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586-2268

Congress of the United States

Washington, DC 20515

March 14, 1997

William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

MAR 17 PM 7:14

Dear Mr. President:

Drunk driving crashes claimed 17,274 lives on our nation's roadways in 1995, an increase in drunk driving fatalities for the first time in a decade. These numbers confirm the sad reality that our nation's drunk driving laws are just not tough enough and underscore the need to adopt proven measures to curb drunk driving.

To that end, we recently introduced legislation entitled "The Safe and Sober Streets Act of 1997." Mothers Against Drunk Driving, Advocates for Highway and Auto Safety, and drunk driving victims strongly support this bill. We hope the Administration will join us in supporting this life-saving measure.

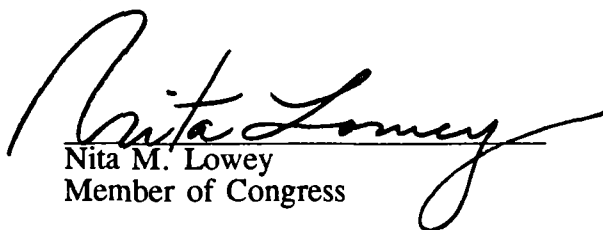
Our legislation, which is modeled on the overwhelming success of the 21 Minimum Drinking Age Law and the Zero Tolerance Law for underage drunk drivers, would withhold a portion of a state's federal highway funds if it does not lower the legal level of intoxication from .10 Blood Alcohol Concentration (BAC) to .08 BAC by October 1, 2000. For many years, the National Highway Traffic Safety Administration has recommended that states adopt .08 BAC, as have a wide array of groups including the American Medical Association, the American Automobile Association, the National Safety Council, the International Association of Chiefs of Police, and some of our nation's largest insurance companies. To date, thirteen states (California, Oregon, Utah, New Mexico, Kansas, Alabama, Florida, North Carolina, Virginia, Massachusetts, Vermont, New Hampshire, and Maine) have adopted .08, and their experiences show that 500-600 lives would be saved in the U.S. each year if every state did so.

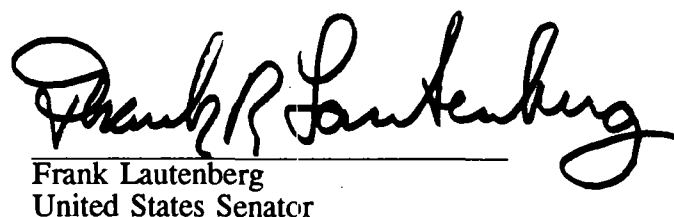
According to the National Highway Traffic Safety Administration, a 170 lb. man would only reach .08 BAC after consuming four drinks in one hour on an empty stomach. The average 137 lb. female would need three drinks on an empty stomach in one hour to reach that level. This is hardly social drinking. Moreover, more than 3,500 people were killed in 1995 by drivers with blood alcohol levels below .10 BAC.

The United States lags behind a number of industrialized nations in adopting .08 BAC laws, despite the overwhelming evidence of the hazards of driving at this level of intoxication. This is no longer acceptable, and we intend to include the "The Safe and Sober Streets Act" in the upcoming reauthorization of the Intermodal Surface Transportation Efficiency Act. We would very much welcome the Administration's support in making this a reality.

Thank you for your attention and consideration of this matter. We look forward to working with you.

Best regards,


Nita M. Lowey
Member of Congress


Frank Lautenberg
United States Senator

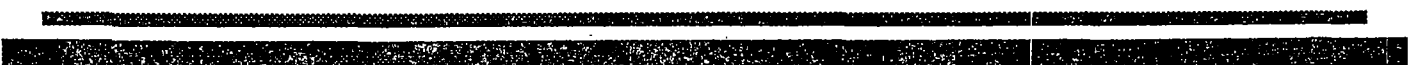
cc: Secretary Rodney Slater

.08

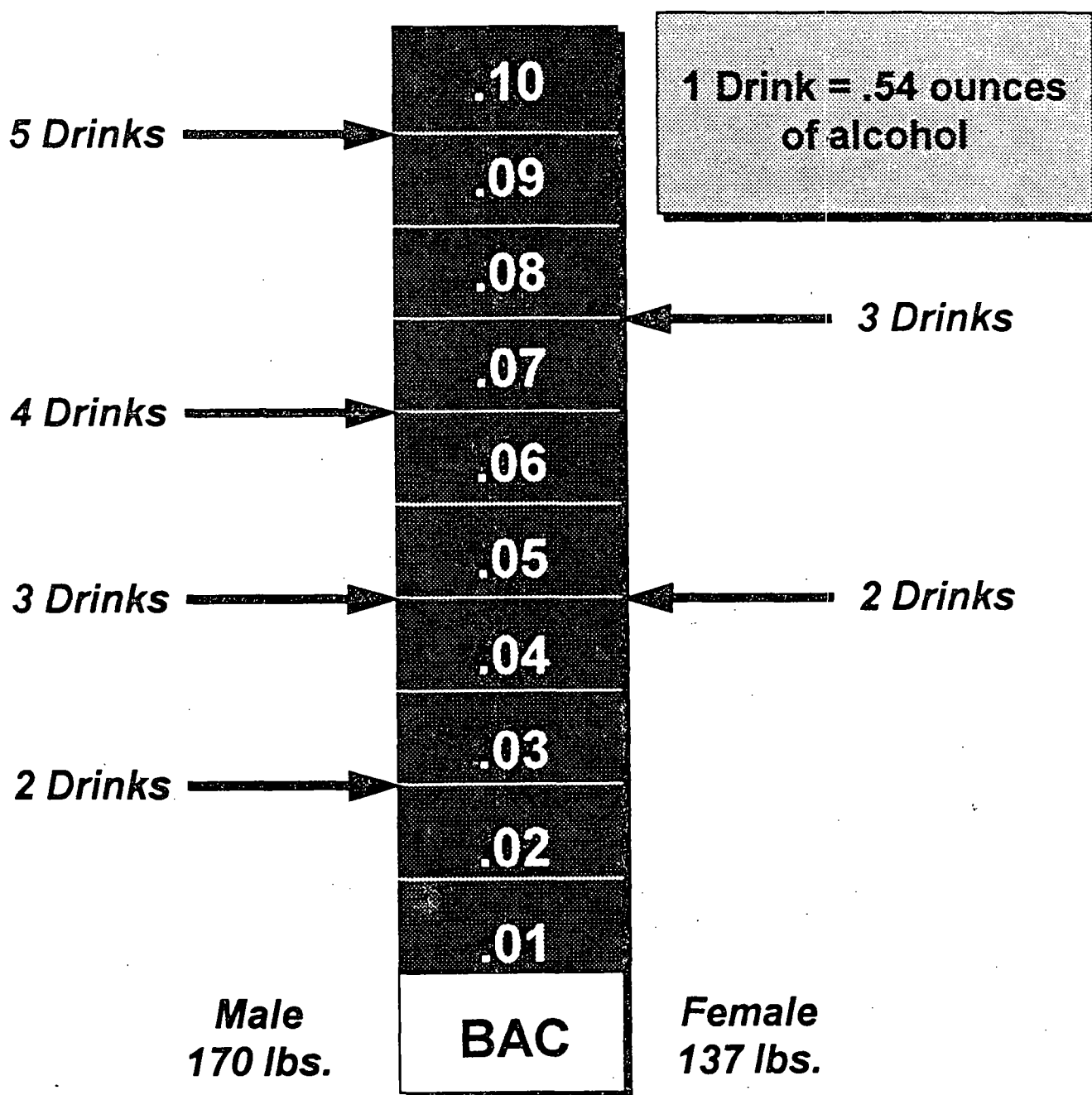
Illegal Per Se



BAC Per Se Levels

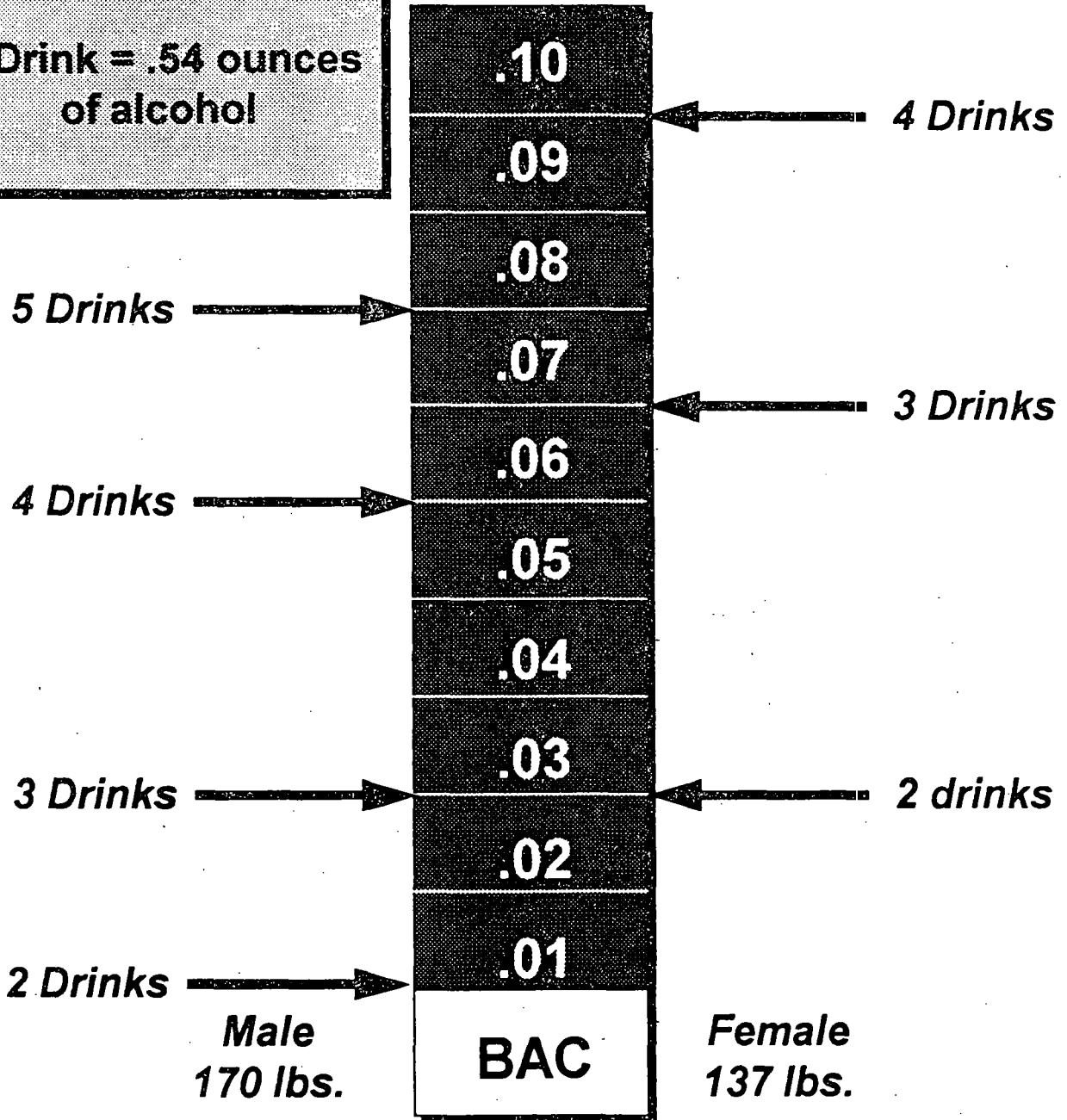
- **Per Se Laws are proven effective countermeasures**
 - **Years ago, .15 was the standard in many states**
 - **.10 BAC is a somewhat arbitrary level**
 - **Recent scientific evidence shows .08 BAC to be the more reasonable level**
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Number of Drinks and BAC in One Hour of Drinking

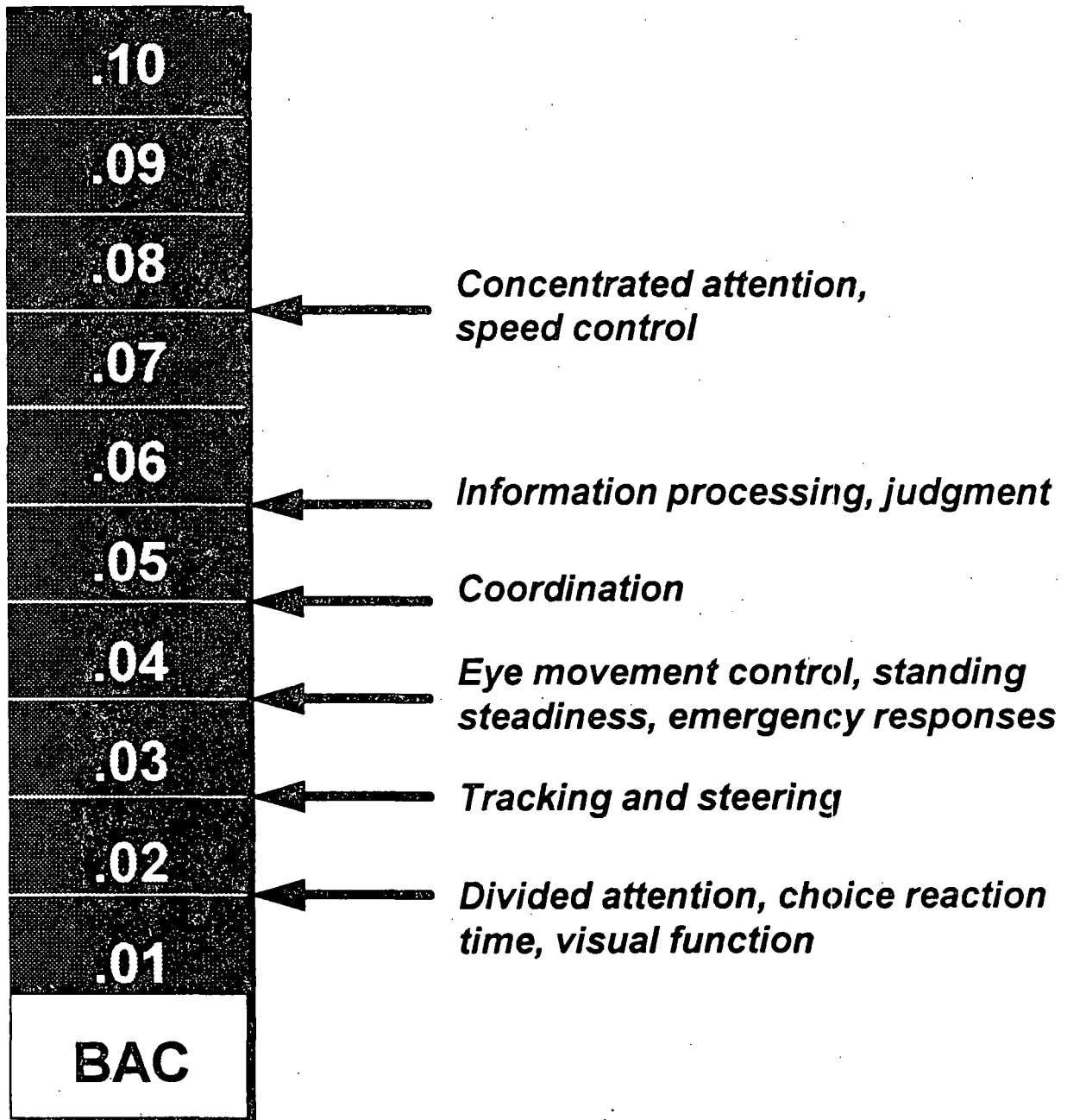


Number of Drinks and BAC in Two Hours of Drinking

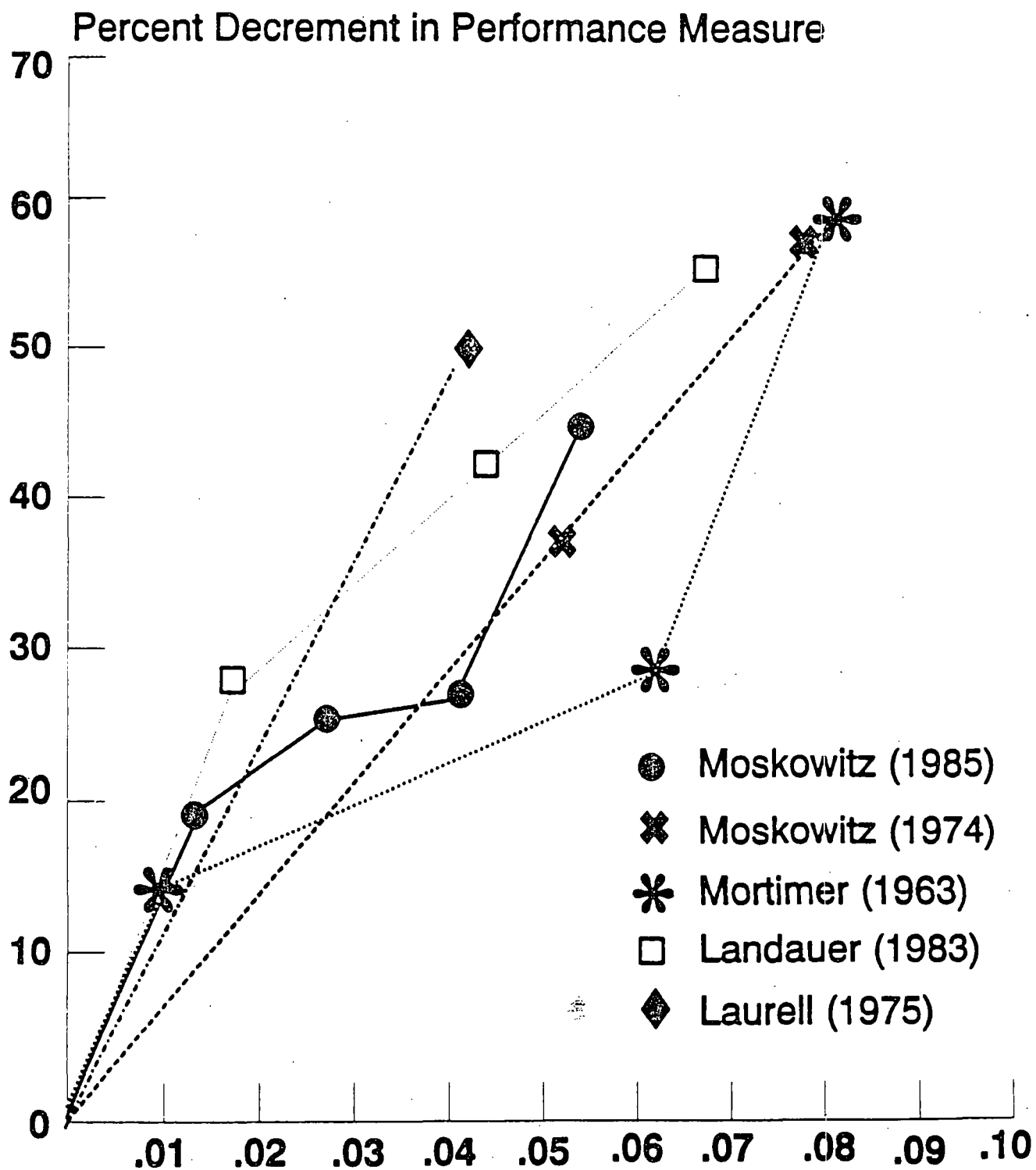
1 Drink = .54 ounces of alcohol



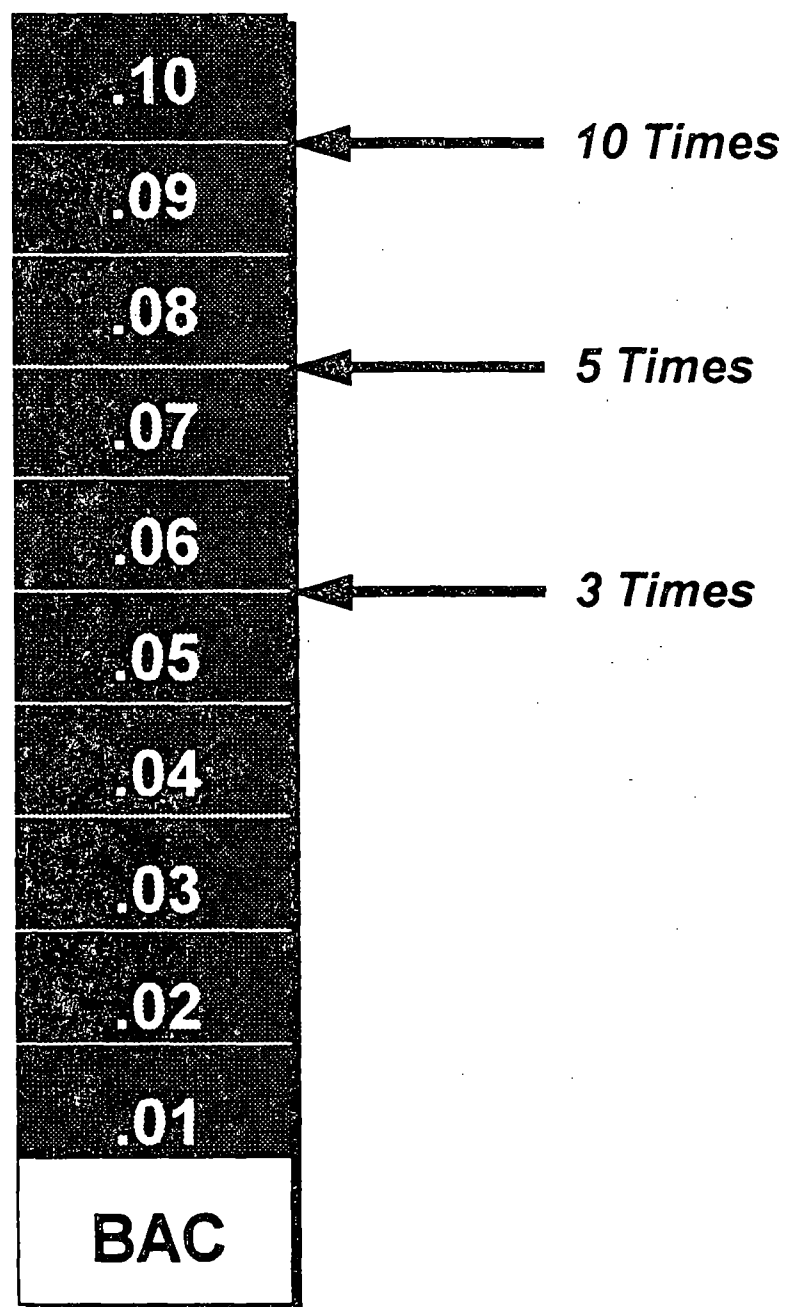
BAC and Impairment

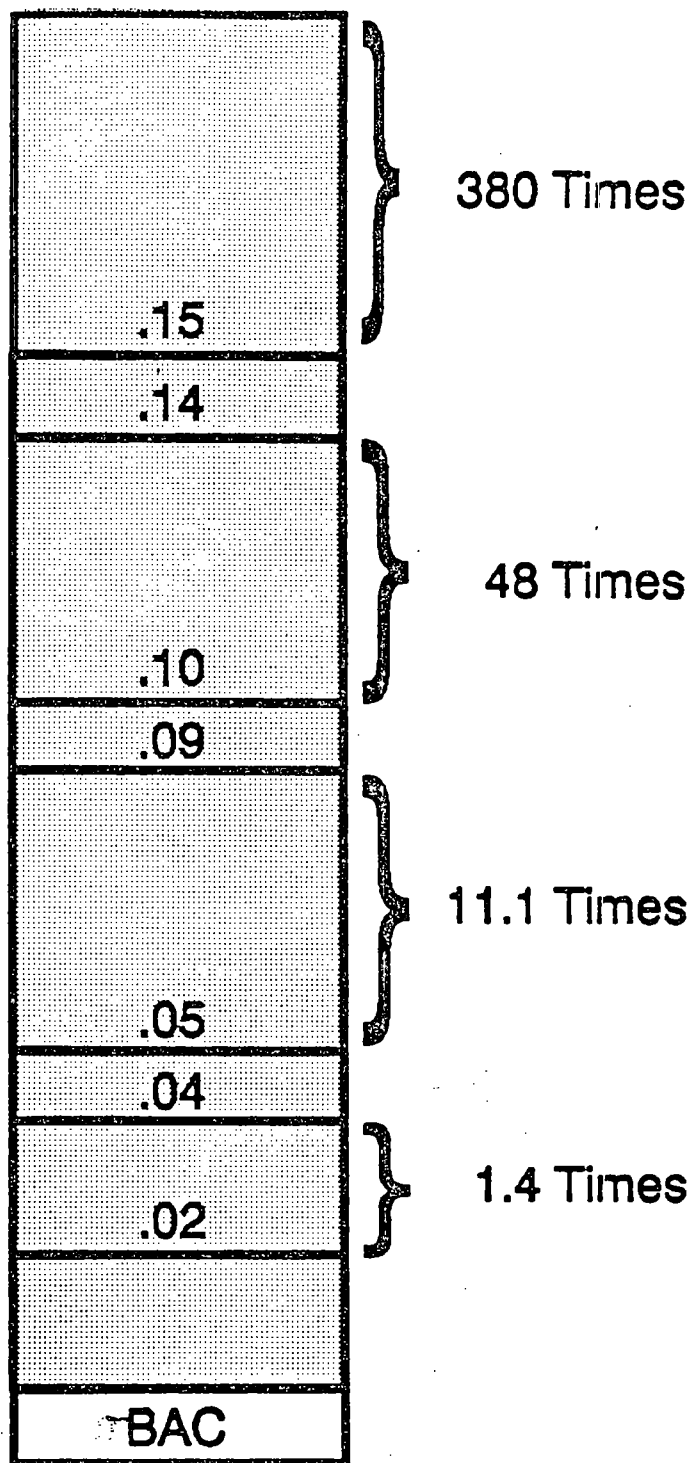


Experimental Studies of Impairment and BAC



BAC and Fatal Crash Risk (Zador, 1989)





**Relative Fatality Risk for Drivers in
Single Vehicle Crashes by BAC
(Zador, IIHS, 1991)**

Alcohol Limits for Drivers

A Report to Congress

**NHTSA
USDOT**

February 1991

- No "safe" BAC level.
- All States should have "Per Se" laws.
- .08 should be adopted.
- Multilevel system of administrative, civil, and criminal penalties should be considered.

Driving Under the Influence: A Report to Congress on Alcohol Limits

- **Enact .08 BAC as per se criminal offense**
- **Accompany lower limits with PI&E**
- **Repeal laws that create presumption drivers *not* under influence at any BAC above .00**
- **“Don’t drink and drive”**
- **“Don’t drive if you have been drinking”**

*National Highway Traffic Safety Administration
United States Department of Transportation*

July 1992


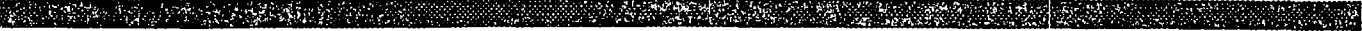
Effectiveness of .08 Per Se

- NHTSA evaluated effects of .08 in California
- Results:
 - 81% knew BAC limit was stricter
 - Increase in DUI arrests
 - 12% reduction in A/R fatalities
 - Some of effects due to ALR




Effectiveness of .08 Per Se

- **Effects were evaluated in Maine**
 - **Results:**
 - **Maine experienced 19% decline in nighttime fatal crashes during law's first three years compared to previous 5 years**
 - **Control States of New Hampshire and Vermont (with .10 Per Se) experienced 3% increase in nighttime fatalities during same period**
 - **Proportion of fatal crashes involving alcohol declined from 53% (five years before law) to 37% (four years after law)**
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- **A preliminary assessment of the impact of lowering the illegal BAC per se limit to .08 in five states**

*National Center for Statistics and Analysis
National Highway Traffic Safety Administration
December 1994*



Summary of Significant Decreases in Alcohol Related Crashes After .08 Legislation

<u>State</u>	<u>Measure</u>	<u>Decrease</u>
CA	Alcohol \geq .10	- 4%
OR	Any alcohol	- 9%
	Alcohol \geq .10	- 11%
	Police reported alcohol	- 13%
	Estimated alcohol	- 11%
UT	Police reported alcohol	- 30%
VT	Any alcohol	- 36%
	Alcohol \geq .10	- 31%
	Estimated alcohol	- 40%

BAC Limits in Other Countries

<u>Country</u>	<u>Illegal Per Se</u>
Canada	.08
Great Britain	.08
Australia	.05 - .08
Austria	.08
Switzerland	.08
Netherlands	.05
Norway	.05
Finland	.05
Sweden	.02

Who Supports Lower BAC Levels?

- **MADD** **Mothers Against Drunk
Driving**
 - **IACP** **International Association of
Chiefs of Police**
 - **HHS** **U.S. Surgeon General, Health
and Human Services**
 - **NCADD** **National Commission
Against Drunk Driving**
 - **RID** **Remove Intoxicated Drivers**
 - **AAA** **American Automobile
Association**
 - **NSA** **National Sheriff's
Association**
-
-

Who Supports Lower BAC Levels?

AMA	American Medical Association
NSC	National Safety Council
NCUTLO	National Committee on Uniform Traffic Laws and Ordinances
AAAM	Association for the Advancement of Automotive Medicine
NIAAA	National Institute for Alcohol Abuse and Alcoholism
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board

.08 Per Se

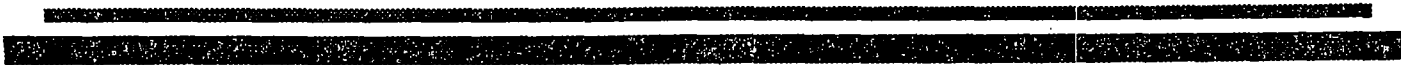
Point: Lowering the illegal BAC level to .08 will only affect those **moderate** drinkers at **.08 and .09 BAC.**

Counterpoint: .08 Per Se will serve as a **general deterrent** to all drinker drivers that the law is more strict.



.08 Per Se

How will .08 affect problem drinker drivers (BACs \geq .15)?

- **Significant reductions in the proportion of fatally injured drivers with BACs \geq .20 occurred in California after .08 went into effect**
 - **.08 will serve as a general deterrent, if accompanied with PI&E even for drinkers who reach high BACs**
- 

The .08 Per Se Law Will:

- Increase the arrest and conviction rates for impaired drivers at .10 and above.
- Raise the perceived risk of arrest for driving after drinking.
- Improve public awareness about how much alcohol it takes to be dangerously impaired.
- Bring the U.S. closer to per se limits of most industrialized nations.

.08 Per Se

- **By the time a level of .08 is reached, virtually everyone experiences dangerous driving skill impairment, even those who are experienced or habitual drinkers.**

.08 Per Se

Lowering the limit from the current level to .08 would set the boundary at a level at which driving skills are proven to be compromised for the vast majority of drivers. It is a limit which is reasonable and necessary for the driving safety of all.

.08
In Summary ...

- Is not just a couple of drinks after work
 - Is a level at which critical driving skills are impaired
 - Is a level above which the risk of crash is increased substantially
 - Is a level which most industrialized countries have adopted
 - Is a proven effective measure which will reduce alcohol-related fatalities
-
-

.08 Per Se Laws

States with Law

Utah

Oregon

Maine

California

Vermont

Kansas

North Carolina

New Mexico

New Hampshire

Florida

Virginia

Hawaii

Alabama

Effective Date

August 1, 1983

October 15, 1983

August 4, 1988

January 1, 1990

July 1, 1991

July 1, 1993

October 1, 1993

January 1, 1994

January 1, 1994

January 1, 1994

July 1, 1994

June 30, 1995

October 1, 1995

Effects of .08 Legislation On Alcohol Consumption

Per Capita Alcohol Consumption (Gallons of Alcohol)

State	Before .08		After .08	Comments
	1982	1983	1984	
Utah	1.71	1.52	1.53	No change
Oregon	2.74	2.69	2.63	No change in decreasing trend
	1987	1988	1989	
Maine	2.55	2.55	2.45	Decreased 4%
	1989		1990	
California	2.15		2.13	No change

Sources: DISCUS, Beer Institute, NIAAA

**TESTIMONY BY JAMES C. FELL
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
BEFORE THE CRIMINAL JURISPRUDENCE COMMITTEE OF THE
TEXAS HOUSE OF REPRESENTATIVES ON THE MERITS OF A .08 BAC
PER SE LAW FOR ADULT DRIVERS, SOBRIETY CHECKPOINTS, ZERO
TOLERANCE, AND OTHER BILLS TO REDUCE IMPAIRED DRIVING**

MARCH 12, 1997

Thank you for inviting me to testify today. My name is James C. Fell and I am Chief of Research and Evaluation in Traffic Safety Programs, National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation. Our goal at NHTSA is to reduce the annual toll of 41,000 deaths, 3,000,000 injuries and \$150 billion in societal costs due to motor vehicle crashes. Impaired driving plays a substantial role in these crashes. However, the solutions to impaired driving are mainly at the state and community level. We conduct research at NHTSA and evaluate programs to see what is working. We do know that certain measures reduce impaired driving: *legislation, highly publicized and visible enforcement, and public information and education.* And there is specific legislation that has proven effective in the impaired driving area. I will be testifying in favor of HB 133 which proposes to lower the illegal blood alcohol concentration (BAC) limit from .10 to .08, HB 603 which authorizes sobriety checkpoints, and SB 35 which is a zero tolerance law for drivers under age 21.

We believe that lowering the **illegal per se BAC limit to .08** will not only save lives and reduce injuries in Texas, but will also save your citizens substantial amounts of money in associated health care costs.

NHTSA has produced two reports to the U.S. Congress on the subject of blood alcohol concentration (BAC) limits for drivers. In both of those reports, we recommend that all states and D.C., should establish .08 BAC as the illegal limit *per se* for drivers aged 21 and older.

There are several good reasons for this position:

(1) *Virtually all drivers are substantially impaired at .08 BAC.* Laboratory and test track research shows that the vast majority of drivers, even experienced drinkers, are impaired at .08 with regard to critical driving tasks. There are significant decrements in performance in braking, steering, lane changing, judgement and divided attention, among other measures, at .08 BAC. Performance decrements in some of these tasks are as high as 60%-70% at .08 BAC according to studies.

(2) *The risk of being involved in a crash increases substantially by .08 BAC.* The risk of being in a crash gradually increases at each BAC level, but rises very rapidly after a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their blood systems. Research by the Insurance Institute for Highway Safety indicates that the relative risk of being killed in a single vehicle crash at BACs between .05 and .09 is 11 times that drivers at .00 BAC (no alcohol).

(3) *Lowering the per se limit is a proven effective countermeasure which will reduce alcohol-related traffic fatalities.* We have evidence in California that significant reductions in alcohol-related fatalities occurred in 1990 (a 12% reduction), the year .08 and an administrative license revocation law went into effect. In a recent study by Boston University, there was a 16% reduction in the proportion of fatal crashes involving fatally injured drivers whose BACs were .08 or higher in five states that lowered their illegal limit from .10 to .08 compared to five states that did not do so. NHTSA has found significant decreases in four states that adopted .08 on nine measures of alcohol-related fatalities in a report published in 1995. These decreases in alcohol-related fatalities ranged from 4% to 40% in those states analyzed.

I want to point out that in California, the decrease in alcohol-related fatalities occurred at both high and low BAC levels, even drivers with BACs of .20 or greater. A .08 law serves as a *general deterrent* to all drinking drivers, not just social drinkers or moderate drinkers.

(4) *.08 is a reasonable level to set the limit.* A .08 BAC is not reached with a couple of beers after work or a glass or two of wine with dinner. The average 170 pound male would have to consume more than 4 drinks within 1 hour on an empty stomach to reach .08 BAC. The average 137 pound female would need 3 drinks in one hour on an empty stomach to reach that level. More typically, that female driver would need 4 drinks over a 2 hour period to get above .08 BAC and the male would need 5 drinks.

(5) *The public supports levels below .10 BAC.* NHTSA surveys all show that most people would not drive after consuming 2 or 3 drinks in an hour.

(6) *Most other industrialized nations have set BAC limits at .08 or lower* and have had these laws for many years. For example, Canada and Great Britain are at .08--so is Austria and Switzerland. The states in Australia range from .05 to .08.

There is opposition to .08 BAC laws by some in the alcohol industry. They think that people will drink less or simply stop drinking alcohol if .08 laws are passed. There is no evidence that happened in California. The per capita alcohol consumption did not change in California in 1990, the year .08 went into effect, compared to 1989. Nor did it change in Utah and Oregon the year after .08 went into effect. There is also data from Maine that restaurant sales actually increased 11% in 1988, the year .08 went into effect.

In summary, 13 states already have .08 per se laws. The time is now for Texas and other states to adopt the law. It is a level at which critical driving tasks are impaired. It is level at which the risk of a crash increases substantially. It is a level which most industrialized nations have adopted. It is a proven effective measure which will save lives and reduce injuries. And, it is not just a couple of drinks after work. We are talking about a fairly substantial amount of alcohol when we talk about .08 BAC. I urge the Criminal Jurisprudence Committee to consider the merits of this legislation and pass the measure to lower the illegal BAC to .08.

With regard to HB 603, there is also substantial evidence that **sobriety checkpoints**, more so than other enforcement efforts, will reduce alcohol-related crashes.

In communities around the United States, impaired driving occurs anywhere from 100 to 2000 times before an arrest is made for driving under the influence. Police resources are limited and must be used efficiently and effectively in order to reduce impaired driving. Sobriety checkpoints not only serve as a *specific deterrent* to impaired driving by detecting and arresting impaired drivers who pass through a checkpoint, but more importantly, as a *general deterrent* to drinking drivers. Checkpoints increase the perceived risk of arrest if they are adequately publicized and visible to the public. Sobriety checkpoints are a key feature of many impaired driving enforcement programs around the country.

We have had evidence for sometime that sobriety checkpoints in communities have been effective. A well-publicized sobriety checkpoint program held in Binghamton, NY resulted in a 39% decrease in the number of drinking drivers on the roads at night according to roadside surveys and a 23% reduction in late night crashes in the months the checkpoints were held.

A year-long checkpoint program in Charlottesville, VA was associated with a 13% reduction in the proportion of crashes that were alcohol-related. Similar results were obtained from a checkpoint program in Clearwater and Largo, FL which experienced a 20% decrease following checkpoint operations.

Now there is evidence that *statewide* sobriety checkpoint programs are also effective. A checkpoint program conducted in Tennessee in 1994-1995 resulted in a 17% reduction in the number of drunk driving fatal crashes that would have occurred without the program. This is a reduction of 5-6 drunk driving fatal crashes per month in Tennessee. Other statewide programs in North Carolina and New Mexico are showing similar results.

Recent surveys by NHTSA indicate that 70% to 80% of the general public favor the *increased* use of sobriety checkpoints by police as an enforcement tool.

Sobriety checkpoint programs are also cost effective. A recent study showed that for every \$1 spent on a sobriety checkpoint program, a community can expect to save \$6, including \$1.30 of insurer costs.

Sobriety checkpoints also have the potential to impact other crime via the detection of felonies such as drug interdiction, stolen vehicles and stolen goods.

Sobriety checkpoints reduce impaired driving, save lives, and are cost effective. The public favors their use. Police agencies in the State of Texas should have the authority to conduct them, within certain strict guidelines.

The **Zero Tolerance** bill (SB 35) for drivers under age 21 will also save lives. Zero Tolerance laws in other states have been found to be very effective in reducing nighttime crashes of drivers under age 21 (a recent study showed a 16% reduction). Since the drinking age law in Texas prohibits the purchase and public possession of alcohol by those under 21, it seems reasonable to expect drivers under age 21 to have no alcohol in their blood systems. Limits higher than .02 for these young drivers (Texas is .07) are simply not effective and send a mixed message.

A Zero Tolerance law not only is reasonable and effective, but there is also a scientific basis for it. The relative risk of fatal crash involvement is substantially higher for drivers under age 21 at lower BAC levels than for drivers aged 25 and older. For example, male drivers aged 16-20 have 6 times the driver fatality risk in single vehicle crashes at BACs = .01 to .04, compared to male drivers aged 25 and older at these low levels. Clearly, a zero tolerance law (.02 or above) in Texas will send a consistent and clear message to our youth -----*don't drink and drive, period.*

Thank you for allowing me to testify today. I would be glad to answer any questions you may have.

COMMITTEE ON
APPROPRIATIONS

SUBCOMMITTEES:

LABOR, HEALTH AND HUMAN SERVICES,
AND EDUCATION

FOREIGN OPERATIONS,
EXPORT FINANCING AND
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CO-CHAIR, CONGRESSIONAL CAUCUS
FOR WOMEN'S ISSUES

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Nita M. Lowey
Congress of the United States
18th District, New York

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March 13, 1997

Mr. James Hedlund
Associate Administrator for Traffic Safety Programs
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Mr. Hedlund:

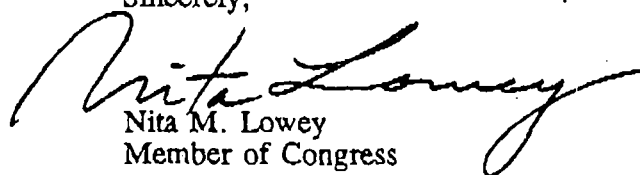
As you are probably aware, Senator Lautenberg and I recently joined Mothers Against Drunk Driving, Advocates for Highway and Auto Safety, and drunk driving victims in introducing "The Safe and Sober Streets Act of 1997." This legislation would withhold a portion of a state's federal highway funds if it does not lower the legal level of intoxication to .08 Blood Alcohol Concentration (BAC) by October 1, 2000.

In its public statements in opposition to this legislation, the American Beverage Institute has repeatedly asserted that a 120 lb. woman who drinks two 12 oz. beers or two glasses of wine in a two-hour period would reach a BAC level of .08. These figures do not correspond to any information I have seen on this subject, nor do they correspond to the BAC information contained in the report "Setting Limits, Saving Lives: The Case for .08 BAC Laws" published in January 1997 by the National Highway Traffic Safety Administration and the National Safety Council. This report states that the average 137 lb. female would need to drink three 12 oz. beers or three glasses of wine in one hour on an empty stomach to reach .08 BAC. The report also states that the average 170 lb. man would only reach .08 BAC after consuming four alcoholic drinks in one hour on an empty stomach.

In light of NHTSA's expertise on this subject, I would appreciate it if you could comment on the American Beverage Institute's assertion and clarify how many alcoholic beverages the median weight male and female would have to drink in order to reach .08 BAC. This information will be essential in ensuring an informed and honest debate of my legislation.

Thank you for your attention to this matter.

Sincerely,


Nita M. Lowey
Member of Congress



807 14th Street, N.W. • Suite 1110 • Washington, D.C. 200
Phone: (202) 347-6218 • FAX: (202) 347-6250

February 12, 1997

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Richard B. Berpan
General Counsel

The Honorable Allan H. Spear
Chairman
Minnesota State Legislature Committee on
Crime Prevention
State Capitol, Room 120
St. Paul, MN 55155

Dear Chairman Spear:

Thank you again for providing what I felt to be an imminently fair hearing on the issue of dropping the blood alcohol content (BAC) in Minnesota to .08.

Regarding the confusion over conflicting claims on BAC levels, the proponents of dropping the BAC levels seek to put the current arrest threshold of .10 in the worst possible light in their quest for a tighter standard. They are using *technically correct, but totally unrealistic and inflammatory scenarios* to describe drinking at .08 as the type of behavior that should be prohibited (and prosecuted). As I testified, the facts belie the claim this level of drinking is where a disproportionate number of accidents are occurring:

Proponents of .08 suggest that five drinks in one hour can put someone at the .08 level. This is a statement designed to enrage, but not enlighten. (They could just as easily claim that five drinks in a half hour renders this result.) This hypothetical individual, finishing a drink once every 12 minutes for a full hour, does not fit the .08 drinker profile. This is a consumer who will be drinking to much higher BAC levels and will only be at the .08 BAC level for a few minutes. This hypothetical "problem drinker" evidencing this consumption pattern does not quit drinking after 60 minutes. (The average fatally injured drunk driver has had about 15 drinks prior to becoming involved in the crash.)

A more realistic description of a .08 drinker is a 120 pound woman with average metabolism who has consumed two six-ounce glasses of wine over a two-hour period. Changing the BAC level to a .08 threshold for arrest would mean that this moderate consumer who is clearly not engaged in abusive drinking (and is typical of many benign social drinkers) would be subject to arrest, imprisonment, fines, higher insurance rates and loss of license. This is clearly not the individual or behavior logically targeted by anti-drunk driving programs.

The Honorable Allan H. Spear
February 12, 1997
Page Two



(This two-drink scenario comes from the Office of Program Development and Evaluation of the National Highway Traffic Safety Administration, October 1994.)

Please be advised that proponents of .08 are engaged in a massive campaign to distort the debate through half truths and inflammatory rhetoric. There is an old saying that "Everyone is entitled to their opinion, but not their own set of facts."

I hope that you and the other Committee members will keep the factual evidence in mind prior to voting on this issue. We will be pleased to work with you on fashioning meaningful solutions at your pleasure.

Sincerely,

Richard B. Berman
General Counsel

RBB/vmw

Post-It* Fax Note	7671	Date	3/7/97	# of pages	2
To	Jim Hedlund/ Jim	From	Anne Russell		
Co./Dept.	Fell	Co.	This is what ABI		
Phone #	has been waving	Phone #	around. Any ideas?		
Fax #	202/366-7096	Fax #			



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAR 12 1997

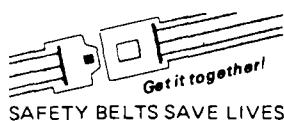
Richard B. Berman
General Counsel
American Beverage Institute
607 14th Street, NW, Suite 1110
Washington, DC 20005

Dear Mr. Berman:

Your letter to the Honorable Allan H. Spear, Chairman of the Minnesota State Legislative Committee on Crime Prevention dated February 12, 1997, has come to my attention.

I would like to set the record straight on the number of drinks it would take for a 120 pound woman to reach a blood alcohol concentration (BAC) of .08. Your letter states that: "A more realistic description of a .08 drinker is a 120 pound woman with an average metabolism who has consumed two six-ounce glasses of wine over a two hour period." This is incorrect.

According to research conducted by the National Highway Traffic Safety Administration (NHTSA) and reported in our October 1992 Report to Congress on Alcohol Limits (DOT HS 807 879) and in a Traffic Tech (No. 80, November 1994), a 120 pound female who was a moderate drinker with an average metabolism would have a BAC of .04 after consuming 2 drinks in a two hour period. That same female would probably reach .08 BAC after 3 drinks in a two hour period. It would take more than 3 drinks for a median weight (137 pounds) female to reach .08 in two hours. For the medium weight male (170 pounds), it would take over 4 drinks in a one hour period to reach .08 and 5 drinks in a two hour period. These can be verified with NHTSA's "BAC Estimator" which was released with the Traffic Tech in November 1994 (Computing a BAC Estimate, on diskette). I am assuming you are referring to this "BAC Estimator" when you stated: "(This two-drink scenario comes from the Office of Program Development and Evaluation of the National Highway Traffic Safety Administration, October, 1994)." If so, you did not properly calculate the BAC for a 120 pound woman who had two drinks in a two hour period (see enclosure).

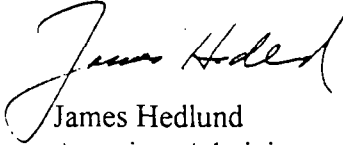


AUTO SAFETY HOTLINE
(800) 424-9393
Wash. D.C. Area 366-0123

2

For most individuals, a .08 BAC requires a substantial amount of alcohol, much more alcohol than the vast majority of the public feels is safe for driving.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Hedlund".

James Hedlund
Associate Administrator
Traffic Safety Programs

Enclosure

cc: The Honorable Allan H. Spear

-- BAC Estimator --

Body Weight (lbs)	120
Gender (M or F)	F
Number of 12oz Beers	2
Time Duration (hrs)	2
Metabolism Rate	BAC
Below Average	.05
Average	.04
Above Average	.04

-- BAC Estimator --

Body Weight (lbs)	120
Gender (M or F)	F
Number of 12oz Beers	3
Time Duration (hrs)	2
Metabolism Rate	BAC
Below Average	.09
Average	.08
Above Average	.07

-- BAC Estimator --

Body Weight (lbs)	137
Gender (M or F)	F
Number of 12oz Beers	2
Time Duration (hrs)	2
Metabolism Rate	BAC
Below Average	.04
Average	.03
Above Average	.03

-- BAC Estimator --

Body Weight (lbs)	137
Gender (M or F)	F
Number of 12oz Beers	3
Time Duration (hrs)	2
Metabolism Rate	BAC
Below Average	.09
Average	.08
Above Average	.07

-- BAC Estimator --

Body Weight (lbs)	170
Gender (M or F)	M
Number of 12oz Beers	5
Time Duration (hrs)	2

Metabolism Rate	BAC
Below Average	.09
Average	.08
Above Average	.07

Analysis of .08 Studies

There have been four major studies of the effects following the implementation of .08 laws in states. The following includes descriptions and comments about each.

- **“The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California,” Research and Evaluation Associates, sponsored by NHTSA, DOT HS 807 777, August 1991.**

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- **“The General Deterrent Impact of California’s 0.08% Blood Alcohol Concentration Limit and Administrative Per Se License Suspension Laws,” Patrice Rogers, California Department of Motor Vehicles, Research and Development Section, CAL-DMV-RSS-95-158, September 1995.**

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Comment: Some in the alcohol industry point to this study as finding no effect of .08, but it did, as stated above. The effect was not seen in the HBD crashes or in total fatal crashes, but the 7.2% reduction was in nighttime fatal and severe crashes, where alcohol involvement is historically high.

- **“The Impact of Lowering the Illegal BAC Limit to .08 in Five States in the U.S.,” Delmas Johnson and James Fell, NHTSA, 39th Proceedings of the Association for the Advancement of Automotive Medicine, October 1995.**

Description: An analysis was conducted using fatal crash data (from FARS) to determine the impact of lowering the per se limit to .08 in five states which had the law for at least 2 years. The results revealed statistically significant reductions of driver involvement in alcohol-related fatal crashes after .08 legislation took effect in 4 out of the 5 states, ranging from 4% in California to 40% in Vermont. This assessment appears to indicate that the implementation of .08 laws and other related activities (i.e. public information about the laws) are associated with reductions in fatal crash driver alcohol involvement.

Comment: The study did not control for other factors which could have influenced the reductions such as increased enforcement, other DWI legislation, and public information and education. Significant reductions were found in only 9 of 30 measures used and this is often criticized by some opponents to .08. However, the nine significant changes were reductions in favor of the .08 legislation. Of the remaining 21 measures, most were reductions but were not significant. NHTSA is conducting further analyses of these 5 states in attempts to control for some potentially influencing factors. That analysis should be completed in the summer of 1997.

- **“Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes,” Ralph Hingson, Timothy Heeren, Michael Winter, Boston University, American Journal of Public Health, Vol 86, No.9, September 1996.**

Description: The first 5 states that lowered legal blood alcohol limits to .08 were paired with 5 nearby states that retained .10. Within each pair, comparisons were made for the maximum equal available number of prelaw and postlaw years. States adopting .08 experienced 16% and 18% relative postlaw declines in the proportion of fatal crashes involving fatally injured drivers with BACs .08 or higher and .15 or higher, respectively. If all states adopt .08, at least 500 to 600 fewer fatal crashes would occur annually.

Comment: The five comparison or control states were selected based upon three criteria: geography, population, and BAC testing rate on fatal drivers. The control state had to be nearby the .08 state to account for regional differences, had to be similarly populated (small, medium, large), and had to have a fairly high BAC testing rate on fatally injured drivers (the average testing rate was 81% during the study periods). These criteria are common practice in public health studies of this kind.

The effects most likely would not have been the same if five different control states were selected. However, according to the strict criteria noted above, the five selected states were pretty much the only ones that could have been used.

Many researchers believe that the sample size in controls should be higher than the sample size in the experimental group. When NHTSA performs these analyses, it uses "the rest of the states" as a comparison to the .08 states (see Johnson and Fell, 1995). There are good reasons to do this and it is a weakness in the Hingson study.

However, Hingson had used his "matched pair" methodology in other research without criticism. In fact, the "match pair" philosophy is used by many top researchers in traffic safety. His paper was peer reviewed by the American Public Health Association editors before it was published, so it passed their muster.

- *Future Studies*

NHTSA is sponsoring a study by the University of North Carolina on the effects of .08 in North Carolina. That study is in progress and should be completed by the summer of 1997. Preliminary indications are a small positive effect (unknown if statistically significant).

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**LOWERING THE ILLEGAL PER SE
BAC LIMIT TO .08**

POINT/COUNTERPOINT

- Point 1** *A .08 law will cause moderate drinkers to drink less alcohol, or not even drink at all, for fear of breaking the law or being arrested for driving while impaired.*
- Counterpoint** There is no evidence in the 5 states which have had a .08 law for more than a year that per capita alcohol consumption was affected by the law. In California, for instance, per capita alcohol consumption in 1989 (before the law) was 2.15 gallons of alcohol. In 1990, after the law went into effect, per capita consumption was 2.13, with only wine consumption decreasing (insignificantly), according to figures from the alcohol industry. While per capita alcohol consumption decreased somewhat in Utah, Oregon, Maine and Vermont after their .08 laws were passed, the decrease was no different than the decreasing trend that was already occurring in those states.
- Point 2** *A .08 law will cause a shift in drinking behavior from licensed establishments (restaurants, bars, taverns) to the home where no driving is involved.*
- Counterpoint** On the contrary, there is evidence from Maine that restaurant sales increased 11% in 1988, the year .08 went into effect. However, if a shift is happening, there are plenty of incentives that the hospitality industry can use to bring customers back to their premises and reduce the risk of driving while impaired:
- promote the designated driver program by providing free or reduced price non-alcoholic beverages to those individuals;
 - promote non-alcoholic beers and wines;
 - provide free rides home for drivers who appear to be impaired; and
 - engage in responsible alcohol service by training servers, making food available to patrons, not serving intoxicated customers, etc.

Finally, the intention of .08 legislation is to send a message to drivers that the laws against DWI are getting stricter and that if they do get caught driving impaired they will be prosecuted. It is intended to reduce drinking and driving behavior, not drinking behavior.

Point 3

A .08 law will diminish efforts to deal with the real problem ---- the hard core drinking drivers with very high BACs.

Counterpoint

Efforts continue to attack the impaired driving problem from all angles. For approximately 70-80% of fatally injured drinking drivers each year, their fatality is their first alcohol-related contact with the system, no matter what their BAC. .08 legislation is just one of many laws and programs that NHTSA is encouraging states to adopt. Other legislation that NHTSA promotes include zero tolerance (.02 BAC) laws for drivers under age 21, administrative license revocation laws to ensure swift punishment for DWI, graduated licensing programs for new drivers, self-sufficient DWI programs, and various vehicle actions against repeat DWI offenders. In the area of enforcement, NHTSA promotes the use of sobriety checkpoints and saturation patrols to catch impaired drivers, training for police on standardized field sobriety testing, and increased enforcement of underage drinking and driving. New public information and education programs will target hard core drinking drivers. Responsible alcohol service programs are also encouraged by NHTSA, which have the potential of preventing intoxicated patrons from driving. NHTSA spends substantial time and energy promoting all of the above.

Point 4

Instead of lowering the illegal BAC limit from .10 to .08, why not adopt more severe sanctions for drivers with high BAC levels (e.g. those at .15 or .20 and higher)? These are the majority of drinking drivers arrested and involved in fatal crashes.

Counterpoint

Some states, such as Florida, use both systems. Florida lowered its per se BAC limit to .08 on January 1, 1994. There is also no question that drivers with very high BACs (.15 +) are more impaired and have greater crash risks than drivers at .08. For many years, Florida has had mandatory minimum jail sentences and fines for drivers convicted of DWI at BACs = .15 or greater. These "mandatory minimums" do not apply to drivers under .15 BAC. Both laws are rational and make sense. It should not be "one or the other," but can be both. There is evidence that .08 reduces alcohol-related fatalities.

While more severe penalties based upon BAC makes sense, there is no evidence to date that this system is effective.

Point 5

The only evidence that NHTSA has that .08 is effective in reducing alcohol-related crashes is the California study, and that study has flaws:

- (1) *There was only a 5% reduction in alcohol-related fatalities in California between 1989 and 1990, not 12% as reported by NHTSA.*
- (2) *The national decrease in alcohol-related fatalities was the same as California's between 1989 and 1990. Therefore, .08 did not have an effect.*
- (3) *California's own studies show no significant decrease in alcohol-related crashes or fatalities between 1989 and 1990.*
- (4) *Most of the states with .08 laws had higher proportions of drivers with alcohol in fatal crashes than the national average in 1992.*
- (5) *California actually had an increase in the number of fatally injured drivers with BACs = .15-.19 between 1989 and 1990, where the real problem lies.*
- (6) *The NHTSA study in California showed no significant decrease in crashes where the police reported a driver as "had been drinking" (HBD).*

Counterpoint

The evaluation of .08 in California was not the only reason NHTSA has endorsed .08 laws. There is substantial evidence that critical driving performance measures are impaired at .08 and that the risk of a crash is significantly elevated at .08 and beyond. Many industrialized nations use .08 or a lower BAC as a standard for impairment. The fact that the California study indicated bottom-line effectiveness of the law was just one more ingredient in the decision. With regard to the specific "flaws" in the California study, here are the facts:

- (1) The evaluation used an accepted methodology to study the effects of the .08 law --- time series analyses using the AutoRegressive Integrated Moving Averages (ARIMA) model. Data were analyzed 4 years before the law change and 1 year after. The trend model before the law took effect predicted alcohol-related fatalities for 1990. Actual alcohol-related fatalities for 1990 were 12% below that predicted while non-alcohol-related fatalities experienced no change. The 12% significant decrease took place in the first six months of 1990 when .08 was in effect but the administrative license revocation (ALR) law was not. In analyses of the effects of laws, it is not appropriate to merely compare one year of aggregated data before the law change to one year of aggregated data after the law. The NHTSA study used an acceptable, peer-reviewed, statistical approach to the problem.
- (2) Many things went on in the rest of the nation to explain the national decrease from 1989 to 1990. These things were controlled for to the extent possible in the California study, which is why the time series method was used. The fact is, California's alcohol-related fatality decrease was significant and was due mainly to the .08 and ALR laws.
- (3) California has published no studies to date which make this statement. The California Department of Motor Vehicles is conducting its own analyses of the effects of the .08 and ALR laws and plans to publish those results this year.

- (4) Here are the estimates of drivers in fatal crashes with positive BACs for the 5 states with .08 and the nation as a whole in 1992:

Percent Drivers in Fatal
Crashes with BAC > .01

CA	27.4
ME	29.1
OR	28.5
UT	20.4
VT	<u>33.4</u>
Nation	28.6

Three of the five states with .08 had lower proportions of drivers with positive BACs compared to the national average. However, these comparisons are irrelevant to the effects of .08 laws. Some of these .08 states started out with higher than national average alcohol rates. It is the reduction in alcohol-related fatalities due to the law change, not comparisons to the national average, that is the issue.

- (5) California did experience a slight, non-significant increase in the number of driver fatalities with BACs = .15-.19 in 1990 compared to 1989. However, they experienced decreases in driver fatalities in all other BAC ranges, including those with .20 BAC and above. Overall, California experienced a decrease in driver fatalities with positive BACs between 1989 and 1990, certainly the desired effect.
- (6) Experience in many past evaluations shows that police may change their behavior in reporting HBD crashes in the year following a highly publicized law change. Police became more aware of the problem and feel more compelled to report HBD crashes. Many times this behavior change offsets any real decreases since crashes reported as "HBD" in the year following the law change may not have been reported as such in the year before. This phenomenon is common and it is why other measures of alcohol involvement are used in scientifically accepted evaluations.

Finally, NHTSA is conducting an analyses of the effects of .08 in the 5 states which have had the legislation for over a year. So far, 9 out of 30 measures of alcohol-involvement in fatal crashes show statistically significant decreases when the .08 law went into effect in 4 of the 5 states. Results of these analyses will be published in the spring of 1994.

Point 6

.08 is just the first step in a process to lower the illegal limit even further.

Counterpoint

NHTSA believes that a .08 limit is practical, rational and acceptable to the public. NHTSA has no plans to recommend limits lower than .08 for adults, except for commercial drivers (where the national standard is already .04) and for drivers under age 21 where NHTSA recommends zero tolerance: .02 or lower.

JCF
3/18/94

STATE LEGISLATIVE

0.08 BAC Illegal Per Se Level

It is illegal per se to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all but two States of the United States. The customary level, currently the law in 35 States and DC, was 0.10 for all drivers aged 21 and above. However, 13 states have lowered their level to 0.08. In a 1992 Report to Congress, NHTSA recommended that all states lower their illegal per se level to 0.08 for all drivers aged 21 and above.

Key Facts

- In 1995, 41 percent of the 41,798 motor vehicle deaths were alcohol-related. This percentage translates into 17,274 alcohol-related deaths last year.
- Over 80 percent of drivers involved in fatal crashes with positive BACs had levels exceeding 0.08.
- An average male weighing 170 pounds must consume more than four drinks within one hour on an empty stomach to reach a 0.08 BAC level.
- A recent analysis of five states that lowered the BAC limit to 0.08 showed that significant decreases in alcohol-related fatal crashes occurred in four out of the five states as a result of the legislation.

Why 0.08?

Virtually all drivers are substantially impaired at 0.08 BAC. Laboratory and test track research shows that the vast majority of drivers, even experienced drinkers, are impaired at 0.08 with regard to critical driving tasks. Braking, steering, lane changing, judgment, and divided attention, among other measures, are all

affected significantly at 0.08 BAC. Performance decrements in some of these tasks are as high as 60-70 percent at 0.08 BAC according to studies.

The risk of being involved in a crash increases substantially by 0.08 BAC. The risk of being in a crash gradually increases at each BAC level, but rises very rapidly after a driver reaches or exceeds 0.08 BAC compared to drivers with no alcohol in their blood systems. Research by the Insurance Institute for Highway Safety indicates that the relative risk of being killed in a single vehicle crash at 0.08 BAC is eleven times that of drivers at .00 BAC (no alcohol).

Lowering the per se limit is a proven effective countermeasure which will reduce alcohol-related traffic fatalities. There was a 12 percent reduction in alcohol-related fatalities in California in 1990, the year 0.08 and an administrative license revocation law went into effect. The decrease in alcohol-related fatalities occurred at both high and low BAC levels, even drivers with BACs of .20 or greater.

0.08 is a reasonable BAC level. A 0.08 BAC is not reached with a couple of beers after work or a glass or two of wine with dinner. Studies show that the average 170 pound male would have to consume more than four drinks within one hour on an empty stomach to reach 0.08 BAC. The average 137 pound female would need three drinks on an empty stomach to reach that level. Typically, that

(continued)

Contents

- Key Facts
- Why 0.08?
- Point/Counterpoint
- Impact on the Criminal Justice System
- Who Supports 0.08?
- Information Sources

Why 0.08? (continued)

female driver would need four drinks over a two hour period to get above 0.08 BAC and the male would need five drinks.

The public supports a 0.08 BAC level. NHTSA surveys all show that most people would not drive after consuming two or three drinks in an hour. Most other industrialized nations have set BAC limits at 0.08 or lower and have had these laws for many years. For example, Canada, Great Britain, Austria, and Switzerland have a 0.08 BAC level. The states in Australia have 0.05 or 0.08 BAC levels.

Point Counterpoint

States considering 0.08 legislation should review all the facts, including the rationale behind 0.08 and the potential impact on alcohol-related deaths. Opposition to 0.08 legislation generally includes the following claims:

- **Point:** 0.08 legislation will not affect high BAC problem drinker drivers.

Counterpoint: There is evidence that 0.08 legislation reduced the proportion of fatally injured drivers who had BACs greater than or equal to .20 in California.

- **Point:** 0.08 legislation will affect alcohol consumption and, therefore, affect the economy.

Counterpoint: There is no evidence that per capita alcohol consumption was affected in any of the five states examined by NHTSA with the 0.08 legislation.

- **Point:** 0.08 legislation is the first step in lowering the limit even further.

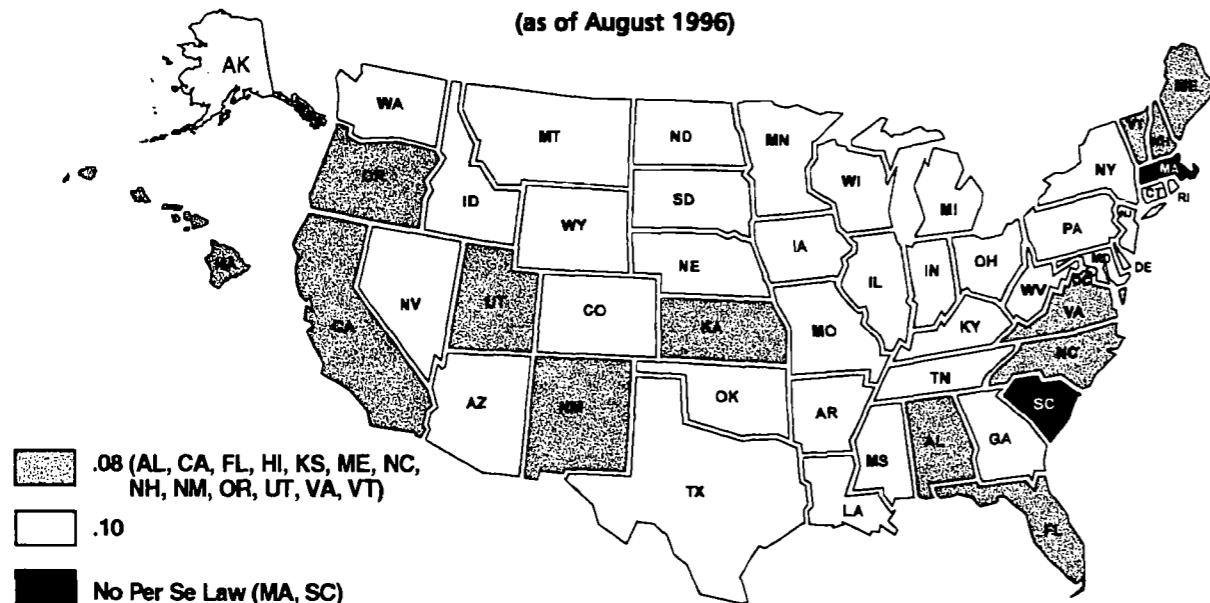
Counterpoint: NHTSA has no plan to recommend a per se limit below 0.08 for adult drivers. The agency does recommend, however, a zero tolerance limit for drivers under the age of 21 since they may not drink alcohol legally anyway, and a .04 limit for commercial drivers.

The 0.08 limit is reasonable and has the potential for saving thousands of lives and many more injuries on the highways if it is implemented by more states in the U.S.

Impact on the Criminal Justice System

When California lowered the BAC limit to 0.08 there was little impact on court administrators or judges. The main impact has been on prosecutors' decisions concerning whether cases should be filed. Previously, DWI arrestees with BACs below 0.12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about 0.10 BAC. No increases have been reported in the proportion of DWI defendants pleading guilty, requesting jury trials, or appealing convictions.

States with BAC Per Se Laws
(as of August 1996)



Who Supports 0.08?

The following organizations support a BAC limit of 0.08 or lower:

- Advocates for Highway and Auto Safety
- All State Insurance
- American Alliance for Rights and Responsibilities
- American Association of Motor Vehicle Administrators
- American Association of Neurological Surgeons
- American Automobile Manufacturers Association
- American Coalition for Traffic Safety
- American Insurance Association
- American Medical Association
- American Spinal Injury Association
- American Trucking Associations
- Association for the Advancement of Automotive Medicine
- American Spinal Injury Association
- Center for Substance Abuse Prevention
- Federal Highway Administration
- Insurance Information Institute
- International Association of Chiefs of Police
- Insurance Institute for Highway Safety
- Kemper Insurance Group
- Mothers Against Drunk Driving (MADD)
- National Safety Council
- National Committee on Uniform Traffic Laws and Ordinances
- National Highway Traffic Safety Administration
- National Safety Council
- National Sheriffs' Association
- Nationwide Insurance
- Operation Lifesaver
- Students Against Driving Drunk
- U.S. Department of Justice
- USAA Insurance
- U.S. Surgeon General

Information Sources

Driving Under the Influence: A Report to Congress on Alcohol Limits. NHTSA, Report Number DOT HS 807 879, October 1992.

The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California. NHTSA, Report Number DOT HS 807 777, August 1991.

The Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence. Moscowitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, Report Number DOT HS 807 280, July 1988.

Alcohol-Related Relative Risk of Fatal Driver Injuries in Relation to Driver Age and Sex. Zador, Paul, Insurance Institute for Highway Safety, Journal of Studies on Alcohol, 52, 4, 1991.

Alcohol Limits for Drivers: A Report on the Effects of Alcohol and Expected Institutional Responses to New Limits. NHTSA, Report Number DOT HS 807 692, April 1991.

Lowering the Illegal Per Se BAC Limit to .08, Point/Counterpoint. NHTSA 1994.

Improving the Understanding of Alcohol Impairment and BAC Levels, and their Relationship to Highway Accidents. NHTSA Report DOT HS 807 433, May 1989.

The 0.08 Alcohol Concentration Limit, House Research Policy Brief, Minnesota House of Representatives, March 1994.

.08 Saves Lives in Your State, 11 Minute video on merits of .08 produced by USAA for NHTSA.

.08 Blood Alcohol Content Laws: Facts, Myths, and Fictions. Kathryn Stewart, Center for Substance Abuse Prevention, October 1993.

The Impact of Lowering Illegal BAC Limit to .08 in Five States in the U.S., Johnson, Delmas; and Fell, James, NHTSA, 39th AAAM Proceedings, 1995.

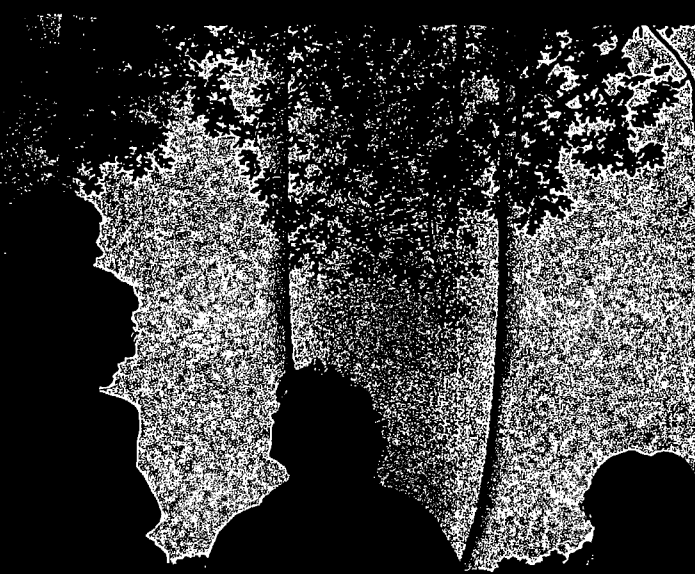
The reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, NTS-20, 400 Seventh Street, S.W., Washington, DC 20590, 202-366-9588.

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SETTING LIMITS, SAVING LIVES

THE CASE FOR .08 BAC LAWS

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U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this Page: 15

Date: 3/21/97

TO: Dorothy Rolyn

FROM: JOHN N. LIEBER
DEPUTY ASSISTANT SECRETARY
FOR TRANSPORTATION POLICY

(202) 366-4450

FAX: (202) 366-7127

FAX MESSAGE:

Dorothy!
I will be sending the
partially, other pages
will follow

A handwritten signature that appears to be "Cheryl" with a circled initial above it.

Second Shift



SHIMABUKUR_L @ A1
03/24/97 12:05:00 PM

Record Type: Record

To: Elizabeth Drye, Dennis Burke, Leanne A. Shimabukuro

cc:

Subject: RESTAURANTS BLOCK LIFESAVING DRUNK DRIVING LEGISLATION, ...

Date: 03/24/97 Time: 09:15

bRestaurants Block Lifesaving Drunk Driving Legislation, Says MADD

To: National Desk

Contact: Brandy Anderson, 214-744-6233, ext. 272, or

Michelle Bennett, 214-744-6233, ext. 248, or

Tresa Coe, 214-744-6233, ext. 245, all of

Mothers Against Drunk Driving

DALLAS, March 24 /U.S. Newswire/ -- The American Beverage Institute (ABI), which represents the parent companies of some of America's favorite restaurant chains, including Chili's, TGI Fridays, Morton's of Chicago, Red Lobster, Mick's, Outback Steakhouse, Hard Rock Cafe, Romano's Macaroni Grill, Hooters and Pizzeria Uno, continues to mislead the public and legislators across the nation concerning legislation that would lower the illegal blood alcohol content limit (BAC) from .10 to .08, Mothers Against Drunk Driving (MADD) charged today.

"The ABI's propaganda machine is working overtime issuing false and misleading statements intended to sway legislators into defeating lifesaving legislation and scare the public into believing that a glass or two of wine with dinner will make them criminals," said Katherine Prescott, MADD's national president. "MADD might expect such scare tactics and unprofessional conduct from 'drink and drown' establishments whose main goal is to sell as much alcohol as possible regardless of the consequences, but not from nationally recognized restaurant chains, particularly those that we think of as family restaurants."

Prescott charged that Richard Berman, general counsel for the ABI, has repeatedly used the media to distort the facts by claiming a report from the National Highway Traffic Safety Administration (NHTSA) establishes that a 120-pound female would reach a 0.08 BAC level after consuming two glasses of wine in a two-hour period.

NHTSA recently issued a letter refuting Berman's inaccurate claim. The NHTSA letter said that Berman's information was "incorrect" and that the ABI "did not properly calculate the BAC for a 120-pound woman." The fact is, a 120-pound woman only would have a BAC level of .04 after drinking two drinks in two hours, according to the NHTSA report. It would take at least two or three alcoholic beverages in just one hour for this woman to reach a .08 BAC level. A 170-pound man would have to drink three to four drinks in an hour before reaching .08 BAC.

The letter from NHTSA also stated that "for most individuals, a .08 BAC requires a substantial amount of alcohol, much more alcohol than the vast majority of the public feels is safe for driving." MADD, NHTSA and many other health, medical, safety and law enforcement groups support .08 BAC laws because .08 BAC is the level at which all critical driving skills have been severely diminished.

Studies show that .08 laws serve as a deterrent to drinking drivers of all BAC levels including the would-be first-time offender who represents 70 to 80 percent of all fatally injured drinking drivers.

"This is the third letter NHTSA has had to send in the last year as a result of false and misleading statements made by the ABI altering and twisting NHTSA facts to fit the ABI's narrow agenda," said Prescott. "We are deeply distressed at the lengths to which the ABI and its members will go to distort the facts and mislead the public and lawmakers to try to stop this lifesaving legislation," said Prescott.

"We question if the 'One for the Road Gang' is more interested in selling more drinks to an already impaired person than in preserving the safety of their customers and others who share the road with them.

"The time has come to pull back the ABI's curtain so the American public, a majority of whom support .08 BAC laws, can see exactly who is opposing .08 legislation that would save hundreds of lives each year," said Prescott.

Despite scientific research including an American Journal of Public Health study released last September, which showed that lowering the BAC limit to .08 in all states would reduce alcohol-related traffic deaths by 500 to 600 per year, many state legislatures have been slow to enact this effective law and have buckled under pressure from the powerful alcohol and hospitality industries that oppose .08 BAC laws. Currently, 14 states have .08 bills pending and 14 states have already lowered their BAC limits from .10 (Alabama, California, Florida, Hawaii, Idaho, Kansas, Maine, North Carolina, New Hampshire, New Mexico, Oregon, Utah, Virginia and Vermont).

Federal legislation was recently introduced by U.S. Rep. Nita Lowey and Sen. Frank Lautenberg to require the states to make .08 the law of the land as a condition of receiving their full share of federal highway funds.

Prescott challenged the ABI and its members to "immediately stop their misinformation campaign. It's time for the 'One for the Road Gang' to join the majority in America's war on drunk driving."

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2 or 3 drinks

3 drinks female 137 lbs

empty stomach

4 male ^{170 lbs} " "

- 3 1/2 - 2 hrs. drinks - female

- 5 - 2 hrs. drinks - male

FACT SHEET

SEPT
1996

STATE LEGISLATIVE

0.08 BAC Illegal Per Se Level

It is illegal per se to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all but two States of the United States. The customary level, currently the law in 35 States and DC, was 0.10 for all drivers aged 21 and above. However, 13 states have lowered their level to 0.08. In a 1992 Report to Congress, NHTSA recommended that all states lower their illegal per se level to 0.08 for all drivers aged 21 and above.

Key Facts

- In 1995, 41 percent of the 41,798 motor vehicle deaths were alcohol-related. This percentage translates into 17,274 alcohol-related deaths last year.
- Over 80 percent of drivers involved in fatal crashes with positive BACs had levels exceeding 0.08.
- An average male weighing 170 pounds must consume more than four drinks within one hour on an empty stomach to reach a 0.08 BAC level.
- A recent analysis of five states that lowered the BAC limit to 0.08 showed that significant decreases in alcohol-related fatal crashes occurred in four out of the five states as a result of the legislation.

Why 0.08?

Virtually all drivers are substantially impaired at 0.08 BAC. Laboratory and test track research shows that the vast majority of drivers, even experienced drinkers, are impaired at 0.08 with regard to critical driving tasks. Braking, steering, lane changing, judgment, and divided attention, among other measures, are all

affected significantly at 0.08 BAC. Performance decrements in some of these tasks are as high as 60-70 percent at 0.08 BAC according to studies.

The risk of being involved in a crash increases substantially by 0.08 BAC. The risk of being in a crash gradually increases at each BAC level, but rises very rapidly after a driver reaches or exceeds 0.08 BAC compared to drivers with no alcohol in their blood systems. Research by the Insurance Institute for Highway Safety indicates that the relative risk of being killed in a single vehicle crash at 0.08 BAC is eleven times that of drivers at .00 BAC (no alcohol).

Lowering the per se limit is a proven effective countermeasure which will reduce alcohol-related traffic fatalities. There was a 12 percent reduction in alcohol-related fatalities in California in 1990, the year 0.08 and an administrative license revocation law went into effect. The decrease in alcohol-related fatalities occurred at both high and low BAC levels, even drivers with BACs of .20 or greater.

0.08 is a reasonable BAC level. A 0.08 BAC is not reached with a couple of beers after work or a glass or two of wine with dinner. Studies show that the average 170 pound male would have to consume more than four drinks within one hour on an empty stomach to reach 0.08 BAC. The average 137 pound female would need three drinks on an empty stomach to reach that level. Typically, that
(continued)

Contents

- *Key Facts*
- *Why 0.08?*
- *Point/Counterpoint*
- *Impact on the Criminal Justice System*
- *Who Supports 0.08?*
- *Information Sources*

Why 0.08? (continued)

female driver would need four drinks over a two hour period to get above 0.08 BAC and the male would need five drinks.

The public supports a 0.08 BAC level. NHTSA surveys all show that most people would not drive after consuming two or three drinks in an hour. Most other industrialized nations have set BAC limits at 0.08 or lower and have had these laws for many years. For example, Canada, Great Britain, Austria, and Switzerland have a 0.08 BAC level. The states in Australia have 0.05 or 0.08 BAC levels.

Point Counterpoint

States considering 0.08 legislation should review all the facts, including the rationale behind 0.08 and the potential impact on alcohol-related deaths. Opposition to 0.08 legislation generally includes the following claims:

■ **Point:** 0.08 legislation will not affect high BAC problem drinker drivers.

Counterpoint: There is evidence that 0.08 legislation reduced the proportion of fatally injured drivers who had BACs greater than or equal to .20 in California.

■ **Point:** 0.08 legislation will affect alcohol consumption and, therefore, affect the economy.

Counterpoint: There is no evidence that per capita alcohol consumption was affected in any of the five states examined by NHTSA with the 0.08 legislation.

■ **Point:** 0.08 legislation is the first step in lowering the limit even further.

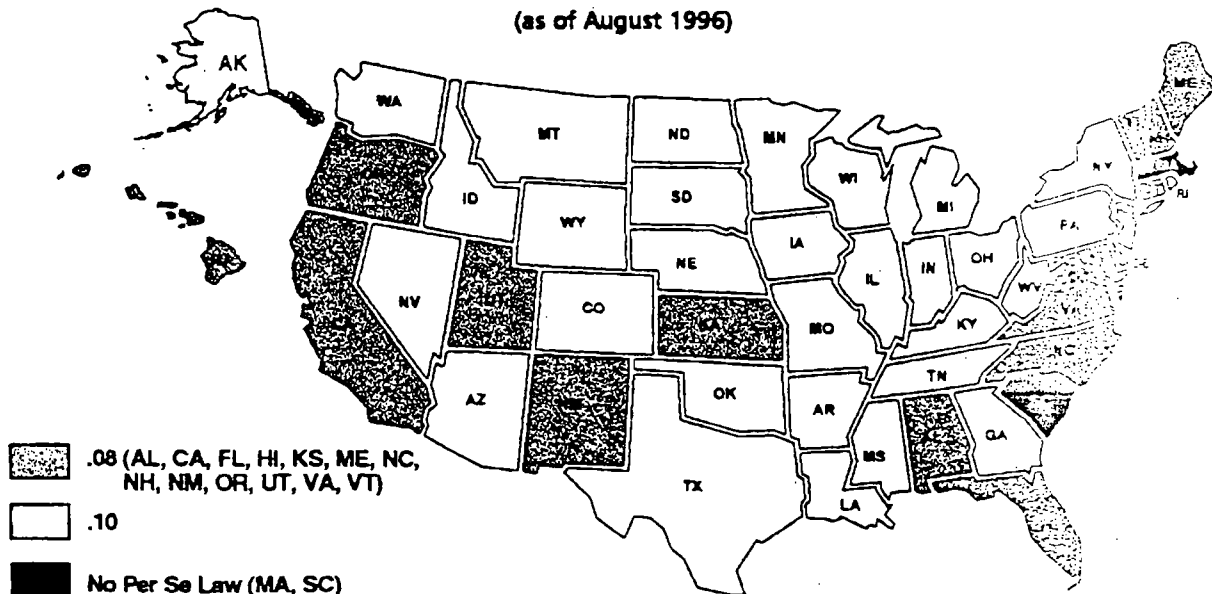
Counterpoint: NHTSA has no plan to recommend a per se limit below 0.08 for adult drivers. The agency does recommend, however, a zero tolerance limit for drivers under the age of 21 since they may not drink alcohol legally anyway, and a .04 limit for commercial drivers.

The 0.08 limit is reasonable and has the potential for saving thousands of lives and many more injuries on the highways if it is implemented by more states in the U.S.

Impact on the Criminal Justice System

When California lowered the BAC limit to 0.08 there was little impact on court administrators or judges. The main impact has been on prosecutors' decisions concerning whether cases should be filed. Previously, DWI arrestees with BACs below 0.12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about 0.10 BAC. No increases have been reported in the proportion of DWI defendants pleading guilty, requesting jury trials, or appealing convictions.

States with BAC Per Se Laws
(as of August 1996)



Who Supports 0.08?

The following organizations support a BAC limit of 0.08 or lower:

- Advocates for Highway and Auto Safety
- All State Insurance
- American Alliance for Rights and Responsibilities
- American Association of Motor Vehicle Administrators
- American Association of Neurological Surgeons
- American Automobile Manufacturers Association
- American Coalition for Traffic Safety
- American Insurance Association
- American Medical Association
- American Spinal Injury Association
American Trucking Associations
- Association for the Advancement of Automotive Medicine
- American Spinal Injury Association
- Center for Substance Abuse Prevention
- Federal Highway Administration
- Insurance Information Institute
- International Association of Chiefs of Police
- Insurance Institute for Highway Safety
- Kemper Insurance Group
- Mothers Against Drunk Driving (MADD)
- National Safety Council
- National Committee on Uniform Traffic Laws and Ordinances
- National Highway Traffic Safety Administration
- National Safety Council
- National Sheriffs' Association
- Nationwide Insurance
- Operation Lifesaver
- Students Against Driving Drunk
- U.S. Department of Justice
- USAA Insurance
- U.S. Surgeon General

Information Sources

Driving Under the Influence: A Report to Congress on Alcohol Limits. NHTSA, Report Number DOT HS 807 879, October 1992.

The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California. NHTSA, Report Number DOT HS 807 777, August 1991.

The Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence. Moscovitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, Report Number DOT HS 807 280, July 1988.

Alcohol-Related Relative Risk of Fatal Driver Injuries in Relation to Driver Age and Sex. Zador, Paul, Insurance Institute for Highway Safety, Journal of Studies on Alcohol, 52, 4, 1991.

Alcohol Limits for Drivers: A Report on the Effects of Alcohol and Expected Institutional Responses to New Limits. NHTSA, Report Number DOT HS 807 692, April 1991.

Lowering the Illegal Per Se BAC Limit to .08: Point/Counterpoint. NHTSA 1994.

Improving the Understanding of Alcohol Impairment and BAC Levels, and their Relationship to Highway Accidents. NHTSA Report DOT HS 807 433, May 1989.

The 0.08 Alcohol Concentration Limit: House Research Policy Brief. Minnesota House of Representatives, March 1994.

.08 Saves Lives in Your State. 11 Minute Video on merits of .08 produced by USAA for NHTSA.

.08 Blood Alcohol Content Laws: Facts, Myths, and Fictions. Kathryn Stewart, Center for Substance Abuse Prevention, October 1993.

The Impact of Lowering Illegal BAC Limit to .08 in Five States in the U.S., Johnson, Delmas; and Fell, James, NHTSA, 39th AAAM Proceedings, 1995.

The reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office serving your State, or from NHTSA Headquarters, Traffic Safety Programs, NTS-20, 400 Seventh Street, S.W., Washington, DC 20590, 202-366-9588.

**LOWERING THE ILLEGAL PER SE
BAC LIMIT TO .08**

POINT/COUNTERPOINT

Point 1 *A .08 law will cause moderate drinkers to drink less alcohol, or not even drink at all, for fear of breaking the law or being arrested for driving while impaired.*

Counterpoint There is no evidence in the 5 states which have had a .08 law for more than a year that per capita alcohol consumption was affected by the law. In California, for instance, per capita alcohol consumption in 1989 (before the law) was 2.15 gallons of alcohol. In 1990, after the law went into effect, per capita consumption was 2.13, with only wine consumption decreasing (insignificantly), according to figures from the alcohol industry. While per capita alcohol consumption decreased somewhat in Utah, Oregon, Maine and Vermont after their .08 laws were passed, the decrease was no different than the decreasing trend that was already occurring in those states.

Point 2 *A .08 law will cause a shift in drinking behavior from licensed establishments (restaurants, bars, taverns) to the home where no driving is involved.*

Counterpoint On the contrary, there is evidence from Maine that restaurant sales increased 11% in 1988, the year .08 went into effect. However, if a shift is happening, there are plenty of incentives that the hospitality industry can use to bring customers back to their premises and reduce the risk of driving while impaired:

- promote the designated driver program by providing free or reduced price non-alcoholic beverages to those individuals;
- promote non-alcoholic beers and wines;
- provide free rides home for drivers who appear to be impaired; and
- engage in responsible alcohol service by training servers, making food available to patrons, not serving intoxicated customers, etc.

Finally, the intention of .08 legislation is to send a message to drivers that the laws against DWI are getting stricter and that if they do get caught driving impaired they will be prosecuted. It is intended to reduce drinking and driving behavior, not drinking behavior.

Point 3

A .08 law will diminish efforts to deal with the real problem --- the hard core drinking drivers with very high BACs.

Counterpoint

Efforts continue to attack the impaired driving problem from all angles. For approximately 70-80% of fatally injured drinking drivers each year, their fatality is their first alcohol-related contact with the system, no matter what their BAC. .08 legislation is just one of many laws and programs that NHTSA is encouraging states to adopt. Other legislation that NHTSA promotes include zero tolerance (.02 BAC) laws for drivers under age 21, administrative license revocation laws to ensure swift punishment for DWI, graduated licensing programs for new drivers, self-sufficient DWI programs, and various vehicle actions against repeat DWI offenders. In the area of enforcement, NHTSA promotes the use of sobriety checkpoints and saturation patrols to catch impaired drivers, training for police on standardized field sobriety testing, and increased enforcement of underage drinking and driving. New public information and education programs will target hard core drinking drivers. Responsible alcohol service programs are also encouraged by NHTSA, which have the potential of preventing intoxicated patrons from driving. NHTSA spends substantial time and energy promoting all of the above.

Point 4

Instead of lowering the illegal BAC limit from .10 to .08, why not adopt more severe sanctions for drivers with high BAC levels (e.g. those at .15 or .20 and higher)? These are the majority of drinking drivers arrested and involved in fatal crashes.

Counterpoint

Some states, such as Florida, use both systems. Florida lowered its per se BAC limit to .08 on January 1, 1994. There is also no question that drivers with very high BACs (.15+) are more impaired and have greater crash risks than drivers at .08. For many years, Florida has had mandatory minimum jail sentences and fines for drivers convicted of DWI at BACs = .15 or greater. These "mandatory minimums" do not apply to drivers under .15 BAC. Both laws are rational and make sense. It should not be "one or the other," but can be both. There is evidence that .08 reduces alcohol-related fatalities.

While more severe penalties based upon BAC makes sense, there is no evidence to date that this system is effective.

Point 5

The only evidence that NHTSA has that .08 is effective in reducing alcohol-related crashes is the California study, and that study has flaws:

- (1) *There was only a 5% reduction in alcohol-related fatalities in California between 1989 and 1990, not 12% as reported by NHTSA.*
- (2) *The national decrease in alcohol-related fatalities was the same as California's between 1989 and 1990. Therefore, .08 did not have an effect.*
- (3) *California's own studies show no significant decrease in alcohol-related crashes or fatalities between 1989 and 1990.*
- (4) *Most of the states with .08 laws had higher proportions of drivers with alcohol in fatal crashes than the national average in 1992.*
- (5) *California actually had an increase in the number of fatally injured drivers with BACs = .15-.19 between 1989 and 1990, where the real problem lies.*
- (6) *The NHTSA study in California showed no significant decrease in crashes where the police reported a driver as "had been drinking" (HBD).*

Counterpoint

The evaluation of .08 in California was not the only reason NHTSA has endorsed .08 laws. There is substantial evidence that critical driving performance measures are impaired at .08 and that the risk of a crash is significantly elevated at .08 and beyond. Many industrialized nations use .08 or a lower BAC as a standard for impairment. The fact that the California study indicated bottom-line effectiveness of the law was just one more ingredient in the decision. With regard to the specific "flaws" in the California study, here are the facts:

Why?

- (1) The evaluation used an accepted methodology to study the effects of the .08 law --- time series analyses using the AutoRegressive Integrated Moving Averages (ARIMA) model. Data were analyzed 4 years before the law change and 1 year after. The trend model before the law took effect predicted alcohol-related fatalities for 1990. Actual alcohol-related fatalities for 1990 were 12% below that predicted while non-alcohol-related fatalities experienced no change. The 12% significant decrease took place in the first six months of 1990 when .08 was in effect but the administrative license revocation (ALR) law was not. In analyses of the effects of laws, it is not appropriate to merely compare one year of aggregated data before the law change to one year of aggregated data after the law. The NHTSA study used an acceptable, peer-reviewed, statistical approach to the problem.
- (2) Many things went on in the rest of the nation to explain the national decrease from 1989 to 1990. These things were controlled for to the extent possible in the California study, which is why the time series method was used. The fact is, California's alcohol-related fatality decrease was significant and was due mainly to the .08 and ALR laws.
- (3) California has published no studies to date which make this statement. The California Department of Motor Vehicles is conducting its own analyses of the effects of the .08 and ALR laws and plans to publish those results this year.

- (4) Here are the estimates of drivers in fatal crashes with positive BACs for the 5 states with .08 and the nation as a whole in 1992:

Percent Drivers in Fatal
Crashes with BAC > .01

CA	27.4
ME	29.1
OR	28.5
UT	20.4
VT	<u>33.4</u>
Nation	28.6

Three of the five states with .08 had lower proportions of drivers with positive BACs compared to the national average. However, these comparisons are irrelevant to the effects of .08 laws. Some of these .08 states started out with higher than national average alcohol rates. It is the reduction in alcohol-related fatalities due to the law change, not comparisons to the national average, that is the issue.

- (5) California did experience a slight, non-significant increase in the number of driver fatalities with BACs = .15-.19 in 1990 compared to 1989. However, they experienced decreases in driver fatalities in all other BAC ranges, including those with .20 BAC and above. Overall, California experienced a decrease in driver fatalities with positive BACs between 1989 and 1990, certainly the desired effect.
- (6) Experience in many past evaluations shows that police may change their behavior in reporting HBD crashes in the year following a highly publicized law change. Police became more aware of the problem and feel more compelled to report HBD crashes. Many times this behavior change offsets any real decreases since crashes reported as "HBD" in the year following the law change may not have been reported as such in the year before. This phenomenon is common and it is why other measures of alcohol involvement are used in scientifically accepted evaluations.

Finally, NHTSA is conducting an analyses of the effects of .08 in the 5 states which have had the legislation for over a year. So far, 9 out of 30 measures of alcohol-involvement in fatal crashes show statistically significant decreases when the .08 law went into effect in 4 of the 5 states. Results of these analyses will be published in the spring of 1994.

Point 6

.08 is just the first step in a process to lower the illegal limit even further.

Counterpoint

NHTSA believes that a .08 limit is practical, rational and acceptable to the public. NHTSA has no plans to recommend limits lower than .08 for adults, except for commercial drivers (where the national standard is already .04) and for drivers under age 21 where NHTSA recommends zero tolerance: .02 or lower.

JCF
3/18/94

DOT SAFETY TITLE: OUTSTANDING ISSUES

Primary Seat Belt Laws

The NEXTEA proposal rolled out on March 12 included a new six-year, \$125 million incentive program to encourage states to adopt and enforce aggressive laws and programs aimed at increasing seat belt and child restraint use. Primary seat belt laws -- i.e., a law permitting enforcement authorities to stop motorists and issue summonses solely for seat belt violations, and not just in the context of a stop for another traffic violation -- figure in one of the two options to qualify for the "basic grant" under this program. As proposed in NEXTEA, a state may qualify for funds by either satisfying four out of five specified primary seat belt requirements, including having a primary belt law, or it may demonstrate that its belt use is at least 80 percent, and increasing.

Experience with such primary belt laws -- which have been enacted by 11 states and the District of Columbia, together covering about one-third of U.S. population -- indicates that they work to increase belt use significantly. In primary law states, the level of belt use is 15 percent higher, on average, than in secondary law states. Moreover, much of the differential is due to increases achieved in the first year after enactment. NHTSA estimates that enactment of a primary seat belt law by all remaining states would save at least 1,800 lives nationwide in the first year.

As part of the follow-on "safety title" to NEXTEA -- which will include regulatory, rather than funding elements -- the Department is now inclined to propose a "soft sanction" that would go beyond the incentive program. The proposal under consideration calls for requiring states to adopt primary seat belt laws by the end of the fifth year of reauthorization (i.e., by September 30, 2002) or have one-and-one-half percent of their highway construction funds (three percent in subsequent years) mandatorily shifted to seat belt education and enforcement programs. These shifted funds would be in addition to funds made available for safety enforcement and education through NHTSA grant programs and the flexible infrastructure safety category proposed in NEXTEA.

Amount?

.08 Blood Alcohol Content Laws

Also under consideration is a proposal to apply a similar "soft sanction" to states that do not by the end of FY 2002 adopt a law setting .08 Blood Alcohol Content as the standard for impairment. Notwithstanding great progress in reducing drunk driving, over 40 percent of fatal crashes are alcohol-related. Safety activists argue -- and NHTSA agrees -- that at .08 BAC virtually all drivers are substantially impaired in critical tasks such as braking, steering and judgment. One study found that the risk of a crash is 11 times higher at .08 BAC than when sober. Notwithstanding some public misunderstanding, .08 BAC does not impact the responsible social drinker. To reach .08, a 170 lb. male needs to drink 4 drinks in 1 hour on an empty stomach. A 120 lb. female needs 3 drinks in 1 hour on an empty stomach.

Fourteen states currently have a .08 BAC limit. (Idaho, the most recent, passed .08 just last week.) Recent studies have shown that fatalities have declined anywhere from 7 to 16 percent when states lowered their BAC limits from .10 to .08. However, the studies are too few in number and not consistent enough to give a precise estimate of the reductions that have occurred, or would occur if additional states adopted .08 laws.

DOT is already on record supporting .08 BAC laws. In fact, adoption of both a .08 BAC law and an administrative license revocation law is one of the three options to qualify for funds under the proposed program alcohol incentive program included in NEXTEA. NEXTEA proposes to authorize that program at about \$40 million a year.

While the NEXTEA incentive programs will provide some encouragement to states to enact primary seat belt and .08 BAC laws, they will not have the effect, albeit coercive, of a sanction program. Sanction programs -- including programs by which states forfeit a portion of their construction funds -- have in the past been used successfully to get states to enact 55 mph speed limits, age 21 drinking laws, secondary seat belt laws, and zero tolerance laws.

Strategic Considerations

Sanction strategies are generally disfavored by state governments, highway construction interests, and states rights activists as an imposition on states rights and a diversion of needed construction funds. Activists, in turn, often favor such programs because of their strong motivational effect on states. The 1995 NHS bill repealed a range of sanctions -- including national speed limits and motorcycle helmets provisions -- long unpopular with states and various interest groups.

Of the two proposals, the seat belt sanction is likely to be the less controversial and more likely to succeed. The issue of seat belt use has received enormous recent coverage given its close nexus with the airbag debate. Somewhere between 50 and 70 percent of the motoring public is already using seat belts. Virtually all those involved in the coalition of groups working on getting airbag safety messages out to the public -- including the auto manufacturers, insurance companies, seat belt and air bag suppliers, safety and health care organizations -- have made increased seat belt use, and primary laws in particular, a top agenda item. The President has asked DOT to submit a report recommending strategies to increase seat belt use. And NTSB has recently made seat belt usage a major priority.

A seat belt sanction proposal will galvanize the support of these various groups during a time when the public is paying particular attention to the issue of seat belt use. Also, Congress is increasingly aware of the issue, particularly as hearings on the air bag issue take place.

The proposal will draw opposition from the governors' highway safety offices (NAGHSR), the National Motorists Association (the strongest supporters of repealing the speed limit law), individual liberties groups, and the same conservative and western members of Congress who allied to repeal sanctions in the NHS Act. NHTSA does not expect opposition from civil rights or minority organizations. Overall, given the national focus on the issue and the broad support it will receive from the manufacturing, insurance, safety and health care industries,

the measure has a significant chance of passing. DOT leadership is currently inclined to include a "soft sanction" that would only "bite" in the final year of NEXTEA.

The battle over .08 will be more difficult. A .08 sanctions proposal will be broadly supported by Mothers Against Drunk Driving (MADD), other safety organizations, health care and insurance industries, and probably by the auto industry also. Congresswoman Lowey and Senator Lautenberg have already introduced legislation requiring states to adopt .08 laws. However, a sanction approach to .08 BAC will be vigorously opposed by the beverage, restaurant and hotel industries. These interests are likely to mount an aggressive, well funded campaign seeking to portray the proposal as scientifically unsupported and a threat to casual drinkers. While these arguments can all be rebutted, public opinion is difficult to predict. Given that the BAC standard has received much less recent publicity than the belt issue and that the effectiveness studies on .08 are less than definitive, a .08 sanction will likely be tougher to win than a seat belt sanction.

An additional consideration is possible impacts on the Administration's other ISTEA reauthorization priorities. Led by Senator Chafee, the coalition of pro-ISTEA transportation progressives that supports the Administration's bill would likely welcome a proposal that included sanction provisions. At the same time, there is some possibility that sanctions proposals would undermine the relatively positive reception given the Administration's NEXTEA proposal by certain Republican transportation leaders (e.g., Chairman Shuster) and state transportation officials. Possible "spill-over" is not of itself an argument against sanction proposals, but it may weigh against proposing multiple sanction initiatives, on top of the truck size restrictions DOT intends to propose.