

FINAL REPORT

DRUNK DRIVING STUDY COMMITTEE

January, 1985

CREATION: The Drunk Driving Study Committee was created by the enactment of House File 2486 (Ch. 1292, § 26, Laws of the 70th G.A., 1984). That legislation provided as follows:

Sec. 26. STUDY COMMITTEE CREATED.

1. There is established a committee to study the laws and penalties relating to operating motor vehicles while intoxicated composed of ten members. The members shall be appointed as follows:

a. The chief justice of the supreme court shall select one judge to be a member and chair the committee.

b. The Iowa county attorneys association shall select one member of their organization as a member.

c. The Iowa public defenders association shall select one member of their organization as a member.

d. The department of public safety shall select an employee as a member.

e. The department of transportation shall select an employee of that department as a member.

f. The Iowa department of justice shall select an employee of that department as a member.

g. The Iowa department of substance abuse shall select an employee as a member.

h. The legislative council shall select an attorney experienced in the defense of those charged with driving while intoxicated as a member.

i. The legislative council shall select a person with professional experience in substance abuse treatment as a member.

j. The legislative council shall appoint one member of the legislature as a member.

All members of the study committee shall be appointed not later than thirty days from the effective date of this Act. The study committee shall hold its organizational meeting not more than thirty days following the appointment of its membership.

2. Public members of the study committee shall receive a per diem of forty dollars and be reimbursed for their travel and other necessary expenses actually incurred in the performance of their official duties. Public employees who are members of the study committee shall be reimbursed for travel and other expenses actually incurred in the performance of their official duties.

3. The study committee shall conduct a comprehensive study of the laws and penalties presently in the Code relating to the operation of a motor vehicle by a person who is intoxicated and make recommendations for any changes in the law the committee deems necessary. The study committee may request assistance of

any state or local government agency to obtain any data or other information which the study committee deems necessary to carry out its duties. The state and local government agencies shall provide any assistance requested by the study committee.

4. The study committee may request the legislative council provide staff for the study committee from the staff of the legislative service bureau and the legislative fiscal bureau.

5. The study committee shall transmit copies of its final report to the general assembly on January 14, 1985. The final report shall include findings of fact and its recommendations and relevant data gathered by and for the committee.

MEMBERSHIP:

The members serving on the committee were:

- The Honorable Judge Van Wifvat, Chairperson  
(Appointed by the Chief Justice)
- Senator Donald Doyle  
(Appointed by the Legislative Council)
- Ms. Mary Ellis  
(Appointed by the Department of Substance Abuse)
- Dr. Stanley Haughland  
(Appointed by the Legislative Council)
- Captain Blaine Goff  
(Appointed by the Department of Public Safety)
- Mr. Robert Kromminga  
(Appointed by the Legislative Council)
- Mr. Gordon Sweitzer  
(Appointed by the Department of Transportation)
- Mr. J. Patrick White  
(Appointed by the County Attorneys Association)
- Mr. Earl Willits  
(Appointed by the Department of Justice)
- Mr. David Sallen  
(Appointed by the Public Defenders Association)

MEETINGS:

The Committee was originally authorized two meeting dates, but received approval from the Legislative Council to hold an additional two meetings. The Committee's four meetings were held on August 30, October 18, November 15 and December 7, 1984.

SPEAKERS:

During its meetings, the committee heard from the following individuals:

- Mr. Sven Sterner, Governor's Highway Safety Office
- The Honorable Judge James R. Havercamp
- Mr. Michael Oelrich, Director from the Center for Alcohol and Drug Services, Davenport, Iowa

Mr. James Hancock, Director of the Department of Correctional Services for the 5th Judicial District  
Mr. Lary Nelson, Director of the Department of Correctional Services for the 6th Judicial District  
Mr. John Hare, Program Director of Project Crossroads in Ottumwa, Iowa  
Mr. Al Crystal, Administrator of Driver Services - I.D.O.T.  
Mr. James Charlier, Assistant Director of the Office of Project Planning - I.D.O.T.  
Mr. Don Mason, Prosecuting Attorneys Training Council

INFORMATION AND DATA:

During its meetings, the committee received and reviewed the following information and data:

House File 2486 (1984)  
House File 2472 (1984)  
Service Bureau Memorandum: 1983 and 1984 Drunk Driving Statutes, Changes and Problems in Iowa.  
Summary Chart: Liquor and Driving Laws Nationwide.  
Summary Chart: Drinking Age Provisions Nationwide.  
Briefing Paper: Illegal Per Se and Administrative Per Se Laws in Operating While Intoxicated Statutes.  
Briefing Paper: Driving Status/Chemical Testing/Implied Consent: Provisions in OWI, Discussion and Analysis.  
District Court Ruling: Criminal No. 255430A (Alcohol Concentrations).  
State Plan, Directory, and Informational Booklet on the Iowa Department of Substance Abuse.  
Public Law 98-363: Federal Drinking Age Legislation.  
Statistic Sheet: Alcohol Related Fatal Crashes in Iowa.  
Statistic Sheet: OWI Arrests in Iowa for 1983.  
Statistic Sheet: OWI Arrests in Iowa for 1974-1982.  
Survey: Disposition of OWI Arrests in Iowa.  
Recommendations: ISDA OWI Offender Substance Abuse Programs.  
Recommendations: Private OWI Offender Substance Abuse Programs.  
State v. Bock: Summary S. Ct. decision on Alcohol Concentration.  
Memorandum: Scott County Sentencing Alternatives for OWI Offenders.  
Position Paper: Adjudication of OWI Offenders.  
Position Paper: Mandatory Testing of Drivers in Fatal Accidents.  
Position Paper: Vehicular Homicide.  
Position Paper: Dram Shop Requirements and Liability.  
Safety Study: National Transportation Safety Board Report.  
Funding Report: ISDA Treatment Programs and their Catchment Areas.  
Statistics Report: Driver Services in Iowa.  
Recommendation Report: Governor's Conference on Drunk Driving.  
Fiscal Analysis by Legislative Fiscal Bureau: Fiscal Estimate of Proposed Changes in Drunk Driving Legislation.  
1985 Driver's Manual: Iowa Department of Transportation.  
Statistical Material: American Council on Alcohol Problems.  
Position Paper: Office for Planning and Programming - Alcohol Related Crashes and the Lowering of the B.A.C.

Survey: Report of Responses of Iowa County Attorneys on OWI Issues.

INITIAL CONCERNS: At the outset of the Committee's deliberations, the members identified the general concerns and hopes which they had brought with them to the committee, including:

The development and utilization of effective substance abuse screening procedures and appropriate facilities for individuals needing substance abuse treatment.

Increasing the before and after approach to substance abuse and providing better education on substance abuse.

Creating a comprehensive approach to the efforts to solve the problems in drunken driving.

The development of stronger programs of highway safety.

The collection and analysis of hard data on drunk driving.

The development of a system which must be applied consistently and uniformly.

Coordination of efforts to reduce the use of intoxicants.

Regaining the needed consensus of all groups to increase and unify efforts to solve the problems of substance abuse and drunk driving.

The refinement of the administrative revocation procedures.

Providing a structure to oversee drunk driving prevention activities.

Identifying and modifying society's involvement in drunk driving.

The creation of a system which provides better incentives for drunk drivers to rehabilitate themselves.

PRELIMINARY ISSUES: During the preliminary stages of the committee's work, the following legislative issues were discussed:

1. Drivers license identification of problem drinkers.
2. State issuance and control of "drinking licenses".
3. Strengthening the right of refusal of service of alcoholic beverages.
4. State control over the "manner" of service of alcoholic beverages.

5. Creation of a "vehicular homicide" statute.
6. Increasing the funding of administrative revocation procedures.
7. Strengthening Dramshop requirements and policy limits.
8. Extending Dramshop liability to "private" hosts.
9. Requiring chemical tests of all drivers in fatal accidents.
10. Increasing criminal sanctions for work permit violations.
11. Clarification and stabilization of field sobriety tests.
12. Reduction of the "per se" alcohol concentration level.
13. Increasing the drinking age to 21 years of age.
14. Developing special photo licenses for OWI offenders.
15. Expanding OWI and Implied Consent provisions to the operation of vessels on the waters of this state.
16. Increasing the use, and the incentives for use, of drunk driving education programs.
17. Expanding the class of individuals who may receive temporary or restricted driving privileges.
18. Creating mandatory periods of revocation in which no temporary or restricted driving privileges may be issued.
19. Creation of a civil bar or presumption against a drunk driver being able to sue for injuries.
20. Requiring mandatory evaluation, and treatment where appropriate, for all OWI offenders.
21. Requiring mandatory adjudication of all OWI charges.
22. Prohibiting the use of "plea-bargains" in OWI charges.
23. Prohibiting deferred and suspended judgments and sentences in OWI cases.
24. Increasing the Liquor Tax to pay for prevention programs.
25. Creation of a new drunk driving offense of "Operating While Impaired."

26. Suspension of certain OWI offender's licenses for life.
27. Increasing the penalty for driving while license suspended or revoked.
28. Requiring OWI and substance abuse questions on license examinations.
29. Requiring OWI examination of all individuals prior to license renewal.
30. Requiring the posting of notice of OWI law in all establishments selling or serving alcohol.
31. Increasing the criminal penalty for persons who serve or give alcohol to intoxicated individuals.
32. Establishing a hearing cost fee to be posted by all persons appealing a license revocation.
33. Requiring mandatory incarceration of all repeat OWI offenders.

ACTION TAKEN BY COMMITTEE: After committee review and deliberation of each issue, the committee took the following final actions:

ISSUE: INCREASE IN LEGAL DRINKING AGE.

DISCUSSION: Proposal introduced as logical outgrowth of Iowa's increased concern toward curbing drunk driving and increasing highway safety and based upon statistical evidence from states where legal age has been raised, reflecting a significant decrease in accident rates and fatalities for those under twenty-one years of age. The proposal initially met with mixed reviews by the committee members.

Arguments raised in favor of the proposal were varied in theory and practice. The recent federal legislation (Public Law 98-363) which would withhold as much as twenty million dollars from Iowa highway programs, should the state fail to adopt the proposal, was an often mentioned concern in favor of adoption. The easing of the problem of "blood borders" (travel of underage drinkers to take advantage of lower neighbor-state drinking ages) was expressed as a point in favor of the move. The collateral savings in decreased substance abuse were also felt to be important. Additional considerations included the reduction in the tendency for alcohol producers and sellers to push increased consumption at college campuses, the reduction of drinking done by underage eighteen persons, who will find it increasingly hard to get into establishments, and the reduction in the number of peer groups of high-school age who will have a member legally able to purchase

alcohol and then transfer that alcohol to underage members of the group.

Arguments raised in objection to the proposal included discomfort with the coercive aspects of the federal action, concern that the measure could result in increased cynicism toward the law by those under twenty-one, and the fact that underage drinking would be increased at nonestablishment places and increased enforcement and control difficulties would result. Further concerns voiced related to the use of statistics as the basis for this proposal, since simply raising the drinking age to twenty-one had several statistical flaws. First, if the statistical age category was to be predictor, and therefore basis, for an increase, then the drinking age should naturally go to age twenty-four or higher. Second, statistical data will automatically show a decline in accident statistics because the number of drivers who can legally drink will be reduced. Third, the statistics for age twenty-one to twenty-four persons will rise due to the fact that the age at which an individual will be inexperienced with the effect of alcohol on driving ability will increase. It was also noted that the loss of twenty million dollars in road funds was not a "given", since several states had already filed court cases questioning the constitutionality of the federal action.

ALTERNATIVES: The committee reviewed the following legislative alternatives:

1. Rejection of the proposal.
2. Acceptance of the proposal:
  - a. With an effective date of July 1, 1985 and applying to all persons not twenty-one as of that date.
  - b. With an effective date of September 30, 1985 (effective date for federal road reductions for noncomplying states) and applying to all persons unable to legally consume alcohol by that date.
  - c. With an effective date of July 1, 1985 and applying to all persons unable to legally consume alcohol as of that date.

RECOMMENDATION: The committee's recommendation was to increase the legal drinking age for Iowa to twenty-one years of age, effective July 1, 1985, but exempting the application of the statute to persons born on or before June 30, 1966 (alternative 2 (c) above).

The major reason for choosing this alternative was to parallel the actions of surrounding states and thereby avoid any time

period in which "blood borders" could appear.

\*\*Statutory language contained in sections 2 and 27 of LSB 1434S attached.

ISSUE: INCREASING DRAMSHOP PENALTIES (CRIMINAL).

DISCUSSION: The general consensus of the committee was that further control over the service of intoxicants may be needed by the state. It was determined that the present slant of service prohibitions fell mainly on owners and operators of licensed establishments and that the present criminal penalty for providing alcohol to intoxicated individuals, presently established as a simple misdemeanor, could be too low.

In the area of criminal penalties, the committee determined that the Code presently provided that any person, whether a private host or an establishment owner or employee, who served alcohol to an intoxicated individual committed a simple misdemeanor. Further committee discussion resulted in the consensus that the penalty, often in the form of a minor fine, did not provide sufficient deterrence and correspondingly, that the low level of the penalty often resulted in law enforcement determining that action was not worth pursuing. The committee then determined that an increase of the penalty to the level of a serious misdemeanor could provide sufficient deterrence and consistent enforcement. However, the committee became concerned that the law could be too vague to be used in a crime that could result in a one year incarceration. The committee then determined that proper modification of the provision, to fit the new increased penalty, might include providing a definition of "intoxication" and requiring that the person giving or serving "know or have reason to believe" that the person was intoxicated.

RECOMMENDATION: The committee's recommendation was to increase the penalty for giving or serving alcohol to an intoxicated person to a serious misdemeanor, requiring that the person know or have reason to believe that the person was actually intoxicated, and providing that the intoxication be defined for purposes of the section as is presently included in the Uniform Jury Instructions used by the court for such cases.

\*\*Statutory language contained in sections 3 and 4 of LSB 1434S attached.

ISSUE: INCREASING DRAMSHOP PENALTIES (CIVIL).

DISCUSSION: As an outgrowth of the committee's concern that further control over the service of intoxicants may be needed, the committee turned to discussion of the civil liability that may be imposed upon those who serve alcohol (Dramshop Liability).

Alternatives discussed in increasing control by the imposition of civil liability included the extension of dramshop type liability to private hosts who serve or give alcohol to intoxicated individuals, extension of dramshop provisions to those selling carryout beer, and increasing the policy limits that must be carried by establishment licensees. It was pointed out that at least one state had already, by case decision, provided for private host liability. However, it was also noted that the recent enactment of the Comparative Fault Act in Iowa may already provide a basis for private host liability in Iowa. The general concern that those who engaged in hazardous activities should pay for injuries caused to others by that activity became apparent. It was also pointed out that many dramshop licensees carry less insurance than the careful automobile owner. The committee then determined that an increase in policy limits, to ensure that injured individuals are recompensed, should be made in dramshop insurance policies.

RECOMMENDATIONS: The committee determined that civil responsibility for dramshop licensees should be increased. The committee then determined that the minimum amount of policy coverage that a dramshop licensee must carry is one hundred thousand dollars per injured individual and three hundred thousand dollars per individual occurrence.

\*\*Statutory language contained in section 5 of LSB 1434S attached.

ISSUE: POSTING OF NOTICE ON DRUNK DRIVING LAWS.

DISCUSSION: The committee determined that an important aspect of drunk driving reduction was the public awareness of the law regarding OWI and Implied Consent. One manner in which public awareness could be improved would be the requirement that such notice of the law be displayed prominently at establishments serving alcohol. It was further noted that the posting of such notice would serve as an educational tool on drunk driving statute revisions, as well as the publicity of penalties to enhance deterrence.

RECOMMENDATION: That all state liquor stores and holders of liquor control licenses or beer permits be required to post notice of drunk driving laws in a prominent place.

\*\*Statutory language contained in section 6 of LSB 1434S attached.

ISSUE: SUBSTANCE ABUSE/DRIVERS EDUCATION.

DISCUSSION: The committee reached a general consensus that efforts to increase the awareness of substance abuse and the effects that substance abuse can have on driver performance should

be undertaken. One suggested alternative would be the requirement that all persons taking drivers education courses be given instruction on substance abuse as part of their course. The committee then discussed the advisability or unadvisability of requiring a specific number of hours of such instruction in a program that was attempting to provide important instruction on many other issues in a limited period of time.

RECOMMENDATION: The committee's final recommendation on the proposal was to require a minimum of two hours of classroom instruction on substance abuse for all approved drivers education courses.

\*\*Statutory language contained in section 8 of LSB 1434S attached.

ISSUE: OWI INFORMATION/TESTING ON LICENSE RENEWALS.

DISCUSSION: The committee's decision to attempt to increase the public awareness and education of drunken driving laws also resulted in the proposal to require license exmainees and license renewal applicants to take a short test on OWI laws. It was felt by some members that it would provide a "captive" audience to which the information could be disseminated. During discussion on the advisability and feasibility of the proposal, the committee received information that the upcoming license examinations would contain material and questions on OWI laws. The suggestion was then made that the OWI section of the test be mandatory for successful completion. As to the license renewal applicants, several suggestions arose. First, requiring all persons to attend some form of "community education" prior to license renewal. Second, requiring all applicants to review and take a short test on OWI at the license examination station. These suggestions met with some resistance from committee members concerned with staff and funding problems for such programs. The suggestion was made that the funding problem be dealt with by increasing the license fee. However, it was pointed out that Iowa was already the most expensive license fee state. Additional proposals included substituting required testing with required information dissemination.

The further suggestions were made that the Department of Transportation be required to hold informational sessions prior to license renewal, issue information to all applicants prior to renewal, or provide information at the renewal itself. The problems of staff and negative public reaction were again raised.

RECOMMENDATION: The committee's final recommendation on the proposal for testing/information was to require the issuance of information on the laws concerning OWI and statistical information on the injuries and deaths caused by OWI offenders at the time of license renewal.

\*\*Statutory language contained in section 9 of LSB 1434S attached.

ISSUE: VEHICULAR HOMICIDE.

DISCUSSION: The committee determined that a major concern in drunk driving was the number of persons who have been convicted over and over, yet continue to drive drunk. The committee felt that such individuals had received sufficient time and impetus to change their behavior, and should be subject to stiff penalties when their repeated disregard for the law causes death or serious injury. The committee reviewed several drafted proposals, all of which created a new criminal offense. The committee discussed the advisability of confining the application of the new penalty to cases involving OWI offenses. The committee then determined that the interplay between a new crime such as this and a prosecution for an OWI offense could cause logistical and procedural problems. The committee then decided that rather than creating a "new" offense, the proposal should be drafted as a "penalty enhancement" of one degree for repeat OWI offenders who kill or seriously injure another. The committee further felt that such an approach would allow swift and assured incarceration of such individuals.

RECOMMENDATION: The committee's final recommendation on the issue was to provide that a second, third or subsequent OWI offender who seriously injures or kills will be subject to a penalty one degree higher than the present penalty for second or third and subsequent offenses (i.e., resulting in a class "D" or "C" felony penalty being imposed. The committee also tied the term "serious injury" to the present definition of that term in the Criminal Code for use by the court.

\*\*Statutory language contained in sections 12, 13, and 14 of LSB 1434S attached.

ISSUE: LOWERING OF PER SE ALCOHOL CONCENTRATION LEVEL.

DISCUSSION: The committee reviewed the proposal to reduce the per se violation alcohol concentration level from .13 to .10. The committee acknowledged the fact that the majority of states had moved to this level. The committee also reviewed, but eventually rejected, a similar type proposal to create a new offense of "Driving While Impaired" at a lower alcohol concentration. It was the committee's determination that the lowering of the alcohol concentration level to .10, if adopted, would be sufficient. In reviewing the merits of the proposal for a .10 per se, the committee determined that the major advantage would be the resulting ease with which convictions could be gained in many cases. However, the committee did express reservations over the fact that; (1) a lower per se level will result in the apprehension and conviction of more "social drinkers" but not more

"problem drinkers", (2) the resulting statute will place almost all emphasis for a conviction on a person's blood alcohol, and not on the impairment of the person's driving ability, and (3) the reliability of tests currently being used to measure alcohol concentration can be flawed, and regularly have an error factor of at least .01 percent.

RECOMMENDATION: The committee determined that even with its drawbacks, the proposal merited recommendation due to the fact that persons testing above .10 were a danger to society. The committee then endorsed the proposal to provide that a per se violation of section 321.281 occurs at .10 alcohol concentration.

\*\*Statutory language contained in section 11 of LSB 1434S attached.

ISSUE: MANDATORY CHEMICAL TESTING OF ALL OPERATORS INVOLVED IN A SERIOUS OR FATAL ACCIDENT.

DISCUSSION: It was brought to the committee's attention that the statistics on drunken driving fatalities may be flawed due to the fact that there may not be probable cause to test all drivers at the scene of an accident. The committee discussed possible applicability of the provision to passengers and pedestrians, but determined that its limitations to operators would have fewer constitutional concerns and would accomplish what this committee was seeking (i.e., better statistics and enforcement on OWI offenses). The committee was cautioned that the areas of probable cause and chemical testing were complicated, and that peace officers would need specific language if they are to enforce such a provision. Following further discussion, the committee reached the consensus that blood tests should be automatic in the case of death or serious injury and that the probable cause warrant requirement should be removed from these cases.

During discussion as to the form which the proposal should take, the committee received the opinion of the Attorney General's representative that the Implied Consent provisions of the present law would allow for such a procedure. The committee also determined that medical personnel might need to certify that death or serious injury had actually occurred, to give the peace officer the right to require the test.

RECOMMENDATION: The committee's final recommendation on the proposal was to endorse the concept of requiring the chemical testing of all motor vehicle operators involved in an accident resulting in serious injury or death. The committee further endorsed the suggestion to make the procedure an extension of the Implied Consent Law and to limit its application to cases where a licensed physician has certified that serious injury or death has occurred. The committee further endorsed the suggestion that a person who is tested under this mandatory testing procedure would

not later be subjected to a charge of refusal to submit to the test.

\*\*Statutory language contained in sections 20, 21, and 25 of LSB 1434S attached.

ISSUE: PROHIBITION OF DEFERRED JUDGMENTS AND SENTENCES IN OWI.

DISCUSSION: The committee originally determined that a major problem in OWI was the lack of uniformity and consistency in the application of penalties, citing the example that in one county an OWI offender would in three out of four cases serve no time and in another county would in three out of four cases be required to serve some time. The first proposal reviewed by the committee prohibited deferred judgments, deferred sentences, and suspended sentences for all OWI offenders. After discussion, it was the committee's feeling that the proposal might go "too far". Committee members expressed the concern that the prohibition of suspended sentences could result in judges or prosecutors not enforcing or following through on the charge. However, the committee did consider the prohibition of deferred judgments and sentences as an endorsable idea.

RECOMMENDATION: The committee's final recommendation on the proposal was to prohibit the deferral of judgments and sentences in OWI cases.

\*\*Statutory language contained in sections 16 and 26 of LSB 1434S attached.

ISSUE: ADMINISTRATIVE REVOCATION APPEAL FEE.

DISCUSSION: It was reported to the committee that administrative revocation systems were severely backlogged. Among other reasons given for the backlog, it was noted that a large number of cases were appealed, but with little success. It was opined that delays work to the advantage of revokees and therefore too many frivolous appeals were being filed. It was suggested that some form of disincentive to frivolous appeals be developed. The committee reviewed the proposal to require persons appealing a revocation to provide a two hundred dollar appeal fee prior to appeal. Following committee discussion, the committee determined that the two hundred dollar fee would in fact provide a disincentive and would nearly cover the administrative costs which the department felt that successful appeals should not cost a person two hundred dollars.

RECOMMENDATION: It was the final recommendation of the committee that the proposal to require a two hundred dollar hearing cost fee prior to a revocation appeal be endorsed provided, however, that if the revocation order was rescinded the fee would be refunded.

\*\*Statutory language contained in section 24 of LSB 1434S attached.

ISSUE: DISCRETION IN ISSUANCE OF TEMPORARY RESTRICTED DRIVING LICENSES OR PERMITS.

DISCUSSION: During its discussions relating to other issues, the committee noted that temporary restricted licenses and permits for OWI offenders were issuable only if driving was a necessary requirement of the person's employment or substance abuse treatment. Several members noted that situations when driving is necessary can often go beyond just employment and treatment. Specific examples given were the need for a single parent to care for a child, an offender's need to get medical or mental health treatment, the need for offenders to complete educational programs already begun, and similar responsibilities. However, it was pointed out that presently the police already have trouble enforcing work permits, and the expansion of such permits would increase enforcement difficulties.

RECOMMENDATION: The committee endorsed the proposal to expand the discretion of the Department of Transportation to issue restricted permits to offenders where, and to the extent that, it is necessary for the offender's employment, family, health, education and treatment responsibilities.

\*\*Statutory language contained in sections 17, 19, 22 and 23 of LSB 1434S attached.

ISSUE: MANDATORY "HARD" REVOCATION.

DISCUSSION: The committee received information that part of the federal legislation related to the requirement that states provide that "full" revocation or suspension of an offender's license must occur for the first thirty days of the suspension or revocation period (i.e., disallowing any temporary or restricted driving privileges during that time). It was also pointed out that this was one of the elements needed to qualify for an additional two and one-half million dollars in federal highway safety funds. During committee discussion on the subject, it was determined that a number of other states have had good results with the "hard" revocation and feel that the deterrent effect of their OWI law has increased. However, numerous concerns were voiced to the proposal including: (1) administrative problems for the Department of Transportation if it were implemented, (2) many instances exist where automatic revocation of all privileges are inappropriate, and (3) such a proposal could force individuals to continue to drive, but without the ability to insure themselves (and thereby protecting those they may injure). Following the first series of discussions on the proposal, it was disapproved of by the committee.

The proposal was again discussed, after a motion to reconsider, with the availability of federal funds, the high deterrence value, and the recent statistics of other states pointed out in favor of the proposal. Along with the original arguments against the proposal, committee members stated several new concerns with the proposal, including: (1) The harm to injured individuals, if an offender lost his job (due to the full revocation), who were seeking restitution, (2) The collateral social costs to employment, family and health that the full revocation could have, (3) The argument that insufficient statistics were available upon which to base such a drastic action. Following further discussion, a majority of the committee determined that the points in favor of the proposal outweighed the points against the proposal.

RECOMMENDATION: The committee's final recommendation on the proposal was the endorsement of the prohibition against the issuance of any driving privileges during the first thirty days of revocation.

\*\*Statutory language contained in sections 17, 19, 22 and 23 of LSB 1434S attached.

ISSUE: INCREASING PENALTY FOR DRIVING WHILE SUSPENDED OR REVOKED.

DISCUSSION: The committee noted that the previous General Assembly had created a penalty distinction between driving while suspended or revoked cases of suspension or revocation for OWI offenses and non-OWI offenses, the former a serious misdemeanor and the latter a simple misdemeanor. It was the committee's feeling that these individuals were committing the same crime, and that the crime was a serious one. Law enforcement pointed out that the distinction was also causing problems in enforcement, since often the arresting officer did not know the reason for the original suspension, and therefore did not know whether to charge for a serious or simple misdemeanor. The committee further determined that the sentence should be suspendable, in order to provide an avenue of control and allow the courts to issue significant sentences, but that the deterrent value of a mandatory jail sentence of forty-eight hours be added in its place.

RECOMMENDATION: The committee's recommendation on the proposal was to endorse the increase of all such violations to the level of a serious misdemeanor, allow a sentence imposed to be suspended, and provide that offenders be required to serve a mandatory 48 hours. The committee also endorsed applying the provision to all motor vehicle licenses, rather than just operators and chauffeurs licenses as had previously been contained in the law.

\*\*Statutory language contained in section 10 of LSB 1434S attached.

ISSUE: MANDATORY SUBSTANCE ABUSE EVALUATION/TREATMENT OF ALL OWI OFFENDERS.

DISCUSSION: The committee reviewed the changes in public attitude regarding the drunken driver (increased incarceration) in relation to the static factors of prison space and correctional resources. The committee also noted that if alternative sentencing programs were to be useful, they might be very useful in the cases of nonviolent drunk drivers. The committee then reviewed various programs for the sentencing and treatment of drunk drivers statewide. The committee acknowledged that the diversion of offenders, where appropriate, from the usual correctional system could be a major benefit both to the offenders and to society itself. Following a review of the potential costs of implementing the various programs statewide, the committee endorsed the following general concepts; (1) That early evaluation and treatment of offenders is essential to avoid repeat offenses, (2) That judicial discretion in the determination of who should do the evaluation and treatment was necessary, due to the differences in resources and facilities statewide, (3) Drunk driver education courses could be a part of a treatment program, and (4) All appropriate pieces of this type of legislation should be developed into a comprehensive approach to the problem of curbing drunken driving.

RECOMMENDATIONS: The committee's final recommendations on the issue included:

1. The requirement that as a condition of bond (pretrial) all individuals charged with an OWI violation must undergo a substance abuse evaluation.
2. Requiring that substance abuse evaluations must include a comprehensive list of factors (identified for the committee by substance abuse experts).
3. That the substance abuse evaluation provider report to the court their findings and that if their findings are positive, provide the court with treatment or education recommendations.
4. Having the court order an offender to follow substance abuse treatment or education recommendations where appropriate.
5. Allowing the court to credit the costs incurred by a defendant in securing evaluation, treatment or education against any fine imposed by the court.
6. Requiring the Department of Substance Abuse to review and approve substance abuse education programs, and to develop curriculum standards for the program.

\*\*Statutory language contained in sections 7, 15, and 18 of LSB

1434S attached.

ISSUE: EXPANSION OF OWI AND IMPLIED CONSENT PROVISIONS TO THE OPERATION OF VESSELS ON THE WATERS OF THIS STATE.

DISCUSSION: The committee reviewed the inability to effectively enforce drunk driving provisions against persons operating boats while intoxicated. The committee further determined that the same enforcement problems related to the operation of snowmobiles, motorized carts, all terrain vehicles and similar modes of transportation and recreation. The committee discussion, however, raised logistical and procedural problems with the imposition of OWI sanctions and Implied Consent procedures on the operation of modes of transportation and recreation that presently did not require an operator's license or permit.

RECOMMENDATION: The committee determined that due to time and subject matter constraints on the committee, the issue of expansion of OWI penalties and Implied Consent procedures to nonmotor vehicle operation should be recommended as an issue to be addressed by the Standing Committees on Judiciary of the Iowa General Assembly.

\*\*Letter of recommendation attached.

The text of these major proposals, and those of the nonsubstantive proposals, along with all letters of recommendation, are attached to and made a part of this final report. All informational material and data referred to herein, shall remain on file with the Legislative Service Bureau for the use of the members of the General Assembly.

SENATE/HOUSE FILE \_\_\_\_\_

BY (PREPARED BY THE LEGISLATIVE  
SERVICE BUREAU FOR THE DRUNK  
DRIVING STUDY COMMITTEE,  
JANUARY, 1985)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the use of intoxicating beverages and  
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 29B.106, Code 1985, is amended to read  
2 as follows:

3 29B.106 DRUNKEN OR RECKLESS DRIVING.

4 Any A person subject to this code who operates any a  
5 vehicle while under the influence of an alcoholic beverage as  
6 defined in section 321.1, a narcotic, hypnotic or other drug,  
7 or any combination of such substances, or in a reckless or  
8 wanton manner, shall be punished as a court-martial may  
9 direct.

10 Sec. 2. Section 123.3, subsection 33, Code 1985, is  
11 amended to read as follows:

12 33. "Legal age" means nineteen twenty-one years of age or  
13 more.

14 Sec. 3. Section 123.49, subsection 1, Code 1985, is  
15 amended by striking the subsection and inserting in lieu  
16 thereof the following:

17 1. A person shall not sell, give, or otherwise supply  
18 alcoholic liquor or beer to another person knowing or having  
19 reasonable cause to believe the person is intoxicated or is  
20 simulating intoxication. For the purpose of this subsection,  
21 intoxication means the use of alcoholic liquor or beer to the  
22 extent that the person's reason or faculties have become  
23 affected, judgment impaired, passions visibly excited, or  
24 control of the actions or motions of the person's body have,  
25 in any manner or to any extent, been lost.

26 Sec. 4. Section 123.50, subsection 1, Code 1985, is  
27 amended by striking the subsection and inserting in lieu  
28 thereof the following:

29 1. A person who violates section 123.49, subsection 1,  
30 commits a serious misdemeanor. A person who violates any  
31 other provision of section 123.49 commits a simple  
32 misdemeanor.

33 Sec. 5. Section 123.92, unnumbered paragraph 2, Code 1985,  
34 is amended to read as follows:

35 Every liquor control licensee and class "B" beer permittee

1 shall furnish proof of financial responsibility either by the  
2 existence of a liability insurance policy or by posting bond  
3 in such amount as determined by the department. However, the  
4 liability limit of an insurance policy required by this  
5 section shall not be less than one hundred thousand dollars in  
6 respect to any one person injured or killed and three hundred  
7 thousand dollars in respect to all persons injured or killed  
8 in an accident or series of accidents arising out of any one  
9 event or any one case of intoxication.

10 Sec. 6. NEW SECTION. 123.151 POSTING NOTICE ON DRUNK  
11 DRIVING LAWS REQUIRED.

12 State liquor stores and holders of liquor control licenses  
13 or beer permits shall post in a prominent place in the state  
14 liquor stores or licensed establishments notice explaining the  
15 operation and penalties of the laws which prohibit the  
16 operation of a motor vehicle by a person who is intoxicated.  
17 The size, print size, location, and content of the notice  
18 shall be established by rule of the department.

19 Sec. 7. Section 125.10, Code 1985, is amended by adding  
20 the following new subsection:

21 NEW SUBSECTION. 18. Review and approve of substance abuse  
22 education programs for persons in violation of section 321.281  
23 and develop and administer curriculum standards for the  
24 programs.

25 Sec. 8. Section 321.178, subsection 1, unnumbered  
26 paragraph 1, Code 1985, is amended to read as follows:

27 1. Approved course. An approved driver education course as  
28 programmed by the department of public instruction shall  
29 consist of at least thirty clock hours of classroom  
30 instruction, and six or more clock hours of laboratory  
31 instruction of which at least three clock hours shall consist  
32 of street or highway driving. An approved course shall  
33 include a minimum of two hours of classroom instruction  
34 concerning substance abuse as part of its curriculum. After  
35 the student has completed three clock hours of street or

1 highway driving and has demonstrated to the instructor an  
2 ability to properly operate a motor vehicle and upon written  
3 request of a parent or guardian, the instructor may waive the  
4 remaining required laboratory instruction.

5 Sec. 9. Section 321.196, Code 1985, is amended by adding  
6 the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. Prior to the renewal of a  
8 license pursuant to this section, the department shall issue  
9 to each applicant information on the law contained in chapters  
10 321 and 321B relating to the operation of a motor vehicle  
11 while intoxicated and statistical information relating to the  
12 number of injuries and fatalities occurring as a result of the  
13 operation of motor vehicles while intoxicated.

14 Sec. 10. Section 321.218, unnumbered paragraph 1, Code  
15 1985, is amended to read as follows:

16 A person whose ~~operator's-or-chauffeur's~~ motor vehicle  
17 license or driving privilege has been denied, canceled,  
18 suspended or revoked as provided in this chapter, and who  
19 drives a motor vehicle upon the highways of this state while  
20 the license or privilege is denied, canceled, suspended, or  
21 revoked commits a ~~simple~~ serious misdemeanor and shall be  
22 imprisoned in the county jail for not less than forty-eight  
23 hours to be served as ordered by the court, less credit for  
24 any time the person was confined in a jail or detention  
25 facility following arrest. ~~However, a person whose license or~~  
26 ~~driving privilege has been revoked under section 321.209 or~~  
27 ~~chapter 321B and who drives a motor vehicle upon the highways~~  
28 ~~of this state while the license or privilege is revoked~~  
29 ~~commits a serious misdemeanor. The sentence imposed under~~  
30 ~~this section shall not be suspended by the court,~~  
31 ~~notwithstanding section 907.3 or any other statute.~~ The  
32 department, upon receiving the record of the conviction of a  
33 person under this section upon a charge of driving a motor  
34 vehicle while the license of the person was suspended or  
35 revoked, shall, except for licenses suspended under section

1 321.513, extend the period of suspension or revocation for an  
2 additional like period, and the department shall not issue a  
3 new license during the additional period.

4 Sec. 11. Section 321.281, subsection 1, paragraph b, Code  
5 1985, is amended to read as follows:

6 b. While having an alcohol concentration of ~~thirteen~~ ten  
7 hundredths or more.

8 Sec. 12. Section 321.281, subsection 2, paragraph b, Code  
9 1985, is amended to read as follows:

10 b. An aggravated misdemeanor for a second offense, not  
11 resulting in the death or serious injury, as defined in  
12 section 702.18, of another, and shall be imprisoned in the  
13 county jail or community-based correctional facility not less  
14 than seven days, which minimum term cannot be suspended  
15 notwithstanding section 901.5, subsection 3 and section 907.3,  
16 subsection 2, and assessed a fine of not less than seven  
17 hundred fifty dollars.

18 Sec. 13. Section 321.281, subsection 2, paragraph c,  
19 unnumbered paragraph 1, Code 1985, is amended to read as  
20 follows:

21 c. A class "D" felony for a second offense resulting in  
22 the death or serious injury, as defined in section 702.18, of  
23 another or third offense and each subsequent offense not  
24 resulting in the death or serious injury, as defined in  
25 section 702.18, of another and assessed a fine of not less  
26 than seven hundred fifty dollars.

27 Sec. 14. Section 321.281, subsection 2, is amended by  
28 adding the following new lettered paragraph:

29 NEW LETTERED PARAGRAPH. d. A class "C" felony for a third  
30 offense and each subsequent offense resulting in the death or  
31 serious injury, as defined in section 702.18, of another.

32 Sec. 15. Section 321.281, subsection 2, unnumbered  
33 paragraph 3, Code 1985, is amended to read as follows:

34 On a conviction for a second-or-subsequent-offense-in  
35 violation of this section, and for which the defendant's

1 evaluation under section 321.281A was positive, the court  
2 ~~shall order the-defendant-to-undergo-a-substance-abuse~~  
3 ~~evaluation-and-the-court-may-order~~ the defendant to follow the  
4 recommendations proposed in the substance abuse evaluation for  
5 appropriate substance abuse treatment for the defendant. As a  
6 result of the substance abuse evaluation, the court may order  
7 a person to attend a substance abuse education program  
8 approved by the Iowa department of substance abuse.  
9 Curriculum standards for substance abuse education programs  
10 shall also be developed and administered by the Iowa  
11 department of substance abuse. Court ordered substance abuse  
12 treatment is subject to the periodic reporting requirements of  
13 section 125.86. If a defendant is committed by the court to a  
14 substance abuse treatment facility, the administrator of the  
15 facility shall report to the court when it is determined that  
16 the defendant has received the maximum benefit of treatment at  
17 the facility and the defendant shall be released from the  
18 facility. The time for which the defendant is committed for  
19 treatment shall be credited against the defendant's sentence.  
20 The court may credit against any fine imposed all or part of  
21 the expenditures made by the defendant for purposes of  
22 evaluation, treatment, or education. The court may prescribe  
23 the length of time for ~~the-evaluation-and~~ treatment or it may  
24 request that the treatment program to which the person is  
25 committed immediately report to the court when the person has  
26 received maximum benefit from the treatment program or has  
27 recovered from the person's addiction, dependency, or tendency  
28 to chronically abuse alcohol or drugs. A person committed  
29 under this section who does not possess sufficient income or  
30 estate to make payment of the costs of the treatment in whole  
31 or in part shall be considered a state patient and the costs  
32 of treatment shall be paid as provided in section 125.44. A  
33 defendant who fails to carry out the order of the court or who  
34 fails to successfully complete or attend an ordered substance  
35 abuse treatment or education program shall be confined in the

1 county jail for twenty days in addition to any other  
2 imprisonment ordered by the court or may be ordered to perform  
3 unpaid community service work, and shall be placed on  
4 probation for one year with a violation of this probation  
5 punishable as contempt of court.

6 Sec. 16. Section 321.281, Code 1985, is amended by  
7 striking subsection 6 and renumbering the remaining  
8 subsections.

9 Sec. 17. Section 321.281, subsection 11, Code 1985, is  
10 amended to read as follows:

11 11. If a defendant is convicted of a first offense of this  
12 section and the defendant's license or permit to operate a  
13 motor vehicle is revoked under section 321.209 or chapter 321B  
14 for the occurrence from which the arrest arose, the period of  
15 revocation shall be the period provided for such a revocation  
16 or until the defendant reaches the age of nineteen whichever  
17 period is longer. A person whose license to operate a motor  
18 vehicle is revoked pursuant to this subsection may, after the  
19 expiration of not less than thirty days after the effective  
20 date of the revocation, be issued a temporary restricted  
21 driving permit by the department allowing the person to drive  
22 to and from the person's home and ~~place-of-employment-and-in~~  
23 ~~the-course-of-the-person's-employment-and-to-attend~~  
24 ~~evaluation,-treatment-or-educational-services-for-alcohol-or~~  
25 ~~drug-dependency~~ specified places required by the person's  
26 employment, family, health, education and treatment  
27 responsibilities.

28 Sec. 18. NEW SECTION. 321.281A. MANDATORY EVALUATION --  
29 TREATMENT.

30 A person charged with a violation of section 321.281 shall,  
31 as a condition of bond, be ordered by the court to promptly  
32 undergo an evaluation to determine if the person is a  
33 substance abuser, as defined in section 125.2, subsection 5.  
34 The evaluation shall include, but is not limited to, the  
35 following:

- 1 1. The person's substance abuse history, including the  
2 type, amount, frequency, and duration of substance use.
  - 3 2. The family history and composition of the person's  
4 current family. Historical family data may include the use of  
5 substances on the part of family members.
  - 6 3. The psychological history and mental health status of  
7 the person. If warranted, further psychological testing of  
8 the person may be made.
  - 9 4. The person's medical and health history, including any  
10 instances of overdoses; and any physical indicators which  
11 would warrant a physical examination.
  - 12 5. A legal history which will describe any involvement of  
13 the person with the criminal justice system, including a  
14 discussion with the person to determine the extent to which  
15 the person's current legal situation will influence future use  
16 of substances.
  - 17 6. The person's educational and vocational history.
  - 18 7. An observation of the person's emotional and behavioral  
19 functioning during the evaluation period.
  - 20 8. Verification of required information and data from a  
21 family member or concerned individual. Verification shall  
22 include, where possible, information on the person's current  
23 emotional and behavioral functioning.
- 24 The substance abuse evaluation provider shall report to the  
25 court the results of the evaluation. If the substance abuse  
26 evaluation provider determines that the person has definite  
27 indications of substance abuse or has probable indications of  
28 substance abuse and there exists other corroborative evidence  
29 of substance abuse, the provider shall notify the court that  
30 the substance abuse evaluation is positive and make  
31 recommendations for treatment or education to the court.
- 32 Sec. 19. Section 321.283, subsection 6, unnumbered  
33 paragraph 1, Code 1985, is amended to read as follows:
- 34 6. TEMPORARY DRIVING PERMIT. Any person required to  
35 attend evaluation, treatment or rehabilitation services by the

1 provisions of this division, who is subject to a drivers  
2 license suspension or revocation, may, after the expiration of  
3 not less than thirty days after the effective date of the  
4 revocation or suspension, be issued a temporary driving permit  
5 by the department restricted to driving to and from the  
6 person's home, ~~place of employment, in the person's employment~~  
7 ~~and the location of the required evaluation, treatment or~~  
8 ~~rehabilitation services~~ and specified places required by the  
9 person's employment, family, health, education and treatment  
10 responsibilities. Any person who does not receive a temporary  
11 driving permit may after the period of license suspension or  
12 revocation for a violation of section 321.281 have ~~his or her~~  
13 the person's drivers license reissued subject to suspension  
14 for failure to comply with the provisions of this division.  
15 This section shall not permit the issuance of a temporary  
16 driving permit or reissuance of a drivers license where the  
17 provisions of chapter 321A have not been complied with.

18 Sec. 20. Section 321B.2, Code 1985, is amended by striking  
19 the section and inserting in lieu thereof the following:

20 321B.2 DEFINITIONS.

21 As used in this chapter, unless the context otherwise  
22 requires:

23 1. "Alcoholic beverage" means as defined in section 321.1.

24 2. "Alcohol concentration" means as defined in section  
25 321.1.

26 3. "Arrest" includes but is not limited to taking into  
27 custody pursuant to section 232.19.

28 4. "Department" means the state department of  
29 transportation.

30 5. "Director" means the director of transportation or the  
31 director's designee.

32 6. "Peace officer" means:

33 a. Members of the highway patrol.

34 b. Police officers under civil service as provided in  
35 chapter 400.

1 c. Sheriffs.

2 d. Regular deputy sheriffs who have had formal police  
3 training.

4 e. Any other law enforcement officer who has  
5 satisfactorily completed an approved course relating to motor  
6 vehicle operators under the influence of alcoholic beverages  
7 at the Iowa law enforcement academy or a law enforcement  
8 training program approved by the department of public safety.

9 7. "Serious injury" means as defined in section 702.18.

10 Sec. 21. Section 321B.11, Code 1985, is amended to read as  
11 follows:

12 321B.11 ~~DEAD-OR-UNCONSCIOUS-PERSONS~~ ADMINISTRATION OF  
13 CHEMICAL TESTS WITHOUT CONSENT.

14 1. If a person is an operator of a motor vehicle involved  
15 in a motor vehicle accident causing death or serious injury to  
16 a person and the operator refuses a test under this chapter, a  
17 chemical test shall be administered to the person arrested  
18 without the consent of that person; provided that a licensed  
19 physician certifies in advance of the test that death or  
20 serious injury has occurred to a person.

21 2. Any A person who is dead, unconscious or who is  
22 otherwise in a condition rendering the person incapable of  
23 consent or refusal is deemed not to have withdrawn the consent  
24 provided by section 321B.4, and the test may be given;  
25 provided that a licensed physician shall-certify certifies in  
26 advance of such the test that such the person is dead,  
27 unconscious or otherwise in a condition rendering that person  
28 incapable of consent or refusal.

29 3. If a test is administered to a person under this  
30 section, that person is not subject to the penalties for  
31 refusal to submit to a test.

32 Sec. 22. Section 321B.13, unnumbered paragraphs 2 and 3,  
33 Code 1985, are amended to read as follows:

34 The department may, on application, issue a temporary  
35 restricted license to a person whose license has been subject

1 to revocation under section 321.209, subsection 2, section  
2 321.281, or this chapter, for a second or subsequent time to  
3 allow the person to drive to and from the person's home and  
4 ~~place-of-employment, in-the-course-of-the-person's-employment,~~  
5 ~~and-to-attend-evaluation, treatment-or-educational-services~~  
6 ~~for-alcohol-or-drug-dependency~~ specified places required by  
7 the person's employment, family, health, education and  
8 treatment responsibilities, upon expiration of the first three  
9 hundred and sixty days of the person's period of revocation.

10 The department may, after the expiration of not less than  
11 thirty days after the effective date of the revocation, on  
12 application, issue a temporary restricted license to a person  
13 whose license has been revoked under this section and who has  
14 ~~entered-a-plea-of-guilty-to-a-charge-under~~ been convicted of a  
15 violation of section 321.281 when-the-person's-regular  
16 ~~employment-includes-the-operation-of-a-motor-vehicle-or-who~~  
17 ~~cannot-perform-the-person's-regular-occupation-without-the-use~~  
18 ~~of-a-motor-vehicle, or-when-the-person's-use-of-a-motor~~  
19 ~~vehicle-is-necessary-to-attend-evaluation, treatment-or~~  
20 ~~educational-services-for-alcohol-or-drug-dependency, or-to~~  
21 ~~attend-court-ordered-community-service~~ allowing the person to  
22 drive to and from the person's home and specified places  
23 required by the person's employment, family, health, education  
24 and treatment responsibilities, but the person shall not  
25 operate a vehicle for pleasure while holding a restricted  
26 license. However, this paragraph does not apply to a person  
27 whose license is suspended or revoked for another reason.

28 Sec. 23. Section 321B.16, unnumbered paragraph 4, Code  
29 1985, is amended to read as follows:

30 The department may after the expiration of not less than  
31 thirty days after the effective date of the revocation, on  
32 application, issue a temporary restricted license to the  
33 person whose license has been revoked ~~when-the-person's~~  
34 ~~regular-employment-includes-the-operation-of-a-motor-vehicle~~  
35 ~~or-the-person-cannot-perform-the-person's-regular-occupation~~

1 ~~without the use of a motor vehicle, or when the person's use~~  
2 ~~of a motor vehicle is necessary to attend evaluation,~~  
3 ~~treatment or educational services for alcohol or drug~~  
4 ~~dependency~~ allowing the person to drive to and from the  
5 person's home and specified places required by the person's  
6 employment, family, health, education and treatment  
7 responsibilities, but the person shall not operate a vehicle  
8 for pleasure while holding a restricted license. However,  
9 this paragraph does not apply to a person whose license is  
10 suspended or revoked for another reason.

11 Sec. 24. Section 321B.26, Code 1985, is amended to read as  
12 follows:

13 321B.26 HEARING.

14 Upon the written request of a person whose privilege to  
15 drive has been revoked or denied, or who has been issued a  
16 twenty-day license pursuant to section 321B.13 or section  
17 321B.16, the department shall grant the person an opportunity  
18 to be heard within twenty days after the receipt of the  
19 request and payment of a two hundred dollar hearing cost fee,  
20 but the request must be made within ten days of the effective  
21 date of revocation or denial of driving privileges or the  
22 issuance of a temporary license. The hearing shall be before  
23 the department in the county where the alleged events  
24 occurred, unless the director and the person agree that the  
25 hearing may be held in some other county. The hearing may be  
26 recorded and its scope shall be limited to the issues of  
27 whether a peace officer had reasonable grounds to believe that  
28 the person was operating a motor vehicle in violation of  
29 section 321.281 and either of the following:

30 a. Whether the person refused to submit to the test or  
31 tests.

32 b. Whether a test was administered and the test results  
33 indicated an alcohol concentration of ten hundredths or more.

34 The department shall order that the revocation or denial be  
35 either rescinded or sustained. Payment of the hearing cost

1 fee is required notwithstanding the Iowa administrative  
2 procedure Act, chapter 17A. The person's hearing cost fee  
3 shall be returned if the order is rescinded.

4 Sec. 25. Section 331.802, Code 1985, is amended by adding  
5 the following new subsection:

6 NEW SUBSECTION. When a death occurs as a result of a motor  
7 vehicle accident, the county medical examiner or the county  
8 medical examiner's designee shall take a blood sample from the  
9 decedent within eight hours of death. The county medical  
10 examiner or the county medical examiner's designee shall  
11 analyze the blood sample to determine the alcohol  
12 concentration or the presence of drugs, and shall report the  
13 results of the analysis to the state department of  
14 transportation within thirty days of the death.

15 Sec. 26. Section 907.3, subsection 1, paragraph g, Code  
16 1985, is amended to read as follows:

17 g. The offense is a violation of section 321.281 and  
18 ~~within the previous six years, the person has been convicted~~  
19 ~~of a violation of that section or the person's driver's~~  
20 ~~license has been revoked pursuant to that section or chapter~~  
21 ~~321B.~~

22 Sec. 27. Section 2 of this Act does not apply to persons  
23 who were born on or before June 30, 1966.

24 EXPLANATION

25 This bill modifies the existing law regarding the  
26 consumption of alcoholic beverages and beer by, among other  
27 things:

28 1. Raising the legal drinking age to twenty-one years of  
29 age.

30 2. Increasing the penalty from a simple to a serious  
31 misdemeanor for providing intoxicated individuals with  
32 alcoholic beverages or beer.

33 3. Requiring minimum levels for dram shop liability  
34 insurance policies.

35 4. Requiring the posting of notice of OWI laws in liquor

- 1 establishments and stores.
- 2 5. Requiring approved drivers education courses to include  
3 instruction concerning substance abuse.
- 4 6. Requiring the dissemination of information relating to  
5 drunken driving at the time of license renewal.
- 6 7. Providing that all offenses of driving while license  
7 denied, canceled, suspended or revoked are serious  
8 misdemeanors and providing that offenders be imprisoned in the  
9 county jail for a minimum of forty-eight hours.
- 10 8. Reducing the per se level of alcohol concentration from  
11 .13 to .10.
- 12 9. Increasing the penalty one degree for repeat OWI  
13 offenders who cause death or serious injury.
- 14 10. Requiring that all OWI offenders receive a substance  
15 abuse evaluation and providing that if a substance abuse  
16 evaluation is positive, that the offender undergo appropriate  
17 substance abuse treatment or education.
- 18 11. Prohibiting the deferral of judgment or sentence for  
19 OWI offenders.
- 20 12. Prohibiting the granting of temporary or restricted  
21 driving privileges for a period of 30 days following an OWI  
22 related revocation.
- 23 13. Authorizing the chemical testing of all motor vehicle  
24 operators involved in an accident resulting in serious injury  
25 or death.
- 26 14. Requiring a hearing cost fee of \$200 for a revocation  
27 or denial hearing, which is refundable if the revocation or  
28 denial order is rescinded.
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January 11, 1985

TO: THE HONORABLE MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY  
AND THE HOUSE COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT.

FROM: The 1984 Interim Study Committee on Drunk Driving

Dear Members:

You will be receiving an omnibus draft proposal from our committee relating to the problems in, and proposed solutions for, the consumption of alcoholic beverages and driving while intoxicated.

We would like to call your attention to an issue which, although not contained within the omnibus draft, has been considered by our committee as a major problem in the area. The issue is the extent to which the provisions of section 321.281 and chapter 321B of the Iowa Code may or may not be applicable to the operation of modes of transportation or recreation not specifically covered by the present definition of "motor vehicle". Specifically, the question has arisen as to how the driving while intoxicated and implied consent provisions of the Code may be made applicable to the operation of vessels, snowmobiles, all-terrain vehicles and other similar modes of transportation or recreation, and correspondingly, the principle or principles by which these provisions may be applied to the operation of a mode of transportation or recreation for which an "operator's license" is not presently required.

Therefore, this committee respectfully requests that the Standing Committees on Judiciary pursue these issues and recommend such legislation

January 11, 1984

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as necessary to insure that all applicable modes of transportation and recreation are covered by, and subject to, the provisions of operating while intoxicated and implied consent.

Respectfully submitted on behalf  
of the 1984 Interim Committee on  
Drunk Driving

The Honorable Judge Van Wifvat  
Chairperson

DAVID J. LYONS  
Legal Counsel

DL:cf

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Lowell E. Norland  
Delwyn Stromer  
Richard W. Weiden

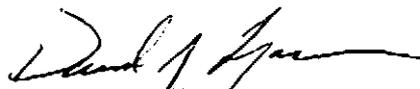
TO: THE HONORABLE MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY  
AND THE HOUSE COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

FROM: The 1984 Interim Study Committee on Drunk Driving

Dear Members:

Attached, please find copies of correspondence between the Drunk Driving Study Committee and the Parole Board Study Committee. The issues with which these letters are concerned are, in our opinion, important concerns and may need to be addressed by legislation. However, due to the limited subject matter with which our committee has dealt and the time constrictions involved, our committee will not be recommending legislation on these issues. However, it is the wish of this committee that the Standing Committees on Judiciary review the attached correspondence, in conjunction with the legislative proposals provided by this committee, and recommend to the General Assembly legislation deemed appropriate by your membership.

RESPECTFULLY SUBMITTED ON BEHALF OF THE 1984 INTERIM COMMITTEE ON DRUNK DRIVING;

  
DAVID S. LYONS  
Legal Counsel

DL:cf

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Senator Lowell L. Junkins, Vice Chairperson  
IOWA LEGISLATIVE SERVICE BUREAU  
STATE HOUSE  
DES MOINES, IOWA 50319  
TELEPHONE 515/281-3566  
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TO: THE HONORABLE MEMBERS OF THE DRUNK DRIVING STUDY COMMITTEE

FROM: The Parole Board Study Committee

RE: Assured Punishment and Adequate Treatment for OWI Offenders.

During the November 9th meeting of the Parole Board Study Committee, concerns were raised regarding the system of justice surrounding Operating While Intoxicated offenses.

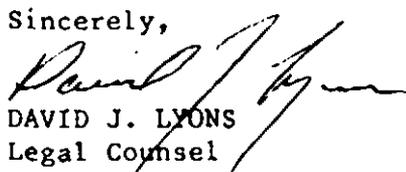
Of particular concern to the Committee were:

1. The lack of assured incarceration for repeat offenders.
2. The lack of adequate treatment programs for incarcerated individuals with substance abuse problems.

We are attaching a copy of our minutes so that your Committee may review these concerns and attempt to alleviate these problems. Further, we ask that you forward to our Committee any suggestions or proposals your Committee is working with to solve these problems so that our Committee may review them at our meeting on the 27th.

We appreciate your assistance in this matter.

Sincerely,

  
DAVID J. LYONS  
Legal Counsel

DL:cf

IOWA LEGISLATIVE SERVICE BUREAU

STATE HOUSE  
DES MOINES, IOWA 50319  
TELEPHONE 515/281-1566  
SERGE H. GARRISON, DIRECTOR

12/5/84

TO: THE HONORABLE MEMBERS OF THE DRUNK DRIVING STUDY COMMITTEE

FROM: The Board of Parole Study Committee

Dear Members:

During its deliberations, the Board of Parole Study Committee discussed the problems of lack of assured incarceration for repeat O.W.I. offenders and the lack of adequate substance abuse evaluation and treatment programs for O.W.I. offenders.

We commend your efforts to establish mandatory evaluation and treatment for all O.W.I. offenders and your efforts to increase the penalties for repeat O.W.I. offenders who injure or kill innocent citizens.

However, it is the feeling of this committee that there may be more efforts called for. These efforts include assuring the continuation of treatment programs into the correctional process and the creation of a system that assures that repeat O.W.I. offenders serve periods of incarceration commensurate with their crimes, regardless of the pressures of the present prison cap and funding of correctional facilities for this purpose.

Therefore, the Board of Parole Study Committee respectfully requests that your committee review these issues at your final meeting and recommend such legislation on these issues as your membership deems appropriate.

RESPECTFULLY SUBMITTED ON BEHALF OF THE BOARD OF PAROLE STUDY COMMITTEE;

  
DAVID J. LYONS  
Legal Counsel

IOWA LEGISLATIVE SERVICE BUREAU

STATE HOUSE  
DES MOINES, IOWA 50319  
TELEPHONE 515-281-3506  
SERGE W. GARRISON, DIRECTOR

TO: THE HONORABLE MEMBERS OF THE PAROLE BOARD STUDY COMMITTEE  
FROM: THE DRUNK DRIVING STUDY COMMITTEE  
RE: ASSURED INCARCERATION AND ADEQUATE TREATMENT FOR O.W.I. OFFENDERS

We are in receipt of your letter regarding your concerns on the system of justice surrounding the offense of Operating While Intoxicated. For your information, the Committee is attempting to deal with both issues which are of major concern to your Committee. For example, on the issue of "Assured Incarceration", we have discussed the following proposals:

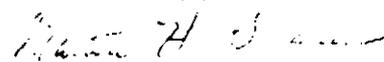
1. Prohibiting Deferred Judgments and Sentences in O.W.I.
2. Increasing the Penalties for repeat offenders who cause death or serious injury.

On the issue of adequate treatment programs, the Committee is working on a proposal that would require substance abuse assessment and evaluation for all O.W.I. offenders. Positive results on these assessments will allow the court to order appropriate treatment as a part of the sentence.

Upon reading the minutes of your Committee, however, it is clear that these proposals may not go as far as your Committee would like. In particular, we have not addressed the issues of substance programs within the correctional institutions and the effect of the prison cap pressure to release O.W.I. offenders in a larger percentage than other offenders. These may indeed be issues that could be addressed in the upcoming legislative session. Therefore, we will attempt to place these concerns on our December 7th agenda.

We will forward a copy of our final report and suggested legislation on these issues to your Committee members as soon as possible.

Sincerely,

  
MARTIN H. FRANCIS  
Legal Counsel