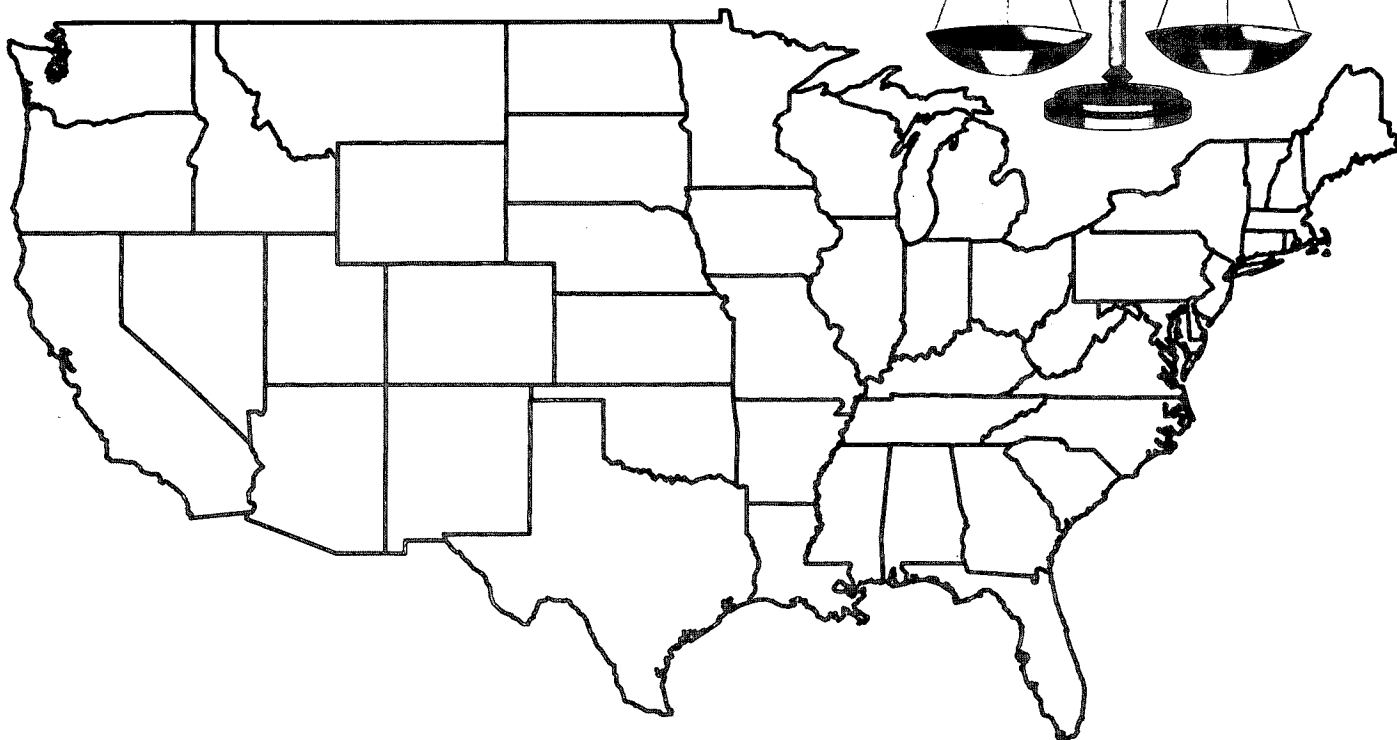


Evaluation of Enhanced Sanctions for Higher BACs:

Summary of States' Laws



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16. Abstract Twenty-nine states have a statute, regulation, or rule that provides for additional or more severe sanctions for DUI offenders with a "high" BAC. States vary in terms of the high-BAC threshold, which ranges from .15 to .20 percent, and the types, severity, and complexity of sanctions. Types of high-BAC sanctions include limitations on plea reductions or deferred judgments; driver-based punitive sanctions (jail, electronic home monitoring, community restitution, fines, license suspension/revocation); vehicle-based punitive sanctions (ignition interlock, administrative plate impoundment); and alcohol treatment/education. Highway safety offices in all states with such sanctions were contacted. Most reported few problems with implementing high-BAC sanctions and believe the sanctions have had a positive impact on the state's DUI system. Concerns and problems that were noted include: 1) high-BAC sanctions may further complicate an already complex DUI system; 2) high-BAC sanctions may increase the number of BAC test refusals; 3) courts and/or prosecutors may allow high-BAC offenders to plead to a lower charge and, thus, evade the enhanced penalties; 4) courts may view the enhanced penalties as onerous and, thus, fail to impose the penalties; and 5) concerns about jail overcrowding or increased incarceration costs and the limited availability of treatment programs in some areas may hinder the effectiveness of these sanctions. These issues will be addressed in the second stage of the study, an in-depth evaluation of high-BAC sanctioning programs in selected jurisdictions.					
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Background

Twenty-nine states have a statute, regulation, or rule that provides for differential treatment of DUI offenders with a "higher" BAC, that is, a BAC threshold above the level for a standard DUI charge. Referred to as tiered sanctioning, these systems are based on evidence that DUI offenders with higher BACs are more likely (than DUI offenders with lower BACs) to be involved in a crash and more likely to recidivate. More states are expected to implement high-BAC laws, partly in response to the inclusion of high-BAC incentive grants in the TEA-21 legislation.

Objective

The "Evaluation of Enhanced Sanctions for Higher BACs" study will:

- determine the effectiveness of tiered sanctioning legislation
- determine whether individuals are sanctioned under the enhanced tiered specifications, and whether such a system creates additional problems in the prosecution, adjudication, and/or sanctioning systems

This report summarizes the results of the first stage of the study: identifying and describing state high-BAC sanctioning systems, and conducting an initial review of states' experiences with these systems. The report focuses primarily on high-BAC sanctions for first offenders. The summary of high-BAC systems was based on a review of the literature and state statutes and telephone discussions with the highway safety offices in all states with high-BAC sanctions. In addition, states with relatively recent high-BAC laws were assessed for their suitability as study sites for an in-depth evaluation of high-BAC sanctioning systems.

Results

States have taken a variety of approaches in developing high-BAC sanctioning programs. Some programs are relatively limited in scope, while other, more extensive programs have added a significant level of complexity to the body of DUI laws. In 27 of the 29 high-BAC states, at least some of the high-BAC provisions are statutory; in the other two states, the high-BAC provisions are administrative rules that provide for longer, more intensive education/treatment for high-BAC offenders.

Enactment of High-BAC Systems. Most high-BAC statutes have been enacted since 1990. Ten states have implemented high-BAC laws since 1998, and five additional states have recently strengthened their existing high-BAC sanctions. States reported that the laws were enacted to address the problem drinker, the repeat drunk driver, or the “hard core drunk driver.” Most states reported little significant opposition to the high-BAC legislation, and some noted widespread public and editorial support. States with more extensive or more recent sanctions, and states where other statutory changes were also implemented, reported higher levels of publicity about the high-BAC sanctions. In particular, the imposition of jail or vehicle-based sanctions was reported to receive considerable press attention in some states.

High BAC Threshold. The “high” BAC threshold ranges from .15 percent to .20 percent. Most commonly, states have either a .15 percent (12 states) or a .20 percent (6 states) threshold. In some states the mean BAC for DUI offenders was selected as the threshold, while in other states the threshold is double the *per se* BAC level. In still other states, the threshold represented a compromise between a lower threshold advocated by the highway safety office and a higher BAC preferred by other groups.

TEA-21 410 Incentive Funds. Sixteen states relied on a high-BAC program to qualify for 410 incentive grant funding in federal fiscal year 2000. Other states included in this study had high-BAC programs, but did not rely on these programs to qualify for 410 incentive grant funding in that year. There are various reasons for this. Some states may have had a high-BAC program that met the 410 requirements, but the state was able to qualify for a grant based on other laws and programs. Some states may have had a high-BAC program that met the 410 requirements, but the state did not apply for a 410 grant at all (perhaps because the state did not meet a sufficient number of the other requirements). Other states may have had a high-BAC program that did not meet the 410 requirements. For example, the state’s program may have been discretionary rather than mandatory, or it may have applied only to repeat offenders.

Types of Enhanced Penalties. Even when focusing solely on first offenders, state high-BAC sanctions run the gamut in terms of complexity, the types and severity of enhanced sanctions, and whether the sanctions are mandatory. Some states have adopted high-BAC sanctions for a first offense that are comparable to those for a second DUI offense, for a BAC test refusal, or for a DUI offense with another “aggravating” circumstance. The types of sanctions for high-BAC adult (21 years or older) first offenders include the following:

- Longer or more intensive education and/or treatment (10 states)
- Limitations on deferred judgment provisions (2 states)
- Limitations on plea reductions (3 states)
- Creation of a new, more serious high-BAC offense (for example, Aggravated Driving While Intoxicated) (4 states)
- Additional or enhanced driver sanctions (mandatory minimum and/or maximum)
 - jail (6 states)
 - license sanctions (3 states)
 - jail or jail/community restitution and fine (5 states)
 - jail or jail/electronic home monitoring, fine, and license sanctions (4 states)
- Vehicle sanctions, including ignition interlock devices (4 states) and administrative plate impoundment (1 state)

- Court consideration of high BAC in sentencing as an aggravating or special factor (3 states)
- “Hold for court” provision that restricts release from jail upon arrest (1 state)

State Experiences with High-BAC Sanctions. Most states reported few problems with implementing high-BAC sanctions and believed the sanctions had had a positive impact on the state’s DUI system. Several also reported concerns and/or problems, including: 1) high-BAC sanctions may complicate an already complicated DUI system; 2) enhanced sanctions may increase the number of BAC test refusals; 3) courts and/or prosecutors may allow high-BAC offenders to plead to a lower charge (directly or indirectly) and, thus, evade the enhanced penalties; 4) courts may view the high-BAC penalties as onerous and, thus, fail to impose the penalties; and 5) concerns about jail overcrowding or increased incarceration costs and concerns about the limited availability of treatment programs in some areas may hinder the effectiveness of these sanctions. These and other issues will be addressed in the next stage of this project.

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I. INTRODUCTION

During the period 1982 through 1996, the U.S. population increased by 15 percent; the number of licensed drivers increased by 20 percent; vehicle miles driven increased by 56 percent; and the number of non-alcohol-related traffic fatalities increased by 32 percent. Remarkably, the number of alcohol-related fatalities decreased 37 percent from 1982 to 1999. Decreases in alcohol-related fatalities from 1982 to 1996, ranging up to 60 percent, were experienced by 47 of the 50 states. States with the largest reductions enacted and publicized laws that have been shown to reduce impaired driving. These states also had coordinated and well-publicized enforcement efforts, although they did not necessarily have high arrest rates per population. Finally, these states were more likely to have substantial dedicated funding for enforcement and alcohol treatment, along with strong leadership, particularly at critical junctions (Ulmer, Hedlund, Preusser, in process).

The success of the 1980s and 1990s was remarkable. Still, 15,786 persons died in alcohol-related crashes in 1999; this represents 38 percent of all traffic fatalities and an average of one alcohol-related fatality every 33 minutes. According to the Federal Bureau of Investigation, 1.4 million drivers were arrested for drinking and driving in 1998.

Some portion of the successes to date can be attributed to the demonstrated effectiveness of countermeasures developed and implemented by the highway safety community. However, success beyond this point will likely require new initiatives. One such new initiative has been a focus on high-risk individuals variously referred to as the hard core drinking driver, persistent drinking driver, hardened drunk driver, repeat offender, and/or chronic drunk driver. While there is no single operational definition for this group, two criteria are often applied to the "hard core drinking driver": driving with a "high" BAC (for example, .15 percent or greater) and evidence of repeated drinking and driving, such as repeat convictions for drinking and driving (Simpson, Mayhew, Beirness, 1996; Century Council, n.d.). Developing countermeasures that target the "hard core drinking driver" has arguably been one of the predominant concerns of the alcohol highway safety community in the late 1990s, along with a focus on drinking and driving among teens (under age 21) and persons 21-34 years old.

One type of countermeasure that appears particularly applicable is enhanced sanctioning levels following conviction for "hard core drinking drivers." Enhanced sanctions for second and third DUI convictions are not new. For many years, states have routinely specified longer confinement, higher fines, and longer and more restrictive license suspensions or revocations for individuals convicted for the second or third time. Partly in response to the concern with "hard core drinking drivers" in recent years, many states have further strengthened penalties for repeat offenders, and some have implemented vehicle-based sanctions such as the installation of ignition interlock devices or the forfeiture or impoundment of the vehicle. Many states also now require that repeat offenders undergo assessment and, if indicated, treatment for an alcohol or substance

abuse dependency. There is likely to be a further increase in the number of states enacting tougher legislation for repeat offenders, since the TEA-21 legislation provides penalties for states without specified minimum penalties for these drivers.

While enhanced sanctions for repeat DUI offenders have been part of most state DUI legal systems for many years, a more recent phenomenon is a statute or regulation that applies different and more severe sanctions to DUI offenders with higher BACs. Judges have routinely applied, and prosecutors have routinely negotiated, stronger sanctions for the higher BAC offenders, but these stronger sanctions were within the framework of the general drinking and driving statutes. Now, in an increasing number of states, prosecutors and judges have statutes that enable stronger sanctions for high BACs that go beyond typical sanctioning for drinking and driving offenders. In addition, while treatment professionals have commonly applied the BAC at the time of the arrest as a criterion for assessing a potential alcohol dependency, some states have implemented laws or regulations that specifically require that an offender with a higher BAC undergo more intensive screening and/or treatment.

In passing the TEA-21 legislation in 1998, Congress amended the alcohol-impaired driving countermeasures incentive grant program ("410" program), which provides funding for states that meet certain criteria. To encourage states to implement high-BAC sanctions, a program for high-BAC offenders was included as one of the program's basic grant criteria.

As yet, there has been no systematic evaluation of the effectiveness of statutory or regulatory enhanced sanctions for higher BACs. This report summarizes progress to date on a NHTSA-funded evaluation of such systems. To clarify the terminology used in this report, the term "DUI" (Driving under the Influence) will be used as a generic term for alcohol-impaired driving. The terms "high-BAC sanctions," "enhanced BAC sanctions," and "tiered BAC sanctions" are used synonymously to refer to a system that imposes more severe or different sanctions on DUI offenders whose BAC at arrest is at or above an established level that is higher than the standard DUI charge. The report does not examine two-tiered systems that differentiate between drivers whose BAC is at or above the state's "per se" level, typically .08 percent or .10 percent, and drivers whose BAC is a lower "presumptive" level.

Rationale for High-BAC Systems

Tiered-BAC sanction systems are based on the assumption that DUI offenders with higher BACs pose a greater risk than offenders with lower BACs. There is evidence that DUI offenders with higher BACs are more likely than DUI offenders with lower BACs to be involved in a crash (Zador, Krawchuck, Voas, 2000). According to NHTSA, 59 percent of drinking drivers involved in fatal crashes in 1998 had a BAC of .15 percent or higher. The agency estimates that drivers with a BAC of .15 percent or higher have risks that increase to more than 300 times that of drivers who have not been drinking. There is also evidence that DUI offenders with a higher BAC are more likely to

recidivate. In a study of DUI offenders in California, Marowitz (1996) found that first-time offenders with high BACs were more likely to recidivate than first-time offenders with lower BACs, although the number of non-alcohol-related traffic convictions was a better predictor of recidivism than BAC.

In addition, a high BAC at arrest has often been applied by treatment professionals as a potential indicator of alcohol dependency. Although some studies suggest an association between a high BAC and symptoms of alcohol abuse or dependence (Ruud and Morland, 1993; Snow, 1996), other research has not found a relationship between BAC and alcohol diagnosis (Wieczorek, Miller, Nochajski, 1992).

Simpson, Mayhew, and Beirness (1996) suggest that a tiered-BAC system addresses the public's perception that a higher BAC merits a more severe punishment, since it represents a more serious offense. They further claim that a tiered-BAC system will improve the efficiency of the DUI system by focusing energy and resources (for example, screening for alcohol dependency) on the most problematic offenders.

Several safety organizations advocate that states adopt high-BAC sanctioning programs. The Century Council advocates that states implement a tiered-BAC system as part of a "hard core offender" program; the Council recommends that an "Aggravated DWI" charge be imposed on first offenders with a BAC of .15 percent or above. In evaluating state DUI systems for its "Rating the States 2000" report, MADD considered enhanced penalties for offenders with BACs of .16 percent or higher as key, although not priority, legislation. MADD's Higher Risk Driver program recommends that a high-BAC driver be subject to license suspension, installation of an ignition interlock device, increased fines, community service, one year's probation, six months in a monitored alcohol treatment program, and attendance at a victim impact panel.

The National Transportation Safety Board (NTSB, 2000) recommends that a model program to reduce DUI should include legislation that defines a BAC of .15 percent or greater as an aggravated DUI offense that "requires strong intervention similar to that ordinarily prescribed for repeat DWI offenders." According to NTSB, the sanctions for high-BAC offenders should include mandatory treatment and administratively imposed vehicle sanctions.

The Traffic Injury Foundation (Simpson, Mayhew, Beirness, 1996) suggests the following guidelines for a tiered-BAC system:

- at least two clearly defined BAC levels, with the type and severity of sanctions linked to these levels
- both punitive and treatment countermeasures for high-BAC offenders
- reduced judicial discretion in sentencing high-BAC offenders
- assessment of alcohol dependency triggered by a high BAC

The Foundation further proposes that offenders with low and moderate BACs receive only administrative sanctions, with high-BAC offenders subject to administrative and criminal actions, as well as assessment and treatment. Others (for example, Voas, 1995) have also suggested that alcohol-impaired driving at a higher BAC should continue to be adjudicated through the courts as a criminal offense, while administrative procedures should be implemented at .08 BAC.

TEA-21 High-BAC Incentive Grants

The TEA-21 legislation amended the alcohol-impaired driving countermeasures incentive grant program ("410 program") to states. Beginning in federal fiscal year (FY) 1999, a state could qualify for a basic 410 grant by meeting the criteria to qualify for a programmatic basic grant or a performance basic grant. The criteria for the programmatic basic grant included a program targeting drivers with a high BAC.

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

It should be noted that discussion of a state's high-BAC system in this report does not indicate that the system would meet the requirements for a high-BAC program under the TEA-21 410 incentive grant program. For example, a state may have qualified for Section 410 based on other criteria, a state may have chosen not to apply for Section 410 funding at all, a state's law may authorize (but not require) that enhanced or additional penalties apply to high-BAC offenders, or a state's law may imposed enhanced or additional penalties only on repeat high-BAC offenders.

II. STUDY OBJECTIVES

Despite the attention focused on the imposition of tougher penalties for high-BAC offenders, the current project represents the first systematic study of the implementation or effects of high-BAC sanction systems. The objectives of the "Evaluation of Enhanced Sanctions for Higher BACs" study are to:

- determine the effectiveness of tiered sanctioning legislation

- determine whether individuals are sanctioned under the enhanced tiered specifications, and whether such a system creates additional problems in the prosecution, adjudication, and/or sanctioning systems

II. GENERAL STUDY APPROACH

The study is proceeding in two stages. In the first stage, a description of current high-BAC sanction systems, and states' experiences with the systems, was prepared. The summary was based on a review of the literature and discussions with all states with high-BAC sanctions. Also during this phase, states with relatively recent high-BAC laws were assessed for their suitability as study sites for an in-depth evaluation study.

In the second stage, process and outcome evaluations of high-BAC sanctions will be conducted in two states. To assess the process results, statewide data and/or data from selected local jurisdictions will be collected on drinking and driving arrests, adjudications, and sanctioning. The numbers of repeat offenses and alcohol-related crashes will be examined to assess any general deterrent effects. In addition, prosecutors, judges, enforcement personnel, and sanctioning personnel will be interviewed to determine their perspectives on overall system effects. Considerations in selecting the study sites include having more recently enacted tiered sanction legislation, accessible records of arrests and case adjudications, and stronger sanctions for high BACs.

IV. REVIEW OF STATE HIGH-BAC SYSTEMS

This report summarizes the results of the first stage of the study: identifying and describing states' high-BAC sanctioning systems, and conducting an initial review of states' experiences with these systems.

Review of State High-BAC Laws and Regulations

States with tiered-BAC systems were identified and the DUI laws for each state, including those dealing with a higher BAC, were reviewed. In identifying states with tiered sanctioning systems, a number of sources were consulted, including:

- NHTSA's *Digest of State Alcohol-Highway Safety Related Legislation, current as of January 1, 2000*
- state statutes available on state websites
- 410 applications submitted to NHTSA by states seeking funding under the High BAC Incentive Grant program
- the Century Council's *From the Grassroots to a National Agenda: Community Forums Report, Issues and Insights on Hardcore Drunk Driving*

- MADD's *Rating the States 2000* and MADD's website
- NTSB's *Safety Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver*
- NHTSA's regional offices

As of the date that this report was prepared, 29 states were identified as having a statute, regulation, or rule that provides differential treatment for persons with a higher BAC. In determining which state high-BAC programs to include, "differential treatment" was broadly defined. In particular, it should be noted that some state high-BAC provisions differentiate among offenders in relatively minor ways, and that the high-BAC provisions may be discretionary rather than mandatory. Inclusion of a state's high-BAC system in this report does not indicate that the system would meet the requirements for a high-BAC program under the TEA-21 410 incentive grant program. For example, as noted earlier, a state may have qualified for Section 410 based on other criteria, a state may have chosen not to apply for Section 410 funding at all, a state's law may authorize (but not require) that enhanced or additional penalties apply to high-BAC offenders, or a state's law may imposed enhanced or additional penalties only on repeat high-BAC offenders.

Discussions with States

Drawing from the sources noted above, a summary of each state's tiered-BAC statute or regulation, and other key DUI statutes, was prepared. Then, each state with a tiered-BAC system was contacted by telephone to 1) verify the information on the state's high-BAC statute or regulation, and 2) gather information on the state's experiences with a tiered-BAC system. For most of the 29 states, discussions were held with someone in the state's highway safety office; in a few states, discussions were also held with knowledgeable persons in other state agencies. Appendix A provides a listing of the contact persons in each state. An extensive discussion was held with a counsel in the Wisconsin Department of Transportation about that state's passage and subsequent repeal of a high-BAC system. Wisconsin is the only state known to have passed, and then repealed, a high-BAC sanctioning law.

The discussions with states focused primarily on the specific provisions of the high-BAC system and how these provisions work within the context of the state's overall DUI system. Of particular interest was how the treatment of a high-BAC offender differed from the treatment for a standard DUI offense, and whether there were "loopholes" in the system that allowed high-BAC offenders to avoid the enhanced sanctions. The state's laws and penalties pertaining to BAC test refusals were also of interest.

The discussions with states also addressed the following topics, if applicable:

- effective date and rationale for high-BAC law/regulation
- subsequent revisions to high-BAC law/regulation and any current efforts to strengthen or otherwise revise the law/regulation
- whether the state applied for and received 410 funding for a high-BAC program and/or planned to apply in the future
- any changes in other DUI statutes or policy (for example, tougher BAC test refusal penalties) related to the high-BAC law/regulation
- any perceived or demonstrated problems with the implementation of the high-BAC sanctions
- quantitative or anecdotal evidence of the sanctions' effects, including both process effects (for example, rates of BAC refusals, sanctions imposed) and outcome effects (for example, rates of recidivism)

For the states that had recently implemented or made significant changes to their high-BAC legislation, an additional set of questions was posed. The questions were designed to help assess the state's suitability, and willingness, to serve as a study site for the second stage of the study. The discussion topics included the following:

- whether new procedures were required to implement the high-BAC sanctions
- whether other significant DUI legislation was implemented along with, or subsequent to, the high-BAC sanctions
- whether there was any publicity or education about the law when implemented, and, if so, what type and to whom it was directed (for example, public, judicial system)
- availability of current and historical information on BAC tests taken and refused and results of tests taken; perceived (or demonstrated) effects of high-BAC sanctions on the rate of BAC test refusals
- quantitative or anecdotal evidence about the extent to which high-BAC sanctions were implemented and any related DUI system effects, for example, the percent of high-BAC offenders prosecuted and receiving enhanced sanctions; rate of guilty pleas
- perceived (or demonstrated) effects of high-BAC sanctions on DUI recidivism or general deterrence
- perceived system problems with the high-BAC sanctions, for example, overcrowded jails, clogged courts, increase in BAC test refusals.

The potential study states were also asked questions about the feasibility of conducting interviews with a sample of judges, prosecutors, enforcement officers, and sanctioning personnel about their experiences and perceptions related to the high-BAC sanctions.

Summary of State High-BAC Sanctioning Programs

Given the considerable differences in state DUI laws, it is not surprising that state provisions for high-BAC offenders vary widely. Some high-BAC statutes impose additional or enhanced penalties that are relatively simple and limited. Other high-BAC statutes are complex and integrated into the full range of state DUI laws. In these states, the high-BAC sanctions must be analyzed within the context of the state's general DUI laws. Understanding the differential treatment of high-BAC offenders in such states requires consideration of such issues as whether the offender was 21 years or older, or whether the offense was a first offense or a repeat regular or repeat high-BAC offense. The general DUI laws also indicate what options may be available to high-BAC offenders to avoid the enhanced sanctions; in some states, for example, high-BAC offenders may avoid the enhanced sanctions by pleading guilty to a lesser charge or completing a deferred judgment program. Such issues will be examined in the in-depth evaluations conducted in the second stage of this project.

To simplify the summary of state high-BAC penalties, the following discussion focuses primarily on high-BAC penalties for first offenders. (It should be noted that the high-BAC penalties in Kansas apply only to repeat offenders; effective January 1, 2001, Wisconsin implemented enhanced sanctions for high-BAC offenders convicted of a third, fourth, or fifth offense.) Table 1 summarizes the high-BAC provisions that apply to first offenders over 21 years of age. For each state, the table summarizes the high-BAC penalties, in comparison to the penalties imposed for a first-time standard DUI offense, i.e., a DUI offense not involving an extenuating circumstance (for example, involvement in an injury crash) that carries special penalties. The table summarizes only the high-BAC penalties that differ from the penalties imposed on other first-time offenders. Thus, if a state's driver license sanctions are the same for high-BAC offenders and other offenders, driver license sanctions are not noted.

In some states, the high-BAC sanctions are comparable to those for a second offender (for example, Idaho), for a convicted DUI offender who refused the BAC test (for example, Washington), or for DUI offenses with other "aggravating" circumstances, such as driving 30 MPH over the speed limit, eluding a police officer, operating a vehicle with a teen passenger (for example, Maine).

An effort was made to identify and note any "loopholes" that would allow a high-BAC offender to elude the enhanced penalties. However, it should be noted that courts and prosecutors have considerable discretion in prosecuting and adjudicating cases and determining sanctions, even if there are mandatory statutory penalties.

Enactment of High-BAC Systems. Illinois and Virginia have only administrative rules that provide for longer, more intensive education/treatment for offenders with a BAC at or above .15 percent or .20 percent, respectively. For all other 27 states, at least some of the high-BAC provisions are statutory.

**Table 1: Summary of States' Enhanced Penalties for
First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Arizona	≥ .18 versus ≥ .10	<p>Mandatory jail 30 consecutive days for high-BAC offenders; all but 10 consecutive days may be suspended if complete screening/treatment program. Versus mandatory 10 consecutive days for non-high-BAC offenders; all but 24 consecutive hours may be suspended if complete screening/treatment. Law allows jurisdictions to provide work release program after 48 consecutive hours in jail for high-BAC offenders, versus 24 consecutive hours for other offenders. Jurisdictions may also provide home monitoring program after 15 consecutive days jail for high-BAC offenders, versus 24 consecutive hours for other offenders.</p> <p>Mandatory minimum fine \$250 and \$250 assessment, versus \$250; additional 77% surcharge is levied on basic \$250 fine for regular and high-BAC offenders.</p> <p>Effective 7/18/00, courts must order convicted persons with BAC ≥ .18 to equip vehicles that they operate with ignition interlock devices for 1 year; no requirement for standard 1st DUI offense.</p>	statute	FY 1999 FY 2000
Arkansas	≥ .18 versus ≥ .10	For administrative license suspension, high-BAC offenders receive 180 days suspension or 30 days suspension followed by 150 days restricted driving privileges; versus 120 days suspension if BAC ≥ .10 but < .18. Restricted licenses can be available to all 1 st offenders. Court can order ignition interlock devices.	statute	FY 2000
California	≥ .20 versus ≥ .08	<p>Courts may consider BAC ≥ .20 or test refusal as a special factor in imposing enhanced sanctions and determining whether to grant probation, and may give BAC ≥ .20 or test refusal "heightened consideration" in ordering an ignition interlock.</p> <p>Offenders with BAC ≥ .20 must participate in longer alcohol or drug education program required to reinstate license.</p>	statute	

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First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Colorado	$\geq .15/.20$ versus $\geq .10$	If driving under the influence (DUI) charge is reduced to the lesser charge of driving while impaired, and if $BAC \geq .20$, then "because of such aggravating factor," sanctions imposed must be for (greater) DUI offense. For state's mandatory treatment/screening program for all offenders, assessment tool recommends Level I if $BAC \geq .15$; judge, however, has discretion.	statute policy	
Connecticut	$\geq .16$ versus $\geq .10$	For administrative per se law, $BAC \geq .16$ results in 120 days license suspension rather than 90 days. However, for both high-BAC and other offenders, the offender is eligible for restricted license after 30 days. Under state's diversion program, completion of pre-trial rehabilitation/alcohol education results in dismissal. If $BAC \geq .16$, offender attends more sessions at higher cost than other offenders.	statute	
Delaware	$\geq .16/.20$ versus $\geq .10$	Offenders with $BAC \geq .16$ not automatically eligible for "First Offense Election Process" (dismissal of criminal charges upon completion of education/treatment program) but can apply for waiver. If $BAC \geq .20$, DMV conducts "character review" (references and interview) prior to reinstating license.	statute policy	
Florida	$\geq .20$ versus $\geq .08$	Minimum fine \$500 up to \$1,000 versus \$250-\$500. Maximum 9 months jail versus 6 months. Judge cannot accept guilty plea to lesser offense if $BAC \geq .20$.	statute	FY 1999 FY 2000
Georgia	$\geq .15$ versus $\geq .10$	Court cannot accept a <i>nolo contendere</i> plea if violate illegal per se law and $BAC \geq .15$	statute	

**Table 1: Summary of States' Enhanced Penalties for
First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Idaho	≥ .20 versus ≥ .08	Mandatory minimum 10 days jail (beginning with 48 consecutive hours) and maximum 1 year, versus no mandatory minimum and maximum 6 months. Fine up to \$2,000 versus fine up to \$1,000. Criminal license sanctions: mandatory 1 year suspension after release versus mandatory minimum 30 days suspension followed by restricted license for 60-150 days.	statute	FY 1999 FY 2000
Illinois	≥ .15/.20 versus ≥ .08	BAC one of several criteria for assignment to "risk category" for completion of treatment program for license reinstatement: BAC < .15 = minimal risk (10 hours education); .15-.19 BAC = moderate risk (10 hours education and 12 hours early intervention); BAC ≥ .20 = significant risk (10 hours education and 20 hours treatment). High risk multiple offenders must receive ≥ 75 hours of treatment for reinstatement.	rule	FY 1999 FY 2000
Indiana	≥ .15 versus ≥ .10	BAC > .15 is Class A, versus Class C, misdemeanor. Maximum fine not more than \$5000 versus \$500. Maximum jail not more than 1 year versus 60 days.	statute	
Iowa	≥ .15 versus ≥ .10	Deferred judgment or sentence generally available to 1 st offenders but not if BAC > .15. Mandatory minimum 48 hours jail, versus no mandatory jail. Mandatory minimum \$500 fine. For other offenders, minimum fine is \$500 fine, or \$1,000 if personal injury or property damage crash. However, court may order unpaid community service in lieu of fine.	statute	FY 1999 FY 2000
Kansas	≥ .15 versus ≥ .08	No enhanced penalties for higher BAC 1 st offenders. For 2 nd or subsequent conviction with BAC ≥ .15, defendant must operate only vehicles with ignition interlock device when driving privileges restored.	statute	

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First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Kentucky	≥ .18 versus ≥ .08	Effective 10/1/00, BAC ≥ .18 became one of several "aggravating circumstances"; enhanced penalty is mandatory minimum 4 days jail, which "shall not be suspended, probated, conditionally discharged, or subject to any other form of early release." Other 1 st offenders must receive one of the following: \$200-\$500 fine, 48 hours-30 days jail or community labor, or 48 hours-30 days community service.	statute	
Louisiana	≥ .15 versus ≥ .10	Mandatory 48 hours jail. For non-high-BAC 1 st offenders, in lieu of minimum 10 days jail, offender may participate in substance abuse/driver improvement program and 1) serve 2 days jail, or 2) perform 4 days community service.	statute	FY 2000
Maine	≥ .15 versus ≥ .08	Mandatory minimum 48 hours jail for high-BAC offenders, versus no mandatory jail for other offenders.	statute	

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First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Minnesota	≥ .20 versus ≥ .10	<p>Gross Misdemeanor II versus Misdemeanor.</p> <p>For high-BAC offenders, mandatory minimum 30 days jail (including 48 consecutive hours), but may substitute 8 hours community service for each day less than 30 not served. Judge may not apply mandatory minimum jail sentence under certain mitigating circumstances, but 48 consecutive hours or 80 hours community service must be served. No mandatory minimum jail for other 1st offenders. Maximum jail for high-BAC 1st offenders is 1 year, versus 90 days.</p> <p>Mandatory minimum fine \$900 versus \$210, and court may also impose additional penalty assessment of \$1000. Maximum fine \$3,000 versus \$700.</p> <p>Mandatory administrative pre-conviction license revocation 180 days (30 days hard revocation) versus 90 days (15 days hard); mandatory post-conviction license revocation 60 days (30 days hard revocation) versus 30 days (15 days hard).</p> <p>Court may stay sentence except license revocation if offender submits to level of care recommended in required chemical use assessment report. For high BAC offenders, court must order person to submit to level of care recommended in chemical use assessment.</p> <p>Mandatory "hold for court": unless maximum bail is imposed after arrest, high-BAC offender may be released from jail only if he/she agrees to abstain from alcohol with daily electronic alcohol monitoring.</p> <p>Administrative plate impoundment if BAC > .20.</p>	statute	FY 1999 FY 2000
Nevada	≥ .18 versus ≥ .10	<p>Offenders with BAC > .18 must be evaluated for alcohol/drug abuse prior to sentencing, with \$100 fee, versus no required evaluation.</p>	statute	FY 1999 FY 2000

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First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
New Hampshire	≥ .16 versus ≥ .08	Class A misdemeanor versus violation. Up to 1 year jail versus no jail. Mandatory minimum \$500 fine versus \$350; maximum fine \$2,000 versus \$1,000. Mandatory minimum 1 year license revocation versus 90 days. For Class A misdemeanor, may receive conditional discharge, which may include up to 50 hours community service. High BAC threshold lowered from .20 to .16 in 1997.	statute	FY 1999 FY 2000
New Mexico	≥ .16 versus ≥ .08	Mandatory minimum 48 consecutive hours jail versus no mandatory jail.	statute	FY 1999 FY 2000
North Carolina	≥ .15/.16 versus ≥ .08	Person convicted with BAC > .15 must complete substance abuse assessment and substance abuse treatment program, if indicated, to reinstate license. BAC > .16 is considered gross impairment and an aggravating factor in sentencing. Effective 7/1/00, if BAC > .16, ignition interlock must be installed for one year to obtain restricted license after hard suspension.	statute	FY 1999 FY 2000
Ohio	≥ .17 versus ≥ .10	Mandatory jail time doubled for high-BAC versus other offenders from 3 consecutive days (may attend 3 consecutive days driver's intervention program in lieu of jail) to 6 days (may attend program for 3 days in lieu of 3 days jail but must serve 3 days jail).	statute	FY 2000

**Table 1: Summary of States' Enhanced Penalties for
First-Offense High-BAC Offenders 21 Years or Older**

State	High Br/BAC Versus Illegal Per Se	Enhanced Penalty for High-BAC Offenders Versus Penalty for Standard DUI	Statute or Rule	Relied on High BAC to Qualify for 410 Funds
Oklahoma	$\geq .15$ versus $\geq .10$	In addition to other penalties for all offenders, offenders with BAC $\geq .15$ receive mandatory minimum 28 days inpatient treatment, followed by minimum 1 year of supervision, periodic testing, and aftercare at defendant's expense, 480 hours of community service following aftercare, and minimum 30 days ignition interlock device. This shall not "preclude the defendant being charged or punished under other DUI statutes."	statute	
Rhode Island	$\geq .15$ versus $\geq .10$ misdemeanor; BAC $\geq .08$ and $< .10$ civil offense	In contrast to a misdemeanor DUI with BAC $\geq .10$ and $< .15$, offenders with BAC $\geq .15$ receive \$500 fine versus \$100-\$300 fine; 20-60 hours public community restitution and/or imprisonment for up to 1 year, versus 10-60 hours public community restitution and/or imprisonment for up to 1 year.	statute	
South Dakota	$\geq .17$ versus $\geq .10$	Courts must require pre-sentencing alcohol evaluation, versus no such requirement.	statute	
Tennessee	$\geq .20$ versus $\geq .10$	Mandatory minimum 7 consecutive days of jail, versus 48 consecutive hours. It appears that in certain counties with more than 100,000 residents, court may allow 200 hours community service in lieu of jail term.	statute	FY 1999 FY 2000
Virginia	$\geq .20$ versus $\geq .08$	1 st offender may attend Virginia Alcohol Safety Action Program (VASAP) to obtain restricted license. BAC $\geq .20$ is one of several criteria used to indicate longer and more intensive education.	rule	FY 1999 FY 2000

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First-Offense High-BAC Offenders 21 Years or Older**

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

Most high-BAC statutes have been enacted since 1990. Ten states have implemented high-BAC laws since 1998. High-BAC laws were implemented in Arizona, Connecticut, and Minnesota in 1998 and in Arkansas and Louisiana in 1999. The following states implemented high-BAC laws in 2000: Ohio (May), Indiana (July), Rhode Island (July), and Oklahoma (November). A seventh state, Wisconsin, implemented its high-BAC law on January 1, 2001. A few states have also recently strengthened their high-BAC sanctions; these states include Arizona, California, Kentucky, North Carolina, and Washington. Some of the most recent high-BAC legislation was enacted along with other major DUI legislation, for example, stronger repeat offender laws or a .08 *per se* law.

States reported that the laws were enacted to address the problem drinker, the repeat drunk driver, or the “hard core drunk driver.” Where the sanctions include more intensive screening and/or treatment for alcohol dependency, the rationale was also that persons with higher BACs are more likely to have an alcohol dependency.

Most of the laws predate the availability of 410 funding for high-BAC programs, but the availability of these funds did not appear to be the primary motivation for the states that have most recently enacted or strengthened a high-BAC statute. Most states reported little significant opposition to the high-BAC legislation, and some noted widespread public and editorial support. Several contrasted this with the staunch opposition facing a .08 *per se* law. Some states suggested that the high-BAC legislation offered legislators a more palatable anti-DUI alternative to the .08 legislation; for example, one state official noted that legislators found it more acceptable to penalize “bad drivers” with a high BAC than the “mainstream DUI population.” Most states did not believe that strengthening or otherwise modifying their high-BAC sanctioning system was imminent.

States varied in terms of the amount of publicity associated with the implementation of the high-BAC sanctions. States with more extensive or more recent sanctions, and states where other statutory changes were also implemented, reported higher levels of publicity. In particular, the imposition of jail or vehicle-based sanctions was reported to receive considerable press attention. In instituting high-BAC sanctions in the early 1990s, Washington State found that the sanctions were initially confusing to the public and the courts (Kuhl, 1998). Drawing on this experience and with more latitude in allowable expenditures for publicity, Washington made a concerted effort to mount a public information and education effort when its high-BAC laws and other DUI laws were strengthened in 1998. Focus group research was conducted and a comprehensive publicity effort was launched.

High BAC Threshold. The “high” BAC threshold ranges from .15 percent to .20 percent; within a given state, a different threshold may apply to different sanctions. The minimum threshold is at or above .15 percent in 12 states (CO, GA, IL, IN, IA, KN, LA, ME, NC, OK, RI, WA); .16 percent in four states (CT, DE, NH, NM); .17 percent in three states (OH, SD, WI); .18 percent in four states (AR, AZ, KY, NV); and .20 percent

in six states (CA, FL, ID, MN, TN, VA). In some states, the high-BAC threshold was based on the mean BAC for DUI offenders. In other states, the threshold is double the state's *per se* BAC level. Based on this rationale, New Hampshire in 1997 lowered its high-BAC threshold from .20 percent to .16 percent, when the state's *per se* limit was lowered from .10 percent to .08 percent. In still other states, the threshold represented a compromise between a lower threshold advocated by the highway safety office and a higher BAC preferred by other groups.

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

410 Incentive Funds. As indicated in Table 1, 13 states relied on a high-BAC program to qualify for Section 410 program funds in federal fiscal years 1999 and 2000 (AZ, FL, ID, IL, IA, MN, NV, NH, NM, NC, TN, VA, WA). An additional three states (AR, LA, OH) relied on a high-BAC program to qualify for Section 410 program funds in federal fiscal years 2000. It should be noted that a state may meet the requirements for a high-BAC program but fail to meet other criteria under the programmatic basic grant and, thus, fail to qualify for Section 410 funding. Also, a state may meet the requirements for a high-BAC program but not include that component program in its 410 application. In addition, a state's enhanced sanctions may not meet the requirements for a high-BAC program as defined under the 410 program; for example, the enhanced sanctions may not be mandatory and/or they may apply only to repeat offenders.

Types of Enhanced Penalties. Even when focusing solely on first offenders, two things complicate the summarization of high-BAC sanctioning programs. The first is the wide variation in the types of high-BAC sanctions, and the variety of circumstances under which the sanctions do and do not apply. Second, the differential treatment of high-BAC offenders and the ramifications of a high-BAC sanctioning system can be understood only within the context of the full system of DUI laws. And DUI systems in many states are highly complex. These issues will be examined in more depth in the second stage of this study.

State high-BAC sanctions run the gamut in terms of complexity and in terms of the numbers, types, and severity of enhanced sanctions. The types of sanctions for the first offense include the following:

Longer or more intensive alcohol screening or education/treatment. Several states provide for longer or more intensive education and/or treatment for first offenders with high BACs, or require that a high BAC be considered in determining the type of education/treatment an offender will undergo. As noted previously, administrative rules in Virginia and Illinois are the basis for the more intensive education/treatment sanction. In California and North Carolina, DUI statutes require longer or more intensive treatment

for high-BAC offenders for license reinstatement. Under Colorado's pre-sentencing alcohol and drug evaluation program, an enhanced level of treatment is indicated for high-BAC offenders. Under Connecticut's diversion program, high-BAC offenders must attend more sessions at a higher cost than other offenders. Nevada and South Dakota require that high-BAC offenders be evaluated prior to sentencing. In Minnesota, the court may stay the sentence (except license revocation) if an offender submits to the level of care recommended in a required chemical use assessment report; however, for high-BAC offenders, the court must order the person to submit to the level of care recommended in the assessment. Finally, under Oklahoma's high-BAC law, implemented in November 2000, high-BAC offenders must receive a mandatory minimum 28 days of inpatient treatment, followed by a minimum of one year of supervision, periodic testing, and aftercare (at the offender's expense), 480 hours of community service following aftercare, and a minimum of 30 days ignition interlock device.

Limitations on deferred judgment programs. Iowa prohibits high-BAC offenders from participating in a deferred judgment program that results in a dismissal of charges contingent on fulfillment of an alcohol education/treatment program. High-BAC offenders in Delaware are not automatically eligible for the "first offense election process."

Limitations on plea reductions. Florida prohibits high-BAC offenders from pleading guilty to a lesser offense, and Georgia courts cannot accept a *nolo contendere* charge from a high-BAC offender. Colorado law provides that if a driving under the influence (DUI) charge is reduced to the lesser offense of driving while impaired, but the offender's BAC was at or above .20 percent, then the sanctions imposed must be the sanctions for the higher charge.

High BAC constitutes a more serious, separate offense. In four states, the high-BAC offense represents a separate, more serious offense, with more serious penalties attached. These states include Arizona (Driving While Under Extreme Influence of Intoxicating Liquor), New Hampshire (Aggravated Driving While Intoxicated), New Mexico (Aggravated Driving While Under the Influence), and Oklahoma (Aggravated Driving Under the Influence).

Driver-based sanctions - jail, fine, license suspension/revocation. Most high-BAC sanctioning systems involve one or more of the traditional driver-based penalties -- jail, fines, or license sanctions.

The high-BAC penalties in six states relate solely to jail. Louisiana, Maine, and New Mexico require mandatory jail time for high-BAC first offenders, versus no jail time for lower BAC offenders. Tennessee's law imposes a longer mandatory minimum jail term for high-BAC offenders. Ohio's new high-BAC law doubles the mandatory jail sentence from three consecutive days (with three consecutive days in an intervention program in lieu of jail) to six consecutive days (with three consecutive days in an

intervention program in lieu of three days of jail). Effective October 1, 2000, high-BAC first offenders in Kentucky must receive a mandatory minimum sentence of four days of jail, which “shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.”

In addition to a treatment-related sanction, Connecticut provides a longer maximum “soft” license suspension term for high-BAC first offenders. Delaware also requires high-BAC offenders to undergo a more stringent process for license reinstatement. In Arkansas, the enhanced penalty for high-BAC first offenders is a longer administrative license suspension, although a restricted license is available to all first offenders.

Eight states provide more than one driver-based sanction for high-BAC first offenders. Most of these sanctions involve enhanced mandatory minimum sanctions, but in some states, one or more of the sanctions involve only enhanced maximum penalties. The states with more than one type of driver-based sanction include Arizona (jail, fine), Florida (jail, fine), Idaho (jail, fine, criminal license suspension), Indiana (jail, fine), Iowa (jail, fine), New Hampshire (jail, fine, license revocation), Minnesota (jail, fine, criminal license revocation), Rhode Island (public community restitution/jail, fine), Washington (jail or electronic home monitoring, fine, criminal license suspension/revocation). Washington and Minnesota have particularly extensive high-BAC sanctioning systems; summaries of these states’ DUI statutes are provided in Appendix B and Appendix C, respectively.

Vehicle-Based Sanctions. A relatively new development is the imposition of vehicle-based sanctions for high-BAC offenders. Minnesota’s 1998 high-BAC legislation provided for administrative plate impoundment for high-BAC offenders. Effective January 1, 1999, Washington requires the installation of ignition interlock devices by high-BAC offenders. Effective July 2000, Arizona and North Carolina require the installation of ignition interlock devices for high-BAC offenders. Finally, effective November 1, 2000, high-BAC offenders in Oklahoma must receive an ignition interlock device in addition to inpatient treatment, aftercare, and community service.

Consideration of High BAC in Court Sentencing. North Carolina statutes provide that a high BAC ($\geq .16$ percent), considered “gross impairment,” may be considered an “aggravating factor” by the court in imposing the sentence. California courts may give special consideration to a high BAC ($\geq .20$ percent) in imposing enhanced sanctions, including the installation of an ignition interlock device. In Wisconsin, courts shall consider the BAC level, if known, in sentencing.

Other. As part of its extensive high-BAC sanctioning program, Minnesota has a “hold for court” provision. Under this provision, unless maximum bail is imposed after arrest, a high-BAC offender may be released from jail only if he/she agrees to abstain from alcohol with daily electronic alcohol monitoring.

States' Experiences with High-BAC Sanctions

Based on discussions with the 29 states that have high-BAC sanctioning programs, scant evidence is available on implementation or effects. A study conducted by the California Department of Motor Vehicles (1986) examined the relationship between the severity of court sanctions and the BAC level and licensing status. The study was prompted by the state's 1985 law that provided that courts may consider a BAC of .20 percent or higher as a special factor in sentencing DUI offenders. Based on the DUI offenders with reported BAC levels (43 percent of all offenders), first offenders with high BAC levels received the jail sanction more frequently than did those with low BAC levels. There was substantial variation among counties in sanction severity regardless of BAC level. Sanctions given to most second offenders did not vary with BAC level. No other states in this study reported that they had undertaken a systematic study of high-BAC sanctions.

In terms of procedures or policies developed to implement the high-BAC sanctions, some states noted the need to modify the conviction record to include the BAC test result. Most states reported few problems with implementing high-BAC sanctions and believed the sanctions had had a positive impact on the state's DUI system. However, several also reported concerns and/or problems, which are summarized below.

Some states expressed concerns that the high-BAC sanctions had increased, or would increase, the BAC test refusal rate; this rate varies widely from state to state. Some state highway safety offices noted that they had recommended that the penalties for refusals be strengthened to address this concern, but that the legislature had not chosen to do so. At least one state, Maine, increased the penalties for test refusals to address this concern. Maine has one of the older high-BAC laws and reports that of the 11,000 DUI arrests in 1998, only 585 persons refused the BAC test. Officials in some states with much higher refusal rates expressed concerns that this rate would increase still further as a result of the high-BAC sanctions. Such concerns were expressed, for example, by officials in Louisiana and by officials in Ohio, where the test refusal rate was approximately one-third prior to the new high-BAC law, and by officials in Oklahoma, where there were 7,039 test refusals and 10,875 test failures in fiscal year 2000.

In Minnesota, which implemented high-BAC sanctions in 1998, persons arrested are given an opportunity to call an attorney for advice about taking the BAC test. It had been considered unethical for an attorney to advise the driver to refuse the test; a test refusal constitutes a misdemeanor. Since enactment of the high-BAC sanctions, there have been reports that attorneys are more likely to advise their clients to refuse the BAC test. However, Minnesota reports that the percent of BAC test refusals declined from 16.3 percent in 1997, prior to the high-BAC sanctioning law, to 15.3 percent in 1998, the first year of the sanctions; this decline continued a downward trend in test refusals from 1995 (Minnesota Department of Public Safety, 1999).

Data provided by New Hampshire indicated that convictions for the high-BAC offense, Aggravated Driving While Intoxicated, increased from 280 in 1996 to 567 in 1997 (when the high-BAC threshold was lowered from .20 percent to .16 percent) to 608 in 1998. Based on preliminary data, the number of convictions then declined to 398 in 1999.

Some states with high-BAC jail sanctions reported that there were concerns with jail overcrowding and/or the added expense (for example, Ohio, Arizona, Tennessee), while other states (for example, Maine) reported no such concerns. Tennessee reported that the overcrowding has led some courts to allow offenders to serve the sentence piecemeal rather than consecutively.

There were also some concerns in Oklahoma that there may not be sufficient treatment services available to accommodate the mandated in-patient treatment requirement for all high-BAC offenders. These concerns focus especially on indigent offenders.

Washington and Arizona, both states with relatively extensive high-BAC sanctioning programs, noted concerns that high-BAC offenders may be evading the enhanced sanctions through agreement by the prosecutor and/or court to reduce the BAC of record at the time of conviction. In response to concerns regarding this problem in Washington, preliminary data were generated by the Department of Licensing for a sample of approximately 3,000 DUI cases, covering one to two months. The preliminary analysis indicated that about half of the high-BAC offenders were pleading guilty to a lower BAC charge and, thus, avoiding the enhanced penalties.

Washington has also noted a higher rate of BAC test refusals. In 1994, the year prior to the implementation of high-BAC sanctions, the BAC test was refused by 19 percent of persons arrested for drinking and driving; this percent was essentially unchanged in 1995 and fell to 14 percent in 1996 and to 8 percent in 1997. More recently, however, the percent of refusals has increased. The percent of test refusals rose to 17 percent in 1998 and to 23 percent in 1999. During the period from 1994 to 1999, the average BAC hovered around .15 percent. Although Washington's high-BAC sanctions were significantly strengthened in 1999, other major changes to the DUI laws also occurred, including the enactment of a .08 *per se* law and administrative license suspension for the first incident.

States that have enacted vehicle-based sanctions were particularly hopeful that these sanctions would have both general and specific deterrent effects. Representatives of these states noted that these sanctions had generated considerable publicity and that they represented strategies to deal with drivers who would likely continue to drive without a license. Offenders are generally charged for the cost of these devices (for example, \$50 per month for an ignition interlock device), which is an added financial penalty.

Officials in both Washington and Arizona stress the importance of an incremental approach in developing a high-BAC sanctioning system. Both states have strengthened high-BAC sanctions over time. Washington also stressed the importance of adopting a simple system and considering practical issues of implementation, such as access by the courts to BAC information.

Finally, several states noted that courts retain a great deal of latitude in adjudicating cases and imposing sanctions, even when state law provides mandatory minimum sanctions. Courts that view the high-BAC penalties as onerous may fail to apply them fully and consistently.

Discussions were also held with the Assistant General Counsel for the Wisconsin Department of Transportation about that state's enactment in 1987, and subsequent repeal in the following year, of a law that created the criminal offense of "aggravated drunk driving" for persons with a BAC of .20 percent or higher. A report relating to the repeal (Wisconsin Department of Transportation, 1987) and other documents were also reviewed. As reported, the 1987 Wisconsin law presented several problems. First, because the penalties for BAC test refusals were not strengthened, the 1987 law provided an incentive for persons to refuse the BAC test. However, Wisconsin's penalties for test refusals have been strengthened since 1987, and the refusal rate was 13.8 percent in 1998 (Wisconsin Bureau of Transportation Safety, 1999). A second concern related to the court caseload. Under Wisconsin's DUI system, many first-time DUI cases are adjudicated in municipal courts. The 1987 law bumped a number of first-offense DUI cases from the municipal court to the circuit court system, thus aggravating an already burdened circuit court caseload and increasing the costs of prosecution and adjudication considerably. A third concern was that the increased fines for high-BAC offenders would worsen a considerable fine/forfeiture non-payment rate. Other concerns were that high-BAC sanctions were redundant with judicial sentencing guidelines, which call for enhanced sanctions for a high BAC and other aggravated circumstances; that high-BAC sanctions that include jail would lead to case dismissals by judges and/or prosecutors; and that high-BAC sanctions further complicate an already complex system of laws.

Recent attempts to enact high-BAC sanctions for first offenders have proven unsuccessful, partly because the proposed legislation did not address the concerns noted above. As noted in Table 1, on January 1, 2001, Wisconsin will implement a law that provides enhanced penalties for high-BAC offenders convicted of a third, fourth, or fifth DUI.

On a more philosophical level, concerns in Wisconsin about high-BAC sanctions reflect the belief that current penalties are sufficiently tough and that tougher penalties would not be imposed by some courts and may push some offenders out of the system. In keeping with this viewpoint, it was suggested that programs that monitor offenders' behavior (for example, ignition interlock programs) and programs that provide treatment, if indicated, have more potential to be fully implemented.

V. SUMMARY

In summary, states have taken a variety of approaches in developing high-BAC sanctioning programs. States vary in terms of the BAC threshold, with the threshold ranging from .15 to .20. Some state programs are relatively limited in scope, while other, more extensive programs have added a significant level of complexity to the body of DUI laws. The enhanced sanctions include limitations on plea reductions or deferred judgments; driver-based punitive sanctions (jail, electronic home monitoring, community restitution, fines, license suspensions/revocations); vehicle-based punitive sanctions (ignition interlock, administrative plate impoundment); and alcohol treatment/education. The enhanced sanctions differ in terms of whether they represent mandatory minimum or maximum penalties, or whether they simply are considered when sanctions are being determined.

Based on discussions with the 29 states with high-BAC sanctioning programs, scant evidence is available on implementation or effects. No state reported that it had undertaken a systematic study of high-BAC sanctions. Most states reported few problems with implementing high-BAC sanctions and believed the sanctions had had a positive impact on the state's DUI system. Several also reported concerns and/or problems. These concerns include that: 1) tiered sanctions may complicate an already complicated DUI system; 2) enhanced sanctions may increase the number of BAC test refusals; 3) courts and/or prosecutors may allow high-BAC offenders to plead to a lower charge (directly or indirectly) and, thus, evade the enhanced penalties; 4) courts may view the high-BAC penalties as onerous and, thus, fail to impose the penalties; and 5) concerns about jail overcrowding or increased incarceration costs and concerns about the limited availability of treatment programs in some areas may hinder the effectiveness of these sanctions.

States also noted the difficulty in evaluating the effects of high-BAC sanctions, particularly when there have been other significant changes in the law. Some of the difficulty in evaluating high-BAC sanctions relates to the lack of needed data. For example, few states have maintained historical statewide conviction records that include the BAC at arrest; this information is needed for a before/after evaluation of the process effects of high-BAC sanctions, or for an evaluation of the effects on recidivism among high-BAC offenders. It is believed that an evaluation of the process effects of tiered sanctions would be useful to states, particularly an evaluation that examines different types of sanctions in states with varying DUI systems. These issues will be addressed in the next stage of the project.

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**APPENDIX A:
PERSONS INTERVIEWED ABOUT STATES' LAWS AND REGULATIONS
PERTAINING TO HIGH-BAC SANCTIONS**

Coral Assam, Director, South Dakota Office of Highway Safety
Captain J.P. Allan, Government Affairs Liaison, Ohio Highway Patrol
Charlotte Ashburn, Program Director, Indiana Governor's Council on Impaired and
Dangerous Driving
Ike Avery, North Carolina Attorney General's Office
Susan Baltusevich, Alcohol Program Coordinator, Illinois Department of Transportation
David Beatty, Legislative and Special Projects Administrator, Oklahoma Department of
Public Service
Denny Becker, Area Administrator, DRE/DEC Program Manager, Iowa Governor's
Traffic Safety Bureau
Jim Borden, Special Projects Coordinator, Rhode Island Governor's Office of Highway
Safety
Vince Burgess, Director, Transportation Safety Services, Virginia Department of Motor
Vehicles
James Champagne, Executive Director, Louisiana Highway Safety Commission
Ed Crabtree, New Hampshire Highway Safety Agency
Roger Doherty, Traffic Safety Section, Florida Department of Transportation
Al Goke, Traffic Safety Chief, Montana Department of Transportation
Alberto Gutier, Director, Arizona Governor's Office of Highway Safety
Paul Helzer, Program Administrator, Office of Transportation Safety, Colorado
Department of Transportation
Joe Maassen, Assistant General Counsel, Wisconsin Department of Transportation
Bruce Mackey, Acting Chief, Nevada Office of Traffic Safety
Officer LD Maples, Office of Research and Planning, California Highway Patrol
Headquarters
Melvin Martinez, New Mexico Traffic Safety Bureau
Connie Morgan, Delaware Driver Improvement
Michael Munns, Arkansas Office of Driver Services
Dick Nuse, Washington Traffic Safety Commission
Bob O'Connell, Director of Driver Licensing/Control, Maine Bureau of Motor Vehicles,
Secretary of State
Wes Parker, formerly with North Carolina DWI Task Force
Joe Peagler, Grants/Contracts Officer, Idaho Office of Highway Safety
Tracy Poulin, Contract/Grant Specialist, Maine Bureau of Highway Safety
Tricia Roberts, Director, Delaware Office of Highway Safety
Mike Selig, Coordinator, Arkansas Highway and Transportation Department
Randall Smith, Tennessee Governor's Highway Safety Programs
Karen Sprattler, State Program Administrator, Minnesota Office of Traffic Safety
Kathy Swanson, Director, Minnesota Office of Traffic Safety
Peter Thomson, New Hampshire Highway Safety Agency
Rosalie Thornburgh, Chief, Kansas Bureau of Traffic Safety

Jackie Tidler, Administrator for DUI Offender Services, Oklahoma Department of
Mental Health and Substance Abuse Services
Jay Wall, Program Manager, Oklahoma Highway Safety Office
Sgt. Tony Young, Commander, Governor's Coordinator, Governor's Office of Highway
Safety, Kentucky State Police
Bob Whitney, Highway Safety Management Specialist II, Connecticut Department of
Transportation

APPENDIX B:
**HISTORICAL SUMMARY OF THE
STATE OF WASHINGTON'S DUI LAWS**

HISTORICAL DUI SENTENCING GRID (1985 – January 1, 1999)

Violation Date	Additional Sentencing Criteria	Mandatory Minimum Jail and Ignition Interlock Device (IID)*	Mandatory Min. Fine (includes ALL assessments)**	Mandatory Driver's License Susp/Revocation***
1/1/1999 to Present (0.08 presumptive level & Administrative License Suspension on First Incident)				
No Prior Offenses (within 7 years)	BAC < .15 or No Test Result	24 Hours <u>OR</u> 15 days EHM; IID length at discretion of the court	\$685	90 Days
	BAC = > .15 or Refusal	2 Days <u>OR</u> 30 days EHM; IID mandatory not less than 1 year*	\$925	1 Year
One Prior Offense	BAC < .15 or No Test Result	30 Days <u>AND</u> 60 days EHM; IID mandatory, not less than 1 year*	\$925	2 Years
	BAC = > .15 or Refusal	45 Days <u>AND</u> 90 days EHM; IID mandatory, not less than 1 year*	\$1,325	900 Days
Two or More Prior Offenses	BAC < .15 or No Test Result	90 Days <u>AND</u> 120 days EHM; IID mandatory, not less than 1 year*	\$1,725	3 Years
	BAC = > .15 or Refusal	120 Days <u>AND</u> 150 days EHM; IID mandatory, not less than 1 year*	\$2,525	4 Years
6/11/1998 to 12/31/1998				
No Prior Offenses (within 5 years)	BAC < .15 or No Test Result	24 Hours <u>OR</u> 15 days Elec. Home Monitoring	\$685	90 Days
	BAC = > .15 or Refusal	2 Days <u>OR</u> 30 days Elec. Home Monitoring	\$925	1 Year
One Prior Offense	BAC < .15 or No Test Result	30 Days	\$925	2 Years
	BAC = > .15 or Refusal	45 Days	\$1,325	900 Days
Two or More Prior Offenses	BAC < .15 or No Test Result	90 Days	\$1,725	3 Years
	BAC = > .15 or Refusal	120 Days	\$2,525	4 Years
1/1/1998 to 6/10/1998				
No Prior Offenses (within 5 years)	BAC < .15 or No Test Result	24 Hours	\$685	90 Days
	BAC = > .15 or Refusal	2 Days	\$925	1 Year
One Prior Offense	BAC < .15 or No Test Result	30 Days	\$925	2 Years
	BAC = > .15 or Refusal	45 Days	\$1,325	900 Days
Two or More Prior Offenses	BAC < .15 or No Test Result	90 Days	\$1,725	3 Years
	BAC = > .15 or Refusal	120 Days	\$2,525	4 Years

EHM Electronic Home Monitoring

* Ignition Interlock (IID): For a person previously ordered to install ignition interlock under RCW 46.20.720(3)(a) not less than 5 years, for a person previously ordered to install ignition interlock under RCW 46.20.720(3)(b) not less than 10 years. *Note RCW 46.20.720(3)(a) and 46.20.720(3)(b) are effective January 1, 1999.*

** Does not include probation, jail, ignition interlock, indigent defense, court or other recoverable costs.

*** Does not include a separate administrative (as opposed to criminal) license suspension period that may be imposed by the Department of Licensing.

Violation Date	Additional Sentencing Criteria	Mandatory Minimum Jail	Mandatory Min. Fine (includes ALL assessments)**	Mandatory Driver's License Susp/Revocation***
9/1/1995 to 12/31/1997				
No Prior Offenses (within 5 years)	BAC < .15 or No Test Result	24 Hours	\$685	90 Days
	BAC = > .15 or Refusal	2 Days	\$925	120 Days
One Prior Offense	BAC < .15 or No Test Result	30 Days	\$925	1 Year
	BAC = > .15 or Refusal	45 Days	\$1,325	450 Days
Two or More Prior Offenses	BAC < .15 or No Test Result	90 Days	\$1,725	2 Years
	BAC = > .15 or Refusal	120 Days	\$2,525	3 Years
7/9/1994 to 8/30/1995				
No Prior Offenses (within 5 years)	BAC < .15 or No Test Result	24 Hours	\$685	90 Days
	BAC = > .15 or Refusal	48 Hours	\$925	120 Days
Probationary Driver's License Status	BAC < .15 (statute fails to address no test result in this situation)	7 Days	\$925	1 Year
	BAC = > .15 or Refusal	10 Days	\$1,325	450 Days
One or More Prior Offenses OR Driver's License in Suspended or Revoked Status	<i>Includes all BAC results, No Test Results, and Refusal</i>	90 Days	\$1,325	2 Years
7/25/1993 to 7/8/1994				
No Prior Offenses (within 5 years)		24 Hours	\$525	90 Days
One or More Prior Offenses		7 Days	\$925	1 Year
One or More Prior Offenses	With a Suspended or Revoked Driver's License	90 Days	\$925	1 Year (2 Years on 3rd Conviction)
1985 to 7/24/1993				
No Prior Offenses (within 5 years)		24 Hours	\$400	90 Days
One or More Prior Offenses		7 Days	\$800	1 Year
One or More Prior Offenses	With a Suspended or Revoked Driver's License	90 Days	\$320	1 Year (2 Years on 3rd Conviction)

EHM Electronic Home Monitoring

* Ignition Interlock (IID): For a person previously ordered to install ignition interlock under RCW 46.20.720(3)(a) not less than 5 years, for a person previously ordered to install ignition interlock under RCW 46.20.720(3)(b) not less than 10 years. *Note RCW 46.20.720(3)(a) and 46.20.720(3)(b) are effective January 1, 1999.*

** Does not include probation, jail, ignition interlock, indigent defense, court or other recoverable costs.

*** Does not include a separate administrative (as opposed to criminal) license suspension period that may be imposed by the Department of Licensing.

APPENDIX C
SUMMARY OF MINNESOTA'S DUI LAWS

DWI

*A quick reference guide
for the enforcement of
Minnesota's DWI and related statutes*



**REVISED
JUNE 1998**

*Provided by the
Minnesota Department of Public Safety and the
National Highway Traffic Safety Administration*

**THIS INFORMATION IS ONLY A GUIDE AND SHOULD
NOT BE CONSIDERED AS LEGAL ADVICE.**

DWI Violation:

- A conviction of driving while impaired (169.121, 169.1211, 609.21)
- License revocation, suspension, cancellation, denial or disqualification for implied consent test or refusal
- A prior operating conviction for DUI violation with a snowmobile, all-terrain vehicle or motorboat
- Suspension or revocation for refusal to test or a DUI with a snowmobile, all-terrain vehicle or motorboat on or after Aug. 1, 1995
- A prior impaired driving offense involving a commercial motor vehicle
- Also includes an ordinance or law violation for DUI from another state

Penalties

1st violation or refusal-MISDEMEANOR

1st violation if .20 AC or over/ 2nd violation or refusal or revocation in five years / DUI in violation of 169.26 (railroad crossing)/ violation or refusal with a passenger under 16 years old – GROSS MISDEMEANOR

3rd violation, refusal or revocation in 10 years/ 2nd violation or revocation or more within 10 years if AC .20 or over/ 2nd violation or revocation or more within 10 years in violation of 169.26 (railroad crossing)/ 2nd violation or revocation or refusal in 10 years with a passenger under 16 years old/ 3rd violation or revocation or refusal or combination in 10 years – ENHANCED GROSS MISDEMEANOR

168.042 Administrative Plate Impoundment

- 2nd violation in five years or 3rd violation in 15 years or aggravated violations (169.129)
- 1st or subsequent violation if over .20 AC
- 1st or subsequent violation or refusal with a passenger under 16 years old
- 1st or subsequent violation of 171.24 Cancel IPS (171.04 subd 1 (9))

- includes related offenses from other states
- includes motor vehicle plates if the violator is on a recreational vehicle (snowmobile, all-terrain vehicle or motorboat)
- issue notice of impoundment and temporary permit
- SEIZE and DESTROY plates of vehicle violator currently driving regardless of ownership
- Impoundment can be done by the officer or by the Department of Public Safety
- all plates registered to party including joint registration and lease vehicles
- does NOT include rentals, out-of-state plates or recreational vehicle (snowmobile, all-terrain vehicle, motorboat, or off-highway motorcycle) registration

171.24 Driving After Cancellation - IPS

- gross misdemeanor to drive if CANCEL-IPS (drunk or sober)
- SEIZE and DESTROY plates (168.042)

169.121 DUI (relevant evidence at .04 AC)

subdivision 1: drive, operate, or physical control

- a. influence of alcohol
- b. influence of controlled substance
- c. combination of alcohol, controlled substance or hazardous substance
- d. AC is .10 or more, but less than .20
- e. AC is .10 or more, but less than .20 within 2 hours
- f. AC is over .20 within 2 hours
- g. knowingly under the influence of a hazardous substance as listed in 182.655
- h. body contains ANY amount of a controlled substance listed in schedule I or II (other than marijuana or tetrahydrocannabinols)

subdivision 1a

- crime to refuse testing (see 169.123)

subdivision 1c: conditional release

Must have maximum bail or abstain from alcohol and submit to a program of electronic alcohol monitoring if charged with:

- a. violation of subd. 1 or 1a within 5 years of two DWI convictions (or within 10 years of three or more DWI convictions)
- b. a second or subsequent violation of subd. 1 or 1a if the person is under the age of 19
- c. any violation of subd. 1 or 1a while driver cancelled IPS
- d. any violation of .20 or more, or
- e. any DWI Aggravated violation (169.129)

Must have maximum bail or abstain from alcohol, submit to electronic monitoring, weekly probation reporting, weekly random alcohol testing and plate impoundment if charged with:

- a. violation of subd. 1 or 1a within 10 years of the first of three DWI convictions, or
- b. a violation of subd. 1 or 1a within the person's lifetime after four or more DWI convictions

169.123 Chemical Testing (Implied consent)

- test may be also required for probable cause of 609.21
- can only charge for TEST REFUSAL if advisory is read and given opportunity to contact an attorney and only on request for blood (or urine) if alternative test is offered (can be breath)
- subdivision 2a: if controlled substances are suspected, then the alternative for blood must be urine (and vice versa)
- can require blood or urine after breath if controlled substance is suspected (re-invoke implied consent advisory for controlled substance only)

169.129 Aggravated Violations

- must be a motor vehicle that requires a driver's license to operate
- currently has Minnesota driver's license or operating privileges revoked, canceled or suspended for an alcohol-related offense

169.1217 Vehicle Forfeiture

- 3rd violation, revocation or refusal or combination based on separate incidents in five years or 4th violation, revocation or refusal or combination in 15 years
- 2nd violation or revocation in five years if .20 AC or more
- 2nd violation or refusal or revocation if a passenger is under 16 years of age
- 3rd violation or revocation within 15 years of 1st of 2 or more offenses and .20 AC or more
- 3rd violation or refusal or revocation in 15 years if a passenger is under 16 years old
- DUI if canceled IPS or if has restriction on D/L not to consume or use alcohol or controlled substance
- seize vehicle with intent to forfeit

Preliminary Screening Test

results of the PBT test can be used in the following court actions:

- to prove that a test was properly required of a person under 169.123
- in a civil action arising out of the operation of the motor vehicle
- prosecution for underage driving after drinking – "zero tolerance" law (169.1218) or minor consumption (340A.503)
- prosecution for violation of the "zero tolerance" law for school bus drivers (169.1211 para. b)
- prosecution for violation of the conditions of a limited license (171.30)
- prosecution for violation of a conditional driver's license that prohibits the person from consuming any alcohol or controlled substance (171.09)

169.1211 sub.1 clause 3 paragraph B "Zero Tolerance" for School Bus drivers

- physical evidence of any alcohol consumption while using any class of school bus or Head Start bus
- first conviction – lose CDL for one year, second conviction – lose CDL for 10 years

169.1211 Commercial Vehicles

- *subdivision 1:* drive, operate, physical control of any commercial motor vehicle
- 1) when AC is .04 or more, but less than .20
- 2) when AC is .04 or more, but less than .20 when measured within two hours
- 3) when AC is .20 or more when measured within two hours
- invoke implied consent with any presence of alcohol

169.125 Commercial Vehicle Out-of-Service Order

- drive, operate, physical control of a commercial vehicle with any presence of alcohol – driver out of service for 24 hours.

609.21 Criminal Vehicular Homicide and Injury

subdivision 1: cause death, great bodily harm, substantial or any bodily harm to a person, or death or injury to an unborn child while operating a motor vehicle:

- gross negligence and under the influence of alcohol, controlled substance or both
- alcohol influence over .10
- alcohol influence over .10 within two hours

subdivision 1: death

subdivision 2: if a person causes great bodily harm to another, as a result of operating a motor vehicle [great bodily harm (type A accidents)]

subdivision 2a: substantial bodily harm

subdivision 2b: any bodily harm

subdivision 3: death to unborn child

subdivision 4: injury to unborn child

Definition

COMMERCIAL MOTOR VEHICLE: a motor vehicle or combination used to transport passengers or property if it –

- has a gross vehicle weight (GVW) of more than 26,000 pounds

- has a towed unit with a GVW of more than 10,000 pounds and the combination has a combined GVW of more than 26,000 pounds
- is a bus
- is of any size and is used to transport hazardous materials, except those vehicles having a GVW of 26,000 pounds or less while carrying in bulk tanks a total of not more than 200-gallons of petroleum products and liquid fertilizer
- is outwardly equipped and identified as a school bus
- a truck-tractor, capable of or designed to meet the above standards, whether or not the towed unit is attached
- does NOT include a farm truck, firefighting equipment or recreational equipment being used for personal use

Under 21 Alcohol Violations

Consumption and Operation

VIOLATION	STATUTE	PENALTY
Under 21 Consumption / Driver		
■ DUI, if applicable	169.121	Misd./ G.M.
■ Unlawful to drive after consuming any amount of alcohol	169.1218	Misd.

Alcohol-Related

VIOLATION	STATUTE	PENALTY
Passenger Consumption		
■ Under 21 years of age	340A.503:1a2	Misd.
Passenger Possession		
■ Under 21 years of age	340A.503:3	Misd.
Open Container in Vehicle	169.122:2	Misd.
Driver / Owner Allowing O.B.	169.122:3	Misd.

Identification-Related

VIOLATION	STATUTE	PENALTY
False Information to officer	171.22:8	G.M.
Use of another person's D.L. or Minnesota I.D.	171.22:3	Misd.
Display of false / altered D.L. or Minnesota I.D.	171.22:1	Misd.

At a Glance

Plate Impoundment (168.042; 169.129; 171.04 subd 1 (9))

IMPOUND PLATES IF:

- 1st offense and .20 AC or more; or
- 1st offense and Child Endangerment; or
- 2nd offense in 5 years or 3rd offense in 15 years; or
- Aggravated DUI violation; or
- DUI offense at a railroad crossing; or
- Cancel-IPS violation.

Charging

MISDEMEANOR IF:

- 1st offense and under .20 AC, and no Child Endangerment, and no railroad crossing, and no Cancel-IPS, and no "B" card violation; or
- 2nd offense in more than 5 years and under .20 AC, and no Child Endangerment, and no railroad crossing, and no Cancel-IPS, and no "B" card violation.

GROSS MISDEMEANOR OR ENHANCED GROSS MISDEMEANOR IF:

- All other violations (charge by complaint).

Vehicle Forfeiture (169.1217)

VEHICLE SUBJECT TO FORFEITURE IF:

- 2nd offense in 5 years and .20 AC or more; or
- 2nd offense in 5 years and Child Endangerment; or
- 3rd offense in 5 years or 4th offense in 15 years; or
- 3rd offense within 15 years (of 1st of 2 or more offenses) and .20 AC or more; or
- DWI violation with a Cancel-IPS license status; or
- DWI violation with a "B" card license restriction.

Mandatory Hold For Court (169.121 subd 1c)

JAIL THE OFFENDER AND IMPOSE MAXIMUM BAIL OR ELECTRONIC ALCOHOL MONITORING IF:

- Any violation .20 AC or more; or
- Any violation while Cancel-IPS; or
- Any DWI aggravated violation; or
- A DWI violation within 5 years of 2 DWI convictions; or
- A DWI violation within 10 years of 3 or more DWI convictions; or
- A DWI violation and four or more DWI convictions on record; or
- 2nd DWI violation and under 19 years old.

DOT HS 809 215
March 2001



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

NHTSA
People Saving People
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