

3. Jones, I.S. and Lund, A.K. Detection of alcohol-impaired drivers using a passive alcohol sensor. *Journal of Police Science and Administration*, 14(4): 153-160, 1986.

4. Kiger, S.M.; Lestina, D.C. and Lund, A.K. *Passive Alcohol Sensors in Law Enforcement Screening for Alcohol-Impaired Drivers*. Arlington, Virginia: Insurance Institute for Highway Safety, June, 1991.

5. Mastroski, S.D. and Ritti, R.R. "You can lead a horse to water ...": A case study of a police department's response to stricter drunk-driving laws. *Justice Quarterly*, 9:465-491, 1992.

6. Speigman, R. Internal and external economies: treatment and custodial infrastructure and restrictions on DUI sentencing. Paper presented at annual meeting of the American Society of Criminology, November, 1991.

7. Speigman, R. Mandated AA attendance for recidivist drinking drivers: ideology, organization, and California criminal justice practices. *Addiction*, 89: 859-868, 1994.

8. U.S. Department of Justice, FBI. *Crime in the United States*. Washington, D.C.: U.S. Government Printing Office.

9. U.S. Department of Transportation, NHTSA. *Fatal Accident Reporting System*, 1992. Washington, D.C.

APPENDIX C6 DRIVER LICENSE STRATEGIES FOR CONTROLLING THE PERSISTENT DUI OFFENDER

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Introduction

Any consideration of how driver licensing can be used more effectively in controlling persistent and hard core DUI offenders should begin with an understanding of the control and deterrence mechanisms which reside within the driver licensing process. A review of prior functional analyses of this process (Finklestein & McGuire, 1971; Peck, 1987) reveal the following interfaces between driver licensing and DUI control.

² This paper represents the opinions and conclusions of the authors as independent agents rather than as representatives of their respective organizations. The recommendations may therefore not reflect the opinions and policy perspectives of the State of California or the Province of British Columbia.

1. Pre-licensure: The screening out and nonlicensing of applicants with uncontrolled substance abuse problems.

2. Problem Identification: The use of the driver record file to identify high risk DUI offenders.

3. License actions: The imposition of license restrictions, alcohol education, alcohol treatment and license withdrawal as a means of reducing public safety risk.

4. Compliance monitoring: Determining whether the sanctions and treatments in (3) have been complied with. Suspending the license of drivers not completing treatment and identifying suspension violators.

5. Re-entrance: Reinstating license privilege of suspended DUI offenders.

In this paper, we will not consider process number 1 because it is judged to offer the least payoff potential for impacting the persistent DUI offender. Although most jurisdictions inquire about the presence of disqualifying medical conditions, including substance addiction, at the time of initial application, there are a number of practical difficulties in obtaining correct answers and determining what action to take upon receiving information of a "problem." Perhaps an even more fundamental limitation is that most novice drivers are too young for a drinking problem to have materialized to the point of representing "a persistent DUI problem."

Process number 2 will only be touched on lightly since it is being addressed by another background paper to this workshop (Simpson). Its connection with driver licensing strategies, however, cannot be ignored since driver license action severity is functionally related to the number of prior DUI offenses and other factors identifiable from state driver record file. In some instances, the driver licensing agency is both the risk identifier and delivery system agent for triggering and monitoring control actions, as implied by figure 1 taken from Peck (1992). Similarly, alcohol education and rehabilitation programs, which are being discussed in another background paper (Timken and Wells-Parker), are sometimes given as alternatives to license suspensions and they also often modify the terms of a suspension and determine the offenders reinstatement eligibility.

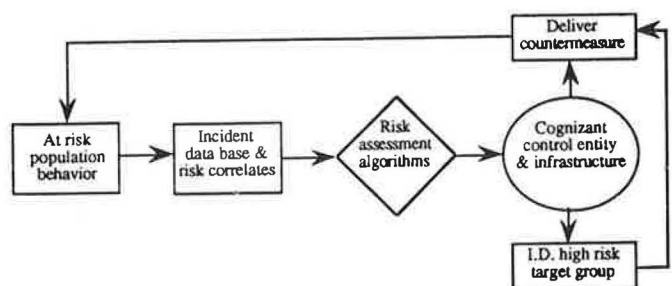


Figure 1.--Simplified model of target group and countermeasure delivery system process

There can be little doubt that the power of the drivers license as a DUI countermeasure resides in the state's authority to withdraw the license. This process involves three components of deterrence: special, general and incapacitation. In this paper, we will explore what is presently known about controlling the persistent DUI offender through driver licensing. This will entail a description of currently used DUI countermeasures—both their strengths and weaknesses. Weaknesses will be summarized along with proposals that have been previously advanced for increasing the effectiveness of driver licensing in controlling the hard core DUI offender.

A license may be suspended, revoked or canceled and the driving privilege itself withdrawn. While these practices have different administrative implications, the main difference to the individual concerns the permanence of the action, and the steps that need to be taken for reinstatement or return of privileges. Thus such requirements as reinstatement fees, reapplication, retesting, completion of alcohol rehabilitation programs, and submitting proof of liability insurance influence the number of drivers that remain permanently unlicensed.

Description of an Illustrative State System

Since all states and provinces differ in some respects in their laws, sanctions and licensing policies with respect to DUI offenses, it is impossible to describe a typical system. We have therefore arbitrarily decided to use California as an example since there is a great deal of published information on California, and one of the authors is familiar with that state. Detailed description of the California system can be found in Peck (1987) and Automobile Club of Southern California (1992).

The California system is extremely complex, and it is not the purpose of this paper to perform a process analysis of California's DUI laws and policies. We will, however, summarize some of the more important elements and sanction dimensions embodied in the California system because many are typical of other states.

- Mandatory increase in sanctions as a function of number of priors.
- Discretionary authority for courts to enhance sanctions for BACs above .20.
- Mandatory jail sentences for repeat offenders but authority to use community service in lieu of some or most of jail sentence.
- Three-time offenders are revoked for at least 3 years and must also complete an 18-30 month treatment program to be reinstated.
- Two-time offenders can avoid a postconviction license suspension and receive a restricted license by enrolling in a certified treatment program.

- All drivers suspended for two or more DUIs must complete a certified treatment program before their license privilege can be reinstated.

- Administrative per se (preconviction) suspension can be reduced to 30 days (with license restriction) for first offenders enrolling in a treatment program.

- Court has discretion to impound vehicles in certain cases.

- Court has authority to require ignition interlock for repeat offenders.

- Minors are subject to a conviction, mandatory revocation and mandatory alcohol education programs at BAC $\geq .05$ percent.

- Drivers under 21 are subject to administrative license suspension under zero-tolerance law (BAC $> .01$ percent). These incidents do not have the status of a criminal offense.

- Courts are subject to plea bargaining constraints.

- Suspended and revoked repeat offenders cannot be unconditionally reinstated until proof of insurance is filed and maintained.

Although the above sanction components represent a wide array of sanctions and interventions, embodying virtually every mechanism that has been proposed in the literature, Peck (1987) has pointed out several limitations in the California system. For the most part, these relate more to lack of coordination between agencies and failure to implement existing sanctions, rather than to intrinsic limitations in the sanctions themselves. The vehicle impoundment sanctions and ignition interlock sanctions are seldom used. Nor are sanctions consistently enhanced for offenders with BACs of .20+ (Tashima, 1986). In addition, the authority to conduct presentence investigations (PSI) as a means of assisting the court in assessing the offender's need for treatment is seldom used. Finally, a number of California studies have corroborated: 1) Low level of enforcement of license suspension laws; 2) inconsistent monitoring of treatment program compliance; 3) frequent nonreporting of juvenile DUI convictions; and 4) wide regional variations in DUI conviction rates and sanctions.

Some Past Proposals

In addition to the California studies, policy reviews have been conducted by other organizations, most notably MADD, the American Bar Association (ABA), and the National Commission Against Drunk Driving. Although policy advocacies do not, in themselves, constitute evidence, they can provide insights into the characteristics of an improved driver licensing system for deterring DUI offenses. Those of the ABA and the above California study (Peck, 1987) relating to high risk DUI offenders are summarized below.

Analysis of Fatal Accident Reporting System (FARS) data for California for 1991 and 1992 indicates that 13 percent of all fatal-accident drivers were suspended or revoked at the time of their accident. Data from California's driver record files indicate that approximately 6 percent of all drivers are suspended at any point in time. Unfortunately, the above figures are not broken down by type of suspension, but we do know that drunk driving actions comprise a substantial percentage of all suspensions and revocations in California and this is presumably true of most states and provinces. It therefore seems clear that effective strategies for increasing suspension compliance offer much potential. The operative word, of course, is "effective." The accurate identification of persistent DUI offenders and existence of theoretically effective countermeasures accomplish nothing unless the countermeasures are operationally viable and functionally effective.

An Overview of Impact Studies on License Action Effectiveness

There is no doubt that mandatory license suspension is more effective than discretionary suspension in reducing total crashes and violations (Nichols & Ross, 1990; Preusser, Blomberg and Ulmer, 1988). This is largely due to its greater perceived certainty and the reduced influence of judicial discretion. The evidence is also very clear that diversion to treatment (with either unrestricted or limited license) leads to higher accident and violation rates than full license suspension (Nichols and Ross, 1990). A number of studies report that full license suspension also reduces DUI recidivism (e.g., Peck et al., 1984; Vingilis et al., 1990) but the evidence is less consistent. However, the traffic safety impacts are almost, if not completely, explained by reduced exposure on the part of suspended drivers. During the suspended period, offenders are driving less, and/or more cautiously, than drivers not suspended. The period of effectiveness may extend beyond the suspension period because some drivers fail to reinstate their license or pay insurance surcharges.

McKnight and Voas (1990) compared the results of several studies and concluded that the traffic safety benefits of full license suspension were totally explained by reduced exposure. The studies seemed to show that restricted license action combined with some kind of remedial treatment was more effective in preventing alcohol-related traffic incidents than full suspension. A similar conclusion was reached by Wells-Parker et al. (1994) based on a meta-analysis of a large body of research literature. Therefore, it appears that the traffic safety benefits of license suspension are due to

incapacitation, but there is little evidence that they lead to reform. The reform potential of license restrictions alone is likely to be nil among persistent drinking drivers.

There are many forms of licensing actions, and while one tends to generalize their effectiveness, it is important to note that there are many variations on several dimensions, and these may differ in their impacts.

Duration of Sanction

It appears that license suspension periods of less than 3 months are ineffective (Paulsruide and Klingberg, 1975) and that traffic safety benefits increase with longer periods of suspension (Homel, 1981; Vingilis et al., 1990). However, at some point the benefits drop off due to decreased compliance. Homel suggests that periods of suspension between 12 and 18 months are optimal.

Delay in Application

Administrative license revocation (ALR), now adopted by 43 states and one province, has been credited with a strong general deterrence effect, presumably because it provides a swift and certain punishment (served immediately and effective within 7 to 45 days from date of offense). This is in contrast to court imposed and post conviction sanctions which may separate the offense and the sanction by one year or more. Although one study suggested a possible specific deterrent effect in two states (Stewart, Gruenewald and Roth, 1989), further evaluation is needed to assess the impact of ALR on recidivism for DUI.

License Reinstatement Contingencies and Remediation

One of the more promising strategies appears to be the integration of licensing and remediation actions. What form the remediation should take is dealt with in another workshop paper (Rehabilitation) and will not be pursued here.

In many European countries, removal of the driving privilege is considered a necessary condition for rehabilitation. For example, Sweden introduced a law in 1991 requiring all drivers convicted with a BAC greater than .15 to submit to medical treatment and provide laboratory evidence that they are no longer abusing alcohol, as a condition of reinstatement, after the required period of revocation. The law thus places the burden of proof on the driver. Roos (1992) reports that since the requirement was introduced, DWI recidivism rates fell by 50 percent.

In North America some states have established contingencies for relicensure, but the criterion is usually

completion of a treatment program. Failure to complete a program may lead to indefinite revocation. In addition, California has discretionary authority not to reinstate revoked DUI offenders who have not satisfactorily controlled their alcohol abuse problem. This authority to conduct a reinstatement interview is currently not used, in part because of the requirements for repeat offenders to complete lengthy treatment programs in order to qualify for reinstatement. Yet course completion may be inadequate as the sole criterion for reinstatement eligibility because many persistent drinking drivers may still be alcohol dependent. If a combination of medical, biochemical and psychological criteria, such as those used in Europe, are adopted to determine fitness for relicensure, then the validity of these criteria needs to be established.

If license actions are to be integrated with remediation, then it also makes sense that offenders should be subject to mandatory assessment prior to referral, as noted above in connection with the comments on California programs. In Germany, assessment has a major role in that country's driver improvement program for drinking drivers. However, about one-third of offenders are judged to be unfit to drive and unsuitable for treatment and are permanently revoked from driving (reported in Nickel, 1990). This situation undoubtedly leads to high rates of unlicensed driving.

While selection criteria for remediation programs may be less stringent in North America than in Germany, there is undoubtedly a group of habitual DUI offenders who do not benefit from treatment and who ignore driving restrictions. For this group other approaches involving incapacitation (e.g., vehicle countermeasures, electronic monitoring) are needed to support licensing actions. Some of these measures are addressed in a companion background paper (Vehicle Strategies) to this workshop.

Controlling the Persistent DUI Offender Through Improved Risk Assessment and Driver Control Strategies

Based on the current literature, the following readily available criteria can and should be used in identifying DUI offenders presenting the highest probability of accident and recidivism risk.

1. BAC level,
2. number of priors, including reckless driving convictions and alcohol-involved accidents,
3. total number of accidents and moving violations on the record.

The first two criteria have been firmly established and recognized. The significance of the third is less well accepted

but a number of investigations have shown that DUI offenders who accumulate above average number of moving violations are substantially higher risks than DUI offenders with otherwise clean records (Peck, 1994; Peck, Kerslake & Helander, in press). Peck et al. discuss this result in terms of two paradigms previously proposed by Simpson (1977): the problem driver who drinks vs. the problem drinker who drives. Clearly, the two groups suggest different types of countermeasures.

Identification of additional risk factors and use of customized treatment modalities could be implemented through presentence investigations. As noted earlier, most rehabilitative paradigms emphasize the need to customize treatment to the differing characteristics of drinking offender types, and that some types are not responsive to rehabilitation. Since this relates to another topic, we will not pursue it here other than to point out that license actions should not be lessened for offender types who do not offer rehabilitation potential. (It might also be added that little is served in making nonproblem drinkers enroll in lengthy treatment programs.)

There is, however, a utility to treatment programs that is often unrecognized. Peck et al. (in press) point out that DUI offenders who do not comply with the requirements of treatment programs have much higher accident and reoffense rates than do compliers. Such programs may therefore function as hurdles which filter out high risk persistent offenders, who are then suspended for noncompliance.

Having established the preceding, we would like to conclude with a list of potential driver license strategies for consideration in achieving better control of the persistent DUI offender.

1. Adopt a multitiered system which differentiates between moderate and high BACs. Under this system, BACs of .08 - .12 should receive lighter sanctions than BACs of, say, .12+. Such a system should still retain the option of enhancing penalties for BACs of 0.20+.

2. First offenders with extreme BACs (say above .20) would be treated as repeat offenders, both with respect to punitive sanctions and rehabilitation requirements.

3. Increase the detection and conviction rates for license suspension violations. One component of this objective would be a computerized system allowing police officers to check the license status of all drivers stopped for an infraction.

4. Increase sanctions, including mandatory jail sentences, for being convicted of violating DUI suspensions. (Also see #6.) Graduate sanctions as a function of the number of priors.

5. Give the Department of Motor Vehicles oversight authority to revoke the vehicle registrations for DUI offenders who accumulate moving violations and accidents during suspension.

6. Mandate vehicle impoundment or license plate revocation for any DUI offense or alcohol-involved accident which occurred during period of license suspension or revocation.

7. Require that all juvenile DUI convictions be reported to DMV.

8. Use a 7-year time window in defining the first subsequent DUI offense (e.g., 2 in 7).

9. Use a 10-year time window for defining the second subsequent DUI offense (e.g., 3 in 10).

10. Use lengthy revocations for chronic repeaters: e.g., 4 in 10 = 5 years, 5 in 10 = 10 years (or perhaps lifetime).

11. Allow treatment program enrollment to reduce length of suspension but not replace all of the suspension for first and two-time offenders. Three time offenders should be revoked and also made to complete a treatment program as a condition of reinstatement.

12. Use ignition interlock and periodic medical reports as a condition of probationary reinstatement for three time offenders or as an additional requirement for two-time offenders enrolled in treatment programs. Do not allow ignition interlock as an alternative to license suspension.

13. Adopt administrative per se suspension laws in all states.

14. Require presentence assessment for DUI offenders as a condition for alcohol treatment program assignment.

Strategic Considerations

The following issues must be considered in evaluating the above recommendations. These considerations will inevitably influence the specific form and assessed feasibility of the above policy recommendations.

- public cost
- benefit-cost potential
- public and political acceptability
- legal and constitutional constraints
- objective fairness (is sanction exceeding the seriousness of offense?)
 - perceived fairness - potential for neutralization
 - compliance discrimination - do some of the sanctions exceed the offender's economic ability to comply?

REFERENCES

1. Automobile Club of Southern California. (1992). *None for the road: A guide to California's DUI laws*. Author, Public Safety Department.
2. DeYoung, D. J. (1990). *Development, implementation and evaluation of a pilot project to better control disqualified drivers* (Report No. 129). Sacramento: California Department of Motor Vehicles.
3. Finklestein, R. & McGuire, J. (1971). *An optimum system for traffic enforcement/driver control* [Grant No. DL69-001(002)]. Washington, D.C., National Highway Traffic Safety Administration
4. Gebers, M. A. & Hanely, M. (1987). *Proof-of-service rates for suspended or revoked drivers as a function of mailing contact strategy: Interim report of "post-disqualification control of DUI offenders* (Report No. 120). Sacramento: California Department of Motor Vehicles.
5. Homel, R. (1981). Penalties and the drink-driver: A study of one thousand offenders. *Aust. N.Z. Journal of Criminology*, 14, 225-241.
6. McKnight, A. J. & Voas, R. B. (1990). The effect of license suspension on DWI recidivism. *Alcohol, Drugs and Driving*, 7(1), 43-54.
7. Nickel, W. R. Programs for the rehabilitation and treatment of drinking driving multiple offenders in the Federal Republic of Germany. In Wilson, R. J. and Mann, R. E. (Eds.), *Drinking and Driving. Advances in Research and Prevention*, New York, Guilford Press, 250-266.
8. Nichols, J. L. & Ross, H. L. (1990). The effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs and Driving*, 6(2), 33-60.
9. Paulsude, S. & Klingberg, C. (1975). *Driver license suspension: A paper tiger?* (Report No. 32). Olympia: Washington Department of Motor Vehicles.
10. Peck, R. C. (1987). *An evaluation of the California drunk driving countermeasure system: An overview of study findings and policy implications* (Report No. 112). Sacramento: California Department of Motor Vehicles.
11. Peck, R. C. (1991). The general and specific deterrent effects of DUI sanctions: A review of California's experience. *Alcohol, Drugs and Driving*, 7(1), 13-42.
12. Peck, R. C. (1994, January). *Quantifying the net accident contribution of convicted DUI repeaters: Some methodological issues and preliminary findings*. Paper presented at the 73rd annual meeting of the Transportation Research Board, Conference Session 123A: DWI Methodology—what are the impediments? Washington D.C.: Committee on Alcohol, Other Drugs and Transportation

13. Peck, R. C. (1992, April). *The identification of high-risk target groups*. Paper presented at the Target Group Expert Panel Workshop. Alexandria, VA: National Highway Transportation Safety Administration

14. Peck, R.C.; Arstein-Kerslake, G. W. & Helander C. J. (In press). Psychometric and biographical correlates of drunk-driving recidivism and treatment program compliance. *Journal of Studies on Alcohol*.

15. Peck, R. C.; Sadler, D. D. & Perrine, M. W. (1984). The comparative effectiveness of alcohol rehabilitation and licensing control actions for drunk driving offenders: A review of the literature. *Alcohol, Drugs and Driving*, 1(4), 15-39.

16. Preusser, D. F.; Blomberg R. D. & Ulmer, R. G. (1988). Evaluation of the 1982 Wisconsin drinking and driving law. *Journal of Safety Research*, 19, 29-40.

17. Roos, H. L. (1993). Constitutional rehabilitation of high consumers/ drunken drivers in Sweden. In: Utzelmann, Berghaus, Kroj (Eds.) *Proceedings of the 12th International Conference on Alcohol, Drugs and Traffic Safety - T92*, Cologne, 28 September-2 October, 1992, Verlag TUV Rheinland, Cologne, Germany.

18. Simpson, H. M. (1977). *The impaired-driver problem vs. the impaired problem driver*. Paper presented at the Association of Life Insurance Medical Directors of America. Toronto, Canada.

19. Stewart, K.; Gruenwald, P. & Roth, T. (1989). *An evaluation of administrative per se laws*. Final Report on Grant 86-IJ-CX-0081. Washington, DC: National Institute of Justice, US Department of Justice.

20. Tashima, H. N. (1986). *Final report to the legislature of the State of California: The relationship between blood alcohol concentration level and court sanction severity in drunk driving cases* (Report No. 109). In accord with Assembly Bill 144 Chapter 1256, 1985 Legislative Session. Sacramento: California Department of Motor Vehicles.

21. Vingilis, E. R.; Mann, R. E.; Gavin, D.; Adlaf, E. & Anglin, L. (1990). Effects of sentence severity on drinking driving offenders. *Alcohol, Drugs and Driving*, 6(3-4), 189-197.

22. Wells-Parker, E.; Bangert-Drowns, R.; Allegrezza, J.; McMillen, R. & Williams, M. A. (1994). *Meta-analysis of remedial interventions with DUI offenders*, Manuscript submitted for publication.

APPENDIX C7

VEHICLE-BASED SANCTIONS--AN OVERVIEW

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Traditionally, social policy directed at drinking drivers attempted to modify the offenders, either through affecting their motivations or loading the illegal act with a punishment threat sufficient to deter. Policy interventions based on this approach have been evaluated and found effective to some degree. However, this is not necessarily the case for the committed and persistent offender, who drinks heavily whenever possible and who, when he has access to a vehicle, drives while impaired.

The persistent offender demonstrates by his repeated violation of the law that he is not affected by the law's deterrent threat. He is also demonstrably immune to the programs routinely applied to offenders, such as education and therapy, and the experience of jail. These facts are not unanticipated, given the commitment to drinking on the part of repeat drunk driving offenders and the notorious weakness of education and therapy among heavy consumers of alcohol. Many of the persistent offenders have attenuated relationships with conforming persons and easily accept the stigmatization and unpleasantness of jail terms because they have nothing to lose in the way of reputation. The most hopeful approach to controlling these individuals is not so much reform as incapacitation, rendering the crime difficult or impossible for those who would otherwise be motivated to commit it.

License suspension and revocation are techniques meant to get the persistent offender off the road. License actions are not without effect, but suspended and revoked drivers rarely refrain totally from driving. Rather, they do less of it, and drive in a more cautious manner, and thus more safely, in order to avoid apprehension. License actions are worthwhile policy, but they fail to remove many dangerous determined drunk driving offenders from the highway.

Imprisonment would of course be a nearly perfect incapacitative policy. Repeat offenders serving lengthy sentences would not be able to recidivate during incarceration. Moreover, jail would have the advantage of symbolizing the seriousness with which the community views drunk driving. However, judges are unwilling to incarcerate for lengthy time periods those drunk drivers -- the vast majority -- who have not caused a crash or harmed someone else. In order to have a significant effect on the casualty rate incarceration would have to be extensive. Minnesota researchers have calculated that if all 36,000 third offenders