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ALCOHOL, DRUGS, AND TRAFFIC LAW

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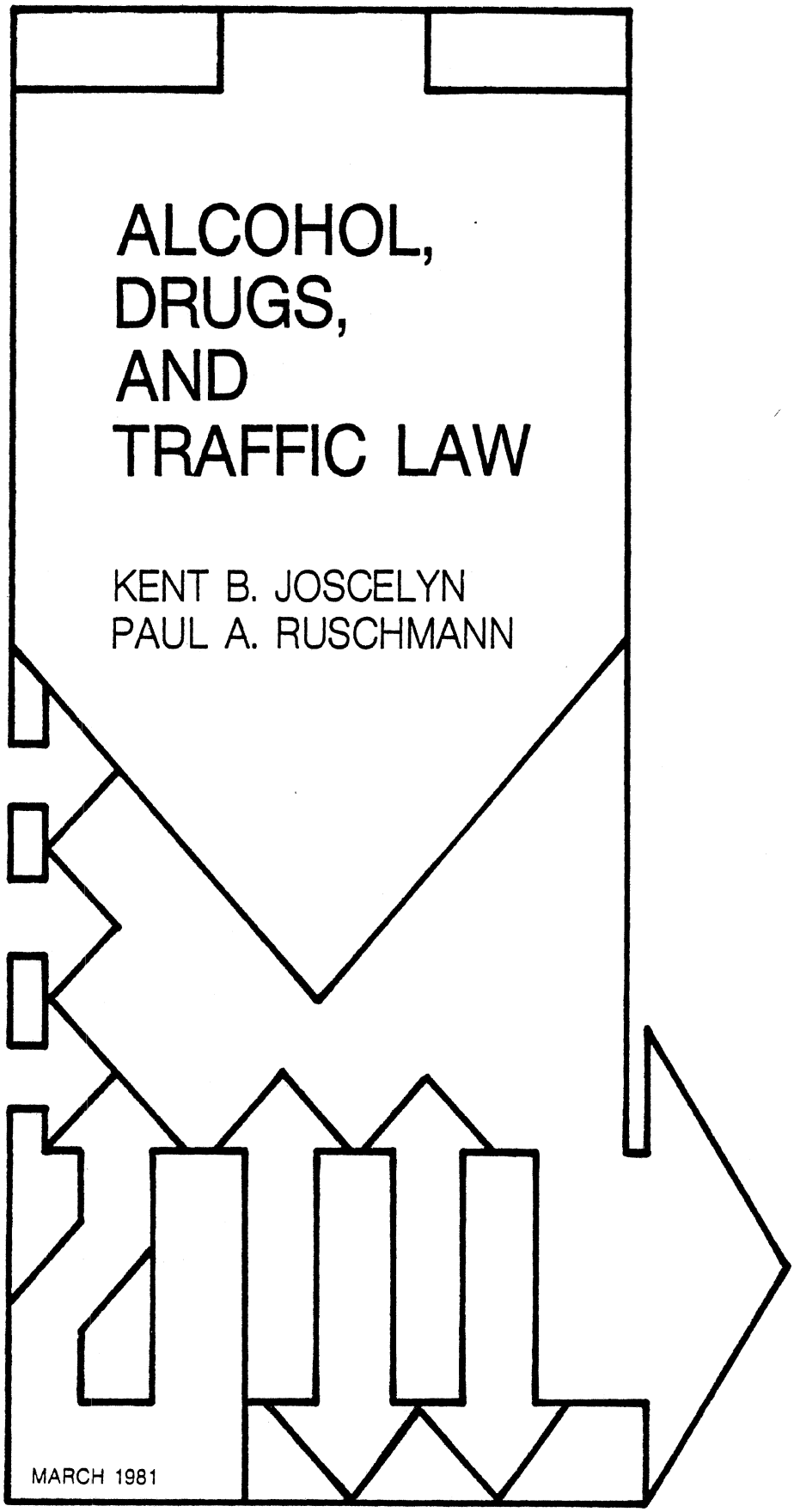

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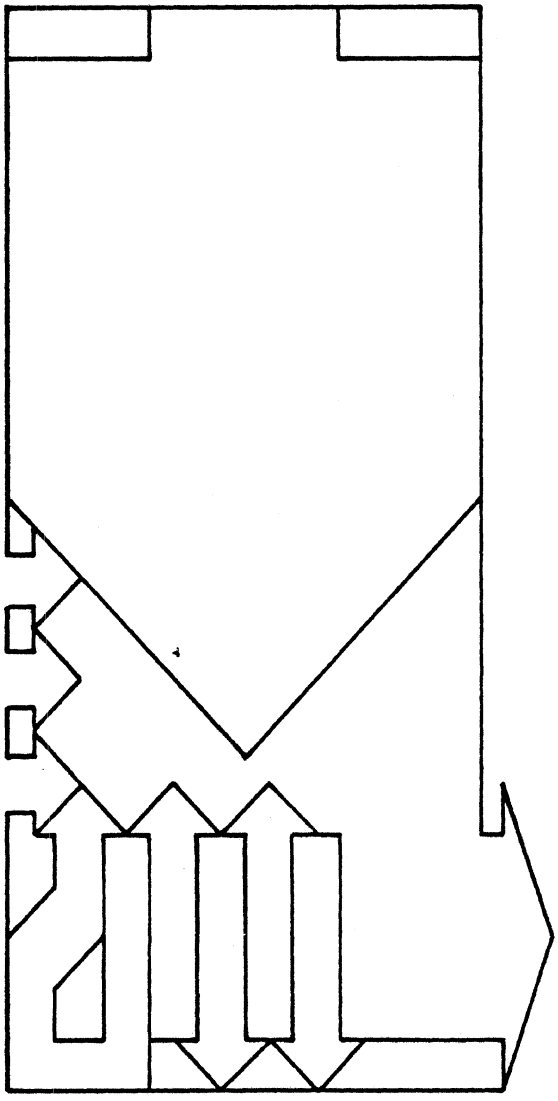

Society's primary strategy for managing the safety risks posed by the impaired driver is the legal approach based on the principle of deterrence. Laws prohibiting impaired driving and calling for the punishment of offenders exist in all states. Implied-consent laws that assist the police in gathering evidence of impaired-driving offenses also exist in every state. However, many aspects of current state legislation are inadequate and inhibit law enforcement, especially with respect to drivers who are impaired by drugs other than alcohol. Many of these deficiencies can be remedied by legislative changes.

This paper examines the chief legal tools directed against the impaired driver, describes major constraints on law enforcement, identifies the principal deficiencies of existing impaired-driving and implied-consent laws, and presents proposals for amending deficient laws.

INTRODUCTION

Drivers who are impaired by alcohol or other drugs increase the risk of a traffic crash. Alcohol-impaired drivers are more frequently involved in crashes than drivers who had not been drinking. Forty to fifty-five percent of the drivers who are fatally injured are legally intoxicated—that is, their blood alcohol concentration (BAC) is equal to or in excess of .10% w/v. Approximately nine to thirteen percent of the drivers involved in personal injury crashes, and five percent of the drivers involved in property damage crashes, also have BACs equal to or greater than the legal standard of .10% w/v. The risk that a driver will be involved in a traffic crash rises sharply as BAC increases. A driver with a BAC of .10% w/v is six to ten times more likely to have a fatal crash than a nondrinking driver. The fatal crash risk increases to fifteen to twenty-five times that of the nondrinking driver when an alcohol-impaired driver reaches a BAC of .15% w/v.

Impairment can also be caused by drugs other than alcohol. In some cases this may occur as a result of drug abuse, that is, the prohibited use of controlled substances or the consumption of drugs in quantities that exceed therapeutic doses. Drug-impaired driving can also result from the licit use of prescription and over-the-counter medications. Other substances, such as volatile solvents, can also impair driving. Often drug-impaired driving results from the use of more than one drug. The combined use of alcohol and other drugs is common. Sometimes impairment may result from use of multiple drugs as directed. In other cases, the impairment may occur when a modest amount of alcohol is consumed while taking medications. Even though the drug use may not be illegal, the resulting impairment by alcohol and drugs in combination is just as dangerous for road users as impairment caused by alcohol alone or by illegal drug use.

In many states, existing laws dealing with impaired driving are inadequate. Loopholes exist that allow some impaired drivers to escape the penalty of the law. Other laws contain procedural requirements that unnecessarily preclude efficient police work.

The frequency with which drugs other than alcohol are involved in crashes is not yet known. Drug-impaired drivers are involved in crashes and are arrested for impaired driving. Approximately one arrest for drug-impaired driving occurs for every 100 arrests for alcohol-impaired driving.

The use of our legal system is the oldest and most widely used approach to deal with impaired driving. Every state has laws that prohibit driving while impaired by alcohol. Every state also has some legislation intended to deter drug-impaired driving. However, in many states, existing laws dealing with impaired driving are inadequate. Loopholes exist that allow some impaired drivers to escape the penalty of the law. Other laws contain procedural requirements that unnecessarily preclude efficient police work. These laws, which make processing the impaired driver a time-consuming task, are costly for society and inconvenient for the individual charged.

If the legal system is to be used effectively to manage the traffic crash risk created by the impaired driver, sound legislation must form the basis for action. This paper presents a discussion of the law relating to alcohol, drugs, and driving to provide an understanding of the problems with existing laws as well as an understanding of what laws are needed. A concise summary of needed laws is presented to serve as a guide for review of existing legislation. This can be used by legislators, highway safety specialists, and citizens to examine the "state of the law" in their state.

LEGAL TOOLS FOR CONTROLLING IMPAIRED DRIVING

The legal approach has been the traditional approach to the problem of impaired driving in the United States. It operates on the principle of deterrence: laws are passed to define and prohibit behavior that is considered unacceptable to society; those who do not comply with the law are subject to being caught and punished; and—ideally—those who contemplate breaking the law are thus discouraged, or deterred, from doing so out of a belief that the unpleasant consequences of violating the law would outweigh the benefits (see Jones and Joscelyn 1976).

Impaired-Driving Laws: Deterrence

The most essential legal tools for controlling impaired driving are **impaired-driving laws.** The simplest form of impaired-driving law prohibits driving "while under the influence" of alcohol or some other drug (1). It is generally accepted that to be considered "under the influence," one's ability to drive safely must be reduced to some unacceptable level. While state court decisions use varying language to describe this subjective standard for alcohol impairment (Erwin 1979, pp. 1-28—1-43), and qualitative evidence of alcohol or drug influence (i.e., the officer's observations of the suspect, and the performance of field coordination tests) is not precise, impaired-driving laws are considered clear enough to give drivers, courts, and juries sufficient notice of what is prohibited conduct.

Development

Prior to 1939, all states' impaired-driving laws had only qualitative standards of driving while under the influence. However, as more knowledge was gained regarding the relationship between the amount of alcohol in the body and the impairment of driving-related skills, it became possible to establish a quantitative standard of alcohol intoxication. Early legislation set a presumptive standard at a BAC of .15% w/v. At this level a judge or jury could presume that a driver was under the influence of alcohol. The BAC, plus evidence of impaired driving behavior, constituted proof of the offense. More recent legislation in nearly every state has reduced the standard to .10% w/v (2). In the 1970s a growing number of states—thirteen as of May 1979 (National Highway Traffic Safety Administration 1980)—have gone one step further and enacted so-called "per se" statutes. Recognizing the extremely high probability that impairment of driving ability occurs at and above .10% w/v, these states have made it an offense to drive with a BAC at or above that level; in those states, when BAC is shown to be above .10% w/v, additional evidence of driving impairment is not required.

Legal Restrictions on Enforcement

Impaired driving is usually considered a criminal offense (3). Law-enforcement agencies use procedures to gather evidence and determine guilt or innocence that are similar to those used, for example, in the case of suspected burglars or narcotics peddlers. Therefore, enforcement agencies are bound by the same constitutional protections that apply to other criminal cases. Chief among these protections are the individual's right to be free from unreasonable searches and seizures, guaranteed by the Fourth Amendment to the U.S. Constitution; and due process of law, guaranteed by the Fourteenth Amendment.

Under the Fourth Amendment, for a search or seizure (i.e., an arrest) to be reasonable, the officer conducting it must have **probable cause** to arrest or search. Probable cause cannot be defined with precision; however, one widely accepted definition states that it consists of facts and circumstances that indicate to a reasonably prudent person that an offense has been committed (4). The guarantee of due process of law prohibits violent or brutal means of obtaining evidence (5), but it does not prohibit the chemical tests for alcohol that are widely used in law enforcement (6). Due process also requires basic fairness in official proceedings, such as license-suspension proceedings and criminal trials for impaired driving (7).

It should be noted that constitutional requirements relating to search and seizure, due process, and other basic individual rights are the supreme law of the land (8), and thus take precedence over any impaired-driving and implied-consent laws that conflict with the Constitution.

Implied-Consent Laws: Facilitating Chemical Testing

Rationale

Proof of an impaired-driving offense requires proving three elements: operation of a motor vehicle; use of alcohol or drugs; and impairment of driving ability. Especially in the case of alcohol, the task of proving that the driver was impaired is aided by chemical test results: a court or jury may presume, from a BAC level at or above .10% w/v, that driving impairment has occured (9). When test results are not available (such as when a driver refuses to take a test), impairment can still be established by other evidence, including the impaired driving behavior that brought the driver to the attention of the officer, the driver's lack of coor-

dination, performance of field sobriety tests, physical appearance, odor of alcohol on the breath, or the presence of liquor containers in the vehicle. This was how impaired driving was proved before chemical tests came into wide use.

After the development of chemical testing methods but prior to implied consent, police relied on their lawful powers to forcibly seize evidence of impairment from a suspect so long as they had

Implied-consent legislation has in fact resulted in greater, not fewer, restrictions on the testing process.

probable cause to do so, and so long as the method of seizing it was not violent or brutal (10). Thus a police officer could extract a body fluid specimen from a suspected impaired-driving offender, over that person's objections, without violating the U.S. Constitution. Police departments, however, are reluctant to engage in forcible confrontations with noncooperative suspects; moreover, state legislators viewed forcible testing for alcohol content as poor policy (Colorado Law Review 1976). Therefore, beginning in New York in 1953, legislation was enacted to replace the threat of physical compulsion with a substitute form of compulsion—namely the threat of license loss—when an officer attempted to obtain a body fluid specimen. These laws, which by 1972 were in force in all 50 states and the District of Columbia, typically state that an individual has, by the act of operating a vehicle on the highway, given consent to the taking of specimens. Thus they were given the popular but somewhat misleading title of "implied-consent" laws (11). The label is misleading because implied-consent legislation has in fact resulted in greater, not fewer, restrictions on the testing process. Most notably, if a driver refuses to submit to a test, no attempt will be made to obtain a specimen; instead, the matter will be referred to the state driver-licensing authority, which would take steps to suspend the driver's license (12). Therefore, implied-consent legislation has created a right to refuse a chemical test that does not exist as a matter of constitutional law.

In some states it is possible that police officers may still have the authority to forcibly test drivers. Court cases dealing with this issue have reached differing results when the driving offense involved was specifically covered by the implied-consent law (13). When, on the other hand, an offense is not covered by implied consent (for example, if manslaughter is not covered but impaired driving is), police officers have no alternative but to use their authority to forcibly seize evidence (14). It is also possible that in any situation, a police officer could persuade a driver to voluntarily submit to a test—whether or not such a test would be constitutional if it were compelled or whether it would be authorized by the implied-consent statute. In the case of a "consent search," care must be taken to ensure that the driver's consent was in fact free and knowing (15).

Legal Restrictions on Testing

Two sources of law thus govern the administration of chemical tests for BAC. First, the U.S. and state **constitutions** establish minimum protections for those suspected of impaired driving. Under the Constitution, an officer must have "probable cause," that is, reasonable grounds to believe that the driver is under the influence, to arrest the driver or to require the driver to take a chemical test. In addition, the manner of testing must be "reasonable," that is, conducted according to established medical standards and neither violent nor brutal. Second, state **implied-consent legislation** governs the administration of chemical tests in all states. Implied-consent laws also govern the types of tests to be given and the manner in which the testing is to be carried out, and specify penalties for refusal; thus, these provisions place a set of restrictions, in addition to those of the U.S. Constitution, on police officers who intend to obtain specimens.

DEFICIENCIES OF EXISTING LAW

Current legislation directed at alcohol- and drug-impaired driving consists of: first, an **impaired-driving law**, that defines the offense and prescribes punishments; and second, an **implied-**

consent law, that regulates the gathering of evidence of impairment, and prescribes punishments for refusing to submit to a test. Both impaired-driving and implied-consent laws are subject to constitutional restrictions, such as the requirement that the testing officer have probable cause to arrest before demanding a test, and that the testing be conducted in a reasonable manner.

The ultimate goal of the legal approach to the impaired-driving problem is to deter drivers from making decisions to drive while under the influence of alcohol and/or other drugs. Within legal and practical constraints, an intermediate objective is to catch, prove guilty, and sanction as many impaired drivers as possible. However, existing laws in most states exhibit deficiencies that inhibit the finding and punishment of impaired drivers. What is more, these deficiencies are not required by any provision of the Constitution. The rest of this paper points out the chief deficiencies of current legislation and identifies legislative reforms that can overcome them.

Problems with Existing Impaired-Driving Laws

Most states' impaired-driving laws consist of a simple prohibition of driving while "under the influence" of alcohol or other drugs, which is qualitative in nature, plus a quantitative standard relating BAC to alcohol impairment. A few states also define a second, less serious offense, typically called "driving while impaired." Citations to state impaired-driving laws appear in Appendix B.

In the case of alcohol, the current definition of impaired driving has posed few problems: the terms "intoxicated" and "impaired" have been defined by courts with sufficient clarity and are well enough known to the public that there is little confusion as to their meaning or their application. Moreover, quantitative standards of intoxication based on BAC exist in all states, and these have been uniformly upheld as reasonable by the courts.

Many drivers operate vehicles after consuming both alcohol and one or more other drugs, typically marijuana or a prescription drug.

On the other hand, state law definitions of driving while under the influence of other drugs are problematical. First of all, the language of many impaired driving statutes contains overly narrow definitions of "drug." Second, many statutes fail to deal with the "polydrug" case, that is, the driver who uses alcohol in combination with other drugs, or who uses a combination of drugs other than alcohol.

Narrow Definitions of "Drug"

Early state laws prohibited driving while under the influence of narcotic drugs. In 1944, the drafters of model legislation known as the Uniform Vehicle Code (16) recognized that definition was too restrictive, and added the language "any drug" to the Code provision. Many—but not all—states have likewise recognized that nonnarcotic substances can impair driving ability; accordingly, 30 states have also revised their definitions to include "any drug" or have adopted language that encompasses virtually all drugs. The remaining twenty states continue to limit their definitions to "narcotic drugs," "controlled substances," or to substances specifically listed in the law. The problem with such narrow definitions is that one who drives after consuming an uncontrolled, over-the-counter medication (such as a cold or allergy remedy) might not be in violation of the law, even though unable to drive safely. A related problem is posed by the laws of several states—including Indiana, Iowa, and Maryland—that exclude legal (both prescription and over-the-counter) drug use from their prohibitions of drug-impaired driving. These laws are likewise too narrow in their scope, because licit drugs (i.e., those that are properly used for medical treatment) can impair driving ability as well as illicit ones that are abused.

No Provision for Combined Use of Substances

Police officers and researchers have noted that many drivers operate vehicles after consuming both alcohol and one or more other drugs, typically marijuana or a prescription drug. The interaction of alcohol and the other substances frequently impairs driving ability to an unacceptable degree; however, the problem of driving while under the

combined influence was not specifically addressed by state legislation until recently. In 1971 a provision was added to the Uniform Vehicle Code that prohibited driving while under the combined influence of alcohol and another drug. Still, a majority of states, 31 in number, have yet to enact such a provision. In many of those states a prosecutor faced with a combined-influence case must choose whether to prosecute for driving while under the influence of alcohol or under the influence of drugs, with the result that it may not be possible to prove either offense.

Another, related deficiency in many states' laws is the lack of a provision prohibiting driving while under the combined influence of two or more drugs other than alcohol. The Uniform Vehicle Code was amended to contain such a provision in 1979, but to date only four states—Delaware, Iowa, Maryland, and Massachusetts—have legislation that follows the Code's example.

Although most state impaired-driving laws adequately define and prohibit driving while under the influence of alcohol, many of them contain deficiencies with respect to driving while under the influence of other drugs, or combinations of impairing substances. Model legislation contained in the Uniform Vehicle Code prohibits driving while under the influence of any impairing substance, or any combination of impairing substances, and that language forecloses the possibility that an impaired driver would escape prosecution by virtue of an incomplete definition of "drug."

Problems with Existing Implied-Consent Laws

Every state has an implied-consent law that permits a police officer, under certain circumstances, to require a driver to choose between submitting to a lawful chemical test or risking the loss of driving privileges for refusal. State laws differ from one another with respect to a number of items, including: the specific offenses to which the implied-consent law applies (17); the types of tests that can be administered; drivers' rights in connection with the testing process; the time and place of testing; the number of tests that can be administered; and the handling of specimens. Citations to state implied-consent laws appear in Appendix C.

Chemical testing, and the implied-consent legislation that is intended to support the testing process, were both developed in the context of alcohol-related prosecutions. Alcohol did and still does account for the great majority of all impaired-driving cases. Chemical testing for alcohol can be done by analyzing any of a number of body fluid specimens but, in the case of conscious drivers, breath is the preferred type of test.

Time-Consuming Arrest and Testing Processes

Nonetheless, the chemical testing process, even for alcohol, encounters several difficulties. Because impaired driving is considered a criminal offense, a driver must be arrested for the offense, which normally means being taken into custody. Even though a driver could be placed "under arrest" at the roadside, most police departments have policies requiring that those arrested for impaired driving be brought to the stationhouse. In some states, state law requires that drivers arrested for alcohol-related offenses be kept in custody for some minimum period of time or meet certain criteria before being released from custody (Little and Cooper 1977).

Police officers need a reliable method of accurately determining, at the roadside, whether a driver is in violation of the law.

Frequently the testing process takes place at the police station or at some laboratory facility that could be a considerable distance from the point where the driver was apprehended. Thus, the entire process of apprehension, determining whether the driver is under the influence (observation and administration of field coordination tests), transporting the driver into custody, and processing the driver at the police station, requires up to several hours of an officer's time. This expenditure of time not only discourages officers from making impaired-driving arrests (for whether or not the suspect proves not to be intoxicated the officer must spend a great deal of time off the road) but also reduces the accuracy of any test results that are obtained. This is primarily so because alcohol concentration diminishes at the rate of about .015% w/v per hour, due to metabolism.

Two possible remedies have been proposed to

meet the difficulties associated with the processing of impaired-driving cases: **evidential roadside testing**; and **preliminary breath testing.**

An Alternative: Roadside Testing

Police officers need a reliable method of accurately determining, at the roadside, whether a driver is in violation of the law, and of determining the driver's BAC as close in time to the time of arrest. One solution that has been advocated is the use of evidential roadside testing. Use of this procedure would reduce the time between apprehension and testing of a driver, and would produce a more accurate BAC determination; it would also allow an officer to determine in a "close" case (where it is probable but not certain that the driver could be proven intoxicated and there is the risk that a trip to the stationhouse would be a waste of time) to determine whether further proceedings (such as an impaired-driving trial) are appropriate.

Roadside Testing and the Arrest Requirement. There are, however, a number of legal barriers to roadside testing. The first of these is the requirement, currently found in most states' implied-consent laws, that the driver be **formally** arrested for some alcohol-related offense before a test can be administered. The arrest requirement can be traced to the U.S. Supreme Court's decision in **Schmerber**, which appeared to treat the chemical test as a "search incident to" the impaired-driving arrest, and therefore appeared to require a formal arrest as a precondition to testing. The Uniform Vehicle Code's implied-consent provision has required, and still does require, a formal arrest before a test may be required, and most states have provisions that parallel the Uniform Vehicle Code. However, it does not appear that a formal arrest is constitutionally required. A more recent Supreme Court decision, **Cupp** v. **Murphy** (18), permitted police officers to conduct a nonintrusive search without making a formal arrest beforehand, provided they had the equivalent of probable cause to make the formal arrest (19) and the evidence was likely to disappear unless the police acted quickly. Alcohol in a driver's body falls into that category of evidence, and courts in a number of states, relying on **Cupp**, have dispensed with the requirement of a formal arrest, especially in the case of unconscious drivers given blood tests at hospitals (20). Thus, implied-consent legislation could be amended to eliminate any specific mention of "arrest" and instead permit tests whenever an officer has the equivalent of probable cause to make the arrest. This law change would allow police departments to develop policies permitting tests at the roadside.

The proposed objective of prearrest testing is worthy, but under current constitutional law, the procedure that is advocated amounts to an illegal search and seizure.

"Preliminary" Breath Testing. Some individuals (e.g., Hricko 1969; National Highway Traffic Safety Administration 1980; U.S. Department of Transportation 1979) advocate that police be allowed to conduct so-called "preliminary breath tests" at the roadside, that would guide them in their decision whether to arrest the driver. The rationale for the prearrest test is the same as that for the proposed evidential roadside testing in many "close cases" involving alcohol impairment. The average police officer has only limited ability to determine, on the basis of field coordination tests and observations of the driver (such as bloodshot eyes or poor coordination), how gross that driver's intoxication may be (Dozier 1976, p. 1; Belardo and Zink 1976, p. 1). Thus, in many suspected impairment cases the officer chooses to take no action for fear of wasting time by arresting a driver who is later found not to be intoxicated. The proposed prearrest test could be used whenever an officer suspected a driver of alcohol impairment but lacked the evidence required by the Constitution to make an arrest. Its use is also proposed in certain situations, such as after every traffic crash; a number of states' prearrest-test laws call for such postcrash testing (Dozier 1976). Under the procedure advocated by National Highway Traffic Safety Administration, an officer with a "reasonable suspicion" that the driver was impaired—a standard less than probable cause—would require the suspected driver to either submit to the test, or suffer a fine or license suspension for refusal. The test reading would not be used as evidence at trial, but only as a guide to the officer whether to make

an arrest. Quantitative testing for alcohol would follow the arrest, and those test results would be introduced as evidence. The National Highway Traffic Safety Administration has proposed legislation to accomplish this objective (21).

Constitutional Barriers to Preliminary Testing. The proposed objective of prearrest testing is worthy, but under current constitutional law, the procedure that is advocated amounts to an illegal search and seizure that is likely to be challenged by a driver forced to submit to a prearrest test. Tests for alcohol are considered "searches" (22), and the U.S. Constitution requires that any search for evidence of crime (which is the purpose of these tests) requires probable cause. The extent to which a prearrest test would aid in law enforcement is not known, for the same impaired drivers who currently attract the attention of police officers would also be targets of efforts involving prearrest testing. Nor is it likely that departing from the probable-cause standard would significantly aid in law enforcement. The probable-cause standard is actually quite easily met; at most, all it requires is a belief that it is more likely than not that a driver is intoxicated (Dowling 1976, p. 134).

The Future of Roadside Testing. The technology exists to conduct roadside tests for alcohol concentration, and the widespread availability of such devices may reasonably be expected in the future. While many existing devices are not readily portable, some of them have been used at the roadside. In the 1950s the Indiana State Police used the Borkenstein Breathalyzer® for roadside testing. More recently, a number of jurisdictions have equipped vans with breath-testing equipment. Usually these vans are staffed by qualified technicians and go to the location where an officer has apprehended a suspected impaired-driving offender.

At present, thirty-eight states' implied consent laws do not authorize the analysis of body fluid specimens for drugs other than alcohol.

In sum, then, roadside testing techniques are both technologically and legally possible. To use them, however, law changes would be necessary in many states; specifically, the formal arrest requirement that appears in the implied-consent laws of the great majority of states should be deleted and language that requires the equivalent of probable cause should be substituted.

No Legal Authority to Test for Drugs

At present, thirty-eight states' implied consent laws do not authorize the analysis of body fluid specimens for drugs other than alcohol, even if such an analysis could be conducted. In these states a police officer who desires analytic results that could provide evidence of drug-impaired driving has a number of more or less unsatisfactory options. First, the officer could attempt to obtain a specimen over the driver's objections, as was done in the case of alcohol before implied-consent statutes were enacted. However, this would raise serious issues of public policy and could be prohibited by the state's implied-consent law, since forcible testing is contrary to expressed legislative policy. Second, an officer could attempt to persuade the driver to voluntarily provide a sample; however, a driver who finds oneself suspected of using drugs is unlikely to agree to such a voluntary test (23). Third, the officer could forego chemical evidence of drug concentration and rely solely on such qualitative evidence as driving errors, impairment of physical capabilities, and inability to pass field sobriety tests. Such evidence is considered by prosecutors to be weaker evidence in drug-impaired driving cases than test results, even though other evidence of impairment is at their disposal. Thus, in those cases where drug analyses could be of value in proving guilt, the absence of an implied-consent provision for drug analysis could unnecessarily handicap law enforcement.

Blood is the only body fluid that will realistically yield meaningful evidence regarding drug concentrations for living drivers.

Not All Tests Reveal Drug Use

Various body fluids can be drawn and analyzed to determine alcohol concentrations. Blood, urine, saliva, and breath can all yield accurate measurements of the driver's BAC. Because the breath test is relatively simple and inexpensive, nonmedical personnel can conduct breath tests, and drivers consider it the least intrusive of the chemical tests, the breath test is preferred by police agencies. When the concentration of drugs other than alcohol is of interest, however, specimens of breath cannot be analyzed for drug concentrations. Blood is the only body fluid that will realistically yield meaningful evidence regarding drug concentrations for living drivers (Joscelyn and Donelson 1980, pp. 50-51).

Currently, it is possible to analyze blood specimens and to determine for most drugs whether they are present and in what quantities they are present. Unlike alcohol, though, blood drug concentrations have not yet been established as presumptive levels of impairment. As a result, analyses of blood for drug concentrations require expert testimony in court that can interpret analytic findings to provide legal evidence of impairment. Sometimes this is possible, such as when the concentration of a particular drug is far above that which is considered "theraputic," or when it indicates that an overdose had occurred. Frequently, however, the evidence gained from chemical analyses will be less conclusive. In addition, unlike alcohol testing, analytic techniques for other drugs are costly or not widely available and thus might be considered unjustifiably expensive and time-consuming for use in prosecuting the relatively minor offense of impaired driving. In sum, chemical tests for drugs are available, but they presently have only limited value as evidence in drug-impaired driving trials.

Even assuming that the implied-consent law authorizes the analysis of specimens for drugs other than alcohol, blood specimens cannot be drawn from drivers under the implied-consent laws of some states. Testing procedures set out in a state's implied-consent law are determined in part by considerations of efficiency in the enforcement process, the convenience of the apprehended driver, general fairness, and reliability of test results. One manifestation of these policies is the existence of provisions that limit officers to requiring breath tests, except for deceased and unconscious drivers. Implied-consent laws in fourteen states permit police to obtain only breath specimens from conscious drivers. Breath specimens cannot be analyzed for the presence and concentrations of substances other than alcohol.

In many of the thirty-six states that authorize tests other than the breath test, legislation allows a driver to choose from among available tests. Typically these provisions either allow a driver to decline a blood test and take less intrusive tests—namely, a breath test, a urine test, or both (24)—or allow the driver to choose from among the available tests. Eight states give drivers the right to refuse a blood test, and six offer the driver a choice of tests. In addition, Michigan's law permits the driver to demand a breath test only. In all of these fifteen states, then, a driver can select a test other than the blood test and effectively defeat any efforts to have performed an analysis for drugs other than alcohol.

In six other states, the implied-consent law is ambiguous or even silent on this question. This leaves only fifteen states in which the police officer has an absolute right to specify what test will be given. The implied-consent laws of those fifteen states contain language that parallels that of the Uniform Vehicle Code: the officer has the express authority to select the test to be given. That provision, in theory, permits an officer to demand that the driver submit to the blood test. However, blood analyses are especially time-consuming since trained medical personnel are required to withdraw specimens and laboratory technicians are needed to perform the analysis. As a result of these considerations, many police departments prefer to administer the breath test unless circumstances require another form of testing—typically, when they encounter an unconscious driver who cannot provide the necessary breath specimen. Some police departments have recognized the value of a blood analysis in suspected drug-impairment cases and have reported using the blood test in those circumstances.

Some Laws Permit Only One Test

Another feature of state implied-consent legislation that could adversely affect testing for drugs other than alcohol is language that refers to a "test" rather than "test or tests" as it appears in the

Uniform Vehicle Code. Thirty states use the former language in those states. It is therefore possible that courts in those states could interpret the law literally and limit the officer to a single test. Such an interpretation could greatly restrict the testing process for substances other than alcohol. Consider, for example, the hypothetical situation of a driver, apprehended for impaired driving, who has consumed both alcohol and another substance, such as marijuana. The officer, who notices the odor of alcohol, administers the breath test and discovers that the driver's BAC is well below .10% w/v; however, the driver appears grossly impaired, which raises the inference that impairing substances other than alcohol are also involved. Another test—that of the driver's blood—would be required to determine whether the driver had taken other drugs. However, if the courts of that state should hold that only one test is permitted, then that test already has been administered and no further analyses are possible, unless the driver voluntarily agrees to them. Quantitative evidence relating to drug impairment probably could not be obtained in this case. Police departments in at least two states—New Mexico and South Dakota—that have single-test provisions in their laws have reported this to be a problem; the problem could be even more widespread.

States that have adopted the Uniform Vehicle Code's provisions have the most useful statutory tools for dealing with the impaired-driving problem.

Some Laws Unnecessarily Restrict the Introduction of Test Results

In many instances an impaired driver is involved in and responsible for a traffic crash, often one involving a fatal or serious injury. Whether or not the driver is arrested and prosecuted for a traffic crime or offense, the crash usually causes the victim to start a civil action in which the victim sues the impaired driver and possibly others (such as the owner of the vehicle). Since the civil action is based on an allegation that the other driver was negligent, and since impairment by alcohol or other drugs is evidence tending to prove negligence, chemical test results have value in a civil case as well as in an impaired-driving prosecution. In addition, road authorities of states and their political subdivisions have faced an increasing number of suits filed by injured drivers alleging road defects. Evidence of the injured driver's impairment may provide the road authority a defense against the driver's suit, namely that the driver's impairment also contributed to the injuries. The Uniform Vehicle Code permits the introduction of test results in "any civil or criminal action or proceeding" arising out of impaired driving (25); however, some states—for example, Michigan—have laws that allow introduction of results only in trials of traffic-related offenses in which impairment is an element.

SUMMARY: DEFICIENCIES IN EXISTING LAWS

All states have two types of laws directed at those who drive while under the influence of alcohol or other drugs. The first of these are **impaired-driving** laws, that define the offense of driving while under the influence, and set out punishments for those found guilty of the offense. The second are **implied-consent** laws, that govern the time, place, and manner of otherwise lawful chemical testing to determine the concentration of alcohol or other drugs in the driver's body. These laws are intended to achieve the same goal—to deter persons who are unable to operate a vehicle safely from driving. There are no nationwide laws dealing with impaired driving. A model set of statutes dealing with alcohol, drugs, and driving, does exist. These model statutes are contained in what is known as the Uniform Vehicle Code (National Committee on Uniform Traffic Laws and Ordinances 1979). They comprise the most complete set of impaired-driving and implied-consent provisions that have so far been developed. States that have adopted the Uniform Vehicle Code's provisions have the most useful statutory tools for dealing with the impaired-driving problem. Most state statutes, though, lack one or more of the provisions contained in the Uniform Vehicle Code. As a result, they are likely to have some weaknesses with respect to enforcing their laws. The following are chief among the deficiencies of state laws:

- Laws that do not define the term "drug" in their impaired-driving provision as "any drug" (for example, limiting it to "narcotic drugs" or "controlled substances") fail to include all substances that can impair driving ability.
- Laws that do not prohibit driving while under the combined influence of alcohol and other impairing substances, or a combination of impairing substances other than alcohol, fail to include the so-called "poly-drug" user who cannot operate a vehicle safely.
- Laws that exempt users of licit (i.e., prescription or over-the-counter) drugs fail to include a class of impaired drivers who pose as serious a highway safety hazard as those who drive while under the influence of alcohol or illicit drugs.
- Laws that fail to authorize chemical tests of blood for conscious drivers prevent police officers from drawing specimens that can be analyzed for drug concentrations. Likewise, implied-consent laws that do not permit the analysis of specimens for drugs other than alcohol prevent police officers from having specimens analyzed for drug concentrations.
- Laws that give drivers the option of taking other chemical tests in lieu of the blood test, or that allow a driver to choose from among available tests, limit the ability of police officers to draw specimens that can be analyzed for drugs.
- Laws that limit police officers to taking a single test of the driver's body fluids create situations in which a police officer initially determines that a driver is grossly impaired and that substances other than alcohol are involved, but is prevented from investigating further.

One other difficulty is presented by implied-consent statutes, including the most recent Uniform Vehicle Code provisions. The requirement of a formal arrest, which most states still retain, is a barrier to roadside testing of offenders. It appears that formal arrests are not required by the Constitution, so long as probable cause to arrest exists. The chief deficiencies of each state's current legislation are summarized in tabular form in Appendix D.

RECOMMENDATIONS

The preceding analysis has shown that state impaired-driving and implied-consent statutes are generally effective in dealing with persons who drive while under the influence of alcohol. Still, with respect to the alcohol offender, these laws are not totally effective. The chief deficiency of present laws is their retention of the formal arrest requirement, which unnecessarily precludes police officers from conducting evidential tests for BAC at the roadside—a procedure that would yield more accurate results and save police officers' time.

All of the deficiencies identified in this paper can be remedied by statutory change by state legislatures.

With respect to drugs other than alcohol, impaired-driving and implied-consent statutes both exhibit deficiencies that hinder police officers in detecting and prosecutors in prosecuting those who are accused of driving while under the influence of drugs. Laws in many states contain incomplete definitions of drugs that do not account for the full range of impairing substances. These laws frequently fail to account for the combined use of impairing substances by drivers, especially alcohol in combination with marijuana or prescription drugs. Thus, some persons who are unfit to operate motor vehicles could, in these states, escape prosecution despite having posed a risk to highway safety.

In the great majority of states, implied-consent legislation still applies to alcohol-related offenses only. In those states the prosecution lacks authority to have a body fluid specimen analyzed for drug concentrations. Moreover, many states preclude police officers from obtaining the type of specimens that could be analyzed for drugs, because they either authorize breath tests only, or allow drivers to avoid blood tests. In those cases, a

police officer would be prevented from obtaining a specimen that could be analyzed for drugs—even if state law allowed such analysis to be done. Provisions limiting the police officer to demanding one test only from the driver could also inhibit the gathering of evidence of drug impairment especially when that driver had consumed both alcohol and other impairing substances.

All of the deficiencies identified in this paper can be remedied by statutory change by state legislatures, since none of these deficient provisions are dictated by constitutional requirements. Not all of the countermeasures that have been proposed by safety advocates are legally feasible, however; specifically, the proposed remedy of prearrest (preliminary) breath testing in the absence of probable cause would be likely to be ruled unconstitutional.

We therefore recommend that states consider adopting the model statute that appears in Appendix A to this paper. The provisions of this statute are, for the most part, based on the 1979 revision of the Uniform Vehicle Code's impaired-driving and implied-consent laws. We have deleted the Uniform Vehicle Code's requirement of a formal arrest from those provisions and made other, minor changes in the language. In sum, our principal recommendations are:

- Eliminate restrictive and underinclusive definitions of "drug" in impaired-driving laws and instead prohibit driving while under the influence of any drug. Provisions that exempt users of licit drugs from the impaired-driving law should also be eliminated.
- Broaden impaired-driving laws to prohibit driving while under the influence of any combination of impairing substances: alcohol plus another drug; alcohol plus a combination of other drugs; and combinations of drugs other than alcohol.
- Eliminate provisions in implied-consent laws that allow a driver to choose the test to be administered, or to demand other tests in lieu of the blood test. Add language specifically granting the police officer the authority to choose the test to be administered.
- Extend the coverage of implied-consent laws to drug-related as well as alcohol-related offenses, and add specific language authorizing the analysis of body fluid specimens for drug as well as alcohol concentrations.
- Add language to implied-consent laws that specifically authorizes the administration of multiple tests.
- Delete from implied-consent laws the requirement that a driver be formally arrested before testing can take place, and substitute language authorizing testing whenever the officer has the equivalent of probable cause to arrest. Avoid including a prearrest-test provision in the implied-consent statute, for such a provision is highly unlikely to survive a constitutional challenge.

Model legislation based on the 1979 Uniform Vehicle Code (with minor modifications to eliminate the requirement of a formal arrest) is presented in Appendix A. We consider that model statute to be illustrative of what provisions an individual state's impaired-driving and implied-consent statute should contain. Because of subtleties in their legislative drafting processes, states may find it necessary to make minor departures from the language offered in the model statute.

A Checklist for Reviewing Legislation

Does Your State's Impaired-Driving Law Prohibit Driving While Under the Influence of All Impairing Substances?

Any impaired driving poses a threat to highway safety; thus, a state law that defines the offense of impaired driving should account for all substances that can impair the ability to drive safely. Specifically, the definition of impaired driving should include impairment caused by (a) alcohol; (b) any other drug or combination of drugs; or (c) alcohol plus one or more other drugs. In addition, the fact that a drug is being used legally (by prescription or purchased over the counter) should not be a defense to an impaired-driving charge. The term "drug" should refer to all impairing substances.

Does Your State's Implied-Consent Laws Allow the Analysis of Body Fluids For Drugs Other Than Alcohol?

Most states' implied-consent laws allow for the chemical analysis of body fluids for alcohol content only. In those states, it is likely that a court would refuse to admit analytic results, obtained from specimens gathered under the implied-consent law, as evidence in an impaired-driving trial. Evidence obtained under an implied-consent law—or by any other lawful search, or with the driver's consent—should be admissible in any civil, criminal, or administrative action arising out of or associated with the incident that led to the request for test results, and in which alcohol or drug impairment is an issue.

Does Your State's Implied-Consent Statute Allow Police Officers to Demand Blood Specimens From Drivers Under Penalty of License Suspension?

Most implied-consent laws either do not authorize blood tests or allow a driver to choose a chemical test other than blood. Thus, even in states where analytic results pertaining to drugs could be admitted at an impaired-driving trial, a driver could defeat a drug analysis in the first place. An implied-consent law should allow tests of blood, breath, urine, or other body fluids and should expressly give a police officer the power to name the test that is given.

Does Your State's Implied-Consent Statute Allow Testing When Probable Cause Exists for an Impaired-Driving Arrest?

Most implied-consent laws, as well as the Uniform Vehicle Code, require that a driver be "under arrest" before tests may be required. Police officers equate the term "arrest" with the formal process of taking the suspect into custody, booking, and release on bail. Recent federal and state court decisions have determined that those formalities of arrest are not constitutionally required, provided there is probable cause to make an impaired-driving arrest.

Many states' impaired-driving and implied-consent laws contain one or more of the deficiencies that were discussed in this paper. A state-by-state summary of these deficiencies appears in Appendix D.

References

1. In this paper the term "drugs" means drugs other than alcohol, and the term "alcohol or drugs" means alcohol or other drugs. The authors recognize that although alcohol is a drug, it is not commonly characterized as one in the legal or popular literature.

2. Idaho and Utah have lowered the presumptive level of intoxication to .08% w/v.

3. Oregon and Wisconsin classify first offense impaired driving as a noncriminal traffic infraction; however, criminal-like procedures are used to enforce these laws in those states, and subsequent impaired-driving offenses are treated as criminal.

4. **Brinegar** v. **United States**, 338 U.S. 160 (1949); **Carroll** v. **United States**, 267 U.S. 132 (1925).

5. **Rochin** v. **California**, 342 U.S. 165 (1952) [the pumping of a suspected drug offender's stomach for evidence of narcotics consumption was held unconstitutional].

6. **Briethaupt** v. **Abram**, 352 U.S. 432 (1957) [blood test].

7. A few state courts have held that fairness requires the prosecution to preserve breath ampoules used in chemical testing. Those courts have followed the reasoning of a 1974 California decision, **People** v. **Hitch**, 12 Cal. 3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974), although most courts have so far rejected **Hitch** (Reeder 1977) and it is widely accepted that the scientific basis of that case is questionable (National Safety Council 1979).

8. U.S. Const., art. VI.

9. Legislation has been passed in thirteen states that makes driving with a BAC of .10% w/v or greater an offense in itself. In those states it is no longer necessary to prove actual impairment of driving ability.

10. **Schmerber** v. **California**, 384 U.S. 757 (1966) [blood test in impaired-driving case].

11. See, for example, the reasoning of the Minnesota Supreme Court in **Prideaux** v. **State, Department of Public Safety**, 310 Minn. 405, 247 N.W. 2d 385 (1976). There the court discussed the legal status of implied-consent legislation, relative to constitutional and other legal provisions.

12. Section 6-205.1 (c) of the Uniform Vehicle Code states that if a driver refuses to submit to a chemical test for BAC, none shall be given (National Committee on Uniform Traffic Laws and Ordinances 1979).

13. See, for example, **People** v. **Superior Court of Kern County**, 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972); **State** v. **Riggins**, 348 So. 2d 1209 (Fla. Dist. Ct. App. 1977); and **Rossell** v. **City and County of Honolulu**, ——— Haw. ———, 579 P.2d 663 (1978).

14. See, for example, **People** v. **Cords**, 75 Mich. App. 415, 254 N.W.2d 911 (1977).

15. **Schneckloth** v. **Bustamonte**, 412 U.S. 218 (1973).

16. The Uniform Vehicle Code is model legislation that covers all areas of traffic law including, for instance, driver licensing, vehicle titling and registration, and rules of the road. It is not binding on any state, and states are free to pass laws in conformity or at variance with the Code's provisions. In the past, however, most states have come to adopt statutes that are substantially similar to the Uniform Vehicle Code's provisions.

17. In some states implied consent legislation applies only to criminal prosecutions and results cannot be admitted in civil cases; see, for example, **McNitt** v. **Citco Drilling Co.**, 397 Mich. 384, 245 N.W.2d 18 (1976). In a few states, implied consent applies only to alcohol-impaired driving and excludes other alcohol-related offenses; see, for

example, **People** v. **Keen**, 396 Mich. 273, 242 N.W.2d 405 (1976). As discussed in this paper, most states' implied-consent laws do not cover drug-impaired driving offenses.

18. **Cupp** v. **Murphy**, 412 U.S. 291 (1973).

19. Any arrest, that is, any restraint on one's freedom to move, must be justified by probable cause. Likewise, any search, that is, any invasion of a person's reasonable expectation of privacy, that is directed at evidence of a crime, requires probable cause (Ruschmann et al. 1979, pp. 45-50).

20. See, for example, **State** v. **Oevering**, ——— Minn. ———, 268 N.W.2d 68 (1978); **State** v. **Heintz**, 286 Or. 239, 594 P.2d 385 (1979); **Commonwealth** v. **Hlvasa**, ——— Pa. Super. ———, 405 A.2d 1270 (1979); and **Van Order** v. **State**, 600 P.2d 1056 (Wyo. 1979).

21. As of 1979, 13 states had enacted some form of prearrest-test statute. These statutes vary widely with respect to: the circumstances under which a test could be required; the penalties, if any, for refusal; and whether results can be admitted as evidence at an impaired-driving trial (National Highway Traffic Safety Administration 1980). To date, no reported appellate court decisions have dealt specifically with the constitutionality of these laws (Ruschmann et al. 1980, pp. 19-20).

22. **Schmerber** v. **California**, 384 U.S. 757 (1966); **see also**, **State** v. **Howard**, 193 Neb. 45, 225 N.W.2d 391 (1975); **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); and **Commonwealth** v. **Quarles**, 229 Pa. Super. Ct. 363, 324 A.2d 452 (1974) (plurality opinion); **State** v. **Locke**, —R.I.—, 418 A.2d 843 (1980).

23. The Los Angeles Police Department uses an unusual procedure to persuade drivers to "voluntarily" provide specimens: the driver is advised that (s)he is not legally required to provide a specimen, but that a refusal to provide one will be commented on at the impaired-driving trial. This procedure reportedly has been accepted by some local judges in Los Angeles County.

24. Two different tests might be given when a driver refuses a blood test, and the police officer instead demands both a urine and breath test. For example, Iowa's implied-consent law expressly provides for this procedure.

25. Uniform Vehicle Code, sec. 11-902.1(a) (Supplement III, 1979).

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APPENDIX A
Proposed Model Legislation

Note: The model legislation that we propose differs slightly from that which was prepared by the National Committee on Uniform Traffic Laws and Ordinances, and which appears in the 1979 Supplement to the Uniform Vehicle Code and Model Traffic Ordinance. Language added to the Uniform Vehicle Code by the authors of this article appears in bold type; language deleted from the Uniform Vehicle Code is interlined with dashes.

Sec. 6-205.1—Revocation of license for refusal to submit to chemical tests

(a) Any person who operates a motor vehicle upon the highways of this State shall be deemed to have given consent, subject to the provisions of Sec. 11-902.1, to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic or drug concentration of his blood or breath ~~if arrested for~~ **in connection with*** any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or any **other** drug. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe** the person to have been driving or in actual physical control of a motor vehicle upon the highways of this State while under the influence of alcohol or any **other** drug. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section and the test or tests may be administered, subject to the provisions of Sec. 11-902.1.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in revocation of his license to operate a motor vehicle for six months. Following this warning, if a person ~~under arrest~~ refuses upon the request of a law enforcement officer to submit to a test designated by the law enforcement agency as provided in paragraph (a) of this section, none shall be given, but the department of motor vehicles, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the ~~arrested~~ person had been driving or was in actual physical control of a motor vehicle upon the highways of this state while under the influence of alcohol or any **other** drug and that the person had refused to submit to the test upon the request of the law enforcement officer, shall revoke his license subject to review as hereinafter provided.

Sec. 11-902—Driving while under influence of alcohol or other drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.10 percent or more based on the definition of blood and breath units in Sec. 11-902.1(a)(5);
2. Under the influence of alcohol;†
3. Under the influence of any **other** drug or combination of **other** drugs to a degree which renders him incapable of safely driving; or
4. Under the combined influence of alcohol and any **other** drug or drugs to a degree which renders him incapable of safely driving.

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or **any other** drug shall not constitute a defense against any charge of violating this section.

(c) Except as otherwise provided in Sec. 11-902.2, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days nor more than one year, or by a fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment and, on a second or subsequent conviction, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000.

Sec. 11-902.1—Chemical and other tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or **other** drugs, evidence of the concentration of alcohol or **other** drug in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath, or other bodily substance, shall be admissible. Where such a chemical test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be con-

sidered valid under the provisions of this section shall have been performed according to methods approved by the State department of health and by an individual possessing a valid permit issued by the State department of health for this purpose. The State department of health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State department of health.

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of Sec. 6-205.1, only a physician or a registered nurse or other qualified person may withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.††

4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol.

(c) OPTIONAL. If a person ~~under arrest~~ refused to submit to a chemical test under the provisions of Sec. 6-205.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs.

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* The requirement of a formal arrest is eliminated by eliminating the phrase "arrested" or "under arrest." The equivalent of probable cause to arrest is still required.

** The phrases "probable cause to believe" and "reasonable grounds to believe," both indicate that the equivalent of probable cause to arrest is required.

† This provision is necessary to cover the cases where no chemical test results are available for prosecution because of the driver's refusal to submit, failure of testing equipment, or suppression of test evidence by the court.

†† Subsection (b)(3) need not be enacted in any state adopting § 11-902(a)(1) which makes driving with a blood alcohol concentration of 0.10 or above an offense, irrespective of actual impairment of driving.

APPENDIX B
Citations to State Impaired-Driving Legislation

ALA. CODE, sec. 32-5-170 (1977)
ALASKA STAT., sec. 28.35.030(a) (1978)
ARIZ. REV. STAT. ANN., sec. 28-692(I) (Supp. 1979-80)
ARK. STAT. ANN., sec. 75-1026.1 (1979)
CAL. VEH. CODE, secs. 23102(a), 23105(a) 23105(b) (West Supp. 1980)
COLO. REV. STAT, sec. 42-4-1202(1)(c) (1973)
CONN. GEN. STAT. ANN., sec. 14-277a (West Supp. 1980)
DEL. CODE ANN., tit. 21, sec. 4177 (1979)
FLA. STAT., sec. 316.193(1) (Supp. 1979)
GA. CODE ANN., sec. 68A-902.1 (1980)
HAW. REV. STAT., sec. 291-7 (1976)
IDAHO CODE, sec. 49-1102(c) (Supp. 1979)
ILL. ANN. STAT., ch. 95 1/2, sec. 11-501(b) (Smith-Hurd Supp. 1980-81)
IND. CODE ANN., sec. 9-4-1-54(b)(1) (Burns Supp. 1980) [amended by P.L. 83, 6/1/1980]
IOWA CODE ANN., sec. 321.281 (West Supp. 1980-81)
KAN. STAT. ANN., sec. 8-1567(b) (1975)
KY. REV. STAT., sec. 189.520(2) (1971)
LA. REV. STAT. ANN., sec. 14:98(A) (West Supp. 1980)
ME. REV. STAT. ANN., tit. 29, sec. 1312 (1978 and Supp. 1979-80)
MD. TRANSP. CODE ANN., sec. 21-902 (1977)
MASS. ANN. LAWS, ch. 90, sec. 24(1)(a) (Michie/Law. Co-Op 1975)
MICH. COMP. LAWS ANN., secs. 257.625(a), 257.625(b) (Supp. 1980-81)
MINN. STAT. ANN., sec. 169.121(1) (West Supp. 1980)
MISS. CODE ANN., sec. 63-11-29 (1973)
MO. ANN. STAT., sec. 577.010 (Vernon 1979)
MONT. CODE ANN., sec. 61-8-401 (1979)
NEB. REV. STAT., sec. 39-669.07 (1979)
NEV. REV. STAT., sec. 484.379 (1979)
N.H. REV. STAT. ANN., sec. 262-A:62 (1979)
N.J. STAT. ANN., sec. 39:4-50 (West Supp. 1979)
N.M. STAT. ANN., sec. 66-8-102 (1978)
N.Y. VEH. & TRAF. LAW, sec. 1192 (McKinney Supp. 1979)
N.C. GEN. STAT., sec. 20-139 (Supp. 1979)
N.D. CENT. CODE, sec. 39-08-01 (1980)
OHIO REV. CODE ANN., sec. 4511.19 (Page Supp. 1979)
OKLA. STAT. ANN., tit. 47, sec. 11-902 (West 1972)
OR. REV. STAT., sec. 487.540 (1977)
PA. CONS. STAT. ANN., tit. 75, sec. 3731 (Purdon Supp. 1980)
R.I. GEN. LAWS, sec. 31-27-2 (Supp. 1979)
S.C. CODE, sec. 56-6-2930 (Supp. 1979)
S.D. CODIFIED LAWS ANN., sec. 32-23-1 (Supp. 1979)
TENN. CODE ANN., sec. 55-10-401 (1980)
TEX. REV. CIV. STAT. ANN., art. 6701 -5 (Vernon Supp. 1979)
UTAH CODE ANN., sec. 41-6-44 (Supp. 1979)
VT. STAT. ANN., tit. 23, sec. 1201 (Supp. 1979)
VA. CODE, sec. 18.2—266 (Supp. 1980)
WASH. REV. CODE ANN., sec. 46.61.502 (Supp. 1980)
W.VA. CODE, sec. 17C-5-2 (Supp. 1980)
WIS. STAT. ANN., sec. 346.63 (West Supp. 1979)
WYO. STAT. sec. 31-5-223 (1977)

APPENDIX C
Citations to State Implied-Consent Legislation

ALA. CODE, sec. 32-5-192 (1977)
ALASKA STAT., sec. 28.35.031 (1978)
ARIZ. REV. STAT. ANN., sec. 28-691(A) (1976)
ARK. STAT. ANN., sec. 75-1045 (1979)
CAL. VEH. CODE, sec. 13353 (West Supp. 1980)
COLO REV. STAT., sec. 42-4-1202(3) (1973)
CONN. GEN. STAT. ANN., sec. 14-277b (West Supp. 1980)
DEL. CODE ANN., tit. 21, secs. 2740, 2741 (1979)
FLA. STAT., secs. 322.261(1)(a), 322.261(1)(c) (Supp. 1979)
GA. CODE ANN., sec. 68B-306 (1980)
HAW. REV. STAT., sec. 286-151 (1976)
IDAHO CODE, sec. 49-352 (Supp. 1979)
ILL. ANN. STAT., ch. 95 1/2, Sec. 11-501.1(a) (Smith-Hurd Supp. 1980-81)
IND. CODE ANN., sec. 9-4-4.5-3(a) (Burns Supp. 1980) ["Chemical test" is defined in sec. 9-4-4.5-2 (Burns Supp. 1980)].
IOWA CODE ANN., sec. 321B.3 (West Supp. 1980-81)
KAN. STAT. ANN., sec. 8-1001(a) (Supp. 1979)
KY. REV. STAT., sec. 186.565(1) (Supp. 1978)
LA. REV. STAT. ANN., sec. 32.661(A) (West Supp. 1980)
ME. REV. STAT. ANN., tit. 29, sec. 1312 (1978 and Supp. 1979-80)
MD. TRANSP. CODE ANN., secs. 16-205.1(a), 16-205.1(c) (Supp. 1979)
MASS. ANN. LAWS, ch. 90, secs. 24(1)(e), 24(1)(f) (Michie/Law. Co-Op 1975)
MICH. COMP. LAWS ANN., sec. 257.625a (Supp. 1980-81)
MINN. STAT. ANN., secs. 169.123(2), 169.123(2a) (West Supp. 1980)
MISS. CODE ANN., sec. 63-11-5 (1973)
MO. ANN. STAT., sec. 577.020 (Vernon 1979)
MONT. CODE ANN., sec. 61-8-402 (1979)
NEB. REV. STAT., sec. 39-669.08 (1979)
NEV. REV. STAT., sec. 484.383 (1979)
N.H. REV. STAT. ANN., sec. 262-A:69-2 (1979)
N.J. STAT. ANN., sec. 39:4-50.2 (West Supp. 1979)
N.M. STAT. ANN., sec. 66-8-107 (1978)
N.Y. VEH. & TRAF. LAW, sec. 1194 (McKinney Supp. 1979)
N.C. GEN. STAT., sec. 20-16.2 (Supp. 1979)
N.D. CENT. CODE, sec. 39-20-01 (1980)
OHIO REV. CODE ANN., sec. 4511.191 (Page Supp. 1979)
OKLA. STAT. ANN., tit. 47, sec. 751 (West Supp. 1979)
OR. REV. STAT., sec. 487.805 (1977)
PA. CONS. STAT. ANN., tit. 75, sec. 1547 (Purdon Supp. 1980)
R.I. GEN. LAWS, sec. 31-27-2.1 (Supp. 1979)
S.C. CODE, sec. 56-6-2950 (Supp. 1979)
S.D. CODIFIED LAWS ANN., sec. 32-23-10 (Supp. 1979)
TENN. CODE ANN., sec. 55-10-406 (1980)
TEX. REV. CIV. STAT. ANN., art. 6701 -5 (Vernon Supp. 1979)
UTAH CODE ANN., sec. 41-6-44.10 (Supp. 1979)
VT. STAT. ANN., tit. 23, sec. 1202 (Supp. 1979)
VA. CODE, sec. 18.2—268 (Supp. 1980)
WASH. REV. CODE ANN., sec. 46.20.308 (Supp. 1980)
W.VA. CODE, sec. 17C-5A-1 (Supp. 1980)
WIS. STAT. ANN., sec. 343.305 (West Supp. 1979)
WYO. STAT., sec. 31-6-102 (1977)

APPENDIX D
Summary of Major Deficiencies in State Impaired-Driving and Implied-Consent Legislation

	IMPAIRED-DRIVING LAW		IMPLIED-CONSENT LAW			
	DOES NOT COVER ALL COMBINATIONS	RESTRICTIVE DEFINITION OF "DRUG"	LAW APPLIES TO ALCOHOL ONLY	BREATH TEST ONLY AUTHORIZED	CHOICE OF TESTS PROVISION	SINGLE TEST LIMITATION
ALABAMA	•	•	•		•	
ALASKA	•	•	•	•	•	
ARIZONA	•		•	•	•	
ARKANSAS	•		•		•	
CALIFORNIA			•		•	•
COLORADO	•		•		•	•
CONNECTICUT					•	•
DELAWARE			•			•
FLORIDA	•	•	•	•	•	•
GEORGIA						
HAWAII	•		•		•	•
IDAHO			•		○	•
ILLINOIS	•		•	•	•	•
INDIANA	•	•			○	•
IOWA					•	
KANSAS	•		•			•
KENTUCKY	•		•			•
LOUISIANA	•	•	•			
MAINE	•		•		•	•
MARYLAND		•	•		○	•
MASSACHUSETTS			•	•	•	•
MICHIGAN		•	•		•	
MINNESOTA		•			•	
MISSISSIPPI	•		•	•	•	
MISSOURI	•		•	•	•	•
MONTANA	•		•			•
NEBRASKA	•		•		•	•
NEVADA	•		○		•	•
NEW HAMPSHIRE	•	•				
NEW JERSEY	•	•	•	•	•	
NEW MEXICO	•		•	•	•	
NEW YORK	•				○	•
NORTH CAROLINA	•		•			•
NORTH DAKOTA	•	•	•			•
OHIO		•	•			•
OKLAHOMA	•		•		•	
OREGON		•	•	•	•	•
PENNSYLVANIA		•	•	•	•	•
RHODE ISLAND		•				•
SOUTH CAROLINA			•	•	•	•
SOUTH DAKOTA		•	•		○	•
TENNESSEE	•	•			○	•
TEXAS	•	•	•	•	•	
UTAH						
VERMONT						○
VIRGINIA	•		•		•	
WASHINGTON	•		•	•	•	
WEST VIRGINIA			•		•	•
WISCONSIN	•	•				
WYOMING		•	•			•
NUMBER OF STATES:						
DEFINITE (•)	30	20	37	14	29	30
POSSIBLE (○)	0	0	1	0	6	1

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