AN ANALYSIS OF THE POTENTIAL LEGAL CONSTRAINTS ON PROPOSED MODEL LEGISLATION CREATING A CLASS OF TRAFFIC OFFENSES AGGRAVATED BY ALCOHOL

Paul A. Ruschmann

Kent B. Joscelyn

The University of Michigan
Highway Safety Research Institute
Ann Arbor, Michigan 48109

September 1979

Prepared for
U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

Contract No. DOT-HS-7-01536

Document is available to the U.S. public
through the National Technical Information Service
Springfield, Virginia 22161

AN ANALYSIS OF THE POTENTIAL LEGAL CONSTRAINTS ON PROPOSED MODEL LEGISLATION CREATING A CLASS OF TRAFFIC OFFENSES AGGRAVATED BY ALCOHOL

Paul A. Ruschmann
Kent B. Joscelyn

The University of Michigan
Highway Safety Research Institute
Ann Arbor, Michigan 48109

September 1979

Prepared for
U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

Contract No. DOT-HS-7-01536

Document is available to the U.S. public through
the National Technical Information Service
Springfield, Virginia 22161

Technical Report Documentation Page

1. Report No.	2. Government Accession No.	3. Recipient's Catalog No.

4. Title and Subtitle	5. Report Date
AN ANALYSIS OF THE POTENTIAL LEGAL CONSTRAINTS ON PROPOSED MODEL LEGISLATION CREATING A CLASS OF TRAFFIC OFFENSES AGGRAVATED BY ALCOHOL	September 1979
	6. Performing Organization Code
7. Author(s)	8. Performing Organization Report No.
Paul A. Ruschmann and Kent B. Joscelyn	UM-HSRI-79-61
9. Performing Organization Name and Address	10. Work Unit No. (TRAIS)
The University of Michigan Highway Safety Research Institute Ann Arbor, Michigan 48109	11. Contract or Grant No. DOT-HS-7-01536
12. Sponsoring Agency Name and Address	13. Type of Report and Period Covered
National Highway Traffic Safety Administration U.S. Department of Transportation Washington, D.C. 20590	Final Report November 76-September 79
	14. Sponsoring Agency Code

15. Supplementary Notes

This volume is one of a series of documents dealing with legal constraints relevant to countermeasure development and implementation produced under contract no. DOT-HS-01536.

16. Abstract

An analysis was made of the legal feasibility of proposed legislation intended to deal with drinking drivers who do not meet the legal standard for alcohol intoxication, but who commit hazardous traffic violations while their blood alcohol concentration (BAC) is high enough to increase the risk of traffic crash involvement. The combination of alcohol involvement and a hazardous violation would be classified as a "traffic offense aggravated by alcohol." Convicted offenders would receive increased sanctions, alternative sanctions (such as mandatory attendance at an alcohol-education program), or both.

Examination of current law revealed that the proposed legislation would be constitutional in principle. However, chemical testing of drivers could be compelled only if there existed probable cause to arrest for a drinking-driving offense. In addition, enacting the proposed legislation would require substantial changes in existing state implied-consent and drinking-driving laws; for that reason, practical and potential constraints might be encountered.

17. Key Words	18. Distribution Statement
Drinking Drivers, Laws and Ordinances, Moving Traffic Violations, Traffic Law Systems, Courts, Constitutional Law, Implied Consent	This document is available to the U.S. public through the National Technical Information Service, Springfield, Virginia 22161

19. Security Classif. (of this report)	20. Security Classif. (of this page)	21. No. of Pages	22. Price
Unclassified	Unclassified	30	

ACKNOWLEDGMENT

This volume is one of a series produced over a two-year period and therefore represents the combined work product of a large number of individuals. The legal constraints study was designed by Kent B. Joscelyn, J.D., who served as project director. Paul A. Ruschmann, J.D., coordinated project activity, developed the basic draft of this volume, and supervised the work of the many student assistants who participated in this study. Murray Greyson, J.D., and Andrew M. Walkover, J.D., coordinated earlier phases of project activity and compiled much of the legal background material necessary to produce this document. Hal O. Carroll, J.D., participated in the production of earlier drafts and provided valuable legal and technical review. James E. Haney edited this report.

Special thanks are due to Professors Jerold H. Israel and Richard O. Lempert of The University of Michigan Law School, who served as critical reviewers of the many work products. Policy Analysis Division staff who participated in this study included David G. Baldwin, J.D.; John W. McNair, J.D.; Dennis M. Powers, J.D.; and William C. Wheeler, Jr., J.D.

Legal research and updating and citechecking of legal authorities were ably performed by the following law student assistants: Paul E. Bateman, John M. Coyne, John E. Grenke, Donald R. Garlit, Amy Greyson, Marcia McKenzie, Patricia Ramsey, Lawrence D. Rosenstock, James D. Tomola, Linda Throne, Theodore J. Vogel, Francis J. Wirtz, and Kent L. Weichman. In addition, Judith L. Cousins, Susan M. Kornfield, Mary Ann Snow, and Susan J. Wise served as research assistants.

Special recognition must be expressed to those in the Administrative Zone of the Policy Analysis Division, without whose efforts this volume would not have been produced: Anne L. VanDerworp, Word Processing Unit supervisor, and Deborah M. Dunne who assisted her; Jacqueline B. Royal, Administrative Zone supervisor; Olga S. Burn, Policy Analysis Division executive assistant; Judy M. Hunter; Kathryn A. Szegedy; and

Douglas J. VanDenBerg. Thanks are also expressed to the many individuals, too numerous to mention individually, who typed previous drafts of these volumes.

Appreciation is also expressed to the National Highway Traffic Safety Administration's Contract Technical Managers, Dr. Richard P. Compton and Mr. Theodore E. Anderson, for their assistance throughout this study.

Kent B. Joscelyn, J.D.
Principal Investigator

Paul A. Ruschmann, J.D.
Principal Investigator

1.0 INTRODUCTION

This is one of a set of volumes concerned with the legal constraints that can arise in conjunction with the implementation of highway crash countermeasures. It is specifically concerned with proposed legislation that creates a class of Traffic Offenses Aggravated by Alcohol (TOAA). A TOAA, as conceived by its proponents, is a hazardous traffic violation committed by a driver whose blood alcohol concentration (BAC) is high enough that he poses an increased risk of a traffic crash, yet is not high enough to presume him legally intoxicated under current driving-while-intoxicated (DWI) statutes. It is proposed that TOAA violators would receive sanctions that more closely correspond to the crash risk created by their driving behavior.

The research and analysis leading to the preparation of this volume was conducted by staff of the Policy Analysis Division of the The University of Michigan Highway Safety Research Institute (HSRI) for the National Highway Traffic Safety Administration (NHTSA) under Contract Number DOT-HS-7-01536.

1.1 Purpose of Volume

Many of the legal issues that might constrain the implementation of TOAA legislation as well as other countermeasure programs are rooted in basic aspects of the American legal system, and often involve complex issues of U.S. constitutional law and U.S. Supreme Court interpretations of that law. Thus, any discussion of legal issues and the potential constraints they impose must deal with previling constitutional principles. However, to treat the material in a rigorous legal manner would be beyond the scope of this paper. It is not designed to provide legal advice. Rather, it is designed for use by public safety officials and highway safety planners as a guide that will permit them to identify problem areas in countermeasure program implementation. Once identified, these problems can be discussed with legal counsel.

Within this context, the purpose of this volume is to provide a brief but relatively comprehensive review of the legal constraints that might be encountered in enacting TOAA legislation. It is designed to: identify important legal issues; show how they might arise; estimate their significance as constraints on the TOAA countermeasure; suggest methods that might be employed to resolve those constraints; and assess the legal feasibility of this countermeasure.

1.2 Purpose of the TOAA Countermeasure

Familiarity with current DWI legislation and the risk posed by the drinking driver are essential to an understanding of the proposed TOAA legislation. Therefore, current DWI laws are discussed here in light of the relationship between drinking and the traffic crash risk.

A number of studies have shown that a drinking driver's probability of traffic crash involvement, relative to the nondrinking driver, increases sharply as his BAC increases (Borkenstein et al. 1964; Huntley and Centeybear 1974; Huntley and Perrine 1971; Seehafer, Huffman, and Kinzie 1968; Coldwell et al. 1958). These studies have also shown that a driver poses an increased crash risk at BACs below .10% w/v, the level at which most states presume a driver to be legally intoxicated.

Existing DWI (1) statutes vary considerably from one state to another, even though all set quantitative BAC levels that define drinking-driving offenses. The most common variety of DWI statute establishes a "presumption" of intoxication at .10% w/v (2). A judge or jury ordinarily will find a driver with a BAC of .10% or above guilty of DWI; however, when the chemical test results are not accompanied by evidence that a driver's consumption of alcohol materially affected driving ability, then the driver might be found not guilty. DWI statutes also typically set a lower BAC level, such as .05% w/v (3), above which a judge or jury may find the driver guilty of DWI if other evidence of impairment is present. BAC levels in the .05-.10% range **must** be accompanied by other evidence that the driver's consumption of alcohol resulted in impairment of driving capability for the driver to be found guilty.

There are two principal variations to the typical DWI statute described

here. The first variation, which has been adopted by twelve states (4), established a so-called per se definition of DWI: a driver whose BAC is determined to be above a given level (usually .10% w/v) has committed an offense, irrespective of whether alcohol consumption had in fact affected his driving ability. The second variation, which is found in several states (5), is the establishment of two drinking-driving offenses: the DWI offense; plus a lesser offense, which is given various titles such as "driving while impaired." Creation of two offenses allows judges or juries in marginal cases to find a driver guilty of a less serious drinking-driving offense instead of finding him not guilty of DWI.

Thus, current drinking-driving legislation sharply limits the ability of police or prosecuting attorneys to deal with high-risk drivers in the .05-.10% BAC range. This is so for two reasons. First, most state laws require evidence of alcohol impairment in addition to the BAC results to prove a driver guilty of DWI. This requirement tends to discourage police officers from even arresting a driver for DWI unless he displays gross signs of impairment; this in turn as a practical matter focuses enforcement attention on drivers with BACs well above .10% (Belardo and Zink 1975; Mason and Dubowski 1974). Second, the requirement that additional evidence of impairment accompany BAC results between .05% and .10% makes a DWI conviction unlikely for drivers in this range. This is because in these cases the driver's intoxication cannot be inferred from the test results alone; rather, it must be proved at trial by the prosecution. Therefore, under the current laws of most states, a prosecutor or police officer is likely to deal with a driver with a BAC level below .10% in one of three ways: prosecute for DWI and face the strong probability of a not-guilty verdict; prosecute for a traffic violation not related to alcohol (such as reckless driving); or take no enforcement action.

TOAA legislation attempts to remedy the difficulty, imposed by existing legislation, of dealing with high-risk drinking drivers. This proposed legislation would first of all establish a threshold BAC level, most likely .05%, which would be a per se level. Driving with a BAC level above the threshold, combined with a hazardous (moving) traffic

violation, would be defined as an offense "aggravated by alcohol." Conviction of this new offense would subject the offender to increased or different sanctions. The concept of this approach is not novel; a number of states have in effect created offenses aggravated by alcohol with respect to drivers who cause fatal traffic crashes: in these states the intoxicated, at-fault driver is guilty of a more serious offense and faces more severe sanctions than the unintoxicated at-fault driver (6).

In contrast with current DWI statutes, the TOAA statute would require the prosecution only to prove that the driver committed a hazardous traffic violation, and that his BAC was, at the time of the offense, above the statutory limit. It would not be necessary under the proposed TOAA statute to establish that impairment in fact resulted from the consumption of alcohol.

1.3 TOAA Employment Scenarios

It is believed that the most useful employment scenarios would be provided by a scheme based on how drivers would be tested for BAC, and what kinds of sanctions would be imposed on convicted TOAA offenders.

When traffic violators are stopped by the police, two testing procedures are possible:

- any driver who commits a hazardous traffic violation would be required under the TOAA statute to submit to a BAC test; or
- any driver who commits a hazardous traffic violation would be required under the statute to submit, **provided** the arresting police officer suspects alcohol impairment.

Once a traffic law violator has been convicted of a TOAA, three variations are possible with respect to sanctioning:

- the convicted TOAA offender is sanctioned more severely--by the court, the driver licensing authority, or both—than a driver who committed the same hazardous violation not aggravated by alcohol;
- the convicted offender is sanctioned differently--such as being sentenced to attend alcohol safety classes—than a

driver who committed the same hazardous violation not aggravated by alcohol; or

- the convicted offender receives both increased and alternative sanctions.

1.4 Content of Volume

The remainder of this volume is organized into three sections. Section 2.0 identifies and discusses the legal issues that can arise in the employment of TOAA legislation, the constraints that derive from such legal issues, and the significance of those constraints. Section 3.0 discusses approaches that can be employed to resolve those constraints. Section 4.0 discusses the general legal feasibility of the proposed legislation in light of the identified constraints, and makes recommendations concerning the enactment of TOAA legislation.

2.0 IDENTIFICATION AND DISCUSSION OF THE LEGAL ISSUES AND POTENTIAL LEGAL CONSTRAINTS ASSOCIATED WITH TOAA LEGISLATION

2.1 General

Three distinct sets of legal issues can arise out of the employment of TOAA legislation. The first set is concerned with the constitutional authority to enact and enforce a TOAA statute. The second set of issues is concerned with the detection and identification of drivers suspected of violating the TOAA statute and deals primarily with compulsory testing of drivers for BAC. The third set of issues concerns sanctioning of convicted TOAA violators.

The purpose of this section of the document is to identify the legal issues that might arise, set out the legal constraints that can develop out of these issues, and estimate the significance of these constraints on the employment of TOAA legislation. Approaches to remove or resolve these constraints are discussed in Section 3.0.

2.2 Constitutional Authority to Enact TOAA Legislation

TOAA legislation, unlike countermeasure devices and systems, involves the lawmaking process itself and is therefore subject to constitutional requirements governing the type of laws that legislatures may enact. Three fundamental constitutional issues are applicable: the state's authority, under its police power, to deal with drinking drivers and to test them for BAC; the reasonableness of TOAA legislation under the Due Process Clause; and whether legislation creating a class of TOAA offenders violates the equal protection guarantee.

2.2.1 Authority to Deal with Drinking Drivers. It is established that states have the authority to deal with the crash risk posed by drinking drivers. This authority derives from the states' so-called police powers, which include powers to legislate for the public health, safety, morals, or

welfare (7). Under the states' police powers, special interests have been recognized in highway safety (8), and these interests include the elimination of drinking drivers from the highways (9).

States not only have power to take action against drinking drivers, but they may also use appropriate investigating tools to identify those drivers who, because of their drinking, create an increased risk of traffic crashes. Thus, states have been permitted to use chemical test results as evidence of intoxication (10), to make chemical testing compulsory by means of implied-consent statutes (11), and to make evidential use of test results by defining drinking-driving offenses in terms of BAC (12).

The unanimous trend of courts has been to uphold implied-consent legislation in principle. It should be noted, however, that the proposed TOAA statute would supplement or modify existing implied-consent legislation. Specific legal issues associated with the relationship between TOAA and implied consent legislation are discussed below.

2.2.2 The Due Process of Law Requirement. TOAA legislation, being an exercise of the state's police powers, enjoys a presumption of constitutionality; unless legislation is clearly unrelated to the state's interest in highway safety, or infringes fundamental constitutional rights, courts will uphold it as constitutional (13).

Studies showing a relationship between BAC in the .05 to .10% range and an increased risk of traffic crashes (Borkenstein et al. 1964; Huntley and Centeybear 1974; Huntley and Perrine 1971; Seehafer, Huffman, and Kinzie 1968; Coldwell et al. 1958), combined with the presumption of constitutionality given statutes by courts (14), virtually assure that TOAA legislation would be upheld as a reasonable means of promoting highway safety. In addition, it is highly unlikely that TOAA legislation would be found offensive to any fundamental right. Although it has been argued that legislation restricting the use of motor vehicles infringes the fundamental "right to travel," the courts have disagreed, holding that the right to operate a motor vehicle is a "qualified" one that may be subject to appropriate regulations (15). Finally, opponents of TOAA might argue that such legislation overbroad in that it punishes unintoxicated as well as

intoxicated drivers. This argument, however, has so far not been accepted by courts (16). In sum, it is unlikely that TOAA legislation will encounter any constraints under the Due Process Clause.

2.2.3 The Equal Protection Guarantee. TOAA legislation establishes a classification of drivers, based on BAC, and for that reason it may be challenged as a violation of the equal protection guarantee. That guarantee generally requires that legislative classifications be reasonably related to some important government interest.

When legislative classifications involve such "suspect" criteria as race or religion, or involve fundamental rights such as voting or marriage, courts will stringently review them and require the government to demonstrate their necessity (Note 1969) (17). When neither a fundamental right nor a suspect classification is involved, all that is required to support a classification scheme is a rational relationship to some valid state objective (18). In the case of TOAA legislation, no suspect classifications would be created. Nor would fundamental rights be affected; as pointed out earlier, the right to operate a motor vehicle is neither "fundamental" in itself, nor is it equivalent to the fundamental constitutional right to travel. Therefore, analysis of TOAA by courts will center on the state objective served by such laws, and on the relationship of the TOAA classifications to achieving that objective.

As pointed out earlier, courts have recognized the importance of eliminating drinking drivers from the highways, some courts have, in fact, characterized this interest as "compelling" (19). Courts, recognizing this interest, have upheld a number of statutory schemes that call for special treatment to the drinking driver (20). Given that the objective of TOAA--reduction of the crash risk--is a valid one, and given the relationship between BAC levels between .05% and .10% and increased traffic crash risk, it is highly unlikely that courts would find that the classifications created by TOAA legislation violate the equal protection guarantee.

2.2.4 Summary. States have authority both to enact TOAA legislation

and to enforce such legislation by testing drivers for BAC. TOAA legislation may challenged as a violation of the due process of law requirement or the equal protection guarantee; however, it is very unlikely that such challenges would succeed. This being the case, a TOAA statute will not be declared unconstitutional on its face. It is, however, possible that constitutional constraints could be encountered in the enforcement of an otherwise valid TOAA statute. This is discussed in the next section.

2.3 Constraints on the Detection and Identification of TOAA Offenders

Even though challenges to TOAA legislation itself are unlikely to succeed, the enforcement of such legislation might be constrained by both constitutional provisions and by state statutes governing DWI prosecutions in general. Possible legal issues raised by the enforcement of TOAA legislation concern a police officer's authority to stop vehicles, the officer's authority to test drivers for BAC, and the manner of testing drivers.

2.3.1 Authority to Stop Vehicles. Because a TOAA violation consists of two elements—a hazardous (moving) traffic violation and driving with the requisite BAC level--a TOAA arrest would result from a traffic stop based on probable cause. Since a police officer may validly stop a driver who commits an suspected traffic law violation in his presence (21), there exist no constitutional barriers to the initial contact between the officer and driver. That initial contact may reveal to the officer that the driver had been drinking; this in turn may give the officer justification to conduct a BAC test.

2.3.2 Authority to Test Drivers for BAC. Two alternative procedures have been proposed by which drivers stopped on suspicion of a traffic violation would be tested for BAC. These are: first, compulsory testing of all suspected traffic offenders; and second, compulsory testing of suspected traffic offenders only when there is reason to suspect alcohol impairment.

Two sources of law act as possible constraints on the circumstances under which a BAC test may validly be compelled. These are: first, the prohibition, under the U.S. Constitution, of unreasonable searches and seizures; and second, specific requirements imposed by state implied-consent laws.

Court decisions have clearly defined compulsory blood testing for BAC as a "search" (22), and the same reasoning also applies to breath testing (23). Therefore, to be valid, such tests must meet the requirement of reasonableness imposed by the Fourth Amendment to the U.S. Constitution (24). Specifically, a police officer may not require a driver to submit to a BAC test unless he has probable cause to believe that the driver had committed a drinking-driving offense (25). The level of suspicion is equivalent to the level of probable cause necessary to arrest the driver for a drinking-driving offense (26), whether or not a formal arrest on that charge is made. In many states, implied-consent statutes that govern BAC testing require a formal arrest prior to testing; other states have imposed the same requirement by means of court decisions (27). Thus, whether or not a formal TOAA arrest is required prior to testing, it is clear that a test cannot be required without some reason to suspect that a drinking-driving violation had occurred; therefore, legislation authorizing compulsory tests for all moving traffic offenders, without requiring evidence of alcohol impairment, would violate the Fourth Amendment.

Chemical testing for BAC is governed in all states by so-called implied-consent statues. These statutes typically provide that a driver has, by his act of operating a vehicle, given his consent to appropriate chemical tests of body fluids to determine his BAC (Reeder 1972). Implied-consent statutes are made effective by imposing penalties, typically mandatory license suspension, upon drivers who refuse a valid request to submit to a test (28).

It is not certain whether implied-consent statutes would govern tests in connection with TOAA, or whether they would apply to DWI prosecutions only (29). It is possible that in some states, existing implied-consent statutes would not apply to tests conducted under the proposed TOAA legislation. In those states, authority to test in the

absence of an implied-consent law derives from the powers of police officers to arrest and search; these powers are required by the Fourth Amendment to be exercised in a reasonable manner (35). Courts interpreting the Fourth Amendment reasonableness requirement have permitted police officers to conduct BAC testing over the tested driver's objection (Comment 1976) (36), at least where no violence or brutality is involved (37).

Even though police officers may test for BAC without the benefit of an implied-consent statute and without the tested driver's acquiesence, such testing runs counter to the legislative policies reflected in implied-consent legislation. A principal purpose of implied-consent legislation is to provide an alternative, nonphysical means of forcing drivers to submit to tests (Comment 1976). While under implied-consent, no driver may be tested against his will, a decision not to submit is punished by an alternate penalty, namely loss of license (33). Implied-consent provisions express a legislative policy that forcible testing is an unsatisfactory enforcement tactic.

Even if implied-consent statutes govern testing of TOAA offenders, those statutes may, in some states, grant drivers certain additional rights that are not required by the U.S. Constitution; they may also impose requirements on police officers in addition to the minimum constitutional requirements. One common statutory requirement is that of a formal drinking-driving arrest prior to testing: although there are indications that neither the U.S. nor state constitutions require a formal arrest, most states have—as stated before—imposed such a requirement by statute (34). In any event, the equivalent of probable cause to arrest will be required as a condition of testing. Other requirements imposed by implied-consent legislation include, for instance: permitting the driver to consult with his attorney before deciding whether to submit to a test (35); offering the tested driver a choice of tests (36); and prohibiting the officer who made the drinking-driving arrest from also administering the BAC test (37). While these provisions raise legal issues that are no different in the case of TOAA than in the case of DWI legislation, they may impose practical constraints on the testing process.

2.4 Constraints on the Sanctioning of Convicted TOAA Offenders

Three alternative schemes have been proposed for the sanctioning of drivers convicted of a TOAA: first, convicted TOAA offenders would receive more severe punishment than unimpaired moving traffic violators; second, convicted offenders would be sentenced to attend alcohol safety classes or to participate in some rehabilitation program; and third, convicted offenders would receive both additional and alternative sanctions. Two constitutional guarantees are likely to be raised against sentencing of TOAA offenders: the equal protection guarantee; and the requirement that conditions of probation be reasonable.

2.4.1 The Equal Protection Guarantee. TOAA legislation might be challenged on the grounds that more severe punishment for alcohol-aggravated offenses is not reasonably related to their nature and severity. However, as pointed out earlier, it is likely that a court would consider the proposed TOAA legislation a rational means of dealing with the added crash risk posed by the moving traffic violator who had been drinking.

It should be pointed out that classifications of traffic offenses are widely used in the law. For example, reckless driving earns the offender heavier fines and more violation points than careless driving (38), fines for speeding violations are often based on the number of miles per hour above the posted speed limit (39), and, as mentioned earlier, several states have created two degrees of drinking-driving offenses and defined them in terms of BAC. More generally, the law recognizes different degrees of offenses and prescribes punishments accordingly (40).

Because classification of offenses by degree does not in itself violate the equal protection guarantee, and because there is evidence showing that drivers with BAC levels between .05% and .10% pose a comparatively greater crash risk than drivers with BAC levels below .05%, it is likely that courts would uphold differential punishment of TOAA offenders as constitutional.

2.4.2 Reasonableness of Probation Conditions. Probation is a sanctioning process by which a convicted offender is granted conditional liberty as an alternative to incarceration (Killinger, Kerper, and Cromwell 1976, pp. 14-15). It is relevant to the santioning of convicted TOAA offenders for two reasons: first, it is a means of channeling offenders into education and rehabilitation programs; and second, the laws of all but two states make drinking-driving offenses punishable by a jail sentence (41). Assuming that a court has the requisite authority to grant probation, the chief legal issue is the requirement that probation conditions be reasonable. By "reasonable" is meant that conditions be related either to the offender's criminality or to his rehabilitation, that they be possible to carry out, and that they do not unduly restrict the offender's personal liberty (42). Requiring an alcohol-involved traffic offender to participate in a rehabilitative program directed at his drinking behavior would likely meet the test of reasonableness, at least when the program avoids compulsory and highly intrusive medical or psychological treatment (43).

2.5 Summary

TOAA legislation, while susceptible to legal challenges based on several fundamental constitutional rights, is unlikely to be found unconstitutional on its face. The separate treatment of moving traffic offenders who had been drinking is likely to be upheld as a valid exerise of the state's power to legislate in the interests of highway safety. On the other hand, the constitutional prohibition against unreasonable searches, plus the specific requirements of state implied-consent statutes, may restrict the authority of police officers to require BAC testing of suspected TOAA violators. Under the Fourth Amendment, drivers cannot be forced to submit to a chemical test unless there is at least probable cause to suspect that the driver is impaired by alcohol. Thus, any provision in the proposed legislation that authorizes testing of all moving traffic offenders would be unconstitutional. Whether implied-consent legislation governs testing of suspected TOAA violators or not, it raises legal issues affecting the proposed TOAA legislation. If implied-consent laws do apply, their various requirements—such as attorney consultation or

choice of tests--could impose practical constraints on testing. On the other hand, if those laws do not apply, police officers have no means of compelling an unwilling suspect to take a test other than using physical force—an enforcement tactic not favored by state legislatures.

3.0 APPROACHES TO CONSTRAINT RESOLUTION

Two constraints that have been identified in Section 2.0--the requirement of probable cause and the applicability of implied-consent legislation—might pose barriers to the employment of TOAA legislation. It is the purpose of this section to discuss approaches that might be employed to resolve those constraints.

3.1 The Requirement of Probable Cause as a Precondition to Testing

Chemical testing has been characterized as a "search" governed by the Fourth Amendment requirement of reasonableness. As a result a police officer must have at least probable cause to believe that a driver is impaired by alcohol before requiring him to submit to a chemical test for BAC. This requirement precludes enforcement strategies calling for the testing of all moving traffic violators. However, this constraint is relatively slight, since the commission of a moving traffic violation coupled with an odor of alcohol or other evidence of impairment would, under the Fourth Amendment, justify an officer in demanding a BAC test. Therefore, the probable-cause requirement does not pose a serious constraint to the proposed TOAA legislation.

3.2 The Application of Implied-Consent Legislation to Testing of Suspected TOAA Offenders

The primary purpose of existing implied-consent legislation is the detection and identification of DWI offenders. Whether these statutes, as written, would govern testing of suspected TOAA offenders is not known. In states whose implied-consent laws do not govern testing in TOAA cases, compulsory BAC testing could conceivably be carried out under the general Fourth Amendment requirement that searches be "reasonable." However, without the threat of mandatory license suspension as a means of obtaining a driver's consent to BAC testing, police officers faced with an uncooperative TOAA suspect would have to choose between foregoing

chemical test results as evidence of guilt or using physical force to conduct BAC tests.

In states where implied-consent legislation does govern testing of suspected TOAA offenders, enforcement problems could result from statutes that grant drivers rights such as a choice of tests or the opportunity to consult with an attorney prior to the test. Although these additional protections would not by themselves preclude testing of suspected TOAA offenders, they could generate constraints in the form of added time and expense, and may divert officers' attention from more seriously impaired drivers. Such constraints, however, are practical rather than legal.

There exists a simple means of avoiding these potential problems: amending existing implied-consent statutes so that they govern suspected TOAA offenses. None of the constitutional chellenges originally raised against existing implied-consent legislation would likely succeed against the new implied-consent provisions; this is because the unsafe driving conduct addressed by TOAA legislation poses crash risks quite similar to those now created by DWI offenders.

4.0 CONCLUSIONS AND RECOMMENDATIONS

A TOAA statute would likely contain the following provisions:

- A traffic offense aggravated by alcohol (TOAA) is a hazardous traffic violation committed by a driver whose blood alcohol concentration indicates an impairment of driving ability;
- A BAC level of .05% w/v or greater, indicates impairment of driving ability;
- A driver validly stopped by a police officer on suspicion of a moving traffic violation may be tested for BAC under the implied-consent statute, **provided** the officer has probable cause to believe that the driver is impaired by alcohol;
- A driver who refuses a valid request to take a BAC test shall, under the implied-consent statute, receive a mandatory license suspension; and
- A driver convicted of a TOAA shall, in addition to receiving any penal sanctions or violation points: (a) attend alcohol safety classes; (b) receive additional penal sanctions or violation points on account of his alcohol impairment; or (c) both.

Although the constraints identified in Section 2.0 pose potential barriers to the implementation of TOAA legislation, all of them can be resolved through appropriate statutory amendment. The most important of these would be to amend implied-consent laws so that they govern the testing of suspected TOAA offenders as well as suspected DWI offenders. Finally, in states that grant drivers such rights as attorney consultation or choice of tests in connection with BAC testing, TOAA law enforcement could be more costly and time-consuming. Appropriate statutory amendments to facilitate testing of TOAA offenders might be considered.

The remaining barriers to the enactment of a TOAA statute are

political and practical in nature. For example, the adoption of per se DWI statutes so far by less than one-quarter of the states, and the relative rarity of states having levels of two drinking-driving offenses, suggest that TOAA legislation might not readily be accepted by many state legislatures. It is also possible that TOAA statutes would, if enacted, provide prosecutors with another plea-bargaining tool by creating a class of alcohol-related offenses less serious than DWI. These issues require further examimation as the countermeasure concept is developed. As noted, they are policy considerations and not legal issues.

Thus, we conclude that the concept of a TOAA statute is a legally feasible countermeasure approach for dealing with drinking and driving. It should be pointed out that TOAA legislation may encounter political or practical constraints; these, however, are beyond the scope of this volume. Note that this analysis has addressed neither the political nor the practical feasibility of TOAA legislation as this is the subject of analyses by NHTSA and by other NHTSA contractors.

FOOTNOTES

1. The term "driving while intoxicated" (DWI) is used throughout this volume to refer to drinking-driving offenses. State drinking-driving laws use a wide variety of terms and acronyms to label these offenses.

2. See, UNIFORM VEHICLE CODE § 11.902.1(b)(3) (Supp. II 1976). A small number of states "presume" intoxication at levels lower than .10%; see, e.g., IDAHO CODE § 49-1102(b)(2) (Supp. 1978) [over .08%]; and UTAH CODE ANN. § 41-6-44(b)(3) (Supp. 1977) [over .08%]. The word "presumption" is misleading; the effect of BAC test results is to raise an inference, not a presumption. See, e.g., Commonwealth v. DiFrancesco, 458 Pa. 188, 329 A.2d 204, 207-10 (1974).

3. See, UNIFORM VEHICLE CODE §§ 11.902.1(b)(1), 11.902.2(b)(2) (Supp. II 1976). Some states have established lower limits other than .05%; see, e.g., MICH. COMP. LAWS ANN. § 257.625a (1977) [.07%].

4. As of December 1978, the following per se DWI statutes had been enacted: DEL. CODE tit. 21, §§ 4177(a), 4177(b) (Supp. 1978); FLA. STAT. §§ 316.193(3), 322.262(2)(c) (1978); MINN. STAT. ANN. § 169.121(1)(d) (West Supp. 1979); MO. ANN. STAT. § 577.012 (Vernon Cum. Supp. 1979); NEB. REV. STAT. § 39-669.07; (Cum. Supp. 1978); N.Y. VEH. & TRAF. LAW § 1192(2) (McKinney Supp. 1978-79); N.C. GEN. STAT. ANN. §§ 20-138(b) (1978); OR. REV. STAT. §§ 487.540(a) (1977); S.D. COMP. LAWS ANN. § 32-23-1(1) (1976); UTAH CODE ANN. § 41-6-44.2(a) (Supp. 1977); VT. STAT. ANN. tit. 23, § 1201(a)(1) (1978); and WIS. STAT. ANN. § 346.63(4) (West Supp. 1979-80).

5. A number of states have created, in addition to the DWI offense, a lesser alcohol-related offense commonly known as "driving while impaired." Typical driving-while-impaired provisions include: COLO. REV. STAT. § 42-4-1202(2)(b) (1974) [impairment "presumed" at .05%]; MICH. COMP. LAWS ANN. § 257.625a(1)(b) (1977) [impairment "presumed" at .07%]; and N.Y. VEH. & TRAF. LAW §§ 1192(1), 1195(2) (McKinney Supp. 1978-79) [impairment inferrable at .05%, presumed at .07%]. One should see also, N.C. GEN. STAT. § 20-140(c) (1978) [reckless driving after consuming enough liquor to "directly and visibly" affect driving ability].

6. The laws of some states in effect recognize alcohol consumption as an aggravating factor when an intoxicated driver is involved in a fatal traffic crash; the driver's intoxication is treated as equivalent to criminal recklessness or negligence. See, e.g., COLO. REV. STAT. §§ 18-3-105 (1974) [criminally negligent homicide; class 1 misdemeanor] and 18-3-106(1) (Supp. 1978) [vehicular homicide (recklessness or intoxication causing death); class 4 felony]; IND. CODE ANN. §§ 9-4-1-54(b)(1) (Burns Supp. 1978) [reckless homicide; class D felony]; and 32-42-1-5 (Burns Supp. 1978) [driving while under the influence causing the death of another; same]; and UTAH CODE ANN. §§ 76-5-206 (Cum. Supp. 1977) [criminally negligent homicide; class A misdemeanor] and 76-5-207 (Cum. Supp. 1977) [automobile homicide (negligence plus driving while intoxicated, causing death; third degree felony).

7. Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939); 16 AM. JUR. 2d Constitutional Law §§ 259-276 (1964); see generally, Berman v. Parker, 348 U.S. 26 (1954).

8. Dixon v. Love, 431 U.S. 105 (1977); California v. Byers, 402 U.S. 424 (1971) (plurality opinion); Hess v. Pawloski, 274 U.S. 352 (1927).

9. Mackey v. Montrym, —U.S.—, 47 U.S.L.W. 4798 (1979); Breithaupt

v. Abram, 352 U.S. 432 (1957); Anderson v. Cozens, 60 Cal. App. 3d 130, 131 Cal. Rptr. 256, 265 (1976).

10. State v. Duguid, 50 Ariz. 276, 72 P.2d 435 (1937); Lawrence v. City of Los Angeles, 53 Cal. App. 2d 6, 127 P.2d 931 (1942); State v. Haner, 231 Iowa 348, 1 N.W.2d 91 (1941).

11. Schmerber v. California, 384 U.S. 757 (1966); Breithaupt v. Abram, 352 U.S. 432 (1957); Campbell v. Superior Court, 106 Ariz. 542, 479 P.2d 685 (1971); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007 (1972); Lee v. State, 187 Kan. 566, 358 P.2d 765 (1961). One should see also, Schutt v. MacDuff, 205 Misc. 43, 127 N.Y.S. 2d 116 (Sup. Ct. 1954).

12. Recent cases upholding the use of BAC levels include; e.g., People v. Schrieber, 45 Cal. App. 3d 917, 119 Cal. Rptr. 812, 813-14 (1975); Commonwealth v. DiFrancesco, 458 Pa. 188, 329 A.2d 204, 210 (1974); and State v. Coates, 17 Wash. App. 415, 563 P.2d 208, 210 (1977). BAC presumptions are actually "inferences," which permit--but do not require--a judge or jury to find a driver guilty of DWI on the basis of test results alone. Inferences are distinguishable from presumptions, which have the effect of shifting the burden of proof from the state to the driver. In this regard see the discussion in the Di Francesco case cited in note 2 above.

13. Lawton v. Steele, 152 U.S. 133 (1894); see also, 16 AM. JUR. 2d Constitutional Law §§ 277-87 (1964).

14. Ferguson v. Skrupa, 372 U.S. 726 (1963); McGowan v. Maryland, 366 U.S. 420 (1961).

15. Wells v. Malloy, 402 F. Supp. 856 (D. Vt. 1975); Love v. Bell, 171 Colo. 27, 465 P.2d 118, 123 (1970); State v. McCourt, 131 N.J. Super. 283, 329 A.2d 577 (App. Div. 1974); Berberian v. Petit, — R.I. —,

374 A.2d 791, 794 (1977); and Berberian v. Lussier, 87 R.I. 226, 139 A.2d 869 (1958).

16. Greaves v. State, 528 P.2d 805 (Utah 1974); see also, State v. Abbott, 15 Or. App. 205, 514 P.2d 355 (1973).

17. Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality opinion) [discussing "suspect classifications"]; San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) [discussing "fundamental rights"].

18. New Orleans v. Dukes, 427 U.S. 297 (1976); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974).

19. Anderson v. Cozens, 60 Cal. App. 3d 130, 131 Cal. Rptr. 256, 265 (1976).

20. See, Department of Motor Vehicles v. Superior Court, San Mateo County, 58 Cal. App. 3d 936, 130 Cal. Rptr. 311, 314 (1976); Miller v. Tofany, 88 Misc. 2d 247, 387 N.Y.S. 2d 342 (Sup. Ct. 1975); and State v. Kent, 87 Wash. 2d 103, 549 P.2d 721 (1976); see also, Jones v. Penny, 387 F. Supp. 383 (M.D.N.C. 1974).

21. 5 AM. JUR. 2d Arrest §§ 26, 28 (1962). It should be noted that the power to make warrantless arrests for traffic offenses is generally granted by statute.

22. Schmerber v. California, 384 U.S. 757 (1966); State v. Howard, 193 Neb. 45, 225 N.W.2d 391 (1975) [applying reasoning of Schmerber]; State v. Kroenig, 274 Wis. 266, 79 N.W.2d 810 (1956) [decided on state constitutional grounds prior to Schmerber].

23. State v. McCarthy, 123 N.J. Super. 513, 303 A.2d 626 (Essex County

Ct. 1973); State v. Osburn, 13 Or. App. 92, 508 P.2d 837 (1973); Commonwealth v. Quarles, 229 Pa. Super. 363, 324 A.2d 452 (1974) (plurality opinion); State v. Driver, 59 Wis. 2d 35, 207 N.W.2d 850, 854 (1973).

24. U.S. CONST. amend. IV.

25. In Schmerber v. California, 384 U.S. 757, 768-69 (1966), the U.S. Supreme Court appeared to require both a valid arrest and probable cause before a driver could be required to submit to a chemical test. In Cupp v. Murphy, 412 U.S. 291 (1973), the Court permitted the taking of "highly evanescent" evidence without a formal arrest where there existed probable cause to make the arrest. Reading Schmerber and Cupp together therefore provides justification for prearrest chemical testing of a driver where there is probable cause to arrest the driver for DWI. This result was reached in State v. Oevering, — Minn. ---, 268 N.W.2d 68 (1978). See also, State, Department of Public Safety v. Grovum, 297 Minn. 66, 209 N.W.2d 788 (1973) [licensing authority cannot punish driver for refusing to take chemical test unless officer had probable cause to suspect DWI]; and Commonwealth v. Quarles, 229 Pa. Super. 363, 324 A.2d 452 (1974) (plurality opinion) [requiring probable cause to conduct on-the-spot BAC test of driver; but requiring formal arrest to take driver into custody]; but see, State v. Mitchell, 245 So.2d 618 (Fla. 1971) [apparently requiring a showing less than probable cause to justify a test]; and People v. Graser, 393 N.Y.S.2d 1009 (Amherst Town Court 1977) [possibly requiring less than probable cause]. Most states, however, still require a formal arrest prior to DWI testing; see, the statutes and cases cited in note 27 below.

26. BLACK'S LAW DICTIONARY 1365 (4th ed. rev. 1968) states that have "probable cause," "probable cause to believe," and "reasonable cause to believe" all have equivalent legal meanings.

27. In many states, the implied-consent statute explicitly requires an arrest prior to administering a BAC test; see, e.g., CAL. VEH. CODE § 13353(a) (West 1971) [the test "shall be incident to a lawful arrest"]; ILL. ANN. STAT. ch. 95 1/2, § 11-501.1(a) (Smith-Hurd Supp. 1979) ["as an incident to and following his lawful arrest"]; and MICH. COMP. LAWS ANN. § 257.625c(1)(a) (1977) [arrest for driving while intoxicated or impaired made a condition of testing]. In a number of other states, courts have suppressed BAC test results at trial because the statutory arrest requirement was not observed; the following cases are typical: State v. Richerson, 87 N.M. 437, 535 P.2d 644 (Ct. App.), cert. denied, 87 N.M. 450, 535 P.2d 657 (1975); State v. Wetherell, 82 Wash. 2d 865, 514 P.2d 1069 (1968); and State v. Byers, 224 S.E.2d 726 (W. Va. 1976). Cases dealing with the arrest requirement are collected in State v. Oevering, --- Minn. ---, 268 N.W.2d 68, 74-75 (1978) (dissenting opinion).

28. See, e.g., MICH. COMP. LAWS ANN. § 257.625f(3) (1977).

29. UNIFORM VEHICLE CODE § 11-902.1(a) (Supp. II 1976) provides for the introduction of chemical test results in "any civil or criminal action or proceeding" arising out of acts alleged to have been committed by the suspected intoxicated driver. Not all states follow the UVC approach. Many states permit the introduction of chemical test results in criminal prosecutions only; see, e.g., MINN. STAT. ANN. § 169.121(2) (West Supp. 1979). Some states restrict the use of test results to DWI prosecution only; see, e.g., ILL. ANN. STAT. ch. 95 1/2, § 11-501.1(c) (Smith-Hurd Supp. 1979). The issue of whether BAC test results can be admitted in prosecutions of vehicular-homicide and other non-DWI cases is also discussed in Annot., 16 A.L.R. 3d 748 (1967).

30. Schmerber v. California, 384 U.S. 757 (1966).

31. See, People v. Superior Court of Kern County, 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972).

32. See, People v. Superior Court of Kern County, 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972); and Rossell v. City and County of Honolulu, --- Haw. ---, 579 P.2d 663 (1978); see also, Commonwealth, Department of Public Safety v. Hayden, 484 S.W.2d 97 (Ky. 1972) (dicta).

33. See, e.g., MICH. COMP. LAWS ANN. §§ 257.625-257.625g (1977), which is typical of those statutes that in effect grant the driver a "right to refuse" a chemical test and choose a license suspension instead. A number of statutes, however, punish the noncooperative driver both ways, by imposing a license suspension and by permitting the prosecution at a DWI trial to comment on the driver's refusal. Representative statutes imposing such a "double" penalty include the following: UNIFORM VEHICLE CODE § 11.902.1(c) (Supp. II 1976) [optional provision]; ALA. CODE tit. 32, § 5-192(c) (1975); DEL. CODE tit. 21, § 2749 (1974); and IOWA CODE ANN. § 321B.7 (West Supp. 1978-79).

34. In eleven states and the District of Columbia, however, police officers are permitted to administer, under certain circumstances, prearrest breath tests, the purpose of which are to guide the officer in deciding whether to make a formal DWI arrest. As of December 1978, the following "preliminary breath test" statutes had been enacted: FLA. STAT. § 322.261(1)(b) (1978); IND. CODE ANN. § 9-4-4.5-3 (Burns Supp. 1978); ME. REV. STAT. ANN. tit. 29, § 1312.11C (West Supp. 1978-79); MINN. STAT. ANN. § 169.121(6) (West Supp. 1979); MISS. CODE ANN. § 63-11-5 (1973); NEB. REV. STAT. § 39-669.08(3) (1974); N.Y. VEH. & TRAF. LAW § 1193a (McKinney Supp. 1978-79); N.C. GEN. STAT. ANN. § 20-16.3 (1978); N.D. CENT. CODE § 39-20-14 (Supp. 1977); S.D. COMP. LAWS ANN. § 32-23-1.2 (1978); VA. CODE § 18.2-267 (Supp. 1979); and WIS. STAT.

ANN. § 343.305(2)(a) (West Supp. 1979-80). In addition, D.C. CODE ANN. § 40-1002(b) (1973) could be termed a "preliminary breath test" statute since it allows police officers to require tests in cases where the driver is involved in a fatal or personal injury crash and is arrested for a traffic offense other than DWI; the test results could then be introduced at a subsequent DWI trial.

35. See, e.g., ILL. ANN. STAT. ch. 95-1/2, § 11-501.1(a)(3) (Smith-Hurd Supp. 1979); MINN. STAT. ANN. § 169.123(3) (West Supp. 1979); and VT. STAT. ANN. tit. 23, § 1202(b) (1978).

36. See, e.g., CAL. VEH. CODE § 13353(a) (West 1971); and MINN. STAT. ANN. § 169.123(2) (West Supp. 1979).

37. See, e.g., N.C. GEN. STAT. § 20-139.1(b) (1978).

38. For example, compare MICH. COMP. LAWS ANN. §§ 257.626, 257.320a(1)(d) (1977) [reckless driving punishable by maximum penalties of 90 days' imprisonment or a $100 fine or both, plus six violation points] with MICH. COMP. LAWS ANN. §§ 257.626b, 257.320a(1)(e) (1977) [careless driving punishable by maximum penalties of 10 days' imprisonment or a $100 fine or both, plus four violation points].

39. See, e.g., FLA. STAT. § 322.27 (1978); MICH. COMP. LAWS ANN. § 257.320a (1977); NEB. REV. STAT. § 39-669.26 (1974); and PA. STAT. ANN. tit. 75, §§ 1535, 3362(c) (Purdon 1977).

40. See, e.g., CAL. PENAL CODE §§ 487, 488 (West 1970) [theft of over $200 defined as grand theft; theft of lesser amount considered petty]; N.Y. PENAL LAW §§ 130.25, 130.30, 130.35 (McKinney 1975) [setting out three degrees of statutory rape, defined by age of defendant and victim]; and OR. REV. STAT. § 475.992(4)(f) (1977) [possession of more than one ounce of marijuana punishable by

imprisonment; possession of smaller amount punishable by fine only].

41. Two state statutes have decriminalized first offense DWI. They are: OR. REV. STAT. §§ 484.360, 484.365(3)(a) (1977); and WIS. STAT. ANN. 346.65(2)(a)(1), 939.12 (West Supp. 1979-80). Even where imprisonment is not a possible sanction, statutes may nevertheless authorize a court to sentence a convicted offender to participate in a rehabilitation program. See, MICH. COMP. LAWS ANN. § 257.907(4) (Supp. 1979-80)

42. See, e.g., Springer v. United States, 148 F.2d 411 (9th Cir. 1945); In re Mannino, 14 Cal. App. 3d 953, 92 Cal. Rptr. 880 (1971); and People v. Higgins, 22 Mich. App. 479, 177 N.W.2d 716 (1970); but see, State v. Sandoval, 92 Idaho 853, 452 P.2d 350 (1969).

43. Runnels v. Rosendale, 499 F.2d 733 (9th Cir. 1974); Mackey v. Procunier, 477 F.2d 877 (9th Cir. 1973); Merriken v. Cressman, 364 F. Supp. 913 (E.D. Pa. 1973).

REFERENCES

Belardo, S., and Zink J. 1975. New York State Police evaluation of the National Highway Traffic Safety Administration alcohol screening device. Albany: New York State Police.

Borkenstein, R.F.; Crowther, R.F.; Shumate, R.P.; Ziel, W.B.; and Zylman, R. 1964. The role of the drinking driver in traffic accidents. Bloomington: Indiana University Department of Police Administration.

Comment, The Theory and Practice of Implied Consent in Colorado, 47 COLO. L. REV. 723 (1976).

Coldwell, B.B.; Penner, D.W.; Smith, H.W.; Lucas, G.H.W.; Rodgers, R.F.; and Darroch, F. 1958. Effect of ingestion of distilled spirits on automobile driving skill. Quarterly Journal of Studies on Alcohol 19:590-616.

Huntley, M.S., Jr., and Centeybear, T.M. 1974. Alcohol, sleep deprivation, and driving speed effects upon control use during driving. Human Factors 16(1):19-28.

Huntley, M.S., Jr., and Perrine, M.W. 1971. Influences of alcohol upon driving behavior in an instrumental car. National Highway Traffic Safety Administration technical report DOT-HS-800-625.

Killinger, G.G.; Kerper, H.B.; and Cromwell, P.F., Jr. 1976. Probation and parole in the criminal justice system. St. Paul: West Publishing Company.

Mason, M.F., and Dubowski, K.M. 1974. Alcohol, traffic, and chemical testing in the United States: A resume and some remaining problems. Clinical Chemistry 20(2):126-140.

Note, Developments in the Law—Equal Protection, 82 HARV. L. REV. 1065 (1969).

Reeder, R.H. 1972. Interpretation of implied consent laws by the courts. Evanston, Illinois: Northwestern University Traffic Institute.

Seehafer, R.W.; Huffman, W.J.; and Kinzie, M.D. 1968. Effects of low level blood alcohol concentration on psychophysiological and personality measures under controlled driving conditions. 1968 National Safety Congress Transactions vol. 24. Chicago: National Safety Council.