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The Use of Safety Checkpoints for DWI Enforcement

**TRAFFIC SAFETY PROGRAMS
Office of Alcohol Countermeasures
Office of Drive and Pedestrian
Research**

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PREFACE

A number of States and communities have been using safety checkpoints for DWI enforcement. We have reviewed these programs and prepared this paper to provide an overview of the issues involved in existing programs. The paper also contains a description of the major implementation guidelines used in these existing programs that should be useful to police administrators who may be considering using the checkpoint procedure.

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SAFETY CHECKPOINTS FOR DWI ENFORCEMENT

Introduction

Police enforcement is a critical component in every drunk driver control system. If the police do not detect and apprehend the drunk drivers, then the rest of the system will not function properly.

During the 1970s, the National Highway Traffic Safety Administration (NHTSA) undertook a major demonstration project which consisted of 35 local project sites called Alcohol Safety Action Projects (ASAPs). ASAP and subsequent research and demonstration efforts provided considerable knowledge about drunk driver control mechanisms and identified the elements necessary for a successful community-based alcohol program. We learned, for example, that effective enforcement requires the following:

- o Command Emphasis--The chief, senior staff, lieutenants and sergeants must emphasize and support DWI arrest activity. The time and effort necessary for DWI enforcement must be seen as a continuing priority.
- o Problem Identification Capability--The ability to determine the nature and magnitude of the DWI crash/violation problem (time of day, day of week, location, etc.) must be developed and sustained.
- o Selective Enforcement Patrol Techniques--Departments must apply resource allocation techniques such as selective enforcement, that deploy manpower at the key times and locations of DWI activity.
- o Effective Support Technology--Departments must have round-the-clock logistics capability to provide forensic chemical test equipment (evidential breath testing devices, calibration units, preliminary breath test devices, etc.) and qualified staff to operate the equipment.
- o Special Training--Training in detection, arrest and processing of DWI offenders must be provided to all patrol officers and others as appropriate.
- o Public Information--Enforcement related public information plays a key role in raising the perceived risk of arrest (to go along with an increase in the actual risk of arrest).

Extensive research in alcohol related projects has demonstrated that the general deterrence approach has the greatest potential for achieving a substantial, short-term reduction in alcohol-related crashes. General deterrence programs are those designed to raise the perceived risk of arrest and sanctioning by the vast majority of drunk drivers who are never arrested. The general deterrence approach is also an essential aspect of any long-term solution to the problem.

The use of safety checkpoints can provide an important component of an effective enforcement system designed to raise the perceived probability of apprehension for DWI. Drivers may believe that they stand little chance of being detected if they drive after drinking too much.* They may believe that the police will not notice them or that they can drive carefully enough not to attract suspicion if they are noticed. But roadblocks, or safety checkpoints, counter this belief because the potential of a drunk driver being detected is increased. This may deter others from driving while under the influence.

Recently there has been an increased interest in the use of sobriety checkpoints. For example, the State police in Delaware, Maryland, New York, Arizona, and local police in many counties and cities, have in the last year initiated checkpoint programs. Based on a review of a number of these and other programs, we have prepared this paper to present some of the salient issues identified in these State and local programs. This information may be useful to police administrators considering a safety checkpoint program for DWI enforcement.

Safety checkpoints' limitations are that they have not been proven cost effective when used solely for producing DWI arrests, nor when they are used as the sole DWI enforcement technique. In addition, the effectiveness of different screening techniques in detecting impaired drivers and influencing their perception of the risk of being detected is unknown. Nonetheless, safety checkpoints have been demonstrated to be highly effective in raising the visibility of enforcement efforts.

The use of safety checkpoints raises a number of legal issues related to drivers' constitutional rights, which are discussed in the following section. In addition, a list of program and operational procedures, based on our review of existing programs, is presented that should prove useful to police administrators who may be considering the use of safety checkpoints in their overall comprehensive DWI enforcement program.

* Studies conducted during the 1960s and 70s have estimated that a drunk driver's chance of being apprehended on any given occasion is between 1 in 200 and 1 in 2,000. Recent data indicated that between 1/4 and 1/3 of drivers who drink alcoholic beverages do not think the chances of being caught and punished are great enough to deter them from driving after drinking too much.

Section I

REVIEW OF LEGAL ISSUES

RIGHT TO STOP VEHICLES

The Fourth Amendment to the United States Constitution prohibits unreasonable "seizures" and has been interpreted to govern arrests and other encounters between police and citizens. The United States Supreme Court has emphasized that encounters short of full-fledged arrests are considered to be seizures when a police officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person," Terry v. Ohio, 392 U.S. 1, 16 (1968); Davis v. Mississippi, 394 U.S. 721 (1969). Thus, it is the nature of the encounter and not the label attached to it (e.g., "arrest", "detention", "stop", etc.) that determines whether it is a "seizure" governed by the Fourth Amendment.

By the above definition, whenever a police officer stops a motorist he has "seized" him. At this point, the issue becomes whether the seizure was "reasonable", that is, whether it was supported by adequate cause and limited in scope to the circumstances which justified the interference in the first place.

Stops for Probable Cause

Most police officers stop drivers because the officer has probable cause to believe that the driver has committed a traffic violation in his presence. The probable cause necessary to make such a stop reasonable is created by the officer's observation of the driver's behavior, such as speeding, making an illegal turn, failure to stop at a traffic signal, driving too slowly, weaving, for example. Also, the violation of noise, pollution or equipment laws justifies such stops.

Random Discretionary Stops

The courts have viewed the random*, discretionary stopping of motorists in the absence of an articulable suspicion that the driver has engaged in illegal activity, as impermissible. The courts have found that such random, discretionary stops violate Fourth Amendment protections due to the arbitrary, intrusive and sometimes discriminatory nature of the police-citizen encounter. In deciding cases of this type, the Supreme Court has focused upon the justification required to permit such intrusion imposed upon drivers by these stops. The Court has generally applied a balancing test to these situations, weighing their intrusive nature against the legitimate governmental/societal interests which serve as the basis for the stop.

*"Random" as used by the courts means arbitrary and not as a chance event in the statistical sense.

Many of these issues were raised in a series of cases dealing with border police attempts to detect and apprehend illegal aliens in motor vehicles near the border. For example, in United States v. Brignoni-Ponce, 422 U.S. 873 (1975), the Court held that a roving patrol could not stop vehicles on a solely discretionary basis without at least a reasonable suspicion that the particular vehicle might contain illegal aliens.

In this case, the Court acknowledged the important governmental interest in preventing the illegal entry of aliens into the country and the absence of practical alternatives for policing the border. Balanced against this valid public interest was the interference with individual liberty that results when an officer stops an automobile and briefly questions its occupants. The Court held that:

"Because of the limited nature of the intrusion, stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest." Id. at 800.

However, the Court was:

"unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops. Thus, if we approved the Government's position in this case, Border Patrol officers could stop motorists at random for questioning, day or night, anywhere within 100 air miles of the 2,000 mile border, on a city street, a busy highway, or a desert road, without any reason to suspect that they have violated any law... We are not convinced that the legitimate needs of law enforcement require this degree of interference with lawful traffic." Id. at 882-883.

Fixed Checkpoint Stops

In a later case, the Court considered the use of fixed checkpoints to stop vehicles for the purpose of detecting illegal aliens. In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), the Court held that this practice was consistent with the Fourth Amendment, in spite of the lack of individualized suspicion that a particular vehicle contained illegal aliens. This decision rested on balancing the government's need to make routine checkpoint stops against the intrusion on the driver's Fourth Amendment rights. The Court felt the intrusion resulting from a checkpoint stop to be slight.

Acknowledging that checkpoint stops interfere, to a limited extent, with a motorist's right to "free passage without interruption" (Carroll v. United States, 267 U.S. 132 [1925]), the Court felt they produce only a minimal intrusion that is outweighed by the legitimate governmental interests at stake.

"[It] involves only a brief detention of travelers during which 'all that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing the right to be in the United States.'" United States v. Brignoni-Ponce, supra, at 880.

"Neither the vehicle nor its occupants are searched, and visual inspection of the vehicle is limited to what can be seen without a search. The objective intrusion - the stop itself, the questioning, and the visual inspection - also existed in roving-patrol stops. But we view checkpoint stops in a different light because the subjective intrusion - the generating of concern or even fright on the part of lawful travelers - is appreciably less in the case of a checkpoint stop. In *Ortiz*, we noted:

'[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.' [*United States v. Ortiz*, 422 U.S. 895 (1975)]" *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

The Court also noted that checkpoint operations both appear to, and actually do, involve less discretionary enforcement activity than do alternative practices (e.g., roving-patrol stops). "The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest." *United States v. Martinez-Fuerte*, supra, at 559. In addition, the Court gave weight to the fact that the location of the checkpoint was not chosen by the officers in the field, but was selected by officials responsible for making decisions on effective allocation of limited enforcement resources.

In summary, the Court found this sort of checkpoint stop permissible for a variety of reasons which served to limit the intrusiveness of the operation. The reasons included the use of advance warning signs (i.e., "All Vehicles Stop Ahead, 1 mile"; then, one quarter of a mile later: "Watch For Brake Lights" and at the checkpoint, "Stop Here - U.S. Officers"), the presence of uniformed officers, marked vehicles and only a brief detention for drivers who were stopped.

This case also dealt with the issue of "selective referrals," the practice when traffic was heavy, of referring only a small percentage of vehicles to a secondary inspection area. This seemingly inequitable treatment of motorists did not appear unreasonable to the Court. It acknowledged that inspection of all motorists in heavy traffic was not feasible and that the routine and limited nature of the inquiry was unchanged. They found no increase in the objective intrusion involved in the practice. "Selective referral may involve some annoyance, but it remains true that the stops should not be frightening or offensive because of their public and relatively routine nature. Moreover, selective referrals - rather than questioning the occupants of every car - tend to advance some Fourth Amendment interests by minimizing the intrusion on the general motoring public." *United States v. Martinez-Fuerte*, supra, at 560.

In deciding this case, the Supreme Court noted that the requirement of individualized suspicion is usually a prerequisite to a constitutional search or seizure, Terry v. Ohio, 392 U.S. 12 (1948). They clearly found, however, that the constitution makes no such absolute requirement, Camara v. Municipal Court, 387 U.S. 523 (1967). In Camara, the Court held that under certain circumstances, governmental interests outweigh those of the private citizen.

The Unique Status of Motorists

In addition, the Court's decision in the Martinez-Fuerte case made special reference to the unique status of law enforcement practices with respect to drivers of automobiles. "As we noted earlier, one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." United States v. Martinez-Fuerte, supra, at 561. In a footnote to this decision, the Court expanded on the special nature of motor vehicle law enforcement:

"Stops for questioning, not dissimilar to those involved here, are widely used at state and local levels to enforce laws regarding driver's licenses, safety requirements, weight limits, and similar matters. The fact that the purpose of such laws is said to be administrative is of limited relevance in weighing their intrusiveness on one's right to travel; and the logic of the defendant's position, if realistically pursued, might prevent enforcement officials from stopping motorists for questioning on these matters in the absence of reasonable suspicion that a law was being violated... this practice of stopping automobiles briefly for questioning has a long history evidencing its utility and is accepted by motorists as incident to highway use." Id. at 560-561.

(It should be noted that in this case, the Court specifically restricted its decision to the use of permanent checkpoints set up to detect illegal aliens. The search for illegal aliens has been expressly authorized by Federal law, and in this case, the Court held this application of the law to be reasonable and permissible.)

Delaware v. Prouse, 440 U.S. 648 (1979) dealt with the issue of a police stop of a vehicle for the purpose of checking the operator's driver's license and the registration of the car, under circumstances where there was neither probable cause to believe nor reasonable suspicion that the car was being driven in violation of the laws governing the operation of motor vehicles. As it had in previous decisions, the Court held that this type of random (discretionary) stop was not permissible under the Fourth Amendment. In reaching its decision, the Court applied the "reasonableness" standard to the conduct of the law enforcement agents by means of a balancing test: "[T]he permissibility of a particular law enforcement action is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Id. at 654.

Regarding the issue of the lack of individualized suspicion, the Court held that:

"In those situations in which the balance of interests precludes insistence upon 'some quantum of individualized suspicion,' other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.' (Camara v. Municipal Court, supra)"
Delaware v. Prouse, supra, at 655.

In part, the Court's decision against allowing discretionary spot checks was based upon the lack of evidence that the law enforcement technique does or would so effectively serve a legitimate governmental interest that it would outweigh the resulting intrusion to the drivers stopped. The Court made reference to the fact that:

"Although the record discloses no statistics concerning the extent of the problem of lack of highway safety, in Delaware or in the Nation as a whole, we are aware of the danger to life and property posed by vehicular traffic... We agree that the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed. The question remains, however, whether in the service of these important ends the discretionary spot check is a sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests which such stops entail. On the record before us, that question must be answered in the negative. Given the alternative mechanisms available, both those in use and those that might be adopted, we are unconvinced that the incremental contribution to highway safety of the random spot check justifies its operation under the Fourth Amendment. Delaware v. Prouse, supra, at 659.

Thus, the critical factor in the Court's reasoning appears to be that no evidence or reason was provided to believe that unlicensed drivers would actually be discovered or deterred from driving by using the spot check technique. The Court, however, also expressed that "this holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative." Id. at 658.

In a concurring opinion, Justice Blackman (joined by Justice Powell) suggested that the Court's opinion that questioning all oncoming traffic at a roadblock would be acceptable did not preclude "other not purely random stops (such as every 10th car to pass a given point) that equate with, but are less intrusive than, a 100% roadblock stop." Id. at 664.

A recent case before the United States Court of Appeals, involved a roadblock type stop of traffic for the purpose of checking drivers' licenses and vehicle registrations (United States v. Prichard, 645 F.2d 854 [1981]). In this case, the officers testified that it was their intent to stop all westbound vehicles

on the Interstate highway except when cars began to "pile up," at which time they would wave through all stopped traffic in order to prevent a hazardous situation. The Appeals Court, in light of the Prouse decision, held that this roadblock type of stopping procedure was acceptable.

The court decisions cited above indicate that the United States Supreme Court has found that non-discretionary roadblock checkpoints may be permissible and reasonable law enforcement practices for promoting a legitimate governmental interest if executed properly.

The Court indicated that this judgment was based on balancing the intrusion on the individual's Fourth Amendment interests resulting from the minor inconvenience of a safety checkpoint against the promotion of public safety upon the roadways. Some of these cases dealt specifically with the issue of checking for unlicensed drivers and for proper vehicle registration and vehicle safety inspections. However, in reaching its decision, the Court discussed other vital interests of the States including the apprehension of drivers under the influence of alcohol (Prouse, supra, at 659). In a number of cases the Court has acknowledged the importance of removing drunk drivers from the public highways, e.g., Mackey v. Montrym, 443 U.S. 1 (1979).

Considering the vast difference in magnitude of the safety problem presented by unlicensed drivers in comparison to the deaths and injuries caused by drunk drivers, it seems likely that since the Court found checkpoints to detect unlicensed drivers acceptable, it would also find checkpoints to detect drunk drivers permissible. The safety benefits that would accrue from the detection and deterrence of alcohol-impaired drivers would greatly exceed that resulting from the enforcement of the license and registration laws. However, this issue has not yet been adjudicated by the Supreme Court.

Summary

Using checkpoint stops for DWI enforcement appears to be consistent with the Supreme Court's interpretation of Fourth Amendment rights, if they are conducted in a "reasonable" fashion. The actual procedures used would have to be designed so that the intrusion is kept to a minimum and any appearance of arbitrary or discretionary action on the part of the law enforcement officers in the field is eliminated or kept to a minimum.

Since the operation of a safety checkpoint technically involves the "seizure" of citizens in the absence of individualized suspicion that they have committed a violation, some "neutral criteria" must be used for determining when, where and who to stop. These matters cannot be left to the discretion of officers actually conducting the safety checkpoint.

SEARCHING DRIVERS

The nature of an officer's interaction with a motorist he has stopped will differ depending on the reason for the stop. Different reasons for stopping a motorist will justify different actions. The officer must be extremely careful in the way he develops probable cause to make an arrest for DWI. The element of "search" and how it is conducted must be carefully developed because the rules change for each situation.

Since drivers stopped at checkpoints are not stopped for either observed or suspected violations, the search procedures used to ascertain alcohol impairment must initially be very limited. As previously discussed, the search must be conducted in a reasonable fashion -- supported by adequate cause and limited in scope to the circumstances which first justified the interference in the first place, Terry v. Ohio, 392 U.S. 1 (1968). Officers who conduct searches at safety checkpoints must therefore take care not to engage in actions which could be considered "searches" under the Fourth Amendment, unless justification arises during initial contact with the driver. It must be noted, however, that information obtained during a lawful encounter between a police officer and a citizen can provide sufficient cause for further action. Thus, while the officer may not have reasonable suspicion of DWI when first stopping a vehicle (or during initial contact with a driver stopped at a safety checkpoint), it is possible to develop such reasonable suspicion during the course of a lawful investigation. This reasonable suspicion would then provide cause for either further investigation or for an arrest.

Conducting a Search of a Driver Stopped for Cause

An officer stopping a vehicle for an observed driving violation or erratic driving behavior is confronted with a different situation than he is during a safety checkpoint interview. In the former case, the officer may observe some indication of intoxication (odor of alcoholic beverages on the driver's breath, slurred speech, lack of muscular coordination) after he has stopped the driver. These two conditions, an indication of impaired driving and suspected alcohol intoxication, provide sufficient cause to ask the motorist out of his vehicle (to perform a series of behavioral tests) and subsequently to place the driver under arrest for DWI (assuming no information to the contrary is obtained).

Conducting a Search After a Routine Traffic Stop

A DWI arrest can also occur as the result of a routine stop in which the officer has no initial suspicion of DWI. This situation is close to that found with a checkpoint stop. For example, an officer might make a valid stop of a vehicle at night which is being operated without tail-lights. While conversing with the driver (perhaps checking the driver's license and vehicle registration) the officer may notice the odor of alcoholic beverages on the driver's breath (or some other indication of alcohol intoxication such as clothing askew or slurred speech). He might then lawfully request the driver to get out of his vehicle (Pennsylvania v. Mimms, 432 U.S. 106) and request the driver to perform behavioral tests. The observation of lack of physical coordination or poor performance on the behavioral tests could provide probable cause for the arrest of the driver for DWI.

In this case, at the time of the initial stop of the driver, no probable cause to suspect for DWI was apparent. Only during the officer's contact with the driver did cause develop to arrest for DWI. At each stage in the encounter, justification can develop to warrant increasingly intrusive actions by the officer.

Conducting a Search Using a PBT

In States with prearrest testing statutes, reasonable suspicion is sufficient for an officer to request a preliminary breath alcohol test. Then, should an arrest be made, an officer can request a blood or breath sample for evidential testing.

Conducting a Search at a Safety Checkpoint

In the situation that exists at a checkpoint stop, the officer has no indication of driving impairment, nor was a violation observed. This limits to some extent, the actions that can be taken. At the time of the initial stop, the officer can do little more than converse briefly with the driver, while requesting the motorist to produce his driver's license and vehicle registration. Unless the officer observes some indication of alcohol impairment he will not have cause for any further investigation.*

A motorist's initial detention at a checkpoint should be for a few minutes at most in order to be considered "reasonable." If, during that time, an officer establishes a reasonable suspicion that the driver is impaired, the driver could be asked to step out of his vehicle to perform a series of behavioral tests and to take a preliminary breath test (if the State has enabling legislation) in order to develop grounds for an arrest.

* While many things can provide an experienced officer with grounds to suspect that a driver has been drinking, it is instructive to note that the Oregon Supreme Court has taken judicial notice of the following symptoms or signs of alcohol intoxication: (1) odor of the breath, (2) flushed appearance, (3) lack of muscular coordination, (4) speech difficulties, (5) disorderly or unusual conduct, (6) mental disturbance, (7) visual disorders, (8) sleepiness, (9) muscular tremors, (10) dizziness, and (11) nausea (State v. Clark, P.2d 123 [Oregon, 1979]).

SECTION II

TECHNIQUES USED IN EXISTING SAFETY CHECKPOINT PROGRAMS

Based upon the court decisions discussed in the previous section and NHTSA's review of existing programs, this section lists and describes items that police administrators may want to consider in order to help ensure that safety checkpoints are used legally, effectively and safely. These points are consistent with, but more extensive than, those specified by the Iowa Supreme Court in State v. Hillesheim, 291 N.W. 2d 314 (1980).

1. Ongoing, Systematic DWI Enforcement Program
2. Judicial Support
3. Existing Policy
4. Site Selection
5. Special Warning Devices
6. Visibility of Police Authority
7. Chemical Test Logistics
8. Contingency Planning
9. Training in Detection and Investigation Techniques
10. Comprehensive Public Information Programs

1. Ongoing DWI Program -- Any agency considering safety checkpoints should integrate them with an ongoing, systematic and aggressive enforcement program. The use of checkpoints alone will not sustain the perception of risk so essential to an effective general deterrence program. In fact, if drinking drivers believe that their chances of being caught are only at safety checkpoints, their perception of risk of arrest may be quite low.
2. Judicial Support -- When officials decide that they intend to use this technique, they should involve their prosecuting authority (district attorney, attorney general, etc.) in the planning process to determine legally acceptable procedures. This person can detail the types of evidential information that will be needed to prosecute cases emanating from checkpoint apprehension.

The jurisdiction's presiding judge should be informed of the proposed checkpoints and procedures, an essential step if the judiciary is to accept their use. The judge can provide insight on what activities would

be required to successfully adjudicate such cases. If a judge cannot be persuaded that this technique is acceptable, its implementation will be futile.

The prosecutor, judges and alcohol task force members can be invited to observe the actual operation of the checkpoint program.

3. Existing Policy Guidelines -- Any jurisdiction considering safety checkpoints should prepare written policy/guidelines which outline how roadblocks are to be conducted prior to starting to use them. The courts have been very clear in directing that safety checkpoints be planned in advance, Id. at 318. Failure to do so has been used as evidence that roadblock techniques were discretionary.
4. Site Selection -- Planners should take into consideration the safety and visibility to oncoming motorists: Safety checkpoints cannot be of less public benefit than the behavior they are trying to displace, nor can they create more of a traffic hazard than the results of the driving behavior they are trying to modify.

Planners should remember to select a site that allows officers to pull vehicles out of the traffic stream without causing significant subjective intrusion (fright) to the drivers and/or creating a safety hazard (e.g., by creating a traffic backup). Furthermore, officers' safety must be taken into account when deciding where to locate the checkpoint.

Checkpoint locations should be selected in advance by officers other than those manning the checkpoint according to objective criteria that will maximize contact with DWIs, for example, locations with a high incidence of DWI-related fatalities, nighttime injuries or nighttime single vehicle crashes.

Most jurisdictions have the capability to review the Average Traffic Volume (ATV) during the surveillance period for major roadways in their area. Once a jurisdiction has decided on possible locations for the safety checkpoints, the effect on traffic flow can be determined by: (1) ascertaining how long each interview will take, then (2) multiplying that time by the number of available officers, and finally, (3) dividing that figure into the average number of vehicles which can be expected at that location. This will indicate whether all vehicles can be examined without causing a traffic build-up.

If the traffic volume precludes stopping every vehicle, a nondiscretionary scheme should be adopted (in advance) for stopping some subset of vehicles. As discussed earlier, Delaware v. Prouse states that not every vehicle need be stopped as long as a systematic method of checking, one which eliminates discriminatory or random stops, is used; for example, every tenth or twentieth vehicle. The Prouse decision mentions only every tenth vehicle as an alternative to stopping all vehicles, but this appears to have been offered as an example and not as the only option.

If every vehicle is not to be stopped, the method used to determine which ones will be stopped must appear in the administrative order authorizing the use of the safety checkpoints.

5. Warning Devices -- Special care should be taken to provide adequate warning to approaching motorists that a roadblock-type checkpoint has been established. Such notice can be accomplished with warning signs, flares and police cars with warning lights flashing. If possible, warning signs should be placed along the roadway well in advance of the checkpoint to alert motorists that they will be required to stop. (The Court has stated that the use of warning signs appears to reduce the subjective intrusion involved in checkpoint stops (United States v. Martinez-Fuerte, supra)). Signs should be placed to provide advance warning as to why motorists are being stopped, but at the same time should not give impaired motorists the opportunity to avoid the checkpoint.

Recent experience by some States has shown that the smoke emitted from burning fuses or railroad flares can reduce the officer's visibility and impair their ability to detect the odor of alcoholic beverages on the motorists' breath or person, as well as create unfavorable environmental conditions to work under. One may wish to consider alternate light sources if high humidity and low wind conditions exist at the site you are considering for the checkpoint. Portable flood lights and battle lanterns are readily accessible in most jurisdictions and may alleviate the potential problems caused by fusee smoke.

6. Visibility of Police Authority -- The visibility of uniformed officers and their marked police vehicles makes the power of the police presence obvious and serves to reassure motorists of the legitimate nature of the activity. This is an important aspect of any safety checkpoint. This is also part of the effort to reduce the intrusion to the passing motorists who will be affected by the checkpoint surveillance.
7. Chemical Test Logistics -- Since DWI arrests are to be anticipated at the selected location, the logistics of chemical testing must also be included. A system for expeditiously transporting suspected violators to chemical test sites must be established.
8. Contingency Planning -- If intermittent traffic conditions cause the officers to stray from the predetermined order of selecting motorists to stop (e.g., if a traffic backup occurs), the reasons for the departure must be thoroughly documented. Courts have allowed this deviation as long as records are kept documenting the necessity to deviate from the interview sequence United States v. Prichard, 645 F.2d 854. If such an event occurs, jurisdictions must have prepared alternative plans in advance to handle the checkpoint.

If too much traffic develops at a checkpoint, causing a backup that cannot be easily alleviated, the officer in charge of the checkpoint may consider discontinuing operation at that site and moving to an alternative site. The alternative site should have been identified in advance in the administrative order that first established the checkpoint surveillance, and should be prepared for operation.

9. Detection and Investigation Techniques -- An agency considering safety checkpoints should ensure that the officers who staff it are properly trained in detecting alcohol-impaired drivers. The implementation of safety checkpoints that allow legally intoxicated drivers to pass through undetected will not be able to achieve a general deterrence effect. Examples of the kind of actions officers are taking during initial contact with a driver at a checkpoint are:

- o Request his or her license and registration.
- o Use a divided attention task (e.g., after requesting the driver's license, while the driver is looking for it, the officer engages him in conversation).
- o Question the driver regarding his origination/destination, whether he had been drinking, etc.

Police are using these approaches to try to quickly detect whether a driver has been drinking. Once an officer's suspicion has been raised, further investigation can take place out of the traffic lane without impeding the flow of traffic. These and other approaches are currently being studied. If an officer feels it is necessary to move a suspect's car after he suspects the driver is impaired, it will be necessary for someone other than the suspect to drive the car.

(It should be noted that an officer's request that a suspect take a breath test [preliminary or screening] might be considered a "search" within the meaning of the Fourth Amendment. To be reasonable, therefore, a breath test would only be permissible after the officer has observed some indication that the driver had been drinking to the point of being DWI, and not during their initial contact.)

10. Public Information -- To obtain maximum benefit in terms of its general deterrence effect, a safety checkpoint program should be aggressively publicized. The majority of drivers will most likely never encounter a checkpoint, but will only learn of it through media reports (and perhaps by word of mouth). These two valuable forms of public communication will greatly enhance any such program, however, and should be consistently employed.

Safety check points can be an effective general deterrent tool when they are integrated in a well planned and aggressively executed DWI enforcement program and operated within constitutional constraints. We do not believe, however, that these techniques can or should be used on their own as DWI enforcement programs. Further, publicity concerning checkpoints should be used in the context of the total DWI enforcement program and not be oversold.

SECTION III

EVALUATION

An important component of any drunk driving program is the analysis and evaluation of the program's effectiveness. Only when the effect of various countermeasures on reducing drunk driving is known can informed decisions be made to allocate scarce resources most effectively. Anyone considering implementing a safety checkpoint program should give serious thought to how the program can be properly evaluated. This section contains some suggestions regarding the evaluation of such a program.

An evaluation should cover three main issues:

1. Public Reaction
2. Administrative Evaluation
3. Impact Analysis

1. Public Reaction -- The question to be addressed here is the public's reaction to being stopped at a checkpoint. Are drivers cooperative with the police? Do they mind being stopped briefly? Do they believe the checkpoint system is fair? A short questionnaire which includes an explanation of why the program is being conducted, given to drivers stopped at the checkpoint can provide this data. The questionnaire can be completed later and mailed back to the administering agency. (The best way to guarantee a response, if the jurisdiction has the resources, is to use stamped, self-addressed postcards as the questionnaire.)

The State of Maryland and the District of Columbia have used the questionnaire technique. Their list of questions is included in Appendix I. In Maryland approximately 87% and in the District of Columbia 85% of the respondents to this questionnaire approved of the use of checkpoints.

2. Administrative Evaluation -- An administrative evaluation concerns the extent to which the program's implementation, operations and efficiency meet targets set for the program. For example, the following sorts of questions should be investigated:
 - a. How does the checkpoint system compare to the traditional patrol system in terms of DWI arrests per enforcement man-hour?
 - b. How many motorists are stopped per unit-time? Have any safety problems been encountered while bringing motorists to a stop? What is the average delay for motorists stopped at a checkpoint? How long is the process interrupted when an arrest is made?
 - c. What percentage of motorists stopped at the checkpoints are requested to perform field sobriety tests or to submit to preliminary breath tests? What percentage are arrested for DWI?

- d. What are the reactions of police officers who take part in a checkpoint? Are they supportive? What is its effect upon morale?
 - e. Do judges and prosecutors find the checkpoint cases brought before them adequately prepared, with sufficient evidence to produce convictions? Are there any special problems in prosecuting checkpoint DWI cases?
3. Impact Analysis -- The issue addressed by an impact analysis concerns the extent to which the program succeeds in reducing drunk driving. Since a safety checkpoint program is viewed as an important component of the general deterrence approach, this question can be viewed as determining the extent to which drivers are deterred from drunk driving by the use of checkpoints. This can be measured directly through an increase in the driving public's perception of risk for DWI and/or indirectly through measuring the effect on the accident reduction or surrogate measures (e.g., nighttime accidents).

The whole notion of a general deterrence program is that it succeeds by changing public perceptions and attitudes. While bottom-line results are generally considered to be accident reduction numbers, showing an effect over a short period of time with a small sample size is fairly difficult and may not be realistic. Thus, it is important to determine changes (before and after implementing the checkpoint program) in other measures, such as attitudes and perceptions, as part of any evaluation effort. For example, an evaluation should answer the following type of questions:

- o Whether the drivers in the checkpoint area are aware of the special nature of the checkpoint system, and
- o Whether the police use of safety checkpoints increases drivers' perceptions that they will be apprehended if they drink and drive.

NHTSA has developed a set of survey questions to measure changes in public perception (e.g., perceived risk of being detected by the police) and behavior which is available to any interested organization. Technical assistance and support is also available in terms of choosing specific items and in developing the sampling design.

Determining a checkpoint program's indirect effects means answering such specific questions as:

- o Whether checkpoints reduce alcohol-related accidents during the period in which the checkpoints are operating.
- o Whether the enforcement program also reduces accidents at night and/or on roads where no enforcement teams were operating.
- o Whether the program reduces the average BAC levels of drivers using the roads.

This type of analysis could be accomplished by the Intervention Analysis method, using time series techniques which determine if a change in accident levels occurs due to checkpoint intervention. Further confirmation could be obtained using comparison areas to see if changes only occurred in the checkpoint areas. Care must be taken to determine whether any beneficial effects are obtained outside the checkpoint areas.

FOR MORE INFORMATION:

- o On measuring public attitudes and perception --

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- o On administrative and impact evaluations using accident and arrest data --

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MARYLAND STATE POLICE
FIELD OPERATIONS BUREAU
TRAFFIC PROGRAMS PLANNING UNIT
PIKESVILLE, MARYLAND 21208-3899

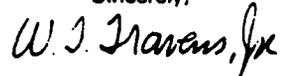
Dear Motorist,

As a citizen passing through a sobriety checkpoint, we would appreciate knowing your opinion about the use of this enforcement technique.

This survey form has been developed to assist us in measuring public opinion which is an important aspect of this pilot test. When you have completed the survey questions, please detach this form from the sobriety checkpoint information card and mail it to us. The survey card has been pre-addressed for your convenience.

Thank you for your help.

Sincerely,



COL. W. T. TRAVERS, JR.
Superintendent
Maryland State Police

Question #1: Did the Sobriety Checkpoint cause a significant delay to your journey?

YES _____ NO _____

Question #2: Do you believe Sobriety Checkpoints will deter some people from driving while intoxicated?

YES _____ NO _____

Question #3: Do you believe that Sobriety Checkpoints will increase a drunk drivers risk of being detected and arrested?

YES _____ NO _____

Question #4: Do you approve of Sobriety Checkpoints as a Maryland State Police enforcement measure, to detect and remove drunk drivers from the highway?

YES _____ NO _____

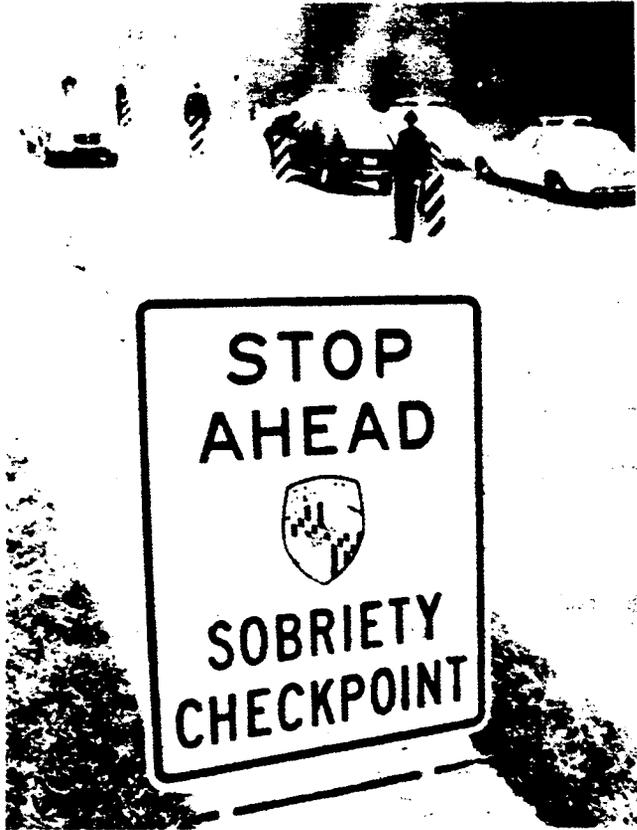
Question #5: Do you have any comments about Sobriety

Checkpoints? _____

Question #6: I am a Male _____ / Female _____.

Question #7: My age is _____.

DRINKING AND DRIVING IS A DEADLY COMBINATION



You have just passed through a Maryland State Police Sobriety Checkpoint. The use of this enforcement strategy is being pilot tested at certain high accident locations where the abuse of alcohol has been a significant contributing factor in serious and fatal injury accidents.

The purpose of this Sobriety Checkpoint is to aid Troopers in identifying and removing drunk drivers from the highway. We appreciate your cooperation in this effort and hope that any inconvenience that you experienced at the Sobriety Checkpoint was minimal and did not unnecessarily delay your journey.

We anticipate that a substantial benefit will be gained from the use of Sobriety Checkpoints by increasing the drunk driver's perception of risk of being detected and consequently may deter him or her from driving while intoxicated or under the influence of alcohol.

WE NEED YOUR HELP

Drunk drivers cause one half of the approximately 50,000 traffic deaths that occur in the United States each year according to the National Highway Traffic Safety Administration.

Maryland's efforts to reduce the tragic consequences of drunk driving, like many other states, is working. Local and State Police continue to make more drunk driving arrests. New laws have been enacted to give police more tools to address this serious problem, to make penalties more stringent, and to tighten up some previous legal loop holes.

Everyone must do their part to make travel on Maryland's highways safe from the drunk driver. Here is how you can help.

Even under the best circumstances, there's always the chance that some people will drink too much. When that happens, they become potential dangers to themselves and others. If someone you are with has been drinking excessively, you should see to it that he or she does not drive. Here are a number of things you might do:

1. Make the suggestion to your friend that you drive him home. He can always come back for his car at a later date....when he's sobered up.
2. Suggest to your friend that he stay overnight at your home. This may involve some inconvenience for you, but you could be saving your friend's life.
3. Try to take his car keys away if he insists on driving. Your friend may resent it, but if he's too drunk to listen to reason, you must take charge.
4. Call a taxi and have him taken home. Pay for the cab yourself. Your friend can't object to a free ride home. (When he finally comes to his senses, he'll probably thank you and reimburse you gladly.)
5. When other measures fail, call the police to prevent his driving. You may be shocked by this suggestion, but it is important to prevent someone who has had too much to drink from driving.

Remember, it is a matter of life and death. When a person has had too much to drink and tries to drive he becomes a threat not only to himself but to others, like you and your family.

KNOW YOUR LIMITS!

Below is a chart to be used only as a guide, not a guarantee, to help persons stay safely within safe limits. This table indicates the relationship between the number of drinks consumed by normal adults and their body weight. When approximating blood alcohol content you must remember that the average person eliminates the effect of alcohol at the rate of one drink per hour.

| Drinks | APPROXIMATE BLOOD ALCOHOL PERCENTAGE | | | | | | | | |
|--------|--------------------------------------|-----|-----|-----|-----|-----|-----|-----|---------------------|
| | Body Weight in Pounds | | | | | | | | |
| | 100 | 120 | 140 | 160 | 180 | 200 | 220 | 240 | |
| 1 | .04 | .03 | .03 | .02 | .02 | .02 | .02 | .02 | Possibly Influenced |
| 2 | .08 | .06 | .05 | .05 | .04 | .04 | .03 | .03 | |
| 3 | .11 | .09 | .08 | .07 | .06 | .06 | .05 | .05 | |
| 4 | .15 | .12 | .11 | .09 | .08 | .08 | .07 | .06 | Under the Influence |
| 5 | .19 | .16 | .13 | .12 | .11 | .09 | .09 | .08 | |
| 6 | .23 | .19 | .16 | .14 | .13 | .11 | .10 | .09 | |
| 7 | .26 | .22 | .19 | .16 | .15 | .13 | .12 | .11 | Intoxicated |
| 8 | .30 | .25 | .21 | .19 | .17 | .15 | .14 | .13 | |
| 9 | .34 | .28 | .24 | .21 | .19 | .17 | .15 | .14 | |
| 10 | .38 | .31 | .27 | .23 | .21 | .19 | .17 | .16 | |

One drink equals 1 oz. of 80 proof liquor, 12 oz. of beer, or 6 oz. of wine.
Subtract .01% for each 40 minutes of drinking.

The number one priority of the Maryland State Police is identifying and removing the drunk driver from the highway.

APPENDIX I

Motorist Survey - Sobriety Checkpoints

(Prepared by the Maryland State Police Traffic Program Planning Unit)

- Question #1 - Did the sobriety checkpoint cause a significant delay to your journey?
- Question #2 - Do you believe sobriety checkpoints will deter some people from driving while intoxicated?
- Question #3 - Do you believe that sobriety checkpoints will increase a drunk driver's risk of being detected and arrested?
- Question #4 - Do you approve of sobriety checkpoints as a Maryland State Police enforcement measure to detect and remove drunk drivers from the highway?
- Question #5 - Do you have any comments about sobriety checkpoints?