

Ensuring safe roads

BY JAMES CARROLL

How do drunken-driving laws compare across the states?

Last October, President Clinton issued a directive calling for a national standard to measure the blood alcohol concentration, or BAC, for drivers of motor vehicles across the country. This raises the question of how drunken-driving laws differ among the states.

BAC, which refers to the amount of alcohol in a person's bloodstream, helps law-enforcement officials determine the level to which a driver is impaired by the alcohol consumption. In order to measure a driver's BAC and possibly establish probable cause for an arrest, law-enforcement officers in 30 states administer preliminary breath tests when they make a traffic stop.

Traditionally states have allowed drivers with a BAC of up to .10 to operate a vehicle, but recently many states have lowered the standard to .08. Significant research by the National Highway Traffic Safety Administration showed that drivers are substantially impaired at .08 BAC, and that a driver with a BAC between .08 and .10 is up to 52 percent more likely to die in a single-vehicle crash than a driver with a lower BAC. Other studies in North Carolina and Illinois show that after the state passed a law lowering the BAC level to .08, the number of fatal drunken-driving accidents decreased.

In response to such research, the U.S. Congress passed a law last year requiring states to lower their BAC standard to .08 by 2004. States that do not comply by the deadline face a 2 percent reduction in federal highway-construction funds. If a state still has not complied by 2007, the reduction would increase to 8 percent.

States have three types of laws regarding drunken driving. Under the first type, enacted in 49 states and the District of Columbia, police may charge a driver with "driving under the influence" of alcohol, or DUI, if the driver is found to have a BAC of a certain level or higher on a breath, blood or urine test. This level, called the "illegal per se" BAC level, is the one most commonly discussed and the one that Congress wants all states to set at .08.

Under the second type of law, enacted in all 50 states and the District of Columbia, police may charge a driver with "driving while intoxicated," or DWI, if the driver fails sobriety tests such as walking in a straight line or touching his finger to his nose. In 29 states and the Dis-

trict of Columbia, police may estimate the person's level of drunkenness by using what is called a "presumptive level" BAC. In most states, the presumptive level BAC is the same as the illegal per se BAC, but in six states and the District of Columbia it is lower, thus more clearly differentiating between the offenses of DWI and DUI. A driver whose BAC is at the illegal per se level or higher may be charged with both DUI and DWI. However, if the driver legally refuses to take a chemical test, he may be charged only with DWI.

The third type of drunken-driving law, enacted in 41 states and the District of Columbia, sets the "administrative per se" BAC, or the level at which a state licensing agency can restrict a person's driving privileges. The administrative per se BAC is the same as the illegal per se BAC in every state, but is lower in the District of Columbia, where the agency may restrict the driving privileges of a person found to have a .05 BAC, even though that person cannot be

charged with DUI.

Of the 49 states with an illegal per se BAC standard, 19 states and the District of Columbia currently comply with the presidential directive asking that it be set at .08. The other 30 states all have illegal per se BAC standards of .10. The state without an illegal per se BAC standard, Massachusetts, does have presumptive level and administrative BAC standards.

In addition to having various standards for measuring whether a driver is drunk, states also have widely varying penalties for drunken driving. Twenty-eight states impose a mandatory fine on people convicted of DWI for the first time, with amounts ranging from \$100 in Michigan, Rhode Island and West Virginia to \$1,000 in Oregon. Twenty states punish first-time offenders with jail time, most imposing a sentence of 24 or 48 hours. The stiffest penalty is found in Alaska, where such offenders must serve 72 hours in jail.

With just under 16,000 deaths from alcohol-related traffic accidents in 1999, the issue of what states should do about drunken driving promises to be significant in the 2001 state legislative sessions.

For more information on this or other issues, contact the States Information Center at (888) CSG-4SIC or sic@csg.org.



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