

**TO THE HONORABLE  
MARK R. WARNER  
GOVERNOR OF VIRGINIA**

**FROM THE GOVERNOR'S TASK FORCE  
TO COMBAT DRIVING UNDER THE INFLUENCE  
OF DRUGS AND ALCOHOL**

**Report and Recommendations**

**July 2003**

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## EXECUTIVE SUMMARY

Governor Mark R. Warner created the Task Force to Combat Driving Under the Influence of Drugs and Alcohol to assess current efforts to eliminate driving under the influence (DUI) and recommend new strategies to further curtail impaired driving and boating under the influence (BUI). Task Force members reviewed data on state and national trends, reviewed relevant state programs and procedures and heard presentations from numerous speakers concerning high priority issues. A survey of judges, prosecutors, chiefs of police and sheriffs (supplemented by focus group discussions and telephone interviews) gathered additional information and insight into the problem.

Virginia has made significant progress during the past 20 years in its efforts to reduce DUI and BUI. Legislation has been enacted to improve efforts to detect, apprehend and prosecute offenders. Societal changes, such as the growth of organizations such as Mothers Against Drunk Driving (MADD), Virginians Opposing Drunk Driving (VODD) and Designated Driver programs, have increased public awareness of the problems and consequences. Overall, alcohol-related crashes, injuries and deaths have declined.

Despite these accomplishments, there is room for improvement. Both national and Virginia data suggest that some of the positive trends may be reversing. Estimated 2002 national crash data document 17,970 alcohol-related deaths, the third straight year of increase after a decade of decline.<sup>1</sup> In Virginia, alcohol-related motor vehicle crashes increased between 1999 (10,942) and 2002 (11,788) at a rate of 7.73%. Three hundred seventy five fatalities occurred in 2002 as a result of drunk driving, comprising 41 percent of total highway fatalities that year.<sup>2</sup>

Since 1997, the percent of boating fatalities that were alcohol-related was almost double that for boating crashes in general.<sup>3</sup> This finding is similar to findings concerning alcohol-related motor vehicle crashes, except that the percentage of fatal motor vehicle crashes that are alcohol-related is about three times as high as the percent of total alcohol-related motor vehicle crashes.

The Task Force identified eight high-priority issues requiring increased attention:

1. **Underage drinking and driving.** Although young drivers are less likely than adults to drive after drinking alcohol, their risk for a crash is substantially higher when they do.<sup>4</sup> Continued vigilance is required to develop and reinforce safe driving habits at an early age.

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1. *Motor Vehicle Traffic Crash Injury and Fatality Estimates: 2002 Early Assessment.* National Highway Traffic Safety Administration, May 2003.

2. Transportation Safety Services, Virginia Department of Motor Vehicles, 2003.

3. Edward Steinkoenig, Virginia Department of Game and Inland Fisheries, 2003.

4. *Alcohol and Underage Drinking.* Insurance Institute for Highway Safety, December 2002, Arlington, VA.

2. **Public support and high visibility leadership.** Public outreach and education campaigns must continue to maintain and build public support for drunk driving and boating initiatives. The Governor's office should continue to provide high visibility leadership, supporting as in 2003, such initiatives as a primary safety belt law and other appropriate highway safety programs.
3. **Differing perspectives.** Law enforcement personnel, prosecutors, judges and others involved in combating DUI and BUI differ in their views regarding the most effective deterrents. Expanding understanding and implementation of effective approaches and practices is needed.
4. **Technology resource allocation.** State-of-the-art techniques and tools are not available or in use across the Commonwealth. Laptop computers in police cars and boats, drivers' license scanners and other tools can help improve law enforcement efficiency and effectiveness by providing timely access to information and improving accuracy of data collection.
5. **Adequacy of current substance abuse programs.** Treatment and rehabilitation programs are inadequate to address the demand for services. Data-driven substance abuse screening tools and treatment programs can improve DUI and BUI recidivism prevention efforts.
6. **Repeat offenders and hard core drunk drivers.** This group is involved in a disproportionate number of alcohol-related crashes and fatalities. In 2001, 57 percent of all drivers and 41 percent of drivers under the age of 21, involved in an alcohol-related fatal crash, had a BAC test result of .15 or higher.<sup>5</sup>
7. **Legal issues.** The current complexity of DUI and BUI laws and procedures make enforcement and prosecution efforts both difficult and time-consuming.
8. **Data management.** The absence of a unified, coordinated data management system has made it virtually impossible to track DUI and BUI events from arrest through resolution, hampering efforts to determine emerging trends and issues.

To address these issues, the Task Force offers thirty-three recommendations for implementation within the next five years (pages 20-26).

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5. *2001 Report on Alcohol-Related Traffic Fatalities in the United States.* The Century Council, Washington, D.C.

## **BACKGROUND**

In 1982, Governor Charles S. Robb convened Virginia's first Governor's Task Force to Combat Drunk Driving. In June 1983 this Task Force made recommendations that focused on the areas of DUI enforcement and adjudication, rehabilitation of offenders, and public awareness of drunk driving and traffic safety consequences. By 2003, all but five recommendations were completed or implemented in part (Attachment 2, page 30). Additionally, drunk driving received recognition as a major public health problem.

In 1993, the National Highway Traffic Safety Administration (NHTSA) conducted an assessment of Virginia's impaired driving program. Their recommendations (Attachment 3, pages 31-33) included changes in the Code of Virginia, a reevaluation of law enforcement training, a holistic approach to rehabilitation, and statewide planning for impaired driving.

On August 15, 2002, Governor Mark R. Warner announced the creation of the Task Force to Combat Driving Under the Influence of Drugs and Alcohol. The 42-member Task Force (Attachment 1, pages 27-29), co-chaired by the Secretaries of Public Safety and Transportation, was a diverse group including members of the executive, legislative, and judicial branches of state government, and included representatives from business and professional organizations and advocacy groups. The Task Force was charged with assessing current efforts in combating driving under the influence (DUI), and recommending new strategies to further reduce driving and boating under the influence (BUI).

In creating this Task Force, Governor Warner acknowledged the work done by a previous task force in 1983 in combating driving and boating under the influence. Despite these efforts, the problem of DUI and BUI was not eradicated, and the number of crashes related to impaired driving has increased in the past three years. To reverse this trend the Task Force:

1. Reviewed the achievements made in combating driving and boating under the influence during the past 20 years;
2. Identified and assessed current efforts being taken to address DUI and BUI;
3. Identified national state-of-the-art efforts to combat DUI and BUI;
4. Identified gaps existing between current efforts and state-of-the-art efforts and recommended actions to bridge those gaps;
5. Recommended new strategies with initiatives to address high-risk populations such as underage drinkers and repeat DUI offenders;
6. Recommended actions to sustain and enhance the public's awareness and concern for the danger posed by driving under the influence;

7. Identified potential funding sources for recommendations;
8. Recommended strategies for improved coordination of management, funding and resources at state and local levels.

This report summarizes the Task Force's activities, accomplishments, and recommendations for the next five years.

## PROGRESS AND CHALLENGES

Until recently, Virginia has made significant progress over the last 20 years in its efforts to reduce DUI and BUI. Among the major accomplishments for this time period are:<sup>6</sup>

- Legislation for: 0.08 Blood Alcohol Content (BAC) limit (§18.2-269, DUI; §29.1-738.3, BUI); zero tolerance for underage drinkers (§18.2-266.1, DUI; §29.1-738.02, BUI); and administrative license suspension (§18.2-271, §46.2-391.2, DUI; §29.1-738.4, §29.1-738.2, BUI);<sup>7</sup>
- Increased public awareness about the tragic consequences of drunk driving has led to societal change as demonstrated by the growth of organizations such as Mother's Against Drunk Driving (MADD), Virginians Opposing Drunk Driving (VODD) and Designated Driver programs;
- A decline in the number of alcohol-related crashes in the past 20 years from 21,157 (18.8 percent of all crashes) in 1982 to 11,788 (8.0 percent of all crashes) in 2002;
- A decline in the number of alcohol-related injuries from 15,836 (26.5 percent of all traffic crash injuries) in 1982 to 8,465 (10.7 percent of all injuries) in 2002;
- The average BAC level upon arrest has dropped as well, from 0.174 in 1982 to 0.138 in 2002;
- An increase in DUI convictions from 24,089 in 1982 to 27,322 in 2002.

Despite these victories, in the recent past, we have seen reversals in long standing positive trends in the number of alcohol-related crashes. Although state and national countermeasures to combat DUI have had a positive impact on the general population, their effect on hardcore drunk drivers (HCDD), those who habitually drive at a BAC of .15 or greater<sup>8</sup> has not been as widespread.

Hard Core Drunk Drivers are now becoming the target of new approaches to changing drinking and driving behavior. In addition, as the children of the 80s and 90s reach driving age, they become a whole new audience for efforts to reduce drunk driving.

- Alcohol-related crashes in Virginia have been on the rise during the past four years — increasing from 10,942 crashes in 1999 to 11,788 crashes in 2002;

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6. Unless otherwise indicated, data illustrating progress and challenges was provided by Transportation Safety Services, Virginia Department of Motor Vehicles, 2003.

7. Ryan Hartman, Virginia Transportation Research Council, 2003.

8. *Source Book of Promising Strategies, Laws and Programs*, National Hard Core Drunk Driver Project, The Century Council, Washington, D.C., 1997

- In 2002, 375 fatalities occurred in Virginia as a result of drunk driving, the highest total since 1994;
- DUI fatalities comprised 41.1 percent of total fatalities in 2002, an increase compared to 30.8 percent in 1997.
- The declining trends for alcohol-related boating crashes and arrests have leveled off during the past four years.

## METHODOLOGY AND APPROACH

A primary responsibility of the Virginia Department of Motor Vehicles (DMV) was to assist the Task Force in its efforts to update the work of Governor Robb's 1983 Task Force. The Center for Public Policy at Virginia Commonwealth University (VCU) provided staff support to the Task Force. DMV enlisted the Virginia Transportation Research Council (VTRC) to research the status of the recommendations of the 1983 Task Force. Research included current legislation regarding DUI and BUI; and gathering, reviewing and analyzing state and national trends. They also identified effective programs and approaches in this area.

The Task Force formed three committees: Specific Deterrence; General Deterrence; and, Prevention, Intervention and Treatment. These committees worked to further define and prioritize issues and offer specific action recommendations for approval by the full Task Force. Several individuals were asked to serve as committee members to provide additional expertise in the areas of policy development, law enforcement and rehabilitation and treatment (Attachment 1, page 27-29).

The **Specific Deterrence Committee** examined current laws and enforcement practices and made recommendations regarding activities that focus on dangerous behavior by individuals.

The **General Deterrence Committee** reviewed current public awareness and deterrence efforts. Recommendations included strategies to deter unacceptable behavior by educating the general public on the dangers and consequences of DUI and BUI.

The **Prevention, Intervention and Treatment Committee** reviewed current efforts and recommended future strategies for individuals who are identified as having a substance abuse or dependency problem, considered at-risk, or part of a risk-taking population.

The full Task Force met a total of four times and each of the three committees met five times. These meetings provided opportunities to review data on state and national trends, review state programs and procedures and hear presentations from numerous speakers on a variety of issues (Attachment 4, pages 34-36).

In order to make the best possible assessment of the status of the impaired driving and boating problem in Virginia, the Task Force solicited data from the following agencies:

- Commission on Virginia Alcohol Safety Action Program (VASAP)
- Criminal Sentencing Commission (CSC)
- Department of Alcoholic Beverage Control (ABC)
- Department of Corrections (DOC)
- Department of Criminal Justice Services (DCJS)

- Department of Game and Inland Fisheries (DGIF)
- Department of Motor Vehicles (DMV)
- Virginia State Police (VSP)
- National Highway Traffic Safety Administration (NHTSA)

Although each of the agencies provided a great deal of data, they were unable to answer all the questions posed by Task Force members, for the following reasons:

1. Databases in different agencies are not linked. For example, the Task Force was interested in BAC levels for first offenders as compared to recidivists. The Division of Forensic Science collects BAC data. DMV collects driver records and can identify recidivists. However, there is no way to attach the BAC level in the Division of Forensic Science database to a driver in the DMV database.
2. It is very difficult to assemble data on an individual basis. For example, through 1999, the Virginia State Police (VSP) collected arrest data based on the charge. If an individual was charged with both DUI and eluding the police, there would be two records, one for each charge. VSP recently moved to an incident-based system, where more data is collected on the arrest, but this change has made identifying all DUI arrests impossible. This new method of collecting arrest data captures the most serious charge in arrests where there are multiple charges. For example: in a case where there was an arrest for Possession of Cocaine and DUI, only the Possession of Cocaine would be captured for data collection.
3. Databases are often designed to meet specific administrative needs and data cannot be readily retrieved for other purposes. For example, the VASAP client information database was designed to track clients and to allow case managers to ensure that each client meets all the requirements of his or her probation. Recidivism rates for various client groups requested by the Task Force required data to be aggregated. To do this would require time-consuming and costly new programs.

The Task Force requested that each of the agencies collecting data have the staff members responsible for maintaining each of the databases join an expert panel. This panel was present at one of the Task Force meetings to discuss data availability and issues in detail. In addition, the Task Force solicited input from experts in areas impacted by these issues. A comprehensive listing of each speaker and the topic area they addressed is enclosed, see Attachment 4, pages 34-36.

## HIGH PRIORITY ISSUES

The Task Force identified the following high-priority issues to address during the next ten-year period:

1. Underage drinking and driving is a growing problem. This issue is particularly important because patterns of behavior established at an early age are likely to continue in adulthood. Increased outreach and education is required with enhanced efforts to prevent alcohol sales to minors.
2. Public perception and support lag in spite of national and state trends indicating a growing DUI and BUI problem. High-visibility leadership and public outreach campaigns are needed to help maintain public focus on critical issues.
3. There is variation in DUI and BUI prosecution and sentencing as well as perceptions regarding effective deterrents and penalties. In addition, law enforcement training in this arena is not uniform across all local agencies. Greater efforts are needed to bring together law enforcement personnel, prosecutors, judges and others to share experiences and build understanding of effective approaches and practices.
4. Access to and use of passive breath sensors, laptop computers in vehicles, and other technological tools vary among law enforcement personnel. Greater use of technology, such as driver license scanners, can also help alcohol retailers and sellers more quickly and effectively identify underage buyers.
5. Substance abuse screening, assessment and treatment approaches vary among service providers. Public and private service providers use a myriad of assessments and treatment approaches, not all of which are successful. Current substance abuse treatment and rehabilitation programs are inadequate to address increasingly complex problems and demands for services. Delivery of substance abuse services is not coordinated across state and local agencies. State-of-the-art techniques should be employed throughout the entire spectrum of prevention, apprehension and treatment.
6. An increase in repeat offenders and hard-core drunk drivers is a growing menace. These individuals are involved in a disproportionate number of alcohol-related crashes and fatalities. Fines, license suspensions or revocations, and other existing sanctions are not proving effective in preventing recidivism. While strict sanctions are necessary, penalties should not be so tough that courts are reluctant to impose them.
7. Over time the Habitual Offender Act became controversial, due to its strict penalties for a driver habitually accumulating demerit points (including DUI) as stated above, as well as the burden it placed on the already overloaded court system.

In 1999, the Habitual Offender Act was repealed and replaced with a third DUI felony provision. This removed the actual declaration of the driver as an habitual offender from the process, a step that many felt was a meaningful deterrent as well as a warning to those drivers who chose to continue to drink and drive (see notation below). To deter repeat offenders components of the former Habitual Offender Act should be reconsidered.

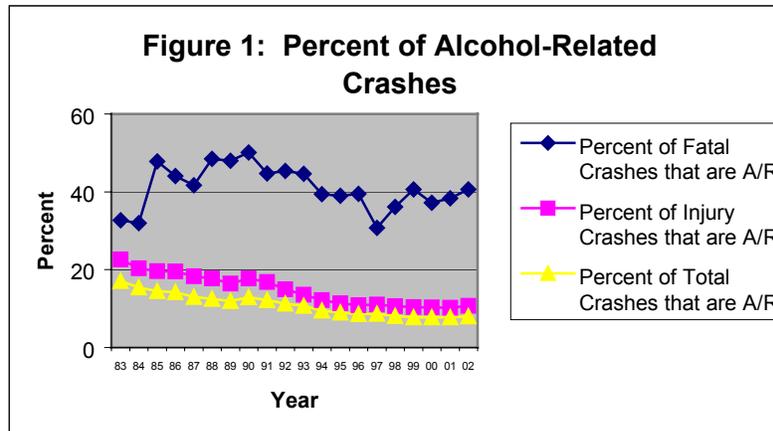
8. Laws regarding DUI and BUI are complex, difficult to administer and not uniformly enforced. The complexity of laws and procedures create numerous challenges that make prosecution difficult. Law enforcement personnel are challenged by the amount of time it takes to make a DUI stop and arrest. This is especially true when the driver is a minor. State laws should be streamlined and the time to process an arrest reduced.
9. The lack of a unified, coordinated data management system makes it difficult to answer some questions. Numerous state agencies collect a significant amount of information regarding DUI and BUI. Information is not gathered in a consistent fashion and databases are not linked. It is necessary to create a system to track records from arrest to resolution.

**Note:** Virginia was one of the first states in the nation to pass legislation dealing with repeat traffic offenders of all kinds. The original Virginia Habitual Offender Act required that offenders who accumulated three major violations (including DUI) or 10 minor violations be certified by DMV as eligible to be habitual offenders. These certifications were then forwarded to the circuit courts, where the drivers were adjudicated as habitual offenders and their licenses revoked indefinitely. Individuals who were apprehended while driving after becoming a habitual offender were subject to a mandatory 3 to 5 year prison sentence. Many of the drivers adjudicated as habitual offenders were third-time DUIs. A study in the early 1990s estimated that at any one time, there were approximately 1,200 drivers in jail or prison for driving under habitual offender revocation. (Citation: Lynn, C.W., Jernigan, J.D., Froning, P.J., and Norris, A.J. September 1993. *An Investigation of the Effectiveness of the Virginia Habitual Offender Act*, VTRC94-R11, Virginia Transportation Research Council, Charlottesville, Virginia.)

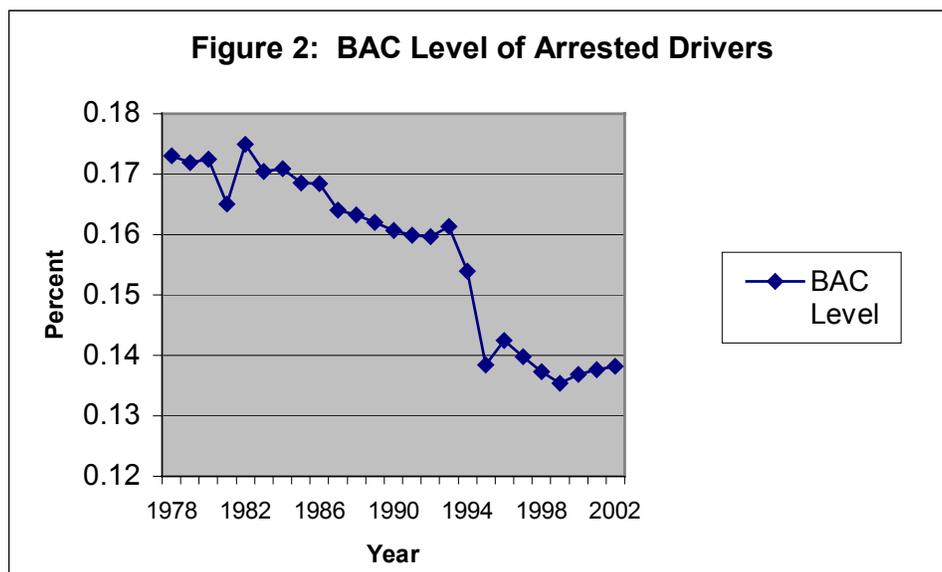
## DATA AND TRENDS

### THE IMPAIRED DRIVING AND BOATING PROBLEM IN VIRGINIA

The percent of alcohol-related total crashes and injury crashes have decreased substantially since 1983 (Figure 1).<sup>9</sup> The percent of alcohol-related fatal crashes reached a high of 50 percent in 1990 prior to a steady decline to a low of 31 percent in 1997. Fatal crashes have risen since 1997. In 2002, alcohol-related crashes comprised 41 percent of all fatal crashes and 8 percent of total crashes.



The average BAC of convicted drivers has decreased from .173 in 1978 to .138 in 2002 (See Figure 2).<sup>10</sup>

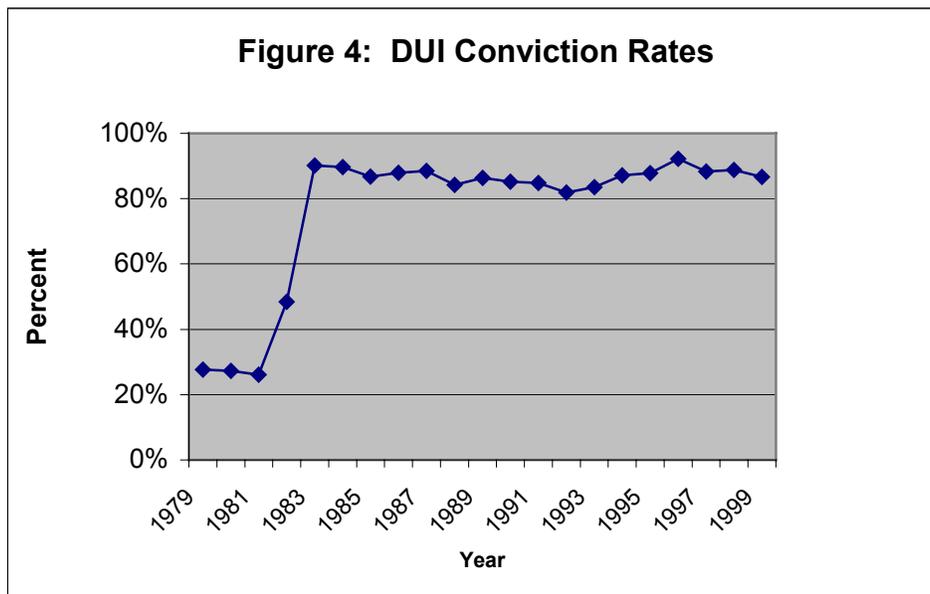
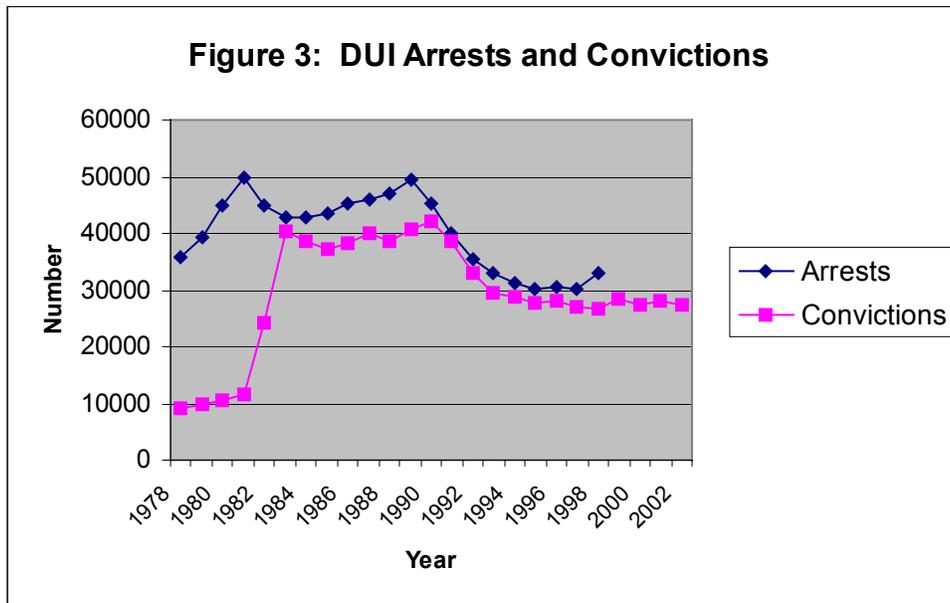


The quantity of arrests and convictions, which all increased dramatically during the 1980's, began to decrease in the 1990's. A quantitative evaluation of DUI arrests and

9. Transportation Safety Services, Virginia Department of Motor Vehicles, 2003.

10. Ibid.

convictions is outlined in Figures 3. Based on the number of DUI arrests and convictions Figure 4 outlines the conviction rates during that period.<sup>11</sup>



Both Virginia and national data for 2002 suggest that some of the positive trends in alcohol-related crashes may be reversing. Estimated 2002 national crash data indicate that in all, 42,850 people were killed, 1.7 percent more than the year before, with alcohol-related deaths rising 3 percent to 17,970.<sup>12</sup> This marks the third straight increase after a decade of decline. In Virginia, the number of alcohol-related crashes

11. Transportation Safety Services, Virginia Department of Motor Vehicles, 2003.

12. *Motor Vehicle Traffic Crash Injury and Fatality Estimates: 2002 Early Assessment*. NHTSA, May 2003.

also increased in 2002 to 11,788, the highest number since 1994.<sup>13</sup> The number of alcohol-related fatalities, 375 in 2002, is the highest since 1994, even though the percentage of fatal and total crashes that were alcohol-related was similar to recent years.

### **At-Risk Drivers**

Task Force members were particularly interested in drivers for whom the likelihood and consequences of drinking and driving were high. These groups included recidivists (also known as habitual offenders), hard core drunk drivers (defined as having BAC levels of .15 or greater) and young drivers.

According to the Insurance Institute for Highway Safety, young drivers are less likely than adults to drive after drinking alcohol, but their crash risks are substantially higher when they do.<sup>14</sup> This is especially true at low and moderate BACs. Nationally, in 2000, 22 percent of 16-20-year-old passenger vehicle drivers fatally injured in crashes had high BACs (.10 or more).<sup>15</sup> Teenage drivers with BACs in the .05-.10 range are far more likely than sober teenage drivers to be killed in single-vehicle crashes - 18 times more likely for males, 54 times more likely for females.

During the 1980s, percentages of fatally injured drivers with high BACs (.10 or more) declined among young drivers more than for other age group, in part because of changing alcohol purchasing age laws.<sup>16</sup> In the last 10 years, alcohol related crashes in Virginia in which 15 to 19 year olds were killed have decreased 22 percent from 4.7 percent in 1991 to 3.6 percent in 2001.<sup>17</sup> Injury crashes for the same age group have decreased almost 40 percent over the same time period.

Recidivists also operate under elevated crash risk.<sup>18</sup> Research has noted a strong positive association between a history of multiple DUI arrests and subsequent alcohol-related driver deaths. There is a relationship between a driver's risk and age, with 21 to 34-year-olds with previous DUIs four times more likely to die in crashes and persons 35 years or older are twelve times more likely.<sup>19</sup>

Recidivists who have high BACs (.15 or higher) are 300 to 600 times more likely to die in a traffic crash than those with BACs less than .15.<sup>20</sup> Approximately 10,000 people die and 250,000 people are injured each year as a result of the behaviors of hard core drunk drivers. Chronic drunk drivers cost the economy \$1.5 billion per year in

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13. Transportation Safety Services, Virginia Department of Motor Vehicles, 2003.

14. Insurance Institute for Highway Safety. *Alcohol and Underage Drinking*. December, 2002, Arlington, Virginia.

15. Ibid.

16. Insurance Institute for Highway Safety. *Alcohol and Underage Drinking*. December, 2002, Arlington, Virginia

17. Ibid.

18. Epperson, W. V., Harano, R., & Peck, R. C. (1975). *Final report to the legislature of the state of California in accord with resolution chapter 152 - 1972 legislative session*. Sacramento, CA: Department of Motor Vehicles

19. Wells-Parker, E., Landrum, J. W., & Cosby, P. J. (1985). *Classifying the DUI offender: A cluster analysis of arrest histories*. Alcohol Safety Education Program, Mississippi State University.

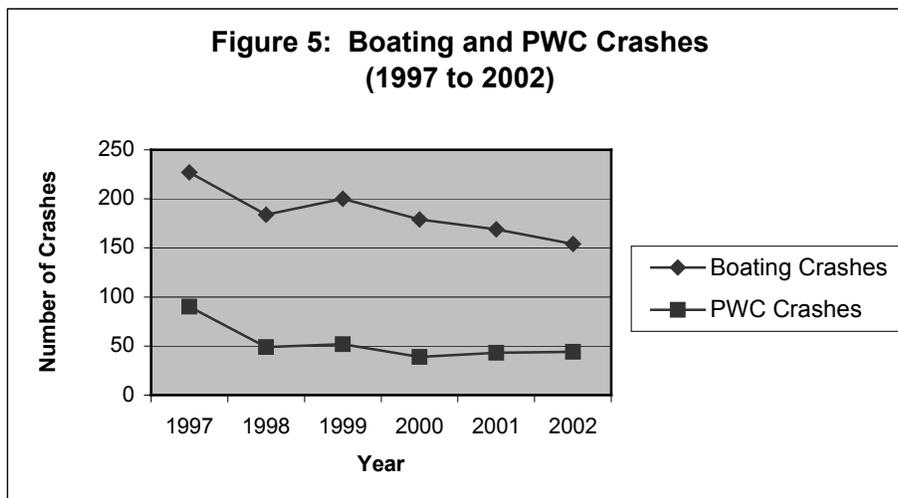
20. Marsh, W. C. (1989). *Prediction of driving record following two major convictions or three alcohol-related incidents*. Sacramento: California Department of Motor Vehicles, Research and Development Section, Division of Program and Policy Administration.

enforcement and adjudication and \$45 billion per year in property damage.<sup>21</sup>

### Impaired Boating

With 3,200 miles of river, 500 miles of coastline, and 60 man-made lakes, boating is a major recreational activity in Virginia. In 2002, there were 246,910 boats registered in Virginia, as well as 25,010 personal watercraft (jet skis, etc.).<sup>22</sup> Virginia's legal limit for BUI is .08 and there is a zero-tolerance law for boaters under the age of 21.<sup>23</sup> Although some counties prohibit carrying alcohol on recreational boats, there is no statewide prohibition, even though 3 out of 10 boating fatalities nationwide are alcohol related and boaters with a BAC of .10 or higher are 10 times more likely than sober boaters to die in a boating crash or incident.

Trends in the number of boating and personal watercraft (PWC) crashes appear in Figures 5 and 6.<sup>24</sup> Clearly, in terms of the number of boaters effected, the boating crash problem is not as serious as the motor vehicle crash problem. Since 1997 (and actually since the passage of the Boating Safety Law of 1988), numbers of boating and PWC crashes has been declining. PWC crashes have leveled off since 2000 while boating crashes have continued to drop.

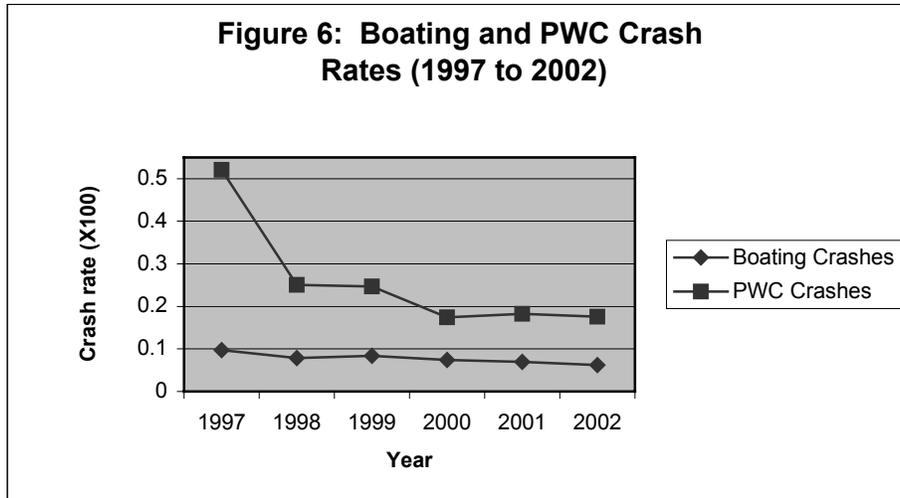


21. National Commission Against Drunk Driving. *What the Research Says About Chronic Drinking Drivers and Ways to Apply This Research*. Traffic Safety Research Abstracts, 2002, Silver Spring, MD.

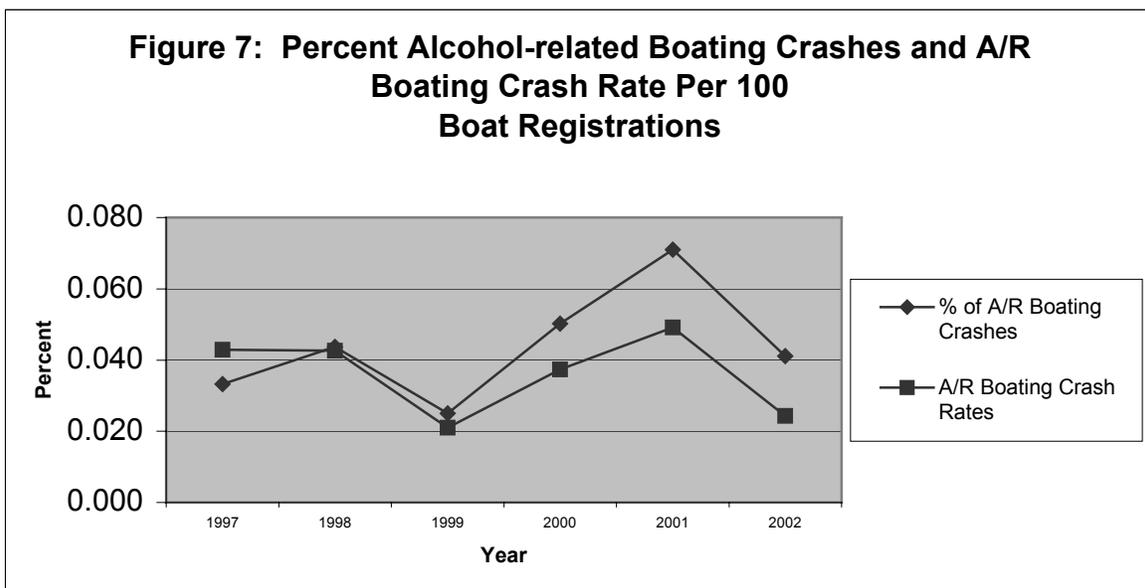
22. Edward Steinkoenig, Virginia Department of Game and Inland Fisheries, 2003.

23. §29.1-738.3 and §29.1-738.02 of the *State Code of Virginia*.

24. Edward Steinkoenig, Virginia Department of Game and Inland Fisheries, 2003.



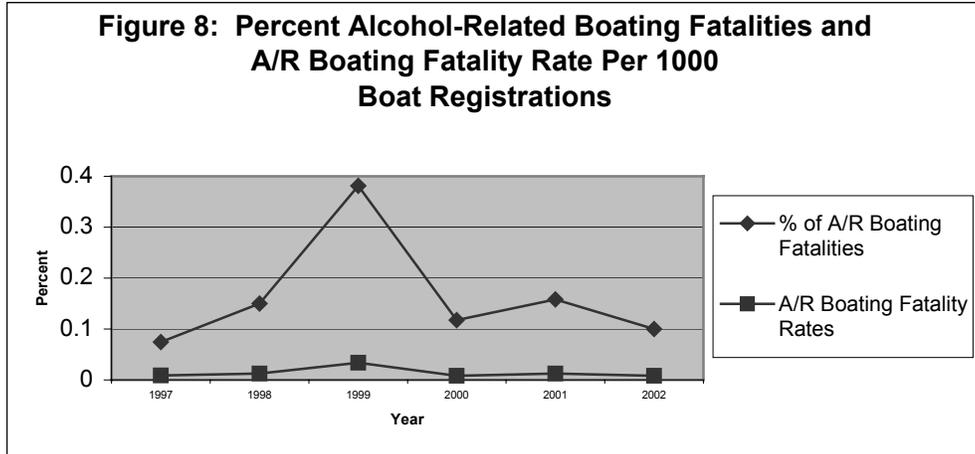
The percent of boating crashes that involve alcohol and the alcohol-related crash rate varied significantly across years (Figure 7).<sup>25</sup> Part of this variation is due to the fact that the number of boating crashes that the investigating officer identified as caused by alcohol were low, ranging from 5 in 1999 to 12 in 2001.



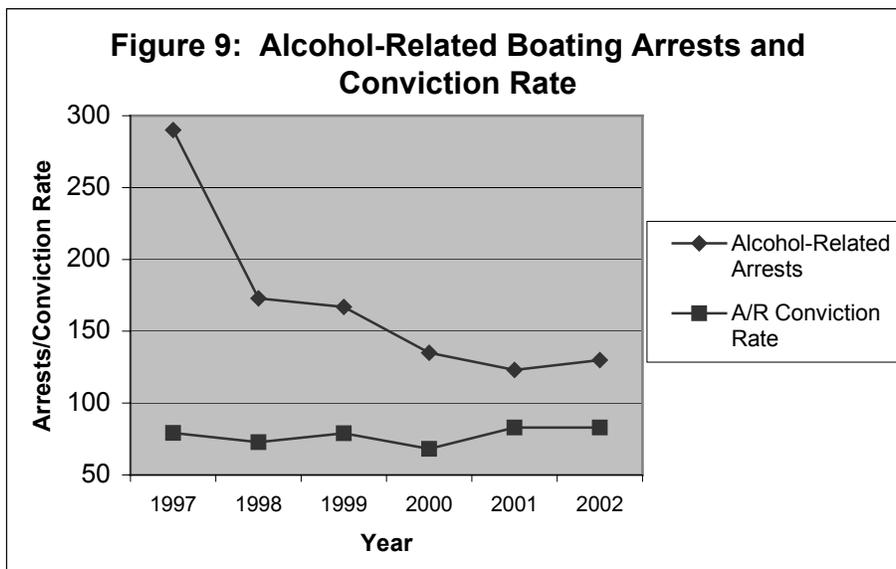
The percent of boating fatalities that are alcohol-related and the alcohol-related boating fatality rate appear in Figure 8.<sup>26</sup> Since 1997, the percent of fatalities that were alcohol-related was almost double that for boating crashes in general.

25. Edward Steinkoenig, Virginia Department of Game and Inland Fisheries, 2003.

26. Ibid.



While the number of alcohol-related boating arrests has decreased over time, the alcohol-related boating conviction rate has increased to 83 percent, which is just slightly lower than the most recent DUI conviction rates (Figure 9).<sup>27</sup>



In summary, as indicated in crash and conviction data, the alcohol-related boating problem is small compared to the corresponding motor vehicle problem. However, given the increasing popularity of recreational boating, advances can be made to continue improving the safety of the boating public.

27. Lorraine Bass, Virginia Department of Game and Inland Fisheries, 2003.

## **COMPARISON OF DUI AND BUI LAWS AND PENALTIES**

A detailed comparison of DUI and BUI laws and penalties is provided in Attachment 5, pages 37-44.<sup>28</sup> This information is organized by offender group (underage vs. adult, first vs. repeat offenders, etc.) and includes the “abuse and lose” laws as well as breath test refusal.

The primary differences between DUI and BUI laws and penalties include:

1. The lack of tiered penalties and mandatory minimums for recidivist offenders in BUI cases, including the absence of an indefinite revocation of boating privilege provision;
2. The lack of tiered penalties and mandatory minimums for high-blood alcohol content (BAC) offenders in BUI cases;
3. The broader grant of discretion in sentencing to the courts in BUI cases, including the relatively few mandatory minimum provisions in comparison to DUI;
4. The lack of statutory provision regarding operating after a court has restricted one’s boating privileges;
5. The legality of drinking while operating a boat;
6. The lack of an additional penalty for BUI while transporting a minor, and;
7. A two-hour, rather than three-hour post-arrest window of opportunity in which implied consent applies to prevent an operator from refusing a BAC test without additional penalty.

## **DUI SURVEY AND FOCUS GROUP RESULTS**

VCU conducted a statewide survey of judges, commonwealth attorneys, chiefs of police and sheriffs to help assist the Task Force make its final recommendations. In addition, focus group discussions were held with commonwealth attorneys and chiefs of police. These discussions were supplemented by telephone interviews with two general district court judges. A presentation summarizing the results of the survey and focus group discussions was provided to the Specific Deterrence Committee prior to formulating their recommendations. In addition, approximately 500 surveys were mailed to judges, commonwealth attorneys, and chiefs of police and sheriffs during the first week of March 2003 (Attachment 6, pages 45-50). Two hundred fifteen completed surveys were returned, a return rate of forty-three percent.

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28. Lynn, Cheryl and Hartman, Ryan. Virginia Transportation Research Council, 2003.

The survey asked for opinions on:

- The general effectiveness of punishments, laws and deterrents;
- The best methods for dealing with hard core drunk drivers and repeat offenders;
- Effective deterrents for youth.

### Effectiveness of Laws and Punishments

Respondents indicated the most effective laws were felony offenses for third convictions within a ten-year time limit and .08 BAC level considered per se evidence. License revocations, suspensions, and mandatory Alcohol Safety Action Program (ASAP) classes were perceived as only moderately effective.

<b>Effectiveness Ratings of Existing DUI Laws and Sanctions</b> (ratings on a 10-point scale, 10 being "extremely effective")	
<i>Laws and sanctions rated most effective:</i>	
3 <sup>rd</sup> offense in 10 years a Class Six felony	7.9
0.08 BAC considered per se evidence	7.7
Forfeiture of license for second offense	7.1
Additional jail time for high BAC levels	7.1
<i>Laws and sanctions rated least effective:</i>	
Open container law	4.0
Administrative license revocation	5.6
Restricted license for first time offenders	5.6
Mandatory ASAP for first conviction	5.9

Punishments rated most effective included incarceration, impoundment of vehicles and license suspensions. Punishments rated only moderately effective were house arrests, boot camps and fines.

<b>Effectiveness Ratings of Existing Punishments</b> (ratings on a 10-point scale, 10 being "extremely effective")	
<i>Punishments rated most effective:</i>	
Incarceration	7.6
Vehicle impoundment	7.4
License suspension	7.0
<i>Punishments rated least effective:</i>	
House arrest	4.4
Boot camps	4.7
Fines	5.2

### Repeat Offenders and Hard Core Drunk Drivers (HCDD)

Respondents emphasized stringent punishments, especially incarceration and felony convictions as the most effective methods for dealing with repeat offenders and hard core drunk drivers. ASAP rehabilitation classes and fines were considered least effective.

<b>Effectiveness Ratings for Dealing with HCDD</b> (ratings on a 10-point scale, 10 being “extremely effective”)	
Incarceration	7.9
Third offense felony convictions	7.9
Increased sanctions for high BAC	7.1
Daily monitoring	6.8
Ignition interlocks	6.5
License revocation	6.4
License suspension	6.0
Mandatory fines	5.7
Mandatory rehabilitation programs	5.1
ASAP classes	4.1

Among the respondent groups, there are some differences in emphases within this overall framework:

- Chiefs of police (6.7) and sheriffs (6.3) believe that fines are more effective than judges (4.7) and commonwealth attorneys (4.5)
- Commonwealth attorneys (7.8) and judges (7.3) are more positive about daily monitoring than chiefs of police (6.3) and sheriffs (6.2)
- Judges are more positive about ignition interlock devices (7.3) than commonwealth attorneys (6.6), chiefs of police (6.3) and sheriffs (5.8)

The survey also asked participants to rate various penalties in terms of effectiveness in improving how Virginia handles HCDD and repeat offenders. Respondents indicated the most effective changes are longer periods of incarceration, vehicle forfeiture and increased fines for high BAC convictions. Respondents rated proposals such as increased point of sale penalties, increased time limits for use of ignition interlocks and mandatory treatment as likely to be moderately effective.

<b>Effectiveness Ratings for Changes in Penalties for HCDD and Repeat Offenders</b> (ratings on a 10-point scale, 10 being “extremely effective”)	
Longer periods of incarceration	8.2
Vehicle forfeiture	7.9
Increased fines for high BAC	7.8
Vehicle impoundment	7.1
Increased point of sale penalties	6.5
Increased time limits for ignition interlocks	6.5
Increased minimum fines	5.9

Clear differences exist between respondent groups within this overall framework:

- Chiefs of police (8.7) and sheriffs (8.6) were more likely than judges (6.3) to believe that vehicle forfeiture would enhance effectiveness.
- Chiefs of police (7.2) and sheriffs (6.7) were more likely than judges (4.0) and commonwealth attorney’s (4.8) to believe that increased minimum fines would enhance effectiveness.
- Chiefs of police (7.3) and sheriffs (7.1) were more likely than judges (5.5) and commonwealth attorney’s (5.4) to believe that increased point of sale penalties would be effective.

### **Discouraging Youth from Drinking and Driving**

License revocation, license suspension and commitment to the Department of Juvenile Justice are seen as the most effective deterrents for preventing youth from driving under the influence. Fines, public education campaigns and the embarrassment of arrest are seen, at best, as moderately effective deterrents to youthful DUI. Respondent groups were fairly uniform in their responses, with the exception of sobriety checkpoints that are rated higher by police chiefs and sheriffs than judges or commonwealth attorneys.

<b>Effectiveness Ratings for Preventing Youth from Driving Under the Influence</b> (ratings on a 10-point scale, 10 being “extremely effective”)	
License revocation	7.9
License suspension	7.5
Juvenile justice detention	7.3
License restrictions	6.6
High visibility checkpoints	6.5
Embarrassment of arrest	5.3
Public education campaigns	5.1
Fines	4.9

### **Highlights of Open-Ended Comments, Focus Groups and Interviews**

Separate focus group discussions were held with commonwealth attorneys (nine participants) and chiefs of police (12 participants) to supplement and further explore survey results. In addition, two telephone interviews were conducted with circuit court judges to gain insight on court-related responses.

In general, issues and recommendations highlighted during focus group discussions and telephone interviews, and open-ended comments on surveys reinforced general tendencies indicated by the survey data.

There were several issues concerning perceived gaps in laws and procedures that were repeatedly mentioned:

- Law enforcement personnel and prosecutors are encountering increased problems in making DUI arrests after the driver leaves the scene of an crash;
- The 10-year time limit on conviction for a 3<sup>rd</sup> offense is not consistent with other crimes which contain no such time limit;
- There is variation in DUI prosecution and sentencing across localities and courts;
- Breath test certification procedures are complicated and prone to attack by defense attorneys;
- The training in and use of the Standard Field Sobriety Test (SFST) is not uniform across the state and it is unclear how necessary its use is in helping to obtain a conviction;
- There is concern that no system is in place that adequately deals with the challenges evident with repeat offenders and hard core drunk drivers. ASAP programs provide alcohol abuse screening and assessment services but must rely on other providers for treatment and rehabilitation services. These services are not readily available in all localities.

### **Overall Survey Results**

Respondents consistently rated felony and incarceration sanctions, vehicle forfeiture, and license revocations among the most effective practices for dealing with and deterring DUI. License revocations and suspensions were, however, rated more effective as a youth deterrent than as a deterrent to the hard core drunk driver or repeat offender. All respondent groups rated ASAP and mandatory rehabilitation programs relatively low. There were notable differences between chiefs of police, sheriffs and judges on the effectiveness of vehicle impoundment and forfeiture procedures.

The discussion of DUI issues between judges, commonwealth attorneys, chiefs of police and sheriffs would be very useful in helping to narrow the gap between the differing perspectives and improving DUI procedures from initial arrest to adjudication.

## **RECOMMENDATIONS FOR ACTION**

The following recommendations are intended to address the high priority issues previously discussed. Recommendations have been organized in seven categories based on subject matter. Short-term recommendations, intended for implementation between 2003 and 2005, as well as longer-term recommendations, for implementation between 2005 and 2008, are provided. The legislative actions listed below will be considered for introduction during the 2004 General Assembly session.

### **LEGISLATIVE ACTIONS**

1. Eliminate the requirement for a magistrate to issue a warning upon breath test refusal. Nominal administrative costs are anticipated. For DUI offenses refer to Code Section, §18.2-268.3. For BUI offense refer to Code Section, §29.1-738.2 which requires procedures from §18.2-268.1 through §18.2-268.11.
2. Reinstate a form of the Habitual Offender Act to create administrative procedures to deter repeat offenses. Projected total cost for the first two years of implementation is \$315,000. Refer to Code Section §46.2-355.1, §46.2-356, §46.2-357 and §46.2-360. The Habitual Offender Act was first codified under §46.2-351 and §46.2-354.
3. Lower the statutory definition of high blood alcohol concentration (BAC) level from .20 to .15 to allow for increased sanctions and more intensive treatment interventions. Nominal administrative costs are anticipated. Refer to Code Section §18.2-270 for DUI and §29.1-738 for BUI.
4. Increase penalties for persons arrested while driving with a restricted license as a result of a previous DUI conviction. Nominal administrative costs are anticipated. Refer to Code Section §18.2-272 for DUI. No increased penalty currently exists for BUI offenses.
5. Make an open container of alcohol in a vehicle a factor in determining probable cause to test the driver for DUI. Nominal administrative costs are anticipated. Refer to Code Section §18.2-323.1, which allows for rebuttable presumption of violation of drinking while driving, but not DUI. Drinking while boating is legal so there is no existing Code Section to reference.

### **ADMINISTRATIVE ACTIONS**

6. The Governor's Office should continue to provide highly visible leadership on and support of DUI and BUI initiatives through the provision of annual progress reports, convening future Task Forces, or additional actions.

7. The Secretaries of Transportation and Public Safety should periodically brief key General Assembly legislative committees on DUI and BUI progress and problems.
8. The Secretary of Public Safety should continue to support and encourage the use of technological tools (e.g. drivers license scanners; laptop computers in police cars; automated crash reporting forms; etc.), as funds become available, to help law enforcement personnel, retailers, servers and others more easily enforce DUI and ABC laws. Appropriate funds should be sought to support this initiative
9. The Secretary of Public Safety should convene an advisory committee, including state police, chiefs of police, sheriffs, court personnel and others, to examine and make recommendations concerning DUI and DUID (driving under the influence of drugs) training and implementation of training standards, to include Standard Field Sobriety Test (SFST) methods, no later than 2005. Nominal administrative costs are anticipated.
10. The Department of Motor Vehicles should provide an annual report card on the status of Task Force recommendations to the Governor's Office, General Assembly, interested parties and partners to document progress, compare Virginia's progress to national benchmarks and best practices, and identify priorities for further action. Nominal administrative costs are anticipated.
11. The Department of Motor Vehicles should implement a more prominent visual cue on driver's licenses for individuals under the age of 21 to make it easier for alcohol retailers and servers to quickly identify underage individuals, no later than 2005. Nominal administrative costs are anticipated.
12. The Department of Motor Vehicles should create a records management system to provide an administrative failsafe process to indicate a third DUI conviction regardless of the specific court ruling on the nature of the offense, no later than 2005. DMV would require administrative authority via a change to the Code of Virginia to impose sanctions based on the number of DUI convictions. This would eliminate avoidance of penalties through the use of multiple 1<sup>st</sup> and 2<sup>nd</sup> offenses. Projected cost for the first year is \$44,000 and \$20,000 for operations each successive year.
13. The Department of Alcoholic Beverage Control should retain the responsibility for wholesale distribution and retail sale of distilled spirits, enforcement of laws related to the sale and distribution of alcohol, licensing authority, and training for servers and retailers. No additional costs are anticipated.
14. The use of sobriety checkpoints should be expanded across the Commonwealth. The Virginia Association of Chiefs of Police and the Virginia Sheriffs Association, with input from the Department of Criminal Justice

Services and others, should create model sobriety checkpoint standards and guidelines and encourage adoption and implementation by all local law enforcement agencies, no later than 2005. Nominal administrative costs are anticipated.

15. The Commission on Virginia Alcohol Safety Action Programs (VASAP) should publicize the findings of the current study of program effectiveness being conducted by the National Center for State Courts and brief key stake holders within the DUI control system, no later than 2005. No additional costs are anticipated.

### **COURT-RELATED ACTIONS**

16. The Commission on VASAP should work with the Supreme Court and individual General District Court judges to encourage the creation of specially designated DUI Courts or Dockets, no later than 2008. Projected costs for each court include an additional 78 hours of judicial time per 100 DUI convictions annually; 91 hours of additional court clerk time per 100 DUI convictions annually; and one additional ASAP community corrections case manager per 200 DUI convictions at an average cost of \$46,000 annually.
17. The Commission on VASAP should partner with interested localities and General District Court Judges to pilot a DUI work release jail program that integrates education and treatment for repeat and high BAC offenders, no later than 2008. Projected costs for a program are \$1,000,000 a year. Similar programs operate on a cost-neutral basis, recouping their expenses through payment of fees and third-party insurance reimbursements.
18. The Commission on VASAP should encourage local ASAP offices to use victim impact panels, no later than 2008. Panels would be composed of volunteers who are willing to discuss with offenders the direct impact that impaired driving and boating had on their lives. Nominal administrative costs are anticipated.
19. The Commission on VASAP should encourage the Supreme Court and General District Courts to implement a system of postcard and telephone prompts, staffed by community volunteers, to increase the percentage of court appearances on DUI dockets, no later than 2008. Nominal administrative costs are anticipated.

### **PUBLIC AWARENESS AND EDUCATION ACTIONS**

20. The Department of Motor Vehicles and the Department of Game and Inland Fisheries should continue to place a priority on supporting public awareness and education campaigns to deter DUI and BUI. Priority should be given to campaigns that target youth and other at-risk populations and campaigns that support implementation of sobriety checkpoints. The agencies should work

together to seek resources to expand these efforts. No additional costs are anticipated.

21. The Department of Alcoholic Beverage Control should expand efforts to create and support community and college coalitions designed to prevent underage and excessive drinking, no later than 2008. Projected costs are \$200,000 annually.
22. The Department of Education should continue to integrate and expand research-based substance abuse prevention programs that meet Standards of Learning criteria in all primary and secondary schools, no later than 2008. No additional costs are anticipated.

### **SUBSTANCE ABUSE PREVENTION, INTERVENTION AND TREATMENT ACTIONS**

23. The Commission on VASAP should continue to serve as the lead organization for DUI and BUI related substance abuse prevention, intervention, and treatment programs and work closely with the Governor's Office for Substance Abuse Prevention (GOSAP) and the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to review and modify programs and services. No additional costs are anticipated.
24. The Governor's Office for Substance Abuse Prevention should continue to develop and help implement a plan for the coordination of prevention programs and services provided through state agencies. This plan should establish statewide goals and priorities for DUI and BUI substance abuse prevention efforts as well as identify best practices, no later than 2005. Nominal administrative costs are anticipated.
25. The Substance Abuse Services Council, in partnership with the Virginia Alcohol Safety Action Program, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and other partners, should develop a plan that coordinates substance abuse intervention and treatment programs and services, no later than 2005. Nominal administrative costs are anticipated.

In particular, this plan should address and recommend ways to:

- Establish statewide goals and priorities for substance abuse intervention and treatment efforts, placing a high priority on hard core drunk drivers, and repeat offenders;
- Identify and promote a standardized assessment tool, such as the Addiction Severity Index (ASI) or Substance Abuse Subtle Screening Inventory (SASSI), that can be used by all service providers to help match individuals to appropriate intervention and treatment programs;

- Establish uniform, statewide substance abuse standards and treatment definitions for use by service providers to improve understanding and implementation of treatment programs and evaluations of effectiveness;
  - Identify programs and approaches that have documented success;
  - Collect and track data collected from administration of standardized assessments to identify characteristics of at-risk populations in order to enhance the design of effective prevention, intervention and treatment programs.
26. The Substance Abuse Services Council should develop a longer-term plan designed to increase the availability of DUI and BUI intervention and treatment services and identify successful programs and approaches, no later than 2008. Nominal administrative costs are anticipated.

In particular, this plan should:

- Identify resources and document lead organizations for program implementation;
- Recommend methods to increase the availability and intensity of effective intervention and treatment programs to expand the range of available options for judges;
- Recommend a coordinated system to conduct or catalog substance abuse needs assessments, by locality, for youth and at-risk populations to document problems, measure progress and guide resource allocation decision-making;
- Identify prevention, intervention and treatment approaches and programs that have documented success.

## **TRAINING ACTIONS**

27. All Standard Field Sobriety Test (SFST) training provided to law enforcement personnel in Virginia should meet the guidelines established by the National Highway Traffic Safety Administration and Virginia Department of Criminal Justice Services, no later than 2005. No additional costs are anticipated.
28. The Department of Motor Vehicles, in partnership with the Commission on VASAP, the Commonwealth's Attorneys' Services Council and the Supreme Court, should host a conference for judges, prosecutors and law enforcement personnel to increase their awareness of DUI and BUI issues, discuss implementation of best practices, discuss the effective use of third offense felony laws, discuss issues concerning mandated sentencing and penalties,

and explore options available for intervention and treatment, no later than 2005. Estimated costs are \$50,000.

29. The Department of Alcoholic Beverage Control should partner with the Virginia Hospitality and Travel Association, and other state agencies, to develop and implement a statewide alcohol server education program to promote responsible alcohol service and consumption, no later than 2008. Projected costs are \$400,000 annually.
30. The Department of Alcoholic Beverage Control should expand enforcement, training and education programs for alcohol retailers to help prevent underage purchases of alcohol, no later than 2008. Projected costs are \$400,000 annually.

## **FURTHER STUDIES**

31. The Secretary of Public Safety should explore options for streamlining the State Code to reduce complexity of enforcement and prosecution. Input should be gathered from law enforcement personnel, prosecutors, the Commission on VASAP, the National Center for State Courts, Supreme Court of Virginia, Department of Motor Vehicles and others, to review DUI and BUI statutes and formulate specific recommendations. Nominal administrative costs are anticipated.
32. The Secretary of Transportation should request the Virginia Transportation Research Council conduct the following:
  - A study to determine the need for making standards, procedures and penalties uniform for driving under the influence (DUI) and boating under the influence (BUI), no later than 2005. Projected cost for completion is \$20,000.
  - A study of the benefits of mandating all drivers and boat operators involved in fatal crashes be tested for alcohol, no later than 2005. Projected cost for completion is 15,000.
  - A study on the collection, use and feasibility of third-party reimbursement for blood tests for BAC level for drivers admitted to hospitals, no later than 2005. Projected cost for completion is \$15,000.
  - A study and recommended methods for creating a standardized system for DUI-related record keeping across state agencies that would coordinate and integrate databases and make information more readily available, no later than 2005. Projected cost for completion is \$35,000.

- A study that gathers data to evaluate the effectiveness of Virginia's open container law, compare this data to national benchmarks, and make recommendations for changes in the law, if needed, no later than 2005. Projected cost for completion is \$20,000.
  - A study to identify recommend methods for creating regular, periodic reports to law enforcement and court personnel regarding vehicle impoundments to help local officials identify individuals who have committed previous serious offenses, no later than 2008. Projected cost for completion is \$20,000.
  - A study to determine the feasibility and impact of creating a dedicated funding stream (supported through fines and user fees), to support local DUI enforcement programs, public education campaigns and substance abuse prevention, intervention and treatment services, no later than 2008. Projected cost for completion is \$30,000.
33. The National Center for State Courts, with input from the Supreme Court, General District Court Clerks, and the Committee on District Courts, should study the feasibility of instituting a conformance bond system that would provide a financial incentive to offenders to comply with court orders by returning a portion of the bond upon successful completion of all requirements, no later than 2008. Projected cost for completion is \$50,000 - \$75,000.

# Attachment 1

## GOVERNOR WARNER'S TASK FORCE TO COMBAT DRIVING UNDER THE INFLUENCE OF ALCOHOL AND DRUGS

### Membership List

#### Co-Chairs

**The Honorable Whittington W. Clement**  
Secretary of Transportation

**The Honorable John W. Marshall**  
Secretary of Public Safety

#### Judicial Members

**The Honorable Harry L. Carrico**  
Former Chief Justice  
Supreme Court of Virginia

#### Senate Members

**Senator Janet D. Howell**  
Reston

**Senator Henry L. Marsh, III**  
Richmond

**Senator William C. Mims**  
Leesburg

**Senator Thomas K. Norment, Jr.**  
Williamsburg

**Senator Phillip P. Puckett**  
Tazewell County

**Senator W. Roscoe Reynolds**  
Henry County

**Senator Kenneth "Ken" W. Stolle**  
Virginia Beach

#### House Members

**Delegate James F. Almand**  
Arlington County

**Delegate Charles "Bill" Carrico**  
Independence

**Delegate Kenneth "Ken" R. Melvin**  
Portsmouth

**Delegate Brian J. Moran**  
Alexandria

**Delegate Harry R. Purkey**  
Virginia Beach

**Delegate Beverly J. Sherwood**  
Winchester

#### Other Members

**Mahlon "Lon" G. Anderson**  
Director of Public Affairs  
AAA Mid-Atlantic

**Charles B. Arrington, Jr.**  
Executive Vice-President  
Virginia Bar Association

**Jessica Bland**  
Youth Coordinator  
Youth of Virginia Speak Out (YOVASO)

**Nick Champeau**  
Chairman  
Washington Regional Alcohol Program

**Vernon Daniels**  
Board Chairman  
Alcohol Beverage Control

**Chief Charlie T. Deane**  
Immediate Past President  
Virginia Association of Chiefs of Police

**Dr. Jo Lynne DeMary**  
Superintendent of Public Instruction  
Virginia Department of Education

**Lillian DeVenny**  
President  
Virginians Opposing Drunk Driving (VODD)

**Marilyn Harris**  
Assistant Secretary of Public Safety  
Director of Governor's Office on Substance  
Abuse Prevention (GOSAP)

**H. Lane Kneedler**  
Attorney at Law  
National Commission Against Drunk Driving  
(VA Representative)

**J. Christopher LaGow,**  
Legislative Counsel for National Safety  
Council  
Nationwide Insurance, Liberty Mutual Group

**Peter M. Marone**  
Central Lab Director  
Department of Criminal Justice Services

**Colonel Gerald W. Massengill**  
Superintendent  
Virginia State Police

**William "Bill" T. McCollum**  
Executive Director  
Commission on VASAP

**Marcy J. McGuigan**  
President  
Virginia Beer Wholesalers Association

**W. Neal Menefee**  
Chairman  
Board of Directors for DriveSmart Virginia

**Ashton D. Mitchell, III**  
Executive Vice President/CEO  
Virginia Hospitality & Travel Association

**John F. Pinckney**  
Chairman  
State of Virginia MADD

**Asbury "Ab" W. Quillian**  
Former Commissioner  
Department of Motor Vehicles

**John Rainey, Regional Director**  
State Government Affairs  
Philip Morris Management Corporation

**Dr. James S. Reinhard**  
Commissioner  
Department of Mental Health, Mental  
Retardation & Substance Abuse Services

**Sheriff B. J. Roberts,**  
Immediate Past President  
Virginia Sheriffs' Association

**Barry Seeskin, Director**  
Governmental Affairs - Research and  
Planning  
Anheuser-Busch Companies

**Charles S. Sharp,**  
President  
Virginia Association of Commonwealth  
Attorneys

**Stan Tretiak**  
Public Relations Committee  
State Government Affairs Councils  
Coors Brewing Co.

**William L. Woodfin, Jr.**  
Director  
Department of Game & Inland Fisheries

## **Additional Committee Members**

### **GENERAL DETERRENCE COMMITTEE**

**Kurt Erickson**

President and CEO

Washington Regional Alcohol Program (WRAP)

### **SPECIFIC DETERRENCE COMMITTEE**

**Jim Cervera**

Deputy Chief of Police

Virginia Beach Police Department

**Donald Cullen**

Specific Deterrence Subcommittee

Director, Special Projects

National Center for State Courts

**Lloyd Young, Jr.**

Executive Director

Chesapeake Bay ASAP

### **PREVENTION, INTERVENTION AND TREATMENT COMMITTEE**

**Marleen Durfee**

Resident, Midlothian, Virginia

**Mellie Randall**

Manager, Community Planning and Program Standards

Office of Substance Abuse Services

Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services

**Vanessa Wigand**

Specialist, Health, Physical Education and Driver Education

Virginia Department of Education

Assistance was also provided by:

Thomas Hannett, Public Safety Intern

Secretary of Public Safety

## Attachment 2

### STATUS REPORT ON ACTIONS TAKEN IN RESPONSE TO THE RECOMMENDATIONS OF THE 1983 DUI TASK FORCE

In June of 1983, Governor Robb's DUI Task Force made 51 recommendations for changes in the areas of DUI enforcement and adjudication, rehabilitation of offenders, and public awareness of drunk driving and its traffic safety consequences.

These recommendations fell into the following categories:

- **Legislative Recommendations**, including steps to streamline the arrest process, reducing the legal limit for alcohol to .10 , and raising the legal drinking age to 21
- **Operational Recommendations**, including police use of preliminary breath testers in the field, increasing incentives for offenders to comply with VASAP requirements, and increasing the emphasis on drunk driving in public information and education efforts and in DMV's *Driver Handbook*.

By 1993, all but 7 of the 51 recommendations had been implemented. As of 2003, the following 5 recommendations have not been fully implemented:

Recommendation	Implemented Since 1993?	Where in Statute?
Eliminate the requirement that DUI arrests be made within two hours of the offense for the implied consent law to apply.	Yes and no. Changed the requirement this year (this was amended in 2002) from two hours to three hours.	§ 18.2-268.2
Allow the refusal to submit to a chemical BAC test to be entered as evidence in DUI cases.	No. It is admissible to explain why the state does not possess an evidentiary chemical test, but not as an indicator of guilt. (An "unreasonable" refusal does count as a separate offense.)	§§ 18.2-267, 18.2-268.10 (B) & (C) Refusal: § 18.2-268.2 (B)
Continue the magisterial impoundment of the driver's license for 14 days or until trial, whichever comes first.	No.	
Abolish restricted permits for VASAP participants.	No. Judge may still issue restricted permits for VASAP participants, "The Court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for" any of eight different reasons.	§ 18.2-271.1 (E)
Use temporary, full permit to replace restricted permit contingent on successful VASAP enrollment.	No.	§ 18.2-271.1 (E)

**Alcohol Policy and Legislative Recommendations from the  
National Highway Traffic Safety Administration (NHTSA)  
Assessment of Virginia's Impaired Driving System**

**July 11-17, 1993**

NHTSA Technical Assistance Team  
Isaac T. Avery, Thomas A. Boerner, Alan D. Cochran, II,  
Col. Larry Thompson (Retired), Johnie L. Underwood, III

**SUMMARY OF RECOMMENDATIONS**

1. Omnibus DUI Legislation:
  - A work group involving all concerned parties should be brought together to completely revise and/or rewrite the DUI statutes. This rewrite should update the language and utilize model legislation (Uniform Vehicle Code 11-902,11-907) as a pattern. Care should be exercised in the drafting of this legislation to minimize the need for interpretation of its provisions and avoid the loopholes that currently exist;
  - Lower the per se Blood Alcohol Content (BAC) level to 0.08;
  - Change the implied consent statutes to allow the officer the choice of test. Additionally, the choices should be expanded to include urine, along with blood and breath analyses. The BAC should be determined at the time of the test. This will eliminate the relation-back extrapolation problems that currently exist. The statutes should specifically authorize the use of the infrared breath testing devices. Refusal to test should be admissible in DUI proceedings;
  - A statute authorizing the forfeiture of the vehicle registration and/or the vehicle of the repeat DUI offender should be sought; and
  - Allow hospital blood test results to be admitted into evidence.
2. Develop an effective pre-trial administrative license revocation system that allows the Department of Motor Vehicles (DMV) to take administrative action to withdraw the driving privilege from those arrested for impaired driving, regardless of age, without court action. (Refer to Uniform Vehicle Code (UVC) Section 6-207).
3. The process of the habitual offender program should be made administrative and removed from the courts. The criminal penalties for violation of the provisions should be retained.

4. Referral of first time DUI offenders to the Virginia Alcohol Safety Action Program (VASAP) should be mandatory. Intervention is needed for potential problems at an early stage.
5. DMV, working in conjunction with the Department of Education, should develop and implement a K-12 alcohol highway safety curriculum. This curriculum should be culturally and ethnically sensitive and address the diverse needs of the Commonwealth's children.
6. Make all licensing sanctions administrative, allowing DMV to take these actions.
7. Expand the "Use and Lose" law to age 21.
8. Conduct a study to determine why approximately 40 percent of all suspensions resulting from DUI convictions do not result in a reinstatement of the driver's license, and the license reinstatement fee is not paid.
9. All management functions of the Community Traffic Safety Programs (CTSPs) should be under the Transportation Safety Administration (TSA).
10. Introduce legislation to create a dram shop law for licensed sellers.
11. Rigorous DUI enforcement should be made a top priority in ALL jurisdictions. Continue the task force concepts and invite new agencies to participate.
12. Evaluate the whole scheme of law enforcement training in Virginia. Sufficient resource capabilities exist in Virginia to accomplish this task. Training needs to be bolstered in the following areas:
  - Alcohol training should be standardized and mandated in both recruit and in-service schools;
  - ABC laws and regulations should be taught;
  - Training should be provided on the importance of juvenile enforcement;
  - Standardized Field Sobriety Test (SFST) training utilizing the NHTSA model should be required;
  - Training on the benefits of the VASAP program should be provided;
  - Joint prosecutorial/law enforcement training sessions on courtroom presentation and procedures should be required;
  - Hazards of the low BAC driver and detection techniques should be taught;
  - All officers should be trained in the operation of the breath testing equipment; and
  - Special training in the gathering of DUI evidence should be required.

13. Amend the Virginia Code to require a prosecutor to appear and represent the Commonwealth in all traffic, DUI, and juvenile proceedings.
14. Simplify procedures for identification and prosecution of repeat offenders.
15. Allow introduction of all relevant impairment evidence, including the offender's refusal to submit to the implied consent test, hospital blood alcohol tests, and drug screens.
16. Create a comprehensive highway safety information system capable of tracking arrests and dispositions of all traffic citations, including those for impaired driving.
17. Create a zero tolerance law for those drivers under age 21.
18. Driver records for all traffic offenders, especially those involved with impaired driving, must be available for use by the prosecutor and judge.
19. The current restricted license process should be replaced with a period of "hard" suspension, followed by a provisional license for those persons enrolled in ASAP.
20. Establish a closed loop system requiring successful completion of VASAP prior to license reinstatement.
21. Develop a holistic approach to rehabilitation and statewide planning. Currently there are a number of boards identified in the Governor's Strategic Plan. It is not clear how or if these boards have sufficient interaction to deal with a unified comprehensive planning process. It is recommended that a work group be formed, made up of agency heads who have a primary alcohol and funding responsibility. The work group should include citizens who reflect the diversity of the communities of the Commonwealth. This work group should be given the authority to do agency coordination and collaboration for the purpose of continuity of strategic planning.

**Task Force Speakers and Topics**

**Kristen Allen**

National Highway Traffic Safety  
Administration  
*Successful Prevention and Treatment  
Activities in Other States*

**Elizabeth Baker**

Regional Administrator, NHTSA Region III  
National Highway Traffic Safety  
Administration  
*Persistent Drunk Drivers;  
High Visibility Public Awareness Campaigns*

**Jeff Becker**

President  
Beer Institute  
Responsible Drinking Programs and  
Industry Marketing Guidelines

**Jessica Bland**

Traffic Safety Youth Coordinator  
Ferrum College/Virginia Department of  
Motor Vehicles  
*Reaching Out and Getting Through to  
Teens*

**Vince Burgess**

Assistant Commissioner Transportation  
Safety  
Virginia Department of Motor Vehicles  
*Virginia's Accomplishments During the Past  
Twenty Years*

**Donald Caldwell**

Commonwealth Attorney  
City of Roanoke  
*A Prosecution Perspective on DUI*

**Jim Cervera**

Deputy Chief

**Scott Wichtendahl**

Master Police Officer  
Virginia Beach Police Department  
*Enforcement Efforts and DUI Courts*

**Curtis Coleburn**

Chief Operations Officer  
Department of Alcoholic Beverage Control  
*College and Community Coalitions*

**Jim Congable**

President and CEO  
Designated Drivers Association  
*Keeping Impaired Drivers Off the Highway:  
Designated Drivers Association*

**DUI Data Panel**

*Representatives from state agencies briefed  
Task Force members on the current status  
of DUI-related data collection and reporting  
systems. Members included:*

**Bud Cox**, Virginia State Police

**James Creech**, Virginia Criminal  
Sentencing Commission

**Col. Herb Foster**, Department of Game and  
Inland Fisheries

**Debra Gardner**, Virginia Alcohol Safety  
Action Program

**Peter Marone**, Division of Forensic Science

**James McDonough**, Department of  
Criminal Justice Services

**Kenneth Mittendorff**, Supreme Court

**Lam Phan**, Department of Motor Vehicles

**Shawn Walker**, Department of Alcoholic  
Beverage Control

**Kurt Erickson**

Executive Director and CEO  
Washington Regional Alcohol Program  
*High Visibility Public Awareness Campaigns*

**Michele Fields**

General Counsel  
Insurance Institute for Highway Safety  
*Sobriety Checkpoints*

**Jim Frank**

National Highway Traffic Safety  
Administration  
*Ignition Interlocks and Other Technologic  
Deterrents to Drinking and Driving*

**William Georges**

Senior Vice President, Programs  
The Century Council  
*Drunk Driving: What's Not Happening?*

**Marilyn Harris**

Director  
Governor's Office for Substance Abuse  
Prevention  
*Virginia's Substance Abuse Prevention  
Programs and Initiatives*

**James Harvell, III**

General District Court Judge  
7<sup>th</sup> Judicial District, Newport News  
*A View From the Bench: Challenges Ahead*

**Jim Hedlund**

President  
Highway Safety North  
*National Challenges Ahead: What's it Going  
to Take?*

**Bob Holsworth**

Director  
Center for Public Policy, Virginia  
Commonwealth University  
*Findings From the Virginia DUI Survey and  
Focus Group Discussions*

**Keith Hurley**

Chairman, Criminal Law Section  
Virginia Bar Association  
*A Defense Perspective on DUI Cases*

**Cheryl Lynn**

Senior Research Scientist  
Virginia Traffic Research Council  
*Overview of Vehicle Impoundment and  
Forfeiture Procedures in the United States;  
Third Party Reimbursement for DUI-Related  
Hospital Blood Tests*

**Jack Mallery**

Substance Abuse Clinical Coordinator  
Virginia Beach Community Services Board  
*Local Efforts to Provide Substance Abuse  
Treatment and Links to ASAP Programs*

**Bill McCollum**

Executive Director  
Commission on Virginia's Alcohol Safety  
Action Program  
*Monitoring, Rehabilitation and Treatment  
Efforts in Virginia;  
Use of Ignition Interlocks in Virginia*

**Hope Merrick**

Manager of Prevention Services  
Department of Mental Health, Mental  
Retardation and Substance Abuse Services  
*Alcohol Use by Adolescents*

**Jim Phipps**

Director  
Court-Community Corrections ASAP  
*VASAP Services: A Collaborative Public  
Safety Initiative*

**Bill Porch**

Executive Director  
Richmond Cities in Schools  
*Underage Drinking and Driving: Best  
Practices in Deterring the Problem Through  
Public Awareness*

**Mellie Randall**

Manager, Community Planning and  
Program Standards  
Department of Mental Health, Mental  
Retardation and Substance Abuse Services  
*Current Needs and Capacity for Substance  
Abuse Treatment in Virginia*

**Ronnie Roberts**

Sergeant  
Charlottesville Police Department  
*The Operation and Usefulness of Sobriety  
Checkpoints*

**Lt. Col. John Scott**

Director of Field Operations  
Virginia State Police  
*Law Enforcement Challenges in Virginia*

**Charles Sharp**

President  
Virginia Association of Commonwealth's  
Attorneys'  
*Prosecuting DUI Cases in Virginia;  
An Overview of Vehicle Impoundment  
Procedures in Virginia*

**Herb Simpson**

President and CEO  
Traffic Injury Research Foundation  
*DWI System Improvements for Dealing  
With Hard Core Drinking Drivers*

**Shawn Walker**

Special Agent in Charge of Education,  
Training and Compliance  
Department of Alcoholic Beverage Control  
*ABC Enforcement and Educational  
Initiatives*

## Attachment 5

# Comparison of Laws and Procedures Regarding DUI and BUI in Virginia, 2003

Compiled by the Virginia Transportation Research Council

Category	Driving	Boating
<b>Pre-arrest (Preliminary) Breath Test</b>	<ul style="list-style-type: none"> <li>• Entitled if equipment is available</li> <li>• Results not admitted into evidence (§18.2-267)</li> </ul>	<ul style="list-style-type: none"> <li>• Entitled if equipment is available</li> <li>• Results not admitted into evidence (§29.1-738.1)</li> </ul>
<b>Post-arrest (Implied Consent) Breath Test</b>		
Implied consent	Yes (§18.2-268.2)	Yes (§29.1-738.2)
To have implied consent, must arrest within:	3 hours of alleged offense (§18.2-268.2)	2 hours of alleged offense (§29.1-738.2)
Penalty for unreasonable refusal	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension of privilege</li> <li>• 12 months suspension of privilege</li> <li>• Suspension runs consecutively with other penalties (§ 46.2-391.2; 18.2-268.4)</li> </ul>	<ul style="list-style-type: none"> <li>• 1st offense: 12 months suspension of privilege</li> <li>• 2nd or &gt; offense within 5 years: 24 months suspension of privilege</li> <li>• Suspension runs consecutively with other penalties (§29.1-738.4)</li> </ul>
Effect of guilty plea for BUI/DUI	<ul style="list-style-type: none"> <li>• Court <i>may</i> dismiss the refusal warrant (§18.2-268.4)</li> </ul>	<ul style="list-style-type: none"> <li>• Court <i>may</i> dismiss the refusal warrant (§29.1-738.2)</li> </ul>
Refusal admissible as evidence	<ul style="list-style-type: none"> <li>• Not as evidence of guilt (§18.2-268.10)</li> </ul>	<ul style="list-style-type: none"> <li>• Not as evidence of guilt (§29.1-738.2)</li> </ul>
<b>Low-BAC Underage Operator</b>		
BAC 0.02-0.08	0.02-0.08 (§18.2-266.1)	0.02-0.08 (§29.1-738.02)
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 6 months suspension</li> <li>• May get restricted license, in court's discretion</li> <li>• VASAP eligible, but does not appear that VASAP is required (§46.2-391.2; 18.2-266.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 6 months suspension of boating privilege</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• ≤ \$500 fine (§18.2-266.1)</li> </ul>	<ul style="list-style-type: none"> <li>• ≤ \$500 fine (§29.1-738.02)</li> </ul>

Category	Driving	Boating
<b>Intoxicated Operator - 1st Offense BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 1 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 12 months suspension</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$250 mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 2 misdemeanor: ≤ \$1,000 and/or 6 months (§29.1-738.4)</li> </ul>
<b>Intoxicated Operator - 1st Offense BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 1 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 12 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$250 mandatory</li> <li>• ≥ 5 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 2 misdemeanor: ≤ \$1,000 and/or 6 months (§29.1-738.4)</li> </ul>
<b>Intoxicated Operator - 1st Offense BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 1 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 12 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$250 mandatory</li> <li>• ≥ 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 2 misdemeanor: ≤ \$1,000 and/or 6 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>2nd Offense within 5 years BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• 6 months ignition interlock after license reinstated, unless already used under restricted license</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$500 mandatory</li> <li>• 1 month – 1 year, with 5 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>2nd Offense within 5 years BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• 6 months ignition interlock after license reinstated, unless already used under restricted license</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$1,000 mandatory</li> <li>• 1 month – 1 year, with 5 days mandatory</li> <li>• Additional 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>2nd Offense within 5 years BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• 6 months ignition interlock after license reinstated, unless already used under restricted license</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• ≥ \$1,000 mandatory</li> <li>• 1 month – 1 year, with 5 days mandatory</li> <li>• Additional 20 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>2nd Offense within 5-10 years</b> <b>BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• Penalty suspended if VASAP completed</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• \$500 mandatory</li> <li>• ≥ 1 month (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>2nd Offense within 5-10 years</b> <b>BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• Penalty suspended if VASAP completed</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• \$1,000 mandatory</li> <li>• ≥ 1 month</li> <li>• Additional 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>2nd Offense within 5-10 years</b> <b>BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• 3 year suspension</li> <li>• VASAP usually required to avoid revocation (§46.2-391.2; 18.2-271.1)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• Penalty suspended if VASAP completed</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months</li> <li>• \$1,000 mandatory</li> <li>• ≥ 1 month</li> <li>• Additional 20 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>3rd Offense within 5 years BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 30 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>3rd Offense within 5 years BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 30 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>3rd Offense within 5 years BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 30 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>3rd Offense within 5-10 years BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• \$1,000 mandatory</li> <li>• 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>3rd Offense within 5-10 years BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• \$1,000 mandatory</li> <li>• 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>3rd Offense within 5-10 years BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• After 3 years, can petition court for work-restricted license</li> <li>• After 5 years, can petition court for restricted license for up to 5 years or restoration of license</li> <li>• No VASAP eligibility (§46.2-391; 46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• \$1,000 mandatory</li> <li>• 10 days mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>4th or &gt; offense within 10 years</b> <b>BAC 0.08-0.19</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• No VASAP eligibility (§46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 1 year mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>4th or &gt; offense within 10 years</b> <b>BAC 0.20-0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• No VASAP eligibility (§46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 1 year mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>
<b>4th or &gt; offense within 10 years</b> <b>BAC &gt; 0.25</b>		
Penalty – Suspension	<ul style="list-style-type: none"> <li>• 7 day automatic post-arrest suspension</li> <li>• Indefinite revocation</li> <li>• No VASAP eligibility (§46.2-391.2)</li> </ul>	<ul style="list-style-type: none"> <li>• 36 months suspension</li> <li>• Runs consecutively with any BAC refusal penalty</li> <li>• VASAP required, and suspension of operating penalty may be conditioned upon completion of VASAP (§29.1-738.02; 29.1-738.5)</li> </ul>
Penalty – Fine/Prison	<ul style="list-style-type: none"> <li>• Class 6 felony: 1-5 years, or ≤ 1 year and/or \$2,500</li> <li>• ≥ \$1,000 mandatory</li> <li>• ≥ 1 year mandatory (§18.2-270)</li> </ul>	<ul style="list-style-type: none"> <li>• Class 1 misdemeanor: ≤ \$2,500 and/or 12 months (§29.1-738.4)</li> </ul>

Category	Driving	Boating
<b>Additional penalty for DUI while transporting a minor</b>	<ul style="list-style-type: none"> <li>• \$500 - \$1,000</li> <li>• 1st offense: 40 hours community service, benefiting children</li> <li>• 2nd offense: 80 hours community service, benefiting children (§18.2-270)</li> </ul>	
<b>Open Container</b>	Can create rebuttable presumption that driver was drinking while operating, but not itself illegal (§18.2-323.1)	Lawful (§4.1-308, 4.1-100)
<b>Drinking while operating</b>	Class 4 misdemeanor: ≤ \$250 fine (18.2-323.1; 18.2-11)	Lawful (§4.1-308, 4.1-100)

## Attachment 6

### DUI Survey

**1. Please indicate how effective you believe each of the following laws have been in helping to combat driving under the influence in Virginia. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Law</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/ Not Applicable	
	0	1	2	3	4	5	6	7	8	9	10	DK/NA
a) Open container law.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Forfeiture of driver's license for second offense.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Third offense within 10 years a Class 6 felony.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) Mandated ASAP participation for 1 <sup>st</sup> conviction.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) Additional jail time for high BAC levels.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) Restricted license of first time offenders.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Administrative license revocation.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) Use of ignition interlock devices.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
i) Zero tolerance statutes for persons under 21.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
j) 0.08 BAC considered per se evidence.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**2. Please indicate how effective you believe each of the following proposals would be in improving DUI conviction rates. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Proposal</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not Applicable	
	0	1	2	3	4	5	6	7	8	9	10	DK/NA
a) Streamlined DUI laws and statutes?	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Improved gathering of evidence by law enforcement personnel.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Improved law enforcement testimony.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) Improved presentation of evidence by prosecutors.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) Increased law enforcement training.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) Increased prosecutor training.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Increased judicial training.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**3. Please indicate how effective you believe each of the following deterrents are to driving under the influence. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Deterrent</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not	
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Embarrassment of arrest.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Fear of incarceration.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Financial consequences.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) Potential loss of license.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) Public education campaigns.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) High visibility checkpoints.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**4. Please indicate how effective you believe each of the following punishments are for driving under the influence. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Punishment</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not	
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Fines.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Incarceration.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) License restrictions.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) License suspensions.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) House arrest.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) Boot camp.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) DUI jails with work release.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) Vehicle impoundment or forfeiture.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
i) Interlock ignition devices.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**5. Please indicate how effective you believe each of the following methods are for dealing with the hard core drunk driver and repeat offender. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Method</i>	Not at all Effective			Moderately Effective						Extremely Effective		Do Not Know/not
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Incarceration.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Mandatory fines.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Increased sanctions for high BACs.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) License suspension.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) License revocation.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) ASAP classes.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Mandatory rehabilitation programs.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) Daily monitoring.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
i) Interlock ignition devices.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
j) Third offense felony convictions.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**6. Please indicate how effective you believe each of the following penalties might be for improving the way we deal with hard core drunk drivers and repeat offenders. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Penalty</i>	Not at all Effective			Moderately Effective						Extremely Effective		Do Not Know/not
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Increased mandatory time limits for ignition interlocks.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Mandatory treatment for substance abuse.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Vehicle impoundment.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) Vehicle forfeiture.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) Increased minimum fines.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) Longer periods of incarceration.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Increased penalties for high BAC convictions.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) Increased point of sale penalties to discourage service to intoxicated patrons.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**7. Please indicate how effective you believe each of the following ASAP options is in reducing repeat offenses. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>ASAP Option</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not	
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Educational classes.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Alcoholics Anonymous.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Aggressive driving classes.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) Group therapy.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**8. Please indicate how effective you believe each of the following deterrents is for preventing youth (16-21) from driving under the influence. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Instrument</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not	
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Embarrassment of arrest.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Detention or commitment to the Department of Juvenile Justice.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Fines.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) License restrictions.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) License suspension.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) License revocations.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Public education campaigns.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) High visibility checkpoints.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**9. Please indicate how effective you believe each of the following deterrents is for preventing youth (16-21) from becoming a repeat offender. Please circle the appropriate number on the scale from 0 to 10, where 0 indicates "not at all effective," 5 indicates "moderately effective," and 10 indicates "extremely effective."**

<i>Instrument</i>	Not at all Effective			Moderately Effective						Extremely Effective	Do Not Know/not	
	0	1	2	3	4	5	6	7	8	9	10	Applicable
a) Incarceration.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
b) Mandatory fines.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
c) Mandatory, increased sanctions for high BAC.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
d) License suspension.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
e) License revocations.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
f) Mandatory ASAP classes.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
g) Mandatory rehabilitation programs.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
h) Daily monitoring.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
i) Interlock ignition devices.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
j) Vehicle impoundment.	0	1	2	3	4	5	6	7	8	9	10	DK/NA
k) Vehicle forfeiture.	0	1	2	3	4	5	6	7	8	9	10	DK/NA

**10. Under current law, a third DUI conviction is considered a Class 6 felony. Please circle the letter beside the statement about the penalty that is closest to your own view.**

A - The penalty is too severe.

B - The penalty is appropriate.

C - The penalty is not stringent enough.

**11. Please note any steps in the process of arresting, prosecuting and trying DUI cases that you feel are too cumbersome or unnecessary. If so, what are the one or two major changes that you would recommend to streamline the process.**

**12. Is there any evidence not accepted by the Court in which you work or appear? If so, why is this evidence not accepted?**

**13. What changes, if any, would you recommend regarding current felony sanctions?**

**14. For the purpose of classifying your responses, could you circle the letter that describes your current position.**

A - Judge

B - Commonwealth Attorney

C - Chief of Police

D - Sheriff