

**Submission to the Transport and Industrial Relations
Select Committee**

Land Transport (Road Safety and Other Matters) Amendment Bill

**Submitted by Gerald Waters on behalf of the friends and family of
Katherine Kennedy**

2010

Introduction

In March of 2010 on a road near Kerikeri, Katherine Kennedy was killed by a recidivist drink driver with 17 previous convictions for drink driving. I have witnessed at first hand the devastating effects that drink driving has had on her family, friends and the community that mourns her death. I have spent some time studying alcohol impaired driving in New Zealand and have also researched data including:

- Worldwide studies of recidivism
- Studies on counter measures such as alcohol ignition interlocks
- BAC level and accident rate correlation
- Worldwide studies of lowering of the BAC
- Rehabilitation and treatment of drink drivers
- Therapeutic jurisprudence
- Studies on worldwide drink driving sanctions
- Data and statistics on drink driving in NZ

I would like to present my findings to the committee by oral submission.

Executive Summary

In this submission I will present my findings, conclusions and recommendations in respect of the Amendments to The Land Transport Act. In particular:

- (a) Lowering the youth drink drive limit
- (b) Introduction of alcohol ignition interlocks
- (c) Introduction of a zero BAC for repeat offenders
- (d) Lengthening the penalties for dangerous driving causing death

The key points to emerge from my research are that:

- There is evidence that most New Zealanders who drink and drive do so responsibly and well below current allowed levels. BAC levels of 0.05 and above significantly impair driving skills
- Alcohol interlocks are an invaluable and versatile tool for tackling first time detected drink drivers and repeat offenders. They are also of great use to monitor the habits and behaviours of drink drivers
- The zero BAC level for repeat offenders, on its own, falls far short of the necessary actions needed to address this problem. They will be of little or no use as a deterrent and have little or no utility value. Recidivist drink drivers usually have alcohol abuse/dependence issues just telling them they are not allowed to drink or drive will prove meaningless. Disqualified drivers often drive while disqualified
- Rehabilitation and treatment of recidivist impaired drivers are greatly under-funded. Few convicted drink drivers are ordered to undergo an assessment. Banned drink drivers are not monitored during the length of their disqualification
- The sentence range currently available to judges for impaired drivers causing death is inadequate and out of touch
- We must invest in the long term

Lowering the youth drink drive limits

The findings on lower limits for young drivers were reported in a paper regarding the road safety impact of establishing blood alcohol concentration levels at 0.05. This paper pointed out the reduction in injury accidents when a zero BAC is used for young drivers and that the most appropriate level for young drivers is zero BAC.¹

Lowering the BAC

Studies on the relationship between BAC levels and accident risk date back to 1962.²

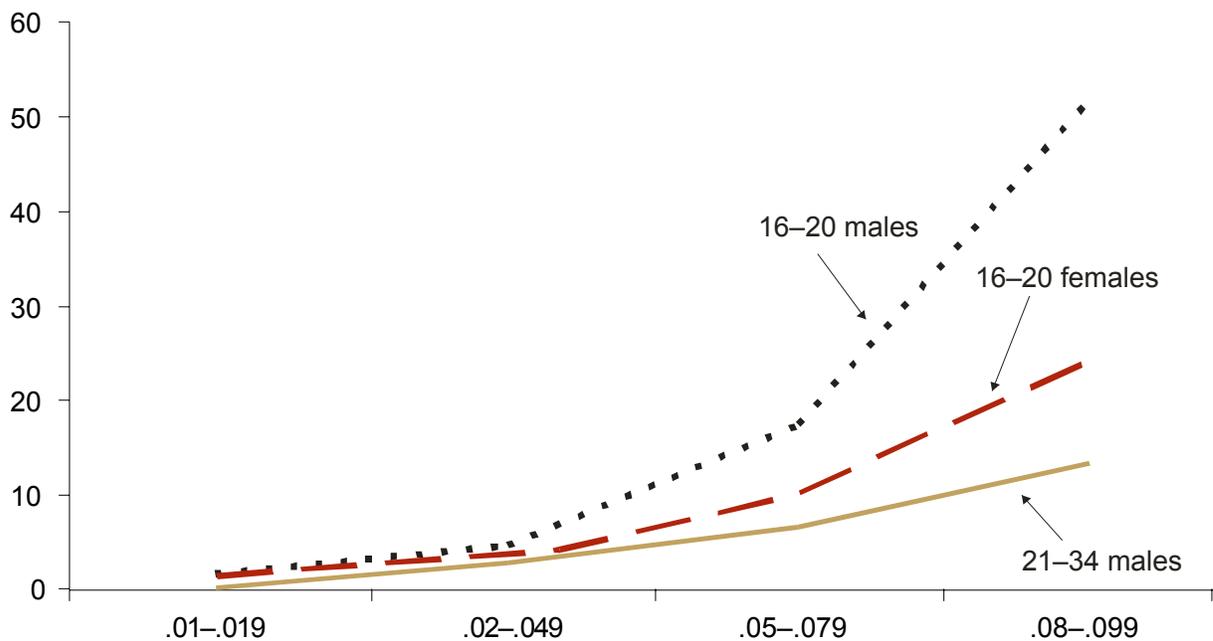


Figure 1

Relative Crash Risk by BAC and Driver Age (adapted from Blomberg et al., 2005)³

The scientific evidence accumulated over the past 50 years indicates a direct relationship between rising BAC levels and the risk of being involved in a motorvehicle crash.⁴

¹ Frith and Strachan, 2002

² Borkenstein et al., 1964

³ Graphic courtesy of James Fell. Correspondence with author, 2010

⁴ Fell & Voas, 2009

In a further information paper they prepared for the Minister this year the Ministry of Transport concluded that a lowering of the BAC from 0.08 to 0.05 would save lives and money. They found that lowering the adult drink drive limit would be the strongest initiative in the area of Safe Road Use. They estimated that each year this initiative could save between 15 and 30 lives and prevent between 320 and 686 injuries. This would be an annual social cost saving of between \$111 million and \$238 million.⁵ They have also revealed overwhelming support for such measures in NZ from the public and stakeholder submitters to the Safer Journeys initiative. They also put to rest arguments that said that it would unfairly criminalize cautious law-abiding motorists.⁶ Other studies have shown that the most effective measure that will see a dramatic reduction in the NZ road toll is to lower the blood alcohol level.⁷

I conclude that the Ministry of Transport is correct and it is obvious that lowering the BAC to zero for young drivers and to 0.05 for adults will lessen dramatically the cost in lives and money. It appears that there are no arguments against the nearly 300 worldwide studies that this is proven to save lives. It is also my conclusion that any delay of this initiative for the purposes of unnecessary further study will cause needless injury and death to NZ road users.

‘The number of repeat drink-drivers caught on New Zealand roads is showing a worrying upward spiral, and is a problem police are struggling to counter. The number of recidivist drink-drivers has risen steadily over the past three years, and more than 4000 have been prosecuted already this year. Many of them are involved in fatal crashes. Figures released to the Herald on Sunday under the Official Information Act reveal 7200 people were convicted of their third or more drink-driving offence in 2009 compared with 6995 in 2008 and 6639 in 2007.’⁸

| Year | Number of alcohol offenders |
|------|-----------------------------|
| 2007 | 30968 |
| 2008 | 34272 |
| 2009 | 34679 |

Source: Ministry of Transport

⁵ Ministry of Transport. Further information paper, 2010

⁶ Ibid

⁷ Alcohol Healthwatch Briefing Paper, 2003

⁸ NZ Herald, website, Aug 29, 2010

The introduction of compulsory alcohol interlocks for repeat drink drive offenders and first time offenders convicted of a high excess blood alcohol offence

The interlock programme, as proposed in the Land Transport (Road Safety and Other Matters) Amendment Bill, will give the Court an option to sentence a person to an interlock in lieu of a longer period of disqualification. The offender will either be disqualified and fined (or jailed) as the penalty regime allows for currently, or will be given an alcohol interlock disqualification. This means that the offender will be disqualified for three months, and then will have to apply for an alcohol interlock licence. While on the alcohol interlock licence they will only be able to drive the vehicle that they have nominated and have had fitted with an alcohol interlock. If a person does not get an interlock fitted, they will not be allowed to drive. If they do continue to drive, they will face penalties similar to driving while disqualified. A person will be required to have an interlock for a 12- month period, and will have it removed when they have satisfied the exit criteria for the programme, either 6 months with no violations, or 3 months with no violations and complete an alcohol assessment to show that they are managing their alcohol issues. A “violation” covers many things, for example if the person fails to start the vehicle because of a high BAC, if a person tries to tamper or circumvent the interlock, or if they fail to take a retest. The qualification for this option applies to serious drink drivers (BAC reading of 0.16 or higher) or repeat offenders (2 or more convictions within a 5-year period)⁹

The proposed use of the interlock in New Zealand will produce the same results reported by the Sentencing Advisory Council, Australia, last year.

“The council has found that many drink drivers continue to drive during the (initial) disqualification period and because of the cost and complexity of the relicensing process many do not undertake it but simply continue to drive without a licence and hence without an alcohol interlock.”¹⁰

The 3-month disqualification period before interlock is too long. A repeat drink driver who decides to drive disqualified will be highly unlikely to apply for an interlock license if he believes he can avoid detection - after all they have only been caught once or twice in all the time they've been drink driving. We have the benefit of hindsight, we should use it.¹¹

⁹ Ministry of Transport. Correspondence with author, 2010

¹⁰ Sentencing Advisory Council, 2009

¹¹ M Hands, 2004

The interlock intervention suggested is aimed at ‘serious drink drivers’. Studies suggest a driver with a level of 0.08 BAC or more would be significantly impaired¹² and pose a great danger to other road users and themselves. Most New Zealanders drink and drive sensibly. A recent Survey has shown that most New Zealanders think a 0.08 BAC level for driving is far too high. 85 % of those surveyed said a driver should only have one or two drinks well below even a 0.05 BAC level.¹³

Proportion of drivers involved in alcohol-related fatal crashes from 2005-2007 by prior offending history¹⁴

| Prior offending history period | Number of prior drink-driving offences within prior history period | Proportion of drivers involved in alcohol-related fatal crashes between 2005-2007 |
|--------------------------------|--|---|
| 5 years | None | 77% |
| | One | 15% |
| | Two | 5% |
| | Three or more | 3% |
| 10 years | None | 70% |
| | One | 17% |
| | Two | 7% |
| | Three or more | 6% |
| Lifetime | None | 67% |
| | One | 13% |
| | Two | 7% |
| | Three or more | 13% |

Source: Ministry of Transport

As can be seen in the above table, from 2005-2007, 77 % of the drivers involved in fatal crashes involving alcohol had no previous drink-driving offences in the 5 years before the crash. The figures are similar for casualty and serious crashes.¹⁵ Under the proposed terms of the interlock intervention, any of these if detected, would not qualify for the installation of a device that could prevent a fatality. I find this alarming. The table also seems to show that repeat offenders, while posing a real danger, make up only about a quarter of those involved in casualty, serious and fatal crashes. The majority are by those with no previous conviction. Evidence, though, would suggest that a first

¹² Ministry of Transport. Further information paper, 2010

¹³ *ibid*

¹⁴ The information is limited to those crash-involved drivers with valid licences only when linking the Crash Analysis System (CAS) and Driver Licence Register (DLR) information. Approximately 12% of the crash-involved drivers were either missing or had an invalid driver licence number for these analyses.

¹⁵ Ministry of Transport. Further information paper, 2010

conviction in no way implies first-time offending, indeed quite the opposite. In all likelihood these ‘First time offenders’ are likely to be first time detected repeat offenders.¹⁶ Non-compliance of the interlock sentence will result in more long-term disqualifications.

Long-term (hard) disqualification as a sanction for repeat drink driving.

While fines and licence suspension and similar sanctions may work well as deterrents for the majority of drink drivers there is a growing body of evidence that hard licence disqualification for repeat drink driving does not work.¹⁷ For these offenders, it appears, sentences of hard disqualification on their own fail to fulfill the very purposes of the Sentencing Act itself.¹⁸ Repeat drink drivers frequently ignore sentences that disqualify them from driving.¹⁹ There are definite links between drink drivers and driving while disqualified.²⁰ There is even evidence to suggest that hard disqualification just makes the offender more educated in ways to avoid detection.²¹ They drink and drive even while knowing that there is a good chance that they will get caught.²² In NZ more and more drivers are getting hard disqualification for drink driving and other offences every year. The Ministry of Transport's RIS²³ observes this also.

| | Total number of disqualifications |
|------|-----------------------------------|
| 2007 | 47757 |
| 2008 | 52047 |
| 2009 | 52434 |

| | Total number of disqualifications due to an alcohol-related offence |
|------|---|
| 2007 | 26763 |
| 2008 | 30274 |
| 2009 | 31345 |

Data is limited to full and indefinite disqualifications only (excludes partial disqualifications)

Source: NZ Transport Agency

¹⁶ D.J DeYoung, 2007. Willis C, Lybrand S, Bellamy N, 2009

¹⁷ B M Sweedler & K Stewart, 2000. J Fell. Correspondence with author, 2010

¹⁸ E Marriot, 2009

¹⁹ ibid

²⁰ Sentencing Advisory Council, 2007

²¹ B.C Watson, 1998

²² L W Bakker, S M Hudson & T Ward, 2000

²³ Ministry of Transport Regulatory Impact Statement, 2010

Long term disqualification for recidivist drink drivers fails and will continue to²⁴ in nearly every way in terms of the purpose of sentencing i.e. retribution, utility, rehabilitation and specific deterrence. There is some evidence that it works as a general deterrent²⁵ but also evidence that it doesn't deter but actually creates offenders.²⁶ Interlocks however cover all the requirements of sentencing and more.²⁷ Retribution is covered by the cost and upkeep of the interlock. The utility or specific deterrent value is obvious as it will not allow the vehicle to be started if there is an illegal breath sample. The rehabilitation value of the interlock cannot be underestimated. There are no studies to prove its effect as a general deterrent but the shame and connotations the fitting of an interlock has should be of deterrent value to most citizens. A trial (see appendix II) of interlocks for first-time offenders with criteria-based removal after 6 months and an advertising campaign to inform the public on how these devices work and modeled to encourage deterrence will provide such data. The driver that killed our friend had 19 convictions for driving while disqualified, his history not being the worst nor an isolated high conviction case. (See Appendix I) I must comment that I believe he would not have chosen to have an interlock fitted given the opportunity. On the Ministry of Transport website page 'Alcohol package FAQs' it states:

'Overseas research on interlock programmes suggests that interlocks are superior to licence disqualification in preventing repeat impaired driving offences while they are installed. A number of jurisdictions in the United States, Canada, Australia and Europe have interlock programmes for drink drivers.'

So why don't we fit interlocks to all detected drink drivers? For an answer I contacted **Ted Miller, PhD**, a world-famous health and injury economist and **Dr. Richard Roth, PhD, Paul R. Marques, PhD, and James C. Fell, M.S.** These gentlemen are world-recognized authorities on the study of impaired driving and in particular alcohol ignition interlocks. I asked them "What is the most effective use of interlocks?" Their collective answer was "***Interlocks should be installed on the vehicles of all convicted impaired drivers.***" The following statistics are the effects of interlocks for all convicted impaired drivers.

²⁴ ibid

²⁵ B. C Watson & V Siskind, 1997

²⁶ S Lenton, J Fetherston & R Cercarelli, 2009

²⁷ Dr. Richard Roth likened it to 'A 24hour parole officer in the front seat'. Correspondence with author, 2010

More Interlocks, Fewer Alcohol-Involved Crashes, Injuries, and Fatalities

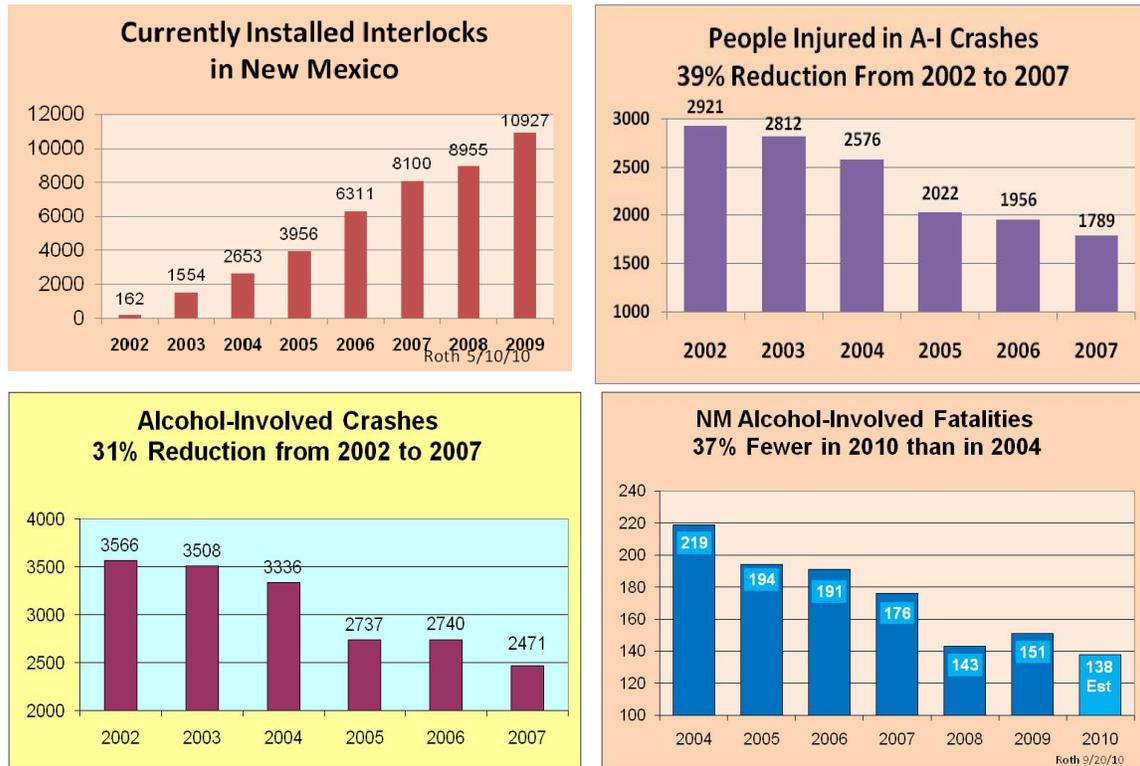


Figure 2

Fed up with high rates of recidivism, New Mexico lawmakers started building the state's entire DUI (Driving Under the Influence) reform effort around increased use of interlock devices. Interlocks were made mandatory for all DUI offenses. Figure 2 shows the results.²⁸ A study of the interlock usage in New Mexico showed evidence that interlocks are as effective with first offenders (approximately 60% reduction in recidivism when on the vehicle) as they are for multiple offenders. In addition, the benefits of requiring an interlock for first offenders exceed the costs by a factor of three.²⁹ The Ministry of Transport's RIS reported nearly 6000 interlocks installed in New Mexico in 2006. The actual figure was 6311. There are now well over 10,000 interlocks installed. I believe the Ministry of Transport underestimates the amount of lives that will be saved, injuries avoided, and the overall savings in social cost, in several years time, by the use of interlocks for all offenders.

²⁸ Statistics supplied courtesy of Dr Richard Roth. Correspondence with author 2010

²⁹ R Roth, R Voas, P Marques - Traffic Injury Prevention, 2007

Barriers to installing interlocks for all EBAs

- Cost could be a factor, in that offenders cannot afford to install interlocks. I would suggest that it is we who cannot afford *not* to install them. Those offenders who claim to be unable to pay for an interlock should be means tested. An indigent fund should be created to pay all or part of the costs of the interlock. While I believe that the expense of the interlocks is a vital part of its retributive/deterrent value, the small cost of supporting those who are unable to pay for the interlock themselves should not be a barrier to safety. Offender costs when measured on a national scale are a barrier to legislators. Last year crashes involving alcohol resulted in 137 deaths, 565 serious injuries and 1725 minor injuries at an estimated social cost of \$875 million. If we want to get the same outstanding results as New Mexico we need to be prepared to look further than the costs next year. We must invest for the long term.
- Current disqualification laws are a barrier to effective interlock use. Long-term licence disqualification for first and second time detected offenders as an initial penalty should be discontinued and replaced with a short period of suspension before interlock installation. I'd suggest a target of 28 days.
- Inability to operate interlock. I suggest that if the offender believes they are capable of operating a motor vehicle requiring the interactions of a complex set of skills while intoxicated, operation of an interlock while sober should pose no significant problems.
- It has been suggested that the large populations of some countries mean that this approach may be unfeasible, but for a country the size of NZ with its rural areas where detection efforts are harder, the interlock is perfect. NZ should lead the way in road safety working towards zero.³⁰
- No car barrier. I suggest that all detected offenders have their vehicle impounded until they have their interlock license. For other sentencing and penalty suggestions see Appendix II.

³⁰Organization for Economic Cooperation and Development, 2008

- The argument that interlocks have no long term effect on recidivist offenders. Well, neither do the current sanctions but we still go on using them. There is in fact evidence that interlocks do reduce recidivism³¹ especially when used with an appropriate treatment/rehabilitation program.³²
- Finally the will to undertake such a massive “sea change” in the approach to drink driving. I have no answers or research on this but hope that the Committee may seek some on behalf of everyone in New Zealand.

Conclusion

I believe the majority of New Zealanders who drink and drive do so below the 0.08 and even the 0.05 BAC level. Those first time EBA (driving with excess breath/blood alcohol) offenders are highly likely to be recidivist first-detected offenders. These people need to have interlocks fitted as soon as possible. Again this is addressed in the Ministry of Transport’s RIS. The usual 6 month suspension will have little or no effect on these offenders and may in fact push their evasion tactics to new levels. Interlock data provides a valuable opportunity to monitor the habits of the offender and therefore enable an accurate assessment of the individual’s drinking problem. Without the ability to monitor the level of their problem we have learned nothing.

We know that, for whatever reasons, the Government is not going to lower the BAC level for adults. We have also established that lower BAC means lower accident risk. Alcohol interlocks are in no way a miracle cure for the problem of drink driving but they do offer a tool that can be used in many different ways. All too often these offenders have been grouped together under the narrow heading of ‘drink drivers’ when it is apparent that they present a multi-faceted problem involving individuals with unique socio-economic factors that contribute to their particular problems.³³ Interlocks will provide details of failed start-up attempts and therefore a unique record of the level of problem each offender has, allowing a much less homogeneous approach to drink drivers. (See appendix III)

³¹ Richard Roth. New Mexico Ignition Interlock FAQ’s. Correspondence with author, 2006

³² R Voas, P Marques & R Roth, 2007

³³ Bakker, et al, 2000

The interlock is ideal for first-time offenders who, once detected, will have the opportunity to still enjoy the privileges of driving. It will also help separate drinking and driving and reinforce good driving practice. There is the added benefit that instead of punishing the offender he is in fact being rewarded by still being allowed the privilege of driving. As such we can perceive the interlock as a safety device rather than a punishment. We have now removed the negative attachment of hard disqualification which often results in many, particularly repeat offenders, driving while disqualified anyway.³⁴ The observed best practice use of the interlock is interlocks for all detected offenders.

If the intention is to prevent death and injury by drunk drivers then let's adopt a serious approach. Let's catch the drink drivers, insert technology that stops the offence, review who is a threat, and who can be rehabilitated either under their own recognizance or with further support. Let's not let the worst offenders get disqualified only to slip off the radar until the next time they appear and it is too late. The Ministry of Transport knows all this; it has reported the exact same thing in its Regulatory Impact statement:

'International practice is now moving away from restricting use of interlocks to repeat offenders. The benefits of interlock use have been well researched and documented, and there is a proven reduction in reoffending after using an interlock. To get the maximum benefit from an interlock programme, first time offenders should be included as they make up a significant percentage of the overall drink driving population. The use of an interlock after the first conviction maximizes the chance of changing the offender's attitude towards drink driving, and reduces the risk of the offender re-entering the criminal justice system.' Source- **Ministry of Transport Regulatory Impact Statement, 2010.**

While there is no guarantee that there will be no reoffending upon interlock removal, we will have stopped many attempts at impaired driving by using the interlock. Offenders who having served a period of interlock condition but who are then caught offending again have to be treated differently as they are now repeat detected offenders.

³⁴ Clark B & Bobevski I, 2008

Introduction of a zero drink drive limit for repeat offenders

While I agree with the intervention logic of zero BAC for repeat offenders, it is similar to the logic of complete abstinence as a cure for alcoholism. Just telling an alcoholic he can't drink isn't going to work without some sort of treatment program. As a stand alone solution it falls far short of tackling this issue with any serious intention of protecting the public from repeat offenders, as the Ministry of Transport's RIS also concludes. The NZ Police force does an amazing job of detecting impaired drivers. Having to tackle repeat offenders is a waste of time and resources. I have talked to police officers who tell me of their despair at the number of repeat offenders they apprehend. The current approach to drink driving deals with the crimes caused by drinking, but not the drinking itself.

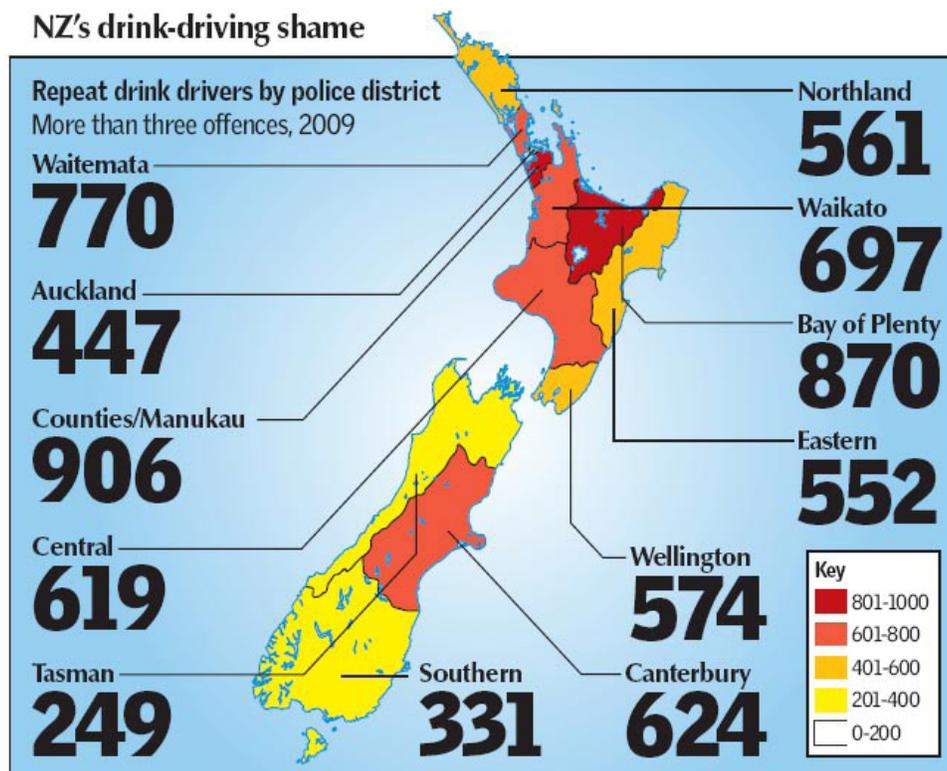


Figure 3

Source: NZ Herald, 29th August 2010

*.. 'A combination of interlocks with an associated intervention and/or support program may also provide participants with the opportunity to practice and consolidate newly developed skills and strategies to avoid the drink driving sequence.'*³⁵

³⁵ Freeman J & Lioassis P, 2002

As the proposed amendments stand those offenders ordered to fit an interlock and not applying for an interlock licence will hold the licence status “of no effect”. They will be recidivist drink drivers with no licence, in possession of a vehicle, with no further monitoring. I find this unacceptable. These offenders should at least have their vehicle immobilized. Offenders who do not comply with the Courts and those who fail the criteria for early interlock removal should be dealt with in a DUI-style court. In the U.S.A DUI Courts are used where multidisciplinary groups including the police, judges, lawyers, probation, rehabilitation and healthcare professionals are involved collectively, coherently and efficiently to deal with recidivist impaired drivers in a surrounding that is consistent. In these courts the offenders’ problems can be properly and informally dealt with and the necessary and appropriate actions taken.

‘The establishment of Alcohol and Drug Courts for offenders who are presenting with offending that involves alcohol and drug use would help to integrate services and provide opportunities for people to address their alcohol and drug issues and reduce the harm to society and themselves.’³⁶

Rehabilitation

I have talked to Roger Brooking, Director of the Drink Driving Intervention Trust and the New Zealand Drug Foundation who inform me of the low number of convicted offenders who are referred for assessment and also the inadequate and under resourced services available for alcohol impaired drivers.

‘Offenders with a history of alcohol dependence/abuse need to be treated if there is any chance to change their behaviour’.³⁷

Roger Brooking has found a legal loophole which means disqualified serious drink-drivers are getting their licences back without any assessment or treatment. These concerns have been brought to the attention of the Transport Minister Steven Joyce who has pledged to review the situation. I have met with Mr Brooking and am shocked at his discovery. I believe Mr Brooking will be submitting to this Committee and will leave him explain his findings.

³⁶ Paul Langdon. Correspondence with author 2010

³⁷ Beirness et al., 1997

‘I have worked in the addictions field for 16 years and I support Gerald Waters’ submission to use Interlockers to reduce the significant harms that people who drink and drive pose to the general public. This intervention provides objective accountability and the opportunity for people who have been convicted of an EBA charge to rebuild trust.

If used with first offenders a pathway to an alcohol assessment would be imperative for anyone who breaches the parameters set with the use of interlockers. It has been my experience that many people who have had a number of drink driving convictions have not been sent for an alcohol and drug assessment when their repeat offending clearly indicates they have had an alcohol problem.’³⁸

I was in the court when the driver who killed our friend was sentenced. I did not see a violent killer who was intent on killing, in the dock that day. I saw an out-of-control alcoholic who had presented himself as such on many previous occasions. I saw a man with a disease the justice system had failed to acknowledge or treat and, like any untreated disease, death was inevitable.

Conclusion

Without assessment plus the support of treatment and monitoring, alcohol impaired recidivists will continue to cause death and offend until they eventually fill our jails and morgues and outrage a public who see the growing statistics as a sign of the failure to understand the problem, just as sanctions fail to address the issue as disqualified drivers repeatedly drink drive without any sort of monitoring while they are disqualified. It is wholly unacceptable that repeat offenders are allowed back into society without any serious attempt at rehabilitation, treatment or monitoring. Rehabilitation and treatment are the ideal but need to be supervised closely. Subjects resistant to therapy, to the point where it is useless, need swift penalties to protect the community. Those who pose a serious danger to the public cannot be allowed to be in a position to re-offend.

³⁸ Paul Langdon. Correspondence with author 2010

Lengthening the sentences for drink driving causing death

We have now reached the point where after all our endeavours, the reality of why we abhor drink driving has brought us to the reasons we are amending the Land Transport Act. In cases of drink driving causing death/injury, judges need to be given more choice with regard to the length of sentences they can impose. While a low level first time offender who causes death/injury by drink driving is still a serious offender, it is hoped that the hurt caused, guilt and shame of the offence, along with an appropriate sentence will be enough to stop offending. An extreme recidivist with multiple past convictions committing the same offence, however, needs to be given a sentence that protects the public. A longer sentence range could be utilized to serve this purpose. The judge that sentenced the driver who killed our friend imposed the maximum sentence; there were no mitigating circumstances, only aggravating. In fact, so many aggravating circumstances that she said “If I could sentence you to a longer term of imprisonment I would”. The families, friends and loved ones of victims of death/injury by drink driving deserve to be assured that society recognizes this tragedy and are repulsed by it and will do all it can to see that this offender cannot be in a position to do this again. The 5 year maximum sentence now available is amongst the lowest in the world.³⁹ The driver that killed our friend had been incarcerated on many occasions for drink driving and had only been released from jail 10 days before he killed our friend. He’d been in jail for drink driving.

While I appreciate the apprehension of Governments towards positive investment in our futures, when measured in dollars and cents, the cost of deaths and injuries caused by drink drivers is incalculable. The loss of caring, compassionate and community spirited people like Katherine Kennedy must be foremost in the minds of legislators.

³⁹ ‘Judge Bruce Davidson said’ New Zealand's maximum of five years prison for alcohol-impaired driving is amongst the lowest in the world. This compared to the United States where 20 to 25 years, or even a life sentence, could be imposed.’ Source: NZ Herald, 2010.

Recommendations

If the Government seriously wants to work towards a safe road system free of death and serious injury, then a comprehensive overhaul and study needs to be undertaken of the methods and programs that are needed to achieve this, including:

- **Major investments in assessment and rehabilitation programs. Creation of drink driving Courts to deal with repeat offenders. Compulsory assessment for repeat offenders including tests for alcohol.**
- **Replace the current 6-month disqualification for first-time offenders with compulsory alcohol interlocks set at 0.02 BAC level (to allow for false positives). Criteria-based removal after 6 months. Offenders issued with 0.02 BAC licences for 2-year period. Indigent fund for means tested offenders. (see appendix II)**
- **More initiatives aimed at young offenders are needed before unacceptable behaviors such as impaired driving become entrenched. Programs such as ‘The Right Track’⁴⁰ need to be Government-funded and part of the solution for this social endemic problem facing all New Zealanders.**
- **Advertising and public awareness needs to be re-invented and not used to brand and alienate these offenders as merely ‘idiots’ but as sick people with substance abuse/dependence problems.**
- **A longer sentence length is necessary for the charge of causing death by drink driving. Allowing judges more power to remove high threat recidivists and protect the public. I’d suggest at the maximum end 14 years.**
- **Invest in the future.**

⁴⁰The Right Track is supported by NZ Police, NZ Fire Service, Auckland City Council, Waitakere District Council, Rodney District Council, CYFS, Department of Probation and Psychological Services, Waitakere and Auckland District Court judges and is funded through partnerships with Braveheart Youth Trust, The Charitable Trusts Foundation, Sky City and ASB Trust. The original Right Track Programmes focused on young people aged between 15 and 18 within the Youth Justice System. Whilst this remains the primary focus, The Right Track has successfully implemented two new initiatives driven by the justice system including a programme that caters for young people who have yet to offend and who have a sphere of influence with their peers; and secondly, a programme that caters for recidivist and adult offenders. Both provided further evidence of The Right Track’s developmental potential and success. NZ Police statistics show clear evidence of effectiveness. **The Right Track has achieved an 83% non-recidivism success rate** for participants across all programmes since its inception in February 2007.

References

- Alcohol Healthwatch Briefing Paper. (2003). Reducing the Legal Blood Alcohol Concentration for Driving in New Zealand. Pages 16-17.
- Bakker, L.W., Hudson, S.M., & Ward, T. (2000) Reducing Recidivism in Driving While Disqualified: A Treatment Evaluation, Criminal Justice and Behaviour.
- B. C Watson & V Siskind. (1997). The effectiveness of licence restriction for drink drivers. In *Proceedings of the Road Safety Research and Enforcement conference*, Hobart. Tasmania.
- Beirness, D.J., Mayhew, D.R., & Simpson, H.M. (1997). *DWI Repeat Offenders: A Review and Synthesis of the Literature*.
- B.M Sweedler & K Stewart. (2000). Vehicle sanctions: An effective means to reduce impaired driving. *The 15th International Conference on Alcohol, Drugs and Traffic Safety*, Stockholm, Sweden.
- Clark B & Bobevski I. (2008). Disqualified Drivers in Victoria: Literature Review and In-Depth Focus Group Study. Monash University Accident Research Centre. Report No. 274. Page 111.
- D.J DeYoung. (2007). Ignition Interlock- Silver Bullet for Drunk Driving? Barriers and Promise. *T2007, incorporating the annual meetings of International Council on Alcohol, Drugs, and Traffic Safety (ICADTS), The International Association of Forensic Toxicologists (TIAFT), and the 8th Ignition Interlock Symposium (IIS)* Seattle, Washington.
- E Marriot. (2009). Submission to the Sentencing Advisory Council - study of driving whilst disqualified or suspended. Springvale Monash Legal Service. Pages 8 - 11.
- Freeman, J & Liossis, P. (2002). Drink driving rehabilitation programs and alcohol ignition interlocks: Is there a need for more research? *Road and Transport Research*, 4, 3-13.
- Frith and Strachan. (2002). Road safety impact of establishing blood alcohol concentration levels at 0.05. Land Transport Safety Authority of New Zealand. Page 6.
- J Fell & R Voas. (2009). Reducing Illegal Blood Alcohol Limits for Driving: Effects on Traffic Safety. - In *Drugs, Driving and Traffic Safety*, J.C. Verster, S.R. Pandi-Perumal, J.G. Ramaekers, J.J. deGier, Editors, Publisher: Birkhauser. pp 415-437
- R Roth, R Voas, P Marques. (2007). Interlocks for First Offenders: Effective? - *Traffic Injury Prevention*, Volume 8, Issue 4, pages 346 – 352

M Hands. (2004). Working With the Benefit of Hindsight: A Perspective on Alcohol Interlocks.

Ministry of Transport. (2010). Further information on the proposal to lower the adult drink drive limit to BAC 0.05. Pages 1-22.

Ministry of Transport Regulatory Impact Statement. (2010). Completing the actions to address alcohol-impaired driving.

Organization for Economic Cooperation and Development. (2008). Towards Zero. Ambitious Road Safety Targets and the Safe System Approach. International Transport Forum, Transport Research Centre.

R Voas, P Marques & R Roth. (2007). Incapacitating the DUI Offender: Dealing with the No-Car Barrier to Interlocks. *T2007, incorporating the annual meetings of International Council on Alcohol, Drugs, and Traffic Safety (ICADTS), The International Association of Forensic Toxicologists (TIAFT), and the 8th Ignition Interlock Symposium (IIS)* Seattle, Washington.

Sentencing Advisory Council. (2009). Driving While Disqualified or Suspended. Information Paper.

S Lenton. (2008). Working with windows: Translating drug research into drug policy. In D. Moore & P. Dietze (Eds.), *Drugs And Public Health: Australian Perspectives on Policy and Practice*. pp. 179-190. Melbourne: Oxford University Press.

S Lenton, J Fetherston & R Cercarelli. (2009). Recidivist drink drivers' self reported reasons for driving whilst unlicensed- A qualitative analysis. *Accident Analysis and Prevention* 44, pp 637-644.

Willis C, Lybrand S, Bellamy N. (2009). Alcohol ignition interlock programmes for reducing drink driving recidivism (Review). The Cochrane Collaboration. Published by John Wiley & Sons, Ltd. Page 2.

Correspondence with author included:

- **Dr. Richard Roth, PhD** –World-recognized expert on DWI
- **James C. Fell, M.S.** - Senior Program Director, Pacific Institute for Research & Evaluation
- **Ted Miller, PhD** - Principal Research Scientist, Pacific Institute for Research & Evaluation
- **Paul R. Marques, PhD** - Senior Research Scientist, Pacific Institute for Research and Evaluation
- **Mark Stockdale** - Senior Policy Analyst, The New Zealand Automobile Association Incorporated
- **Catherine Milburn** - Policy Analyst, New Zealand Drug Foundation
- **Dave Taylor** - Community Development Worker, Springvale Monash Legal Service Inc.
- **Jennie Connor** - Professor and Head of Department Preventive and Social Medicine, Dunedin School of Medicine
- **Jos Mason** - NZ Bikers Against Drink Driving
- **Professor Simon Lenton** - PhD MPsych(clin) MAPS, Deputy Director, National Drug Research Institute
- **Roger Brooking** - Director of the Drink Driving Intervention Trust, Wellington
- **Helen Fielding** - Principal Policy Advisor, Alcohol Advisory Council of New Zealand
- **Peter Raynes** - Senior Sergeant, Acting Road Policing Manager, Counties Manukau, NZ Police
- **New Zealand Transport Agency**
- **New Zealand Department of Corrections**
- **New Zealand Ministry of Justice**
- **Statistics New Zealand**
- **New Zealand Ministry of Transport**
- **Professor Doug Sellman - MBChB PhD FRANZCP FACHAM**, Director, National Addiction Centre New Zealand
- **Professor Barry Watson, PhD** – Director, Centre for Accident Research and Road Safety - Queensland (CARRS-Q)
- **Paul Langdon, B.A DAPAANZ Reg. Prac.** - CADS Mt Eden Abstinence Programme
- **Dorothy Begg PhD MPH** - Senior Research Fellow, Co-ordinator Road Safety Research, Injury Prevention Research Unit, Dunedin School of Medicine

I will be happy to supply the committee with any further proofs, studies, information or documents that they require

Appendices

Appendix I

Recidivist and High-Level Offenders NZ

(Source: NZ media)

One of the country's worst repeat drink-drivers has been jailed for two years after his 20th conviction for drink-driving and his 35th for driving while disqualified. Andrew Tawhara, of Kerikeri, is "a very real and serious danger to the community", Judge Keith de Ridder said during sentencing in the Kaikohe District Court. The court heard that the 47-year-old was at a friend's place drinking on April 22 when he asked his partner to pick him up. Because she had eye trouble, he took the wheel, and was driving on the Kerikeri Heritage Bypass when he saw a police checkpoint ahead.

Bay of Plenty man Richard Steven Rowe was sentenced this morning for drink-driving at the Hamilton District Court. The conviction is his 24th for driving while drunk, and he has 27 convictions for driving while disqualified. At the time he was caught, he was on home detention for a previous drink driving conviction. He's been drink-driving for over a quarter of a century.

A district court judge says jail is inevitable for a recidivist drink-driver who told police he didn't care about being caught because he would get just a "slap over the hand" from the judge. Judge Kevin Phillips told Barry Patrick Monaghan, a dairy farm worker that his attitude was a major concern and alarming as he remanded the 46-year-old, in custody, to await sentence for his seventh drink-driving conviction. Police prosecutor Sergeant Penny Stratford said Monaghan was stopped by Gore police on July 8 after his car was seen drifting in Main St. His speech was slurred and he smelt of liquor. Monaghan explained to police he had been at home at Sandstone, near Riversdale, drinking and was driving to Invercargill to drink with friends. After returning a breath alcohol level of 686mcg, Monaghan showed no remorse, Mrs Stratford said. He told police he did not care about getting caught as he would just get a slap across the hand by the judge and if he killed someone it would be just bad luck, she said.

A Gate Pa mother of six expecting her seventh child has been jailed for a year after clocking up her 3rd, 4th and 5th drink-driving offences in two months. Sending Pania Mason, 28, to prison where she could not drink alcohol would be better for her unborn child, a Tauranga judge said. Mason who pleaded guilty in Tauranga District Court yesterday to driving with an excess breath alcohol (3rd or subsequent offence), was sentenced on that charge plus two earlier admitted charges of driving with an excess breath alcohol (also 3rd and subsequent offences). The court was told that when Mason was stopped on Waihi Rd in the early hours of May 21 she had an excess breath alcohol of 485 micrograms of alcohol per litre of breath. The adult legal limit is 400 mcgs.

Prison was the only option for an Okaramio repeat offender, a judge decided in the Blenheim District Court this week. Reading a pre-sentence report, Judge Pat Grace said offences by Leam Joseph Badcock, 24, driver, started on November 5 when he drove with excess breath alcohol (eba) of 582 micrograms per litre of breath, 182mcg above the legal limit. While waiting to appear in court on that charge, he was caught driving on November 26 with eba of 914mcg. He was convicted on both charges, and a pre-sentence report was ordered. Before that was finished, Badcock drove with eba of 921mcg on February 2.

A Whakatane man who drove with a breath alcohol level more than four times the legal limit was a "potential time-bomb", a judge said this week. Charles McRoy, 51, went to Whakatane District Court on Wednesday with his bag packed in anticipation of a prison sentence for his seventh drink-driving charge. A breathalyser revealed he had 1613 micrograms of alcohol per litre of breath -- the legal limit is 400mg. "This was a very high reading -- at 1600 you are not only drunk, you're blind drunk," the judge said.

A drink-driver convicted for the sixth time was told by a judge, before he jailed her, that she must have known she was over the legal limit. Jessica Susan Green, 29, was convicted in Gisborne District Court of driving with excess breath-alcohol for the third time or more, with a level of 730 micrograms, and for driving while disqualified. She was jailed for four months and disqualified from driving for two years. Judge Philip Connell said Green was seen trying to take a corner and her vehicle flipped.

A Hawke's Bay judge showed no tolerance for repeat drink drivers in the Hastings District Court yesterday. Judge Richard Watson's crack down saw him send three people to jail, sentence one to home detention and two to community detention. Barry Paul, 53, Ahere Scott, 19, Maxine Stephenson, 41, Justin Tumanako, 31, Roimata Thompson, 42, and Isaac Pharazyn, 24, each pleaded guilty to a charge of excessive breath alcohol. All of them were appearing for at least the third time. Judge Watson continued to repeat Land Transport New Zealand statistics to the offenders. "Thirty per cent of fatal road accidents are caused by drink drivers ... of those a large number have previous convictions from drink driving charges," Judge Watson said.

Northland has some of the worst drink-driving rates in the country - a point graphically illustrated by more than 20 people appearing in Whangarei District Court in one day charged with drink-driving offences. Alcohol was a factor in 30 per cent of Northland's fatal and serious injury crashes between 2003 and 2007. That figure rises to more than 50 per cent for serious and fatal crashes after dark. In 2008, 2308 drivers were caught drunk behind the wheel, including a record number of recidivist offenders. Almost a quarter - 540 - had three or more previous convictions for drink-driving offences.

Appendix II

Suggested sentencing and Penalties for convicted impaired drivers

My suggestions and recommendations for tackling drink drivers are structured around the guiding principles proposed by Professor Simon Lenton.⁴¹

- Evidence-based and informed by best practice
- Provide graduated sanctions and remedial options tailored to an individuals needs
- Aim to engage all those deemed eligible to participate
- Aim to keep offenders operating within the system of formal controls and reduce the number who drive without a valid licence
- Non-discriminatory and address the needs of the socially or economically disadvantaged
- Structured in such a way that maximizes early and voluntary participation wherever possible
- Accessible in regional and remote areas
- Subject to ongoing monitoring and review

All offenders have screening for eligibility. All offenders eligible for interlock are issued with limited licenses providing interlock driving limitations. Offenders detected in vehicle other than their own results in owner of vehicle incurring interlock conditions. Failure to apply for limited licence results in impounded vehicle becoming forfeit. Indigent fund for means tested offenders unable to pay for interlock. Interlock removal as a result of vehicle destruction or sale - criteria based removal. Offenders claiming no vehicle ownership: First offence: heavy fines. Second offence: 3 months home detention plus heavy fines. Third offence requires DUI style Court appearance. Offenders who claim that they cannot use for medical reasons or for any reason are unable to comply with any aspect of interlock sentence (except in outstanding circumstances) vehicle immobilization/impoundment. All offenders detected that are driving disqualified - vehicle confiscated. Drivers detected breaching terms of limited licence- vehicle confiscation/impoundment.

⁴¹ S. Lenton, 2008

| OFFENDER | SANCTION | EFFECTIVENESS | COMMENT |
|------------------------------------|---|---|---|
| First conviction | Licensing: | | |
| | Suspension 28 days. Offender to apply for interlock licence within 14 days of offence | Reduces alcohol related fatalities and reduces recidivism | Shortest possible time for offender to be able to unlawfully drive a vehicle. |
| | Vehicle actions: | | |
| | Impoundment. until offender has limited licence .Vehicle fitted with interlock. | Reduces recidivism | Best practice would be that offender picks up his vehicle from the site of interlock installation |
| | 12 month alcohol ignition interlock, criterion based removal | Reduces recidivism by 65% | Interlock can be removed after 6 months if no violations |
| | Assessment & Rehabilitation | | |
| | none | | |
| | Sentencing options: | | |
| 24 month 0.02 BAC limited licence. | | Alternative to 6 months hard disqualification Studies indicate 50-70% of offenders drive while disqualified | |

The ideal scenario would be that on detection the vehicle is impounded. The offender is told to apply for Interlock licence within 14 days. Within 28 days of offence they receive their limited licence. They contact the Interlock site and arrange appointment for interlock instruction. The vehicle is taken to site 1 day before appointment and fitted with interlock.

| OFFENDER | SANCTION | EFFECTIVENESS | COMMENT |
|--|---|--|---|
| Repeat or high level BAC (0.15 and above) first conviction | Licensing: | | |
| | Suspension 28 days. Offender to apply for interlock licence within 14 days of offence | Reduces alcohol related fatalities and reduces recidivism | Shortest possible time for offender to be able to unlawfully drive a vehicle |
| | Vehicle actions: | | |
| | Impoundment until offender has limited licence .Vehicle fitted with interlock | Reduces recidivism | Best practice would be that offender picks up his vehicle from the site of interlock installation |
| | 24 month alcohol ignition interlock. criterion based removal | Reduces recidivism by 65% | Interlock can be removed after 12 months if no violations |
| | Assessment & Rehabilitation | | |
| | Mandatory assessment of drinking problem | Reduces recidivism by 7-9% | Paid for by offender when possible |
| | Sentencing options: | | |
| | 36 month 0.02 BAC limited licence | | Alternative to 6 months hard disqualification Studies indicate 50-70% of offenders continue to drive anyway when disqualified |
| Family intervention meeting. | | Multidisciplinary mediation involving family and offender to make aware the seriousness of situation and implications. Support offered | |

| OFFENDER | SANCTION | EFFECTIVENESS | COMMENT |
|--|--|---|---|
| Third conviction + | Licensing: | | |
| | Suspension until criteria-based removal | Reduces alcohol related fatalities and reduces recidivism | Driving privileges abused. Requires swift severe penalty |
| | Vehicle actions: | | |
| | Impoundment/confiscation | Reduces recidivism | |
| | Interlocks for all family vehicles. Indefinite period | Reduces recidivism | Paid for by offender when possible |
| | Assessment & Rehabilitation | | |
| | Mandatory assessment of drinking problem. Mandatory treatment | Reduces recidivism by 7-9% | Paid for by offender when possible |
| | Sentencing options: | | |
| | Indefinite 0.02 BAC limited licence. Applicable when offender satisfies criteria based licencing requirements | | Alternative to one- year hard disqualification Studies indicate 50-70% of offenders continue to drive anyway when disqualified |
| | Electronic monitoring and home confinement | Reduces recidivism by 33% | Paid for by offender if possible |
| Intensive Supervision Probation | Reduces recidivism by 50% | Paid for by offender if possible | |
| DUI Court (e.g. frequent contact with judge; intensive supervision probation; treatment; random alcohol testing; lifestyle changes; positive reinforcement) | Some courts reporting reductions in recidivism by 50% or greater | | |

Appendix III

Not all first time detected drivers are the same

Offender A. Offender A has been caught with a low EBA. He has no previous convictions. This appears to be an isolated incident. He is told that if this is the case and he meets the criteria for such he will be able to have the interlock removed in 6 months. He is 30-40 yr old married with children male in gainful employment who although will find it difficult to pay for the interlock and recalibration fees will be able to. After 28 days he gets his vehicle and his interlock licence which enables him to drive his vehicle under the stated 0.02 BAC. His interlock data is checked every month. At the end of 6 months he is found to have met the criteria for early interlock release. The interlock is removed. The conditions of his 0.02 BAC licence remain for another 12 months at the end of which with no further incident it can be reinstated to a full licence.

Offender B. Offender B has been caught under similar circumstances with a low EBA. She has no previous convictions and this appears to be an isolated incident. She is also informed of the criteria for early interlock removal. She is single 25-35 and in between jobs and is means tested. A third of her interlock installation fee is funded as is part of the monthly recalibration fees. After 30 days she gets her vehicle and her interlock licence which enables her to drive her vehicle under the stated 0.02 BAC. However inspection of interlock data after first month reveals numerous lockouts and failed repeat attempts. She is referred for an assessment and confronted with the data; initially she blames the machine but under skilled confrontation admits to alcohol problems. Offender B is now attending a rehabilitation program. Her interlock remains and removal will be reviewed in 6months.

Under the current law both of these offenders would have been treated the same.