

Alaska Criminal Justice Commission
WORKGROUP ON TITLE 28
Thursday, April 28, 2:30-4:30 PM
AG's Conference Rooms, Anchorage and Juneau
(video- and audio-conferenced meeting)

Commissioners Attending: Stephanie Rhoades, Trevor Stephens, Gary Folger

Commissioners Not Present: Alex Bryner, Greg Razo, John Coghill

ACJC Staff: Brian Brossmer, Mary Geddes, Giulia Kaufman, Susan DiPietro

Other Attendees: Billy Houser, Matt Widmer, Seneca Theno, Dave Hanson, Susan Gravely, Alysa Wooden, Nancy Meade, Jayson Whiteside, Fred Slone

Next Meeting: TBD

Materials relied upon for discussion are attached to this Summary.

Legislative Update

Nancy Meade and others reported that SB91 includes therapeutic court limited license provision (originally proposed by Partners) that allows either court or DMV to grant a limited license if there had been a felony DUI (but not Refusal) as long as driver had been a participant in therapeutic court for at least six months, there is proof of insurance. The requirement for this provision is that they have to drive with limited license for three years. Defendant can't have had a previously limited license that was revoked. The provision is being amended to include folks that don't have access to the therapeutic court program; those individuals would still have to provide proof of successful treatment and proof of monitoring program by clear and convincing evidence, and sobriety for 18 months. The burden of proof is on defendant. There is no entitlement to representation by an attorney, and the defendant would have to petition court. Therapeutic court is only in Anchorage, Juneau, Palmer, Bethel, and Ketchikan. The concerns with any non-therapeutic court applicant are: that they may not be under any meaningful supervision, there may not be access to IID in their communities and how would DMV insure that they don't cancel their insurance.

Susanne DiPietro asked what kind of retroactive effect it might have. Meade said that she believes it would have effect for those whose licenses are currently revoked. After 3 years of a limited license with interlock, the person could go to DMV for a full restoration of a drivers' license. DMV will need to make sure they are eligible. Limited licenses are not limited by time, but DMV cannot reinstate if there are stacked suspensions.

ASAP

At this point, participants referred to the papers circulated for discussion. [See attached.]

They are substantial changes to ASAP in SB91, restricting it to DUI/ Refusals. Comr. Stephens asked what will happen to those cases previously tracked by ASAP which do not fall into the DUI category. Comr. Rhoades said that prosecutors will be responsible for collecting the proof of completion of probation requirements. Susan Gravely commented on ASAP's current programming status. In the past, they were

behind in follow-ups on referrals. Now they are less than 30 days behind. There are changes ahead when ASAP switches to using the LSI-R. It will involve more work. Gravely said that someone will need to provide information to treatment agencies.

IID Proposal Clarified

The group clarified that the proposal to the ACJC will be that

- There should be no court-imposed mandatory IID sentencing penalty
- Failure to complete the IID requirement will not preclude license reinstatement.
- In response to the question, what's the alternative?
 - Other alternatives exist. Some allow for remote monitoring. Some allow for continuous alcohol monitoring in real time, others involve daily downloads.

License Revocations

One question asked was why courts should use revocations and not suspensions. Are more fees involved in revocation actions? In distinguishing between suspensions and revocations, Whiteside noted revocations involve starting over essentially with a new license, and suspensions allow for the same license to be reactivated. The fee difference might be as great as \$100, and it is more of a hassle. However, the difference between the two essentially evaporates after a one year suspension. He typically associates revocations with criminal action and suspensions with administrative action, like child support nonpayment and too many points, although the accumulation of more points can change a suspension to a revocation.

There was next discussion as to what length of 'hard' and 'soft' revocations should sanction DUI convictions. Matt Widmer noted that the use of a 'soft' revocation period can operate as a graduated sanction. Comr. Rhoades noted that there is no evidence as to what revocation term is more efficacious. Widmer noted that a 30 day hard revocation period is hard for everyone. He suggests that we change or lengthen only the soft revocation periods. Offenders also need graduated, higher levels of treatment depending on number of convictions they have. Comr. Stephens recommends at minimum a 30 day hard revocation period. Mary Geddes asked about the principle of graduated sanctions/revocations for repeat offending. Shouldn't the principle require increases in periods of hard revocations?

Stephens also urge consideration of parity with other offenses such as Reckless Driving. The statute 28.15.181(see below)¹ requires for the 1st, 30 days revocation; for the 2nd, 1 year of revocation, and for

¹ (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license, privilege to drive, or privilege to obtain a license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;
- (6) reckless driving;

the 3rd, 3 years of revocation. No limited licenses are available either for Reckless Driving offenders nor for Refusal offenders. Fred Slone noted that we had not spoken about non-DUI revocations. Commissioner Rhoades suggested that the ACJC could merely drop a footnote noting the disconnect,

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- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
 - (8) refusal to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under AS 28.35.031(g);
 - (9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation;
 - (10) vehicle theft in the first degree in violation of AS 11.46.360 or vehicle theft in the second degree in violation of AS 11.46.365.

(b) A court convicting a person of an offense described in (a)(1)-(4), (6), (7), or (10) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1)-(4), (6), (7), or (10) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license, privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle, commercial motor vehicle, or aircraft shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in AS 28.15.201, grant limited license privileges during the minimum period of revocation. Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the minimum periods of revocation are

- (1) not less than 90 days if the person has not been previously convicted;
- (2) not less than one year if the person has been previously convicted once;
- (3) not less than 3 years if the person has been previously convicted twice;
- (4) not less than 5 years if the person has been previously convicted more than twice.

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than the minimum period under AS 28.15.291(b)(4).

(e) Repealed.

(f) The court may terminate a revocation for an offense described in (a)(5) or (8) of this section if

- (1) the person's license, privilege to drive, or privilege to obtain a license has been revoked for the minimum periods set out in (c) of this section; and
- (2) the person complies with the provisions of AS 28.15.211(d) and (e).

(g) The court may suspend the driver's license, privilege to drive, or privilege to obtain a license of a person who fails to appear in court as required by a citation for an offense involving a moving motor vehicle, or who fails to pay a fine as required by the court for an offense involving a moving motor vehicle. If the court suspends a driver's license under this subsection, the court shall also provide notice of the suspension to the department. A suspension imposed under this subsection remains in effect until the person appears in court as required by the citation, or pays the fine as required by the court. When the person appears in court or pays the required fine, the court shall terminate the suspension imposed under this subsection and provide the department and the person with written notice of the termination.

(h) A court convicting a person under AS 04.16.050(c) or (d) shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license as provided in AS 04.16.050(c) or (d).

rather than getting into it. Stephens agreed that we should have a caveat, an identification of those statutes for which the penalties are inconsistent with recommended reforms.

Fines

After review of the comparison information, the consensus was that there should be a reduction of fines, commensurate with the fines charged by states in the western region because we want to encourage re-licensing. Court fines could be offset by fees paid for treatment and supervision.

Jail

There was discussion on the use of minimum mandatory penalties for repeat offenders. Widmer asked whether the minimum mandatory encourage judges to stick to that as a penalty. Comr. Stephens thinks that the former minimum mandatory penalty of 10 days 'works better, ' i.e. that it still represents a significant sanction. Fred Slone thinks that a 20 day sanction is 'realistic' and not too harsh. He wanted to know if we could discuss the duration next time at greater length.

Public input was sought. No additional public input was provided.

REMAINING FROM PRIOR MEETING'S TO-DO LIST

- Matt Widmer volunteered to interview Muni Prosecutor and PD on their experiences and opinions re revocations

who is being referred for ASAP services (types of charges / level of offense – 1st, 2nd, etc.) and

Fiscal year 7/1/14-6/30/15 ASAP cases, statewide

A total of 7243 cases were opened.

4983 or 68% were OUI/DUI/Refusal, 146 of those cases were designated as 2nd, 3rd, 4th, etc.

444 or 6% were MCA/MOAC/Minor on Lic. Premises

754 or 10% were Assault cases and over half (389) were DV Assault cases

211 or 3% were MICS or Attempted MICS

The remaining 13% were a wide range of charges including:

Criminal Mischief/Crim. Trespass-117

Criminal Mischief, DV-33

Attempted Burglary/Theft/Shoplifting-89

Disorderly Conduct-112

Disorderly Conduct, DV-17

Reckless driving-73

Harassment- 73

Harassment, DV-5

Interfere with Officer duties/Resisting-32

Endangering Welfare of Minor/Reckless endangerment-17

Child Abuse/Neglect-47

MIW-41

Transport alcohol by Common Carrier/Import to dry area-37

Drunk person on lic. Prem./bring alcohol on lic. Prem. 7

Furnish Alcohol to Minor-8

Interfere with report of DV Crime-5

Mal. Dest. Of Property-6

Indecent Exposure-4

Leaving Scene of Crash-4

False Information-8

Attempted Assault-5

Aiding and abetting-1

Attempt. Veh. Theft. 3

Attempt forgery-2

Attempted hinder pros. 2

Fail to stop 2

Fail reg. sex off- 2

Fail obey citation-1

Obstruct hwy-1

Overtaking school bus-1

Permit unauthorized person to drive-1

Promoting contraband-1

Restrict on purchase of alcohol-1

Current fiscal year beginning 7/1/15 to 3/14/16 ASAP cases opened statewide

A total of 4060 cases were opened.

2491 or 61% were OUI/DUI/Refusal

489 or 12% were Assault cases with nearly half of those (235) being DV Assault

203 or 5% were MCA/MOAC/Minor on lic. Premises

126 or 3% were reckless Driving

The remaining 19% or cases were a wide variety of other offenses including:

Attempted MICS/Controlled Substance/MICS-92

Crim. Mischief/attempted Crim. Misch./Crim. Tres. -89

Attempted burglary/Theft/Shoplift/Conceal Merch/Forgery/Larceny-63

Crim. Mischief,DV-27

Disorderly Conduct—66

Disorderly Conduct-DV-8

Harassment -45

Harassment DV-1

MIW/Possess Weapon while Intoxicated-23

Endanger Welfare of Child/Reckless Endangerment-21

Child Abuse/Neglect-22

Trespass/Unauthorized Entry-12

Vio. Protective order-4

Indecent Exposure-3

Fail to stop at direction of officer/Eluding-16

Transport Alcohol by common carrier/Import alcohol to dry area-11

False Info.-8

Leave Scene of Crash-4

Interfere with report of DV Crime-4

Furnish Alcohol to Minor-2

terroristic threatening-1

alcohol on lic. Premises-1

deferred prosecution-1

fail to provide notice of accident-2

interfere with officer-1

obstruct traffic with vehicle-1

passing a school bus-1

restriction on purchasing liquor-1

Sex assault-victim not aware-1

what treatment / course of action is being recommended for those who are referred

Clients report to ASAP. They sit through a short presentation explaining what how the system works, the part ASAP plays, what is required of them to remain in compliance and the possible consequences if they fail to follow through. After the short class they meet individually with an ASAP staff member where they choose the treatment agency that hopefully will work best for them. This choice is made by identifying client's barriers to narrow it down to an agency that will best meet their needs. The most common barriers are financial, transportation issues, location, type of treatment needed and philosophy.

All ASAP Clients are classified using the Drinker Classification Chart.

1. If classified "non-problem" they are referred to a 12 hour alcohol drug information school and Victim Impact panel.

To be classified non-problem it must be a first offense DUI or Reckless, with BAC below .160, no prior drinking related charges, no prior education or treatment. All available information indicates this person made a mistake, there are no red flags to indicate there might be a substance abuse issue. Education not treatment is in order.

2. If classified "Pending" they are sent for an evaluation to determine whether they are eligible for the 12 hour class or do they need something more.

There are a number of criteria that make the classification pending. If there was violence involved, drugs involved, felony reduction, is a minor, weapon involved, refusal, and more. ASAP staff are not substance abuse treatment counselors, so are not qualified to determine whether the client needs a bit of education i.e. 12-hour ADIS or if they need substance abuse treatment. Thus they are sent for an evaluation so a trained assessment counselor can make the determination.

3. If classified "Problem" they are sent for an evaluation to determine how much treatment is needed.

A 12-hour class is not an option for this classification. A classification of problem drinker is made if the BAC is .160 or higher • 2 DUIs /DWIs within the last 5 years • 3 or more DUIs/DWIs in a lifetime • clinical determination of problem drinking within 5 years • client admission of problem drinking.

does this match-up with the severity of the charge (# of previous offenses)

Yes I believe this does match up. It should be noted that ASAP provides the treatment agency with a *client's treatment history and criminal history*. When an assessment is conducted the counselor is aware of whether it is a client's first or fifth DUI, whether they have completed treatment in the past and what level. They are provide with whether the client has suffered from blackouts, whether they have a family history of alcoholism and whether they themselves believe they have an alcohol or substance abuse problem.

Proposed Discussion Outline for T28 Workgroup

- 1. Whether a revision of the alcohol-related offenses in AS 28 is necessary**
- 2. Should both administrative and court license revocation processes be maintained?**

Application of research principles for future deterrence

- (Swift principle concerns the amount of time between the offense and sanction)
National research indicates that sanctions which can be quickly put into effect are more effective in deterring reoffending; therefore, administrative revocation is more likely to reduce recidivism.
- (Certainty principle that offenders will be caught and punished)
Administrative license revocation actions that utilize a lower standard of proof provide a more certain outcome than in a criminal court process.
- (Consistency among all drivers) Mandatory judicial license revocation provides a consistent response to all variants of DUI/Refusal but administrative license revocation only available in per se DUI cases and Refusal.

Research

- Suspensions and revocations are more effective in reducing DUI recidivism than jail.
- Early research on judicial suspensions shows some effectiveness in reducing total and non-alcohol crashes. Administrative suspension has been shown to be effective in reducing not only crashes overall, but also crashes where alcohol was a factor.
- Wagenaar and Maldonado-Molina (2007) examined both pre and post-conviction mandatory license suspension in 46 states evaluating the impact of these sanctions on monthly alcohol-involved fatal crashes occurring between 1976 and 2002. They found that administrative pre-conviction license suspension was associated with a significant 5% reduction in alcohol-involved fatal crashes, but that post-conviction suspension appeared to have little effect, a finding they hypothesize may be due to the speed of punishment associated with the administrative application of this sanction.
- The optimal length of 'hard' revocation periods is yet to be established. But shorter revocation periods are more effective than longer periods because they create inconvenience but are not so long as to 'teach' the individual that he or she can drive, unlicensed, without being apprehended.
- Many revoked drivers never, or significantly, delay license reinstatement beyond period of revocation. Cost is cited as the most significant deterrent. Other oft-cited factors are: confusion about process of reinstatement; and failure to satisfy other prerequisites.
- Drivers who have suspended licenses appear to drive less and more conservatively and have lower recidivism rates than those who are not suspended. Still, compared to fully licensed drivers, suspended offenders have 3.7 times the risk being at fault in a fatal crash.

Data relevant to this discussion

- Approximately one-third of Alaska DUIs convictions are DUIs based upon circumstantial evidence of impairment (from alcohol or drugs or a combination of both) as opposed to per se DUIs.
 - National and local trends show slowing rates of alcohol DUI but increasing rates of drug-involved DUIs
- 2/3 of all DUI's/Refusal in Alaska are *per se* offenses (DUIs at or exceeding .08 breath-alcohol or Refusals for violation of Implied consent law) subject to DMV administrative license revocation (ALR) process
 - Between 70-75% of cited drivers subject to ALR in the last three years do not seek an administrative hearing after citation and therefore their administrative revocation goes into effect 7 days after their arrest/citation.
- (Thus) 50% of all Alaska drivers cited for DUI do experience an immediate license revocation; but 50% are not so exposed.

Option 1: Maintain Status Quo (keep both court and administrative license revocations).

Administrative actions do not supplant the post-conviction judicial license actions, but rather constitute a parallel process to the judicial one.

Benefits of a dual system:

- Administrative license revocation can go relatively quickly into effect. (In contrast, criminal courts lack statutory authority to revoke in advance of a criminal conviction (although they may hypothetically order “no driving” as a condition of release).)
- For Refusal only, no potential 4th Amendment challenge in administrative license revocation; for criminal charge, warrant may be soon required under *Birchfield v. Minnesota*.
- For the 1/3 of all Alaska DUI/Refusal cases in which the blood-alcohol level does not establish a *per se* offense and therefore no ALR is authorized, courts have statutory authority to revoke licenses following criminal conviction.

Complaints concern inconsistent legal standards and transparency:.

- A lower evidentiary standard is utilized for (civil) administrative revocation. [However, important ameliorative measure is available if SB91 passes, mandating that ALR is rescinded if criminal court action is dismissed]
- Only application to 50% of the cases at present, i.e. revocation can be as immediate as 7 days for *Per se* DUI and Refusal cases, but not for impairment cases
- There is duplication of adversary process (2 hearings) and therefore additional costs may be involved for both sides.
- There is a potential for confusing revoked drivers:
 - Court probation terms do not necessarily coincide with license revocation terms (this seems to depend upon whether DMV received court paperwork)
 - license reinstatement is not automatic at the end of revocation

- driver may be subject to stacked revocation periods for non-DUI conduct but the court will not necessarily be aware of that.

Option 2: Administrative Revocation Only

Benefits :

- An administrative license revocation can go quickly into effect and is therefore more consistent with effective (swift and certain) correctional principles.
 - Unresolved: whether current statute allowing DMV to issue temporary licenses (not the same as limited licenses) pending administrative hearings undercut this potential such that a swift sanction is not uniformly imposed
- Alaska Supreme Court has stated that procedural protections are the same as in a criminal proceeding. *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007)(holding “the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense.”) Additionally, Alaska Statute 28.35.031(a) and AS 28.15.166(g) require a driver's license revocation to be based upon a lawful arrest. Under AS 28.35.031(a), the state may not use breath test results that are obtained following an unlawful arrest. And under AS 28.15.166(j), the driver's license revocation must be rescinded if the officer did not have probable cause to believe that the person was operating a motor vehicle while intoxicated.

Concerns:

- There is a lower evidentiary standard and no right to jury trial for administrative revocation. Also, as a general rule, the exclusionary rule does not apply in civil proceedings, but see discussion in *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007) providing procedural safeguards and suggesting 4th Amendment suppression may be available.
- NB: Because current statutes do not allow ALR in non-per se DUI cases, so the more specific question may be whether options are
 - a. To expand authority for ALR to all DUI Offenses, or
 - b. Remove judicial revocation for only Per Se DUI and Refusal Offense

Option 3: Court Revocation Only (Remove Administrative Revocation for per se and Refusal cases)

Benefits:

- Higher standard of proof
- Court has expertise in non-per se DUI cases
- Court may pair revocation/limited licenses with probation requirements for alcohol treatment which heightens effectiveness of license revocation
- Theoretical ability of court or probation to supervise and enforce sanctions for non-compliance

(see next page)

Concerns:

- Not a swift sanction as judicial sanctions can't be not imposed until time of conviction.
- Not a certain sanction as adjudication process itself introduced substantial uncertainty as to whether a conviction would result and a suspension action be imposed.
- Greater risk to public safety when license is not immediately revoked, and deterrence effect is undermined.
- Greater risk to public safety as some offenders who pose a public safety risk of driving while under the influence may not be convicted, due to suppression orders and the high standard of proof required in criminal proceedings.
- Unresolved but before the Supreme Court right now: whether refusal criminal prosecutions are violative of 4th Amendment when premised on implied consent. In other words, will warrants be required for breath tests administered at a police station?

OTHER QUESTIONS, OPTIONS OR FIXES?

- Can ALR be expanded to any DUI or Refusal? What would be the barriers to successful implementation? (Swift, Certain, Fair)
- Change laws to disallow temporary license pending administrative hearing or in the first thirty days. (Swift, Fair, Consistent) Make consistent with 30-day revocation period for first DUI.
- For those that drive within that thirty day period, some kind of Mandatory Vehicle Action (Certain)
- Is there a different approach than the stacking of administrative revocation periods? Is any amelioration possible?

What is the effectiveness of ignition interlock devices in reducing DUI/Refusal offenses and recidivism

Data and research previously provided to Workgroup will be summarized here

Draft Workgroup Recommendation

In Alaska, use of an IID device is currently a mandatory sentencing requirement for all misdemeanor alcohol-involved DUI offenders. This means, in effect, that the completion of a term of IID monitoring is necessary for license reinstatement. The Workgroup proposes a statute change, making IID use discretionary only.

An IID disables a car from operation by a person who has a set amount of alcohol content in their breath. In Alaska, the pre-set amount on IID is devices is 0.02 alcohol. (state unit) Assuming the IID unit is working properly, the vehicle would be disabled by a “blow” test of 0.02 or higher, either at the start of driving or during its operation.

The evidence indicates that that use of an IID device is effective for public safety and recidivism reduction of alcohol involved DUIs during the period of use and if the vehicle is actually used, and if its use is effectively monitored. However, the use of an IID alone is ineffective in deterring future recidivism, after its use has been discontinued. There is promising evidence elsewhere that recidivism may be reduced when IID programs are coupled with treatment and consistently and closely monitored with immediate feedback and consequence for non-compliance.

No such program model exists in Alaska, nor frankly is it likely to in the near future, in terms of the expense involved both to individuals and to the State. IID services, provided by private vendors who charge drivers directly, are not coupled with treatment and do not involve remote monitoring of the vehicle, so attempts to operate a vehicle with a certain breath-alcohol level) which disable the vehicle are not documented in real-time. Rather, 'lock-outs' merely prompt additional fees paid to the vendors for the participants who want the car to start again. While current regulations require vendors to download and maintain records on the vehicle (much like the emission tests run by garages), there is no legal requirement for nor capability for immediate feedback to courts or prosecutors or DMV. Vendors do have an affirmative duty to report when they discern evidence of tampering, but otherwise they are simply to maintain the records. There is no consequences for 'lock-outs' [by so noting, we are not expressing an opinion of what type of consequence there should be]; nor is there any sanction for simply installing an IID on a car and then not using that particular car.

In sum, the existing statutory scheme of mandated IID use does not effectively protect public safety because

- Attempts to operate a vehicle with a certain breath-alcohol level) which disable the vehicle (“lock outs”) are not remotely monitored and are not timely documented or reported if at all.
- The IID does not monitor a driver when he or she is not driving that particular vehicle with the installed IID. This is unlike portable, personal monitoring devices (such as Secure Continuous Remote Alcohol Monitoring (SCRAM) bracelets which are worn around the clock. Portable

breathalyzers (most with facial recognition features) also monitor 24/7 the consumption of alcohol; these devices may also be remotely monitored in real time.

- The penalty/requirement for license reinstatement is applied inconsistently:
 - IID participation in Alaska is only available on the road system, which exempts a large number of offenders from its protections.
 - IID devices are not mandatory for drug involved DUIs, as the device has no capacity to register either drug use or impairment, and there are an increasing proportion of drug involved DUIs.
 - IID use is not required following a DUI occurring on certain federal lands and Indian reservations.
 - DMV cannot order IID after a DUI administrative revocation (only when a limited license is sought during the time of revocation), so it is not a condition for reinstatement.
- The mandatory penalty imposed on some Alaskans may unfairly burden the way back to lawful, licensed driving.
 - Drivers who do not own a car still have to prove that the IID has been installed on someone’s car.
 - Much more significantly, the cost of an IID for a first DUI offender is anywhere from \$675-950 and for a second DUI the cost is \$1275-1550. There are no provisions for financial assistance to indigents. See Table below.

Table: Costs to Defendant Associated with Interlock				
	1 st Misdemeanor DUI/Refusal	2 nd Misdemeanor DUI/Refusal	3 rd Misdemeanor DUI/Refusal	4 th misdemeanor DUI/Refusal
Installation of Interlock	75-350	75-350	75-350	75-350
Interlock servicing costs (ongoing): ranging between \$85-125, estimated here at 100/mo.	600 (6 mo.)	1200 (12 months)	1800 (18 months)	2400 (24 months)

OPTIONS/ALTERNATIVES

SR: “A more effective alternative to mandatory IID could be the mandatory use of a SCRAM unit (or other equivalent technology). The workgroup recommends that IID, SCRAM and other technological approaches to preventing DUI that may be effective as proposed for use on a case by case basis should be available as options for defendants to propose to the court as a condition of release in individual cases.”

Note; that limited licenses are permitted by court and DMV – can only be issued if IID requirement is concurrently satisfied

3. Should fines for DUI and Refusal be maintained, increased or reduced?

Research on fines among the states

At \$1500, Alaska has the single highest minimum-mandatory fine for a first DUI offense, 4.7 times the national average. A survey of all 50 states and the District of Columbia by WalletHub provides a median of \$250 and a mean of \$317 in a minimum mandatory fine for a first-time DUI.

At \$3000, Alaska also has the highest mandatory fine among all states and D.C. for a second-DUI offense, 4.5 times the national average. Among all fifty states and D.C., there is a \$500 median and a mean of \$667.

WalletHub also states that, after a DUI in Alaska, there is an average 80% increase in car insurance rates. This percentage is the fourth-highest reported increase in the country. Table 1 provides comparisons with other Western states.

State	Min. fine 1 st DUI	Min. fine 2 nd DUI	Reported percentage increase in auto insurance after DUI
Alaska	1500	3000	80%
Arizona	250	500	37%
California	390	390	103%
Colorado	600	600	34%
Hawaii	150	500	62%
Idaho	0	0	43%
Kansas	500	1000	46%
Montana	300	600	39%
Nebraska	500	500	58%
Nevada	400	750	29%
New Mexico	0	500	46%
No. Dakota	500	1500	33%
Oklahoma	0	0	28%
Oregon	1000	1500	26%
So. Dakota	0	0	27%
Texas	0	0	44%
Utah	1370	1560	39%
Washington	940.50	1195	28%

¹ <https://wallethub.com/edu/strictest-states-on-dui/13549/#adam-gershowitz>

Research on effectiveness of fines as a sanction for DUI

Some very weak evidence supports the deterrent effect of higher fines versus lower fines²; however, the literature is largely silent on thresholds at which sanctions become effective, are most effective, and cease to be effective (or become counter-productive). More importantly, a comprehensive study of 26 states between 1976 and 2002 concluded mandatory fine penalties do not have clearly demonstrable general deterrent or preventive effects, especially in contrast to two other DUI countermeasures (1) administrative drivers' license suspension for DUI and (2) reductions in the legally allowable BAC limit for driving – which show fairly consistent effects in reducing alcohol-related crash involvement.³

Concerns

- The amount of direct and indirect (insurance) costs of a DUI conviction in Alaska.⁴

² Homel (1981) found that fines of \$300 or more were more effective than smaller amounts in reducing DUI recidivism.

³ Wagenaar et al. (2007).

⁴

DUI/ Re-fusal	Min. – Mand. Fine	Police training Surcharge	State cases correction facility surcharge	Cost of Imprisonment or of EM	Forfeit vehicle?	Cost of Counsel	ASAP costs (variable)
1st	\$1,500	\$75 or \$50 if muni.	\$75	Jail costs are \$330; EM costs are either \$36 or \$78	Possible	Plea \$200; trial \$500; post-conviction \$250	u/k
2 nd	\$3,000	\$75	75	\$1,467	“	“	u/k
3rd	\$4,000	\$75	75	\$2,000	“	“	u/k
4th	\$5,000	\$75	75	\$2,000	“	“	u/k
5th	\$6,000	\$75	75	\$2,000	“	“	u/k
6 th	\$7,000	\$75	75	\$2,000	“	“	u/k
Felony / 3rd +	10,000	\$100	\$100	\$2,000	Mand.	Pre-indictment plea \$250; post-indictment plea with motions \$500; plea with motions and hearing up to time of trial \$1000; trial \$1,500; post-conviction \$250	u/k

- Inconsistent sentencing outcomes depending on different sovereigns.
 - In Municipality of Anchorage DUI cases, defendants may obtain a reduction of the fine amount based on out of pocket costs of substance abuse treatment. A similar reduction is not consistently available in State DUI cases because of how state law has been interpreted.

(concerns continued)

- In DUI cases prosecuted in federal court under the Assimilative Crimes Act (for crimes committed in the National Parks and on some other federal lands and in Metlakatla), no minimum fine is required. There is a maximum \$5000 fine, but it is more typical for a fine of \$150 to be imposed.

OPTIONS

1. No criminal DUI fine (13 other states)
2. Reduce fine to
 - national average,
 - western state average (with or without Alaska)
3. Suspend fine for first and second DUIs on condition of license reinstatement

4. Should the penalty of license revocation for DUI/Refusal be maintained or changed?

Research

- (Fair sanction) Whether imposed administratively or criminally, license suspension or revocation appears to be a fair sanction because it is directly related to the offense misconduct.
- Generally, license curtailment reduces driving exposure and prompts more cautious driving (Ross and Gonzales 1988).
- (Offender Recidivism effect) With respect to the question of whether license revocation in general in particular specifically deters a DUI driver offender from re-offending, earlier research results were somewhat mixed.
 - Homel (1981) and Stewart et al. (1988) found no association between driver's license suspension and recidivism.
 - Sadler et al. (1984) found such a specific association for repeat offenders, finding that a three-year license suspensions for repeat offenders were associated with decreased DUI recidivism and crash rates when compared to one-year suspensions.

More recent surveys indicate that license suspension works to control the overall traffic safety risk of first and repeat DUI offenders. (DeYoung, TRB, 2011)

- Studies of pre-conviction (administrative) license suspension laws passed in various states showed consistent effects across the cohorts of DUI offenders studied; although the results depended heavily on how quickly the sanction was effective.¹
 - Blomberg, Preusser, and Ulmer (1987) showed a significant decrease in recidivism associated with the law.
 - Rogers (1997) found that APS (administrative per se) was associated with significant reductions in subsequent alcohol-related crashes and DUI convictions among both first and repeat offenders, with effect sizes ranging from 27% to 33% for alcohol-related crashes and 19% to 27% for subsequent DUI convictions.
 - In general, the research evidence shows that administrative driver license suspension is effective... "in reducing not only crashes overall, but also crashes where alcohol was a factor. The evidence shows APS (administrative per se) exerts both specific deterrent (or incapacitative) effects ranging from 15% to 35% and general deterrent effects of 5% to 40%."

¹ A study by Wagenaar et al. (2007) of all states implementing mandatory fines for first-time offenders found that pre-conviction license suspension laws (i.e., administrative) were associated with fewer single-vehicle nighttime crashes and fewer fatal alcohol-related crashes; in contrast, post-conviction license suspension laws had no such associations. Pre-conviction license suspension laws reduced single-vehicle nighttime crashes by four percent, low-BAC (0.01 – 0.07) crashes by five percent, medium-BAC (0.08 – 0.014) crashes by seven percent and high-BAC (≥ 0.015) crashes by four percent.

- The optimal length of ‘hard’ revocation periods is yet to be established. More research is needed on minimum periods of hard license suspension necessary to maintain benefits. (DeYoung)
- Many revoked drivers never reinstate, or significantly delay license reinstatement beyond period of revocation. Cost is cited as the most significant deterrent. Other oft-cited factors are: confusion about process of reinstatement; and failure to satisfy other prerequisites.
- Drivers who have suspended licenses appear to drive less and more conservatively and have lower recidivism rates than those who are not suspended.
- However, compared to fully licensed drivers, suspended offenders have 3.7 times the risk being at fault in a fatal crash.

Current law and local data

- Both DMV and the state courts impose mandatory license revocation periods for DUI and Refusal Offenses. The DMV type of revocation is called Administrative (“ALR”); and the court (criminal) revocation is termed Judicial.
- Close to 2/3 of all DUIS/Refusal cases are subject to both ALR and Judicial processes. About 1/3 of DUI cases is subject only to Judicial process. A very small number are subject to ALR only.
- ALR typically involves early action, to curtail the driver’s license of a DWI offender at the time of arrest (Lacey, Jones, and Stewart, 1991). In Alaska, an ALR will be effective in 7 days after arrest or citation unless an administrative hearing is requested by the driver. A temporary license will typically can be provided until the hearing.
 - Hearings are requested by drivers in approximately 1 out of 4 administrative cases.
 - The request for a hearing is later withdrawn in about 15% of those cases.
 - Average time for the scheduling of ALR hearing absent requested continuance is
 - 30 days for unrepresented individuals
 - 45 days for represented hearing
- A Judicial revocation may take 120 days or longer; 75% of all misdemeanor cases typically resolve within 120 days.²
- Statutory license revocation periods cannot be shortened by DMV or the courts.
- With respect to DUI, limited licenses can be granted during the period of revocation but only after a shorter “hard” period of revocation has been first observed. Under current law, limited licenses require compliance with mandatory IID law.

² Alaska Court system FY2014 disposition statistics.

- With respect to Refusal cases, there is no driving permitted during the full length of revocation period.

Table: Relationship Between Number of DUIs and Current Statutory Minimum Mandatory Periods of Revocation, Limited License and IID Use			
# DUI	Minimum Revocation	When Limited License Allowed for some DUI Offenders, but not Refusal	Accompanying Minimum Period of IID Use
1st	90 days	After first 30 days.	6 months
2 nd	1 year	After first 90 days.	12 months
3 rd	3 years	After first 90 days.	18 months
4 th	5 years	After first 90 days.	24 months
5 th	5 years	After first 90 days.	30 months
6 th	5 years	After first 90 days.	35 months
Felony	Permanent. Termination of revocation is within discretion of DMV after ten years based on statutory criteria. If revocation is terminated, prescribed IID use will follow.	None	60 months

Concerns

- License suspension is hard to enforce because of the invisibility of the sanction.
- Justification of treating refusal cases differently is arguably weak.
- There may be confusion as to whether the two types of revocation periods (Judicial and ALR) run concurrently.
- Delays in court and administrative hearings may undermine any effectiveness of the sanction.
 - NB: Due process must be provided.
 - “Suspension of issued licenses . . . involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.” *Bell v. Burson*, 402 U.S., at 539, 91 S.Ct., at 1589.
- Expenses and requirements involved may discourage license reinstatement, and suspended drivers pose a risk on the roads due both to their risky driving and also because there are large numbers of them (DeYoung)
 - Shorter revocation periods may be more effective than longer periods because they create inconvenience but are not so long as to ‘teach’ the individual that he or she can drive, unlicensed, without being apprehended.

- Concern remains with felony DUI defendants' inability to seek earlier termination of statutory revocation:
 - before ten years have elapsed. .
 - when there have been no driving related offenses for ___ years
 - when they have completed their probation requirements and so haven't completed a court ordered program as described in SB91
 - If ignition interlock is no longer a part of a mandatory sentence
- Concern is whether any previously convicted felons should receive retroactive application

OPTION 1: Eliminate confusion

- Propose statute that expressly makes judicial and ALR revocation periods wholly concurrent.

OPTION 2: Eliminate disparity and attenuated effect

- Make ALR applicable to all DUI cases (including drug and combined drug alcohol txt)

OPTION 3: Address barriers to reinstatement

- Change revocation to suspension to encourage speedy license reinstatement by reducing costs and requirements. [29 or 31 of states provide suspension only for first offender]
 - a. All offenders including Refusal?
 - b. Only DUI offenders ?
 - c. Only DUI offenders with a BA below a certain cut off?
- Reduce license reinstatement costs if reinstatement is within ___ years of revocation (incentivize)

OPTION 4: Make ALR more effective

- (fewer delays) Provide admin hearings more quickly, i.e. always within 30 days
- (visibility problem) Couple ALR with vehicle sanctions (license plate, seizure/whiskey plates, impoundments, e.g.) for first or repeat offenders
- (heighten visibility of enforcement efforts) Sobriety checkpoints and license checks (Michigan v. Sitz, 110 S.Ct. 2481 (1990) Of all states, 40 permit, 7 prohibit, 2 have no provisions (including Alaska) sobriety checkpoints

OPTION 5a: Reduce Revocation Periods to encourage licensed driving

- Workgroup Proposal (SR): For first offenders: Reduce total revocation period to 30 days (currently, only 1st time DUI and not Refusal offenders observe 'hard' revocation period that brief) with no limited license to follow as long as the defendant can demonstrate to DMV that he is treatment compliant, have required driver insurance and pay reinstatement fees.

- For first offenders, 11 states allow revocation/suspension periods 30 days or shorter (1 req. only 15 days)
- Workgroup Proposal (SR): Keep hard revocation period at 30 days for all other offenders with a limited license opportunity for the remaining total revocation period. The limited license periods for all second or greater DUI offenders (high risk DUI offenders) should be conditioned upon Intensive Supervision Programming and Monitoring which could be coupled with accountability court hearings for violations or with immediate DMV sanctions.
 - For repeat offenders, all states except 2 have a minimum one year revocation: 1 state (OK) allows 6 month revocation/suspension period and 1 other state (TX) allows 6 mo—2 years with one year mandatory interlock
NB: Many states' revocation periods are often 'soft' meaning that limited or restricted driving privileges are available early on for first offenders and after 30-60 days for repeat offenders as long as they drive with ignition interlocks and otherwise comply with licensing requirements.
- Another option: graduate hard revocation periods: e.g. 30, 45, 60 or 15, 30, 45, keeping in step with proportionate sanctioning

OPTION 5b: Reduce Revocation Periods to encourage licensed driving

- Lower the maximum driving revocation period for a recidivist driver
- Alternatively, provide more opportunities for termination of revocation

OPTION 6: Set different revocation periods based on conduct

A. *High BAC:*

NCSL: In 2013, 68 percent of drivers who had been drinking and were involved in fatal crashes had a blood alcohol content of .15 or greater. Therefore 22 states have enacted increased revocation terms for DUI offenders with a high BAC.³ Break points: .10, .15, .16, .17, .18 and .20 and above. Also 2 states expressly provide pre-conviction suspension for high BAC.

Example: California's laws require a 10 month license suspension for first time offender with .15 but allow a restricted license after one month with completion of 9-month DUI education and counseling program). The court may order a first offender to operate only motor vehicles equipped with "ignition interlock" devices for not more than 3 years. Heightened consideration is to be given to first offenders with a BAC \geq .15 or to first offenders who refused to take a chemical test, including to grant probation participation for at least 3 months or longer in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions. First offenders who have been placed on probation and at the time of the offense had either a BAC \geq 0.20 or refused to submit to a chemical test must be placed in

³ 48 states and DC provides some sort of increased penalty for high BAC drivers

a licensed alcohol and other drug education program that consists of at least 60 hours of program activities for at least 9 months or longer.

B. Injury Accident

E.g. California increases period of hard revocation for those with injury-related DWI offense

C. Timing of second or third offense within five years

E.g. Hawaii provides stricter sanctions for more rapidly occurring DUIs

5. Should AS 28 alcohol crime jail terms be decreased or increased?

Table: Relationship Between Number of DUIs and Current Statutory Minimum Mandatory Periods of Jail Tme			
# DUI/Refusal	Minimum Jail Term	Maximum Jail Term	Cost of imprisonment
1st	72 hours	1 year	\$330
2 nd	20 days	1 year	1467
3 rd within 15 years	60 days	1 year	2000
4 rd within 15 years	120 days	1 year	2000
5 th within 15 years	240 days	1 year	2000
6 th within 15 years	360 days	1 year	2000
3 rd within 10 years	120 days	5 years	n/a
4 th within 10 years	240 days	5 years	n/a
5 th within 10 years	360 years	5 years	n/a

- For a first DUI offender, 27 states have no minimum mandatory sentence. 14 states have sentences of 1-2 days. Three states have 3-day sentences (including Alaska). Nebraska has a 7-day minimum and Arizona has 10.
- However, for a first offender with a high BA, higher and even tiered minimums apply in many states.
- For a second offender, the minimum-mandatory sentences range from 0-180 days. The median is 7 days.

From Digest of Impaired Driving laws:

“To avoid the penalty of the transfer of Federal-aid highway funds, States must enact and enforce laws providing the following as sanctions for *second or subsequent DWI offenders*: a minimum license suspension of 1 year; the impoundment, immobilization, or installation of an ignition interlock on a driver’s motor vehicle; an alcohol assessment and treatment as appropriate; and not less than 5 days of imprisonment *or* 30 days of community service... [and 10 days of imprisonment or 60 days of community service for a 3rd or subsequent offense].”

Research

From [NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555 -](#)

Jail

In the past 15 years, most States have adopted some form of mandatory jail sentences for misdemeanor DWI and prison sentences for felony DWI. The effects of these laws have been hotly debated, and the evidence from studies of incarceration as a specific and general deterrent to DWI is mixed. In general, the available evidence suggests that as a specific deterrent, jail terms are extremely costly and no more effective in reducing DWI recidivism among either first-time or repeat offenders than are other sanctions (Hagen, 1978; Homel, 1981; Salzberg and Paulsrude, 1984; Jones, Joksch, Lacey, and Schmidt, 1988; (Mann, Vingilis, Gavin, Adlaf, and Anglin, 1991; Ross, 1991; Martin, Annan, and Forst, 1993). Nichols and Ross (1989) reviewed available studies of the effect of incarceration on DWI recidivism rates for the Surgeon General's Workshop on Drunk Driving. They found six studies that reported no reduction in recidivism, one that found no difference in recidivism between a special DWI facility and a traditional prison, and one that found reduced recidivism for first-time offenders sentenced to 48 hours in jail. Further, traffic deaths decreased in Norway and Sweden once both countries abandoned mandatory jail sentences for convicted impaired drivers (Ross and Klette, 1995).

There are some indications that the short-term effect of jail as a general deterrent depends on the extent of public awareness, the risk of incarceration, and the size of the community. These short-term effects are initially strong following public announcement of a sanction, but often dissipate over a period of about 3 years. Some studies have found that the use of 2-day jail sentences had a general deterrent effect for first-time offenders (Falkowski, 1984; Jones et al., 1988; Zador, Lund, Fields, and Weinberg, 1988); others concluded that jail terms were ineffective (Ross, McCleary, and LaFree, 1990). Researchers have also noted, however, that mandatory jail sentences tended to negatively affect the court operations and the correctional process by increasing the demand for jury trials, plea-bargaining, and jail crowding (NHTSA, 1986; Voas and Lacey, 1990). Consequently, in some jurisdictions the severity of the sanction was reduced, and swiftness was retarded; inconsistency in implementation raised equity questions.

Additional questions arise regarding sentence severity, or the appropriate length of a jail sentence. For example, 2 days in jail may have a specific deterrent effect and may be more effective than a 2-week sentence in reducing recidivism for first-time offenders (Wheeler and Hissong, 1988). In one study, lengthy periods of incarceration were actually associated with higher recidivism (Mann et al., 1991). This finding may be due to judges giving longer jail sentences to those offenders whom they regard as most likely to recidivate, rather than an indication of the negative effects of more severe penalties.

Based on these findings, it has been suggested that a weekend in jail may be useful for first-time offenders, for whom a “taste of punishment” may be an effective deterrent (Jones et al., 1988; Mayhew and Simpson, 1991). However, since many convicted impaired drivers, particularly repeat offenders, have severe life-stress problems, may be alcohol-dependent, and may have additional health problems, long jail terms are unlikely to resolve their problems and may even exacerbate them (Homel, 1981). For such individuals, incarceration, which effectively incapacitates them as a threat to public safety, but only for the period they are incarcerated, may be most effective as a complement to treatment-oriented measures (Jones and Lacey, 1991).

Research on other incarcerative-type programs

Weekend Intervention

A weekend intervention program (WIP) is designed to evaluate alcohol and other drug abuse and to create an individualized treatment plan for each offender while housing them away from their normal domicile (a “low-level” form of incarceration). For low-risk offenders, exposure to the WIP evaluation process itself may be sufficient treatment. High-risk offenders are referred to longer-term, more intensive programs. Repeat offenders assigned to WIP have lower recidivism rates than do jailed offenders or those given suspended sentences and fines (Siegal, 1985). An example of a WIP is the Wright State University WIP in Ohio (Siegal, 1987). Programs based on the WIP have been used in some additional locations including, for example, Augusta, Maine; Altoona, Pennsylvania; Gillette, Wyoming; and throughout the State of Missouri.

Dedicated Detention/Special DWI Facilities

Confinement in detention facilities dedicated to DWI offenders incapacitates the high-risk offender and provides supervised rehabilitation services, such as:

- Treatment for alcohol abuse and alcoholism
- DWI driver education
- Vocational training, sometimes in the context of work release
- Individual counseling (Timken, Packard, Wells-Parker, and Bogue, 1995)

Detention typically ranges from two weeks to one year. During this time, offenders may be released for work or community service (Harding, 1989a). Data on effectiveness is limited and inconclusive, although data analyses indicated reduced recidivism among both first-time and repeat offenders sentenced to a facility in Prince George’s County, Maryland (Harding, 1989b; Voas and Tippetts, 1989). In a recent study of a special facility in San Juan County, New Mexico, which was modeled after the Prince George’s

County facility, it was found that recidivism at five years after treatment was 23.4 percent compared to 40.1 percent for a similar group of offenders not treated at the facility (Kunitz et al., 2002). The San Juan County facility mainly treated offenders who were Native American (70%) and Hispanic (10%).

Home detention. This approach to incarceration recognizes a defendant's need to drive during the day either to get to work or to court-ordered treatment, but keeps the defendant off the road during evening and nighttime hours, when most DWI violations occur. Home detention as a condition of probation is generally enforced by electronic monitoring (see below), with violation punishable by jail (Jacobs, 1990). No data has been published on the effectiveness of this sanction with DWI offenders except for programs that couple home detention with electronic monitoring.

Electronic monitoring. Electronic monitoring is a computerized method of verifying that the offender remains at home except when excused to attend work or treatment (Harding, 1989a). Offenders are outfitted with a waterproof, shock-resistant transmitter on a band that is strapped securely on their ankles (Jones and Lacey, 2000). In a 7-year study (Lilly, Ball, Curry, and McMullen, 1993), recidivism was less than 3 percent among a group of DWI offenders who were electronically monitored over approximately 2 to 3 months while on probation. However, recidivism increased at the completion of the monitoring period. More recently, Jones et al., (1996) evaluated the Los Angeles County Electronic Monitoring/Home Detention Program. Their analysis found that the electronic monitoring program reduced the reconviction rate by nearly one-third. One study of offenders in Pennsylvania looked at the differences between those who served their sentences in jail only and those who served their sentences under house arrest with electronic monitoring. While there were no significant differences between the groups, those offenders who were employed at the time they were sentenced to electronic monitoring were more successful than those on electronic monitoring and unemployed (Courtright, Berg, and Mutchnick, 2000). There are other benefits of house arrest combined with electronic monitoring. For instance, it allows the offender to be home with his/her family, the curfew keeps the offender off the road during prime DWI hours, it can be adapted to employment hours, AA meeting, etc. and it is less expensive than jail (Jones et al., 1996). Some challenges of electronic monitoring include the cost (some suggest using grant money to help certain people pay for it; sliding scales have also been used), trouble with the monitoring devices (e.g., wakes up the offender too often, doesn't recognize his/her voice, disturbs others in the home), and a lack of face-to-face observation. However, at least one company has solved that problem by providing a digital image of the person being monitored when the probation officer calls the offender on the phone.

OPTIONS

Eliminate or decrease jail terms for DUI offenders, which also eliminates or reduces cost of cost of imprisonment.

Substitute electronic monitoring. Impose home detention for confinement, create day reporting option, or short-term intensive DUI-specific confinements.

5. Are there effective (non-incarcerative) programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?

Research from [NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555 -](#)

Probation

The U.S. Supreme Court recently wrote about probation and its purposes in the decision of United States v. Knights (2001). The Court concluded: "...a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens." Although probation may reduce recidivism slightly among drivers at low risk for recidivism (Wells-Parker, Anderson, Landrum, and Snow, 1988), probation alone does not measurably reduce recidivism among those at high risk (Jones and Lacey, 1991). There is some evidence that probation combined with treatment can be effective (Nochajski, Bell, and Augustino, 1995).

- Abstinence from alcohol and illegal drugs, subject to random screening by breath or urine testing;
- Additional sanctions for driving without a license that has been suspended by the court or motor vehicle administration, or driving without insurance; and
- Court-ordered treatment, home detention (sometimes with alcohol monitoring using various remote devices designed for such purposes), license or vehicle restrictions, or any other sanctioning option discussed in this guide.

Variations of DWI probation include basic supervision probation (monthly visits), unsupervised probation, and case-specific restrictions (individualized). Some of the more promising forms of probation are:

- ***Intensive supervision probation (ISP)***. In ISP programs, offenders have more contact with probation officers compared with standard (nonintensive) probation programs and participate in various educational and therapeutic programs in the community (Harding, 1989a; Transportation Research Board, 1995). Results of intensive probation have traditionally been difficult to evaluate (Latessa and Travis, 1988; Greene and Phillips, 1990). One NHTSA-sponsored evaluation (Jones, Wiliszowski, and Lacey, 1996) examined the Milwaukee County Pretrial Intoxicated Driver

Intervention Project (of which ISP was a component). Significantly fewer offenders who received ISP recidivated compared to those who did not receive the program (5.9 % versus 12.5%).

- **Day Reporting Centers (DRCs).** DRCs are highly structured, nonresidential facilities that provide counseling, supervision, employment, education, and community resource referrals to DWI probationers (Jones and Lacey, 2000). In a NHTSA-sponsored study of the Maricopa County (Arizona) DRC program, Jones and Lacey (1999) found that while the DRC was not significantly more effective in reducing recidivism (compared to traditional probation programs), the program facilitated offenders' reintegration into society and was more cost-effective than jail.
- **DWI courts.** Modeled after drug courts, and incorporating some of the forms of probation described above, DWI courts are designed to provide constant supervision to offenders by judges and other court officials who closely administer and monitor compliance with court-ordered sanctions coupled with treatment. DWI courts generally involve frequent interaction of the offender with the DWI court judge, intensive supervision by probation officers, intensive treatment, random alcohol and other drug testing, community service, lifestyle changes, positive reinforcement for successful performance in the program and going back to jail for noncompliance (National Association of Drug Court Professionals, 1997; National Drug Court Institute, 2002). Most DWI courts assign nonviolent offenders who have had two or more DWI convictions in the past to the court. At the present time, there are multiple sources of funding for drug/DWI courts to help defray their costs. DWI courts have been shown to hold offenders accountable for their actions, change offenders' behavior to end recidivism, stop alcohol abuse, treat the victims of DWI offenders in a fair and just way, and protect the public (Tauber and Huddleston, 1999; Freeman-Wilson and Wilkosz, 2002). Breckenridge, Winfree, Maupin, and Clason (2000) report that such a program significantly reduces recidivism among alcoholic DWI offenders. Other studies of this type of program are currently underway and DWI courts are being implemented in Georgia, Pennsylvania, and other States. Specialized DWI courts provide greater opportunity for close monitoring and offender accountability. However, this currently is only done with the most egregious offenders (Robertson and Simpson, 2002). At the end of 2003, there were approximately 70 DWI courts and 1,100 drug courts operating in the U.S. One report on a DWI court in New Mexico indicated that recidivism was reduced by over 50 percent for offenders completing the DWI court compared to similar offenders not assigned to the DWI court (Guerin and Pitts, 2002). Those results, however, were preliminary and did not include statistical tests. NHTSA is completing an evaluation of the Maricopa County (Phoenix), Arizona, DWI court using a random assignment design (Jones, in press). In this research, more than 250 felony DWI offenders were randomly assigned to the DWI court and a comparable number of offenders were assigned to traditional probation services. The Maricopa DWI court includes monthly in-person court appearances by the offenders before the judge, frequent contact with an assigned probation officer,

regular meetings with treatment personnel, participation in AA meetings, attendance at Victim Impact Panels (VIP), and random testing for alcohol and other drug use. Qualifications for graduation from the DWI court include meeting all treatment and program requirements, maintaining steady employment for six months, remaining alcohol-free for six months, and having a stable residence. NHTSA presently is collaborating with the Department of Justice to promote the increased use of DWI courts and encourage jurisdictions that utilize drug courts to accept repeat DWI offenders in them (NHTSA, 2003b).

ADDITIONAL DISCUSSION/PROPOSED ANSWER BY JUDGE RHODES:

There are several program types that promote offender accountability and emphasize swift, certain, and proportionate sanctions.

Intensive Supervision Programs (ISP) reduce recidivism of DWI offenders. All three ISPs evaluated indicate significant reductions in medium-term recidivism for ISP offenders up to 4 years (although one of the findings may have been due to an artifact in the comparison offender group, and the effect has disappeared by 15 years). The reductions in recidivism ranged from 18.1% to 54.1%. The evidence appears to be strong that ISPs with the following common features can be very effective:

- a. Screening and assessment of offenders for the extent of their alcohol/substance abuse problem
- b. Relatively long-term, close monitoring and supervision of the offenders, especially for alcohol and other drug use or abuse
- c. Encouragement by officials to successfully complete the program requirements
- d. The threat of jail for noncompliance⁴

ISP programs should be funded and be mandatory probation requirements for high risk DUI offenders, monitored by the Division of Behavioral Health ASAP program in misdemeanor cases and DOC Community Corrections in felony DUI offenders. The ASAP program should be funded and reformatted to concentrate on high risk misdemeanor DUI offenders only and to determine, through evidence based best practices, what components are most effective in reducing recidivism. These may include mandatory assessment and treatment of substance use disorders and criminogenic risks and needs,

⁴ Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. *Annals Of Advances In Automotive Medicine / Annual Scientific Conference - Association For The Advancement Of Automotive Medicine*. Association For The Advancement Of Automotive Medicine. Scientific Conference, 54375-387. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf This study confirms prior research showing that ISPs are effective.

frequent alcohol monitoring – either by 24/7 (see below), IID, SCRAM, random UA/drug tests or other components to an individual offenders risks and needs.

DOC felony probation should require felony DUI offenders to participate in and complete ISP immediately upon the offenders release to probation.

The South Dakota 24/7 Sobriety Monitoring program (pre-trial alcohol monitoring). Findings of initial studies were highly promising and, since then, comparable programs have been implemented in other jurisdictions across the country, including Alaska. However, the body of peer-reviewed literature on this topic is still in its infancy, and there are currently no long-term studies which have examined whether participation in these programs leads to lasting behavioral changes.

The Alaska equivalent to the South Dakota 24/7 Sobriety Monitoring program is the Alaska 24/7 Sobriety Monitoring program. The program was implemented in July, 2014. An evaluation of the program has not been conducted yet; the Alaska Judicial Council is currently working on a program evaluation.

Initial findings on a national level are promising. Therefore, one would assume the programs available in Alaska would also be effective. However, it is important to keep in mind that only a pilot evaluation has been conducted on PACE, and no evaluation has been conducted on 24/7. Because of the lack of data available, it is impossible to draw definite conclusions about the effectiveness of the programs available in Alaska

Even though the 24/7 program has shown great promise in other jurisdictions, the program is not a treatment program. The program can be used complementary to an ISP, to monitor sobriety, or as a standalone program. Those offenders who fail to maintain sobriety in the 24/7 program due to their inability to control substance use should be required to complete mandatory substance abuse treatment with sobriety monitoring.

Hawaii's Opportunity Probation with Enforcement (HOPE) program (probation drug monitoring) is a judicial hands on swift accountability court for felony probationers. The Alaska equivalent to HOPE is the Alaska Probation Accountability with Certain Enforcement (PACE) program. In 2011, the Alaska Judicial Council conducted a pilot evaluation of the program. The results were very promising and consistent with other study. However, a follow-up evaluation has not been conducted since. It is also important to point out that the PACE program solely focuses on drug use and not on alcohol consumption.

A HOPE or PACE court collaborates with probation to provide swift and certain court attention to a violation of a condition of probation. This court approach could easily be coupled with an ISP program probation requirement for misdemeanor and felony high risk DUI offenders.

Finally, DUI, drug and other therapeutic courts address addiction and, often times, co-occurring addiction and mental health disorders. These have shown positive results. These court models are intended for substance dependent offenders who benefit from a lengthy court involvement that involves a multidisciplinary legal and treatment team to provide case management and requires linkage to and participation in an array of substance abuse treatment, cognitive behavioral interventions to address criminal thinking errors, employment, etc. to help achieve and maintain sobriety for life.