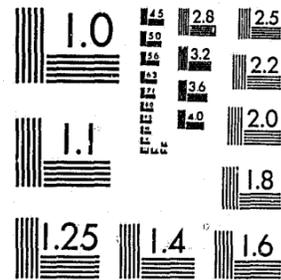


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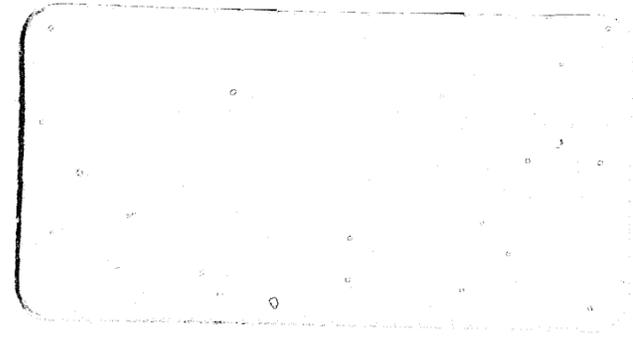
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ALCOHOL ABUSE AND
HIGHWAY SAFETY IN MASSACHUSETTS

AN EXECUTIVE RESPONSE
EDWARD J. KING, GOVERNOR

Prepared by

The Governor's Task Force
on Alcohol Abuse
and Highway Safety
March 1982

Alcohol Abuse...

We can live without it.

U.S. Department of Justice 89528
National Institute of Justice

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The Commonwealth of Massachusetts

DISTRICT ATTORNEY OF SUFFOLK COUNTY
NEWMAN FLANAGAN

March 4, 1982

The Honorable Edward J. King
Governor of the Commonwealth
of Massachusetts
Governor's Office
State House
Boston, Massachusetts 02133

Your Excellency:

I am pleased to submit to you the Final Report of the Governor's Task Force on Alcohol Abuse and Highway Safety.

This Report is a culmination of many long hours spent by the Task Force in studying this serious public safety problem. The dedication of each and every Task Force member is reflected in the comprehensive recommendations which are presented for your consideration. Although the Task Force officially ends its work with the submission of this Report, please be assured of our continued support and participation in addressing the problem of the drinking driver.

It is important to note that the primary documentation for our Report was gathered at five regional hearings which were held throughout the Commonwealth. We wish to thank those individuals that testified for their insight and support. We also wish to express our gratitude to the Advisory Board members for their contribution, as well as the Committee on Criminal Justice for their invaluable assistance in completing this Report.

The Task Force applauds your efforts in this area and we thank you for the privilege of serving on this panel.

Sincerely,

A handwritten signature in cursive script that reads "Newman A. Flanagan".

Newman A. Flanagan
Chairman

COMMONWEALTH OF MASSACHUSETTS

By His Excellency

EDWARD J. KING
Governor

EXECUTIVE ORDER NO. 212

GOVERNOR'S TASK FORCE ON ALCOHOL ABUSE AND HIGHWAY SAFETY

WHEREAS, a considerable number of highway fatalities and crippling injuries result from persons operating motor vehicles under the influence on the public ways of the commonwealth; and

WHEREAS, these alcohol related motor vehicle accidents effect a costly toll on the well-being of our citizenry; and

WHEREAS, there is a clear and unmistakable need to reduce the extent of human loss which results from persons operating under the intoxicating influences of alcohol and drugs by the development of a comprehensive state program to combat the causes and effects of such abuse;

NOW, THEREFORE, I, Edward J. King, Governor of the Commonwealth, by virtue of the authority vested in me by the Constitution and the laws of this Commonwealth, do hereby order as follows:

1. There is created a Committee, to be known as the Governor's Task Force on Alcohol Abuse and Highway Safety, to consist of members appointed by the Governor to serve without compensation at his pleasure. The Governor may designate additional persons to officially serve on this committee as the need may arise without further action by Executive Order.

2. The following persons or their respective designees shall serve as ex officio members of the Committee: the President of the Massachusetts-Senate; the Speaker of the Massachusetts House of Representatives; the Chief Justice of the District Courts; the Secretary of Public Safety; the Commissioner of Public Safety; the Commissioner of the Metropolitan District Commission; the Registrar of Motor Vehicles; the Commissioner of Insurance; the Commissioner of Education; the Director of the Division of Alcoholism; the Director of the Governor's Highway Safety Bureau; the District Attorney of Suffolk County; the Police Commissioner of the City of Boston; the President of the Massachusetts Chiefs of Police Association; the President of the Massachusetts Police Association; and, the President of the Massachusetts Medical Society.

The membership of the Committee shall also consist of: a representative of the American College of Emergency Physicians - Massachusetts Chapter; a representative of the National Highway Traffic Safety Administration -Region One (1) Office; a representative of the Driver Alcohol Education Director's Association; a representative of the Massachusetts Association of School Superintendents; a representative of a Massachusetts based insurance company; a member of the clergy; a student representative of a Massachusetts college or university; and members of the general public.

From the membership, the Governor shall designate a Chairperson and Vice - Chairperson. Any vacancies which may occur shall be filled by the Governor in the same manner as the prior appointments.

3. In order to fully accomplish the mandate of the Task Force, the Chairperson shall form such subcommittees as he deems necessary and establish the objectives and schedule of each said subcommittee. Said subcommittees may include in their membership individuals not designated herein as Task Force members.

4. The Committee is authorized and directed to advise the Governor on specific, concrete statutory and administrative recommendations whose implementation would dramatically decrease the incidence of alcohol - related highway fatalities in the Commonwealth. The Committee shall have, minimally, the following functions and responsibilities toward this end:

A. To analyze the statutes of the Commonwealth and other jurisdictions relating to the dispositional options available to the court as well as administrative penalties for offenders who drive while under the influence or are convicted of vehicular homicide.

B. To study the statistics relating to the judicial response to driving under the influence cases.

C. To propose a coordinated executive, legislative and judicial response to the problem.

5. The Committee is authorized to call upon any secretariat, office, department, board, commission, council or other agency of the executive branch of state government under my jurisdiction and any officer, member or employee thereof, to supply such statistical data, program reports and other information and materials as the Committee deems necessary or appropriate to perform its work, and they are authorized and directed to cooperate with the Committee and to furnish it with such information or assistance in connection with such review and analysis.

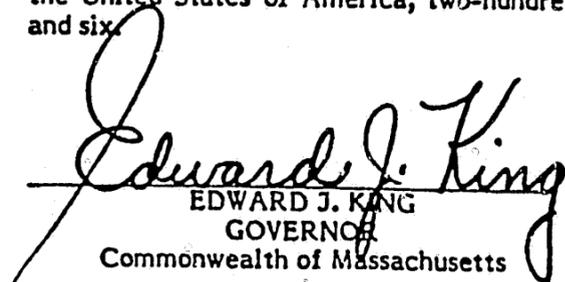
6. The Massachusetts Committee on Criminal Justice shall provide such technical and administrative assistance as the Committee shall require.

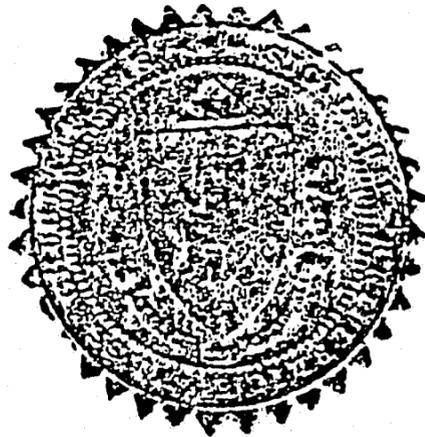
7. In view of the critical nature of the problem and the need for immediate action, it is requested that the Committee conduct its affairs as expeditiously as possible.

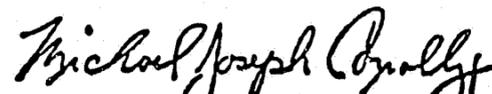
8. The Committee shall submit a written report to the Governor of its findings and recommendations together with drafts of legislation necessary to carry its recommendations into effect. Said report shall be filed with the Governor on or before March 15, 1982.

9. This Order shall take effect immediately and shall continue in force through March 15, 1982, unless extended by the Governor for an additional period of time.

Given at the Executive Chamber in Boston this 7th day of January, in the year of Our Lord one thousand nine hundred and eighty-two and of the independence of the United States of America, two-hundred and six.


EDWARD J. KING
GOVERNOR
Commonwealth of Massachusetts




Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

MEMBERS OF THE GOVERNOR'S TASK FORCE ON ALCOHOL ABUSE
AND HIGHWAY SAFETY

The Honorable Newman A. Flanagan, Chairman
Suffolk County District Attorney's Office
Boston

Reverend David A. Works, Vice-chairman
North Conway Institute
Boston

Mr. Donald Babets
Student Government Trustee
Harbor Campus - Student Activities Office
University of Massachusetts
Boston

Dr. Edward Blacker, Director
Division of Alcoholism
Boston

Mr. Paul Bontemps, Executive Director
Mass. Minority Counsel on Alcoholism
Roxbury

The Honorable John P. Burke
Chairman, Committee on Public Safety
Massachusetts Senate
Boston

Chief John D. Coyle
President
Massachusetts Chiefs of Police Association
North Attleboro Police Department
North Attleboro

Mr. Raymond M. Defossez
General Counsel
Law Department
Commercial Union Insurance Co.
Boston

Mr. Paul Deignan
Past President
Driver Alcohol Education Director's Association
South Shore Council on Alcoholism
Wollaston

Commissioner Terrence J. Geoghegan
Metropolitan District Commission
Boston

Commissioner Joseph Jordan
Boston Police Department
Boston

The Honorable Raymond M. LaFontaine
Chairman, Committee on Insurance
Massachusetts House of Representatives
Boston

Sgt. Francis R. Landers, President
Massachusetts Police Association
Newburyport

Mr. John P. Larkin, Chairman
Alcoholic Beverage Control Commission
Boston

Mrs. Carol E. Lawler
No. Weymouth

Dr. John H. Lawson
Commissioner of Education
Boston

The Honorable George A. Luciano
Secretary of Public Safety
Executive Office
Boston

Paul R. McHugh, Director
Governor's Highway Safety Bureau
Boston

Richard E. McLaughlin, Registrar
Registry of Motor Vehicles
Boston

Dr. Wayne Pasanen
American College of Emergency Medical
Physicians
Lexington

Mr. James C. Ryan
Attorney
National Highway Traffic Safety Administration
Cambridge

Commissioner Michael Sabbagh
Division of Insurance
Boston

Mr. Alvero M. Sousa
Vice President, Public Affairs
New England Mutual Life Insurance Company
Boston

Mrs. Marian Stokes
Medford

Commissioner Frank J. Trabucco
Department of Public Safety
Boston

Dr. Stanley Wyman
President
Massachusetts Medical Society
Boston

Mr. John W. Wynn
Superintendent of Schools
Town of Tewksbury
Tewksbury

The Honorable Samuel E. Zoll
Chief Justice
District Court Department
Salem

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ACQUISITIONS

A STATEMENT OF THE PROBLEM

"It's difficult for me to do this, because at 5:00 Christmas morning I got the news that my sister and her entire family had been wiped out in an automobile accident in Hyde Park. You know them as the Pierce family - Alan, Laurie, Jeffrie -one year old, and Laurie's father-in-law. They were killed by a 16 year old alleged drunk driver - a supposed 1st time offender. I ask you, the Task Force, not only to look at the 2nd and 3rd time offender, but also at the 1st time offender. My sister and her family are not going to get another chance. The Christmas presents are still sitting under my tree unopened. I beg you please, do something so that no one has to go through the Christmas that my family and I went through. I agree with Secretary Luciano that we are all potential victims. None of us is immune to the drunk driver. It doesn't matter who we are or what positions we hold, we are all victims. I'll tell you, when something like this hits, it'll tear you apart... do something now, don't wait till it happens to you."

"My 23 year old daughter was killed by an 18 year old drunken driver, driving the wrong way on Route 91. Compassion is noble, but we don't prevent accidents that way. All I ask as a citizen of Massachusetts is that you give us a law with teeth in it as a deterrent. If all your work saves one life and a heartache, it'll be worth it. Thank you."

"I'm one of the victims. Two years and three months ago, I was hit by a drunken driver and as you can see, I still have a broken leg from it. This man who hit me lost his license for one year. I did not walk for four months and I was out of work for over a year. He went on living his normal life while I was stuck in bed. He had minimum insurance. He's back on the road now. He can go on having a good time. I think there has to be something done about it because it's not fair to the people left on the side of the road or left without their loved ones. They go back to normal lives, while we pick up the pieces after they're done."

The number of accidents occurring because a person drinks and drives throughout the United States is staggering. Each year on American highways 25,000 men, women and children are killed because of drunk drivers. They injure 750,000 more. On a daily basis this means that nearly 70 persons are killed and 2,054 seriously injured because of the drunk driver.

In Massachusetts, the data indicate that approximately 50% of all fatal highway accidents involve a driver who has been drinking. The number of alcohol related traffic fatalities was 392 in 1980, 276 in 1981, and it has been estimated that in the former year 30,153 injuries resulted because of drunken driving.

Aside from the human loss and injuries suffered, are the economic costs. Alcohol-related highway accidents cost millions of dollars annually through: lost work or productivity; increased insurance costs; legal and court costs; medical costs; psychiatric treatments; vehicle and property damages; funeral costs and accident investigation costs.

The above list captures the tangible costs of accidents caused by the drinking driver. The "hidden costs" of these accidents are more far reaching. For example, the victim who is killed in an accident leaves behind family members who agonize over the death for the rest of their lives. Moreover, those who are seriously maimed in an auto accident are constantly reminded of the trauma by the injury which remains.

The extent to which drinking drivers affect us all is far more reaching than described in the above passages. The drinking driver is indiscriminate in his/her selection of victims. No one can predict who will be the next victim. All of us are potential victims.

INTRODUCTION

On January 7, 1982, Governor Edward J. King established the Governor's Task Force on Alcohol Abuse and Highway Safety, hereinafter, to be referred to as the Task Force. The Governor created this Task Force because of his concern for the startling number of lives lost on the Commonwealth's roadways along with the serious crippling injuries resulting from those persons driving motor vehicles while under the influence of alcohol.

The Task Force was charged to research and analyze alcohol-related highway accidents so as to inform the Governor on concrete statutory and administrative recommendations whose implementation would dramatically decrease the incidence of alcohol-related highway accidents. More specifically, Executive Order No. 212 delineates the Task Force's responsibilities and functions as follows:

1. to analyze the statutes of the Commonwealth and other jurisdictions relating to the dispositional options available to the court as well as administrative penalties for offenders who drive while under the influence or are convicted of vehicular homicide;
2. to study the statistics relating to the judicial response to driving under the influence cases; and
3. to propose a coordinated executive, legislative and judicial response to the problem¹

The above functions and responsibilities were delegated to 28 individuals representing a wide and diverse section of professions and geographic areas. Task Force membership included: state commissioners, police chiefs, health and rehabilitation professionals, prosecutors, educators, clergymen, former alcoholics, parents of victims of alcohol-related accidents, highway safety and other professionals. The Honorable Newman Flanagan, District Attorney for Suffolk County, chaired the Task Force and Reverend David A. Works was the Vice-Chairman.

¹ Executive Order No. 212 Commonwealth of Massachusetts, January 7, 1982

As clearly stated in the Governor's Order that established the Task Force, its primary mission was to design a comprehensive statewide program to alleviate the problems related to alcohol abuse and highway safety. With this as its overall aim, the Task Force engaged in a number of significant activities. First, the Task Force held numerous full Task Force meetings. During these meetings, members were informed on the topic of alcohol abuse by a wide variety of speakers. The speakers' presentations ranged from hard-core statistics to individuals who were either victims themselves or who had had a loved one maimed or killed because of a drunk driver. It was also during the full Committee meetings that relevant literature (including international, national and statewide studies) was disseminated to each member. Said literature was extensive and covered all aspects of alcohol abuse. Among the topics were: alcohol abuse in itself, education, rehabilitation, highway fatalities, treatment, law enforcement, and court-proceedings and laws in Massachusetts as well as in other states. Finally, full Committee meetings afforded each member the opportunity to voice their opinions and views on each recommendation to be considered before adoption or rejection.

The second significant activity in which the members of the Task Force participated were regional hearings. In order to assess public sentiment on the topic of alcohol abuse six separate regional hearings were scheduled in Springfield, Worcester, Fall River, Lowell and two in Boston. The Springfield and Worcester hearings were on January 18th and 29th, respectively. The hearing in Fall River was held February 1st and the Lowell hearing on the 9th of February. Because of the volume of participants, that is the great number of testimonies to be delivered, in the Greater Boston area, two consecutive public hearings were scheduled on February 11th and 12th. All of these regional hearings had both afternoon and evening sessions in order to allow all segments of the working public the opportunity to voice their concerns.

Third, given that the Task Force adopted a systems approach, it channeled its efforts through special Sub-committees. These Sub-committees targeted key issues and components within the system that deal with drunk driving. The five major components were Court-Related Issues, Education, Rehabilitation, Highway Safety and Law Enforcement. These five components in turn translated into the five Sub-committees which were created. For a complete break-down of the members who served on each Sub-committee as well as the chair person refer to Appendix, p. 43.

Each of the Sub-committees was allowed the freedom to conduct its meetings according to membership preference yet there were some similarities. For instance, the great majority of Sub-committees held more than 10 meetings. Each covered the

material relevant to their specific components thoroughly and extensively, examining the present system with the intent to improve upon it. Although each Sub-committee focused primarily on its component of the system, the procedures and practices surrounding the other components were not ignored. Furthermore, all of the Sub-committees were assisted in their endeavors by advisors who brought to the committee members their special expertise and knowledge. (See Appendix, pp. 45-48 for a complete list of advisors). In addition to the advisors, some of the Sub-committees had special presentations from interested individuals who wished to be heard. The major advantage of the Sub-committee format was that it allowed members the opportunity to examine and research, on a more comprehensive level, their specific topics. Finally, each of the Sub-committees was required to submit a report to the full Task Force. These reports included a description of the current system, the problems with the present system, and the recommendations needed to improve upon said system. Copies of these reports were given to each Task Force member for their review.* In turn, the Chair of each Sub-committee presented its recommendations to the full Task Force. These recommendations were then discussed, debated and voted upon by the full Task Force.

In summary, it is obvious that the Task Force used a variety of methods and techniques to thoroughly analyze all aspects of the issues and to identify the problem areas so as to recommend changes that would reduce alcohol-related accidents and fatalities. More specifically, members of the Task Force as a unit, and in particular as Sub-committees, investigated all possible aspects from which draft reports dealing with the various components of the system were submitted for scrutiny. From such draft reports, the analysis of the performance of the existing system, expert as well as public testimonies, relevant literature/statistical data, review of other states' statutes and full Task Force deliberations, the Task Force made its final recommendations.

* Sub-committee reports as submitted to the full Task Force are bound in a separate edition and are available upon request from the Committee on Criminal Justice.

The Nature of the Recommendations

Before presenting the final recommendations it should be stated that the facts, opinions, perceptions and perspectives examined throughout this process were as wide and diverse as the professions and geographic areas represented. Yet, the Task Force was unanimous in its view that a systematic yet constitutional, efficient and effective approach is a necessity. The approach it proposes focuses on the violator in that it provides for quick and speedy actions and at the same time begins to gradually alter society's attitudes to this grave problem.

The recommendations presented herein are the results of specific findings and perceptions which indicate that drinking and driving is a more serious problem than commonly believed. For instance, the amount of drinking and driving which occurs is far more pervasive than that indicated by the number of such incidents either detected, reported or which result in an arrest. Then again, even the number of arrests which do take place do not consistently lead to prosecution and conviction. Furthermore, drinking and driving has, on the whole, been viewed as acceptable behavior. With the above considerations in mind, the Task Force's recommendations were designed: to raise the public's perception on the risk of driving and drinking through public education; to increase detection and apprehension; to revoke licenses; to provide substantial penalties and fines; and to make available appropriate rehabilitation services.

In short, the recommendations which follow constitute a unified plan of action, a strong, effective attack on drunk driving in the State of Massachusetts.

COURT-RELATED RECOMMENDATIONS

In its consideration of court-related issues the Task Force favored a balanced approach to court action against the drinking driver. Its aim was justice and fairness in individual cases, with the proper mix of punishment, rehabilitation and prevention of further unlawful conduct on the part of the violator. The Task Force favored retaining judicial discretion in a way which is firm and maximizes the likelihood that the offender will not recidivate. The Task Force believed that the proposed recommendations will better insure arrest, conviction and disposition of each case under consideration; provide for the safety and protection of the community as well as the interests of the defendant, the immediate victim or his/her family; and insure prompt adjudication so that defendants will not obtain the tactical advantage inherent in an overburdened court system.

Although, the Task Force carefully reviewed the present system, i.e., current statutes as they relate to operating a motor vehicle while under the influence of alcohol, discussion of the current system is deferred for the sake of brevity. However, immediately following the recommendations on court-related issues is a chart which highlights the difference between the current system and that proposed by the Task Force. See Chart I at the end of this Chapter.

The Recommendations under court-related issues are as follows:

A. Driving Under the Influence: first offense. The Task Force recommended that:

1. Practices of continuing such cases without a finding, filing them, or placing persons in the care of probation officers under G.L. c. 276, s. 87, should be eliminated for this offense. A final judgment of conviction or acquittal should be entered in every case.
2. A defendant found guilty of a first offense of driving under the influence of alcohol (or drugs) should suffer a mandatory suspension of his or her license or right to operate. The minimum license suspension period should be 60 days if the defendant's blood alcohol level was below .20 (or if the offense is driving under the influence of drugs), and 120 days if the reading was .20 or above. If the defendant refused to take the test, the 60 day minimum should apply. However, the defendant would then also be subject to a separate 180 day loss of license for failure to submit to the test; see recommendation E-2.
3. The maximum period of license suspension should be one year.
4. The court should seize the license immediately upon conviction, notify the Registrar telephonically and then promptly transmit the license to the Registrar for safekeeping and eventual return. No separate Registry hearing should be necessary.
5. As is now the case, a judicial appeal shall not stay the effect of a loss of license.

6. A defendant found guilty should be sentenced to a mandatory term of imprisonment for not less than (NLT) 14 days and not more than (NMT) two years.
7. The period of imprisonment should be suspendable, in whole or part, and the defendant placed on probation, but only on the condition that the defendant successfully complete an appropriate program of driver alcohol (or drug) education, rehabilitation or treatment, as required by the court, and that he or she comply with all other terms of the order of probation. However, if the defendant was unlicensed, 14 days of the term of imprisonment should not be suspendable.
8. A defendant found guilty should also be sentenced to pay a mandatory fine of NLT \$200 and NMT \$1,000. If the defendant was unlicensed, \$100 should be added to the amount of the fine otherwise assessed. The fine should be non-suspendable, but the defendant should be allowed a reasonable time to pay.

The Task Force proposed the above changes because it believed that the present penalties for driving under the influence are light. It agreed that even first offenders should have a guilty finding placed on record and suffer a loss of license for some period of time. While the impact of a loss of license will vary with the circumstances of the defendant, public interest required that there be some uniformity of practice. The blood alcohol reading was determined as an objective measurement of the defendant's condition. This reading would be the factor that determines the minimum period of loss, e.g., a reading above .20 would require a loss of license for a minimum of 120 days.

The minimum 14 day sentence of imprisonment was viewed by the Task Force as a meaningful warning to first offenders. In addition, it serves as a reminder of the punishment that awaits the offender if he/she fails to comply with the terms of probation, including participation in a suitable program, in which case probation is revoked. The mandatory, non-suspendable fine, established by the court in the range of \$200 to \$1,000, was perceived as a viable deterrent to future drunken driving.

The Task Force adapted the system of minimum terms of license suspension, fine and imprisonment, with only the latter suspendable, to promote uniformity of disposition. Furthermore, it believed that by eliminating the present, unnecessarily severe mandatory one year loss of license on every conviction, judges and juries would be less reluctant to convict and continuance without a finding would be eliminated. Moreover, in such cases there would be less incentive for a guilty defendant to appeal to the jury session since, with the existence of mandatory minimums he/she would be unable to receive a more favorable disposition in a jury session (unless, of course, the defendant were found not guilty). Said procedure would also facilitate efficient caseload management and would, hopefully, avoid court backlogs in the jury sessions.

The Task Force proposed stiffer penalties for unlicensed drivers for first offenders, and, as will become obvious below, for second, third and subsequent offenders. The rationale behind this was that the criminality of drinking and driving is considerably heightened if the violator has no license in the first place. This matter, whether defendant is unlicensed, should be considered by the judge at disposition and should not be required to be alleged in the complaint.

In regard to loss of license, the Task Force decided that this should be a part of the court action and not a determination of a separate agency. While the court determines the length of revocation, and, in fact, seizes the license, subsequently it would be transmitted to the Registrar. The Registrar would be the custodian of the license during the period of suspension or revocation and would return the license to the defendant only upon presentation of a certificate from the court. The Task Force believed this procedure as desirable primarily because it viewed loss of license as an integral part of the penalty for this offense.

B. Driving Under the Influence: second offense. For a second offense the Task Force made the following recommendations:

1. The practices of continuing such cases without a finding, filing them, or placing persons in the care of a probation officer under G.L. 276, s. 87, should be eliminated for this offense. A final judgment of conviction or acquittal should be entered in every case.
2. A second offense should be defined as one occurring within six years of an earlier conviction.
3. The offense should be punishable by a mandatory, non-suspendable term of imprisonment of NLT 14 days and NMT two years, except that if the defendant was unlicensed the minimum term should be NLT 30 days.
4. The offense should also be punishable by a mandatory, non-suspendable fine of NLT \$300 and NMT \$2,000. If the defendant was unlicensed, \$100 should be added to the amount of the fine otherwise assessed. The defendant should be allowed a reasonable time to pay, however.
5. The offense should also carry with it mandatory revocation of license for NLT one year and NMT three years, the court to determine the precise period of revocation.
6. The defendant should be required to successfully complete an appropriate program of intensive driver alcohol (or drug) education, rehabilitation or treatment, as required by the court.
7. Proof of a second (or subsequent) offense should be streamlined so that it can be considered by the court at disposition but need not be alleged in the complaint.

It was the Task Force's opinion that a second offense is one of the most serious problems associated with drinking drivers. The data seemed to indicate that a relatively small, hard core number of offenders are responsible for many violations, the resulting injuries and deaths. For this reason, the Task Force favored a mandatory, non-suspendable fine of not less than \$300 and a mandatory loss of license for not less than one year. Although these are harsh penalties, the Task Force believed they are warranted by the tragic consequences to which other motorists and pedestrians are exposed.

C. Driving Under the Influence: a third or subsequent offense ("Chronic offenders").

The following recommendations were proposed for the chronic offender:

1. The practices of continuing such cases without a finding, filing them, or placing persons in the care of probation officers under G.L. c. 276, s. 87, should be eliminated for this offense. A final judgment of conviction or acquittal should be entered in every case.
2. A third or subsequent offense should be defined as one occurring within six years of an earlier conviction.
3. The offense should be punishable by a mandatory, non-suspendable term of imprisonment of NLT three months and NMT five years, except that if the defendant was unlicensed the minimum term should be NLT four months.
4. The offense should also be punishable by a mandatory, non-suspendable fine of NLT \$500 and NMT \$3,000. If the defendant was unlicensed, \$100 should be added to the amount of the fine otherwise assessed. The defendant should be allowed a reasonable time to pay, however.
5. The offense should also carry with it mandatory revocation of license for NLT five years and NMT ten years, the court to determine the precise period of revocation.
6. The defendant should be required to successfully complete an appropriate program of intensive driver alcohol (or drug) education, rehabilitation or treatment, as required by the court.
7. That portion of G.L. c. 90, s. 22F providing that one who has accumulated three or more convictions for driving under the influence within a five year period is to be punished as a habitual traffic offender should be repealed, as it will be unnecessary if the above recommendations are adopted.

Severe punishments were provided for chronic offenders, those found previously guilty either three or more times, primarily because these persons are the most dangerous. The Task Force believed that strong measures should be instituted to keep such individuals off the roads for a considerable period since they are the most dangerous of all drinking drivers.

D. Homicide by Motor Vehicle While Under the Influence of Alcohol (or drugs). The following recommendations were proposed for vehicular homicide:

1. A separate felony of motor vehicle homicide while under the influence of alcohol or drugs should be created.
2. The practices of continuing such cases without a finding, filing them, or placing persons in the care of a probation officer, under G.L. c. 276, s. 87 should not be permitted for this offense. A final judgment of conviction or acquittal should be entered in every case.
3. If the defendant has not previously been convicted of homicide by motor vehicle while under the influence, he or she should be punished by a mandatory term of imprisonment of NLT 18 months and NMT ten years. Only the term of imprisonment over and above 12 months could be suspended, i.e., every guilty defendant would be required to serve a minimum of 12 months. If the defendant were unlicensed, he or she would be required to serve an additional nine months to the term imposed. In addition, the defendant should pay a mandatory, non-suspendable fine of NLT \$1,000 and NMT \$5,000, with reasonable time to pay; and suffer a mandatory revocation of license or right to operate of NLT ten years and NMT 12 years, the precise period to be determined by the court. If the defendant was unlicensed, \$500 should be added to the amount of the fine otherwise assessed.
4. If the defendant has previously been convicted of homicide by motor vehicle, he or she should be punished by a mandatory, non-suspendable term of imprisonment of NLT five years and NMT 10 years. In addition, the defendant should pay a mandatory, non-suspendable fine of NLT \$1,000 and NMT \$5,000, with reasonable time to pay; and suffer a mandatory, permanent revocation of license or right to operate. If the defendant was unlicensed, \$500 should be added to the amount of the fine otherwise assessed.
5. The defendant should be required to successfully complete a program of driver alcohol (or drug) education, rehabilitation or treatment, as required by the court.
6. The provision of G.L. c. 90C, s. 2 requiring that an application for complaint be brought within three days of the date of citation should be changed to provide that cases of homicide by motor vehicle, whether by one who is under the influence or not, shall not be dismissed for failure to comply with the statute.
7. In order to facilitate prompt disposition of these cases, it should be required that cases pending without disposition for more than six months be reported by the District Courts to the Chief Justice of the District Courts.

The present offense of homicide by motor vehicle does not distinguish between death caused by one who is and is not under the influence of alcohol. The Task Force endorsed such a distinction, and thus proposed a separate crime of homicide by motor

vehicle by one who is under the influence. As can be seen from the above recommendations the penalties are severe for this offense, and should be considered a felony within the jurisdiction of both the District and Superior Courts.

The Task Force unanimously favored stiff penalties for this offense because it believed that there is no aspect of the drunken driving problem more difficult than the drinking driver who causes a death. In fact, the tragic and serious nature of these cases has been demonstrated in recent and past events in Massachusetts. In such cases, the feelings of interested parties understandably run extremely high. The victim's death is a terrible tragedy to family and friends. While the defendant may feel great remorse, the impact of the crime is devastating and final. Even though, the Task Force was aware that harsh penalties do not bring a victim back, they strongly believed that the crime cries out for meaningful punishment.

Finally, to insure the quick disposition that such cases call for, the Task Force recommended the reporting mechanism suggested in D-7. The Chief Justice of the District Courts advised them that such a mechanism could be established administratively.

E. Operating After Revocation or Suspension Based on Operating Under the Influence.

In these cases the Task Force made the following recommendations:

1. Special penalties should be established for cases in which a defendant drives after revocation or suspension of his or her license or right to operate when that revocation or suspension was based on a conviction for driving under the influence of alcohol or drugs.
2. The practices of continuing such cases without a finding, filing them, or placing persons in the care of probation officers under G.L. c. 276, s. 87 should be eliminated for this offense. A final judgment of conviction or acquittal should be entered in every case.
3. A defendant found guilty should be sentenced to serve a mandatory, non-suspendable term of imprisonment of NLT 30 days and NMT one year.
4. A defendant found guilty should also be sentenced to pay a mandatory non-suspendable fine of NLT \$250 and NMT \$500. The defendant should be allowed a reasonable time to pay, however.
5. The original period of revocation or suspension of license or right to operate should be automatically doubled.

The general perception, among the Task Force, was that a great many persons "take a chance" and drive after license revocation. This constitutes particularly grave conduct, as it not only negates the impact of the seizure of the license but also constitutes an affront to the court, to the law and the community in general. For this reason, the Task Force felt that a special penalty be established. In turn, the Task Force viewed these penalties as contributing to the efficacy of the license taking provisions, giving them added meaning in the eyes of the violator.

F. Administering the Blood Alcohol Concentration Level Test. The recommendations under this category are:

1. In addition to the present requirement that one who is arrested for driving under the influence is deemed to have consented to a test of blood alcohol concentration, the law should require that every driver who is involved in an accident resulting in death should likewise be deemed to have consented to such a test.
2. The period of suspension of license or right to operate in the event of a driver's refusal to submit to a test should be increased from 90 to 180 days, with no reduction of that period for any reason. This penalty should apply both to those who refuse the test after being arrested for driving under the influence and those who refuse after being involved in an accident where there is a death.
3. In the event of a refusal to submit to the test of blood alcohol concentration, the police shall seize the operator's license at the police station, notify the Registrar telephonically and then promptly transmit the license to the Registrar for safekeeping and eventual return. If the violator wishes to contest the seizure of his license, he may do so in a Registry hearing similar to that now provided by G.L. c. 90, s. 24 (1) (g).
4. Any period of revocation or suspension of license or right to operate resulting from the violator's conviction of either driving under the influence or homicide by motor vehicle while under the influence (see recommendations D-1 through 7) should be consecutive with the 180 day suspension for failure to submit to the test, and not concurrent therewith.

Task Force members were of the opinion that one problem in the enforcement of the drunk driving laws is detection. That is, some persons who are under the influence may not appear so. To reduce the number of such persons who escape prosecution for drunk driving and to protect the public from the dangers of drinking drivers, the Task Force believed that a blood test or breathalyzer should be administered in all cases involving a death as a result of a motor vehicle. This would be a new provision of law, one that could further discourage drinking and driving, facilitate trial, and provides an objective measure of the violator's condition. Even though the Task Force realized that the 180 day

suspension for refusal to submit to the test is a considerable penalty, it did not view it as an unreasonable condition for the privilege of being a licensed driver. Moreover, it was the Task Force's opinion that appropriate safeguards can be implemented to insure that licenses are not seized overzealously or improperly by the police.

G. The Role of the Passenger. The Task Force established a new offense which makes it a crime to be present in a moving vehicle in which the operator is under the influence of alcohol or drugs. The elements of the offense are:

1. That one was present in a moving vehicle where one knew or should have known that the operator was under the influence of alcohol or drugs.
2. A successful prosecution of such a case should require that the driver have been convicted of driving under the influence.
3. The passenger's knowledge of the operator's condition should be presumed if, in the case of alcohol, the operator's blood alcohol content was .20 or above.
4. The offense should be punishable by a fine of NLT \$100 and NMT \$500.
5. The court should have discretion to require the defendant in such a case to participate in a driver alcohol (or drug) education, rehabilitation or treatment program as a condition of probation, if it seems warranted.
6. The Legislature should study further whether, and if so, how, passengers should otherwise be held accountable by statute for riding in a vehicle being operated by one who is under the influence, and whether their own state of inebriation should affect their status.

The rationale behind the creation of this new offense is inherent in the Task Force's commitment that the law should encourage individual responsibility on the part of persons who are passengers in a vehicle operated by someone who is under the influence. It believed that this measure would not only act as a means of minimizing the danger to themselves but also serve as a reminder to the passenger of the seriousness of being part of an enterprise involving drunk driving. This is the reason that the Task Force recommended that a new law with a moderate punishment be created making it a criminal offense to be present in a moving vehicle where one knew or should have known that the operator was under the influence.

H. Consuming Alcohol While Driving. Present law does not state that it is illegal to consume alcohol while operating a motor vehicle. The closest statute presently in force is G.L. c. 90, s. 13, which prohibits an operator from having in a vehicle or on or about his person "anything which may interfere with or impede the proper

operation of the vehicle...." The Task Force believed that a statute should be enacted which prohibits or makes it a criminal offense to drink while operating a motor vehicle. To accomplish this aim the Task Force recommended:

1. A statute should be enacted making it a crime to have an open container or to consume an alcoholic beverage while operating a motor vehicle.
2. The offense should be punishable by a fine of NLT \$100 and NMT \$500.

I. Return of Operator's License. In the cases where the license has been suspended or revoked the Task Force recommended the following procedure:

1. Whenever the court revokes or suspends an operator's license or right to operate for an offense, as allowed pursuant to the earlier recommendations, the period of suspension or revocation should be established by the court within the ranges provided for.
2. If the court revokes the license or right to operate for the minimum period required, it should, prior to the expiration of the period, hold a hearing to determine whether the operator's license or right to operate should be reinstated. At such hearing the operator should be required to present a certificate, from an alcohol (or drug) education, rehabilitation or treatment program approved by the Director of the Division of Alcoholism, describing the program in which the operator has participated, certifying that the operator's successful completion of the program and also certifying that, in the opinion of the program director, the operator is fit to possess an operator's license again. Presentation of such a certificate should result in a presumption that the operator's license should be returned. However, in the face of clear and convincing evidence that the operator remains unfit to possess an operator's license, the court should be authorized to continue the period of revocation for a period and on such conditions as it determines, up to the maximum license revocation period for the offense.
3. If the court revokes the license or right to operate for more than the minimum period required, the operator should be permitted to apply to regain his license at an earlier time, but no earlier than the minimum period of license revocation provided by statute. A similar process of hearing should apply.

In the above cases where the court has revoked a license for the minimum period, the Task Force intended for reinstatement to be automatic, but it should follow a hearing where the matter is examined with deliberation. However, there should be a presumption that completion of an appropriate program warrants reinstatement. The intent is to keep the offender alert to the importance of staying on the path of rehabilitation permanently. Likewise, the Task Force was of the opinion that in the case of revocation for more than the minimum period, the offender should have an incentive to have his license reinstated early (but not earlier than the minimum revocation period).

J. Places and Terms of Imprisonment. In regard to this category the Task Force proposed the following recommendations:

1. There should be established one or more facilities devoted exclusively to housing non-violent persons who have been imprisoned for alcohol (or drug) related motor vehicle offenses.
2. The facilities should have the capability to offer comprehensive driver alcohol (and drug) education, rehabilitation and treatment programs to inmates, and all inmates should be required to participate in such programs.
3. Person incarcerated at such institutions should be required to serve their terms continuously. Weekend or other intermittent sentences should not be permitted.

Assuming that the Task Force's recommendations are adopted, members of the Task Force anticipated an increase in the number of individuals who would be imprisoned for this offense. This being the case, the Task Force suggested that special facilities be available to house such offenders because few such inmates are likely to be violent persons or potential escapees. Second, most will be serving relatively short terms, and, finally, all will be participating in education, rehabilitation or treatment programs at the facility. Given these considerations, the Task Force believed that nothing would be gained and probably much would be lost by housing these inmates in regular houses of correction. In fact, by keeping them together, they could focus their attention fully on their common problem thereby having a significant positive impact on their rehabilitation and future conduct.

The above suggestion should not be misconstrued. The Task Force is not recommending a "country club" atmosphere. Cells and confinement should be the rule. Weekend or other intermittent incarceration should not be permitted.

K. Distribution of Fines. As indicated by the previous recommendations the Task Force endorsed a system where fines are an integral part of alcohol related motor vehicle dispoitions as opposed to a simple alternative of incarceration. This fine was perceived in addition to the punitive value as a law enforcement function, one which could directly assist police in their attempts to control drunken driving. For this reason the Task Force made the following recommendation:

1. The total amount of the fines shall be distributed to the cities and towns and other police authorities for law enforcement and also for educational purposes. Specifically, the Secretary of Public Safety should be authorized to approve the funds upon submission of a plan.

The main purpose for this recommendation is to provide assistance in light of the difficult financial circumstances of many municipalities.

L. The Role of the Victim. Throughout the Task Force deliberations the victim was always of paramount importance. The following reommendations reflect this attitude:

1. In cases where serious injury or death results from an act of driving under the influence, the victim or the victim's family should have the right to state their views, if they wish to, prior to sentencing. There should be a statutory provision authorizing the Chief Justice of the District Courts to establish procedures for this purpose.
2. The District Attorneys should likewise be required by statute to establish procedures that insure that in such cases the victim or the victim's family is kept informed on the progress of the case and consulted with regard to the prosecution and disposition of the case.

The Task Force unanimously believed that it is essential that the victim, in the case of serious injury, or the victim's family, in the case of death, play a significant role in the court process. The Task Force understood that the Commonwealth represents the public interest in the prosecution of such cases. Yet, it firmly believed that there are significant private interests that must also be taken into account. In particular, the concerns of the parents or other family members of a deceased victim should be heard in order for the court to have a full understanding of the impact of the victim's death.

For the above reasons, the Task Force recommended that, in cases of serious injury or death, the victim or the victim's family have a definitive role in the judicial process. Specifically, they should be kept apprised of events by the District Attorney. This should be facilitated by the victim-witness units which some District Attorneys are utilizing or considering. In particular, the victim or his or her family should be consulted on issues of plea bargaining and recommended dispositions, understanding, of course, that ultimately these are matters for the District Attorney to decide. In addition, the victim or the family should, if they desire, be heard by the court prior to sentencing, in a manner that is allowed by the court -- letter, oral presentation to the court, etc. A District Court Sentencing Memorandum was issued in May, 1981, encouraging this practice. Utilization of such a procedure should be required by statute, with details to be prescribed by the Chief Justice of the District Courts.

M. Caseflow Management. The Task Force believed that caseflow is pertinent and should be monitored. To accomplish this it proposed the following recommendation:

1. Caseflow in the District Courts, as it pertains to the offenses enumerated in this report should be carefully monitored in order to insure that cases are disposed of promptly.

While any of the offenses discussed in this report could be brought in the Superior Court, the majority of such prosecutions will be and should be brought in the District Courts for two reasons. First, the District Courts have extensive experience and familiarity with the driver alcohol (or drug) education, rehabilitation and treatment programs that are an integral part of the dispositions in these cases. Second, the District Courts are generally able to process cases promptly. As noted by many authorities, justice must be swift in order for sanctions to be effective.

It is tempting to suggest that, in order to speed things up, trial de novo should be abolished in alcohol related motor vehicle cases, thus denying the defendant the delay occasioned by a second trial. While this may be a worthwhile idea in the abstract, the Task Force does not recommend it, first because it seems beyond the primary mandate of the Task Force, and second because it has implications which extend far beyond the problem of drinking drivers and into fundamental areas of judicial administration.

The statutory scheme that is recommended will only be effective if cases can be tried promptly. It is believed that the District Courts can process this business efficiently. The jury sessions, which have had jurisdiction over all District Court de novo and first instance jury trials for three years, are current. As of December 31, 1981, 70 percent of the 2,093 active cases pending in the jury sessions had been pending there for not more than 60 days. Only 15 percent of the cases had been pending for more than 90 days.

Still, the Task Force urges close monitoring of the situation, since it is impossible to predict just what the dynamics of these cases will be. How many defendants will want jury trials? How many will plead guilty? How many will want two full trials? On the other hand, defendants may feel that the expense of a jury trial is not worth it, since if convicted in the jury session, they will face the same mandatory penalties as in the primary court. Where incarceration is less likely in the primary court (first offender cases), defendants may choose to plead guilty or have their cases heard in the primary court and be done with it. If they receive the minimum sentence there, they would be unable to get more favorable treatment in the jury session, absent a full retrial and a not

guilty decision. Once found guilty in the primary court, a defendant would lose his or her license pending the appeal, and probably would regain it by the time the appeal is heard. On the other hand, defendants might opt for avoidance of the initial bench trial and claim a first-instance jury trial simply to delay the inevitable a bit longer, notwithstanding the extra expense, and run the risk of harsher disposition. Or they may insist on full trials before the primary court judge, which could be time consuming.

No one can tell how all of these factors will interact, but it is important that the case processing be followed carefully in order to minimize any foreseeable difficulties.

PRESENT LAW

CHART 1

PROPOSED LAW

Operating under the influence

- Continuances without a finding are now premitted.
- Imprisonment: NLT 2 weeks and NMT 2 years, suspendable.
- Fine: NLT \$35 and NMT \$1,000, suspendable.
- Note: Either a fine or imprisonment or both may be assessed.
- Note: Defendant may have his case continued without a finding and later dismissed if he completes a driver alcohol education, rehabilitation or treatment program.
- Loss of license: One year, mandatory, if convicted.
Five years, mandatory, if convicted and if it is the defendant's second OUI within 6 years.
Permanent, if a death results from the defendant's second OUI.
Some courts take licenses as a condition of a continuance without a finding.

Refusal to take the breathalyzer

- 90 day loss of license

Operating under the influence

- Continuances without a finding would not be permitted.
- Note: Imprisonment, fine and loss of license would all be required in all cases (except that imprisonment could be suspended in the case of a first offender); they are not alternatives.
- First offense
Imprisonment: NLT 14 days and NMT 2 years, suspendable; and
Fine: NLT \$200 and NLT \$1,000, non-suspendable; and
Loss of license: NLT 60 days and NMT 1 year if BAC is below .20, NLT 120 days and NMT 1 year if BAC is .20 or above, mandatory.
- Second offense (within 6 years)
Imprisonment: NLT 14 days and NMT 2 years, non-suspendable; and
Fine: NLT \$300 and NMT \$2,000, non-suspendable; and
Loss of license. NLT 1 year and NMT 3 years, mandatory.
- Third offense (Chronic offender)
Imprisonment: NLT 3 months and NMT 5 years, non-suspendable; and
Fine: NLT \$500 and NMT \$3,000, non-suspendable; and
Loss of license: NLT 5 years and NMT 10 years, mandatory.

Refusal to take the breathalyzer

- 180 day loss of license; license would be seized by the police immediately.
- Any other period of loss of license would be consecutive with this 180 day period, not concurrent.

Homicide by motor vehicle

- At present the ^{statute} applies both to drivers who were under the influence and those who drove recklessly or negligently.
- Imprisonment: NLT 30 days and NMT 2½ years, suspendable.
- Fine: NLT \$300 and NMT \$3,000, suspendable.

Driving after revocation or suspension

- Continuances without a finding are now permitted.
- First offense
 - Imprisonment: NMT 10 days, suspendable.
 - Fine: NLT \$50 and NMT \$100, suspendable.
- Subsequent offense
 - Imprisonment: NLT 10 days and NMT 1 year, suspendable.
- Habitual offender (3 or more OUI's within 5 years)
 - Imprisonment: NMT 2 years, suspendable.
 - Fine: NLT \$200 and NMT \$1,000, suspendable.
 - Loss of license: 4 years, reinstatable after 1 year for reasons of hardship.

Driving without a license

- First offense
 - Fine: NMT \$25, suspendable.
- Second offense
 - Fine: NLT \$25 and NMT \$50, suspendable.

Homicide by motor vehicle caused by one who is under the influence

- New offense created to deal exclusively with those who are under the influence.
- Continuances without a finding would not be permitted.
- First offense
 - Imprisonment: NLT 18 months and NMT 10 years, suspendable except for 12 months (thus, all first offenders will serve 12 months); and
 - Fine: NLT \$1,000 and NMT \$5,000, non-suspendable; and
 - Loss of license: NLT 10 years and NMT 12 years, mandatory.
- Second offense
 - Imprisonment: NLT 5 and NMT 10 years, non-suspendable; and
 - Fine: NLT \$1,000 and NMT \$5,000, non-suspendable.
- This offense would be a felony.

Driving after revocation or suspension

- Special penalties would apply if the revocation or suspension was for operating under the influence.
- Continuances without a finding would not be permitted.
- Imprisonment: NLT 30 days and NMT 1 year, non-suspendable, and
- Fine: NLT \$250 and NMT \$500, non-suspendable, and
- Loss of license: mandatory doubling of period of revocation or suspension previously imposed on the original offense.

Driving without a license

- Special penalties would apply if a defendant were unlicensed when he committed OUI or homicide by motor vehicle while under the influence.
- First OUI offense
 - Fine: Additional fine of \$100, non-suspendable.
 - 14 additional days.

-Subsequent offenses (during 12 month period).
Fine: NLT \$50 and NMT \$100 suspendable.

Being present in a moving vehicle where the driver is under the influence.

-No such offense at present.

Consuming alcohol while driving

-No such offense at present.

-Second OUI offense

Imprisonment: NLT 30 days (rather than 14 days), non-suspendable; and
Fine: Additional fine of \$100, non-suspendable.

-Third or subsequent OUI offense

Imprisonment: NLT 4 months (rather than 3 months), non-suspendable; and
Fine: Additional fine of \$100, non-suspendable.

-First offense of homicide by motor vehicle while under the influence

Imprisonment: an additional 9 months to the term imposed; and ...

Fine: additional fine of \$500, non-suspendable.

-Second or subsequent offense of homicide by motor vehicle while under the influence

Fine: Additional fine of \$500, non-suspendable.

Being present in a moving vehicle where the driver is under the influence.

-A new offense would be created.
-Fine: NLT \$100 and NMT \$500.

Consuming alcohol while driving

-A new offense would be created.
-Fine: NLT \$100 and NMT \$500.

REHABILITATION AND EDUCATION RECOMMENDATIONS

It was the belief of the Task Force that, in addition to strong law enforcement and penalties against drunk drivers, a total approach to combat drunk driving must include rehabilitation and education efforts. The Task Force was unanimous in its view that rehabilitation and education programs and activities are supplements to penalties under the law, not substitutes or alternatives to penalties.

For the sake of clarification the Task Force adhered to the principle that rehabilitation efforts with the drunk driver take place after the total countermeasure system has "failed." Therefore, its role in the entire countermeasure scheme is not preventive of a first offense, but rather is directed toward prevention of additional or repeat offenses. On the other hand, the primary purpose of education is the prevention of drunk driving in the first place.

Furthermore, they maintained that regardless of the undertaking, i.e., rehabilitation or education, no single approach or activity is a panacea for all adjudicated or potential drunk drivers. Rather, programs need to be tailored to different types of target groups because those who actually or potentially make up the drunk driving population are not a uniform group. This general principle applies both to rehabilitation and education, as for example, the first offender vs. the second offender in the case of rehabilitation and young people vs. adults in the case of education.

With these general views and principles as a background, the Task Force reviewed current laws and practices in order to make recommendations for program and law revisions. These reviews and recommendations follow after a brief presentation of current statutes and problems with the present system.

Rehabilitation: The Current System.

In brief, the current law permits a drunk driver to receive a continuance without a finding, or a finding of Guilty or Not Guilty. If a drunk driving offender receives a continuance without a finding, he must voluntarily go to a Driver Alcohol Education Program (DAEP) and/or further treatment along with one year's probation. (Whether or not the offender's license is removed varies from court to court). While the majority of those in Driver Alcohol Education Programs have continuances without findings, some justices send people who have been found Guilty to the programs. The offender pays the court a \$200 fee for the program. These funds are transmitted to the Division of Alcoholism, Department of Public Health, which has the responsibility for implementing the DAEP operations.

The Division of Alcoholism has established 27 Driver Alcohol Education Programs across the state to service 73 District Courts. Approximately 16,000 drunk driver offenders have gone through these programs annually for the past five years. The Driver Alcohol Education Programs consist of three components: (1) an intake/diagnostic session; (2) eight 2-hour group sessions; and (3) a disposition/recommendation session. Altogether the DAEP comprises about 20 hours over a period of about three to four months. From among those who complete Phase I, some clients are considered to be at higher risk and are referred for additional counseling called Phase II. At present the Division funds 21 Phase II programs across eight state regions. These Phase II programs typically consist of 8 group counseling sessions beyond Phase I. Currently, approximately 6000 clients go through Phase II programs annually.

Problems With the Present System

Considering the magnitude of the numbers handled by the present system, the rehabilitation effort works reasonably well - particularly with the first offender who is a social drinker. However, there are a number of major problems which, if corrected, could lead to significant improvements.

These problems include the following:

1. The current law makes no distinction between the first offender and the second or multiple offender. Approximately 20% of the drunk driving arrest events are accounted for by the repeat offender. Yet these repeaters are often returned to the Driver Alcohol Education Program rather than being found Guilty, and/or rather than being referred for more intensive treatment.
2. Current experience shows that sanctions with respect to the license are handled differently from court to court, and sometimes handled differently within a court. An offender may or may not have his license removed by the court under a continuance without a finding. As a result, Driver Alcohol Education Programs which serve several courts must contend with additional resentments felt by some of their group members who view their license removal as unequal justice under the law.
3. There is insufficient recognition of the fact that drunk driving offenders consist of different types. There is a prevailing impression that drunk drivers are either social drinkers or alcoholics. In actuality, evidence supports the fact that there are also other types including borderline problem drinkers and sociopathic types for whom the drunk driving offense is one manifestation of general lawless behavior. Except for the social drinker types, a Driver Alcohol Education Program is insufficient. The other types require more intensive rehabilitation interventions in addition to the DAEP (Phase I) program.

4. Diversion to intensive treatment may be perceived by the individual as a means of avoiding legal sanctions, rather than as an opportunity for self-evaluation and self-correction. This sense of "doing time" or "going through the motions" is sometimes reinforced by probation conditions requiring the client/offender to go to a fixed number of sessions, e.g., Alcoholics Anonymous meetings. While for some this may be a valuable initial step, it is insufficient to effect positive change in some people (particularly the alcoholic) and it tends to remove the responsibility for positive change from the client. Mere participation in a program does not guarantee the goal of a non-alcohol-abusing life. In the end, the client must commit himself to assume responsibility for change in treatment and to bear the burden of proof that positive change has occurred.
5. The current fee of \$200 established in 1975 is insufficient to conduct both Driver Alcohol Education Programs (Phase I) and more intensive Phase II programs. While the law sets a fee of \$200, it also provides waivers of fees for indigent clients. The net result is that in fact over the last four years, the average fee paid by clients has been \$140. The total revenues only marginally cover costs for Phase I programs and are woefully inadequate to cover intensive treatment. It is unrealistic to presume that even a raised fee can pay for intensive treatment.

The above problems inherent within the current system, then, are also the ones which the Task Force hoped to correct. Toward this goal the Task Force proposed the following recommendations:

A. Recommendations on the First Offender.

1. The Driver Alcohol Education Program (DAEP) should be retained under the law and should be administered by the Division of Alcoholism, Department of Public Health. But the Driver Alcohol Education Program should be applied to the first offender only, with the definition of the first offender being no prior DUI offense within the past six years.
2. The fee under the law should be raised and set at \$300 for the Driver Alcohol Education Program.
3. Routine diagnostic evaluation and assessment prior to judicial disposition is not necessary, but may be an open option in special cases.
4. The court, the Driver Alcohol Education Program, and the client should understand that the referral probation terms for DAEP participation are subject to further evaluation and possible further treatment. If the program discovers the client to have more serious problems (e.g. alcoholism) prior to completion of Phase I (DAEP), the program can notify the client and the court that more intensive treatment efforts will be required as a condition of probation in addition to Phase I.
5. For those clients requiring intensive intervention or treatment programs, such programs are available and others can be developed. Because such services

need to be customized to the specific nature of the client's problems and because such treatment may vary by type, by length of time in treatment, and by cost, these programs should not be administered by the Division of Alcoholism. However, by law the Division of Alcoholism should be required to certify such programs and provide a list of them to the courts. (Alcoholics Anonymous is obviously exempt.) The costs for intensive intervention or treatment should be borne by the client offender.

6. The burden of proof of responsibility for being a safe driver and/or recovery from problem drinking should be on the client offender. The period of probation should be a minimum of one year.

In making the above recommendations, the Task Force adhered to its original proposition that distinctions need to be made between the first, second and multiple offender. These distinctions should prevail both as to penalties under the law (see court-related recommendations) as well as to Driver Alcohol Education Programs and/or rehabilitation. This separation will allow a more tailored approach to treating individuals thereby increasing the efficiency within the system as a whole. Stated differently, Driver Alcohol Education Programs work best for the social drinker and together with other sanctions are usually sufficient for this type of person; whereas for multiple offenders this is usually not the case.

B. Recommendations on the Second and Multiple Offender.

1. The second offender is defined as anyone with a prior DUI conviction within the past six years. The second offender, if he has completed the Phase I Driver Alcohol Education Program, should be banned by law from being reassigned to such a program. Rather, an intensive diagnostic assessment and a customized intervention or treatment plan should be required.
2. Because the second offender is more likely to have some type of less controlled, serious drinking behavior, it should be required that such persons undergo a professional diagnostic assessment before referral disposition by the court, for intensive intervention or treatment. The diagnostic assessment would include a recommended intervention or treatment plan, which would be furnished to the court. These diagnostic assessments should be made by 8 to 10 Regional Diagnostic Centers which would be developed and administered by the Division of Alcoholism under the law. A fee of \$200 would be charged to the client/offender under the law to pay for the professional diagnostic assessment. These same Centers would also provide an additional post-treatment, clearance-evaluation function (see recommendation 3 below).
3. The type of intensive intervention or treatment program used should be customized for each client/offender. Such programs are available and others can be developed. Because such programs need to be customized to the specific nature of the client's problems and because such intervention or treatment may vary by type, by length of time in treatment, and by cost, these programs should not be administered by the Division of Alcoholism.

However, by law the Division of Alcoholism should be required to certify such programs and provide a list of these programs to the courts. (Alcoholic Anonymous is obviously exempt). The costs for intensive intervention or treatment programs should be borne by the client/offender.

4. On completion of intensive intervention or treatment, the burden of proof of responsibility for being a responsible driver with respect to alcohol use or recovery from problem drinking or alcoholism should be on the client offender. The period of probation should be two years for the second offender, and five years for three or more offenses. The client offender should be required to obtain a review and re-evaluation of his status after completing treatment.

These re-evaluations would be performed by the same Regional Diagnostic Centers mentioned above, under administration of the Division of Alcoholism. In effect these Centers would serve a clearance-evaluation function and would be seen as a protector of the public and a professional resource to the courts. The Centers would report to the courts in regard to license reinstatement and other conditions of probation, but the final decisions would be the courts. A fee of \$100 under the law would be paid by the client for this purpose.

As can be assessed from these recommendations, the Task Force endorsed a more intensive intervention/treatment program for second and multiple offenders. The reasoning was that said individuals are more likely to have some type of less controlled, serious drinking problem. Likewise, they are subject to a longer period of probation, two years for the second offender and five years for three or more offenses.

C. Other Recommendations

1. Money from the fees paid for the Driver Alcohol Education Program should be collected by the courts and forwarded to the Division of Alcoholism, as is the current practice. These fees should be deposited with the State Treasurer, to be kept in a separate fund in the treasury for expenditure by the Division of Alcoholism for the DAEP.
2. If the recommendation for the establishment of Regional Evaluation and Clearance Centers is accepted, procedures for the collection and expenditure of fees for this purpose should be similar to those used by the Driver Alcohol Education Programs.
3. No person should be excluded from participation in the various programs because of an inability to pay the stated fees. However, such persons would have to file an affidavit of indigency with the court, and the court would have to confirm such indigency in writing.
4. Provision should be made in the law that the separate treasury fund for drunk driving may also be used by the Division of Alcoholism for purposes of conducting intervention and treatment demonstration programs, evaluation projects, and education activities related to drunk driving.

5. Information exchange between the courts, other official agencies, Driver Alcohol Education Programs, and intensive intervention and treatment programs is vital. Complete records as soon as possible on the DUIL offender should be kept, including Blood Alcohol Concentration (BAC), at time of arrest, prior criminal history of arrests, terms of probation, referral agencies, etc. This information should be made available, on request, to the Driver Alcohol Education Programs and to the Regional Evaluation and Clearance Centers.

Taken together, it is obvious, that the recommendations proposed by the Task Force are meant to treat the specific needs of the offender. Even though, the client offender is charged a fine, the Task Force recognized the fact that certain individuals are unable to absorb such costs. These individuals are not to be excluded from participation in the various programs, rather they may file an affidavit of indigency with the court. Moreover, these recommendations reflect that a system works best when all of the components are in harmony. That is, Driver Alcohol Education Programs work best when there is a clear understanding and agreement between the courts (judges and probation officers) and the programs. The terms or conditions of probation of the DUIL offender are a three-way "contract" between the driver, the court, and the program. Each of the three parties to the "contract" must fulfill his or her responsibilities.

For an example of how the above recommendations would read in statute form see Appendix, p. 49.

Education: Current Status and Problems

Most efforts to reach young people with an alcohol education and abuse prevention program have historically been centered within the public schools. This can be partially attributed to the existence of Chapter 71 of the General Laws of the Commonwealth which alludes to "instruction as to the effects of alcoholic drinks." Although this law exists, there is no uniformity concerning its implementation within the school setting. The range of programs can extend from a "one-shot" assembly program to one which integrates and involves students, faculty, administration, and the community. Many school systems rely on outside resources such as programs featuring recovering alcoholics and others who are drug-dependent, who offer their services either on a fee or free basis. This type of program, due to its short duration, precludes the development of resources existing within the school system, have little or no community involvement and therefore operate in isolation.

Perhaps the main drawback to the implementation of meaningful alcohol education in the public schools is the absence of community consensus concerning the use of alcohol. Thus the schools are not given a clear mandate of what the community wants taught.

Many areas exist in the community for delivering information and knowledge to the public concerning alcohol education and highway safety. The general public lacks both knowledge and understanding of beverage alcohol and this factor, combined with extremely ambivalent attitudes toward alcohol in general, produces a public which - although it may use alcohol - has little or no understanding of the potential for abuse and its resulting effects. In other words, "we think dry but drink wet," which in fact represents Prohibition Era mentality.

Resources for the prevention of alcohol on a general level and specifically alcohol and driving already exist within the community, but in limited numbers. These services are fragmented and function in a piecemeal manner. Additional funding sources will be required. The opportunity for delivery of alcohol education in a preventive manner exists at many levels within the community. These would range from media campaigns to community-wide efforts utilizing print material and actual classroom techniques or other situations where the public is exposed to a clear and consistent message concerning alcohol and its use, non-use, and abuse.

The current situation concerning alcohol education does not provide for a coordinated and consistent effort and message. Too often the message is either inaccurate, overly emotional, or of a confused nature. In order to deliver a consistent message in a rational and meaningful manner, the "deliverers of the message" must become part of a system which certifies the necessary qualifications of those who are entrusted with the task of intervening in current alcohol education efforts. In addition to teaching about alcohol, an educational process which also includes attitudes, values, decision-making and coping skills in the context of day-to-day happenings has a better chance of reaching the student.

The public schools must be viewed as part of the community and not as the only locus for providing alcohol education. In addition to schools, another current source for alcohol education is the Massachusetts Department of Public Health through its Division of Alcoholism, which funds eight regional prevention centers covering the entire state. They are contractually responsible for:

- (a) Developing prevention resources and services on a regional basis;
- (b) Coordinating those services for the primary prevention of alcohol abuse within their individual regions.

It must be understood that these prevention centers, in addition to the State Department of Education, are limited in both funding and personnel. Any proposed expansion of their services must provide for adequate funding to accomplish their mandate. (For a breakdown of the costs of such a program see Appendix, p. 52).

The Task Force proposed the following recommendations for improvement in the area of education:

A. Public Schools and Community Education. Expansion of alcohol education resources.

1. There should be an expansion of alcohol education resources in the Department of Education, Division of Alcohol and resources within the individual community school systems.

The Task Force suggested the above, because it recognized the importance of and the need for an expanded alcohol and highway safety preventive educational program within the Commonwealth's public systems. These new programs would recognize the relationship between the schools and community and the unmet needs of both. The Task Force suggested several options or combinations of options for implementation among which were:

...Trained alcohol abuse prevention specialists could be made available on a "roving" basis to serve as resource specialists to individual community school systems. The number of resource specialists required would depend on the level of demand from individual community school systems.

...Each school system or combination of school systems could have a permanent "alcohol abuse prevention specialist" located within their systems who would work directly with students, in addition to training teachers who would carry out alcohol education.

One caveat that the Task Force noted in its discussion was that alcohol education as defined for purposes of this recommendation not be confined to the physical facts about alcohol, but rather should also include but not be limited to values clarification, decision making and coping skills.

B. Certification of Educators.

1. The Department of Education should certify alcohol abuse prevention educators.

The Task Force agreed that all educators providing alcohol education, in either the public schools or other community locations, should possess adequate knowledge and

understanding of the issues related to alcohol abuse. It was the Task Force's opinion that the Department of Education, within its mandate and availability of funding, should establish a task force representing public and private groups and individuals. In turn, they would make recommendations to the Board of Education on appropriate requirements for the certification of alcohol abuse prevention educators.

C. Certification of Driver Education Instructors.

1. All classroom driver education instructors shall complete and be certified in an approved alcohol education course in public, private, and commercial schools. The course should consist minimally of six hours in which the following material would be covered:
 - (a) The implied consent law and any other laws that may relate to drinking and driving;
 - (b) The law as it relates to the legal drinking age;
 - (c) Explanation and determination of a Blood Alcohol Concentration (BAC) and the potential effects at the various levels;
 - (d) Any other information that people need in order to make an informed decision concerning their use or non-use of alcohol.

As a complement to the above, the Task Force recommended that the Registry of Motor Vehicles, the Division of Alcoholism, and the Department of Education should review existing criteria, qualifications and requirements governing certification of instructors and licensing of schools. This measure would insure quality school instructors as well as provides a mechanism whereby changes could be implemented to maintain a quality program.

D. Licensure Requirements.

1. Every applicant for an initial Massachusetts driver's license shall attend a driver education school or drivers' education program which has been approved by the Commonwealth of Massachusetts. Instead of attending an approved driving school, each candidate for a Massachusetts driver's license shall successfully complete an alcohol and highway safety course which shall minimally consist of four hours. This mini-course may be taught by certified driver education instructors or other certified alcohol education instructors. A projected fee of \$10.00 should be charged each license applicant. In addition to licensed driver education schools offering this course, other sources to be considered might include community colleges, adult education programs in local schools, and state colleges (continuing education programs).

2. The driver's license manual should contain an extensive section on alcohol and alcohol abuse. Information should consist of: the implied consent law; blood alcohol concentrations and varying effects; penalties for driving under the influence; and other necessary information to enable license applicants to have a knowledge of alcohol as it relates to highway safety.
3. Applicants for a Massachusetts driver's license should be orally examined on a minimum of five questions related to alcohol and highway safety. These questions should be asked at both the time of the learner's permit exam and before the road test exam.
4. The driver's manual (current) should be examined for inclusion of information and its acceptability concerning alcohol. This should be performed cooperatively by the Registry of Motor Vehicles, the Department of Education, the Division of Alcoholism, and the Driving Schools Associations.
5. In the case of license renewal, all applicants should be tested orally on a series of at least five questions concerning alcohol and highway safety. In the mailing of all license renewal applications, there should be included a full description of the current statute relating to alcohol and driving, and a booklet which covers the questions on which each renewal applicant will be examined.

The Task Force's intention behind the above recommendations was to insure that the public, in particular those who have or wish to acquire a license, have the necessary information regarding alcohol and its relationship to highway safety. Inherent in these recommendations is the message that driving is a privilege, one which requires the appropriate knowledge.

E. Media Campaign.

1. Television and radio public service announcements should be developed in cooperation with stations, publicizing the current statute and resultant penalties.
2. A series of roadway signs promulgating the current law as it relates to drinking and driving should be erected on Massachusetts highways.
3. Media publicity on driving under the influence, related arrest and prosecution should be promoted. Editorial boards of both print and electronic media should be approached minimally once every two or three years in an effort to promote adequate and timely coverage.
4. Point of contact areas such as gas stations, package stores, bars, restaurants and others having an alcoholic beverage license should prominently display signs promulgating the laws relating to alcohol and highway safety. Pamphlets and other printed material should be distributed by these establishments.

5. Various service groups in the Commonwealth should be approached to participate in developing educational programs for both their own constituency and the community. Any effective program dealing with alcohol and highway safety must call for a community-wide effort.
6. A media campaign should be developed which uses as a centerpiece a basic awareness statement.

The Task Force proposed a wide-scope media campaign, i.e., use of television, radio, roadway and display signs in stores or other businesses which dispense alcohol, to insure total coverage. It was the Task Force's belief that an informed public is a more responsible public.

F. Dispensers of Alcoholic Beverages. Licensed facilities and schools of bartending.

1. Any bar, tavern or lounge, licensed to dispense alcoholic beverages, shall be required to have all employees who dispense or serve these beverages acquire knowledge on alcohol use and abuse, including the latter's relationship to highway safety. The Alcohol Beverage Control Commission and/or the local licensing authority shall insure that the above-mentioned types of liquor establishments have complied with arranging for their employee's education on alcohol use and abuse.
2. Schools of bartending should be required to provide within their curriculum adequate information concerning alcohol and highway safety, and any other relevant information. Current statutes place the responsibility for licensing these schools within the Department of Education. The Division of Alcoholism should work in a cooperative effort with the Department of Education to examine current licensing practices and procedures. Teachers within these schools should also be properly certified by the Department of Education in order to instruct within these schools.

In addition to making the public more aware and responsible as regards alcohol use, the Task Force also favored making dispensers of alcoholic beverages more knowledgeable. Toward this aim, the Task Force recommended that all employees who dispense or serve beverages be required to be knowledgeable on alcohol abuse and use. In turn, schools of bartending should include within their curriculum information on alcohol and highway safety.

HIGHWAY SAFETY RECOMMENDATIONS

In the Task Force's review and analysis of the problems affecting citizens on Massachusetts highways, the drinking driver emerged as the number one problem. A 1968 report released by the United States Secretary of Transportation documented that alcohol-impaired drivers are involved in at least 50% of the nation's traffic fatalities. This report further identified a large proportion of individuals who could be classified as "problem drinkers." Their definition of a "problem drinker" was persons who regularly drive while seriously impaired by alcohol.

In 1968, the Massachusetts Public Safety Commission also released its study which confirmed the findings of the national study. The Massachusetts study took a 15% sample of all motor vehicle deaths for the years between 1962-1968. The results of the study were as follows:

Of the 369 operators who were killed in single vehicle accidents, 254 (69%) were impaired by alcohol and 30 (8%) had been drinking, but below the impaired level.

Of the 221 operators who were killed in the multiple car accidents, 108 (49%) were impaired by alcohol and 32 (14%) had been drinking. (In some accidents both drivers were impaired).

Of the 257 pedestrians killed, 147 (57%) were impaired by alcohol and 24 (9%) had been drinking.

All studies in Massachusetts since that time support the Nationwide findings that alcohol impairment is found in at least half of all fatal accidents. (See Tables 1, 2, and 3, Appendix, p. 53).

In light of this information, the Task Force made recommendations that would allow the development of a comprehensive program to remove the drinking driver from the highway.

Highway Safety recommendations are:

A. Increase Detection and Arrests.

1. Increase detection and arrests through specialized training for all police officers in the area of identifying drunk drivers and operating breath testing equipment. Eight hours minimum training would be required.

A review of police training indicated to the Task Force that specialized training increases detection and arrests, especially if accompanied by a favorable management attitude. Such training, according to the Task Force's research, would require a minimum of eight hours. In addition, to maintain a high level of efficiency, the Task Force favored a refresher course to be conducted on an annual basis. Both types of training should be a routine part of both basic officer training and refresher training programs. Finally, the Task Force noted that such programs have been found to be highly cost effective in terms of increasing arrests.

B. Provision for Necessary Equipment.

1. Provide necessary equipment for effective detection, apprehension, and prosecution such as: modern chemical test equipment, mobile vans, preliminary breath test (PBT) equipment, and video tape equipment.

The Task Force recognized that police efficiency is related to equipment needs. Stated differently, with the purchase of the proper equipment a policeman can do his job rapidly, efficiently and with greater effectiveness. The latter refers to detection, apprehension, processing and prosecution of DUI cases. In recommending the above, the Task Force was only endorsing that jurisdictions purchase equipment according to needs. For example, mobile vans would be appropriate only in those jurisdictions which show that implementation would be most cost-effective.

C. Enforcement Program Aimed at the Impaired Driver.

1. It is recommended that the enforcement agencies in the Commonwealth, with the assistance of the Governor's Highway Safety Bureau, submit to the Secretary of Public Safety an enforcement program aimed at the impaired driver within their jurisdictions.

A fundamental assumption of the Task Force was that a key element in combatting alcohol-related incidents is providing adequate enforcement in order to remove the impaired driver from the streets and highways. The importance of such enforcement efforts lies in the fact that all other systems depend on its proper function. That is, if police do not detect and apprehend the drinking driver, the remaining components become dysfunctional. For these reasons, the Task Force endorsed the implementation of an enforcement program which would remove the impaired driver. Moreover, enforcement data generated by the Massachusetts State Police-Alcohol Teams clearly demonstrated

that an aggressive patrol - one aimed at removing the drinking driver - has had a definite impact on fatal accidents on the state highways.

D. Allocation of Funds.

1. Allocate funds to either update the existing information system or create a unit within the Office of the Secretary of Public Safety to provide the following information: up to date accident information, accurate license and registration information, and timely data to identify the repeat offender.

The Task Force believed that critical to any Highway Safety Program is up to date, accurate information to properly identify the time of day, week and the location of high incidence of alcohol related accidents. In addition, such information would provide accurate information on the problem drinker, drivers with suspended or revoked licenses could be more easily identified by police, and probation officers could single out the repeat offender. For these reasons the Task Force endorsed the above recommendations.

E. Media Campaign.

1. Develop a full scale public information campaign aimed at:
 - a. increasing public awareness of drinking and driving;
 - b. increasing the level of perceived risk of apprehension;
 - c. increasing acceptance of responsibility by the general public to intervene in drinking and driving situations; and
 - d. increasing involvement of private sector organizations in delivery of public support and prevention programs. Such a program would be coordinated through the Office of the Secretary of Public Safety with assistance offered through the Governor's Highway Safety Bureau.

Endorsement of a full scale media campaign as described above was favored by the Task Force for two main reasons. First it concurred with the National Highway Traffic Safety Administration, that coupled with public information, enforcement programs will have more of an impact on accidents. Second, an effective media campaign can target two of the major problems as regards driving under the influence of alcohol. This two-fold approach would create a media program targeting the drinking driver, that is, instill the fear of arrest in potential offenders, thereby acting as a deterrent. On the other hand, it would address significant others, who are individuals in a position to control or stop the potential drinking driver from driving. These individuals should not only be made

more aware of the severity of the problem but should also be informed that in the future they may be held responsible.

F. Evaluation.

1. Require evaluation of all highway safety activity to ensure proper use of funds and provide decision-makers with information on program effectiveness.

The Task Force endorsed evaluating all highway safety activity in order to provide decision-makers with appropriate information on: the degree of efficiency generated by program implementation, whether said activities are producing intended effects, and as a basis for a decision to continue, modify or terminate projects and programs. In short, evaluation provides the format for progress. With this in mind, the Task Force suggested that DUI enforcement programs, whether funded and conducted on the local, state, or federal level should include an evaluation design to allow measurement of impact.

G. Funding.

1. Review the possibility of drafting legislation which will provide funds for a comprehensive highway safety program.

It was the Task Force's opinion that a primary goal in planning and development is the establishment of a continuing alcohol safety program. If this goal is to be realized, programs need to be made financially self-sufficient. For this reason, the Task Force favored drafting legislation which would provide such programs with their own or special revenue sources, thereby insuring that good programs will not be short lived or terminated before their true value can be assessed.

LAW ENFORCEMENT RECOMMENDATIONS

The Task Force's comparative analysis of Massachusetts law prior to and after 1975 produced some interesting findings. In 1975 Massachusetts revised the law concerning drivers charged with operating under the influence of alcohol. Under this revision judges were given the major additional option to continue cases without a finding, placing the individual under probation supervision and assigning the individual to a driver alcohol program.

An evaluative assessment of the merits of the new law, showed that from 1970 to 1974 the percentage of driving under the influence of alcohol per 100 licensed drivers rose from .2870 to .4499, an increase of 56%. This increase, in fact, was responsible for the aforementioned change in the 1975 law. In contrast, from 1975 to 1980 the percent of arrests for driving under the influence of alcohol rose from .4937 to .7427, a 50% increase. In absolute numbers, in 1980, over 27,000 persons were arrested for driving under the influence compared to 16,000 in 1975. (For a complete breakdown of these figures for the years between 1970-1980 see Table 4 in the Appendix, p. 56).

It is obvious from these statistics that the law enforcement community was effective in apprehending these offenders. However, the 1975 law allowed criminals to escape punishment. This became evident in the study conducted by the Probation Department. This study showed that virtually two-thirds of those arraigned for driving under the influence had their cases continued without a finding. Similarly, only one-third of the defendants were found guilty for "driving under" for the years 1977-1980. (For complete breakdown see Table 5 in the Appendix, p. 57).

The above clearly indicates that the law needs to be revised. Given that this issue was addressed and changes for correcting the law were handled in the Court-Related Section of this report, the recommendations presented in this Chapter go beyond the legal realm. In other words, in addition to the proposed laws for driving under the influence, a comprehensive community approach is needed. The police cannot do the job alone. In fact, in the Commonwealth the vast majority of municipal police agencies have less than 50 sworn officers. Bearing this in mind, the law enforcement recommendations focus on police, professional and community efforts to control drivers who drive under the influence.

Thus, the main thrust of the recommendations which follow is to increase cooperative action toward the common goal:

A. Role of the Local Police.

1. Local police departments should arrange regular meetings with the liquor establishments in their towns to work out a successful enforcement program.
2. Police in local communities should make periodic checks on all licensed establishments that sell alcohol beverages.

The Task Force's intent behind the first recommendation is to have qualified members of the police department meet on a regular basis with owners, managers and key employees of all liquor establishments in their jurisdiction. During these meetings, police, the liquor licensing officer or community service officers could explain the laws and licensing regulations governing these businesses. These discussions should also include an emphasis on stringent local enforcement and the penalties that will be imposed on violators; how to handle patrons who are under the influence, i.e., in a manner that will be most helpful and responsible to all involved (call a cab or friend); as well as general and educational information on alcohol. These sessions will also serve to establish good rapport between police departments and liquor establishments, thus increasing the likelihood of cooperative action toward the common goal and decreasing the number of individuals who drive while under the influence.

The rationale behind the second recommendation is an attempt to reach the intoxicated person before he starts to drive. The manner in which this is to be accomplished is by periodic checks on establishments which serve alcohol. Such enforcement would be conducted when the number of persons drinking is the highest, that is, on Friday and Saturday nights. These checks would eventually cover every establishment in a specific locality. Not every tavern, bar, or lounge would be checked on the same evening. However, if during these checks the police noticed that one particular establishment continually served liquor to already intoxicated individuals or minors, then they would be more closely watched. In short, this practice would show a concern and awareness on the part of police departments; and would also impress upon the establishments and their patrons that the laws will be enforced.

B. Re-institute Road Blocks.

1. Local police departments should re-institute the road block concept consistent with constitutional guidelines and case law.

Even though road blocks are currently the subject of much controversy, the Task Force favored re-instituting them. In fact, it hoped that the Massachusetts Supreme Court or the Attorney General would soon reach a decision as to whether these road blocks can be conducted within constitutional boundaries, i.e., without violation of civil rights. In support of re-instituting road blocks, the Task Force noted the case of *Delaware vs. Prouse* (1979).

In this case, the United States Supreme Court ruled that police may use roadblocks to enforce traffic and license regulations, even when probable cause for a stop does not exist. The criteria used to justify the stop must be sufficient to outweigh the invasion of privacy caused by such a procedure. Moreover, in the case of the United States vs. *Martizen-Fuerte* (428 U.S. 543, 560, n. 14, 1976), the court found that roadblock-type stops were non-intrusive when advance notice was given and the stops were reasonable in duration. For these reasons the Task Force favored re-instituting road blocks. To abide by the findings stated in the court cases, they proposed the following guidelines when instituting road blocks:

1. a large number of officers should be present so that the duration of the stop will not exceed 10-12 minutes;
2. the police must stop a group of vehicles rather than individual cars indiscriminately; and
3. a breathalyzer device should be present at the scene of the roadblock.

C. Legislation.

1. The state should pass legislation compelling emergency room doctors to call the police if they have reason to believe that a person undergoing treatment had been operating a motor vehicle while under the influence of alcohol.

It was the opinion of the Task Force that some persons who had been drinking and involved in a traffic accident are often rushed to the hospital, thereby escaping detection by the authorities. To overcome this problem, the Task Force favored requiring doctors to report such cases to the police. Since doctors are now mandated to report incidents of child abuse the same should apply to alcohol abuse cases given that they pose a similar danger to public safety. To accomplish the above, emergency room doctors should meet with police to establish a policy of procedures.

D. Board of Appeals on Motor Vehicle Liability Policies and Bonds.

1. An Act should be passed whereby the Board of Appeals on Motor Vehicle Liability Policies and Bonds may not annul or modify the Registrar's decision to uphold a police seizure of a license of any such person who refuses the test for blood alcohol concentration (BAC).

The Task Force made the above recommendation to insure that the Board of Appeals would not supercede the power mandated to the Registrar, thereby not undermining the latter's authority. For an example of the draft legislation for this recommendation see Appendix, p. 58.

APPENDIX

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Proposed Statute Language

The following provisions should be inserted in the appropriate sections of a new Chapter 90 law on drunk driving:

(1) Section - - . Any person convicted of operating a motor vehicle while under the influence of intoxicating liquor may be placed on probation for two or more years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided herein and also, if deemed necessary by the court, to an alcohol intervention or rehabilitation program as provided herein. A person who within six years has previously been convicted for drunk driving or who has previously completed a driver alcohol education program shall not be eligible again for a driver alcohol education program. A person who has been previously convicted within six years may be allowed by the court to undergo an intensive intervention or rehabilitation program and shall pay directly to the programs for all expenses incidental to said intervention or rehabilitation. Such orders of probation shall be in addition to any penalties imposed or any requirement imposed as a condition for any suspension of sentence.

(2) Section - - . Driver alcohol education programs utilized under the provisions of this section shall be established and administered by the Director of the Division of Alcoholism. The Director of the Division of Alcoholism shall seek, from time to time, advice and consultation from other relevant state officials on the content of such programs.

A fee of three hundred dollars shall be paid to the chief probation officer of each court by each person placed in a driver alcohol education program. All such fees shall be deposited with the state treasurer to be kept in a separate fund in the treasury for expenditure by the Division of Alcoholism for the support of said program.

No person may be excluded from said program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof.

(3) Section - - . The separate driver alcohol education program funds deposited with the state treasurer may also be used by the Division of Alcoholism for purposes of conducting intervention and treatment demonstration programs, evaluation projects and education activities related to drunk driving.

(4) Section - - . Any repeat offender, defined as one who has been previously convicted for drunk driving within the previous six years shall, as a condition of probation, consent to a pre-sentence professional diagnostic evaluation before referral disposition by the court for intensive intervention or treatment. The professional diagnostic evaluations shall be provided by regional diagnostic centers to be established and administered by the Director of the Division of Alcoholism. The regional diagnostic centers shall provide a report in writing to the court which shall include but not be limited to information pertinent to the person's personality,

drinking status, past criminal history, and past driving record, which information shall be used to make a recommendation for an intervention or treatment plan. The Registrar of Motor Vehicles, the state Probation Department and the courts shall cooperate with the regional diagnostic centers in furnishing relevant records and information.

A fee of two hundred dollars shall be paid to the chief probation officer of each court by each person referred for a professional diagnostic evaluation. All such fees shall be deposited with the state treasurer to be kept in a separate fund in the treasury for expenditure by the Division of Alcoholism for support of said regional diagnostic center programs.

No person may be excluded from said program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof.

(5) Section - - . Any alcohol intervention, treatment or rehabilitation program utilized for further treatment after the driver alcohol education program in the case of a first offender, or any alcohol intervention, treatment or rehabilitation program utilized by a second or multiple offender shall be certified by the Division of Alcoholism. The Division of Alcoholism shall promulgate regulations and procedures for establishing requirements and standards for such certification and may charge a fee for such purpose. The Division shall prepare and publish annually a list of all such certified intervention, treatment or rehabilitation programs, shall make this list available upon request to members of the public, and shall from time to time furnish each court in the Commonwealth, the Registrar, and the Secretary of Public Safety with a current copy of said list.

(6) Section - - . Upon completion of intensive intervention, treatment or rehabilitation, the burden of proof of, or responsibility for, being a safe driver and/or recovery from problem drinking or alcoholism shall be on the drunk driving offender. The drunk driving offender shall be required to obtain an independent review and re-evaluation of his status after completing an intensive intervention, treatment or rehabilitation program. The Registrar of Motor Vehicles, the state Probation Department and the courts shall cooperate with the regional clearance centers in furnishing relevant records and information. The centers shall make a report to the court of its recommendations in regard to license reinstatement and other conditions of probation, but the final decisions would be the court's. The re-evaluations performed under the provisions of this section shall be made by regional clearance centers to be established and administered by the Director of the Division of Alcoholism. The Director of the Division of Alcoholism shall seek, from time to time, advice and consultation from relevant state officials and the Chief Justice of the district courts on the procedures of such programs.

A fee of one hundred dollars shall be paid to the chief probation officer of each court by each person referred for re-evaluation to the regional clearance centers. All such fees shall be deposited with the state treasurer to be kept in a separate fund in the treasury for expenditure by the Division of Alcoholism for support of said regional clearance center.

No person may be excluded from said program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof.

(7) Section - - . The state treasurer may accept for the state for purpose of driver alcohol education, intervention, treatment or rehabilitation any gift or bequest of money or property and any grant, loan, service, or payment of property from a governmental authority. Any such money received shall be deposited in a separate fund in the treasury for expenditure by the Division of Alcoholism for support of said program of driver alcohol education, intervention, treatment or rehabilitation in accordance with the conditions of the gift, grant or loan without specific appropriation.

GENERAL ALCOHOL ABUSE PREVENTION EDUCATION

Public Schools

The State Department of Education shall, within its mandate and should funds be available, provide public school systems with information pertaining to the utilization of community resources such as regional primary prevention centers for assistance in the areas of teacher training, classroom work with students, demonstration projects, programs for teachers, parents and other community agencies, curriculum development, training of students for peer education and any other activities which shall fall under the aegis of alcohol education and/or highway safety and alcohol abuse. The State Division of Alcoholism shall cooperate and collaborate with the Department of Education in this effort.

A major portion of the services provided by the Department of Education would consist of at least 20 hours of instruction provided by Department of Education personnel for every eighth grade student enrolled in public schools of the Commonwealth. Such alcohol abuse prevention education would not be limited to factual information about alcohol but would also include values clarification, decision-making, and coping skills.

The funds required are as follows:

| | |
|--|--------------------|
| 40 full-time professional staff @ \$24,000 per person | \$ 960,000 |
| 8 full-time clerical staff @ \$15,000 per person | 120,000 |
| Travel reimbursement @ \$2,500 per professional per year | 100,000 |
| Materials and supplies @ \$2,000 per professional | <u>80,000</u> |
| | \$1,260,000 |
| Overhead @ 20% | 252,000 |
| Indirect costs @ 4.9% | <u>61,740</u> |
| TOTAL | \$1,573,740 |

Certification of Alcohol Abuse Prevention Educators

The Department of Education shall, within its mandate and should funds be available, establish a task force representing public and private groups and individuals to make recommendations to the Board of Education on appropriate requirements for the certification of alcohol abuse prevention educators.

The funds required are as follows:

| | |
|--|-----------------|
| 2 full-time professional staff @ \$24,000 | \$48,000 |
| 1 full-time clerical support staff @15,000 | 15,000 |
| Materials and supplies | 5,000 |
| Travel | 2,000 |
| Overhead @ 20% | 14,000 |
| Indirect @ 4.9% | <u>3,430</u> |
| TOTAL | \$87,430 |

TABLE 1

CRIMINAL COMPLAINTS: DRIVING UNDER THE INFLUENCE
1970 - 1980*

| <u>Year</u> | <u>Number of Arrests</u> |
|-------------|--------------------------|
| 1970 | 8,574 |
| 1971 | 9,105 |
| 1972 | 10,675 |
| 1973 | 12,861 |
| 1974 | 14,583 |
| 1975 | 16,290 |
| 1976 | 17,735 |
| 1977 | 20,988 |
| 1978 | 22,495 |
| 1979 | 24,878 |
| 1980 | 25,875 |

*Includes only adults over 17 years of age.

Excludes complaints logged in Boston Municipal Court.

Source: Administrative Office, District
Court, 1981.

TABLE 2

RESULTS OF BLOOD ALCOHOL SAMPLES
1979 & 1980¹

1979

Total Samples* - 354

Adult operators - 197 Samples

Of that 197 - 64% had BAC's of .10 or higher.

- 9% had BAC's of .05 - .10.

Under age 20 - 63 Samples

Of that 63 - 56% had BAC's of .10 or higher.

- 17% had BAC's of .05 to .10.

1980

Total Samples* - 298

Adult operators - 204 Samples

Of that 298 - 61% had BAC's of .10 or higher.

- 9% had BAC's of .05 to .10.

Under age 20 - 27 Samples

Of that 27 - 70% had BAC's of .10 or higher.

- 19% had BAC's of .05 to .10.

¹Source: Department of Public Safety, Boston Chem Lab

*Approximately one-third of all fatalities received BAC tests.

TABLE 3

COMMONWEALTH OF MASSACHUSETTS
Registry of Motor Vehicles
Statistician's Office
Boston, Massachusetts

SUMMARY OF MOTOR VEHICLE ACCIDENTS1979 - 1980 EXPERIENCE

| | <u>1979</u> | <u>1980</u> | <u>Percent Change</u> |
|--|-------------|-------------|---------------------------|
| Total Accidents Reported | 211 152 | 222 144 | + 5.2 |
| Fatal Injury Accidents | 857 | 812 | - 5.3 |
| Non-Fatal Injury Accidents | 52 948 | 50 306 | - 5.0 |
| Property Damage Accidents | 157 347 | 171 026 | + 8.7 |
| Persons Fatally Injured | 920 | 881 | - 4.2 |
| Persons Non-Fatally Injured | 72 113 | 67 759 | - 6.0 |
| Personal Injury Accident Rate per 1 000 000 Miles Travelled | 1.5 | 1.4 | |
| Fatal Accident Rate per 100 000 000 Miles Travelled | 2.4 | 2.3 | |
| Death Rate per 100 000 000 Miles Travelled | 2.6 | 2.5 | |
| Persons Injured (Fatally and Non-Fatally) per Accident | 1.357 | 1.343 | |
| * Mileage Travelled (Millions) | 35 178 | 35 292 | + 0.3 |
| Motor Vehicle Fuel Consumed (Gallons-in Millions) | 2 538 | 2 425 | - 4.5 |

* Mileage estimated on the basis of an average of 14.55 miles per gallon of fuel sold for motor vehicle use.

Table 4: D.U.I.L. Arrests per 100 Licensed Drivers

| <u>Fiscal Year</u> | <u>Estimated Licensed Drivers</u> | <u>D.U.I.L. Arrests</u> | <u>D.U.I.L. Arrests Per 100 Drivers</u> |
|------------------------|---|-----------------------------|---|
| 1970 | 2,987,565 | 8,574 | .2870 |
| 1971 | 3,060,240 | 9,105 | .2975 |
| 1972 | 3,127,500 | 10,675 | .3413 |
| 1973 | 3,186,900 | 12,861 | .4035 |
| 1974 | 3,241,000 | 14,583 | .4499 |
| 1975 | 3,299,300 | 16,290 | .4937 |
| 1976 | 3,368,600 | 17,735 | .5265 |
| 1977 | 3,412,400 | 20,988 | .6150 |
| 1978 | 3,476,700 | 22,499 | .6471 |
| 1979 | 3,523,597 | 24,928 | .7074 |
| 1980 | 3,640,876 | 27,040 | .7427 |

Source: Massachusetts Department of Public Safety

Table 5 : Dispositions of D.U.I.L. Cases

| <u>Year</u> | <u>Continued w/o finding</u> | <u>Defendants found guilty</u> | <u>Defendants found not guilty</u> |
|-------------|------------------------------|--------------------------------|------------------------------------|
| 1977 | 14,008 (66%) | 4,790 (23%) | 2,463 (12%) |
| 1978 | 12,469 (63%) | 4,815 (24%) | 2,603 (13%) |
| 1979 | 14,134 (64%) | 5,430 (24%) | 2,655 (12%) |
| 1980 | 15,392 (63%) | 6,470 (27%) | 2,405 (10%) |

* Brown, Marjorie and Elaine Greenblatt, Driving Under the Influence of Liquor: Disposition and Placements in Driver Alcohol Education Programs, 1977-1980, Boston: Office of the Commissioner of Probation, 1981.

AN ACT RELATIVE TO APPEALS FROM RULINGS AND DECISIONS
OF THE REGISTRAR OF MOTOR VEHICLES

Section 28 of Chapter 90 of the General Laws, as most recently amended by Chapter 536 of the Acts of 1950, is hereby further amended by striking the first sentence therefrom and inserting in place thereof the following sentence:

Any person aggrieved by a ruling or decision of the registrar may, within ten days thereafter, appeal for review of such ruling or decision to the Board of Appeal on Motor Vehicle Liability Policies and Bonds created by Section 8A of Chapter 26, which Board may, after a hearing, affirm the ruling or decision of the registrar or may modify or annul any discretionary ruling or decision of the registrar if said Board determines that the substantial rights of the aggrieved party have been prejudiced because the registrar's discretionary ruling or decision is (a) in excess of his statutory authority or (b) based upon an error of law or (c) unsupported by substantial evidence; but no such appeal shall operate to stay any ruling or decision of the registrar but the Board shall not annul or modify the registrar's decision to uphold the police seizure of the license of those who refuse the test for blood alcohol content as mandated.

END