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APPENDIX C13

CITIZEN ACTIVISTS' ASSESSMENTS OF THE DUI PROBLEM, PUBLIC ATTITUDES AND SELECTED RESPONSES TO THE PERSISTENT DRINKING DRIVER

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INTRODUCTION

Traffic crashes have long had a major impact on highway safety, representing the greatest single cause of death for Americans aged 6 to 33⁴; alcohol has been involved in approximately half of these deaths in recent decades. Both total traffic fatalities and alcohol involvement in these deaths peaked in the early 1980s, after which deaths began to decline. Except for a period in the mid-1980s, the trend in alcohol involvement has been rather steadily downward.

Since the late 1970s, the impaired driving problem has been the focus not only of federal, state and local highway safety and law enforcement officials, but also of the public. In 1978 a citizen-activist group called Remove Intoxicated Drivers (RID) was started in New York; Mothers Against Drunk Driving was begun in 1980; and various other groups have been formed as well. These groups have played an important role in generating momentum for legislative change and other programs to reduce the involvement of alcohol in traffic crashes. As recently as April 1 of this year, U.S.

⁴ National Highway Traffic Safety Administration, Fatal Accident Reporting System, 1993

Secretary of Transportation Federico Pena acknowledged the role of citizens' activism in improvements in highway safety in announcing a decrease in alcohol-related deaths for 1993.⁵

Aside from legislative action, one area in which activist groups have contributed is that of changing attitudes toward drinking and driving. Efforts by groups like MADD have helped to publicize the dangers of drinking and driving, the special risks faced by inexperienced young drivers, and the importance of countermeasures to the problem. MADD has utilized the experiences of DUI victims not only to work for stricter legislation but also to discourage individual offenders from repeating their impaired driving behavior.

Public Attitudes

In 1990 MADD commissioned a survey by Gallup to determine current public attitudes toward drinking and driving. The telephone survey, with a sample of 9,028 respondents, was conducted during the period of September 1990 through August 1991. Results released in October 1991 indicated that Americans considered drinking and driving or drunk driving to be a major highway safety problem, citing it significantly more often than any other problem (39 percent, compared to 22 percent for speeding, the second most often-cited problem). DUI was identified as the most important of six major highway safety problems, mentioned by 95 percent of respondents.⁶

Other findings were that the factor most likely to discourage people from driving drunk was the fear of injuring or killing others or oneself, followed closely by the fear of jail, loss of license and stiff fines. A majority (55 percent) personally knew someone convicted of drunk driving. Fifty-five percent said they drink on occasion. Nearly one-half (48 percent) felt the penalty for first offense drunk driving was not severe enough; 59 percent felt second-offense DUI penalties were not severe enough, and results were similar for third offenses.

A second survey conducted by the Gallup Organization between February 1993 and February 1994 found similar results. Again, drunk driving was most frequently cited as a major highway problem; of six major highway safety problems, DUI was mentioned by 97 percent of respondents, and drugged driving was next most often mentioned, with 91 percent. A total of 56 percent said they drink at least on

occasion. More than 3 in 5 (61 percent), a statistically significant increase from the previous poll, said they knew someone convicted of drunk driving.⁷

There was also a significant increase in percentages reporting key consequences that might discourage them from driving drunk: realizing one could kill or injure others, or oneself; a jail sentence; loss of license; a substantial fine; vehicle impoundment; and others. The rank order of such factors remained the same as in 1991.

As in 1991, a majority felt that penalties for first, second and third offense drunk driving were not severe enough, with a significant increase in the percentage who felt penalties were not severe enough, per offense. Eighty-nine percent supported or strongly supported bigger fines and longer jail sentences; 77 percent supported impoundment and sale of repeat offenders' vehicles.

Evaluation of State Programs

Also in 1990, MADD began a process to rate the states on DUI laws, programs and other responses to the impaired driving problem. Using "20 By 2000," MADD's package of anti-DUI goals and objectives, and other issues and countermeasures, a task force made up of representatives from universities, research organizations and government agencies in addition to activists developed a questionnaire covering eleven topic areas. The sections included: Governor's Leadership; Statistics & Records; Enforcement; Administrative & Criminal Sanctions; Regulatory Control & Availability; Legislation; Prevention/Public Awareness; Youth Issues; Self-Sufficiency Programs; Innovative Programs; and Victim Issues. This "Rating the States" survey was sent out to the 50 governors, most of whom called upon their Highway Safety Representative to complete it. Results of the survey identifying the top 10 states in each category were released in May 1991, drawing considerable public and media interest.⁸

In order to assess progress, this survey was conducted again in 1993,⁹ with the questionnaire sent to the governor's

⁷ The Gallup Organization, Mothers Against Drunk Driving Executive Summary of 1993 Results, April 1994.

⁸ Rating the States: An Assessment of the Nation's Attention to the Problem of Alcohol- and Other Drug-Impaired Driving. Mothers Against Drunk Driving and Advocates for Highway & Auto Safety, 1991.

⁹ Rating the States: An Assessment of the Nation's Attention to the Problem of Alcohol- and Other Drug-Impaired Driving. Mothers Against Drunk Driving and Advocates for Highway & Auto Safety, 1993.

⁵ U.S. Department of Transportation, press release, April 1, 1994.

⁶ The Gallup Organization, Mothers Against Drunk Driving Executive Summary of 1991 Results, September 1991.

highway safety representatives for completion on behalf of the governor. On the 1991 survey, MADD's state organization representatives also completed the survey for comparison, based on information at their disposal or requested from various state agencies. In 1993, MADD leaders received a copy in order to help monitor progress and communicate with officials to facilitate completion but were not asked to complete it. The data received from the states was complemented by information from the National Highway Traffic Safety Administration Fatal Accident Reporting Section and State Digest of Alcohol Highway Safety-Related Legislation and FBI Uniform Crime Reporting Section. Based on information from these sources, the states were evaluated and given a report card on their status with regard to laws and programs dealing with impaired driving.

Certain information gathered from the survey may be especially relevant to efforts to deal with the driver who persists in drinking before driving. This information was drawn from survey questions about retention of DUI records, alcohol problem assessment and treatment, and attendance at Victim Impact Panels.

Driver Records and Identification of Persistent Drinking Drivers

The principle method for identifying the persistent drinking driver is through records on repeat offenses. Availability of adequate and complete records on DUI offenses is therefore important, and the length of time offenses are maintained on driver records can affect identification of these drivers. It can also impact the nature and severity of sanctions meted out, as well as affecting the likelihood of appropriate treatment for alcohol problems. As an example, recently the driver convicted in the death of the MADD founder's daughter in 1980 was arrested on a new offense and, because records had been expunged, he was sentenced once again as a first offender, despite his earlier history.¹⁰

According to information gathered from the "Rating the States" Survey, there is considerable disparity from state to state as to policies for maintaining offenses on these records, and the definition of a repeat offender may vary accordingly. Only 4 states maintain data on prior DUI offenses in perpetuity. Twenty other states and D.C. maintain such records for 10 or more years, including 8 states for 20 or more. Twenty maintain records for 3 to 7 years. Five other

states have variations; for example, in Louisiana, criminal records are maintained for 10 years, but for administrative offenses, are referenced for only 5 years. Georgia maintains the information on the record, but does not use the information for classification of drivers as repeat offenders beyond 5 years.

Programs allowing for pre-sentence diversion exist in 15 states, and 10 states have Probation Before Judgment (PBJ) programs. These programs allow offenders to avoid the usual sanctions for an offense and typically prevent or delay information about an offense from appearing on their driving record. Diversion may prevent offenders from recognizing and dealing with the seriousness of their offense.

For those states which maintain records for the shorter periods, as well as for the states allowing pre-sentence diversion or PBJ, offenders may escape appropriate consequences.

One of the beliefs about persistent drinking drivers is that they have an alcohol problem, which leads to an inability to control drinking and results in DUI arrests and even crash involvement. One approach to dealing with these offenders is to require treatment as a part of probation or incarceration. "Rating the States" data indicate that as many as 34 states report that they require those arrested for DUI to be evaluated for alcohol problems. Of these, 32 states require alcohol problem assessment on a first offense, 33 on a second offense and 34 on a third or subsequent offense. Additional states conduct such evaluation by policy rather than statute. Thirty-two states report that they mandate treatment for a first offense and 39 for a second or subsequent offense; additional states require treatment at judicial discretion.¹¹

Evaluation of Victim Impact Panels

Courts in a growing number of states are sentencing offenders to attend a Victim Impact Panel, usually as a requirement during probation. As many as 200 or more counties across the country in as many as 34 states now hold panels, bringing groups of offenders together with victims or their family members. For the victims, speaking as part of a Victim Impact Panel provides an opportunity to influence others to avoid driving after drinking in order to spare others the tragedy that has befallen them. As an added benefit, a recent

¹⁰ USA Today, October 16, 1992, pg. 3A.

¹¹ Unpublished information from the "Rating the States" 1993 survey.

report indicates that anxiety and depression are reduced and psychological well-being improves for victims participating in these panels.¹²

The results of this sentencing method have not been extensively evaluated, but data are available from a number of programs. For the courts, the panels may help focus the attention of DUI offenders on the potential results of their own behaviors, with the hope of increasing awareness and reducing recidivism, and anecdotal reports provide examples of the impact on individual offenders. Evidence of attitudinal change comes from a study conducted in March 1990 in Dallas, Texas, which looked at attitudes pre- and post-panel attendance for 94 offenders attending panels between November 1989 and March 1990. Prior to attendance, 87.1 percent stated that they would continue to drink and drive or were undecided. Following the panel, 90 percent stated they would not drink and drive again.¹³

More significant than change in attitudes is behavior change, as indicated by reduced recidivism. A study conducted in 1989 in Washington County, Oregon, examined a randomly selected group of 90 offenders who had attended a Victim Impact Panel. While some of these individuals were first offenders, others were classifiable as persistent drinking drivers, based on prior offenses. Prior to the arrest for which they were sent to a panel, the offenders had from zero to four arrests. A review of driving records one year after attendance at a panel revealed a recidivism rate of 8.8 percent compared to the general re-arrest rate of 40 percent to 50 percent. Of the 8 who re-offended, 7 were males and 1 was female, and the ages ranged from 24 to 56. The length of time between attendance at a panel and arrest for a subsequent offense varied from 7 to 21 months.¹⁴

¹² Mercer, Dorothy, Rosanne Lorden and Janice Lord. Victim and Situational Characteristics Facilitation or Impeding Post-Victimization Functioning, Preliminary Report on First-Year Findings of a Three-Year Project, Drunken Driving Victim Impact Panels: Victim Outcomes. Presentation at the International Society for Traumatic Stress Studies, San Antonio, Texas, October 27, 1993.

¹³ Sprang, G. Analysis of Pre and Post-Test Responses to Victim Impact Panel: November 1989 through March 1990. Results reported to the Board of Directors, MADD, Dallas County, April 2, 1990.

¹⁴ Satterfield-McLeod, Carole. An Evaluation of the Washington County Victim Panel for Intoxicated Drivers. Washington County, Oregon, Sheriff's Department, April 1989.

A larger study conducted in 1990 in Clackamas County, Oregon, compared recidivism rates of 534 offenders who attended a Victim Impact Panel and 741 offenders who did not. The recidivism rate for non-panel offenders during the following year was three times the rate of those who attended panels.¹⁵

In Portage County, Ohio, 3,026 individuals were arrested for drunk driving between January 1, 1990, and July 31, 1991. Approximately 30 percent were repeat offenders, with at least one prior within 5 years. During this time frame, 346 first offenders attended Victim Impact Panels. At the time of the report, the re-arrest rate for this group was 3 percent, or 12 offenders.¹⁶

Summary

Efforts by citizen activists have contributed to progress against drunken driving in the areas of legislation and public awareness; these efforts have been cited as contributing to lower alcohol involvement in traffic crashes, deaths and injuries. Knowledge about public attitudes and understanding of impaired driving risks and solutions as well as about the status of anti-DUI efforts nationally and at the state level has been compiled through programs like the "Rating the States" project and public attitude polls, providing information useful to examinations of the persistent drinking driver problem.

Definitions of repeat offender or persistent drinking drivers are dependent on records on their involvement in traffic violations and other DUI-related offenses. Better records on these offenses, maintenance of offenses on driver records for longer periods, and elimination of pre-sentence diversion would provide for a more accurate and consistent identification of the persistent drinking driver.

In addition, citizen activist programs which involve victims telling their stories to offenders appear to help reduce recidivism but should be evaluated further for their effect on persistent drinking drivers. More in-depth evaluation could indicate more clearly which offenders are most likely to benefit from attendance at a panel; whether persistent drinking drivers tend to be affected by panel attendance; whether recidivism is reduced; and whether the impact lasts

¹⁵ O'Laughlin, Linda Hetrick. Drunk Driving - The Effects of the Clackamas County DUII Victim Impact Panel on Recidivism Rates. MADD, Clackamas County, Oregon City, OR 97045, 1990.

¹⁶ Victim Impact Panels: A Creative Sentencing Opportunity, Mothers Against Drunk Driving, 1991.

over time. Even if the group of offenders for whom recidivism is lowered over time were found to be small, that effect could potentially prevent some deaths due to impaired driving and would therefore be worthwhile.

APPENDIX D

SUMMARY OF MINNESOTA REPEAT DWI OFFENDER PLATE IMPOUNDMENT LAW

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Administrative Impoundment of Plates, Minnesota Statutes Section 168.042

The law is based primarily on the implied consent administrative license revocation experienced by repeat DWI offenders. The law requires that the commissioner of public safety issue an impoundment order for the vehicle registration plates of the **vehicle driven by the repeat DWI violator** (regardless of who owns the vehicle) at the time of the "driving incident" that triggers the issuance of the impoundment order and all vehicles owned individually and jointly by a person whose driver's license or privileges have been revoked three times within 5 years or four times or more times within 15 years for an **impaired driving** violation. Impaired driving violation is defined as:

a) A **criminal conviction** for violating Minnesota's DWI laws or drivers license laws applicable to DWI offenders whose driver's license are cancelled (offenders with 3 plus DWI violations of record)

b) An **administrative revocation** for a civil violation of Minnesota's implied consent law (administrative alcohol related license revocation).

The impoundment order can be issued at the time of the arrest of the DWI offender. The impoundment order can be issued by the police officer who invoked Minnesota's implied consent law and the person either failed or refused an implied consent alcohol concentration test. (Minnesota's implied consent law authorizes pre-hearing revocation for failure or refusal of an implied consent test).

THIS IS THE CENTRAL AND KEY PART OF THE PLATE IMPOUNDMENT LAW

The pre-hearing implied consent administrative revocation notice issued by the arresting officer at the time of arrest and test failure or refusal is the basis for and "triggers" the issuance of the pre-hearing administrative plate impoundment order.

The police officer is authorized by the statute to act as the commissioner's agent and issue the impoundment order in the same manner that they act as the commissioner's agent in issuing administrative license revocations.

The commissioner also issues, by mail, impoundment orders to drivers who should have received such an order from the arresting officer but did not do so.

After issuing the impoundment order and seizing the plates the officer issues a temporary vehicle permit to the driver. The permit is valid for seven days if the driver owns the vehicle. The permit is valid for forty five days if the vehicle is owned by someone other than the driver.

The temporary permits allows the owner of the vehicle to remove the vehicle from the street if legally parked after the arrest or the impound lot if the vehicle was towed after the arrest of the driver. The longer period for vehicles not owned by the driver allows the non-driver owner time to obtain new plates (see # 6 below).

All plates impounded by police officer pursuant to the impoundment law are to be destroyed by the police department that impounds them. This is authorized by statute and eliminates the problem of storage of plates or transmittal of the plates to the state.

The owner, if not the violator, can obtain new plates at no cost by filing with the commissioner of public safety a statement containing the following information:

- a) that they are the registered owner of the vehicle;
- b) that they currently own and possess the vehicle;
- c) the date the violator obtained the vehicle from the owner;
- d) the residence addresses of the registered owner and the violator on the date the violator obtained the vehicle from the owner;
- e) that the owner was not passenger in the vehicle at the time of the violation; and
- f) that the owner knows that the violator may not operate a vehicle without a valid driver's license.

The owner is not entitled to receive new plates if they knew or had reason to know that the violator did not have a valid driver's license on the date they obtained the vehicle from the owner.

The cost of implementing plate impoundment is very low. Issuing an impoundment order takes only minutes of an officer's time. Removal of plates is often done by tow lot personnel at the direction and request of the arresting officer after the officer has ordered a tow for the driver's vehicle after the arrest. Storage of plates by police departments is not a problem because the plates are destroyed.

One problem that does exist in the present system is impoundment of plates from vehicles not owned by the