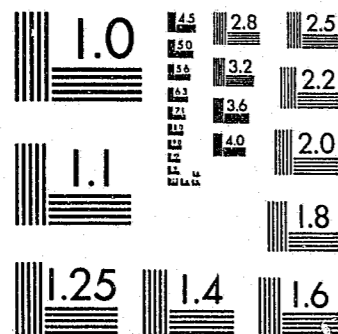


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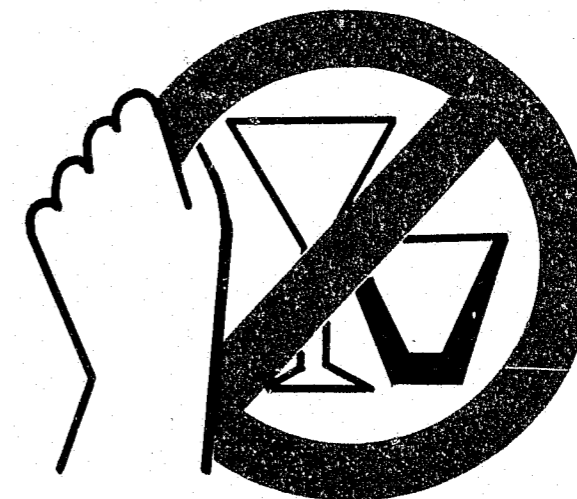
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AN EXECUTIVE RESPONSE  
GOVERNOR JAMES B. HUNT, JR.



**95807**

RECOMMENDATIONS  
OF THE  
GOVERNOR'S TASK FORCE ON DRUNKEN DRIVERS

EXECUTIVE SUMMARY REPORT

John S. Stevens, Chairman  
Governor's Task Force on Drunken Drivers

Heman R. Clark, Secretary  
Department of Crime Control & Public Safety

November 1982

95807

North Carolina Department of  
**Crime Control & Public Safety**   
 P.O. Box 27687 512 N. Salisbury Street Raleigh 27611 (919) 733-2126

James B. Hunt, Jr., Governor

November 16, 1982

Heman R. Clark, Secretary

U.S. Department of Justice  
National Institute of Justice

95807

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The Honorable James B. Hunt, Jr.  
Governor of the State of North Carolina  
The Capitol  
Raleigh, North Carolina

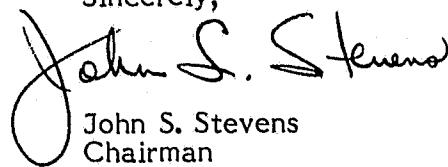
Dear Governor Hunt:

I am pleased to submit to you the Final Report of the Governor's Task Force on Drunken Drivers.

This Report is the culmination of many long hours spent by the Task Force in studying this complex and widespread public safety problem. The dedication of each and every Task Force member is reflected in the comprehensive recommendations which are presented for your consideration. Although the Task Force officially ends its work with the submission of this Report, please be assured of our continued support and participation in addressing the problem of the drinking driver.

It is important to note that the primary documentation for our Report was provided by the Governor's Crime Commission's report, Driving Under the Influence, and through the seven public hearings which were held across the State. We wish to thank those individuals that testified at the hearings and have written letters to us, for their insight and support. We also wish to express our gratitude to Secretary Heman R. Clark of the Department of Crime Control and Public Safety for his personal contribution, as well as the assistance of his staff in completing this Report.

The Task Force applauds your efforts in this area and we thank you for the privilege of serving on this panel.

Sincerely,  
  
John S. Stevens  
Chairman

NCJRS

NOV 26 1982

ACQUISITIONS

## ACKNOWLEDGEMENTS

The topic of this Report required that the Task Force call upon a wide variety of individuals and groups to aid them in their deliberations. Consequently the recommendations contained herein are the product of many concerned individuals who came forward to present their views.

The Governor's Task Force on Drunken Drivers wishes to acknowledge and thank these individuals for their participation.

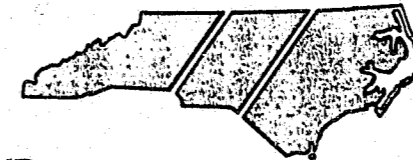
As is readily apparent, the report itself necessitated full-time staff assistance in order to meet the deadline set forth in the Executive Order establishing the Task Force. Such staff assistance was rendered by the Department of Crime Control and Public Safety. Heman R. Clark, Secretary of the Department, made resources available to the Task Force which ensured the completion of this report in a timely and efficient manner. In addition, Secretary Clark's devotion to the work of the Task Force, the public hearings and committee deliberations, demonstrated the dedication of his Department to this serious public safety problem.

Staff members of the Governor's Crime Commission and the Criminal Justice Analysis Center deserve recognition as they were responsible for organizing the Task Force meetings and public hearings and for producing this report. They include Gordon Smith, Executive Director of the Commission, whose organizational skills allowed the Task Force to conduct its work free from the encumbrances of the details surrounding the operation of a temporary governmental commission, David Jones, Director of the Center, who converted the individual sub-committee reports, the meeting minutes and public testimony into this Final Report, Tom Havener, Tony Queen and Ralph Barefoot, who assisted in organizing the public hearings and staffed the individual sub-committees, and, Anita Munns, who provided accurate accounts of the Task Force meetings and public hearings and who typed this report.

In recognition of the cooperative venture of this report, the Task Force also wishes to express its gratitude to: the Institute of Government, in particular Jim Drennan, Dexter Watts, and Ben Loeb for their invaluable expertise and assistance in drafting the proposed legislation, John Lacey of the UNC Highway Safety Research Center, Pete Martin of the Alcohol and Drug Services Section, Dr. Arthur McBay of the Chief Medical Examiner's Office, Doug Wooten and Bill Abernathy of the Highway Safety Branch of the Health Services Section, and A. W. Turner of the Legislative Drafting Division.

The Task Force also wishes to express its profound gratitude to all other persons who have made this report possible.

# State of North Carolina



JAMES B. HUNT, JR.  
GOVERNOR

EXECUTIVE ORDER 75

GOVERNOR'S TASK FORCE ON  
DRUNKEN DRIVERS

WHEREAS, the operation of motor vehicles on our highways by persons under the influence of intoxicating beverages constitutes a serious threat to the health and safety of our citizens; and,

WHEREAS, a large portion of the fatal accidents on our highways are alcohol related; and,

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons under the influence of intoxicating beverages;

NOW, THEREFORE, IT IS HEREBY ORDERED:

Section 1. I hereby establish the Governor's Task Force on Drunken Drivers, which shall be an ad hoc committee of the Governor's Crime Commission. The Task Force shall be composed of at least fifteen and not more than thirty members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as chairman. The members appointed by the Governor will be representatives of the following areas:

- (A) The Governor's Crime Commission and committees associated with that Commission;
- (B) Law enforcement;
- (C) The judicial system;
- (D) Highway safety; and
- (E) The prevention of alcoholism.

Section 2. The Task Force shall meet regularly at the call of the chairman and may hold special meetings at any time at the call of the chairman, the Governor, or the Secretary of Crime Control and Public Safety. The Task Force is authorized to conduct public hearings.

Section 3. Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Crime Commission.

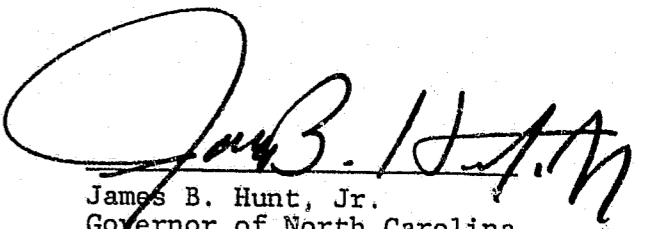
Section 4. The Task Force shall have the following duties:

- (A) Review the General Statutes of North Carolina applicable to driving under the influence of intoxicating beverages;
- (B) Review proposals in other states designed to deter driving under the influence of intoxicating beverages;
- (C) Consider proposals for North Carolina, including mandatory jail term for conviction of driving under the influence, mandatory revocation of operator's license for driving under the influence, the elimination or alteration of certain "lesser included offenses" for driving under the influence, and a county by county report card on the disposition of cases; and
- (D) Other such duties as assigned by the Governor or the Secretary of Crime Control and Public Safety.

Section 5. The Task Force shall present a report to the Governor no later than December 1, 1983. The Task Force shall be dissolved when its report is presented to the Governor.

Section 6. This order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this  
the eleventh day of February, 1982.



James B. Hunt, Jr.  
Governor of North Carolina

MEMBERS OF THE GOVERNOR'S TASK FORCE

ON DRUNKEN DRIVERS

John S. Stevens, Chairman  
Attorney  
Asheville, N. C.

Judge J. B. Allen, Jr.  
Chief District Court Judge  
Burlington, N. C.

Mary Leila Andrews  
Citizen  
Wilmington, N. C.

Robert Lee Ayers  
Citizen  
Marion, N. C.

Sheriff John Baker, Jr.  
Wake County Sheriff  
Raleigh, N. C.

Wade Barber, Jr.  
District Attorney  
Pittsboro, N. C.

Spencer Barrow  
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Ronald C. Brown  
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Lt. Col. Jack Cardwell  
N. C. State Highway Patrol  
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Locke T. Clifford  
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Greensboro, N. C.

Judge Robert A. Collier, Jr.  
Superior Court Judge  
Statesville, N. C.

Karen Combs  
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Dr. Philip J. Cook  
Professor  
Durham, N. C.

Representative Charles Evans  
N. C. House of Representatives  
Nags Head, N. C.

Marse Grant  
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Chief B. J. Hamerick  
Morganton Police Department  
Morganton, N. C.

Reverend Warnie Hay  
Minister  
Winston-Salem, N. C.

Steven L. Hicks  
Mental Health Official  
Raleigh, N. C.

Judge William K. Hunter  
District Court Judge  
High Point, N. C.

Representative Martin Lancaster  
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Rae McNamara  
Director of Prisons  
Raleigh, N. C.

Dr. Fred Patterson  
Physician  
Chapel Hill, N. C.

George Thomas  
Citizen  
Boone, N. C.

Helen Baker Wallace  
Citizen  
Smithfield, N. C.

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PUBLIC HEARING TESTIMONY

The Governor's Task Force on Drunken Drivers conducted public hearings across the State of North Carolina during the months of April, May and June, 1982. Hearings were held in Asheville, Charlotte, Winston-Salem, Raleigh, Fayetteville, Greenville, and Wilmington. At these hearings the Task Force presented recommendations on driving under the influence of the Governor's Crime Commission, and solicited ideas and comments from the public on those proposals as well as others not addressed in the Crime Commission report. Overall the public response to the Crime Commission report was very positive and virtually all of its recommendations are included in this report of the Task Force. There was also a variety of different and innovative ideas presented to the Task Force by citizens attending the public hearings, and many of them are also included in this report.

At these hearings the Task Force was also made very much aware of the sense of public outrage for the manner in which our criminal justice system and our society deal with drunken drivers, particularly those who injure or kill innocent victims on the highway. It is perceived by some individuals that the way our judicial system deals with the drunken driver who has killed another human being makes the crime tantamount to a "socially accepted form of murder". Many individuals who had lost a friend or family member in an alcohol related accident spoke at the public hearings, and indicated that the offender received very little active jail time, was now free, and again had a license to drive.

If there was any central theme to the testimony presented by the citizens of North Carolina to the Task Force, it was to make the laws tougher and make them mandatory. The public expressed a desire for one drunk driving law for everybody, regardless of age, or financial circumstances. The Task Force also heard testimony from former alcoholics and convicted DUI offenders, who indicated that the only way to change their behavior was to "slap them in the face" and not give them a break or feel sorry for them.

The Task Force has, in its report, tried to balance the heartfelt concerns of the people for strict, mandatory laws on drinking and driving, with the constitutional rights of the wide variety of people arrested for drunk driving. It is understood that no law can seem tough enough to the individual who has suffered the tragic and senseless loss of a loved one. The Task Force realizes that for many people, the victims of drunk drivers and their friends and families, this report and its recommendations, comes too late. It is our hope and belief that this initiative will prevent future tragedies and that the people of North Carolina will support this comprehensive impaired driving program.

Letter to Governor's Task Force on Drunken Drivers  
from Mrs. Barbara Ray Sibley, Concord, North Carolina  
September 11, 1982

These thoughts are from 1 of the 20,000 who were injured last year as a result of an accident caused by one driving under the influence. My 10 month old son and my husband were also injured. My son, Eric Ray Sibley, age 3, was one of the 700 North Carolinians killed last year. Being in an approved child's car seat, with his sealbelt fastened, failed to protect him.

He was a special gift to my life. For three years, I enjoyed being with him. He loved all aspects of everyday life. Watching his enjoyment of life, noticing his interest in people, books, animals, and nature; observing him teach his younger brother about toys and games; noticing his love for his Daddy and involvement in the activities enjoyed by him were all daily activities which I loved to observe. Helping him learn about life; being a part of his life, was certainly a great joy to me. But now my goals in life, those which concerned Eric, have had to be changed. My opportunity to be with him, here on Earth, is gone. I will always love him, that will never change. I do have fantastic memories of all the days we spent together, they will never go away.

Until this accident happened to my family on November 8, 1981 in Stanly County, I was unaware of this tremendous problem that is affecting our State and our nation. I am certainly in agreement with Congressman Bill Hefner and his colleagues which call this type of accident "America's Greatest Tragedy". Eric's death is certainly a tragedy. The scars on my son, Patrick's face, are a tragic mistake. What events resulting from this accident must he face? The memories of the accident which I sometimes see in my husband, Rick's face, are a tragic mistake. Memories which he will always endure. I am not aware of happenings for approximately ten days, these memories I do not have; but my sadness, my family's sadness, are a tragic event which will remain a part of our life. Knowing that Eric is in Heaven with one of the best teachers, with one of the best babysitters is a good thought, but it still cannot relieve the pain of missing him.

Public awareness of this tragic problem is definitely a necessity. Public awareness prior to becoming involved. The basic facts of driving under the influence should be greatly publicized. Should not people think about what could happen before they drive drunk? Do not people care about their lives and the lives of others? Maybe drinking helps take away all your problems; maybe it makes your life easier; maybe it is a lot of fun. Do not let it take away another person's life. Dealing with an unnatural death, one resulting from manslaughter or murder, is difficult to accept. It involves a lot of sadness.

If the public will agree with Bill Noblitt who says that "before there can be a stigma - public rejection of the drunk driver - there must be a public which clearly says "No, it is not all right to drive drunk," possibly some changes can be made in our laws regarding this matter. Governor Hunt, however cautions that just changing the laws; making them tougher will not resolve the issue. The changes must be one people believe in and are committed to.

Find out what is happening. Inform others. Encourage the politicians to continue their work towards the alleviation of this tragic problem. Let's reduce the number of deaths and injuries which could affect each one of us.

Thank you.

## PROBLEM DESCRIPTION

During 1981, there were over 143,000 traffic accidents in North Carolina. Of that number, 1,335 resulted in at least one fatality, 52,634 resulted in some type of personal injury, and the remaining 89,357 in only property damage. According to figures published by the Division of Motor Vehicles, investigating officers were able to positively identify that 403 of the 1,335 fatal accidents were alcohol related. The accidents resulted in the deaths of 445 people. There were an additional 513 fatalities where the investigating officer was unable to determine whether or not alcohol was involved.

According to blood analyses of 640 drivers killed during 1980 performed by the Toxicology Laboratory of the North Carolina Office of the Chief Medical Examiner, 269 or 42% were drunk (blood alcohol concentration of .10% or more) and 72 or 11% had been drinking (blood alcohol concentration of between .02% or .09%). If this same percentage were applied to the 1,491 traffic fatalities recorded in North Carolina during 1981, it would indicate that approximately 790 lives were lost in alcohol related traffic accidents. That number far exceeds the 532 murders reported to the police during 1981.

Of the 52,634 accidents resulting in personal injury, 11,535 were alcohol related, with 18,730 individuals receiving some type of bodily injury. It is estimated that in approximately 10% or 9,000 of the accidents resulting in only property damage, the driver had a blood alcohol content (BAC) greater than .10%.

Nationwide, the number of accidents occurring because a person drinks and drives is staggering. Each year on American highways 25,000 men, women, and children are killed because of drunk drivers. They injure 750,000 more. On a daily basis this means that nearly 70 persons are killed and 2,054 seriously injured because of the drunk driver.

The percentage of drivers killed in single and multiple-vehicle crashes who were drunk or had been drinking has remained at a fairly constant level of 53% since 1970, according to figures maintained by the Toxicology Laboratory.

During that same period, arrests for driving under the influence (DUI) have increased significantly. In fact, from 1979 to 1981, DUI arrests in North Carolina increased from 71,534 to 96,404 or by almost 35%. During 1981 there were more arrests per capita for DUI in North Carolina than any other state in the nation. The DUI arrest rate per 100,000 population for North Carolina in 1981 was 1,619, compared to a national arrest rate of only 664 per 100,000 population.

The above arrest statistics should not be interpreted as indicating that the prevalence of motor vehicle operators driving under the influence is two and a half times as great in North Carolina as it is nationwide, only that the emphasis placed on enforcement of the DUI statute is greater. The commonness of alcohol abuse, as well as the abuse of other drugs in our society suggests that the actual incidence of someone operating a vehicle while under the influence of some debilitating drug is far more widespread than arrest on accident figures indicate. Studies used by the National Highway Traffic Safety Administration (NHTSA) have indicated that on a nightly basis, only between

one in five hundred (1/500) and one in two thousand (1/2,000) drivers on the road with a BAC greater than .10% are arrested for drunk driving. Since North Carolina has such a high arrest rate for drunk driving it would seem that the probability of being arrested in this state is much higher than the studies used by NHTSA would indicate. Nevertheless, assuming that the arrest probability is as high as one in one hundred (1/100), the total number of incidents of driving under the influence in North Carolina during any given year would still be in the millions.

The implications of those startling figures are significant in the development of any program or strategies to reduce alcohol related traffic fatalities. First, it indicates that this sort of behavior is very widespread and pervasive in our society, precluding any attempt to try to eradicate such by apprehending all offenders. Secondly, it reveals that in the vast majority of the incidents of impaired driving, there is neither an accident nor an arrest, but instead a rather uneventful motor vehicle trip. The relatively few motor vehicle trips undertaken by an impaired driver that result in the horrible tragedy of a loss of human life usually involve a heavy problem drinker but not necessarily one who has had a previous encounter with the law. Only 10 to 20 percent of all fatal crashes investigated by NHTSA's accident investigation teams involve a driver with a previous drunk driving arrest on his or her record.

Nationwide, more than 50% of all traffic fatalities involve a drinking driver, and 67%, or two-thirds of those crashes involve a problem drinking driver whose BAC is well above the presumed level of intoxication of .10%. In fact, the average BAC of drinking drivers involved in fatal traffic accidents is .20%, or double the legal level of intoxication. Estimating an average period of alcohol consumption at 4-5 hours, this means that the average fatally injured drinking driver had about 15 drinks prior to becoming involved in the crash. It appears then that the vast majority of alcohol related traffic fatalities are caused by a relatively small proportion, maybe 10 to 15 percent, of the drinkers who happen to be heavy or problem drinkers. The primary focus then of any countermeasure program should be on this minority of drivers that cause or are involved in the majority of the fatal alcohol related crashes. The problem, however is that this group is commonly believed and reasonably well documented to be least likely to respond to prevention, rehabilitation, deterrence or any other approach. Also, since only a small percentage of these problem drinking drivers are arrested each year, the total rehabilitation or incapacitation of their drinking and driving behavior would yield only a small reduction in traffic fatalities. According to research reports published by NHTSA, if all the 96,904 drivers arrested in North Carolina for DUI in 1981 were totally rehabilitated or removed from the road during 1982, traffic fatalities that year would decline by about 9%. A 100% success rate for rehabilitation or incapacitation would of course be extremely unlikely for any countermeasure program.

The most feasible and effective approach to reducing the carnage on the highway caused by the impaired driver, one that is supported by an abundance of literature on the subject, and is herein presented by the Governor's Task Force on Drunken Drivers, is a general deterrence program that includes the following:

- increase the likelihood of arrest or apprehension,
- increase the swiftness and certainty of punishment,
- increase the severity of legal sanctions imposed, and
- increase the public's perception of all of the above.

This approach, combined with an extensive, long range educational program to prevent individuals from becoming problem drinkers, is the only way to have a measurable and lasting impact on this horrible human tragedy.

RECOMMENDATIONS OF THE  
GOVERNOR'S TASK FORCE ON  
DRUNKEN DRIVERS

PUBLIC EDUCATION RECOMMENDATIONS

Recommendation 1: Increase Education on Alcohol Abuse in  
Statewide Health Education Program

In 1978, the General Assembly passed H.B. 540 which called for the development and implementation of a comprehensive health education program. This program deals with a variety of health topics including alcohol and substance abuse. The Division of Special Projects of the Department of Public Instruction has developed a health education curriculum to be used statewide. The curriculum includes four components on alcohol and substance abuse to be presented at the K - 3, 4 - 6, 7 - 9, and 10 - 12 grade levels. This curriculum will be implemented in the Fall of 1983 and the Governor's Task Force on Drunken Drivers hereby recommends that it be adopted and taught in all 143 Local Education Agencies across the State.

Through the implementation of the health education curriculum statewide in grades K through 12, better information on the effects of alcohol and substance abuse will be presented to young people in North Carolina. This should promote a tendency toward more responsible behavior when the young people mature to the driving and drinking age.

Recommendation 2: Increase Emphasis on the Hazards and  
Penalties of Driving Under the Influence  
In Drivers Education Classes

Results of tests administered during the Alcohol and Drug Education Traffic School (ADETS) indicate that there is considerable ignorance of the effects of alcohol, and the DUI statutes among individuals referred to the school. The largest group of individuals referred to the school as a result of a DUI conviction is young adult males, particularly 19 and 20 year olds. These individuals also account for a disproportionate number of the alcohol related traffic injuries and fatalities. Young people who are just learning to drive and just learning to drink, present the most serious threat to their own safety as well as that of others on the highways.

The curriculum in the driver's education program should be reoriented to include a greater emphasis on the hazards and penalties of driving under the influence, thereby, providing young people in this high risk group with a better education on such matters. The Division of Health, Safety, Physical Education and Sports of the Department of Public Instruction is currently looking into expanding that component of the drivers education program that deals with substance abuse and driving. The Task Force recommends that an appropriate level of funding be provided by the General Assembly so that drivers education classes can be expanded or adjusted accordingly, statewide. This should deter impaired driving by this group and therefore reduce the number of alcohol related accidents and fatalities involving young people.

Recommendation 3: Increase Education and Media Programs  
for the General Public Concerning the  
Effects of Alcohol and the Hazards and  
Penalties of Driving Under the Influence

Increasing the public's perception of the likelihood of arrest, the certainty and swiftness of punishment and the severity of sanctions to be imposed are the essentials of a general deterrence program to reduce impaired driving behavior. It is also important that public awareness be enhanced as to the debilitating effects of substance abuse in general, so that a reduction in impaired driving can be permanent. It is only through an extensive education and media program that public sentiments can be changed so that drinking and driving is no longer socially accepted behavior.

The Governor's Highway Safety Program presently has a contract with Pennington Associates, Inc. to develop media programs dealing with highway safety. Special emphasis should be placed on programs dealing with the hazards and penalties of driving under the influence. An expansion of the DUI public education program conducted by the Governor's Highway Safety Program should also be undertaken. This could be accomplished with funds presently available and with additional federal funds that are forthcoming.

Expanding the public education programs currently sponsored by the Governor's Highway Safety Program should increase the deterrent effect of the proposed impaired driving statutes, and influence public attitudes about driving after drinking. This should reduce the incidence of impaired driving and therefore the number of alcohol related accidents and fatalities.

Recommendation 4: Raise the Buying and Possessing Age for Malt  
Beverages and Wine to Nineteen

The Governor's Task Force on Drunken Drivers recommends raising the buying and possessing age for malt beverages and wine to nineteen so that it would be less accessible to the high school age group. Considering that traffic accidents are the leading cause of death for young people sixteen to nineteen years old, and that most of the fatal crashes are alcohol related, raising the drinking age by only one year should have a significant impact on traffic fatalities in that age group. Research has indicated that when the drinking age is set at eighteen there is significant extension of availability to the sixteen and seventeen year old, high school age group.

Raising the drinking age for beer and wine to nineteen should retard the use of such beverages among the high school age group, an age when young people are just learning to drive and therefore most susceptible to impaired driving problems. This moderate change in the drinking age should also mitigate any problems in enforcement or disrespect for the law, particularly around college campuses, that might result if it were raised to twenty-one.

Recommendation 5: Support the Efforts of the DUI Coordinating  
Council to Coordinate the Activities  
of the Various Agencies that Deal With  
Alcohol and Substance Abuse Problems

The Governor's Crime Commission recently established the DUI Coordinating Council,

pursuant to a recommendation contained in its DUI report. This council is chaired by the Deputy Director of the Alcohol and Drug Abuse Section of the Division of Mental Health, Department of Human Resources. It is responsible for pulling together various groups that deal with alcohol and substance abuse problems to improve coordination of services and facilitate the implementation of recommendations on reducing impaired driving. To expedite the operation of the Coordinating Council, the Task Force recommends that it be afforded all the cooperation and financial support of the participating agencies.

The activities of the DUI Coordinating Council should provide for a more efficient and effective delivery of services presently undertaken by a variety of agencies. This should ultimately reduce the incidence of alcohol impaired driving and alcohol related traffic fatalities.

Recommendation 6: Enact Dram Shop Statute Creating Civil Liability for Unlawful Sale of Alcohol to Under Age or Intoxicated Persons

It is a crime in North Carolina for anyone to serve alcoholic beverages to a minor or for a commercial server to sell alcoholic beverages to an intoxicated patron. Enactment of a dram shop statute would make the server liable if the illegally served patron injures himself or another person in a motor vehicle accident as a result of his intoxication. This statute should have the beneficial consequences of providing injured parties with an opportunity to recover damages from a relatively "deep pocket", i.e. the permit holder and providing a financial incentive for the permit holders to exercise reasonable care in serving patrons. The latter consequence may be most beneficial particularly with respect to limiting the availability of alcoholic beverages to under age persons. When combined with the recommendation to raise the buying and possessing age, this dram shop statute should have a significant impact on getting alcoholic beverages out of the high schools.

By creating liability for commercial servers, this dram shop statute will greatly increase the likelihood that permit holders will pay some penalty for serving a patron illegally. With the provision that liability can be limited by a defense based on good serving practices, the permittees will be further inclined to exercise responsibility in the serving or selling of alcoholic beverages.

Recommendation 7: Enact Statute Prohibiting the Possession of an Open Container of Beer or Wine By the Driver of a Motor Vehicle

The fact that it is currently legal in North Carolina for the operator of a motor vehicle to possess or consume beer or wine while driving is, in effect, an endorsement of drinking and driving. Also, since it is illegal to possess or consume a mixed beverage while driving even though the ethyl alcohol content is, on average, the same as that in a twelve ounce beer, the law is inconsistent and perpetuates the erroneous perception of beer as the "soft drink" of alcoholic beverages. This statute would make it illegal for the driver to possess and consume beer or wine. The Task Force believes this to be the most realistic approach, one that would encourage the practice of "designated driver" which is common to many Scandanavian countries where drinking and driving is socially unacceptable.

The enactment of this statute should remove some of the present inconsistencies in North Carolina law on the possession and transportation of open containers of alcoholic beverages. It should also reduce the incidence of driving while imbibing in malt beverages, which is the beverage of choice of many young people and is involved in a disproportionately high rate of alcohol related traffic fatalities among that age group.

Recommendation 8: Adopt Legislative Resolution to Ban Advertising of Beer and Wine on Television and Radio or at Least Require Public Service Announcements as to the Hazards of Alcohol Abuse and Driving After Drinking

Beer and wine advertisements are intended as an inducement to buy a particular brand, and by implication, to engage in certain activities, that if done to excess or in conjunction with the operation of a motor vehicle, are very hazardous to one's health. Advertising of cigarettes was recently banned for a similar reason and the advertising of distilled spirits over the electronic media has never been practiced. Many of the beer and wine advertisements present imbibing as integral to having a good time or celebrating a momentous occasion and as an appropriate way to escape from the realities of the work-a-day world.

If a total ban of such advertisements on television and radio is not politically or economically feasible, then it is recommended that the Federal Communications Commission require stations to run public service spots of equal time and value on the hazards of alcohol abuse and of driving after drinking. The cost of such media spots would obviously be passed along to the companies advertising the beer or wine, which would provide a significant financial resource for an effective nationwide public education campaign. This latter approach may actually be more effective in reducing alcohol related fatalities than a total ban on advertising.



ENFORCEMENT RECOMMENDATIONS

Recommendation 9: Increase Funding for Chemical Tests for Alcohol Training

Breathalyzer operator training, breath test instrument certification and police officer training in detecting drunken drivers are the responsibility of the Highway Safety Branch within the Division of Health Services of the Department of Human Resources. The Highway Safety Branch is funded in part by the Highway Fund, the Division of Health Services and grants from the Governor's Highway Safety Program. These funds have not been increased significantly in recent years even though the workload has, as evidenced by the emphasis placed on DUI enforcement by agencies across the state indicated by the substantial rise in arrests.

It is recommended that funding for the Highway Safety Branch be directly through the Division of Health Services and that the breathalyzer training budget be increased by at least one third. By funding directly through Health Services and increasing that funding, the high DUI arrest rate in North Carolina can be maintained, if not further increased, while at the same time preserving the quality of cases generated by those arrests. This will be essential to the general deterrence program regarding the likelihood of arrest and the certainty of conviction.

Recommendation 10: Increase Funding for Training of Law Enforcement Officers to Detect Drunken Drivers

This funding would be budgeted as part of the operating budget of the Highway Safety Branch that goes to training the Highway Patrol and local law enforcement officers in the detection and apprehension of drunken drivers. It is also recommended that the North Carolina Criminal Justice Education and Training Standards Commission require a minimum of sixteen hours training in detecting drivers who are under the influence of an impairing substance. The sixteen hours would be in addition to the required 240 hour basic training course, and would be presented as in-service training during the first year of employment.

This expanded training program should increase the likelihood of arrest of drunken drivers and ultimately the public's perception of that likelihood. Accordingly, the deterrent effect of the proposed impaired driving law will be increased as well.

Recommendation 11: Expand Impaired Driving Enforcement Programs Across the State

The Governor's Task Force on Drunken Drivers recommends that funds provided to law enforcement agencies by the Governor's Highway Safety Program for fiscal year 1982-83 be dedicated to DUI enforcement programs, and that federal funding for this purpose be increased. These funds will allow for the expansion of programs statewide that pay officers' overtime to concentrate on the enforcement of impaired driving statutes, at times and in areas where impaired driving is a particular problem.

Again, this expansion of selective enforcement programs dedicated to arresting and getting impaired drivers off the highway, is integral to any general deterrence program to reduce alcohol related traffic fatalities. Only if there is a general public concern with the prospect of getting arrested, will the overall incidence of impaired driving be reduced.

Recommendation 12: Admit Breathalyzer Evidence in District Court on Appropriate Certification by the Breathalyzer Operator

The requirement that a breathalyzer operator as well as the arresting officer be present to testify in district court, as well as superior court in those cases appealed for trial *de novo*, creates serious logistical problems. Attempts to expedite this process by requesting prior stipulation to the admission of breathalyzer evidence in unexceptional cases have been unsuccessful. Many times when the breathalyzer operator is present in the courtroom, the defense counsel will stipulate, and when he is not present counsel will not stipulate. This just delays processing the case and puts pressure on the prosecution to accept a plea to a lesser charge. Also, most of the breathalyzer operators are not paid for court time because they work at night when drunk driving is so prevalent.

This recommendation includes a provision that either party may subpoena the breathalyzer operator, and if done solely by the defense attorney, to have him declared an adverse witness. If the defense counsel does not stipulate as to the admissibility of the breathalyzer evidence and does not subpoena the breathalyzer operator, the evidence can be admitted by affidavit. Such a provision will preserve the right of the defendant to confront his accuser, while at the same time expediting court proceedings and making more efficient use of the breathalyzer operator's time.

Recommendation 13: Adopt Legislative Resolution Encouraging North Carolina Newspapers to Publish the Names and Addresses of Persons Convicted of Impaired Driving

The Governor's Task Force on Drunken Drivers recommends that the North Carolina General Assembly pass a resolution encouraging newspapers in the state to print the name, address and disposition or sentence of people convicted of impaired driving. This practice would enhance the public's awareness of the drunk driving problem and of the likelihood of arrest and conviction. It should also have an additional deterrent effect on impaired driving behavior because of the unfavorable publicity that it would shed on persons convicted of impaired driving.

Printing names of individuals convicted of impaired driving will also increase the public's awareness of law enforcement's efforts to alleviate the problem and raise the public consciousness of the role of the judiciary.

Recommendation 14: Expand Provisions of Implied Consent Statute to Clarify and Expedite Chemical Testing Procedures

In addition to clarifying the procedures to be followed to obtain evidence of blood alcohol concentration, this recommendation would eliminate the requirement that a person be arrested before he can be requested to submit to a chemical test. Such a

change in the implied consent statute is useful in that it will eliminate otherwise unnecessary arrests in cases where the person is also seriously injured and will be hospitalized until long after he sobers up. Other procedures are delineated in the revised implied consent statute that will clarify and expedite the testing process.

By eliminating the requirement that a person be arrested before being asked to take a chemical test, investigations of accidents involving serious injury will be expedited and the gathering of pertinent evidence will be facilitated. Also, if the testing process is performed quickly, within proper certification procedures, the officers' time will be more efficiently utilized in patrolling the highways for other drunken drivers.

Recommendation 15: Facilitate More Roadside Breath Test Screening for Determination of Probable Cause by the Arresting Officer in the Use of Preliminary Breath Test

The use of preliminary breath testing can be very beneficial in increasing impaired driving arrests. Currently the average BAC of all individuals arrested for DUI nationwide is .18%, and in North Carolina it is around .14%. This is well above the legal limit of .10%. By amending the preliminary breath test statute to facilitate more testing to determine probable cause, more arrests are likely to be made and the average BAC level of arrestees will be reduced to closer the legal limit. The revised statute will allow an officer to request the driver of a vehicle to submit to a screening test if he has reasonable grounds to believe the driver has been consuming alcohol and has committed a moving traffic violation or been involved in an accident. Also, the officer will be able to request the driver to submit to a screening test if he has an articulable and reasonable suspicion that the driver has committed the offense of impaired driving. The results of said tests, or the driver's refusal to submit to such, will only be used in determination of probable cause by the officer as to whether or not an impaired driving offense has occurred. It will not be allowed as evidence in the determination of guilt or innocence in the resulting case.

An expansion of the roadside testing activities across the state will enhance the public's perception of the likelihood of arrest, which will in turn increase the deterrent effect of the impaired driving law. Also, by making greater use of breath test screening many impaired drivers who would have been allowed to go free will be charged and removed from the highway.

Recommendation 16: Increase License Revocation Penalty for Refusal of Breathalyzer Test in Cases Involving Critical Injury or Death

In cases where death or critical injury has occurred, breathalyzer evidence can be crucial to proving manslaughter or impaired driving resulting in serious injury. Willful refusal to submit to a chemical test for alcohol is tantamount to concealing evidence. In cases such as these it will result in elimination of the right to limited driving privileges and in the revocation of the driver's license for twelve months to run consecutively to any other revocation.

This severe drivers license sanction should provide an added incentive for an individual to submit to a chemical test when he has been involved in an accident resulting in serious injury or death. It will mandate a higher revocation sanction for the individual who tries to circumvent the law by refusing the test and concealing his level of impairment.

## PROSECUTION AND PUNISHMENT RECOMMENDATIONS

Recommendation 17: Create One Single Offense of Driving With Impaired Faculties With Punishment Determined by Aggravating and Mitigating Factors Including Mandatory Jail for Grossly Aggravated Drunk Driving (GADD) and Repeal all Current Alcohol and Drug Related Traffic Offenses

The Governor's Task Force on Drunken Drivers recommends the elimination of the existing crimes of driving under the influence of alcoholic beverages and drugs, driving with a blood alcohol content of 0.10%, and careless and reckless driving after drinking. In their place it recommends a single offense of impaired driving, which may be proved in one of two ways:

- (1) By showing that the driver's physical or mental faculties are impaired by an impairing substance, i.e. alcohol, drugs or a combination of both; or
- (2) By showing that the driver's alcohol concentration is 0.10% or more at any relevant time after driving.

The new offense applies to drivers of all vehicles anywhere in the state, not just on streets and public vehicular areas. After the driver is convicted of the offense of impaired driving, the law requires the judge to hold a sentencing hearing.

At this hearing, the prosecutor is required to present the defendant's driving record and any evidence of aggravating circumstances he has, including breath or blood test results. The judge must then determine if any of a list of grossly aggravating factors is present. The factors are:

- (1) A prior impaired driving offense (broadly defined to include current DUI offenses) occurring in the past ten years;
- (2) Speeding in an attempt to elude arrest;
- (3) Speeding over 30 mph over the posted limit;
- (4) Driving while the driver's license was revoked for an impaired driving offense; or
- (5) Causing an accident resulting in serious injury to another.

If at least two of these factors are present (two prior convictions may satisfy this requirement) then the punishment is a mandatory minimum of 14 days and up to two years in jail and a fine of up to \$2,000. If only one factor is present, the punishment is a mandatory minimum of 7 days and up to one year in jail and a fine of up to \$1,000.

If no grossly aggravating factor is present, the judge must then consider a list of regular aggravating and mitigating factors and determine which, if either, dominates in the case.

The aggravating factors are:

1. Gross impairment or an alcohol concentration of 0.20% or more;
2. Especially reckless driving;
3. Negligent driving leading to an accident causing over \$500.00 damage or personal injury;
4. Driving while license revoked;
5. Refusal to take a chemical test;
6. Prior conviction of a non-impaired driving traffic offense or of an impaired driving offense more than ten years old;
7. Abusive conduct toward authorities at or after arrest; or
8. Any other aggravating factor.

The mitigating factors are:

1. Slight impairment and alcohol concentration of 0.11 or less;
2. Slight impairment and no chemical test available;
3. Generally safe driving at time of offense (other than for the impairment);
4. No serious traffic offenses within the last five years;
5. Good conduct at the time of arrest;
6. Impairment caused by lawfully prescribed drug;
7. Voluntary submission to treatment before trial; or
8. Any other mitigating factor.

The judge must make specific findings of the aggravating and mitigating factors that are present. If he determines that the aggravating factors outweigh the mitigating factors then the punishment is a minimum of 72 hours in jail, or 72 hours of community service or a 90-day revocation of driving privileges, or any combination of the three and a fine up to \$500.00. If the judge determines that neither of the two sets of factors outweighs the other then the punishment is 48 hours in jail, or 48 hours of community service or a 60-day revocation of driving privileges, or any combination of the three and a fine up to \$250.00. In the case where the judge finds that the mitigating factors outweigh the aggravating factors then the punishment is 24 hours in jail, or 24 hours of community service or a 30-day loss of driving privileges, or any combination of the three and up to \$100.00 fine.

For the three punishment levels in which a grossly aggravating factor is not present, a defendant is eligible for a limited driving privilege after he has completed at least one of the mandatory portions of his sentence, i.e. jail, community service, or revocation. (The mandatory suspension of the driver's license for one year by the Division of Motor Vehicles for a conviction of first offense impaired driving remains in effect under the Task Force proposal.) For the two punishment levels in which a grossly aggravating factor is present, the defendant is not eligible for a limited driving privilege.

This proposed new impaired driving statute, although seeming rather complicated at first appearance, is the most practical and effective way of reconciling the public demand for tough punishment with the need for certainty of its imposition for general deterrence, while giving consideration to the wide variety of impaired driving cases that come before the court. By including the per se element of the 0.10% BAC law the certainty of conviction is enhanced considerably for a vast majority of the impaired driving cases, particularly since there is no lesser offense to which the district attorney can reduce nor the defendant plead. The single offense of driving with impaired faculties will also preclude using under the influence of lawfully prescribed or over the counter drugs as a defense, since that would constitute a violation as well. (It would however be a mitigating circumstance). Also, since the conviction of a prior impaired driving offense is not an element of a second or subsequent offense, it would not have to be charged in the warrant nor proven beyond a reasonable doubt. It would simply be a finding of the judge based on a preponderance of the evidence, i.e. the defendant's driving record presented by the prosecutor. The fact that the judge must make specific findings of the presence of aggravating and mitigating factors will allow for judicial discretion when it is appropriate and should be used, while at the same time eliminating unbridled discretion as his findings will be entered in the public record of the case, and since the mandatory portions of the sentence cannot all be suspended.

The above factors were considered by the Task Force to be essential aspects of an impaired driving law that could be applied to any one of the approximately 100,000 DUI cases coming before the court annually in North Carolina, while at the same time increasing the certainty of conviction and severity of punishment. These two factors are integral components of any statutory provision that seeks to deter socially unacceptable and harmful behavior. The punishment provisions in this impaired driving statute are realistic sanctions that can be imposed to both rehabilitate and eliminate impaired driving behavior on the part of the convicted offender.

\*See Levels of Punishment Chart on the following page.

LEVELS OF PUNISHMENT

DEGREES OF AGGRAVATION or MITIGATION	1 (If two grossly aggravating factors are present)	2 (If one grossly aggravating factor is present)	3 (If aggravating factors outweigh mitigating factors)	4 (Neither factor is present or neither outweighs the other)	5 (Mitigating factors outweigh aggravating factors)
FINE	Up to \$2,000	Up to \$1,000	Up to \$500	Up to \$250	Up to \$100
IMPRISONMENT	14 days to 2 years	7 days to 1 year	72 Hours to 6 months	48 Hours to 120 days	24 Hours to 60 days
TERMS OF SPLIT SENTENCE and SPECIAL PROBATION	Must Serve 14 days  See (1) Below	Must Serve 7 days  See (1) Below	72 Hours In Jail or 72 Hours Community Service or 90 days Without Driving or Combination  See (1) Below See (2) Below	48 Hours in Jail or 48 Hours Community Service or 60 days Without Driving or Combination  See (1) Below See (2) Below	24 Hours in Jail or 24 Hours Community Service or 30 days Without Driving or Combination  See (1) Below See (2) Below

(1) If placed on probation, defendant must successfully complete an Alcohol and Drug Education Traffic School unless he has previously completed such a school or unless the judge determines that he will not benefit from the school.

(2) If the defendant had a B.A.C. level of 0.20 or greater or if he has previously been convicted of an impaired driving offense or if he has previously refused to submit to a chemical test, the defendant must submit to a substance abuse assessment, and participate in the the treatment program recommended as a result of that assessment.

NOTE: Limited driving privileges available only to defendants punished at Levels 3, 4 and 5 and only after any court-ordered period without driving. The Task Force does not recommend any change in the mandatory driver's license revocation periods to be imposed by the Division of Motor Vehicles, which are: one year for first offense; four years for second offense, but can reapply for a new license after two years; permanent for third or more offense, but can reapply for a new license after three years.

Recommendation 18: Enact Statute Calling for Immediate Ten Day Administrative Revocation of Driver's License for Operating a Motor Vehicle with a Blood Alcohol Content of 0.10% or More

Research has indicated that the most effective deterrent to drunken driving is the potential loss of driving privileges. This reduces the likelihood that they will have an accident or a subsequent encounter with the police during the period of revocation. This recommendation calls for an immediate ten day administrative revocation of the driver's license where one is arrested driving with a BAC of 0.10% or more. The license will be confiscated by the magistrate upon a finding of probable cause that the arrest was proper and the chemical test was performed correctly. An individual who refuses the test will also have his license summarily revoked by the magistrate. For a defendant who does not surrender his license relatively promptly, e.g., he does not have it with him at the time of arrest, the revocation period is 30 days. Hearings to contest the revocation will be held by a magistrate and his decision will be final. Even if a hearing is requested the revocation continues in effect until the end of the revocation period or the hearing is resolved in the defendant's favor.

An immediate revocation of this type will provide a swift and certain sanction to be imposed upon arrest and determination that the defendant was violating the per se element of the impaired driving statute. This sanction will also provide for some total loss of driving privilege in every impaired driving case where the defendant registers over 0.10% BAC or refuses the test, which may not occur if the judge does not impose the loss of driving privilege sanction.

Recommendation 19: Enact Statute Providing for Forfeiture or Impoundment of the Motor Vehicle Driven by Someone While Their License was Revoked or Suspended for an Alcohol Related Traffic Offense

Most of the multiple DUI offenders with several impaired driving convictions on their record were arrested at least once while their license was suspended for a prior offense. For some people, taking their privilege to drive is not enough to prevent them from driving. Many times these are the problem drinking drivers that end up having an accident, injuring or killing themselves or someone else. This recommendation would allow for the judge to order complete forfeiture or some lesser sanction if the defendant is convicted of driving while license is revoked and the revocation was due to a previous impaired driving offense. If the judge decides not to impose any of the sanctions he must indicate in writing his reasons for not doing so.

By confiscating or impounding the car, a person who does not respect the license revocation sanction will be incapacitated from any further driving, at least in his own vehicle. This should serve not only as a specific deterrent or incapacitative measure against the arrested offender but will also reinforce the general deterrent effectiveness of the license revocation sanctions.

Recommendation 20: Extend the Period of License Revocation for Refusal to Take a Chemical Test from Six to Twelve Months, with a Limited Driving Privilege Available Only After at Least Six Months and Disposition of the Case

Extending the revocation period from six to twelve months would make it essentially the same as that for a first offense conviction on an impaired driving charge. Making a limited driving privilege available after at least six months also would be similar to the reduction in the revocation period that occurs after the defendant successfully completes ADETS school. The provision that the case would have to be disposed would reduce the incentive to continue the case. Also, a limited driving privilege would continue to be available only to the first offender.

Even though North Carolina already has a very low refusal rate, this recommendation would provide a greater sanction for one who chooses to refuse a chemical test, thereby withholding valuable evidence from the prosecution of the case. This is a particular problem in dealing with the multiple offenders and problem drinkers who have found that it is better to refuse the test and reduce their chances of being convicted of a second or more offense and going to jail.

Recommendation 21: Increase the Level of Follow-Up Action on Individuals that do not Successfully Complete the Alcohol and Drug Education Traffic School

Current law requires that if a convicted defendant does not successfully complete the Alcohol and Drug Education Traffic School, the court shall revoke his limited driving privilege. Figures maintained by the State DUI Coordinator for the schools indicate that only a small percentage of the individuals who fail to complete the school have their limited driving privilege revoked. This recommendation would remove the necessity of going back to court and would have the instructor of the school notify the Division of Motor Vehicles directly, which would revoke the limited driving privilege and reinstate the twelve month suspension.

This should provide a much greater incentive for individuals referred to the ADETS schools to successfully complete the course. We hope that those who do complete the course will improve their driving habits and not drink and drive in the future.

Recommendation 22: Publish a Semi-Annual Report by the Division of Motor Vehicles Listing the Disposition of DUI Charges by Blood Alcohol Content Level for Each County in the State and Identifying the Presiding Judge and District Attorney

At the present time the Division of Motor Vehicles maintains the Rehabilitation, Alcohol Test, Evaluation and Retrieval System. This RATERs reporting system is used to publish an annual report on the arrests and dispositions of driving under the influence cases by BAC level for each county in the State.

The annual report does not break down the dispositions for each county, only the totals for the state as a whole. It also does not break down dispositions by presiding judge. The Task Force recommends that a report providing the detailed information for each county and judge be provided on a semiannual basis.

This more detailed and frequent publication will make the public more aware of how consistent the impaired driving law is being applied across the state. Accountability to the public on the enforcement of alcohol related traffic offenses will be increased, and eventually a more even and certain application of the law will result.

Recommendation 23: Restrict the Use of the Limited Driving Privilege so that a Person has to Serve the Minimum Sentence First and Then it can Only Allow for Driving that is Related to Work, Education or Emergency Health Needs

The Task Force recommends rewriting the impaired driving offense limited driving privilege statute to tighten it up. In addition to requiring the person to wait to apply until after he has served the minimum sentence, the privilege is by statute restricted to driving to work, education, treatment, and emergency health needs. Within those limitations, the judge must also restrict those who work or go to school at regular weekday hours to driving during those hours only (6 a.m. - 8 p.m. Monday - Friday) although the judge can be more restrictive. The person may drive for medical emergencies at any time. If the person works or goes to school on evenings or weekends, he must document that fact and the judge must restrict his driving to exact times and routes. In addition, the privilege must contain a condition that the person not drive while drinking or with alcohol in his body or drugs in his blood.

The proposed statute also requires the applicant in most cases to come back to court later to apply for the privilege and to pay a fee of \$25.00 to get the privilege, and, to discourage judge shopping, it requires all privileges not issued by the judge who presided over the trial to be issued by the chief district judge or the senior regular resident superior court judge of the district in which the trial was held.

At the present time, most limited driving privileges are issued in court, immediately following the disposition of the DUI case. This means that most of the convicted DUI offenders do not at any time suffer a complete loss of driving privileges. According to this proposal, and other recommendations contained in this report, impaired drivers will totally lose their privilege to drive for at least a brief period of time. This is one of the key aspects of the Task Force's proposal to stiffen the penalties for drunken driving in North Carolina.

Recommendation 24: Extend Provisional License Statute Making it Unlawful for a Person Under 18 Years of Age to Drive With Any Alcohol In His Body or an Unlawful Controlled Substance in His Blood

Young people who are just learning to drive and just learning to drink, constitute the most dangerous threat to their own safety as well as that of others on the highways.

Automobile accidents are the leading cause of death for individuals between the ages of 16 and 19 years old. For this reason the Task Force recommends making it unlawful for a person under 18 years of age to drive a motor vehicle when he has any alcohol in his body or an unlawful controlled substance in his blood. Conviction will carry a maximum \$100.00 fine or 60-day jail term, as well as a revocation until the person is 18 or for 45 days, whichever is longer. A similar revocation applies to drivers under 18 convicted of impaired driving or who refuse a breath or blood test.

It is not the intention of the Task Force to put young people in jail for drinking a beer and driving, rather it is believed that the potential loss of the driver's license will deter juveniles from driving around and drinking or getting intoxicated in their cars. Such deterrence should reduce the disproportionately high traffic fatality rate for 16 and 17 year olds in North Carolina.

Recommendation 25: Increase Services for Victims and Witnesses in Drunk Driving Cases by Expanding the Witness Assistant Coordinator Positions Statewide

Where there is an alcohol related traffic accident, the victim is often an essential witness, unlike the non-accident DUI where the officer is the only witness. Since people who are injured often are not familiar with the court system, they need assistance as the case proceeds through the system. If the victim who is a witness is not present when the case is called, the prosecution may lose the case or be forced to accept a plea to a lesser offense.

In some instances, victims or witnesses take the trouble to appear in court only to have the case continued several times. Too often, even in cases of death, such cases are disposed without the victim or family being present or understanding the disposition.

To help alleviate this problem and increase the level of services currently provided for victims or witnesses in DUI cases involving injury, the Task Force recommends that an appropriate number of witness assistants be provided statewide. Currently, General Statute 7A-69.1 creates and allocates one witness assistant coordinator position to the following prosecutorial districts: 10, 12, 14, 15B, 18, 21 and 28. These state positions have been found to save countless hours of witness time, facilitate better prosecution and avoid many frustrations of the witnesses and victims in their contact with the judicial process.

The expansion of these positions statewide should improve the quality of services provided for the victims or witnesses in impaired driving cases. This should enhance the efficiency of the judicial process and improve the perception of involved citizens as to the justice rendered by the criminal justice system. It should also provide for more effective prosecution in driving under the influence cases involving accidents, injury or death.

Recommendation 26: Require Prosecutors to Explain Reductions or Dismissals of Charges Involving Impaired Driving

With the proposed single offense of impaired driving and the elimination of all lesser included offenses, the only way an individual can beat the charge is by a finding of not guilty or by the prosecutor dismissing the charges or reducing it to another charge. Since the judges will be required to make specific findings on the aggravating and mitigating circumstances in the case, to either enhance or reduce the punishment, the Task Force recommends that the prosecutor also be required to enter detailed facts in the record setting out his reasons for dismissing or reducing a charge of impaired driving.

This recommendation will not reduce or eliminate prosecutorial discretion as much as it will provide that the district attorney's office give specific reasons as to why the case was dismissed or another charge substituted. It should increase public knowledge and awareness of the prosecutor's handling of such cases, and ultimately enhance the level of understanding and respect for the judicial system in regards to alcohol related traffic offenses.

REHABILITATION AND THERAPY RECOMMENDATIONS

Recommendation 27: Require that Anyone Caught Driving with a Blood Alcohol Concentration of 0.20% or More, or Anyone Arrested for a Second or More Impaired Driving Offense Be Referred to the Local Alcohol Treatment Facility for an Assessment of Their Drinking Problem and Participate in the Recommended Treatment Program

The National Highway Traffic Safety Administration considers anyone arrested for DUI with a BAC of 0.20% or more as a problem drinker. This is an accepted fact by individuals that work in the alcohol abuse field such as the Center for Alcohol Studies in Chapel Hill. On average, one must consume about 12 mixed drinks or 12 twelve-ounce beers in a two hour period to reach a BAC of 0.20%. Anyone who could imbibe to that extent and still attempt to drive has a drinking problem. Also, individuals who are arrested for a second or subsequent DUI offense, because of the improbabilities of being caught twice, are most likely to have a drinking problem as well. According to the NHTSA, 50% of all traffic fatalities are alcohol related, and 67% of those are caused by problem drinkers. If these individuals can be identified and provided treatment then recidivist DUI behavior might be reduced and many lives saved.

This recommendation of the Task Force is oriented toward rehabilitation and therapy for the problem drinking driver. To achieve this, the provisions for assessment and treatment were incorporated in the sentencing structure of the proposed impaired driving statute. Anyone arrested for a second or more impaired driving offense within five years of the prior offense would of course fall into one of the two grossly aggravated drunk driving categories, and received a mandatory 14 or 7 days in jail, since a prior offense within ten years is a grossly aggravating factor. If the individual registered 0.10% or more or refused the chemical test on his second or more impaired driving arrest, then if the judge places him on probation he must include as a special condition of that probation, the provision that the defendant obtain a substance abuse assessment from the local alcohol treatment facility and if recommended by the center, participate in the appropriate treatment program. Failure to comply with this special condition would result in the termination of probation and the imposition of the suspended sentence. Individuals arrested for impaired driving for the first time who have a blood alcohol concentration over 0.20 will also be required, as a condition of special probation, to obtain an assessment of their substance abuse problem and participate in the recommended treatment program.

By using blood alcohol concentrations and previous arrest records as diagnostic tools to identify problem drinkers and then requiring them to undergo an assessment and, if necessary, treatment, the most dangerous group of offenders will be targeted for the most intensive rehabilitative sanction. These sanctions, combined with the other aspects of punishment included in the impaired driving statute, will serve as very effective deterrents to repeated impaired driving behavior.

Recommendation 28: Enact Statute Requiring Magistrates to Detain An Impaired Driver up to 24 Hours, Until He is No Longer Impaired or Until He is Released to a Responsible Adult

A person's blood alcohol concentration drops about 0.02% per hour if no more drinks are consumed. Individuals with a blood alcohol content of 0.10% need about five hours to become completely sober. There have been incidents where an individual was arrested for DUI, brought before the magistrate, posted bond and released and subsequently re-arrested for DUI or involved in a traffic accident.

The Task Force recommends that a statute be enacted requiring a magistrate to detain an impaired driver who is arrested and brought before him until the person can be released to a responsible adult, the person is no longer impaired, or the person has been in custody for 24 hours, whichever occurs first. The magistrate must allow the defendant to communicate with his counsel, if requested. To determine if the defendant is still impaired, breath testing instruments suitable for roadside screening may be used. An alcohol concentration of 0.05% or less is presumed to meet the standard of no impairment if no drugs are present.

This law will prevent individuals from driving while still intoxicated, after they have been released. It will also provide specific guidelines for magistrates to follow before releasing an individual who is obviously under the influence.

Recommendation 29: Include Community Service Restitution as an Alternative Punishment in the Impaired Driving Statute

As already indicated in the description of the sentencing provisions of the impaired driving statute, community service restitution will be one alternative sanction that the sentencing judge can impose. This sanction can be as a condition of probation in addition to any other condition of probation the judge chooses to impose.

This type of alternative punishment can have a more rehabilitative effect, and a much greater likelihood of imposition by the court than active jail sentences. This recommendation would allow for constructive and meaningful sanctions of offenders while not exacerbating the problems of jail and prison overcrowding.

Recommendation 30: Restrict Participation in Alcohol and Drug Education Traffic School to Only One Occasion

The Alcohol and Drug Education Traffic School is a first offender treatment program that is not intended nor effective for multiple offenders. Individuals that have had repeated contacts with the criminal justice system for alcohol related traffic offenses are more than likely heavy problem drinkers that will not benefit from such a program. These individuals need multiple offender treatment which can be recommended pursuant to the alcohol and drug assessment provisions of the impaired driving statute.



The sentencing provisions of the impaired driving statute preclude anyone from participating or attending ADETS school that has already done so. This will prevent convicted repeat offenders from using this educational sanction simply to obtain a limited driving privilege or a reduction in the period of license revocation.

## CONCLUSION

The problem of driving under the influence is indeed a very complex and pervasive problem, virtually endemic to our society. There have been many strategies implemented by other states and countries to reduce alcohol related traffic accidents, but few have proven very effective in the long run. The Governor's Task Force on Drunken Drivers has looked at the laws of other states, reviewed a considerable amount of research and literature on the subject, considered the opinions of a variety of experts, and listened to the testimony of citizens across the State of North Carolina. It is the considered opinion of the Task Force that only a radical change in how our criminal justice system deals with the drinking driver, oriented toward the general deterrence of drinking and driving behavior, can achieve any measurable reduction in alcohol related traffic accidents. This reorientation of the system toward greater apprehension of offenders and swift and sure imposition of appropriately severe sanctions, must be accompanied by a comprehensive public education and awareness program. Without such a program public perception of the increased likelihood of arrest, swift and sure punishment, and the severity of sanctions imposed will not be forthcoming and public behavior will not change.

The recommendations described in this report present a comprehensive program focused on the general deterrence of drinking and driving behavior and on the specific deterrence of repeated impaired driving by apprehended offenders. Presented in four basic components, the Task Force proposals address the key aspects of public education and awareness, enforcement and apprehension, prosecution and punishment, and rehabilitation and therapy. Each component of this comprehensive program is as important as the other to achieving the primary objective of the Task Force, which is to accomplish a meaningful and long-lasting reduction in the carnage on the highways of North Carolina caused by the impaired driver. Only through a concerted and extensive effort can this seemingly intractable problem be reduced, which the Governor's Task Force on Drunken Drivers has presented in this report.

**END**