



**Statement of the Governors Highway Safety Association (GHSA)  
for the  
Oversight Hearing on the Effectiveness of  
Federal Drunk Driving Programs  
Transportation Safety, Infrastructure Security and  
Water Quality Subcommittee  
Senate Environment and Public Works Committee  
October 25, 2007**

## **I. Introduction**

The Governors Highway Safety Association (GHSA) is a nonprofit association that represents state highway safety offices (SHSO). Its members are appointed by their governors to administer federal behavioral highway safety grant programs, including the federal impaired driving incentive grant program and the two impaired driving penalty transfer programs.

GHSA considers itself the voice of states on highway safety issues. As such, the Association represents states on a range of behavioral issues such as failure to use proper occupant protection, speeding and impaired driving, among others. Our members use federal highway safety grant funds for a wide variety of impaired driving purposes including enforcement, training and equipment for enforcement personnel, judicial training, public education campaigns (including those that use paid media), and DUI information system improvements.

## **II. Background**

This country has made considerable progress in impaired driving in the last thirty years. In 1990, according to statistics of the National Highway Traffic Safety Administration (NHTSA), 51% of total crashes were alcohol-related. By 2005, 39% of crashes were alcohol-related. A part of the success must be attributed to simple increases in the number of registered vehicles, licensed drivers and vehicle miles of travel. As those increased, the percentage of alcohol-related crashes consequently declined. Another part of the success, however, can be attributed to federal and state efforts to address impaired driving. These have successfully maintained the progress that was made in the last thirty years without allowing further backsliding. Without the federal funding, the level of impaired driving would likely be much worse.

However, in terms of total numbers, relatively little progress has been made over the last decade. In 1995, 17,308 persons were killed in alcohol-related crashes. By 2005, that number had fallen by only 423 persons to 16,886 – a 2.4% drop. Federal and state impaired driving policies and programs have not enabled states and communities to make the “great leap forward” in impaired driving that will result in significant reductions in alcohol-related crashes, fatalities and injuries.

Unlike occupant protection issues, impaired driving is a highly complex issue for which there are no simple solutions. Impaired driving data can be analyzed in a number of different ways, each of which will suggest different countermeasures. One approach is to look at crash records and determine who is over-involved in impaired driving crashes. Typically, crashes involve underage drinkers, first time offenders and hard core drunk drivers (including high BAC first-time offenders). Another way is to analyze the data by BAC level. In that approach, drivers aged 25-34 years old appear to be the biggest part of the problem. Another strategy is to examine when and where the impaired driving crashes occur. Each approach suggests different parts of the impaired driving puzzle in a state, and each requires specific policies, programs and most importantly, funding. A general deterrence program aimed at first time offenders, for example, cannot be the sole focus of a state's impaired driving efforts without having a detrimental impact on programs that reach hard core drunk drivers and the other subgroups.

Additionally, impaired driving is part of a larger societal problem that reflects our ambivalence about alcohol use. State highway safety offices, advocacy organizations, public health agencies and others encourage “no use” of alcohol when driving, yet our society encourages alcohol consumption through the media and our laws permit a certain legal amount of alcohol when driving. Further, the impaired driving problem cannot easily be separated from the larger societal problems of alcohol abuse and alcoholism. There is a complexity of federal, state and local agencies that deal with these problems, and the highway safety community is struggling to determine its role.

Finding solutions to the nation's impaired driving problem, therefore, will not be easily achieved. Public policy should be crafted that encourages states to further action on impaired driving yet recognizes the complexity of the issue and sets realistic goals for states.

### **III. Potential Solutions**

#### **A. Continue to focus on a comprehensive approach to impaired driving**

Programs to reduce impaired driving must be based on a comprehensive approach that touches on all aspects of impaired driving. Anything less will be ineffective.

Such programs should have a prevention component to stop drivers from driving impaired in the first place as well as an intervention component that provides transportation alternative to drivers who are impaired. NHTSA is currently funding the Responsible Hospitality Institute's pilot programs that attempt to change the social environment in which people are entertained by providing alternatives to drinking and reducing the opportunities to drive impaired. These programs show some promise and should be further researched.

Strong laws are a critical aspect of any impaired driving program. Such laws should include .08 blood alcohol concentration (BAC) laws, zero tolerance laws for underage drinking and driving, administrative license revocation laws, repeat offender laws, and laws addressing high BAC first-time offenders. Nearly all states have enacted nearly all of these laws.

GHSA does not support new sanctions on states that fail to enact specific impaired driving laws. States are already faced with seven safety-related sanctions (zero tolerance BAC, .08 BAC, open container, repeat offender, age 21, drug offenders, and use of seat belts). We do not believe that a sanction for states that don't have laws penalizing high BAC first time offenders is necessary since states have aggressively enacted such laws over the last few years. 40 states have some form of high BAC laws. Sixteen have stronger penalties for first time offenders at .15 BAC and above. Another six states have laws for offenders .16 BAC and above, and another four have them for offenders at .17 BAC and above. Further, penalizing states for failure to enact high BAC laws may make it more difficult for states to enact interlock laws for first-time offenders. If state legislatures are forced to enact high BAC laws for first time offenders, then they may be unwilling to also enact interlock legislation for first time offenders, regardless of the offenders' blood alcohol concentration.

In the future, states should be encouraged through incentives to strengthen (e.g. criminalize) the penalties for test refusal and to require a higher level of BAC testing for dead and surviving drivers. Enhanced test refusal laws would address a growing problem in many states. Hard core drunk drivers know how to beat the "system" by refusing the BAC test and receiving the same penalties as those that test negatively. If this loophole were closed, then hard core drunk drivers would be tested more often and would receive more appropriate sanctions. The BAC testing laws would yield better data than is currently available on the nature and extent of the impaired driving problem.

Passage of strong laws, however, is insufficient. Those laws must be strictly enforced. Enforcement has been a focus of state activity over much of the last several years. All states participate in one national DUI mobilization over Labor Day and nearly all participate in an additional mobilization during the December holidays. States also conduct enforcement efforts in between mobilizations. States in the mid-Atlantic region, for example, have joined forces to conduct frequent (e.g. monthly, weekly) sobriety checkpoints at locations throughout the region.

The difficulty is that there are insufficient resources for law enforcement. Most state police and patrols are facing large number of retirements and layoffs caused by state budget cuts. At the local level, law enforcement personnel are being diverted to homeland security and immigration law enforcement duties. It is not unusual for local law enforcement officers to be called up for active duty in Iraq. As a result, traffic enforcement has fallen to the bottom of the priority list in

many jurisdictions. More federal resources are needed to recruit, train and retain law enforcement officers to conduct sobriety checkpoints or saturation patrols.

Strong laws and consistent enforcement are two key components of a good state impaired driving program. However, these components have less impact if impaired driving offenders are not properly adjudicated. Judges are difficult to reach, and few judicial education materials are available for them. The Century Council, a 2007 winner of a GHSA achievement award, has developed excellent materials for judges on hard core drunk drivers and has trained more than 2,000 judges across the country. The reach of programs like this need to be expanded, distance-based training needs to be developed, and more federal and state resources need to be committed to judicial education.

DUI courts are a very promising approach for handling hard core drunk drivers. These courts go beyond punishment and address the offender's abuse of alcohol. Typically in a DUI court, there is prompt intake and assessment, court-ordered individualized sanctions for offenders, frequent drug and alcohol testing, treatment and aftercare services and frequent monitoring and ongoing judicial interaction with the offender. Prosecutors, defense attorneys, judges, probation, law enforcement and treatment professionals usually function as a team to systematically change behavior. The individualized sanctions are structured to maximize the probability of rehabilitation and minimize the likelihood of recidivism. These courts can involve specialized court calendars or dockets for individuals, juveniles or families rather, or hybrid drug/DUI courts than specifically designated courts. Due to the Department of Justice grant programs, most states have at least one DUI court. GHSA strongly supports DUI courts and urges additional federal funding to enable further expansion in the states. GHSA also recommends that states be allowed to use their Section 410 funding for DUI courts, an unallowable expense under the current 410 program.

Technology is one component that until recently, has received little attention. GHSA believes, as do Mothers Against Drunk Driving (MADD) and others, that technology has the potential for enabling states to make a huge difference in impaired driving. Some proven technology, such as ignition interlocks and continuous alcohol monitoring systems, are already available. Others, such as expanded uses of transdermal detection devices, are under development. Still others will be developed with the support and encouragement of the public-private blue ribbon panel on advanced impaired driving technology. GHSA eagerly joined MADD's Campaign to Eliminate Drunk Driving because we believe that technology has been a missing link in the fight against drunk driving.

This year, MADD, with the support of GHSA members in the affected states, has successfully encouraged three states (IL, LA, and AZ) to enact legislation requiring first-time offenders to have restricted drivers licenses as long as an ignition interlock is installed on their vehicle. GHSA encourages all states to enact this type of legislation. The Association would strongly oppose, however, federal efforts to sanction states for failure to enact first-time offender interlock legislation even if those sanctions were preceded by a few years of incentives. Only four states currently have such laws (the three previously named and New Mexico). Forty-six states would be subject to the sanctions if enacted.

This issue is an emerging one, and there is little state experience in how such laws will be implemented. Based on the August 22 NHTSA conference on interlocks, there are tremendous implementation barriers to be overcome and a sizeable amount of judicial and prosecutorial education that must occur before there is ubiquitous use of interlocks. A federal sanction could cause a backlash against the interlocks and undermine MADD's efforts on the state legislative front. Rather, GHSA believes that states should be encouraged, only through federal incentives, to support interlock legislation for first-time offenders.

Improvements to state laws, enforcement, adjudication and technology all need to be supported by a solid infrastructure for impaired driving programs at the state and local level. Few states have automated systems for tracking an impaired driving offender (regardless of whether they are

a first-time or a repeat offender) from point of arrest to final disposition of the offender's case. BAC testing information, which can involve several different agencies, is rarely linked or automated. Many states are beginning to use electronic citation systems, but electronic arrest records are non-existent in most jurisdictions. Judges who require the use of ignition interlocks do not always know if the interlocks have been installed or what effect they have had because there is not feedback information. In the rare event there is feedback information, it is not in electronic form. It is not unusual for offenders to slip through the cracks because information from one state or local agency is not sent to another appropriate state or local agency. Few federal funds are available to states to help them address these problems. The Section 408 program is a small federal program whose focus is primarily on improving a state's crash data system. The program is inadequate to meet that need, let alone meet the need for automating states' impaired driving information systems.

In the next reauthorization, there is a clear need to substantially fund impaired driving programs and to address the needs discussed above. GHSA will be working with NHTSA as well as this Committee and the Senate Commerce Committee over the next several months to help craft an adequately funded and appropriate federal impaired driving program for the next reauthorization.

B. Fix the current penalties

Under the current Section 164 penalty transfer program, states must enact legislation that, among other things, requires a repeat offender's license to be suspended for one year. GHSA strongly believes that the one-year hard suspension requirement actually encourages repeat offenders to drive without a license. Once an offender is out of the license control system, it is difficult to keep track of the offender or to monitor the offender's driving behavior. Further, judges are often reluctant to require the one-year hard suspension because it can affect an offender's ability to reach his/her job or go to treatment. In effect, the one-year hard suspension language may inadvertently make matters worse.

GHSA strongly supports the language in the SAFETEA-LU technical corrections bill, H.R. 1195, that would give states the option of either requiring a one-year hard suspension or a 45-day hard suspension followed by installation of an ignition interlock and limited driving privileges for repeat offenders. We encourage the Senate to enact the technical corrections language as soon as possible.

Another difficulty is that the 154 and 164 penalty programs pose a big administrative problem for the SHSO's because of the way the statutory language has been drafted. Currently, non-compliant states have 3% of their Interstate Maintenance, Surface Transportation Program and National Highway System funding transferred into the 402 program. The state then determines if it would like to spend the transferred funds for impaired driving or Hazard Elimination program purposes. There is no actual transfer of funding if a state chooses to spend the money for Hazard Elimination purposes. Instead, the state highway safety office must subcontract with its state department of transportation (DOT) to use the funding.

Since the Section 164 funds are not actually transferred to the state DOT, the state highway safety office bears the administrative responsibility for the penalty transfer funds. The SHSO must track the expenditures in the federal grant tracking system and ensure that funds are being spent for the purposes authorized. Further, because of the slow spend out rate for Hazard Elimination construction funding, most of the SHSO's have substantial amounts of Section 154 and 164 carryover money. NHTSA strongly encourages states to reduce their carryover funding. However, it is impossible for the SHSO's to reduce their Hazard Elimination 154 and 164 carryover funds since they have no control over that funding. In effect, the SHSO has all the administrative burdens of the Section 154 and 164 funds that are spent for hazard elimination purposes but none of the benefits of that funding.

A simple statutory fix is needed. If a state chooses to use its Section 154 or 164 funding for Hazard Elimination purposes, then the funding should be transferred to the state DOT and that agency should be administratively responsible for the funds.

C. Oppose efforts to weaken underage drinking law

Recently, Parade magazine published a story about the National Minimum Drinking Age (NMDA) law intimating that the drinking age should be lowered to 18. Further, former Middlebury College President John McCardle formed a non-profit association to promote the lowering of the drinking age as well as education and regulation of 18-year old drinking behavior. These developments have put a spotlight on the NDMA and its effectiveness.

According to NHTSA, nearly 25,000 teen traffic deaths – an average of almost 1,000 per year -- have been prevented since the enactment of the NMDA. Since enactment, the number of teen drivers killed in alcohol-related traffic crashes has been cut in half, self-reported alcohol use by high school seniors has dropped by 20% and self-reported binge drinking has declined by an estimated 40%.

The Centers for Disease Control (CDC) reviewed more than 100 studies of the impact of the NMDA and found more than 50 which were considered high quality. In its meta-analysis, CDC found that increasing the drinking age decreases fatalities and crashes by 16% and lowering it increases fatalities and crashes by 10%.

Since enactment of the NMDA, researchers at the National Institutes of Health have made great strides in understanding adolescent brain development. They have found evidence that alcohol consumption negatively impacts adolescent brain as well as nervous system development. One important study showed that more than 40% of individuals who begin drinking before age 13 are classified with alcohol dependence at some time in their lives. The study also found that lifetime alcohol dependence decreases steeply as age at onset of drinking increases. Lowering the drinking age wouldn't solve the problem of underage drinking. It would simply push that drinking down to younger aged children.

The evidence is clear: the NMDA has worked exceedingly well and is one of the strongest policy tools in the state arsenal. Protecting the health of young people – our country's future -- should be of paramount importance, more so than the fact that there are in disparities in public policy affecting young people. Lowering the drinking age would be a gigantic and harmful step backward. GHSA strongly opposes such a move and is proud to be a member of the Support 21 coalition.

Thank you for the opportunity to present the views and ideas of the Governors Highway Safety Association.