

**Testimony of Mark V. Rosenker, Chairman
National Transportation Safety Board
before the U.S. Senate
Committee on Environment and Public Works
Subcommittee on Transportation Safety, Infrastructure Security,
and Water Quality
Oversight Hearing on Effectiveness of Federal Drunk Driving Programs
October 25, 2007**

Good morning, Chairman Lautenberg, Ranking Member Vitter, and Members of the Subcommittee. My name is Mark Rosenker, and I am the Chairman of the National Transportation Safety Board. I want to thank you for allowing me the opportunity to present testimony on behalf of the Safety Board regarding the oversight of the effectiveness of Federal drunk driving programs. While the Safety Board has testified before Senator Lautenberg on several occasions, we have not testified before this Committee. Thank you again for the privilege.

As you know, the Safety Board is an independent agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in railroad, highway, marine, pipeline and hazardous materials in order to determine the causes and issue safety recommendations to prevent future accidents.

Each year, there are between 42,000 and 44,000 highway fatalities, more than any other mode of transportation. Of that number, roughly 40% of highway accidents is attributed to alcohol related deaths. For that reason, the Safety Board has had a long history of recommending action to reduce alcohol-related fatalities, injuries, and crashes. Many of these recommendations were issued in 1983, 1984, and 1989 as a result of our investigation of the Carrollton, Kentucky church activity bus crash which is still the worst drunk driving crash in the nation's history. Addressing impaired driving has been on our list of Most Wanted Safety Recommendations since its inception in 1990.

We have made a lot of progress at the Federal, state, and local level in reducing the alcohol-related crashes, injuries, and fatalities. In 1982, there were 26,173 alcohol-related fatalities, almost 60 percent of all highway fatalities. We are now down to 17,602 alcohol-related fatalities, or 41 percent of highway fatalities. Most of that progress was achieved in the 1980s and early 1990s, likely attributable to implementation of the National Minimum Drinking Age Act and state passage of Age 21 laws, administrative license revocation, sobriety checkpoints, mandatory seat belt use laws, and public education campaigns on the dangers of impaired driving. We have been stuck, however, in a decade-long plateau where the number and percent of alcohol-related fatalities have not declined further. The Safety Board issued recommendations in 2000 aimed at eliminating hard core drinking driving as means to further reduce the toll of impaired driving.

The Hard Core Drinking Driver

The Safety Board is particularly concerned with hard core drinking drivers, who are involved in about 54 percent of alcohol-related fatalities. The Board defines hard core drinking drivers as individuals who drive with a blood alcohol concentration (BAC) of 0.15 percent or greater, or who are arrested for driving while impaired (DWI) within 10 years of a prior DWI arrest.

Drivers with a high BAC, 0.15 percent or greater, have consumed large amounts of alcohol, much more than is generally considered to be social or responsible drinking. High-BAC offenders are also likely to be repeat drinking drivers. Research has found that drivers with a high BAC are at a substantially greater risk of being involved in a fatal crash. The Insurance Institute for Highway Safety has estimated that the relative fatality risk for drivers in single-vehicle crashes with a high BAC is 385 times that of a zero-BAC driver and for male drivers the risk is 607 times that of a sober driver.

The Safety Board defines repeat offenders as individuals who are arrested for a DWI offense within 10 years of a prior DWI arrest. The Board specifies arrest, not just conviction, because DWI offenders are not always convicted of DWI violations. Their charges may be reduced to a lesser, non-alcohol-related offense or erased. The original DWI could not be used as a prior offense for the court to impose more rigorous measures for a subsequent offense. The American Psychological Association Diagnostic and Statistical Manual states that even one DWI offense is indicative of a substance abuse and/or dependency problem. A high-BAC or repeat DWI arrest, therefore, supports the conclusion that the individual has an alcohol abuse problem and will continue to engage in dangerous driving practices unless significant countermeasures are imposed.

From 1983 through 2005, more than 183,000 people died in crashes involving hard core drinking drivers. Most experts agree that impaired drivers persist in their behavior because these drivers believe that they will not be caught and/or convicted. That perception is based on reality. NHTSA estimates that on average, an individual makes about 1,000 drinking driving trips before being arrested.

One of the accidents investigated by the Safety Board occurred on October 23, 1999 in Irving, Texas. A Chevrolet pickup truck driver was merging onto a highway when it veered to the south, crossed over three lanes and a shoulder, and struck the guardrail. The collision with the guardrail caused the truck to become airborne and travel 98 feet before striking the ground in the center median. It then continued traveling for an additional 97 feet and collided with a tractor-semitrailer, which eventually crashed through a guardrail, and collided with a bridge pillar. A post crash fire ensued, destroying the tractor-semitrailer and damaging the bridge structure. The debris from the initial collision struck a Ford pickup truck and a Cadillac during the accident sequence. The tractor-semitrailer truck driver was killed. The Chevrolet pickup truck driver was found partially ejected and was also killed. He was an unlicensed driver with a BAC of 0.29 percent.

The problem of hard core drinking drivers is complex; no single countermeasure by itself appears to reduce recidivism and crashes sufficiently. We need a comprehensive system of prevention, apprehension, punishment, and treatment to reduce the crashes, injuries, and fatalities caused by these drivers.

The Safety Board's model program includes such countermeasures as:

Sobriety Checkpoints: States must take measures to convince motorists that there is a strong likelihood that they will be caught, thereby deterring impaired driving before an arrest. Well-publicized and frequent sobriety checkpoints are a key component of deterrence because they increase the perception among drivers who potentially would drive impaired that they will be caught.

Vehicle Restrictions: States should authorize vehicle restrictions such as license plate impoundment, vehicle immobilization, vehicle impoundment, vehicle forfeiture, and ignition interlocks. Most can be administratively imposed. Vehicle restrictions substantially decrease the opportunity for hard core drinking drivers to operate vehicles illegally.

Habitual Offender Tally (HOT) Sheet Programs: States should promote this special enforcement program where the State licensing agency, on a regular basis, provides lists of drivers whose licenses have been suspended or revoked for alcohol-related offenses. Law enforcement agencies then use these lists to identify drivers who subsequently operate vehicles without a license.

Zero BAC Limits: States should require DWI offenders, upon conviction, to operate vehicles without any alcohol in their system. Such a provision forces DWI offenders to demonstrate that they can operate a vehicle legally and separate their drinking from their driving.

High BAC Limits: For those offenders arrested with a BAC of 0.15 percent or higher, States should impose penalties and employ countermeasures similar to those penalties and countermeasures used for repeat offenders. These drivers require strong intervention.

Confinement Alternatives: States should implement alternatives to traditional jail confinement, such as jail-treatment facilities, home detention with electronic monitoring, and intensive supervision probation. These alternatives, which reduce prison overcrowding, allow offenders to remain productive members of society and address any underlying alcohol problem, offer greater benefit than the traditional confinement alternative, community service, which has not been proven to reduce crashes.

Plea Bargaining Restrictions: States should prohibit DWI offenders from pleading to non-alcohol-related offense, or at least include information on the original arrest/charge in the offenders' criminal record. This provision would help ensure that prosecutors and judges know when they are dealing with a hard core drinking driver who may require countermeasures beyond the traditional punishment of a short jail term and a fine.

Diversion Elimination: Diversion is a system by which an offender's record is wiped clean if the offender complies with certain requirements. States should eliminate diversion as an option for DWI offenders, again, because it makes it that much harder to identify and develop appropriate rehabilitation measures for hard core drinking drivers.

Administrative License Revocation: States should authorize administrative license revocation, which gives a law enforcement officer the authority, on behalf of the state licensing agency, to confiscate the license of any driver who either fails or refuses to take a chemical breath test. The driver then receives a temporary license that is valid for a short, specified period of time. During that time, he or she may seek an administrative hearing -- independent of any criminal proceedings.

10-Year Look-Back Period: The likelihood of arresting, let alone convicting, a person even once for impaired driving is small. For penalty enhancement, the length of time a state will "look back" to determine how many convictions an offender has should be at least 10 years.

Individualized Court-Based Programs: States should develop and fund programs, such as a DWI court, that allow judges to tailor the sanctions to an offender's circumstances on a case-by-case basis.

Attached for your review is a summary of the model elements recommended by the Safety Board to address hard core drinking driving. The Board's model program is derived from programs operated in the States that have been shown through research to reduce alcohol-related crashes, injuries, and fatalities or have been shown to reduce recidivism. Some elements of the model program aid the workings of the impaired driver control system. Only five states have implemented a sufficient number of elements for the Board to close this recommendation to them.

Age 21

The issue of the minimum drinking age has recently been in the news. This is an issue we thought was solved a quarter century ago through extensive congressional, Federal, and state action.

The change in the legal minimum drinking age has been one of the most extensively studied policy changes in our transportation history. All of the rigorously drawn and peer-reviewed studies have essentially come to the same conclusion; lowering the legal drinking age increases both alcohol consumption and alcohol-related fatalities among young drivers and raising the drinking age reduces consumption and fatalities.

In 2005, 28 percent of teen drivers killed in traffic crashes had a positive BAC, and 74 percent were unrestrained by safety belts. Teen drivers (age 15 through 20) made up slightly more than 6 percent of the driving population. But although this population is not allowed to drink, almost 11 percent of alcohol-related fatalities (1,800 people) still

involved a teen driver with a positive BAC. This is down from the 20 percent involvement we had in 1982. The National Highway Traffic Safety Administration estimates that since 1975, Age 21 laws have prevented almost 25,000 traffic deaths.

Research and current data do not justify changing the Board's recommendations. Motor vehicle crashes remain the leading cause of death for teenagers, and alcohol remains the leading drug of choice.

Mr. Chairman, that concludes my statement and I would be happy to answer any questions you may have.

HARD CORE DRINKING DRIVER MODEL PROGRAM

- Sobriety checkpoints (frequent, statewide)
- Vehicle restrictions
 - License plate actions (impoundment, confiscation, etc.)
 - Vehicle immobilization
 - Vehicle impoundment
 - Vehicle forfeiture
 - Ignition interlocks (court-ordered and administrative)
- State and community cooperative enforcement programs for driving while suspended/revoked/unlicensed
- Zero BAC for DWI offenders
- Aggravated offense for high BAC (0.15 or greater)
- Alternatives to confinement
 - Home detention with electronic monitoring
 - Intensive supervision probation
 - Jail-treatment facilities (for multiple DWI offenders)
 - Eliminate community service (does not reduce recidivism)
- Plea bargaining restrictions
 - Prohibit lessening of DWI offense to non-alcohol-related offense
 - Require reasons for DWI charge reduction to be entered into public record
- Eliminate diversion programs that allow erasing, deferring, or otherwise purging the DWI offense record, or that allow the offender to avoid license suspension
- Administrative license revocation for BAC test failure and refusal
- 10 year DWI record retention and offense enhancement period
- Individualized court-based sanction programs with frequent offender contact, unannounced testing, mandatory assessment, treatment, and long-term follow-up

“Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver,” June, 2000

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