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Legislative History of .08 Per Se Laws

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16. Abstract

This report documents the legislative history of .08 *per se* legislation at the state level. It was conducted prior to the October 2000 passage of a federal provision mandating states to enact .08 *per se* laws by 2004 or otherwise begin losing federal highway construction funds. To write this legislative history, project staff studied the legislative and political processes in six states: Texas, Washington, Illinois, and Virginia (states that have passed .08 *per se* laws), as well as Maryland and Minnesota (states that, at the time of this study, had been attempting to pass .08 legislation for several years).

In-depth discussions were conducted with many individuals involved in the political and legislative processes at each site. In each of the states, project staff spoke with legislators both for and against .08 *per se*, as well as lobbyists and representatives from special interest groups on both sides of the issue. State-level agencies such as the Department of Motor Vehicles, the State Police, and the state's Department of Transportation were also consulted. In addition, project staff spoke with representatives from national organizations such as Mothers Against Drunk Driving, the Century Council, and the American Beverage Institute.

The report discusses arguments in favor and against .08 *per se*, key participants in the debate, as well as legislative strategies and tactics used by legislators to promote or block passage of the .08 bill.

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EXECUTIVE SUMMARY

This report documents the legislative history of .08 *per se* laws at the state level. It was conducted prior to the October 2000 passage of a federal provision mandating states to enact .08 *per se* laws by 2004 or otherwise begin losing federal highway construction funds.

To write this legislative history, project staff studied the legislative and political process of six states that either recently lowered their illegal *per se* laws from .10 to .08 blood alcohol concentration (BAC), or attempted unsuccessfully to enact .08 *per se* legislation in recent sessions. The following six states were selected for this project: Texas, Washington, Illinois, and Virginia (states that had passed .08 *per se* legislation), as well as Maryland and Minnesota (states that, at the time of this study, had been attempting to pass this legislation for several years).

The most important criterion for site selection was recent consideration of the legislation. States where .08 legislation was recently introduced logically yielded the most information because contact lists were more current, and project staff were able to locate a larger number of individuals involved in the process, as well as written materials such as reports, analyses and handouts. In addition, contacts' recall was expected to be more accurate if the legislative session was relatively recent.

Aside from recent consideration of the legislation, the site selection process took into account the intensity of the .08 debate in each state. Certain states where .08 *per se* laws passed in recent years were not selected because the legislation was achieved without much debate in the legislature; thus, these states might not have yielded as much information about obstacles and supporting strategies as other states where the debate was more complex.

In-depth discussions were conducted with a wide range of individuals involved in the political and legislative process at each site. In each of the states, project staff spoke with legislators both for and against .08 *per se*, as well as lobbyists and representatives from special interest groups on both sides of the issue. State-level agencies such as the Department of Motor Vehicles, the State Police, and the state's Department of Transportation were also consulted. In addition, project staff approached representatives from national organizations such as Mothers Against Drunk Driving (MADD), the Century Council, and the American Beverage Institute (ABI). Although these organizations are national in scope, they generally offer assistance and advice to local chapters at the state level, and therefore, they often play a significant role in the state legislative process.

Participants in the .08 *per se* debate in the six states made the following observations to project staff:

- In states where .08 *per se* was enacted, both advocates and opponents identified and credited the actions of a key individual who provided strong leadership, who was deeply committed to the issue, and who had the ability to

orchestrate the legislative and political process. Advocates said that true leadership from politicians involved a willingness to marshal some of his or her resources to the cause and to become personally active as well. In their view, a mere indication of support by the Governor, for instance, would not have been enough to secure passage of the legislation.

- Likewise, when the legislation failed to pass, advocates of .08 *per se* identified a key committed opponent who was, in their view, able to block passage of the legislation through his or her actions.
- Advocacy coalitions were formed in every state. In order to emphasize that .08 *per se* was an initiative supported by a wide variety of groups, advocates sought the official backing of several organizations representing both public and private interests in the state. Supporters sought to recruit members who possessed not only a strong background and knowledge of impaired driving issues, but also in-depth knowledge of the political process in their respective states.
- In all six states, the opposition was represented in the State Legislature by one or more professional lobbyists. Experienced local lobbyists were considered to be a great asset for the following reasons: they were thoroughly familiar with the state's political process and legislative procedures; they knew who the key legislators were on which key committees; and they understood the background and interests of these legislators. Both advocates and opponents of the bill believed that a good lobbyist could anticipate a state representative's reaction to a particular bill or issue, and he or she would know who the other party would most likely approach for support.
- In states where .08 *per se* legislation was enacted, legislators from both major political parties worked in cooperation to sponsor the bill and seek the support of their political caucuses.
- In all six states, advocacy groups worked to mobilize impaired driving victims and others. Advocates said that victims' testimonies provided a more personal and emotional element to the formal legislative process.
- It was reported that, in states where .08 was passed, advocacy groups also succeeded at recruiting constituents from the legislators' home districts, and encouraged them to contact their legislators and express their concern and support for the legislation. Advocates said that many lawmakers responded to constituents' concerns, perhaps because re-election votes were cast depending on how those legislators dealt with important issues such as this one.
- Supporters of .08 *per se* engaged the mass media to bring the .08 issue to the public eye, and also to apply pressure on legislators, through editorials by newspaper columnists, radio talk-show coverage, coverage of public hearings, as well as extensive media coverage of impaired driving crashes.
- In states where .08 *per se* was enacted, advocates prepared for the debate well in advance of the beginning of the legislative session. It was reported that, because the legislative session in many states is often very short, whenever the

.08 *per se* issue was not given a high priority from the start, it often became buried by other legislative issues.

- Similarly, legislators who opposed .08 *per se* were often able to kill the bill simply by placing it at the bottom of their priority list. Especially during a short legislative session, bills died because there was "not enough time" to consider them. This was a frequently employed tactic that saved face for the legislators since they never actually had to vote against the bill.
- As part of their preparation for the debate, advocates of .08 *per se* emphasized that they sought to become thoroughly familiar with their opponents and their arguments. It was reported that this method of advance preparation enabled supporters of the measure to respond quickly and effectively when debating the issue or providing answers to questions when testifying before legislators. By planning their responses in advance, supporters said they hoped to not only silence the opposition, but also to provide a unified front, as all advocates were providing the same facts and information.
- In states where the legislation failed to pass, opponents were successful in persuading legislators that .08 *per se* was unnecessary, either because the state already imposed penalties on individuals caught driving at BAC levels below .10, or because other forms of legislation (e.g., increased penalties for repeat offenders) would have a greater impact on public safety.
- Opponents of .08 *per se* were also successful in halting passage of the bill through a variety of legislative tactics. For example, some legislators delayed consideration of the bill by requesting fiscal notes, or other assessments of the financial impact of the legislation. Depending on the timing of these requests, this tactic sometimes served to defeat the measure, if the legislature adjourned before legislative staff could compile the requested information. Other legislators who opposed .08 *per se* attempted to halt the bill's passage by filing amendments that would significantly alter the impact of the law, for example, by allowing local governments to exempt their communities from enforcing the proposed .08 BAC limit.
- Finally, both advocates and opponents emphasized that, whenever possible, they provided positive angles and avoided the use of negative comments to antagonize the other parties in the debate. For example, some supporters of .08 *per se* claimed that use of this strategy persuaded their opponents to eventually accede or accept a neutral position on this issue. On the other hand, opponents of the measure highlighted the importance of maintaining a positive working relationship with key individuals in government circles and the state legislature.

1 - INTRODUCTION

On March 3, 1998, President Clinton addressed the Nation on setting new standards to prevent the many tragic and unnecessary alcohol-related deaths and injuries that occur on the Nation's roads. (In 1999, there were 15,786 alcohol-related traffic fatalities in the U.S. - 38% of the total traffic fatalities for the year. This represents an average of one alcohol-related fatality every 33 minutes.[1]) Among other measures to deter impaired driving, the President called for the promotion of a national limit, under which it would be illegal to operate a motor vehicle with a blood alcohol concentration (BAC) of .08 or higher. An *illegal per se* law makes it illegal *in and of itself* to operate a motor vehicle with an alcohol concentration measured at or above the established illegal level, regardless of whether or not the driver exhibits visible signs of intoxication.

The federal agency charged with implementing the President's directive is the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation. Long before the President issued his directive in 1998, NHTSA had sponsored several studies on the effectiveness of .08 *per se* laws. In a 1992 Report to Congress, the agency recommended that all states should enact .08 *per se* laws for drivers 21 years of age or older. In 1997, NHTSA established an action plan to reduce alcohol-related driving fatalities on U.S. highways to 11,000 by the year 2005. NHTSA's plan, titled *Partners in Progress: An Impaired Driving Guide for Action*, recommended that all states pass a wide range of measures to combat DWI,[2] including the enactment of illegal *per se* laws, and illegal limits of .08 BAC.

RESTRICTIONS COVERING ORGANIZATIONS THAT RECEIVE FEDERAL FUNDS

It is important to note that Federal law prohibits the use of Federal funds for the purpose of influencing a member of Congress to favor or oppose legislation, whether or not the legislation is currently pending. This restriction prohibits the use of Federal funds for grassroots lobbying. Federal law also prohibits the use of Federal funds to influence or attempt to influence an agency or a member, officer or employee of Congress in connection with the awarding, making, entering into or extending of a Federal contract, grant or cooperative agreement.

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[1] Figures provided by the National Highway Traffic Safety Administration (NHTSA), based on the Fatality Analysis Reporting System (FARS).

[2] The use of the acronym "DWI" throughout this report refers to the criminal action of driving a motor vehicle, either 1) while "illegal *per se*" or 2) while impaired, under the influence, or while intoxicated by either alcohol or other drugs. Usage of the term "DWI" and other acronyms (DUI, OWI, OUI) varies from state to state based on the different statutes in each state.

Additional lobbying restrictions apply specifically to programs funded by the U.S. Department of Transportation (DOT). For example, the fiscal year 2001 DOT Appropriations Act prohibits the use of DOT funds (including NHTSA funds) for grassroots lobbying activities. In addition, the Transportation Equity Act for the 21st Century (TEA 21), as amended by the TEA-21 Restoration Act, prohibits the use of NHTSA funds for "any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body" (exception that testimony may be provided for or against pending legislation, in response to an invitation from a member of a State or local legislative body or the State executive office).

Taken together, these restrictions prohibit the use of NHTSA funds for direct lobbying activities and grassroots lobbying activities that specifically target pending State or local legislative bills. They do not apply to State officials engaged in direct communications with their legislatures, under customary practice in the State.

THE CASE FOR .08 *PER SE*

Although NHTSA is the lead federal agency, other government agencies and non-governmental agencies as well have been very vocal in their support of .08 *per se* laws. The following list, though not comprehensive, represents a sampling of other organizations that support the .08 movement:

- Advocates for Highway and Auto Safety
- Allstate Insurance
- American Alliance for Rights and Responsibilities
- American Association of Motor Vehicle Administrators
- American Association of Neurological Surgeons
- American Automobile Association
- American Automobile Manufacturers Association
- American Coalition for Traffic Safety
- American Insurance Association
- American Medical Association[3]
- American Spinal Cord Injury Association
- American Spinal Injury Association
- American Trucking Associations
- Association for the Advancement of Automotive Medicine
- Center for Substance Abuse Prevention (U.S. Department of Health and Human Services)
- Daimler Chrysler AG

[3] The American Medical Association actually endorses an illegal limit of .05 BAC.

- Federal Highway Administration (U.S. Department of Transportation)
- Ford Motor Company
- General Motors Corporation
- International Association of Chiefs of Police (IACP)
- Kemper Insurance Group
- Mothers Against Drunk Driving (MADD)
- National Association of Governors' Highway Safety Representatives
- National Commission Against Drunk Driving
- National Committee on Uniform Traffic Laws and Ordinances
- National Institute for Alcohol Abuse and Alcoholism
- National Safety Council
- National Sheriffs' Association
- Nationwide Insurance
- Remove Intoxicated Drivers (RID)
- Students Against Destructive Decisions (SADD)
- USAA Insurance
- U.S. Department of Justice
- U.S. Surgeon General

These organizations, as well as others not listed above, believe that all states should establish .08 BAC as the illegal limit for the following reasons[4]:

(1) Virtually all drivers are substantially impaired at .08 BAC. At .08 BAC, there are significant decrements in performance of critical driving tasks such as braking, steering, lane changing, judgement and divided attention.[5]

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[4] See NHTSA's publication "Setting Limits, Saving Lives: The Case for .08 BAC Laws" or the agency's website at www.nhtsa.dot.gov.

[5] A review of supporting scientific literature appears in: Moskowitz, H., & Fiorentino, D. (2000). *A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills* (DOT HS 809 028). Washington DC: National Highway Traffic Safety Administration.

(2) The risk of being involved in a crash increases substantially by .08 BAC. Compared to drivers with no alcohol in their blood system, the risk of being in a crash gradually increases at each BAC level, but rises very rapidly after a driver reaches or exceeds .08 BAC.[6]

(3) Lowering the *per se* limit is a proven effective countermeasure that will reduce alcohol-related traffic fatalities. NHTSA cites a number of studies to substantiate this claim. For example, a study in California found a 12% reduction in alcohol-related fatalities in 1990, the year .08 *per se* and administrative license revocation laws went into effect.[7] A study by Boston University compared five states that lowered their illegal limits from .10 to .08 with five states that did not do so. Researchers found a 16% reduction in the proportion of fatal crashes involving fatally injured drivers whose BACs were .08 or higher in the five .08 states. That same study showed an 18% reduction in the proportion of fatal crashes involving fatally injured drivers at very high BAC levels (.15 or higher) in those .08 states.[8] In a 1995 NHTSA study, four states that adopted a .08 BAC limit experienced significant decreases on several measures of alcohol-related fatalities. Decreases in alcohol-related fatalities ranged from 4% to 40% in those states that were studied.[9]

More recent studies completed in 1999 and 2000 have continued to quantify the effectiveness of .08 *per se* laws. A study by a team of researchers from Boston University's School of Public Health concluded

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[6] See: *Alcohol Limits for Drivers: A report on the Effects of Alcohol and Expected Institutional Responses to New Limits* (DOT HS 807 692). Washington DC: National Highway Traffic Safety Administration, February 1991. "There is little difference in relative risk for drivers with BAC levels between zero and 0.05 (at most 1.5 times). There appears to be an increase in relative risk at BACs between 0.05 and 0.10 (the estimates of relative risk for drivers with a BAC at 0.10 ranges from 1.5 times to 12 times the risk of drivers with a zero BAC), with the rate of increase in relative risk accelerating above 0.10 (at a BAC of 0.15 the range is 2 to 20 times the relative risk of drivers at zero BAC). For the most part, all of these curves share the same general shape with some increase in relative crash risk between zero and 0.05, followed by a more rapid increase in risk around 0.08 to 0.10." (p. 32)

[7] National Highway Traffic Safety Administration (1991). *The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per se Law in California* (DOT HS 807 777). Washington, DC: National Highway Safety Administration.

[8] Hingson, R., Heeren, T., & Winter, M. (1996). Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes. *American Journal of Public Health*, 86, 1297-1299.

[9] Johnson, D., & Fell, J. (1995). The Impact of Lowering the Illegal BAC Limit to .08 in Five States in the U.S. *39th Annual Proceedings of the Association for the Advancement of Automotive Medicine, October 16-18, 1995* (pp. 45-64). Chicago, IL.

that states that lowered their illegal levels from .10 to .08 BAC in 1993 and 1994 experienced post-law reductions in alcohol-related fatal crashes.[10] A NHTSA-sponsored 1999 study of 50 states and DC concluded that states which enacted .08 BAC laws experienced an 8% reduction in the involvement of drivers with both high and low BAC levels, when compared with the involvement of sober drivers.[11] Another report, which studied the effectiveness of the .08 *per se* law in Illinois, concluded that the number of drivers in fatal crashes with positive BACs in Illinois decreased by 13.7% after implementation of the law.[12]

(4) A BAC of .08 is a reasonable level at which to set the illegal limit. A .08 BAC is not typically reached with a couple of beers after work, or a glass or two of wine with dinner. The average 170 pound male would have to consume more than four 12 oz. cans of beer within 1 hour on an empty stomach to reach .08 BAC. The average 137 pound female would need at least three cans of beer in one hour on an empty stomach to reach that level.

(5) The public supports levels below .10 BAC. NHTSA surveys show that most people report they would not drive after consuming up to 2 drinks in two hours, and a majority of those who are aware of BAC levels support an illegal limit of .08 or lower for their state.[13]

(6) Most other industrialized nations have set BAC limits at .08 or lower and have had these laws in place for many years. Austria, Switzerland, Canada and the United Kingdom have set limits at .08. All of the states in Australia have a .05 limit. France and Germany also have a limit of .05, while Sweden's illegal limit is .02 BAC.

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[10] Hingson, R., Heeren, T., & Winter, M. (2000). Effects of recent 0.08% legal blood alcohol limits on fatal crash involvement. *Injury Prevention*, 6, 109-114.

[11] Voas, R.B., & Tippetts, A.S. (1999). *The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes* (DOT HS 808 980). Washington, DC: National Highway Traffic Safety Administration.

[12] Voas, R., Taylor, E., Baker, T.K., & Tippetts, S. (2000) *Effectiveness of the Illinois .08 Law*. (DOT HS 809 186). Washington, DC: National Highway Transportation Safety Administration.

[13] See: Balmforth, D. (1998). *National Survey of Drinking and Driving Attitudes and Behavior: 1997* (DOT HS 808 844). Washington, DC: National Highway Traffic Safety Administration. This report is the fourth in a series of biennial national surveys undertaken by the NHTSA starting in 1991.

LEGISLATION AT THE FEDERAL LEVEL

Beginning in 1982, Congress developed a series of grant programs to encourage states to enact strong and effective impaired driving laws.

The Section 408 program was created by Congress in 1982. To qualify for a basic grant under the Section 408 program, states were required to meet four criteria, including the enactment of a .10 BAC *per se* law. States that qualified for basic grant funds could qualify for supplemental grants based on additional criteria, including the enactment of a .08 *per se* law.

In 1988, Congress created the Section 410 program. To qualify for a basic grant under the Section 410 program, states were required to meet five out of seven criteria. One of these seven criteria was the enactment of a *per se* law. Furthermore, to qualify under this criterion, during the first three years that a state received section 410 basic grant funding, the illegal limit had to be set at .10 BAC or lower. To continue to qualify under this criterion after the initial three years of basic funding, the illegal limit in the state had to be set at .08 BAC. States that set the illegal limit at .08 BAC during the first three years of section 410 basic grant funding were eligible for additional supplemental grant funds. Thirty-eight states qualified for incentive grants under the Section 410 program in 1997 and 1998.

On May 22, 1998, Congress passed the Transportation Equity Act for the 21st Century ("TEA 21"), authorizing highway, highway safety, transit and other programs for the next six years. TEA 21 provides $500 million of incentive grants over 6 years to states that have enacted and are enforcing a .08 BAC *per se* law. These grants are to be based on what a state receives under NHTSA's State and Community Highway Safety Formula Grant Program, under Section 402 of Title 23, U.S. Code. The grant funds may be used for any project eligible under Title 23, which may include highway construction as well as highway safety projects.

Also in 1998, the Senate version of the Department of Transportation's Appropriations Bill included language that would have encouraged states to adopt .08 *per se* by diverting highway construction funds to safety programs unless .08 laws were adopted. Despite the Clinton administration's endorsement of the measure, no such language appeared in the 1998 House version of the bill, and the provision was removed in conference committee.

In October 2000, the Department of Transportation's 2001 Appropriations Act (HR4475) was passed by both chambers of the U.S. Congress and signed by President Clinton. The Act provides that states must pass a .08 *per se* law by 2004 or begin losing federal highway construction funds. States that do not implement .08 BAC by 2004 will lose 2 percent of their highway money, with the penalty increasing by 2 percent each year, until it reaches 8 percent beginning in FY2007. States that adopt the .08 limit by 2007 will get back all of the funds lost in previous years.

LEGISLATION AT THE STATE LEVEL

As of May 2001, forty-nine states, plus the District of Columbia and Puerto Rico, had enacted *per se* laws (the exception is Massachusetts, where an .08 BAC is considered evidence of impairment, but it is not illegal *per se*.). Twenty-five states, plus the District of Columbia and Puerto Rico, had established .08 BAC *per se* as the illegal limit. The remaining states have a .10 BAC per se limit.

Table 1: States/Jurisdictions with .08 *Per se* Laws

State/Jurisdiction	Effective Date (Year)	State/Jurisdiction	Effective Date (Year)
Utah	1983	Illinois	1997
Oregon	1983	Washington	1999
Maine	1988	Texas	1999
California	1990	District of Columbia	1999
Vermont	1991	Rhode Island[14]	2000
Kansas	1993	Kentucky	2000
North Carolina	1993	Puerto Rico	2001
New Mexico	1994	Arkansas	2001
Florida	1994	Maryland	2001
New Hampshire	1994	Nebraska	2001
Virginia	1994	Arizona	2001
Hawaii	1995	Georgia	2001
Alabama	1995	Indiana	2001
Idaho	1997		

[14] NHTSA's Office of Chief Counsel has determined that Rhode Island's law does not fully comply with the criteria set forth in TEA-21, and therefore the State is not eligible to receive funds under the Act. It is the agency's opinion that Rhode Island's 2000 law does not make driving while intoxicated with a BAC of .08 the standard driving while intoxicated offense (or equivalent to that offense) in the State for the following reasons: under the new Rhode Island law, a first time offense is not considered to be a criminal offense, .08 offenders are subject to a less severe set of sanctions than .10 offenders, and many of the sanctions available are permissive rather than mandatory.

During the 1999 state legislative sessions, 23 states introduced .08 *per se* bills. Only Texas and the District of Columbia were successful in passing the legislation. (A .08 *per se* BAC became effective in Washington State in 1999, but the law was passed during the 1998 legislative session.)

2 - OBJECTIVES AND METHODOLOGY

OBJECTIVES

With federal programs to encourage the adoption of lower BAC limits, as of May 2001 twenty-five states, plus the District of Columbia and Puerto Rico, had established .08 BAC as the illegal limit. Repeated efforts in many other states to pass .08 legislation have been unsuccessful.

Rather than provide incentives to states that enact .08 *per se* laws, Congress has now decided to withhold federal highway funds from states that do not pass .08 *per se* laws by 2004. Consequently, it is expected that over the course of the next four years, legislators in more states will introduce bills to lower the illegal BAC limit in their states.[15]

The general objective for this project was to study the legislative and political processes of six states that either: (a) recently lowered their illegal *per se* laws from .10 to .08; or (b) attempted unsuccessfully to enact .08 *per se* legislation in recent sessions.

The specific objectives of this study were to:

- document the roles, strategies, tactics, leadership, statutory provisions, resources, and arguments used in efforts to pass .08 *per se* laws in the six states; and

- compare and note contrasts between the findings among states with new .08 *per se* laws, and discuss whether similar efforts and obstacles might be expected in other states with campaigns to pass .08 *per se* laws.

SITE SELECTION

The states used for this study consisted of the following: Texas, Washington, Illinois, and Virginia (states that have passed .08 *per se*), as well as Maryland and Minnesota (states that, as of the time of this study, had been attempting to pass this legislation for several years.[16])

The most important criterion for site selection was recent consideration of the legislation. States where .08 legislation was recently introduced would logically yield the most information. States that passed .08 laws in more recent years would

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[15] It should be noted that the present study was conducted prior to the passage of the Department of Transportation's 2001 Appropriations Bill in October 2000.

[16] During the 2001 Legislative Session, the Maryland General Assembly enacted a .08 *per se* law, scheduled to become effective on September 30, 2001.

most likely have current lists of contacts which would allow project staff to locate more individuals who were involved in the process, as well as written materials such as reports, analyses and handouts. In addition, contacts' recall was expected to be more accurate if the legislative session was relatively recent.

Aside from recent consideration of the legislation, site selection took into account the intensity of the .08 debate in each state. Certain states where .08 *per se* passed in recent years were not selected because the legislation was achieved without much debate in the legislature; these states might therefore not yield as much information about obstacles and supporting strategies as other states where the debate was much more complex. Feedback was obtained from NHTSA, MADD and Advocates for Auto and Highway Safety, as to which states would present the most interesting case studies.

DATA COLLECTION METHODS

In-depth discussions were conducted with a wide range of individuals involved in the political and legislative process in each state. For each of the states, project staff spoke with legislators both for and against .08 *per se*, as well as lobbyists and representatives from special interest groups on both sides of the issue. State-level agencies such as the Department of Motor Vehicles, the State Police, and the state's Department of Transportation were also consulted. In addition, project staff approached representatives from national organizations such as MADD, the Century Council, and the American Beverage Institute (ABI). Although these organizations are national in scope, they generally offer assistance and advice to local chapters at the state level, and therefore, they often play a significant role in the state legislative process.

Many contacts spoke with project staff on the condition that project staff would assure confidentiality; accordingly, we have avoided the use of our contacts' names throughout this report.

In addition to our conversations with pertinent individuals, project staff also assembled copies of available materials concerning the .08 *per se* debate, including but not limited to:

- copies of the legislation;
- transcripts or tape recordings of the hearings on .08 *per se*;
- analyses of bills prepared by legislative staff;
- newspaper articles, editorials, and press releases covering the .08 *per se* debate; and
- handouts, flyers, and other literature provided to the legislators by supporters and/or opponents of the legislation.

DISCUSSION TOPIC GUIDE

A topic guide was developed so that similar types of information would be gathered for each jurisdiction, with the understanding that participants were asked different questions depending upon their specific roles and perspectives. No one individual was asked every question, and even when project staff sought the same types of information from two contacts, the wording of the questions and the order in which the questions were posed was different in each case.

- What initiated the movement to lower the illegal BAC level to .08? Were there any events which prompted the movement? (Ask both advocates and opponents to gain their viewpoints.)
- Which individuals and/or groups were responsible for initiating the .08 movement? Did the initiative involve political pressure "from above" or did it gain strength from the "bottom up?" What was the relative importance of grassroots organizations or movements in initiating the process? (Also identify the groups.) What was the relative importance of national or state organizations in initiating the process? (Also identify the groups.) Did federal incentives provide impetus or factor into discussions?
- Who were the key players (individuals, groups, coalitions, lobbyists, spokespersons) both in favor and against the passing of .08 legislation? Who were the most prominent leaders in each of the two camps, and how were they effective? Was there a successful coalition? How was it built and organized? Was there a task force or study commission? What roles, if any, did any of the following groups play: defense bar, prosecutorial bar, courts (or administrative branch), DMV, treatment professionals, law enforcement?
- Was a "mission statement" or policy written by proponent and opponent groups? What individuals and organizations were instrumental in shaping policy for proponents and opponents? Can we obtain copies?
- What were the arguments used by advocates and opponents to support their views? What arguments proved effective to persuade legislators and/or the Governor to support/oppose the legislation? Were quantitative/statistical data used?
- At what point did the proponents/opposition become well organized? What about the opposing side? (Ask both camps to gather perceptions about their own organizations as well as their thoughts about the other side.)

- What resources (i.e., support and funding sources) were each of the two camps successful in mobilizing to generate support for their views? How did they do it? What resources were they unsuccessful in mobilizing, and why? Were the services of a paid lobbyist retained (ask all parties)?
- What materials were useful and can we obtain copies?
- What was the role (if any) of the media in the process?
- What was the role (if any) of law enforcement agencies in the process?
- What was the public's perception towards .08 legislation? Was local public opinion and knowledge of the topic ever measured (through polls or otherwise)?
- Were there any prior attempts to pass .08 legislation that failed? If so, what are the perceived major factors leading to the defeat of the bill on those occasions?
- Was the successful legislation part of an omnibus bill or an individual piece of legislation? What were the legislative obstacles faced in the passing of .08? What strategies and tactics were used by opponents in the legislature to prevent the passing of the bill? How did .08 supporters overcome these obstacles?
- Were there any trade-offs made to get the legislation passed? If so, how were compromises reached? How did the key players in the process (coalitions, organizations, individuals) react to such compromises?
- What is the perceived major factor resulting in the eventual passage of the .08 law?
- (For both advocates and opposition) In retrospect, what would they have done differently? What would they advise others to do when faced with similar circumstances?

3 - KEY PARTICIPANTS IN THE .08 DEBATE

This section identifies the key players who participated in the .08 *per se* debate in the six states that were studied, and highlights their roles in the political and legislative process, as reported to project staff.

EXECUTIVE OFFICIALS

Participants in the .08 *per se* debate agreed that the Governor was a very important player in the legislative process -- no legislator wanted to fight for passage of a law only to have it vetoed by the Governor. In all six states studied, there was a promise from the Governor that he would not veto the .08 *per se* bill if it reached his desk. In all but one of the states, the Governor publicly endorsed the measure. State Governors were sometimes criticized because their support of the legislation seemed rather passive.

Executive leadership often came from state executive officials other than the Governor. In Texas, for example, the Lieutenant Governor was credited with providing invaluable support to MADD and others who lobbied for passage of .08 *per se*. The Texas Lieutenant Governor is also the President of the state Senate, and is thus influential in both the executive and legislative branches of state government.

In Illinois, the .08 *per se* movement was led by the office of the Secretary of State. It is important to note, however, that the duties and responsibilities of the Secretary of State in Illinois are quite different from those of his or her counterparts in most other states. The Illinois Constitution stipulates that the Secretary of State's duties shall include managing all aspects relating to motorists and vehicles, as well as educating the public about issues such as drunk driving and traffic safety. For almost all other states, it is the Secretary of Transportation or the Registrar of Motor Vehicles who is charged with these responsibilities.

It was repeatedly pointed out to project staff that the Lieutenant Governor in Texas and the Secretary of State in Illinois were both elected, not appointed, executive branch officials. As politicians, they were concerned about re-election, campaign issues and accountability to the constituents who brought them to office. Rather than always receiving and implementing directives from the Governor, they set their own priorities and pursued their own agendas. Moreover, they enjoyed almost as much name recognition and media exposure as the Governor, and they had at their disposal a full-time staff of legislative assistants with considerable expertise in state politics, as well as direct and frequent access to state legislators.

THE GOVERNOR'S HIGHWAY SAFETY REPRESENTATIVE AND THE TRAFFIC SAFETY OFFICE

Legislators and advocacy groups frequently requested and received information, data and testimony from the staff at their respective Governor's Office of Traffic Safety. It should be pointed out, however, that the highway safety representatives' ability to deploy resources in support of .08 *per se* legislation was contingent on their Governor's approval.

LEGISLATORS

Legislation to enact .08 *per se* was sponsored by Republicans and Democrats alike. In some states, unlikely alliances were formed among Republican and Democratic legislators; though they differed on most other political issues, they found common ground in their backing of .08 *per se*. It was reported to project staff that a common trait among effective legislation sponsors was their ability and willingness to enlist support from fellow legislators in both legislative chambers and both major political parties.

Advocates of .08 *per se* believed that support from the President of the state Senate and the Speaker of the state House was important for the following reasons. First, the Senate President and the House Speaker controlled the legislative agenda of their respective chambers. They also decided which committees would consider the proposed legislation. Supportive Presidents or Speakers put pressure on committee members to approve a bill promptly, or in some states, they were able to bypass the committee altogether and bring the legislation to a general vote on the floor. Finally, in most cases, the Senate President and the House Speaker were also the leaders of the chamber's majority party, and had considerable influence on the votes of their political caucuses.

For similar reasons, the committee chairperson was also considered to be a key player in the legislative process. Typically, .08 *per se* bills were assigned to a Transportation Committee, if the chamber had one; otherwise the bill went to the committee in charge of criminal justice issues. Committee chairs who were allies of the .08 *per se* movement ensured that hearings on the issue were conducted promptly, and worked to convince other legislators within the committee to vote in favor of the measure. Allegedly, committee chairs who were against .08 *per se* attempted to bury the bill and stop it from reaching the floor.

Finally, some of our contacts believed that a legislator's professional background significantly influenced his or her stance on the issues. For example, many legislators in the six states studied were also professional lawyers and, as is further discussed below, criminal defense attorneys in general were opposed to .08 *per se* laws. In cases where the committee considering the .08 *per se* bill was comprised mostly of defense lawyers, the fight to obtain passage of the legislation was reported to be an uphill battle. On the other hand, the pre-disposition toward

.08 *per se* of other legislators with backgrounds in the medical professions generally seemed to be more favorable.

LOBBYISTS

Experienced local lobbyists were considered to be a great asset for the following reasons. They were thoroughly familiar with the state's political process and legislative procedures. They knew who the key legislators were on which key committees, and they understood the background and interests of these legislators. Both advocates and opponents of the bill believed that a good lobbyist could anticipate a state representative's reaction to a particular bill or issue, and he or she would know who the other party would most likely approach for support. Lobbyists were also believed to be instrumental in finding supporters and opponents with a good understanding of the issue who would be willing to vocalize their support and apply pressure to their respective caucuses.

Volunteer organizations usually were not able to appoint a full-time staff member to promote their issues all the way through the different stages of legislation. At the same time, these grassroots organizations were often unable to afford the costs associated with hiring a professional from a lobbying firm. In two of the six states studied, MADD was able to hire a paid lobbyist to assist them in the legislative process, using funding from grants the organization received from General Motors Corporation. In all six states, the alcohol industry had a professional lobbyist to represent their interests. Other private institutions, including insurance companies and restaurant associations, sometimes sent lobbyists to the state capitol to present their stance on the .08 issue.

It should be noted that lobbyists often represented their clients in a variety of matters, and they were often empowered to negotiate with legislators to give priority to certain issues over others. For example, it was suggested that lobbyists for the alcohol industry negotiated with legislators to accept passage of .08 *per se*, in exchange for a favorable vote in another, presumably more pressing legislation piece. Although project staff found no evidence of this, the reverse situation could potentially be true as well: a lobbyist representing the .08 movement could negotiate with legislators to allow passage of .08 *per se* and in return drop demands for other bills that seem to be of lesser importance or priority.

GRASSROOTS ORGANIZATIONS

Advocates of .08 *per se* believed that grassroots organizations added a more personal and emotional element to what was otherwise a formal and "cold" legislative process. Volunteers in state and local chapters encouraged residents to voice their support of .08 *per se* by writing or calling their state senators and representatives. In particular, local DWI victims were encouraged to contact their representatives, so that legislators could "attach a name and a face" to the bill they

were considering. Sometimes, crash victims were escorted to the state capitol to testify at hearings. When the legislature was scheduled to vote on .08 *per se* in Illinois, MADD erected a large billboard on the lawn of the state capitol. The billboard contained photographs of children who had been victims of drunk drivers.

Though by no means the only one, MADD was by far the most widely recognized grassroots organization in the .08 *per se* debate. Legislators in all states were very familiar with MADD and their agenda, and many had seen MADD successfully lobby in favor of anti-DWI legislation in the past. Although MADD was not always the principal driving force for the .08 initiative, in all six states it was without a doubt one of the coalition's most active members.

Other grassroots groups that formed part of state .08 coalitions included the Alliance Against Intoxicated Motorists (AAIM), Students Against Destructive Decisions (SADD)[17], Remove Intoxicated Drivers (RID), PTA (Parent/Teacher Association) groups, as well as other organizations representing the interests of senior citizens and veterans.

Like MADD, many of these grassroots groups are in fact chapters of a nationwide organization. Staff at the national level were available to assist state-level .08 initiatives with data, information, and perhaps some funding. National MADD headquarters staff often traveled to and testified at state legislatures during .08 *per se* hearings.

PRIVATE CORPORATIONS

Insurance companies such as Allstate Insurance, Kemper Insurance Group, Nationwide Insurance, and USAA Insurance, among others, have publicly expressed their support for .08 *per se* laws. The American Automobile Manufacturers Association, Daimler Chrysler, Ford Motor Company and General Motors have also endorsed the .08 BAC limit. One of our contacts suggested that the .08 *per se* coalition in his state derived a great deal of strength from the support of large corporations such as Daimler Chrysler, Ford and General Motors. In his view, many legislators hold the belief that the private sector "knows best" and that government should emulate the private sector (e.g., in policies concerning employee benefits or affirmative action). If the CEOs of Fortune 500 corporations support .08 *per se* because they believe it is in the best interest of their employees, then legislators would be more likely to be swayed to vote in favor of the measure.

Private corporations assisted the .08 movement in a variety of ways. In Washington State, the insurance companies used their corporate lobbyists to argue in favor of the legislation. In Illinois, a major insurance company conducted a poll of voters in the state to examine their support for lowering the state's limit from .10 to .08 BAC. In another example of public and private cooperation, the office

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[17] Formerly known as Students Against Driving Drunk.

of the Secretary of State in Illinois formed a partnership with a taxi cab company in the greater Chicago area to equip all of their vehicles with stickers displaying the slogan "Illinois–A Safer State with .08," as well as the related message "If you're drinking, who's driving? We will!" The cab company paid to print the stickers, which were designed by the Secretary of State's office. The partnership was announced in December 1997 and the taxi company planned to display the stickers throughout 1998. This awareness campaign effectively brought the new .08 law to the attention of the media and the general public. It can be assumed that the cab company also gained media exposure and public recognition in exchange for their participation in this joint venture.

ALCOHOL AND HOSPITALITY INDUSTRIES

Beer, wine, and spirits wholesalers, distributors, retailers and serving establishments generally opposed .08 *per se* legislation. Establishments serving or selling alcoholic beverages typically joined efforts through a statewide membership association. This allowed members to pool their resources together, and hire at least one full-time lobbyist to represent their interests in the state legislature. Like other industries and special interests groups, alcohol beverage associations at the state level often made regular campaign contributions to state senators and representatives.

In all six states studied, the state's Restaurant Association also opposed the .08 *per se* legislation. However, in some states, their opposition was passive and their role was secondary to that of the local alcohol beverage association. In some states where .08 *per se* was approved, the Restaurant Association cooperated with government agencies after the fact, to educate the public about the new illegal limit.

At the national level, the American Beverage Institute (ABI), a coalition of restaurants and on-premise retailers, has been fighting .08 *per se* legislation at both the state and the federal levels. It should be noted that the ABI is a national organization, and does not maintain local chapters at the state level. In recent years, the Institute has begun to send lobbyists and other personnel to the states to assist in the fight against .08 *per se*.

LAW ENFORCEMENT

In all six study sites, law enforcement agencies formed part of the coalitions that supported .08 *per se* legislation. However, project staff found that in reality law enforcement officials were often divided on this issue, and both supporters and opponents of .08 *per se* were able to find police officers who would publicly take their side in the debate.

Opponents of the measure within the law enforcement community claimed that the law would result in an increase in DWI arrests, and that current resources in

terms of personnel and jail space would not be sufficient to meet this increase. Supporters argued that .08 *per se* would reduce the time that police officers spent in the courtroom, especially in cases of offenders with "borderline" situations where the defense attorney was trying to dismiss the case for an individual who registered a .10 BAC. (See the following chapter on opponents' arguments and supporters' responses to those arguments.)

In some states, police officers aided the .08 movement by providing testimony at committee hearings. In at least one study site, police officers invited legislators to find out for themselves how their driving performance would be affected at .08 *per se*, by organizing and hosting a controlled "drunk driving test." (For more details on this activity, see Chapter 5.)

LEGAL SYSTEM

In at least one state, the defense attorneys were deemed by .08 supporters to be more of an obstacle to passage of .08 *per se* than the liquor lobby. As noted above, many legislators in the six states studied were professional lawyers themselves, and many of them practiced as defense attorneys when the state legislature was not in session. Even among those legislators who no longer practiced law, their ties to the state's bar association remained relatively strong and influential during their tenure in the House or Senate. In general, the defense bar opposed .08 *per se* because it "penalizes social drinkers and makes criminals out of them." Critics maintained that defense attorneys opposed the measure because *per se* laws erode their capability to obtain dismissals of DWI charges against their clients. (See next chapter on opponents' arguments and supporters' responses to those arguments.)

For their part, prosecutors and district attorneys were greatly divided over the .08 issue. Some district attorneys and prosecutors became vocal advocates of the lower BAC limit, and even testified at committee hearings. However, as in law enforcement agencies, some were concerned that the new bill would be a litigation nightmare for the courts, and that the increased workload would overwhelm the criminal justice system. Some of our contacts suggested that prosecutors were not so much against .08 *per se*, but rather they were using this opportunity to bargain for passage of other legislation. For example, in some states "deferred prosecution" laws[18] give offenders a strong incentive to plea bargain, thus saving time and resources for the courts. Recently, however, additional legislation has been enacted to limit or even eliminate deferred prosecution as a sentencing option for DWI offenders. In some states, prosecutors were willing to accept the lower

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[18] The laws governing deferred prosecution and/or deferred adjudication vary from state to state. In general, these laws allow misdemeanor offenders to be placed on probation for one or two years, and if the offender satisfies the conditions of probation, then the charge does not appear in the criminal record as a "conviction."

BAC limit, so long as deferred prosecution was reinstated or reemphasized as a viable sentencing option for DWI offenders.

MEDIA

In all states studied, there was significant coverage of the .08 debate in the media. A large number of editorials appeared in local publications exhorting state senators and representatives to support the bill. In one state, the defeat of the .08 *per se* legislation through the actions of a single senator resulted in an onslaught of negative publicity that extended well beyond the adjournment of the legislative session. In Washington State, the media's coverage was instrumental in giving one tragic DWI crash a high profile, and keeping the issue in the forefront of their news reporting. This, in turn, forced the State's politicians to turn their attention to impaired driving issues and appropriate measures.

In addition, legislators used their contacts in the media to discuss the issues and present their views. In some states, supporters of the legislation appeared on local talk shows. Executive officials in some states held press events to highlight the problem of impaired driving and propose .08 *per se* as part of the solution. Through the public media, victims of drunk drivers made appeals to lawmakers and the public to draft stronger legislation to prevent more DWI-related tragedies. All in all, our contacts were in agreement in their belief that the media played a crucial role in making impaired driving an object of immediate concern for the public and for legislators.

THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

NHTSA personnel provided information, data, reports and related assistance to legislators, advocacy groups, and the media in connection with .08 *per se* and other legislation concerning traffic safety issues. Supporters of .08 *per se* also frequently solicited expert testimony from the staff at NHTSA regional and national offices during committee hearings. NHTSA also assisted advocates through its connections to other traffic safety and alcohol experts in the medical community, academia and the government.

OTHER PARTICIPANTS

Local governments

In many instances, county, city, town and village governments joined the state's .08 coalition, or indicated their support of the legislation by issuing a written resolution. City council and village board members also exhorted their local senators and representatives to vote in favor of the measure.

In one of the study sites, several associations representing city and county interests were opposed to .08 *per se* on the grounds that the law might prove to be an "unfunded mandate." In recent years, a number of states have passed unfunded mandate laws, which prevent state government from issuing mandates to local communities unless the directive does not require additional funding, or alternately, the State provides adequate financial support to implement the new law. A few local communities were concerned about the financial impact on their law enforcement agencies and corrections facilities, due to an alleged increase in DWI arrests following the enactment of the law, and thus opposed .08 *per se*.

Public health and medical community

Associations that represent nurses, physicians, surgeons, emergency medical personnel and others endorsed .08 *per se* in all six states that were studied. Often, members of the medical and public health communities were available to discuss the effects of alcohol at .08 *per se* during committee hearings. Nationwide groups such as the American Medical Association and the American Association of Neurological Surgeons also publicly endorsed BAC limits lower than .10 *per se*.

Alcohol treatment community

In one state, the treatment community opposed an entire package of legislation targeting drunk drivers, including .08 *per se*. As in the case of the district attorneys, it is possible that treatment centers were not philosophically opposed to the lower BAC limit, but rather they objected to limitations placed on the deferred prosecution sentencing option for DWI offenders (see above). One of our contacts, a supporter of .08 *per se*, believed the issue was an economic one: allegedly, the treatment community supported the lack of change in the existing DWI prosecution and sentencing system in order to protect the substantial revenue they received for handling the treatment of DWI offenders. Another supporter of the .08 limit believed that treatment centers were simply arguing that alcoholism is an enduring problem that often requires multiple phases of treatment, and that deferred prosecution was a successful tool in getting those problem drinkers into treatment. So most proponents of .08 *per se* believed that the treatment community was not opposed to a lower BAC limit as such, but rather to limitations on, or the possible elimination of, the deferred prosecution option for DWI offenders.

The treatment community as opposition was encountered in only one of the states that were used as sites for this study.

Truckers' unions

A concern sometimes set forth by opponents of .08 was that the measure would unfairly target the blue-collar worker who goes to the local tavern after work for a few beers. In some states, the support of the local Truckers Association served to deflect this argument. Commercial truck drivers have been operating for years under a federal BAC limit of .04, and if they were able to comply with the .04 limit, then it could be expected that others would accept and comply with an illegal limit of .08. The American Trucking Association at the national level has also endorsed the measure.

Religious groups

In some states, religious groups were involved in support of the .08 movement. Ministers generated awareness among their congregations by trying to promote an interest in legislative affairs. They motivated churchgoers to be informed citizens, and to approach their local senators and representatives to ask their stance on drunk driving issues. Occasionally, an article on DWI would appear in a local church publication. Religious leaders expressed willingness to be of assistance to the .08 movement in an indirect manner; however, they warned against religious organizations taking a lead role on this issue, for two reasons. First, they did not want to be accused of violating the separation of church and state. Second, a movement led by the church could be dismissed by the public as a fundamentalist drive to return to prohibition.

Century Council

Funded by America's leading distillers, the Century Council is a national, non-profit organization dedicated to reducing drunk driving and illegal underage drinking problems. The Council's official stance toward the .08 *per se* issue has been neutral.[19] However, the Council teamed up with MADD, the Texas Medical Association and the AAA Foundation for Traffic Safety, to sponsor a survey of Texas voters in March 1999 regarding several traffic safety issues, including .08 *per se*. Researchers concluded that 59% of Texas voters favored lowering the state's illegal BAC to .08. As expected, younger voters were less supportive than older voters. Adults with children under the age of 18 were also much more likely to support the measure, compared to adults without children.

Interestingly, some of contacts were under the impression that the Century Council was not neutral on the .08 issue; they thought the Council publicly

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[19] In April 2001, the Century Council announced that it will support a comprehensive approach to fighting drunk driving, including a BAC limit of .08 when accompanied by meaningful BAC education. This press release is available on the Council's website: www.centurycouncil.org.

supported the lower limit. A representative from the Century Council emphasized this was not the case. This mistaken impression is probably the result of the Council's educational campaign launched *after the bill's passage* to promote public awareness regarding the new illegal limit.

4 - ARGUMENTS IN FAVOR AND AGAINST .08 *PER SE*

This section presents the most commonly used arguments against .08 *per se* legislation in the six states that were studied, as well as counter-arguments used by supporters of the measure, as reported to project staff.

.08 CRIMINALIZES SOCIAL DRINKING

Perhaps the most common argument heard from the alcohol industry and defense attorneys was that .08 *per se* legislation "criminalizes social drinking." Opponents emphasized to the public that under the proposed law they could be subject to arrest, fines and even jail when their only "crime" was to drive home after having a few drinks at the local tavern.

Particularly controversial was the opposition's claim that, according to NHTSA's own literature, a 120-pound woman would reach .08 BAC after consuming two glasses of wine over a two-hour period. This claim appeared frequently in the ABI's literature as well as their web site. NHTSA responded to this claim in a May 1997 letter to the General Counsel of the American Beverage Institute. The following is an excerpt from that letter:

> "According to research conducted by the National Highway Traffic Safety Administration and reported in our October 1992 Report to Congress on Alcohol Limits (DOT HS 807 879) and in a Traffic Tech (no. 80, November 1994), a 120-pound female who was a moderate drinker with an average metabolism would have a BAC of .04 after consuming 2 drinks in a two-hour period. That same female would probably reach .08 BAC after 3 drinks in a two-hour period."

The letter concluded that the ABI was not using NHTSA's materials properly when it calculated the BAC for a 120-pound woman who had two drinks in a two hour period.

At a press conference in Texas, the media was encouraged to conduct their own research and see for themselves whether or not the ABI's claims were true. Reporters recruited a 120-pound female state worker, and administered her a breath test after she drank two glasses of wine over a two hour-period. Her BAC was not even close to .08. The news story that night concluded that the ABI's claims were "exaggerated," thus damaging the Institute's credibility. Following this event, MADD mobilized quickly and made sure that each member of the state legislature had a tape and a transcript of that story.

As in Texas, other states countered the "social drinker" argument by demonstrating how much alcohol is really necessary to reach .08 *per se*. Legislators and the public seldom had a clear understanding of how much alcohol a person needs to consume in order to reach the limit. Charts and BAC estimators

provided by NHTSA and state traffic safety agencies were supplemented with actual measurements, as opposed to mere "estimates." In some states, legislators were invited to find out for themselves how their driving performance would be affected at .08 *per se* through a controlled "drunk driving test." Legislators were given controlled amounts of alcohol and had their BAC levels recorded. Then they drove in a closed area, controlled and monitored by the police. In another state, legislators were provided flyers with BAC measurements of their own state police force who participated in similar tests. (For more details on these activities, see Chapter 5.) Reportedly, most legislators were surprised at how much alcohol was in fact needed to reach an .08 BAC.

Occasionally, advocates of .08 *per se* argued that "social drinking" is a matter of definition. According to NHTSA's estimates, it takes an average 170-pound male more than 4 drinks to reach .08 BAC. Even if one considers this drinking behavior to be "social," they argued, it does not disprove the fact that a male who consumes 4 or 5 beers in one hour on an empty stomach is too impaired to be operating a motor vehicle.

.08 *PER SE* IGNORES THE "REAL PROBLEM"

Another argument proffered is that rather than the "social drinker," the real root of the DWI issue is the "problem drinker." Opponents of .08 *per se* emphasized that the average driver arrested for DWI registers a BAC of .15 or above. Consequently, they argued, an illegal limit of .08 BAC is no more of a deterrent to the average drunk driver than the current .10 BAC limit. Under .08 *per se*, chronic drunk drivers would continue to flaunt the law and risk the lives of others. To reduce drunk driving, the legislature should instead target the "real" problem – high-BAC offenders.

In one state, the .08 movement decided to surprise the opposition by concurring with them on this point: yes, drivers with high BAC levels are indeed the most dangerous type of drunk driver, and strong legislation should be enacted to target this group. However, the state should have legislation to cover all levels of impaired driving, and .08 *per se* really aims to change the drinking and driving behavior of the average citizen, not the "problem drinker." Reportedly, this strategy worked well to disarm the opposition as far as the "problem drinker" argument was concerned.

In general, advocates of .08 *per se* agreed that tougher laws may be needed to target high-BAC drivers and repeat offenders. It is their belief, however, that the need for additional legislation of this type does not eliminate the need for .08 *per se* laws. Supporters of the measure presented examples of tragic crashes committed not by a "problem drinker" but by a first-time DWI offender who registered a BAC of .08 or .09. Some advocates also quoted one study's conclusion (see page 27) that .08 BAC laws serve not only to reduce the overall incidence of alcohol-related traffic fatalities, but also to reduce fatalities at the

higher BAC levels. However, given that the methodology used in this particular study has been put into question by opponents, advocates in other states often consciously refrained from using this as a counter-argument.

.08 *PER SE* WILL HURT THE ECONOMY

In many states, the hospitality industry expressed the concern that a .08 *per se* law would have a detrimental effect on the state's economy: taverns, restaurants and other alcohol serving establishments may go out of business, sending more workers into the unemployment ranks.

In the six states that were studied, no concrete evidence was ever submitted by the opposition to support the argument that .08 *per se* would adversely affect the economy, and no statistics were presented to prove that alcohol consumption in states with .08 *per se* laws had decreased dramatically since the enactment of the law. In fact, the .08 movement was able to counter this argument by presenting statistics purporting that in California there had been no significant change in the number of drinking establishments, or in the number of employees in these establishments, since the states' passage of .08 *per se*.

It should be noted that recent studies have examined the question of whether .08 laws work to reduce per capita consumption of alcohol. For example, Voas and Tippetts found some evidence that per capita consumption has in fact experienced a slight decline in states following passage of .08 legislation.[20] Although this particular finding was not used in the debates that took place in the states used for this project, the argument is certain to appear in future legislative discussions.

.08 *PER SE* WILL OVERWHELM THE CRIMINAL JUSTICE SYSTEM

Some law enforcement agencies, prosecutors, district attorneys, as well as city and county government officials were concerned that a .08 *per se* law would translate into an overwhelming increase in the number of DWI arrests, thus putting enormous pressure on the limited resources of the police departments, the courts and the jails.

As mentioned in the previous chapter, law enforcement and prosecutors were, in fact, greatly divided over the .08 issue. It was relatively easy for both supporters and opponents of .08 *per se* to find police officers and prosecutors to testify or make public statements in support of their respective positions. In one study site, advocates felt the opposition had done a good job to create among legislators and the public the impression that law enforcement in the state was

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[20] Voas, R.B., & Tippetts, A.S. (1999). *The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes* (DOT HS 808 980). Washington, DC: National Highway Traffic Safety Administration.

opposed to the measure, even though the sheriffs' association, the state patrol troopers' association, and the chiefs of police association, had all officially signed on as supporters of the bill and members of the coalition.

Some law enforcement officials and district attorneys who testified at committee hearings in favor of .08 *per se* stressed that the legislation should be passed on its own merits. In their view, the potential impact on resources should not be a primary consideration when it was clear that the public supported the measure as a weapon to deter drunk drivers. And supporters of .08 *per se* also emphasized that the purpose of the legislation was not to increase the number of DWI arrests, but to deter impaired driving. Under current laws, police officers need to observe certain types of erratic driving behavior before they have probable cause to stop a vehicle. Lowering the illegal limit does not change this requirement. Accordingly, unless there was an increase in the number of police officers patrolling the streets for drunk drivers, the impact of the new law on the number of arrests should be minimal.

More likely, it was argued, the state should see an increase in the number of successful DWI prosecutions. Allegedly, under current .10 *per se* laws, many "marginal" cases (individuals who exhibit visible signs of intoxication or impairment at the time of arrest, but register .08 - .10 in chemical tests) are regularly dismissed due to the tactics employed by defense attorneys to question the accuracy of the instrumentation, or the training of the police officer who made the arrest. Under .08 *per se*, police officers would spend less time in the courtroom defending their arrest procedures, and the above "marginal" cases would not be as easily dismissed by judges.

Some supporters of the measure quoted the findings from a study in California, where the main impact on the court system was an increase in the certainty of prosecution for DWI at lower alcohol concentration levels.[21] The study found no significant increase in jail overcrowding, or in the number of convictions, or in the number of appeals, or in the number of offenders pleading guilty versus requesting jury trials. Though it was not yet available for any of the states in this study to use, it should be noted that a more recent NHTSA-sponsored study on the effectiveness of the Illinois .08 *per se* law also examined the impact of the measure on that State's law enforcement agencies, and did not find significant changes in their operations as a result of the change in the BAC level, despite the fact that statewide DUI arrests increased by 11%.[22]

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[21] National Highway Traffic Safety Administration (1991). *The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per se Law in California* (DOT HS 807 777). Washington, DC: National Highway Safety Administration.

[22] Voas, R., Taylor, E., Baker, T.K., & Tippetts, S. (2000). *Effectiveness of the Illinois .08 Law.* (DOT HS 809 186). Washington, DC: National Highway Transportation Safety Administration.

In one state, legislators made provisions to cover additional expenses incurred by local communities (e.g., increased law enforcement costs or more jail space) if such expenses were proven to be related to lowering the illegal BAC limit.

.08 BAC LAWS WILL NOT SAVE LIVES

Opponents claimed that none of the studies available have proven that .08 *per se* is effective in reducing alcohol-related crashes.

The following table presents summary information for the nine studies that had been conducted on the effectiveness of .08 *per se* laws as of December 2000.

Table 2: STUDIES ON THE EFFECTIVENESS OF .08 *Per se*

Title of Study	Released	Conducted by	Funded by	Scope
The Effects Following the Implementation of an .08 BAC Limit and an Administrative *Per se* Law In California	1991	Research and Evaluation Associates	NHTSA	CA
A Preliminary Assessment of the Impact of Lowering the Illegal BAC *Per se* Limit to .08 in Five States	1994	NHTSA	NHTSA	CA, UT, OR, ME, VT
The General Deterrent Impact of California's .08% Blood Alcohol Concentration Limit and Administrative *Per se* License Suspension Laws	1995	CA Department of Motor Vehicles	CA Office of Traffic Safety	CA
Lowering State Legal Blood Alcohol Concentration Limits to .08%: The Effect on Fatal Motor Vehicle Crashes	1996	Researchers from Boston University's School of Public Health	Several grants, including ones from the National Institute on Alcohol Abuse and the U.S. Centers for Disease Control and Prevention	CA, UT, OR, ME, VT

Title of Study	Released	Conducted by	Funded by	Scope
The Effects of .08 Laws	1999	Rainbow Technology, Inc. and NHTSA's National Center for Statistics and Analysis	NHTSA	CA, UT, OR, ME, VT, NH, NC, KS, NM, FL, VA
Evaluation of the Effects of North Carolina's .08% BAC Law	1999	University of North Carolina	NHTSA	NC
The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes	1999	Pacific Institute for Research and Evaluation	NHTSA	50 states and DC
Effectiveness of the Illinois .08 Law	2000	Pacific Institute for Research and Evaluation	NHTSA	IL
Effects of recent 0.08% legal blood alcohol limits on fatal crash involvement	2000	Researchers from Boston University's School of Public Health	Several grants, including ones from the National Institute on Alcohol Abuse and the U.S. Centers for Disease Control and Prevention	KS, NC, FL, NM, NH, VA

During the 2000 legislative sessions in Maryland and Minnesota, opponents of the measure made reference to a September 1999 report of the General Accounting Office (GAO), the investigative arm of Congress. The conclusion of this report begins as follows: "Overall, the evidence does not conclusively establish that .08 BAC laws, by themselves, result in reductions in the number and severity of alcohol-related crashes." Opponents sometimes referred to the GAO report as a "study on the effectiveness of .08 laws." Advocates of .08 *per se* have pointed out that the authors did not engage in any original research. The GAO simply performed a review of existing literature; thus the document is a "report" not a "study." Moreover, the authors of the report acknowledge that they did not review any of the medical evidence associated with the .08 issue: "Because we were directed to review the impact of .08 BAC laws on the number and severity of crashes involving alcohol, we did not review the medical evidence on impairment or other arguments in favor of or in opposition to .08 BAC laws."

Advocates of .08 *per se* also noted that the GAO report concludes that the effect of .08 BAC laws, *by themselves*, to reduce alcohol-related crashes has not been conclusively established. The report goes on to say that there are "strong indications that .08 BAC laws in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives." It was argued that NHTSA and other advocates of .08 *per se* have always maintained that, in order to reduce the incidence of impaired driving, states need a combination of strong legislation, effective public education programs, and active law enforcement. Supporters claim that the GAO report is simply re-stating something the .08 movement has always known -- that any reductions in alcohol-related crashes should be credited not to .08 BAC laws exclusively, but rather to a combination of measures.

Apart from the GAO report, perhaps the most frequently quoted study of the effectiveness of .08 *per se* was the one written by Dr. Ralph Hingson and two other researchers from Boston University's School of Public Health. The results of their study appeared in the September 1996 issue of the *American Journal of Public Health*. Hingson compared the first five states to lower their illegal BAC limits to .08 (CA, ME, OR, UT and VT) with five states that retained the .10 limit. Hingson and his colleagues found a 16% greater decline in the proportion of alcohol-related fatalities among drivers in the states adopting the lower limit, and concluded that if all states adopted .08 BAC laws, 500 to 600 fewer fatal crashes would occur annually. Another significant finding of this study was that, not only did the .08 BAC laws serve to reduce the overall incidence of alcohol fatalities, but they also worked to reduce fatalities at the higher BAC levels.

Critics of .08 *per se* argued that this study was methodologically unsound. States are difficult to compare with one another because conditions are rarely the same. For example, in two states that were paired as "test" and "control" sites for Hingson's study, one state allowed sobriety checkpoints and the other one did not. Once again, critics questioned how the reduction in fatalities could be credited to .08 BAC laws when, in three of the five .08 states used in Hingson's study, administrative license revocation (ALR) laws went into effect within six months of the .08 BAC laws, if not concurrently. Hingson's use of Texas as the control site for California, and his pairing of .08 states with so-called "nearby sites" has also been the subject of much criticism.

Legislators seemed to rely heavily on the testimony of supporters and opponents as to the findings and the methodology of studies concerning the effectiveness of .08 *per se*. Besides discrediting the existing reports as being flawed and inconclusive, opponents of .08 *per se* often presented legislators with statistics of their own. For example, in some instances statistics were used to show that, when compared to states that had enacted the .08 BAC limit, the state considering the law had fewer alcohol-related fatalities per capita, despite the higher BAC limit. Such statistical data was often easier for legislators to

comprehend than the more complex statistical reports mentioned above. It was a bigger challenge for supporters of .08 *per se* to explain in a concise and clear manner the findings and the methodology of the research. Some of our contacts warned that this "numbers game" is difficult to win, and it is best for advocates of .08 *per se* to avoid debates that focus on figures and statistics. Instead, they argued, the movement should focus on the human and emotional aspects of the debate.

EXISTING LAWS ARE SUFFICIENT

Opponents argued that .08 BAC laws are unnecessary. There are state laws already in place to deter and punish drunk drivers, even at the lower-BAC levels. If existing laws are not effective, it is because enforcement is weak and inconsistent. They argued that efforts to deter drunk drivers should focus on stronger law enforcement, rather than *per se* limits.

In several states, advocates of .08 *per se* conceded that stronger enforcement of current laws may indeed be necessary. They argued that .08 BAC laws are not meant to displace but rather support existing legislative measures. As mentioned previously, supporters of .08 *per se* said they have always maintained that, in order to reduce the incidence of impaired driving, states need a combination of effective laws, strong enforcement, and highly-visible public information and education.

In particular, the opposition in some states argued that police were already empowered to arrest and charge a driver with DWI if the individual exhibited visible signs of intoxication or impairment at the time of arrest, regardless of the BAC of the driver on a breath test. In response to this argument, advocates maintained that drivers who are impaired by alcohol may not clearly exhibit visible outward signs of drunkenness. And, as stated previously in this report, DWI charges were sometimes dismissed when defense attorneys questioned the training of the police officers. The enactment of .08 BAC as the illegal limit, it was argued, would provide law enforcement and the court system with a scientific standard against which to measure the level of impairment.

Other state legislation also presented obstacles to passage of .08 *per se* when the opposition argued that existing laws were sufficient to address the problem. Several states, including one of the sites used in this study, make a legal distinction between "driving while intoxicated" and "driving under the influence." Concurrent with the .10 BAC *per se* limit, these states have established a lower BAC level (for example, .07 BAC) at which the breath test results are considered *prima facie* evidence that the driver is under the influence of alcohol. However, individuals convicted of driving under the influence of alcohol experience fewer and less severe penalties than those convicted of driving while intoxicated. Opponents in one of the states studied successfully argued that this statute eliminates the need to enact a .08 *per se* law, since the state already has legislation to target and punish individuals who operate a vehicle at levels above .07 BAC.

.08 *PER SE* IS THE FIRST STEP TOWARD ZERO TOLERANCE

Opponents of the measure claimed that .08 *per se* was only the first step in an attempt to eventually lower the illegal limit of drivers to .00 BAC. The ABI sometimes referred to the .08 movement as "the new prohibition."

Advocates had a difficult time countering this argument. Several politicians, legislators and at least one Governor have publicly endorsed illegal limits of .05 BAC or lower. The American Medical Association has also publicly supported .05 BAC as the illegal limit. State BAC limits have been gradually lowered over the course of time, and supporters were not able to make assurances that in the future, lower BAC limits would not be sought.

NHTSA has officially indicated that, based on the scientific literature currently available, .08 BAC is a reasonable point at which to set the limit, and that the agency is not interested in pursuing a lower limit. However, opponents have countered that this is no guarantee, as it is always possible that new research findings may lead to a revision of the agency's position in the future.

While they could not make assurances that in the future lower BAC limits will not be sought, advocates of .08 *per se* did successfully emphasize that, contrary to the ABI's claims, no one is interested in bringing about "the new prohibition." They stressed that the .08 movement was not trying to limit the consumption of alcohol. The goal of illegal BAC limits for adults was not to restrict individuals from drinking alcohol; rather, advocates argued, these limits exist to prevent individuals from operating a motor vehicle while intoxicated, putting their own lives and the lives of others at risk.

.08 *PER SE* WILL BE UNFAIR TO CERTAIN GROUPS

In some states, there was a concern that .08 *per se* would unfairly affect the blue-collar worker who stops at the local tavern after work to have a few beers. More affluent folks who could afford to pay for cab service on a regular basis, or maintain a well-stocked liquor cabinet at home, would not bear the impact of this measure.

In states where this argument was presented, advocates successfully countered that the state's Truckers' Association fully supported the measure. Commercial truck drivers have been operating for years under a federal BAC limit of .04, and if they were expected to comply with the .04 limit, then it could be expected that others could accept and comply with an illegal limit of .08.

A similar concern was put forth in one state regarding the impact of the law on minority groups. These concerns disappeared once the legislator had a chance to discuss the issue with a prominent black leader who supported .08 BAC limits.

.08 *PER SE* IMPOSES ON STATES' AUTONOMY

Congressional programs that award grants to states with .08 *per se* laws were welcomed by some legislators and shunned by others. One committee chair repeatedly referred to the congressional incentive program as "blackmail." On the other hand, some contacts felt that among the more "budget-conscious" legislators, the availability of federal funds was a contributing factor in their decision to support the measure.

It was reported that there was little that supporters were able to do in order to change the attitudes of legislators who resented any influence of the federal government in state legislative matters. In the states studied, effective lobbyists and .08 supporters anticipated how individual legislators would react to this issue, and accordingly made a conscious decision to either mention or remain quiet on the issue of federal grant money. For the most part, representatives from MADD and legislation sponsors emphasized that they never used financial compensation as an argument in favor of their position; the measure should be passed because it is going to save lives, not because it is going to bring money into the state's treasury.

In October 2000, the Department of Transportation's 2001 Appropriations Act (HR4475) was passed by both chambers of the U.S. Congress and signed by President Clinton. The Act provides that states must pass a .08 *per se* law by 2004 or begin losing federal highway construction funds. States that do not implement .08 BAC by 2004 will lose 2 percent of their highway money, with the penalty increasing by 2 percent each year, until it reaches 8 percent beginning in FY2007. As a consequence of this legislation, it is foreseeable that, in some states, opposition may mount in response to the mandated nature of this legislation, as much or more than in opposition to the .08 BAC limit itself.

5 - SUPPORTIVE STRATEGIES

This section describes the activities and strategies used by advocates of .08 *per se* in the six states that were studied, as reported to project staff.

COALITIONS

In all six states that were studied, coalitions were organized so that members could join efforts and work together to obtain passage of .08 *per se*. In some states, the coalition had a definite leader and a clear plan of action. In other states, the coalition was no more than a loose association of organizations that supported the measure. In both cases, however, coalitions were necessary to demonstrate to legislators that .08 *per se* was an initiative backed by a wide variety of groups, representing both public and private interests in the state. Many groups that were not really active in the legislative struggle nevertheless submitted their names as supporters of the effort to lower the illegal limit to .08 BAC. A typical coalition consisted of:

- grassroots advocacy groups (e.g., MADD, RID, SADD, PTA groups)
- private corporations (e.g., insurance companies, automobile manufacturers)
- labor groups (e.g., truckers' association, nurses' association)
- law enforcement (e.g., state police, sheriffs' association)
- substance abuse, prevention and treatment groups
- medical and public health groups (e.g., state medical association, hospitals)
- religious groups
- veterans' groups
- local (county, city, town, village) governments
- district attorneys
- traffic safety experts
- legislators

Though in all cases it was one of the most active members, MADD was not always the coalition's leader. In several states, the governor's office for highway safety acted as the strategy coordinator.

ADVANCE PREPARATION

Legislative sessions in many states can be quite short. The number of days that the legislature can meet during regular session is limited by statute in all but 11 of the 50 states. Most legislative sessions vary in length from 30 to 120 days. Seven legislatures in the nation meet bi-annually. As an example, the Texas Legislature

meets for only 140 days every other year. In this short period of time, thousands of bills are introduced; only a fraction of these bills are seriously considered, and the number of bills actually passed is even fewer. During the 1999 Texas legislative session, 5,766 bills were filed, but only 1,621 were passed.

Based on the above, individuals involved in the state legislative process report that a bill must move along relatively quickly, if there is any chance for it to become law by the end of the session. In states where .08 *per se* was passed, coalition members believed that by preparing extensively before the first meeting of the legislature, they were ready to "hit the ground running" once the legislators arrived in the capital. In states with short legislative sessions, coalition members reported that, if they were to wait until the beginning of the session to get organized, in all likelihood it would already be too late to have the bill placed high enough on the legislators' agenda to be considered during that session.

In preparation for the legislative session, coalition members reported that they recruited supporters, and kept the topic of impaired driving on the forefront. Grassroots activists said they encouraged voters to write or call their representatives at their local district offices to express their support for tougher DWI legislation, including .08 *per se*. Local governments were asked for their support. Local victims of DWI crashes who could potentially serve as witnesses at committee hearings were identified. Executive leaders in favor of the measure held press conferences on the issue, often in the aftermath of a tragic death caused by an incident of drunk driving. One supportive committee chairperson managed to hold hearings on the subject before the legislative session began, in anticipation of the debate that would take place in the state Senate that year.

Also in preparation for the legislative session, advocates began to anticipate the arguments that the opposition would present, and devised strategies for dealing with those arguments well in advance. For example, in one state, meetings were held prior to the legislative session to address communities' concerns regarding the costs of implementing .08 *per se*. If the legislation had been considered in past years, strategies were also formulated to rebut the opposing arguments that had been successful in previous legislative sessions.

MEDIA INVOLVEMENT

Coalition members met with reporters and other representatives from the news media to seek their support. In one of the states, a part-time consultant was hired to coordinate relationships with the media. As a result of these efforts, many local newspapers featured editorials in support of the .08 *per se* legislation. Even when readership was limited, the editorials were significant because they would often mention the local representative by name and exhort him or her to support the bill.

In several states, it was reported to project staff that the media were instrumental in giving a high profile to tragic DWI deaths to continue to elicit strong emotional responses from the public long after the incident had occurred.

In particular, deaths of young children as a result of an alcohol-related crash were often seen by advocates as catalysts for an upsurge in public outrage and a demand for laws that would prevent such a tragedy from repeating itself. The .08 movement gained momentum from these events due to ongoing media coverage and investigative reporting. Victims of drunk drivers were also featured making emotional pleas to lawmakers and the public to support stronger legislation that would prevent more DWI-related tragedies.

In some states, legislators and executive leaders held press conferences to discuss the issue of impaired driving and propose .08 *per se* as part of the solution. One legislator treated the impaired driving issue as a campaign, complete with slogans, to generate as much publicity as possible not only in newspapers but also through television and radio talk shows.

COVERAGE OF THE LEGISLATURE

Advocates aggressively lobbied the members of the committee where the .08 BAC bill was to be considered. And, while they tried to reach every senator and representative in the state legislature, members of the coalition were often selective in terms of who should be the focus of their lobbying efforts. Some legislators were clear in their support of .08 *per se* from the very beginning; likewise, a handful of them were vehemently opposed to the legislation from the start. Giving secondary importance to these two groups, lobbying efforts were aimed instead at the larger number of legislators who were undecided, uncertain, or "on the fence." In particular, some advocates emphasized that they aggressively lobbied first-time legislators who arrived in the capitol without a pre-determined stance on many of the issues. These rookie legislators had more open schedules than their more senior counterparts to meet with .08 supporters. In addition, novice legislators were often eager to identify an issue or two that they could rally behind early on in their political careers.

Having identified a sub-group of legislators to focus on, coalition members then adopted a two-tiered strategy: senators and representatives were not only lobbied while in session at the state capitol, but they were also approached by individuals and groups in their local districts. The advocates' logic was simple: legislators are concerned with re-election and accountability to their constituents. Therefore, they were more likely to take a personal interest in a particular issue if there were specific demands from their own constituents. Local authorities in cities and towns in the targeted districts were contacted. In many cases, this resulted in a municipal proclamation supporting .08 *per se*. MADD and other grassroots organizations worked together to identify local victims of alcohol-related crashes and exhorted them to write to their legislators, and if possible to visit them at their district offices. Local newspapers in the target districts were also lobbied, often resulting in an editorial discussing the .08 issue and encouraging the local legislator to vote in favor of the measure. As discussed above, much of

this lobbying effort actually took place before the legislature convened, but it was thought that if the legislator was properly "swamped" with requests from his or her constituents, the impaired driving issue would be fresh in the legislator's mind at the beginning of the session.

"POLITICAL COVER" FOR LEGISLATORS

Supporters pointed out that even when legislators were not fully convinced as to the effectiveness of .08 BAC laws, the vocal support of local government authorities, the local media, and district residents might be enough to provide the legislator with a sufficient degree of "political cover." By aiming to provide legislators with such political cover, coalition members were sometimes able to win votes in their favor. Legislators needed assurances that in the future they would be able to justify their votes through a relatively simple and straightforward answer, such as "my constituents (including the local government authorities and the local media) demanded it." Even if the legislator was uncertain as to effectiveness of .08 BAC laws, he or she could explain that personal convictions were set aside to make way for the demands of the constituency.

EDUCATE LEGISLATORS

In Illinois, advocates believed that one of their most effective strategies was the "drunk driving test" organized by the Illinois State Police. The State Police invited legislators to find out for themselves how their driving performance would be affected at .08. Participants were evaluated on a driving course before consuming any alcohol. Then, alcoholic beverages were provided, together with some food. Once they reached BAC levels of .04 -.05, participants were again taken out to the closed driving course and their driving skills were evaluated. Finally, those who chose to continue with the test were dosed until they reached BAC levels approaching .07 - .08, and their driving skills were once again evaluated.

The results of this exercise were better than expected. At least two state legislators, some of their family members, as well other volunteers from the community, submitted themselves to the test and discovered that at .08, and even at lower BAC levels, their coordination was affected, and they would knock down multiple cones along the driving course. Some participants refused to get behind the wheel at .04 BAC because they already felt that they would not be able to perform safely. Several days after the exercise, the participating legislators disseminated a letter to their counterparts in the Illinois General Assembly, describing how they had experienced first-hand the impairment of driving a vehicle at .08 BAC, and exhorting legislators in both chambers to endorse the measure.

This exercise was recommended by many as a strategy to persuade legislators in other states to endorse .08 *per se*. However, project staff are aware that attempts to organize similar activities in other states have been unsuccessful, and

may even backfire. In some states, legislators have simply refused to submit themselves to this type of test.

A different approach was used in Texas. When training troopers to operate breath testing devices, the state's Department of Public Safety (DPS) conducts alcohol dosing of police officers so that troopers can observe and experience for themselves the effects of alcohol at different BAC levels. In the House of Representatives, the legislation's sponsor distributed a flyer containing actual measurements from DPS, indicating the sex and weight of police officers who submitted themselves to the test, the amount of alcohol they consumed in a 45-minute period, and the troopers' BAC readings one hour after they began drinking. The idea was for the representatives to find an individual who matched their gender and approximate weight, and then look at the number of liquor shots the officer needed to reach .08 BAC. It was reported that, in almost all cases, legislators were surprised at how much alcohol was in fact needed to reach .08 BAC.

Advocates believed these activities were helpful because many legislators did not have a clear idea of how much alcohol they would have to consume in order to reach an .08 BAC level. Charts and estimates provided by NHTSA and other agencies were somewhat helpful, but actual measurements were reported to be even better tools than the hypothetical estimates used in the charts.

SEPARATE LEGISLATION UNDER SEPARATE SPONSORS

With the exception of one state, the .08 legislation piece was typically a separate, stand-alone bill. It was not bundled together with other anti-DWI proposals. By submitting separate bills, advocates ensured that if one of the proposed measures failed, they would not all fail (as in omnibus legislation), though they could still be described as a "package of bills" which would strengthen each measure if all passed. Also, through the use of multiple sponsors, the publicity would provide opportunities for many legislators to look good in their districts and might help those up for re-election. In all six states studied, the measure enjoyed bi-partisan support, and by including sponsors from both major political parties and from both legislative chambers, the opposition found it difficult to enlist allies along political lines.

PUBLIC OPINION POLLS

In two of the states used as sites for this study, public opinion polls were conducted demonstrating that a majority of the state's voters supported .08 BAC as the illegal limit. Both polls were conducted with assistance and partial funding from insurance companies and other organizations. It should be mentioned that the polls sought to obtain the public's stance on a variety of issues, not only .08 *per se*. It is also interesting to point out that, in both cases, they were polls of

registered state voters, and they were conducted during an election year. The results were of particular interest to candidates for public office, as they provide some indication as to what issues are of greatest concern to state voters.

BREAKDOWN OF THE OPPOSITION

Groups opposed to .08 *per se* were varied. They included restaurant owners, beer and wine wholesalers, defense attorneys, retail stores, and others. In at least one state, this diversity proved to be a weakness. By appealing to specific interests not shared with other opposing groups, the .08 movement was able to disintegrate the united stance that opponents of the measure had presented in previous years.

In one state, the Restaurant Association decided not to actively fight .08 *per se*, even though they were *de facto* opposed to the measure. This was as a gesture of good will toward the newly-elected administration that was actively promoting a .08 BAC law. The Restaurant Association decided that in the long run it was in their best interest to promote a positive working relationship with state government officials, rather than antagonizing the new administration from the start.

For their part, brick-and-mortar alcohol wholesalers and retailers were beginning to see their businesses threatened by on-line Internet resellers. Some legislators suggested that beer and wine retailers were willing to negotiate and accept passage of .08 *per se*, in return for certain favorable state trade regulations that would protect them from Internet start-up companies.

Once the active, vocal opposition of the hospitality industry and the local alcohol industry disappeared, the remaining adversary in the .08 *per se* debate was the American Beverage Institute. Advocates noted that legislators found it easier to vilify the ABI once it was left standing alone, since the ABI is not a state organization, and cannot claim to directly represent local business and constituent interests.

6 -BARRIERS TO PASSAGE

This section discusses the major obstacles to passage of .08 *per se* as encountered by supporters of the measure in the six states that were used as sites for this project, as reported to project staff.

GOVERNOR OR POWERFUL LEGISLATOR OPPOSES THE BILL

In all six states studied, there was a promise from the Governor that he would not veto the .08 *per se* bill if it reached his desk. In states where such an agreement has not been reached with the Governor, this would be considered by the .08 movement to be a major obstacle, as many legislators would not want to fight for passage of a law only to have it vetoed by the state's top executive.

In most states, there was initially a very strong and vocal opposition from either the President of the Senate or the Speaker of the House. Opposition from legislative chamber leaders was seen as a significant obstacle, since it is they who control the legislative agenda of their respective chambers. Typically, the Senate President and the House Speaker also decide which committees will consider the proposed legislation. In most cases, they are also the leaders of the chamber's majority party, and can wield considerable influence on the votes of their political caucuses.

Opposition from the chairperson of the committee that considers DWI bills was also considered to be a great obstacle. In more than one instance, advocates had reason to believe that the state legislature would approve the legislation, should the bill be allowed to pass out of committee. However, in many cases the chairperson's influence over proceedings in the committee was sufficient to keep the bill from the reaching the floor for a general vote.

Opposition from the chamber or committee leaders resulted in numerous unsuccessful attempts year after year to pass .08 *per se* legislation. Enactment of the measure typically followed an election year that brought some changes in the balance of power within the legislature. In one state, the opposing House Speaker left the legislature to pursue higher office. In another state, a member of the executive branch had to intervene before the Senate President finally permitted the measure to come to a vote on the general floor.

LEGISLATIVE TACTICS

The easiest way for legislators to kill a bill was simply to "put it at the bottom of the pile." Especially during a short legislative session, bills died simply because there was "not enough time" to consider them. This was a frequently employed tactic that saved face for the legislators since they never actually had to vote against the bill. Even when legislators were not strongly opposed to a bill, short sessions forced them to prioritize and turn their attention only to those issues they

believed to be the most important. Accordingly, lobbyists for .08 *per se* believed that one of their greatest challenges was to capture the legislators' attention early on in the session, and persuade them to give priority to DWI issues.

Some legislators attempted to halt the bill's passage by filing amendments that would alter the impact of the law. One legislator filed an amendment to enact the .08 BAC limit for administrative purposes but eliminate *per se*. In another state, one senator put forward an amendment that would have allowed local governments to exempt their communities from enforcing the new .08 BAC limit. This amendment was approved by the legislature, forcing supporters to draft and vote on a second bill effectively removing this amendment.

In still another state, one legislator proposed to lower the state's illegal BAC limit to zero. When this amendment failed, he filed a second amendment to lower the limit to .05. Our contacts were unanimously in agreement that these were not *bona fide* proposals on behalf of the legislator, but rather, a last-minute attempt from the opposition to prevent the passage of .08 *per se* by "scaring" legislators into voting against the measure, because the new limit would be considered by most to be too low.

Finally, legislators delayed consideration of a .08 BAC law by requesting fiscal notes, or other assessments of the financial impact of the legislation. Depending on the timing of these requests, they sometimes served to defeat the measure, if the legislature adjourned before legislative staff could compile the requested information.

PASS IT IN ONE CHAMBER, KILL IT IN THE OTHER

In more than one state, it was suspected that members of one legislative chamber approved the .08 *per se* bill because they were extremely confident that the bill would not become law due to the fierce opposition in the other chamber. For example, in one of the states where the House Speaker was a vocal opponent of .08 *per se*, and had repeatedly prevented the bill's passage in past legislative sessions, the Senate approved the measure, allegedly because they knew the bill would never be approved by the House. It was reported to project staff that, in this manner, senators managed to protect themselves from any media and public outcries, as it was the "other chamber" that defeated the measure.

OBSTACLES NOT RELATED TO THE OPPOSITION

It was reported to project staff that the .08 *per se* movement sometimes faced obstacles such as lack of sufficient preparation, and conflicts in interests between legislators and advocates. For example, a couple of legislators who had worked with one grassroots organization to enact .08 *per se* legislation, found themselves at odds with the organization because they felt that the group was being inflexible and was threatening them with bad publicity if the legislators did not meet all of their demands. Though only a very small minority of our contacts voiced such

complaints, it is important to note the potential for conflict among .08 *per se* advocates themselves when there is a difference in priorities or opinions.

7 - SUMMARY AND CONCLUSIONS

The intent of this study was to document the various arguments and strategies employed by both proponents and opponents of .08 *per se* legislation in several states which have recently considered such legislation. Both proponents and opponents were interviewed in six such states, four of which adopted .08 *per se* legislation and two of which considered and rejected it. The points below summarize the main observations reported to project staff during this undertaking.

- In states where .08 *per se* was enacted, both advocates and opponents identified and credited the actions of a key individual who provided strong leadership, who was deeply committed to the issue, and who had the ability to orchestrate the legislative and political process. Advocates said that true leadership from politicians involved a willingness to marshal some of his or her resources to the cause and to become personally active as well. In their view, a mere indication of support by the Governor, for instance, would not have been enough to secure passage of the legislation.
- Likewise, when the legislation failed to pass, advocates of .08 *per se* identified a key committed opponent who was, in their view, able to block passage of the legislation through his or her actions.
- Advocacy coalitions were formed in every state. In order to emphasize that .08 *per se* was an initiative supported by a wide variety of groups, advocates sought the official backing of several organizations representing both public and private interests in the state. Supporters sought to recruit members who possessed not only a strong background and knowledge of impaired driving issues, but also in-depth knowledge of the political process in their respective states.
- In all six states, the opposition was represented in the State Legislature by one or more professional lobbyists. Experienced local lobbyists were considered to be a great asset for the following reasons: they were thoroughly familiar with the state's political process and legislative procedures; they knew who the key legislators were on which key committees; and they understood the background and interests of these legislators. Both advocates and opponents of the bill believed that a good lobbyist could anticipate a state representative's reaction to a particular bill or issue, and he or she would know who the other party would most likely approach for support.
- In states where .08 *per se* legislation was enacted, legislators from both major political parties worked in cooperation to sponsor the bill and seek the support of their political caucuses.
- In all six states, advocacy groups worked to mobilize impaired driving victims and others. Advocates said that victims' testimonies provided a more personal and emotional element to the formal legislative process.
- It was reported that, in states where .08 was passed, advocacy groups also succeeded at recruiting constituents from the legislators' home districts, and

encouraged them to contact their legislators and express their concern and support for the legislation. Advocates said that many lawmakers responded to constituents' concerns, perhaps because re-election votes were cast depending on how those legislators dealt with important issues such as this one.

- Supporters of .08 *per se* engaged the mass media to bring the .08 issue to the public eye, and also to apply pressure on legislators, through editorials by newspaper columnists, radio talk-show coverage, coverage of public hearings, as well as extensive media coverage of impaired driving crashes.
- In states where .08 *per se* was enacted, advocates prepared for the debate well in advance of the beginning of the legislative session. It was reported that, because the legislative session in many states is often very short, whenever the .08 *per se* issue was not given a high priority from the start, it often became buried by other legislative issues.
- Similarly, legislators who opposed .08 *per se* were often able to kill the bill simply by placing it at the bottom of their priority list. Especially during a short legislative session, bills died because there was "not enough time" to consider them. This was a frequently employed tactic that saved face for the legislators since they never actually had to vote against the bill.
- As part of their preparation for the debate, advocates of .08 *per se* emphasized that they sought to become thoroughly familiar with their opponents and their arguments. It was reported that this method of advance preparation enabled supporters of the measure to respond quickly and effectively when debating the issue or providing answers to questions when testifying before legislators. By planning their responses in advance, supporters said they hoped to not only silence the opposition, but also to provide a unified front, as all advocates were providing the same facts and information.
- In states where the legislation failed to pass, opponents were successful in persuading legislators that .08 *per se* was unnecessary, either because the state already imposed penalties on individuals caught driving at BAC levels below .10, or because other forms of legislation (e.g., increased penalties for repeat offenders) would have a greater impact on public safety.
- Opponents of .08 *per se* were also successful in halting passage of the bill through a variety of legislative tactics. For example, some legislators delayed consideration of the bill by requesting fiscal notes, or other assessments of the financial impact of the legislation. Depending on the timing of these requests, this tactic sometimes served to defeat the measure, if the legislature adjourned before legislative staff could compile the requested information. Other legislators who opposed .08 *per se* attempted to halt the bill's passage by filing amendments that would significantly alter the impact of the law, for example, by allowing local governments to exempt their communities from enforcing the proposed .08 BAC limit.
- Finally, both advocates and opponents emphasized that, whenever possible, they provided positive angles and avoided the use of negative comments to antagonize the other parties in the debate. For example, some supporters of

.08 *per se* claimed that use of this strategy persuaded their opponents to eventually accede or accept a neutral position on this issue. On the other hand, opponents of the measure highlighted the importance of maintaining a positive working relationship with key individuals in government circles and the state legislature.