rockbridge	1	195.0	188.0	136	17,402
Rockingham	3	294.0	226.0	249	13,717
Southeastern	7	277.1	184.1	303	24,472
Southside	3	267.0	157.3	145	15,585
Southwest	9	283.3	148.8	250	13,132
Tidewater	11	249.8	190.0	450	23,147
Tri River	3	196.6	139.7	230	19,689
Valley	3	260.3	148.3	212	18,296
Total (Mean)	161.5	(242.6)	(179.5)	(236.8)	(18,241)
Standard Deviation	-	45.1	45.6	73.5	58.4

[a] Based upon first quarter 1982.

[b] Estimated.

[c] Based on fourth quarter 1981.

TABLE 3

ARREST INFORMATION, 1981

	No. Arrests	Enforcement[a] Index	Funds Expended Arrest ($)	Percent Of Licensed Drivers[b] Arrested
Arlington	2,082	90.0	183.72	1.43
Bull Run	3,000[c]	90.0	108.00[c]	3.70[c]
Capital	1,600	59.0	176.97	0.96
Central Virginia	1,597	77.3	147.37	1.72
Dan River	1,055	31.8	160.12	0.79
District 9	761	70.9	108.48	1.52
Eastern Shore	300[c]	60.0	173.95[c]	1.15[a]
Fairfax	5,547	90.0	124.80	1.43
John Tyler	1,949	67.3	199.15	1.19
Mount Rogers	1,944	84.9	116.53	2.04
New River Valley	777	55.0	201.97	2.04
Old Dominion	2,200[c]	110.4	124.91[c]	2.13[a]
Peninsula	3,244	93.9	169.16	1.64
Piedmont	652	74.4	144.20	1.45
Rappahannock	621	52.5	214.96	1.11
Region 10	600[c]	50.9	206.77[c]	0.80[c]
Roanoke Valley	1,317	43.6	223.53	0.85
Rockbridge	195	80.4	247.69	1.12
Rockingham	882	80.4	119.08	2.13
Southeastern	1,940	55.7	161.37	1.14
Southside	801	88.7	156.80	1.72
Southwest	2,550	104.2	121.62	2.17
Tidewater	2,748	55.7	221.72	1.08
Tri River	590	62.6	147.59	1.00
Valley	781	80.4	94.00	1.43
Total (Mean)	39,733	-	(162.20)	(1.51)
Standard Deviation			42.3	0.63

[a] Calculated on a planning district basis, this index represents how closely arrests approximated 1% of the local population. This is expressed in percent.

[b] Licensing information correct as of January 29, 1979.

[c] Estimated.

TABLE 4

REFERRAL INFORMATION, 1981

	No. Referrals	Percent of All Arrests	Funds/ Referral	Percent of License Drivers Referred[a]	Completion Rate
Arlington	1,997	95.9	191.54	1.37	92.9
Bull Run	1,696	56.5[b]	191.03	2.04	-
Capital	1,396	87.3	202.82	0.84	79.5
Central Virginia	1,102	69.0	213.57	1.19	75.0
Dan River	871	82.6	193.96	0.65	-
District 9	480	63.1	171.99	0.96	67.7
Eastern Shore	185	61.7	282.08	0.71	52.9
Fairfax	3,351	60.4	206.59	0.86	65.0
John Tyler	2,586	-	150.09	1.59	75.5
Mount Rogers	1,126	57.9	201.20	1.18	65.6
New River Valley	630	81.1	249.10	0.91	41.2
Old Dominion	1,200[b]	41.4[b]	229.01[b]	1.12[b]	68.2
Peninsula	2,714	83.7	202.19	1.37	77.3
Piedmont	372	57.1	252.74	0.83	65.7
Rappahannock	509	82.0	262.25	0.92	63.6
Region 10	622	-	199.45	0.83	64.6
Roanoke Valley	1,207	91.6	243.89	0.78	70.1
Rockbridge	188	96.4	256.91	1.08	96.4
Rockingham	678	76.9	154.91	1.64	88.0
Southeastern	1,289	66.4	242.87	0.75	81.9
Southside	472	58.9	266.09	1.01	64.5
Southwest	1,339	52.5	231.63	1.14	69.9
Tidewater	2,090	75.1	291.52	0.82	87.2
Tri River	419	71.0	207.82	0.71	60.7
Valley	445	56.9	164.98	0.81	78.2
Total Mean	28,964	(72.9)[c]	(218.4)	(1.04)	(72.7)
Standard Deviation		15.0	38.7	0.34[b]	127[d]

[a] Licensing information correct as of January 29. 1979.

[b] Estimated.

[c] Derived from statewide arrest and referral figures.

[d] For these columns, standard deviations refer to the variation among programs around the mean percent response, rather than the overall mean.

The enforcement index, a measure of enforcement effort, varies from 43% to over 100%, indicating how closely the number of arrests approximated 1% of the total population. Statewide, about 1.57% of all licensed drivers in the VASAP localities were arrested for DUI. Following arrest, there were 28,964 referrals to VASAP treatment in 1981. This represents about 73% of all arrests and about 1% of all licensed drivers. Completion rates for the local programs vary from 41% to 96%. As seen in Table 5, about 4% of all VASAP participants were diagnosed as social or Level I drinkers, while 46% were adjudged Level II pre-problem drinkers, and 50% were diagnosed as Level III problem drinkers.

Table 6 presents the minimum or typical education and treatment services provided to participants in each program. Very few VASAPs differentiate between Level I and Level II drinkers by offering separate Level I and II treatments. Most offer a combined program of between 20 and 39 hours. Level III participants receive typical minimum programs varying in length from 32 to 75 hours, but may receive additional treatment if needed. Typical Level III treatment can cost between $50 and $350, depending upon the program attended. (Costs often vary between VASAP areas due to the differences in the costs of living and the extent to which more expensive individual counseling figures into the treatment program used.)

TABLE 5

DRINKING LEVEL CLASSIFICATION OF ASAP CLIENTS

Local ASAP Office	Percent Level I	Percent Level II	Percent Level III
Arlington	7.9	43.8	48.2
Bull Run	21.3	47.1	31.5
Capital	4.6	39.4	55.8
Central Virginia	4.2	43.0	52.7
Dan River	0.8	36.1	63.0
District 9	3.0	62.8	34.1
Eastern Shore	0.0	34.4	65.5
Fairfax	1.3	50.5	48.1
John Tyler	0.1	49.9	49.8
Mount Rogers	18.8	33.0	41.1
New River Valley	1.7	52.4	45.7
Old Dominion	1.0	35.0	63.9
Peninsula	1.0	40.1	58.8
Piedmont	8.7	48.5	42.6
Rappahannock	8.1	37.4	54.4
Region 10	0.4	54.3	45.2
Roanoke Valley	2.1	28.1	69.7
Rockbridge	0.9	57.6	41.4
Rockingham	22.8	47.8	29.4
Southeastern	0.0	46.0	53.9
Southside	1.0	32.0	66.9
Southwest	2.2	65.5	32.2
Tidewater	0.04	51.5	48.3
Tri River	0.4	43.2	56.3
Valley	12.1	42.5	45.3

TABLE 6

TYPICAL VASAP REHABILITATION PARAMETERS

	Level I Social Drinker (Hours)	Levels I & II Combined (Hours)	Level II Pre-Problem Drinker (Hours)	Level III[a] Problem Drinker (Hours)	Level III[b] Cost (Dollars)
Arlington	18		26	44	180
Bull Run		24			
Capital		32		56	100
John Tyler		24		38	200
Central Virginia		35		32	90
Dan River		35			
Eastern Shore		28			
District 9		24		48	220
Fairfax	20		25	44	180
Mount Rogers		32		34	150
New River Valley		28		44	75
Old Dominion		24		52	350
Peninsula		32		59	180
Piedmont		24		33	155
Rappahannock		24		52	336
Region 10		22		25	90
Roanoke Valley		24		33	50
Rockbridge		24		40	120
Rockingham	18		26	41	
Southeastern		39		40	130
Southside		26		33	155
Southwest		26		72	345
Tidewater		30		75	150
Tri River		20			
Valley	20		32	50	240

[a] This represents the average minimum hours of alcohol/driver education, including both group and individual counseling, for an individual in a Level III program. Each Level III participant has an individualized treatment plan and could receive well over the number of hours listed.

[b] These costs represent what the average defendant pays for the average minimum services in each program. Many of the Level III programs use a sliding fee scale so that the same service may be provided to different defendants at a different cost within the same program. The range of costs between different programs is not related to contact hours. This can be explained by variations in costs of living across the state and, more significantly, by variations in the percentage of contact hours devoted to "education" as opposed to individual (and more expensive) counseling.

II. THE FOUR COUNTERMEASURE COMMITTEES

The four standing committees of the Task Force parallel the four basic components of the systemic approach to controlling drinking drivers. The emphasis placed on one or more parts of the system is what differentiates one approach from the other. Four primary emphasis approaches to deal with drunken driving are apparent in the literature. They include:

1. Efforts to prevent drunken driving by means of public information and education.

2. Efforts to prevent or deter drunken driving by raising the actual and the perceived risk of apprehension for drunken driving.

3. Efforts to prevent or deter drunken driving by imposing substantial penalties (fines, license actions, jail) on apprehended drunken drivers.

4. Efforts to prevent a recurrence of drunken driving by apprehended drunken drivers by exposing them to educational or rehabilitation programs.

This section briefly describes each of the committee areas. There follows a summary of where Virginia fits into the overall picture and what gaps, if any, appear to exist between current procedures and Virginia's policies and operations.

Enforcement

Enforcement is the basis of the entire system for controlling drinking drivers; if the police do not detect and apprehend drinking drivers, the rest of the system cannot function. State and local law enforcement agencies have long considered drinking drivers one of the most difficult problems in accident prevention, and enforcement agencies have long recognized that drinking drivers are involved in a disproportionate number of crashes. They are also aware that the rate of arrests and convictions for DUI is low. Thus, they have responded actively to the special enforcement countermeasures of the VASAP, as they have to previous countermeasure campaigns.

No other countermeasure area has more frequently demonstrated impact in terms of measurable reductions in overall alcohol-related fatalities than has increased enforcement and surrounding publicity. Of course, increased police activity must also be known or perceived by the public. In other words, the perceived risk of arrest must be elevated, as opposed to merely raising the actual risk of arrest. This usually requires a public information effort to accompany an increase in law enforcement efforts. Perhaps enforcement

campaigns of very large magnitude can become self-evident to drivers through personal experience, but most such campaigns must employ publicity to affect public perception more directly and immediately.

One of the primary drawbacks of this approach is that most of its impact appears to be only temporary, with alcohol-related crash rates returning to their expected levels. The initial deterrent and the subsequent delay are due to an initial overestimation of the probability of punishment produced by the publicity and newsworthiness of the enforcement activity, followed by public experience that the risk of punishment remains negligible. Therefore, any commitment to a DUI enforcement program must be continuously increased to ensure a constant level of results.

The main component of an effective enforcement program is increased numbers of arrests. In general, the largest increase in arrests will probably occur at the beginning of an enforcement program. However, the result of a greatly increased arrest rate is overall system inefficiency as backlogs develop in the courts and as education and rehabilitation agencies are forced into a hasty response. There is differing opinion as to the value of such an overload. In some cases it may force institutions and agencies to change more quickly and efficiently than would otherwise be the case, and is therefore regarded as a productive tactic to bring about system change. In other cases, parts of the overall system succumb to the overload and take the easiest rather than the best solution. Thus, it would be better in those instances to delay a rapid increase in arrests until all agencies are ready to handle them. However, the NHTSA recommends increasing arrests as soon as possible. To delay activating increased enforcement may slow down change throughout the system and hamper subsequent increases in the enforcement effort, which is the basis of the entire system.

Finally, in order for any DUI enforcement program to be successful, all officers, not just those assigned to specialized DUI units, must be motivated and convinced that it is in their best interest as well as the community's to arrest the DUI offender. Inherent in this establishment of priorities are the needs and motivations of the patrol officer that are sometimes overlooked in the planning and implementation of new programs. However, if the officer does not make the arrest, obviously the rest of the program will be useless.

With the foregoing in mind, following is a checklist of issues that might be considered when developing or improving any enforcement program.

1. Efforts must be made to reduce the time it takes to arrest and process the drunken driver. At present, it can take, in some areas, more than 2 hours to complete this process; and this either adds to overtime payments to police or to a tendency for arrests to drop off just prior to shift changes.

2. Police administrators and government officials must identify DUI apprehension as a high priority activity, and efforts to convince the field officers of this need should be increased.

3. All elements of the criminal justice system (police, district attorneys, and judges) must be involved, and by their actions must mirror the sentiment that DUI is a serious offense.

4. Specialized police units can play a major role in an effective DUI program. Their primary benefits lay in the ability to make valid arrests and the capability to relieve general road patrol units of some of the time-consuming steps involved in the arrest proceedings.

5. One of the major goals of any DUI counteroffensive must be to increase the public perception of apprehension and of conviction once a potential offender is apprehended. Even in areas where concentrated efforts are made, it is still estimated that for every DUI arrest there are 2,000 DUI incidents that go undetected.

6. Many special DUI enforcement efforts started with federal funds are discontinued when the federal funds are exhausted. The case for ending the grants in some cases is related to their success rate. This may falsely lead local government officials to believe the problem has been solved.

7. Police officers should be trained in alcohol awareness. This often serves to convince the officers that DUI offenders, even those with a low BAC, are a real danger and that DUI arrests are a worthwhile effort.

8. In order to encourage the participation of officers in the field, standards of arrests should be set by police administrators and officers must be expected to meet these standards.

These issues are more interrelated than they are separate. A positive effort on any one issue is likely to produce positive results in the other areas.

In addition to these general goals, there are some specific activities which, though having some popular appeal, are not yet supported by conclusive research data. These include "road blocking," that is, testing or at least interrogating every driver passing a certain point on a road, such as a toll booth or interstate highway exit ramp. Surveillance of persons leaving establishments serving alcohol beverages would also produce a large number of arrests in addition to minimizing the time that an intoxicated driver is actually on the highways. Any such enforcement method, however, would require a large commitment of police personnel and other resources to overcome the appearance of a random occurrence.

Licensing/Adjudication

Licensing and adjudication are the parts of the systemic approach that include efforts to prevent or deter drunken driving by use of penalties. These penalties can include fines, license actions, or jail sentences. The questions of severity and certainty of penalties and their effect on both specific and general deterrence are discussed below.

Perhaps the most often cited example of the impact of severe penalties on alcohol-related crashes is that of Sweden, Norway, and Denmark. These nations have relatively strict drunken driving laws dating back to the late 1930's. Harsh penalties for drunken driving which include severe license actions and sentences to work camps are frequently imposed. Arrest rates are also high, and other factors, such as the price of liquor by the drink, make it difficult to isolate the impact of severe penalties alone.

The Scandinavians feel that their strict approach has had a significant impact. However, Laurence Ross of the State University of New York at Buffalo has challenged such claims. Using a time-series analysis approach, he could find no evidence of impact immediately following such legislation. It should be pointed out that because the Scandinavian approach developed gradually and over a period of years when crash data were generally poor, it would be difficult to document such an impact using the time-series techniques employed by Ross.

Existing evidence for an impact of the Scandinavian experience is comparative rather than causal. The Scandinavians report approximately one-third of their crash fatalities to be alcohol-related, compared to one-half in the United States. Further, roadside surveys involving similar survey techniques suggest that the Scandinavians have approximately one-tenth the number of persons on the road with positive BACs than is the case in the United States. An important point with countermeasure implications is that the greatest difference between Scandinavian and United States roadside survey data occurs for drivers with BACs of less than 0.10%. This suggests that any impact which the Scandinavian program may have

had has been primarily on drinking drivers at lower BACs. Again, it is impossible to prove a causal relationship using such data. The Scandinavian data may be optimistically viewed as evidence of the only existing permanent impact on alcohol-related fatalities. On the other hand, they can also be pessimistically viewed as providing no adequate evidence of an impact. In any case, the data must be seen as emanating from a total program involving much more than just severe penalties alone.

Whatever one's view of the Scandinavian experience, the United States' experience in using severe sanctions is somewhat clearer, at least with regard to mandated jail sentences. Simply put, mandated jail sentences seem not to be a workable sanctioning alternative for drunken driver cases in the American judicial system. One factor contributing to this is the present low level of public demand for action against the drunken driver.

Mandated jail sentences have been attempted in a number of locations throughout the United States during the past decade. In such attempts, one of two outcomes has predictably occurred which has prevented such an approach from having an impact on alcohol-related crashes. The first result is called "neutralization" and refers to the fact that when a severe penalty is mandated, it is only infrequently imposed. Charge bargaining, plea bargaining, and suspended sentences are most often used to avoid imposing the penalty. Perhaps the best example of neutralization is the Chicago crackdown of 1970-71. In this case, judges agreed to impose a 7-day jail sentence on all convicted drunken drivers beginning during the 1970 Christmas holiday period. Six thousand six hundred persons were arrested over the next 6 months, but less than 10% (557) were given jail sentences.

The second most likely outcome of mandatory jail sentences is increased case loads in the courts. If attempts are made to frequently impose mandatory penalties, more defendants will seek counsel and will attempt to refute the charges. This results in a backlog in the judicial system, largely due to increased numbers of not-guilty pleas and requests for jury trials. This is illustrated in data taken from several of the ASAP projects. When such backlogs occur, the entire system, including enforcement, ceases to function effectively.

Frequently imposed mandatory jail sentences have much potential as an effective deterrent, both general and specific. However, such potential has not been realized in the United States, because these penalties have not been workable in the existing judicial and public climate and have thus been seldomly imposed. Infrequently imposed penalties apparently do not constitute

effective deterrents. Furthermore, mandatory jail sentencing does not necessarily work well with increased arrest rates. Rather it tends to diminish the workability of increased arrest rates by obstructing the processing of the arrested drunken drivers. Should the level of public demand for action against the drunken driver increase, mandatory jail sentences could prove to be more workable. They would, however, remain a costly alternative.

Actions against the driver's license, i.e., suspension or revocation, are similarly viewed as severe penalties by defendants and their lawyers. As such, they have similar problems in terms of being seldomly imposed. Furthermore, there is a problem with persons driving after suspension or revocation. As many as 80% to 90% of persons whose licenses have been suspended or revoked continue to drive. These data have generally been offered as evidence that such actions do not work. However, this may be an inaccurate conclusion. Consider the following:

1. If only 10% of suspended/revoked drivers refrain from driving, the crash probability rate of the entire exposed group is reduced by 10%. Few countermeasures have shown as great a deterrence impact in crash reduction.

2. There is some evidence that suspended/revoked drivers who continue to drive are more careful than previously as evidenced by a reduced level of arrests and crashes.

More recently, a deterrent atmosphere similar to that reported in Scandinavia has been reported in West German news reports as a result of automatic administrative license suspensions for persons found to be driving with excessive BACs. Similar administrative procedures are also being carried out in the state of Minnesota. Again, however, there is still no documented evidence of a reduction in alcohol-related crashes as a result of such efforts.

Given the available data concerning license actions one can conclude the following:

1. License actions have been shown to have a significant specific deterrent impact in reducing arrests and crashes for those apprehended drivers receiving such actions.

2. Like jail sentences, license actions have strong general deterrence potential, although such potential has not yet been maximized or adequately measured.

3. Also like jail sentences, license actions are often viewed as severe sanctions, and thus their imposition can have a disruptive impact on the courts.

4. Unlike jail sentences, license actions can be imposed administratively and at less cost than can jail sentences.

Frequently imposed, highly publicized license actions, administratively or judicially imposed, provide a potentially effective complement to efforts to increase the perceived risk of arrest. To be frequently imposed, however, license actions for first offenders may have to be of a moderate nature; e.g., 30- to 120-day sentences.

All of these findings can be related to Virginia's new DUI law, discussed previously. This law is now more strict in penalties, but the severity is generally applicable to repeat offenders. For instance, a 48-hour mandatory jail sentence is imposed for a second offense within 5 years of a first offense, and a 30-day mandatory sentence is imposed for a third offense within 5 years. Although the new DUI law is not as harsh as the Scandinavian laws discussed above, these mandatory jail sentences may be perceived as harsh. Since the law is so new, there is no evidence as yet as to whether the mandatory jail sentences will be perceived as so harsh that they may actually deter arrests or convictions.

The new DUI laws also provide for mandatory periods of license revocation. For a first offense, there is a 6-month suspension. However, this can be suspended in its entirety conditioned on completion of ASAP. Alternatively, the judge may grant a restricted license during ASAP. As mentioned above, a restricted license does not assure the defendant will not drive; however, persons who do drive under a revoked or suspended license may drive more carefully. Subsequent offenses call for longer revocation periods — i.e., 3 years suspension for the second offense within 5 years (only two of these may be suspended by the court).

Within the licensing/adjudication component of the countermeasures system, if levels of punishment are to rise as intended, the new legislation must be perceived as being fair and internally consistent. This perception must be shared by police officers, prosecutors, and courts. Whether the new DUI law in Virginia does accomplish rising levels of DUI arrests and convictions as well as a reduction in drunken driving is a question to be evaluated after there are more data and greater experience with the law.

Education and Rehabilitation of Arrested Drunken Drivers

Currently, one of the most frequently used countermeasure approaches for dealing with drunken drivers is to refer them to education and rehabilitation programs. Such programs provide an early identification and intake potential from a countermeasure standpoint. Therefore, the impact of such programs is, at best, limited to changing the behavior of apprehended drunken drivers. It should be recognized at the outset that education in the treatment sense refers to a method of secondary prevention that occurs only after the driver is apprehended. This contrasts with the primary prevention effected by public information programs, which ideally educate drivers prior to their detection by enforcement officials as drunken drivers.

Fortunately, there have been many evaluations of a variety of such programs in the United States. Unfortunately, very few of these produced definitive results due to problems with the research methods employed. However, from these studies, the following can be noted:

1. Some educational programs have shown small reductions in drunken driving arrests for social drinkers. No reductions of crashes for such persons have been documented. This is to be expected, since social drinkers are least often involved in alcohol-related crashes.

2. Other than the NHTSA sponsored comprehensive DUI offender treatment demonstration project in Sacramento, California, very little methodologically correct research has been conducted. Those studies which have been conducted suggest that very few educational or therapy programs have been shown to have had a significant impact on problem drinking drivers in terms of reductions in alcohol-related arrests. No such programs have been shown to have reduced alcohol-related crashes.

3. Only disulfiram (antabuse) programs have reduced drinking behavior among apprehended drinking drivers.

Overall, it must be concluded that education and treatment programs have limited potential for solving the overall drunken driving problem, when used alone. On the positive side, such programs work operationally well in conjunction with attempts to increase arrest rates, as they allow for a smooth and efficient flow of defendants. On the negative side, such options are most frequently used in lieu of license actions, rather than in addition to such actions. As such, both general and specific deterrence efforts are lost.

Nationwide, many current education and treatment efforts are conducted as part of diversionary programs where no attempt is made to increase arrest rates or to impose license actions. In such cases, it is unlikely that any documentable reductions in alcohol-related crashes are possible. Education and treatment efforts should remain as part of the drunken driver control system, if they are used as a means for the revoked or suspended driver to get back into the driving system after a period of loss of license, i.e., not in lieu of license actions.

In the past, rehabilitation throughout the state's VASAP program was offered in lieu of license action. This may or may not be the case under the new DUI law. In the future, the judge may still suspend all or part of the license suspension accompanying a first conviction for DUI. This indicates that the treatment may still replace the suspension and thus reduce the impact of this part of the program. However, while the judge may be resistant to fully suspending an offender's license, he now has the option of issuing a restricted license, and he may be more likely to use this option since it is not as harsh as full revocation. Depending on the judge's behavior, this may open the way for some interaction between license action and rehabilitation.

There are a number of logistic issues with regard to the provision of treatment to drinking drivers, especially problem drinkers who fall within the purview of long-term treatment providers. The first involves where the money for alcoholism (and drunken driving) treatment will come from. With the drastic reductions in federal funding for rehabilitation which have befallen service providers, many must rely more heavily on defendant payments. However, given the state of the economy, there are also more defendants who for one reason or another may be classified as indigent and must be accepted into extended rehabilitation services without paying a fee. This squeeze often results in judges being reluctant to order extensive treatment, especially problem drinker rehabilitation, because the defendant cannot afford it. Thus, the economic situation is interrupting the orderly diagnosis of defendants and their assignment to appropriate treatment. The most commonly suggested solution to this problem involves a crown tax on alcoholic beverages to support alcoholism services.

The second issue involves the location of services. Traditionally, public and state service providers have been able to treat referred persons less expensively than the private sector, but often this is done where other types of treatment are the agency's first priority. Currently, with the reduction in public monies for treatment, private sector providers can now underbid state facilities. This means that public facilities will receive even less financial support from defendant fees than they did previously.

There is a final issue, a philosophical one, which is also interfering with accurate diagnosis and referral to treatment. From the criminal justice point of view, evidence must overwhelmingly prove a defendant's guilt before such a verdict is reached. This philosophy, however, is also being applied by the court to the diagnosis of drunken drivers. Since being diagnosed as a Level III problem drinker involves additional cost to the offender over and above the program fee, and involves considerable inconvenience, judges are unwilling to agree to such assignments unless the evidence overwhelmingly indicates that the person is a Level III drinker. This means that some Level III defendants are being classified as Level II. From the health services point of view, this has serious consequences. Under this philosophy, having a Level II defendant attend a Level III program does him no harm in terms of subsequent drinking and driving behavior; on the other hand, having a Level III defendant attend a Level II program reinforces his denial of the problem and keeps him from receiving needed treatment. This is especially serious since it has been shown that education alone is not effective with problem drinkers. Thus, from the health services point of view, if there is any indication of a Level III drinking problem, the defendant should be adjudged Level III. Clearly, unless some compromise between these two competing philosophies is reached, there will be friction between the adjudication and the rehabilitation aspects of Virginia's alcohol programs.

Public Information and Education

Most specialists believe that well designed and executed public information and education efforts can be successful in transferring information to a target group but that they cannot, in themselves, bring about behavioral changes. Any changes in drinking and driving that result from such activities are seen as an unexpected side effect. Only in cases where the programs are combined with other types of countermeasures have any behavioral changes been noted. While research indicates that such attempts have not been successful in reducing crashes when used alone,

there is evidence that they have been effective in supporting other alcohol safety approaches, particularly the legal approach.

In general, there are four groups who are targeted by public information campaigns. First, campaigns are aimed at those who most often participate in situations where drinking and driving frequently occur. Identifying this group requires an analysis of all possible segments of the population, and the analysis will produce different results in different communities. Once a target group has been identified, it can be further segmented according to age, drinking patterns, etc. Objectives for specific behavioral modifications must then be identified in educating this group to avoid drinking and driving. In addition, such campaigns encourage friends to prevent members of these target groups from driving drunk.

The second category of public education efforts are aimed at community decision makers. Those who will determine whether various project countermeasures will be undertaken are essential targets. They include public officials, especially those in legal and health care systems, and professional groups. Education for these groups must be very audience-specific and requires unusual expertise, but it has high dividends.

A third target group is made up of those who can disseminate the message further. Since highway safety and drinking and driving are a major public concern, they interest many influential people — clergymen, elected officials, civil groups, large employers, etc. Activities aimed at these people usually seek to provide them with ideas for reaching still more members of the public.

Finally, those who distribute, sell, or promote alcoholic beverages are good campaign targets. Trade associations, as well as individual liquor stores and bars, will often cooperate with public interest campaigns in this area. Note that the chronological order in which these groups are approached should be determined by the needs of the project countermeasures and the degree to which one group's participation can be built on that of another.

In general, the following issues must be considered before embarking on a public information and education program:

1. Driving after drinking is presently socially acceptable behavior. How do we use existing information and education networks to change the public's attitude towards driving after drinking?

2. Education must go hand in hand with enforcement and swift, equitable adjudication. One without the other is ineffective.

3. There is no existing educational program which shows conclusive evidence of reducing crashes.

4. Education is believed to be useful whether results can be demonstrated in terms of empirical evidence of crash reduction or not.

5. Mass media approaches can be used to reach many different groups. However, special messages for individual target groups have a greater impact than general messages to the populace at large.

Regardless of the specific tactics used, the primary purpose of a public information and education campaign is to help the community openly acknowledge the nature and extent of its drinking driving problem. It will bring the issue out in the open and make the public sensitive to its importance. It will also ensure participation of essential public agencies and professionals. A large body of evidence suggests that these activities will result in public support of escalated efforts to deter drinking and driving as opposed to public perception of these efforts as repressive or unnecessary.

Some good examples of successful public information and education efforts are found in the activities of several private groups, such as Mothers Against Drunk Drivers, etc. These groups have had a substantial effect in increasing public awareness of the drinking and driving problem and prompting concrete action in response to it. More importantly, these groups demonstrate that the most effective attempts at informing the public originate at a local, grass roots level. They reflect the growing national concern about the drinking and driving problem that previously lacked direction. The real value of a public information and education program is its ability to focus and articulate an existing public attitude rather than attempting to promote an idealistic policy through stilted rhetoric.

Coordination of Committee Activities

It is clear from the evidence provided in the United States and other countries that very few measures have proven successful in dealing with the drunken driver and that much remains to be done in this field. Based upon this negative evidence, the NHTSA has

reevaluated its previous approaches, culminating with ASAP's approach, and concluded that:

> Solving the drunken driver problem requires an integrated effort by all levels of government and society. But we must recognize that in a real sense, drunken driving is first and foremost a local problem, not a federal one. It has reached national importance because it has first become a significant problem in every community in this nation. This distinction has more than rhetorical importance, because it is the local and community emphasis which is essential to any solution. The ultimate responsibility for solving this problem must be accepted at the local level. It is in our cities, towns, and counties where the primary resources for controlling the drunken driver reside. It is there where society's attitudes toward drinking and driving are established and reinforced. It is there where the tragic consequences of drunken driving are most acutely felt.

Thus, the federal government is taking a less direct role with regard to alcohol countermeasures in the states, stressing local involvement and encouraging development of new activities through incentive grants. It has, however, endorsed an approach to alleviating the drunken driving problem which stresses six major points:

1. Short-Term General Deterrence Approach — conducting programs oriented toward deterring the majority of drunken drivers who are never arrested (rather than treating the few who are) for short-term impact.

2. Community Focus — placing program emphasis and responsibility at the local level.

3. Systems Approach — integrating the coordination, enforcement, prosecution, adjudication, education/treatment, public information/education, and licensing functions at the local and state levels as appropriate.

4. Financial Self-Sufficiency — assessing fines, court costs, treatment tuition fees, etc., to convicted offenders to defray the costs of local/community programs.

5. Citizen Support — generating community/citizen support for comprehensive community programs (to provide a political base for increased countermeasure activity).

6. Long-Term General Deterrence (Prevention) — efforts toward changing societal attitudes to drinking and driving through long-term prevention/education programs.

Virginia's efforts to reduce drunken driving conform quite well with some of these guidelines, but do not match up well with others. For instance, each VASAP operates at the local level (point no. 2), each employs the systems approach to integrating the various countermeasures (point no. 3), most are now becoming financially self-sufficient (point no. 4), and most have now established a broad base of political support within their localities (point no. 5). The local programs deal mainly with specific deterrence of repeated drunken driving arrests. However, most innovations within the local programs now stress general deterrence through such public information programs as are run by the central ASAP office and by encouraging and coordinating grass roots efforts towards prevention. The most optimistic change occurring in recent years, and probably the factor which has the most chance of improving long-term prevention by changing public attitudes, is the advent of coordinated citizen concern for the problem.

As a final note before proceeding to a discussion of specific issues relating to drunken driving in Virginia, all task force members should recognize that none of the committees (and thus none of the countermeasures upon which they are modeled) act independently. Recommendations for change in one part of the alcohol countermeasures program may often have serious impact on the state of the art in other parts. Inasmuch as the NHTSA is stressing the need for a coordinated approach to the problem, it seems appropriate that these committees seek to work closely together and to keep each other informed.

III. ISSUES

The four committees of the task force can, and undoubtedly will, consider many issues in their deliberations. This section discusses some issues that are particularly germane to Virginia at this time. The list is not exhaustive, of course, but does contain salient issues which become obvious from a study of the literature on alcohol and driving.

Per Se Law

At present in Virginia, the results of chemical tests establishing a defendant's BAC are admissible into evidence, but they create only inferences or presumptions. For instance, if the BAC is under 0.05%, there is a presumption that the person is not under the influence. This presumption can be rebutted by the introduction of sufficient evidence to controvert the presumed fact. A BAC between 0.05% and 0.10%, however, does not give rise to a presumption, but can merely be used as a piece of evidence and thus be considered by the judge or jury along with all the other evidence. A presumption of driving under the influence is created by a BAC of 0.10% or above. This presumption, again, can be rebutted by a preponderance of evidence to the contrary.

A number of states are beginning to follow the recommendations of the Uniform Vehicle Code (§11-902) and are passing per se laws to establish a BAC limit above which a defendant is automatically guilty of breaking the law. With a per se law, no presumption or inference is created. A person with a BAC above the prescribed limit is simply guilty of a violation of the per se law. If Virginia adopted a per se law, the offense of DUI should be maintained to cover cases where no chemical test results are available, or where the defendant's BAC was below the per se level but his driving was nevertheless impaired.

A change in Virginia to a per se law could increase conviction rates for several reasons. First, the arresting officer would no longer have to testify as to observed impairment. Also, the defendant could no longer directly rebut an excessive BAC. He could only attack the viability of the test results themselves (i.e., proper instrument reading, qualified operator). In addition, a sympathetic defendant would not be able to convince a judge or jury to find for him if he in fact had an excessive BAC.

The pros and cons of a per se law can be briefly highlighted by three arguments:

1. The strongest argument against the per se law is that there is no empirical evidence to show any permanent deterrence to drunken driving in countries with the law. In answer to this, it must be noted that any statistical evidence of the effects of a change in the law must be questioned because there are many factors incapable of measurement which may be involved. Although it is impossible, therefore, to verify that per se laws deter DUI, they do lead to more convictions as noted above.

2. Per se laws are said to deprive persons who have developed a high tolerance to alcohol of their constitutional right to be presumed innocent. However, their high tolerance to alcohol does not mean that their driving is not impaired. These drivers are still not safe drivers. Therefore, a per se law would pass constitutional muster because it would have a "rational connection" to a legitimate state concern — public safety. This rational connection is the test the Supreme Court calls for in such a constitutional question.

3. The per se law is also attacked for unconstitutional vagueness as it does not give the drinker adequate warning of when he is in violation of the law since he cannot know his own BAC level. This argument is attenuated by the availability of charts which show how body weight and number of drinks translate into BAC. In addition, a person of reasonable intelligence should realize that if he has drunk a substantial amount, he should not drive. Greaves v. State, 528 P. 2d 805 (Utah 1974).

The Impact of Reducing Legal Drinking Ages

As mentioned earlier, on July 1, 1974, an amendment went into effect which lowered Virginia's legal drinking age for beer to 18 years; the minimum drinking age for wine and hard liquor was kept at 21. At that time, changes in the drinking age designed to extend adult drinking privileges to persons of military age had already been made in one form or another in about 30 other states. The most common practice among these states has been to allow the purchase of all alcoholic beverages at one particular age. Virginia was the only state which discriminated between beer and wine/hard liquor in its treatment of minimum ages. Since 1974, the

detrimental impact of lowering the legal drinking age has been clearly demonstrated both in Virginia and elsewhere.

It has been determined that young persons have traditionally had the worst driving record of all age groups, and that drinking even small amounts of alcohol drastically increases their probability of being involved in a motor vehicle accident. (This is not the case among older drivers, who must drink considerably more alcohol to increase their chances of accident involvement as much.) Considering that young persons are also more likely to combine alcohol with psychoactive drugs such as marijuana than are older drivers, it can be safely said that substance abuse while driving was a potentially serious problem for young persons even before the legal drinking age was lowered.

With regard to the effects of lowering the drinking age, it was first noted in states taking this action that the purchase and consumption of alcoholic beverages increased for newly enfranchised persons 18 to 20 years old. This was especially true of draught beer consumed in restaurants and taverns, which indicated that the young persons would be more likely to drive after drinking than if they were consuming the beverages at home. Increases in consumption of alcohol were also noted among persons as young as 13, probably because their older schoolmates were able to purchase the beverages for them.

The ultimate impact of the new drinking age law on highway safety must be measured in terms of accidents. Significant increases in alcohol-related accidents associated with the change in the drinking age have been noted, not only for persons 18 to 20 years old but also for persons 16 to 17 years old. These increases have not been noted for non-alcohol-related accidents nor for accidents involving older, and thereby unaffected, drivers. Also, increases have not been noted in states that did not change their drinking age laws. An analysis of Virginia crash data yielded similar results; there were significant increases in alcohol-related crashes for persons 16 to 19 years old subsequent to the lowering of the legal drinking age. No significant increases were noted for non-alcohol-related teenage crashes. At the same time, both alcohol-related and non-alcohol-related crashes significantly decreased for older drivers, probably as a result of the 1974 energy crisis.

It can be concluded from the examination of both the available literature and Virginia accident statistics that lowering the legal drinking age had an adverse effect upon the accident experience of young persons.

During the 1981 session of the General Assembly, the legal drinking age for beer was raised to 19 years, except in restaurants, for which the legal drinking age of 18 years was retained. To date, no direct evaluation of the effect of this legislation on the traffic safety environment in Virginia has been conducted. However, in other states that have raised their legal drinking age, alcohol-related accidents among affected young persons have been reduced anywhere from 6% to 75%. Since Virginia's law does not apply to restaurants and taverns, and since most teenage drinking following lowered age limits takes place in these establishments, decreases in alcohol crashes among young persons resulting from the increase in age requirements would be expected to appear on the lower end of this scale. Measures that would be expected to improve the highway safety experiences of young persons would include raising the legal drinking age for beer incrementally to 21 years and increasing age requirements for drinking in restaurants as well as elsewhere.

Mandatory Blood Alcohol Concentration Testing

Proof of an impaired driving offense requires the establishment of three elements: operation of a motor vehicle, use of alcohol or drugs, and impairment of driving ability. Especially in the case of alcohol, the task of proving that the driver was impaired is aided by chemical test results. A court or jury may presume from a BAC level at or above 0.10% that driving impairment has occurred. When test results are not available, such as when a driver refuses to take a test, impairment can still be established by other evidence, including the driving behavior that brought the suspect to the attention of the officer, the driver's lack of coordination, performance of field sobriety tests, physical appearance, odor of alcohol on the breath, or the presence of liquor containers in the vehicle. These methods were the only ones used before chemical tests came into wide use.

After the development of chemical testing methods, police relied on their lawful powers to forcibly seize evidence of impairment from a suspect, so long as they had probable cause to do so and the method of seizing was not violent or brutal. Thus, a police officer could have a blood specimen extracted from a suspected offender, even over that person's objections, without violating the United States Constitution. Police departments, however, are reluctant to engage in forcible confrontations with noncooperative suspects; moreover, state legislators viewed forcible testing for alcohol content a poor policy. Therefore, legislation was enacted to replace the threat of physical compulsion with a substitute form of compulsion — the threat of license loss. This legislation states that an individual has given

consent to the taking of specimens by his act of operating a vehicle on the highway. This law has been given the popular but somewhat misleading title of an "implied consent" law. The label is misleading because implied consent legislation has in fact resulted in greater, not fewer, restrictions on the testing process. Most notable, if a driver refuses to submit to a test, no attempt will be made to obtain a specimen; instead, the matter will be referred to the Division of Motor Vehicles which can take steps to suspend the driver's license for 90 days. If a defendant does refuse the test, it is difficult to obtain a DUI conviction on that person because the BAC level is the primary evidence for conviction. Therefore, implied consent legislation has created a right to refuse a chemical test that does not exist as a matter of constitutional law, as well as a method for avoiding a DUI conviction.

Two sources of law thus govern the administration of chemical tests for BAC. First, both the United States and Virginia constitutions establish minimum protections for those suspected of impaired driving. Under either constitution, an officer must have "probable cause" to believe that the driver is under the influence before arresting him or requiring a blood test. In addition, the manner of testing must be "reasonable," that is, testing must be conducted according to established medical standards and be neither violent nor brutal. Second, Virginia's implied consent law (§18.2-268) governs the administration of the chemical tests as well as the sanction for refusal. The constitutional protections along with the testing procedures and requirements do protect the defendant's rights. However, they also place restrictions on the apprehending police officers and may in some instances, as described above, lead to such strictures that an avenue for avoiding a DUI conviction is opened.

A final problem common to both alcohol and drug testing involves impaired drivers who are apprehended as the result of a crash. Frequently, these drivers are injured, or at least possibly injured, and receive immediate medical attention. Unfortunately, because Virginia does not have a mandatory blood testing statute, the results of hospital-administered blood tests are not usually reported. As one Richmond physician stated, an injury to an impaired driver amounts to a "ticket to absolution." Thus, although a blood test is medically routine, the results are not made available to the law enforcement community on a routine basis.

Other Intoxicants

Drug use and drug abuse are widespread in our society. The consumption of illicit drugs, especially marijuana, has become

commonplace, particularly among young people. Alcohol is also frequently used in combination with marijuana or other drugs. Licit prescription drugs, such as tranquilizers and antidepressants, and such over-the-counter drugs as cold remedies, are also widely used and are often consumed in combination with one another or with alcohol.

Millions of people in the United States use drugs other than alcohol. Many commonly used substances have at least the potential to impair the ability to drive safely, and many persons drive after consuming potentially impairing drugs. These facts suggest that drugs, both licit and illicit, present the potential for causing traffic crashes and that Virginia should take action to control the drug/crash problem. What is not yet known is the precise extent to which drug use contributes to the occurrence of traffic crashes.

Unlike alcohol, the case with a quantitative relationship between drug concentrations in the body and impairment of driving ability has not yet been established. Also, many drugs remain in the blood long after initial use, making the results of blood tests much less meaningful than in the case of alcohol. Marijuana, for example, can be detected by a blood test up to a week after its use. Another problem with drug testing is the number and variety of possible intoxicants. Although broad spectrum tests exist, the drug testing process is more expensive than simple alcohol level tests and the results are often ambiguous. The interaction of various drugs when used with alcohol or each other is also poorly understood and does not yet lend itself to the kind of quantitative certainty that is taken for granted when dealing with alcohol.

This lack of quantitative certainty explains in large part why Virginia, while prohibiting driving under the influence of intoxicating drugs, does not permit chemical testing for the presence of such drugs. In Virginia, a police officer who desires analytic results that could provide evidence of drug-impaired driving has a number of more or less unsatisfactory options. First, he could attempt to obtain a specimen over the driver's objections, as was done in the case of alcohol before Virginia's implied consent statute was enacted. However, this would raise serious issues of public policy and may even be prohibited by the implied consent law, since forcible testing is contrary to expressed legislative policy. Second, an officer could attempt to persuade the driver to voluntarily provide a sample; however, a driver who finds himself suspected of using drugs is unlikely to agree to such a voluntary test. Third, the officer could forego chemical evidence of drug concentrations and rely solely on qualitative evidence such as driving errors, impairment of physical capabilities, and inability to pass

field sobriety tests. Such evidence is considered by prosecutors to be weaker evidence in drug-impaired driving cases than test results, even though other evidence of impairment is at their disposal. Thus, in those cases where drug analyses could be of value in proving guilt, the absence of an implied consent provision for drug analysis could unnecessarily handicap law enforcement.

In any event, the analysis of blood for drug concentrations requires expert testimony in court to interpret analytic findings to provide legal evidence of impairment. This testimony is available only when the concentration of a particular drug is far above that which is considered therapeutic or when it indicates that an overdose has occurred. Frequently, however, the evidence gained from chemical analyses will be less conclusive. Thus, although chemical tests for drugs are available, they presently have only limited value as evidence in trials for drug-impaired driving.

Federal Drunken Driving Legislation

Table 7 gives a summary of two Congressional drunken driving bills. The Senate bill was passed by a floor vote on May 11, and the House bill is still under consideration. The bills require states to implement certain drunken driving regulations in order to qualify for highway safety incentive grants. The requirements include many of the issues addressed in this booklet, i.e., a per se law, mandatory jail sentences, administrative suspension of licenses, etc.

Alternative Adjudication/Referral Systems

It should be noted at the outset that there is no best system for adjudicating DUI cases. Different systems will be most effective in different jurisdictions. All good systems are fair, efficient, and effective. They dispose of a case rapidly, well under the 90 days required by Virginia law. They collect sufficient information about each individual to create an appropriate sentence, especially if a referral is in question. Their record systems are accurate, complete, and economical, and they are maintained in such a way as to be useful to individuals outside the court or outside the locality. They aim at individualized dispositions rather than routine processing. They monitor their dispositions and evaluate effectiveness as a whole and in individual cases.

TABLE 7

CURRENT PENDING

FEDERAL DRUNK DRIVING LEGISLATION

SENATE

S. 2158 Danforth/Pell

- Provides an incentive grant (equal to the federal 402 State and Community Highway Safety Grant) to any qualifying State in any fiscal year it enacts a comprehensive, two-tiered anti-drunk driving statute that does all of the following:

  1. automatic 90 day administrative license suspension for the first drunk driving incident; one year suspension for second or subsequent incident;

  2. 90 day minimum impoundment of motor vehicle driven by individual whose license has been suspended for drunk driving;

  3. comprehensive alcohol traffic safety program which includes:

     - .10% blood alcohol content (BAC) test result as per se evidence;
     - 48-hour jail term (minimum) for second or subsequent offense within five years;
     - alcohol treatment program;
     - improved enforcement;
     - a driver record system that identifies repeat offenders.

- Updates the current National Driver Register (NDR) to an electronic system to assist the States in exchanging driving record information on problem drivers, by:

  a) providing for license suspensions, revocations, and other serious driving convictions to be listed in the NDR.

  b) establishing pilot test programs for states to test effectiveness of an electronic register.

HOUSE

H.R. 6170 Howard/Barnes

- Provides incentive grants to states (an amount to be determined by the Secretary), awarded by the Secretary through the State and Community Highway Safety Grant Program (402), after a rulemaking that would establish the criteria with which to judge how the states are performing in their individual attempts to address the problem. Final regulations will go into effect April 1, 1983, unless disapproved by a one-House veto.

- Outlines elements that should be included in a comprehensive, systems approach, but does not require that all be included:

  1. enhanced enforcement;

  2. passage of per se statutes providing .10% blood alcohol content (BAC) (or greater) is deemed driving while intoxicated;

  3. statewide driver record systems that identify repeat offenders and are easily accessible to courts and the public;

  4. administrative suspension or revocation by state licensing agency of driver's license;

  5. empowering courts to recommend suspension or revocation of license and providing courts with presentence screening authority and sanction options (community services, fines, imprisonment, attendance in education and treatment programs)

  6. Provides for locally coordinated alcohol traffic safety programs in each major political subdivision, administered by local officials and financially self sufficient.

TABLE 7 cont.

S. 2158 Danforth/Pell (continued)

Authorizations

Incentive Grants (from Highway Trust Fund)

F.Y. '83 - $25 million; F.Y. '84 - $50 million

National Driver Register (from general fund)

F.Y. '83 - $3.2 million - Update to Electronic system/operate
F.Y. '84 - $1.5 million - " " " " "
F.Y. '85 - $2.1 million - Register programs/pilot demos

State Match - No state match required

Status of Bill

Introduced March 2, 1982
Hearings held March 3, 1982
Reported out of Committee, March 29, 1982
Floor consideration - May 11, 1982 (passed by voice vote)

Amendments Adopted on the Senate Floor

1. DeConcini amendment that authorizes the National Highway Safety Advisory Committee to approve and recommend to the Secretary a State's Statute for an incentive award if the Committee feels that statute is generally applicable and will produce results which equal or exceed those provisions required in this bill.

2. Danforth amendment that does not allow employers access to information in the National Driver Register on prospective employees any further back than three years from the time of request.

3. Danforth admendment that establishes an NDR Subcommittee of the Highway Safety Advisory Committee, that reports directly to the Secretary.

H.R. 6170 Howard/Barnes (continued)

Authorizations

Incentive Grants (from Highway Trust Fund)

F.Y. '83 - $25 million; F.Y. '84 - $50 million;
F.Y. '85 - $50 million

State Match - soft match permitted - have to use alcohol programs as match: F.Y. '83 - 75/25;
F.Y. '84 - 50/50; F.Y. '85 - 25/75

Status of Bill

Introduced April 27, 1982
Hearings held April 29, 1982
Mark-up -- May 12, 1982
Floor consideration

Adjudication systems are produced jointly by attitudes of the defense, the prosecution, and the judiciary. The worst systems are those run solely by the defense bar (though defense cooperation is always necessary). Systems based on offering an incentive of some kind are possibly better run by prosecutors, and those based on coercion should be run by judges. All systems should be monitored by the defense bar to ensure that the defendant's rights are protected. Basically, there are three systems available for dealing with a drinking driver once he has been apprehended.

The first system might be called the traditional approach insofar as it takes elaborate precautions to protect the rights of the defendant, treating his case with the same thoroughness as that of a felon. It includes several court appearances, full investigation prior to sentencing, and a direct order to cooperate with a referral to rehabilitation.

For example, an arrested driver is immediately taken before a magistrate for a probable cause hearing. If probable cause is proven, the driver is bound over to the superior court and released on bail. A prosecutor then investigates the case, takes testimony, prepares a case, and files a bill of information. An arraignment is scheduled. If the defendant pleads not guilty, he is scheduled for trial, and plea bargaining is not encouraged. Upon a plea of guilty or a guilty verdict from judge or jury, the judge makes a finding of guilt and orders a presentence investigation. This consists of a full diagnostic and background investigation filed by a probation officer in a lengthy presentence investigation report. At a sentencing hearing, the judge formally pronounces sentence, including a referral to rehabilitation or education. Drivers who successfully complete this program may apply to have their licenses restored. Problem drinkers are placed on 6 months supervised probation, during which time they see a probation officer regularly and attend a therapy program. Their attendance in the program is ensured by the judge's power to carry out a suspended jail sentence. Because this system is lengthy, slow, and expensive, it is used in very few jurisdictions.

Another type of system is the pretrial, or diversionary, system. Based on open, formalized plea bargaining, such systems reward cooperation with an "earned charge reduction" or a final sentence reduction. This is somewhat like the early 1970's VASAP system that was used in a few jurisdictions in the Commonwealth. At arraignment the judge encouraged all defendants to plead not guilty, so that they might participate in VASAP. Upon a plea of not guilty, the defendant was given a date on which to reappear for a VASAP orientation session, and on the same day a pretrial disposition conference. This occurred between 14 and 21 days after arraignment.

Within that period the prosecutor determined if the defendant's record made him eligible for VASAP. If so, the prosecutor offered a plea bargain by inserting a VASAP agreement form with proposed charges and sanctions into the defendant's file, which was then kept in the VASAP orientation office. Decisions as to plea bargain offers were routine and nondiscretionary.

The VASAP staff worked for the prosecutors in a manner similar to that of presentence investigators. At the orientation session, where a group of defendants would appear, VASAP case coordinators administered an alcohol screening questionnaire. A film explained the VASAP process while the questionnaires were scored and rehabilitation assignments determined by case coordinators, who then met individually with the defendants to explain the terms of the plea agreement. Cooperation saved the defendant from loss of license or a possible jail sentence. He would eventually plead guilty to a lesser offense not related to alcohol. The defendant signed the contract and was given written notice of his rehabilitation assignment and of what would happen if he broke the agreement.

Whether they accepted the bargain or not, all defendants attended a pretrial disposition conference, where the judge repeated the terms of the agreement, ensured that agreement was voluntary and knowing, and set a final disposition date within about 60 days. Those who continued to plead not guilty were scheduled for trial, where, if found guilty, they would be convicted of the original charge of DUI, lose their licenses for at least 6 months, and be ordered under probation to attend the appropriate rehabilitation program. Noncompliance with the VASAP agreement also resulted in trial.

This system was developed in response to an enormous number of requests for trials caused by legislation requiring a mandatory 6-month suspension of driving privileges. The courts could not conduct the trials within the period required by speedy trial guidelines and chose this system over informal plea bargaining or mass dismissals. The system enabled the courts to increase their case loads while reducing the number of judges and prosecutors involved. It also encouraged more than 90% of the defendants to voluntarily accept a referral to rehabilitation. The great weakness of this system was that it failed to result in an official record of conviction for an alcohol-related driving offense. However, under the new DUI laws, a person is convicted of DUI prior to entering a rehabilitation program. Under this system, there may be a disincentive to enter the rehabilitation program because a defendant would be unwilling to go through the program merely to keep his license or get a restricted license. So there may be a return to the first, traditional system described above.

The final method of adjudication involves delegating routine pleas and dispositions to parajudicials. These systems are often associated with formalized plea bargaining through a pretrial disposition hearing. For example, many jurisdictions are faced with a large backlog of cases and public dislike of informal plea bargaining. An alternative is to implement a pretrial disposition system at which a judicial officer presides over a negotiation between defense and prosecution, seeking acceptance of a referral to rehabilitation in exchange for a reduced charge. The referral path is based on records of the current offense and prior offenses, and if the defendant agrees to the bargain, it will then be reviewed and the plea accepted by an official judge. This system guarantees the judicial presence but does not require judges to commit their time to full-fledged hearings. Judicial officers can be either private attorneys paid on a daily basis or specially trained, full-time staff.

Although this system eliminates backlogs and formalized plea bargaining, the degree to which it delegates judicial sentencing authority creates some anxiety among judges.

Assuming that there was such a thing as an ideal adjudication system, it would still be difficult to get local courts to adopt it. Local courts are like living organisms, responding to numerous local, state, and legal pressures on an almost daily basis, working out compromises between what they want to do and what they have to do. The best recommendation about the best system, therefore, is to have local courts design their own systems on the basis of the available information and according to criteria for measuring fairness, efficiency, and effectiveness.

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APPENDIXES

APPENDIX A

CODE OF VIRGINIA

— DRIVING A MOTOR VEHICLE WHILE INTOXICATED —

CHAPTER 7.

CRIMES INVOLVING HEALTH AND SAFETY.

Article 2.

Driving Motor Vehicle, etc., While Intoxicated.

Article 3.

Transporting Dangerous Articles.

ARTICLE 2.

Driving Motor Vehicle, etc., While Intoxicated.

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated. — It shall be unlawful for any person to drive or operate any motor vehicle, engine or train while under the influence of alcohol, or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature. For the purposes of this section, the term "motor vehicle" shall include pedal bicycles

with helper motors, while operated on the public highways of this State. (Code 1950, § 18.1-54; 1960, c. 358; 1975, cc. 14, 15; 1977, c. 637.)

§ 18.2-267. Analysis of breath to determine alcoholic content of blood. — (a) Any person who is suspected of a violation of § 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The Department of General Services, Division of Consolidated Laboratory Services shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

(c) Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of § 18.2-266, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of § 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of § 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of § 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under § 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.2-266, advise such person of his rights under the provisions of this section. (Code 1950, § 18.1-54.1; 1970, c. 511; 1975, cc. 14, 15; 1979, c. 717.)

§ 18.2-268. Use of chemical test to determine alcoholic content of blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions. — (a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this Commonwealth on and after January one, nineteen hundred seventy-three, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for violation of § 18.2-266 or of a similar ordinance of any county, city or town within two hours of the alleged offense. Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that either test is not available.

(c) If a person after being arrested for a violation of § 18.2-266 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for

a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this Commonwealth, then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Division of Consolidated Laboratory Services (hereinafter referred to as Division), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood or breath sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Division which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Division, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Division. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of the second container give to the accused a form provided by the Division which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the Division; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver the second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by

the Division, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Division.

(d3) A fee not to exceed fifteen dollars shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State Treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two hours after receiving the container then the officer shall destroy such container.

(e) Upon receipt of the blood sample forwarded to the Division for analysis, the Division shall cause it to be examined for alcoholic content and the Director of the Division or his designated representative shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Division and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the Division.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the Division, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Director of the Division or his designated representative, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 or of a similar ordinance of any county, city or town, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State Treasury.

(i) In any trial for a violation of § 18.2-266 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for a chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal,

declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants. Venue for the trial of the warrant shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of the warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of ninety days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense; provided, that if the defendant shall plead guilty to a violation of § 18.2-266, or of a similar ordinance of a county, city or town, the court may dismiss the warrant.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party, trial by jury shall be as provided in article 4 of chapter 15 (§ 19.2-260 et seq.) of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

(q) No person arrested for a violation of § 18.2-266 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(r1) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid

license to conduct such tests, with a type of equipment and in accordance with the methods approved by the Division. Such breath-testing equipment shall be tested for its accuracy by the Division at least once every six months.

The Division is directed to establish a training program for all individuals who are to administer the breath tests, of at least forty hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon the successful completion of the training program the Division may issue a license to the individual operator indicating that he has completed the course and is authorized to conduct a breath-test analysis. Licenses previously issued by the State Health Commissioner shall continue to be valid until the expiration date.

Any individual conducting a breath test under the provisions of this section and as authorized by the Division shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal proceeding as evidence of the alcoholic content of the blood of the accused. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof. A copy of such certificate shall be forthwith delivered to the accused.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section. (Code 1950, § 18.1-55.1; 1964, c. 240; 1966, c. 635; 1970, c. 622; 1972, cc. 741, 756; 1973, c. 511; 1974, c. 591; 1975, cc. 14, 15, 587; 1977, cc. 638, 659; 1978, c. 593; 1979, cc. 717, 728.)

§ 18.2-269. Presumptions from alcoholic content of blood. — In any prosecution for a violation of § 18.2-266, or any similar ordinance of any county, city or town, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcoholic content of his blood in accordance with the provisions of § 18.2-266 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants;

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight by volume of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.10 percent or more by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was under

the influence of alcoholic intoxicants. (Code 1950, § 18.1-57; 1960, c. 358; 1964, c. 240; 1966, c. 636; 1972, c. 757; 1973, c. 459; 1975, cc. 14, 15; 1977, c. 638.)

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction. — Any person violating any provision of § 18.2-266 shall be guilty of a Class 2 misdemeanor.

Any person convicted within any period of ten years of a second or other subsequent offense under § 18.2-266, or convicted of a first offense under § 18.2-266 after having been convicted within a period of ten years prior thereto of an offense under former § 18.1-54 (formerly § 18-75), shall be punishable by a fine of not less than two hundred dollars nor more than one thousand dollars and by confinement in jail for not less than one month nor more than one year.

For the purpose of this section a conviction or finding of not innocent in the case of a juvenile under the provisions of § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this State or the laws of any other state substantially similar to the provisions of §§ 18.2-266 through 18.2-269 of this Code, shall be considered a prior conviction. (Code 1950, § 18.1-58; 1960, c. 358; 1962, c. 302; 1975, cc. 14, 15.)

§ 18.2-271. Same; forfeiture of driver's license; suspension of sentence. — The judgment of conviction, or finding of not innocent in the case of a juvenile, if for a first offense under § 18.2-266, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted or found not innocent of the right to drive or operate any motor vehicle, engine or train in this State for a period of not less than six months nor more than one year in the discretion of the court from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, any such period in either case to run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by § 18.2-268. If any person has heretofore been convicted or found not innocent of violating any similar act of this State and thereafter is convicted or found not innocent of violating the provisions of § 18.2-266, such conviction or finding shall for the purpose of this section and § 18.2-270 be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent. (Code 1950, § 18.1-59; 1960, c. 358; 1962, c. 625; 1964, c. 240; 1972, c. 757; 1975, cc. 14, 15.)

§ 18.2-271.1. Probation, education and rehabilitation of person charged; person convicted under law of another state. — (a) Any person charged with a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof, or any second or other subsequent offense thereunder, may upon a plea of guilty or after hearing evidence which is sufficient in law to give rise to a finding of guilt, with leave of court or upon court order, with or without a finding of guilt by the court or jury, enter into an alcohol safety action program, or a driver alcohol rehabilitation program or such other alcohol rehabilitation program as may in the opinion of the court be best suited to the needs of such person, in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. In the determination of the eligibility of such person to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program.

(a1) The court shall require the person entering such program under the provisions of this section to pay a fee of not more than two hundred dollars, a reasonable portion of which as may be determined by the Director of the Department of Transportation Safety, but not to exceed twenty dollars, shall be

forwarded to be deposited with the State Treasurer for expenditure by the Department of Transportation Safety for administration of driver alcohol rehabilitation programs, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Notwithstanding any other provision of law requiring a conviction prior to the imposition of court costs, the court may require all persons entering such program under the provisions of this section to pay all costs of the proceeding which would have been payable by such person upon a conviction of a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof. In addition, such fees as may reasonably be required of defendants referred for extended treatment under any such program may be charged.

(b) If the court finds that such person is not eligible for such program or violates any of the conditions set forth by the court in entering such program, the court shall dispose of the case as if no program had been entered. If the court finds that such person has complied with its order and has completed such program successfully, such compliance may be accepted by the court in lieu of a conviction under § 18.2-266 and the requirements specified in § 18.2-271, or the court may amend the warrant and find such person guilty of such other violations of the traffic laws as the evidence may show and assess such fines and costs for such offense as required by law. Appeals from any such disposition or finding shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date final disposition or finding was made.

(b1) Any person who has been convicted in another state of the violation of a law of such state similar to § 18.2-266, and whose privilege to operate a motor vehicle in this State is subject to revocation under the provisions of § 46.1-417, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection (a) of this section. If the court shall find that such person would have qualified therefor if he had been charged in this State for a violation of § 18.2-266, the court shall grant the petition, and restore such person's privilege to operate a motor vehicle in this State, or if unrevoked, stay any forthcoming order of the Commissioner of the Division of Motor Vehicles revoking such privilege. A copy of the order granting the petition shall be forthwith sent to the Commissioner of the Division of Motor Vehicles. Upon the granting of the petition and entry of the order, the driving privilege of such person shall be restored upon condition that he comply with the order or further orders of the court. If such person violates any condition set out by the court, the court may revoke his driving privilege. Upon satisfactory completion of the program, the court may restore such privilege without condition. In case of either revocation or unconditional restoration of such privilege, the court shall forthwith send a copy of its order to the Commissioner of the Division of Motor Vehicles.

(b2) The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court; whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than ten days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege.

(c) The State Treasurer or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in (a1) hereof.

(d) The Department of Transportation Safety, or any county, city, town, or cities or any combination thereof may establish and, if established, shall operate in accordance with the standards and criteria required by this subsection alcohol safety action programs or driver alcohol treatment and rehabilitation programs or driver alcohol education programs in connection with highway safety. The Department of Transportation Safety and the Department of Mental Health and Mental Retardation shall establish standards and criteria for the implementation and operation of such programs. The Department of Transportation Safety shall establish criteria for the modalities of administration of such programs, as well as public information, accounting procedures and allocation of funds. Funds paid to the State hereunder shall be utilized by the Department of Transportation Safety to offset the costs of State programs and local programs run in conjunction with any county, city or town. The Department of Transportation Safety shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

(e) Nothing in this section shall be construed to prevent the exercise by a court of its authority to make any lawful disposition of a charge of a violation of § 18.2-266 or a similar offense under any county, city or town ordinance. (1975, c. 601; 1976, cc. 612, 691; 1977, c. 240; 1978, c. 352; 1979, c. 353.)

§ 18.2-272. Driving after forfeiture of license. — If any person so convicted shall, during the time for which he is deprived of his right so to do, drive or operate any motor vehicle, engine or train in this State, he shall be guilty of a misdemeanor and shall be confined in jail not less than ten days nor more than six months and may in addition be fined not exceeding five hundred dollars; but nothing in this section or §§ 18.2-266, 18.2-270 or 18.2-271, shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance. (Code 1950, § 18.1-60; 1960, c. 358; 1975, cc. 14, 15.)

§ 18.2-273. Report of conviction to Division of Motor Vehicles. — The clerk of every court of record and the judge of every court not of record shall, within thirty days after final conviction of any person in his court under the provisions of this article, report the fact thereof and the name, post-office address and street address of such person, together with the license plate number on the vehicle operated by such person to the Commissioner of the Division of Motor Vehicles who shall preserve a record thereof in his office. (Code 1950, § 18.1-61; 1960, c. 358; 1975, cc. 14, 15.)

APPENDIX B

JULY 1, 1982 CHANGES IN DUI LAW

1982 REGULAR SESSION

CHAPTER 301

An Act to amend and reenact §§ 18.2-36, 18.2-270, 18.2-271, 18.2-271.1 and 46.1-417 of the Code of Virginia, relating to penalties for involuntary manslaughter; rehabilitation programs; fees and penalties for driving under the influence of alcohol or other drugs.

[H 938]

Approved APR 8 1982

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-36, 18.2-270, 18.2-271, 18.2-271.1 and 46.1-417 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-36. How involuntary manslaughter punished.—Involuntary manslaughter is punishable as a Class ~~6~~ *5* felony.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.—Any person violating any provision of § 18.2-266 shall be guilty of a Class ~~2~~ *1* misdemeanor.

Any person convicted ~~within any period of ten~~ *of a second offense within less than five* years after a ~~second or other subsequent offense under § 18.2-266, or convicted of~~ a first offense under § 18.2-266 after ~~having been convicted within~~ a ~~period of ten years prior thereto of an offense under former § 18.1-54 (formerly § 18-75),~~ shall be punishable by a fine of not less than ~~two hundred dollars~~ *$200* nor more than ~~one thousand dollars~~ *$1,000* and by confinement in jail for not less than one month nor more than one year. *Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than $200 nor more than $1,000 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense within ten years of an offense under § 18.2-266 shall be punishable by a fine of not less than $500 nor more than $1,000 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.*

For the purpose of this section a conviction or finding of not innocent in the case of a juvenile under the provisions of § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this State or the laws of any other state substantially similar to the provisions of §§ 18.2-266 through 18.2-269 of this Code, shall be considered a prior conviction.

§ 18.2-271. Same; forfeiture of driver's license; suspension of sentence.— *Except as provided in § 18.2-271.1,* the judgment of conviction ~~, or finding of not innocent in the case of a juvenile,~~ if for a first offense under § 18.2-266, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted ~~or found not innocent~~ of the ~~right~~ *privilege* to drive or operate any motor vehicle, engine or train in ~~this State~~ *the Commonwealth* for a period of ~~not less than~~ six months ~~nor more than one year in the discretion of the court~~ from the date of such judgment ~~; and~~ . If *such conviction is* for a second or other subsequent offense *(i)* within ~~ten~~ *five* years ~~thereof~~ *of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended* for a period of three years *or, (ii) within five to ten years of a first offense conviction under § 18.2-266 such person's license to operate a motor vehicle, engine or train shall be suspended for a period of two years* from the date of the judgment of conviction ~~or finding of not innocent thereof,~~ . Any such period *of license suspension,* in ~~either~~ *any* case ~~to~~ *shall* run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by § 18.2-268. If any person has heretofore been convicted or found not innocent *in the case of a juvenile* of violating any similar act ~~of this State~~ *in the Commonwealth or any other state* and thereafter is convicted ~~or found not innocent~~ of violating the provisions of § 18.2-266, such conviction or finding shall for the purpose of this section and § 18.2-270 be a subsequent offense and shall be punished accordingly ~~; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent~~ . *Six months of any license suspension or revocation imposed pursuant to this section for a first offense conviction may be suspended, in whole or in part by the court*

upon the entry of such person convicted into and the successful completion of a program pursuant to § 18.2-271.1. Upon a second conviction, the court may not suspend more than two years of such license suspension or revocation if such second conviction occurred less than five years after a previous conviction under § 18.2-270, nor more than one year if such second conviction occurred five to ten years after a previous conviction. Upon a third conviction of a violation of § 18.2-266, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1.

§ 18.2-271.1. Probation, education and rehabilitation of person convicted; person convicted under law of another state.—(a) Any person ~~charged with~~ *convicted of* a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof, or any second ~~or other subsequent~~ offense thereunder, may ~~upon a plea of guilty or after hearing evidence which is sufficient in law to give rise to a finding of guilt~~ , with leave of court or upon court order, ~~with or without a finding of guilt by the court or jury,~~ enter into an alcohol safety action program, or a driver alcohol rehabilitation program or such other alcohol rehabilitation program as may in the opinion of the court be best suited to the needs of such person, in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. In the determination of the eligibility of such person to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program. If such person has never entered into or been committed to a driver alcohol safety action program or driver alcohol rehabilitation program or similar rehabilitation or education program, in keeping with the procedures provided for in this section, and upon motion of the accused or his counsel, the court shall give mature consideration to the needs of such person in determining whether he be allowed to enter such program ; ~~and, upon completion of the program successfully, whether the warrant should be amended as provided in (b) hereof~~ .

(a1) The court shall require the person entering such program under the provisions of this section to pay a fee of ~~two hundred dollars~~ *$250* , a reasonable portion of which as may be determined by the Director of the Department of Transportation Safety, but not to exceed twenty dollars, shall be forwarded to be deposited with the State Treasurer for expenditure by the Department of Transportation Safety for administration of driver alcohol rehabilitation programs, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. ~~Notwithstanding any other provision of law requiring a conviction prior to the imposition of court costs, the court may require all persons entering such program under the provisions of this section to pay all costs of the proceeding which would have been payable by such person upon a conviction of a violation of § 18.2-266, or any ordinance of a county, city or town similar to the provisions thereof.~~ In addition *to the costs of the proceeding* , ~~such~~ fees as may reasonably be required of defendants referred for extended treatment under any such program may be charged.

(b) ~~If the court finds that such person is not eligible for such program or violates any of the conditions set forth by the court in entering such program, the court shall dispose of the case as if no program had been entered. If the court finds that such person has complied with its order and has completed such program successfully, such compliance may be accepted by the court in lieu of a conviction under § 18.2-266 and the requirements specified in § 18.2-271, or the court may amend the warrant and find such person guilty of such other violations of the traffic laws as the evidence may show and assess such fines and costs for such offense as required by law. Appeals from any such disposition or finding shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date final disposition or finding was made.~~ *Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, the court shall impose sentence as authorized by §§ 18.2-270 and 18.2-271. Upon a finding that a person so convicted is eligible for participation in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with paragraph (b1a) of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds that a person is not eligible for such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of §§ 18.2-271 and 46.1-421 (a) shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Division of Motor Vehicles. If such order*

provides for the issuance of a restricted license, the Commissioner of the Division of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for a rehearing, whichever is later.

(b1) Any person who has been convicted in another state of the violation of a law of such state *substantially* similar to *the provisions of* § 18.2-266, and whose privilege to operate a motor vehicle in this State is subject to revocation under the provisions of § 46.1-417, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection (a) of this section *and that upon successful completion of such program his privilege to operate a motor vehicle in this State be restored or, if unrevoked, that any order of the Commissioner of the Division of Motor Vehicles revoking such privilege be stayed* . If the court shall find that such person would have qualified therefor if he had been ~~charged~~ *convicted* in this State ~~for~~ *of* a violation of § 18.2-266, the court ~~shall~~ *may* grant the petition *; and may suspend the period of license suspension or revocation imposed pursuant to § 46.1-417. Such suspension of sentence shall be conditioned upon the successful completion of a program by the petitioner. If such person has previously been convicted of a violation under § 18.2-266 or the laws of any other state substantially similar thereto, the court may suspend not more than two years of the sentence of license suspension or revocation imposed. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall impose a sentence of license suspension or revocation in accordance with the provisions of §§ 18.2-271 or 46.1-421 (a).* ~~and restore such person's privilege to operate a motor vehicle in this State, or if unrevoked, stay any forthcoming order of the Commissioner of the Division of Motor Vehicles revoking such privilege~~ : A copy of the order granting the petition *or subsequently revoking or suspending such person's license to operate a motor vehicle* shall be forthwith sent to the Commissioner of the Division of Motor Vehicles. ~~Upon the granting of the petition and entry of the order, the driving privilege of such person shall be restored upon condition that he comply with the order or further orders of the court. If such person violates any condition set out by the court, the court may revoke his driving privilege. Upon satisfactory completion of the program, the court may restore such privilege without condition. In case of either revocation or unconditional restoration of such privilege, the court shall forthwith send a copy of its order to the Commissioner of the Division of Motor Vehicles.~~

No period of suspension or license revocation shall be imposed pursuant to this subsection which, when considered together with any period of license suspension or revocation previously imposed for the same offense in any state, results in such person's license being suspended for a period in excess of the maximum periods specified in this subsection.

(b1a) Whenever a person enters a program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; or (ii) travel to an alcohol rehabilitation program entered pursuant to this paragraph; or (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment. The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.1-425 and shall forward a copy of its order entered pursuant to this paragraph, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person, to the Commissioner of the Division of Motor Vehicles. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Division of Motor Vehicles of a restricted license. A copy of such order or, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.1-350.

(b2) The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court ; , whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke

the privilege afforded by this section. Such notice shall be made by first class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than ten days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. *Notice of revocation under this paragraph shall be sent forthwith to the Commissioner of Motor Vehicles.*

(c) The State Treasurer or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in (a1) hereof.

(d) The Department of Transportation Safety, or any county, city, town, or cities or any combination thereof may establish and, if established, shall operate in accordance with the standards and criteria required by this subsection alcohol safety action programs or driver alcohol treatment and rehabilitation programs or driver alcohol education programs in connection with highway safety. The Department of Transportation Safety and the Department of Mental Health and Mental Retardation shall establish standards and criteria for the implementation and operation of such programs. The Department of Transportation Safety shall establish criteria for the modalities of administration of such programs, as well as public information, accounting procedures and allocation of funds. Funds paid to the State hereunder shall be utilized by the Department of Transportation Safety to offset the costs of ~~State~~ *state* programs and local programs run in conjunction with any county, city or town. The Department of Transportation Safety shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

(e) ~~Nothing in this section shall be construed to prevent the exercise by a court of its authority to make any lawful disposition of a charge of a violation of § 18.2-266 or a similar offense under any county, city or town ordinance.~~

§ 46.1-417. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions thereto.—The Commissioner shall forthwith revoke, and not thereafter reissue during the period of one year, except as provided in § *§* 18.2-271 *or 18.2-271.1* , the license of any person, resident , or nonresident, upon receiving a record of his conviction or a record of his having been found ~~not innocent~~ *guilty* in the case of a juvenile of any of the following crimes, committed in violation of either a ~~State~~ *state* law or a valid town, city or county ordinance paralleling and substantially conforming to a like ~~State~~ *state* law and to all changes and amendments of it:

(a) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(b) Violation of the provisions of § 18.2-266 or § 18.2-272 or violation of a valid town, city or county ordinance paralleling and substantially conforming to §§ 18.2-266 to 18.2-273;

(b)(1) Upon receipt of a copy of an order entered by a general district court pursuant to the provisions of § 18.2-271.1 (b1) that a person whose license would otherwise be subject to revocation under the provisions of this section has entered a program under the provision of § 18.2-271.1, the Commissioner shall not revoke such license, or having revoked it, shall forthwith withdraw his order of revocation and any order of suspension of registration certificates and plates under the provisions of § 46.1-418. In the event the Commissioner shall receive a copy of an order from the court revoking *or suspending* the privilege of such person to operate a motor vehicle, the Commissioner shall then revoke *or suspend* such license and suspend such registration and plates pursuant to this section and § 46.1-418 . ~~Upon receipt of a copy of an order from the court restoring such privilege without condition, the Commissioner shall purge his records of such convictions~~ :

(c) Perjury or the making of a false affidavit to the Division under this chapter or any other law of this State requiring the registration of motor vehicles or regulating their operation on highways, or the making of a false statement to the Division on any application for an operator's or chauffeur's license;

(d) Any crime punishable as a felony under the motor vehicle laws of this State or any other felony in the commission of which a motor vehicle is used;

(e) [Repealed.]

(f) Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person.

STATUTORY SUMMARY

OLD STATUTORY PROVISIONS	NEW STATUTORY PROVISIONS
Authorized Penalties: Involuntary Manslaughter.	
Defined as class 6 felony punishable by imprisonment for not less than 1 year nor more than 5 years.	Defined as class 5 felony punishable by imprisonment for not less than 1 year, nor more than 10 years.
Note: Under the provisions the jury, or the court trying the case without a jury, in its discretion can impose a penalty of confinement for not more than 12 months and a fine of not more than $1,000, either or both	
Authorized Penalties: DWI	
Defined as class 2 misdemeanor, punishable by confinement for not more than 6 months and a fine of not more than $500, either or both.	Defined as class 1 misdemeanor, punishable by confinement for not more than 12 months and a fine of not more than $1,000 either or both.
Second and subsequent convictions within 10 years punishable by confinement of not less than 1 month nor more than 1 year and a fine of not less than $200 nor more than $1,000.	Second conviction within 5 years punishable by confinement for not less than 2 months nor more than 1 year and a fine of not less than $200 nor more than $1,000. Third and subsequent convictions within 10 years punishable by confinement for not less than 2 months nor more than 1 year and a fine of not less than $500 nor more than $1,000.
Mandatory Minimum Jail Sentences	
No mandatory periods of confinement for either first conviction or subsequent convictions.	Second conviction within 5 years punished by mandatory confinement for 48 hours. Third conviction within 5 years punished by mandatory confinement for 30 days. Third conviction within period of 5-10 years of a conviction punished by mandatory confinement for 10 days.
Mandatory Periods of License Revocation/ Suspension	
First conviction resulted in mandatory revocation for period of not less than 6 months nor more than 1 year, in the discretion of the judge.	First conviction results in revocation of license for 6 months. Entire 6 months may be suspended by the court conditional upon the offender's completion of VASAP.
Second conviction within 10 years resulted in mandatory revocation for period of 3 years.	Second conviction within period of 5 years results in license revocation for three years. No more than two years may be suspended by the court.
Third conviction resulted in permanent revocation.	Second conviction within period of between 5 and 10 years of previous conviction results in license revocation for 2 years. No more than one year may be suspended by the court. Third conviction results in permanent revocation.
VASAP Entrance Requirements §18.2-271.1	
Conviction not required for referral to VASAP. Referral was possible either upon plea of guilty or upon hearing evidence sufficient to establish guilt.	Conviction must be entered before referral to VASAP.
Referral not explicitly limited to first offenders	Upon a third conviction a person is ineligible for VASAP.
Fee of $200 for the program.	Fee of $250 for the program.
Note: Fee does not include costs of the court proceeding or cost for extended treatment under the program.	

1754

Issuance of Restricted Licenses	
No provision for such licenses.	Such licenses may be issued to persons referred to VASAP. May be issued for any or all of the following purposes: - Travel to and from VASAP - Travel to and from place of employment - Travel during hours of employment where operation of a motor vehicle is necessary.
Treatment of Out-Of-State Convictions for DWI	
Out-of-state conviction for DWI treated as conviction for purposes of sentencing and license revocation. However, person convicted in another jurisdiction could petition the court for referral to VASAP.	Same
Upon referral to VASAP, privilege to drive is restored, conditional upon completion of VASAP.	If conviction is a first conviction, court may in its discretion restore the privilege to drive, conditional upon completion of VASAP.
	If conviction is a second conviction within 10 years, revocation provisions are operative. Court may not suspend more than 2 years of the license revocation period.
Upon completion of VASAP, record of out-of-state conviction is expunged.	Upon completion of VASAP, record of out-of-state conviction remains on DMV records.