Historical Background

Prior to 1980, New York's drunk driving laws, while seemingly adequate on paper, lacked sufficient focus and cohesiveness to provide a substantial measure of deterrence. The combination of unfettered plea bargaining, insubstantial use of breath test laws, grossly inadequate penalties and lack of commitment by the criminal justice system combined to minimize New York's effort to address the tragic consequences of the drinking driver.

At that time, a person arrested for driving while intoxicated (DWI) in New York had an average blood alcohol content (BAC) level of .19%, an amount that is more than twice the current legal limit of .08%; yet the person's chances of being arrested were estimated to be as low as one in 2,000 drunk driving events. If caught, the person would likely be allowed to plead guilty to a non-alcohol-related charge, such as reckless driving, and receive a penalty that would seldom include a loss of license. Even if a person were convicted of a drunk driving offense, the average fine imposed in 1979 was $11. With little chance of being either apprehended or punished, it is not surprising that few motorists were deterred from drinking and driving.

Time for Reform

During the late 1970's and early 1980's, grass roots groups, such as RID and MADD, concerned with the drunk driving issue and growing national public consciousness led many state Legislators to make drunk driving a traffic safety priority. As the New York Legislature analyzed this problem, it reviewed the latest research and evaluated the various approaches taken by other states and countries.

The Senate Special Task Force on Drunk Driving found that New York's laws did not provide strong penalties for drunk driving offenders. However, it also found that: *The experience of other states where harsh penalties have been tried – such as mandatory jail for all convicted drunk driving offenders – has shown that these penalties have had a temporary effect at best. Where harsh penalties have been threatened, they have not been applied. Mandatory jail and so called "hard" license suspensions (which prohibited offenders from holding restricted use licenses) provided an escape route for most drunk drivers, because public officials have recognized that efforts to impose harsh sanctions could reduce the likelihood that drunk drivers would actually be convicted.*

Report of the Senate
Special Task Force on Drunk Driving
Sen. William T. Smith, Chairman 3/85

Instead, New York moved away from a system that focused on penalties to one that emphasized higher levels of enforcement and prosecution that were coupled with workable penalties and a public information and education campaign.

Prevention of Drunk Driving through General Deterrence

When New York State enacted the STOP-DWI Legislation in 1981, it sought to follow the general deterrence model as the way to combat drunk driving. In theory, people are deterred from breaking the law when: the penalties which will be applied to those who violate the laws are publicized, enforcement activities to make citizens fear apprehension are increased and the respective sanction(s) are applied to those who are convicted. The effective performance of the general deterrence function is essential since it theoretically reaches all of society. *Deterrence can be regarded as a restatement of the first law of demand in economics. Briefly, it proposes that the efficacy of a legal threat is a function of the perceived certainty, severity, and swiftness or celerity of punishment in the event of a violation of the law. The greater the perceived likelihood of apprehension, prosecution, conviction, and punishment, the more severe the perceived eventual penalty, and the more swiftly it is perceived to be administered, the greater will be the deterrent effect of the threat.*

Deterring The Drinking Driver Legal
Policy and Social Control 1982.
H. Lawrence Ross

New York's passage of the STOP-DWI Legislation in 1981 laid the foundation for enhancing the deterrent effects of its drunk driving laws. To that end, New York increased the civil and criminal penalties for drunk driving and directed the return of DWI fine monies back to each county to create the STOP-DWI Program that would coordinate increased enforcement, prosecution and public information and education efforts.

While the development of the STOP-DWI Program in 1981 was the primary component in assuring the new law would have more than a temporary impact, it was but one of several elements of New York's deterrent model.

Plea Bargain Restrictions

One of the primary failures of New York's pre-1980 laws was the unfettered practice of plea bargaining the crime of driving while intoxicated to such non-alcohol related offenses as reckless driving and failure to keep right. The deleterious effect of unlimited plea bargaining was significant. First, it undermined the penalties attendant to the initial charge, thereby defeating any specific deterrent value that the arrest might have had. Second, it exempted the defendant from the State's Drinking Driver Program where the defendant would participate in an alcohol education program, be screened for alcohol dependence and, when appropriate, referred for treatment. Third, and perhaps the most significant, it deprived law enforcement officials of a standard method of identifying recidivists.

In addressing the problem, the Legislature struck an important balance. On the one hand, it recognized that plea bargaining is an essential component of an overburdened criminal justice system. At the same time, it sought to convey the message to local law enforcement officials that drunk driving is a complex and potentially violent crime and that there had to be some method in place for identifying alcohol-related offenders and removing them from the road.

In landmark legislation, New York lawmakers put in place a policy that prohibits persons charged with driving while intoxicated from pleading guilty to a non-alcohol related offense except under very narrow evidentiary circumstances.

The impact of the law was immediate. During the first year following enactment, non-alcohol related pleas among motorists in a ten county study area, who were initially charged with DWI, declined from 56% to 15%. By 1983, DWI and DWAI convictions had increased by 43%, while convictions for reckless driving had declined by 68%. Additionally, since the "back door" had theoretically been shut on alcohol-related pleas, prosecutors were now able to identify repeat offenders and seek full prosecution. As a result, in 1983, the third year of the plea bargaining law, statistics showed a 20% increase in DWI convictions alone.

The STOP-DWI Program

STOP-DWI stands for "Special Traffic Options Program for Driving While Intoxicated". The STOP-DWI Program was created by the State Legislature in 1981 for the purposes of empowering counties to coordinate local efforts to reduce alcohol and other drug-related traffic crashes within the context of a comprehensive and financially self-sustaining statewide alcohol and highway safety program.

The STOP-DWI legislation permits each of the State's 62 counties to establish a county STOP-DWI Program which, in turn, will qualify the county for the return of all fines collected for alcohol and other drug-related traffic offenses occurring within its jurisdiction. Each county is given broad discretion in the direction of its program. The "local option" concept set forth by the Legislature merely requires that the programs address alcohol and highway safety issues and be non-duplicative of related ongoing efforts.

All 62 counties have opted to participate (with the five counties of New York City combining efforts into one program) under the auspices of 58 programs. Each county appoints a STOP-DWI Coordinator, whose duties include the development of a program, the coordination of efforts by agencies involved in alcohol and highway safety, and the submission of fiscal and program data to the Commissioner of Motor Vehicles.

Although the development and implementation of STOP-DWI Programs rests with the counties, the Commissioner of Motor Vehicles is charged with the task of approving the county plans prior to the expenditure of STOP-DWI monies and submitting periodic evaluations of the program to the Governor and the State Legislature.

Local Option

The success of STOP-DWI is attributable to numerous factors. Perhaps most importantly, its self-sufficiency creates a focal point for maintaining a continuous high profile. Thus, unlike many other legislative acts that have an immediate deterrent value when first initiated but gradually lose their impact, the STOP-DWI Programs are in a position to continually renew and adjust strategies to maintain a high level of visibility.

The statute requires that each program initiate programs to reduce the rate of alcohol and other drug-related fatalities and injuries through the creation and funding of programs that serve to enhance the deterrent effects of New York's DWI laws (i.e. relating to enforcement, prosecution, probation, rehabilitation, public information and education and program administration). Clearly, there are common threads found between most counties. Most counties fund specially trained police units dedicated to DWI enforcement, hire special prosecutors and probation officers to handle the caseload, support rehabilitation services and develop public information and education campaigns tailored to the communities within the region. Some counties combine their efforts in certain areas.

However, each program ultimately reflects the needs and priorities of its own communities. Strategies that work in Massena will not necessarily work in Bay Ridge. The needs of Broome County will never be the same as those in Suffolk County. Yet, from the diversity of local needs comes innovation and creativity.

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SUFFOLK COUNTY

The STOP-DWI Program of New York State

Key Components of Drunk Driving Reform:

A Legislative History

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STOP-DWI Foundation