

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE**

**An Assessment of the Efficacy of the Texas Administrative Licensing Revocation Program**

**A Policy Research Project  
Submitted in Partial Fulfillment  
of the Requirements for the Professional Designation  
Graduate, Management Institute**

**by Charles Daniel Thomas**

**Texas Department of Public Safety  
Tyler, Texas  
November, 1996**

#406

## TABLE OF CONTENTS

| <b>Section</b>                           | <b>Page</b> |
|--|-------------|
| Abstract                                 | no page #   |
| Introduction                             | #1          |
| Historical, Legal or Theoretical Context | #2          |
| Review of Literature                     | #4          |
| Discussion of Relevant Issues            | #5          |
| Conclusion and Recommendations           | #9          |
| Bibliography                             | #10         |

## ABSTRACT

At the completion of a survey of 264 respondents including state officials and private sector leaders, the U.S. Presidential Commission on Drunk Driving in 1983, recommended the implementation of nineteen drunk driving countermeasures. From them, the State of Texas has adopted a minimum drinking age of twenty-one, mandatory seatbelt usage, victim compensation legislation, and administrative license suspensions for drivers who fail, or refuse an alcohol breath test. Theoretically, the adoption and enforcement of the commission's proposals should have brought about substantial reductions in intoxicated driving offenses. In reality, the implementation of the Administrative License Revocation (ALR) program in Texas has resulted in the creation of a bureaucratic quagmire of lawyers, administrative hearings, voluminous documents and forms, all of which has unnecessarily burdened law enforcement and has produced a chilling effect on drunk driving arrests. Further, ALR has failed to prevent the continued driving of suspended drivers.

Various researchers and research sources imply, but fail to substantiate, that tax dollars spent on administrative license suspension programs have reduced intoxicated driver violations. Consequently, such programs in several states have been labeled successes despite the absence of reliable data on drunk driver recidivism and subsequent arrests while under suspension.

In Texas, the ALR program is also deemed a success, depending of course upon whom you ask. In truth however, drunk driver arrests statewide have plummeted to approximately one fourth of the arrests for the year immediately preceding the implementation of the ALR program. Because the paperwork requirements of ALR remove officers from their patrol areas for hours during peak DWI arrest periods, the reduction of drunk driver arrests is mistakenly interpreted as evidence of the declining number of offenses due to the deterrent effect of ALR. In reality these offenses resurface in the form of increasing numbers of alcohol related fatal and injury accidents.

It will be shown in this assessment that the ALR program in Texas is flawed in design, and that the primary beneficiaries of the program are criminal defense attorneys and the drunk drivers themselves. The losers are the law abiding citizens of the State, and the patrol officers on the streets and highways upon whose shoulders the success or failure of the program rests. In brief, the Texas ALR program is detrimental to the original plan of the U.S. Presidential Commission on Drunk Driving, i.e., to reduce the number of intoxicated drivers upon streets and highways of the nation. Regardless of their noble intentions, counterproductive administrative license suspension programs should not and must not be perpetuated at the expense of this vital goal.

## **Introduction**

The purpose of this research is to examine the effectiveness of the Texas Administrative License Revocation (ALR) program as administered by the Texas Department of Public Safety. More specifically, this research is intended to determine the relationship of the program as it relates to the incidence of intoxicated drivers and related driving offenses.

Numerous issues are addressed in the course of this assessment. Foremost is the question, "Is ALR in Texas a part of the problem, or a part of the solution to the increasing numbers of alcohol related injury and fatal traffic accidents?" Statistical data will show that while drunk driving arrests have declined across the State, alcohol related traffic accidents have risen. Secondly, "Does suspending the license of a drunk driver ensure that he or she will not drive, or drink and drive during the term of suspension?" One driver convicted of thirteen drunk driving offenses was heard by the author to say, "I can drive just as well without a license as I can with one." Is administrative license revocation a meaningful punitive measure? "It is held that the usual jail and license suspensions have not offered any solution" (Diehm, 4)

On the topic of punitive measures, the question surfaces, "Is ALR a punitive measure, and if so, is it not double jeopardy to punish a defendant civilly and criminally for the same offense?" U.S. Supreme Court has imposed certain limitations upon states with administrative license revocation and suspension programs to guarantee due process rights to persons who come under threat of losing their driver license. This issue will be discussed in the review of literature.

Other problems concerning Administrative License Revocation programs will be discussed, including: a) the prohibitive cost of administration of the ALR program, b) the stifling burden of paperwork imposed on patrol officers who make drunk driver arrests, c) the "down time" involved in processing a drunk driver under ALR, d) the administrative hearings to suspend drunk driver licenses, and the number of personnel and man-hours involved, e) the use of administrative hearings by defense attorneys as tools to discover evidence to build plausible defenses before the criminal trials, f) the administrative license judges who conduct trials, rather than hearings, g) the inability to confirm ALR suspensions by patrol officers, and the suspension orders received after the suspension term has ended, h) the issuance of occupational licenses to circumvent ALR suspensions, i) the complexities of the ALR forms and reports in conjunction with the other required arrest reports, and j) the unreasonable deadlines imposed on patrol officers under ALR policies. These, plus the conscious disregard of ALR altogether by a growing number of police agencies will be examined.

This research is intended to be a "wake up" call to anti-drunk driver organizations, Texas law enforcement administrators, the Texas legislative committees on criminal jurisprudence, the news media and the general public. State statutes, criminal justice abstracts, state documents and records from the Texas Department of Public Safety, the National Criminal Justice Computer files, and personal interviews and the author's knowledge as a law enforcement practitioner for 24 years comprise the sources of information for this project.

This research assessment is undertaken, either to bring about necessary modifications in the

Texas Administrative License Revocation Program by identifying problem areas which warrant change, or to encourage the elimination of the State's ALR program by establishing that it is ineffective as a countermeasure to drunk drivers, is cost prohibitive in tax dollars, is an extreme detriment to patrol officers who do the job for which the police agency exists, and that the meaningless suspension of driver licenses is not worth the price extracted in lives lost, injuries sustained and damages incurred by Texas citizens because of unjustified reduction in police presence on State streets and highways.

### **Historical and Legal Context**

In 1983, the United States Presidential Commission on Drunk Driving collected and compiled data from a survey of 264 state officials and private sector leaders, which formed the basis of the commission's recommendation for the implementation of nineteen drunk driving countermeasures by all states (Criminal Justice Abs, 1990). Among the countermeasures was the recommendation that states have authorized administrative license suspensions for drivers who fail an alcohol breath test. The commission's proposals may have been coolly received by budget conscious state legislatures, but anti-drunk driving activists enthusiastically began to lobby for administrative license suspensions. Under pressure from Mothers Against Drinking Drivers and others, the Seventy-third Texas Legislature passed, albeit reluctantly, Senate Bill 1, section 19 into law, to become effective January 1, 1995, thus creating the Texas Administrative License Revocation Program (Tex. Civil Stat. Art. 6687b-1&9, and VTCS 67011-5,&4a).

Since the inception of the ALR program, there has been a 15.6% reduction in the number of DWI arrests from 1994 to 1995. In the first six months of 1994, there were 52,659 DWI arrests compared to 44,426 DWI arrests in the first six months of 1995. It is also important to note that in the first six months of 1994 there were 516 alcohol -related traffic fatalities compared to 492 in the first six months of 1995. This is a 5% reduction in the number of alcohol-related traffic fatalities on Texas highways (ALR Annual Report 1996).

Immediately, as indicated above, advocates of the administrative license revocation program credit ALR with drunk driving reductions and the saving of lives. It is interesting to note that the ALR Annual Report did not address the statistics of the second six months of 1995. In fact, there were 977 alcohol related fatal accidents in 1994, and 978 alcohol related fatalities in 1995 that were investigated by DPS troopers. Statewide, the picture was considerably worse.

The Texas ALR program is statutorily designed to function as follows:

- \*A peace officer stops a motorist for a bona-fide traffic law violation committed on a public street or highway, or in a public place.

- \*The officer develops reasonable suspicion that the driver is impaired and conducts a field

sobriety test. If probable cause to believe the driver is intoxicated results from the test, the driver is arrested and transported to the location of the breath testing device (Intoxilyzer).

- \*Upon arrival at the Intoxilyzer, the driver is asked to submit to the taking of a specimen of breath to determine the presence of alcohol in the driver's body. If the driver complies, and the result is 0.10 alcohol concentration or more, or if the driver refuses the breath test, the driver is then charged with Driving While Intoxicated.
- \*Upon being charged with DWI, the driver is served with a suspension notice, giving the driver fifteen days from the date of service to request an administrative hearing to determine whether or not the driver's license will be suspended. If no hearing is requested within the allotted time, the suspension will become effective on the 40th day after notice was served.
- \*The driver must pay a \$100.00 reinstatement fee after the term of suspension to legally drive a motor vehicle upon public streets and highways.
- \*If a hearing is requested, and is conducted within 75 miles of the Courthouse in the County of arrest, or in a County with over 300,000 population, the hearing is held in the County of arrest. The hearing may be held by telephone if both plaintiff and defendant agree.
- \*An Administrative Law Judge (ALJ) conducts a hearing to determine whether the officer has reasonable suspicion to stop, and probable cause to arrest the person, and to determine whether the driver was operating a motor vehicle with an alcohol level at or above the legal limit. If the ALJ is convinced in the affirmative, the license is then suspended.
- \*If the driver refused the breath test, and the ALJ determines the officer had reasonable suspicion to stop, and probable cause to arrest the person, and determines that the person was given opportunity to give a breath specimen and refused, the license is suspended.

Occupational licenses may be obtained if the person attends an alcohol abuse and rehabilitation program approved by the court (County Court at Law or District Court), and an essential need is demonstrated for the license. For first offenders, the occupational license becomes effective immediately. For second or subsequent offenders, the occupational license takes effect 90 days after the beginning of the suspension. If the driver requesting an occupational license has been previously convicted of DWI, or Intoxication Manslaughter, the license becomes effective 180 days after the date the suspension begins.

In 1995, the first year of the ALR program in Texas, "67,802 driver license suspensions were processed by the Department of Public Safety...13,608 hearings were actually held...8,030 ALR hearings were affirmative rulings...therefore in those cases where a hearing was held and the results were submitted, the Department suspended licenses in 75% of them...70% of the cases where a breath test operator testified resulted in a license suspension" (ALR Annual Report 1996). This report fails to mention that 32% of suspension appeals to County Court were overturned.

## Review of Literature

“In 1970 when the Supreme Court ruled that a driver’s license cannot be revoked without due process of law, driver licensing agencies began changing hearing procedures which had little regard for the rights of the driver. Many state legislatures passed laws providing for mandatory revocation for certain offenses. The problem is to balance the individual’s need for a license against society’s need to get the dangerous driver off the road” (Whitcomb, 325).

“At issue is whether the driver is being prosecuted and punished twice for the same offense, that is, criminal prosecution for drunk driving in addition to license confiscation. The Supreme Court has adopted a three-pronged approach to parallel driver license confiscation and criminal prosecution proceedings in drunk driving cases: (1) there is a strong presumption that driver license suspension at least partially serves punitive or deterrent purposes; (2) because the suspension proceeding focuses on the licensee’s culpability, it is likely that suspension at least in part deters and punishes guilty conduct; and (3) State legislatures can tie license confiscation and suspension directly to offense commission in order to deter or punish law violators” (Taylor, 5)

Does then, a person have a possessory right to his or her driver license? Is driving a privilege, or a right? If a driver is charged with a moving traffic violation involving personal culpability, i.e., intentionally, knowingly, recklessly, or with criminal negligence commits an offense, is the state precluded from charging the person with the criminal offense and out of the same event, suspending or revoking the offender’s driver license? The answer to this dilemma is contained in five words... without due process of law.

The state cannot deny the licensee’s driving entitlement once it has been granted, unless the state first provides to the licensee the right to due process of law, e.g., a suspension or revocation hearing. “However, the Court also held that in certain emergency situations the government may dispense with the requirements of a pre-deprivation notice and an opportunity for a hearing” (Virkar, Wall & Kelly, 39). An administrative law, according to the Court meets the criterion of governmental interest, which rules out problems with double jeopardy. Further, drivers whose blood alcohol is above a prescribed level may have their licenses summarily revoked. The problem is that some drivers refuse breath or blood tests which necessitates due process actions, i.e., ALR.

When the state suspends or revokes a driver license, what is gained? Theoretically, the licensee’s right to drive is confiscated. Actually, a piece of plastic laminated paper is confiscated. Presumably, the suspended or revoked licensee will ride in a carpool, take public transportation, have a spouse drive them, walk, or stay at home. In reality, they drive anyway. An Austin television crew in 1990, sat in a Travis County Court at Law and observed while the judge imposed mandatory driver license suspensions. The camera crew then followed each suspended driver to the parking lot and filmed the drivers as they illegally started their engines, and drove

away. The judge was incensed, and lengthened the terms of suspension for each contemptuous offender. The result? Each driver was given the opportunity to drive illegally for an extended period of time.

## **Discussion of Relevant Issues**

The National Highway Traffic Safety Administration estimates that a driver in the United States could drive under the influence of alcohol ... "between 200 and 2,000 times without being caught" (Journal of American Insurance, 1982). Once caught, the driver would stand only a 50% chance of being punished. Another study puts the nationwide probability of arrest for drunk driving at one in 2,000. If the odds of being caught driving drunk are so remote, then the probability of police detecting a person driving with a suspended license is astronomical, since drunk driver's actions draw attention to themselves, but suspended licenses are virtually undetectable until the driver is stopped.

What is the value of a law, or policy if it cannot be uniformly applied and visibly enforced? Purdue University's analysis of Indiana's 1983 Anti-Drunk Driving Law concludes that..."License suspensions and jail terms may not appreciably contribute to deterrence until there is a higher level of certainty for these punishments" (Purdue Univ. Auto Transp. Ctr, 1986). Most law enforcement experts agree that the rate of crime is directly related to the potential offender's belief that they will, or will not be caught and punished. Yet, according to a 1988 update on drunk driving in Massachusetts, 53% of the jury cases with no blood alcohol content evidence end in a not guilty verdict, but so did 36% of the jury cases where blood alcohol content evidence was present (Mass. Senate Oversight, 1988).

Violators of administrative license suspensions rightfully have no fear of being caught driving illegally for numerous reasons. There is a remote chance that suspended drivers will while driving encounter a police officer during the term of suspension. If a police officer is observed, the possibility of being stopped while driving is very unlikely unless the driver attracts the officer's attention. There is a 1 in 2,000 chance of arrest, even if intoxicated. Driver license and sobriety checkpoints have been abolished over Constitutional issues and case law requiring outlandish procedures for the conduct of checkpoints. Further, if caught driving after 5 p.m. Monday through Friday, or on weekends, the ALR suspension cannot be confirmed as required by enforcement policy. Furthermore, most ALR suspension periods have ended before they can be entered in the Driver and Vehicle Records computerized system, so confirmation is all but impossible.

There are five viable reasons for the implementation of ALR programs: 1) \$100.00 reinstatement fees, which are both punitive and profitable, 2) Deterrence for first time offenders - "...the effectiveness of the implied consent suspension may be primarily as a general deterrent influencing potential first time offenders" (Jones-Barnie, 1989), 3) perceived incapacitation - "Drivers license suspensions and revocations may play an incapacitative role" (Jacobs, 1988), 4)



Insurability impact, which penalizes the driver while it profits the insurance industry, and 5) political correctness, which provides campaign fodder for legislators and a sense of accomplishment for anti-drunk driving organizations.

Additionally, there are several not-so-viable reasons for the continuance of ALR programs, once they have been created. The programs add to bureaucracies in personnel and funding. They are difficult to dismantle without drastic down-sizing (lay-offs). The elimination of non-essential programs is detrimental to the careers of administrators who initially recommended their implementation, and major policy and procedure changes result from the reorganization.

The entire ALR program is state funded. There have been no federal funds received to date. In order to receive federal funds to support the ALR program, the state would be required to make several significant changes to the laws affecting drunk drivers. Federal funding would require compliance with five (5) of the federal statute provisions set out in Section 410(d) of Title 23 U.S.C. which are as follows:

- \*All first offenders receive a minimum suspension of 90 days.

- All repeat offenders receive a minimum suspension of one year.

- Suspensions must take effect 30 days after the date of suspension notice.

- \*Statewide DWI checkpoints would be mandatory.

- \*A self-sustaining drunk driver prevention state program would be implemented.

- \*An effective system of preventing minors who are drivers from obtaining alcoholic beverages must be developed.

- \*Mandatory jail or prison sentences for repeat offenders.

Additionally, the state will be required to reduce the per se level of blood alcohol concentration for minors to 0.02 BAC by October 1, 1998, or lose millions of dollars in Highway Funds currently being poured into the ALR program (Exerpts from ALR Annual Report 1996). ALR program expenditures to date are as follows:

| Annual Year | Expenditures                     |
|-------------|----------------------------------|
| 1994        | \$1,720,049.58                   |
| 1995        | \$4,195,048.36                   |
| 1996        | \$4,477,647.57 (Jan through Oct) |
| Total       | \$10,392,745.51                  |

These expenditures, made possible through the Federal Highway 006 Fund, pay the salaries and employee benefits for all ALR administrators and attorneys, all ALR judges and hearing office clerical staff, for Hearing office rental, utilities, computers, office equipment and furnishings, telephone service and toll charges, documents, forms, postage, personal vehicle mileage compensation, training, travel, consumable supplies, and more (TX DPS Budget Report, 1996)

Highway Fund 006 is derived from federal excise tax on gasoline, and can only be spent by states for the building and policing of highways. The federal government then imposes certain requirements on states, under the threat of withholding highway funds. The states have little, to no input into these requirements. They simply must comply, or lose funding, regardless of whether

the requirements are realistic, attainable, or might create a worsening of the problems being funded. It is as though Washington D. C. has the only true vision for solving the problems of the states, regardless of the 10th Amendment. Therefore, ALR programs are most likely here to stay.

During annual year 1995, ALR processed 67,802 driver license suspensions, held 13,608 administrative hearings receiving suspensions in 10,049 of the cases set for hearing. The author was able to determine that 9,603 drivers actually paid \$100.00 reinstatement fees in 1995, resulting in receivable funds of \$960, 300.00 which proves that the program is not self sustaining.

Statewide DWI arrests have been drastically reduced by ALR, not because of the deterrent affect on the motoring public, but because of the stifling effect of the reporting and appearance requirements on arresting officers and others. Highway Patrol trooper arrests of DWI drivers dropped from 25,778 in 1993 to 19,845 in 1995, attributable in part to the ALR program. Alcohol related fatal accidents decreased by 2.7% from 1994 to 1995. However, total motor vehicle traffic fatalities increased by 1.0%, according to DPS accident statistics. The same statistics show that in 50% of fatal accidents in 1995, blood alcohol concentration tests on fatally injured drivers were either not obtained, or results were unknown. The Department of Public Safety concurs with national studies which indicate that in more than 50% of all fatal accidents, alcohol is involved, therefore the appearance of decline in alcohol related injury and fatal accidents is skewed because half of the drivers were not tested (A Look at DWI, 1995)

It should concern ALR administrators that a police officer who arrests a drunk driver, in a light truck or passenger car, will spend approximately four hours at the jail completing the required procedures, notices, and forms, imposed by the program. The off road time would be closer to six hours, had the drunk driver been driving a commercial motor vehicle. ALR advocates should realize that the longer the officer remains removed from the streets and highways during peak DWI periods, the greater the possibility of damage, injury, or death caused by drunk drivers who evade detection. The figures vary, but the National Highway Traffic Safety Administration estimates that 6 of 10 drivers on the highways between 10 p.m. and 3 a.m. on Fridays and Saturdays are alcohol impaired.

ALR requirements are literally choking out pro-active enforcement, in that it now requires more report writing and paperwork preparation to arrest a drunk driver, than it takes to arrest and convict a murderer, thief, rapist, or robbery suspect. Many municipal police departments have begun to use alternatives to avoid the financial and manpower constraints resulting from ALR. Drunk drivers are arrested and charged with DWI, but no license suspension action is filed. Their criminal case is filed, officers are back on the streets quickly, there are no ALR hearings requiring supplemental pay and reassignment of personnel, defense attorneys have to file discovery motions for reports and must wait until the trial to hear officer's testimony, and the drunk is more likely to be convicted. Some municipalities are charging drunk drivers with public intoxication, reckless conduct, and a variety of other class C misdemeanors in Municipal court where arraignments are timely, fines are kept in the city, and paperwork is negligible.

In the author's county of assignment, Smith County, troopers filing a routine DWI

violation on a first offense driver of a passenger car (no open containers in the vehicle, no accident, no aggravating factors) is required to complete twenty-three (23) separate forms from the time the trooper stops the violator, until he returns to patrol. On a commercial driver arrest, or a driver arrest from a motor vehicle traffic accident, the number of required reports could escalate to forty (40). With increasing frequency, troopers are suggesting that, "keeping statistics is becoming more important than arresting drunks," and that, "five minutes of good police work, means five hours of paperwork." All ALR reports, forms, and the criminal complaint must be received by ALR in Austin within 5 days, an unreasonable deadline for officers who have no available clerical assistance.

Some ALR forms have been revised three times in two years, much to the chagrin of small police departments who must re-purchase the new forms each time they are changed. Line officers are not consulted before changes in ALR reports are made, resulting in overly legalized wording and ridiculous requirements, such as a notary jurat on a mandatory blood specimen form. Officers have asked, "Where the hell am I supposed to find a notary in the hospital at three o'clock in the morning?" Lawyers designed the ALR program, and lawyers drafted the forms, but police officers are saying, "We need a lawyer to read this ALR notice to a drunk...maybe a lawyer can make them understand this \_\_\_\_ (expletive deleted)! The suspension notice is so complex in its wording that officers, juries and judges have become confused attempting to read and understand it. ALR program designers obviously overlooked the fact that the form would be read to a drunk.

Defense attorneys have learned to manipulate the ALR system. Subpoenae are issued by ALJs for all documents, all witnesses, all police personnel with knowledge of the case, arresting officer, breath test operator (if separate), and the technical supervisor for breath testing. Several ALR hearings have taken as long as three hours in Smith County. ALJs, either willfully or unwittingly, facilitate defense attorneys interrogations, and many have begun to conduct trials, rather than hearings. The scope of the hearing should be limited to relevant facts of the DWI case, yet they frequently become fishing expeditions by defense attorneys who are attempting to prepare legal defenses for the impending criminal trial. The hearings were initially meant to be "on the record" hearings, i.e., the ALR reports would be presented, without necessitating appearance by the officer(s). Few hearings are actually conducted on records alone.

Many drunk driver defendants in ALR hearings opt to default, that is, to summon the state's witnesses, then fail to appear themselves. This is frustrating for the officers and wastes police financial and manpower resources. Last minute continuances create havoc for police schedules, but are regularly granted to defendants. Suspensions are stayed until the hearing can proceed. Some defendants plea nolo contendere in the ALR hearing, receive their suspension, and promptly petition the County court for the issuance of an occupational driver license. Very few petitions are denied, and 32% of ALR suspension appeals are overturned in County court. Most defendants do nothing, but continue driving.

ALR has had the effect of eliminating many small police departments from the enforcement of DWI laws. In Athens, Texas, for example, the police department has three certified breath test

operators, who ran all Intoxilyzer tests for all the surrounding towns and communities, e.g., Seven Points, Gun Barrel City, Malakoff, Trinidad, Brownsboro, and so forth. With the advent of ALR, these three certified operators found themselves repeatedly summoned to Tyler, the nearest hearing office (still within 75 miles, so no telephone hearing is authorized), and rarely available to perform their assigned duties at Athens PD. Their police department could not readily provide the officers with transportation, as the patrol cars were needed for call responses, and patrol duty. When a vehicle was available, fuel expenditures strained the police department's meager budget, and the absence of the officers subpoenaed to ALR hearings devastated Athens PD's work schedule. Finally the police chief instructed the officers to cease running breath tests for other departments. Now, a drunk driver in Gun Barrel City will be charged with public intoxication and placed in a small cell until sober enough to release with a ticket.

Perhaps the most pervading issue concerning the ALR program is that the majority of the work of administrative license suspension is the responsibility of the arresting officer. The officer is the one who has to stop the violator, determine that the driver is intoxicated, arrest, frisk, handcuff and warn the driver, inventory and impound the driver's vehicle, protect the driver from passing traffic, fireants, and frostbite, disregard the threats, vile language, and verbal assaults of the driver, place the driver in the patrol car (which often requires diplomacy or force), transport the driver to the jail without incurring damage to the officer's mobile video system or police radio (both of which drunks love to kick) and without having to stop to clean vomit from the patrol car, then upon arrival at the jail must read the statutory warning, administer the breath test, complete the complaint and probable cause affidavit, ALR paperwork, booking sheet and medical history forms, traffic case report and ticket, videotape the driver performing or refusing to perform sobriety tasks, orally interview and record the driver responses, and inventory and secure the driver's personal property. If the driver had passengers, they too must be transported to a safe location, arrested, or in the case of children, baby-sit for two or three hours until Child Protective Services arrives and assumes custody.

Of all the duties currently assigned to police officers, the greatest responsibility is enforcement work, traffic and criminal investigations, and protection of citizens. Why should a police officer be responsible for the completion of all the paperwork required for a drunk driver to keep his license? That burden is the responsibility of the drunk driver, the defense attorney and the administrative judge.

## **Conclusion and Recommendations**

Administrative License Revocation programs are the invention of a group of influential citizens, formed into a panel known as the U.S. Presidential Committee on Drunk Driving. Thirteen years ago this panel sent out questionnaires to law enforcement administrators and to other influential citizen like themselves, and when the questionnaires returned, the committee concluded that the implementation of nineteen countermeasures by the fifty states would all but eliminate drunk driving. Many states have, at considerable expense, undertaken the committee's

recommendations, but other states have taken a wait and see approach to the countermeasure programs. Perhaps wisely so, for some of the recommendations have produced expensive failures. Prohibition, for example, was not a bad idea in the 1920s, but it failed miserably, and created a monster of organized crime before it was abolished.

Simply because committees diligently try to do the right thing does not guarantee that all of their conclusions are correct, or that all of their proposals will produce the desired result. In the case of administrative licensing programs, the desired result of removing drunk drivers from the highway has not been accomplished in any state which has attempted the countermeasure. There is no evidence what-so-ever that license suspensions have had an impact on drunk drivers behavior before, except that they may serve as some deterrent to first time offenders before the offense is committed. Studies show that once a driver has been convicted of drunk driving, the deterrent affect of ALR is lost. "Criminal convictions of habitual motor vehicle offenders and persons who operate after license suspensions have increased substantially" (O'Brien, 171). Often times, states are willing to try innovative concepts in policing because the federal government is willing to finance the program. Many states have ALR programs in place for this reason. Yet, all too often, such programs produce limited results after the initial hooplah is over, and the states are saddled with a disfunctional, costly burden. This appears to be where ALR is taking Texas.

ALR suspensions *do not* prevent unlawful driving by suspended licensees. Despite the best efforts of police and courts, suspended drivers continue to drive.

Perhaps a solution to the burgeoning paperwork problem is to a) include law enforcement officers in the decision making process before new policies, procedures, and forms are adopted. These officers should comprise at least 50% of any committee deciding issues affecting their jobs. It may come as a surprise to many police agency administrators, but most line officers are eager to accomplish the goals of the organization. Most line officers are hardworking, and are enthusiastic about their professions. Most are idealistic, in that they truly believe that they can make a change in the troubled world about them.

Furthermore, it may surprise a few police agency administrators that their decisions concerning the direction of their agency may reassure, or destroy the zeal of the line officer. Line police officers want the drunk drivers off of the road. They are willing to go the extra mile to get it done but, ALR is not getting it done. It is demoralizing the officers who are bogged down in paperwork while drunk drivers run rampant in their areas of patrol.

ALR forms and reports should be in a packet, labled "Light truck/Passenger car" and "Commercial DL." The drunk driver should be presented the appropriate packet, and be required to sign for it on an attached receipt. If the driver chooses to have a license suspension hearing, the forms inside the packet will guide and instruct him. If not, that choice is up to the driver. The driver can retain legal counsel if preferred, and the lawyer and process the paperwork for his client. Due process is met at minimal time expense to the arresting officer.

ALR hearings should be restricted to the evidence presented on the probable cause affidavit. No appearances should be required by arresting officers, breath test operators, or

technical supervisors. All the information that is needed has been included in the arresting officer's probable cause affidavit, that is to say,

- \*The driver identified in the affidavit is a "person"
- \*Who was driving, or operating,
- \*A motor vehicle
- \*Upon a public road and highway, or in a public place of said County and State
- \*While intoxicated, symptoms exhibited as described in the affidavit.
- \*The affiant was a peace officer at the time of the driver's arrest, who requested that the driver submit to a breath test to determine the alcohol concentration present in his body.
- \*And the driver submitted a specimen of 0.10 BAC or above, or the driver refused a test.

No evidence beyond this information is required for the administrative hearing to suspend.

All ALR proceedings should take place after the criminal trial. To avoid the negative fiscal impact to small police departments like Athens PD, post conviction suspension hearings should be held by telephone. Evidence requirements by ALJs should adhere to the legal standards as listed in the probable cause affidavit. Confirmations of administrative license suspensions will be unnecessary. The suspension will be a mandatory suspension for conviction of drunk driving. The ALJ will merely decide whether or not the convicted driver will keep or lose the license.

Without the burden of ALR paperwork, police officers will be able to leave the jail before the person they arrested, and can possibly apprehend another drunk driver before damage, injury or death results. These recommendations, if implemented should better facilitate the goal of reducing drunk drivers on the nation's highways, more especially in Texas.

## BIBLIOGRAPHY

1 Bragdon, David; Grant, John, "Anti-drunk driving program initiatives: a prospect assessment of future program needs," (1990). see Criminal Justice Abstracts.

2 Diehm, A. P.; "Treatment Aspects of the Driver Improvement and Rehabilitation Programme," (Sydney University Law School Institute of Criminology , Sydney, Australia (1977). see NCJ 049623.

3 Jacobs, J. B., "Law & Criminology of Drunk Driving," Crime and Justice: A Review of Research, Vol. 10, 171-229. see NCJ 111254.

4 Jones - Barnie, "The effectiveness of implied consent suspensions for DUI in Oregon," (1989). see Criminal Justice Abstracts.

5 Journal of American Insurance - Chicago, Illinois, "Drying up the drunk driver," (1982), Vol. 58 (2), 1-5. see Criminal Justice Abstracts.

6 Massachusetts Senate Post Audit and Oversight Bureau, "Drunk driving enforcement in Massachusetts: has the effort stalled?" (1988) see Criminal Justice Abstracts.

7 O'Brien, Ronald J., "Driving under the influence of alcohol in Ohio after Senate Bill 342 - the prosecutor's viewpoint," University of Toledo Law Review (1983), Vol. 15, 171-201.

8 Purdue University Automotive Transportation Center, "Do laws make a difference? An analysis of Indiana's 1983 Anti-Drunk Driving Law: A Report to the Governor's Task Force to Reduce Drunk Driving," (1986), 43.

9 Taylor, L., "Drunk Driving License Suspensions: Double Jeopardy Dilemma," Trial, (June 1995), Vol. 31, 80-84.

10 Texas Administrative License Revocation Program Annual Report, "How the Law Works in Texas," Texas Department of Public Safety departmental publication (1995). 1-3.

11 Texas Department of Public Safety Accounting Report, Budget for Legal - Administrative License Revocation, fiscal year 1995.

12 Texas Department of Public Safety Statistical Reports, "A Look at DWI," departmental publication (1995), 1-39.

13 Texas Civil Statutes, V.C.S. 6687b-1&9, (Administrative License Revocation) 1995, Chapter 17, 157-162.

14 Texas Civil Statutes, V.C.S. 6687b-1&9, (Rules of Procedure for Administrative License Suspension Hearings) 1995, Chapter 159, 536-545.

15 Texas Penal Code, Section 49.00, (Intoxication Offenses), formerly V.C.S. 67011-1.

16 Virkar, S.R., Wall, J.D., Kelly, V.M.; Virginia Research Council, Charlottesville, Virginia, "Issues Concerning the Adoption of an Administrative Per Se Statute by the Commonwealth of Virginia," (1989), 24-39.

17 Whitcomb, R.F.; Arthur Young and Company (Washington, D.C.), "Study of Administrative Hearings Conducted by State Driver Licensing Agencies," (1977). see NCJ 045952.